

ONE

why compare?

It may be easy enough to find striking examples of differences in criminal justice, but what is less clear is how these can contribute to make up a coherent subject matter. What is the comparative analysis of criminal justice (good) for? In this chapter I first describe some of the theoretical and policy goals of this subject and how the literature seeks to contribute to them. I then go on to discuss how far this sort of work can overcome the risks of ethnocentrism and relativism.

The goals of comparative criminal justice

There are a variety of theoretical and practical reasons for wanting to know more about what others do about the sanctioning of offensive conduct (Nelken, 1994b, 2002). Whatever misgivings they may have about how their own system works, many people are even more suspicious of what goes on when their fellow citizens end up being tried in courts abroad. Such ethnocentric thinking can easily lead people to assume a priori that their own local arrangements must be superior in general, or at the very least better fitted to their own society. But, fortunately, there are also those who have a more open-minded interest in apparently strange ideas and practices, seeking to make sense of rather than reject difference outright.

Many writers seek to learn from other systems how to improve their own. Hence we get articles with titles like ‘English criminal justice: is it better than ours?’ (Hughes, 1984), or ‘Comparative criminal justice as a guide to American law reform: how the French do it, how can we find out and why should we care?’ (Fraser, 1990). Those who undertake studies of this kind seek to borrow an institution, practice, technique, idea or slogan so as to better realise their own values, or sometimes to change them. They may aim to learn from those places with high incarceration rates what *not* to do, or they may seek to help others change their systems, for example exporting new police systems to South Africa, or restoring the jury system in Russia. Or again they may just be concerned to cooperate and collaborate in the face of ‘common threats’.

But the vital practical importance of this subject brings us up against one of the most troubling of questions regarding the goals of our comparisons. How far are we intending to learn more about our own system and its problems, and how far are we trying to understand another place, system or practice ‘for itself’? For some authors, we can choose between seeking for ‘provincial’ and ‘international’ insights, or engaging in ‘national’ and ‘cosmopolitan’ enquiries (Reichel, 2008; Zimring, 2006). For reform purposes, comparative researchers deliberately use accounts of practices elsewhere as a foil. Lacey (2008), for example, deploys evidence of differences in prison rates in Europe so as to prove that growing punitiveness is not the only game in town and suggests to UK politicians that they can find a way out of outbidding each other on being ‘tough on crime’. In other cases, we may set out to understand the other but end up knowing ourselves. As T.S. Eliot (1943) put it:

the end of our exploring,
Will be to arrive where we started,
And know the place for the first time.

What, on the other hand, could it mean to try to understand another society only in ‘its own terms’? To a large extent it is impossible to make sense of things except against some background of previous expectations. Someone from India will find Italian criminal justice relatively efficient; someone from Denmark is unlikely to do so. Any cross-cultural comparison emerges from a given cultural context and has to

be able to make sense to the foreign audience(s) for whom it is intended. What is found interesting or puzzling will vary depending on local salience. But even questions couched in terms that *are* salient in both (or more) cultures being compared will lead to different answers depending on which culture one starts from. Reichel (2008) begins his book with the dilemma faced by US police agents, who feel justified to continue to pursue a criminal who has fled to Mexico because the police there are notoriously corrupt. He admits that the Mexican government might feel differently about such conduct. But one would imagine a rather different take on the topic in a textbook written for Mexican students.

Even the society being reported on is likely to *understand itself* in relation to points of similarity and difference in relation to some places (those to which it compares itself) rather than others. Should we then say that what is crucial in studying another place is less whether the author has actually got it 'right' and more what the author makes of it? Perhaps this is all that 'learning' from others means (and can mean)? Does it even matter if, according to Johnson (2001), Braithwaite may not have properly grasped the Japanese criminal justice practices he used as a model for his highly influential idea of 'reintegrative shaming' (Braithwaite, 1989)? For example, after Balvig (1988) tells us that his aim was less to learn about somewhere else than to understand his own country better. Taken too far, however, this line of argument becomes self-defeating. The reasons we make comparisons cannot provide the only criterion of success. If we have failed to properly understand another system we can hardly make use of 'it' to throw light on our own arrangements. Even if there is no view from nowhere, this does not prove that all starting points are of equal value. And seeing only what is useful for us is a poor way of acknowledging and engaging with the 'other'.

We also have to ask what, if anything, is specific about this subject. It has been forcefully pointed out that all social science is concerned with explaining variation and difference (Feeley, 1997). Comparison was central to the work of both Durkheim and Weber, albeit with rather different strategies. Many would say that comparison is the essence of all social enquiries or even of logical enquiry in general. In principle, then, no line can or needs to be drawn between criminal justice and comparative criminal justice (or between criminology and comparative criminology). In addition, the traditional focus of what is called

comparative criminal justice on different national jurisdictions is mainly a matter of political/legal convention and methodological convenience. There are considerable political, social and cultural differences *within* modern nation-states, for example within the USA (Newburn, 2006), or Australia (Brown, 2005), and even more so in less industrialised societies. For some purposes other 'units', such as towns, organisations and professional groups, can all provide occasions for comparison. And transnational crime activities and responses to them help transform and transcend differences between units defined as nation-states.

The local, the national and the international often interpenetrate. But there may sometimes be good reasons to privilege the nation-state or societal level. States are the locus both for collecting criminal statistics and for administration, and their boundaries often, though not always, coincide with contrasts in language and culture. Franklin Zimring, a distinguished American criminologist, explains that he became a 'convert' to comparative criminology when discovering that Canada had not shared the rise in US prison levels even though its crime rate was not much lower than in the USA, with the exception of homicide and life-threatening robbery (Zimring, 2006). As this example also shows, some of criminology's major debates now involve issues of comparative criminal justice.

Cross-national and cross-cultural research is a fundamental way to show whether criminology's claims are more than local truths (though it does not exhaust this task, in so far as taken-for-granted starting points are also conditioned by other factors, for example gender). But this subject offers a number of other potential benefits (and challenges) that go beyond simply adding to the pool of potential variables that can be used in building criminological explanations. Trying to understand one place in the light of another allows us to move closer to a holistic picture of how crime and its control are connected (what do they know of England who only England know?) Likewise, it can help us appreciate why reforms that are limited to those that emerge from within the same society often tend to reproduce the problems they are being asked to solve – precisely because they come from the same culture. Or, it may help us understand the factors that explain why a given society goes through cycles of corruption and anti-corruption.

In England and Wales, as in the Netherlands, the answer to failures in the system is normally thought to be greater efficiency and speed

(as in reforms of the English Youth Justice system inspired by the reports of the Audit Commission). In Italy, a rethinking or defence of 'values' is more often invoked as the way forward when problems arise (thus the 'obligatoriness' of prosecution decision-making is usually argued about as an issue of principle rather than as a question of learning from the 'best practices' of prosecutors as they struggle to deal with this unrealisable requirement (Nelken and Zanier, 2006). 'Governing through crime' may be a particularly American obsession, but suggesting that it be replaced with the metaphor of the fight against cancer still remains firmly within the American ethos of instrumental problem-solving (Simon, 2007). Miscarriages of justice arise both in more adversarial and more inquisitorial types of process. But in each case it is their tendency to count too much on the strengths of their procedures that danger lies (Brants, 2010).

Comparative study can help us escape from self-sealing cultural logics (Field and Nelken, 2007). There are a variety of strategies that can be used. But each is also subject to pitfalls. Classifications can be controversial, descriptions deceptive, explanations erroneous, interpretations interminable, translations twisted, and evaluations ethnocentric. The difficulties multiply in so far as a satisfactory account of difference usually requires the ability to draw on more than one of these strategies. But the message of this book is that considerable progress can be made in understanding and explaining other systems of criminal justice if (but only if) we face up to these challenges.

Collecting data on legal rules, procedures and distinctive institutions is certainly a valuable first step (one that is both demanding and time-consuming, not least because of linguistic and conceptual difficulties). It can be instructive to learn about the social role of policemen in Japan (as well as the lesser known system of voluntary probation officers), or discover that the way chosen to stop traffic policeman in Mexico City taking bribes from motorists was to appoint less threatening women rather than men to do this job. Careful description can also help get beyond often out-of-date classificatory stereotypes. In many respects, the Netherlands has more similarities with the UK than with Italy, even though the UK has a common law rather than continental system of criminal justice. But the task of comparativists, unlike that of lawyers, cannot be that of providing description for description sake. Even the effort to describe

selected aspects of criminal procedure in Europe runs to over a thousand pages (Delmas-Marty and Spencer, 2002).

Descriptions can provide the basis for explanation and understanding, but for them to serve this purpose we must have an understanding of the way the 'law in action' relates to the 'law in books'. This essential working tool for all social studies of the law was in fact first put forward in the context of studying police (mis)use of criminal procedure. Likewise, the distance between what continental systems of criminal justice claimed to be doing and what research into the law in action showed they were actually doing was the nub of the classical debate about 'the myth of judicial supervision' in continental criminal procedure. The leading recent empirical in-depth study of French criminal justice, by Jacqueline Hodgson, also places stress on how little actual supervision of police is exercised by continental prosecutors (Hodgson, 2005).

If we are worried that some criminal justice systems allow the state to use psychological pressure against defendants (Vogler, 2005), a closer look at what goes on in police cars will quickly show us that this is not a problem restricted to the inquisitorial system. Empirical research has shown that it was rarely necessary to pass 'telephone justice' messages to judges and prosecutors to ensure politically appropriate outcomes of trials in communist East Germany. The methods used to appoint and socialise recruits to these offices was sufficient (Markovits, 1995). More recently, by contrast, corruption investigations in post-communist Poland were themselves used 'corruptly' against political adversaries under direct government impetus (Polak and Nelken, 2010). As this suggests, rules and safeguards can even operate in ways that are the opposite of what are said to be their justifications. The procedures in Italy that are supposed to protect offenders' rights to know as soon as possible that they are being prosecuted (the 'avviso di garanzie' notice) ends up having the effect of facilitating 'trial by media' (Nelken and Maneri, 2000).

Paying attention to the 'law in action' is also relevant to making sense of all three of the running examples being used in this book. The reason why young people in Italy, in some respects, 'get away with murder' is that the 1989 reform of juvenile justice was a procedural one brought in at the same time as the introduction of the major procedural reform in that year for adults. It did not change the substantive penalties on conviction available for serious offences by young people, which remain

(in this country where children are so much loved) only prison. The two most important new measures that were introduced – ‘irrelevance’, for cases that were deemed too trivial for further prosecution (an essential filter in a regime of obligatory prosecution and one not yet available for adults), and ‘putting to the test’ (*messa alla prova*), a type of probation with in-built requirements of work, schooling etc. – had therefore to be *pre-trial procedures* – ways of putting off and avoiding trial. It is because *messa alla prova* is available for all crimes that prosecutions for murder too often end up without going to trial provided the conditions of pre-trial probation measures have been successfully met.

Likewise, to make sense of obligatory prosecution, it is necessary to learn how Italian prosecutors actually behave, given the impossibility for handling all the cases on their desk simultaneously. Who or what is it that *de facto* decides priorities – the prosecution office or the single prosecutor – and on what grounds? The rule of obligatory prosecution can in practice strengthen the hands of prosecutors who give priority to some classes of cases rather than others (Nelken, 1997b; Nelken and Zanier, 2006). Finally, to understand the times taken by trials, it is vital to appreciate the workings of the system’s own cut-off points for undue procedural delay. This so-called period of *prescription*, within which a case must run its course, applies right up until the hearing of appeal in the final court, after three stages of trial and any number of possible procedural objections. So defence lawyers often try less to prove their client’s innocence than to make the case overrun its allocated time.

For many criminologists, the main interest of comparative criminal justice lies in the help it affords for formulating and testing explanatory hypotheses about levels of incarceration rates, the retention of the death penalty, or whatever. Those looking for explanations of differences in criminal justice practices that translate quickly into policy arguments may be disappointed, however. Asking which penal disposal is better at reducing crime turns out to be more complicated than ever when asked across a range of countries, *many of whose criminal justice systems seem to give low priority to this goal*. We first have to understand why that should be the case. It has been argued that even countries like the USA, which claim to be most concerned with reducing recidivism, are less concerned with crime in its own right than with larger issues of social and moral discipline (Simon, 2007). And critics of penal policies may likewise be

as interested in wider questions of how to create a better society as they are in crime rates as such. In this field explanatory and evaluative issues, what works and what is right are rarely easily separated.

Those with a normative agenda may seek to assess criminal justice systems as a whole. Is the problem that too many people are being sent to prison, or too few, or does all depend on which offenders we are speaking about? There are also interesting differences between criminal justice systems in what kind of evaluation, if any, is seen as appropriate for different actors in the system. Should judges be evaluated, by whom, for what conduct, and for what purpose? (Mohr and Contini, 2008). More commonly, commentators examine what goes on at a given 'stage' of criminal justice, or in one of its constituent organisations or networks. But because criminal justice practices are sites for contesting values, in order to make sense of what criminal justice agents are trying to do, we need to make sense of their normative commitments and will often be providing contestable interpretations of their behaviour.

In Anglo-American systems, for example, it is debatable and debated when plea bargains are to be considered the result of unfair pressures. Getting our normative bearings can be even more difficult in unfamiliar contexts. In Italy, some judges in corruption cases imprison those who refuse to confess, arguing that extracting a confession is the only certain way they have of being sure that the offender will no longer be trusted by his associates (and so be unable to repeat the offence). But many commentators see this as an abuse of criminal procedure. Should 'we' take one side or the other (and who are 'we')? How much allowance should be made for the larger context of political corruption in which judges find themselves, or for particular historical circumstances such as those that characterised the *Tangentopoli* anti-corruption investigations (Nelken, 1996, 1997b)?

Beyond ethnocentrism and relativism?

To make progress both in learning about and evaluating other systems of criminal justice we need to bear in mind two dangers. On the one hand, there is the risk of being ethnocentric – of 'confusing the familiar

with the necessary'. Here we fall into the trap of assuming that the links between social factors, crime and criminal justice that we find persuasive are also ones that apply generally, and that what *we* do, our way of thinking about and responding to crime, is universally shared, or, at least, that it would be right for everyone else. Alternatively, there is the temptation of relativism. Here the claim is that we can never really grasp what others are doing, or that there can be no transcultural basis for evaluating whether what they, or we, do is right (see, for example, Beirne, 1983/1997; Leavitt, 1990/1997; Cain, 2000b; and Sheptycki and Wardak, 2005).

For some leading post-war authors the point of comparative work was precisely so as to 'uncover etiologic universals operative as causal agents irrespective of cultural differences between different countries' (Szabo, 1975: 367). The search for such generalisations continues. Authors seek to show that certain social groups or categories tend to be more punitive than others, or that similar forms of criminal conduct are, as a matter of fact, universally disapproved to similar degrees. Claims are made that, cross-culturally, people have similar preferences for fair trial processes and shared intuitions about how institutions such as the police must behave if they are to be considered legitimate (Lind and Tyler, 1988). A well-organised criminal justice state that reflects such public preferences is seen as the best way of helping victims of criminal behaviour (Newman, 1999).

The currently renewed interest in establishing and spreading 'evidence-based', transcultural knowledge of 'what works' in responding to crime (Sherman et al., 1997) is an important example of the search for universalistic knowledge in this field. On the one hand, this represents a valuable attempt to reverse the unwarranted, and partially unintended, pessimism induced by the earlier slogan that 'nothing works' in terms of dealing with offenders. But this type of 'globalising criminology' can also be less culture-free than it purports to be (Nelken, 2003a). Strengthening dysfunctional families is seen as the major route to reducing crime. Yet Mafia groups, like those of corrupt politicians and all groups of collaborative criminals, seem, if anything, to suffer from having too strong family or family-like ties. This approach also often gives insufficient attention to what different cultures mean by 'working' (especially in reference

to the procedures of criminal justice), as well as for whom it is that crime prevention and criminal justice is supposed to work.

By contrast, there are authors who contest this search for universals and suggest the point of comparative research is rather to undermine the pretensions of positivistic criminology. For them, careful examination of foreign criminal justice practices suggests that it is, above all, the certainties buried in universalising approaches to explanation, such as the claim that all systems find ways of relieving caseload pressures, or that criminal law must always serve the interests of the powerful, that turn out to be cultural rather than scientific truisms. Differences between what societies define and treat as crime can be striking – and not only in the obvious areas of political and sexual deviance. The USA is still sending people to their death in the electric chair, but, in 2008, a fairground owner in Italy was convicted of a crime against public decency for exhibiting a pretend one! The same applies to solutions to deviance. Writers in the UK are convinced that military-style policing always alienates police from the community and so cuts down the supply of information. But in Italy the fact that the militarised *carabinieri* live in barracks apart from society is seen as a guarantee of their independence from potentially corrupting local ties. This is especially important in the South where organised crime groups hold so much sway.

Deciding what is ethnocentric or relativistic is not always straightforward. It is, of course, not ethnocentric to have value preferences – only somewhat suspect if these simply coincide with those we have been brought up to believe in. Thus American textbooks tend to warn of the price that countries such as Saudi Arabia or Japan pay for their low crime or low prison rates. Yes, Saudi Arabia has less crime, but ‘we’ would not want to have as little ‘freedom’ as they do. It is true that Japan has low levels of incarceration but some of the things the Japanese do in their criminal process to make this possible we would not find acceptable, and, more generally, ‘their’ conformist way of living is not for us (Dammer, Fairchild and Albanese, 2005: 9).

It is moot whether we can use Anglo-American categories, such as ‘due process’ versus ‘crime control’ (Packer, 1964), or speak of ‘justice’ versus ‘welfare’, as if they referred to universal predicaments. A surprising example of what can be seen as an ethnocentric approach is provided by the great criminologist Edwin Lemert, one of the inventors of the social

reaction and labelling approach, and also a specialist in juvenile justice. In a widely reproduced paper about the Italian system, Lemert noted the enormous disproportion between the number of juveniles arrested and processed in the USA and in Italy. But, rather than see this as an indictment of the American approach, he argued that the Italian system was what he called a 'spurious' example of juvenile justice because it could not be seriously considered as trying to implement a welfare system for juveniles on the American model (Lemert, 1986). As it turned out, it was the USA that moved away from the welfare model that the Italian system has been steadily consolidating (Krisberg, 2006).

An emphasis on the importance of diversity and the particular is not the same as relativism (Dembour, 2006). Different arrangements may indeed – rightly – be appropriate under different conditions, and changing conditions may also alter the relevance over time of given values even within the same culture. Roach, for example, argues that the rise of victims' groups challenges the continued utility of Packer's categories, even in Anglo-American settings, by showing that these were focused only on the roles of the state and the accused (Roach, 1998). Even if some practices work well locally, they may not be easily transferable. It is hard to imagine other places copying the Japanese in seeking to reform a rapist by telling him to write a *haiku* (Johnson, 2000). But their wider applicability should not be confused with understanding how they work as they do *in loco*. If the question was how the continental methods of control over the police would work in the USA, then Goldstein and Marcus were right that such methods would be insufficient to avoid potential abuse (Goldstein and Marcus, 1977). But, in so far as the issue was rather trying to understand what other places were actually trying to do, and sometimes succeeding in doing, *in the context of their own structures and expectations*, then Langbein and Weinreb had the better of the argument (Langbein and Weinreb, 1978).

Conversely, if we wish to avoid ethnocentrism, it is not sufficient to be critical of our own practices. This too can be formulated in ways that take for granted local values which are then projected on 'better' systems elsewhere (e.g. Pizzi, 1999). It is often helpful to ask whether we may have fallen into the so-called 'evil causes evil fallacy' (Cohen, 1970). Just as it can be a mistake to assume that the causes of crime must necessarily be other objectionable matters, we need to be open

to the possibility that aspects of criminal justice that we disapprove of may be connected to positive and not only negative factors (and vice versa for matters we approve of). Criminologists who try to explain which states in the USA have the highest prison rates tend to single out factors that most criminologists would consider negative in their own right, such as lower welfare levels, less effort to ensure economic equality, and less public participation in political life, or the power of only certain groups to participate where it matters. But this can also be linked to the rise in concern for victims, or the introduction of determinate sentencing through sentencing guidelines. To a limited extent even the effort to abolish or limit the use of the death penalty can increase the use of prison (Gottschalk, 2006). Prison building restarted in the Netherlands in part so as not to abandon the principle of one person to a cell. It has been suggested that egalitarianism in the USA led to an increase rather than a reduction in levels of state punishment (Whitman, 2003; Nelken, 2006e).

More individualist and more collective societies can each have their own sort of pathologies, for example dealing with difference by excluding it or by enforced assimilation (Young, 1999). Assuming that places with lower prison rates necessarily operate more 'inclusive' systems of social justice can be the kind of short-cut that can easily lead to a dead end. Learning from what others do is not so straightforward. On closer acquaintance we may well find that we like the result achieved by other systems of criminal justice, but not the means they use to get there, or vice versa. (In Italy it is the politicians' sense of their vulnerability to criminal prosecution that helps explain why criminal procedure is so complicated, and hence why less people end up in prison than might otherwise do so).

The need to give attention to the local and the particular does not mean that we cannot ever talk about 'best practice', as evaluated according to widely shared standards. Even if considerable caution needs to be used in interpreting cross-national ratings, some places may be doing better or worse in terms of such standards. If one in ten children in Denmark who grow up in local government care homes go on to further education, whereas in the UK only one in a hundred do so, then we would do well to try to learn how this is achieved. But comparative research should not be treated only as a means of identifying

universally valid best practices to be adopted wholesale. We can also explore what happens elsewhere so as to engage in ‘internal critique’ according to our own standards. Those in common law systems could learn that paying more attention to ‘due process’ considerations could also help achieve the goal of ‘crime control’ (by increasing legitimacy, public confidence and cooperation). Conversely, French authors could discover that strengthening the role of defence lawyers in their system could help increase the chances of truth emerging from the process – a key value for them.

What this implies is that *the best practice for ‘us’ to learn from may not always be best practice as such*, but rather that which stretches our imagination about what is possible. Moving a little nearer to what we would otherwise never normally think of doing may be just what is needed. It may seem obvious to many observers of Italy (as well as to some Italians) that the Italian criminal justice system could benefit from increased pragmatism and managerialism. But vice versa, Italy may have something important to teach more pragmatic countries about the possible counter-productive consequences of too much concern for ‘efficiency’ in their penal systems.

Take the three running examples being used in this book. The Italian juvenile system may seem to offer insufficiently robust procedures for dealing with the type of problem situations that Anglo-American systems face. But, in England and Wales, the government’s recent stress on dealing with caseloads more expeditiously mainly led to a substantial rise in youth custody, in contradiction to its general commitment to reduce this number. As far as the rule of obligatory prosecution is concerned, it is not obvious that those who want to bring about a more equal society can or should immediately seek to achieve this by opting for the Italian rule of mandatory prosecution. Even the Italian system achieved the effects it did only during an exceptional period of political transition, though it is also fair to add that the judges themselves played an important part in bringing about that transition. Under ‘normal’ circumstances, the degree of independence possessed by Italian prosecutors can lead to continual and distracting tests of strength with governments, which weakens collaboration in organising much needed reforms of the criminal process. Nonetheless there may be much to be learned – for countries where prosecution is less independent – about the different

possible meanings of prosecutorial independence, and the social and political preconditions and consequences of such independence.

The example of Italian trials raises even more issues. Certainly, justice delayed may often simply be justice denied. Delay reduces the chance of conviction because of its implications for the witnesses' memories, willingness to collaborate, vulnerability to being got at, etc. Once it has accumulated, delay itself produces more delay and uncertainty, and, because final trial verdicts are so slow in coming, Italy is increasingly experiencing trial by media as the daily newspapers treat even information about the earliest stage of an investigation as a token of presumed guilt. But, in so far as delay is produced by given rules of criminal procedure, this should lead us to think more carefully what 'due process' (what the Italians call *garanzie*) should actually require. How many stages of appeal should there be? How much need is there for separate scrutiny at each stage by different judges (and how appropriate is it to restrict all such decisions to legally trained people)? Why is it not enough to trust to the system's own internal legal definition of when cases have overrun the time in which they must be disposed of?

We can even ask whether slowness can ever have value. At a conference in Padua on the topic of legal delay in which I participated, it was surmised that delayed trials could give victims time to get over their upset so as not to be so emotional. This may seem less strange a suggestion if we treat criminal justice, as one important progressive Italian theorist does, as primarily a means to restrain vendetta in the interest of the offender (Fellajoli, 1989; Nelken 1993). This is certainly a very different perspective from the current trend to make the victim and his and her feelings play a more central role. Criminal justice also reflects wider social values. A more efficient or speedy court system in Italy would often come into conflict with a social structure and culture in which many people place reliance on slowly built-up forms of group co-optation and clientalist sponsorship, sometimes even in defiance of legal rules. On a more positive note, Italy has been called the spiritual home of the slowness movement, the call to all of us to slow down so as to get more out of life (Honoré, 2004). Perhaps slow food and fast trials are incompatible?