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SOLON Crimes and Misdemeanours

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PERSONAL REFLECTIONS ON THE *EXPERIENCING THE LAW* CONFERENCE

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I approached this conference as something of an interested observer. My academic background is in history and sociology rather than law, and my research interests lie in the study of alcohol. Consequently the conference was never going to address head-on my own research questions, but as my research relates particularly to how alcohol is perceived and how it is regulated, it requires at least a familiarity with legal studies – something which I hoped the conference would contribute towards. My research is pitched somewhere on the symbiotic interface between law and society, in the sense that it focuses on how popular attitudes and public morality enter the law-making process to become legislative frameworks in addition to how these frameworks in turn impact upon popular attitudes and public morality. The chicken-and-egg-type conundrum involved in this equation is clear and so the question of whether the law *creates* or is *created by* popular beliefs appears best examined from a historical and comparative perspective. It is well beyond both the extent of my current research and the intention of this paper to attempt an answer to this question, but what does seem feasible is some consideration of how the papers given at the ‘Experiencing the Law’ conference impacted on this ongoing project. I found the conference both fascinating and useful and in this paper I will give some personal reflections on the presentations in terms of how they relate thematically to my own research, and how they have impacted conceptually and methodologically upon the plans for my PhD. It should become clear that, despite arriving as an interested observer, I found a plentiful supply of information and opinion relevant to my own work.

The conference’s express purpose was to deal with the issue of *failings* or *failure* in regard to the law and its handling of violence in everyday life. Some of the papers, particularly Heather Harvey’s and Jasvinder Sanghera’s, focused on where the legal system falls short of delivering justice, security and public confidence, and made suggestions about what can be done to remedy this situation. Others looked more pragmatically at what is currently being done to minimise the law’s failings in particular areas, and, to an extent, the likes of Alisdair

¹ ESRC funded PHD student currently working on his thesis entitled ‘Intoxicating Measures and Abstinence Agendas: Popular Attitudes Towards Alcohol and their SocioLegal Contextualizations: Victorian and Modern Parallels’

Gillespie and Nazir Afzal appeared cautiously optimistic about the ability of legal systems to adapt to and cope with new and difficult challenges. Kim Stevenson and Candida Harris's paper looked at the legislative response to crime in general and was critical of contemporary 'frenzied law-making'. Les Moran demonstrated the utility of, and argued for the use of visual sources in studies of changes in legal systems and practise over time. And there were several presentations that utilised a historical approach to assess the law's response to violence or the threat of violence, notably by Judith Rowbotham, David Nash and Lorie Charlesworth. The issue of the law's failure was thus explored through a variety of topics and from several distinguishable perspectives (academic/practitioner, contemporary/historical, methodological).

The papers that discussed social problems through a historical approach were of particular interest to me, thematically and methodologically. Lorie Charlesworth's paper on the 'minor' war crimes trials that took place in the occupied areas of Germany after World War Two was essentially a case study. It examined the ad-hoc creation of a court system to deal with violence that had occurred outside of the law and gave a rather positive appraisal of the capacities of a common law system to adapt to new situations. Demonstrating the versatility of a particular legal system through a historical reconstruction was, I felt, an innovative exercise. Judith Rowbotham's paper involved two case studies, chronological rather than geo-political, and compared the responses of the criminal justice system to domestic violence in Victorian and contemporary periods. Comparative enquiry, be it historical or international, is highly generative in its ability to broaden horizons which, from a perspective anchored in time or space, may appear fixed. Rowbotham's paper was thus informative in its assessments of continuity and change between the two periods in question, and illuminating in its implicit judgements on the relative success or failure of each. David Nash took a more longitudinal approach that examined the evolution of blasphemy over time. The paper stressed the changing conceptions of blasphemy, particularly 'passive' and 'active', and their relation to broader historical processes. In regard to alcohol, public concerns tend to be episodic² and so Charleworth's case study approach may be fruitful. Moreover, the Victorian and modern periods are often seen as high tides of public concern and so the utility of Rowbotham's methodological approach was obviously of interest to me. But alcohol panics have a longer and more 'joined-up' history that is broader than any two periods. Hence a combination of the case, comparative and evolutionary approaches is something I will now seek to incorporate into my own work (and my attempts to unpick the attitude-legislation paradox).

² John Greenaway *Drink and British Politics since 1930*, (Palgrave, 2003).

Also interesting from my point of view, was the concentration of several papers on what might be termed 'hidden' violence – by which I refer specifically to the papers relating to domestic violence and forced marriage/honour killing. By definition this type of violence is inter-familial, and an associated consequence of this is that it tends to occur in private (i.e. 'behind closed doors'). Both Heather Harvey and Jasvinder Sanghera gave some discussion of the actual, rather than reported, levels of domestic violence and forced marriages respectively. The salience of the topic comes from the fact that violence of this type is difficult to gauge as it often goes unreported, remaining in the private sphere, and this point serves to support the characterisation of both domestic violence and forced marriages as 'hidden' violence. As Judith Rowbotham described there has been in the past, and to an extent still remains, a debate over how much of a role the state should play in these affairs. To what extent can and should the state legislate for personal relationships? Whilst much criminal law exists to punish and prevent any harm inflicted upon the individual, if a prosecution is not pursued by the victim, should the state continue with punitive legal actions?³ Should the police sit back and wait for the victims to contact them, or for worried neighbours to tip them off? Or should they take a more pro-active approach that seeks out and punishes offenders as, say, they might in regard to drug dealers? This debate straddles the sometimes fine line between public and private spheres of behaviour as well as individual and collective spheres of responsibility. Liberal ideas underpin much of our political and legal structures and, as an ideology based around the reconciliation of individual and social rights and freedoms, liberalism is therefore posed some acute questions by this debate.

The type of violence associated with alcohol is predominantly public. Of course, alcohol hypothetically could be, and in all likelihood is, involved in much 'hidden' violence. But the popular discourse surrounding the topic of alcohol rarely, if ever, mentions its relation to inter-familial violence. Stereotypically alcohol is associated with unruly youths, brawling in the streets, or fighting in pubs or clubs. In the current political climate, this type of behaviour has become, perhaps, the 'classic' type of crime, the type we read about in the papers and see on TV day-in day-out. I honestly cannot remember the last time I heard a politician call for a clampdown on domestic violence, or new legislation to prevent honour killings. Yet barely a week goes by without some particular measure being called for to curb alcohol-related violence. In the last twelve months, Chief Constable Peter Fahy has asked for the

³ See: J.S. Mill, *On Liberty* (Penguin, 1985).

legal age of drinking to be raised to 21,⁴ Liberal Democrat health spokesman Norman Foster proposed that people who become ill through drinking alcohol should be charged for treatment on the NHS,⁵ Alcohol Concern called for the prosecution of parents who allow under-fifteens to drink alcohol,⁶ David Davis has called for a reversal of the 2003 Licensing Act (which allowed premises to apply for twenty-four licences), numerous people have called for an increase in the price of alcoholic drinks,⁷ and many local councils have tried to freeze the number of licensed premises within their jurisdiction.⁸ It is often said that the level of alcohol-fuelled crime and disorder is at epidemic levels, it could also be said that the level of concern relating to alcohol-fuelled crime disorder has reached similarly dizzying heights.

The point I am alluding to is that alcohol-related violence receives so much attention for precisely the same reason that domestic violence and forced marriages receive so little: because it is out in the open. Alisdair Gillespie's paper argued that law enforcement agencies take something of a 'hear no evil, see no evil, speak no evil' approach to the policing of prostitution. He suggested that there is a concentration of efforts on curb-crawling and open soliciting of sex, whilst brothels and websites continue to provide the means by which sex can be readily bought and sold. One of the possible explanations of this seeming imbalance in the focus of regulations and prosecutions, is that prostitution in brothels or online is not socially visible, like domestic violence it occurs behind-closed-doors rather than in public space. It might be said that this is a natural response – legal intervention must be predicated by recognition of a certain offence and, usually, some degree of measurement of that offence. But in regard to domestic violence and prostitution, it is clear that, despite the social invisibility and absence of reliable measures, these things are generally believed to occur and believed to have been occurring for a very long time. This situation is not radically different to the issue of alcohol-related violence – whilst most people believe it occurs, reliable explanation and measurement of the phenomenon is scarce. With the exception of things like licensing offences and drink driving, official crime statistics include no measure of alcohol-related crime. And how could they? Because a person has consumed alcohol before engaging in affray does not necessarily mean alcohol is causally related to the incident. There is, however, a 'common sense' assumption that alcohol in

⁴ *The Guardian*, 15th August 2007, viewed on <http://www.guardian.co.uk/crime/article/0,,2149167,00.html> on 14/12/07.

⁵ *The Guardian*, 14th September 2007, viewed on <http://www.guardian.co.uk/guardianpolitics/story/0,,2168855,00.html> on 14/12/07.

⁶ *The Daily Mail*, 11th May 2007, viewed on http://www.dailymail.co.uk/pages/live/articles/news/news.html?in_article_id=454140&in_page_id=1770 on 21/11/07.

⁷ *BBC News*, 13th November 2007, viewed on <http://news.bbc.co.uk/1/hi/health/7090864.htm> on 15/11/07.

⁸ *Evening Herald* (Plymouth), 22nd January 2008, viewed on http://thisisplymouth.co.uk/displayNode.jsp?nodeld=181429&command=displayContent&sourceNode=229968&h_ome=yes&more_nodeld1=133174&contentPK=19624155 on 22/01/08.

some way contributes to any criminal or disorderly behaviour committed by those who have drunk it. This assumption is substituted for empirical measurement in respect to alcohol, but seemingly not for domestic violence or prostitution. There is a discrepancy between the policing of public and hidden crime and disorder.

It would appear, therefore, that whether a crime is public or private in location is a crucial determinant of the legal response (or lack of) to this crime. To elaborate, the first notable instance of alcohol-related panic or outrage to occur in Britain was the 'gin panics' which took place between 1720 and 1750. Immortalised in Hogarth's famous 'Gin Lane' sketches, gin was seen as corroding social order and public morality, of leading men to violence and idleness and transforming women into bad mothers.⁹ Historians tend to agree that the 'gin panics' were at least partly instigated by an increase in consumption of the spirit from the end of the Seventeenth Century onwards. But the likes of Peter Borsay and Jessica Warner¹⁰ are also keen to point out the importance of broader social changes, such as the beginnings of industrialisation and its accompaniment with rapid rural-urban migration, in instigating the gin panics. As Richard Sennett reports, the population of London more than doubled between 1632 and 1750 – an increase not matched not by spatial expansion.¹¹ The capital thus seemed crowded and, with the government disinclined to intervention, confidence in social order was reduced. In Hogarth's pictures the streets are akin to a grim carnival of debauchery and recklessness. Public space had been invaded and degraded by an emerging mass of population, soon to be formed into an industrial working class, a mass whose behaviour was profoundly disturbing for Hogarth and his urban, middle-class peers. It was not the behaviour of this mass *per se* that was the cause of concern, but the occurrence of this behaviour in open, visible, civic space.

It can be argued, therefore, that a concentration of humanity and a general anxiety about rapid social change helped spawn the gin panics. Sennett argues that in the Eighteenth Century an imperative to bring order to public space became apparent. London underwent much reconstruction in this period, following the Great Fire, and in the new public squares the focus was on houses and gardens. The traditional civic multi-purpose squares that accommodated commerce and entertainment were no longer desirable and a concerted effort was made to drive peddlers and hawkers away from public squares.¹² Of course, the existence of public space and attempts to bring order to it were not inventions of this period

⁹ Borsay, Peter 'Binge drinking and moral panics: historic parallels?', viewed on <http://www.historyandpolicy.org/papers/policy-paper-62.html> (2007) on 23/01/08.

¹⁰ Jessica Warner *Craze: Gin and Debauchery in an Age of Reason* (Profile Books, 2003).

¹¹ Richard Sennett *The Fall of Public Man* (Cambridge University Press, 1974), p.p.50-53.

¹² Sennett, p.p.54-55.

and are documented throughout the Medieval and Classical periods. But as both Sennett and Ehrenreich are keen to point out, this was a new bourgeois public space and the standards of behaviour expected were stricter than ever before.¹³ The clampdown on traditional activities and recreations in the Eighteenth and Nineteenth Century is well documented and includes the suppression of bear-baiting, cockfighting, Sunday trading, football, steeple chase, carnivals, dancing and drinking.¹⁴ The sheer range of behaviour covered supports the idea that there was an urgency and intensification about this project of public order hitherto unseen in Britain.

Like the gin panics, the Temperance Movement of the Nineteenth Century was rooted largely in anxieties about the drinking habits of the masses and also exhibited a concurrent drive to bring order to public space and 'civilise' the masses. Temperance societies were keen to argue that drink resulted in crime and disorder. Samuel Pope, secretary of the UK Alliance, suggested that crime rates would be 75% lower if not for alcohol. He explained that alcohol "destroys my primary right of security by constantly creating and stimulating social disorder".¹⁵ This belief led many temperance activists to campaign for tighter restrictions on licences or even, and as in Pope's case, to call for total prohibition. For Pope, alcohol was a temptation, a social, physical and moral evil which the majority of people lacked the fortitude to resist and, as such, legal intervention was the only solution. Interestingly, the Temperance Movement in general and especially Pope's prohibitionist UK Alliance were strongest in Lancashire and Yorkshire – the emerging industrial heartlands of Nineteenth Century Britain.¹⁶ It seems that, as with the gin panics, concerns about the detrimental effect of alcohol on how people use public space were most acute in newly urbanised areas.

A similar pattern has been observed in the USA. Joseph Gusfield identified that the activities of US Temperance Societies in the Nineteenth Century tended to be concentrated around the arrival of successive waves of Irish and German migrants.¹⁷ Again, rapid in-migration to urban areas seemed to instigate concerns public behaviour and civic order. Gusfield goes on to comment:

"Police can best control and supervise events they can observe and to which they can react. The area in question, then, is largely public and observable

¹³ Sennett, p.p48-49; and Barbara Ehrenreich, *Dancing in the Street* (Granta, 2007), p.p.105-180.

¹⁴ See for example Ehrenreich (2007) or Robert W. Malcolmson, *Popular Recreations in English Society 1700-1850* (Cambridge University Press, 1973).

¹⁵ *The Times*, 2nd October 1856, p.p.8-9.

¹⁶ Lillian Lewis Shiman

¹⁷ Joseph R. Gusfield, 'Status conflicts and the changing ideologies of the American temperance movement', in Pittman, David J. and Charles R. Snyder (eds), *Society, Culture and Drinking Patterns*, (John Wiley and Sons, 1967) p.107.

territory. Streets, parks, alleys, and public plazas are the venue of the police".¹⁸

The police are thus depicted as reactive rather than pro-active, dealing with observed, public offences after they occur rather than seeking out crime that is not immediately visible. This description is concurrent with earlier discussions of violence and prostitution and it is therefore possible to characterise public crime and disorder as the subject of significantly more attention than 'private' or 'hidden' offences.

Sennett's description of a campaign to bring order to public space thus appears borne out by policing and alcohol panics, in both Britain and the USA, in the Eighteenth and Nineteenth centuries. Moreover the discussion of contemporary concerns over alcohol and its effects on (public) crime and disorder show a continuity in this campaign. In this context, where the police and law-making bodies are preoccupied with public order, the kind of 'legislative hyper-activity', of which Kim Stevenson and Candida Harris spoke about, takes hold. On the wall of my office I have a timeline from 1800 onwards on which I have labelled every significant piece of legislation in regard to the consumption and retail of alcohol that I have come across. The timeline is typified by clusters – there is a cluster of licensing legislation in the 1870s and then again around World War One. But the biggest concentration is from the 1980s to the present. From the restriction of drinking at sporting events in 1985 and the Road Traffic Act of 1988, to the Confiscation of Alcohol (Young Persons) Act 1997 and the Licensing Act 2003, there has been an abundance of legislation on, or relating to, the retail and consumption of alcohol in recent years. This historical discussion has allowed me to view these recent legislative actions in the long-term context of concerns over public order and in reference to the rise of modernity and the social environments that have accompanied this process. This latter thread in particular is one which I was not intending to explore before attending the conference.

So, the breadth of topics and approaches displayed at the conference has focused my attentions on a theoretical delineation of public and hidden violence. This conceptual framework has allowed me to explore popular concerns, the activities of the police and the law-making actions of politicians from a different perspective. These new insights have ignited my interest in the early modern period and the social dynamics which created anxieties such as the gin panics. Of course, the work presented here is 'in progress' as it were, and many points certainly need further empirical support. In addition, the descriptions of the papers given at the conference are based largely on my own memory and so I

¹⁸ Joseph R. Gusfield, *Contested Meanings: The Construction of Alcohol Problems* (University of Wisconsin Press, 1996), p.87.

apologise if I have in any way misrepresented anyone's work. The point of this paper is not, however, to present my own thesis or to summarise the events of the 'experiencing the law' conference. The intention is to describe how, despite my lack of legal background and the absence of any papers specifically relating to the topic of my own research, I found the conference extremely productive. For me personally, it was a huge aide to my research. More generally, the papers given and their overarching relevance were a fantastic advert for the benefits of inter-disciplinary research and cooperation.