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SOLON Crimes and Misdemeanours
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**Conference Report: Crime Violence and the Modern State II –
Blame, Shame and Culpability
Herzen State Pedagogical University, St Petersburg, May 2009**

Between 15 and 17 May 2009, an international group of historians, lawyers and criminologists attended the second SOLON 'Crime, Violence and the Modern State' conference in St Petersburg, focusing in particular on the theme of blame, shame and culpability. We are grateful to Professor Marianna Muravyeva, formerly of the Law School at Herzen State, who has now moved to the University of Helsinki, Finland, and to the Herzen State Pedagogical University for their help and hospitality! It was a pleasure to welcome back not just a number of 2007 participants, especially from Greece and Southern Europe, but also to make contact with the lively and stimulating research community in and around Russia.

Why blame, shame and culpability? Do the first and last not mean much the same thing, it might be asked? We wanted to explore these issues and how differently they might be viewed in different jurisdictions and contexts, in order to see what understanding this might enable of the problems associated with criminalisation in the modern era, looking beyond the 'usual' areas of study (Western Europe and North America). In this, we continued the process begun in Crete in 2007, at the first [Crime, Violence and the Modern State](#) conference, which provided us with – amongst other things – an interesting challenge to the simplicities of the Elias trope on civilisation and order as a way of explaining what was happening in modern states. It was plain that, for instance, the Eastern European comprehensions and experiences required a significant nuancing of current understandings of the interconnections between criminalisation of violence and the actions of states and individuals in the modern era and state-making in several countries from the late eighteenth century to today. We also welcomed the opportunity to expand the concept of the 'modern' state chronologically, with several papers dealing with the sixteenth and seventeenth centuries.

What was focused on during the first conference was ‘the different ways in which individuals, on both sides of the penal divide, use, negotiate or resist’ the systems in place, thereby challenging ‘current conceptualisations shaping the history of European crime and interpersonal violence, which remain largely evolutionary in respect both of chronology and geographical/cultural areas.’¹ As with the first conference, one of the most striking things to emerge in St Petersburg was the range of interconnections between national penal systems, for example, and the ways in which institutional influences travel. The impact on Catherine the Great, for instance, of Blackstone’s *Commentaries* was, according to Galina Babkova, significant in her reconceptualisation of what constituted criminality in late eighteenth century Russia.² Again, though, the complex and hierarchical ways in which violent breaches of legality are construed and acquire meaning was a feature of the discussions, as in Boris Kolonitsji’s paper on the nature of state crimes in Russia and the continuity under the Soviet system of tsarist comprehensions of this category of criminality. This forced delegates to think about transfers, influences and flows in the circulations of technologies, ideas and regulations comprising, for instance, the governance of criminalized violence and the (always fragile and uneven) forging of compliant subjectivities as well as the (often contingent and tactical) possibilities for resistance and negotiation available to subjects in different times and places.

The crucial **differences between processes of shaming and of stigmatisation** were also a key feature of this conference. In order to comprehend transitions from the so-called ‘pre-modern’ to the modern, this conference had deliberately invited a number of presentations which discussed the seventeenth and eighteenth centuries, and enabled comparisons to be made chronologically as well as locationally. Anne Marie Kilday, for example, revealed the extent to which physically painful and humiliating ‘shaming’ rituals in eighteenth century Scotland had received State approval, but had essentially functioned as mechanisms for the rehabilitation and reintegration of offending individuals back into communities: and her perspectives found an interesting echo in the comments of Romina Tsakiri on Crete, examining the

¹ E. Avdela, S. D’Cruze and J Rowbotham (eds.) *Problems of Crime, Violence, and Criminal Justice* (forthcoming Mellen Press, 2010) Introduction,; this edited volume represents work from the Crete conference.

² The impact on her thinking of Montesquieu, *L’Esprit des Lois* could, arguably, have been more expected given the Russian-French axis of the day.

role taken by the controlling Venetian state in the seventeenth century in seeking to control the complex and contentious area of honour. This was further highlighted by Antonella Bettoni's paper on shaming punishments, pointing out that States had realised back in the seventeenth century that community involvement was inevitably central to *infamia ex genere poenae* and even to *infamia ipso iure*, providing a powerful inducement (so far as lay within the State's practical exercise of power) to promote *infamia per sententiam*; a perspective echoed by Natalia Pushkareva's exploration of shameful punishments in nineteenth century Russia. This emphasises the degrees of continuity between the modern and the pre-modern in terms of state initiatives and policies relating to criminalisation.

The investment of modern states in the **management of criminality** was powerfully emphasised by Neil Davie's presentation, and further underpinned by that of Nathalie Fally. Davie and Fally examined the commitment of official policy to a 'scientific' contextualisation not so much of crime as of the criminal; looking to anthropological and biological theorisations about the inherited nature of criminality. Criminal anthropology, as both highlighted, has an interesting relationship with the concept of 'blame,' removing the burden from the individual will to allocate it instead to their biological heredity. The enduring effect on ideas about criminality underpinning the international debate provoked by the development of criminal anthropology was one of the most interesting aspects of Neil Davie's presentation. Accompanying the advance in individualising identification techniques, he argued, has been an underlying will to continue to discover the criminal 'type,' enabling societies and states to identify future criminals – the principle of 'pre-crime.' That in itself provides an interesting reflection on the blame, shame and culpability process: can states be blamed for policy failures to identify and then restrain the future criminal, preventing crime? And if it were possible, how is it either fair or politic to use the concept of blame? As Davie acerbically pointed out, 'few of those engaged in such research stopped to ask themselves if it was appropriate to apportion blame for a crime that had yet to be committed'! And James Wood provided a further reflection on the potential for escalation of such ideas in his exploration of the difficulties implicit in the considerations of a Scottish group of thinkers arguing for a new legal system capable of dealing not with individual criminals as threats to society but with groups, identified on the basis of a psychiatrically assured biologically defined deviance: avoiding the moralities of individual blame, but adhering instead to an essentially impersonal standard

of non-judgmental 'justice.' An interesting counterbalance to the problems of seeking for certainties and insurance in this field was provided by the mid-twentieth century Belgian example illuminated by Fally. She explored how this apparently ineluctable destiny was in practice modified by experiments to assess and so to individualise the punishment of criminals in ways that were recognised that if some were 'incurable' criminals, this was not the case for all. Moral and social strategies could effect rehabilitation – something more generally susceptible to the human dimensions associated with the process of blame, shame and culpability!

In a conference dealing with a state dimension to crime, what needs to be one area of consideration is the area of **crimes against the state** (or what a state, at any one time, identifies as such) rather than simply crimes acknowledged as such and managed by state policy. This conference did not disappoint. The range was considerable, and thought-provoking. Boris Kolonitskii's revelation that the majority of 'crimes against the state' from the imperial era consisted of a careless 'insult' (failing to take off a hat in a room containing a portrait of the Tsar) rather than being deliberate and threatening conspiracies was particularly illuminating, accompanied as it was by information that this was one area of 'crime' that the Soviet state had continued. The debates surrounding the use of capital punishment, and other removal strategies such as those highlighted by Bill Miller, were shown to have a long pedigree, capable of being consciously invoked at times to justify the actions of the state in blaming and shaming certain categories of offender in permanent ways. As Miller pointed out, perpetration of certain sexual offences has resulted in recent Western history in the indelible re-identification of individuals. To be a 'sex offender' is to bear a mark of shame (if not always a physically visible brand, as in the past for offenders labelled by their offence) which seeks to exclude them from the daily business of 'normal' society. The unwillingness – or inability – of states to accept that it can be wrong in managing criminal justice processes was the main lesson from Amon Burton's paper on capital punishment in Texas.

The issues of loyalty and the ability and power of states to invoke such was the underlying issue for several papers, including Margo de Koster and Xavier Rousseau's contribution on Belgian war crimes trials. The issue of the 'rightness' of collaboration with a dominant, conquering power must, as they pointed out, blur the boundaries of what constitutes 'criminal' behaviour in this sense by highlighting the shifting parameters

associated with state crime. Their examination of the personal statements relating to 'uncivil' (or collaborative) conduct by some Belgians provided illuminating insights. This paper, along with that of Yannick Cormier about collective guilt issues in German-occupied France after World War Two, shows the highly complex nature of such 'guilt', and its ability to invoke blame in communities. If it can now be claimed that modern history, at least, is more than just the history of the victors, it has to be admitted that in terms of the history of the law – especially the criminal law – the modern state still possesses the ability to rewrite a history of the recent past in ways that serves to criminalise and so to make culpable conduct that had either been actively accepted by some as contingent and practical or at least acquiesced in by a silent majority. The fairness of such processes cast a different light on the dimensions to the definition of war crimes – should this include activities by collaborating citizens where that collaboration does not offend either the laws of the state they were loyal to at the time or a wider, internationally accepted, 'moral law'?

However, as various presentations also emphasised, it is also necessary to take into account the extent to which communities resisted, evaded and negotiated state authority in this area also and the potential such state will had for creating a divide between states and communities. This can be identified as problematic given the agreement amongst the delegates that effective management of a criminal justice system required community consent, if not active participation. The problems associated with an increasing tendency for the state to impose rather than participate were discussed. For instance, the shift away from *infama* or shaming punishments towards the stigmatisation increasingly associated with modern penal-orientated systems, with its potential for a more permanent 'outlawing' effect, was discussed (among others) by Aris Tsantirouopoulos and was a key theme in a particularly thought-provoking presentation by Anna Smorgunova on the limitation of the rights of terrorist suspects in the Russian Federation; for instance by using tactics of denying such individuals, after death, an existence which could be physically memorialised by their families.

Such strategies have powerful moral overtones, echoing the strategies used by established religion – especially in association with the state. After all, as several speakers pointed out, the barriers between sin and crime were, in practice and

theory, extremely flimsy! Especially, in historical and present terms, when aspects of sexuality are involved. Prostitution as a form of punishable deviance was a clear target, but – who was the culpable party? Who needed to be blamed and shamed? The long perspective on the history of the regulation of prostitution in the Low Countries found an interesting echo in Adrian Agar's paper on nineteenth century prostitutes and their community profiles. Muravyeva's paper on 'shameful' punishments furthered underlined the subjective nature of punishment rituals, and the powerful links between qualifying for 'blame' and extremes of condemnation in shaming punishment strategies. However, an interesting angle on the difficulties experienced by both states and communities in managing the blame and shaming process when the criminals to be targeted do not conform to conventional definitions was provided by Sarah Wilson, reflecting on the respectable perpetrators of fraud. Fraud, she argued, was an action which was unrespectable, but not susceptible to the normal processes accompanying the identification of culpability because of the lack of violence and, in most cases, of personal animus against victims.

Community involvement or implication, particularly with **shaming rituals** – justified by a blaming process – was another feature of many papers. Formal rituals surrounding a variety of state organised events such as executions were crucial to a mass comprehension of justifiable punishment, as Paul Friedland argued. And, as Anja Johannsen pointed out, state-endorsed rituals such as the public 'naming and shaming' of individuals could be used to regulate the conduct of officers of the state, like policemen and the consequent levels of community acceptance of their roles. Linked to this depiction of the use of publicity as a tool for shaming, other speakers considered more 'informal' (in the sense of not being directly state sponsored) rituals included the use of the circulation of news or gossip, by word of mouth and in print. Both Julie Peakman and Jad Adams showed how individuals could find themselves blamed, and consequently shamed, through such means – and the role of conventional moral expectation in the regulation of such disseminations. The conference also explored issues relating to the moral dimensions of individual and group behaviour, including an interesting Russian perspective on the use by Russia of European strategies such as the English Poor Law to 'blame' paupers. As Meg Arnot pointed out, the realities of infanticide trials in nineteenth century England reveals the extent to which communities normally have clearly defined and commonly

understood standards of acceptable behaviour demarcating the boundary between behaviour which might count as criminal but is condoned because it is mitigated by conformity to certain moral expectations, and that which is unequivocally condemned because of a wider, and essentially moral (if practically so) failure to conform to societal expectation.

As might be anticipated, **gender and class stereotypes** were shown to play a role, but as the Opening Plenary by Natalia Pushkareva indicated, the complications of space and place had also to be considered, along with issues of collusion between women and men in defining the gendered boundaries of acceptable behaviour. And Vivien Miller ensured that the racial dimensions, especially to anticipations of blame and a consequent justification of shame-driven punishment strategies, were not overlooked. Her paper also highlighted the vexed issue of shame as humiliation; prompting consideration of the ways in which 'normal' standards draw a line between shame and humiliation, when humiliation involves not just shame but disgrace or degradation, an irreparable loss of status, faith or identity. This was further underlined by Cassie Watson's consideration of the impact of drunkenness on the process of allotting culpability in the courts, and by Rowbotham's consideration of the importance of blame as an initial stage in any justifiable shaming process. She pointed out the increasing need for clearly accessible definitions, given the increasing breadth of remit and thematic sophistication of Western criminal justice systems as they have proceeded to criminalise more and more areas of everyday life over not just the last centuries but the last millennium.

In conclusion, this was a lively and thought-provoking conference which revealed the usefulness of applying historical methodologies to current, as well as past, issues in criminalisation. It becomes plain that there are many unexpected continuities – but also, that there are a number of disjunctures and breaks with the past where modern assumptions about criminalisation – practical and philosophical – need to be re-evaluated if successful criminalisation strategies are to be evolved and applied. In terms of a criminalisation process targeting either acts or individuals, the issues are complex – and for that reason, one of the strengths of the conference was that the debates highlighted some of the basic simplicities. At its simplest, a crime is an act which is defined as injurious to the welfare of others – to the welfare of a community,

essentially, leaving open to debate the issues of what constitutes that welfare, and who could and should define it (and how that has changed over time). There has been no fixed certainty about what does or does not constitute a criminal act, but one of the features of 'modernity' in Western and Eastern states has been an increased will manifested by states, but with the consent of society overall, to promote order by expanding the criminalisation process.³ And yet – as this conference underlined, there is always going to be dissent, discussion and resistance.

³ E. Avdela, S. D'Cruze and J Rowbotham, *Problems of Crime, Violence, and Criminal Justice*