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Historiographical Contextualisation of Current Issue

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SOLON Crimes and Misdemeanours
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EDITORIAL

The Editorial Board

Introduction

This editorial contextualises the historiography relating to the themes that comprise this current issue; two articles on the theme of women and petty crime in sixteenth century Scotland and female penitentiaries in Victorian England; current research conducted with gypsies and travellers in south-west England concerning access to legal services. We then conclude with a conference update.

Women and Gender

This first issue in the fourth volume of *Crimes and Misdemeanours* provides a key focus on women and gender issues examined within the frame of conceptualisations of what constitutes offending and how offenders should be dealt with. Our articles use historical contexts to discuss the issues relating to femininity and offending, but it has an acute present relevance for lawyers and criminologists, because this is a topic of crucial interest at the end of the first decade of the twenty-first century. There is a perception, bolstered by figures for prosecutions and percentages of women in prison, that there is a threatening rise in female offending. As ever more women offenders are appearing before the courts, being found guilty and punished in ways considered appropriate by the criminal justice system, questions are being asked about the ways in which femininity must be reconceptualised to take account of the visible female deviant or offender. Is it a form of resistance to traditional gender codes, as has been argued by Lisa Pasko at the American Society of Criminology meeting in 2006.¹ If it is such – how ‘new’ is such resistance? The articles in this issue provide an interesting reflection on this aspect. Equally, how far is it accurate to say that the increased visibility of women as defendants reflects a traditional sexism in the courts and within the criminal justice system more broadly; one that is perceived as disadvantaging or defeminising women

¹ ‘Disparate Pathways, Femininity Indictments, and Systematic Control: A Re-conceptualization of the Female Juvenile Offender,’ American Society of Criminology Annual Meeting, 2006, Los Angeles, CA.

as Victoria Herrington and Claire McNee have argued?² Stacey Nofziger has also recently argued that the modern sex gap in offending is rooted in traditional expectations of femininity as an expression of self control in the face of temptation to offend.³ Again, is this a new phenomenon? And does history suggest that women have, in the past, negotiated these dilemmas in different ways?

Very little has been written on early modern Scottish crime history generally, and specifically on the sixteenth century – while one member of the Editorial Board, Anne Marie Kilday (Oxford Brookes) is a Scottish crime history expert, her focus is predominantly post-sixteenth century, as has been typical of Scottish locational crime history in the last decades. Rob Falconer fills a gap in the provision, by presenting a substantial and extended case study based on a survey of early modern Aberdeen, which examines the ways in which women, both as defendants and prosecutors, used the courts to negotiate their own identities – while also recognising the constraints which those women faced. This is an article which has a further significant dimension, in that it illustrates the importance of paying serious attention to petty criminality and associated behaviour which is barely on the cusp of being legally offensive. It reveals how the law was expected to work, including through the courts, in ways which strengthened the community – providing strategic contingent remedies for perceived incivilities and other petty crimes. We encouraged this author to expand his article significantly from the paper he gave at the Colloquium on Women and Crime in the British Isles and North America since 1500, held in September 2008 at the Université de Lyons 2 and Université de Lyons 3, under the aegis of Neil Davie, the other author featured in this issue. We are delighted that he responded by providing us with a very substantial response, given the ability of an e-journal like this to publish such extended articles. He explores the importance of the petty courts, underlining the reality that the summary courts have long been the major venue for the continuing re-imagining of the boundaries between offensive behaviour that is merely socially odious and that which actually constitutes an offence in legal terms. It indicates also the importance of individual agency in such court events; something now largely lost at the start of the twenty-first

² Victoria Herrington and Claire McNee, 'Self Perceptions, Masculinity and Female Offenders,' *Internet Journal of Criminology*, 2005, <http://www.internetjournalofcriminology.com/> (accessed 9 March 2010).

³ Stacey Nofziger, 'A Gendered Perspective on the Relationship between Self Control and Deviance,' *Feminist Criminology* 5(1), 2010, 29-50.

century, raising questions about our present prosecution system. What is particularly interesting in this article is what it reveals about women's agency, through constructed rhetorics in the courts, and how this affected the power structures within the community more broadly. It is a topic that needs a *longue durée* consideration, such as that provided by the Colloquium of Women and Crime in 2008.

This was an important conference, bringing together a range of scholarship from North America and Britain as well as French and other European scholars working on these topics. Martin Weiner (who has already published with us), Ginger Frost and Robert Maniquis were among the American contributors; and other significant papers were delivered by SOLON Board members Anne Marie Kilday and Cassie Watson, as well as papers from Jim Sharpe, Peter King and John Carter Wood; all taking the opportunity to share perspectives with scholars like Neil Davie, Delphine Cingal, and Martine Stirling among others. The programme for the conference is still available online (at <http://criminocorpus.hypotheses.org/?p=12>) for anyone interested in viewing the rich spread of papers. As well as publishing in article format expanded versions of the papers given by Rob Falconer and Neil Davie in this issue, we hope that more extensive versions of other papers from this conference will be published in forthcoming issues.

Neil Davie's article is also a very significant contribution to scholarship in the area of crime and gender, with its focus on the first convict prison constructed specially for women, at Brixton. He examines this pioneering effort during the 16 years of the prison's life in this guise. Again, this is an article with considerable modern resonance, given the current concerns with gender-responsive correctional and penal strategies and women's reactions/resistance to such strategies. Davie challenges Philip Priestley's conclusion, for instance, that women's penal experiences was nuanced by a will to treat them as 'rather difficult men'. Through a careful dissection of the management of the prison and the associated comments of government officials, he reveals how gendered the topic of female punishment remained at the start of nineteenth century reforms which created a recognisably modern criminal justice system, including the use of prison sentences as end objectives of punishment in themselves. The consciously-expressed need, with the ending of transportation and the consequent practical exile of criminal women from the healthy body of the British state, was for strategies which promoted women's moral regeneration without resorting to the kind of hard labour thought to be suitably

rehabilitative or punitive in the case of men. Women's prisons, he shows, needed to configure themselves as quasi-domestic locales which had the ability to rehabilitate their inmates. But to do so, they also configure themselves as locales which could teach women who were presumed to have committed crimes from emotion and impulse, rather than a motivation showing a more masculine deliberation, the self-control and consequent femininity that they lacked or had lost through turning to offending conduct. In other words it was seen as a much more morally-driven issue than was the case in the penal management of male criminals. As Davie shows, there was an increasing feeling of helplessness about the success of penal strategies aimed at women during Brixton's brief period as a female convict prison. How different is this for twenty-first century management of penal strategies? A brief survey of current criminological and socio-legal literature suggests that the gender dimension to the problem is still identified as a major problem.

Vulnerable Groups and Minorities

In order to showcase the importance to scholarship as well as practice of reflections on empirical research projects which have not (yet) developed into scholarly articles, and will inevitably change their thrust should they do so, we are delighted to publish a very recent report based on interview research conducted by Zoe James and Lesley Simmonds from the criminology department at the University of Plymouth in conjunction with the Plymouth Citizen's Advice Bureau on the issue of access to legal advice and services for travellers and gypsies. Not only has relatively little academic research been undertaken with such groups but in the context of the Ministry of Justice's 'takeover' of the Legal Services Commission this month and contraction of public funds to support access to legal advice and services for all this is a very topical and timely investigation.

Historically, gypsies have always been viewed as (at best) a problematic group and (at worst) a threat to community welfare and to the state, in the challenge they have been identified as providing to the operation of the rule of law in England and Wales. As Fitzjames Stephen pointed out, the Statute of Labourers, during the reign of Richard II, effectively criminalised any group that were not confined to a fixed place of abode and labour.⁴ Though not specifically targeting gypsies initially,⁵ practically speaking the Rom

⁴ James Fitzjames Stephen, *A History of the Criminal Law of England* (2 vols), II, p. 267

(or gypsies) and later groups of travellers, particularly Irish 'tinkers', were the most visible continuous presence of a nomadic existence in mainland Britain from the sixteenth century on. Gypsies remain in modern cultural understanding as a dual presence. In terms of how we understand their reality, they are present as a continuity - something which normally can be assumed to convey reassurance, in the maintenance of tradition. However, their enduring nomadic profile means that even when 'permanent' bases are provided, the gypsy presence is negatively comprehended in terms of how their daily activities affect the realities of other communities. Subsequent legislation in succeeding centuries, especially the successive versions of the Poor Law, created a cultural association in the popular gaze, if not a direct legal link, between vagrancy (regardless of the reason therefore) and criminality.⁶ The 'My mother said/I never should/Play with the gypsies in the wood' syndrome has made gypsies an easy target for accusations of a variety of crime. Petty theft of property is perhaps the trope most usually associated in media depictions, past and present. However, violence (particularly against women) has also helped to ensure a well-entrenched 'othering' which sees gypsies and travellers continue to be identified as a 'problem' which goes beyond social offensiveness in modern media reportage.⁷ If rare figures like Hesba Stretton, the Victorian moralist and author, or Barbara Cartland, the twentieth century romantic novelist, depicted gypsies and travellers (particularly the former) positively, the majority of factual and fictional representations have remained hostile and suspicious. The issues raised in terms of the reluctance and underlying reasons of gypsies and travellers to engage with advice agencies such as the Citizens Advice Bureau and other support agencies and practical and inexpensive recommendations/conclusions suggested have a clear historical echo, underlining the work that needs to be done for periods after the early modern era on gypsies and the law. These issues are also ones that are easily transferable to other groups. Coincidentally Simmonds has also reviewed Chakraborti and Garland's book on Hate Crime for us which confirms the current situation that "The experiences of groups such as Gypsies and Travellers have also remained largely obscured from mainstream enquiry."⁸

⁵ This community did not appear to English gaze as an identifiable group until the early fifteenth century.

⁶ See Lorie Charlesworth, *Welfare's Forgotten Past* (Routledge, 2009), pp. 168-75

⁷ See, for instance, 'Gypsy Crime Wave Grips Europe', *Daily Mail*, 29 March 2010

⁸ Neil Chakraborti and Jon Garland, *Hate Crime* (Sage: London, 2009) p.27

Conference Update

These articles show the need for continuity in investigating and understanding aspects of the criminal justice system – but also the need for constant vigilance and considered reform. This is something which undoubtedly stretches beyond the criminal justice process. There are lessons to be learned about how we view the processes which produce legislation, and justice – however that notoriously elusive concept is to be defined. Lesley Abdela, our opening plenary speaker in the first War Crimes conference last year, will be contributing a brief consideration to the issues she discussed, updating some of the themes she raised at the conference (to be added after Easter). We also include a link to her blogspot (<http://www.abdela.blogspot.com/>), with her reflection on 23 March on the need for constitutional reform, including her comment on the point made by Professor Francesca Klug, arguing for ‘justice’ to be at the heart of any constitution, thereby incorporating an international Human Rights framework into such a model. What does not seem to have been discussed is what constitutes ‘justice’: and this is something which, as SOLON’s various enterprises in terms of conferences and publications have underlined to us, is by no means an easily defined concept. It is considerations such as this which underpin our future plans for conferences and for funded projects involving SOLON members.

The fourth Experiencing the Law conference, on the objectifying of children and the human rights/justice dimension to this theme, is highlighted in a Report also included in this issue. Regrettably, the demands of finishing his undergraduate dissertation and other coursework has delayed the posting of the online exhibition on the Borstal Aftercare experience and Neil Littlewood’s underpinning essay. We aim to upload this during the summer, however. Planning for future SOLON conferences also continues, including Crime, Violence and the Modern State III for 2011, War Crimes II in March 2011, and the fifth one day conference in the Experiencing the Law series, to be held on 3 December at IALS. In addition, there is a one day conference to be held at IALS in September on electronic monitoring, organised by Mike Nellis and Judith Rowbotham; as well as a further one day conference organised by Lorie Charlesworth and Judith Rowbotham: From School Exclusion Orders to Anti Terror Laws: Human Rights and the Use of Law in the Modern State, on 22 October, again at IALS. The Call for Papers for this conference is already on the SOLON website.

The Editorial Board
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