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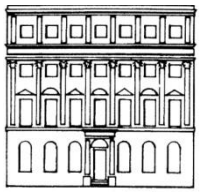

BULLETIN

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Crime and Punishment: Criminal Justice in Modern Europe, 1870–1990
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CONFERENCE REPORTS

Crime and Punishment: Criminal Justice in Modern Europe, 1870–1990. Conference organized by the German Historical Institute Washington and the German Historical Institute London and held at the GHI Washington, 10–12 Mar. 2011. Conveners: Kerstin Brückweh (GHI London) and Richard F. Wetzell (GHI Washington).

This conference brought together historians working in Belgian, British, French, German, Italian, Russian, Swedish, and Swiss history in order to develop comparative and transnational perspectives on the history of criminal justice in modern Europe since 1870. The first panel sought to provide a transnational perspective on late nineteenth-century criminal justice with papers on international crime, criminal justice in the colonial world, and prison and penal reform. In his paper on the internationalization of crime in Britain and America between 1881 and 1939, Paul Knepper (University of Sheffield) argued that international crime was both more and less than a myth invented by the police. Although the police exaggerated the threat of international crime, they did not invent it; crime became an international issue as a result of 'world-shrinking' technologies of transportation and communication. Yet the police were not the only ones promoting crime as an international problem; many other groups also did so, including the press, politicians, transnational voluntary associations, the League of Nations, and various anti-Semitic conspiracy theorists. Judith Rowbotham (Nottingham Trent University) examined the process of exporting European legal cultures and practices to the colonies. Criticizing the claim that the British Empire created a dualist system that left many indigenous legal structures intact, Rowbotham argued that the British made a concerted effort to crack down on domestic violence in the colonies through the imposition of Western legal norms. The failure of this effort must be explained by a crucial difference between metropole and colonies: whereas in Britain the prosecution of domestic violence

The full conference programme can be found on the GHIL's website <www.ghil.ac.uk> under Events and Conferences.

was part of a wider cultural education, in the colonies the cultural element was lacking.

Andreas Fleiter (University of Bochum) used the concept of legal culture to compare the introduction of probation in the United States and Germany. Whereas the 1878 Massachusetts Probation Act gave the trial court power to suspend sentences on probation, the equivalent Prussian ordinance of 1895 gave this power to the Ministry of Justice, which exercised it in the form of a 'conditional pardon' legitimized by the monarch's prerogative of mercy. Instead of explaining this divergence by a difference in political cultures, Fleiter attributed it primarily to a difference in legal cultures: whereas American criminal procedure distinguished between verdict and sentencing as two distinct phases of the judicial process, in Germany the pronouncement of guilt and punishment were inextricably linked. In the panel's final paper, Tiago Pires Marques (Université Paris-Descartes), used the problem of the 'habitual criminal' as a case study to examine the impact of transnational reform organizations on national penal reforms in the period 1880 to 1940. Stressing the role of the International Penal and Penitentiary Congress (IPPC), Marques argued that the introduction of indeterminate sentencing in continental Europe owed much to the encounter of continental jurists with penal experts from common-law countries (especially Great Britain and the United States), which had pioneered indeterminate sentencing. In her comment, Sylvia Kesper-Biermann (University of Paderborn) encouraged further reflection on how the internationalization of the penal reform movement related to legal reforms within each nation-state. She also called for transnational contacts beyond Europe and the United States to be examined, including the possible effects of the colonial experience on the judicial systems of the metropolitan countries.

The second panel compared the history of penal reform in Britain, Germany, Italy, Switzerland, and Sweden. In a comparative paper, Désirée Schauz (Technical University Munich) and Sabine Freitag (University of Frankfurt am Main) argued that British and German discourses on crime and criminal justice in the period 1870 to 1930 were quite different. In Britain these discourses were dominated by prison commissioners and voluntary societies, while in Germany they were controlled by academic (legal and psychiatric) experts. Whereas the British favoured environmental causes of crime, the

Germans focused on biological factors. Finally, only British discussions of crime were embedded in a larger context of political participation, whereas the German discourse was shaped by a belief in scientific progress. Pursuing the history of German penal reform beyond 1933, Greg Eghigian's (Pennsylvania State University) paper on the categorization of offenders criticized the conventional view that the history of modern penal policy 'played out as a choice between punitive retribution and correctional rehabilitation'. Insisting that the two were not mutually exclusive, Eghigian argued that penal policies in Nazi Germany, East Germany, and West Germany were characterized by significant continuities. Although National Socialism became more punitive, it never abandoned its rehabilitative hopes for criminals. After starting out with a class-struggle theory of crime, East German penology came to prioritize the rehabilitation of offenders during the 1960s, while West Germany, too, pursued rehabilitative policies, as evidenced by the introduction of social-therapeutic facilities (*sozialtherapeutische Anstalten*) for sex offenders and 'abnormal' repeat offenders in 1969.

Paul Garfinkel's (Simon Fraser University, Vancouver) paper on penal reform in liberal and fascist Italy challenged the historiographical thesis that Italian penal reform in the period 1880 to 1930 was marked by sharp conflict between the classical and positivist schools of criminal law. Instead, Garfinkel argued that Italian legal culture in this period was unified by broad support for moderate principles of social defence, whose roots he traced back to early nineteenth-century Italian criminal law. The Rocco Code of 1930 was therefore not a compromise between the classical and positivist schools but a 'systematic reworking of moderate penal reform ideas', which was also fully in line with the transnational penal reform movement. In his paper on penal reform in Switzerland in the period 1890 to 1950, Urs Germann (Schweizerisches Bundesarchiv, Berne) argued that the Swiss Criminal Code of 1937 brought about a diversification of sanctions that connected criminal justice to existing regimes of discipline, such as correctional education. Clearly inspired by the international penal reform movement, the code was also shaped by Swiss domestic politics. Robert Andersson (Linnaeus University, Växjö) examined the abandonment of the rehabilitative ideal embodied in Sweden's 1965 penal code in the two following decades. Although academic critiques played a key role in discrediting the rehabilitative ideal,

Sweden's turn toward a criminal justice system based on 'the general sense of justice' disconnected penal policy from any scientific legitimation, thus transforming penal policy from a 'social engineering practice' into a 'moral engineering practice'. In his comment on the panel, Warren Rosenblum (Webster University) encouraged the authors to take into account the role of non-ideological social factors (such as economic depression or full employment) in penal policy. He also underscored the commonalities in the development of penal policy in the countries examined, most of which underwent processes of decarceration and decriminalization in the late nineteenth and early twentieth centuries.

The third panel examined the criminal trial from a variety of perspectives including the role of juries, forensic expert witnesses, and the press. James M. Donovan (Pennsylvania State University, Mont Alto) used a debate on the jury system between two prominent jurists as a lens to examine the tension between inquisitorial and accusatory elements in French criminal procedure from the French Revolution to the Fifth Republic. The 1955 debate centred on the question of whether France should retain *échevinage* (the association of judges and jurors deliberating and voting together on verdict and punishment), introduced by the Vichy regime in 1941, or return to trial by jury as instituted in 1791. The Code of Criminal Procedure adopted with the advent of the Fifth Republic three years later consolidated the victory of the inquisitorial system over the accusatory principle; *échevinage* was kept, and the presiding judge remained the dominant figure in French criminal trials. Eric J. Engstrom's (Humboldt University, Berlin) paper turned from the role of jurors to that of forensic psychiatrists. Challenging the thesis that the increasing role played by forensic psychiatrists had resulted in a medicalization of criminal justice in Imperial Germany, Engstrom examined an array of jurisdictional conflicts between psychiatry and jurisprudence, including conflicts over forensic expertise in court, the placement of mentally ill criminals, and forensic psychiatric training, in order to present a more complex picture of the relationship between psychiatry and criminal justice. John Carter Wood (Institute of European History, Mainz) used a British murder trial of 1928 as a case study to examine the role of the media in criminal trials. In their reporting, Wood argued, the press placed increasing emphasis on expert witnesses such as detectives and pathologists, but also expanded their

reporting beyond the courtroom to cover crime scenes and pretrial investigations. Newspaper crime reporting also contributed to celebrity culture and provided opportunities for the discussion of broader social and cultural issues.

Continuing the third panel, Sace Elder (Eastern Illinois University) examined Wilhelmine Germany's renegotiation of the limits of acceptable adult violence against children. Starting with a 1907 case of child abuse that became a nationwide scandal, Elder analysed the public, legal, and parliamentary debates that weighed parental rights against the rights of children and resulted in the passage of Germany's first anti-cruelty law in 1912. The panel's final paper, by Dominique Grisard (University of Basel), examined the 1973 trial of a left-wing male terrorist in a Swiss court in order to tease out the gendering of judicial narratives. The court's judgment, she argued, alternated between a 'narrative of rationality', which was necessary to create a threat scenario as the basis for conviction, and a 'narrative of dilettantism', which denied the defendant the attributes of hegemonic masculinity by depoliticizing the crime and pathologizing the defendant. In her comment on this panel, Rebekka Habermas (University of Göttingen) noted that all the papers shared a conception of legal culture as part of the broader culture, but nevertheless encouraged the authors to pay more attention to the interactive dynamics between criminal trials and various external factors. To what extent, for instance, were trials both shaped by, and an influence on, penal reform? To what extent did the press create events?

The conference's fourth and final panel was devoted to the history of prisons and other penal institutions. Mary Gibson's (John Jay College, City University of New York) paper on prisons in nineteenth-century Italy revised the conventional narrative of Italian prison history, which stresses the modernization and secularization of prisons after the unification of Italy, by revealing stark differences between the treatment of male and female prisoners in post-unification Italy. Whereas men's prisons were increasingly constructed and administered according to modern penological principles, women's prisons were managed by religious orders, who submitted female prisoners to a regime that stressed moral and religious reform. Since this private monastic model was clearly at odds with the principles of the liberal Italian state, it also demonstrates that women were not perceived as citizens. Turning from Italy to Belgium, Bert Vanhulle

(Catholic University of Louvain) and Margo De Koster (Catholic University of Louvain) challenged the conventional division of the history of Belgian prisons into two distinct periods: the era of the 'moral prison' (*c.*1850–80), during which Belgium implemented the 'cellular system' to facilitate the moral improvement of inmates, and the subsequent transformation of Belgian prisons into science-based institutions committed to a medicalized approach to crime and criminals. Although Vanhulle and De Koster acknowledged that there was a discursive shift from a moral to a medical discourse from the 1880s onwards, they argued that this shift was not neatly reflected in penal practice, which revealed a great deal of continuity and a fusion of different approaches throughout the period 1850 to 1940. Just as prison practices prior to 1880 were already undergoing a process of medicalization, so the supposedly scientific practices after 1880 still reflected many of the old moral categories. Moving further into the twentieth century, Roddy Nilsson's (Linnaeus University, Växjö) paper on the transformation of the Swedish prison system from the 1930s to the 1960s also identified a significant gap between discourse and practice. Although Swedish prison reformers in this period talked about constructing a prison system built on the principles of individual prevention, treatment, and humanism, much of this remained just talk. The prison system never received sufficient material resources to implement the reforms. It lacked professionally educated personnel, and the enormous energy expended on creating diagnostic tools to assess prisoners stood in sharp contrast to the very limited interest in developing treatment programmes.

The panel's last two papers explored penal institutions other than the prison. Stephen A. Toth (Arizona State University) examined the Contard Affair of 1909, in which the suicide of a male youth interned in the Maison Paternelle, a private establishment for recalcitrant bourgeois youths, resulted in a trial of the Maison's director for wrongful imprisonment. The trial, he argued, led to a far-reaching reassessment of private power, state control, and paternal authority in *fin de siècle* France. Although the director was acquitted, the trial sealed the fate of the Maison Paternelle and other private institutions of this kind, as the French state asserted its pre-eminent role in dealing with troubled youths. Three years later, France established a separate juvenile court system, which mandated psychiatric examinations. Sarah Badcock (University of Nottingham) explored the lived

experiences of convicts who were exiled to Eastern Siberia in late Imperial Russia. Badcock found that the state played only a minimal part in determining conditions in exile, where convicts were supposed to make a living off the land. Because of the lack of state involvement, conditions for criminal exiles were often worse than conditions in Russian prisons. Since the mostly male convicts were frequently accompanied by their families, the line between punishment and the suffering of innocents was often blurred, giving rise to a sense of arbitrariness. In his comment on the panel, Pieter Spierenburg (Erasmus University, Rotterdam) insisted on the need to distinguish between medical metaphors and the application of medical techniques in nineteenth-century penology. He also encouraged the authors to think about the implications of Norbert Elias's theory of the long-term diminution of power differences (between men and women, parents and children, prisoners and guards, for instance) for the history of criminal justice.

The conference was characterized by lively exchange and discussion. The final discussion identified a number of common themes. First, many of the papers challenged narratives of rupture and stressed long-term continuities. Second, many authors called into question accounts that focused on conflicts between different juridical schools, arguing instead that reforms were made possible by a widespread consensus among criminal jurists. Third, taken together, the examinations of national criminal justice histories revealed a remarkable transnational consensus on penal reform, especially around the turn of the century. Fourth, while everyone has long been critical of Whiggish narratives of progress in the history of criminal justice, most of the authors were equally critical of teleological narratives of scientization, medicalization, and social control. In the final discussion, there was also a near-consensus that it was important to examine both ideas and practices without establishing a hierarchy between the two. While much remains to be done—suggestions for topics to be studied ranged from the history of risk management to the history of emotions—there was a strong sense that the national histories of criminal justice have reached a stage at which the comparative and transnational perspectives that were central to this conference are extremely fruitful for advancing the field.

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