

## Editorial

This opening issue in the 2012 volume of *Law, Crime and History* is the first of three editions this year and comes at a particularly interesting time in the development of the SOLON consortium. We are thus delighted that we have an interesting array of contributions which reflect on a range of issues raised in previous articles, as well as commentaries which highlight the core theme of the forthcoming Routledge SOLON series of research monographs and edited collections, *Explorations in Crime and Criminal Justice Histories*, which will launch this summer.

## Articles

The first article, by Tom Smith, examines the contentious role of the modern defence lawyer, by tracing the development of expectations associated with that role within the context of the development of the adversarial criminal trial in the late eighteenth century. One of the most significant aspects of this article is its demonstration that the current debates surrounding the duties and obligations of the defence lawyer – to his client, to the court, and to society as a whole – tap into an ongoing moral debate which first developed as part of the establishment of the criminal trial process as a distinct and discrete element but which has continued to this day. Nor is it just a matter of concern to the specialist lawyer; as any legal historian accustomed to using fiction as a source for investigating socio-cultural attitudes to the law and lawyers is aware.

Many novels from the late eighteenth century on make comments, often derogatory, on lawyers generally and defence lawyers have been a regular target for their criticisms. Dyebright, in Bulwer-Lytton's 1830 novel, *Paul Clifford*, who defends Clifford (a 'gentleman' and a highwayman!) was described by the author as 'exactly the man born to pervert justice ... to cozen truth with a friendly smile and to obtain a vast reputation as an excellent advocate': a summing-up which clearly reveals Bulwer-Lytton's distaste for such men.<sup>1</sup> Dickens was perhaps more nuanced in his depiction of Jaggars, the defence lawyer from *Great Expectations*, but the consistent theme underpinning Dickens'

---

<sup>1</sup> Edward Bulwer-Lytton, *Paul Clifford*, first published 1830, 3 vols, (Penguin: Harmondsworth, 2010) p. 501. This novel aimed to bring about legal reform by exposing the extent to which the 'evils' endemic in the social system created criminals such as Paul Clifford. It is also available through Project Gutenberg..

presentation of Jaggars was his willingness to pervert the truth to serve the cause of a paying client and to boost his own income.<sup>2</sup> Such nineteenth century accusations are echoed in the early twentieth century; witness Detective Inspector Bob Company who recently reflected to the *Daily Mail* his opinion that 'Years ago, robbers would attend the Old Bailey wearing suits, and they still do, but too often now they masquerade as defence lawyers'.<sup>3</sup>

Tom Smith's wide-ranging and interdisciplinary discussion thus builds in particular on Langbein's seminal text, *The Origins of the Criminal Adversary Trial*, but also considers a wide number of texts which were common on both sides of the Atlantic debating the purpose and responsibilities of the criminal defence lawyer. His emphasis on a figure too often forgotten, in the shape of Henry, Lord Brougham, is also a reminder that more work needs to be undertaken on Brougham's impact on both the theories and the practices of the criminal justice process and legal reform. This article thus constitutes an important addition to the literature, emphasising the extent to which legal history has modern importance for practitioners as well as scholars. As it underlines, we need to understand that the issues which concern us today are not new. In our search for useful and positive reforms of the criminal justice system, a consciousness of the continuities involved in understanding key aspects of that system needs to be foregrounded if we are to move forward effectively. There is also a real need to remember that the legal process does not, in fact, work in a vacuum but must be comprehended in a wider socio-cultural (as well as political and economic) reality. There are lessons to be learned from Smith's article about how the wider public has, and continues, to view aspects of the legal process at work, and their consequent judgments on whether that process promotes forms of justice which are generally acceptable to them.

We have previously published a special edition on the Children Act 1908 in 2009, with a range of challenging articles reflecting on the centennial anniversary of that ground-breaking legislation.<sup>4</sup> In their introduction to that issue, Kate Bradley, Anne Logan and Simon Shaw commented on the 'continuing, lively public debate' about the 'web of

---

<sup>2</sup> For further discussion of Dickens and his opinions on the criminal justice process of his day, see Philip Collins, *Dickens and Crime*, (Indiana University Press: New York, 1994).

<sup>3</sup> *Daily Mail*, 6 October 2011

<sup>4</sup> *Crimes and Misdemeanours*, 3(2), (2009) at <http://www.pbs.plymouth.ac.uk/solon/JournalVol3Issue2.htm>

relationships between 'parents, the adult community as a whole and, crucially, the State and other agencies'.<sup>5</sup> Vicky Holmes usefully reminds us that that debate is not only on-going but in fact preceded the passage of that legislation, in her focus on Clause 15 of that Act, with its emphasis on the issue of parental responsibility in relation to juveniles. The Report of the Select Committee Investigating the Alarming Increases of Juvenile Crime in the Metropolis, (published 1816), had highlighted the issue of parental responsibility for juveniles taking (wilfully or involuntarily) to delinquent or criminal paths in life. Subsequent reports including the 1852 Committee on Criminal and Destitute Children (published 1853) continued the theme of the State identifying and stigmatising parental accountability for juvenile criminality.

The implications of such perceptions of the parental role for the establishment of processes for prosecuting, punishing and reforming juveniles have been widely discussed by scholars.<sup>6</sup> What has been less usually explored is the criminalisation of parents for everyday neglect of their offspring, in a conceptual development which directly relates to the conclusions promoted by such reports and a range of other Victorian print productions, from novels such as Hesba Stretton's *Jessica's First Prayer* to polemics such as Benjamin Waugh's *The Gaol Cradle*.<sup>7</sup> Holmes examines the accumulation of cases, and their public reportage in the press, which were used to justify the addition of a provision to the Children Act 1908 which implied, a belief that working class mothers were naturally feckless in their attitudes towards their children. The spotlight here is on the regular reality of children dying as a result of serious burns received from accidents involving open fires in the crowded working class home. Regular press reportage, in the national and in particular, the provincial newspapers (her examples are primarily drawn from the *Ipswich Journal*), increasingly drew public attention to the long-standing concern about negligent working class maternal management. Such tales of feckless maternity brought the issue of local socio-cultural

---

<sup>5</sup> Guest Editorial, Kate Bradley, Anne Logan and Simon Shaw, *Crimes and Misdemeanours*, 3(2), (2009) p.1.

<sup>6</sup> See, amongst others, Heather Shore, *Artful dodgers: youth and crime in early nineteenth-century London*, (Royal Historical Society, 1999); Jeannie Duckworth, *Fagin's Children: Criminal Children in Victorian England*, (Hambledon, 2002); and Jane Abbott, 'The press and the public visibility of nineteenth-century criminal children', in Judith Rowbotham and Kim Stevenson (eds.), *Criminal Conversations: Victorian crimes, social panic, and moral outrage*, (Ohio State University Press, 2005), pp. 23-39.

<sup>7</sup> Hesba Stretton, *Jessica's First Prayer*, (Religious Tract Society, 1867); Benjamin Waugh, *The Gaol Cradle, Who Rocks It?* (Strahan and Company, 1873).

and community condemnation into the realms of the criminal justice process, through reportage of proceedings in the coroners' courts.

For a variety of reasons, there seems to have been a reluctance on the part of coroners' juries to acknowledge the social stigmatisation of women judged in the coroners' courts of being negligent in the discharge of their parental duties. =. Holmes stresses the fact that the reportage made a point of emphasising ng maternal remorse and/or grief. It is possible, here, to speculate that such verdicts and judgments, (especially when locally published) constituted sufficient punishment because they will undoubtedly have constituted public social, if not legal, shaming of such women – a particularly interesting possibility in the light of the recent expansion of studies on the continuation of shame as a punishment trope in the modern period.<sup>8</sup> However, as Holmes demonstrates, the Edwardian State, with its powerful welfare imperative, felt impelled to enact a statutory provision which could, potentially, have enabled the coroners' courts and magistrates, (had they so desired), to have advanced towards an actual, instead of a social, prosecution of such careless mothers. Instead, as her examination of the impact of the legislation underlines, it was in practice used more as a strategy to promote 'prevention rather than punishment', Holmes' emphasis on the essentially local and informed nature of the sympathy shown to working class mothers suffering from the tragedy of losing children to accidents resulting from absent fireguards raises interesting issues about the importance of a workable system of justice remaining local. With the current State-led initiative to reduce the costs of the justice process by cutting the numbers of magistrates courts, this article also has the merit of informing very current questions about the value of the locality of the effective delivery of justice, at least in the eyes of the communities that justice is presumed to serve.

Stefan Slater's examination of early twentieth century street disorder in London has also timely resonance, given the urban riots of August 2011. He makes the telling point that ongoing processes, such as those that scholars and policy-makers like to identify on the

---

<sup>8</sup> See, for instance, David Nash and Anne Marie Kilday, *Cultures of Shame: Exploring Crime and Morality in Britain 1600-1900* (Palgrave Macmillan, 2010) on the continuing use of shaming punishments and the importance of the press in this; see also Judith Rowbotham, 'The Shifting Nature of Blame: Revisiting Issues of Blame, Shame and Culpability in the English Criminal Justice System', in Judith Rowbotham, Marianna Muravyeva and David Nash (eds), *Shame, Blame and Culpability. Crime, Violence and the Modern State* (forthcoming, Routledge SOLON series, summer 2012)

basis of statistics, are – in and of themselves – ‘blind’. They are not prescient when occurring, and tend to acquire significance only retrospectively, thanks to the use of statistics and similar analytical devices adopted by contemporary commentators. Slater highlights the reality that it is not possible to compare crime rates across time on a strictly like-for-like basis. As he points out, there was a significant expansion in prosecutions brought by the State, local and national, for motoring offences and other heinous law-breaking of a regulatory nature. However, there was also a significant decline in prosecutions for offences, despite the police taking on the responsibility for bringing the overwhelming majority of summary prosecutions including ‘everyday’ domestic violence, which had, as the Victorian press reportage of summary crime underlines, dominated the magistrates’ courts in the last half of the nineteenth century.

Equally, the issue of what constitutes public disorder in any period does not automatically echo the perceptions of either preceding or succeeding eras. The ambiguity of the concept of public disorder has always enabled both communities and authorities to interpret public manifestations of group behaviour positively or negatively, according to a range of contextualising socio-political factors. This article is significant in that it explores a transitional period in the management of crime and disorder within England and Wales; one where the primacy of the police as the prosecuting agency (and thus the body with the discretion to ignore or identify and bring within the remit of the criminal justice process types of behaviour) was firmly established in both the official and the popular consciousness. In many ways, the local police (as institution and individuals) were taking over from local magistrates’ courts as the channel for managing popular expectations of justice. This was the period when the attitudes towards the police later encapsulated in the eponymous police series of the 1960s, *Dixon of Dock Green*, were being established, especially during the interwar years. Slater’s accounts of the highly informal nature of much everyday policing underlines this – as well as highlighting a growing concern at higher levels that such informality did not best serve the needs of justice at the highest level, or did not seem to do so according to the statistics of the day!

Slater’s warnings about the extent to which statistics distort a more detailed, qualitative comprehension of what was happening on the streets and within communities are well made. He highlights the actual complexities lying behind official statistics at times of economic difficulty, for instance. His discussion of the likely reality of levels of women

engaging in at least part time prostitution, and of the levels of homelessness in London, highlight the tension between official agendas, where statistics serve a short term policy purpose (as Howard Taylor pointed out in 1994) and lived experiences, carry a warning to all scholars and (it is to be hoped) policy-makers about the difficulties of relying on statistics to gain insights into what is actually happening within communities.<sup>9</sup> The statistics relating to the recent riots of 2011, for instance, have been agonised over – but what has been less considered is the agendas governing how and why the figures have been generated for public and official consumption. This is thus a very timely article.

### **Conference Reports**

We include a report on the *British Legal History conference* in July 2011 and the Legal History section in the *Society of Legal Scholars conference*, in September 2011; both held in Cambridge but at different colleges, from Judith Rowbotham, and a third on the *Crime, Violence and the Modern State* series, held in September in Lyon from Lorie Charlesworth. What, unusually, is not included in this first issue of a new volume is a report on the annual SOLON *Experiencing the Law* conference, usually held on the first Friday in December. This was postponed until 22 February 2012, in view of the schedule of the keynote speaker, Professor Avrom Sherr, and will appear in the next issue. However, we take this opportunity to remind readers that we are always very happy to publish such conference reports, and to note that there are a number coming up which would be of interest apart from the usual annual conference events! These include the Criminal Justice section in the biennial European Social Science History conference, held in April in Glasgow, the second conference of the European Society for Comparative Legal History to be held in Amsterdam in July 2012, and the third in the Directions in Crime History conference, September 2012 at the Open University – to say nothing of the combined SOLON, Institute for Contemporary British History @KCL and Liverpool University conference to be held in Liverpool in June 2012.

### **Book reviews**

There is also what will become a more regular feature in future issues: a book review section. In this issue Lizzie Seal commends James Gregory's, *Victorians Against the Gallows* (2011-2) in adding more detail to our understanding of the role of the abolitionist

---

<sup>9</sup> Howard Taylor, 'Rationing Crime: The Political Economy of Criminal Statistics Since the 1850s', *Economic. History Review* 51, (1998), 569-90;

movement in the mid-nineteenth century and Georgios Antonopoulos reflects interestingly on aspects Danzig Baldaev's depictions of *Drawings from the Gulag* (2010). We will be looking to review, amongst other publications, the first volume in the *Routledge SOLON Explorations in the Histories of Crime and Criminal Justice* series, which constitutes the edited volume from the SOLON St Petersburg conference in 2009: *Shame, Blame and Culpability: Crime, Violence and the Modern State* (edited by Judith Rowbotham, Marianna Muravyeva and David Nash), and of course subsequent volumes in that series. But please ensure that you inform your publishers if you have a book (or a journal article) which you would wish to have noticed in this section!

And finally new SOLON member *Chloë* Kennedy from the University of Edinburgh offers a summary of her ongoing PhD research examining the way in which Scottish criminal law has been influenced by changes in Scottish religious culture and theological orthodoxy. We remind readers that we are always happy to publish the introductions and conclusions of recently successful PhDs of interest to the broad areas of law, crime and history.

The Editors

January 2012