

Editorial

SOLON News

Instead of a cornucopia of issues in 2012, circumstances dictated that there could only be one. The editors, particularly Judith Rowbotham, apologise profusely for this. A combination of illness affecting two members of the SOLON Directorate combined with Judith Rowbotham's personal circumstances since early last year effectively debarred her in particular from active engagement with SOLON. The heavy responsibility that thereby fell on Kim Stevenson's shoulders meant that practical choices had to be made and some articles were directed elsewhere to enable a speedier publication. We would add that a time when the journal publishing world is in some flux as a result of the pressures to move towards Open Access policies, we remain determined to sustain *Law, Crime and History* as a genuinely free open access e-journal (summarized by Kim Stevenson in a recent item in [History Workshop Online](#)). Our policy is to ensure that we continue to publish articles which are challenging and scholarly, and likely to interest a range of disciplines – and to provide a home for articles and debate pieces showcasing research which does not always easily fit into a journal with a more obvious focus on a single discipline, as well as ensuring that 'risky' work can find a home without having to find funding support for such publication as well.

As we resume publication, and the development of other SOLON enterprises, we can report that the SOLON structure continues to do well. One former Liverpool John Moore's Director, Professor George Mair, has now moved to Liverpool Hope University and that institution has now become the sixth collaborative institution to join the SOLON family. We can also announce that the appointment of Dave Cox to the Criminology department at Wolverhampton University is expected to lead to another SOLON association. Last July, the first in the **Routledge SOLON book series** appeared – *Shame, Blame and Culpability*, edited by Judith Rowbotham, Marianna Muravyeva and David Nash, reflecting the proceedings of the St Petersburg conference in the Crime, Violence and the Modern State series. We look forward to further publications in the series in the near future both from SOLON members such as Sarah Wilson, *Visible lessons from invisible crimes: respectability, criminality, and enterprise, and the Victorian origins of modern financial crime* and Lizzie Seal, *Everyday Death Penalty: Capital Punishment in Britain* and those not hitherto involved in the SOLON project such as

Vicky Conway, *Policing Change, Changing Police: An Garda Síochána and Twentieth Century Ireland*.

Debate forum - Magna Carta

This issue includes a debate piece in anticipation of a more prolonged discussion of the importance (past and present) of Magna Carta around the 2015 anniversary. It is a quintessentially legal perspective on the history of the role Magna Carta played at the time and subsequently in terms of its constitutional impact and significance. We hope to publish a historian's perspective to accompany (and perhaps challenge) **Ann Lyon's** survey. This does, however, highlight the importance of a sound sense of history as an intrinsic part of informed legal study, such as we seek to promote through SOLON. Pointing up the obvious, all legal judgments (civil and criminal) implicitly use a historical narrative: looking to the past is the basis of precedent and the search for equitable justice requires at the very least an invocation of contemporary history in terms of examining recent events. What this debate piece also points up is the extent to which the development of law and the application of charters, statutes and precedents to societies within states over time is heavily shaped by events and socio-cultural developments unthought of at the time of the original inception of a legal document or application of a precedent. As Ann Lyon confirms, there was, in 1215, absolutely no intention that Magna Carta would come to be regarded as a charter guaranteeing individual freedoms and a ringing endorsement of the importance of democracy. Indeed, The Charter of the Forest issued in 1217 to accompany a re-issue of a slightly amended Magna Carta was of greater importance for medieval society in terms of the relationship between monarch and subject. But - as Judith Rowbotham points out (as an advisory member of the Lincoln Castle redevelopment project entrusted amongst other things with the task of presenting Magna Carta in an appropriate and relevant form) - the historical symbolism that has accrued to that document since the collapse of feudalism created a society of freemen (and eventually women!) is what is significant in terms of its constitutional legal history. At a time when issues to do with democracy and individual freedom and rights are causing tension between politicians determined to manage the public in its own 'best interests' in the face of public resentment of such efforts, a historical perspective on *how* and *why* a document like Magna Carta has become so significant is a useful reminder of the unintended long term consequences of legislation

originally evolved with one, short term, agenda to remedy a particular contemporary issue. Kiron Reid's article is a clear reminder of this.

The 'law' of unintended consequences: themes in this issue

The breaking news as this issue goes out, of a new Royal Charter which will, according to the current advertisement by its supporters, prevent future governments from watering down measures for press regulation while still (according to politicians) safeguarding press freedom, is more likely to be reviewed in retrospect as merely an attempt so to do. The media reaction has been predictably hostile, and it is easy to dismiss this as 'well, they would, wouldn't they' special pleading. However, anyone with a consciousness of the ways in which pieces of legislation have developed over chronological time in ways completely unforeseen (and unintended) by their originators can only wonder how effective the Charter will be in doing only what it is intended to do. The 'law' of unexpected consequences, though a metaphorical truism not a formal enactment, is about the only safe 'law' to bank on in this case. Time alone will tell if those unintended consequences will benefit or harm the media and its ability to serve the public by providing potentially embarrassing information which that public might consider to be crucial in safeguarding democracy. Equally, given the power and scope of the internet and the difficulties of managing that content, the editors (as authors of an article on the issue of internet regulation by law) can only speculate that, if the controls on the commercial print press do turn out in practice to be overly stringent for their profit or the taste of their consumers, the outcome will not be to stifle free debate and democratic impulses. History suggests that this has never worked particularly well in the UK at least – in the twenty-first century, the likelihood is that if the press *is* stifled, there will be instead an explosion in consumption of material with even less control over content than is currently in place for newsprint – and so even more potential for embarrassing and also inaccurate information to enter the public sphere.

This angle of the unexpected consequences of events and associated legal initiatives is something which explicitly or implicitly links together the articles in this issue. Coming from legal, criminological and historical perspectives they set out to explore shifts in understanding – specialist and public – of the law in operation. **Kiron Reid's** article on the banning of protests around the Palace of Westminster provides an interesting extension of the issues addressed in our debate piece. In a sweeping and

comprehensive contextualisation of the regulation on protests visible (and so embarrassing) to Parliament under the Serious Organised Crime and Police Act 2005, the implications for the unspoken social contract between government and governed (a contract accepted as being policed by laws restricting both the rights of the ordinary subject to protest and that of political rulers to punish the citizen for protesting inappropriately) of a political will to enable the police to stop such protests are laid bare. Again, the issue has to do with the rights of the citizen as subject of national government policies to manifest their hostility to such initiatives. Many historians reading this article will be reminded of the on-going debates surrounding E.P. Thompson's concept of the moral economy of the crowd – broadly, the idea that throughout British history, crowds gathering to protest and 'riot' with a political purpose behind that gathering have a conceptualisation that they have a 'right' to make their points in this disorderly but visible way.¹ John Bohstedt points to the enduring importance of 'paternalism' in the management of social expectation of political management in reaching compromises.²

What Reid's article suggests is that modern governments are dangerously less aware of the significance of paternalism in the practical working out of solutions to popular dissatisfaction with the contemporary balance in the social contract between people and rulers. Crowds assembling to protest over some issue are regular historical phenomena, and the attitudes of both government and communities towards such crowds underpin any will to identify a disorderly assemblage as threatening or riotous. Such attitudes regularly fluctuate over time. In many ways the Victorian era was not so much more 'authoritarian' in its attitude towards the assembling of protest crowds with their inherent visible disorderliness as more generally suspicious of such assemblages than the eighteenth century had been. In the wake of the French Revolution and its association with the unfortunate consequences for government (and monarch) of mobs getting out of hand, the British population generally preferred to make political points via marches and public meetings – events which seemed organised and so orderly. The Trades Unions, for instance, early learned that lesson when seeking to establish themselves as an acceptable element in economic and political life in Victorian Britain. Initially, the twentieth century was overall more tolerant, partly because less afraid of the inherent

¹ A. Randall and A. Charlesworth (eds) *Moral Economy and Crowd Protest: crowds, conflict and authority* (St Martins Press, 2000).

² J. Bohstedt, *The Politics of Provision: Food Riots, Moral Economy and Market Transition in England c1550-1850* (Farnham: Ashgate, 2010).

threat to national social and political stability, of marches and demonstrations on the whole – partly in a belief that the police constituted a proper safeguard against such events getting out of hand (despite a number of occasions when that confidence was manifestly misplaced). That changed towards the end of the century, when concern over riots associated with race and anti-police hostility merged into concerns over terrorist threats to the nation. There is now, as the current scenario reveals, a distrust between people and politicians that means the policing of relations between Parliament and subject is managed not so much by any political will to trust the public to behave appropriately and so, ordinarily, to police themselves, but by a reliance on formal policing at a time when the nation's police forces are increasingly distrusted by individuals and groups within communities.

What **Paul Jennings's** article reveals is that while the Victorian uniformed police were an important element in the management of potential disorder in the context of alcohol consumption in the public house, there were other community-based factors at work also. The will to manage drunken individuals and to promote an orderly atmosphere in leisure venues came as much from community anxieties as from a top-down political policy. The eventual passage of the Wine and Beerhouse Act 1869 could be held to represent the workings of the social contract between government and the governed. If it made unhappy brewers, public house proprietors and some customers – it pleased magistrates (magistrates' courts were then still a major conduit of local public opinion, expressed through prosecutions brought by aggrieved private individuals as much as by the police), local churches and popular groups within society such as the Band of Hope and other temperance campaigners. Indeed, the sense of general approval inspired the Liberal Government to pass the Licensing Act 1872. True, Gladstone always considered that the enactment of that legislation had cost him the General Election in 1874 – but that may have more to do with the still restricted nature of the franchise rather than with a broader public opinion. Certainly given that many of the women who approved of the Act were not yet enfranchised, it seems likely that any hostility in the electorate was not representative of the wider population.³ This is a case of legislation that was increasingly indicative of an escalating popular will to see drink-related disorderliness controlled and public houses better run, making them assets to a community rather than a threat. It is

³ The legislation was, to an extent, watered down in the Licensing Act 1874, passed by the incoming Tory government, but the core issues remained in place.

easy to dismiss the impact of the British temperance movement, and to point to continuing incidents of drunkenness. But, as Henry Yeomans has pointed out, this has more to do with political and medical attitudes and resulting policy developments than with serious and sustained threats from levels of inebriation in the population as a whole. Jennings' point is well made that respectability was increasingly linked with moderate consumption and sobriety in the working as well as the middle classes.

Both these articles reveal the public and popular dimensions to their explorations through use of the media: the final article also makes heavy use of that resource. **Samantha Pegg's** exploration focuses on the media's use of rhetoric and its symbolism to show how certain types of case were and are understood by contemporaries at the time and then subsequently provides a range of challenging insights into how issues such as gender, age and class play an enduring, if largely unspoken, role in developing and establishing the cultural lens we use to frame criminal cases. Largely unconscious, this article points up the ways in which such attitudes serve to trivialise or maximise particular cases according to how they fit our established cultural prejudices. The Victorians were accustomed to the deaths of children from a range of causes and so, while such deaths could be personally tragic, there was less likelihood that even a horribly gruesome death would be seen as being nationally tragic – and yet, the murder of innocent Fanny did cause enormous public outrage at the time. The identification, trial and conviction and execution of her killer, Frederick Baker, did nothing to assure a public that such things could not happen again. After all, Fanny's death came in a decade characterised by public outrage over the deaths of innocents Georgie Burgess (at the hands of two young boys) and Savile Kent (with sister Constance confessing to that killing in 1865). How far was the macabre association made between her name and 'spoiled' (and so unconsumable) meat a shorthand for the powerlessness felt by society then over the failure to protect such innocents and the certainty that future events would take place that would continue to outrage the public. Judith Rowbotham remembers the gruesome humour traditionally endemic in the services manifesting itself in RAF 'tribute' songs such as 'he jumped without a parachute from twenty thousand feet', as a way of remembering World War II fighter pilots, for instance.⁴

⁴ Verses sung with relish included imagery such as 'they scraped him off the runway like a lump of strawberry jam' (adding that 'the next day in the NAAFI, they had strawberry jam for tea') accompanied by a chorus of 'Gory, gory, what a terrible way to die...'

However, the memorialisation of Sara Payne, also raped and murdered, through her named association with a law intended to protect innocent children from such attacks suggests a change in attitude towards child protection and the possibility of doing so successfully through the criminal justice process. In 1884, the Home Secretary of the day had rejected the proposal to criminalise incest to protect children from paternal abuse in order to protect patriarchal authority; showing that two decades after the death of Fanny Adams, an agenda to protect the innocent child from adult (usually male) predators was of far less cultural and practical importance to society than protecting the authority and status of adult males. In general, the law thus intended to protect and privilege male authority within families and the community generally at the cost of the child if it came down to it. A century later, with a long history by then of legislation intended to promote the protection of the child from various forms of adult abuse, the popular reaction to the abuse and murder of Sarah Payne was consequently very different. It became the opportunity to promote a further expansion of legislation intended to help parents protect their children from predators lurking within the community. What this also underlines is that retrospectively at least, those 'unexpected consequences' of events and laws can be contextualised and so to an extent comprehended, even if they cannot be predicted.

Conference Reports and SOLON members' research

The three conference reports covering events throughout 2012 flag up current controversies including those on new legislation and the problematic nature of the revision of legal aid provisions. Kim Stevenson's reflection on the SOLON Experiencing the Law conference on legal aid remains timely even though the Bill discussed is now law. However, as Tom Smith's report underlines, the reforms mean that there is minimal state funding for civil claims and this, again, has implications for judgments about the social contract between the governed and government. Will the legal process be seen as delivering 'justice' on an appropriate scale when there is no more funding for claims of clinical negligence against NHS (there is still an exception where pregnancy and childbirth involved) and where funding for divorce and family proceedings is not available except where child abduction or forced marriage are key points in the proceedings? So many areas within the legal process are now either excluded from access to legal aid or have the level of aid heavily capped, including claims relating to benefits, to immigration

and asylum appeals. The condition that successful claimants will have to pay a 25% levy of damages to the new legal aid agency and up to another 25% to cover lawyer costs also challenges the 'fairness' of a system that is perceived by many within the legal profession as well as in the community as having more to do with money-saving initiatives than with the justice process.

Covering the same broad theme, Kim Stevenson's report, in introducing a historical dimension to the provision of legal aid, provides an important complement to Tom Smith's thoughtful consideration of the issues. Avrom Sherr and Richard Monkhouse delivered constructive practical criticisms of the impact of current policy on the way in which justice is delivered – bringing out in particular the importance of the local dimensions to justice. This was (and is) not being appropriately considered by government – yet over the centuries, that local dimension has proved to be critical to sound levels of public support for the legal process. Papers delivered emphasised the *longe durée* of attempts to improve the delivery of justice, and the perception that justice was available to all, through more informal provision of legal aid from the 'free' issue of summons by Victorian magistrates in deserving cases (using the funds under their control from parish poor boxes) to the advice clinics run by academic staff and students. Looking to the past, it is easy to criticise the provision of dock briefs in indictable cases, for instance – but the criticisms of the current situation by participants in both conferences and by the report authors suggests that the results of current initiatives will undermine both the practical delivery of justice and the public perception that justice is available to all. It highlights the continuing reluctance of the Treasury to underpin the economics of a truly effective justice system with all the implications that has for the need for a thorough review of government funding priorities when seeking to create a functioning and stable society where the rule of law obtains with the consent of the populace.

The extent of altruistic commitment with which individuals within or associated with the law have campaigned to improve the rule of law, nationally and internationally with the interests of groups within societies or with a more abstract impetus to deliver more coherent and equitable justice was also invoked as the key theme of the SOLON Modern Activism conference in Liverpool last June. The first such conference of its kind, it brought together a range of practitioners and academics across disciplines. The

powerful opening contributions from Lesley Abdela and Richard Monkhouse (reappearing after his engaging talk at the Experiencing the Law conference) and John Thornhill of the Magistrates' Association set the tone for the passion with which the topic (broadly and in relation to specific issues) was addressed. Both addresses pleaded for better communication between academic researchers and activists – for the better exchange of not only ideas and information, but also of useful practices and knowledge of the agendas and limitations on action intrinsic to both fields of work. That is something which SOLON supports very strongly – and we will hope to continue to publish more practitioner contributions to stimulate such interactions.

We are also delighted to showcase three member statements of their research interests and current projects – a knowledge of what is going on is important to maintain, especially when it comes to interdisciplinary perspectives on academic and practical research initiatives. We also include a book review from Dave Cox, on Nicola Goc's book on infanticide, and welcome suggestions from SOLON members about other works they would like to see reviewed and commented on in ways which contribute to the interdisciplinary project.

The Editors
March 2013