

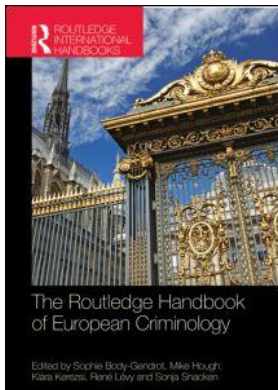
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Access details: *subscription number*

Publisher: *Routledge*

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## **The Routledge Handbook of European Criminology**

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### **A history of crime and criminal justice in Europe**

Publication details

<https://www.routledgehandbooks.com/doi/10.4324/9780203083505.ch3>

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**Published online on: 10 Jul 2013**

**How to cite :-** Xavier Rousseaux. 10 Jul 2013, *A history of crime and criminal justice in Europe from:* The Routledge Handbook of European Criminology Routledge

Accessed on: 20 Jul 2019

<https://www.routledgehandbooks.com/doi/10.4324/9780203083505.ch3>

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## 3

# A history of crime and criminal justice in Europe

*Xavier Rousseaux*

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Since the 1960s, crime has been studied from a historical perspective. As a result of the epistemological rapprochement between history and the social sciences, a history of crime and criminal justice has arisen at the intersection of a critical criminology, social and political history, the history of law, and social and cultural anthropology. The latter has stressed the importance of constructions and past experience in the contemporary configurations in which crime occurs and the methods of controlling it. The present chapter is intended to display a few of the contributions of the history of crime to criminology, and to ask a few questions about the dialogue among criminologists concerning both the history of crime and the criminology of the past. Within the realm of the social sciences, criminology offers the historian a set of questions generated by the actual observation of crime and the practices that control it, including analytical methodologies and explanatory theories. It opens a debate about the function of expertise and aids to decision-making, and emphasises the preoccupation with evaluation of current penal policy. The historian contributes a detached consideration of his object to the criminologist. Observing the past for its own sake brings with it a power of comprehension of the present, a power guaranteed by distance in time. The use of archives allows us to avoid traps associated with 'official' discourse or mediated discourse, and to establish the date of the first instance of an idea or a practice. An interest in chronology has two foci, measuring changes (discontinuities) and discerning the influence of the past in the present (continuities). Finally historical synthesis attempts to arrange the major debates about crime and its control in terms of a variety of temporal situations and locations, taking account of a critique of emotions and the interpretations of various time periods given by criminals, their victims, and those who work within the criminal justice system (police, judges, journalists, experts).

The option selected was to present the lines of force of this European criminal history as extending over long periods of time (the *longue durée*). In terms of a European context, the work is presented mostly with reference to individual nations; it is impossible to draw a detailed landscape in a few pages. Beginning with studies conducted in various countries in Western Europe, the history of crime and criminal justice will be explored in three stages. The guiding thread of the text is the pluralistic conception of time found in the work of the historian Fernand Braudel (1982). Chronology does not consist of a succession of past eras, but a successive stratification of temporalities. After time on a millennial scale (that of the anthropological and cultural

history of the West), we get lesser stretches of time, the medium-sized lengths associated with certain economic structures, and also the short spaces of time associated with political contingencies. After attempting to place the *longue durée* in perspective (1300–1750), we will examine the mutations undergone in the last two centuries (1750–1950) and the particular impact on the West of experiences involving domination (1830–1975). For each of these periods, we will concentrate on the description of changes, and on interpretative debates involving four focal points: (a) definitions and perceptions of crime, (b) detection of crime and actors of control, (c) institutions and processes in the response to crime, and (d) the penal system and associated social issues. Questions about the post-war period, familiar to many criminologists, will be mentioned briefly as we conclude.

### Long-term criminal culture in Europe (1300–1750)

An analysis considering the perspective of the *longue durée* is indispensable for understanding the origins of the history of crime in Europe. Words for crime, procedures, institutions and penalties are deeply rooted in long-term European culture.

#### *Emerging legal and social concepts of crime*

The definition of crime has its origin in the ancient legal cultures of several nations, particularly in Roman law. The latter survived the fall of the Empire and continued to prevail in ecclesiastical institutions. It was revived by Italian legal scholars of the twelfth century. In the thirteenth century the development of sovereign powers (the Papacy, English and French kings) led to a re-working of the discourse on crime and on normative practices. Revived by the legal scholars of Bologna, Roman law gave structure to the Papal bureaucracy and to the courts of various kings. In many localities, customary law from the time of the Germanic invasions subsisted, while urban communities liberated themselves from the brutal power of feudal lords, in order to establish autonomous juridical spaces.

Local customs contribute little to the definition of crime; they are usually limited to an idea of ‘serious’ or ‘capital’ crimes that can lead to the death penalty: murder, theft, rape, arson. Canon law deploys concepts of sin and crime, developing a ‘penitentiary’ culture. As for the Roman law revisited by medieval legal experts, it put forward a concept of crime against Majesty (*crimen laesae maiestatis* or *lèse-majesté*). This became a category in 1199 which was extended to cover heresy, thus receiving a religious emphasis (blasphemy, heresy, rebellion, sorcery). In practice the nature of a crime is less important than the procedure that follows after. Any behaviour is criminal if it leads to a criminal procedure that sanctions secret trials, torture and bodily punishments.

Before 1300, the reality concerning offences punished by multiple jurisdictions is not well known, since sources concerning practices are lacking. Beginning in 1300, sovereign jurisdictions and urban tribunals began to produce a series of documentary records. Physical violence was the biggest problem. Estimated murder rates between 1300 and 1500 are very high (20–40 per 100,000 inhabitants). Sexual violence, thefts and religious crimes appear to have been fewer in number. Perceptions of crime during this period are hard to interpret. Literary works, chronicles, requests for pardon, narratives of trials all show the political priorities or values at the centre of medieval conflicts: horror at political treason, the importance of one’s reputation (*fama*), honour and shame as experienced by man and by women; and the ambivalence of the status of the homeless.

The 'first modernity' (1450–1650) was characterised by a transformation in the very notion of crime. It became the object of juridical discourse, and general normative texts. Crime was seen as a major menace, and society must react against it. The crime of human *lèse-majesté* allows any dissident position or opinion to be declared a crime against the sovereign. This crime appears as linked to the defence of the State. The theme of the defence of the State is reflected in the emergence of new types of crime and new criminal profiles, seen in royal legislation and in the transformation of the perception of crime. With regard to practice, in addition to murder, religious dissidence, vagrancy, sorcery, sexual deviance (i.e., adultery and homosexuality), all these behaviours give shape to new fears and stigmatised new types of criminal figures (heretics, the homeless, witches), which then become targets for arrest, secret investigation and severe punishment.

### *Revenge, self-denunciation and prosecution: protagonists' initiatives in solving conflict*

In the Middle Ages, the first response to crime was to take revenge against the aggressor. Regulations existed to channel and moderate impulses towards revenge. The cities established procedures of self-denunciation and reconciliation between parties under the control of local authorities.

Institutional pluralism characterises the recourse to justice in medieval and early modern Europe. A person, according to his status, could take a complaint to a local judge, to a tribunal of arbiters or peacemakers, to an ecclesiastical or military court, or to a court reserved for cases involving nobles; if the person was not registered as a resident of a particular locality, he would be viewed with suspicion within the jurisdiction of a marshal.

Consequently, before the seventeenth century, 'the police' were not very specialised. In cities a few sergeants of a court and business inspectors were supported by young bourgeois who joined urban militias. In order to pacify the countryside, from 1500 on, sovereigns developed military constabularies that acted as police, defending justice. These 'marshals' were supposed to hunt deserters and chase out vagabonds. Mostly they limited themselves to policing the main roads between cities.

### *Institutional responses: the emergence of criminal courts*

Beginning in the thirteenth century, judicial institutions began to specialise in particular types of case and developed a bureaucracy based on written documents. Sovereign powers and elites developed chancellor's offices, Parliaments and higher courts. Cities, in a bid for more autonomy, created their own jurisdictions. In the sixteenth century Europeans saw more and more royal legislation imposed upon them, impinging on local norms, and relegating to the shadows any settlements between parties. Manned by university-trained legal experts, higher courts tried to harmonise the various forms of legal procedure of local courts and developed forms of recourse beyond them (legal opinions, appeals, amended decisions), especially with regard to the accusation and identification of heretics and with regard to 'witch hunts'. Through these forms of further recourse, higher courts tended to exert control over local courts, and to make written procedure more widespread. Around 1600, local jurisdictions transformed themselves into oligarchical tribunals. Some of these were subject to a central authority, as were French tribunals; others turned to a system, to their profit, based on the authority of a prince, for instance, oligarchical republics such as Venice, Geneva or the United Provinces, free German cities. In many regions, however, local communities kept their autonomy in criminal cases until

the eighteenth century; city councils had the right to torture and to condemn to death, although the efforts of higher courts to control criminal sentencing were strengthening.

### *Criminal procedure and stigmatising penalties*

On the continent, the most important change was the passage from a procedure that was mostly oral, as a basis for negotiation, to a written procedure which was imposed upon persons appearing in court. The increased severity of punishments noted in the late fifteenth and early sixteenth centuries was based on a particular and extraordinary criminal procedure. Written records of investigations were kept secret, torture was used, and capital punishment was frequently the result. This procedure was developed during the waves of persecution of religious dissidents and witches. In Latin Europe and in their colonies, ecclesiastical or royal inquisitions arrived at a similar procedure, but continued to allow secular jurisdictions to carry out the sentences they imposed.

This increased severity of the penal regime also affected sentences. At the end of the Middle Ages, financial penalties were most common in ordinary or ecclesiastical jurisdictions, taking many forms (fines paid in money, fines paid in beeswax (then used to make candles for the church), money paid to excuse someone from a judicial pilgrimage, etc.). Penal severity was further accompanied by a double movement: an increase in the number of public executions (theatre of horrors) and various stigmatising punishments for ordinary crimes began to appear (public shaming, public penance whipping, branding with red-hot irons, etc.). Banishment became a common punishment, when something less severe than death was desired. Ecclesiastical jurisdictions reserved specific punishments for servants of the church, such as being confined in a convent. After the Reformation, civil authorities tried to expand the practice of confinement, accompanied by forced labour, to social outcasts (vagrants, the elderly, disabled people, outlaws). The development of workhouses was, however, never really connected to a penal policy before the eighteenth century.

### *Interpretations: long-term trends, resistance and acculturation*

The trend towards rationalisation through recourse to written documents and the establishment of juridical procedure and State control of the exercise of criminal justice and repression in Europe was not continuous or completely widespread. Many local communities continued to practise an oral procedure that had the characteristics of negotiation, supported by the local power structure. It is thus important to take into account the level of observation being analysed (local, provincial, central government) and to distinguish among the discourses of elites, legal uses, and daily practice in local communities.

But how can we explain the difference between the exercise of justice as practised in 1700, as opposed to that exercised in 1300? Some have hypothesised an economic explanation: each mode of production is matched with a mode of punishment (Rusche and Kirchheimer, 1939, 1968), and the emergence of capitalism leads to a justice that is more selective when it comes to the unemployed. Others have seen a relation to certain transformations of power itself in the West. Many scholars follow Max Weber in his analysis of the emergence of the State as a form of power that is distinct from that of a charismatic leader or an absolute monarch. The claim of the bureaucratic State to a monopoly over legitimate violence is thought to have speeded up the process by which criminal justice was controlled by top-down authority. For sovereigns, ancestors of the modern State, the management of repression and the granting of pardons was all part of the accreditation of legitimate power – that of the sovereign over his subjects. Establishing control over sovereign territory within borders went along with waging war against

neighbours involved in disputes over territory, until stable borders were established (Tilly, 1993). Measured against the *longue durée*, this monopolisation took place to the detriment of other power centres, such as feudal lords, ecclesiastical institutions, urban communities and villages.

Some scholars prefer to locate these transformations at the level of social relations. A critical reading of Michel Foucault (1979) places the emphasis on processes that accustomed European peoples to discipline (social disciplinisation) at the hands of sovereign authorities. Others, inspired by Norbert Elias' civilising process theory (Elias, 1969, 1982), consider this a transformation of morals and individual sensibilities under the influence of the urban bourgeoisie. Although sensitive to the effects of the disciplinary process, these two approaches are often presented as 'top-down'. Many researchers working with local archives emphasise the initiative of populations in the drive toward a more 'rational' and 'modern' justice, and the persistence of local cultures of regulation up until the eighteenth century.

## Reform and revolution in European criminal justice (1750–1950)

From the middle of the eighteenth century to the mid-twentieth, crime and criminal justice underwent profound changes in Western societies. The Agricultural Revolution and the Industrial Revolution, the rise of the bourgeoisie, the acceleration of geographical and social mobility, the explosion of scientific advances, the modernisation of political space and European wars put a final end to the *ancien régime* of criminal justice. The gradual transformation of sovereign monarchies into democratic nation-States deeply altered criminal justice and conceptions of crime.

### *Old justice and new crimes*

During the 200 years referred to, citizens and political authorities attempted to define criminal behaviour. Crime was fascinating to political elites and intellectuals, but also to ordinary citizens. Elites wanted to develop scholarly constructions in which judges, legal experts and various reformers could confront each other. Ordinary citizens developed a taste for gruesome stories and the popular literature of crime. These representations gave substance to public and political debates concerning changes in criminal law, sometimes to soften it, at other times to make it more severe.

In the eighteenth century in Western Europe, penal practices tended to become less severe. Still, some aspects of justice at the time were roundly criticised by many groups from civil society: lawyers, liberal reformers, and partisans of the Enlightenment, the *Lumières* or the *Aufklärung*. Intellectuals such as Sonnenfels, Beccaria, Voltaire, and Bentham offered critical reflection aimed at aspects of the penal justice of the *ancien régime* that were considered archaic: secret trials, long procedures, the use of torture and gruesome punishments and executions on the continent, a lack of professionalism among 'amateur' judges and disproportionate punishments in England.

During the first half of the nineteenth century the most important development in legislation concerned crimes against propriety and morality. The 'Bloody Code' (the system of laws and punishments in England between 1688 and 1815) was very different from the Napoleonic penal code of 1810, but both constituted programmes of penal severity with regard to crimes involving the violation of propriety or crimes committed against the family. During the second half of the nineteenth century much new legislation appeared, regulating many kinds of behaviour and a wider range of criminal types in this area.

Family-related crimes (infanticide, abortion, crimes of passion, domestic violence) were addressed by criminal justice policies that were more flexible, and which focused less on the

individual criminal and more on the family and social environment in which the crime occurred. Also, desired reforms regarding the treatment of juvenile delinquency and mental health cases introduced the use of specific expert testimony in trials. This reflected changes in wider society's attitude toward certain specific categories of criminal and was the consequence of changing perceptions as to the causes of crime.

Between 1750 and 1850, a moral conception of crime was dominant. But advances in medicine and the human sciences led to a more biological or sociological conception of crime. Crime statistics, and many expert writings on the causes of crime (Quetelet, 1831) or the profile of the criminal (Lombroso, 1876–1897, Lacassagne (Renneville, 1995)) relaunched debates about crime. Near the end of the nineteenth century a fear of 'degeneration' and belief in eugenics as a form of social engineering motivated the struggle against crime. Later, more socially oriented conceptions would appear, in a context of the creation of a welfare State. Criminological discourse developed in interaction with scientific knowledge, institutional structuring and reform of the penal code, as Peter Becker and Richard Wetzell (2006) have shown with respect to the German-speaking world. For example, in Weimar Germany the connection between the development of criminology and the increasing influence of Nazi-style social theories was very obscure. A policy of extermination for groups accused of producing more crime, or of being 'useless in society' did not draw that much of its claimed justification from criminology, which was thought by some to have encouraged certain persecutions. In the French system during the nineteenth century the increasing importance of expert testimony became quite evident in the activity of various courts. The desire to determine the causes of violence precisely made the presence of forensic experts more important in cases of homicide or rape. Expertise about the body was matched by expertise concerned with the understanding of human behaviour. On the continent at the end of the nineteenth and the beginning of the twentieth century, the consensus in legal expertise tipped more and more towards judicial inquiry, as the example of fingerprint analysis shows. Expert testimony gave rise to scientific police work around 1909; this remained part of the search for proof in the consideration of a crime. Thus it was part of the process of accusation, and connected to prosecutors or to the police. In the twentieth century an expansion of psychological expertise, followed by psychiatric expertise in courtrooms put judges at something of a disadvantage relative to the experts. A competition continued between magistrates and doctors regarding the explanation of the causes of criminal behaviour.

These scholarly representations interact with popular representations of crime, popularised in the press, by para-literature (detective fiction), and through the figure of the reporter as investigator. As early as the eighteenth century in England, and later in France and Germany, popular narratives, often concerning capital executions, reinforced the feeling citizens had concerning the dangers of crime and the necessity for repression. Increasing urbanisation and industrialisation fostered the emergence of a popular press which sold to a mass market. This press could heavily influence investigations and trials by sensationalising criminal affairs and cooperating in the fabrication of scandals. The press built up menacing figures and then tried to heighten feelings of insecurity even more by making a fuss over unsolved crimes. Criminological inquiry by police and by social scientists became more expert, and so too did journalism. Journalists investigated the real lives of criminals, and also the practice of the justice system itself. Along with police, lawyers, experts and judges, journalists would now contribute to the construction of the image of crime and the criminal.

From 1750 to 1950, the traditional structure of the judicial apparatus of the *ancien régime* (courts and tribunals) became more complex, at first through the creation of modern police departments and the bureaucratised pursuit of violators, and later on through the development of penal administration (basically the administration of prisons) and procedures for monitoring prisoners after release from the penal system (probation).

### *The increasing role of the police in society*

As sociologists and philosophers of police work have shown, policing is known by its methods of practice, and each modern State defines police work in terms of three primary functions: criminal policing, security policing and community policing. Often these all exist together in one location – local police, civil or military State police, and the beginnings of a specialised criminal police.

#### **Criminal policing**

In the eighteenth century, police work tended to separate itself from the work of the judiciary proper. In the English system, responsibility for pursuing criminals was largely in the hands of victims. The victims would try to get detectives to investigate something. In France, one of the debates from Revolutionary and Napoleonic times concerned the dismantling of the *ancien régime* police and the re-establishment of a bureaucratically administered prosecutor's office involving the police and the *parquet*. By being linked to public prosecution, police became more professionalised, and an administrative police was distinguished from the '*police judiciaire*'. Regarding the investigation of crimes, in Great Britain and on the Continent the State intervened, and over time this function was monopolised and given to a prosecutor (*procureur*, *Staatsanwalt*, *Director of Public Prosecutions*). Criminal investigation was presented as the highest point of police work. It was a relatively small part of the process, but in the nineteenth and twentieth centuries it took advantage of new sciences that could be used to investigate crime (fingerprint analysis, DNA testing).

#### **Urban policing**

The State's tendency to take over the responsibility for prosecution and investigation was aided by increasing professionalisation among police forces in large cities. History has often opposed the English model of a decentralised police force to the French model of a national police; but in reality the Metropolitan Police of London (1829) functioned as a national police, and most French towns had municipal police forces until 1941. In most European cities and towns the police took over more and more tasks involving bureaucratic control with the approval of local elites, thus increasing a certain pressure exerted by the State upon community life. In the nineteenth century urban police were particularly expected to maintain safety in a city generally presented as the epicentre of the new 'crime panic' focused on a 'criminal world' operating at night and visible through petty crime (theft and aggression) and prostitution.

#### **Rural policing**

In the country, the troubles of the latter years of the eighteenth century made rural policing difficult. On the continent the 'marshals' of the *ancien régime* were modernised during the Napoleonic conquests, in accordance with the model of a national, then an imperial *gendarmerie*. As Clive Emsley (1999) has shown, this centralised military police force was a powerful vector for the development of the State itself, as part of its policy of pacification of those rural areas that were not closely monitored by States. The French *gendarmerie* inspired the gendarmeries of Bavaria, Austro-Hungary, Piedmont, Spain, the Netherlands, Belgium and Ireland. Between 1850 and 1950, everywhere in Europe the network of State control in rural areas became denser, causing an increasing number of local conflicts to be referred to courts. During the interwar years, the demilitarisation of the gendarmes was discussed. At the end of the twentieth century most countries opted for the demilitarisation of the national police, putting them under the control of civilian authorities.



### Security police and international policing

Another function of the police is the protection of the integrity of the State. National or State police forces were created as part of a struggle against socialism and anarchy in the nineteenth century. The internationalisation of workers' movements led to the development of an international police force, paralleling the nationalisation of States. Thus the International Criminal Police Commission, the ancestor of Interpol, was equipped after the First World War with files on banditry, drug traffickers, arms dealers, pimps, and labour and political leaders in the major European countries. In response to increased physical mobility within and between countries, specialised divisions of police work emerged: vice squads in large cities, railway police, border patrols, maritime police and of course criminal police. Private policing was also developed; in one sense this represented a response to the increasing fears of a 'civil' society, and in another sense it represented the development of priorities set by the State with regard to the protection of its citizens.

### *The courts between society and the State*

The revolutions at the end of the eighteenth century caused a heavy turnover in magistracies controlled by local powers. There was a professionalisation of the office of judge associated with the appointment of massive numbers of new jurists in the courts and tribunals, but this did not prevent judges from being influenced and dominated by local issues. The practice of English judges has been the most closely studied. In the 1790s, more than 80 per cent of criminal prosecutions were set in motion by the victims. On the Continent, studies of the jurisdictions, particularly those created or established by the French Revolution, give evidence of increasing participation by local elites in justice, through juries, and the 'gentrification' of these elites during the early part of the nineteenth century, before their gradual democratisation at its end. Throughout the nineteenth century, courts became more rational institutions, staffed by professionally trained persons who followed bureaucratic procedures.

How did these courts work? The urbanisation of Western Europe has been of great interest to historians. Eric Johnson (1995) has questioned the causal relationship between urbanisation and crime among contemporaries in imperial Germany, without being able to establish any mechanical connection between the two phenomena; Jean-Claude Farcy (2001) questions the greater violence of rural migrants moving to Paris in the late nineteenth century. Many researchers have provided evidence for the importance of institutional networks in the handling of penal cases. They give close consideration to criminal jurisdictions and the most serious offences (*felonies* in England, *crimes* in France). The representative character of these institutions has been questioned because of mechanisms by which numerous charges were dropped by a higher court and transferred to a lower one. Lower courts have attracted attention recently. Researchers have noticed a gradual transfer of serious crimes from the most important jurisdictions (*cours d'assises* or *assizes sessions*) to medium-sized jurisdictions, such as the correctional courts in France or Belgium, or the 'quarter sessions' or 'petty sessions' in England. This phenomenon of transferring serious offences is especially clear in France and the Benelux countries. The transfer of crimes extends the social control of the State with regard to the most frequent crimes.

For the rural world, the practices followed by penal courts managed to display a portrait of rural violence, sexual violence and infanticide. More anthropologically inclined research has tried to grasp practice at the local level with regard to 'village judges'. Penal justice in such situations functioned as a space for negotiation to resolve conflict between families, individuals, or groups. Women played an active role. Work on Bavaria, Sicily, Corsica or Quercy (a French region) all confirm the two faces of State-like justice in a village. It was written justice,

manipulated by the parties in a context of shared values and local interests. State justice would nonetheless become more dominant. Starting in 1860–80, the State became an unavoidable partner in justice, forcing villages to put their justice system personnel through training that met the norms of the national community. Research has also identified a difference in the relationship between local and national justice, according to whether the example is in Northern or Southern Europe. The Atlantic nations experienced an earlier fusion between society and State, while in the South of Europe the State continued to be seen as an interloper, in confrontation with a society much given to self-regulation of conflicts (banditry, vendettas, honour crimes, etc.).

Otherwise, a study of the decisions issued by these courts emphasises the increased pressure of the State in the social landscape. Under the *ancien régime*, cases rarely went as far as sentencing does in the nineteenth–twentieth century. During this period, many complaints were dismissed by the prosecutor's office. Many others were transferred to very large jurisdictions, whose courts began to generate more and more archives and decisions. Around 1880, the French rate of conviction for judged cases was 70–80 per cent when the cases came before *tribunaux correctionnels* (or magistrates courts). Fines and imprisonment became systematic sanctions, producing a massive prison population across Europe, while the policies that favoured prosecutors dropping cases and transferring them extended the control of the judiciary over more and more of the population.

### *Body and soul: the death penalty and incarceration*

Another major change during these two centuries affected the punishment system. From 1750 to 1850 two mutually linked movements affected many Western societies. One was the decline in public corporal punishment (banishment, penal exile, capital punishment) and the other, the development of penal imprisonment. Historians' work has concentrated on the causes of the emergence of the prison at the end of the eighteenth century. Historiography pleads for a multi-dimensional approach to the rise of imprisonment as a practice, reflecting many changes experienced by Western societies. The birth of the penal prison is an outcome of economic transformation in the eighteenth century, via industrialisation, the transformation of modes of governance through bureaucratic sanctions in nation–States that were in the process of democratisation, changes in people's sensibilities, different conceptions of the body and representations of crime.

The origins of the penitentiary system have been well studied, but our knowledge of the incarceration network between 1850 and 1950 remains fragmentary. Everywhere in Europe this period is characterised by the penal and social treatment of condemned criminals. The penal bureaucracies and specific forms of incarceration of particular populations (women and children, political prisoners, etc.) have attracted the attention of researchers. In the last third of the nineteenth century, the Victorian era, prison in Britain was not very different from a 'republican' prison in France; those imprisoned were often socially rejected and marginalised people from the working classes; the disciplinary treatment was harsh for prisoners in such a place. In the middle of an economic crisis, French repeat offenders were transported to the colonies until the middle of the twentieth century. In Germany, as in the Benelux countries, prisons were developed in the second half of the century according to a model of solitary confinement. In these countries a very large programme of prison construction during the period 1870–90 did not stop people from being aware of the fact that imprisonment was not an acceptable solution. Near the turn of the century a social question emerged concerning the emancipation

of the working classes, during great crises (1873–96). In several countries the increasing interventionism of the State in the treatment of crime was supported by private pressure groups. At the turn of the century a renovation of the penitentiary system came about because of attempts to individualise punishment and the introduction of criminal anthropology in prisons and juvenile offender institutions. This movement gathered strength after the Second World War, with the re-socialisation of persons condemned for having collaborated with the enemy in occupied Europe.

A correlation between modes of production and economic organisation and modes of punishment and social exclusion is an attractive paradigm for explaining changes in the procedure for imprisoning people. This link is not direct, but it gets mediated by the philanthropic ideals of penal systems, as shown by Robert Roth (1981) in his pioneering study of the prison at Geneva in the nineteenth century. His model applies to many different situations. Prison follows an agrarian model until the 1860s, gets contaminated by the industrial model (1870–1920), takes up a tertiary model (1920–70), which then undergoes a crisis during the 1970s, at the time of economic crisis for the welfare State.

The system of sanctions developed in terms of normalising functions, correctional functions and segregating functions (Garland, 1985), under the influence of the earliest criminological discourses which changed the main focus from criminal acts to the criminals themselves. The question of juvenile delinquency is an example of these transformations, with the multiplication of alternative treatment options other than confinement, such as probation, in various Western countries between 1890 and 1914. Basing itself on the development of scientific and medical knowledge and on the social laboratory made available by prison populations, criminal anthropology developed an explication that focused on racial degeneration. Thus the development of alternatives to prison can be interpreted as human progress but also as a re-invention of methods for controlling the poor. The prison takes its place in the chain of ‘total’ institutions (asylums, schools, hospitals) in order to separate, classify and if possible treat the causes of suffering of different population groups (young people, women, homeless people, alcoholics, small-time criminals, alienated people, foreign immigrants).

### *Interpretations: the administration of justice: the State and society*

An extension of police control, the rationalisation of practices of justice, and sentencing according to State norms – were three vectors of a modernisation of the apparatus of social regulation in Western countries. Interpretations differ as to the most influential group, the eclecticism or the effectiveness of these tendencies in accordance with a conflictual or rather consensual vision of crime. It seems clear that penal systems are not monolithic tools in the hands of the upper classes for the purpose of oppressing the working class, or to impose a middle-class culture on them as is maintained by conflict theorists. Sectors such as conflict regulation at work and in business do appear to benefit the affluent classes, while others treat more or less identically the bourgeois, the worker, or the peasant, as claimed in consensual theories of crime. Finally, the study of individual life trajectories gives us a complex vision of the place of a criminal sentence in the career of a convicted criminal. Historians’ work gives evidence of the various interests and local or temporal constraints that explain the functioning of a police department, a court or a prison.

Despite these nuances we must recognise that up to the end of the twentieth century the dominant classes in cities and rural elites were largely exempt from the control of the police, from criminal judgments and prison sentences, in comparison with what was done to members of the poorer classes, or to immigrants. At the end of a long process, prison remains a major

problem as regards social regulation of conflicts in the early twenty-first century. To discipline, to judge, to punish, to isolate from society, to treat, to re-socialise – the functions of forced imprisonment in contemporary societies – change, but do not diminish. Neither do their targets. Populations of men, young people and immigrants remain the main targets of incarceration policies in Europe, which explains the inability to get away from a recourse to detention in discussions on treatment for juvenile delinquency.

## **Colonialism, military occupation and criminal justice, 1830–1975**

During the second half of the nineteenth century and the first half of the twentieth, (during the colonial period (1830–1975) and in two wars of occupation (1914–50)), Europe was affected by two types of experience involving authoritarian regimes. These present comparable characteristics in terms of crime and justice. Regulating authorities overlapped (colonisers or occupiers, colonised societies or occupied societies). Colonisers or occupiers used police and exceptional (military) enforcement as well as exceptional procedures (torture, imprisonment without trial), and carried out exceptional punishments (both public and corporal). Dominated populations (colonised or occupied) were absorbed into the system of the dominant people. It is ironic that on the Continent those nations involved in colonial domination became subjected to military domination during the world wars.

The experience of the Napoleonic wars had already been accompanied by the creation of extraordinary justice systems operating in parallel to the regular justice system. This extraordinary justice was supported by the development of military police, the modernisation of military courts and their purpose to try civilians during counter-revolutionary unrest, government control of courts, judges and jury members, and the development of severe administrative measures (labour camps, deportation). The colonial conquests of European nations were largely based on these extraordinary instruments (military police, extraordinary courts, deportation). The two world wars (1914–18 and 1939–45) left their mark on the apparatus of social control by extending these extraordinary measures, particularly during long-term occupations.

### *Domination and crime construction*

Colonisation introduced changes in the conception and the policies associated with the judicialisation of crimes. Legislation adopted by colonising countries (Great Britain, France, Germany, Italy, Portugal, the Netherlands, Belgium) distinguished norms for Europeans from norms to be applied to the colonised populations. Such discrimination was justified through a discourse on racial hierarchy sometimes expressed in evolutionary terms. Recent work has shown how hard the colonisers tried to prohibit certain practices that were normal for the indigenous people (e.g., sorcery in Africa, polygamy) because they stuck to a European framework when interpreting them as crimes. Other research has shown that crimes committed by the colonised people against Europeans were most severely punished, especially when violence was involved (homicide or sexual aggression against a white woman). More recent work has emphasised crimes committed by colonists against indigenous people. In India, in Rhodesia, in Katanga, violence by 'poor' white people was part of the frustration involved in a relationship of colonial domination. After the Second World War, the urbanisation of colonies and the rise to power of local, Westernised elites brought about a transformation in methods of social control: as in the home cities, new themes emerged in the colonies: urban immigration, prostitution, juvenile delinquency (Bernault, 2003, Wiener, 2008, Kolski, 2009).

Wars and occupations favoured the appearance of new crimes. On one hand, the depredations committed by military units against civilian populations have been the subject of prosecution during or after hostilities; on another hand civilian resistance against occupiers was frequently 'criminalised' by being labelled as 'acts of banditry' in courts operated by the occupier. After the First World War, an attempt in Leipzig in 1921 at achieving international justice regarding war crimes failed. It appeared impossible to have military crimes judged within the framework of national legislation. The Second World War saw the emergence of new types of war crime: crimes against humanity, including the crime of genocide. Considered as unforgivable crimes, responsibility for which should never be avoided as a result of the mere passage of time, that is, through a statute of limitations, they become subjects for the historian nonetheless.

### *Colonial policing and police forces under occupation*

As much in a colonial situation as in a situation of military occupation, maintaining order is a major preoccupation for the authorities because of the unequal demographic relationship between colonists and the colonised, or occupiers and the occupied. Most colonising countries used military police (*gendarmes*) or army units trained to keep order and suppress revolts. During the interwar years (1936 in Great Britain) and after the Second World War, these police forces entered a rapprochement with metropolitan police forces: demilitarisation, territorialisation and orientation toward the administrative and judicial police. This transformation explains the creation of post-colonial police forces in accordance with the colonial model in new States.

In Europe at the start of the 1920s, totalitarian regimes, whether fascist, Franco-ist, Soviet or Nazi used State police forces to carry out programmes of strict population control. The Nazi regime, especially, tried to control the police forces and coordinate their activities during the war – including Interpol. Many studies have documented the ordinary and extraordinary operation of police forces under occupation. The case of Brussels, occupied by Germans in both 1914–18 and 1940–44, opens up new interpretations of social control during an occupation. After the Second World War, Belgian, French or Dutch police and *gendarmes* had to steer clear of collaboration, *attentisme* or resistance to the occupier, without forgetting their increased responsibility for the ordinary guidance of the occupied population. As for the police force of the occupiers and their acolytes, they allowed themselves to practise torture which they justified with reference to a struggle against 'banditry', or resistance against the occupying regime. At the end of the war police forces were purged and reorganised by their governments, while adopting some practices learned from the encounter with the occupying police forces.

### *Ordinary and extraordinary justice*

In the colonial situation, recourse to extraordinary courts was needed because there were so few judges, and there was a need to give 'force' to the law. Colonial wars fought by Western nations have accentuated the role of military justice in repression, the protection of colonists and efforts to discipline colonial troops. In Europe, at the end of the Napoleonic experience, nation-States were at pains to 'civilise' military justice, bringing it closer to ordinary justice by reforming penal law and martial law, putting civilian judges on the military bench, through equalisation of punishments based on regular penal codes and by the establishment of some right of appeal. Most States still envisioned a 'state of war' that would allow the military judges of a State to judge its own civilians, limit the right to a defence and reintroduce capital punishment. For this reason during the two world wars there was an enormous expansion of military justice

systems, and these systems increased their own competence as they increased the number of cases they dealt with. In occupied Europe military tribunals for the occupiers would judge more and more types of civilians (resisters, deserters and those who shirked compulsory work service, dissenters). Most often, fundamental rights acquired during the century of bourgeois democracy (judgment in your own language, free defence, appeals) were ignored under these jurisdictions.

### *Transportation, mass detention and the death penalty*

The unequal treatment received by colonial and occupied populations appears clearly in the panel of punishments. Corporal punishment, public execution, prison and labour camps were the most visible forms of colonial domination. The use of the cane or the whip, public executions, things no longer permitted in the European States, were used in the colonies as symbols of colonial domination. These punishments were rarely given to Europeans, who benefited from rights accorded to their fellow metropolitan citizens; colonial administrations were unwilling to use punishments on Europeans that were considered to be exclusively for the indigenous peoples (so as not to weaken the notion that Europeans were a dominant group). Prisons and work camps repeated the presence of the political and economic domination of the colonisers. The use of forced labour allowed the weakness of the public administration to be remedied, especially as regards the maintenance of infrastructure and the clearing of undeveloped land. Prison was a key element in the carrying out of policies for the handling of ethnic groups in accordance with the coloniser's decision. Finally, penitentiary exile was intensively used against opponents of colonial regimes, especially during the world wars and the Cold War. Not until the 1950s would discourses and practices aimed at re-socialisation, used in urban prisons in Europe (education, occupational training, health, etc.), have any effect on colonial prisons, and they would continue to function as instruments of domination.

The same phenomena: public corporal punishment and extension of forced labour imprisonment were found during the world wars in the European theatre. With regard to punishment in occupied Europe and among troops engaged in fighting there was a return of the death penalty, which had been in decline since the nineteenth century. During the First World War military justice was used by military authorities in order to maintain discipline. The executions of 1915 and 1917 in the English and French armies, or after Caporetto for the Italian army, illustrate this point. Nonetheless, German military justice was motivated by another current, one more attentive to the condition of soldiers (mental troubles, lack of morale), something that was seized on as a weakness by Nazi ideologues later on. Otherwise the development of military justice in the nineteenth century, moving in the direction of more 'civil' punishments such as imprisonment, handicapped the war effort during trench warfare, the reason for the appearance of many disciplinary or correctional companies attached to the fighting armies. In occupied countries individuals suspected of espionage or informing could be deported to the occupying country, or shot by a firing squad, something that happened to hundreds. During the Second World War the development went in the other direction. The military justice of the Axis increased capital sentences, but democracies had internalised the protests against executions of the interwar years 'to make an example of someone'. The drift into total war (1943–45), brought with it many more summary judgments and executions by decapitation or hanging, and made the punishments inflicted upon soldiers and civilians suspected of 'defeatism' even harsher.

Imprisonment went through a change of scale during the twentieth century. This was the century of concentration camps and political prisons, even prisons for particular groups, i.e., ethnic groups. All this happened in the shadow of the two world wars. In France during the First World War, from 1930–50 in Spain during the civil war, and in totalitarian regimes, Italy, Germany

and the Soviet Union in the inter-bellum, during the Second World War and during the Cold War, imprisonment was often accompanied by deportation. Extermination was even used as a tool for managing occupied populations. The large-scale occupation of Europe by Axis forces entailed the detention of large numbers of prisoners of war and the mass deportation of political opponents, also the swift execution of armed resisters. The exploitation of prisoners as labourers was especially located in Eastern Europe. Convicts, whether their conviction was for political or ordinary crimes, or for racial issues, all ended up in the concentration camp network that Germany had created as part of its policy of extermination. The wars and their aftermath were marked by massive use of prisoner labour and work camps, partly to help manage the large numbers of prisoners, partly to punish those suspected of having collaborated with the enemy. In some instances this labour was a temporary boost for the reconstruction of devastated economies.

### *Interpretations: crime and justice in authoritarian societies*

Colonial and war experiences belong to the same set of questions. How can representations of crime and a criminal justice system be made to work towards demographic, economic, political, cultural and military domination? Criminology has much to learn about periods of exceptionality in social and legal relations (wars, military occupations or colonisation) which demonstrate the destructive power of modern techniques and expertise developed in a context of bourgeois democracies confident in the reality of human progress.

The colonial experience demonstrates how deeply the penal systems of Western nation-States were implanted in societies that before colonisation knew little of the bureaucratic way of solving conflict. Whether they knew it or not, they were part and parcel of a project of domination and exploitation, to the benefit and profit of the industrialised societies. Research does show that the interactions between colonising metropolises, the colonial society and colonised ethnic groups were complex. In addition, models of colonial justice changed, along with Western society, through international upheavals, especially during the two world wars and the Cold War.

The experience of war challenged the democratic character of the models of treatment of crime in Europe. On one hand the bureaucratic modernity of penal systems reinforces the terrible effectiveness of segregationist and nihilist policies that are pursued by totalitarian regimes. On another hand, research has shown the extent to which these systems were not all-powerful machines, and that social actors played fundamental roles in them (Baumann 1989, Browning 1992, Gerlach 2010). Financial limits, administrative rivalries and personal choices allowed individuals and groups to slow down, even to sabotage destructive policies. These war experiences showed how far the tendency towards the protection of rights that characterises the debate on the judicial system in democracies could fall behind certain imperatives regarding the protection of public order and the need for military domination. Extraordinary policing and justice function with the same procedures and individuals as ordinary courts in a State governed by law.

### **1950 to today's welfare State, Europeanisation and crisis experiences**

In describing the last sixty years, the ground on which the historian conducts his or her crime research merges with that of the criminologist in their analysis of the new challenges facing post-war societies with respect to changes in crime and in its control in Europe. Epistemologically it is premature to produce a historical reading of recent change. Nonetheless, by including the present state of crime and criminal justice in the review of several centuries' worth of changes that have taken place, the historian can sketch out a few tendencies under the double auspices of criminal history and historical criminology.

### *Criminology, part of history*

After the Second World War changes in the state of crime and its control in Europe proceeded along the same lines, together with an expansion of criminological sciences. These sciences were based on field studies and served to develop explanatory theories communicated through teaching, part of the training of practising ‘criminologists’. The sciences of crime contributed to the construction of policies regarding crime consciously pursued by States in the context of the welfare State, and then during economic crises. Observed nationwide, these scientific practices would become more and more widespread. The question of crime became international thanks to international forums (Council of Europe, UN), and States and NGOs mobilised to respond to the various international fears occasioned by the globalisation of the criminal world.

### *Media and crime: Europeans and their societies*

Europeans today are often obsessed with crime; this attitude is linked to an acceleration and extension of the role of the media in constructing the perception of crime. This introduces an increasing gap between immediate perceptions, ideological readings of danger and depth analyses by researchers. The debate over interpersonal violence is a good example. Homicide has become a major preoccupation on the part of the media and pundits, but for historians, looking at things over the *longue durée*, Europe after the Second World War has experienced a very low level of violent death.

Among new problems identified in different discourses on crime, violence within families, violence against women and children, and the return of ‘the juvenile question’ via the figures relating to gang members and rebellion all show disquiet among the middle classes concerning the basic structures of society: the family and education. Predatory behaviour and urban incivility are of great concern to working-class people and the elderly. Public insults and sexual aggression cause worry for women and minorities. Otherwise, the development of drug addiction leads to concern about the organised crime gangs that are reputed to generate big profits in the area of illegal trafficking: drugs, weapons, pimping. At the other end of the social spectrum, a connection to white-collar crime appears equally bound up with the ambiguous relationship connecting the State, politics, and various business communities in post-war society.

### *From ‘nothing works’ to risk management: European citizens and their State*

The globalised economic crises that occurred during the period 1970–2010 emphasised still more people’s preoccupation with what was called the ‘rise in crime’, and this was further amplified through the media and in communications produced by police departments and legal administrations. Researchers have been able to discern a connection between social exclusion, poor education, the absence of economic development, decaying inner cities, and crime, particularly in the large cities in Europe. A loss of social cohesion succeeded former fears concerning the degeneration of the human race (1870–1910). Interactions between police and people, the way the courts work, and the management of punishment have been criticised, generally with regard to the role of the State in the regulation of conflict. The critique of police, judicial or penal procedure has highlighted the dysfunction in the apparatus of social control, but we are also referred to changing and contradictory expectations by ‘citizens’ in relation to the State. The critique is further sharpened by disenchantment with the process of constructing Europe, which



is thought to be unable, as an institution, to combat crime, either in the area of transnational criminality or migration.

After the Second World War the criminal question in Europe became a major subject of dispute causing distress for many Europeans, while at the same time there was an increase in economic uncertainty and social diversity. Based on a mythical vision of a harmonious society, does a plea for a return to informal, community-based control actually conceal a future massive disinvestment by the State regarding the management of conflicts over property, and a focusing of fear onto serious violence and also the absence of a unified European response to crime? These contradictions are at the heart of a programme of future work called for by both criminologists and historians.

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