

CRIME, VIOLENCE AND THE MODERN STATE III

Law, Order and Individual Rights – Theory, Intent & Practice

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The third in the biennial SOLON conference series under the broad umbrella title of Crime, Violence and the Modern State completed an interesting triangle, of Crete (2007), St Petersburg (2009) and Lyon (2011). The focus on individual rights, the pursuit of 'order' and the use of law to that end, was contextualised further by the added emphasis on theory, intent and practice. What was welcome was that while there were a number of familiar faces (and themes) from speakers in previous conferences, ensuring a representation of southern and northern European perspectives, the conference included a strong representation of French scholarship in particular.

The conference started with an outstanding presentation from Barry Godfrey, posing a range of challenges about theory and practice when researching and writing about crime, violence and individual rights – taking a wide ranging global perspective. William Findlay gave an illuminating paper (shades of George Rudé in bringing together Britain and France) on anarchism and the law in cross-channel perspective. It was an interesting theme to hear early in the conference, and then to hear a further perspective giving point to the issues raised therein through Aniceto Masferrer's plenary on the last day of the conference; a challenging exploration of the origins of terrorism, especially as several conference delegates were ferociously attacked by the anarchist, terrorist mosquitoes based at the Centre Jean Bosco, where the conference was held! However, despite such assaults (undoubtedly constituting violence against vulnerable delegates), the discussions and debates promoted by the papers were, as usual, stimulating and enjoyable. A sustained theme was provided by consideration of actions using law by the state which were construed as violence against individual subjects or communities. We were fortunate in having two presentations which addressed the issue of the growth in the power of the state to punish, and the reasons for this, in what might be called the *longue duree*, demonstrating the importance of challenging the concept of those things

considered 'modern' by highlighting the reality that certain dilemmas relating to the power of the state over the subject are in fact timeless! Annalisa Triggiano reflected on the issue of increasing state power via an exploration of the development of justifications for the use of torture in classical times, particularly Rome; Eric Heinze looked at more recent comprehensions of the tensions in this area through his discussion of how individual injustice was conceptualised by early modern states via Racine's play *Andromaque* which drew on Euripedes' presentation of the topic. What these papers also showed is that the wide-ranging issues involved in any scholarly exploration of the ways in which cultures assess the boundaries between the acceptable and the unacceptable in the exercise of state power via the law cannot be fully explored without the use of literature and other cultural products. Both presenters drew lavishly on literature as a key legal source – from Euripedes and Cicero to Racine and Shakespeare – in order to make their points. Eric, for instance, used Racine's interpretation of the narrative of Andromache, to address the reality that in practice, 'law' and 'justice', as they are popularly understood, are rarely complementary. From both papers, very modern concerns were debated about the tension between moral concepts such as right and duty and the role of law, as used by the state, within the community. Is the underlying historico-legal theme here that unfairness in law depends on – or is supported by – unfairness in the political system?

Aniceto Masferrer later made the point that a key issue for the maintenance of long-standing concepts of what amounts to justice and individual rights within the state is the increasing willingness of modern states to sacrifice individual liberties to the needs of the state under the banner of safeguarding the greater good. At the end of the conference, Judith Rowbotham found herself regretting only that no one had come forward with a paper on Antigone as well to expand the debates also to issues surrounding man made and 'natural' or god-given law as a further inflection to this debate on law and the social contract! There were a number of papers which took such themes further by an examination of the gaps between theory, intent and practice in defining what constitutes law, crime and violence. As was pointed out in paper after paper, it was not enough to examine discourse on the theory of law, or to look at intent, in the shape of policy for example – it was always necessary to question what was the reality of the law in practice. The definition of what constitutes a criminal action has always been culturally inflected, as well as subjected to the judgment of authorities. Robert Andersson argued

that in the present manifestation of the modern state, crime policy currently is a continuation of social policy by other means – but is that new? The Home Secretary in Britain in 1884, the Earl of Kimberley, dismissed suggestions that incest be criminalised because such a move would challenge late Victorian social policy which sought to safeguard paternal authority as a way of maintaining order within the community. Equally, the development over centuries of the English Poor Law (as Lorie Charlesworth points out) combines law and contemporary social policy as the regular amendments to the original 1601 statute underline. It raises the issue of how far it is a feature of the modern state that regardless of the high-sounding statements of the theories of state power in relation to the rights of the individual and the apparent intent in legislative developments to implement such ideas, in practice the actions of the state increasingly infringe on the liberties and so the rights of individuals. This, she points out, remains particularly the case for those who are the most vulnerable to the attentions of the criminal justice process.

However, can one always make and sustain such generalisations? It was useful, in this context, to hear the papers on Sweden from Robert Andersson and Roddy Nilsson, who discussed (respectively) the broader trope of what has come to constitute crime policy in modern Sweden, and a case study testing the successfulness of that policy in the shape of voting rights for prisoners and the challenge that that provides to the invulnerability of state authority, in the Foucauldian sense. In hearing the papers, however, there was, of course, a further dimension to the issues they raised for many in the audience provided by the implications of the shockwaves from the killings perpetrated by Anders Behring Breivik in July in Sweden's neighbour Norway. Drawing on R.V. Clarke's situational crime prevention analyses, including the 'diffusion of benefits', Robert reflected on how discussion of the constant of crime had shifted the focus to risk assessment and the promotion of the police as crime prevention specialists – all with the objective of making crime uninteresting. The idea in Sweden, he pointed out, was that a safe society was a society in which crime was not glamorous... How had that worked in practice, especially given the resonance outside Sweden of characters like Wallender and the popularity of the Steig Larsson novels? It also raised the question of the success in practice of such intent and its underlying theory in diminishing the likelihood of individuals becoming crime victims. Examining the role of prisons in Swedish society, and thus the experience of those convicted of crime, Roddy Nilsson's starting point was the premise put into

practice that there was no need for a conflict between the interests of 'society' and those of individuals including offenders. Prisons were thus conceptualised as institutions for treatment and care of inmates – and such inmates were therefore not excluded from participation in society and this included no restrictions on the right to vote. The post-paper debate focused on the issue of how successful strategies were at individual rehabilitation and in promoting the forms of crime prevention discussed by Robert Anderssen. Did the preservation of formal rights serve as a real rehabilitative force? It was plain that the jury remained out on this point...

Tempting though it is, this report cannot manageably discuss every thought-provoking paper given! A precursor to the ideas raised by Roddy Nilsson was given in Neil Davie's paper on prisoner rights in the context of the birth of the penitentiary idea in the late eighteenth and early nineteenth century. It was an impressive disquisition highlighting the extent to which brilliant ideas, and good intentions, do not always, in reality, promote good practice. Francoise Orazi's discussion of the Mills and the issue of domestic cruelty and the responsibility of the state in that respect reminded us that a consciousness of the importance of having united public opinion to contextualise initiatives was crucial to the workings of representative government's use of the law – such governments cannot 'do violence' to entrenched opinion without damage to itself. The enduring issue of domestic cruelty as an accepted everyday reality in many communities in modern societies would seem to confirm that. It was also instructive as well as informative to have aspects of British history, for instance, from the perspective of French scholarship – as with Cecile Bertrand's literature-based discussion of prisons and workhouses as locales for managing the unruly or disorderly classes in Victorian society by doing 'violence' to their identities as individuals within those institutions. Equally, Geraldine Gadbin-George's discussion of the power of the jury within the criminal justice system, and the reasons why British governments have accepted its role even though it has clearly acted as a moderator of the unchecked power of the state in the last two centuries at least, provided useful insights. This was particularly the case given the apparent interest of the present French government of moving away from a system of professional judges to expand the use of juries in criminal trials there. When, where and why have governments found it useful to accept the often apparently perverse decisions of juries despite the apparent challenge such verdicts can constitute to the agenda of a state? It is ironic (or is it?) that currently, in at least some types of criminal trial, the

British government is exploring the possible reduction of the use of the jury trial system. How far does this indicate a different perception of the importance of the management of the criminal justice system to the maintenance of good order within the state? It is worth remembering that in the early days of the development of the American republic, the Founding Fathers and their successors showed little interest in theorising about the criminal law and satisfied themselves simply by reducing the number of crimes carrying an automatic death penalty as the measure of distancing themselves from their previous colonial rulers.

The colonial dimension was another feature of this conference, past and present. Presenters including Stacey Hynd highlighted the reality that crime and its punishment was powerfully revealing of the nature and agendas of colonial government in any place or period. If the rule of law is in theory the cornerstone of individual rights in a modern state, how far does this require practice where laws are general, equal and certain? It can certainly be argued that, given its flexibility, criminal law and the associated justice processes are inherently political and their effectiveness have much to do with the exercise of authority, central and local, by states – a point made by Romina Tsakiri in her discussion of the management of violence in early modern Crete. The moral distinction made by perpetrators between political crime and ‘ordinary’ crime is also a key feature of colonialism and the reassessments thereof from a post-colonial perspective, as Antonella Bettoni pointed out in the context of Northern Ireland. As Stephen Skinner reflected in his discussion on fascist Italy, there is always a fine line between democracy and anti-democracy. He also, usefully, reminded us that violence is a conceptual and symbolic, as well as an actual manifestation of action. It is always easy for criminal law processes in a state to be merely about intimidation and repression. It has to be remembered, by scholars and policy-makers, that solutions and practices depend heavily on how a problem is identified and framed – something which makes knowledge production in relation to crime, violence and the modern state so crucial.

The final day was as impressive, in terms of content, as the opening day! Aniceto Massferrer’s plenary overcame post-conference dinner languor to stimulate a thought-provoking debate amongst the delegates on methodologies for historical analysis centring on the idea and terminologies of ‘terrorism’ both as descriptor and definition. Some argued for historical ‘purity’ and rejected the validity of modern definitions, others

that these provided a comprehensible, relevant and useful prism through which to revisit the past in many different countries and time periods. One of the authors of this report went back and rewrote her lecture on the French Revolution and its impacts as a result of the talk, however. The variety and breadth of scholarship demonstrated in the papers in combination with speakers and attendees from a number of disciplines inspired some fascinating debates, many of which continued after hours in the delightful French sunshine. Synergies were recognised and ideas tested in original ways by speakers and audience allowing new perspectives to emerge in that fine tradition of SOLON conferences. We must voice our gratitude to Neil Davie for the local organising, and the University for its support, to say nothing of our gratitude to Neil and his wife for the delightful concluding lunch, which stimulated still further discussion at a time when we would all otherwise have been 'conferenced out'!