

Introduction to the Special Issue

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TSEG 20 (1): 5–10

DOI: 10.52024/tseg.13646

Recent years have seen a multiplication of populist discourses in the Western world claiming the existence of a clear link between migrants and criminality.¹ A discourse based on the fear of the Other often forms the foundations of these ideas regarding migration and its impact on society. Yet the mental association of crime with migrants has a long history: it has been actively cultivated by unscrupulous journalists since the nineteenth century and drawn out by successful authors of detective novels.² The representation of the ‘criminal migrant’ borders on the stereotypical and mythical figure of the ‘mysterious foreigner’, of the ‘*inconnu*’ who did not belong to the community, and who became an ideal suspect in a criminal situation.³ The trope of the suspicious foreigner has been regularly used by literary authors and journalists alike to emphasize

1 To name but a few: Daniel Béland, ‘Right-wing populism and the politics of insecurity. How President Trump frames migrants as collective threats’, *Political Studies Review* 18:2 (2020) 162–177; Kristina Boréus, ‘Including or excluding immigrants? The impact of right-wing populism in Denmark and Sweden’, in: Bo Bengtsson, Per Strömblad and Ann-Helén Bay, *Diversity, inclusion and citizenship in Scandinavia* (Cambridge 2010) 127–158; Jackie Hogan and Kristin Haltinner, ‘Floods, invaders, and parasites. Immigration threat narratives and right-wing populism in the USA, UK and Australia’, in: Peter Kivisto (ed.), *National identity in an age of migration. The US experience* (Abingdon 2018) 18–41; Witold Klaus, ‘Security first. The new right-wing government in Poland and its policy towards immigrants and refugees’, *Surveillance & Society* 15:3/4 (2017) 523–528; Ruth Wodak, *The politics of fear. What right-wing populist discourses mean* (Thousand Oaks 2015).

2 Michael Woodiwiss, *Organized crime and American power. A history* (Toronto 2001); Dominique Kalifa, *Les bas-fonds. Histoire d'un imaginaire* (Paris 2013); Benoît Tadié, ‘Démocratie criminelle. Les périodiques de true crime américains, de la national police gazette à true detective’, *Criminocorpus. Revue d'Histoire de la Justice, des Crimes et des Peines* 12 (2018), <https://doi.org/10.4000/criminocorpus.5178>.

3 See the excellent article of Margo De Koster and Herbert Reinke, ‘Migration as crime, migration and crime’, *Crime, Histoire & Sociétés/Crime, History & Societies* 21:2 (2017) 63–76.

the supposed foreignness of criminality in settled communities, where belonging and inclusion became synonymous with idealized peacefulness and law-abiding citizens.⁴ Migrants have been portrayed as murderers, counterfeits, and thieves. Certain communities in particular have borne the brunt of these stereotypes for centuries: travelers' groups of Roma, Sinti, or Irish descent as well as Jewish populations have been regularly targeted as the 'usual suspects'.⁵ It is fair to assume, however, that the reality was much more complex and nuanced, with regard to the origins of the suspects, their involvement in specific types of crimes, and their treatment by the criminal courts and judicial system in general.

This special issue aims to shed light on a still understudied subject: the plurality of migrants' socio-economic and cultural profiles and how these influenced their treatment by the criminal courts. Historians of crime and migration, social scientists, and criminologists have produced essential research on the criminalization of migration over the centuries, and on how the mobility of the poorest became a contentious issue for the local and national authorities.⁶ Likewise, research on the creation and use of stereotypes to portray foreign offenders has provided invaluable insights into the cultural imaginary of the past.⁷ Even so, empirical research about the origins of the offenders has been surprisingly limited. The seminal article of Peter King on the treatment of Irish witnesses, accusers, and victims by the Old Bailey in the late eighteenth century

4 Jean Anderson, Carolina Miranda, and Barbara Pezzotti, *The foreign in international crime fiction. transnational representations* (London 2012).

5 Jacob Melish, 'Antisemitism in a city without Jews. Crime, print and a used-clothes dealer in early modern Paris', *Cultural and Social History* 13:4 (2016) 451-466, <https://doi.org/10.1080/14780038.2016.1237443>; Leo Lucassen, "Harmful tramps". Police professionalization and Gypsies in Germany, 1700-1945', *Crime, Histoire & Sociétés/Crime, History & Societies* 1:1 (1997) 29-50; David Mayall, 'Egyptians and vagabonds. Representations of the Gypsy in early modern official and rogue literature', *Immigrants & Minorities* 16:3 (1997) 55-82, <https://doi.org/10.1080/02619288.1997.9974917>; John Morgan, "'Counterfeit Egyptians'. The construction and implementation of a criminal identity in early modern England', *Romani Studies* 26:2 (2016) 105-128.

6 For instance: De Koster and Reinke, 'Migration as crime, migration and crime'; A.L. Beier and Paul Ocobock, *Cast out. Vagrancy and homelessness in global and historical perspective* (Athens (OH) 2008); Tim Hitchcock, Adam Crymble and Louise Falcini, 'Loose, idle and disorderly. Vagrant removal in late eighteenth-century Middlesex', *Social History* 39:4 (2014) 509-527, <https://doi.org/10.1080/0307102.2014.975943>; Marian H.A.C. Weevers, Margo De Koster, and Catrien C.J.H. Bijleveld, 'Swept up from the streets or nowhere else to go? The journeys of Dutch female beggars and vagrants to the Oegstgeest state labor institution in the late nineteenth century', *Journal of Social History* 46:2 (2012) 416-429. See also the article of Samantha Sint Nicolaas and Karlijn Luk in this issue.

7 Roger Swift, 'Behaving badly? Irish migrants and crime', in: Judith Rowbotham and Kim Stevenson (eds), *Criminal conversations. Victorian crimes, social panic, and moral outrage* (Athens (OH) 2005) 106-125.

offers a canvas on how systematic research on this topic can bring to light local concerns about the policed population. Evidence of discrimination and overrepresentation have been unveiled by King; for instance, when Irish suspects were found guilty of violent crimes, they received harsher punishments. Yet King also reveals a more nuanced picture when he compares the treatment of the Irish and other groups in cases other than violence: in cases of property crimes, for instance, ‘they were no more likely to be convicted than other groups and overall the sentences they received were slightly less severe.’⁸ King argues that the work of the court was tainted by the contemporary English representation of the Irish and their presupposed tendency for violence, highlighting the need for crime historians to combine the history of representation and empirical research on crime. His call was echoed by De Koster and Reinke, who have underlined the importance of the local to understand the interactions between the criminal justice system and migrants.⁹ This special issue answers this plea by researching the position and treatment of migrants of different origins in front of the court in West-European cities in the long term; therefore, it is not about the criminalization of migration from the seventeenth century onward, but about the interactions between criminal justice system, migrants, and local concerns.

‘Migrant’ does not accept a single definition but, as will become obvious in the following articles, the place of birth played an important role in defining one’s identity within a group and, by extension, in front of the institutions. The suspects and offenders appearing in these articles fell into one of four categories of migrant: foreign born; fellow ‘countrymen’; people born in the surrounding province or territory of the city in question; and people who obtained urban citizenship. Before the imposition of the nation-state ideology, the democratization of society, and the more or less fixed borders of the nineteenth century, a clear answer as to who belonged to which state was sometimes difficult to give. Before moving to a national framework, people would refer and be referred to their province or city of origin. Their place of birth played an essential role in the distribution of poor relief in Europe, and it became a main cog in the development of early ‘cimmigration’.¹⁰

8 Peter King, ‘Immigrant communities, the police and the courts in late eighteenth and early nineteenth-century London’, *Crime, Histoire et Sociétés* 20:1 (2016) 39-68.

9 De Koster and Reinke, ‘Migration as crime, migration and crime.’

10 De Koster and Reinke; Juliet Stumpf, ‘The cimmigration crisis. Immigrants, crime, and sovereign power’, *American University Law Review* 56:2 (2006) <https://digitalcommons.wcl.american.edu/aulr/vol56/iss2/3>; Dario Melossi, *Crime, punishment and migration* (Thousand Oaks 2015).

And as we will see in this special issue, local judicial institutions reacted differently according to the suspects' profiles, not only in an attempt to protect the city finances, but also to remove potential threats to public order and social norms.

The early modern and modern cities form particularly relevant cases to study the interactions between the court and migrants. Robert Muchembled has argued that to make the city economically strong and attractive, the urban authorities had to ensure that the urban environment was safe, thanks to physical defenses such as walls and gates, but also, on an intangible level, through the use of formal and informal mechanisms of social control.¹¹ These elements of urban life revolved around the notion of belonging. The walls bordering the limits of the medieval and early modern city, as well as the gates that had to be crossed to enter the said city, acted as physical reminders to anyone in or out that, officially at least, not everyone could access the urban space and the rights and benefits that were connected to the urban territory. Yet, far from being cut off from their surroundings, thriving cities were open to people from outside the city, as long as these 'outsiders' respected the city's rules and brought something beneficial to the city, such as money, goods, *savoir-faire*, culture, arts, or religious knowledge and prestige. What happened when these urban rules were broken by people from outside the city? How were they treated and to what extent did the criminal justice system accommodate, discriminate, or shape the law to deal with these suspects? And if the system was bent, what were the reasons for this? The importance of the urban moral economy¹² based on recognition, trust, and settledness seeps through the various case studies presented in this special issue and shows how it influenced the treatment of migrants by the court.

This special issue aims to answer these questions by compiling a historiographical review and four case studies based on West European cities from the seventeenth century through to the end of the nineteenth century. The authors not only look at the interactions between migrants and the courts in the long term, but their work also highlights subtle differences between Catholic and Protestant urban and judicial cultures. The first article by Samantha Sint Nicolaas and Karlijn Luk,

11 Robert Muchembled, *A history of violence. From the end of the middle ages to the present* (London 2012) 83.

12 Laurence Fontaine, *The moral economy* (Cambridge 2014); Francesca Trivellato, 'The moral economies of early modern Europe', *Humanity. An International Journal of Human Rights, Humanitarianism, and Development* 11:2 (2020) 193-201, <https://doi.org/10.1353/hum.2020.0019>.

which also serves as an extended introduction to the literature on the topic, provides a thorough review of the historiography on crime, social control, and migration, setting up an agenda for future research. The authors effectively combine two trends in the historiography, migration history and crime history, to tease out new research questions about Western Europe and the urban criminal justice system.

The first case study is on seventeenth-century Bern, a smaller city than neighbouring Geneva, but whose socio-economic and cultural profile reveals interesting similarities with larger cities. Tina Adam confronts us directly with the subtleties of the topic by analyzing concomitantly the place of origin of the suspects and their gender. Adam brings to light the high level of prosecutions by the Bern authorities against vagrancy and the transgression of sexual norms; she also reveals that both policies targeted disproportionately women who had limited connections to the city. Adam's work shows how the strong informal social control held by the (Protestant) household was seconded by strong formal social control mechanisms used by the local courts on people who did not belong to any local household. The second research article by Sanne Muurling focuses on Bologna in the late seventeenth and eighteenth centuries. Mirroring Adam's conclusions on Bernese formal social control, Muurling shows how the Bolognese criminal court actively tried to preserve civic norms. A bias against people from outside the city can be outlined, notably regarding the punishments migrant offenders received, and the legislation that was developed to control them. Yet Muurling is quick to point out that the trees should not obscure the forest: the number of foreigners being prosecuted by the Bolognese court as poor vagrants or migrant thieves remained small compared to the large amount of criminal cases dealt with by the court at the time.

Moving forward, Jeannette Kamp and Marion Pluskota look at Amsterdam's criminal justice system in the second half of the nineteenth century. Questioning the role of urbanization and of the agrarian crisis in crimes committed by migrants, the authors demonstrate the importance of considering migrants not as a homogenous group, who could rely on similar support networks and had comparable economic and social opportunities, but as multiple groups whose prospects in the city differed based, to a great extent, on their place of origin. The close study of vagrancy cases also highlights an interesting aspect of the prosecution which deserves more research: the conscious decision made by some people in need to be arrested, with the hope of being

offered by the police a meal and a warm place to sleep for the night, or even of being sent to one of the Dutch ‘vagrant colonies’. The last article in this issue brings to light more of these stories of people who relied on the police to be helped, and who used the local laws against vagrancy as a (temporary) solution to their struggles. The article of Margo De Koster and Ayfer Erkul takes us to Brussels and Antwerp in the late nineteenth century, where they analyze how the police shaped the law at street level and dealt with migrants coming to these two booming cities. Echoing the article on Amsterdam, the authors show how different groups were targeted by vagrancy laws according to some very local preoccupations. Interestingly, the authors show that mobile groups were not specifically targeted, but that a rather wide range of socio-economic profiles fell into the purview of the vagrancy laws. As for Amsterdam, the policing of vagrancy and begging closely followed the local economic and social concerns of the municipal elites, which were applied, *tant bien que mal*, on the Belgian streets. Yet repressive measures were not the only answers to poor migrants. As De Koster highlights, the police also had a ‘social welfare role’ where they could provide assistance to people in need.

With this special issue, we want thus to show the importance of the local context to explain how and why certain migrants were targeted and how they were treated in comparison with local offenders. Far from being passive recipients of repressive vagrancy laws, people born outside of these cities revealed their agency by using the law to their advantage when faced with a dire situation. Likewise, the police’s application of vagrancy and begging laws reveals an important facet of their work both as street-level bureaucrats and as providers of assistance. The professional police of the nineteenth century had enough discretion that some people in need sought out their help. All in all, the treatment of migrants by the criminal justice system in these cities reflects the interplay between agency, formal, and informal social control in shaping the lives of past migrants.