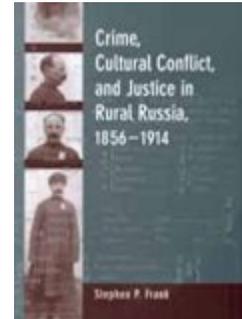


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'Let the Punishment Fit the Crime?' Competing Conceptions of Criminality and Justice in Post-Emancipation Russia

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Given the attention that Russian crime and criminals receive in the press these days, Stephen P. Frank's analysis of crime in post-emancipation rural Russia is certainly timely. It is also an insightful look at an important topic that makes a gallant effort at comparing the administration of peasant Russia with other imperial systems, a task (unfortunately) often neglected in studies of the Russian Empire. By exploring the "alternative definitions of legality, justice, and the very constitution of a criminal act" pp. 2-3) held by peasants and educated society, the book offers fresh insights into the themes of social cleavage and undergovernment. Most importantly, the author makes a convincing case that the state's biggest failure may well have been its inability (or unwillingness) to perform its most basic function: the protection of its subjects/citizens. Crime in rural Russia was primarily "an intrapeasant phenomenon" (p. 4), where peasants were not only the main perpetrators, but also the main victims.

Chapter 1, "Colonial Perspectives," sets the stage for this argument in a number of ways. After charting a course through the court reforms that marked the post-emancipation period (the diagrams are especially helpful), the chapter reminds us that conceptualizing Russia as an empire means more than considering the non-Russian periphery. Indeed, the relationship between the autocracy and elite society on one hand and the peas-

antry on the other was essentially a colonial one embodied in the notion of "cultural underdevelopment." Having defined peasants as backward (and perpetually anxious about such Neanderthals living without the guiding hand of serf owners), elite society set for itself a "civilizing mission" that justified separate peasant institutions and a high level of tutelage.

Because elites saw peasants as too undeveloped to understand the complexities of the law—even though the book provides evidence that peasants had a well-developed legal consciousness (see p. 39)—they relegated legal affairs involving only peasants to separate *volost* (township) courts. Here, in true colonial fashion (and much like the British in India), legal experts attempted to blend "customary law" (i.e., a law more comprehensible to "backward" peasants) with a "developed," "rule-of-law" legal system.[1] The resulting ambiguity persisted until the end of the regime and satisfied neither elites nor peasants. However, both parties benefited from the concept of backwardness. For state and educated society, "backwardness" justified the subordination of peasants to the rest of society and provided a regular excuse for the ineffectiveness of state policies. For the peasantry, "backwardness" or ignorance could be exploited in juridical settings to reduce or ignore punishments.

Chapter 2, "A Portraiture in Numbers," demonstrates two things. First, the chapter shows how the court structure itself (in which peasants appeared only as violent criminals or perpetrators of property crimes against non-

peasants) perpetuated the image of peasants as prone to violence (pp. 58-62). Indeed, because cases tried administratively (e.g., by land captains) and those tried in courts below the circuit court level (misdemeanors and over half of all property crimes like wood theft) were not included in official crime statistics, we are left with “a tidy yet woefully inaccurate” statistical portrait of rural crime that painted the peasant in the most violent hues (p. 65). Transferring property crimes such as wood theft to lower courts also meant shifting judgment to a venue most likely to view such crimes as understandable in a population of culturally backward peasants and which, therefore, imposed lenient punishments. This, in turn, undermined the state’s own goal of developing in the peasantry a “civilized” respect for property. In addition, analysis of crime statistics demonstrates how they mirror state concerns. Interior Ministry concerns with order and the fiscal worries of the Ministry of Finance often sent the empire’s understaffed law enforcement officials on single-issue crusades (e.g., bootlegging), or resulted in increased attention to a certain segment of the population. For example, the shrinking proportion of Russians represented in crime statistics can be explained in part by increased attention to and repression of non-Russians and religious minorities (pp. 65-66).

Finally, crime statistics, for all their faults, offer important insights into village perceptions of crime and the peasantry’s sense of the crisis in law enforcement. As figures for the number of crimes against public order increased rapidly, prosecution and conviction rates for crimes where peasants were victims (those that threatened the community as a whole and its ability to survive) declined. The conviction rate for arson declined 25 percent between 1874-78 and 1909-13 and the rate for horsetheft 18.5 percent. In contrast, convictions for insurrection or resistance to authorities increased nearly 66 percent, those for offenses against tobacco and customs regulations increased nearly 25 percent, and those for passport violations doubled in the same period (p. 79). From the perspective of the village, the legal system appeared designed to protect state interests (and those of local nobles).

After sifting through crime statistics, Chapter 3, “Understandings of the Law,” examines peasant attitudes toward the law and justice system. Believing that the law was not fair, that it was more concerned with protecting noble property than their own interests, peasants reinterpreted the law to their advantage. Elite society viewed the law as a tool with universal applicability (i.e., crimes are perpetrated against society in general and punish-

ments applied to all crimes in a certain category universally). In contrast, the peasantry believed justice to be of a “personal” nature. Crimes were perpetrated by and against specific persons, and thus punishments should be designed to fit the perpetrator and satisfy the victim rather than the crime. Incarcerating or fining a perpetrator was not nearly as important as maintaining the socioeconomic balance of the village. Peasant communities thus emphasized restitution (restoring the victim’s status or assets) and reconciliation. To accomplish this they often avoided *volost* courts (seen as corrupt) in favor of pre-emancipation institutions like the village moots (pp. 94-103).

Nowhere was the contrast between elite and peasant conceptions of crime and punishment more apparent than in the constant battle between peasants and their noble neighbors over property crimes. The peasant definition of crime consisted of two parts: “the infliction of material harm and the commission of sin” (p. 103). Acts defined as illegal but not sinful appeared in peasant eyes as less serious (indeed justified). Property crimes—especially those perpetrated against owners who had a more than adequate quantity of a given item—fit this category. Crimes against noble property also fell into this category of less serious crimes in peasant minds because of what one observer termed the peasantry’s ‘labor principle’ of property: “Anything to which labor has not been applied and which therefore is not acquired capital can be stolen without sin” (p. 105).

Thus, while peasants took a dim view of theft from fellow villagers (and were especially harsh with outsiders who perpetrated crimes in their village), theft of noble property could be justified. In its own way, the state encouraged such practices (most commonly, illegal wood cutting). Seeking to develop the image of the tsar as a firm, but benevolent, father figure, the government periodically issued imperial decrees that granted clemency to large numbers of those convicted of stealing wood and other offenses (p. 111). Such benevolence, justified by the perceived “backwardness” of those convicted, ultimately undermined the state’s own attempts to foster its own sense of property and property rights in the village.

Chapter 4, “The Hidden Realm of Rural Property Crime,” explores the host of crimes which, unlike crimes against noble and state property, never appeared in official statistics. The discussion again highlights the fact that peasants were the main victims of crime. Indeed, they were the primary victims of theft (p. 121). It also illustrates the perceptual clash over what constituted se-

rious crime, and how this continued to drive a wedge between state and peasantry. In particular, the state's inability and/or unwillingness to view crimes such as horsetheft as seriously as peasants (for whom horsetheft was not a mere property crime but a threat to survival) indicated to peasant communities that the law was not designed to protect them.

A number of things encouraged such a perception. The state did not elevate horsetheft into the category of serious offenses (i.e., those worthy of attention above the *volost'* court level) until 1880. In addition, the justice system operated according to standard burdens of proof, and this burden often proved to be too heavy given the conspiratorial nature of horsetheft (oftentimes whole villages were involved). When police did manage to make an arrest the victims seldom got the satisfaction of seeing the perpetrators convicted, and often were left trembling in fear of the retribution the accused might inflict (p. 131). In the final analysis, "pilfering, burglary, robbery, horsetheft and brigandage were far more prevalent in the Russian countryside than previously believed." The state proved unable to protect peasants from these crimes. By classifying the vast majority of intrapeasant crimes as "petty" (and turning them over to lower courts and land captains), the government indicated that "the limited forces of order would be committed primarily to protecting the individual property of private [non-peasant] owners" (pp. 143-144).

Having examined rural property crime, the book moves on to analyze the contemporary elite view of the village as a violent place characterized by high levels of crimes against persons. Here again, Chapter 5, "From Insult to Homicide," reveals the gap between elite perceptions, peasant concerns and reality. The discussion of insult (pp. 147-155), including the frequency with which peasants were willing to pursue this offense in juridical venues outside of the village, indicates the importance of reputation in peasant society.[2] Indeed, such concern appeared to be behind the increasing number of rape victims (or their families) willing to set aside social constraints and report the crime (pp. 165-166). However, although the most common rural crime against the person was insult, elite society remained captivated by accounts of violence. In spite of elite preoccupation with rural homicide, the rate of increase for this offense (3.3 percent excluding the revolutionary years 1905-1907) was the lowest for any felony (pp. 166-167).

Although spousal homicides accounted for a small percentage of the total, they nonetheless represented for

elites "the quintessential act of rural violence, embodying ignorance, savagery, the primitive level of interpersonal communications," and the "extreme abuse" of peasant women (all the elements usually attributed to crimes against persons in the countryside) (p. 170). However, what such characterizations ignored was the fact that, while communal mechanisms of social control had a limited ability to prevent violence, official "mechanisms, such as they were, usually fared even worse." This was especially the case given the lack of police presence in the village and the inability of the state to manage its own penal system in such a way that permanently removed violent persons from society (pp. 173-174).

Chapter 6, "Questions of Belief," examines the conflict between "official" and "popular" belief systems and the legal implications of deep-rooted peasant beliefs. "[W]hen popular belief led to actions that challenged the precepts of Church and state law, these not only became criminal deeds but, for government and educated society alike, proof of the peasantry's cultural deficiencies." This conflict thus became another occasion where "two interconnected yet distinct cultures faced one another across a chasm of mutual suspicion and incomprehension" (p. 179). Thus, while peasants condoned grave mutilation to protect the community from an unsettled spirit, the state did not (pp. 201-208). The most striking thing in this chapter filled with bizarre tales of the "other" is the extent of peasant reliance on popular belief to make up for the state's inability to investigate and prosecute crimes important to them (pp. 187-193). Use of a *znakhar* or *znakharka* (wise person), fortune tellers, "cementing into the mouth of the stove" (*vmazyvanie v chelo*), and corpse kissing demonstrated to elites the backward nature of the rural population. Yet, because peasants believed in these practices so deeply, they often got results. Such practices "allowed villagers to serve as active agents for their own and their community's interests" in the face of crimes and natural disasters the state could not prevent (p. 207).

Having examined the variety of crime found in rural Russia, the book turns in chapters 7 and 8 to the topic of punishment. Chapter 7, "Varieties of Punishment," explores the application of officially sanctioned punishments within the rural justice system. Several interesting conclusions emerge from this chapter. First, in spite of state efforts to establish a regularized judicial system that stipulated punishments, law codes left the severity of standard punishments up to peasant judges. Such leeway perpetuated the rule of persons (as opposed to laws) by opening the doors to bribery and other intervention. Yet, it also benefited peasant communities by

making space for peasant judges to punish according to the community's own norms (pp. 212-215). The most striking material pertains to fines and corporal punishment. Given peasant poverty, contemporaries considered fines to be the harshest form of punishment suitable only for wealthy peasants. This mindset has often been offered as an explanation of why the autocracy did not abolish corporal punishment (a glaring sign of peasant legal separateness) until 1904 (at the same time that it abolished redemption arrears and *krugovaia poruka*). However, there is some evidence that fines were much more commonly imposed as a punishment both by serf owners and by *volost* courts (p. 219).

This is but one piece of evidence indicating that, contrary to contemporary elite perceptions, peasants did not prefer the birch. Indeed, most of these contemporary accounts ignored the fact that in applying the birch, *volost* courts were simply following the law. Contemporaries also based their perceptions on the selective use of evidence from data collected by the Liuboshinskii Commission in the 1870s (p. 228).[3] However, an examination of these records reveals numerous cases where courts never or rarely imposed the birch. Corporal punishment was the punishment of choice in only four of the twelve provinces surveyed. Some evidence even indicates that peasants preferred jail time (which could have disastrous results on one's reputation in the village) to the indignity of the birch. In addition, young judges were hesitant to apply, and young offenders were most resentful of receiving, a punishment they had never become inured to as serfs (p. 229). Available data indicates that by the mid-1880s "peasant judges were increasingly reluctant to mete out corporal punishment" (p. 231). Whether or not the "civilizing" influence of land captains played a role in reducing the number of corporal punishment sentences is unclear (they had the authority to confirm or overrule *volost* court decisions), but there seems to have been some correlation between *volost* court sentences and the land captain's attitude to corporal punishment (p. 232). Significantly, an examination of those cases for which villagers were flogged reveals that the bulk of them pertained to tax arrears. This was in no small part due to legal pressure on communal authorities (pp. 233-234). In this way, wedding law enforcement to the state's fiscal needs kept the degradation of serfdom alive in the minds of its rural population.

Just as peasants often turned to popularly sanctioned methods of investigation, so too, did they often resort to punishments outside (and because) of the official justice system. Chapter 8, "Unofficial Justice," surveys the

varieties of *samosud* (lit. self-judgement), the reasons for its application, and considers what the continuing wide-spread use of *samosud* (including punishment for witchcraft) reveals about peasant and elite culture. Elites viewed peasant vigilantism (especially when directed at sorcery) as another sign of the peasantry's savagery and "primitive" disrespect for human life. However, for peasant communities, *samosud* was an important means of both maintaining social stability in the village and protecting the community from the predations of outsiders (most often when the state had failed to provide such protection). Thus, outsiders generally received the most violent forms of *samosud*, while fellow villagers (unless they were recidivists) experienced such punishments in a more ritualized fashion (p. 246). Communities handed out ritualized punishments (*charivaris*) for infractions against communal norms, such as damaging another's crops, working on holidays, or petty theft. Punishments such as "leading the thief" (*vozhdenie*) were intended to shame the offender. In addition, as they often concluded with a ritualistic banishment from the village (until the offender bought their readmittance with vodka), such punishments served to remind offenders that repeating the offense could result in permanent expulsion. As such, "charivaris were a constituent element of village social regulation" (p. 253).

Habitual offenders and outsiders who came to prey on the village received much harsher punishments. Such criminals often became victims of collective reprisals, ranging from severe beatings (three lashes from each of 200 householders in one case, p.263) to beatings that resulted in death. The latter was often the case when villagers apprehended a horse thief (pp. 264-266). Officials and educated elites, of course, viewed such vigilante justice as barbaric (although some pointed out that peasants may have inherited their violent behavior from their servile past, and that the state itself resorted to the ritualized application of violence) (pp. 267-268). The state thus vigorously prosecuted participants in *samosud* when it could. Yet, knowing the consequences of their actions, peasants continued to administer vigilante justice. This was due, in large part to both the state's inability to protect villages and the contrasting conceptions of justice to be found in the halls of St. Petersburg and the roads of Riazan'. With undermanned local police forces preoccupied with tax collection, protecting noble property, and enforcing the liquor monopoly, peasants too often found that there was never a cop around when they needed one. Of equal importance, the punishments that courts imposed on offenders (when prosecutors succeeded) rarely

coincided with the peasant's sense of justice or promised to solve problems. As one villager commented during a discussion of whether or not to give an apprehended thief to authorities: "And what will the *stanovoi* do? Put him in prison for three months, and then he'll steal even more. Come on, better to punish him ourselves" (p. 269).

Chapter 9, "Savages at the Gates," examines competing conceptions of rural crime within the context of increasing crime levels from the mid-1890s to 1914. During this real, not imagined crime wave (pp. 277-278), both elites and peasants saw themselves as living under siege. Elites called for new laws against "hooliganism" and an increased use of administrative measures to correct deficiencies in the judicial system (measures most likely aimed at furthering the state's interest in order and noble concerns about their property). Peasant communes more frequently requested protection, and more frequently engaged in *samosud* when such protection was not forthcoming or deemed to be inadequate. Desperate to rid themselves of the predations of criminals, an increasing number of villages were even willing to shoulder the expense of administrative exile—especially for criminals who, because they were acquitted or received light sentences, would soon be back to prey on them again (pp. 277-279).

Seeking the causes of "hooliganism" in order to end it, the state carried out a number of inquiries. Whereas earlier investigations of rural crime had juxtaposed the "barbarity" of the village to the civility of urban life, investigations of 1912 and 1913 increasingly blamed things associated with the city and the market economy for the rise in rural crime. Thus, to the usual list of causes (lack of culture, drunkenness, and landlessness) were added a culture of acquisitiveness, a lack of parental supervision among young migrant workers, contact with anti-government agitators in the city, pornography, and the breakdown of religion (pp. 280-286). The 1912 Interior Ministry survey asked for suggested remedies. The responses reflect the divided nature of the times. Some called for new articles in the criminal code that specifically addressed hooliganism (even though most acts defined as hooligan were already covered), a simplified court system for hooliganism, more administrative action by land captains, parental accountability for offenders under age 17, and harsher punishments (including the revival of corporal punishment or all estates). Others suggested replacing prisons (which, given perceived rates of recidivism, only made hooliganism worse) with workhouses, and replacing elected peasant officials with salaried state employees to carry out police functions.

Still others suggested that the problem stemmed from poor modeling on the part of authorities—that the state's own violence against peasants in 1905-07 encouraged peasant violence—or that the real problem lay with shortages of rural police and courts (pp. 286-288).

Frank acknowledges a qualitative difference between the activities that elites deemed hooliganism and "pre-hooligan" acts of aggression, but notes that since police reports rarely examined the motives of offenders, it is difficult to judge the exact nature of this difference from the sources (p. 294). However, it is possible to draw some conclusions. The author is skeptical of the argument that "the hooligan phenomenon is best viewed through the prism of youthful, lower-class rage against upper-class Russia," and rightly cautions that many sources say "more about middle-class perceptions and the phenomenon of 'moral panic' than they do about the behavior and mentalite of peasants, rural laborers and hooligans" (pp. 293-294).[4] Not only were poor and middle peasants the chief victims of crime, but it is also unclear how much villagers themselves were concerned about hooliganism any more than other crimes (p. 295). To the extent that the quantitative increase in crime (or its apparently more brazen quality) can be explained, a likely cause appears to be increasing generational tensions within the village. These tensions stemmed from increasing contact with the market as migrant laborers, increasing freedom for young workers (both freedom from parental supervision and greater economic independence), and the increasing number of taverns that popped up to thrive (in their own way) on the fruits of migrant labor. The threat that such changes posed to the control of elders was immense, and communities went to great lengths to maintain their authority over young migrant workers, control the frequency and nature of youthful gatherings, and close taverns seen as disruptive.[5]

Ultimately, the state's preoccupation with hooliganism proved to be another case where following its own interests failed to address peasant concerns. Rowdy youths were ultimately far less threatening to villagers than arsons, horsethefts, robberies and other crimes against peasant property. "Educated Russia may have been convinced that public order was rapidly collapsing, and the state certainly saw disorder as a great danger to stability, but for many peasants who experienced crime at first hand, or felt that justice did not serve [their] interests, there was simply no law as they understood this term. For them, justice existed no more in 1913 than it had in 1861" (p. 306).

The book rests on an impressive array of primary sources, including the fruits of the author's diligent survey of a number of capital-city and provincial newspapers. Although primarily based on archival work in Riazan' province, the author succeeds in most places in buttressing his case study with comparative data from other provinces. More such comparison in some places (e. g., pp. 297-301) would bolster and flesh out an already strong case. At times, such as in the discussion of courts' increasing preference for fines or jail rather than the birch (see p. 219), the reader senses that perhaps all supporting evidence did not make it to the citations. However, these points do not diminish the fact that the book makes a substantial contribution to our understanding of the cultural gulf separating various segments of post-emancipation Russian society. If the state exists to protect its citizens, it can do so adequately only if a consensus exists as to what constitutes a crime and what constitutes justice. As it vacillated between direct intervention in peasant affairs and the fear of radically disrupting the evolution of peasant society with the stroke of a pen, between a conception of the empire as one of *sosloviia* or one of citizens, the autocracy and educated elites (even

those who espoused pro-peasant agendas) failed to build such a consensus.

Notes

[1]. For discussion of British attempts to follow a similar policy in India see Bernard S. Cohn, *Colonialism and Its Forms of Knowledge: The British in India* (Princeton, 1996), chpt. 3, "Law and the Colonial State in India."

[2]. See also Jeffrey Burds, *Peasant Dreams and Market Politics* (Pittsburgh, 1998).

[3]. One might add that the association of the birch with the punishment of children (p. 227) fit well with elite perceptions of peasants as child-like in their underdevelopment.

[4]. Joan Neuberger, *Hooliganism: Crime, Culture, and Power in St. Petersburg, 1900-1914* (Berkeley, 1993).

[5]. See Burds, *Peasant Dreams*, chapter 3, and compare John R. Gillis, *The Development of European Society, 1770-1870* (Boston, 1977) in re the effect that the rise of putting out systems and rural shops had on old regime families and communities.

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