In *The Brothers Karamazov*, the great novelist Fedor Dostoevsky has the defence counsel Fetiuikovich assert in court the perceived essential characteristic – and superiority – of Russian justice: ‘Let other nations think of retribution and the letter of the law, we will cling to the spirit and the meaning – the salvation and reformation of the lost’ (quoted on p.134). This perception has had a strong resonance in modern Russian history, as Fetiuikovich’s utterance anticipated the later contention of the creators of the Soviet legal system that punishment as retribution was anathema to Soviet justice.

The practice of justice is about more than a formal code of laws, but is reflective of the cultural values of a particular society. Louise McReynold’s study of murder in late imperial Russia is a fascinating examination of murder as ‘most Russian,’ in the sense of ‘the cultural specifics of the crime, its commitment, and its prosecution’ (p. 13). Her reason to focus on murder as a window on late imperial Russian society is, quite simply, that it ‘measures the sanctity and value of human life’. How a society discusses and makes sense of this crime – that is, how murder is defined and prosecuted – is particularly illuminating of its ‘cultural values, political norms, and social expectations’ (p.14).

In essence, this is an examination of Russians’ encounter with modernity, and the central historiographical issue that the work addresses is the particular complexity of Russia’s attempt at legal modernization within an autocratic political structure. What were the effects on Russian society of the reform of the legal system, introduced in 1864 as part of Tsar Aleksandr II’s Great Reforms? Did this reform, in addition to the more fundamental political amendments that resulted from the revolutionary unrest of 1905–7, help to place Russia on a path towards constitutional monarchy and more general patterns of European governance, as some historians have suggested? Or, as is more conventionally assumed, did the autocratic principle trump these reforms and remain essentially intact? To pose the question more precisely, to what extent did the reform of the legal system according to a more conventional European model contribute to the establishment of a significant civil society that undercut autocratic power in late imperial Russia? The author appears reluctant to provide a clearly articulated answer to this question, perhaps because no clear-cut answer fits. Her argument is subtle and indeterminate, as the conflict between state and society remained unresolved before the onset of the war in 1914. However, it is clear enough that Russians made use of the legal reform ‘to pave a path from subjecthood to citizenship’ (p. 2). Insofar as the essential component of a
civil society may be considered legal protection for individuals and groups from arbitrary state power (4), then it is also clear from this book that the establishment of civil society was quite well developed in Russia by the end of imperial rule. (5) The ironic conclusion is that, though the inflexibility of the autocracy ensured the failure of establishment of a true rule-of-law state, reform of the legal system did result in judicial practices that allowed society to challenge the state in significant ways, in some respects even more than in other Western countries. Indeed, the legal reform provisions appear ‘remarkable’ for an autocratic authority to adopt and maintain (pp. 8, 84, 268).

The book is structured thematically and it utilizes murder to examine an impressively and imaginatively wide variety of issues. The author explicitly models her chapters on the popular TV series Law and Order, beginning each with a description of a murder that then leads to discussion of a particular theme. These themes examine the nature of the reformed legal system after 1864; the development of criminology in the Russian context; the significance of the introduction of jury trials; the detectives who tried to solve the crimes; the ‘racial’ presentation abroad of Russian murder; the development of crime fiction in Russia; and the gendering of murder and modernity in Russia. Throughout, McReynolds maintains a focus on what was specific to Russian culture about crime and punishment, and her attentiveness and ability to examine late imperial Russia in comparative context is one of the most useful scholarly contributions of this monograph.

The judicial reform of 1864 resulted in the introduction of an independent judiciary, an open and adversarial judicial process, and trial by jury. The purpose was to tackle the notoriously corrupt and inefficient system that had existed until then, and to foster public confidence in a system that would be seen to be just. In addition, criminal investigations were to be transferred from the police to judicial investigators, who were required to swear an oath of office and possess legal education (p. 21). Soon, however, the professionalism and independence of the investigators were undermined by K. I. Pahlen, appointed Minister of Justice in 1867 (p. 23). Nonetheless, ‘integrity and transparency’ were intended to be the hallmarks of the new judicial process, and this meant that the defendant was to be provided with every opportunity to mount a successful defence. The intention – which might seem naïve to us today – was that the adversarial process would enable objective justice, on the assumption that both procurators and defence lawyers (zashchitniki) would be committed to uncovering the truth. What the reformers had not anticipated was that the open courtroom would become a form of public entertainment, and that skilful zashchitniki would succeed in making ‘the defence table the most prominent piece of furniture in the courtroom’ (p. 37). Some prominent zashchitniki articulated a distinction between what was permitted for a lawyer to argue in court in defence of a client (even the admittedly guilty) and what was permitted for a private individual. This provoked the outrage of a number of prominent liberals, law professors, and others; Dostoevsky, in the mid-1870s, castigated the legal profession as a ‘conscience for hire’ (p. 41).
Indeed, the issue of conscience loomed large in Russian justice. The development of criminology, in Russia as elsewhere, reflected both the new-found social authority in the 19th century of the ‘knowledge professions’ as well as the shifting focus of experts from the crime to the criminal (pp. 53ff.) The increasing professionalization of criminal investigations in Russia, and the embrace of criminalistics with its reliance on new technologies such as photography and handprints, co-existed with the criminological focus on the volition and responsibility of the criminal person. One of the central issues of the book is that, though the intention was to ensure procedural objectivity, the reformers had not recognized that ‘laws themselves were inflected by subjective culture, and murder itself proved quite malleable’ (p. 19). The author emphasises two related aspects of Russian particularity in this regard. First, Russian juries were especially inclined to ‘express a preference for seeking out external explanations’ of a murderer’s actions, ‘determinism over voluntarism’ (p. 76), and to view criminals humanely as neschastnye or the victims of misfortune. Second, and this was especially important for Russian criminologists and psychiatrists, the existence of autocracy coloured the understanding of individual agency in Russia ‘because of the way that the government could be held accountable for the environment that kept people from actualizing their selves’ (p. 52). The Russian Criminal Code, like all such codes in the West, distinguished between vinost’, or the guilt of having committed the crime, and vmeniaemost’, or being responsible and culpable for the act, but ‘cultural differences emerge in how it was applied’ (p. 59).

Russians seem to have been inclined to understand serious crime ‘as the actions of individuals pushed beyond the bounds of their humanity’ (p. 223). This reflected more than the political and social climate of late imperial Russia, and it brings us back to the statement of Fetiuovich above. The criminological examination of the circumstances of crime and factors additional to the criminal’s volition harmonised, in the Russian context, with Christian notions of mercy, forgiveness and rehabilitation (p. 9). McReynolds quotes one zashchitnik who explained this quite neatly:

> In the Christian idea of crime and punishment, each person is guilty or not guilty [...] on the basis of how much desire or will he had in committing the evil deed. Contemporary science has gone even further: it has shown that [...] a person is influenced by all the circumstances that surround him [...] (p. 60).

Russian jurors, and criminologists, were strongly receptive to Benedict Morel’s theory of inherited degeneracy (in particular to the effects of alcohol), and this was seized upon by zashchitniki as a means of diminishing criminal responsibility (pp. 62–3). The relative compassion of Russian juries and the high acquittal rates (nearly 40 per cent), however, engendered concerns amongst legal reformers, such as that ‘religiosity had overwhelmed legality’ (p. 9). McReynolds argues that jurors themselves were not inclined to think in terms of a ‘special Russian sympathy.’ Rather, they sought to counteract the inadequacies and irregularities of judicial investigators, but they also displayed a more direct political challenge to a state that they considered to be excessively oppressive (pp. 100 ff.)

Herein lies the significance of trial by jury, and why it was so remarkable that this persisted in autocratic Russia. The state did ensure that jurors were as favourable to it as possible: they were overwhelmingly Orthodox and ethnic Russians. However, the function of a jury is to balance the formality of law codes with the conscience of the community, and to represent the interests of the community in order to ‘defy those of the state when the two come into conflict’ (pp. 83, 96). In addition, in Russia there was no doubt that juries had the power to nullify laws as well as adjudicate on the facts. The most dramatic illustration of this came in 1878 when a jury acquitted Vera Zasulich of the attempted murder of the governor-general of St. Petersburg, even though she had fired the shot, and even though the state responded by removing crimes of assault of government officials from jury trial (p. 93).
Through her analysis of crime fiction, the author identifies the distinctiveness of this genre in Russia as the greater emphasis on the question of why rather than the question of who, on the motive and circumstances behind the action. In addition, whether through detective literature or the nascent medium of cinema in the early 20th century, ‘ambiguity was the hallmark’ (pp. 114, 223). Unlike comparative fiction in the West, Russian audiences, it appears, were not satisfied with the closure provided by the triumph of law and order. This, McReynolds argues, had political significance, and she identifies the predominant emotion of this fiction as fatalism, reflecting the especially heightened political frustrations of post-1905 Russia connected with the sense of inability to take action to alter the future (p. 233). Russia’s crime fiction, then, ‘reveals an attitude toward the oppressive government that can be characterized as passive-aggressive’, in the sense that ‘Crime that captured the imagination without the need to capture the criminal reflected the significantly low level of commitment to Russia’s dysfunctional system of law and order’ (p. 234).

Connected with most of the themes discussed above is the issue of the gendering of crime and modernity in Russia, the topic of the book’s concluding chapter. Juries were formed by men only, and the vast majority of murders in Russia were committed by men. The author’s point, though, is that the patriarchal nature of the tsarist autocracy resulted in a confusing of gender roles relative to Western norms. By contrast with the self-control that was central to the development of ‘modern’ personalities in the West, many of those who stood trial for murder in Russia were weak-willed, neurasthenic men or liberated, promiscuous New Women whose trials had the effect of putting Russia’s patriarchal social and political system in the dock. The state ‘hindered their [men’s] maturity by restricting their access to the public sphere,’ and in their private lives these men may have been denied their patriarchal desires by women not prepared for monogamous domesticity. The acquittal of such men had the effect of feminizing them, of suggesting diminished responsibility, for it was assumed in Russia as elsewhere that women possessed a natural neuropsychological weakness (pp. 258–9). Russian (aristocratic) women could also be used, following Lombroso, to symbolize the perceived defects of their Slavic ‘race’ and social class, as McReynolds illustrates with the Italian reaction to the trial in Venice of Mariia Tarnovskaia, who was accused of inspiring the murder of her fiancé (chapter six).

McReynolds has written a masterful study of murder and modernity in late imperial Russia, weaving together social, cultural and political history. Her book examines important changes in Russian society, providing novel and sometimes brilliant insights into the nature of crime and punishment, the development of sensationalist mass media, and the political challenges to autocracy. This study is the product of a prodigious amount of research on a wide variety of sources, and the author succeeds in expertly presenting the specifically Russian in international context. It is also a highly enjoyable read. It is not, however, without some minor shortcomings. Principal among these is a lack of clarity in places, where the author’s point could be ‘unpacked’ and explained better. For examples, the discussion of how Minister Pahlen undermined judicial investigators (p. 23) seems to have been inserted a little abruptly. Why was Pahlen appointed, and why was he enabled to amend this reform? The discussion of the limitations of trying to understand violence in Russia from the perspective of enlightened liberal humanism (p. 168) is an important issue, and though the author devotes two paragraphs to it, there is still a feeling here that the point has not been teased out sufficiently. Finally, the discussion of the importance of understanding the emotional aspects of social and political change (p. 205) is also a little abrupt and inadequately clarified. One additional comment to make is that the absence of a bibliography, in what is already quite a slim volume, is frustrating for the reader who would like to follow the sources in the extensive footnotes. The reader would also benefit from a more detailed index.

The author does not attempt to carry forward her story beyond imperial Russia, but it is a work that has much to enlighten scholars of the Soviet period. The commitment of legal reformers in late imperial Russia to objective justice and the maintenance of jury trials stands in quite sharp contrast to the overtly politicized nature of Soviet justice. In addition, although works such as that of Daniel Beer warn against making a very clear distinction between the two periods regarding the balance between social protection and a liberal commitment to individual rights, McReynolds’s book makes clear that there was considerable recourse to
individual rights against the imperial state. By distinction Nikolai Krylenko, then deputy Commissar (Minister) of Justice, declared in 1923 that ‘in present circumstances’ the principal purpose of criminal justice was the protection of society, not the protection or reform of individuals. (7)

Overall, this is a very significant contribution to the study of modern Russian history, and indeed to studies of modernity more generally. It will be useful to advanced students of Russian history and to specialist scholars, as well as to those interested in the variety of broad themes addressed.

Notes

1. See here the following articles of L. Savrasov, the head of the Punitive Department of the Soviet Commissariat of Justice in 1918: ‘Prestuplenie i nakazanie v tekushchii perekhodnyi period’, Proletarskaiia revoliutsiia i pravo, 5–6 (1–15 October 1918), 24; ‘K voprosu ob organizatsii obshchikh mest zaklucheniiia’, Proletarskaiia revoliutsiia i pravo, 7, pp.40–2. Back to (1)


3. One of the most influential arguments in this vein has been Laura Engelstein, ‘Combined underdevelopment: discipline and the law in Imperial and Soviet Russia,’ The American Historical Review, 98, 2 (April 1993), 338–53. Back to (3)


5. McReynolds’s account of the development of Russian citizenship and the challenges to the patriarchal state is quite different, then, to the recent argument of Jane Burbank that citizenship in imperial Russia (and later the Soviet Union) should be understood through the notion of an ‘imperial rights regime’, based on differentiated rights accorded to different social/ethnic groupings. Burbank suggests that we should think beyond the identification of citizenship with ‘Western’ notions of equal and natural rights, and that, though a contract of sorts existed between the state and different social groups in Russia, the state maintained these rights as privileges to be accorded or withdrawn. See ‘An imperial rights regime: law and citizenship in the Russian Empire,’ Kritika, 7, 3 (Summer 2006), 397–431. Back to (5)

6. For a detailed account of this, see Daniel Beer, Renovating Russia. The Human Sciences and the Fate of Liberal Modernity, 1880–1930 (Ithaca, NY, and London, 2008). Back to (6)

7. Quoted in ‘Vserossiiskii s”ezd rabotnikov penitentsiarnogo dela,’ Ezhegodnik Sovetskoi Iustitsii, 41 (19 October 1923), 949. Back to (7)

Source URL: https://reviews.history.ac.uk/review/1680

Links
[1] https://reviews.history.ac.uk/item/92334