Abstract and Keywords

This article examines the importance and the effects of crime news and courtroom journalism for modern societies, taking a global perspective. Mass media starting in the middle of the nineteenth century identified criminal courts as important places that allowed for popular and often-sensational stories of transgression and order. In the United States, in Europe, and in Asia, popular dramas based on criminal trials that appeared in the newspaper stimulated important societal debates, questioning the very notion of modern law and its application. However, it is argued that future research needs to pay more attention to the narratives and effects of courtroom reporting on democracy, both past and present.

Keywords: crime news, courtroom journalism, mass media, social order, public sphere, democracy, global history

Introduction

Since the nineteenth century, criminal trials have become an important aspect of modern life and at times widely mediatized events, first through the medium of mass-circulation newspapers and then, since the 1920s, through radio and—shortly later—television. Although rulers had long before used publicly staged criminal trials as means to demonstrate and legitimize their power (Lemmings 2012a; Rubin 2012), this process turned multidimensional in the nineteenth century, not least because of the emancipation of legal experts, the professionalization of police, and the rise of mass media. In particular, heavily sensationalized criminal trials regularly transformed into popular dramas in which a variety of actors were involved in negotiating social order—on a local, regional, or national level. Topics discussed on the occasion of these trials were, for example, questions of citizenship and race (Gross 2000), class and gender (Bailey 2006, Flaherty 2014), politics
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and national belonging, and youth and sexuality (Willrich 2003). Since the late nineteenth century, journalists and writers have increasingly regarded the criminal courtroom as a place where fundamental questions of law, order, and politics are discussed—and decided. In their footsteps, a number of scholars have in recent years started to explore the cultural significance of the courtroom in the nineteenth and twentieth centuries, following their colleagues of the premodern (p. 556) period who blazed the trail (Blauert & Schwerhoff 2000). My essay is intended to summarize the existing research in this field over the last twenty years, as well as to discuss some of the methodological questions related to it. I aim to stimulate further research by adopting a transnational and—if possible—global perspective that goes beyond the transatlantic, capitalist Western world, a geopolitical frame in which questions of mass media and society have been most notably discussed.

As will be shown in section I, a strong public interest in the handling of crimes through the judicial system that usually went hand in hand with the attribution of political meaning to these trials was not limited to Western Europe or the United States, but can also be found in prerevolutionary Russia, in the late Ottoman Empire, in Meiji Japan, and in the last years of the Qing monarchy and the early Republic of China. Section II explains how mass media starting in the middle of the nineteenth century contributed decisively to the involvement of an ever growing number of the public in criminal trials, which has to be understood not as a passive receiver of a hegemonic discourse about law and order, but rather as an active participant in the constant process of reformulating local moral orders. Section III takes a closer look at media stories as popular dramas of order and transgression and argues that one decisive factor in their popularity was the “scientification of the social” since the turn of the nineteenth century. At that time, real cases tried in court often came to be understood as a representative selection of social problems. They also helped to popularize medical expert knowledge. With regard to more recent political developments in the last three decades, section IV discusses to what extent these important functions, which added to a growing awareness of social problems and also hinted at possible solutions, might have been specific to a particular time and space. Section V critically inquires into the effects of increasingly global audiences for crime news on democracy. It is suggested that an increased visibility of criminal trials does not automatically go along with an increase in democratic rights and participation. Therefore, research on crime and criminology should pay more attention to the narratives and “emotional regimes” that are utilized to report criminal trials in the mass media. Finally, the brief conclusion summarizes the main points of the essay and challenges the assumption that highly mediatized criminal trials positively contribute to the globalization of a liberal public sphere.
I. Newspapers and Crime: Historical Perspectives

With the invention of the printing press, crime news and the subsequent trials regularly provided the basis for moral stories that overwhelmingly served to legitimize authority. In Europe and Eurasia as well as China and Japan, rulers and governments engaged in a “law and order dialogue” with the general public and were usually supported by the press (Lemmings 2012b, pp. 120, 144; Silver 2008, p. 16). At the same time, the public did not confine its role to that of a passive listener to the authoritarian message. Crime news and trials were also a form of entertainment, as hundreds of often very graphic pamphlets from the sixteenth and seventeenth centuries make clear. Ethical standards did not matter much when it came to the gathering of such “news content,” and consequently a lot of what ultimately found its way into print did not please those social reformers who aimed at educating the wider public.

The public’s voyeuristic fascination with those individuals guilty of legal and moral transgression has persisted to the present day (Coville & Lucanio 1999); however, as this essay will argue, the relationship between the media, the public, and the criminal system changed significantly since the middle of the nineteenth century. The growing number of newspapers that at that time started to emancipate themselves politically and economically from government authority provided the precondition for a new form of courtroom reporting that no longer confined itself to reproducing narratives of guilt and punishment that ultimately legitimized existing power relations in society, but rather embarked on a path of questioning the given legal system and the values and institutions on which it was based. Exceptions confirm the rule: in Britain, a new public sphere that allowed for more critical scrutiny of authorities’ judicial actions had already emerged by the late seventeenth century (Williams 2013, p. 31), and the first weeklies that specialized in reporting on crime were founded in the 1830s (Knelman 1998, p. 36). However, even here the press’s predominant tone remained semi-official until the mid-nineteenth century. Crime and courtroom news were meant to entertain and inform, not to provoke critical debates (Crone 2012). Following Alexander II’s “great reforms” in the 1860s, which opened up the formerly predominantly closed court sessions based on written evidence, newspapers in nineteenth-century Russia paid more attention to criminal trials (Healey 2009, p. 19). Yet, many contemporary observers in Russia did not regard the new publicity of the criminal justice system as a counterweight to the autocratix state, but as an aid (Dahlke 2012, p. 118). At the end of the century, heated controversies about the “sensational exploitation” of the courtroom were in full swing in Russia (Oberländer 2013, pp. 114–16). In Japan, the interest in crime news likewise peaked in the 1880s and 1890s. As in Europe, it brought in its wake a substantial new interest in the origins of law and the ways in which it was implemented (Hedinger 2012, pp. 148–49), and it stimulated the genre of the detective novel (Kawana 2008, pp. 1-15).
The fundamental change of the nineteenth century toward popular participation in the evolution and application of law was inversely proportional to the trend described by Michel Foucault in his famous book *Discipline and Punish*: while the punishment of criminals transformed from a “gloomy festival,” or a highly public ritual, into a disciplinary practice that increasingly happened behind the prison walls, in mental asylums, and in penitentiaries and therefore decreased in visibility (Foucault 1979, pp. 8–24), the public scrutiny of the legal system operating in the courtroom increased considerably. A telling example that illustrates both the old and the new regimes is the Cologne Communist trial from October 1852 that brought some individual members of the Communist League in the Rhineland before the court but was intended to fight “democratic tendencies” in postrevolutionary Prussia more generally (Livingstone 1971, pp. (p. 558) 17–30). On the one hand, the predominant news reporting of the trial sided with the authorities, as was the tradition, but on the other hand, because of the clearly recognizable political character of the trial and its predictable outcome, not only the partisan press sympathetic to democratic and socialist tendencies, but also more “respectable” liberal papers commented increasingly critically on the trial. As became known, no less than the Prussian king Frederick William IV had urged the Prussian prime minister in a handwritten letter to “weave the fabric of a conspiracy in order to perform the long awaited drama of a disclosed and (above all) penalized complot” (Bittel 1955, p. 15). What began as a political trial against a few revolutionaries quickly turned into a public controversy about political ideas and social change. This would become one of the main features in the decades to come, in Germany and elsewhere. The courtroom and courtroom journalism transformed into battlegrounds for competing social, legal, and political ideas (Grunwald 2012; Oberländer 2013; Rowbotham, Stevenson, & Pegg 2013; Siemens 2007; Hett 2004). In these battles, the public became not only a political arena, but an active contestant.

II. The Active Public

The Cologne Communist trial of 1852 opened in a “blaze of publicity.” Sessions were held only in the morning hours because the authorities feared that sympathizers of the defendants would provoke “violent incidents” in and around the court in the darker evening hours (Livingstone 1971, p. 26). The Prussian authorities were powerful enough to stage such a political show trial, but they had to take the circumstances and possible public reactions into account. They also had to pay attention to the newspaper coverage. Although most of the revolutionary “March demands” from the spring of 1848 remained unfulfilled, there was no arguing that the era of repressive censorship introduced in the German lands with the “Carlsbad decrees” from 1819 were over. This development was neither confined to the German lands nor limited to Europe and the United States. The rise of mass-circulation newspapers, particularly those that created new audiences by reaching out to less well-to-do segments of the population (e.g., the penny press), was a global phenomenon in the second half of the nineteenth century that deeply influenced how courtroom news stories could be gathered, written, and circulated (Rowbotham, Stevenson, & Pegg 2013; Bleyer 1916, pp. 76–77). A German lawyer noted as early as 1914 that the telegraph and the telephone had made it possible for particular criminal trials to “thrill
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[... half of the world.” Whereas legal interest in criminal trials is always limited by time and space, they would soon have the power to entertain a global audience (Glaser 1914, pp. 8–9).

Newspaper readers quickly formed a second and much larger public that complemented those few observers who were able to attend a criminal trial in person. In the early twentieth century, the proceedings of sensationalized criminal trials mesmerized millions of newspaper readers and radio listeners in the United States, Europe, China, and Japan alike (Hedinger 2012; He 2010; Wood 2012; Elder 2010; Lean 2007). These trials even had the potential to transcend continents and become truly global media events, as the famous Leopold and Loeb murder trial in Chicago in 1924 (which also made headlines in Europe); the trial against Samuel Schwartzbard, the assassin of the Ukrainian nationalist leader Simon Petliura, in Paris in 1927; and the Berlin-based juvenile murder trial of Paul Krantz in 1928, which also reverberated in the United States, demonstrate (Siemens 2007, pp. 113, 269–314, 369–78). Not only did the “dreadful delight” of real crimes that could be consumed in private safety prove irresistible, but their consumption—previously an alleged pleasure of the “immoral” lower classes—also lost its bad reputation. In particular, middle-class readers now came to enjoy a “voyeurism of the ordinary”—a voyeurism that also had its functional side, as it helped urban audiences in the modern metropolises to “structure” their cities and to make them intelligible (Fritzsche 2005, pp. 377–83; Walkowitz 1992; Elder 2010).

Academics initially framed the media stories based on these sensational trials with caution, presenting arguments that often reformulated the bourgeois cultural criticism of the turn of the nineteenth century. Entertainment, the “logic of the spectacle,” would more and more “colonize public space,” or so they claimed (Kohn 2008, p. 480). Most influential in this respect was Jürgen Habermas’s book The Structural Transformation of the Public Sphere, originally published in 1962, in which he highlighted the capitalist mass media’s negative effects as contributing to a “disintegration of the bourgeois public sphere” since the late nineteenth century. The stories run in the modern media supposedly blurred the boundaries between news reporting and literature, raisonnement and entertainment, and, ultimately, between fact and fiction (Habermas 1989, pp. 175–95).

Over the last two decades a more optimistic reinterpretation gained ground, a reinterpretation that stressed—contradicting Habermas’s normative bourgeois public sphere approach—that any attempt to separate these two spheres (the political and the world of entertainment and consumption) would be as useless as it was practically impossible. In particular, historians of modern France early on observed that the writing style of literature and newspaper coverage of real “human interest stories” became identical in the late nineteenth century: as Berenson notes, “the two blended together and nourished each other with references and images” (1993, p. 211). Unlike Habermas, these scholars did not stress decay, but emphasized the functional consequences of this development. Newer research has therefore given up on the idea that newspaper coverage, by “mirroring” a given social reality, can be used to properly reconstruct these former realities.
Rather, the aim is now to understand how contemporaries—by mixing the real and the imaginary—perceived and created reality in the first place.

Such an echo of the linguistic turn directly influences how criminal historians analyze the relationship between criminal trials, mass media, and the public today. A “new cultural history of law” that aims at integrating the development of the legal system and its cultural and social effects into general historiographical narratives (Hedinger & Siemens 2012) emphasizes the “entangled inter-dynamics” (Strath 2008, p. 6) between national legal cultures, as well as within the actors in these national or supranational contexts (Kirmse 2012, pp. 112–14, 120). One consequence of this development is the new attention devoted to the public for criminal trials. Of historical interest in this respect are not only those who were physically present in the courtroom and immediately outside the courthouse, but also the potentially much larger quantity of people who participated at the trial via mass media. Any attempt to strictly divide the audience of a criminal trial into a(n) (possibly) active part—consisting of those present—and a (potentially) much larger passive part, forced to consume certain narratives without any chance to alter them, is therefore of very limited use. The latter group, the wider public, can in fact be more actively involved than the first group in the constant process of attributing meaning to the courtroom procedures and the media stories based on them. They are not isolated spectators, “linked only by a one-way relationship to the very center that maintains their isolation from one another” (Debord 1995, p. 22), but active participants who, despite their at first glance peripheral role, have a crucial influence on the acceptance or refusal of particular narratives of law, order, and transgression (a similar point is made by Williams 2013, pp. 35–38). This holds true even for the late Ottoman Empire, as Avin Rubin has recently shown in a compelling article on the 1884 trial of Hamdi Bey. Proceedings of this trial of a former public prosecutor who had fallen from grace were printed verbatim in at least one newspaper, and for the first time in Ottoman history, the courtroom was rendered “a subject for the public gaze.” Thanks to the newspaper coverage, the trial soon became the talk of the town (Rubin 2012, pp. 759, 772). In modern times, this trend seems to have global application, particularly when we are dealing with a fully commercialized mass media system: to get the public engaged is as much a democratic virtue as it is economically beneficial. By reaching out to the wider public, and especially to previously politically or socially marginalized groups, mass media not only increase profits, but—in the best of cases—help these groups to “recognize their personal identities” (He 2010, p. 4). As has been argued for the United States, Europe, China, and recently New Zealand, newspapers as early as the late nineteenth and early twentieth centuries documented as well as called for reforms of local moral orders, or “community moralities” (Brickell 2014; Wood 2009; Siemens 2007; Bailey 2006; Goodman 2006).

The importance of the active public can be illustrated by comparing sensationalized but otherwise “ordinary” criminal trials with another category of highly publicized trials: the International Military Tribunal in Nuremberg (1945–1946) and the Tokyo War Crimes Trial (1946–1948). Apart from their uncontested significance for international law and in particular their contribution to the implementation of human rights (Priemel & Stiller 2012; Griech-Polelle 2009), both trials were international events that appealed to a global
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However, historians dealing with both trials have noticed a relative lack of emotional engagement, or “passive acceptance,” from the public, particularly in those countries whose former political and military leaders were standing trial (Futamura 2011, p. 37). There are multifaceted reasons for such behavior that can’t be discussed here, such as indifference resulting from the often “overly complex” and “excessively technical” nature of those trials (Wilson 2011, p. 11). However, one additional reason that is hardly mentioned by historians but highly relevant for the scope of this essay is the Japanese and German publics’ lack of active participation in these trials. In occupied Germany, it was the legal aspect—and, more precisely, the controversy about the legitimacy of the court and its right to apply of new set of rules—that seemed to provoke strong emotional responses from the German public, and not only the character and extent of the crimes against humanity that had been committed during the war years (Wilke et al. 1995, pp. 82, 122). This focus of emotion is usually explained with reference to the widespread Schlussstrich mentality of seeking closure that quickly became dominant in postwar Germany and Japan alike. I would argue that the lack of public participation, and the inability to alter the narratives that framed the court proceedings, likewise contributed to this relatively passive reception of the trials in the host countries. In modern societies, the potential to turn a criminal trial into a media sensation depends not only on the nature and extent of a particular crime, but also on the possibility of involving and activating a wide audience, not necessarily physically, but certainly emotionally. Taking up the idea that emotions can also be understood as practices, as new research on the history of emotions argues (Scheer 2012), it is not least the task of criminal historians to explore further the effects of the emotions in and around the courtroom drama.

III. Order and Transgression

It is a feature of modern mass media to turn the reader/listener/spectator of news content into an active consumer, one who ideally contributes to the story. The “Letters to the Editor” page is just an old form of what has since become an indispensable part of online journalism: the reader’s possibility to comment on a news item and to interact with others, a participation that transforms him or her from “passive” reader into “active” user. Courtroom journalism has proven to be a particularly successful field in which several of these techniques were applied early. As crimes are ultimately transgressions of the legitimate social order that allow for speculation about how personal problems and social change might be interrelated, courtroom journalism became a diverse field of social inquiry, in the courtroom as well as in the newspaper columns, starting in the late nineteenth century. Jurists still made sure that the parties involved observed the legal rules, but an increasing number of non-legally trained experts now associated with them. The complex nature of man, as well as an increasing variety of lifestyles, particularly in the growing metropolises and with regard to sexual habits, called for expert knowledge on human behavior. Widespread anxieties and uncertainties—not only about the imminent future of the society in which one was living, but also about very personal economic, interpersonal, or intimate fears—fueled an interest in courtroom journalism, with the real cases tried in court now understood as a representative selection of social problems that
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Concerned everyone in one way or another. At the same time, these trials informed the public of attempts to solve these conflicts—through legal means as well as scientific approaches or “social engineering.” The “scientification of the social” (Raphael 1996) amplified the importance of the criminal courtroom in modern societies; it became, among other things, “a new platform from which medical knowledge was displayed.” On the one hand, the “doctor in the witness box” could consolidate his authority in a contemporary way, but on the other hand, his expertise was now open to public scrutiny. The courtroom thus also turned into a “platform for confusion and embarrassment” (Healey 2009, p. 20), with the press being more than happy to report extensively about such colorful “expert battles” (Siemens 2007, pp. 305–12; Oberländer 2013).

The main effect of the increasing presence and impact of criminalists and medical and social experts in criminal trials was a growing awareness of the fact that the relatively straightforward moral stories of crime and punishment that had dominated the reporting of criminal trials until the mid-nineteenth century no longer reflected the diverse and ever-changing social reality—a reality in which questions of class, race, and gender were moving to the fore. In times when the existing public order came under closer scrutiny, courtroom news reporting provided important stories that helped to redefine the boundaries between acceptable and unacceptable behavior. These narratives also questioned the long-held belief that crime was the consequence of the perpetrator’s evil will. With the social question taking center stage in Europe and the United States alike, audiences were increasingly confronted with explanations of crime that stressed environmental, social, or outright political reasons for individual misdoings (Becker, Wetzell, & Lazar 2005). Cultural critics soon lamented that while criminal judges had to sentence the criminals, the journalists increasingly sentenced the victims—thus turning the question of moral guilt and responsibility upside down (Siemens 2009, pp. 345–46).

The stories of transgression and order that appeared in newspapers were based on individual cases tried in criminal courts, but they ultimately went beyond those cases to question the “very notion of modern law itself,” as Eugenia Lean has demonstrated for interwar China (2007, p. 108). Taking as a starting point the highly discussed trial of Shi Jianqiao, who in the city of Tianjin in 1935 had shot to death a former warlord she held responsible for her father’s death, Lean successfully shows that such trials, in which the accused and her defense team deliberately provoked and exploited public sympathy, raised important legal questions. In this case, it was the question of the extent to which the “moral authority of human feeling (qing)” should matter in the rule of law, a discussion that was much to the distaste of Chinese legal reformers at the time (Lean 2007, pp. 106–40). Here and in many other sensational trials that caught the attention of a wider public, the “public sympathy” for the defendants could simply not be ignored—and a purely technical application of the legal rules did not happen. This observation holds true even with the reservation that these effects were limited to cases that were “framed within socially and culturally acceptable and state-sanctioned behavioral and moral codes” and therefore often stabilized a given political authority (He 2010, p. 28).
Such “adjustments” seemed most likely to occur in cases in which female culprits successfully defended themselves by presenting a highly emotional narrative of their crime that either played on traditional values of female honor (Berenson 1993, Flaherty 2014) or—on the contrary—stylized their crime as a legitimate reaction against a traditionally male-dominated society whose rules were made by and for men but did not suffice to deal with the female condition (Wood 2012). In modern France, the term *crime passionels*, passion crimes, was firmly established in such cases and was eagerly exploited by defense lawyers and journalists alike (Ambroise-Rendue 2006, pp. 35–44; Harris 1989). It can only be decided on a case-to-case basis whether such narratives stimulated a critical discourse that attempted to reform or “modernize” the law and the legal system, or whether such cases ultimately helped to legitimize the given public order and its legal framework, analogous to the function played by carnivals in allowing the temporary transgression of limits. In any case, the media played a decisive part in staging criminal trials as “authentic” plays in the *théâtre moralisateur* (Ambroise-Rendue 2006, pp. 40–41): depending on the public’s changing tastes and preferences, they reported on criminal trials in the form of tragedies or comedies, farces or satires, always keen to increase the circulation of their papers.

**IV. Visibility and Mass Media**

It is a firmly established belief in the Western world that the openness to public scrutiny of the criminal justice system at work is one of the fundamental aspects indispensable to the legitimacy of the legal system. Since the days of the Enlightenment in the eighteenth century, a fair trial could only be an open trial—not one conducted behind closed doors. Against this tradition, a recent development is noteworthy: the gradual turning away from this fundamental principle in those legal procedures that concern suspected terrorists in the aftermath of 9/11. In response to these attacks, the U.S. administration of President George W. Bush coined a new category of “enemy combatants” to deny allegedly “unlawful combatants” (a term used to target suspected al-Qaeda terrorists) access to legal rights otherwise guaranteed by the U.S. Constitution and international conventions and agreements (Akyuz, Cihan, & Roth 2012; Zusman 2011). Instead of holding public trials that would allow for public scrutiny, all U.S. administrations since 2001 have opted for indefinite detention of alleged terrorists, who are tried in exceptional courts (military commissions), if at all (Ní Aoláin & Gross 2013). With the exception of the trial against Zacarias Moussaoui in 2006 (Linder 2006), no “sensational” or highly mediatized “al-Qaeda trial” has taken place in federal criminal courts in the United States since 2001, although the Supreme Court has repeatedly stressed that the principle of habeas corpus also applies to U.S. prisoners of war and alleged terrorists (Akyuz, Cihan, & Roth 2012, pp. 69–70).

This judicial tendency contradicts optimistic claims that praise the Western model of a transparent criminal justice system as one that will increasingly be followed globally (Heger Boyle & Meyer 1998) in two ways: First, it raises questions about the sustainability or even irreversibility of the Western way of *Verrechtlichung* in the twenty-first century...
by pointing to an erosion of legal standards previously attained. Second, it forces us to think more critically about the character of those trials that are actually made available to the public. If one takes a look at those trials that made global headlines in recent decades—the O. J. Simpson murder trial in Los Angeles in 1994–1995 (Linder 2000) or the Oscar Pistorius murder trial in Johannesburg in 2013–2014 (Carlin 2014), to name just a few very well-known cases—one might ask whether the sensationalist exploitation of the faits divers, the “human interest story,” does not obscure the fact that the bigger crimes—bigger in the sense that they have more serious political consequences for a lot more people—often go unnoticed. The selection of those criminal trials that are reported thus helps to maintain the hegemony of the ruling classes, as Marxist-inspired philosophers and historians frequently argue (Jewkes 2004, pp. 16–21). Obviously, such cultural criticism, which is frequently couched in simplistic terms, does not lead very far. Historical research of crime and criminology has long demonstrated that complaints about the exploitation of sexual and other “sensational” topics have been a constant feature of conservative press criticism, at least since large-circulation mass media have been available (for an early example, see Glaser 1914, pp. 18–19). However, the complexity of modern societies makes any attempt to deliberately deceive the public by manipulating it on the basis of a previously defined strategy unlikely to succeed. The politically important as well as academically challenging question—moving the focus from the allegedly hegemonic actors and their strategies to the narratives available—is: Do the narratives established in sensationalized crime trials during the last two centuries provide the exclusive framework in which all criminal trials must be reported, and, if so, what are the consequences?

I will discuss this point with reference to a turning point in modern Chinese legal history, as emphasized recently by Haiping Zheng and Klaus Mühlhahn: the trial against the so-called Gang of Four, a fraction of the former leading members of the Chinese Communist Party, that took place in Peking in late 1980 (Bonavia 1984). This trial is seen as a turning point because it was the first time in Communist China that long-time political leaders who had fallen from grace were exposed publicly. The Gang of Four trial was staged as a highly mediatized event, a show trial that was broadcast live on Chinese television and radio and reported widely in the national press. More than 880 “representatives of the masses” attended the proceedings in the courtroom, and more than 300 journalists—meant to represent the Chinese public—were present. The trial was obviously a “scripted” event that was held to win back legitimacy for the Communist Party by admitting some previous wrongdoings and punishing certain high-profile individuals (Mühlhahn 2009, p. 291).

However scripted, the trial took place, and however controlled the press coverage actually was, it has nevertheless been argued that the trial demonstrated an important step “forward” for modern China. The Chinese legal scholar Haiping Zheng (2010) claims that in spite of its numerous defects, the trial represented progress compared with the situation in the Cultural Revolution, when individuals could be “arrested, jailed and tortured without any formal trial.” Although the verdict against two of the main defendants was prefabricated by the Politburo of the Chinese Communist Party before the public trial started, it was the visibility of the proceedings as such that indirectly improved legal pro-
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...readings in the People’s Republic more broadly, or so Zheng (p. 565) claims. However, in the context of this essay, it is important to raise the question of whether such rather optimistic readings do not overshadow a more worrisome tendency: the increasing ability of political regimes to use the mass media to create a kind of “reality effect.” In modern China, such staging of “reality” is often justified using the general aim of promoting social harmony. But visibility and genuine openness are two different things—and while it is probably correct to assume that the former is a necessary precondition for the latter, it is by no means a sufficient one.

Obviously, here is not the place to broadly discuss with Habermas the effects of mass media on the transformation of the public sphere, as this is ultimately a debate on the effects of mass media on democracy (Keane 2013, pp. 67–76, 112–21; Bohman 2004). Even if the “dominant ideology approach” (Jewkes 2004, pp. 16–18) is lacking in complexity, one should likewise avoid any uncritical glorification of the achievements of the free press and/or mass media and of the visibility of politics so characteristic in modern times. The problem is less an empirical one (for a long time, criticism, particularly from conservative thinkers, centered around “sensationalism” as a form of exploitation of the emotions and the general “lowering” of political culture), but one that has to be addressed on a theoretical level: while the last two decades have demonstrated with ever greater clarity that public debates surrounding criminal trials contribute in important ways to a growing reflexivity of societies and at times increase the ambition to launch legal reforms, the discussion of the overall narratives necessary to analyze these developments needs to take the different political regimes in which they occur into consideration and is, not least for this reason, just about to begin.

V. Global Audiences and Democracy

This brings me to my last point, which is—put briefly—the question of the limits of the public’s agency in criminal trials. As has been outlined previously, it has been firmly established that audiences of criminal trials in the past were all but passive. On the contrary, they were in many cases a most lively and vital component of trials: riots in front of courthouses, emotional letters written by spectators to the judges or the parties involved, heckling and intimidation in the courtroom—all these and other forms of participation were widely commented on by witnesses of those trials at which the events occurred, as well as by historians much later. It is also well known that the rise of mass media and its interest in criminal affairs did not diminish such forms of direct participation, but instead multiplied them. Press reports, and later radio and TV coverage, not only provided an opportunity to transmit individual voices to wide and diverse audiences, but also created new forms of involvement, such as the reader-reporter, who was invited to provide his personal views on the proceedings of a trial, and the pundit, who was increasingly asked to comment on particular aspects of a trial, such as the defendant’s mental capacities or the wider social impact of the proceedings (thus contributing to the effect the media initially created by its coverage).
Highly mediatized criminal trials thus blurred not only the boundaries between courtroom and society, but also the lines between defendants and audiences. Regardless of the judicial chances of a particular defendant, the attention for him or her created by spectacular trials and their media coverage provided a substantial form of social capital that the defendant could and often would exploit. It is not only the case that popular “stars” accused of serious crimes yield sensational media coverage of a particular criminal trial (as was the case with O. J. Simpson and many others), but a highly publicized criminal trial can produce its own very profitable industry; it has the power to create celebrities who can later write successful books, sell their stories to see them translated into popular movies, or start careers as actors themselves. Such careers rely heavily on the emotions provoked and the constant attention provided by mass media news coverage during criminal trials and after. They are a byproduct of an intense coverage of trial proceedings that was in premodern times widely condemned as an illegitimate interference in judicial affairs and as morally “shameful” (Nash & Kilday 2010), but in recent decades has been more openly (and maybe cynically) embraced as a judicial theater that helps visualize and contribute to addressing existing social problems.

However, from the perspective of ruling elites, such a “coming to terms” with social and political realities in the form of highly engaging and mediatized criminal trials—one might even speak of “proxy trials” when referring to the social side of such events—suffers from one very serious shortcoming: its ultimate unpredictability. While it is easy to control the judicial settings of a particular trial, and relatively easy to ensure a certain character of media coverage, it is much harder to keep the emotions created by such a trial in check. Not least because criminal trials ultimately deal with real people and real events, the public only tolerates a certain amount of (perceived) distortion. Governments that are aware of the fact that it is the public and its reactions that provide legitimacy to the judicial proceedings (and to the actions of the public sector more generally) have therefore an interest in what can be labeled as the “emotional management” or “emotional regime” of the media coverage of events (Reddy 2001).

It is here that the transnational approach proves most fruitful. A global history of the relationship between criminal trials and their public has yet to be written. The emerging picture, based on the scholarship available today, suggests that a straightforward success story narrative that equates increased visibility and a growing involvement of the public with an increase in democratic rights could be overly simplistic. It might have been the case in 1920s China that news “became a marker of truth, moral authority, and authenticity,” as Bryna Goodman has claimed (2006, p. 69), but it is doubtful whether the press still enjoys such credit. In many parts of the word, we are currently witnessing the rise of a new and tight relationship between mass media and political oligarchy, a “mediacracy” (Keane 2013, pp. 171–80) that serves particular economic and political interests, but disguises its ultimate goals by producing highly modern and complex media content. Sensational criminal trials that attract a global audience might become an integral part of mediacracy’s portfolio. What is of global cultural interest might, however, be of very limited political relevance.
With regard to “sensational trials” that turn into international media events, I therefore suggest that it is necessary to clearly distinguish between at least two different kinds of public spheres: local or regional public spheres on the one hand, and transnational or potentially global spheres on the other. Local publics will most likely perceive courtroom proceedings, given their deep roots in the social history and legal tradition of a particular political area, as events that are of direct social significance for the “local moral order”—a term coined by the Chicago school of sociology in the early twentieth century. In contrast, the more remote observers might form emotional bonds but otherwise not be directly affected. They will therefore read or “consume” the courtroom drama first and foremost as a moral tale, or simply as entertainment that produces scary thrills.

This idea is neither new, nor does it seem to be problematic, as “moral regulation” has for a long time been identified as a permanent process created by the mass media (Critcher 2013, p. 26). The question is, however, whether “moral regulation” in this sense means moral self-regulation (as is very likely the case in local or regional public spheres), or whether it comes in the form of entertainment that is devoid of a connection to society and therefore more open to manipulation. It might well be the case that the democratizing effects of “sensational trials” that influence limited but clearly defined public spheres were an important characteristic of a specific historical period, dating from the second half of the nineteenth century to the late twentieth century, in which the political and economic realities made it possible for modernizing societies to tolerate a relatively high level of (moderate) unpredictability. Whether future audiences, shaped by the diversity currently available through social media, will insist on relatively open coverage of real criminal trials that allows an active public to participate in them, or whether they will—on the contrary—content themselves with new forms of prearranged realities and calculated surprises—to take up Debord’s (1995) language, with self-referential “spectacles” in the mode of popular entertainment—is hard to foresee. In any case, one of the central tasks of the historiography of crime and media in the years ahead will be to pay more attention to the narratives of the spectacle that have been firmly established in telenovelas, the “Hollywood courtroom drama” (Machura 2001; Kuzina 2001; Levi 2005), “television reality crime programs” (Fishman & Cavender 1998), and pre-scripted courtroom shows since the second half of the twentieth century, and to work out their relationship to the media coverage of authentic criminal trials.

Conclusion

This essay has provided, first, a summary of the latest research on the relationship between criminal court proceedings, the mass media, and their publics. This field of research has been growing in recent decades, but its analysis is still often confined to the national level. A more comparative and potentially global perspective, as adopted here, not only points to the fact that the abovementioned relationship developed in a surprisingly similar way in many parts of the world and was by no means confined to the transatlantic Western hemisphere, but also postulates whether those questions of power, progress, and social reform that occupied historians throughout the twentieth century re-
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Main of central importance today, or whether they have to be asked differently in the twenty-first century. In particular, the postcolonial turn, in full swing in the humanities for a little more than two decades, and the current multiplicity of public spheres, made possible not least by the Internet, have the potential to affect the research questions criminal historians ask. They alter, in other words, the analytical frames at our disposal.

All topics that have come to characterize ambitious media coverage of crime and criminal trials since the nineteenth century will very likely remain major issues in the near future as well: the interconnectedness of entertainment and participation, the struggle between authoritarianism and democracy, the tension between coercion and individual freedom. More attention, however, should be given to narratives in which these topics are addressed. Such a task is not only a scholarly exercise, but also a question of fundamental importance that reflects on the development of modern society at large. In an optimistic reading, globally mediatized criminal trials might positively contribute to the “unfinished project of globalizing the liberal public sphere” (Tully 2013, p. 181), a democratic public sphere that is based on and shaped by a common understanding of events. In a pessimistic reading, the narratives of such global crime and courtroom reporting might lack the emancipatory potential so significant in the last 150 years. Without a possibility for interaction, there is ultimately no public sphere, and certainly no democracy. The media user might again, despite all the technological achievements of the past two centuries, become a “servile servant” (Tully 2013, p. 191), a mere recipient of prefigured truths and emotionally tailored stories that might serve very different ends.

References


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