

Truth, intentionality and evidence: anthropological approaches to crime and tort  
17/09/2014 - 19/09/2014

### International Workshop

Laboratoire d'Anthropologie Sociale - Paris/Centre Jacques Berque – Rabat, with the support of the Wenner Gren Foundation and l'Atelier "Droit et politique" (PRI "Terrains du droit" EHESS- Labex TEPSIS)

Organizers : Yazid Ben Hounet, Baudouin Dupret, Deborah Puccio-Den

This workshop aims to discuss the concepts of crime and tort, and how they can be addressed with the theoretical and methodological tools of anthropology and comparative sociology. Communications will deal mainly with the Mediterranean area, but for the sake of comparison, we would like to integrate communications concerning other parts of the world.

Crime and tort are classical objects of legal anthropology and comparative sociology of law, but invariably and insufficiently studied (in comparison with other topics such as law, custom, property, family, etc.). Henry Sumner Maine (1861) already discussed in one chapter of *Ancient Law* the origins of criminal law. He proposed a distinction between crime (offense against the state or the community) and tort (offense against the person) and argued that the first codes (including Roman and Teutonic) were more devoted to the regulation of tort sanctioning than of crimes – the settlement of the latter being somehow sanctioned in hasty expeditious ways. Bronislaw Malinowski (1926) defined crime as defiance against custom and tried understanding the logic of the sanctions attached to crimes among the Trobriand. Isaac Schapera (1972), in his attempt to analyze the concept of crime, criticized the idea that crime would refer to a form of a universally shared disapproval. He reminded that a principle of universal disapproval does not exist and, secondly, that in "primitive societies" (a term used at his time), there is often no legal authority and therefore, for some, no system of law in the strict sense. He concluded that the definition of crime is thus not obvious. Given this fact, Isaac Schapera offers in his essay, a minimal definition that will be used in this argument: « A crime is an act, or failure to act, that is considered punishable by those who are entitled to react in that way » (Schapera, 1972 : 390) .

In the early anthropological and comparative sociology research on crime and tort, the emphasis was on issues of definition, conceptualization of crime, logical forms and meanings of sanctions. Over the past 40 years, however, anthropological and related research on the topic has been more concerned with the analysis of crimes as manifestations of larger social dynamics and social relations. This is particularly the approach of Donald Black (1983). Arguing that many crimes in contemporary societies resemble acts of self-help, Black provides an analysis of crime in terms of social control. Georg Elwert (1999) analyzes crime in the context of a market (economy) of violence, that is, costs and benefits. Philipp C. Parnell and Stephanie C. Kane (2003) have argued that crime is part of the reorganization and redistribution of power. Many classical works of anthropology of the Mediterranean also re-inscribe crime under the framework of the analysis of violence exchange, and try to understand the logic of retaliation (blood feud, vendetta) and honor, upstream or downstream, to crimes and torts (Bourdieu, 1965; Peristiany, 1965 Black-Michaud, 1975; Jamous, 1981, etc.).

In this workshop, we would like to understand crimes and torts, not generally, but in their contextual definitions, and especially, in the ways they may be perceived by those most concerned. By doing so, we will follow Isaac Schapera' suggestion to recognize the importance of understanding the perception of crime. Thus, the workshop will not analyze causes and effects of crimes and torts, forms of sanctions, nor their place in the sociopolitical relations. It rather intends to report and analyze different perceptions and definitions of actions as crimes or torts depending on the context and on people involved in various



instances or moments of trials, mediations, arbitrations and information (court proceedings, police reports, newspapers, moments of conflict resolution, reconciliation, etc.).

We will focus more precisely on the notions of truth, intentionality, and evidence related to the perception and definition of crimes and torts. The presentations will consist of empirical cases that are ethnographically documented. Questions that will be addressed in this workshop include: What facts, elements of a case are (or not) considered to produce truth, intent, or evidence? What kind of roles do they play in the judgment, mediation, arbitration and adjudication of the act? How do they influence the perception and/ or the definition of an act as a crime or a tort?

Papers can cover various types of crimes and torts – crimes and torts simple, mass murders, organized crimes, cybercrimes, financial crimes, etc. With these papers, we hope to shed light on an important concept for our contemporary societies, the development of Criminology and Forensic Science departments around the world seems to testify it. The workshop aims also to question the notion of truth – which became important since the development of "truth and reconciliation" commissions – and truth-telling practices, understood as saying the truth, whether the truth of God, legal truth, or any other form of truth (Dupret, 2011).

## References

Black, Donald, 1983, « Crime as Social Control », American Sociological Review, Vol. 48, No. 1 (Feb., 1983) : 34-45.

Black-Michaud J., 1975 Cohesive Force: Feud in the Mediterranean and the Middle East. Oxford, Blackwell.

Bourdieu P., 1965 « The sentiment of honour in Kabyle society », in J. G. Peristiany (ed.), Honour and Shame. The Values of Mediterranean Society, Londres, Weidenfeld and Nicholson, pp.191-241.

Dupret B., 2011 Practices of Truth: An Ethnomethodological Inquiry into Arab Contexts, Amsterdam, John Benjamins.

Elwert, Georg, 1999, « Markets of violence », in G. Elwert, S. Feuchtwang and D. Neubert (eds), Dynamics of Violence. Processes of Escalation and De-Escalation in Violent Group Conflicts (Berlin, 1999), pp. 85-102.

Jamous R., 1981 Honneur et baraka, Les structures sociales traditionnelles dans le Rif, Maison des Sciences de l'Homme, Cambridge University Press.

Maine, Henry S., 2012, Ancient Law (1st edition 1861), Cambridge University Press.

Malinowski, Bronislaw, 1926 Crime and custom in savage society. London, Routledge & Kegan.

Parnell Philipp C. and Stephanie C. Kane (eds), 2003, Crime's Power, Anthropologists and the Ethnography of Crime. Palgrave Macmillan, New York.

Peristiany J. G. (ed.), Honour and Shame. The Values of Mediterranean Society, Londres, Weidenfeld and Nicholson.

Schapera I., 1972, « Some anthropological concept of 'crime': the Hobhouse memorial lecture », The British Journal of Sociology, Vol. 23, n° 4 : 381-394.



## Program

The workshop will be organized following this provisional program (45 minutes for each presentation including discussions - and 1h30 of general discussions per day)

### September 18

Centre Jacques Berque / 35, avenue Tariq Ibn Ziad - 10020 Rabat

9h00 – 9h30

Yazid Ben Hounet, Baudouin Dupret and Deborah Puccio-Den

### Introduction

### 1<sup>st</sup> day : The ideas of crime in motion : comparative approach

9h30-11h15 (Chair Salvatore d'Onofrio)

Janine Barbot (INSERM-CERMES-Paris), Nicolas Dodier (EHESS-Institut Marcel Mauss- LIER, Paris)

*Le travail normatif autour des indemnisations financiers. Esquisse d'une méta-analyse des catastrophes*  
(Normative work around financial compensation. Outline of a meta-analysis of disasters)

Perig Pitrou (CNRS, LAS, Paris)

*'Se perdre en agissant'. Crime et pardon dans la Mixe Alta de Oaxaca, Mexique*

11h30-13h15 (Chair : Jean Comaroff)

Liliane Umumbyeyi, Phd Candidate - ISSP - ENS Cachan

*Mobilizing the human rights system to contest human rights categories: the redefinition of apartheid "crime" and "victim" categories in contemporary South Africa*

Bertram Turner, Max Planck Institut for Social Anthropology

*Settling the account: local ideas about dealing with crime and deviance in rural Morocco*

14h45-16h15 (Chair : Bertram Turner)

Zouhair Ghazzal, Loyola University Chicago

*Truth claims, avowal, auto-biography, and madness in the construction of criminality in contemporary Syria*

Jean Comaroff (Professor of African and African American Studies, Professor of Anthropology, Oppenheimer Research Fellow, Harvard University)

*Divine Detection: crime and the metaphysics of disorder*

16h30-18h General Discussions



**September 19**

Centre Jacques Berque / 35, avenue Tariq Ibn Ziad - 10020 Rabat

**2nd day. Evidence, intentionality and truth**

9h30-11h15 (Chair : Nicolas Dodier)

Deborah Puccio-Den (CNRS, Institut Marcel Mauss-LIER, Paris)

*Liability and construction of proof in the case of mafia murders*

Fabien Provost, PhD Candidate, LESC – Nanterre

*The entanglement of medical categories and doctors' perceptions in the production of a medico-legal opinion. A double case of self-inflicted injuries from North India*

11h30-13h15 (Chair : Arzoo Osanloo)

Yazid Ben Hounet (CNRS, LAS, Paris)

*Crime, tort, intentionality and (re)conciliation in Algeria*

Baudouin Dupret (CNRS – CJB)

*La thématization juridique de l'intention. Approche praxéologique d'une question conceptuelle à partir d'un cas pénal égyptien*

14h45-16h (Chair : Zouhair Ghazzal)

Arzoo Osanloo (associate professor, Law, Societies, and Justice Program, Université de Washington, Seattle)

*Arriving at Truth: Judge's Knowledge in Iranian Criminal Sanctioning*

Daniela Berti (CNRS, Centre d'Etudes Himalayennes) et Gilles Tarabout (CNRS, LESC)

*Questioning the Truth. Ideals of Justice and Trial Techniques in India*

16h15-18h Discussions and concluding remarks

