

‘The Highest Guardian of the Child’: International Criminology and the Russian Fight Against Transnational Obscenity, 1885-1935

In April 2015, a regional court in the Apastovskii region of Tatarstan found that 136 websites containing material of a ‘pornographic nature’ contravened the Russian Constitution.¹ In successfully arguing this case, the Apastovskii public prosecutor appealed to the authority not of article 242 of the Russian Criminal Code, which prohibits the ‘illegal distribution of pornographic materials’, but rather directly to Article 15.4 of the Constitution of the Russian Federation, which declares that ‘the international agreements of the Russian Federation constitute an integral part of its legal system.’² Following this logic, he declared, Russia must abide by the rules of the 1910 ‘International Agreement on the Suppression of the Circulation of Pornography,’ and the 1923 ‘International Convention on the Suppression of the Circulation of Pornographic Publications and their Trade,’ to both of which Russia (or the Soviet Union) was a signatory. Unlike article 242 of the Criminal Code, which forbids only the *illegal* distribution of pornography, these two early twentieth century international agreements forbade all distribution, as long as the pornographic nature of the material in question was established.³ In finding that these websites contravened the constitution, the Apastovskii court sparked suggestions that the official telecommunications ombudsman, *Roskomnadzor*, add all 136 addresses to its ‘black’ list of banned websites.⁴ Such a drastic move never eventuated; when approached by the national news service *Russia Today* on the issue, a representative of the Ministry of Culture’s

¹ ‘Roskomnadzor vneset srazu 136 pornosaitov v chernyi spisok,’ *Izvestia*, 13 April 2015, accessed on 22 July 2016 via <http://izvestia.ru/news/585309>; ‘Prokuratura Tatarstana zakryla 136 pornosaitov,’ *Biznes Online*, accessed 22 July 2016 via <http://www.business-gazeta.ru/article/126256/>; ‘Prokuratura Tatarstana reshila zapretit’ 136 pornosaitov na osnovanii dovoennykh konventsii,’ *Meduza*, accessed 22 July 2016 via <https://meduza.io/news/2015/04/13/prokuratura-tatarstana-reshila-zapretit-136-pornosaytov-na-osnovanii-dovoennyh-konventsii>.

² ‘Zakondatel’nye akty Rossiiskoi Federatsii: Konstitutsiia Rossiiskoi Federatsii,’ enacted 12 December 1993, accessed on 31 July 2016, via <http://www.gov.ru/main/konst/konst0.html>.

³ For English-language versions of these treaties see ‘Repression of Circulation of Obscene Publications: Arrangement Signed at Paris May 4 1910,’ in Charles Bevans, *Treaties and Other International Agreements of the United States of America 1776-1949: Volume I Multilateral 1776-1917*, Washington, DC: Department of State, 1968, pp. 748-751; League of Nations, ‘International Convention for the Suppression of Circulation of and Traffic in Obscene Publications. [1924] LNTSer 143; 27 LNTS 213,’ League of Nations Treaty Series, Geneva, 1924.

⁴ ‘Roskomnadzor vneset srazu.’

‘Coordinating Centre for the Internet’ declared enigmatically that ‘There are many [international] agreements which have not been cancelled juridically, but which in practice are not active. We have many of these...’⁵

According to news reports, the Apastovskii public prosecutor had been particularly offended by the fact that all 136 sites came up when he searched ‘Kazan prostitutes’ in the Russian search engine *Yandex*.⁶ Why did he turn to century-old agreements signed in Paris and Geneva to make a localised argument to block to websites believed to offend domestic sensibilities? One answer is that article 242 of the Criminal Code is itself, via a somewhat circuitous genealogy, the direct descendant of Soviet laws put in place in 1935 in response to the Soviet accession to the 1923 Geneva agreement. However, in this case the prosecutor deemed the domestic article insufficient, and appealed to the greater constitutional authority of a more capacious international agreement. In doing so, he inadvertently waded into the murky waters of the relationship between domestic and international law in matters of so-called ‘trans-national crime,’ and evoked an early twentieth century understanding of obscenity and pornography as *inherently* international problems.

In order to understand how conceptualisations of the trans- and inter-national came to be nested within Russian legal understandings of obscenity, we must look one hundred years earlier, when Russian criminologists were integral participants in efforts to codify criminal law across international jurisdictions, and to deal with apparently new cross-border crimes (including the cross-border traffic in pornography). In the late nineteenth century, jurists associated with international legal organizations such as the Belgian *Institute of International Law* and the Hague-based *International Union for Penal Law* began to organize regular conferences and conventions calling on states to co-ordinate efforts at preventing and punishing crimes.⁷ As

⁵ ‘SMI: Roskomnadzor vneset 136 pornosaitov v chernyi spisok,’ *Russia Today*, 13 April 2015, accessed via <https://russian.rt.com/article/85195>.

⁶ ‘Roskomnadzor vneset srazu.’

⁷ Martii Koskenniemi deals at length with the Institute of International Law in his *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*, New York: Cambridge University Press, 2001, pp. 39-97. It is notable that in Koskenniemi’s now classic work on the history of international jurists, he deals little with the development of international criminal law specifically, with the exception of agreements on the extradition of political criminals (see for example Koskenniemi, *The Gentle Civilizer*, p. 69).

Martii Koskenniemi has demonstrated, in the last quarter of the nineteenth century many of these international jurists were not only professors and practitioners but also deeply involved in politics and diplomacy, and thus closely connected to the development of new legislation at home.⁸ These specialists laid the conceptual groundwork for the emergent idea that the modern era was one in which new communications and transport technologies had led to a rash of new and dangerous cross-border crimes, which required diplomatic conferences and international cooperation to combat.⁹ The 1910 and 1923 conventions were the result of precisely such diplomatic conferences, and they were in part presided over by specialists from the International Union.

Russian specialists were enthusiastic participants in these events, which they also mobilised at home as a source of authority for their calls for both the more ‘humane’ treatment of criminals and a tougher approach to ‘cross-border’ crime.¹⁰ Amongst the crimes singled out by both the International Union as a whole, and its ‘Russian Group’ in particular, were apparently new crimes ‘against morality’: the international trafficking in women and the international trafficking in pornography. The identification of both crimes evoked fears that increasingly global economic connections were facilitating the infiltration of national bodies politic with foreign deviance, fears which highlight to the nationally-grounded sentiments at the heart of many calls for greater international cooperation. After 1917, when Russian jurists had less contact with their Western European peers, they carried these concerns into their discussions about the protection of children and the suppression of obscene materials (particularly film) within the Soviet Union. Pre-revolutionary discussions about international crime dovetailed with early Soviet concerns

⁸ Koskenniemi, *The Gentle Civilizer*, p. 39.

⁹ The most thorough examination of the nexus between improved global communications the emergence of peripatetic international criminals in the writings of the International Union is M. Linteau, ‘La lutte contre la criminalite internationale,’ *Mitteilungen der Internationalen Kriminalistischen Vereinigung: XIII*, Berlin: J. Guttentag, Verlagsbuchhandlung, 1906, pp. 281-295.

¹⁰ For an explicit articulation of a link between Russian involvement in the International Union to the reform of domestic law see the claim in a 1909 article on the International Union that Russia’s over-representation within it made the task reforming the Criminal Code according to the 1903 draft all the more urgent. P. I. Liublinskii, ‘Deiatel’nost’ Soiuza v 1902-1908,’ 1909, reprinted in Prof. P.I. Liublinskii, *Mezhdunarodnye S’ezdy po voprosam Ugolovnago Prava za desiat’ let (1905-1915)*, Petrograd: Senatskaia Tipografiia, 1915., p. 32.

about the correct upbringing of the future Soviet citizen and the fostering of a ‘healthy’ (non-pornographic) relationship to sex.

For pre- and post-revolutionary criminologists involved with the International Union, the crime of trafficking in pornography was conceptualized both as a crime against the censor (and hence against the state’s ability to control information), and also an offense that did specific criminal harm to certain social groups, namely women and children.¹¹ Women were perceived as victims of pornography due to the claim that its spread helped to create demand for prostitution and, even more shockingly, international trafficking in women for sex. In this way, pornography was framed as a threat to the gender order more broadly, and its regulation or suppression necessary for maintaining the health of the body politic. Children (especially male children) were perceived as victims because they were the vulnerable potential consumers of pornography, an experience that was assumed to have lasting deleterious psychological and physical effects on them.¹² As we shall see below, Russian and later Soviet criminologists such as A.I. Zak and especially P.I. Liublinskii were particularly concerned with the latter category of victim, arguing that the negative effect of pornography consumption by children was a direct threat to the social stability of the empire and the fledgling Soviet Union. In this way, anxieties about gender and sex lay at the heart of the calls to ban the cross-border trade in obscenity, suggesting a particular biopolitical understanding of international security haunting early twentieth century international criminal law.

¹¹ The question of who functions as the victim of pornography does not have a self-evident answer (is it, for example, the producer, the consumer, or both?). This can be seen from the continued controversy over this question in recent feminist legal theory. Some late twentieth-century theorists, most prominently Catherine McKinnon and Andrea Dworkin, have argued that all women are victims of pornography (both directly, as it encourages men to be violent towards women, and indirectly, as it is a symptom of the broader system of patriarchy oppressing women). Others argue that it is a labor-rights issue, and that the women who are victims are those who work in the industry (this assumes that more women than men work in the pornography industry, which often difficult to substantiate). Most recently, some activists opposed to what they see as the widespread international trafficking in women for prostitution have claimed that many women working in pornography are actually trafficked and have been forced to engage in sexual acts on camera. See Andrea Dworkin, "Against the male flood: Censorship, pornography, and equality." *Harv. Women's LJ* 8 (1985): 1; Catharine A. MacKinnon, "Pornography as trafficking." *Mich. J. Int'l L.* 26 (2004): 993. For a classic risposte to MacKinnon and Dworkin from within feminism legal theory see Martha Nussbaum, 'Whether from Reason or Prejudice: Taking Money for Bodily Services,' in Martha Nussbaum, *Sex and Social Justice*, New York: Oxford University Press, 1999, 276-298.

¹² We see this expressed in the works of E. A. Gal'perin-Gintsberg, A.I. Zak and P.I. Liublinskii, discussed below.

In 1935, the Soviet Union signed the League of Nations Convention for the Suppression of the International Traffic in Obscene Materials and, in line with their treaty obligations, enacted a new law criminalizing the production and advertising of, as well as trade in, pornographic materials (later article 228 of the Criminal Code of the RSFSR).¹³ The League Convention (initially opened for signature in 1923) was a direct descendant of the 1910 ‘International Agreement on the Suppression of the Circulation of Pornography,’ in the drafting of which members of the International Union of Penal Law, including its Russian contingent, played a direct role.¹⁴ Less directly, but nonetheless significantly, pre-war discussions about cross border crime engaged in by, amongst others, the over four hundred Russian members of the International Union had helped to disseminate the idea that certain (sexual) crimes were inherently transnational and required international solutions. Twenty-five years later, and in an era in which the Soviet state was often loath to sign on to League conventions on ‘social’ matters (believing their own economic approach to solving social problems far superior to the League’s legalistic and philanthropic one), their 1935 accession to the 1923 Convention stands out. Tracing the genealogy of imperial and Soviet engagements with international attempts to suppress the traffic in pornography can help us to understand how agreements such as the 1923 Convention came to be embedded in Russian legal understandings of obscenity.

This article will examine Russian criminologists’ engagements with emergent norms of international criminal law, especially in the institutional framework of the International Union of Penal Law, framing them as key elements in the development of Russian ideas about sexual crime more broadly. In doing so, I will pose three central questions suggested by the entangled histories of international criminal law and Russian law on obscenity. First, what might the preoccupations of fin-de-siècle criminologists tell us about the particular vision of international

¹³ *Gosudarstvennyi Arkhiv Rossiiskoi Federatsii* (hereafter GARF), Fond 3316, Opis 28, Delo 178, ‘O prisoedinenii Soiuzna SSR k mezhdunarod. konventsii po presecheniiu ovrashcheniia pronograficheskikh izdaniia i torgovli imi’, 1935. For the decree on the new law see GARF, Fond 5446, Opis 16, Dela 4002, ‘Ot otvetstvennosti za izgotovlenie, khranenie i reklamirovanie pornograficheskikh izdelii, izobrazhenii i inykh predmetov i za torgovloiu imi,’ 1935.

¹⁴ ‘Repression of Circulation of Obscene Publications: Arrangement Signed at Paris Mary 4 1910,’ in Charles Bevans, *Treaties and Other International Agreements of the United States of America 1776-1949: Volume I Multilateral 1776-1917*, Washington, DC: Department of State, 1968, pp. 748-751.

security embedded in emergent norms of international criminal law? Scholars of this period have tended to focus on emergent international legal norms concerning politically sensitive issues such as terrorism and cross-border anarchism.¹⁵ But as this article will argue, those who hoped international criminal law could shore up global security were also concerned with keeping populations (and polities) safe from sexual ‘deviance’. Their understanding of deviance was both gendered and raced, a fact that underlined the divisions at the heart of calls for global cooperation and solidarity. Scholars such as Deana Heath and Pamela Cheek have demonstrated the extent to which the regulation of obscenity in the eighteenth and nineteenth centuries was a fundamental component of the specifically imperial biopolitics of the British and French empires.¹⁶ How might an examination of the entanglements of Russian domestic and international attempts to suppress/regulate pornography help us to understand the ways in which obscenity regulations were not just national or imperial, but also *international* biopolitical projects at the turn of the last century?¹⁷

Second (and relatedly): what was the domestic significance of Russian and later Soviet criminologists’ engagements with bodies such as the International Union for Penal Law? While previous historians have acknowledged international influence on the initiation of domestic Soviet law regarding obscenity, none have probed the potential dialogic relationship between the ‘international’ and ‘domestic’ as sites of state intervention against crime in this period.¹⁸ As this

¹⁵ See for example Lewis, *The Birth of the New Justice: The Internationalization of Crime and Punishment, 1919-1950*. OUP Oxford, 2014; Richard Bach Jensen, *The Battle Against Anarchist Terrorism: An International History, 1878-1934*, Cambridge: Cambridge University Press, 2013; Mary S. Barton "The Global War on Anarchism: The United States and International Anarchist Terrorism, 1898–1904." *Diplomatic History* 39.2 (2015): 303-330.

¹⁶ Deanna Heath, *Purifying Empire: Obscenity and the Politics of Moral Regulation in Britain, India and Australia*, Cambridge: Cambridge University Press, 2010; Pamela Cheek, *Sexual Antipodes: Enlightenment, Globalization, and the Placing of Sex*, Stanford: Stanford University Press, 2003. Heath argues that, in the British case, ‘empire played an important role...in spurring the transformation of obscenity regulation from a juridical to a governmental form of power,’ as ‘the governmentalization of the socio-moral realm by the state had come to be regarded as vital for the maintenance of the ‘strength’ and purity’ of the British nation – and also its empire.’ As we shall see below, similar claims were being made in immediately pre-war Russia. Heath, *Purifying Empire*, pp. 63-64.

¹⁷ Here I draw on Alison Bashford’s illuminating discussion of the varied and contingent ways in which national biopolitical projects can become international (or, separately, global) ones, in Alison Bashford, ‘Global Biopolitics and the History of World Health,’ *History of the Human Sciences*, 19:1, February 2006, pp. 67-88.

¹⁸ I refer here to Paul Goldschmidt, *Pornography and Democratization: Legislating Obscenity in Post-Communist Russia*, Boulder, CO: Westview Press, 1999, p. 168. In discussing the production (as opposed to recognition) of the domestic and international as different governmental scales when it comes to issues of sexual prohibition, I draw on the work of Stephen Legg in his ‘Transnationalism and the Scalar Politics of Imperialism’ *New Global Studies*, 4:1, 2010, pp1-9. As Legg argues in relation to his research on prostitution regulation in colonial India, nineteenth and

article will demonstrate, the connection between international engagement and Russian criminologists' emphasis on sexual deviance – particularly *cross-border* sexual deviance - was not incidental. The vogue for building links with foreign criminologists led to a particular interest in crimes that crossed jurisdictions, which then infused the language with which criminologists discussed such crimes at a domestic level. The particular vision of international (*mezhdunarodnoe*) crime that emerged in this period framed it as the product of an eroticized world of underground networks, shady characters and criminal gangs. The cross-border traffic in women and in pornography shared the stage with international trafficking in drugs as the most concerning manifestations of international crime.¹⁹ The conceptualisation of obscenity as primarily a *transnational* phenomenon that must be attacked at an *international* level was thus intrinsic to the understanding of pornography proposed by many Russian and early Soviet criminologists at the turn of the last century.

Finally, how might a better understanding of the mutual constitution of international and domestic scales of criminal law reveal new insights about the entanglement of purportedly liberal and illiberal modes of governance regarding sexual crime, and the related question of continuities and ruptures across the revolutionary divide? Discussions about the relative (il)liberalism of Russian jurists and bureaucrats in the late imperial and early Soviet periods are always inherently relative, as they rely on (often unspoken) comparisons with the supposed (il)liberalism of Russia's western neighbours.²⁰ But when we look at Russian involvement in organisations such as the International Union of Penal Law, we see a more complicated picture than that provided by spectrums of global fin-de-siècle liberalism. Closer attention to Russian jurists' international entanglements in this period has the potential to help us reframe how we see the link between the political and legal commitments of early twentieth century criminologists

twentieth biopolitical projects depended not only on the trans-national movement of ideas and people, but also upon a particular scalar politics in which the 'national' and 'international' were produced as supposedly semi-autonomous (but in fact mutually constitutive) zones of governance.

¹⁹ See for example Lewis, *The Birth of the New Justice*, 2014; Kevin John Heller, *The Nuremberg Military Tribunals and the Origins of International Criminal Law*, Oxford: Oxford University Press, 2011.

²⁰ A classic of the genre is, of course, Laura Engelstein, "Combined Underdevelopment: Discipline and the Law in Imperial and Soviet Russia." *The American Historical Review* 98.2 (1993): 338-353.

both before and after 1917, a key theme in recent work on the history of international criminal law.²¹

Before I continue, a word on the terminology of ‘international crime.’ When participants in the International Union discussed the movement of people, drugs or obscene material across borders they used the term ‘international’ rather than the more early-twentieth-first century terms ‘transnational’ or ‘cross-border.’ Similarly, the Russian group always referred to *mezhdunarodnoe prestuplenie* (international crime). I will thus use the term ‘international’ in this article. However, this is not an uncontroversial choice. Today, when we refer to international crime or international criminal law, we are almost always referring to so-called crimes against the international order, including genocide, crimes against humanity, and crimes against the ‘laws of war.’ A reader will not find ‘pornography’ listed as a category in any of the excellent recent histories written of international crime.²² Conversely, Paul Knepper, in his two thorough books on the evolution of international crime, addresses what we would now call cross-border crime without highlighting the conceptual confusion caused by the term.²³

Here, I choose to avoid presentist renderings of the crimes considered as ‘cross-border’ and refer to them by the term – ‘international’ - used by my subjects. I do so partly to avoid anachronism, but also because I think that the conceptual confusion highlights an analytic tension within this period itself. Participants in the International Union for Penal Law saw themselves forming an explicitly *international* (that is, supra-national) body whose tasks would be in part comparative, with an ultimate aim of working towards the codification and unification of criminal law codes globally. At the same time, their interest in borders and crossing them intellectually made them some of the first criminologists to concentrate closely on crimes that

²¹ Recent works problematizing simplistic labelling of international jurists as ‘liberal’ or ‘illiberal’ include Lewis, *The Birth of the New* and Gerry Simpson, *Law, War and Crime: War Crimes, Trials and the Reinvention of International Law*, Polity, 2007. See also Mira Siegelberg’s review essay, ‘Neither Right nor Left: Interwar Internationalism between Justice and Order.’ *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 6.3 (2015): 465-477.

²² Lewis, *The Birth of a New Justice*, 2014; Kevin Jon Heller, *The Nuremberg Military Tribunals and the Origins of International Criminal Law*, Oxford: Oxford University Press, 2011.

²³ Paul Knepper, *The Invention of International Crime: A Global Issue in the Making*, London: Palgrave, 2010; Paul Knepper, *International Crime in the Twentieth Century: The League of Nations Era, 1919-1939*, London: Palgrave, 2011.

crossed borders *physically* and combined (or confused) jurisdictions. As such, the international and the transnational were for them conceptually interrelated and even at times collapsed. As this demonstrates, the foci of specialists often changed when they shifted between domestic and international fora; furthermore, international criminology and transnational crime were mutually constituted as objects of analysis.²⁴ When we examine Russia's engagement with international criminal law, we see that the early focus on prison reform and comparative penological regimes directly fed into the development of a concept of international or cross-border crime, a concept that focused somewhat disproportionately on sexual crimes - both the traffic in women and the traffic in pornography - by the early twentieth century.²⁵ In the International Union (and its Russian Group), the focus on differences and similarities between national legal systems directed attention to the places where the cleavages might seem particularly troublesome, and where crime was cross-jurisdictional.

The International Union of Penal Law

Of all the international organisations with which late imperial criminologists engaged, the most significant was the International Union for Penal Law.²⁶ The International Union had been founded in 1889 by northern European criminal law specialists Franz von Liszt (Germany),

²⁴ At the same time, the emergence of international crime as an object of concern gave domestic police organizations a rationale for transnational cooperation, shoring up their own authority and expanding the horizons of their operations. See Mathieu Deflem, *Policing world society: historical foundations of international police cooperation*. Oxford: Oxford University Press, 2002.

²⁵ On the traffic in women see Philippa Hetherington, 'Victims of the Social Temperament: Prostitution, Migration and the Traffic in Women from Russia and the Soviet Union, 1885-1935,' PhD Dissertation, Harvard University, 2014.

²⁶ It is worth noting that this organization, founded in 1889, had its precursors in international networks examining prison reform and prison management, which had first coalesced in the 1830s. The International Penal and Penitentiary Commission, founded in London in 1872, preceded the International Union by nearly 20 years, and was seen as a competitor to it for much of the early twentieth century. Russia began as an active participant the International Penal and Penitentiary Commission, even hosting the 1890 congress in St Petersburg. However, this involvement tapered off in the early twentieth century, a development that was inversely proportional to the growth in involvement in the International Union for Penal Law. Knepper, *The Invention of International crime*, p.4; Benedict S. Alper, 'Historical Roots of International Concern and Action in the Field of Crime,' *International Journal of Comparative and Applied Justice*, 11:1, 1987, pp. 95-109; especially p. 99. On the nineteenth century prison reform movement see Martina Henze, 'Transnational Cooperation and Criminal Policy: The International Prison Reform Movement, 1820s-1950s,' in Davide Rodogno, Bernhard Struk and Jakob Vogel, *Shaping the Transnational Sphere: Experts, Networks and Issues from the 1840s to the 1930s*, New York: Berghahn Books, 2015; Estelle B Freedman, *Their sisters' keepers: Women's prison reform in America, 1830-1930*. University of Michigan Press, 1984.

Adolphe Prins (Belgium) and G.A. van Hamel (the Netherlands).²⁷ Its primary methodological focus was to emphasize the social causes of crime, its sociological and (to a lesser extent) anthropological causes, and the necessary social solutions to it.²⁸ The founders of the International Union insisted that no punishment should fail to take into account a criminal's environment and mental state, and that differentiations had to be made between 'occasional' and 'habitual' criminals, with concordant differentiation in sentencing. It is worth noting that the International Union saw itself as quite separate from the figures that clustered around the regular International Congresses of Criminal Anthropology, who largely followed the infamous Cesare Lombroso and whose first congress occurred in Rome in 1885.²⁹ While the followers of Lombroso favoured biological explanations for criminality resting on certain understandings of 'atavism,' the criminologists associated with the International Union for Penal Law favoured sociological explanations and put more faith in the possibility of reform. By 1905, the register of the International Union stated that thirty countries and 1200 participants formed the organization, by far the largest of its kind by the early twentieth century.³⁰

The Russian Group of the International Union of Penal Law (*Russkaia Gruppy Mezhdunarodnykh Soiuz Kriminalistov*) was founded in 1897, although Russian participants had attended independently since the first congress.³¹ The Russian Group was one of the most active in Europe; by the time of the 1912 congress it was the largest national group, with over four hundred participants (to put this into perspective, the next largest was the German group, with

²⁷ Reminiscing about this foundation decades later, van Hamel recalled how he and von Liszt came up with the idea of an international organization focused on the sociological study of crime and reform along social-criminological lines while walking together in the Siebengeburg mountains along the Rhine. The majestic environment inspired them in their lofty goal, he declared, which was to divest criminal law of its 'dogmatic and purely legal character' and infuse it with 'a spirit of realism in its principles and aims.' G.A. Van Hamel, 'Farewell Message to the International Union of Criminal Law', *Journal of Criminal Law and Criminology*, 5:3, 1914, pp. 325, 327.

²⁸ As such, it accorded with the 'social' focus that Koskenniemi has also identified among the 'men of 1873' who founded the Institution of International Law. Koskenniemi, *The Gentle Civilizer*, pp. 47-51.

²⁹ On the internationalisation of Lombrosian Criminal Anthropology see Knepper, *Invention of International Crime*, pp. 158-187; Martine Kaluszynski, 'The International Congresses of Criminal Anthropology,' in Peter Becker and Richard F. Wetzell (eds), *Criminals and their Scientists: The History of Criminology in International Perspective*, Cambridge: Cambridge University Press, 2006, pp.303-316.

³⁰ Radzinowicz, *The Roots of the International*, p2.

³¹ *Rossiiskii Gosudarstvenyi Istoricheskii Arkhiv* (hereafter RGIA), Fond 1405, Opis' 542, Delo 972, 'Ob uchrezhdenii pri Sankt Peterburgskom iuridicheskom obshchestvo gruppi mezhdunarodnogo soiuzu ugolovnogo prava.' 1897. See also 'Izveshchenie: Mezhdunarodnyi S'ezd Kriminalistov v S-Peterburge,' *Zhurnal Ministerstva Iustitsii*, SPb, 1902, 6, p. 338.

293 members).³² While lawyers and criminologists from St Petersburg and Moscow were the most well-represented among these four hundred, participants came from twenty-nine different imperial cities, as far-flung as Vilnius, Baku and Simferopol.³³ It is worth noting that, while the Russian Group was not officially connected to the Ministries of Justice or the Interior, a number of its members worked for the state in some capacity. Most prominently, the Justice Minister, Ivan Shcheglovitov (later infamous as one of the initiators of the anti-Semitic Beilis Trial) was a member, as was Sergei Nabokov, the Governor of Kurland province (modern-day Latvia).³⁴ The Russian Group also counted amongst its members a number of mid-ranked bureaucrats within the Justice and Finance ministries and a number of senators, including renowned criminologist, drafter of the 1903 reformed Criminal Code, and member of the State Council, Nikolai Tagantsev.³⁵

Domestically, the Russian Group became the one of the most prominent forums for discussion of the social causes of crime in Russia, as well as a vociferous proponent of prison reform and popularizer of the notion of the threat of international crime. Leading the group from its foundation was I. Ia. Foinitskii, a senator and professor of law at St Petersburg University.³⁶ Foinitskii was an avowed legal positivist, and thus the Association's focus on crime from a sociological and anthropological perspective accorded closely with his own approach. He also placed a great emphasis on the state of mind of the criminal, his or her *sostoianie litsa*, to which punishment should be adapted.³⁷ Foinitskii thus drew somewhat on the Lombrosian, criminal anthropological approach to the figure of the offender, although like his fellow Russian

³² Prof. P.I. Liublinskii, *Mezhdunarodnye S'ezdy po voprosam Ugolovnago Prava za desiat' let (1905-1915)*, Petrograd: Senatskaia Tipografiia, 1915, p. 144.

³³ See the list of members of the Russian Group of the International Union in *Mitteilungen der Internationalen Kriminalistischen Vereinigung XIX*, Berlin: J. Guttentag, Verlagsbuchhandlung, 1912, pp. 33-45.

³⁴ *Mitteilungen der Internationalen Kriminalistischen Vereinigung XIX*, pp. 40, 42. On Shcheglovitov and the Beilis case see Robert Weinberg, *Blood Libel in Late Imperial Russia: The Ritual Murder Trial of Mendel Beilis*, Bloomington, IN: Indiana University Press, 2014, pp. 36-37.

³⁵ *Mitteilungen der Internationalen Kriminalistischen Vereinigung XIX*, Berlin: J. Guttentag, Verlagsbuchhandlung, 1912, pp. 33-45. On Tagantsev see N.I. Zagorodnikov, *Nikolai Stepanovich Tagantsev*, Moscow: Nauka, 1994. On the drafting of the 1903 Draft Criminal Code see Engelstein, *The Keys to Happiness*, especially pp. 35-41; Frances Nethercott, *Russian Legal Culture Before and After Communism: Criminal Justice, Politics and the Public Sphere*, London: Routledge, 2007, pp. 21-39.

³⁶ 'Izveshchenie: Mezhdunarodnyi', p338.

³⁷ Nethercott, *Russian Legal Culture*, p54.

criminologists (and unlike the Italians) he never placed more emphasis on biological/anthropological factors than on social/environmental ones.³⁸

Other key Russian juridical figures involved in the Russian Group of the International Union included the liberal jurist V.D. Nabokov; professor of Criminal Law at St Petersburg University A.A. Zhizhilenko, the legal historian D.A. Dril', the top international law specialist F.F. Martens, the constitutionalist P. I. Liublinskii and the legal sociologist M.N. Gernet. Each of these figures sat, at different points in time, on the executive committee of the Russian group. All were at the forefront of the effort to recodify Russian criminal law in the early twentieth century, and many also continued this work in the early Soviet period, thus bringing a marked international criminological perspective into Soviet conceptions of crime.³⁹

In 1902, the importance of the Russian Group was underlined when the International Union decided to hold its 1902 Congress in St Petersburg. Permission for the convening of this congress came directly from the Tsar, and it was opened by the Minister of Justice, N.V. Muraviev.⁴⁰ Despite this statist positioning, the social reformist sympathies of the conveners are also evident; the agenda for the conference as announced in 1901 was to focus on two broad areas: the rehabilitation of liberated criminals (*patronat*) and the defence in justice of the rights of women (specifically, the trafficking in women for prostitution or *torgovliia zhenshchinami*). Through focusing on the traffic in women, the question of 'international' or cross-border crime was given a particular prominence in the congress organised by the Russian group. In their letter to von Liszt planning the congress, the Russian group stated that 'the regulatory solution to these

³⁸ On the general eschewal of strictly Lombrosian approaches to crime by Russian criminologists see Laura Engelstein, *The Keys to Happiness: Sex and the Search for Modernity in Fin-de-Siecle Russia*, Ithaca: Cornell University Press, 1992, pp. 132-138; Daniel Beer, *Renovating Russia: The Human Sciences and the Fate of Liberal Modernity, 1880-1935*, Ithaca: Cornell University Press, 2008, pp. 100-115; Sharon Kowalsky, *Deviant Women: Female Crime and Criminology in Revolutionary Russia, 1880-1930*, DeKalb: Northern Illinois University Press, 2009, Chapter 1: 'Anthropology, Sociology and Female Crime: The Origins of Criminology in Russia.'

³⁹ For more biographical information on V.D. Nabokov see Kirill Solov'ev, 'Vladimir Dmitrievich Nabokov, "Ispolnitel'naia vlast' da pokoritsia vlasti zakonodatel'noi!"', in A.A. Kara-Murzy (ed.), *Rossiiskii liberalizm: idei i liudi*, Moscow: Novoe Izdatel'stvo, 2007, pp. 690-698; on F.F. Martens Lauri Mälksoo, "FF Martens and His Time: When Russia Was an Integral Part of the European Tradition of International Law." *European Journal of International Law* 25.3 (2014): 811-829.

⁴⁰ 'Izveshchenie: Mezhdunarodnyi S'ezd', p343; Speech by V.D.Nabokov, in *Russkaia Gruppy: Mezhdunarodnago Soiuzu Kriminalistov*, SPb: Tip. Lit Obshestvennaia Pol'za, 1909, p. 1.

questions has a great importance for our homeland.⁴¹ On the domestic front, the announcement of the congress stated that the event had been specifically planned to ‘highlight the dignity of our great homeland’, framing Russian legal specialists as figures at the forefront of an emergent narrative of progressive change in continental criminology.⁴²

The International Union between Rehabilitation and the New Victimology

The political leanings of the International Union itself are difficult to categorise. Paul Knepper has warned against flattening ideological differences within such international organizations, as ‘even when perspectives have shifted to wider social and economic influences, it is difficult to locate a distinctive pattern of perceptions in the system of treaties and agreements that comprise international policy, and particularly at a time when this ‘system’ was as inchoate as it was in the late nineteenth century.’⁴³ Nonetheless, an emphasis on penal reform and the need for moral and social uplift of criminals meant that many members of the Union frequently placed themselves on the side of progressive political currents, a position emphasized by many of its participants in the lead up to World War I.⁴⁴ Furthermore, many participants made the argument that international collaboration of this sort led inexorably to liberal reform. Writing in 1911, for example, Dutch member J.A. van Hamel knitted together international collaboration and reformist sympathies, declaring that ‘(the Union) has succeeded in stimulating an interchange of ideas and experience, by arranging periodical conferences, and by eliciting extensive preliminary reports containing valuable information and observations on different subjects.... It may be said that the general decline of admiration for imprisonment as the ideal form of punishment is largely due to the influence of the International Union.’⁴⁵

Certainly, the International Union’s pet projects, which included suspended sentences, the introduction of fines rather than imprisonment, greater protections for child offenders and the

⁴¹ *Union Internationale Du Droit Penal. Groupe Russe. Travaux du Groupe. 1899-1901.* St Petersburg, 1902, p. 91.

⁴² *Izveshchenie: Mezhdunarodnyi S’ezd*, p. 344.

⁴³ Knepper, *Invention of International Crime*, p. 6

⁴⁴ See for example Nabokov’s discussion of the 1905-6 revolution below.

⁴⁵ J.A. van Hamel ‘The International Union of Criminal Law’, *Journal of the American Institute of Criminal Law and Criminology*, May 1911, pp24-25

introduction of special juvenile courts, suggested that their claims of working towards a more ‘humane’ criminology had weight. However, their projected solutions to the problems of poverty and institutionalized marginalization experienced by many of the ‘criminals by environment’ evinced a notable paternalism, involving ‘social patronage’ or the establishment of state-run institutions to turn released criminals into productive members of society.⁴⁶ Furthermore, as Radzinowicz pointed out in his history of the International Union, it was ‘was not so much that the I.K.V. (International Union) was so very radical, but rather that those opposed to it were so conspicuously conservative. The Association in fact represented a kind of a comfortable established elitist European club, earnestly engaged in thinking about and probing into the field of criminal justice.’⁴⁷

A persistent focus of the Union that emphasized its liberal paternalism was the emphasis placed on recidivism, or criminals who re-offended. Von Lizst himself favoured prolonged detention for ‘certain categories of habitual vagrants, beggars, drunkards and those suffering from diminished responsibility.’⁴⁸ A number of the Union’s congresses were taken up with extensive discussions of ‘social defence’, or the prophylactic measures that society should take against criminals who seemed, in their words, ‘incorrigible.’⁴⁹ This obsession with recidivism suggests an essentialization of the ‘habitual’ criminal as opposed to the occasional one, which seemed to fly in the face of the insistence on the social causes of crime. This contradiction did

⁴⁶ For extensive discussions of social patronage within the Russian Group of the International Union see *Mezhdunarodnyi Soiuz Kriminalistov: Russkaia Gruppy*, SPb: Senatskaia Tipografiia, 1902, pp. 289-312; 351-359; 411-23; 460-507.

⁴⁷ Radzinowicz, *The Roots of the International*, p9.

⁴⁸ This emphasis appeared in the Union’s original founding statute, article four of which insisted that ‘the distinction between habitual and occasional delinquents is essential in practice as well as in theory, and should be at the base of provisions of penal law.’ In the same vein, article 9 declared that ‘with respect to incorrigible, habitual delinquents, the association holds that the penal system should aim at placing such delinquents beyond the possibility of harm or as long a time as possible and this independently of the gravity of the offense, even when there is merely a repetition of minor offenses.’ Radzinowicz, *The Roots of the International*, p. 36; Ronald P. Falkner, ‘Miscellany. The International Criminal Law Association.’ *Annals of the American Academy of Political and Social Science*, 1, July 1890, p. 160-161.

⁴⁹ See for example the commentaries by V. Nabokov and M. E. Garcon in ‘Congrès de Bruxelles: Rapport sur la questions: dans quels cas, determines par la loi, la notion de l’etat dangereux du delinquent peut-elle etre substituee a celle de l’acte delictueux poursuivi et dans quelles conditions est-elle compatible, au point de vue des mesures de defense sociale, avec les garanties de la liberte individuelle?’ in *Mitteilungen der Internationalen Kriminalistischen Vereinigung XVII*, Berlin: J. Guttentag, Verlagsbuchhandlung, 1910. One of the founders of the International Union, Adolphe Prins, was also the author on one of the most influential books on the social defense questions; Adolphe Prins, *La Defense Sociale et la Transformation du Droit Penal*, Brussels: Misch et Thron, 1910.

not escape the Russian and French delegations. In 1893, the Russians supported the French representative M. Berenger in vociferously condemning indeterminate sentences for inveterate criminals, and together they managed to have motions for the Union to support mandatory sentencing quashed.⁵⁰

However, over the late nineteenth and early twentieth centuries the position of the Russian participants in the International Union began to shift to a broader support for von Liszt's notion of 'social defence', and thus of the possibility of an incorrigible criminal. Not coincidentally, this shift occurred just as Russian criminologists came to be more concerned with international crime, a shift that involved an emphasis not on rehabilitating criminals (international criminals were invariably framed as incorrigible) but emphasising the harm done to victims (especially women and children).⁵¹ By the 1910s, prominent figures such as V.D. Nabokov and A.A. Zhizhilenko were publishing articles in the Russian Group's own *Zhurnal Ugolovnogo Prava i Protsessa*, which proposed a system of social defence (and, implicitly, indefinite detention) for the most 'dangerous' (*opasnye*) criminals.⁵² In this way, their strange marriage of sociological interpretations and a juridical defence of the location of criminality in individuals themselves paved the way for a similar essentialization of recidivists as 'socially harmful elements' under the Soviets in the 1920s.⁵³ Both before and after the revolution, belief in an incorrigible criminal did not necessarily mean that such incorrigibility was biologically determined in the Lombrosian sense; nonetheless even socially determined recidivism was deemed dangerous enough to mark repeat criminals as social dangers against which special

⁵⁰ *Union International. Groupe Russe*. P. 222.

⁵¹ On children as the victims of the international crime of trafficking in pornography see below; on women as the victims of the international trade in women see Hetherington, 'Victims of the Social Temperament,' 2014.

⁵² See V.D. Nabokov, 'K voprosu o 'opasnom sostoianii'', *Zhurnal Ugolovnogo Prava i Protsessa*, Vol. 2, 1912, pp25-34; A.A. Zhizhilenko, 'K voprosu o merakh sotsial'noi zashchity v otnoshenii opasnykh prestupnikov', *Zhurnal Ugolovnogo Prava i Protsessa*, Vol. 2, 1912, pp35-44; S.P. Ordynskii, 'K Metodologii opasnago sostianiia prestpnika' *Zhurnal Ugolovnogo Prava i Protsessa*, Vol. 2, 1912, pp45- 69; A.A. Zhizhilenko, *Mery sotsial'noi zashchity v otnoshenii opasnykh prestupnikov*, SPb: Tip. A.G. Rozena, 1911. See Daniel Beer's discussion of the shift to 'social defence' among Russian criminologists in Beer, *Renovating Russia*, pp. 124-129.

⁵³ On discussions in the 1920s about recidivists as 'socially harmful elements' see Paul Hagenloh, *Stalin's Police: Public Order and Mass Repression in the USSR, 1926-1941*, Washington, DC: Woodrow Wilson Center Press, 2009, pp. 28-29, 40-43. It is important to note, as Hagenloh does, that the category of socially harmful element included but was not limited to recidivist criminals.

forms of social defence must be mustered.⁵⁴ In this way, a marked focus on socially and environmentally produced deviance characterised the Russian Group of the International Union in its immediate pre-revolutionary years, a focus that we will also see repeated in discussions about the effect of pornography of children.

Nabokov and Zhizhilenko's emphasis on harsh treatment for the most dangerous criminals suggests that the Russian Group's dedication to the defence of the 'fundamental liberty of the individual' (in Berenger's words) only went so far. Indeed, if the inherent liberalism or progressive politics of the International Association were ambiguous, the political positioning of the Russian group was no less so. As noted above, the group was a part of the Tsarist legal establishment from its foundation. This did not mean, however, that individual members of the association shied away from critiques of government policy. In 1905, the group held its annual meeting in Kiev, right as the city was engulfed in revolution. Somewhat provocatively, it issued its first unanimous statement condemning the use of the death penalty, something Frances Nethercott has called an instance of a 'contained' *obshchestvennost'* gesture.⁵⁵ The police, unamused, used this as an opportunity to storm the meeting hall and shut down the group for political insubordination. Reflecting on these events in 1909, rather than playing down their political significance, Nabokov directly connected the Russian Group's activities in Kiev to the 'great social movement' then emerging in Russia.⁵⁶ Calling on the Russian Group not to lose its motivation in the post-revolutionary order, he declared that 'each cultural force, each enlightening step, is perhaps slow, but it brings us closer to the desired goal: the fostering in Russia of freedom and rule of law (*pravoporiadka*). What may be different now is not our political conviction, not our subjective assessment of the current situation, but I think, the clarity of the success of our struggle against darkness, ignorance and primitive savagery.'⁵⁷

⁵⁴ On discussions about recidivism immediately after 1917 see David Hoffmann, *Cultivating the Masses: Modern State Practices and Soviet Socialism, 1914-1939*, Ithaca: Cornell University Press, 2011, p. 293, fn. 199.

⁵⁵ Nethercott, *Russian Legal Culture*, p. 120.

⁵⁶ Speech by V.D. Nabokov at the Obshchee sobranie russkoi Mezhdunarodnago Soiuzza Kriminalistov v Moskve, 4.5.6.7 Ianvaria 1909, in *Russkaia Gruppy: Mezhdunarodnago Soiuzza Kriminalistov*, SPb, Tip. Lit 'Obshchestvennaia Pol'za, 1909, p. 2.

⁵⁷ Nabokov, pp. 3-4.

For much of its existence, and particularly in its early years, a key example of ‘ignorance and primitive savagery’ proffered by member of the Russian Group was the treatment of child offenders by the imperial criminal system.⁵⁸ While the International Union was separate from (and to an extent emerged in opposition to) the International Penal and Penitentiary Commission, its members shared the concern of the latter organization with the situation of juvenile criminals and in particular the desirability of their separation from adult offenders in enlightened prisons designed to reform more than punish. Indeed, a broad concern with the child offender permeates many of the International Union’s discussions, for it cut to the heart of questions about agency and responsibility in the criminal mind.⁵⁹

Significantly, from around 1905, concern with the child offender began to slip into concern with the protection of children from crime, and with crimes that may particularly endanger children.⁶⁰ It is at this point that we see a new victimology emerge within the Russian Group, whereby many of the same criminologists who had previously focused their attention on the rehabilitation of offenders turned to the protection of victims (and, relatedly, the elaboration of more carceral measures to punish particular forms of crime).⁶¹ The focus on children as victims may in part explain the International Union’s concern with the traffic in women and girls, a crime assumed to overwhelmingly affect ‘innocent’ female adolescents. Such young female victims were the ideal focus for the Russian Group’s brand of (semi-)liberal paternalism, which may go part of the way to explain why they and the International Union itself were eager to call for increasingly harsh punishments for the cross-border criminals perceived to be trafficking the girls. With the shift to a focus on cross-border crime in the immediate pre-war years, we thus see also a shift away from an emphasis on the rescue and rehabilitation of

⁵⁸ For an example of the over-representation of this topic within Russian Group meets see the records of their 1902 meeting in *Mezhdunarodnyi Soiuz Kriminalistov: Russkaia Gruppy*, especially pp. 158-203; 267-282.

⁵⁹ See Liublinskii, *Mezhdunarodnye S'ezdy*, pp. 5, 6-7, 40, 86, 124, 15, 236, 263-73, 324, 334.

⁶⁰ This was an explicit part of the rationale for focusing on the traffic in women in the 1902 St Petersburg conference of the International Union, for example.

⁶¹ Compare, for example, the emphasis on rehabilitation and critique of criminal transportation in the 1897 proceedings of the International Union, with moral panic about international crime, its effect on women and children, and attendant calls for stricter border controls evident the proceedings of the 1906 congress. *Mitteilungen der Internationalen Kriminalistischen Vereinigung VI*, Berlin: J. Guttentag, Verlagsbuchhandlung, 1897, pp. 280-289, 330-376, 427-431, 446-459; *Mitteilungen der Internationalen Kriminalistischen Vereinigung XIII*, Berlin: J. Guttentag, Verlagsbuchhandlung, 1906, pp. 260-267, 281-295, 295-367.

criminals and towards an emphasis on rooting out secret, clandestine underground networks of incorrigibly shady figures whose crimes were all the worse for their victimization of children and youths.

It is important to note that, in their engagement with the International Union, Russians were not merely readers of western trends. With their over-sized participation in the organisation, the Russian participants could not but help to shape the direction of the organisation. The effect of this on the coverage of international crimes can be seen in the Russian Group's insistence on including international trafficking in women on the agenda for the 1902 conference in St Petersburg, something that laid a path for the entire section devoted to 'combatting international crime' at the 1905 Hamburg conference of the International Union.⁶² Extrapolating from the discussions about trafficking at the 1902 conference, speakers at the 1905 Hamburg conference framed international crime as a conglomeration of different forms of nefarious 'trades', either the smuggling of (counterfeit) goods (in which the harm done was to the state and local businesses) or the trafficking in women and pornography (in which the harm done was to women or children).⁶³ In doing so, they contributed to an emergent re-spatialization of crime, in which certain crimes were deemed primarily cross-jurisdictional as opposed to solely domestic, and in which the scale at which they should be combatted was presented as an international one. While participants in the International Union continued to assume that it was ultimately national governments that would prosecute individual criminals, they called for these prosecutions to be able to occur in any jurisdiction, regardless of the accused's citizenship, and for international information bureaus to be formed to swap information about border-hopping

⁶² On the emphasis on international crime at the 1905 Hamburg conference see Liublinskii, *Mezhdunarodnye S'ezdy*, pp. 41-43; 162.

⁶³ Liublinskii, *Mezhdunarodnye S'ezdy*, pp. 41-43; 'Etude sur les moyens de reprimer la criminalité internationale,' *Mitteilungen der Internationalen Kriminalistischen Vereinigung XIII*, Berlin: J. Guttentag, Verlagsbuchhandlung, 1906 pp. 360-367; 'La lutte contre la criminalité internationale,' *Mitteilungen der Internationalen Kriminalistischen Vereinigung XIII*, pp. 281-360.

offenders.⁶⁴ Significantly, these rules were declared to apply only to ‘non-political crimes’, allowing states to continue to assert the right to grant asylum to political refugees.⁶⁵

The enthusiastic involvement of Russian jurists in the International Union, and their early insistence on focusing on cross-border crime, is somewhat puzzling when we consider that there was not yet at this time a recognised specialisation in international criminal law within the law faculties of the empire.⁶⁶ One possible explanation for why Russian jurists were so quick to ‘internationalise,’ and why they took up the concern with cross border crime so enthusiastically, is arguably that their enthusiasm for international crime matched the official support of the autocratic state for the Europe-wide co-ordination of policing and prosecutions of international ‘anarcho-terrorists.’⁶⁷ This is not to suggest that all members of the Russian Group overtly or covertly supported the autocratic government’s attempts to crush the revolutionary emigration. Rather it is to highlight the extent to which the Group’s appeal to the powerful (such as the Justice Minister Shcheglovitov) may have stemmed from this emphasis on the repression of international crime, as opposed to the rehabilitation of poor or juvenile offenders. The ability to attract powerful backers would not have hurt the Russian Group, a serendipitous intersection of interests that again problematizes easy distinctions between the liberal and illiberal aims of the Group (and of international criminal law more broadly).

Children, Pornography and Russian Criminology before 1917

As already noted above, the early twentieth century saw a gradual shift in concern from rehabilitating child offenders (although this always remained a pillar of the Russian Group’s

⁶⁴ See for example the resolutions of the International Union’s 1910 Washington Conference with regards to international crime, in Liublinskii, *Mezhdunarodnye S'ezdy*, p. 325.

⁶⁵ Liublinskii, *Mezhdunarodnye S'ezdy*, p. 325. Mark Lewis suggest that this distinction between political and non-political crimes was central to the emergence of international criminal law in the late nineteenth century, but does not elaborate on this point. See Mark Lewis, *The Birth of the New Justice*, p. 5.

⁶⁶ V.E. Grabar, *The History of International Law in Russia, 1647-1917*, Oxford: Clarendon Press, 1990, pp. 560-562. Grabar highlights the fact that discussions about international criminal law had almost entirely consisted of examination of extradition treaties before the late nineteenth century, when specialists in imperial universities began to examine cross-jurisdictional crimes in part as a result of the influence of the International Union as well as numerous international penitentiary congresses.

⁶⁷ On the prominence of the Russian government in international attempts to organise against anarchism and revolutionary socialism see Jensen, *The Battle Against Anarchist Terrorism*, pp. 259-340.

work) and towards rescuing child victims of specifically international crimes. While the traffic in women arguably garnered the most attention, for the Russian Group in particular an anxiety to protect children also permeated discussions about another cross-border crime - the international dissemination of pornography.⁶⁸ Indeed, between 1912 and 1913 the Russian Group's own journal, the *Zhurnal Ugolovnogo Prava i Protsessa*, was to become the site of some of the most extensive discussions of the legal regulation of pornography in Russia in this period.⁶⁹ These discussions linked a self-conscious styling of their authors as 'international' specialists with a concern with cross-border crime, and an emphasis on the particular dangers of this crime for children. As we will see below, this concern was framed as concern for children's inherent moral fibre, couched in a biologicistic language that echoed the more essentialist proponents at the International Union. In articulating their concern with children as victims of sexual crime, the Russian members of the International Union built on an existing concern with child victims evident in discussion by specialists in criminal law engaged in the drafting of the new 1903 imperial Russian Criminal Code. As Laura Engelstein has detailed, the framers of the 1903 draft code (including the later president of the Russian Group, V.D. Nabokov himself) saw the legal defence of minors as a key part of their proposed changes to the 1845 Criminal Code, calling for the age at which informed consent (to sex) was recognised to be raised from 10 to 12. They also raised the limit of judicial discretion on the question of a woman's 'ignorance' of the sexual act from 14 to 16.⁷⁰ Such changes could be seen to be in line with a broader concern about the corrupting possibilities of sex not only for children but also for adolescents, a concern evidenced by Russia's international criminologists.

Within the International Union, P.I. Liublinskii was the figure who came to be most associated with the struggle against cross-border pornography. Liublinskii's professional

⁶⁸ Concern with the male consumer as victim of pornography was not unusual in turn-of-the-century Europe. On the ways in which debates about pornography functioned as debates about the protection of bodily integrity (primarily of males) in the interwar period see Carolyn Dean, *The Frail Social Body: Pornography, Homosexuality and other Fantasies in Interwar France*, Berkeley: University of California Press, 2000.

⁶⁹ As Laura Engelstein has demonstrated, popular literature and the boulevard press were also suffused with concern about the deleterious effects of pornography in the post-1906 period in Russia; however few other 'serious' legal journals broached the topic. See Engelstein, *The Keys to Happiness*, pp. 359-420.

⁷⁰ Engelstein, *Keys to Happiness*, p. 80.

trajectory is particularly illustrative, as his work as an international jurist spanned the revolutionary divide and continued in the Soviet Union in the 1920s. An avowed international and comparative jurist, Liublinskii studied in the Law Faculty of St Petersburg State University in the early twentieth century, placing himself firmly in the self-identifying progressive camp of jurists with his 1907 masters' thesis 'Personal Freedom in Criminal Law.'⁷¹ Liublinskii's special foci were comparative law, particularly of Britain and the United States, the defence of minors, and sexual crimes. Such emphases accorded well with the existing emphases of the International Union. In May 1910 he graduated from junior to full committee member of the Russian Group of the International Union, after which he became one of its most prolific and regular members.⁷² Throughout this period, he repeatedly demonstrated a long-running concern with the protection of children, both the rehabilitation of child criminals and the protection of child victims. The year after completing his masters he wrote *Special Courts for the Young in North America and Western Europe*, which demonstrated the comparative approach Liublinskii took throughout his career, almost always resting his gaze on comparisons with the 'liberal' West.⁷³ In 1911 he followed up with the book *Courts for Minors in America as Education and Social Centres*.⁷⁴ Both works evince Liublinskii's long-term concern with the protection of juvenile criminals, and his continued tendency to carry a brief for the defendant even as he was helping to formulate a new emphasis on the victim, and especially the victim of sexual crime.

At the same time as he wrote about and researched the treatment of child criminals, Liublinskii began, from 1905, to become increasingly concerned about the ways in which new modes of transport and communication were facilitating the emergence of a criminal threat from abroad. For Liublinskii, the dawn of the twentieth century had brought new rash of particularly

⁷¹ V.A. Tomsinov, 'Pavel Isaevich Liublinskii (1882-1938). Biograficheskii ocherk', in P.I. Liublinskii, *Tekhnika, Tolkovanie i Kazuistika Ugolovnogo Kodeksa*, pod redaktsiei I s predisloviem doktora iuridicheskikh nauk, professor V.A. Tomsinova, Moscow: Izdatelstvo 'Zertsalo', 2004, ppvii-xii. The dissertation was published as P.I. Liublinskii, *Svoboda Lichnosti v ugolovnom protsessie*, St Petersburg, 1906.

⁷² 'Protokoly zasedanii Komiteta Russkoi Gruppy Mezhdunarodnago Soiuzza Kriminalistov,' *Zhurnal Ugolovnogo Prava i Protsessa*, 1, 1912, p. 280.

⁷³ P. I. Liublinskii, *Osobyie Sudy dlia Iunoshestva v Severnoi Amerike i Zapadnoi Evrope*, St Petersburg: Senatskaia Tipografiia, 1908. This pamphlet was a reprint of the same article which had appeared in the September-October issue of the *Zhurnal Ministerstva Iustitsii*.

⁷⁴ P.I. Liublinskii, *Sudy dlia nesovershennoletnikh v Amerike kak vospitatel'nye i sotsial'nye tsenry*, Moscow, tipolit tva I.N. Kushnerev, 1911.

heinous international criminals. They included ‘traders in women, so called-black bands, traders in fake goods, especially rarities, traffickers in false tickets, distributors of other lottery tickets, moneylenders, charlatans, and traders in pornographic literature (usually acting in gangs), (who) extend their activities to multiple states.’⁷⁵ Writing the history of the International Union’s activities between 1902 and 1908, Liublinskii noted approvingly that the Union had long called for a centralized police bureau to deal with these crimes.⁷⁶ Lamenting, however, that ‘without unification of criminal law it is difficult to beat all these armies of international criminals,’ he called for more strident declarations from the Union urging international police cooperation and the stricter surveillance of borders.⁷⁷ Such calls evidence a particular vision of international security in which a state’s sovereignty depended on its ability to secure its borders against international criminals while increasing communications with like-minded neighbouring states. The presence of two ‘sexual’ crimes within this order- the traffic in pornography and the traffic in women – suggests that this vision of international security was also at least partly bio-political, linking border security to the protection of the moral purity of the national body. As we can see, Liublinskii’s liberal critique of the reliance on police power and lack of constitutional protections *within* Russia did not extend to a critique of international policing and border control. In fact, Liublinskii seemed to see an extension of international policing as a corollary to an increase in ‘liberal’ protections within the Russian empire, as the responsibility for protecting citizens and preventing ‘deviance’ would be displaced onto a supposedly more trustworthy multi-lateral force, rather than left in the hands of the autocracy. Liublinskii’s liberalism at home and illiberalism abroad should thus not be seen as a contradiction, but rather indicative of the dialogic relationship between these spheres.

Although Liublinskii was the most prominent specialist in the relationship between children and crime in the Russian Group, it was one of his colleagues who, in the pages of the *Zhurnal Ugolovnogo Prava i Protsessa*, first made a connection between the international trade in pornography and the protection of Russian children. In 1912, the official journal of the

⁷⁵ Liublinskii, *Mezhdunarodnye S'ezdy*, pp42-43.

⁷⁶ Liublinskii, *Mezhdunarodnye S'ezdy*, pp. 161-162.

⁷⁷ Liublinskii, *Mezhdunarodnye S'ezdy*, p. 43.

Russian Group published an article by Elena Gal'perin-Gintsberg (who went by the moniker 'Elena G-g') on the struggle against transnational pornography.⁷⁸ Reflecting the International Union's outlook, the author framed pornography not so much as an internal problem of production and distribution, but a crime against international trade that relied on smuggling and underworld networks of criminals. The struggle against it must be international, she declared somewhat tendentiously, because consumption of pornography resulted in the premature sexual excesses of male youth, which in turn 'prevents the formation of muscle and related brain cells and thus leads to *the physical degeneration of the race*' (emphasis mine).⁷⁹ Drawing on the usually faint strain of degeneration theory and criminal anthropology in the Russian group, Gal'perin-Gintsberg argued that the protection of each national 'race' required the protection of its male members from excessive sexual arousal, and that this apparently intimate task was the job of the international community, a novel approach to justifications for international criminal law. Pornography was a particularly insidious problem, she suggested, precisely because of the way in which it impacted on young, ill-formed male organisms, which could in turn go on to join the ranks of 'habitual criminals' who the International Union so feared, and about whom the Russian group was increasingly worried.⁸⁰ In making this argument, Gal'perin-Gintsberg evoked a fin-de-siècle Russian understanding of the psycho-sexual fragility of childhood, present in a raft of pedagogical and paediatric pamphlets warning of dangers to children's nerves.⁸¹

⁷⁸ Elena Abramovna Gal'perin-Gintsberg was one of the few female specialists in criminal law writing in this period. Officially a journalist, she had studied law in Paris and wrote for both *the Zhurnal Ugolovnogo Prava i Protsessa* and the *Zhurnal Ministerstva Iustitsii*. Comparative law relating to sexual crime was a specialty of Gal'perin-Gintsberg and she also published a book on French legislation regarding child prostitution. According to the list of members of the Russian Group published in the 1912 Bulletin of the International Union, there were eleven female members (of 406 members overall). *Mitteilungen der Internationalen Kriminalistischen Vereinigung XLIX*, pp. 33-45. As Linda Edmondson has outlined, from 1906 women in imperial Russia could train to be lawyers, but they could not practice. Linda Edmondson, *Feminism in Russia: 1900-1917*, Stanford: Stanford University Press, 1984, pp. 147-148.

⁷⁹ Elena G-G, 'v', *Zhurnal Ugolovnogo Prava i Protsessa*, Volume 1, 1913, pp. 103- 104. This emphasis on the health of the race reflects the extent to which Russian specialists shared with their western European fellows a tendency to 'conceive of the nation's life in organic terms to be regulated by experts in the body's struggle against contamination and infection.' Dean, *The Frail Social Body*, p. 5.

⁸⁰ Elena G-G's concern with the possible 'criminal' impact of printed materials could also be seen in her article for a 1913 issue of the *Zhurnal Ugolovnogo Prava i Protsessa*, entitled 'Vliianie pressy na prestupnost'. In *Zhurnal Ugolovnogo Prava i Protsessa*, 4, 1913, pp. 62-70.

⁸¹ Engelstein, *The Keys to Happiness*, pp. 227-229, 234-236; Susan Morrissey, 'The Economy of Nerves: Health, Commercial Culture and the Self in Late Imperial Russia,' *Slavic Review*, 69:3, 2010, pp. 645-675 (see especially pp. 661-663).

According to this interpretation, early sexual arousal and masturbation were some of the greatest dangers in a child's upbringing and were to be avoided at all costs.⁸²

By combining a fin-de-siècle concern with the effect of arousal on the boy child's organism with fear of sexual contamination from abroad, Gal'perin-Gintsberg wrote a particular vision of cross-border sexual threat into her understanding of international criminal law. She thus demonstrated the ways in which the increasingly essentialist approach to criminality offered by the International Union could marry with degeneration theory in the supposed struggle against international crime, straying far from the social justifications for legal intervention that purportedly undergirded the international criminological approach. Her article points to the surprising entanglements of new ideas about international criminal law and the protection of the sexual and gender order of the empire in the early twentieth century, something that raises broader questions about the significance of gendered ideologies for the evolution of international law in this period.

On the domestic front, the punishments for the dissemination of pornography in Imperial criminal law also suggested a particular concern with the protection of children. Since 1845, article 1001 of the Penal Code (*Ulozhenie o Nakazaniiaakh*) had forbidden the printing and dissemination of works (*sochineniia*), which had the purpose of corrupting morals or were clearly against morality and public decency (*blagoprivoistost'*).⁸³ The punishment for contravention of this article was a fine of no more than 500 rubles, or arrest for a period between seven days and three months. This crime could be aggravated if the accused had shown the material to a child *and* was in a position of authority over them (that is, a teacher or guardian); in this case the punishment was imprisonment for two to four months.⁸⁴ There is surprisingly little historiographical literature on the prosecution of this law in the pre-1917 period; the political scientist Paul Goldschmidt claims that in practice articles 1001 and 1002 were very difficult to

⁸² See for example A. E. Gippius, *Vrach, kak vospitatel'*, Moscow, 1909, pp. 172-73, 194-201, cited in Morrissey, 'The Economy of Nerves,' p. 662.

⁸³ *Svod Zakonov Rossiiskoi Imperii* (pod. red. I.D. Mordukhai-Boltovskii), SPb: Deiatel', 1912, p. 102.

⁸⁴ *Svod Zakonov Rossiiskoi Imperii*, 1912, p. 103.

prosecute, but does not provide strong evidence to justify this claim.⁸⁵ Nonetheless, from studies such as that undertaken by Laura Engelstein, we do know that metaphors of the ‘pornographic’ abounded as a way to describe the broader political disorder present in Russian society between 1905 and 1914. The discursive preoccupation with the threat of the obscene, which Engelstein identifies as endemic amongst the writings of figures from Social-Democratic politicians to anti-Semitic ideologues, certainly inflected the commentary of Elena G-g and her contemporaries, who married it with a ‘scientific’ focus on cross-border crime inspired by the International Union.⁸⁶

Just before it ceased publication in 1914, the Russian Group’s journal fired another salvo into the debate on children and obscenity with an article by A.I. Zak, this time linking the new technology of film and child crime.⁸⁷ Even more stridently than Elena G-G, Zak linked the rise in supposed childhood delinquency with ‘obscene’ popular culture. This time he did not refer to pornography explicitly, however, but rather categorized all contemporary film as potentially obscene, using the term *razvrashchaiushchii*, which literally means ‘that which depraves.’ As this suggests, Zak envisaged film as the instigator of an active process of gradual moral degeneration in which children were the objects and victims. Film, he declared, ‘invaded the life of the child with new and powerful temptations, easily leading the child further down the criminal path.’⁸⁸ Film was worrisome because of issues around both form (erratically moving images) and content (frequently linked with ‘perversity’ [*isporchennost’*]) and Zak called for far greater legal restrictions on films, as well as a greater attempt by lawmakers to force filmmakers to make uplifting and positive films.⁸⁹ As we will see, both Elena G-g’s focus on the protection of children as the key justification for the suppression of pornography, and A. I. Zak’s particular concern with film, were echoed after the revolution, even more stridently, by their Russian Group colleague, Pavel Liublinskii.

⁸⁵ Paul Goldschmidt, ‘Democracy, Pornography, and state power: the case of legislating obscenity in post-communist Russia,’ Unpublished PhD Dissertation, University of Illinois Urbana-Champaign, 1995, pp. 291-292.

⁸⁶ Engelstein, *The Keys to Happiness*, pp. 276-383.

⁸⁷ A. I. Zak, ‘Kinematograf i detskaia prestupnost’, *Zhurnal Ugolovnogo Prava i Protsessa*, 1913, 3.

⁸⁸ Zak, ‘Kinematograf i detskaia prestupnost’, p. 24.

⁸⁹ Zak, ‘Kinematograf i detskaia prestupnost’, p. 31.

Obscenity after 1917: from Film Censorship to International Convention

Just before the revolution, Liublinskii penned an entry on ‘pornography’ for the late imperial compendium *Granat Encyclopaedic Dictionary*, which displayed both his comparativist outlook and his strong association of obscenity with international crime. Sensing the new biopolitical tenor of the time (albeit entirely anachronistically), he declared that ‘the struggle with pornography is a phenomenon of relatively recent times, when the regulation of popular morality has become one of the concerns of the law.’⁹⁰ Surveying the criminal prohibitions of pornography in Britain, France and Germany, Liublinskii claimed somewhat proudly that, when given the wide interpretation of pornography accorded by the Senatorial decisions by analogy on obscenity cases, Russia had the most complete anti-pornography provisions in Europe.⁹¹ Tellingly, for the evolving spatialization of ideas about obscenity, Liublinskii noted approvingly that, in recent times, the ‘struggle against pornography has moved to the international stage’ (*mezhdunarodnuiu pochvu*). This move was, he asserted, necessary, as ‘pornography must be declared an international crime that can be prosecuted independent of the place of perpetration.’⁹² Liublinskii’s spatial location of pornography as a crime in the ‘international’ arena fit both with the longstanding interest of the Russian Group of the International Union, but also with the recent developments in official international agreements regarding pornography, in particular the 1910 *International Agreement for the Suppression of Obscene Publications*.⁹³ This agreement had been hashed out by diplomats, anti-vice activists and prominent members of the International Union (such as the Russian Group’s earlier ally against social defence, the French senator Berenger) and was signed for Russia by the head of the Main Administration for Published

⁹⁰ P Liublinskii, ‘Pornografiia,’ *Entsiklopedicheskii Slovar’ Russkogo Bibliograficheskogo Instituta ‘Granat’*, T. 33 Polianovskii mir-Puazel’, 1916, p57.

⁹¹ The senatorial decisions to which Liublinskii referred were 1872/347, Kurochkina and 1872/348, Tkacheva.

⁹² P Liublinskii, ‘Pornografiia,’ *Entsiklopedicheskii Slovar’ Russkogo Bibliograficheskogo Instituta ‘Granat’*, T. 33 Polianovskii mir-Puazel’, 1916, p. 59.

⁹³ In the Granat entry Liublinskii refers specifically to a 1913 follow-up conference to the 1910 agreement, as an example of the ‘international stage’ on which anti-pornography laws were to be worked out. P Liublinskii, ‘Pornografiia,’ *Entsiklopedicheskii Slovar’ Russkogo Bibliograficheskogo Instituta ‘Granat’*, T. 33 Polianovskii mir-Puazel’, 1916, p. 59.

Materials and the editor of the Journal of the Ministry of Justice.⁹⁴ Members of the drafting committee drew links between the two great international sexual crimes of the era - trafficking in women and trafficking in pornography - arguing that the former was facilitated by the latter to the extent that the two phenomena were intimately entwined and one could not be combatted without the other.⁹⁵ The (non-binding) document went on to call for the centralization of information that may facilitate the circulation of pornography, and tighter regulations on the import and export of printed materials, two things for which Liublinskii and the International Union had been advocating since 1905.⁹⁶

After the revolution, some members of the Russian Group of the International Union, who had fiercely supported the Provisional Government, faced an uncertain future. Indeed, the Russian Group's undisputed leader in this period, V.D. Nabokov, was himself directly involved in the Provisional Government.⁹⁷ While Nabokov fled in late 1917, Liublinskii stayed, along with a number of his other colleagues in the Russian Group such as A.A. Zhizhilenko and M. Gernet who became prominent early Soviet criminologists (Zhizhilenko remained a specialist on sexual crime after the revolution).⁹⁸ While Liublinskii strategically abandoned his earlier interest in individual constitutional rights, another pre-war interest would stand him in good stead after 1917: namely, his concern with children as both offenders and victims of crime.⁹⁹ Liublinskii

⁹⁴ 'Repression of Circulation of Obscene Publications: Arrangement Signed at Paris May 4 1910,' in Charles Bevans, *Treaties and Other International Agreements of the United States of America 1776-1949: Volume I Multilateral 1776-1917*, Washington, DC: Department of State, 1968, pp. 748-751. The head of the Glavnoe Upravlenie po delam pechati was Aleksei Belegard'; the Ministry of Justice representative was Vladimir Deriuzhinskii. On Berenger's consistent anti-pornography activism (which earned him the nickname 'Père-la-Pudeur') see Dean, *The Frail Social Body*, p. 34.

⁹⁵ Heath, *Purifying Empire*, pp. 66-69; Walkowitz, 'The Politics of Prostitution.'

⁹⁶ 'Repression of Circulation of Obscene Publications: Arrangement Signed at Paris May 4 1910,' in Charles Bevans, *Treaties and Other International Agreements of the United States of America 1776-1949: Volume I Multilateral 1776-1917*, Washington, DC: Department of State, 1968, p. 748.

⁹⁷ See Nabokov's eyewitness account of the provisional government in V.D. Nabokov, *The Provisional Government*, Brisbane: University of Queensland Press, 1970.

⁹⁸ V.D. Nabokov's son, the author Vladimir Nabokov, recalled his father's passage out of Petersburg to Crimea in his memoir *Speak Memory: An Autobiography Revisited*, London: Penguin Classics, 2000, pp. 186-189. For more on Zhizhilenko's work on sexual crime see A.A. Zhizhilenko, *Polovye Prestuplenie st. 166-171 Ugolovnogo Kodeksa*, Moscow: Pravo i Zhizn', 1924.

⁹⁹ Liublinskii's post-revolutionary publications on the issue include P.I. Liublinskii, *Bor'ba s prestupnost'iu v detskom i iunosheskom vosvraste*, Moscow: Iuridicheskoe izd-vo Narkomiusta, 1923; P.I. Liublinskii, *Zakonodatel'naiia okhrana truda detei i podrostkov*, Petrograd: Akademia, 1923; P.I. Liublinskii, *Okhrana detstvo i bor'ba s bezprizornostiu*.

spent the early 1920s elaborating calls for greater ‘socio-legal defence of children’ - that is, a stronger legislative structures protecting both the bodily and psychological integrity of children as well as providing for their welfare. Recognising the shifting times, Liublinskii argued that his calls for a specifically socio-legal defence were particularly *Soviet*, as such infrastructure would ensure it was the state, and not parents, who protected the child. In his 1924 tract *The Defence of Childhood and the Struggle Against Child Homelessness (Okhrana detstva i bor’ba s bezprizornostiui)*, Liublinskii declared that ‘the state must be the highest guardian of the child’ and praised the new Soviet infrastructure (including practices such as the *patronirovanie*) that institutionalised state authority over children.¹⁰⁰ At the same time, he insisted that a specifically *legal* protection of children differed from the methods espoused by pedagogues, whose profession was the other key focus of early Soviet child reform attempts.¹⁰¹ Even Soviet pedagogues, he declared, study the development of the child from the viewpoint of their individual family relations, whereas socio-legal defence takes as its object the ‘social environment’ of the child and how it must be reformed; this social environment included, as we will see, the forms of media and cultural products the child consumed.¹⁰² The legal protections Liublinskii had in mind also included tighter criminal prohibitions on the sexual abuse of children; thus in his 1925 work *Crimes in the Arena of Sexual Relations (Prestupleniia v Oblastakh Polovykh Otnoshenii)*, he devoted a whole section to crimes against children and to his calls for the introduction of a flat age of 16 or both boys at girls, before which children could not be assumed to have consented to any sexual relations.¹⁰³ In making this argument Liublinskii argued that it was as much for the child’s psychic health as its physical health that the current situation, whereby sexual maturity was assessed on a case-by-case basis, must be amended.¹⁰⁴

¹⁰⁰ P.I. Liublinskii, *Okhrana detstva i bor’ba s bezprizornostiui*, 1924, p. 8. On the practice of *patronirovanie*, or state controlled foster care, see Laurie Bernstein, ‘Fostering the Next Generation of Socialists: Patronirovanie in the Fledgling Socialist State,’ *Journal of Family History*, 26:1, 2001, pp. 66-89.

¹⁰¹ On the role of the pedagogues see A.E. Dubnosova, ‘Pedagogicheskie metody perezovospitaniia nesovershennoletnikh prestupnikov 1918-1930,’ *Iurisprudentsiia*, 20:4, 2010, pp. 95-102.

¹⁰² Liublinskii, *Okhrana detstvo*, p. 6.

¹⁰³ Liublinskii, *Prestupleniia v Oblastakh Polovykh Otnoshenii*, Moscow: L.D. Frenkel, 1925, pp. 89-145.

¹⁰⁴ On the Soviet methodology for determining ‘sexual maturity’ (as opposed to age of consent) in criminal cases see Dan Healey, ‘Defining Sexual Maturity as the Soviet Alternative to an Age of Consent,’ in Frances Bernstein, Christopher Burton and Dan Healey, *Soviet Medicine: Culture, Practice and Science*, DeKalb: Northern Illinois

His concern with the ‘psychic’ also fed into Liublinskii’s formulation of the ‘socio-‘ in ‘socio-legal.’ Children’s social and cultural environment must ensure protection against any possible psychic trauma from exposure to sexual or obscene materials.

In 1925, Liublinskii combined his concern with sexual crime and the social protection of children in a monograph on obscenity, pornography and the protection of children from degenerating cultural influences in Soviet society. Entitled *Cinema and Children (Kinematograf i Deti)*, it is one of the only studies of obscenity and popular culture from early Soviet period.¹⁰⁵ In *Cinema and Children*, Liublinskii was particularly concerned with the ways in which internationalized popular culture interacted with cross-border smuggling in pornography to weaken children’s morals. In a context in which the Soviet public consumed a larger amount of foreign than domestically-produced films, Liublinskii identified a lack of control of censorship of film to be a key reason why it was exerting a ‘perverting’ effect on the youth (especially the male youth) of the fledgling Soviet Union.¹⁰⁶ Foreign films were, he declared, of a ‘very low moral standard’ and local authorities so far did a poor job of preventing children from watching obscene foreign films. Although the critique of foreign films fit well with 1920s hand-wringing about how to create truly ‘socialist’ cinema, it also dovetailed neatly with Liublinskii’s pre-revolutionary concern with the spread of obscenity across borders.¹⁰⁷ Technically, since the beginning of 1923, local Gosispolkom committees had been empowered to ban children under 16 from any films which had not been acknowledged by the local ‘political enlightenment committee’ as suitable for adolescents.¹⁰⁸ However, such laws had been weakly enforced, and, according to Liublinskii, in reality children were rarely barred from films.¹⁰⁹

University Press, 2010 and Dan Healey, *Bolshevik Sexual Forensics: Diagnosing Disorder in the Clinic and the Courtroom, 1917-1939*, DeKalb: Northern Illinois University Press, 2009, pp. 37-82.

¹⁰⁵ P.I. Liublinskii, *Kinematograf i Deti*, Moscow: Izd-vo Pravo I Zhizn’, 1925.

¹⁰⁶ On the ubiquity of foreign films in cinemas in the early Soviet Union see Denise Youngblood, *Movies for the Masses: Popular Cinema and Soviet Society in the 1920s*, Cambridge: Cambridge University Press, 1992, pp. 50-69; Denise J Youngblood, "The Amerikanshchina in Soviet Cinema." *Journal of Popular Film and Television* 19.4 (1992): 148-156.

¹⁰⁷ On the debates over what constituted ‘socialist’ cinema (as opposed to foreign, capitalist cinema) see Youngblood, *Movies for the Masses*, pp. 50-69.

¹⁰⁸ Liublinskii, *Cinema and Children*, p. 81.

¹⁰⁹ Liublinskii, *Kinematograf i Deti*, p. 82.

Liublinskii explicitly based his critique of film within a broader call to suppress the circulation of pornography and obscene materials in the Soviet Union, although neither terms (*pornografiia* and *razvrashchaiushchie materialy* in Russian) were carefully defined. Indeed, Soviet legislation was unclear on the question of pornography. Article 224 of the Criminal Code of 1922 prohibited the publishing and distribution of printed material not sanctioned by the State censor, in accordance with the RSFSR's 'Decree on the Main Administration for Literature and Publishing (Glavlit)' which in turn forbade the publication and sale of material 'bearing a pornographic character.'¹¹⁰ In many ways the Soviet legislation drew on that of the imperial period, making pornography a crime against censorship. Crucially, however, the Soviet legislation lacked reference to 'morality' (the Glavlit decree simply referred to 'pornographic materials' without any further explanation). There was also no aggravated penalty for circulating pornography amongst children; Liublinskii's focus on this purpose of anti-obscenity legislation can thus be seen as a sign of his continued embeddedness in pre-revolutionary (and international) debates about obscenity, as opposed to a specifically Soviet focus.

Drawing on his background in the International Union of Penal Law, Liublinskii dedicated a whole chapter of *Cinema and Children* to 'the *international* struggle against obscene material.' In it, he outlined the post-war attempts of the International Association for the Protection of Children to forge a transnational agreement to monitor cinema for obscene content (of which he approved) and the League of Nations' efforts to forge an international convention for the suppression of pornography (which he considered too weak to be effective, while critiquing the exclusive focus on criminal repression).¹¹¹ Discussing a 1923 meeting of the International Association in Geneva, Liublinskii praised its attempts to view 'obscenity' broadly as both a social and moral problem, and the particular emphasis on the negative impact of contemporary film on children.¹¹² He noted in particular calls for an international rating system

¹¹⁰ *Ugolovnyi kodeks RSFSR* (1922), st. 224; 'Polozhenie o Glavnom Upravlenii po delam literatury i izdatel'stva,' (Glavlit), 6 June 1922, in T.M. Goriaeva, *Istoriia sovetskoi politicheskoi tsenzury: Dokumenty I komentarii*, Moscow: ROSSPEN, 1997, p.35. On the background to the Glavlit decree see Stuart Finkel, *On the Ideological Front: The Russian Intelligentsia and the Making of the Soviet Public Sphere*, New Haven: Yale University Press, 2008, p. 148.

¹¹¹ Liublinskii, *Kinematograf i deti*, pp. 72-80.

¹¹² Liublinskii, *Kinematograf i deti*, pp. 78-79.

for cinema, which would mirror the film industry's own transnational nature with a standardized system for identifying content inappropriate for children.¹¹³ A number of League officials, including the secretary of the Social Section, Rachel Crowdy, attended the 1923 Geneva meeting of the International Association for the Protection of Children, and this presence promised the possibility of cross-fertilisation between the (non-governmental) International Association and the inter-governmental League. However, Liublinskii critiqued the fact that, in contrast to the International Association, League officials seemed exclusively interested in criminal repression of obscenity, as opposed to what he saw as necessary concurrent efforts to inculcate a 'positive' approach to cinema on the part of international youth.¹¹⁴

Even though by 1925 Liublinskii himself had ceased to frequent the meetings of international criminologists, he continued to publish on comparative legal questions and in particular on the state of socio-legal protection of children in the Anglo and Germanic worlds.¹¹⁵ Ironically, given his arguable influence on the very conceptualization of 'international pornography' in Soviet legal thought, after 1917 he took a more ambivalent position on the utility of international organizing against cross-border sexual crime (for which he had vociferously called in the days of the International Union). Surveying the international field in 1924, he declared that the countries associated with the International Association for the Protection of Children, founded in 1920 and with close connections to the League of Nations, had distinguished themselves by being interested not so much in the material welfare of children but in the defence of their moral fibres from the corrupting influence of capitalist culture.¹¹⁶ On the one hand Liublinskii sympathized - capitalism was, after all, very much corrupting - but he lamented that these countries thus focused only on improving the upbringing of children in the family, and espousing philanthropic methods in the place of any idea of state guardianship.

¹¹³ Liublinskii, *Kinematografi deti*, p. 74.

¹¹⁴ Liublinskii, *Kinematografi deti*, p. 79. From 1921, the League of Nations began to redraft early agreements on the multi-lateral prosecution of the trade in pornography, making the suppression of cross-border trade in obscene materials once again a question of international law. As with earlier agreements, the Convention limited itself to prohibiting the international distribution of pornography, leaving sovereign states to decide how best to suppress it within their borders.

¹¹⁵ See Liublinskii, *Okhrana Detstva*, which places recent changes in the Soviet Union in the context of in British, American and German law regarding children.

¹¹⁶ Liublinskii, *Okhrana Detstva*, p. 14.

Conversely the Soviet Union, he declared, had set up a successful system of child protection based around the *Detkomissii* and the struggle against child homelessness, which promised to improve both material and moral welfare of the child.¹¹⁷

In making these arguments, Liublinskii evidenced an ambivalence born of his eagerness both to describe (and sometimes implicitly praise) international cooperation around the issue of child protection and the suppression of pornography, *and* an understandable concern to distance himself from bourgeois philanthropists in the early Soviet period. At the same time, his own rhetoric proved to be internally contradictory. For all his insistence that it was attention to the material needs of the child that characterized Soviet approaches to child protections, Liublinskii's own concern with obscene materials evinced an abiding worry about explicitly *moral* corruption, and an urge to prohibit that highlights the ambivalence of his 'liberal' stance. This concern was one that stretched all the way back to his pre-1917 involvement with the International Union.

Liublinskii's discussions of the League of Nations' activism around pornography and international attempts to combat it were more directly connected to Soviet state practice than even he may have realised at the time. In early 1924, the General Secretariat of the League sent the Soviet Union's Commissariat of Foreign Affairs (NKID) the Committee's invitation to become party to the 31 August 1923 Convention on the Suppression of the Traffic in Obscene Materials.¹¹⁸ Initially, the Sovnarkom Legislative Commission balked at the League's insistence, in article 3 of the 1923 Convention, that the prosecutions of any cross-border crime could be worked out between national level court systems, which raised questions about the willingness of bordering states to collaborate with the Soviet policing infrastructure in questions of cross-border traffic.¹¹⁹ In 1923, these complications were enough to shelve Soviet plans to sign the Convention, despite an absence of any ideological objections to the repression of cross-border trades in pornography. It was a different matter, however, in 1935 when the League again approached the USSR to sign on to the Convention for the Suppression of Obscene Materials.

¹¹⁷ Liublinskii, *Okhrana Detstva*, p. 16.

¹¹⁸ GARF, Fond 5446, Opis' 5, Dela 226, l.1.

¹¹⁹ GARF Fond 5446, Opis' 5, Delo 226, l.12.

By now a member of the League, officials in the Commissariat of Foreign Affairs (NKID) took seriously the Soviet Union's potential obligation to sign the treaty. One point of initial concern was the suggestion, raised by members of the Legal Department of NKID, that Soviet anti-religious propaganda may be banned under this treaty, as some Western observers had accused it of blasphemy alike to obscenity.¹²⁰ Mollified that this would not be the case, however, the Legal Department recommended accession to the treaty, which was promptly completed on the eighth of November 1935.¹²¹ In 1935 both Sovnarkom and TsIK issued resolutions announcing the introduction of a new article in the Criminal Code of the RSFSR with all other republics to follow, which would bring Soviet law into line with the treaty.¹²² This amendment, which entered into force in 1936, supplemented article 182 of the Criminal code, in order to directly prohibit the production and dissemination of pornography (rather than leaving this to the Glavlit decrees).¹²³ It remained in force for the rest of the Soviet period, becoming article 228 of the 1960 Criminal Code.¹²⁴

Why did the Soviet state decide to sign on to the 1935 Convention? The decision to accede (the precise motivations for which remain somewhat opaque in the archival record) cannot be ascribed purely to Russian criminologists' fondness for defining pornography as an international crime, not least because the relationship of figures such as Liublinskii to state power was ambiguous by 1935. At the same time, it cannot be disentangled from the earlier work of figures associated with the Russian Group and the International Union itself, who lobbied for many years, and with considerable influence, for tougher prohibitions against international (sexual) crimes. The 1910 agreement on which the 1923 convention was based, and which was signed by the Russian empire, was itself in part a product of these discussions. Further, within

¹²⁰ AVP RF, Fond 54, Opis' 4, Papka 35, Delo 5, 1935, l.8.

¹²¹ AVP RF, Fond 54, Opis' 4, Papka 35, Delo 5, 1935, ll. 37-38; AVP RF Opis' 4, Papka 40, Delo 78, 1935, l. 18.

¹²² GARF, Fond 3316, Opis 28, Delo 178, 'O prisoedinenii Soiuzu SSR k mezhdunarod. konventsii po presecheniiu ovrashcheniia pronograficheskikh izdaniy i trgovli imi', 1935; GARF, Fond 5446, Opis 16, Delo 4002, 'Ob otvetstvennosti za izgotovlenie, khranenie i reklamirovanie pronograficheskikh izdelii', 1935.

¹²³ Postanovlenie No 21/2335, TsIK and Sovnarkom, 7 October 1935, 'Ob otvetstvennosti za izgotovlenie, khranenie i reklamirovanie pornograficheskikh izdaniy ozobrazhenii i inykh predmetkov iz za trgovliiu imi.' GARF Fond 5446, Opis' 1, delo 4002, l. 1. Officially published in SSSR, *Sobranie zakonov I razporiazhenii*, 56, 1935, st. 457.

¹²⁴ M. D. Shargorodskii and N. A. Beliaev, *Komentarii k Ugolovnomu Kodeksu, RSFSR 1960*, Leningrad: Izd-vo Leningradskogo un-ta, 1962, p. 380.

Russian criminological and juridical discourse, figures such as Liublinskii had helped to produce the very notion that an international stage existed on which particular (sexual) crimes were carried out and on which they must be combatted.

Conclusion

The enthusiastic involvement of late imperial Russian criminologists in international legal organisations had important implications not only for the tracing of legal networks, but also for the particular articulation of certain sexual crimes as inherently cross-border crimes in imperial and Soviet law and discourse. The tendency of the International Union to shift from comparative penological reform to cross-border crime suggests one reason for the emergence of international crime as a dominant category at the turn of the last century, as increasing collaboration among jurists and state officials across Europe led to a focus on the places where national law seemed to break down. In the late nineteenth and early twentieth centuries, international collaboration and international crime were mutually constituted categories.

The particular focus on *sexual* cross-border crimes favoured by the International Union and its followers proved influential, undergirding a discourse in which sexual deviance came from ‘abroad’, in the form of traffickers in pornography or women. If, as Mark Lewis has argued, debates about international criminal law are fundamentally debates about particular visions of international security, we can see that at the turn of the last century this vision of security was predicated on the regulation of the gender and sexual order through a *cordon sanitaire* against sexual deviance. As part of this discourse, international criminologists both from Russia and outside it, who had tied their liberalism to their support for the rehabilitation of *defendants*, began to worry more about the *victims* of specific crimes – crimes that were international and that seemed to target women and children. This drew them into discussions about which forms of criminal repression – including censorship and tighter border security – were best suited to eradicating these crimes, a focus that arguably appeared ‘illiberal’ in tone. Figures such as Liublinskii do not seem, however, to have viewed this as a contradiction. This is partly because the lines between liberal and illiberal approaches to crime were never fully

delineated, a fact that underlines the insufficiency of traditional labels for the politics of this period.¹²⁵ For many, concern with cross-border crimes such as the traffic in pornography and women still evinced a concern for the vulnerable that marked this as a progressive cause.¹²⁶ In the immediate pre-revolutionary period, specialists such as Elena Gal'perin-Gintsberg tied the evolution of international criminal law even more tightly to the regulation of the gender order, arguing that cross-border crimes directly threatened the psycho-sexual development of Russian (male) subjects. Along with discussions about the traffic in women, this served to locate sexual deviance outside the body politic, and to elevate it as an issue of such national importance that it required international co-operation at the level of diplomatic treaties to combat.

After the revolution, while Russian criminologists stopped attending meetings of the International Union, they brought this discourse of obscenity as an international problem targeting women and children into domestic Soviet legal discourse. In 1935, encouraged by the League of Nations, the Soviet state acceded to the latest round of official anti-pornography agreements, the 1923 Convention. This Convention was a direct descendant of the 1910 Agreement, and it shared its framing of pornography as an international problem with domestic ramifications that must be combatted cross-jurisdictionally. Tracing the genealogy of the 1935 accession and criminal law amendment back into the late nineteenth century, we see how a particular vision of the international as both a site of multilateral organization and a sphere of sexual crime came to be embedded within Soviet law on pornography. This history suggests that, far from an amusing curiosity, the Apastovskii Public Prosecutor's evocation of 1910 and 1923

¹²⁵ In a discussion of the Russian Group of the International Union's debates over the decriminalization of abortion, Laura Engelstein categorises the group as broadly cleaving to a 'progressive' approach to criminal law, but nonetheless split between centrist liberals (typified, for Engelstein, by Nabokov) and socialist radicals (for which she gives as an example Mikhail Gernet). However, as with the other historians who have briefly considered the Russian Group of the International Union, Engelstein places these criminologists within the matrix of domestic debates alone. A reconsideration of what was 'international' about these international criminologists can help us to problematize this binary understanding of the relative liberalism of its members, and to better comprehend its (often close) relationship to the autocratic state. See Engelstein, *The Keys to Happiness*, pp350-352.

¹²⁶ The tensions between carceral and rehabilitative approaches to 'rescuing' women and children are still evident in much feminist legal theorizing today, and just as at the turn of the last century these debates are in part occurring in the international arena. See Elizabeth Bernstein, "Militarized humanitarianism meets carceral feminism: The politics of sex, rights, and freedom in contemporary antitrafficking campaigns." *Signs* 36.1 (2010): 45-71; Janet Halley et al. "From the international to the local in feminist legal responses to rape, prostitution/sex work, and sex trafficking: Four studies in contemporary governance feminism." *Harv. JL & Gender* 29 (2006): 335-

international agreements in 2015 was true to the spirit of Russian obscenity law as it developed in the twentieth century.