

# Doing law, psychiatric expertise and 'crimes of passion' in the Netherlands and Russia in the twentieth century

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## Introduction

In recent years, feminist activists have called for renewed attention for and solutions to 'femicide' or the killing of women because they are women, by men, often their (ex-)partners. They proposed the term 'femicide' also as a replacement for the older notion of 'crimes of passion', regarding the latter term as a euphemism, that glamourised violence against women while also condoning or mitigating male aggression. As a legal term 'femicide' has been included as a separate crime in Latin American countries in the early twenty-first century.<sup>1</sup> This coining of new terms in relation to gendered crime does justice to the harrowing facts of violence to women. It dovetails with the aims of feminist legal studies, which demonstrate that the power of law – and the naming of crimes is one aspect of that – is not neutral and often works to the disadvantage of women and ethnic or LGBT+ minorities.

At the same time, legal scholars have pointed to the difficulties in defining femicide and to the way this term may also obscure the different motives for crimes against women.<sup>2</sup> From a historical perspective we can add that the term 'femicide' seems to describe an ahistorical, asymmetrical relationship between violent men and female victims. Arguably this term neglects both the historical and cultural variability of femicide and dealing with it. In this chapter we provide an historical and cross-cultural analysis of how different actors, such as the legislature, the judiciary and psychiatrists, together shaped the definition and prosecution of the precursors

of femicide, i.e. the 'crime of passion', as they were called in most Western European countries, and 'a homicide motivated by jealousy' in Russia. Taking a cultural-historical perspective, we use as a working definition a crime that revolved around an intimate relationship between adult men and women, and in which particularly love and jealousy played a role, including both male and female perpetrators and victims. Although this crime could be committed by both men and women, in the vast majority of cases the perpetrator was male, and the victim female. We provide two case studies – the Netherlands and Russia – to show how these crimes of passion have been defined by the law and prosecuted in practice in the twentieth century. We follow Rebekka Habermas's anthropological approach of 'doing law':

Developments in the legal system result in fact from the constantly changing interaction of norms, actors, and institutions. Thus, the idea that justice is 'set' or 'established' is replaced by the concept of a dynamic process involving a multitude of entities, which, endowed with varying degrees of power, repeatedly renegotiate justice.

'Doing law' entails looking at justice as a 'process of negotiation involving many participants rather than a process of assignment'.<sup>3</sup> In this way, through this cultural comparison and historical analysis, we aim to show that what a 'crime of passion' is, is not self-evident: it is continually debated and negotiated by multiple actors, both through time and space.

Building on our cross-cultural comparison, we conclude that both in Russia and the Netherlands the image of 'crimes of passion' revolved around 'othering': these crimes were seen as typical of other countries or classes, thus confirming a certain self-image. In the Netherlands, cultural and legal discourse claimed that the crime of passion, in which honour was central, was typically French and that the French legal system and press were lenient in their judgment of this crime, in contrast to the sensible, rational and emancipated Dutch. In Russia, political and legal discourse opposed socialism against capitalism, perceiving jealousy at the core of the crime of passion as a pernicious element of the capitalist mentality connected to private property and possessiveness.

However, we demonstrate that this cultural-political image did not always dovetail with legal and forensic practice; the latter was

much more complicated than a seemingly consistent cultural discourse surrounding crimes of passion. In the Netherlands, despite the claim that this country was not familiar with the crime of passion, in practice lawyers, prosecutors and psychiatrists regarded the pathology underlying this criminal behaviour as a serious diagnosis, potentially serving to mitigate the sentence of the (often male) perpetrator. In Russia, legal practice did not only connect an act of killing out of jealousy to ‘capitalist’ greed, but also to the offender’s illiteracy and lack of poor education or due to his mental abnormalities. Thus, whereas the cultural and political discourse on crimes of passion clearly identified certain (‘other’) perpetrators with specific motives, legal practice did not always correspond to this cultural-political imagery, and sometimes even contradicted it. Comparing Russian and Dutch forensic cultures can therefore inform us on the discrepancy between cultural-political images of a certain crime and forensic and legal practice.

### **Historiography of crimes of passion: national variability**

Before we discuss the Dutch and then the Russian case, it is important to sketch how modern European legal systems and forensic psychiatry have responded to the ‘crime of passion’. In the fledgling field of forensic psychiatry, doctors explored the relationship between insanity and emotions. From the early nineteenth century, mostly French and German physicians and psychiatrists had coined diagnostic concepts such as ‘affective monomania’, ‘moral insanity’ and later – around 1900 – ‘psychopathy’, notions which were not characterised simply by loss of reason but by the impact on the feelings or morals of the suspect. A perpetrator could display either a total lack of emotion or extreme feelings and yet not be diagnosed as completely insane.<sup>4</sup> This question of the boundaries between normal and pathological emotions, and their connection to insanity, reverberated in the legal and psychiatric discussions on crimes of passion.

The term ‘crime of passion’ has always been a popular, rather than a legal concept, in the sense that it never was a separate article in the law. However, some legal codes included it as a defence of honour and hence as a mitigating factor. This can be seen first

and foremost in the French Code Pénal from 1810, which was also imposed on other countries such as the Netherlands. Its article 324 stated that when a husband murdered his wife and her lover after catching them in adultery in the matrimonial home, his sentence would be reduced. This article was repealed in France in 1975. As Ute Frevert shows, these laws excusing (mostly) men acting out of wounded honour were not limited to southern-European countries.<sup>5</sup> Even if legal codes did not explicitly refer to adultery or honour, the notion of 'temporary insanity' could be used in judicial practice to refer to the emotional condition of the perpetrator serving as an excuse for the crime and possibly to a more lenient sentence. Emotions as part of the 'heat of passion' argument could thus act as a cover for honour.<sup>6</sup> Thus, throughout the twentieth century and in different legal systems, legal codes have allowed for a specific, possibly more lenient treatment for perpetrators of crimes of passion either implicitly or explicitly.

Historians have furthermore pointed to the presence of a jury and the influence of forensic psychiatrists as factors leading to an allowance of mitigating circumstances for perpetrators of crimes of passion. The jury is regarded as championing a popular acceptance of 'just' violence when gender norms were violated, leading to more lenient sentences for (male) perpetrators of crimes of passion, particularly relating to adulterous wives. A closer look at the empirical findings of historians, however, shows that the role of the jury in several countries has been variable.<sup>7</sup> Juries could also be out of step with a shifting popular opinion and cultural circumstances impacted variously in different countries.<sup>8</sup>

In most countries, the participation of forensic psychiatrists in court cases increased in the twentieth century. Psychiatrists themselves devoted numerous studies to the crime of passion, to sketch perpetrator profiles and explain the motives behind this deed. The infamous Italian criminal anthropologist Lombroso in the 1870s regarded perpetrators of crimes of passion as lofty and honourable in contrast to common criminals.<sup>9</sup> In contrast, one of Lombroso's followers, the doctor Léon Rabinowicz, saw the perpetrator of crimes of passion in the 1930s as abnormal and ill.<sup>10</sup> Historian Joëlle Guillaud therefore argues that after 1930, criminologists and psychiatrists viewed these crimes as dangerous, testifying to a bloodthirsty temperament.<sup>11</sup> However, this pathologisation

had started earlier. As Maurice Cottier mentions, already in the first decade of the twentieth century German and French doctors addressed pathological jealousy.<sup>12</sup> Generally, forensic doctors and psychiatrists were increasingly involved in many European countries, but they were not all-powerful or overruling the judiciary.<sup>13</sup> The influence of forensic psychiatry in the legal system showed many national variations.

To summarise, nearly all modern European legal systems in the twentieth century allowed for some kind of lenient treatment of perpetrators of crimes of passion, either via the law or via forensic psychiatry. In the following analysis we explore which actors were involved in ‘doing law’ regarding these crimes and what roles specific cultural-political imagery played in the Netherlands and Russia.

### **The image of the crime of passion in the Netherlands**

In the Netherlands – which had an inquisitorial system without a jury – the crime of passion never existed in the law but was prosecuted as murder or homicide. Nevertheless, in judicial practice prosecutors, lawyers and forensic psychiatrists did refer to ‘crimes of passion’. Before we explain what role this notion played in judicial practice, we will address the Dutch cultural image of the crime of passion and the ways psychiatry defined this type of crime.

Dutch texts written by criminologists and psychiatrists as well as Dutch newspapers testify to a representation of crimes of passion as ‘French’ and ‘other’, mostly in regard to its judgment, though sometimes also in regard to the motive and the type of perpetrator. Especially during the first half of the twentieth century, the crime was associated with typical French or southern-European passion and ‘traditional French clemency towards a crime passionnel’<sup>14</sup> because of the French jury system. The jury as well as the French sensationalised press were seen to contribute to popular understanding of this crime.<sup>15</sup> In 1938, a prosecutor in a court case stated that: “The general precaution demands, that in our country a “crime passionnel” is not given a conditional sentence.”<sup>16</sup> In 1947 psychiatrist Gerrit Kempe elaborated that ‘although it is correct that generally southern peoples are more violent than northern’,

the main difference was caused by the legal system: the French jury treated especially female perpetrators of crimes of passion leniently. A lay jury, according to Kempe, was different from 'experienced, cool, and critical professional judges'. Moreover, these types of cases gave eloquent lawyers the chance to 'shine', which, in combination with a sensationalised press, made the crimes in France more conspicuous, in contrast to the 'decent' Dutch newspapers.<sup>17</sup> In short, the French legal system and press were seen to lead to leniency and contrasted with the sober Dutch newspapers and the more professional and distanced Dutch judges.

In other respects, as well, the crime of passion offered an opportunity to compare the Dutch self-image to that of other countries. Firstly, Dutch criminologists and psychiatrists regarded this crime as typical for the lower classes. Sometimes, this was contrasted to the glamorous, more elitist, image of the French crime of passion. In France, psychiatrist Symon Tammenoms Bakker speculated in 1951, perpetrators frequently came from 'intellectual and society' circles. In contrast, the Dutch perpetrators he studied derived from the labouring classes, whom he saw as uninhibited and 'primitive'. Tammenoms Bakker thought that culturally and scientifically educated people held women in higher regard.<sup>18</sup> The connection between class and gender was also made by criminologist Samuel Philips, who found in his 1938 book that most male perpetrators belonged to the working classes.<sup>19</sup> The criminologist argued that it was clear that in the lower classes (he spoke of 'bad milieus') women were less appreciated than in the higher echelons of society. The reaction to disappointed love was regarded as more dangerous in the lower classes because they generally used aggression faster and had not yet grasped the woman's right to self-determination in regard to love. Therefore, Philips found it important to stimulate women's emancipation.<sup>20</sup> The crime of passion could also bolster a nationalist discourse, exemplified in a 1928 murder case in which an Italian man shot his twenty-year-old girlfriend after she had rejected him. During the trial the public prosecutor demanded freedom of choice for Dutch girls regarding fiancés, claiming they should not be terrorised by their male lovers.<sup>21</sup>

Secondly, the national self-image came to the fore in Dutch court cases in which the suspects were immigrants from countries in which honour was paramount. In 1966 an Italian miner killed

his Dutch blond, 'Northern'-looking wife after he had caught her with another man, in the presence of his own father. His lawyer pled for clemency since the man was from Sardinia 'where the wife is still considered to be a possession of the man'; and he had been hurt in his honour and manhood before the eyes of his father. The lawyer requested the court take into account that the man was overwhelmed by passion.<sup>22</sup> Foreign honour was also discussed in a case from 1965, in which a man from the Indonesian Kei-island, but living in the Netherlands, had killed his wife's lover. Dutch newspapers applied an orientalist discourse in their reports of the court case. The lover and his son had attacked the husband with a knife and kicked him, to which the latter had retaliated. Therefore the lawyer of the defence argued for self-defence and asked: 'Can a Western person understand this? There are Dutch legal scholars who argue that a sense of honour can prevent a suspect to run away so that resistance [self-defence] can be acceptable.' The prosecutor argued for manslaughter but stated that in fact it was a crime of passion. He pled that 'we should take into account different habits and ideas'. The suspect was sentenced to four years in prison.<sup>23</sup>

In these two court cases honour was presented as a quality that belonged to southern-European or eastern men, not to the Dutch. More generally, the crime of passion as described in Dutch newspapers and psychiatric texts could serve to distinguish the sensible, rational, emancipated Dutch from the passionate Other – often French, or Italian – for whom (male) honour mattered more. This representation dovetailed with the Dutch self-image of a sober, moderate, middle-class and civilised nation.<sup>24</sup>

### **Dutch psychiatrists and the profile of the criminal of passion**

As in other European countries, in the Netherlands, psychiatrists throughout the twentieth century were keen to find the boundaries between normal and pathological jealousy.<sup>25</sup> By mid-century, psychiatrists noted a change in the attitude of criminologists and judges towards crimes of passion: romance was no longer emphasised and the perpetrator had come to be seen as a selfish, mentally unstable human being, who gained personally from his crime.<sup>26</sup> Psychiatrist Tammenoms Bakker noted in 1951 that the

perpetrator's aggression was mostly directed at the object of his affection, rather than the lover of his ex. Other hallmarks included partial amnesia and suicidal thoughts and attempts.<sup>27</sup> Nearly all perpetrators had a problematic emotional life, having a strong sense of self-worth and being 'vain, narcissist, selfish and egocentric'. The majority showed a heightened sensitivity about being hurt themselves but less receptive for pain afflicted to others. Tammenoms Bakker concluded: 'The perpetrator of the crime passionnel is irritable, aggressive, suspicious, and jealous.'<sup>28</sup> He divided this crime into two types: the 'normal' characterological crime and the 'abnormal' psychopathological passionate crime, evenly divided over the sixty-four cases of crimes of passion (in three of which the perpetrators were women) he studied in the Amsterdam prison in 1928–1951. His research was based on psychiatric and new 'psychological-experimental' research, yet exactly how Tammenoms Bakker made this distinction remains unclear. In fact, he often underlined that the dividing line between the two groups was vague and that only gradation and intensity of certain mental aberrations determined whether perpetrators belonged to one group or the other.<sup>29</sup> The difficulty of distinguishing 'normal' from 'pathological' perpetrators of crimes of passion thus comes to the fore in psychiatric studies.

In addition to the pathologisation of the criminal of passion, the psychiatric profiles of the perpetrators show both consistency and change. Psychiatrists all saw similar elements in the profile of this criminal: a jealous, selfish person with emotional or mental problems, who acted from disappointed love. Throughout the twentieth century, Dutch forensic psychiatrists and criminologists found that most perpetrators stemmed from the lower classes and the vast majority were male. The number of female perpetrators, however, was seen to increase: whereas criminologist Philips found that 5.46 per cent of perpetrators (over the period 1915–1934) of crimes of passion were female,<sup>30</sup> in de Boer's study of partner killings over the period 1950–1980 17 per cent were women.<sup>31</sup>

Psychiatrists tried to distinguish 'reasonable' from abnormal behaviour. In regard to the gender of the victim, interestingly, Tammenoms Bakker added a table dividing the behaviour of the victim (the vast majority of whom were women) into good, bad and 'questionable' behaviour, since the victim's abominable behaviour could lead to sympathy for the perpetrator, whose acts should



otherwise be disapproved of.<sup>32</sup> That older cultural ideas on gender continued to exist also surfaces in Dutch newspapers. Some women who were the victims of men who committed ‘crimes of passion’ were blamed for their –often adulterous– behaviour. In 1972, a twenty-six-year-old male student had shot his rival in love, the husband of the woman he was having an affair with. The prosecutor reprimanded this woman for her behaviour: she ‘had to assess for herself to what extent she was on trial here, too’. He pled for diminished accountability for the suspect and for manslaughter, not murder, since during the crime there was no calm deliberation. The suspect was sentenced to six years’ imprisonment for murder. In the verdict a mitigating circumstance was ‘his passion for the woman and the long-lasting stress resulting from her attitude towards him’. The court accepted the psychiatric reports but saw no connection between the suspect’s mental illness and his crime.<sup>33</sup> In other cases in which men were the suspects, adulterous women were blamed as well. In the early twenty-first century women have come to be regarded more as victims. This increasing attention to female victims can thus be added to the most consistent trend since the mid-twentieth century: the pathologisation of the criminal of passion, for which psychiatrists tried to demarcate abnormal from normal perpetrators. Experts thus participated in ‘doing law’: the process of negotiation that produces justice.

### **Sentences and treatment in Dutch practice**

Considering the fact that the crime of passion never existed in the Dutch legal code and that Dutch cultural and psychiatric discourse distanced itself from this ‘foreign’ crime, it is remarkable that in practice the term ‘crime of passion’ was not only used in newspapers covering court cases, but also by prosecutors, defence lawyers and psychiatrists in the courtroom. Throughout the twentieth century prosecutors and lawyers for the defence argued for clemency based on the fact that the crime was committed out of passion, that is from strong, sudden emotions or in a bout of insanity, which could imply (partial) unaccountability or mitigating circumstances. Interestingly, psychiatrists called in as expert witnesses were sometimes literally asked whether they considered the act a crime of

passion, even though that was neither a specific crime listed in the criminal code, nor an official psychiatric label. For instance, in his 1962 psychiatric report on the case of a twenty-five-year-old Italian factory employee who had stabbed a female colleague, professor Pieter Baan wrote there was no *crime passionnel*. However, he did conclude that even though the man was not suffering from a mental illness, in the weeks before the crime he had an increasing 'strong pathological aberration of the mind' and at the moment of the crime he was 'in a quiet pathological condition'. Therefore, Baan concluded that he was unaccountable and on the basis of his report and that of a psychologist, the man was held unaccountable by the court, sent to an asylum and given TBR (Ter Beschikking van de Regering) or psychiatric treatment as punishment.<sup>34</sup>

The TBR (later TBS) system was established as part of the Dutch psychopath laws in 1928. These laws gave judges the power to send fully and partially irresponsible criminals to an asylum for psychopaths after their potential prison sentence. This TBR status could be indefinitely extended by the judge every two years and was intended to provide treatment for the perpetrator and protection from dangerous delinquents for society.<sup>35</sup> The role of forensic psychiatry was expanded in later decades. Especially the first decade after the Second World War testified to increased institutionalisation of Dutch forensic psychiatry and witnessed a strong trust in the latter by the judiciary.<sup>36</sup>

In cases of crimes of passion, the Dutch judiciary often followed the expert advice of forensic psychiatrists, testifying to a cooperation between the law and psychiatry and leading to a high percentage of convictions which included both prison sentences and psychiatric treatment. In his 1938 study criminologist Philips, based on a total of 183 cases, concluded that crimes of passion accounted for 18 per cent of convictions for murder and manslaughter and 27.8 per cent of all murder convictions for the period 1915–1934.<sup>37</sup> In regard to punishment, these criminals received high sentences. Even though Philips' research is not based on the psychiatric reports made for the court cases, he was convinced that the number of psychiatric reports made for this type of crime was higher than for other crimes: 44 per cent were examined psychiatrically (only one woman); for 34 per cent of the examined men a ground for diminished accountability was found.<sup>38</sup>

This high level of psychiatric involvement in and impact on punishment was confirmed in the 1951 study on the period 1928–1951 by psychiatrist Tammenoms Bakker. He divided the perpetrators of crimes of passion into normal and abnormal ones. Of the thirty-two ‘normal’ perpetrators, seven (22 per cent) were sentenced while taking mitigating circumstances into account. Of the thirty-two ‘abnormal’ perpetrators, twenty-two were found less accountable, three unaccountable, seven received psychiatric treatment as sentence and were sent to a psychiatric institution (all showed signs of paranoid psychoses).<sup>39</sup> Thus, for nearly all of the ‘abnormal’ ones their mental condition determined the kind of treatment and punishment they received, but it is striking that even 22 per cent of the ‘sane’ perpetrators were given lower sentences.

The significant influence of psychiatric experts in the Netherlands is confirmed by the 1990 study by forensic psychiatrist de Boer, covering 124 partner killings in the period 1950–1980, for which the suspects were psychiatrically examined in the Pieter Baan Centrum (PBC), the foremost centre for forensic examination in the Netherlands. In 122 out of the 124 cases there were ‘sickly mental aberrations’; not the classical psychiatric illnesses, but serious personality disorders.<sup>40</sup> In the vast majority of cases the PBC psychiatrists concluded that the suspects who had killed their partner were less accountable or unaccountable (only two were fully accountable).<sup>41</sup> In 85 per cent of cases the PBC report formed the basis for the judges’ decision on (un)accountability, so they very often followed the psychiatrists’ advice.<sup>42</sup> The stronger the gradation of unaccountability, the lower the prison sentence given. The length of the prison sentence was overall the same for men and women, but women more often received only a prison sentence, while men were more often convicted to both a prison sentence and treatment.<sup>43</sup>

These criminological and psychiatric studies all conclude that the influence of forensic psychiatric expertise on sentencing practices was considerable and that a high percentage of perpetrators was found (partially) unaccountable or benefitted from mitigating circumstances. In short, perpetrators of ‘crimes of passion’ in practice were sometimes judged more leniently on the basis of personality disorders, and often received treatment as punishment regardless of the absence of this crime as such in the legal code

and the vehement Dutch cultural distancing from the 'French' crime of passion and their milder form of judgment by the French jury system and press.

To conclude, the Dutch treatment of crimes of passion is paradoxical. On the one hand, this crime did not exist in the criminal code and culturally the Dutch regarded it as typically French, both in character and regarding the more lenient treatment by the French legal system and jury and the sensationalised French press. In practice, however, the term 'crime of passion' continued to be used regularly throughout the twentieth century in Dutch court cases, by prosecutors, lawyers and psychiatrists. The latter also acknowledged that it was a crime mostly committed by the Dutch lower classes. From the beginning of the twentieth century, the crime of passion was often considered as pathological behaviour and perpetrators were frequently regarded as (diminished) accountable by forensic psychiatrists, receiving more lenient sentences or psychiatric treatment. The influence of Dutch forensic psychiatry on the judiciary was consistent and considerable. We therefore see a Dutch legal system in which forensic psychiatry is an important element, but judicial practice also unveils a Dutch forensic culture that revolved around an older notion of a crime that actually did not exist in the law; moreover this forensic culture was built on a self-image of a rational and emancipated nation.

### **Crimes of passion in Russian criminal law**

'Crimes of passion' had a powerful cultural-political image in Soviet Russia as well. However, and similarly to the Netherlands, this image did not always dovetail with how different actors of criminal investigation practices, including the judiciary and psychiatrists, interpreted the nature and the gravity of this crime.

As such, the term 'crimes of passion' was used neither in Russian law, nor in the doctrine. Instead, the term 'homicide committed out of jealousy' became a standard legal term. The first Russian Criminal Code that was adopted in 1922 (amended in 1926) after the October Revolution thus explicitly referred to jealousy as a motive for homicide.<sup>44</sup> Similarly to many other legal systems, in

Russian law a motive did not form an element of the '*mens rea*', so it did not have to be established to prove *that* the crime was committed. However, it had to be established to determine *how* the perpetrator had to be punished for the crime committed. As we will show later, when a jealousy motive was established, it had a great influence on the offender's sentence.

In addition, the Criminal Code from 1922, as well as the next Criminal Code from 1960, had a provision on 'sudden mental disturbance' that was similar to the 'provocation' defence stipulated in criminal laws of many common law systems.<sup>45</sup> According to this provision, a homicide committed in a state of 'sudden mental disturbance' caused by 'violence or grave insult' on the part of the victim carried a less severe sentence. Although this article did not specifically refer to jealousy or 'heat of passion', it was occasionally applied to homicide committed after a sudden discovery of spousal infidelity. However, this provision had been applied extremely sparingly. For example, according to Kharitonova, in the 1960–1980s only 3.8 per cent of homicide cases committed with the motive of jealousy were prosecuted as homicide committed in a state of 'sudden mental disturbance'.<sup>46</sup> The analysis of court cases adjudicated by the Moscow regional court in the 1920s also shows that the application of this provision to 'crimes of passion' was extremely rare.<sup>47</sup> One reason explaining this could be that such a 'mental disturbance' had to be sudden to justify the application of this provision, while in practice the sudden onset of this 'mental disturbance' was missing, for example, in situations of prolonged mental agitation caused by jealousy. Furthermore, whether adultery was a 'grave insult' was heavily debated, which might also cause a more hesitant application of this provision by the judiciary.<sup>48</sup> The most important consequence of this approach was that 'crimes of passion' carried long and severe sentences throughout the entire period we study. Even though, as we will show, the judiciary started to apply the provision on mitigating circumstances after the entry into force of the Criminal Code in 1960 and treat them much more differentially, the eventual sanctions were nevertheless more severe than those foreseen for homicide committed in the state of 'sudden mental disturbance'.<sup>49</sup>

### **The image of jealousy in the official Soviet Russian legal and political discourse**

As stated above, in Dutch culture crimes of passion were regarded as crimes that were alien to Dutch society. This distancing was done alongside a cultural line; it was assumed that there was an association between a crime and a particular cultural context in which this crime was committed. This cultural context had a great influence on this crime's acceptability within society, as well as on the sentencing practices. This attempt to distance oneself from 'crimes of passion' was pertinent also to the Russian legal and political discourse. However, rather than opposing Russian culture against other cultures, the opposition between socio-economic systems, namely bourgeois capitalism and socialism, was at the basis of this distancing.

The association between jealousy and capitalism was particularly noteworthy in the 1920s when the newly appointed Bolshevik government was busy drafting new socialist laws, including the new Criminal Code. The latter stipulated that a homicide committed out of jealousy was an aggravated homicide, as jealousy was an 'ignoble motive', similar to revenge and greed. Hence, the motive of jealousy due to its 'ignoble' nature was an aggravating factor, automatically implying a more severe sentence. Many legal scholars and ideologists praised this approach. Well-known Russian scholar Andrei Piontkovskii argued that this article was an illustration of the 'new legal consciousness of proletariat' that was embedded in the new Russian laws and that distinguished them from the 'bourgeois laws'.<sup>50</sup> Legal scholar Iakov Staroselskii, referring to the articles of the new Criminal Code, stated that a 'proletarian point of view was in a particular way implemented in each of its articles', not only in those that related to the counterrevolutionary crimes, but also to 'the smallest crimes against the person, where for the first time in world history jealousy, for example, figured as a factor aggravating guilt, rather than mitigating it'.<sup>51</sup> Hence, for these scholars the imposition of a severe sentence on those accused of 'crimes of passion' was precisely what characterised the new proletarian (legal) consciousness and the new laws that reflected this new consciousness. It also distinguished these new proletarian laws from the bourgeois ones.

This approach to jealousy as a motive of crime was to a large extent present throughout the following decades. Similar to the discourse revolving around ‘crimes of passion’ in the 1920s, Russian legal scholars continued emphasising the importance of severe sentencing for ‘crimes of passion’. They argued that jealousy was an element of capitalist mentality, a ‘private property instinct’, making it by definition ‘an ignoble motive’.<sup>52</sup> According to legal scholar Mikhail Aniiants, jealousy was ‘a disgusting relic of the past’ justifying severe sentencing.<sup>53</sup> However, in the 1960s slightly diverging points of view started to appear. For example, legal scholars Pobegailo and Zagorodnikov argued that jealousy as such was not an ‘ignoble’ motive; however, it could give rise to such ‘ignoble’ motives as revenge and anger.<sup>54</sup> Therefore, these scholars argued, offenders committing murders out of jealousy were not always dangerous and their severe sentencing was not always justified.

As we will show in the next section, the emergence of these different points of view in the official legal discourse might have been a reflection of how ‘crimes of passion’ were approached in judicial practice. More specifically, judges saw it as a much more complex emotion, caused by multiple factors, manifesting differently, and leading to variable (legal) consequences. Furthermore, jealousy as a motive for homicide alone did not seem to be sufficient to consider ‘crimes of passion’ as particularly dangerous. Eventually this recognised complexity of jealousy as an emotion and the violent behaviour triggered by it also affected the official legal and political discourse. The jealousy motive was eventually excluded from the scope of aggravating factors in the Russian Criminal Code, and the ‘crime of passion’ became ‘ordinary’ homicide. Jealousy as a feeling was still disapproved of, and homicide committed out of jealousy continued to carry long sentences. However, a seemingly consistent narrative that saw jealousy predominantly in its connection to capitalism that by definition justified a severer sentence gave way to a more casuistic approach to the prosecution of this type of crimes.

### **Crimes of passion in Soviet Russian judicial practice**

The first sign that the influence of capitalism was not the only reason why individuals commit ‘crimes of passion’, and that the latter therefore should not carry high sentences, came from judicial

practice. A selection of court records adjudicated by the Moscow regional court from the 1920s and early 1930s shows that courts treated the offenders accused of 'crimes of passion' differentially. In some cases, they indeed saw the motive of jealousy as an aggravating factor due to its presumed link to capitalism, eventually imposing long prison terms on the offender. For example, in a case heard by the Moscow Regional Court in 1931 the court convicted the offender for killing the lover of his wife out of jealousy to the maximum term of deprivation of liberty.<sup>55</sup> In explaining its verdict, the court stated:

The accused, despite living for so long among the Bolsheviks, coming from a petty bourgeois environment, has not overcome his petty bourgeois ideology, in particular his views about women. He sees them not as the fighters for socialism but as objects needed to satisfy his so-called 'aesthetic', 'erotic' and other needs which reflect his possessive individualistic ideology. All this was clearly demonstrated in how he treated his wife; his jealousy and his behaviour, including the crime itself, very clearly reflect his entire mean petty bourgeois nature.<sup>56</sup>

Hence, this case illustrates the link that the judiciary drew between capitalism, possessiveness, jealousy and delinquent behaviour.

Yet, the judges did not always mete out strict punishments to individuals accused of 'crimes of passion'. For example, courts were more inclined to impose a lenient sentence on individuals who were born and raised in the rural environment and who were carriers of a 'backward peasants' consciousness'. In such cases, jealousy was often regarded as a character trait that the offenders had due to their backwardness and lack of proper education.<sup>57</sup> As these characteristics were mitigating circumstances according to the Russian Criminal Code, in many instances courts imposed lenient sentences, often less than half of what they would otherwise have imposed.

The discontent that the judges had about the Criminal Code's one-size-fits-all approach to crimes of passion might have affected the legislator's approach to it. Whereas jealousy as an emotion was still disapproved of, it was questioned whether it was sufficient to qualify the 'crime of passion' as a particularly serious crime. Jealousy as a feeling and as a motive for an action, it was argued, could be healthy or pathological, caused by real or imaginary infidelity, and all these factors should be given attention by the



judiciary to decide on the appropriate sentence.<sup>58</sup> As legal scholar Sergei Borodin wrote, the experience (which probably meant judicial practice) showed that treating jealousy as an aggravating factor and imposing severe sentences on the offenders convicted of killing their partner out of jealousy simply was not justified.<sup>59</sup> A similar point of view was voiced by Eduard Pobegailo.<sup>60</sup> This criticism might have been taken into account in the deliberation of the new Russian Criminal Code from 1960. It removed jealousy from the list of aggravating circumstances. As a general rule, a killing out of jealousy became ‘ordinary’ homicide and the form and degree of punishment were to be decided by the judiciary in each individual case.

The differential treatment of the offenders accused of killing their partner or a beloved out of jealousy that was made possible with the adoption of the new Criminal Code was further reinforced in judicial practice. For example, according to some sources, in the period from the 1960s until the 1980s in around 30 per cent of cases they were punished severely and in 16 per cent they were punished leniently.<sup>61</sup> Among the factors aggravating punishment were mostly recidivism, alcohol intoxication and the immoral behaviour of the offender. The mitigating circumstances included confession, first-time crime, ‘immoral behavior of the victim’ (infidelity) and, as shown in the following section, mental disorders of the offender. In other words, in judicial practice the acknowledgement of jealousy as a motive of the crime was not regarded by the judges as a factor that automatically turned this crime into a particularly dangerous one. Jealousy might have been still disapproved of, yet it was not seen as exclusively linked with bourgeois capitalism and thus by definition warranting a more severe punishment.

### **Crimes of passion and the role of psychiatric expertise in Soviet Russia**

Alongside the judiciary, psychiatrists acting as forensic experts in criminal investigations might also have played a role in bringing about these changes. As early as the 1920s, Russian psychiatrists – similarly to the judges – saw jealousy not only in its association

with capitalism.<sup>62</sup> For psychiatrists, jealousy was also a possible symptom of the offender's mental disorder. They did acknowledge that connecting jealousy with mental illness might be legally problematic: this could lead to the conclusion about the offender's partial unaccountability and as a result justify the imposition of a less severe sentence. At the same time, they were still inclined to connect jealousy, violent behaviour and mental disorders. Furthermore, the assumption that delinquency could be a symptom of one's mental pathologies was also seen as ideologically 'correct'. Explaining violent behaviour with scientific (that is, medical) arguments was consistent with the teaching of Lenin's dialectical materialism that recognised the importance of scientific evidence for law-making and legal practice.<sup>63</sup>

In the following thirty years the role of psychiatrists in criminal investigation became more limited. Whereas the praising of science as the right basis for legal decisions remained, the reference to biological explanations was no longer considered correct, leading to psychiatrists being accused of 'lombrosianism' (the term became a standard one to accuse psychiatrists of the deviation from the 'correct' science; 'correct' from then on could only be the socio-economic explanations of criminality).<sup>64</sup> As a result, until the late 1950s the role of psychiatrists in criminal investigation was limited to providing expert assessment on the classical issue of legal insanity, rather than on determining a causal link between the crime and the offender's biological predisposition to it.<sup>65</sup>

However, in the late 1950s, the latter again became possible. The requalification of homicide committed out of jealousy into an 'ordinary' homicide and the possibility for a more individualised treatment of offenders accused of it reinforced this practice, enabling a more medicalised approach to dealing with such offenders. For example, in the period from the 1960s until the 1980s in 40 per cent of homicide cases committed out of jealousy in which borderline mental abnormalities such as psychopathy or mental retardation were diagnosed, these disorders were taken into account in the determination of punishment as mitigating circumstances.<sup>66</sup> The only exception was chronic alcoholism that was mostly considered as an aggravating factor and, if diagnosed, was the ground for the offender's forced hospitalisation. The evidence demonstrating the exact role that psychiatrists played in changing the approach

to sentencing the offenders convicted of killing their intimate partner out of jealousy in Russia is scarce. Yet it does suggest that psychiatrists further contributed to weakening the connection between jealousy, and the crimes motivated by it, exclusively with capitalism, by associating the former also with the offender's psychological abnormalities.

To conclude, similarly to the Dutch case, the crime of passion was a contradictory phenomenon in Russia. In the official political and legal discourse, particularly in the first half of the twentieth century, jealousy was seen as an emotion alien to the socialist society that the Soviet Union was building, as it was associated with capitalism, private property and egoism. In addition, due to this association with capitalism, jealousy-driven violent behaviour was seen as particularly dangerous to the socialist legal order, thus justifying severer legal sanction. Parallel to this official discourse, however, killing out of jealousy became a rather 'normal' and a somewhat 'typical' crime. Whereas indeed it could be committed due to the offender's capitalist possessiveness and greed (and thus seen as alien to the socialist mores), it could also be an outcome of the offender's illiteracy and lack of poor education or due to his mental abnormalities. The eventual exclusion of the jealousy motive from the scope of aggravated factors from the 1960 Criminal Code could be seen as a way to (partially) resolve this paradox, even though jealousy to a large extent continued to be condemned in the official public discourse.

## Conclusion

In this chapter, we have applied the approach of 'doing law' to compare the cultural and legal constructions of 'crimes of passion' in Russia and the Netherlands in the twentieth century to demonstrate that the nature of that crime was continually debated and negotiated by multiple actors, such as the legislature, the judiciary and psychiatrists. In both countries a political and cultural discourse on this crime underlined a self-image by contrast with an Other: the Soviet socialist discourse framed 'capitalist' jealousy as its opposite and the 'moderate' and 'rational' Dutch contrasted themselves with the passionate French and Italian who were more lenient

towards perpetrators trying to uphold their honour. However, in the Netherlands this cultural discourse was not an official part of the legal system, as it was in the Soviet Union; it belonged to a broader forensic culture.

Comparing these political, cultural and psychiatric discourses to legal practice, however, we found that these discourses became more complicated. Although Dutch prosecutors, lawyers, psychiatrists and commentators claimed that the 'crime of passion' and its lenient punishment were foreign, in practice this notion was used to mitigate sentences and forensic psychiatrists were asked whether certain murders belonged to this category. In Russia, 'crimes of passion' in practice were not only associated with 'capitalist' greed, but also with the offender's illiteracy, mental abnormalities and poor education. Thus, although our comparison highlighted major differences in the contents of the political and cultural discourses on 'crimes of passion', and the involvement of forensic psychiatrists was more frequent and influential in the Dutch legal system than in Russia, in both countries several actors together constructed the contents of this particular crime in legal practice, demonstrating its cultural and historical variability. We therefore suggest that a comparative approach to different forensic cultures in practice is fruitful to lay bare how crimes are defined and prosecuted. This might also imply that establishing that the old-fashioned concept of 'crimes of passion' is glamourising violence against women and replacing it by 'femicide' is not enough to unveil its character: the term femicide in turn might obscure historical change and differences between national or regional cultural constructions of this crime, or between these discourses and the practices of prosecution.

## Notes

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