

H-France Review Vol. 11 (October 2011), No. 227

Eliza Earle Ferguson, *Gender and Justice: Violence, Intimacy, and Community in Fin-de-Siècle Paris*. Baltimore, Md.: The Johns Hopkins University Press, 2010. 268 pp. Notes, bibliography, and index. \$60.00 US (cl). ISBN 978-0-8018-9428-2.

Elisa Camiscioli, Binghamton University (SUNY).

Eliza Ferguson's *Gender and Justice: Violence, Intimacy, and Community in Fin-de-Siècle Paris* is an eloquent account of the everyday lives of the Parisian popular classes, the vibrancy of their neighborhoods, and how violence permeated their domestic arrangements. It substantially revises previous studies of "crimes of passion" by questioning the importance of elite discourses in formulating narratives of intimate violence, and by demonstrating the limited effect of such discourses on those who committed and adjudicated on *crimes passionnels*. Through a detailed reading of 264 dossiers from the Cour d'assises de la Seine, Ferguson reconstructs the private life of the defendant and his or her victim, their public life in working-class neighborhoods, and the community's values in terms of gendered norms of behavior and the acceptable use of violence. One of the book's many strengths is its respectful engagement with contemporary discourses on crimes of passion, medicalization, and the "pathology" of the popular classes while insisting that such "top-down" histories inadequately explain the motivations of defendants and jurors alike. "Even if traces of professional discourses on crimes of passion can be found in assize court testimony," Ferguson explains, "they appear within the context of an entirely different, popular discourse about the legitimacy of the use of violence in intimate relationships" (p. 199).

Ferguson defines a crime of passion as violence "between a couple, whether married or not," and thus a "love story gone awry" (p. 1). Since much of the Parisian working poor at the fin de siècle lived in arrangements that paralleled solemnized marriages with regard to the couple's expectations of one another and their joint experience of daily life, both married and unmarried couples are included in her analysis. Moreover, because crimes of passion were not defined as a separate legal category under French law, Ferguson relies on trial dossiers of violent crimes committed between domestic partners and classified as assault, murder, attempted murder, homicide, or attempted homicide. Particularly striking in her sample is the high rate of acquittals for *crimes passionnels*: 28 percent of male defendants and 64 percent of female defendants were found not guilty, with men outnumbering women three to one as defendants. Overall statistics on crimes of passion are difficult to ascertain because they were not classified as distinct offences. However, the rate of acquittal for all cases tried in assize courts during the Third Republic was about 28 percent, and "significantly higher" (p. 162) for those which entailed intimate violence (precisely how much higher is unclear). In contrast, the acquittal rate in correctional court, where a panel of professional judges tried lesser crimes, was only around 10 percent.

Criminologists, politicians, and jurists were alarmed by these figures for a number of reasons. While an ample body of secondary literature has explored the "melodramatic narratives" that described crimes of passion, their resonance in the popular press, the medicalized madness of the offenders and the impressionability of the popular crowd, Ferguson makes the fascinating point that elevated rates of acquittals called into question Republican notions of justice. Felonies

brought before the assize courts were tried by a jury, and jury trials were “supposed to enact and instill the ideals of the new regime, reinforcing the ideas of equality under the law and the importance of citizens’ participation in the business of the state” (p. 161). The power of Republican magistrates had been greatly limited as part of a Revolutionary-era effort to ensure the separation of the judiciary and the legislature. Criminal jury trials were established in 1791, further limiting the influence of the magistrate. “In contrast to Old Regime procedures in which professional judges studied written evidence to create written ruling through a process of logical reasoning, jury trials were designed to respond to the historical contingency of the moment” (p. 160).

By acquitting large numbers of defendants, members of the jury were not adhering to the letter of the law, which held that an individual who intentionally killed another person was subject to execution or forced labor. While extenuating circumstances could mitigate the punishment, the guilty party was not supposed to be set free. So why were good French citizens exonerating murderers and assailants? This question is even more perplexing when we remember that in almost all of Ferguson’s cases, the defendant had admitted that he or she had committed the crime, so strictly speaking, his or her innocence was not at stake. What was at stake, according to Ferguson, “...was not the fact of the violence but its legitimacy” (p. 7). And the meaning of “legitimate violence” can only be found in the shared life of the couple and the mores of their community.

The hopes and expectations that men and women held for their partnership provided a framework for evaluating the “legitimacy” of domestic violence. In turn, these gendered understandings of duties to one’s partner were affirmed by members of the community, some of whom would testify as witnesses in the trial. Women’s duties included sexual fidelity, managing the household, having sexual relations with one’s partner (although not all sex acts were deemed appropriate to demand), and contributing to the family economy. While men were given far more latitude—sexual fidelity, for example, was not really expected of them—they were held to an exacting standard with regard to providing financially for the household. Layabouts, drunks who squandered their paychecks on alcohol, and men who allowed their women to financially support them, were widely disdained. Ferguson provides colorful examples from trial transcripts to illustrate how these gendered norms of popular behavior were conveyed by defendants and witnesses alike. Her skillful use of oral testimony to reconstruct the intimate life of the couple and its public enactments in the neighborhood nicely complements Rachel Fuchs’ recent book on paternity suits in modern France.^[1]

In fin-de-siècle Paris, members of the popular classes were well aware of each other’s business. This was the result of crowded living arrangements, thin walls, and common stairways, courtyards, and outhouses. Social relationships within the neighborhood propel Ferguson’s account forward. For the working poor, the private sphere was not terribly private and “intimate violence activated the complex social web of every urban quarter” (p. 94).^[2] Trial depositions reveal that, because concierges often functioned as arbiters in domestic disputes, they were interviewed by investigating magistrates and the police. Rumors circulated throughout the neighborhood about the victim and defendant; their reputations were well known to community members and regularly invoked by trial witnesses. Rumors, hearsay, and gossip were all admissible evidence in the assize courts. And because oral testimony was privileged under the Republican judicial system, the community’s “networks of knowledge” were empowered far beyond their typical function of regulating community members. In the French assize courts, witnesses enjoyed an enormous amount of discretion when relaying their stories. Ferguson contrasts this with the American judicial system, where witnesses’ testimonies are largely shaped by lawyers and by judges and constrained by the process of cross-examination.

Usually what witnesses shared had little to do with the facts of the crime itself. Instead, they “recounted anecdotes or made statements and assumed that the evidence they offered would speak for itself. If a witness testified that a woman used to have male visitors when her husband was away...the implication was that she was unfaithful and therefore if her husband beat her, it was excusable” (p. 179). Thus witnesses cast judgment on a woman who kept company with other men, or took money from a man other than her husband, or allowed herself to be addressed with the “*tu*” pronoun. They also reported on noisy fights, drunken benders, gallivanting, previous acts of violence, idle and not-so-idle threats, and absentee partners. Essentially, witnesses were evaluating which member of the couple they perceived to be more sympathetic, a judgment that always circled back to his or her conformity with the community’s values. In short, those who had not deviated from the “implicit bargain of the domestic partnership” (p. 215) were not considered worthy of punishment.

Testimony reveals that members of the working poor considered violence legitimate if it performed a “punitive or retributive function” (p. 132). While violence could not appear to be random or “undeserved,” in fin-de-siècle Paris, it was considered one of many valid responses to transgressions within the couple. “Along a continuum of possible strategies in household conflict lay a whole range of possibilities, from passive acquiescence, to arguing and insults, to withholding sex or household services, to leaving the relationship. From slaps and shoves to shootings and beatings, the use of violence too corresponded to escalating levels of conflict, and it was considered a legitimate tool in resolving conflicts” (p. 132).

Like the unreliability of jury verdicts, this “community-based, retributive model of justice” (p. 154) undermined the Republican paradigm. In contrast to the system of prisons and penitentiaries elaborated over the course of the nineteenth century, retributive justice did not seek to reform or rehabilitate the guilty party. Moreover, it essentially left policing in the hands of community members who, by virtue of their status as witnesses, greatly influenced the trial’s outcome. In a sense, the assize court became a venue for the enactment of popular justice. “Unlike the utilitarian state system of justice, this popular system...was personal and subjective. It validated the use of violence in disputes between domestic partners where violence was used to punish a previous wrong...” (p. 157). Cases of intimate violence, Ferguson argues, demonstrate the failure of the centralized state to impose on its members the Republican system of justice.

In a sense, trial verdicts were the result of an extensive interchange among jurors, witnesses, the defendant, and the magistrate. While the assize courts were structured in a way that privileged oral testimony, there was no guarantee that jurors would accept testimony as valid and therefore move to acquit. Yet they did so in disproportionately high numbers. This is especially interesting because, as Ferguson points out, jurors were typically drawn from the middle classes, unlike most defendants and witnesses. The Dufaure law of 1872 extended eligibility for jury service to “any man over thirty who enjoyed full political and civil rights” (p. 161) while excluding convicts, the insane, the deaf, the blind, servants, and those illiterate in French. By granting dispensation to men “who need their daily manual labor to live” (p. 166), male wage earners were essentially eliminated from the jury pool. According to Ferguson, there is no reason to assume that middle-class jurors would have been sympathetic to those on trial, to their beliefs about the use of violence in intimate relationships, or their understanding of gendered respectability. Why did it seem as though they were?

The answer to this question could have been clearer in Ferguson’s account, and more information about the bourgeoisie and its relationship to domestic violence might have helped to elucidate it. Ferguson claims that middle-class jurors accepted the version of the story provided by witnesses, along with the notion that if intimate violence had been merely retributive, rather than random or excessive, justice had already been served: “Although the

trial was framed by the intervention of the presiding magistrate and the prosecution, who invariably argued loudly for guilt, jurors more and more frequently concurred with the testimony of witnesses, who said that acts of violence were understandable, excusable, or even deserved" (p. 182). But this does not explain why jurors would concur with witnesses to begin with, especially if they (ostensibly) had nothing in common with them. In fact, the more I pondered the rich evidence Ferguson provides, the more plausible I found it that with regard to the "legitimate" use of intimate violence, members of the bourgeoisie and the popular classes may have seen eye to eye.

Ferguson does not take a strong position as to whether intimate violence also occurred among the upper classes. For example, it's unclear how many of the dossiers in her sample described bourgeois or upper-class households, although she does state they were relatively few. From those examples, she tentatively concludes that the way witnesses spoke about intimate violence indicates that its use between upper-class partners may have been anomalous. But her language is somewhat cagey on this point. "[T]he outrage expressed by upper-class people about relatively minor incidents—a few slaps, or a struggle resulting in some bruises—supports the idea that violence was not, or was not meant to be, an ordinary feature of upper-class relationships between men and women, as it was among working people" (p. 146). Certainly Ferguson is correct that intimate violence was not meant to be a part of the idealized bourgeois household. However, I found the supposition that it did not occur to be much less convincing. Ferguson herself points to the relative privacy afforded by upper-class living arrangements, where acts of intimate violence would have been shrouded from neighbors, the police, and the community. Thus I wondered whether the disjuncture between discourse and practice that Ferguson so artfully documents for the popular classes might have applied to the bourgeoisie as well. Prescriptive literature directed at the middle classes deplored the use of violence between husbands and wives. That doesn't mean it did not occur. Perhaps jurors found courtroom testimony convincing because on matters of intimate violence, popular and middle-class values overlapped.

These points aside, Ferguson's book is ambitious, thoughtful, and smart. It both enhances and challenges the more familiar fin-de-siècle narrative of crime, degeneration, and social control, suggesting instead that in cases of intimate violence, traditional modes of urban life predominated. Elite discourses written by magistrates, social scientists, and the medical profession only imperfectly penetrated the popular milieu, and in the assize court, even the power of the centralized state was called into question as popular justice prevailed.

NOTES

[1] Rachel Fuchs, *Contested Paternity: Constructing Families in Modern France* (Baltimore, Md.: The Johns Hopkins University Press, 2008).

[2] Here Ferguson's argument and method is in keeping with that of David Garrioch, whose work she praises. See David Garrioch, *Neighbourhood and Community in Paris, 1740-1790* (Cambridge: Cambridge University Press, 1986).

Elisa Camiscioli
Binghamton University (SUNY)
ecamis@binghamton.edu

Copyright © 2011 by the Society for French Historical Studies, all rights reserved. The Society for French Historical Studies permits the electronic distribution of individual reviews for

nonprofit educational purposes, provided that full and accurate credit is given to the author, the date of publication, and the location of the review on the H-France website. The Society for French Historical Studies reserves the right to withdraw the license for edistribution/republication of individual reviews at any time and for any specific case. Neither bulk redistribution/ republication in electronic form of more than five percent of the contents of H-France Review nor re-publication of any amount in print form will be permitted without permission. For any other proposed uses, contact the Editor-in-Chief of H-France. The views posted on H-France Review are not necessarily the views of the Society for French Historical Studies.

ISSN 1553-9172