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Robert Allen, *Les Tribunaux criminels sous la Révolution et l'Empire, 1792-1811*. Collection « Histoire » Translated by James Steven Bryant (Rennes: Presses universitaires de Rennes, 2005) 318 pp. 22€ ISBN 2-7535-00095-9.

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At the end of the Old Regime, the judicial system of the kingdom stood accused of all manner of barbarities and atrocities—dungeons and towers harbored innocent victims, indescribable acts of cruelty were rumored to be the prisons' daily fare, all while magistrates and lawyers callously dragged out cases and multiplied their fees. It is not surprising then that one of the Revolution's most ambitious and enduring projects was the reform of the criminal justice system; it is no less surprising that those changes proved complicated and often contradictory. This well-researched study explores the world of the criminal courts during the Revolutionary and Napoleonic regimes. Robert Allen gives a rich sense of those transformations, in particular by extending his examination to sixteen departmental collections, with a special focus on the Côte-d'Or. That research allowed him to present a concrete understanding of the ways in which the new institutions of criminal justice functioned during this period of unending upheaval. He has assembled data from roughly twenty thousand criminal cases, a daunting task as anyone knows who has worked through the cramped handwriting and disintegrating paper characteristic of the Revolutionary courts, which struggled with hyperinflation, paper shortages, and which were often staffed by less educated scribes and clerks. Numerous tables—of the social composition of juries and the bench, of the social backgrounds of the accused, of rates of acquittals, or the length of service of defenders—attest to the author's painstaking work in those archives. His balanced conclusions suggest the need to revise some of assumptions about the violations of justice that have become common in discussions of Revolutionary law, especially that of the Terror and the Directory.

Allen's primary focus is on the ways in which the aspirations of the Revolutionaries to create a more egalitarian and transparent system shaped reforms between 1791 and 1815. The legislators of the Constituent Assembly sought to create a legal system that would be effective in repressing crime and that also would help to generate public loyalty to the new regime. An important key to that program lay with the jury, established by the law of 7 February 1791.[1] The jurors, as representatives of the citizenry, would express the people's will in the solemn chambers of the court, while also serving as a restraint against the potentially arbitrary acts of a judge or accuser. The courts' role as school for the nation's citizens was not lost on the deputies such as Adrien DuPort, who expressed his ambitions for the new institution: "Voilà le vrai moyen de donner aux hommes des mœurs, une humanité profonde, l'amour de l'égalité, de la fraternité . . ." (p. 14).

French legal history was traditionally the province of law schools, which churned out fairly narrow *thèses* for over a century. In the past few decades, fortunately, historians have begun treating the law's many dimensions more fully—whether contextualizing the law in the nation's broader political and cultural life,[2] attending to its rhetoric,[3] or by forcefully questioning of the place of gender.[4] That recent work has made us aware of the many failings of the Revolution, especially with regard to women's rights, while laying bare the discursive modes that helped drive the Terror and that ultimately undermined the early Revolution's conception of individual rights.

While Allen has not followed in the path of the latest methodological innovations, his work nonetheless offers a nuanced and solid look at the daily workings of the courts as they responded to the changes that

issued forth from Parisian legislatures and Napoleonic chambers. He concentrates especially on the crimes that were deemed the greatest threats to public order, such as theft, embezzlement, homicide, rape, rebellion, and counterfeiting (p. 18). Some of those offenses fell into the category of crimes against the state, which Allen explores in a chapter devoted to political trials. Thus, Allen examines both the routine workings of justice as well as the operations of the exceptional courts aimed at repressing counter-revolution and brigandage. That perspective then allows him to present well-grounded conclusions about the nature of Revolutionary justice.

The trial process itself contained numerous changes that responded to the desires for a more fair, democratic and transparent form of justice. The rituals of the courts reinforced the concept of the rule of law actively upheld by the nation's citizens. The public hearings, the oral testimony, the presence of the accused ("*libre et sans fers*"), the juries' oaths to uphold the law, and then their solemn pronouncement of a verdict all made manifest the Revolution's values. On those daily practices, one can see the Revolutionary aspiration to place the law more fully into the hands of the nation and to encourage the energetic participation of its citizens (pp. 27-29, 136-137).

The penal codes drew on Enlightenment critiques of the Old Regime's corporal punishment. Revolutionary laws did away with torture, branding, whipping, the rack, the galleys and other "barbarous" punishments. In their place, the Revolutionaries developed a graduated set of sentences ranging from imprisonment to solitary confinement, forced labor, and, finally, execution. Seeking to take away the judges' Old Regime powers to show favoritism or bias in their sentences, the Penal Code of 1791 insisted on an inflexible linkage between the crime and the sentence. It even established a set of mathematical formulas for determining the weight of the crime and its appropriate punishment. Criminal actions, and not the status of the accused, were the sole matters of importance. Equal crimes, according to the Code of 1791, were to receive equal punishments.

The chapters move forward logically, first explaining the changes in the procedures, and especially the Revolution's embrace of the protection of individual rights and equality before the law. Allen then turns to the trials themselves and finally to political trials and the exceptional justice of the Terror, the Directory, and Napoleon. Of special importance were the juries--the *jury d'accusation* and the *jury de jugement*. They played a primary role in questioning the accused and they decided whether or not the evidence was strong enough for an indictment. An important conclusion of this book concerns the role of the courts, and especially the juries, as a source of stability and even moderation despite the constantly changing political tides and penal codes. True, the Directory did increase the number of "innocent" votes that the jury needed to acquit; and the Consulate removed certain lesser forms of theft from the jury's purview and turned them over to the correctional courts. Yet, overall, judicial procedures themselves remained quite stable from 1792 until the Code of Criminal Instruction (1808) and the Penal Code of 1810. Those Napoleonic codes restricted jury duty to only an educated and propertied elite, reintroduced harsher sentences for many crimes and, once again, allowed judges greater leeway in sentencing (pp. 50-52). Only in one area, although an important one--the creation of the *tribunaux criminels extraordinaires* that tried those accused of rebellion and counter-revolutionary actions--did procedures veer very far from those of Penal Code of 1791.

More important than these exceptions for the book's argument was the way in which procedures of 1791 allowed the departmental courts to shape and even obstruct the goals of the state (p. 277). The innovations of the revolution opened especially significant means for juries to impede the cases presented by the state's prosecutors. In this way, the criminal courts were a force of moderation in those turbulent years. Early in the case, the *jury d'accusation* could refuse to indict the accused if it did not find the evidence compelling. As the case proceeded, jurors could consider the intentions of the accused and then refuse to indict or even to convict if they believed that the ultimate sentence would be too harsh.

Allen sought to go beyond the general knowledge that roughly 30 to 60 percent of the criminal cases in Revolutionary France ended in acquittals, with great regional variations. By scouring the departmental records, he was able to classify the verdicts in terms of the social backgrounds, gender, type of crime, and sentences for the almost twenty thousand cases brought in his sixteen departmental criminal courts. The highest rates of acquittals occurred in the West and South--the Gard and the Vendée acquitted an average of 57 per cent of those accused, which is not surprising given the levels of resistance in those regions (pp. 59-61). Allen's data reveal that the Directory's efforts to repress crime more energetically, by increasing the number of votes needed by the jury for an acquittal, came to naught. The rate of guilty verdicts remained "stuck" at about 46 and 47 per cent from Year IV. Only after Napoleon seized power did the number of acquittals fall significantly to 36 per cent (Year XIII-1811) (pp. 59-61). Not surprisingly, jurors, who usually were property owners themselves, were inclined to convict and to impose the heaviest sentences for crimes against property. Those conviction rates ranged from 47 per cent (Gard) to 66 per cent (Mayenne) (pp. 62-63). Interestingly--and significantly for Allen's arguments--jurors were inclined to dismiss or acquit cases for political crimes, especially those concerned with emigration, non-juring priests, and "seditious cries." (chapters five and six). In the exceptional courts, juries would often convict leaders of public disorders, but balked at fully applying the new laws, such as those regarding conscription or armed rebellion (pp. 235-238). Overall, they showed a "marked indifference" to the government's views in such cases. Rather than seeking to "subvert the judicial system," Allen concludes that it is more likely that the jurors simply did not partake of the political polarization of the period (pp. 227-229).

In the absence of any records of jury deliberations or even of the arguments made during the trials themselves, it is hard to identify the reasons for these acquittal rates, which, while high by modern standards, were well within the range of jury verdicts in England (pp. 56-58). Allen, however, suspects that the subjective aspects of the juries' decisions help to account for those rates. Because the Penal Code of 1791 applied a rigid set of sentences, juries would refuse to convict when they feared that various extenuating circumstances would not lessen the sentence. Their resistance was especially apparent in political cases. The verdicts often either rejected or lessened the sentences the government desired (pp. 68-73, 110-111). Using multiple regression analysis, Allen shows also that three other factors were significant indicators of a guilty verdict: the greater distance of the domicile of the accused from the scene of the crime; the rural origins of the accused; and finally, the nature of the crime. Juries generally punished theft, but they inclined toward acquittal in cases of political crimes (p. 84).

Other chapters take up the composition of the jury, the bench, and of the lawyers' background. Throughout, Allen stresses the often moderating effect of both juries and judges on the cases. "Once put into motion," Allen concludes, "the system would frustrate and justify the hopes of its liberal architects" (p. 270). Juries could prove "rigorous or capricious, severe or indulgent" (p. 270). In particular, their judgments counteracted the rigid categories of crimes and punishments imposed by the Penal Code. By taking into account the behavior of and excuses offered by the accused, juries could reduce the Code's inflexibility. Political trials felt the greatest impact of the juries' unwillingness to accept the government's cases. The grand trials of the Terror, however, held in revolutionary tribunals and not in criminal courts, did not have juries. Thus, Allen asserts that those trials, which are often seen as most emblematic of the Terror, were aberrations of the codes of procedure installed by the early revolutionaries. Indeed, he determines, "... [I]f the seeds of the Terror can already be discerned in the penal arsenal of the Constituents, they are not present (*font défaut*) in the area of procedure....The Terror does not represent a development but instead a procedural betrayal of the codes of 1791" (p. 272).

This is an important conclusion and it merits a fuller discussion in this study. Given that much recent scholarship has attacked the Revolutionary courts and has criticized them for helping to generate the Terror, and especially given the weight of recent scholarship in identifying the anti-liberal tendencies of

the Revolution, Allen could have been more ambitious in stating his conclusions. They are often hidden in his chapters and then are stated only modestly in his conclusion. Given the depth of his research and the implications of his conclusions, the work deserves a more forceful discussion of the reigning paradigms in the scholarship on Revolutionary justice so that Allen's interesting and potentially provocative arguments can be shown to full effect.

(All translations from the French are those of the reviewer.)

NOTES

[1] Isser Woloch, who directed Robert Allen's dissertation ("The Criminal Court of the Côte-d'Or," Ph.D. diss., Columbia University, 1991), drew upon some of Allen's findings in his discussion of the impact of the jury system. See Woloch's chapter "Trial by Jury," which gives a fine overview of the subject. Isser Woloch, *The New Regime: Transformations of the French Civic Order, 1789-1820s* (New York and London: W. W. Norton, & Company, 1994).

[2] Jacques-Guy Petit, *Ces Peines obscures: La Prison pénale en France, 1780 1875* (Paris: Fayard, 1990); Bernard Schnapper, *Voies nouvelles en histoire du droit: La Justice, la famille, la répression pénale (XVIe-XXe s)* (Paris: Presses universitaires de France, 1991); Jean-Louis Halperin, *L'Impossible Code civil* (Paris: Presses universitaires de France, 1992); Jean Pierre Baud, *L'Affaire de la main volée, Une histoire juridique du corps* (Paris: Editions du Seuil, c1993); Pascal Vielfaure, *L'Évolution du droit pénal sous la Monarchie de Juillet: Entre exigences politiques et interrogation de société* (Marseille and Aix-en-Provence: Presses universitaires d'Aix-Marseille, 2001); and collections such as *La Révolution et l'ordre juridique privé, rationalité ou scandale? Actes du colloque d'Orléans* (Paris: Presses universitaires de France, 1988); Jean Bart, J.-J. Clère, Cl. Courvoisier, M. Verpeaux, eds., *La Constitution de l'an III ou l'ordre républicain* (Dijon: Editions universitaires de Dijon, 1998); and Xavier Rousseaus, M.-S. Dupont-Bouchat and C. Vael, eds., *Révolutions et justice pénale en Europe, modèles français et traditions nationales* (Paris: L'Harmattan, 1999).

[3] Ruth Harris, *Murder and Madness: Medicine, Law, and Society in the Fin de Siècle* (Oxford: Clarendon Press, 1989; New York: Oxford University Press, 1989); Sarah Maza, *Private Lives and Public Affairs: The Causes Célèbres of Prerevolutionary France* (Berkeley: University of California Press, 1993); Jean Marc Trigeaud, "Le Mythe du héros et l'esthétique de la justice," *Archives de Philosophie du Droit* 40 (1995) : 34-55; Gisèle Mathieu-Castellani, *La Scène judiciaire de l'autobiographie* (Paris: Presses universitaires de France, c1996); Peter Coss, ed., *The Moral World of the Law* (Cambridge and New York: Cambridge University Press, 2000); Thierry Pech, *Conter le crime: Droit et littérature sous la Contre-Réforme: Les Histoires tragiques (1559 1644)* (Paris: H. Champion, 2000); Xavier Martin, *Human Nature and the French Revolution: From the Enlightenment to the Napoleonic Code* (New York: Oxford University Press, 2001); Christian Biet, *Droit et littérature sous l'ancien régime: Le Jeu de la valeur et de la loi* (Paris: Champion, 2002); Laura Mason, "The 'Bosom of Proof': Criminal Justice and the Renewal of Oral Culture during the French Revolution," *The Journal of Modern History* 76 (2004), 29-61.

[4] Xavier Martin, "Fonction paternelle et Code Napoléon," *Annales historiques de la Révolution française* 305 (1996), 465-475; Suzanne Desan, *The Family on Trial in Revolutionary France* (Berkeley: University of California Press, 2004); Jennifer Heuer, *Families, Foreigners, and Citizens: Contradictions of National Citizenship in France, 1789-1830* (Ithaca, N.Y.: Cornell University Press, 2005);

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