The Price of Revolution

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As Patrice Gueniffey has noted, interest in the Terror as a French revolutionary phenomenon has waxed and waned, but has never disappeared, though focus and emphasis have changed from time to time. In preparation for the French 1789 bicentennial, Mitterand decided that France, unlike the United States, would not treat its revolutionary decade as a serial story, but would celebrate national liberation in a lump, with Chinese students wheeling empty bicycles at the head of the Bastille Day procession as a reminder that some countries had not yet caught up. This decision made it possible to avoid divisive areas, freeing the heirs of the Revolution to commemorate whatever they chose, but outside Paris, foreign visitors might find themselves puzzled by the range of local traditions which presumably shaped the festivities. (Exactly why did the Arles school children produce an exhibition of *émigré* biographies?) It would at least seem from the size and complexity of Gueniffey's book that re-visits to the Terror are likely to continue.[1]

One realizes with surprise that one part of the story has still not had much attention. The normal focus has been on the development of Terror as an instrument of government policy, on the numbers and character of those affected by it, and on the crisis of Thermidor and its sequel. Gueniffey has a good deal about the political maneuvers that culminated in the events of Prairial, placing Robespierre in the centre of the stage, and the Thermidorians naturally get their share of notice. What is still

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[1] Patrice Gueniffey, *La Politique de la Terreur* (Paris, 2002).

missing is any sustained analysis of the implications of the great debate on revolutionary justice which took place during the trial of the King.[2]

This was the only occasion when every deputy in a revolutionary assembly was required to cast a vote on a major constitutional issue. Nearly all the deputies voted, over 40 percent published some explication of their votes, as they were specifically entitled to do, and another 20 per cent made some individual comment, while the Convention's *bureau* republished the voting-lists from the *appels nominaux*. The deputies seem to have been fully aware of what they were doing. The King's trial, designed to maintain the rights and liberties first secured in 1789, was also in conflict with those rights and liberties, and each man gave his individual twist to the disputes over the policy to be followed. The accumulation of agreement and contradiction is massive, and there can here be no attempt to survey the whole field. However, it may be useful to disentangle the main threads, because the responses of *conventionnels* to the decisions asked of them in 1792-3 are suggestive of the price they were prepared to pay for revolution.[3]

Most of the revolutionary rhetoric centered on four crucial questions. Could the King be tried? How was he to be tried? What should be the verdict? How, if at all, was the verdict to be validated? From the Convention's first session, until Louis's execution, an increasingly anguished debate lasted intermittently for four months.

The Convention's standing orders were sketchy enough to allow any orator to follow any line of argument he chose, with the result that the assembly fell into a muddle, uncertain what it was arguing about.[4] Nor did the defeat of a motion prevent its supporters from repeatedly adverting to it in debates arranged on other topics, or introducing new pamphlets on issues long settled, or manipulating the agenda for political reasons—all very time-consuming. It is noticeable that no time worth mentioning was spent on the usual task of trials, namely establishing the guilt or innocence of the accused; the frequent references to the King's crimes were made with a presumption of guilt. When the vote was taken, it matched what could already have been read in the pamphlets published during the weary months of debate. In the 748-strong assembly, seven men were ill, twenty were away *en mission*, and fourteen abstained, leaving 707 to vote. Present or absent, not a single man was willing to judge Louis innocent. It was the closest the deputies ever came to unanimity.[5] But they had to go further. Could their king be made to pay for his crimes?

A mass of uncertainties related to the terms of the Constitution of 1791, to the so-called "law of nature," and to the "sovereignty of the people" and its implications. "The person of the King is sacred and inviolable" was an absolute statement. How did an explicit right to invulnerability square with the doctrine that all men are created equal? The argument here continued to the end. Barailon was almost alone in

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[2] Modern Revolutionary histories do not give the rationale of the trial much space, the outcome being taken for granted. Michael Walzer, ed., *Regicide and Revolution* (Cambridge, 1974) reprints some major speeches, but focuses on divine right, which was very seldom even mentioned. David P. Jordan, *The King's Trial* (Berkeley, 1979) has interesting detail which deserves further analysis.

[3] A full account of the surviving pamphlets (a good many seem to have been lost) would fill several volumes, with much repetition but also constant divergence as points that appear similar are distinguished or differently justified. Those included in the notes are intended to suggest the flavor of the argument, but cannot convey its whole scope.

[4] François Mont Gilbert, *Opinion ... sur le jugement de Louis XVI* (Paris, n.d.).

[5] *Appels nominaux ... sur ces trois questions: 1. Louis Capet est-il coupable de conspiration contre la sureté genérale de l'état? 2. Le jugement de la Convention sera-t-il soumis à la ratification du peuple? 3. Y aura-t-il un sursis, oui ou non, à l'exécution du décret qui condamne Louis Capet?* (Paris, 1793).

claiming that the whole discussion was a waste of time and that Louis should be simply locked up until more important affairs had been disposed of. Others insisted that the constitution existed and must be accepted ("The traitor Louis has slaughtered his people," wrote Duchastel. "And so, what have they proved? That the law is absurd, but not that it was not passed.") The most moving comment came from Jacques Chevalier, a poor farmer who said simply that he did not care what the King had said or done; he, Chevalier, had been a local official, and in that capacity, he had taken an oath of allegiance to nation, law and king, by which oath he, Chevalier, was bound. For him, the King was indeed untouchable, and he abstained from all part in any trial whatever. For various reasons, about a score of colleagues did the same.[6]

The Convention's great majority, who did not share such scruples, faced their own dilemmas. It was all very well to label the doctrine of inviolability a blasphemy, as Audouin did. Outraged protestations could not change the Constitution, even if the Constitution did violate the principle of equality. Lecointre claimed not to understand "this justice that smiles as it strikes down a humble offender, and kowtows to a famous criminal," but no matter what Louis had done or allowed to be done, the Constitution said that while he was king his person was sacred and inviolable, and since his dethronement he had been unable to do anything of significance. True, in June 1791 he had repudiated the oath he had taken alongside his people on Bastille Day, 1790, but in September 1791 that same people had wiped out the past by accepting his constitutional oath, thus giving him the full rights of a constitutional king. Between September 1791 and August 1792 his kingship protected him; after 10 August 1792 he had had no power to act. Whether or not the Constituent had made a mistake, said Morisson, its decision was law.[7]

And yet… *if* the King was inviolable, his person was indeed sacred. But kingship was a public office, and every citizen in public office had to take an appropriate oath of obedience to the law. At the king's accession or when he reached his majority, he had to swear

> to be faithful to the nation and to the law, to employ all the power delegated to him to maintain the Constitution decreed by the National Constituent Assembly in the years 1789, 1790 and 1791, and to have the laws executed.

Without this oath, or if he retracted it, he could not hold office.[8]

A string of speakers agreed that Louis had never been entitled to his post, because he had never honestly taken the oath nor intended to accept the obligations it imposed. Couthon insisted that this dishonesty must cost him the throne and specifically included perjury on his own list of accusations. Oudot and Massieu were amongst those claiming that even as king, Louis could not be above the law he had sworn to obey. Robert Lindet and Lozeau argued that he had consistently used royal

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[6] Jean-François Barailon, *Considérations sur la necessité d'ajourner le jugement de Louis Capet et de sa femme* (Paris, n.d.) (two other speeches by Barailon run the same line); G.S. Duchastel, *Opinion ... sur cette question: Quelle est la peine que le peuple français doit infliger à Louis?* (Paris, n.d.); J. Chevalier, *Opinion ... sur l'affaire du ci-devant roi* (Paris, n.d.). Noel would not vote because his son had been killed at Genappes, and Lafon because he had not arrived in Paris in time to hear the debates. Cf. *Appels nominaux* (note 5, above), regarding voting in the Vosges and the Corrèze.

[7] J.-P. Audouin, *Opinion ... sur le jugement de Louis Capet* (Paris, n.d.); Laurent Lecointre, *Opinion ... sur le jugement de Louis Capet* (Melun, 1792); Charles-Louis Morisson, *Opinion ... concernant le jugement de Louis XVI* (Paris, n.d.) (Morisson published three speeches, all to the same effect).

[8] For constitutional provisions, see John Hall Stewart, *Documentary Survey of the French Revolution* (New York, 1950), 240-5.

power to undermine the state. Anthoine and Finot pointed to natural law as the foundation of equality and justice. At this point, various lines of argument converged, for a public official betraying his trust was a traitor, and under the new *code criminel*, treason remained a capital crime. Some formalities there must certainly be. Saint-Just and Robespierre got little support for the assertion that Louis was as much an enemy as a foe on the battlefield and should be executed out of hand; a trial was needed both in the cause of justice and for its symbolic importance to Europe's remaining tyrants. Had Louis been killed at the Tuileries, said Osselin, his death would have been understood as "merely a catastrophe of the ordinary kind," but a trial would make it plain that even a king could be brought to account for murder.[9]

But a trial by whom? Various deputies suggested trial by the Parisian criminal court, or by a group of judges selected by the departments, or by judges selected by neighboring republics. All these projects failed, either because they embodied retrospective justice or because the judges concerned had been appointed by virtue of a constitution that did not give them the necessary powers. By natural law, however, power resided ultimately in the sovereign, and the Convention, elected by the people, exercised that power. It had a status that the English Long Parliament could never have claimed in its dealings with Charles I. After weeks of wrangling and a committee's report, a majority accepted that the Convention alone could try the King.[10]

Two difficulties emerged from this. On the one hand, there was the problem of process. The new *code criminel*, for which Le Peletier had been the *rapporteur*, had given the accused new rights, but in this unique case those rights went unprotected. Méaulle said bluntly that there was no way in which ordinary jury rights could be made to apply, and as he and his colleagues struggled through the preliminaries, there were repeated irregularities. Louis was allowed to defend himself, appearing before the deputies to do so, and he was allowed more defenders than the law prescribed, but far too little time was allowed for anyone to scrutinize the many documents, or for his counsel to give proper attention to the elaborate defense which was duly placed before the deputies.[11]

The second problem was that many deputies felt they were being made to ignore basic revolutionary principles. The decision that the Convention should become a court to try the King ignored the principle of the separation of powers and

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[9] Georges Couthon, *Opinion ... sur le jugement de Louis Capet* (Paris, n.d.); Charles-François Oudot, *Opinion ... sur le jugement de Louis XVI* (Paris, n.d.); Jean-Baptiste Massieu, *Opinion ... sur le jugement de Louis XVI* (Paris, n.d.); Robert Lindet, *Attentat et crimes de Louis* (Paris, n.d.); Paul-Augustin Lozeau, *Opinion ... sur le jugement de Louis Capet* (Paris, n.d.); François-Paul Anthoine, *Opinion ... sur le jugement de Louis* (Paris, n.d.); Étienne Finot, *Opinion ... sur le jugement de ci-devant roi* (Paris, n.d.); Louis-Antoine Saint-Just, *Opinion concernant le jugement de Louis XVI* (Paris, 1792); Maximilien de Robespierre, *Opinion ... sur le jugement de Louis XVI* (Paris, 1793); Charles-Nicolas Osselin, *Discours sur l'inviolabilité et sur le mode propose par le comité de legislation pour le jugement de Louis Capet* (Paris, 1793).

[10] The arguments for this were hammered out in a committee headed by Jean-Baptiste Mailhe, *Rapport et projet de décret ... au nom du comité de legislation*, 7 Nov. 1792. For a sample of other views, see Jean-Antoine de Bry, *Le ci-devant roi sera-t-il jugé?* (Paris, n.d.); Nicolas-François Enlart, *Opinion ... sur le jugement de Louis XVI* (Paris, n.d.); Gustave Déchezeaux, *Opinion ... sur le jugement de Louis Capet* (Paris, 1793); Dominique-Vincent Ramel de Nogaret, *Que doit faire la Convention nationale sur le procès de Louis Capet?* (Paris, 1793); Jacques Boilleau; *Opinion ... sur le procès du ci devant roi* (Paris, n.d.)

[11] Jean-Nicolas Méaulle, *Discours ... sur le jugement de Louis XVI* (Paris, n.d.); Jordan, *The King's Trial*, chaps. 6-8.

(said Saurine) had created "a dangerous example of a new despotism." It was claimed that if the deputies acted first as accusers, then as jurors ruling on guilt, and finally as judges giving the sentence, the resultant confusion of powers would make them no better than murderers. Some evaded these difficulties by sidling past any matter of principle, declaring themselves statesmen to be moved by political considerations alone. Others who wanted to make the King pay for his duplicity simply did not like the idea of becoming the judges who sentenced him.[12]

These discomforts helped to support a last-minute proposal that the outcome of the trial should be validated by the sovereign people. *After* the Convention's vote, Louis's ultimate fate should be decided by an *appel au peuple,* an appeal to the sovereign people through France's six thousand electoral assemblies. This indeed allowed the deputies to see themselves as statesmen, who were presenting the electors with the evidence and leaving them to reach whatever verdict they chose.[13]

The *appel* proposal produced a flood of last-minute pamphlets. Nearly thirty men had spoken, jeered Carra, and sixty more waited to speak, on a matter that could have been settled on 10 August by any Frenchman with a pistol in his hand. There was a sharp division between those hoping that responsibility—especially responsibility for an irrevocable sentence—would be shared between politicians and the public, and those who believed that the Convention should complete a task that its electors had given it. Additionally, there were those who could not like either solution.[14]

The case for the *appel* was elegantly put by Vergniaud, Gensonné, Brissot and others, with emphasis on its expediency. It would consolidate the Republic, in that citizens would unite to support it, which would make foreign intervention less likely, and it would also show that the Convention was not controlled by Parisian radicals. (It seems interesting that nightmare recollections of the September massacres did not prevent Vergniaud from devoting eight pages of a sixteen page pamphlet to sustained anti-Parisian invective.) The *ad hominem* abuse was mostly from the right. Those urging justice, in opposition to naked expediency, angrily stressed also the dangers of royal intrigue and the threat of civil war, since some Frenchmen had not yet lost all respect for royalty.[15] The best debater's speech was probably Barère's, deftly persuading a doubtful audience to move to the same side as Marat, but one of the most impressive came from Pierre-Louis Prieur. Whatever was done to the King, he said, responsibility rested with the deputies, as had been shown by tacit public approval of the Convention trial. The legal sentence for treason was death. In the existing crisis, any line of action was dangerous, but

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[12] Jean-Baptiste Saurine, *Opinion ... prononcée au moment du troisième appel nominal* (Paris, n.d.); see also Mont Gilbert, *Opinion* (note 4, above).

[13] Jean-Louis Carra, *Discours contre la défense de Louis Capet; dernier roi des Français* (Paris, n.d.); Barailon, *Considérations* (note 6, above).

[14] Cf. François-Nicolas Buzot, *Opinion ... sur le jugement de Louis XVI* (Paris, n.d.); Marguerite-Élie Guadet*, Opinion ... sur le jugement de Louis, ci-devat roi* (Paris, n.d.); Bathélemy Albouys, *Opinion ... sur le jugement de Louis Capet* (Paris, n.d.). Albouys claimed to have originated the idea of the *appel au peuple.*

[15] Jacques-Pierre Brissot, *Discours sur la procès de Louis* (Paris, n.d.); Armand Gensonné, *Opinion sur le jugement de Louis* (Paris, n.d.); Pierre Vergniaud, *Opinion sur le jugement de Louis XVI* (Paris, n.d.) For criticisms of Girondin intrigue, see Armand-Benoît Guffroy, *Discours ... sur ce que la Nation doit faire du ci-devant roi* (Paris, n.d.); and J. Pinet, *Réflexion sur le jugement de Louis Capet* (Paris, n.d.).

> by applying the law, we shall have carried out the duty that our constituents have imposed on us, the tyrant will be punished, freedom and equality will be secured, the republic will triumph, and if we must bear any responsibility, at least it will not be that of having taken steps which might have compromised the peace and safety of the country.

Jean-François Ducos put his reasoning in a different way. To him, a vote for the *appel* would be a betrayal of the system of representative government: "under which I hope to live and die." He added sadly, "Of all the sacrifices I have made for my country, this alone deserves to be remembered, that I sentenced a man to death." It is often forgotten that a number of others shared his repugnance; indeed, in the Constituent Assembly Pétion, Le Peletier and Robespierre had all voted against capital punishment. Dusaulx's plea, "blood calls for blood. It is time to stop the shedding of it," was made to an audience in which it could be expressly hoped that this death would be the last.[16]

In the final choice between expediency and revolutionary justice, justice won a narrow victory. It could be claimed that the Declaration of Rights was upheld: in cases of treason, all those convicted could meet an equal fate. But the trial had been unorthodox, to say the least. What kind of justice? What was the issue between King and Convention?

Let us return to the oath with which Louis was faced and to the comment of Girault, a deputy said to have made no impression whatsoever on the Convention. This may be true enough, but in his single speech on the trial, Girault did point out that Louis had no choice about the kind of king he was, being born and educated under the ancien regime. He could not in conscience take the oath required of him by the Convention because he was already bound to his people by duty of another kind.[17] If this sounds like the dilemma facing the non-juring priests from 1791 onwards, it was. They too were bound by conscience to do their best to oppose a régime they could never accept; the clerical oath was not for them. It follows that the gulf between revolutionaries and their most dedicated opponents was unbridgeable. Those on the far side were "outside the sovereign," rooted there, not merely because of what they had wished or intended or done, but because of what they were.[18]

Timothy Tackett's book on the clerical oath maps more than a score of departments where, during 1792, non-jurors were being illegally forced from their parishes because the authorities believed that their very presence in the parish was subversive. A fortnight after the monarchy fell, the Legislative Assembly accepted the rationale of this policy when it ordered the priests to take a civic oath or be deported.[19] By similar logic, the *conventionnels* who were unwilling to execute Louis

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[16] Bertrand Barère, *Discours sur le jugement du procès de Louis Capet* (Paris, n.d.); Pierre-Louis Prieur, *Opinion ... sur le jugement de Louis Capet* (Paris, n.d.); Jean-François Ducos, *Opinion sur le jugement de Louis XVI* (Paris, n.d.); Jérôme Pétion, *Opinion ... sur le roi* (Paris n.d.) (see also Pétion's *Opinion sur le question s'il existe ou non une Convention nationale* (Paris, n.d.); Michel Le Peletier de Saint-Fargeau, *Opinion ... sur le jugement de Louis XVI, ci-devant roi des Français* (Paris, n.d.); Jean Dusaulx, *Opinion sur le jugement de Louis Capet* (Paris, n.d.).

[17] C.J. Girault, *Opinion ... sur le jugement de Louis XVI*. Cf. Auguste Kuscinski, *Dictionnaire des Conventionnels*, 4 vols. (Paris, 1916-20), "Girault."

[18] The papers of the *comité des recherches* (e.g. AN D XXIX) are full of correspondence with local authorities who found the problem of "subversion" insoluble even if a priest concerned was expressly opposed to violence. Cf. Archives nationales D XXIXbis 22, commune of Lisieux.

[19] See Timothy Tackett, *Religion, Revolution, and Regional Culture in Eighteenth-Century France: the Ecclesiastical Oath of 1791* (Princeton, 1986) 277; also Donald Greer, *The Incidence of the Terror*

XVI seem virtually unanimous in wishing to see him either jailed for life or exiled as soon as might be (with the war's end, probably), and meanwhile, closely confined. A revolutionary state could find no place for those whose conscience bound them to oppose it. It followed that anyone resisting such a régime had no rights. Ordinary criminals could be dealt with in the ordinary departmental criminal courts, and so they were, even under the Terror. Political suspects were dealt with by political agents *en mission* or by revolutionary courts, as Louis XVI had been, because their offence lay outside the normal system of justice. By 1794 Saint Just could say, "The people are the revolutionaries. The rest are helots or nothing." Freedom of speech disappeared, and more and more citizens were excluded from the electorate on suspicion which required no proof. On the eve of Thermidor, an ever-higher proportion of clergy and nobles were among those being guillotined, and in the provinces thousands of suspects were in prison or under house arrest. If one traces the shape of Terror from the Law of Suspects through Prairial to the 1799 Law of Hostages, the methodology becomes increasingly complex and savage, but the aim does not change.[20]

When the choice imposed by revolution is a matter of conscience, it recognizes no compromise. The evidence against the King at the time was on the slender side, but the deputies' instincts were sound. Like many of the non-juring priests, Louis was at bottom under threat for what he symbolized and might wish to promote. Intentions, however dangerous, are difficult to prove, and Terror reduces the need for proof by presupposing intention. Why did both Danton and the Girondins believe that if Louis came to trial he would be executed? Surely this had little to do with evidence and everything to do with the fact that, as Robert Lindet and others saw it, his behavior before and after Varennes, and indeed since Bastille Day, was all of a piece. Kings, said Tom Paine morosely, are all the same.[21]

In 1793, public oaths were taken seriously, and it seems odd that François Furet's Bicentennial *Dictionnaire* does not even list them in its index, whereas in Soboul's rival publication, S. Bianchi points to their precedent in ancient Rome. Roman citizens and their office-bearers had sworn a symbolic oath which marked their admission to the *civis*.[22] In revolutionary France, from 1791, oaths became a political weapon, emphasizing conflicting loyalties and thus serving to divide the community rather than unify it. Despite much effort, it proved impossible to find one that the Republic's recalcitrant clergy would accept; nor was it easy, in some areas, to get dissident citizens to pledge their loyalty to a Nation whose authority they did not respect. It was to be some time before Napoleon imposed his own solution to the problems of post-revolutionary consensus. In 1793 there were no right answers. The Revolution, which had brought equality to Frenchmen, had now produced Frenchmen who were no longer potential citizens; all men were not equal. That was part of the price of revolution.

During the French Revolution: A Statistical Interpretation (Gloucester, 1966); John McManners, *French Ecclesiastical Society under the Ancien Régime (*Manchester, 1960), chap. 15.

[20] See John Hall Stewart, *Documentary Survey of the French Revolution*, 477-481, 528-531, 745-752. For Saint-Just, see Robert Palmer, *Twelve who ruled* (Princeton, 1960) 255.

[21] Thomas Paine, *Opinion concernant le jugement de Louis XVI* (Paris, n.d.) and his *Opinion sur l'affaire* de *Louis Capet* (Paris, n.d.). For problems with public feeling, see AD Maine-et-Loire 1L 976 (6 Feb. 1792), or 1L 357.

[22] François Furet and Mona Ozouf, eds., *Dictionnaire critique de la Révolution française* (Paris, 1988); A.M. Soboul, ed., *Dictionnaire historique de la Révolution française* (Paris, 1989).