

---

*H-France Review* Vol. 15 (August 2015), No. 106

Lucien Faggion, Christophe Regina, and Bernard Ribémont, eds., *La culture judiciaire: Discours, représentations et usages de la justice du Moyen Âge à nos jours*. Dijon: Éditions universitaires de Dijon, 2014. 522 pp. Maps, tables, figures, notes. 32€ (pb). ISBN 978-2-36441-100-5.

Review by Julius R. Ruff, Marquette University.

In recent decades, research in court records has greatly advanced our understanding of the nature of the law and the administration of its justice in the medieval and modern west, and French scholars have been particularly active in this work. Now, the contributors to the present volume seek to add a new perspective to our understanding of legal action by examining the cultural structures that the actors in the courtroom—judges, plaintiffs, and defendants—brought to the bar of justice. Through the exploitation of previously ignored sources, or by innovative readings of the legal records that have long been the traditional source for historians of justice, the authors seek to uncover the often unwritten cultural structures that prompted persons to seek redress in the law, guided the legal strategies of defendants and attorneys, and shaped the decisions of judges.

Theirs is an ambitious goal, and Frédéric Chauvaud aptly notes in the book's Preface that the work's title probably should have been pluralized because the volume's contributors examine not one, but many judicial cultures. Thus, this is a rich and thought-provoking book of unusual temporal and geographic scope. While the twenty-seven contributions to this volume especially address France from the thirteenth through the twenty-first century (twenty-one of the twenty-seven essays deal with French subjects), they also treat Italy in the Renaissance and modern periods, medieval Spain, and nineteenth-century Peru in essays that the editors have carefully organized topically.

In the volume's first and longest section, the editors group the essays dealing with cultural expressions of gender and sexuality in the adjudicatory process. The scholars contributing to this section confirm the assertion of Sylvie Perrier in her introductory essay that while justice is blind in principle, in practice it is highly gendered. Indeed, male officials still largely dominate it, as Juliette Gaté and Marie-Louise Gély show in their contribution to this section of the book. Examining twenty-first century France, where women now constitute a net majority of judges in lower courts, they find a persistent "glass ceiling" that severely limits female magistrates in higher judicial offices, most glaringly in the Conseil d'État and the Conseil Supérieur de la Magistrature. Thus, while France today manages a commendably gender neutral justice, it has a long way to go in establishing a judiciary that truly represents French society. In the patriarchal societies of earlier centuries, however, male domination of courts imposing a decidedly gendered law was the established order, and it shaped both cultural discourse and the rhetorical strategies of all persons dealing with institutions of justice.

A number of the essays in this volume deal with the cultural foundations of French courtroom action, and several contributions to the book's first section demonstrate that males and females employed quite different approaches to the law. We see this, for example, in Gwénaél Murphy's study of spousal abuse in Poitou from 1660 to 1780. Noting that a growing secularization of marriage in this period resulted in an increasing number of wifely demands for legal separation from physically abusive husbands, the author's close reading of wives' complaints and husbands' depositions reveals gender-specific strategies

in these documents. Wives' complaints displayed straightforward, normative rhetoric in which they laid out their reasons for seeking legal separation. Husbands, however, offered a wide variety of defenses, some denying violent behavior, others seeking to explain it as the result of the stress of economic hardship, or as a response to an abusive wife. But what most commonly unified husbands' responses, the author finds, was a certain contempt for the whole procedure and doubt as to its legitimacy in a patriarchal society.

Jean-Christophe Robert found a similar array of male strategies and gender assumptions in the defenses males mounted when charged with rape in the three *vigueries* of Roussillon in the years from 1700 to 1786. Sexual assault, a capital crime in the Criminal Code of 1670, was largely the result of poor, rural young men victimizing young women, sometimes with promises of marriage, although in a few cases the victims were children. Men's responses to allegations of rape built on a well-documented judicial suspicion of women's motives in pressing such charges. Many eighteenth-century jurists in the region assumed that what really underlay such cases was a sort of entrapment in which young women enticed males into sexual intercourse and used resulting pregnancies to secure a matrimonial match that normally would not have been their lot. Moreover, widely known legal commentators like Muyart de Vouglans assumed implied consent in cases of sexual assault in the belief that a determined woman could fend off unwanted advances. Thus, at the very minimum, judges expected physical evidence of a struggle to convict on rape charges, and in default of such evidence, they perhaps all too readily accepted the professions of innocence by defendants. These men employed a number of defense strategies, denying the charges, claiming that their relationship with the plaintiff was a consensual one, alleging that the woman's charges were not credible since she led a debauched life, or charging that the woman was a prostitute in an attempt to exploit the widely-accepted eighteenth-century belief that a prostitute could not charge rape since she sold her favors. All of these arguments drew on a certain image of women in both popular and elite culture of the day, and the male judges of Roussillon thus only sparingly imposed the death penalty in rape cases, while acquitting about one out of every seven males charged with the offense.

If criminal court documents from the provinces showed the persistence there of a very traditional judicial culture in regard to gender, other French sources reveal small, but noteworthy changes in the late eighteenth century. Just as David Bell and Sarah Maza have shown the value of published legal memoranda, the *factums*, for understanding the political culture of the late Ancien Régime, Géraldine Ther offers a sensitive deconstruction of a hundred of these publications from civil and criminal actions of the 1770s that demonstrates their use in understanding judicial culture.<sup>[1]</sup> While the author concedes that these were documents written by male attorneys to advance the interests of their largely male clients and thus routinely presented cultural stereotypes of marital harmony and cooperation between the head of household and his wife, her close textual analysis of these works reveals much more. Wives can be found, for example, acting independently of their husbands in economic and other matters.

Not surprisingly, the Revolution occasioned additional change in judicial culture. The work of Jacques Guilhaumou and Martine Lapiéd in the records of the criminal tribunals of the Bouches-du-Rhône and the Vaucluse and the dossiers of the Commission Populaire d'Orange in the wake of the Federalist Revolt suggest that, even though the Revolution of 1789 denied full political rights to women, they were treated the same as male citizens in court. Women could lodge complaints, testify, and also be tried for counterrevolution. Indeed, the Commission populaire d'Orange was quite prepared to execute nuns. For lay women, however, the departmental criminal tribunals also reflected the persistence of a more traditional judicial culture that tended to view women as less than autonomous actors on the political stage, and spared female suspects the full weight of the Terror. This anomalous role of women in the Revolution is also the subject of Emmanuelle Berthiaud's essay on the claims of pregnancy by female defendants to avoid torture and execution, as had been the rule in prerevolutionary criminal law. The Paris Revolutionary Tribunal, like its provincial counterparts in the southeast, indicted female suspects

as readily as males, and it had scant patience with claims of pregnancy because the difficulty of medical science of the day in identifying the early stages of pregnancy allowed many women to avoid immediate execution by falsely claiming to be pregnant. Indeed, this court sent to the guillotine twenty-one of thirty-one women claiming to be pregnant. But such judicial impatience ended with the Terror, and from 1795 until the advent of the stricter Penal Code of 1810, France's courts reverted to delaying the execution of pregnant women until their delivery, a practice that the author notes was rooted in a prerevolutionary culture that highlighted the peculiar status of the pregnant woman.

The second part of the book addresses the discourse of the judicial process and representations and critiques of the law and its operation, and presents a variety of scholarly contributions whose richness we can only suggest with two examples. The first is that of Mélanie Jecker, who offers an interesting study of Spain in the thirteenth century, when the Reconquista led by Castilian monarchs greatly expanded the territory subject to these Catholic kings, the greatest of whom, Alphonso X ("The Wise"), also undertook a massive codification of the law. Jecker shows that these two developments were closely related. The advance of the Reconquista left Castille with significant Jewish and Muslim minorities subjected to a Catholic monarch presiding over a nominally confessional state. Surprisingly for this period, however, Alphonso's law codes provided for the coexistence of three faiths within his realm.

Indeed, while Alphonso's new law codes maintained the oath-taking central to much of Western law, they also included specific instructions on how Jews and Muslims were to take oaths within their own religious traditions and cultures. Other parts of the king's law codes further cemented a policy of religious coexistence by regulating commercial, social, and legal relations between Catholics and their non-Christian neighbors. The inspiration for this was no great royal sympathy for the minority faiths—in one of Alphonso's codes, royal jurists averred that only madness could explain a Christian's conversion to Islam—but a formal accommodation with the religious reality of the day. Yet, such accommodations to inconvenient cultural realities were not the only ways in which the law was adapted to meet local needs. Diane Roussel's study of the 554 hearings of the seigneurial court of Saint-Germain-des-Près between 1511 and 1610 reminds us that there is perhaps no better way to understand the culture and structure of old regime society than through the records of local courts. Such tribunals, charged with adjudicating minor offenses, often functioned as a sort of stage on which community conflicts played out. First and foremost, those subject to the court's jurisdiction often pressed charges before the tribunal to force those with whom they were in dispute to offer a financial accommodation outside of court in lieu of an expensive litigation. When proceedings actually did open, local citizens pursued a number of strategies. Defendants often counter-sued their accusers, thus launching a judicial duel, and litigants also extended the original conflict by rallying neighbors as witnesses who readily bent the truth under oath in an attempt to prove the defendant's guilt.

The third section of the book groups essays addressing courtroom strategies. Particularly fascinating in this regard is Frédérique Pitou's use of the manuscript *Recueil de Sentences* kept from 1712 to 1765 by Pichot de la Graverie, an attorney and judge at a lower court in Laval. The *Recueil* was a sort of chronicle in which the author recorded verdicts of the court, and reported details of the court's cases over more than half a century. From this record Pitou distills much of cultural significance: the properties expected in a good judge, the deportment necessary for citizens in front of the court, and most tellingly perhaps, assessments of the courtroom performances of members of the local bar. Equally engaging is David Kammerling Smith's account of litigation in early eighteenth-century Nîmes resulting from the crown's attempt to impose a guild structure on the hosiers of that city. The hosiery workers divided deeply over this issue, initiating a conflict made all the more bitter by the fact that the opponents of the corporate structure were heavily Protestant while their adversaries were mostly Catholic. In a case decided by the *parlement*, the victorious anti-guild party argued for liberty for the hosiers, drawing deeply on local culture by invoking the historic liberties of Nîmes in the ancient period.

The twenty-seven essays in this work constitute a dense, rich book, to which even an extended review

---

cannot do full justice. Students of legal history will find much to interest them in this volume.

#### LIST OF ESSAYS

Frédéric Chauvaud, "Préface"

Lucien Faggion, Christophe Regina, and Bernard Ribémont, "Introduction: Rhétoriques, pratiques et réappropriations de la justice"

#### GENRE, SEXUALITÉ ET JUSTICE:

Sylvie Perrier, "Introduction"

Gwénaél Murphy, "Les stratégies de défense masculines dans les affaires de violences conjugales (France, XVII<sup>e</sup>-XVIII<sup>e</sup> siècles)"

Jean-Christophe Robert, "'Fille de mauvaise vie'. La stratégie de défense des agresseurs sexuels en Roussillon au XVIII<sup>e</sup> siècle"

Géraldine Ther, "La représentation du couple dans les *factums* d'avocats à la fin du XVIII<sup>e</sup> siècle"

Martine Lapied and Jacques Guilhaumou, "Genre et justice révolutionnaire dans le Sud-est"

Karine Salomé, "Le procès de Laure Grouvelle. Mise en scène, postures et représentations autour de la violence politique des femmes sous la monarchie de Juillet"

Alessio Basilico, "Stratégies de défense des mères infanticides. Entre justice communautaire et justice d'Etat"

Emmanuelle Berthiaud, "Les femmes enceintes devant la justice révolutionnaire à Paris (1793-1810): l'évolution des enjeux et des représentations de la grossesse"

Silvia Chiletti, "Les experts du corps coupable. Stratégies de défense et de vérité dans les procès pour infanticide (Florence, 1880-1922)"

Lissell Quiroz-Perez, "Une mère ne tue pas ses enfants. Les procès pour infanticide dans le Pérou du XIX<sup>e</sup> siècle"

Anne-Claude Ambroise-Rendu, "Bataille de mots autour du sexe violenté: le mensonge dans la judiciarisation des affaires d'attentats à la pudeur sur enfants (1832-1970)"

Marie-Laure Gély and Juliette Gaté, "Réflexions sur la composition sexuée des formations de jugement"

#### REPRÉSENTATIONS, DISCOURS ET CRITIQUES DE LA JUSTICE:

Solange Segala de Carbonnières, "Introduction"

Bernard Ribémont, "La culture judiciaire des jongleurs et des trouvères au Moyen Âge"

---

Mélanie Jecker, “Jurer selon sa religion. La figure de l’autre dans le droit médiéval castillan”

Diane Roussel, “Combattre en justice: Judicialisation et mises en récits de l’affrontement dans les procédures criminelles au XVI<sup>e</sup> siècle”

Giovanni Florio, “Une autre ‘guerre des écritures’: supplier, dénoncer et se défendre à Venise durant l’Interdit (1606-1607)”

Kevin Saule, “Études des stratégies discursives des paroissiens dans les plaintes collectives adressées à l’officialité diocésaine de Beauvais au XVII<sup>e</sup> siècle”

Arnaud Pautet, “Le regard de l’expert dans l’affaire des bandits fantômes: pratiques et représentations (1906-1914)”

Jacques Amar, “L’escroquerie au jugement: contribution à l’analyse d’une nouvelle culture judiciaire”

#### STRATÉGIES, JUSTICE ET POUVOIRS:

Pierre Legal, “Introduction: Stratégies, vérités et mensonges”

Christophe Blanquie, “Les voies du droit, les mots de justice”

Thomas V. Cohen, “Une épineuse histoire de pieuse pédophilie romaine (1558)”

Claudie Martin-Ulrich, “L’art de Pierre-François Gillet: entre théâtre et comédie, un discours sur les passions”

Frédérique Pitou, “‘*Jugé que...*’. Petites pièces en prose extraites d’un recueil de sentences”

David Dominé-Cohn, “Généalogie judiciaire du pouvoir princier à la fin du Moyen Âge. Les juridictions royales et la construction du pouvoir ducal dans le duché de Bretagne au XIV<sup>e</sup> siècle”

Aurore Chéry, “‘Je ne veux pas les attendrir’: la question de la sensibilité niée et ses conséquences dans le procès et l’exécution de Louis XVI”

Mathieu Soula “Oh le monster! La construction sociale et judiciaire du parricide en Languedoc aux XVII<sup>e</sup> et XVIII<sup>e</sup> siècles: accords et désaccords des représentations”

Jack Thomas, “Le sourd-muet de l’abbé de l’Épée: récits concurrentiels d’une affaire judiciaire au siècle des Lumières”

David K. Smith, “La réputation et la liberté: les stratégies rhétoriques juridiques et les conflits artisanaux au début du XVIII<sup>e</sup> siècle à Nîmes”

Pierre Allorant, “‘Le ‘procès des Treize’: un procès politique retourné pas les ténors libéraux du barreau sous le Second Empire.”

Benoît Garnot, “Conclusion”

#### NOTES

[1] See David A. Bell, *Lawyers and Citizens: The Making of a Political Elite in Old Regime France* (New York and Oxford: Oxford University Press, 1994) and Sarah C. Maza, *Private Lives and Public Affairs: The Causes Célèbres of Prerevolutionary France* (Berkeley: University of California Press, 1993)

Julius R. Ruff  
Marquette University  
[Julius.ruff@marquette.edu](mailto:Julius.ruff@marquette.edu)

Copyright © 2015 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