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Erika Vause, *In the Red and in the Black: Debt, Dishonor, and the Law in France between Revolutions*. Charlottesville and London: University of Virginia Press, 2018. Ix + 324 pp. Tables, notes. \$45.00 U.S. (hb). ISBN 978-0813941417.

Review by Thomas E. Brennan, United States Naval Academy.

Much has been written about the history of credit in recent years, mostly emphasizing its power to grow and transform an economy. Rather less has been written about debt, particularly if debt means not the simple inverse of credit so much as the social and economic burden on individuals. Although partly a matter of perspective, the difference is worth exploring. So, Erika Vause's challenging but deeply interesting book offers a welcome contribution to the study of debt and what its economic and particularly cultural consequences could be. While referring frequently to the growth of credit relations in an increasingly capitalist world, the book's real focus is on the failures left in its wake or, as she says, on the "concepts of risk, fault, and personhood" (p. 20). Vause argues that the personality of the debtor, meaning variously his economic agency, legal status, honor and virtue, was central to French society's efforts to make sense of economic failure. This allows her to reflect on debates about the modernization of the economy, the rise of capitalism, and the emergence of the modern individual. All of these themes emerge from intense controversies in the eighteenth and nineteenth centuries over the laws that dealt with bankruptcy and imprisoned commercial debtors who would not pay.

With the exception of two brief abrogations, in 1793-97 and 1848, the civil penalties sanctioned by both the old and successive regimes allowed creditors to demand the imprisonment of commercial debtors in default. Theoretically distinct from criminal penalties and criminal populations, though in practice often hard to tell apart, the debtors' prison was a tool for protecting creditor interests and enforcing debtor virtue. Again, that was the theory. What Vause finds consistently through this period is the confusion over who actually was liable, the perplexity over whether to invoke this tool, and the profound debates over questions of financial responsibility.

Debtors' prison was already controversial in the old regime, as explained in an unpublished dissertation by Thomas Luckett.^[1] Critics had already pointed to the economic illogic of depriving a businessman of his business and argued for protections of due process. Luckett also emphasizes the creditor's obligation to pay for the prisoner's board as a dissuasion. Vause points out that the cost was added to the final debt, but it probably made creditors think twice. Such impediments help explain the relative rarity of debt imprisonment in France, little more than one hundred prisoners in late eighteenth-century Paris for example, and only a tenth of the number

in London. Revolutionary crowds freed debt prisoners when they could, and the Convention abolished the institution in 1793.

By the mid 1790s, however, France's economy and public finances were in sufficient disarray that the calls for a return to debt imprisonment became imperative. Bankruptcies served as evidence of the general breakdown of public morality and had to be punished. Only the threat of incarceration, it seemed, would force debtors to act honorably and end the chaos of bad debts. Liberal free traders defended their private right to use the commercial law of imprisonment without government controls. Even small artisans and tradesmen defended the prison as a necessary protection of their interests. A series of commissions over the next decade strove to codify and clarify the law, but they exposed deep divisions over the cultural meanings of debt and failure. For some, including Napoleon, it was easiest to treat all bankruptcy as a criminal matter until proven innocent. While hardly less critical of debtors, the business community pointed out that wholesale criminalization would fatally disrupt the economy and encourage desperate behavior. The compromise slowly hammered out retained much of the old regime system but hoped to distinguish more clearly between commercial, civil (for non-business peoples' insolvency) and criminal procedure, but without much success.

Even after the Napoleonic codifications, the legal issues surrounding debtors' prison and bankruptcy in general were a bit of a nightmare. Vause tries hard to explain them carefully but has to admit to many exceptions in practice. The line dividing bankruptcies into private matters (*faillites*) handled by commercial courts, on the one hand, and public, criminal matters (*banqueroutes*), on the other, was never clear and often consciously blurred by zealous prosecutors and cautious creditors. Both debtors' prison and bankruptcy were theoretically reserved for commercial debtors, but the spread of credit instruments, particularly bills of exchange, into the non-commercial world meant that the rest of the population was intermittently dragged into these proceedings. Of course, these confusions underscore one of Vause's main points: that the society was working through the emergence of new attitudes and practices of a modern capitalist economy in their contestations over debt and its legal and moral significance. Even as credit relations became more complex, extended, and vulnerable to misfortune, the failure to pay a debt could not escape an assumption of dishonor.

The actual numbers of those affected by these debates are also a little hard to follow. Vause cites over 1,000 bankruptcies a year and about 2 percent of Parisian businesses around 1830 (p. 94). Of these, little more than one hundred a year faced criminal charges of bankruptcy, of which a majority were found innocent (p. 105). But the number imprisoned for debt is harder to discern. She relies, in the absence of archival evidence, on a nineteenth-century treatise (by Bayle-Mouillard) that presented the numbers in French prisons at the beginning of each quarter in the ten years following 1823. The total that Bayle-Mouillard comes up with (26,652 for private debts and 16,190 for public debts owed to the state) is less the number "imprisoned" (p. 126) during those years than the number in prison at those particular times. Bayle-Mouillard also admits that the number misses those whose stay was so short that they were not present at the four quarterly dates while double-counting those who remained longer than three months.[2] Nevertheless, Bayle-Mouillard divides the total by forty and claims a daily average of 1,269 prisoners for debt, though his numbers actually total 1,069.[3]

In the end, it is less the numbers or the economic significance of these figures than the cultural ramifications of the institution that interest Vause. Thus, she analyzes the contemporary debates

over how to judge business failure and pursues a few particularly rich court cases in some detail in order to tease out the competing discourses of honor, morality, risk, and business models. In addition to much evidence of sloppy business practices, there is reason to sympathize with contemporary concerns that bad debts were a sign of moral failing. But she points out that the “realities of business failure and the bankruptcy process provided multiple incentives not only for debtors to cheat but also for creditors to agree to lenient terms” (p. 118). Looking more closely at Parisian bankruptcy records in the early 1830s, she finds that the “process ended up disproportionately favoring debtors who know how to manipulate both the law and their creditors’ trust” (p. 201). But creditors faced few good options and protected their interests with similar ingenuity. Society seems to have used the law creatively for its own ends. Legal reform in 1838 and evolving case law around the same time treated the poorest debtors more harshly but began to give additional protections to various kinds of partnerships that were treated like an “abstract legal entity... a vision of the company divorced from the centrality of the debtor’s person” (p. 219).

The discursive contests carried over to the debtors’ prisons themselves, as debt prisoners and reformers tried to define their significance to a larger audience. At a time when prisons were playing a growing role in the mechanics of criminal punishment and rehabilitation, it is not surprising that the incarceration of debtors should provoke some controversy. Vause speaks of the “ambiguities inherent in confining individuals who had committed no crimes to institutions designated for those who had” (p. 131). If the two populations were increasingly segregated in Paris, there was considerably more confusion in the provinces. Debt prisoners routinely protested this confusion and insisted on their unique, if ambiguous, status of detention. Indeed, the inmates were surprisingly expressive, and Vause uses their testimony to offer fascinating insights into their prison lives.

Similarly, she devotes much of a chapter to Bayle-Mouillard’s treatise and, while being rather dismissive of his statistics and statistical thinking (perhaps understandably), sees it as an “excellent window into the tropes and questions” raised by contemporary arguments over debtors’ prison (p. 153). These included the troubling issues of who qualified as a businessman (*commerçant*) and why so many prisoners were not. This was connected to the ambiguous legal definition of bills of exchange, which were not necessarily commercial instruments. Most interesting, however, are the treatise’s reflections on the moral and emotional damage done to debtors and creditors alike. Rather than a rational world of the utilitarian *homo economicus*, debtors’ prisons revealed a vicious underworld of profligacy and debauchery. The treatise “reads as an unconscious indictment of the precarious post-Revolutionary social order” (p. 180).

Another revolution announced the temporary end of imprisonment for debt in 1848 and, in the midst of a credit crisis, tried to deal with cascading business failures. Initial reform sought a bankruptcy procedure that avoided some of the shame and disgrace of the previous regime, but reactionary forces triumphed and quickly abolished the reforms. Although these reforms suggested a “new, more abstract understanding of the personal as it related to commercial practices” (p. 246), their abolition reveals how reluctant much of French society was to abandon its traditional equation of failure with dishonor. It took almost another two decades before debtors’ prison was finally ended in 1867, for reasons that are only hinted at in an epilogue. Vause points to legislation that made joint stock companies more accessible and, more generally, to a “gradual reworking of the law that understood personhood in a new, more abstract way” (p. 254).

The use of imprisonment for debt was rare in the old regime and remained so in the nineteenth century. Yet Vause successfully persuades us that it provoked a disproportionate amount of public controversy. By focusing on failure, debtors' prison and bankruptcy laws in general raised questions about the nature of commerce and the individual's proper behavior in the market. These laws forced society to think about the distance between its ideals and its realities. Society responded at every level, from legislators down to the humblest prisoner, with testimony that revealed deep concerns about the cultural changes they experienced. Although a number of typos suggest some haste in the book's preparation, it is a sophisticated analysis of a dense legal subject. By setting the law in a larger, cultural context, it adds considerably to our understanding of debt and its consequences.

NOTES

[1] Thomas Lockett, "Credit and commercial society in France, 1740-89." PhD diss., Princeton University, 1992.

[2] Jean-Baptiste Bayle-Mouillard, *De l'emprisonnement pour dettes...suivies de la statistique de la contrainte par corps* (Paris: Imprimerie Royale, 1836), p. 137.

[3] *Ibid.*, p. 139.

Thomas E. Brennan
United States Naval Academy
brennan@usna.edu

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