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Yann Robert, *Dramatic Justice. Trial by Theater in the Age of the French Revolution*. Philadelphia: University of Pennsylvania Press, 2019. viii + 331 pp. Figures, notes, bibliography, and index. \$79.95 U.S. (cl). ISBN 978-0-8122-5075-6.

Review by William Doyle, University of Bristol.

Nobody has ever doubted that the French Revolution's reforms to criminal procedure were rooted in the judicial thought of the Enlightenment. Yann Robert contends (he "contends" a lot, like some advocate in court) that they owed just as much to Enlightenment thinking about the theatre. Beginning with Denis Diderot's theoretical defense of his innovative drama *Le Fils naturel*, Robert notes the proliferation over the pre-revolutionary decades and into the Revolution itself of re-enactment plays revisiting *causes célèbres* such as the Calas case and the way they influenced thinking about the real-life conduct of criminal justice. He also notes increasing interest in the example of Aristophanes, whose criticism of Socrates in *The Knights* was blamed by Plato for contributing to the condemnation of his hero. Athens was turning, Plato feared, into a "theatrocracy," where the public interest was dictated by popular emotions generated through dramatic performances (p. 131). But many writers in later eighteenth-century France could see little to condemn in that. Much of the scholarship generated since historians of this period discovered Jürgen Habermas has emphasised how public opinion came to be seen as a sort of supreme tribunal of what was right. Many, including Louis XVI himself, declared that public opinion was never wrong.

Ancien régime criminal justice, however, deliberately allowed the public no say or insight into how verdicts were reached. Cases were investigated by judges studying written evidence in secret, confronting the accused only at the last stage, and allowing him or her no opportunity to present countervailing testimony, either in person, or through calling witnesses, or the words of a defending counsel. Even when justice was done, apart from the public punishment of those found guilty, it was certainly not seen to be done. Some reforming commentators found this unacceptable. Long before he became a figure in national revolutionary politics, for example, Jacques-Pierre Brissot wrote extensively on the defects of the criminal law. Arguing for a reinvigoration of the bar, which he thought to be in deplorable decline, he proposed that criminal cases should be conducted (as civil ones largely were) entirely in public through the arguments of trained advocates. He even suggested that they might take instruction from actors into how to touch the feelings of those who heard them. Sarah Maza has already demonstrated how criminal lawyers could use widely disseminated printed briefs, written in increasingly emotional language, to arouse public indignation over wrongs perpetrated by the secretive conduct of the pre-revolutionary courts.[1] Many such wrongs might be avoided in

the first place, thought reformers like Brissot, if advocates were allowed to wrangle in public over contested cases, as they were in the British system. The public could then see for itself how miscarriages of justice might be avoided.

Given the later revolutionary triumph of more open and liberal judicial principles, historians have tended to regard it as the fulfilment of an Enlightenment consensus. Robert, however, warns that no such consensus existed, either before or after 1789. The drawbacks of theatrical justice were never overlooked. Should cases really be determined more through the inevitably unequal histrionic skills of advocates rather than the intrinsic quality of evidence? And what honest lawyer should undertake to defend somebody he knew to be guilty? Both are perennial questions which resurface whenever justice appears to miscarry, and Robert shows that they troubled even the advocates of reforming criminal procedures both before and after the Revolution delivered the opportunity. In fact, the Revolution brought a backlash against lawyers of all sorts. The order of advocates was completely abolished as a former bastion of privilege; and although defendants were now allowed counsel, they took the form of *défenseurs officieux*, informal defenders chosen from citizens at large, however unqualified. Another dream of some earlier writers was to be rid of the law and the chicaneries of lawyers entirely. Montesquieu, to be followed by a number of others, had suggested that a truly virtuous society would have no need of laws. The revolutionaries believed that this might be possible at least within the bosom of families, where all were subject to paternal authority. So *tribunaux de famille* were established where internal disputes might be settled by the arbitration of the family's head, on the basis not of laws but of his knowledge of all the circumstances, and his own natural (not to say sacred) authority. The outside public would have no access to these procedures, and so no influence upon them. But both this experiment, and that of the *défenseurs officieux*, were failures. Based upon an overoptimistic view of human nature, they led to more recourse to law, not less.

Nor did consensus exist on the influence of the theatre. Jean-Jacques Rousseau laid out the case against it in his *Lettre à d'Alembert* of 1758, where he argued that the introduction of a theatre into the puritan republic of Geneva would corrupt public morals. And acting, he and others also argued, was a form of licensed hypocrisy, antithetical to the virtue and sincerity required of honest citizens. Monarchical authorities were well aware of the subversive potential of theatrical performances, and while not hostile to the stage itself, did not hesitate to censor or ban plays that they considered dangerous. The initial reaction of the revolutionaries was to break with these old ways by abandoning stage censorship entirely, and the early Revolution was a heyday for tendentious courtroom dramas about pre-revolutionary judicial scandals. But, in the totally politicised world of the French Revolution, no activity could be innocently pursued. Playwrights did not hesitate to comment through their work on current affairs, and to encourage their audiences to take sides. But this licence went too far when, in January 1793, Jean-Louis Laya offered *L'Ami des Lois* at the Théâtre de la Nation. It was the very moment when the Convention was deciding on the fate of the deposed king, and nobody could mistake the aliases of the play's villains. They were leading advocates of the king's execution: Maximilien Robespierre and Jean-Paul Marat. This was a deliberate attempt, in the manner of Aristophanes, as many observers remarked, to induce the theatre-going public to pronounce in the king's favour. It was bound to fail, and Louis XVI was duly condemned. But the play drew capacity audiences who applauded its message, and the Montagnard municipality was alarmed enough to close it down. From then on, the theatre was increasingly once again subject to close censorship. Until the end of the Terror, all that were now allowed or encouraged were plays of

patriotic propaganda—an ironic acknowledgement, to be sure, of the influence that the stage still seemed able to exert.

In one sense *L'Ami des Lois* was also a play about a play, for the king's trial itself was far more of a public performance than a judicial process. Robespierre and his allies had opposed the whole idea as absurd. In overthrowing the monarchy, they argued, the French people had already tried Louis XVI and found him guilty. Moreover, a real trial according to the reformed principles of criminal justice would have to allow a theoretical possibility of acquittal, with unthinkable consequences for the whole Revolution. What actually happened, therefore, was much more like the derided criminal justice of the *ancien régime*, with an indictment already drawn up, and the defendant only appearing at the end to respond to pre-loaded questions. There were no witnesses, no cross-examination. The only concession to newer practice was the grant of a defending counsel. Raymond de Sèze's peroration was everything that Brissot would have welcomed in his days as a reforming pamphleteer, but the show-trial script had already been written. We cannot know how far Sèze might have swayed anyone who voted against the death penalty, but in any event, it was not enough.

And when, three months later, the Convention established the Revolutionary Tribunal, its procedures were far closer to the inquisitorial justice of pre-revolutionary times, and were made even more so by the Law of 22 Prairial a year later, when defending counsel were abolished, witnesses dispensed with, and jurors transformed into little more than professional judges. It is true that these restrictions only applied to special courts established to try political offences—a point that perhaps Robert should have made more of. But suspicion over allowing too much theatricality into the courtroom was confirmed by the revolutionary experience. When criminal jurisprudence was stabilised under Napoleon, while retaining many of the early Revolution's innovations, it also re-established the initial directing role of the examining magistrate from the earlier French tradition. The hybridity persists until our own times.

This is a challenging work. Who would have thought that a book on judicial reform in the eighteenth century need contain only two fleeting references to Cesare Beccaria? But the argument is based upon wide and thoughtful reading and is confidently, if sometimes rather heavily, deployed. It questions a whole range of commonplaces about theatrical, judicial, and revolutionary history in ways which are sure to stimulate further debate.

NOTE

[1] Sarah Maza, *Private Lives and Public Affairs: The Causes Celebres of Prerevolutionary France* (Berkeley: University of California Press, 1993).

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