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Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264-1423*. Ithaca and London: Cornell University Press, 2003. xii + 277 pp. Tables, bibliography, and index. \$49.95 U.S. (cl). ISBN 0-8014-4105-6.

Review by Esther Cohen, Hebrew University of Jerusalem.

Daniel Lord Smail has been writing important articles since 1996. His work, while significant to the history of Marseille and Provence in general, has also aroused a great deal of interest outside this field for its original and thought-provoking use of archival sources. His previous book (*Imaginary Cartographies: Possession and Identity in Late Medieval Marseille*, Cornell University Press, 1999) dealt with how, in terms of topography, residents of late medieval Marseille saw their city. Smail reconstructed the mental picture of the city from contracts and lawsuits. Since then, Smail has written about the hatred imported into and generated in judicial courts, about how stories are conceived and told in the same spaces, and how memory was re-created there. All those subjects would have been inconceivable before Natalie Zemon Davis's path-breaking work on letters of remission, but Smail's work goes much farther.[1] He is acutely aware of the value of narratives and uses them with consummate skill. He has a remarkable capacity to piece together the *membra disiecta* of medieval court protocols into a coherent and captivating story with analytic meaning. The recreation of several such stories, cheek by jowl, brings to life the litigious and rowdy late medieval city in a manner closely resembling micro-historical studies.

The Consumption of Justice revolves around three major themes; first is the resort to trial justice as consumption of goods, or even ostentatious consumption. This is a reversal of the usual story of public legal institutions in the later middle ages. Usually, their growth is told as the imposition of royal authority upon unruly, vendetta-bent subjects who would much rather resort to violence than to trials. In contrast, Smail argues that going to court was a way of exacting vengeance, and a far more comfortable and satisfying way than mayhem could ever be. In the course of a trial, opponents could be defamed, defrauded, and financially weakened, even ruined, all while acting out one's enmity in the glare of public view. It was much more efficient for wreaking vengeance than a back-alley beating. The Marseillais resorted to public courts because they wanted to, argues Smail, not because the state had imposed it upon them. While the idea of using courts for revenge has been explored in Icelandic and English materials, it has never been so thoroughly applied, especially not within the context of a territorial late medieval state like the kingdom of Provence.[2]

The centrality of emotions--love, hatred, vengeance, enmity--is another crucial point. Courts were the place where one could create and re-create emotions. One could prosecute out of enmity, and develop other feelings as well during the trial. Most importantly, argues Smail, feelings were not an inner force finding an involuntary outlet. Emotions were in essence public forces; they were not just "acted out". Rather, they existed as public actions within the public sphere. This insight by itself is enough to make Smail's book an indispensable contribution to the growing field of emotions history. The third central point, which, alas, finds articulation only in the last chapter, is what Smail calls "the public archive," by which he means communal memory. In an age that had no public registry of basic facts: birth, death, alienation of property, and marriage, the court relied upon testimony and memory to validate facts that are nowadays established by transcripts of public registration. The tremendous importance of memory in literate, but non-registry societies (in fact, all western Christian societies prior to the sixteenth century) has never really been explored in such a convincing way, and probably deserves a special study on the scope of Clanchy's work on the transition from non-literate to literate memory.[3]

True to its aim of using justice as a tool of social and emotional history, the book begins with stories of trials and the emotions they trail with them. Though the preponderant tendency was for trials to peter out into some (assumed) extra-judicial settlement, Smail has had the insight to use the unfinished records (prevalent all over France even in the sixteenth century) for what they do carry, rather than for straightforward judicial histories. Nevertheless, he does

devote an entire chapter to the history and description of public justice in Marseille: how, when, where, and why it worked. At this point, the reader cannot help wishing he had inserted a good map of fifteenth-century Marseille. Similarly, for anyone unfamiliar with Smail's previous work, a short review of faction warfare in Marseille would have been useful. Throughout the book, Smail refers to the Vivaut and de Jerusalem factions, without once describing their conflict more thoroughly.

Smail centers his analysis of the system upon the efficient functioning of the Roman-canon system of law, which was apparently adopted in the kingdom of Provence lock, stock, and barrel. Smail (like his more institutional predecessors) attributes a host of social and legal phenomena to the use of this inquisitorial method--the use of the courts for vengeance, the need for reliable testimony concerning the most basic of facts, and the use of torture to extract confessions. Undoubtedly, the stringent Roman-canon standards of proof required proof of witness probity, but many of these procedures existed elsewhere even before the institution of the inquisitorial system, unnecessary, in any case, in adversarial trials. Witness examination, judicial torture, and private prosecution had existed also within the accusatorial system. The argument that the Roman-canon system released unforeseen possibilities for judicial revenge does not sound convincing.

From the institutional basis, Smail goes on to the core of the book: examining emotions in court, first in general, and then in the separate realms of civil and criminal trials. In these central chapters, Smail studies the vocabulary of emotions and its growth in the fifteenth century. This is another extremely important point, which merits a separate cross-cultural study: the development of a rich emotive vocabulary (be it words for feelings or insults) to describe what people feel about others, and the transposition of this vocabulary from informal to formal situations. At the same time, one can see the courts as nurseries of emotion: what may have begun as a mild dislike may become burning hatred during the case.

Another important point emerges from the study of civil suits. Traditionally, historians have concentrated upon the far more exciting criminal cases, with the result that a majority of court activity and legal culture went neglected. Civil suits rarely make exciting stories. In Marseille, most civil suits were for debt, but beneath this humdrum surface, Smail has managed to excavate not only personal tales, but also roiling emotions that will make a patient landlord lose his patience and sue for payment of rent as revenge or as an expression of factional politics. Here, credit and debt are rescued from purely economic history, transposed into the realm of social relations.

Criminal cases, however, do receive their due. Smail stresses the relative rarity of corporal punishment and torture found in other parts of Europe. The author does get confused between the local method of torture, the *eculeum*, and the strappado. He is in accord with other studies, however, in concluding that corporal punishment and judicial torture were reserved for outsiders--a Jewish woman, a vagabond, a professional criminal. Most Marseillais could pay their penalty to society with a monetary fine.

Throughout the book, Smail returns to the fabric woven of the various threads, to the networks of what he (to my mind, erroneously) terms legal culture. His legal culture is much more than legal: it is the culture of the consumers of law, not the culture of jurists. It is the culture of the public sphere in which so much of late medieval life took place, the culture of interpersonal and interfamilial relations. All the individuals mentioned in the book are embedded in their networks of kindred, faction, neighborhood, or craft. The constant transition from the case, in which individuals star, to the world surrounding them is far more than legal culture. It is total history in the best sense of the word.

No book is free of faults, but most of them are in the eye of the reviewer. Albertus Gandinus did not live in the fifteenth century (p. 182). I would have preferred quantitative data in graphs rather than tables, for they are easier to read. In some places, Smail seems to have taken self-avowed liberties with his texts. As he said, one must often infer the emotions from a dry protocol, a procedure that sounds rather dangerous (p. 92). Though he does acknowledge the danger, I find his inferences occasionally too extreme. The narrative sounds much more dramatic if told directly in first person, but the conscientious author has added the Latin text, which shows that all these raw emotions came boiling straight out of the notary's pen in third person (pp. 92, 135). How much of the drama is indeed elicited (or contributed) by the author, and for this matter, how much was supplanted by the notary himself? Finally, by choosing (to his praise) to add a comparative perspective occasionally to his findings, Smail has laid himself open to

the endless accusations of having missed a reference to court procedures elsewhere. I would have preferred to see more of Diane Owen Hughes's work on Genoa in the footnotes.[4]

But all these criticisms are petty. Smail's book is original and important. It is important for students of southern French history, but it carries weight far beyond that field. It is important for anybody studying the social and cultural uses of courts, for all students of emotions, and for all those interested in reading a well-researched, well-written, and fascinating piece of historical writing.

NOTES

[1] Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and their Tellers in Sixteenth-Century France* (Stanford, Calif.: Stanford University Press, 1987).

[2] William I. Miller, *Bloodtaking and Peacemaking: Feud, Law and Society in Saga Iceland* (Chicago: Chicago University Press, 1990); Paul Hyams, *Rancor and Reconciliation in Medieval England* (Ithaca, N.Y., Cornell University Press, 2003).

[3] Michael T. Clanchy, *From Memory to Written Record, England 1066-1307*, 2nd ed. (Oxford: Blackwell, 1993).

[4] For example, "Urban Growth and Family Structure in Medieval Genoa," *Past and Present* 66 (1975): 3-28.

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