

The French Revolution and the organization of justice

INTRODUCTION

Of all the institutions of the Old Regime, the justice system was criticized the most harshly and the most justifiably.

French justice under the Old Regime was marked by the large number of courts, the overlapping of their jurisdictions, the slowness and the cost of proceedings, the harshness of the criminal procedure, the cruelty of the punishments and the severity of the sentences for ordinary people, a severity that contrasted with the extreme clemency shown to the privileged classes. There was generally little love for judges and prosecutors, due to the fact that they defended a system that favoured their own interests but which the majority of people rejected. Only lawyers drawn from the middle or the lower bourgeoisie acknowledged the need for judicial reform.

A violent campaign in favour of reorganizing the justice system had convulsed the country since 1760. Montesquieu had earlier addressed strong criticisms against the organization of the judiciary. But it was Voltaire who in his writings brought the most violent blows against the judicial edifice of the Old Regime. Moreover, the movement for reform was not exclusively French. Even the most important works in favour of the reorganization of the judiciary were published abroad, in England and Italy. Thus, Beccaria's treatise *On Crimes and Punishments* was published in Italian in 1764 before being translated into French in 1766.

Following this campaign, the royal power carried out an initial reform in abolishing the "preparatory question" (*question préparatoire*) on 24 August 1780. This was a form of torture that accused persons were forced to undergo in order to extract confessions from them. However, the "preliminary question" (*question préalable*) – a form of torture designed to obtain from those who had been convicted the names of their accomplices –

continued to exist, as did many other criminal law practices that seem unworthy of the Age of Enlightenment.

In 1788, in a final attempt by the Old Regime to reform itself, Lamoignon, the Keeper of the Seals, brought in several improvements to criminal procedure: interrogation on the accused's stool (*sur la sellette*) was abolished; judgments of the sovereign courts henceforth had to be supported with reasons; and the preliminary question (*question préalable*) was also finally abolished. Accused who won acquittal were now required to be compensated for their imprisonment. In reality, however, this edict was not implemented. Nevertheless, the courts themselves were taking account of their increasing unpopularity. They thus attempted to make some gestures toward public opinion. The court of the Châtelet in Paris inquired among lawyers on the reforms to introduce to the justice system, the high judicial court (*Parlement*) of Paris established a committee to study reform of the justice system, and lawyers in Marseille drafted a program for the reorganization of the justice system.

However, these projects were very timid in light of the multitude of complaints and projects to be found in the records of the Estates General of 1789. The wishes expressed in these records relate to the general organization of the justice system; others relate more specifically to criminal justice; and yet others refer only to civil justice. In the case of criminal justice, there were many projects based on the large numbers of works on the subject published in the preceding years. The records demand serious guarantees of individual liberty and request that no individual should be arrested or forced to appear before a judge, except when the individual was caught *in flagrante delicto* or identified by public outcry, and that any individual who was arrested be examined within twenty-four hours. The records also demand that all accused be assisted by counsel designated by the authorities or selected by the accused, that accused persons not be required to swear an oath, that the hearing of and judgment in criminal cases be public and that reasons be given for judgments with a precise reference to the laws relied upon. Naturally, the records also demand the abolition of torture, the moderation of sentences to make them proportionate to the offences and the elimination of barbaric forms of torture that had been added to the death penalty. They also demand that the conviction of an individual no longer involve dishonouring all his relatives and that prisons be improved, underground dungeons be abolished

and interrogation on the accused's stool be abolished. Thus, the records contained a full program of criminal legislation.

It was during its first sittings that the Constituent National Assembly decided to give France a new judicial organization. On 17 August 1789, Nicolas Bergasse presented on behalf of the Committee on the Constitution a report on what he called the "judicial power." After summarizing the complaints echoed in the records of the Estates General, he proposed a new organization of the justice system on the following basis: a justice of the peace in each canton, intermediate courts, a court of justice for each province and the abolition of courts of exception. He demanded guarantees of individual liberty on the model of the British *habeas corpus*, the publication of accusations and proceedings, the introduction of juries, less harsh sentences and improvements in policing. However, the Assembly was at that time debating the Declaration of the Rights of Man. It postponed the Bergasse project after noting its main principles, which it enshrined in articles 7, 8 and 9 of the Declaration of the Rights of Man.

On 10 September 1789, at the express request of the Paris Commune, the Constituent Assembly instructed a seven-member commission to submit a proposal for the immediate reform of the criminal law. Jacques Guillaume Thouret was appointed chairman of the commission. The report was adopted more or less in its entirety and became law on 10 October 1789. The law in question established a whole series of provisional measures designed to increase protection for accused persons. Prominent citizens were immediately assigned to the judges in each town. Every accused was required to be brought before a judge within twenty-four hours. Judgments were rendered publicly. Accused persons were assisted by a lawyer, not only during the judgment but also during all the proceedings. Interrogation on the accused's stool, the tortures of the preparatory and preliminary questions, the oath that the accused were required to swear were naturally abolished. The Constituent Assembly supplemented these provisional measures again when it decided on 21 January 1790, on a motion by Dr. Joseph Ignace Guillotin, that the same offences should be punished by the same sentences, that these sentences would not have any consequences for the families of those convicted, that property could not be ordered to be seized and that the bodies of those who had been tortured would be handed over to their families, if the families so requested, for regular burial.

During this period, the Constituent Assembly drafted projects for the complete reform of the organization of the courts. On 24 March 1790, the Assembly decided that the judicial apparatus should be completely restructured and began at once to discuss three main projects, those proposed by Thouret, Adrien Duport and Sieyès. The law of 16 August 1790 respecting the reorganization of the justice system in general and especially the civil justice system, contained the essence of the Constituent Assembly's work relating to the courts. It was supplemented by a number of other laws, including that dated 16 September 1791 on criminal justice, and by the Penal Code dated 25 September 1791.

Some of the interventions made by Bergasse, Duport and Thouret on the reform of the justice system remain relevant to this day in many respects. Yet, despite their undoubted importance, these texts are known only to a few specialists and have not been translated into English. It therefore seemed useful to make them accessible to a much wider number. We therefore publish here, in French and in English, reflections whose interest has not been eroded by the passage of time.