

H-Net Reviews

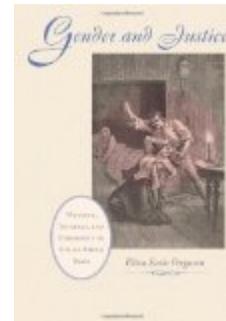
in the Humanities & Social Sciences

Eliza Earle Ferguson. *Gender and Justice: Violence, Intimacy, and Community in Fin-de-Siècle Paris*. Baltimore: Johns Hopkins University Press, 2010. 280 pp. \$60.00 (cloth), ISBN 978-0-8018-9428-2.

Reviewed by Aaron Freundschuh (City University of New York - Queens College)

Published on H-Urban (May, 2012)

Commissioned by Alexander Vari



The Passion Loophole

Eliza Earle Ferguson's history of couples who maimed or murdered each other calls for a fundamental reconsideration of the "crime of passion." Loaded with cultural significance in fin-de-siècle Paris, the term itself had no actual legal basis because it was never codified, and indeed it was rarely even spoken in the courtroom. Yet it had a nearly mystical effect on contemporary juries, who commonly voted to acquit on assault and homicide charges despite incontrovertible evidence of guilt—including a defendant's confession—and cold premeditation. Among Parisian women who were criminally charged for having committed a violent act against their domestic partners, 64 percent were exonerated. Men, who were three times more likely to be the defendants in cases of intimate violence, had inordinately high acquittal rates, too, according to Ferguson's findings (p. 2). Whence the passion loophole? Using a sample of 264 cases heard by the Parisian *cour d'assises* during the waning decades of the nineteenth century—cases predominantly involving working-class couples—Ferguson argues that the bewildering acquittal rates for intimate violence constituted "nothing less than the failure of the state system of justice to displace a popular system of justice" (pp. 157-158). One of this monograph's many strengths is its probing analysis of the social workings, cultural logic, and rhetorical power of this latter, competing system of "justice," which abetted intra-household violence until late-twentieth-century legislation began to dismantle it.

Gender and Justice is divided into six chapters, plus a conclusion which takes the story into the present day, and a brief introduction that begins Ferguson's sustained critique of previous historical treatments of the crime of passion specifically, and of urban violence generally[1]. To begin, the author positions her work as a counterweight to the scholarly "preoccupation with dominant discourses" that has distorted our view of criminal cases involving intimate violence (p. 10). Something other than the influence of elite cultural codes—medical diagnoses of insanity, or defendants' conformity to melodramatic narratives of violence—is needed to account for high acquittal rates. In fact, medical professionals rarely intervened in these cases, and when they did so, it was to only minimal effect; at the same time, writes Ferguson, "one can well admit the availability of the melodramatic narrative of the crime of passion ... but the simple availability of a cultural script does not assure its enactment" (p. 11). In a substantive tweak to the familiar dichotomy between bottom-up and top-down research approaches, then, Ferguson mobilizes Pierre Bourdieu's practice theory in order to make sense of the social world of working-class defendants.

For pragmatic reasons at least, contemporary elites worried about the impunity being granted to assailants and murderers: the reputation of republican justice was evidently at stake. But prosecutors faced a systemic contradiction that diminished their power. To wit: while the republic's prosecuting magistrates spoke the rational lan-

guage of the law, jurors were required to base decisions of guilt—which could carry the death penalty in homicide cases—on their own “*conviction intime*,” a personal and hence contingent notion of justice which the French revolutionaries had built into the jury system back in the 1790s. In practice, jurors could be convinced of a defendant’s guilt while nonetheless finding his rationale for the “crime of passion” justifiable, and the result would be a not-guilty verdict.

The obvious question then is how Parisians’ *conviction intime* held that sexual betrayal, to take a common scenario, might merit the cuckold’s bullet or blade. Household violence served “to patrol the boundaries of acceptable behavior for men and women in domestic partnerships, functioning to help construct gender roles in the immediate and contingent context of daily life” (p. 212). Violence in the home, in other words, could pick up where the law left off by reinforcing norms of “good” domestic partnership through the punishment of frowned-upon behavior. In this way, “intimacy” was a social phenomenon in the widest possible sense. Ferguson’s impressive reach into the archival files shows how this worked. Close interpretive readings of witness testimony expose the social networks from which character witnesses were drawn, thereby challenging the notion that crimes of passion were acts of social isolation. Urban historians will find this data of interest for the way it leads Ferguson into tangential topics, such as contemporary theories of urban crime and the role of the mass press in shaping Parisians’ understanding of this form of violence. Also fascinating is the role of the police, who regularly arbitrated domestic disputes and thus also offered key witness testimony.

Many of these cases involve migrants from the provinces who were well ensconced in the city—enough at least for their neighbors to accumulate a startling amount of information about them. The living quarters in working-class residential buildings facilitated this. The walls separating apartments were so thin that neighbors heard each other urinating. No wonder that witnesses were able to provide minute details when queried as to the habits and events which preceded a fatal ruckus. So-

cial knowledge of intra-household altercations was by no means exclusively a matter of eavesdropping, though. Moving outward from couples’ “private” apartments toward their towns of origin, Ferguson shows how rural gender norms of responsibility among married couples continued to have an impact on life in the French capital. Battered women spread knowledge of their partners’ abuse among friends and family as a means of establishing support, but also for strategic reasons: since investigating magistrates gave great weight to witness testimonies in establishing a person’s reputation and typical behavior for the court, it made sense to alert others. It was not uncommon for the residents of an individual’s home village to give sworn statements, subsequently read by the court in Paris, with information about behavioral patterns that seemed to foretell—or to justify—the exercise of violence within a domestic partnership.

Gender and Justice is an extremely useful history, not least for its archival heavy-lifting. Ferguson’s analysis begins to restore intimate life to the history of urban crime—although urban scholars may regret the lack of comparative reference to other cities—just as it contributes to our understanding of the dynamic cultural processes that define “legitimate violence” in France. Legislative awareness of domestic violence has been slow to grow and remains incomplete in France and elsewhere. Such awareness has not spread via a trickling down of elite sensibilities. Rather, it is the direct result of activism. In the history of gender-based violence, as with other forms of gender injustice, feminists and reformers have overcome significant obstacles in order to push state systems of justice onto higher ground.

Note

[1]. Ruth Harris, *Murders and Madness: Medicine, Law, and Society in the Fin-de-Siècle* (Oxford: Clarendon, 1989); Anne-Louise Shapiro, *Breaking the Codes: Female Criminality in Fin-de-siècle Paris* (Stanford: Stanford University Press, 1996); and Joëlle Guillaud, *La Chair de l’autre: Le Crime passionnel au 19e siècle* (Paris: Olivier Orban, 1986).

If there is additional discussion of this review, you may access it through the network, at:

<https://networks.h-net.org/h-urban>

Citation: Aaron Freundschuh. Review of Ferguson, Eliza Earle, *Gender and Justice: Violence, Intimacy, and Community in Fin-de-Siècle Paris*. H-Urban, H-Net Reviews. May, 2012.

URL: <http://www.h-net.org/reviews/showrev.php?id=34119>



This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 United States License.