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James R. Farr. *Authority and Sexuality in Early Modern Burgundy, 1550-1730.* New York: Oxford University Press, 1995. x + 252 pp. $45.00 (cloth), ISBN 978-0-19-508907-3.

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Social Control, Religion, and Gender

Studies of criminal justice and criminality have come a long way since Francois Billacois[1] focused historians' attention on the potential of judicial sources for a better understanding of mentalities. Broadly speaking, studies in this field generally fall into three conceptual categories. Although no longer very popular, marxist historians saw judicial institutions as instruments of state oppression and the locus for class conflict.[2] Other historians took an instumentalist/consensual view and considered courts as effective instruments for community dispute settlement.[3] The third group, which has been the most influential in France, views justice as existing on the margins of the community when all other methods of dispute-settlement have failed, or as directed against those who are not integrated into the community.[4]

James Farr breaks new ground in linking the first and third trends. He sees the judiciary as implementing a new program of state social control sharply influenced by the Counter-Reformation and reinforcing patriarchy. Its action was mainly aimed at people on the margins of society: wayward clerics and women.

Dividing his analysis into two unequal parts, Farr begins by outlining the ideology of the elite that tried to reform French society emerging from the chaos of religious wars. At the end of the sixteenth century an authoritarian ethic developed, embracing patriarchy and seeking to restore moral order. The author contends that "passions and by association women were deemed most in need of discipline" (p. 19), but in his conclusion, women become a (or rather the) fundamental source of disorder (p. 31). In the context of the purification of Catholicism instituted by the Council of Trent in the 1560s, reformers posited greater self-discipline to be monitored through confessionalism, and were preoccupied with sins of the flesh. Although the importance of religion cannot be underestimated for previous periods, during the baroque religion was systematically integrated into everyday life. The growing power of the judiciary made the courts the logical mediators of this sacralization of society. The common assumption held by lay and clerical elites, that sin was the source of disobedience and disorder, resulted in the criminalization of sin. Sexuality, and especially unregulated female sexuality, was seen as the epitome of disorder by *robins*, or magistrates, and the episcopate intent on restoring order to their communities.

The more lengthy second part of the book examines how the *Parlement* of Burgundy dealt with sexual transgressions in its attempt to reorder society. A first chapter deals with justice and the clergy. The new social order was hierarchical rather than horizontal and reformed Catholicism gave a preeminent role to the priest, who had to be morally superior to his flock. Sexual failings were an important cause for concern and increasingly came under the authority of the royal courts rather than religious jurisdictions, the *officialites*. Punishment of sexual transgressions became more severe, with several curates being hanged for their sins in the early seventeenth century. However, the author also shows how the desire to restore order could be subverted by people, such as local seigneurs who resented the empowerment of the clergy and accused clerics of sexual impropriety to get rid of rivals.

The following chapter continues along this line by showing how royal legislation concerning seduction and pregnancy outside marriage was used by women as a strategy to achieve honourable marriage and by the courts to uphold the institution rather than to punish transgressors. The law established capital punishment for seducers, and all women had to declare their pregnancies on pain of hanging. However, judges balked at the strict application of the law, which would increase the number of unmarried women and destitute children if all men were executed. Instead of meting out the death penalty, they strove to force the seducer to marry the victim and restore social harmony, or, failing that, to pay for maintenance of the offspring. Women adapted to

this practice and used the crime of *rapt de seduction* as a means of forcing hesitant suitors to the altar.

The final chapter deals with women unable to secure an honourable marriage and who resorted to infanticide or prostitution, thereby confronting the new morality of order. Infanticide was considered a serious crime and severely punished when enough evidence could be mustered to obtain a conviction. Concealing pregnancy and abandoning the infant were considered just as serious, but were much more difficult to prosecute. Although some men were prosecuted as accomplices, their punishments were rarely as severe, and the *Parlement* generally reduced the sentence handed down by lower courts. Infanticide was the ultimate recourse of desperate women; others resorted to selling their bodies. Prostitution evoked ambiguous responses from the magistrates, however, and was punished only when behaviour became "scandalous" (that is, caused a public disturbance). Bawds, who threatened the future of honourable girls, were also prosecuted. Like prostitution, procuring was mainly a feminine crime and gave marginal women a measure of independence and material security.

Farr concludes that the ideology of hierarchy, patriarchy, and moral order that magistrates tried to impose to restore social harmony came up against the reality of women who subverted the law for their own purposes. Yet these women were forced to manage within the framework established by this new ideology.

This is a well-researched and -written study that raises important questions about the impact of ideology and the agency of women in early modern France. The arguments are well documented, if not always entirely convincing, and there are sometimes alternate explanations, which the author touches on, but might have further developed.

The idea that the emergence of an early modern French state in the late sixteenth and early seventeenth century was associated with a more important role occupied by royal courts is not new.[5] Indeed, the insistence on self-discipline and the use of the judicial apparatus as a means of social control was made explicit by Robert Muchembled, who titled a chapter of his recent synthesis "The criminalization of early modern man".[6] Farr's originality comes from his insistence on religion and on gender as guiding principles in this development, thus justifying the study of sexual transgressions. But how new was this "criminalization of sin"? Surely in all countries adhering to Judeo-Christian morality, the law of Moses was the primary inspiration for legal codes. Murder and theft were always crimes; disobeying parents could incur disinheritance under article 768 of the Custom of Paris (which existed well before the Renaissance and was first codified in 1510 and revised in 1580); adultery caused wives to lose their dower rights (article 692); and illegitimate children could not inherit their father's estate (article 717).

All sin was not criminalized, at least not in the same way or for the first time. Among the seven mortal sins, anger (associated with crimes of violence) and envy (associated with theft) had always been crimes. The mortal sins associated with an elite lifestyle (gluttony, pride, and avarice) were not directly attacked by royal legislation; the sumptuary laws sought merely to restrict these sins to those who had the proper station in life. There was a greater preoccupation with lust than in the fifteenth century, as Farr's study points out, but the most threatening sin to baroque elites was surely sloth, the "mother of all vice" of popular adage. The most important innovation of sixteenth-century justice was the creation of the *Marechaussee*, whose primary role was to punish vagrants and other marginal individuals. Sexuality was certainly a major concern, but statements such as "The new moral order focused on sexuality" (p. 9) require some nuance, since this is only part of the picture.

The contention that reordering society was essentially an elite preoccupation inspired by the Catholic reformation and specifically by Tridentine ideology is based on extensive examination of published works. Yet examples given in the text suggest that the desire to purge the Church of lascivious clerics and the community of prostitutes was more broadly based and predated the triumph of Tridentine reforms in France. The author gives several examples of merchants, artisans, and neighbours complaining to the authorities on both these counts from the end of the fifteenth century through the 1570s (examples of complaints from the citizenry in 1486 and 1508 on p. 144; in 1532 on p. 67; in 1560 on p. 68; in 1572 on p. 134). The challenge of Calvinism that became especially pressing after the 1550s (but which the author barely mentions) could also be considered as an important stimulus to reform morals.[7]

Gender certainly played a role in the way sexual crimes were treated by the courts. The author insists that the magistrates, influenced by the Catholic reforms that wanted to control passion, were especially intent on controlling the sexual behaviour of women, since they were the source of sin. The author's evidence, however, is not conclusive. Women were prosecuted for having sexual relations with priests before 1560, but the priests were only prosecuted after 1570 (pp. 67-70). This fits in

with a greater surveillance of a reformed clergy, but not with a new emphasis on blaming women. Although both sexes were severely punished in the first part of the seventeenth century (an interesting parallel with witchcraft might have been made here), generally the women received less severe sentences than the men. In 1676 a priest was sentenced to burn at the stake, whereas the nun with whom he had had sex was merely confined to *Notre de Dame du Refuge* for five years. Priests seem to have received a capital punishment or, at best, have been condemned to the galleys, whereas women were banished (p. 74), and by the eighteenth century no mention is made of any condemnation of a woman (p. 75). Granted, cases of clerical misbehaviour are peculiar in that the clerics were keys to the reordering of society, but the same trend can be found in dealing with procuring for prostitution. Men were hanged, but women were banished (p. 142).

The chapter entitled "Marriage and the Uses of the Law" deals with two different types of concern: parental control of girls and female marriage strategies. Because both are manifested in a single generic crime, the *rapt de seduction*, some confusion is introduced which the author might have avoided. Legislators were concerned with the maintenance of parental authority and criminalized clandestine marriages (it might have been noted that it was essentially members of their class who were threatened by misalliance). There are relatively few examples of these crimes given in the text, since most pertain to promises of marriage used to gain sexual favours but then not fulfilled, which I feel is a separate issue. The author does an excellent job in illustrating how the accusation of *rapt* could fit in with female marriage strategies by forcing a reluctant lover to follow through with his promise, thereby rehabilitating the honour of the woman and her family. In cases which I have examined, the defence for the male generally involved alleging that the woman had little virtue, and the author briefly alludes to this in a short concluding paragraph (p. 122). This defence, however, would seem to fit in nicely with the author's thesis that women were blamed for all crimes of lust in the dominant ideology, and it is surprising that he does not make more of these cases.

The author is justly wary about quantitative data and what numbers really mean when dealing with *ancien regime* criminality (p. 181, n. 45). He does, however, provide some figures and draw some conclusions from them, but he should perhaps have been more explicit about the sources of his data. For example, the discrepancy between the 88 cases of *rapt* for selected years reported in Table 4.1 and the 74 cases (67 in the table plus 7 mentioned in the note but unjustified) reported in Table 4.2 should be explained. Are the select years the same for *rapt* cases and for infanticides and prostitution? If not, why not? Why were these years chosen and why are not all periods of equal duration? *Rapt* cases did not necessarily involve corporal punishment and therefore were not automatically appealed to the *Parlement*, and it is difficult to draw any conclusions about the intensity of their prosecution. Examination of lower court records would be more appropriate for an analysis of this type of crime. Infanticides and concealed pregnancies are another matter. Although legislation did not distinguish between the two, it would have been interesting to know how many of each were tried. Prosecution of these crimes did rise, but the incidence remained very low, peaking at a maximum of three cases per year on average in the period 1668-71. Although the prosecution of prostitution and related crimes also rose slightly, the incidence of this crime in the records is not similar to infanticide, despite the conclusion that links the two (p. 153). The highest number per annum was recorded in the period 1582-92 (2.1 cases) before remaining fairly stable at under 1.5 during the seventeenth century with the exception of the period 1668-71 (2.0 cases).

Given the fragility of this quantitative data and the small number of cases involved, the author might have been more prudent when making general statements. Infanticide and abortion become "common considerations" of "many" unmarried pregnant women (pp. 125, 129, 153, and 194, n. 18). Despite finding only 33 cases in 43 years, prostitution was widespread (p. 140), and 88 *rapt* cases make this crime "far from infrequent" (p. 148). Women "frequently failed to gain honorable marriage" from their seducers (pp. 152, 161), yet the author insisted in the previous chapter that the "not infrequent" accusations of *rapt* resulted in marriage. Given that most of these crimes only concerned the small minority of women who lived in Burgundy's towns, the use of such adjectives as "many" and "frequently" is questionable.

Finally, there are two levels of ambivalence in this book that leave me rather uneasy. The first concerns the double objective of treating ideology and then treating practice. The author succeeds in constructing a coherent ideology for the judicial elite, but this ideology seems to have little resonance in the practice of the courts. It was not only the women, but also the magistrates, who subverted the intent of the laws inspired by this ideology. The second has to do with the term Burgundy. By the author's admission, relatively few cases emerge from rural settings, and the discussion of prostitution essentially concerns Burgundian towns. The author's urban

bias is occasionally reflected in general statements. For example, he writes that female purity was "locked within the institution of marriage, even to the literal extent of the house or the bedroom" (p. 50). Yet this could only refer to privileged urban classes whose wives did not have to work outside the house. The idea that concealing pregnancy was easy (p. 126) might apply to the relative anonymity of larger urban surroundings, but it would be quite difficult for a peasant girl to conceal her state or abandon her child unless she fled to a city.

In any ambitious and provocative study, it is always easy to find some nit to pick, but this should not detract from the wealth of interesting information and the keen attention to detail provided in this study. Although men made laws that defined what was socially acceptable, James Farr has succeeded in placing women and their agency at the heart of his narrative and in clearly demonstrating the different uses which could be made of the law.

NOTES

[1]. Francois Billacois, "Pour une enquete sur la criminalite dans la France d'Ancien regime", *Annales. Economies. Societes. Civilisations* 22 (1967): 340-47. For a recent bibliography see Xavier Rousseaux, "Criminality and Criminal Justice History in Europe, 1250-1850: A Select Bibliography", *Criminal Justice History*, 14 (1993): 159-81.

[2]. For an example of this approach see Douglas Hay, *Albion's Fatal Tree: Crime and Society in Eighteenth Century England.* Middlesex: Penguin, 1975.

[3]. For example, John Beattie, *Crime and the Courts in England.* Princeton, N.J.: Princeton University Press, 1986.

[4]. For example, Nicole Castan, *Justice et repression en Languedoc a l'epoque des Lumieres.* Paris: Flammarion, 1980.

[5]. Denis Richet, *La France moderne: l'esprit des institutions.* Paris: Flammarion, 1973.

[6]. Robert Muchembled, *L'Invention de l'homme moderne.* Paris: Fayard, 1988.

[7]. Bernard Dompnier, *Le Venin de l'heresie. Image du protestantisme et combat catholique au XVIIe siecle.* Paris: Centurion, 1985.

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In this response to John Dickinson's review of my book I will not attempt to parry each of his criticisms, but rather I will defend certain of my positions which he has challenged and which are central to my argument. The first pertains to a substantive issue, the "criminalization of sin" in the early modern period; the second, to historical methodology.

Dickinson discerns that the "criminalization of sin" is important to my argument, but he asks "how new" in the sixteenth and seventeenth centuries this was. Certainly sins like murder and theft had long been crimes, but my point was not that all sin was criminalized during this period, but rather that sins of concupiscence increasingly were. I point in part to the overwhelming evidence of the neo-stoic suspicion of the passions, and the equally abundant neo-stoic and moralistic literature which inserted women in this discourse, linking them to the passions in the context of lust. Neo-stoic magistrates, intent on reordering society in the name of God, King, and Justice, then inculpated those people whom they most believed threatened this order. Dickinson grants that there was "a greater preoccupation with lust than in the fifteenth century", but then quickly discounts it, suggesting in its place that "surely sloth" was the "most threatening sin to baroque elites." To be sure, sloth, or idleness, increasingly preoccupied magistrates, but it seems to me that this really gathered steam only in the second half of the seventeenth century in France (earlier elsewhere), and the best evidence for that would not be the *marechaussee* (which though created in the sixteenth century, as Dickinson points out, was a significant constabulary in practice only in the eighteenth), but the "great confinement" (which, by the way, enclosed the sexually "undisciplined" alongside the "idle").

If sins of sexuality were increasingly criminalized in the sixteenth and seventeenth centuries, and I think the evidence conclusively shows that they were, then we should try to explain why, which I have endeavored to do in the first part of this book. The Catholic Reform had something to do with it, but, and here I fear Dickinson has misread me, I have insisted that the "sacralization of society" was driven first by lay elites in France, and only in the seventeenth century does the clerical establishment (by then thoroughly permeated by sons and daughters of the magisterial elite) get on board. Thus the secular assault against sexually undisciplined priests in the sixteenth century (but not before). To infer from my book, as Dickinson does, that "reordering society was essentially an elite preoccupation inspired by the Catholic reformation and specifically by Tridentine ideology" has it rather backwards. I am more inclined to accept John Bossy's formulation of the "migrations of the holy" where jurists (and I would add, judges) assumed the mantle of "high priests of sovereignty", and I have tried

to offer Burgundian evidence to support it.

Dickinson's other fundamental challenge is directed at methods of historical argumentation, specifically mine, but by extension to those of anyone trying to sustain an argument without using statistical support. One option, and this is the one Dickinson presumably would have had me follow, would be to abandon entirely any quantitative assertions (frequently, often, sometimes, occasionally, rarely, etc.) if satisfactory statistical significance cannot be reliably presented. On the one hand, he applauds my caution ("the author is justly wary about quantitative data and what numbers really mean when dealing with 'ancien regime' criminality"), but then rebukes me for imprudent generalizations where I invoke "such adjectives as 'many' and 'frequently.'"

I was trained as a social historian, and the first half of my first book (*Hands of Honor: Artisans and Their World in Dijon, 1550-1650*, Ithaca: Cornell University Press, 1988) is quantitative, so I know what kinds of arguments can and cannot be made from such a presentation of evidence. Arguments about criminal behavior, Dickinson and I agree, perhaps cannot be. But is removing any reference to quantity the only alternative? The method I have employed, for good or ill (ultimately the reader must judge), is a close textual and dialogical analysis of judicial records (and not just at the appellate, parlementary level, but even more so at the level of courts of first instance; Dickinson's review misleadingly implies that my argument rests entirely upon the numbers of cases heard by Parlement). I infer from readings of (dare I say?) thousands of cases a cultural context within which to frame discrete, singular cases. I make no pretence of statistical significance, but I do believe that one can and should build generalizations from historical sources like the ones in which I immersed myself. To abandon usage of quantitative terms like many, frequently, or occasionally, as Dickinson seems to want me to do, takes us out of the game of generalization, and if we take ourselves out of that game, what makes any singular historical event significant?

Dickinson has raised some fundamental questions which go not just to the heart of my book, but to important questions of substance and methodology. Although we disagree, I, for one, appreciate this opportunity for intellectual engagement.

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