

## Book Reviews

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James M. Donovan, *Juries and the Transformation of Criminal Justice in France in the Nineteenth and Twentieth Centuries*. Chapel Hill: University of North Carolina Press, 2010. Pp. 272. \$65.00 (ISBN 978-0-807-83363-6). doi:10.1017/S0738248010001057

The transformation of criminal justice referred to in the title is the steady erosion of the scope and independence of jury trials in France since the Revolution. In Donovan's analysis, it was the leniency of assize court jury verdicts that ultimately caused the jury's decline. Professional jurists were consistently dissatisfied with the high rates of acquittal in jury trials and advocated a variety of reforms that worked to transfer the capacity to judge criminal cases from citizen judges to professionals. How this surprising betrayal of the ideals of the Revolution took place is the focus of this institutional history of the jury in France. Donovan describes the political climate surrounding each step in the reform process, seeking to explain, for example, why liberals in the July Monarchy were committed to preserving the jury whereas leaders of the Third Republic were not. This book is a useful overview of general ideological trends related to jury trials, highlighted by comparisons with developments in the English and American judicial systems.

Drawing heavily on annual statistics compiled by the Ministry of Justice, together with contemporary publications by jurists and politicians, Donovan charts changes in criminal procedure alongside statistics on jury trial verdicts. The use of the jury in felony criminal cases was established in 1791, on a wave of enthusiasm for Enlightenment principles and a rejection of the arbitrary power of the Old Regime judiciary. One important feature of the revolutionary-era jury would remain in place until the twentieth century: jurors deliberated only on the "fact" of the crime – whether or not a criminal act had been committed – while a panel of assize court judges would decide the punishment. That jurors did not participate in determining the sentence was long perceived as a key reason why they acquitted at a much higher rate than professional judges in lower courts, and it would be addressed by a series of reforms. Notably a new law in 1832 introduced the possibility that juries could rule on extenuating circumstances, which would then require the judges to reduce penalties. Although juries would find

extenuating circumstances quite frequently in guilty verdicts, they did not acquit any less frequently, much to the continued consternation of legal professionals.

In response to such jury leniency, magistrates sought to remove more and more cases from their judgment through the practice of correctionalization, downgrading felonies to misdemeanors that would be tried by a panel of judges in lower courts, where conviction was quite likely. By the turn of the twentieth century, correctionalization had significantly reduced the number of defendants tried by jury in the assize courts. At the same time, some felonies that jurors frequently refused to convict on, such as infanticide, were legally reclassified as misdemeanors, removing them from the purview of the assize court.

Therefore, the domain of the assize court jury had eroded substantially within a century or so of its establishment. But even as its composition became more democratic with the inclusion of working-class men (1908) and women (1944), the twentieth century would see the jury's independence undermined even further. In 1932 a new law provided that jurors would deliberate together with assize court judges in deciding the sentence for convicted felons. Apparently jurors did not submit to the authority of the judges during deliberations, because this reform did not result in more convictions or harsher sentences. The pendulum would swing back in favor of the power of the professional magistrates with the implementation of *échevinage* in 1941, requiring jurors to deliberate with judges on the verdict as well as on the punishment. Finally, the rate of acquittal in the assize court would plummet to rates comparable to those in correctional court during the second half of the twentieth century, sealing the re-conquest by professional magistrates of territory lost in the Revolution.

Donovan's analysis is less satisfactory when he moves into the social and cultural context of jury trials. In these areas he relies upon secondary work by other historians rather than archival evidence, sometimes not engaging with recent relevant scholarship. It is unclear, for example, what constituted "traditional male gallantry," cited as a factor in women's frequent acquittals in the fin de siècle. He erroneously defines "crimes of passion" as being specific only to women, and does not inform the reader that "crimes of passion" were not a legally defined category, and therefore impossible to quantify. Whereas the high rate of acquittal was always troubling to professional magistrates, the motivation behind the jurors' verdicts was rarely clear, and ultimately the reader is left with a much clearer understanding of the jurists' interests than of the jurors'.

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