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Introduction

by *Emmanuel Berger* and *Émilie Delivré*

In 1960, an article appeared in the weekly «Die Zeit» entitled: *Keine Volksjustiz!* (No Popular Justice!). Just a few days before, on January 16, Chancellor Adenauer, in a televised speech, encouraged German people to exercise self-justice against neo-Nazis who spread walls and synagogues with swastikas («Wenn ihr irgendwo einen Lümmel erwischt, vollzieht die Strafe auf der Stelle»). According to Adenauer, they deserved a good hiding («eine Tracht Prügel»), because this would be the right punishment («Das ist die Strafe, die er verdient»). The journalist in «Die Zeit» found Adenauer's encouragement very dangerous for a state founded on the rule of law, and condemned what he called «private sentencing» «justice based on hidings». He even declared that such a statement deserved legal censure[1].

The history of popular justice is, undoubtedly, one of the least developed historiographical fields when we factor in the interest that still surrounds its related stakes today[2]. The strong reactions following the recent introduction of jurors in French correctional tribunals demonstrate this interest. They also serve to highlight the controversial representations of popular justice with regard to its advantages or, as the case may be, its

[1] «Wer sich außerhalb des Gesetzes stellt, soll dessen volle Strenge zu spüren bekommen, nicht aber eine unkontrollierbare Privatstrafe, die ihn dem gesetzlichen Richter entzieht. Und wer zur Prügeljustiz auffordert, sollte auch wissen, daß dies nach Paragraph 111 des Strafgesetzbuches eine strafbare Handlung ist». «Drum keine Prügel-Justiz des Volkes. Das wäre der Bankrott des Rechtsstaates», in Th.S., *Keine Volksjustiz!*, in «Die Zeit», no. 4, 1960.

[2] Even the concept itself is not used very often in literature, be it in law or in history: not surprisingly, the volume *The Possibility of Popular Justice* was edited by an anthropologist and a political scientist. S.E. Merry - N. Milner (eds), *The Possibility of Popular Justice. A Case Study of Community Mediation in the United States*, Ann Arbor MI 1993. On the other hand, it is the journal «Social & Legal Studies» (one of its first issues) which first published some of the papers of these authors on Popular Justice, which in fact can be placed between different disciplines.

flaws. According to historians, popular justice stems from ancient times, whether from the Romans, the Franks, the Normans, or the Saxons. It can be roughly defined as the exercise of justice by «the people». The institutions that represent popular justice vary depending on the historical period (jury, justice of the peace, *prud'hommes*, *Rügegerichte*, etc.)[3] and on popular practices (charivari, *Haberfeldtreiben*[4], *Femegerichte*, etc.).

An important historical period for the transition of popular justice in Europe is constituted by the «Sattelzeit» (Saddle Period), which is often collocated between 1780 and 1830, and sometimes extended even until the 1848 revolution. On the one hand, the quoted plurisecular practices of popular justice were progressively called into question. On the other hand, in the space of a century, the democratization of European societies and the progressive advent of political liberalism helped bring about the emergence of an institutionalized popular justice (justice of the peace, jury, etc.) The legitimacy of this justice, however, remained fragile when confronted with government fears of losing control of their absolute powers and it depended largely on the degree of modernization of the states which, for the most part, remained firmly anchored in their anciens régimes.

Why did this happen during the Sattelzeit? For Reinhard Koselleck, who coined this term, many conceptual developments were happening at this time which reflected profound social and political changes: an

[3] R. Martinage - J.P. Royer, *Les destinées du jury criminel*, Hellemmes 1990; A. Padoa-Schioppa (ed.), *The Trial Jury in England, France, Germany, 1700-1900*, Berlin 1987; on *prud'hommes*: J. Krynen (ed.), *L'élection des juges, Essai de bilan historique français et contemporain*, Paris 1999; H. Michel - L. Willemez (eds), *Les Prud'hommes: Actualité d'une justice bicentenaire*, Brignais 2008; on *justice of the peace*: J.-G. Petit (ed.), *Une justice de proximité: La justice de paix, 1790-1958*, Paris 2003; S. Dauchy - S. Humbert - J.-P. Royer (eds), *Le juge de paix: Nouvelles contributions européennes*, Hellemmes 1995; N. Landau, *The Justices of the Peace, 1679-1760*, Berkeley CA 1984; on *Rügegerichte*: A. Holenstein, «Gute Policey» *und lokale Gesellschaft im Staat des Ancien Régime. Das Fallbeispiel der Markgrafschaft Baden(-Durlach)*, 2 vols, Tübingen 2003; A. Landwehr, *Policey im Alltag: die Implementation frühneuzeitlicher Policeyordnungen in Leonberg*, Frankfurt a.M. 2000.

[4] On the charivari: J. Le Goff - J.C. Schmitt (eds), *Le charivari*, Paris 1981; J. Brophy, *Popular Culture and the Public Sphere in the Rhineland, 1800-1850*, Cambridge 2007, pp. 138, 143-145; on the *Haberfeldtreiben*: W. Kalternstadler, *Das Haberfeldtreiben: Geschichte und Mythos eines Sittenrituals*, Greiz 2011; on *Femegerichte*: E. Fricke, *Die westfälische Veme*, Münster 2012.

«ideologization» and a «politicization» of concepts which were incorporated into formulae for propaganda and which served new ideologies. They were now used as real weapons for political and social conflict: a «temporalization» of the vocabulary as a change in the perception of time, now conceived in terms of phases and progression towards a better future; a «democratization» of concepts which were no longer addressed to a small percentage of society but adapted to a wider public[5].

Popular justice was naturally an issue during these fundamental changes in Europe, because it was suspended between the enlightened claim for a professional and controlled administration of justice[6], and the claim for a representation and/or the involvement of the «people» in the actions taken by the «third power» (the judiciary). And it is at the moment when the monopoly of justice by the state and the professionalization of justice seemed to be fulfilled that the claim for popular participation curiously became more insistent and urgent.

Despite the importance of popular justice during the Sattelzeit, most historians have ignored this historiographical field in a European perspective, limiting their study to national analyses. In recent years, German research projects have dealt with issues which in a certain way could also include some aspect of popular justice, such as the resolution of conflict outside the courts, or the question of self-regulation in legal history[7]. The very definition of popular justice remains open and requires new conceptual analysis. Thus, this book aims to lay the

[5] R. Koselleck, *Einleitung*, in O. Brunner - W. Conze - R. Koselleck (eds), *Geschichtliche Grundbegriffe*, vol. 1, Stuttgart 1979, p. XV; R. Koselleck, *Vergangene Zukunft. Zur Semantik geschichtlicher Zeiten*, Frankfurt a.M. 1979

[6] U. Schneider, *Vom Notabelamt zur Amtsprofession*, in C. Dipper (ed.), *Rechtskultur, Rechtswissenschaft, Rechtsberufe im 19. Jahrhundert*, Berlin 2000, pp. 63-86.

[7] See the volumes of G. Bender - P. Collin - S. Ruppert et al. (eds), *Regulierte Selbstregulierung im frühen Interventions- und Sozialstaat* (Moderne Regulierungsregime, 2), Frankfurt a.M. 2012; G. Bender - P. Collin - M. Stolleis, *Selbstregulierung im 19. Jahrhundert – zwischen Autonomie und staatlichen Steuerungsansprüchen* (Moderne Regulierungsregime, 1), Frankfurt a.M. 2011. The project «Regulierte Selbstregulierung in rechtshistorischer Perspektive» in the Max-Planck-Institut für europäische Rechtsgeschichte (Regulated self-regulation from a legal historian's perspective) is organized in the framework of the Exzellenzcluster «Die Herausbildung normativer Ordnungen» (Goethe-Universität Frankfurt am Main) in cooperation with the LOEWE-Schwerpunkt «Außergerichtliche und gerichtliche Konfliktlösung». See also M. Eriksson -

foundations for future research. With these objectives in mind, several themes will be explored.

The first question focuses on popular justice as a concept of delimitation or collaboration. The very concept raises a great deal of antagonism between law and custom, written and oral law, center and periphery, professional and popular[8]. Regarding this last example, how then do we classify jurors who participated in alderman's courts (*justice* échevinale) alongside magistrates? In this case, the relations between popular justice and professional judges were characterized by opposition as much as by collaboration. The social representativeness of popular justice, that is to say its degree of «popularity», must also be discussed. Was popular justice practiced by nobility? Was it subjected to universal suffrage, census suffrage, or suffrage based on meritocracy? Was local justice necessarily popular? Did protagonists of popular justice act in the name of the state, in a complementary manner, or even against it? All these questions raise the ambiguity of the term and call for new definitions.

The second theme deals with popular justice as a forum for social dialogue. In fact, we may criticize legal historians for neglecting a significant portion of legal reality when this reality is not in correspondence with the vision of justice «from above», emanating from the classic institutions. Consequently, we know very little about practices that served as forums for communication between the elite and the «commoners», or about the ability of these «commoners» to influence the legal reality to which they were required to submit themselves through «disciplining» (*Disziplinierung*).

The third theme is both heuristic and methodological. Which sources are accessible and allow for a study of popular justice? Though the theoretical approach is relatively well known, practical sources remain essentially forgotten and have not yet been classified. As such, we know little about the activities of popular institutions as fundamental as the *jury d'assises* during the French Revolution or the *Rügegerichte*

B. Krug-Richter (eds), *Streitkulturen. Gewalt, Konflikt und Kommunikation in der ländlichen Gesellschaft der frühen Neuzeit*, Köln 2003.

8 For the German jurist G.F. Puchta (*Das Gewohnheitsrecht*, Erlangen 1828-1837) there are 3 sources of law: «rechtliche Überzeugung der Nation», «der Wille der Obrigkeit» and finally die «wissenschaftliche Tätigkeit», p. 78.

in 19th-century Germany. Determining the appropriate methodologies to evaluate practical sources will also be necessary.

The fourth and final theme deals with the interaction of different types of popular justice throughout Europe. Rather than studying popular justice nationally, it appears fundamental to adopt a more overall perspective within Europe to understand the processes of acculturation. Indeed, legal traditions have not always been as hermetic as we may have thought and models of popular justice have been successful in crossing national borders.

All these questions raise the problem of determining a typology of popular justice. In order to tackle this subject, it would be useful to start our reflection with that formulated by Max Weber in his work on *Economy and Society* which looked at the link between the development of political power and the formal quality of law:

«The older forms of popular justice had originated in conciliatory proceedings between kinship-groups. The primitive formalistic irrationality of these older forms of justice was everywhere cast off under the impact of the authority of sovereigns or magistrates (*imperium*, ban) or, in certain situations, of an organized priesthood. With this impact, the substance of the law, too, was lastingly influenced, although the character of this influence varied with the various types of authority. The more rational the administrative machinery of the sovereigns or hierarchs became, that is, the greater the extent to which the rationality of the organization of authority increased, irrational forms of procedure were eliminated and the substantive law was systematized, i.e., the law as a whole was rationalized»[9].

Max Weber also stressed that *Kadijustiz* or elected judges (*Schiedsrichter*, *Billigkeitsentscheide*) have a substantive (in German «material») character[10] while popular courts like the medieval *Thing*, or with *Gottesurteil*

[9] M. WEBER, *Economy and Society. Formal and Substantive Rationalization of Law*, Berkeley - Los Angeles - London 1978, p. 809. For the original German version, see M. WEBER, *Wirtschaft und Gesellschaft. Die Wirtschaft und die gesellschaftlichen Ordnungen und Mächte. Nachlaß*, vol. 3: *Recht*, ed. by W. GEPHART - S. HERMES, in *Max Weber Gesamtausgabe*, Abteilung 1: *Schriften und Reden*, vols 22-23, Tübingen 1999, pp. 510-511.

[10] Substantive/Material here means that its aim is «the type of law which is most appropriate to the expediential and ethical goals of the authorities in question» («die inhaltlich den praktisch-utilitarischen und ethischen Anforderungen jener Autorität entsprechendste Ausprägung wird erstrebt»): In substantive rationality, there is legitimacy but no legal security, in M. WEBER, *Economy and Society*, p. 810, and M. WEBER, *Wirtschaft und Gesellschaft*, p. 511.

(«rechtsmagische Praktiken») have a formal-irrational character[11]. For him, abandoning popular justice is a civilizational project because it implies a «Verrechtlichung» of conflicts which until then were resolved often in a violent and self-help manner. Obviously, the voluntary abandonment by members of society of their autonomy in the administration of justice could only happen with the assurance that the state would protect judicial proceedings, and be the guarantor of justice. Popular justice is for Weber antonymic to modernity and rationality. In a formal-rational justice system, without «Rechtslücken» or legal loopholes, there should be no place for popular justice.

Max Weber's mistrust regarding popular justice emphasized the ambiguous attitude of the intellectuals in the late 19th century. Because of the fears generated by the disruptions of the French Revolution, popular participation in the exercise of justice was understood as an irrational, violent and uncontrolled action. This initial form of popular justice often called for lynching (*Lynchjustiz*, *Selbstjustiz*) and mob violence[12]: it was a spontaneous and non-institutional way of practicing justice, sometimes in the form of summary executions. This kind of justice became more frequent in periods of political transition[13]. However, from 1960 onwards, social historians such as George Rudé, Charles Tilly, Louise Tilly, Eric Hobsbawm, Richard Cobb and Edward P. Thompson succeeded in proving that such popular justice had its own rationality, identity and dynamics. This was especially visible in the second type of

[11] Formal here means that «its aim is achieving that highest degree of formal juridical precision which would maximize the chances for the correct prediction of legal consequences and for the rational systematization of law and procedure» («die formal juristisch präziseste, für die Berechenbarkeit der Chancen und die rationale Systematik des Rechts und der Prozedur optimale [Ausprägung] [erstrebt]»). Being formal in character means therefore being systematic, means continuity and security, in M. Weber, *Economy and Society*, p. 810, and M. Weber, *Wirtschaft und Gesellschaft*, p. 511.

[12] M. Berg, *Popular Justice: A History of Lynching in America*, Chicago IL 2011; S. Walker, *Popular Justice: A History of American Criminal Justice*, Oxford 1998.

[13] The philologist and scientist of religions Usener gave a definition of *Volksjustiz* in H.C. Usener, *Italische Volksjustiz*, in «Rheinisches Museum für Philologie», 1901, pp. 1-2: «Entweder in der Vollstreckung eines durch den Volkswillen unmittelbar gegebenen Urtheils, wie Hinrichtung, Steinigung, Steupung, oder aber in einer Vernichtung des Leumunds, welche den Bescholtenen aus der gesellschaftlichen und bürgerlichen Gemeinschaft ausschließt».

popular justice which consisted of practices of community reprimand and local customary law. These practices were ritualized and sometimes also took place on a regular basis. *Haberfeldtreiben* in Bavaria or charivari in France are good examples, which, over the course of the 18th and 19th centuries came increasingly into conflict with local, regional, and central authorities. They often dealt with cases of morals (usury) and sexual issues (so-called «fallen women»). Sometimes the village folk would run undesirables out of town[14].

In these two first definitions, popular justice belongs to what has been called «infrajudiciaire» which is a «règlement des écarts aux normes des rapports inter-individuels ou communautaires par vengeance, arrangement ou toute autre solution ne faisant pas appel aux tribunaux»[15]. The distinction between *infrajudiciaire* and *judiciaire* obviously widened with the claims for a professional and state judiciary system. From this difficulty, a proposal has arisen to use the term «parajudiciaire».

A third type of popular justice can be traced to the practices of justice which are institutionalized and controlled by the state and integrated in the constitutional law. It could directly involve lower classes of a given society, such as the *Rügegerichte* where the commoners were entitled to officially denounce minor crimes mostly regarding morals, but also poor local governance. Among the popular institutions where people

[14] An anonymous author described in the journal *Die Gartenlaube* a ritual of popular justice which was still taking place in the middle of 19th century on the island of Borkum, in north-west Germany: *Volksjustiz auf Borkum*, in «Die Gartenlaube», 1858, 3, pp. 43-44: «Es liegt in der Natur der Sache, daß die volksthümlichsten Gebräuche sich in jenen Gegenden erhalten haben, die vermöge ihrer Lage wenig oder gar nicht mit der übrigen Welt in Berührung kamen … Mag man in unserem 'aufgeklärten Zeitalter' es für eine Lächerlichkeit halten, wenn die Idee der Sittlichkeit so weit getrieben wurde, daß keine Witwe sich zum zweiten Male verheirathete, da man an eine ewige Liebe und Treue glaubte: ein solcher Volksstamm erinnert an die alten Germanen und verdient volle Anerkennung und Achtung».

[15] «Solutions of conflict inside the community, before courts and before sentences. Infrajudiciaire to be studied in interaction with other juridical institutions»; J.-C. Farcy, *Peut-on mesurer l'infrajudiciaire?*, in B. Garnot (ed), *L'infrajudiciaire du Moyen Âge à l'époque contemporaine*, Dijon 1996, p. 109. Researchers have shown it to be very difficult to distinguish infrajudiciary from judiciary, stressing that the actors of the Ancien Régime could easily slip from one to another, without opposing them; H. Roodenburg, *Social Control Viewed from Below: New Perspectives*, in H. Roodenburg - P. Spierenburg (eds), *Social Control in Europe*, vol. 1: *1500-1800*, Columbus OH 2004, p. 147.

exercised an immediate power, the most well-known was certainly the jury. Created in England, the jury was spread to Continental Europe by the French Revolution and the Napoleonic Empire. Popular justice can also be exercised in an indirect way (e.g. election) by laymen. The justice of the peace is the most well-known and, like the jury, transferred from France across Europe during the late 18th century. Because the justice of the peace dealt with non-indictable offenses, his activity was once called subaltern justice[16]. However, this appellation hides the important social and political role of popular justice.

Indeed, in these two types of popular justice, we find the claim for a better comprehensibility of law and juridical language together with a better representation of commoners in the judiciary system, a demand which is according to Luhmann and Weber «as old as the legal profession itself»[17]. In reality, the history of popular justice is closely linked with the democratization and bureaucratization process which took place during the Sattelzeit. Even though the idea of popular justice dates back to ancient times, the initiatives to include people in the exercise of justice were launched within the framework of the Enlightenment. The «Atlantic Revolution» created periods of transition in different countries. Revolutionary and reformative movements gave rise to a claim for the enforcement of natural law and constitutional rights to the detriment of Ancien Régime law and politics. Although this moment started in the late 18th century, its pace varied during the 19th century in European nations according to their legal traditions, political culture and modernization/liberalization processes. The articles presented in this volume will therefore recount a part of the unknown history of popular justice in its complexity and diversity through six European countries: England, Belgium, the Netherlands, Italy, Germany, and France.

[16] This is the name Luigi Galanti gives to a Prussian practice. In *Geografia fisica e politica* 1833, he admired the Prussians «ai quali è riserbato l'ultimo perfezionamento dell'ordine sociale col dare a popoli l'elezione degli magistrati temporanei per la giustizia subalterna, la quale venissa resa gratuitamente da un aristocrazia ben piu nobile, quella del sapere e della probità». Here the comparison and the transfer are very interesting: «In Italia la corte di assise, introdotta durante la dominazione napoleonica, fu ripresa dal Codice di procedura penale del Regno di Sardegna del 1859. Inizialmente era composta, sul modello francese, da tre giudici togati (il presidente e due assessori) e da una giuria di dodici cittadini».

[17] Quoted by U. Schneider, *Socialist Legal Experts: A New Profession?*, in E. Kurz-Milcke - G. Gigerenzer (eds), *Experts in Science and Society*, New York 2004, p. 74.

David Churchill and Peter King's article takes us to the heart of a not much studied ritualized popular justice, namely that of «ducking», which was practiced in Britain until the late 19th century. Applied mainly in the case of pickpockets, ducking consisted in the immediate punishment of the presumed criminal by immersing their head in a river, or more generally in a horse pond. This popular justice aimed at protecting the community against any external aggression and replaced ordinary justice. We notice in this regard that, until 1800, pickpockets were more frequently punished by ducking than conviction. In the same way as the famous «rough music», ducking was based on a custom «from time immemorial» and therefore benefited from a certain legitimacy in the eyes of the judiciary. This feeling was also due to the fact that popular participation in the administration of justice was an old tradition in Britain, either by serving as jurors or contributing to the arrest of criminals. Finally, ducking stopped the gaps in criminal law by punishing the perpetrators of wrongful doings which were not, however, deemed to be criminal actions. From 1795 onwards, the number of duckings reported by the press drastically decreased whereas criticism towards this practice was becoming more frequent and stronger. The reason for this decrease was as a result first of all of the fear caused by the eruption of mob violence during the French Revolution. On the other hand, even if it caused few deaths, the practice of ducking was dangerous, unpredictable and uncontrolled. In the context of growing intolerance towards violence and monopolization of the exercise of power by the state, ducking was criminalized in the 1820s. Judicial behavior, however, remains ambiguous since the perpetrators of ducking were generally given only light sentences. This approach demonstrated the strength of custom and the legitimacy of ritualized popular violence which would continue until the end of the 19th century.

If the ducking custom managed to «cohabit» with English law and justice despite the French Legal Revolution, this was due to the relative protection that the British Isles still benefited from at the time. It was not the same case in the rest of Europe. In the context of institutional upheaval caused by the French armies in the conquered territories, Michael Broers questions in his article the nature of the duties of justices of the peace and the role they played in the integration of new populations to the «Grande Nation». The Napoleonic Empire remained associated with the organization of a centralized, hierarchical, and professional administration which was supervised by the Emperor. Faced

with this disciplined bureaucracy, the justice of the peace appears as an anachronistic relic of the Revolution and one of the last vestiges of the popular justice model. Elected by his fellow citizens, the justice of the peace was tasked with resolving daily conflicts in civil matters, particularly through conciliation, and at no cost to the state. It constituted the lowest level of the judicial hierarchy in constant contact with the local reality. This familiarity would paradoxically make him one of the pillars of the Napoleonic policy aiming at the «amalgame» and «ralliement» of the people of the Empire. Compared to the Ancien Régime, the justice of the peace was usually, at least in the territories in which he operated, a novelty insofar as the governments of former principalities hardly paid any attention to the hinterland. Their judicial authority was primarily realized in cities and capitals. The French government had therefore established a permanent judicial framework in the most remote countryside. In practice, many difficulties thwarted the original plan. The bad weather, poorly maintained road infrastructures or hostile geography made many areas inaccessible for several months per year. The lack of salary and legal competence also reduced the number of candidates to be justice of the peace. Despite the obstacles, the latter were best placed to disseminate French law and popularize the Civil Code of 1806. They truly acted as cultural mediators and enabled the populace to regain some confidence in the legal profession until then associated with deception and corruption. The institution of justices of the peace seems to have been an overall success. Many judges experienced a brilliant career. In 1812, a draft decree provided for the extension of the powers of the justices of the peace, but the fall of the Empire prevented its adoption. In the end, the most popular legal institution of the Napoleonic era succeeded in demonstrating its longevity and its independence in comparison with the authoritarian regime that had introduced it.

The issue of the dissemination of French popular justice is examined by Giuseppina D'Antuono through the case of the short-lived Neapolitan Republic (1799) and the Kingdom of Naples (1806-1815). When the Republic was proclaimed, the justice of the peace was a well-known functionary among the revolutionary elites. Within the framework of their politics of implementation of a popular democracy («ne plebs a potentioribus opprimatur»), the authorities decreed «naturally» the establishment of the justices of the peace. However, the institution adopted was not an exact copy of its French counterpart. Even though

the function was by election, it stood out for its rewards in the form of an annual salary of 360 ducats. When the Kingdom of Naples was proclaimed, Joseph Bonaparte restored the office of justice of the peace while providing for several fundamental changes. Now appointed by the king, the magistrates were chosen among the local notables. The size of their district was greater than in 1799 and their salary was halved to 150 ducats. The «popular» justice of the peace took on a role within a new bureaucratic body paid and controlled by the king. Despite this change, it is striking to see that in Naples, the justices of the peace were called «popular magistrate» in order to stand out from the Bourbon past and emphasize the proximity of justice to the people. By reducing the gap between the elite and the governed, the justice of the peace became a fundamental part of the construction of the nation. The institution was perceived as a place of social dialogue between the state and its periphery, dialogue was made possible thanks to an inexpensive justice system and its itinerant judges. The social backgrounds of the latter, however, were hardly «popular». Mostly from the landlord class, they were chosen according to their political allegiance, their age and legal competence. This social ascendancy did not seem to distance the judges from local communities insofar as in everyday life they independently guaranteed the safety and the «harmony» of people's lives. Analyzing the careers of the justices of the peace, D'Antuono notes that many of them were promoted to the higher courts. Such mobility, as well as the necessity to undergo legal training, which was introduced in 1812, gradually narrowed the gap between popular and professional judges.

Alongside the justices of the peace, the most popular institution was the trial jury. Although the institution was closely related to Common Law, it was adopted by France in 1791 and spread throughout Europe following the revolutionary and imperial conquests. In his contribution to this volume, Emmanuel Berger offers a comparative analysis of English and French juries in the late 18th century. At that time, English law had an excellent reputation because of its ability to protect individual liberties and the independence of the judiciary. Many translations and publications increased French public awareness of the guarantees offered by Common Law. Given its positive reputation, the revolutionary legislators decided in 1791 to replace the Ancien Régime justice system which was deemed unequal, unjust, and cruel with a new judicial model inspired by English law. Constituents adopted the institution of the double jury in criminal cases: the *jury d'accusation* (grand jury) and the

jury de jugement (petty jury). However, similarly to the introduction of the justices of peace in Naples as described above, the English jury was not copied in every detail. Legislators provided for amendments to the system in order to improve the original institution: increased number of sessions, formalization of the hearings, the right to be defended by a lawyer, etc. Research conducted over the past 20 years has focused on the practice of French and English popular juries. In particular, it has succeeded in explaining why the *jury d'accusation* was abolished in 1811 while the grand jury was repealed only in 1933. In France, the replacement of the *jury d'accusation* by a chamber of magistrates was the answer introduced by Napoleon to deal with the alleged corruption and ignorance of the jurors. They were indeed accused of bias and of releasing criminals too easily. Such accusations were also brought against the grand jury. However, in England, criticism did not lead to the abolition of the institution. Because of the long history and the legitimacy of Common Law, the right to be tried by a jury composed of one's peers was considered as one of the fundamental rights of all freeborn Englishmen. In France, on the contrary, the creation of the jury was still recent, and the popular institution only partially survived the authoritarianism of the imperial government and the wish to control judicial power. Although Napoleon agreed to keep the *jury de jugement*, it was primarily an issue of political astuteness and image. The partial maintenance of the jury (as that of the justices of the peace) displayed continuity with the achievements of the Revolution and gave the illusion of justice based on popular sovereignty.

The maintenance or removal of the jury is not unique to France and this question was raised in all European regions annexed to the Empire. Bram Delbecke's article traces the particularly lively debate on this topic pertaining to the United Kingdom of the Netherlands. Following the fall of Napoleon, Belgium and the Netherlands were united under a monarchy ruled by King William of Orange. Although Belgium had had time to acquaint itself with the jury system since 1795, it was only introduced in the Netherlands in 1811 and failed to take root in the Dutch political and legal culture. At the time of the creation of the Kingdom, the jury was therefore abolished. If such abolition initially caused little reaction in the South of the country, voices rose in 1819 to demand the reinstatement of the jury, particularly regarding press offenses. This appeal came within the context of the debate on the freedom of the press, which took place in France from 1819 until 1822.

During this period, several Belgian lawyers and journalists accused the government of despotism and censorship. Facing criminal prosecutions against journalists who were critical of the crown, they demanded the restoration of the *jury d'assises* as a guarantor of individual rights. Political and judicial elites of the North of the country showed opposition to this claim. Relying in particular on arguments put forward at the same time by Feuerbach, they considered the popular jury to be above all a political institution which is unsuitable for a monarchy. Besides the usual accusations of bias and incompetence, the jury was not seen as a legacy of the legal culture of the Netherlands. Finally, lawyers argued that judges had the full confidence of the people because of their professionalism and their integration into society. These diametrically opposed positions between the North and South of the kingdom increased over the years. During the debate held in 1828 on the reform of the *Code d'instruction criminelle* of 1808, the proposal of the Belgian deputies to reintroduce the jury was rejected by their Dutch colleagues. Ultimately, the question of the jury and freedom of the press crystallized the resentment of the Belgians against the North of the country and found an outcome only in the independence of Belgium in 1830. When the Belgian Revolution exploded, one of the first adopted measures was the restoration of the popular jury. In the Netherlands, this possibility would never be discussed again.

The difference in perception and reception of the Napoleonic legacy is visible in various German principalities. Martin Löhnig specifically analyzes how the controversy of the popular jury versus the professional magistracy was considered in Bavaria within the context of the emergence of liberalism and the assertion of the bourgeoisie. In 1848, King Maximilian I decreed a reform of the Bavarian constitution. In addition to protecting the freedom of the press and the abandonment of suffrage on the basis of property qualification, the popular jury (*Geschworenengericht*) was adopted. In reality, the issue of the legitimacy of this institution was raised by Feuerbach in 1813. While acknowledging the protective properties of the jury, he believed that it should be introduced in a constitutional and democratic regime. In other types of governments, the jury would offer only the illusion of freedom. From a legal point of view, Feuerbach challenged the distinction between legal issues and fact and believed that the jury did not have sufficient legal knowledge to perform their duties. However, the Bavarian members of parliament from the Palatinate did not agree with Feuerbach's

reluctance. This territory, which had formerly been annexed to the Empire, had known the Napoleonic jury system. Abolished in 1814, it was reintroduced at the request of parliament in 1819. The question of the adoption of the jury would be debated on a national level during the «Germanistentag» in Lübeck in 1847. On this occasion, the popular institution was proclaimed as the pivotal point of pan-Germanic civil liberties. Its establishment in the different states now became the creed among German liberals. In Bavaria, the law of 1848 organizing trial by jury was inspired by the legislation in force on the left bank of the Rhine. While the French origins of the jury were clearly assumed, the procedure differed from the revolutionary and imperial original model in several respects: the Bavarian lawmakers did not create a *jury d'accusation*, the citizens who would serve as jurors were selected by the administrative authorities, the jury decided on both issues of law and fact, the jury deliberated orally and publicly, etc. Beyond the official discourse praising the virtues of the «popular» jury, the system is socially still very «bourgeois». With the selection criteria based on the census and the level of education, Bavarian liberal legislators created a panel in close correspondence to the identity of German bourgeois society. Despite its initial success, the jury quickly lost support when the mixed jury (*Schöffengericht*) was introduced in Hanover in 1850. The alternative of the *Schöffengericht* would gradually prevail and was adopted in 1924 by the Weimar Republic.

The ambiguity of the German intellectual and political elites towards popular juries is also visible through the issue of the *Rügegericht* as studied by Emilie Delivré. The *Rügegericht* is a form of popular justice that appeared in the German-speaking regions in the Middle Ages and lasted until the late 19th century. Convened several times a year at the behest of the sovereign, the *Rügegericht* gathered together the entire adult population of the municipality generally over the course of two days in the presence of an official representative of the sovereign (*Beamter*). The skills and activities of the *Rügegericht* were numerous. Laws and decrees decided by the upper levels of the state were firstly read and explained to the assembly. Young adult men then took an oath of loyalty to the sovereign. On the second day, the sovereign's representative received the complaints of the population in relation to minor offenses often of moral character (insults, immoral attitudes, etc.). Most cases were immediately tried by a jury or a judge and resulted in fines. Parallel to these complaints, the population had the opportunity