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Popular Justice in Times of Transition (19th and 20th Century Europe)

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Introduction

by *Emmanuel Berger, Émilie Delivré*, and *Martin Löhnig*

It is common to regard the evolution of justice as a civilizing process (Max Weber, Norbert Elias). Popular justice had its part in the process: uncontrolled emotions, which found expression in different kinds of popular justice, would become more and more restrained in the modern state, until complete disappearance. Be it in the form of popular denunciations (*Rüge*), popular rituals (charivari, rough music, *Haberfeldtreiben*, or ducking), or even as participation in public executions, the violence of the crowd, the irrationality of subjective feelings, all these forms of behavior typical of lynch justice, slowly had to give place to the impersonal operation of law, the rational formation of a measured and vengeance-less justice becoming the ideal of a «democratization» of citizens' feelings, fostering revulsion against open violence and pain.

Other scholars, like Michel Foucault[1], have pointed to another reason for the evolution of justice, and particularly of popular justice. In fact, they argue that governments were alarmed by this potential, recognizing that the crowd was using these occasions as a kind of carnival, an opportunity to reverse the hierarchy and to mock official justice and authorities, to be outside of the law. This is why, according to historians following Foucault's hypothesis, governments increasingly repressed spontaneous forms of justice.

In a certain way, the criminal jury is a compound of popular justice, halfway along the road of that hypothetical evolution from traditional to modern justice. In fact, rationalizing lay participation in justice, the popular jury did not completely do away with the potential «emotional behavior» of the crowd, which explains that there were (and still are) many critics of this institution.

[1] M. Foucault, *Surveiller et punir, naissance de la prison*, Paris 1975.

But let us go back to the socio-historical debates on the evolution of justice administration. In fact, other scholars have also stressed that it took place following political fluctuation (see Evans[2]). It is interesting to test these different interpretations by looking for the phenomenon of popular justice in historical transitions. Notably, does the use of particular types of popular justice depend on a change of the political agenda? This question is especially interesting in a period where «the people» were becoming a parameter for different ideologies.

1. *Popular justices*

Transitions are the result of two interweaving strands: 1) the perception by contemporaries and 2) how posterity confirms those perceptions[3]. Focusing on different historical transitions during the long 19th and the 20th century in Europe, we should see what national cases have in common: The hypothesis is that, on the one hand, during political crises, references to natural law and super positive values increase. The public opinion's sense of justice then being particularly low, the political opposition demands a more appropriate political order and therefore no longer recognizes the laws, which structured the previous order. In doing so, references to natural law and to supra-positive values increase, values which sustain their rhetorical device and ideological discourse destroy the foundations of the ongoing state of law. At the same time, as a reaction or preventively, the ruler calls for the administration of justice. When political crises are particularly profound, revolutionary or popular courts appear, the population adopts diverse types of lynching, and for a while the state disappears and loses its monopoly on justice.

Testing our hypothesis, we want to specify what has to be included in the concept of popular justice. Was justice considered «popular»

[2] R.J. Evans, *Rituals of Retribution: Capital Punishment in Germany 1600-1987*, New York 1996, as well as *Tales From the German Underworld: Crime and Punishment in the Nineteenth Century*, New Haven CT - London 1998.

[3] Transitions take place when the people respond to challenges in such a way as to merit «conceptual registration (a conferring of meaning) which turns it into a 'meaning in itself'», in É. Delivré, *Popular Justice and Legal Transition. Getting the Law across tot he People in the Sattelzeit*, in P. Pombeni (ed), *The Historiography of Transition. Critical Phases in the Development of Modernity (1494-1973)*, New York 2016, pp 40-55, here p. 41.

because lower classes were represented, or because the administration of justice happened fast, in favor of—and closed to the lower classes?

What then was the link between different forms of popular justice? Did they run parallel, or, on the contrary, the appearance of one kind brought the disappearance of the other kind (or its removal towards the background): for example, did popular justice as a ritual at some point give place completely to a rational popular justice, such as the criminal jury? In other words, is there one form, which prevails in transition times and another during stable periods?

We also would like to see what distinguishes the national cases: different historical experiences sometimes led to an antithetical understanding of popular justice (*Volksjustiz* in German refers to summary justice, and not at all to a more «democratic» justice). Feeling less in «crisis» than some of its neighbors, contemporary Germans do not discuss the issue of popular justice (and particularly of the criminal jury) as lively as Belgians, Italians, or French. (In the French case, former president Sarkozy was accused of «penal populism» as he wanted to introduce the popular jury even in the summary courts. He maintained «it would bring the people closer to justice» and serve as a remedy to people's incomprehension from the towards «laxist jugdes».)

Some categories we will use when studying popular justice in transitional times are following:

– An issue we are raising deals with the publicity of popular justice. Did the introduction of public trials go together with the gradual abolition of some kinds of popular justice? With the shifted demonstration of the guilt of the accused, from ritual justice towards rationalized justice, did some kind of popular justice become obsolete?

– Interesting is also the category «sense of (in)justice» in order to analyze, for example, in how far the question of an intolerable social distance between the legal sphere and the rest of the community could foster political protest or provoke juridical reforms. By social distance, we mean differentiation and specialization, the existence of a legal sphere separate from both the community at large and other public offices as well as various ways in which judges are distinguished from other members of community in terms of occupation, age, gender, and social class.

– In a third point, we might ask whether popular justice has its own discourse. In moments of great changes, contemporaries often do not know how the transition will end, they are lost among different interpretations, shunted and tossed around by ideologies. The continuity of causes and consequences seems disrupted and turned on its head. When it comes to popular justice and the possibility of overcoming a crisis by implementing it, it is therefore not that surprising to observe that the concept of causality becomes particularly broad.

Let us recall the words of Heinrich von Kleist against the French Napoleonic enemy, during the war of independence, in his poem *Germania an ihre Kinder*: «Schlagt ihn tot! Das Weltgericht / Fragt euch nach den Gründen nicht!»[4] (Beat him dead! The Last Judgement / will not ask for a reason!). Every German citizen (in a period where Germany still did not exist) was allowed, had the right and the duty to kill any French citizen: anyway, at the Last Judgement, God would not have asked for any justification, causes, reasons. Because the reason is supra-rational, it does not have to be «reasonable».

According to lawyer the Heleen F.P. Ietswaart, there is a distinct discourse of popular justice. One of its features is that it uses «non-specific argumentation». This discourse in fact is presented «close to common sense» and presents a «moral discourse against deviant behavior». «Only a relatively small part of this discourse is concerned with identifying parties to the dispute, or ascertaining the facts, or arguing about the content and application of legal norms; the emphasis is rather on defining the problem and determining the remedy. It is prospective rather than retrospective», she continues, and «members of the community are deeply involved, both actively and passively»[5].

– A last category, which became important in the last decade, is the one of emotion. When we speak of *rites judiciaires* or *protestataires* to refer to charivari, rough music, iconoclasm, luddism etc.[6], we recognize

[4] H. von Kleist, *Sämtliche Werke und Briefe*, vol. 1, München 1977, pp. 25-27.

[5] H.F.P. Ietswaart, *The Discourse of Summary Justice and the Discourse of Popular Justice: An Analysis of Legal Rhetoric in Argentina*, in R.L. Abel (ed.), *The Politics of Informal Justice*, vol. 2, New York 1982, p. 160.

[6] See, for example, E. Fureix, *La construction rituelle de la souveraineté populaire: deuils protestataires (Paris, 1815-1840)*, in «Revue d'histoire du XIXe siècle», 42, 2011,

the solemnity, sometimes the religiosity of certain acts or customary observances, which might help us grasp one of the reasons for the existence of such social practices. Here, we go back to our first remark on the evolution of popular justice. Does it have to do with restraining potentially revolutionary crowd emotions? But it does not have to do only with charivari, iconoclasm, and other rituals: in fact, how far was the fear of emotional excesses a basis for the critique of popular juries (who would be too emotional or too easy to manipulate via their emotions etc.)? Finally, in moments of transition and faced with new challenges, did the rise of emotions (fear of change, misunderstanding, enthusiasm or euphoria, anger or rage) play a role in popular justice and in its place in the public opinion?

To answer these challenging questions, which are of burning actuality in Europe, our authors accepted to present original research on popular justice in transition.

2. *Popular justice in transition: the chapters*

The first contribution tackles the topic of popular juries during one of the most remarkable periods of modern history, as well as the foundation of the long 19th century: the French Revolution. In the political and social transition that came with the Revolution, criminal law fundamentally changed. Popular participation in the justice system was a major development in the new legal model imagined by the Constituents. The legislators wished to ensure the independence of the judiciary by introducing the election of judges and of the criminal jury. These new participants became central to the administration of justice as revolutionary crises took place. Emmanuel Berger analyses the activity of grand juries to show that they were brought to make decisions about certain offenses, which local populations were likely to see as illegitimate. Indeed, each political regime adopted a particular legal policy: from 1793, assembly members condemned those who stockpiled commodities, Thermidorians targeted food pillaging, and finally the Directory focused on repressing rebellious rallying and complicity in jailbreaks. Over 50% of the cases ended in discharges. These

pp. 21-39, or P. BASTIEN, *L'exécution publique à Paris au XVIIIe siècle. Une histoire des rituels judiciaires*, Seyssel 2006.

«pious perjuries» were due to disproportionate sentences compared to offenses that were not serious, and to the context of socio-economic crisis in which they were carried out. However, these discharges were not meant to destabilize public order, but to adapt the criminal laws approved in Paris to the reality of the rest of the country. Therefore, popular justice represented protection from temporary partisan policies that had fatal consequences for the citizens (the laws mentioned involved the death sentence). This analysis contrasts with the brutal situation in Paris, where the *tribunal révolutionnaire* jury imposed 2,625 death sentences. Although this seems to demonstrate the arbitrary nature of popular justice, in reality, it cannot be reduced to the excesses of the Terror. Conforming to the liberal ideas of the Constituents, the jury represented the insurance of an independent justice and the protection of citizen rights during the Revolution. The importance of this role explains the longevity of the institution. The jury became part of the French legal structure in 1792 and never disappeared, despite the reforms and changes of constitutional regimes.

While the jury achieved strong enough a consensus to last through the Restoration, the French situation cannot be generalized. Juan A. Pérez stresses that throughout the 19th century, while Spain was undergoing a series of political and dynastic crises, the liberal movement struggled to establish itself and the legitimacy of the popular jury. Although the first constitutions of 1808 and 1812 had shown potential for a fast organization of the jury, the project was abandoned with the re-establishment of royal absolutism. The short-lived period of the Trienio Liberal (1820-1823) allowed, for the first time, to introduce a jury for press offenses, but Ferdinand VII rejected it in 1823. It was re-established by the 1837 Constitution and ruled out again by the Constitution of 1845. During the Glorious Revolution, the 1869 Constitution restored the jury and declared that it was competent to judge any crime punishable by twelve or more years of jail. The 1872 law of criminal proceedings defined the organization of the popular jury. It followed the same ideas as the French model: popular sovereignty, democratization (no tax-based criteria), and decentralization (municipalities participated in choosing the jury members). It also protected the rights of the accused (challenging jurors, privacy of deliberation, differentiation between legal matters and matters of fact). Despite these liberal developments, several jurists were critical of the legislation of the rights and independence of

the jury. First, because of the limited number of crimes that it could rule on (from twelve years of jail against five in France). Secondly, the concern involved the possibility of appeal. If the judges considered that the jury's decision was wrong, the court was able to call in a new jury. The French Code of Criminal Procedure also allowed for such a measure, but not if the accused had been found not guilty. These rules showed a certain distrust of the jury. Incidentally, the 1875 Constitution abolished the institution, and it was then re-established in 1888. Unlike France during the Revolution, the succession of political and social troubles did not ensure the permanence of the *tribunal del jurado*. It was constantly dissolved and re-established by different leaders, and struggled to become part of the Spanish legal system.

The jury is the most recognized form of popular justice, but other institutions were created outside the sphere of criminal law such as labor courts (*conseils de prud'hommes*). Unlike the jury, which has English origins, Carlotta Latini emphasises that *conseils de prud'hommes* were «invented» under the First Empire. There was no equivalent under the Old Regime. They were established in 1805 in Lyon and expanded on the French territory throughout the 19th century. Regularly compared to a justice of the peace of the industrial world, they intended to resolve conflicts between workers and employers and thus avoid violence (strikes, police violence, etc.). The *conseils* were equally divided between representatives of both parties and met some success. In 1845, the *conseils de prud'hommes* in Lyon examined 1850 cases and reached an agreement in over 90% of the disputes. The institution spread with the growth of the Napoleonic Empire. It was preserved in the territories on the left bank of the Rhine after the fall of Napoleon and introduced in Prussia in 1846. In Italy, the establishment of the *probiviri*, a literal translation of *conseils de prud'hommes*, was the result of a long procedure following the strikes that erupted in the Biella valley in 1864, at the time of Italian unification. In 1878, a parliamentary inquiry investigating the causes of the strikes suggested the introduction of the *probiviri.* The suggestion intended to address the flaws of the 1859 penal code and of the 1865 civil code. Italian deputies and senators, under the pressure of public opinion, adopted the *probiviri* on June 15, 1893. They consisted of ten to twenty jurors and one professional judge-president. As non-contentious jurisdictions, the *probiviri* passed judgement, without appeal, on conflicts that did

not involve more than 200 pounds. It was not compulsory to establish a college of *probiviri*. They required the approval of local authorities (municipalities) and of the representatives of both workers and employers. Through the years, their authority increased and eventually reached farm workers, which showed the success of this popular and peaceful way of resolving conflicts. The colleges of *probiviri* could also ratify and rule on the collective agreements applied to a certain profession. Such a prerogative also contributed to reducing violence in social conflict. Despite the constant success of this form of popular mediation, even during World War I, the *probiviri* were removed in 1926, and replaced by labor courts with professional judges. This reform was implemented because the fascist state wanted to take control of the production system. The independence of the *probiviri* was therefore an obstacle that had to be eliminated.

The dissolution of the *probiviri* during the rise of fascism shows the issues surrounding popular justice in times of transition. It reveals the tensions related to the process of democratization and the profound political nature of popular justice. But times of transition are not only characterized by the changes caused by revolutions or armed conflicts. They can also span over a long period of time and involve changes that, although they are slowly brought about, remain fundamental. Stephen Banks develops this approach through the study of the evolution of different forms of popular justice practiced within communities in England and Wales during the 19th and 20th centuries. Known as «rough music», such practices are defined as unofficial shaming processions. They consisted of public and loud expressions (insults, whistling, chanting, and making music) of moral criticism against one or several individuals in a community. They particularly targeted sexual deviance (adultery, sexual relations prior to marriage) or gender deviance (unfaithful women, or battered wives, battered husbands). Rough music also took place when a threat to the traditional rights of the community emerged (enclosures, prohibition of gleaning) or when merchants or shopkeepers tried to increase food prices. Rough music is designated differently depending on the area: «ceffyl pren» or «wooden horse» in Wales, «stang ridings» in northern England and «skimmington» or «skimmity dancing» in the South. Although it could be brutal, rough music was rarely violent as the main goal was to stigmatize the person and not to injure or kill them. It was not only practiced by popular classes, but also by gentlemen

and yeoman farmers. It was part of the political life of English elites until the first third of the nineteenth century (cf. mass immolations of Thomas Paine's effigies in 1792-1793). This progressively changed during the second half of the nineteenth century. Rough music, which had been tolerated and even organized by public authorities since the Middle Ages, became subject to criticism and legal prosecution. The chants associated to rough music were called defamatory, and the processions blocking the highway were legally reproved. This resulted less from the professionalization of the police than from the growing social and geographical mobility that came with English industrialization. Such mobility transformed rural communities and dissolved the social control they exerted. Rough music became marginal in the English countryside after 1850, but analogous traditional shaming mechanisms developed within working class communities in coal-mining and industrial areas. Actions were carried out against individuals who were a threat for the community such as non-strikers or blacklegs. The methods employed reproduced previous practices: denunciations and public harassment, ostracism, symbolic humiliation, and violation of masculinity. These practices declined after the World War II as industrial activity decreased, but subsisted until the last major miners' strikes in the 1980s.

In a similar way, rejecting the binary opposition between a popular justice that is culturally violent, spontaneous, and informal and a normalized justice imposed by the State, Émilie Delivré points out that the boundaries between the different forms of regulation within the public sphere remain ambiguous. Charivari is a relevant example. It was meant to punish those accused of sexual deviance, violation of honor, or extraordinary injustice. Collective actions were carried out in a parallel public space and did not involve the authorities. However, suspending legal norms is not a privilege granted only by local customs. *Anomia* also occurs when governments declare a «state of emergency» in a time of crisis. In both cases, overthrowing the *nomos* is justified by an exceptional situation, it implies the desire to carry out one's own justice and is temporarily tolerated. The different spheres of the public space came closer together in the middle of the 19th century. In Europe, forms of popular justice changed, such as the charivari in France, *scampanellate* in Rome, or *Katzemusik* in Germany. They shifted from moral motivations to political ones, from private questions to public debates. The population of Barr in Alsace acted against a roy-

alist, while in Savoy republican songs were chanted under the windows of political enemies. In 1848, music was used for political purposes in Düsseldorf, Berlin, and Vienna. In Italy, charivari became an instrument of social justice. The proliferation of satirical newspapers («Le Charivari», «Wiener Katzenmusik») and caricatures at that time also shows how traditional practices and political motivations interacted. Through such practices, popular classes were able to take part in politics and influence the public sphere. Liberal movements, facing the threat of an uncontrolled and disorganized form of popular justice, defended the idea of establishing and enlarging popular justice by institutionalizing it through the criminal jury. This was introduced in 1848 in Sardinia, Sicily, and Piedmont, in 1849 by the *Paulskirchenverfassung*, and in 1851 in Prussia. In the second half of the 19th century, the jury expanded at the same time as movements of globalization (the colonies), democratization, independence, and national unification.

This was particularly the case in Germany. As the Germanic principalities united politically (1871), the jury was adopted in the entire Reich in 1879. The *Gerichtsverfassungsgesetz* established two levels of popular participation. The local *Schöffengerichte*, composed of a professional judge and two lay judges, ruled on crimes of intermediate gravity. The *Schwurgerichte*, composed, as is an Assizes court, of twelve citizens, judged crimes that were punishable by five or more years of jail. Their decisions were final and without appeal. This legal organization remained the same until the beginning of World War I. Mareike Preisner analyses the consequences of defeat on the legal structure of Bavaria. The fall of the last king, Ludwig III, and the proclamation of «the popular government of the state of Bavaria» on November 9, 1918, rang in a period of great political instability. It reached a peak in April 1919, when the «Council Republic» was established. Confronted with social protest and an unprecedented crisis in public order, the government decided, on November 16, 1918, to create popular courts (*Volksgerichte*) in troubled regions. On February 20, 1919, the *Volksgerichte* were introduced in the whole area of the right bank of the Rhine. In November 1918, they were responsible for judging any civilian or military caught in the act of murder, pillaging, theft, or arson. Three months later, January 24, 1919, their authority considerably increased. The condition of *flagrante delicto* was no longer necessary, and they were entitled to try any form of resistance or protest against

the established order. Although the *Volksgerichte* were not meant to replace ordinary jurisdictions, their authority reached such an extent that they became key agents of crime repression (31,000 verdicts in six years). Introduced during the state of emergency, they were considered a new type of drumhead court-martial. They consisted of two professional judges and three jurors, before they became equally composed of both in January 1919. The procedure was fast, without appeal, and almost lacked formalities. The compulsory presence of a lawyer and the consent of the Council of Ministers in the case of death penalties were the only guarantees. The parliament supported the creation of this exceptional structure and legalized government ordinances in July 1919. Throughout the years, strong criticism emerged against the lack of protection available to the accused. However, from 1920, the eviction of socio-democrats in parliamentary opposition prevented reform. Intended as temporary, the *Volksgerichte* were eventually removed on January 4, 1924 after the *Lex Emminger* came into effect. It changed the composition of the assire jury established in 1879 to try the most serious crimes. A mixed jury replaced the twelve jurors, thus following the model of the Bavarian *Volksgerichte*.

Introducing popular courts in exceptional times is not a modern procedure. The French *tribunal révolutionnaire* already resorted to the jury. At that time, the term «popular» referred less to the composition of the jury than to the need to convey the people's desire for justice. These ideal people are defined differently depending on the time. In the 19th century and at the start of the 20th century, it was understood through the nation or the national community. This changed with the rise of the Third Reich. In his essay, Johann Chapoutot examines the legal and ideological foundations of the *Sondergerichte* in 1933 and the *Volksgerichtshof* in 1934. These infamous repressive courts, which served the Nazi dictatorship, were composed of two professional judges and three lay judges. The latter were meant to represent the «German people», but in reality, they were members of the Wehrmacht, of the party, or of one of its organizations. This Nazi version of popular justice was based on a racial vision of law and on the supposed superiority of the German people. According to Nazi jurists, the first Germanic tribes had an oral and practical notion of law that resulted from the Germanic race's particular way of life. This common sense conflicted with Roman universalism, which emerged from general principles and

was introduced by the Jewish. The Nazis claimed that Roman law spread to Germanic tribes when they were evangelised. Roman jurists would have accordingly deprived the German people of their natural capacity to determine right and wrong. The Nazi project intended to destroy universalism and reassert the superiority of German common sense, which was considered a biological entity. It did not need any codes or written laws because it consisted fundamentally of an instinctive notion of right and wrong.

The fall of the Third Reich put an end to the racial link between law and people, but it also caused the resurgence of violent popular justice. In liberated regions, crowds gathered in public places to punish collaborators. In some cases, this led to lynchings. François Rouquet and Fabrice Virgili show that in France, even though popular justice was exerted through violent and humiliating actions, it was rarely blind and spontaneous. In most cases, it followed similar procedures and was kept under tight control by the new authorities in place. Liberation was collectively celebrated as the re-establishment of national unity and of the Republic. This was experienced through popular festivities, but also in a desire for revenge towards collaborators. Of all forms of popular justice, the shaving of women's heads is the most debated one. It is estimated that 20,000 women were shaved. The film *Au Coeur de l'orage* (At the heart of the storm), shot in Voison, provides sequences that shed light on the proceedings and symbolic meanings of that practice. It is the combination of a purifying action, a patriotic ceremony, and the re-establishment of masculinity. The latter was a way of compensating for the defeat of French citizens-soldiers who had failed to protect their women and homeland. The shaving ritual evokes the corporal punishment carried out in public under the Old Regime, such as shaving off prostitutes' hair or the pillory. The humiliation suffered is unquestionable, but it has to be placed in the context of the sufferings undergone by the people during the war. Compared to the atrocities perpetrated by the occupant, the cruelty of shaving is relative. The abuse inflicted remained moderate because resistance organizations exerted strong control over those «rituals» of popular justice. They were able to interfere because of the power vacuum that followed the Germans' departure and the fall of Vichy. This allowed them to assert their capacity to maintain public order. The participation of new authorities in the administration of a symbolic and violent

popular justice again shows that the line separating different forms of popular justice, whether they are cultural or institutional, is unclear.

This ambiguity appears particularly during historical times of transition, as we can see with Alexey Tikhomirov who studies how popular justice, in the form of iconoclasm and carnivalesque rituals, was activated in an especially heightened way during the transitional period of the Soviet occupation and in the first years of the German Democratic Republic as a response to the defeated nation's liminal status and the weakness of the state's authority. By destroying the artefacts of power and disrupting official public symbolism, ordinary people interpreted the world and generated meanings for life in the dramatically changing circumstances of their post-war world, restoring shared positive emotions and meanings of «people's community». In forming local communities of violence, the insurgents experienced tabooed feelings of national pride and tried to effect healing by taking revenge on representatives of the Soviet Military Administration in Germany, the Red Army, and the East German regime. Iconoclasm as popular justice reflected the 'emotional work' done by the East German society, which gave the population a distinctive escape valve for their negative feelings.

The purge that occurred in the post-war period was not limited to popular movements dispensing their own justice. Besides these extra-judicial practices, the repression was ensured by military courts and special courts legally introduced by the governments of liberated countries. Among these jurisdictions, Martin Löhnig took particular interest in the popular courts (*Volksgerichte*) created on May 8, 1945 by the 2nd Republic of Austria. Although it is not established that they were related, the Austrian *Volksgerichte* shared more than just a name with the Bavarian institution of 1919: they also included a fast procedure with no possibility of appeal, and mixed courts. They were composed of two professional judges and three jurors, who decided on both the facts and the sentence. The first *Volksgericht* was created in Vienna. From 1946, three other courts were established in Graz, Linz, and Innsbruck. The *Volksgerichte* operated alongside ordinary jurisdiction. To avoid arbitrary decisions, the law of November 30, 1945 allowed those who had been convicted to appeal to the supreme court. The *Volksgerichte* had been created to enforce the *Ausnahmerecht* against the Nazis and war criminals. The courts were qualified to try crimes included in the *Verbotsgesetz* (Prohibition Act), the *Kriegsverbrecherge-*

setz (War Criminal Act), and other ordinary criminal laws. The accused faced sentences that could extend from one year of jail to the death penalty. Prosecutions were engaged mostly against crimes committed on the Austrian land. This concerned the acts committed by Nazi «terrorists» before the Anschluss and the crimes carried out between 1938 and 1946. For instance, charges were incurred against participants in the *Reichskristallnacht*, against medical personnel that collaborated in the euthanasia program, and against perpetrators of the *Endphasenverbrechen* (Final Stage Crimes), which deeply affected collective memory. Between 1945 and 1955, the *Volksgerichte* tried 23,477 individuals and imposed 13,607 sentences, of which 43 were death penalties (30 were executed). The moderation of these verdicts shows that the *Volksgericht* was not an instrument of the victors in the exercise of justice. This was partly due to the system of selection of the jurors. They were chosen from three lists established by the three parties that formed the first provisional government: SPÖ, ÖVP, and KPÖ. The representation of various opinions guaranteed the exercise of an independent justice. From 1946, the parties still provided the lists but no longer had the insurance of proportional representation. In June 1948, the minister of justice announced that the *Volksgerichte* would be abolished at the end of 1949. The urgent need for a fast and efficient justice to enforce the *Ausnahmerecht* had passed. The parliament adopted the abolition on November 22, 1950, but the Allied Council rejected it three weeks later. The *Volksgerichte* and the *Ausnahmerecht* were dissolved only after the allies left, respectively in 1955 and 1957. Ordinary jurisdictions and criminal laws then took charge of the crimes and other atrocities carried out in the context of National Socialism.

The repression perpetrated by governments after World War II was not implemented only through special courts. In Bavaria, it brought about the re-establishment of the popular jury abolished in 1924. Arnd Koch, however, maintains that when the Liberation occurred, the majority of jurists and authorities were openly opposed to an institution that was considered obsolete and belonging to the 19th century. As we have seen with the French Revolution, most criticism concerned the jury's presumed indulgence and the risk of «pious perjuries». Consequently, the re-establishment of the *Schwurgericht* on July 14, 1948 was a surprise that was mostly due to the influence of Wilhelm Hoegner, who then was the provisional Minister of Justice and member of the Bavarian