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### Benoît Garnot (ed.), *L'Infrajudiciaire du Moyen-Âge à l'époque contemporaine : Actes du colloque de Dijon 5-6 Octobre 1995*

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J.A. Sharpe

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Paradoxalement, d'ailleurs, quand H. Franke cherche à comprendre la spécificité récente du système pénal et carcéral des Pays-Bas, il en reste aux interprétations socio-politiques qu'il récuse chez les autres. Le libéralisme pénitentiaire des Pays-Bas depuis 1945 s'expliquerait par le traumatisme de l'occupation nazie (beaucoup d'anciens prisonniers politiques considèrent ensuite les prisonniers de droit commun comme des proches); par la spécificité géographique et démographique d'un petit pays où tous ceux qui comptent se connaissent, participent à des réseaux de pouvoir ou d'expertise qui se recourent et peuvent appliquer plus facilement des projets de réforme; par le rejet tardif d'un système cellulaire plus développé, et plus longtemps que partout ailleurs; enfin par la spécificité d'un pays qui n'a pas connu de révolutions violentes au XIX<sup>ème</sup> siècle et où se manifeste un certain consensus social. Il reste que l'on aimerait aussi comprendre la réalité du partage de ces pouvoirs acquis à l'intérieur des prisons. N'y a-t-il pas, dans ce système, des hiérarchies de pouvoir entre prisonniers qui peuvent constituer la résurgence de nouveaux caïdats, donc de l'arbitraire?

Quoi qu'il en soit de la querelle des interprétations, il est certain que dans l'Europe d'aujourd'hui (l'auteur montre bien l'influence des instances internationales, surtout européennes, sur le droit pénitentiaire), le système pénitentiaire hollandais fait figure de référence. Ainsi la France, qui essaie de s'en inspirer, n'a pas encore réussi, en 2000, à créer une instance de contrôle indépendante qui recevrait les plaintes des détenus. Quant à l'étude de l'évolution historique générale des systèmes de répression et d'enfermement, elle devrait prendre en compte les goulags et camps d'extermination du XX<sup>ème</sup> siècle. Sans vaticiner sur l'avenir, mais en constatant seulement ce qui se fait dans et autour des prisons des USA, ce que relève d'ailleurs H. Franke (la démocratie phare de notre société mondialisée compte plus de deux millions de prisonniers, enchaîne les femmes délinquantes pour des travaux humiliants dans les rues de Phénix Arizona, et exécute des centaines de Noirs), en voyant l'engouement, presque partout, des autorités pénitentiaires pour les bracelets et la surveillance électronique à domicile et au travail (l'expérience précoce des USA prouve que cela ne fait pas diminuer le nombre des détenus), on ne peut s'empêcher de se demander si tout compte fait, pour cette fin de millénaire et le siècle à venir, Foucault n'aura pas raison.

Jacques-Guy PETIT (Université d'Angers)  
jacques.petit@univ-angers.fr

**Benoît Garnot (ed.), *L'Infrajudiciaire du Moyen-Âge à l'époque contemporaine : Actes du colloque de Dijon 5-6 Octobre 1995* (Publications de l'Université de Bourgogne, 81 : Serie du Centre d'Études Historiques, 5), Dijon, Éditions Université de Dijon, 1996, 477 p., ISBN 2-905965-09-6**

Although the practices it comprehends are well known to Anglophone historians, the term 'infrajudiciaire' has no exact equivalent in English, and is perhaps best translated for the purposes of this review as 'infrajudicial practices'; that is to say, the practices by which disputes which have or might normally be resolved through the judicial process are settled by practices operating within or in parallel to the normal machinery and practices of the law. Almost every student of medieval or early modern legal systems will be familiar with the way in which strict legal rules

could be bent or adjusted to meet the need of individual circumstances or individual litigants, or of how litigants or people in dispute might find settlements of the margins of the legal system, and the development among francophone historians of the concept of 'l'infrajudiciare' provides a useful way of grouping these diverse practices.

For, as the essays in this collection demonstrate, diverse these practices certainly were. This volume contains thirty – one contributions presented to a conference at Dijon in 1995, and these contributions, their geographical focus largely but by no means exclusively on France, range widely in period and subject matter: we have, for example, Andrea Zorzi writing on infrajudicial practices and Italian political institutions in the thirteenth and fourteenth centuries, and Anne-Claude Ambroise – Rendu's analysis of the crowd as an instrument of justice in the period 1870-1910; Nicole Gonthier's reflections on peace – making at the end of the middle ages, and Dominique Kalifa, in her essay of the rise of private policing in France in the nineteenth and twentieth centuries, tracing the birth of private detective agencies; and Pierre Monnet reconstructing patrician visions of honour from Frankfurt chronicles of the late middle ages, and François Bayard writing on the how infrajudicial practices operated within economic activity in Lyon and Paris in the seventeenth and eighteenth centuries. To these specific studies are added pieces, notably by Xavier Rousseaux and Jean-Claude Farcy, attacking some broader issues, while transcripts of the debates generated by the presentations are also included. The net result is a rich, wide – ranging, and thought – provoking volume.

The diversity of these papers, and the elasticity of the concept of 'l'infrajudiciaire', understandably makes it very difficult to make any valid generalisations about the operation of infrajudicial practices. Sometimes, for example, they can be seen as being more or less officially sanctioned, and operating within the legal system proper, while at other times they operate outside it. Sometimes the infrajudicial is resorted to when existing institutions were not felt to offer adequate means of solving problems or settling disputes, and sometimes when, as Martin Dinges comments, when parties in a dispute wish to 'avoid justice' (p. 194). Parties involved in infrajudicial dispute resolution obviously needed people or institutions they could trust to mediate and possibly enforce decisions, and these too varied widely, from local clergymen in Ancien Regime France to *apaiseurs*, or institutionalised conciliators, in eighteenth-century Flanders, and the *justices de paix* in the Dijon area in the revolutionary period. There is also the problem of evidence: sometimes this is available in plenty, but infrajudicial practices are sometimes very thinly documented, and the historian has to reconstruct them from isolated and imperfect materials. Generally, however, as many of the contributions to this volume demonstrate, the most meaningful aspects of infrajudicial practices emerge when their interactions with the judicial machine proper are analysed. These interactions demonstrate that the infrajudicial is not just a residual category, but something whose full implications can only be appreciated when it is seen operating with relation to judicial institutions and governmental practices. Lurking behind the history of the infrajudicial, therefore, is the more familiar history of the grand lines of development of the development of the law, legal systems, and litigation in Europe, and the gradual triumph of official justice over unofficial, and central over local.

Overall, study of infrajudicial practices demonstrate that, since human beings live together, they need methods of resolving disputes, and that the necessary means to do so are not always provided by the judicial system. Infrajudicial solutions might

be sought for a variety of reasons, perhaps most often because they are cheaper than going to law, because they allow participants in a dispute to maintain honour or reputation more easily, or because they are less disruptive on interpersonal, familial, or community relations than fighting a lawsuit through to the end. Infrajudicial practices may have been very varied, but they provided an important, familiar, and flexible means of conflict resolution, often as or perhaps more effective than the resources of official justice. Despite its lack of precision, and its inherent ambiguities to which we must always be alert, the concept of 'infrajudiciare' is an indispensable research tool for the historian of the law and the operation of legal systems.

J.A. Sharpe  
University of York.  
jas19@york.ac.uk

**Wolfgang Behringer, *Witchcraft Persecutions in Bavaria: Popular Magic, Religious Zealotry and Reason of State in Early Modern Europe* (Cambridge etc.: Cambridge University Press, 1997), xxiii + 476 p., ill., ISBN 0 521 48258 5**

This is an important study of the history of witchcraft, even though the differences between this translation and the original German version published in 1987 are negligible. Since then the flood of studies on the quantitative and qualitative aspects of the early modern European beliefs in witchcraft and magic has only risen. But every expert on this field will see this monograph as a major contribution to this field of interest. Since 1987 Behringer's book has reached a sort of paradigmatic status in the German historiography and it might very well be that this English version will acquire a comparable position. The first methodological chapter for instance will be a useful introduction for any student preparing a study on the field of early modern cultural history. Focusing on two older regional 'paradigmatic' studies: Macfarlane's monograph on Essex (1970) and Midelfort's book on the German south-west (1972), Behringer points to the influence exerted by the nature of their sources on their conclusions. Macfarlane had argued that the rise of the number of the trial for witchcraft had been brought about by the introduction of a sort of proto-capitalism in the village communities of Essex. Midelfort on the other hand had put much weight on the importance of religious motives. Both these conclusions had benefits but they could not be applied to other regions than the surroundings where they had been developed. But it is clear that these persecutions were not prompted by local conditions alone. Almost everywhere in Europe the numbers and intensity of these prosecutions suddenly rose at the end of the sixteenth century to levels never seen before. Behringer endeavours to present an explanation for this phenomenon that is not restricted in applicability by purely local circumstances. That does not mean however that his study does not have a regional scope. He focuses on the region that is now the 'free state' of Bavaria, one of the major federal states of modern Germany. Under the ancien regime this region was a collection of one large political unity, the Duchy of Bavaria, several free, so-called imperial, cities and a number of more or less autonomous secular and church-domains.

A dazzling amount of sources was available for this research. One of these will catch the special attention of the reader: the card index of witchcraft trials in the