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## Book Review. Criminal Defense as Narrative: Storytelling and Royal Pardons in Renaissance France

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# Criminal Defense as Narrative: Storytelling and Royal Pardons in Renaissance France

Richard M. Fraher†

*Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth Century France.* Natalie Zemon Davis. Stanford University Press, Stanford, California, 1987. Pp. xiv, 217. \$22.50.

In one of her earlier books, *The Return of Martin Guerre*, Natalie Davis made it clear that she relishes the role of the storyteller. In *Martin Guerre*, Davis captured the vividness of a sixteenth century criminal prosecution concerning an impersonation so amazing that it led one of the judges, Jean de Coras, to recount the memorable tale in print. Through the medium of retelling the narrative of Arnaud de Tilh's wondrous impersonation of the peasant Martin Guerre, Davis provided her readers with a rare insight into the perceptions and aspirations of the lower orders of French society in the sixteenth century.

In *Fiction in the Archives*, Davis has cast herself once again in the role of historian as story-finder and storyteller. Again, as in *Martin Guerre*, the storytelling takes place in the context of sixteenth century French criminal justice and the aim of Davis's retelling is to provide her readers with a new perspective on the social history of early modern France. But the perspective from which the narrative is told has shifted from that of the learned judge, Jean de Coras, to that of supplicants seeking royal pardon. *Fiction in the Archives* is based on almost two hundred letters of remission in which a supplicant admitted having broken the law, usually by committing a homicide, and humbly begged the crown to pardon the actor and to mollify or remit the capital penalty that the letter of the law imposed for any homicide, even an accidental one.

Professor Davis, with her sharp eye for a good story and her talent for artfully recasting narrative as social history, examines

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the pardon tales with particular attention to their "fictional" qualities. Here "fictional" does not mean fraudulent or counter-factual, but rather creative or literary. Davis analyzes and retells her supplicants' stories in order to establish how the disparate array of sixteenth century actors employed the storytelling occasion of the remission letter to reconstruct the reality of events that led up to deadly violence. From Davis's recounting of the pardon tales, the reader discovers how sixteenth century supplicants employed narrative, fictive structures to lend coherence to unexpected, frightening experiences; to account for their motives in committing acts that might cost them their lives; to present themselves before the royal chancery and courts in the guise of accepted social types, and—most significantly for the legal historian—to conform to the constraints of the law.

The letter of remission, as a legal document, imposed certain restraints upon the narrator. Davis points out that the letters represent a product of mixed authorship. A letter of remission was formally a missive produced by the royal chancery, in which the king notified a royal criminal court that he was familiar with the facts in the supplicant's case, as recited in the document, and informed the court that the king intended to impart his "grace and mercy, remission, and pardon" to the supplicant. In reality, the supplicant, or the supplicant's relations, or an attorney, brought the facts of the case to a royal notary, who drafted the letter of remission by sandwiching the formulae of the chancery around the narrative provided by or for the supplicant. Davis makes it clear that the clerk's hand sanitized some of the tales, excising blasphemies, translating regional dialect into French, and substituting occasionally a lawyer's bit of technical vocabulary for a lay person's more roundabout expression. But the pardon tales, according to Davis, reflected their tellers more fully than their scribes. The royal notary's primary contribution seems to have occurred in the concluding formulae, where the letter of remission tied the facts of the case together with the recognized legal bases for a grant of remission. It was the supplicant's tale, and not the notary's, when the letter of remission was presented in a criminal court to be dismissed or ratified by judges.

Readers who are familiar with Thomas Green's study of the English jury, *Verdict According to Conscience*,<sup>1</sup> might be inclined to perceive a more powerful influence played by legal doctrine than

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<sup>1</sup> Thomas Andrew Green, *Verdict According to Conscience* (1985).

Davis here suggests. Green's study presented a strong argument that the English jury's findings in homicide cases consistently embellished the facts of the defendant's case by fabricating the elements of self-defense.<sup>2</sup> One suspects that the supplicant in sixteenth century France, whose actions and motives needed to be fitted into one of the doctrinal pigeonholes that defined a remissible homicide, must have received some editorial assistance in the crafting of the narrative. Davis suggests that the French supplicant was in a position significantly different from that of the English defendant, insofar as the French supplicant, after having received the letter of remission, faced the certainty of having to testify convincingly before the criminal court charged with ratifying or dismissing the remission. Granted, the supplicant's freedom to fabricate outright the events recounted in the letter of remission was drastically curtailed by the subsequent examination of the applicant's tale in an adversarial setting, where the victim's kin and any witnesses might challenge the supplicant's account. But the supplicant's appearance before a court also represented a second opportunity to present the facts of the case in a construct as favorable to the defense as one could make it without lapsing into detectable mendacity. Lawyers had known how to coach witnesses in fashioning their testimony at least since the latter decades of the thirteenth century.<sup>3</sup> In sixteenth century France, the supplicant simply had to be coached to tell a consistent tale, one that accorded with the legal requirements governing remission and that did not depart from the facts as they might be established in court. The constraints of the law and the content-editing of the trained lawyer may have played a somewhat larger role in the creation of remission letters than Davis seems to acknowledge.

Regardless of whether Davis is completely right in her claims about how pardon letters combined the supplicants' versions of the facts and the advocates' or royal secretaries' versions of the applicable law, Davis has teased from her catalogue of narrative a fascinating typology of the supplicants and their deeds. The tales divide themselves into two universes separated by gender. In chapter two, the universe consisting of "Angry Men and Self-Defense," Davis identifies distinctive versions of the male account of how a sup-

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<sup>2</sup> *Id.* at 28-46.

<sup>3</sup> See, for example, Thomas de Piperata, *Tractatus de Fama*, in G. Ziletti, ed., 11 *Tractatus Universi Iuris* fol. 8-10 (Venice 1584)(copy on file at the University of Chicago Law Review), explaining how questions should be phrased to prompt a witness to avoid a hearsay problem.

plicant, professing lack of ill intent, nonetheless acknowledges that he has killed. Gentleman, artisans, and peasants employed their social estates as *topoi* to suggest precisely how the course of events created a homicide for which the supplicant could not be held capitally responsible. Over and over, one encounters the theme of man's honor vis-a-vis other men, whether the dispute involved seigneurial rights, or a peasant's hat knocked off in a quarrel at a wedding, or an artisan's demand to be paid for his labors. Where the victim of the homicide was a woman and the supplicant a man, the narrative in the letter of remission seems invariably to turn on the assumption that the audience will believe that a man might understandably kill in defense of his sexual honor, and that an affront to his sexual honor would naturally give rise to the "hot anger" that made a homicide remissible for want of premeditation.

The estate of the victim appears to be less important to the coherence of the tale, but the particular qualities of the victim's character or deeds played a critical role in exculpating the supplicant. Victims as portrayed in remission letters frequently appear either to have been irascible fellows who initiated conflict by dishonoring the supplicant and often by striking the first blow, or to have been wives whose sexual misdeeds caused such dishonor that any reasonable husband would have lashed out in anger. Finally, Davis finds that supplicants made good use of setting to create mood and to lend coherence to episodes that, by definition, culminated in violence. The *topos* of violence in connection with festival was at least as old as Gregory of Tours' tale of murder and vendetta at Christmastide in Frankish Gaul,<sup>4</sup> and the theme appears in many of the male supplicants' tales. Similarly, the remission letters reflect sixteenth century awareness of the kinds of issues that gave rise to violent ruptures within and between groups. The Catholic-Huguenot rift ran through society, inheritance disputes rent families, differences in wealth ran through religious confraternities, and intense local loyalties divided one village from the next, creating the kinds of easily appreciated, acutely felt tensions that could make social sense out of a sudden outburst of violence. Male storytellers wove narratives that employed fictive devices artfully in order to present their case in a light that was both legally and theatrically favorable.

In the female universe, described in the third chapter of the book, Davis found that women's voices employed fictive devices

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<sup>4</sup> Gregory of Tours, *The History of the Franks* VII.47 (sixth century).

less coherently than male voices did. Nor is this surprising, since women faced different social constraints upon the use of violence than men did, while facing precisely the same legal requirements governing the remissibility of homicide. The battered wife, for example, could not justify defending herself on grounds of "hot anger" against an abusive husband, since the sixteenth century audience assumed that husbands justifiably beat unsubmitive wives. The woman who slew her husband had to rely more heavily on suggestions of accident than on an image of justifiable, unpremeditated "hot anger." Similarly, a woman's sexual honor seems not to have been implicated by her husband's infidelities, but only by improper advances ventured toward a woman who was innocuously occupied with everyday female business. In the women's letters of remission, the supplicant's gender was the only estate that mattered, so social type plays a lesser role in lending coherence and color to the women's tales than to the men's. The women's stories in remission letters were more matter of fact, less fictive than the men's narratives, because, Davis suggests, neither literary nor oral culture provided women with materials for constructing "an adventuresome or tragic mode" in which to present female violence (p. 102). Whatever the cause, it is apparent that sixteenth century French legal culture was better able to discover or invent social meanings for men's acts of violence than for women's.

For a lawyer, there is little surprise in Davis's discovery that the criminal records of sixteenth century France are brimming with fictive narratives. Recently, the role of language and narrative structure in the legal process has attracted research from social scientists,<sup>5</sup> and every litigator knows, albeit in a less systematic way than an anthropologist knows, that the presentation of a legal case contains a healthy dose of theater. Thus, the value of Davis's scholarship does not lie primarily in her having discovered fiction in the archives. Rather, the particular genius of this work expresses itself in the interweaving of two hundred disparate narratives into a mosaic that presents sixteenth century stories and storytellers in a perspective that casts new light on how imagination and reality interplay with one another in the operation of criminal justice. *Fic-*

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<sup>5</sup> See, e.g., Douglas W. Maynard, *Language in the Court*, 1983 *Amer.Bar Found.Res.J.* 211, reviewing W. Lance Bennett and Martha S. Feldman, *Reconstructing Reality in the Courtroom* (1981); William O'Barr, *Linguistic Evidence: Language, Power, and Strategy in the Courtroom* (1982); and J. Maxwell Atkinson and Paul Drew, *Order in the Court: The Organisation of Verbal Interaction in Judicial Settings* (1979). Professor Maynard is currently studying the role of narrative structures in plea bargaining.

*tion in the Archives* is a deft and sensitive portrayal of the crafting of persuasive narrative for use in the legal process, and much of the analysis could be applied in the context of contemporary American justice. Professor Davis writes with the lucidity of a master storyteller and with vision that extends the relevancy of her analysis far beyond the confines of sixteenth century France.