Ending the French Revolution

Winner of the Walker Cowen Memorial Prize
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in eighteenth-century studies

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VIOLENCE, JUSTICE, AND REPRESSION FROM THE TERROR TO NAPOLEON

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Preface

THE FRONT DE LIBÉRATION du Québec (FLQ) carried out two hundred bombings around Montreal from 1963 to 1970. The targets ranged from street-corner mailboxes to the stock exchange; the victims numbered five dead and scores injured. Separatist terrorism reached a crescendo in October 1970, when the FLQ kidnapped James Cross, the British trade commissioner, and Pierre Laporte, Quebec's minister of labor. The FLQ threatened to kill their hostages unless the government paid a half-million dollars and released sixteen FLQ members from prison. In a shocking show of solidarity, radical politicians and union leaders staged public rallies in support of the terrorists. In response, the House of Commons invoked the War Measures Act for the first and only time in Canadian history. This suspended civil liberties and led to an overnight roundup of hundreds of Quebec separatists. Armored personnel carriers and military helicopters clattered through the streets and between the skyscrapers of Montreal. Two days later, Pierre Laporte was found strangled to death in the trunk of a car. The rallies ended, and the repression intensified.

This all happened when I was ten years old, growing up in Saskatoon, almost 3,000 kilometers away. The Canadian Broadcasting Corporation covered the October Crisis almost without interruption, and my teachers, aware of my fascination with these events, let me spend all day watching them on the school television. Although minor by almost any yardstick of political violence in world history, these events loom large in the history of Canada. The half-dozen people killed by the FLQ constitute a fair share of all Canadians killed by civil unrest in the last 150 years. Such a low incidence of political violence has made Canada a model of the rule of law, and Pierre Trudeau's recourse to the War Measures Act became the most famous political act of his fifteen years as prime minister. Of course, I did not understand the full significance of the October Crisis at the time—the privilege I was accorded by my teachers no doubt made a greater impression on me than the events themselves—but the issues these events raised about political violence and the state's response to it have only risen in my consciousness ever since.

This is a historical study, but the questions that it seeks to answer have largely emerged from the post–Cold War era. Although glibly considered a golden age for democracy, the 1990s proved difficult, even harrowing, years for many nascent democracies, Russia's experience being only the most strikingly similar to that of France in the 1790s. Fighting the remnants of communism and suppressing the Chechen revolt could be both as chimerical and as dangerous to democracy in Russia as fighting royalism and ending *chouannerie* was under the late First Republic. And yet, almost everywhere, from Mexico to Algeria, from Sri Lanka to Indonesia, fragile and only partially democratic regimes have been struggling to respond to armed resistance movements or endemic lawlessness in ways that preserve government legitimacy and credibility. Finding methods to end cycles of violence, whether in Bosnia or Burundi, Afghanistan or Iraq, depends on particular local circumstances. Nonetheless, studying the French experience of coping with the aftermath of the Terror and Thermidorian Reaction offers insight into the nature of the difficulties and the likely results of certain attempted solutions, especially the recourse to military forms of repression and authoritarian rule. For two centuries, the ideas and practices elaborated in France from 1789 to 1794 have inspired countless democratic movements around the world; shifting attention to violence, justice, and repression from 1795 to 1802 offers a salutary reminder that regardless of their high ideals, transitional regimes always confront the daunting challenge of balancing individual liberty and public security. For that matter, so too do countries with established democratic traditions, as the recent experiences of the United States and Great Britain notably demonstrate. Democracy needs the rule of law, and in both cases, the devil is in the details. As historians teach, general themes become clear only after each case has been understood in its particularity. This book attempts to do that for the French First Republic.

We cannot understand the difficulty revolutionaries had in founding a civic order based on individual rights, representative democracy, and the rule of law without paying special attention to the years between the Terror and the Empire. The apparent lack of idealism or grandeur in these years has left them the subject of far less analysis than the regimes that came before or after. And yet the struggles of the Directory (1795–99) and Consulate (1799–1804) determined the Revolution's outcome. These years are largely known for two characteristics: continual warfare between the revolutionary republic and the monarchies of Europe and a series of coups d'état that shredded parliamentary democracy. As important as these aspects of the

period were for shaping the authoritarian outcome, they are insufficient to explain it. We must also understand the full impact of prolonged violence and pervasive fear on the fledgling institutions of liberal democracy.

This book combines extensive archival research, including considerable material only recently catalogued, with pervasive but discrete use of conceptual and historical work from outside the period—scholarship that ranges across such fields as political theory, legal philosophy, and cultural anthropology—to offer a fuller understanding of the failure of liberal democracy in the French Revolution. It also uses a wide variety of historical methods—from the narrative to the statistical, from the institutional to the cultural—to grasp this disappointing outcome. This variety of approaches makes it possible to combine comparative regional data and local case studies with broader national trends and political trajectories. The results significantly alter our vision of the revolutionary period and call for much greater emphasis on the period after the Terror of 1793–94 than it has hitherto received. Furthermore, they illustrate the importance of these later years for understanding the struggles of liberal democracy in our own age, and especially the role of violence and fear in distorting democracy and generating illiberal politics. Despite the ringing slogans of 1789, liberal democracy was not the most important outcome of the French Revolution. Rather, after a decade of disorder, ordinary citizens made a Faustian pact with enhanced instruments of repression. By doing so, they fostered the emergence of a modern "security state," one founded on the legitimacy that came from at last providing public order. Hobbes triumphed over Rousseau.

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At one time or another over the past decade, a variety of fellow travelers in history have generously provided comments on written work related to this project or suffered long conversations about it. These include Rob Alexander, Philippe Bourdin, Cyndy Bouton, Mike Broers, Jim Collins, Malcolm Crook, Suzanne Desan, Gordon Desbrisay, Alan Forrest, Clive Emsley, Steven Englund, Bernard Gainot, Jean-Pierre Jessenne, Annie Jourdan, Peter Jones, Wulf Kansteiner, Steve Kaplan, Peter Holquist, Tim Le Goff, Jim Livesey, Colin Lucas, Ted Margadant, Arno Mayer, Jane McLeod, John Merriman, Judith Miller, Jennifer Pierce, Xavier Rousseaux, Michael Sibalis, Don Sutherland, Charles Tilly, Liana Vardi, and Isser Woloch. Steven Englund, Michael Sibalis, and Don Sutherland are especially to be thanked, the first two for so generously providing accommodations in Paris at crucial times, and the last for the sheer pleasure he takes in discussing the problems of violence and justice after the Terror. Despite being at a distinct disadvantage, members of my graduate seminar "Views of the French Revolution" in 2001, 2003, and 2005 also provided helpful responses to the growing manuscript that eventually became this book.

In addition to receiving remarkable institutional and collegial support, this project could not have been conceived let alone executed without the professional expertise so willingly deployed by dozens of librarians and archivists. Among these, special mention must be made of two staff members at the Service Historique de l'Armée de Terre at Vincennes; first, M. Frankhauser, who responded to my pointed queries by first identifying and then having catalogued almost five hundred boxes of previously unused military justice records from 1795 to 1815 (now series J2), and second, Mme. Tsao-Bernard, whose personal kindness and professional assistance ensured that my many research trips to the Château de Vincennes, no matter how hurried, always produced satisfying results regardless of prevailing conditions.

Commercial and professional considerations have come to dictate that a project with the scope and duration of this one simply can not be encompassed in a single volume. Naturally, therefore, this book draws on a number of previously published articles. None of these appears as a chapter, but supporting evidence and some extended passages have appeared in the *Journal of Modern History* 8 (1997), © University of Chicago; the *Historical Journal* 8 (1999), © Cambridge University Press; *Annales historiques de la Révolution française* (2000); and *Historical Reflections/Réflexions historiques* (2003). I am grateful for permission from the editors of these journals to reproduce this material here.

At the center of this project lies a lineage. In terms of this book, at least, I am the intellectual grandson of Richard Cobb, whose last series of lectures on the French Revolution I was privileged to attend at Oxford University, but who would surely have found my work too influenced by the "Huns of social science," as well as the intellectual son of Colin Lucas, my doctoral supervisor, who, though he has never said it, would no doubt have preferred this project over my actual D.Phil. thesis. At least in this incarnation, all faults, whether factual or interpretive, rest solely with me.

Finally, the research and writing of this book has been, for better and for worse, woven into my relationship with Diane Butler. From our first trip to Paris together in 1994, through our marriage at Avignon, the bat in my writer's aerie in Ithaca, and our juxtaposed studies in Binghamton, she has shown great tolerance for the demands made on our life together by *Ending the French Revolution.* Never once has she asked for it to end, but must be relieved that it finally has. This book is dedicated to her as fellow scholar and beloved companion.

Ending the French Revolution

Introduction

It was necessary for us to be revolutionaries in order to establish the Revolution, but in order to preserve it, it is necessary to stop being so.
—Deputy J. Grenier, July 1799

EACH TIME POLITICAL leaders implemented a new constitution, that is, in 1791, 1795, and 1799, they announced the end of the French Revolution. Although the mix kept changing, they repeatedly hoped that a new combination of political liberalism and representative democracy would end the cycle of violence and consolidate a new order.[1] But neither a constitution nor a pronouncement could end the French Revolution. Such a feat required a sustained effort to quell civil violence in its myriad forms, whether as popular resistance, counter-revolution, radical agitation, or common crime. This book examines these efforts and the responses they provoked. More specifically, it explores the deep contradictions and ultimate failure of the attempt to create liberal democracy in the aftermath of the Terror. It does this by focusing on chronic violence, ambivalent forms of justice, and repeated recourse to heavy-handed repression.

The descent into dictatorship that ended the French Revolution was neither simple nor inevitable. The inherent difficulty of founding a liberal democratic regime in the face of intransigent and often violent resistance had been the central problem in the early years of the Revolution. The passage from the Estates General to the Committee of Public Safety was a long march of accepting and encouraging the use of violence to overcome opposition. The reasons for this recourse to increasingly bloody coercion has been the subject of an intense debate, but one which ends with the Terror. Yet the issues remained fundamentally the same for another six years, only now the legacy of the year II made solutions even harder to find. Any use of exceptional measures or armed force to defend the republic smacked of Jacobin-style terrorism; any resistance, popular or otherwise, to the impositions of the new regime was ascribed to factionalism or counter-revolution. As a result, the political culture of the constitutional republic was congeni-

tally deformed, an illiberal democracy unable to transcend its situational ethics.[2] Furthermore, historians' teleological insouciance about the dictatorial denouement tends to detach the period from 1795 to 1802 from the history of the French Revolution. And yet it was during these years, more than during the *fuite en avant* of 1789 to 1794, that Frenchmen confronted the full challenges of establishing both the rule of law and representative democracy on the ruins of a corporative order.

Periodization

"The Revolution is over," asserted François Furet in his famous assault on scholars who analyzed the Revolution in terms of the revolutionaries' own ideological claims, political categories, and historical periodization. Rather than encouraging a diversification of scholarship on the French Revolution, however, Furet's polemic helped to breathe new life into old issues, namely the origins of the Revolution and the causes of the Terror. The relationship between 1789 and 1793 (and by implication between 1793 and 1917) became the revolutionary terrain on which neoliberals waged their ideological campaign.[3] This served to reify the already prevailing notion that the most important issues raised by the Revolution largely disappeared after 1794. Historians of a socialist bent had presented the overthrow of Robespierre on 9 thermidor II (27 July 1794) as the decisive defeat of egalitarian ideals and the definitive triumph of the revolutionary bourgeoisie. Many revisionists challenged socioeconomic explanations and focused instead on discourse as the *summa summarum* of revolutionary politics; yet, they too agreed that Thermidor marked the moment at which the Revolution exhausted itself. Even postrevisionist accounts make Thermidor a revolutionary terminus, a pivotal moment for the twin pathologies of French democracy: on one side lie the totalitarian tendencies of using popular sovereignty to create a unified political will; and on the other side lies an oligarchic liberalism based on notions of a limited capacity to exercise the opportunities of citizenship.[4]

Histories of the French Revolution that focus on democracy usually end in 1794, when the expansion of democratic ideology was halted and reversed, or in 1799, when the exercise of democratic practices was halted and reversed. But the French Revolution entailed a great deal more social and political upheaval than can be ascribed to democracy. The abolition

of seigneurialism and redefinition of property, the realignment of church and state, the remaking of gender roles and family structures, the placing of limits on the exercise of political power, all of these extended beyond democratic impulses and belong to the rationalizing and liberal aspects of the French Revolution. It is rather misleading, therefore, to define the Revolution primarily in terms of the trajectory of democracy.

That the Revolution did not end in 1794 or even 1799 is further confirmed by the persistence of endemic violence. Most studies of violence during the French Revolution neglect the period after 1795, when Paris ceased to be convulsed by popular revolt. This ignores the dynamic of revolutionary violence after the flood had crested and the most compelling justifications had worn thin.[5] And yet, too much violence came after the Terror for it to be excised from the rest of the Revolution. Historians concerned with body counts for the Terror accept tallies for the civil war in the Vendée based on the period 1793–96 because a shorter period simply does not make sense. Furthermore, any effort to understand revolutionary violence in the Midi has to include anti-Jacobin *égorgeurs* as well as revolutionary *terroristes* and, therefore, necessarily extends to the reaction of years III to V and ought to include the insurgencies of years VII and VIII, as well as the repression of year IX. Likewise the history of the guerrilla struggle in western France known as *chouannerie* runs from 1792 to at least 1801, if not to the trial of Georges Cadoudal in 1804. Across the country generally, massive and homicidal persecution of priests certainly did not end until 1800. That same year resistance to conscription and the killing of gendarmes both reached their peak nationally. Brigandage, a confusing mélange of traditional banditry and persistent counter-revolution, was another scourge lacerating the social body throughout the First Republic. If brigandage changed significantly before 1802, it was more in official vocabulary than roadside praxis. Thus, the varieties of violence and their distinctive chronologies make it impossible to accept either the Paris-centered or democracy-based periodization of the French Revolution. Any effort to understand the violence unleashed for and against the Revolution cannot end with Robespierre but must follow France's tortuous journey from a bloody reign of virtue to an even bloodier reign of military prowess.

Rather than take turning points in democracy as the end of the French Revolution, it is more analytically useful to adopt a periodization based on the conditions that generally mark the end of revolutions. A truly post-revolutionary regime must be at least structurally secure; that is, the new

regime must no longer face a serious domestic threat of being replaced. This condition is usually achieved when: (1) the form of government is accepted by the great majority of the political elite; (2) the ways in which the political elite is constituted (that is, the principal means of turning social power into political power) have become fixed and stable; and (3) the new regime is able to deploy enough coercive power to overcome whatever opposition has not been dissipated by a growing sense of the new regime's legitimacy in the eyes of the populace. By these criteria, the French Revolution ended in 1802. That year brought a remarkable confluence of critical events: silencing parliamentary opposition by purging the Tribunate and Legislative Body; creating a modus vivendi between secular state and religious populace with the Concordat and Organic Articles; achieving peace with victory through the Treaty of Amiens; rallying members of the former elite through an amnesty for émigrés; fusing old and new elites in the lists of notables; re-creating a martial caste with the Legion of Honor; and, not least, fixing the future of the state executive through the Consulate for Life. Each of these developments was a decisive step in resolving issues that had wracked France since 1789. Only then was the Revolution over.

The need to extend the periodization of the French Revolution to include 1795–1802 gains further support from trends outside of France in the past generation. In recent times, the basic tenets of liberal democracy have spread to a remarkable number of countries. Around the world, new democratic and market-oriented regimes struggle to hold free elections, uphold the rule of law, encourage economic growth, and preserve social order, all at the same time. These fledgling regimes face excruciating dilemmas about the need to manage the economy, curtail free speech, manipulate elections, violate their constitutions, and use armed repression in order to survive and attain their exalted goals. All of these issues were inherent in ending the French Revolution. Even in established democracies, efforts to assure the security of individuals and institutions threaten to compromise many of the freedoms so loudly proclaimed. Thus contemporary events challenge historians of the French Revolution to explore beyond the roots and fruits of Jacobinism. In order to understand the difficulty revolutionaries had in consolidating a civic order based on individual rights, representative democracy, constitutionalism, and the rule of law, we must pay special attention to the neglected years between the Terror and Empire. Although the failure to secure liberal democracy in France at the time has left these years the subject of far less analysis than the regimes that came before or after,

it is these years that most anticipate the problems facing fledgling liberal democratic regimes today.

Scholarly Inheritance

Despite a general lack of attention to the years after 1795, historians have not been wholly indifferent to the failure of liberal democracy in France at the time. Existing analyses fall into several broad analytical perspectives. From the Marxist viewpoint, the years between the Terror and the Empire constituted the "bourgeois republic" as an embodiment of political conservatism and social reaction.[6] This interpretation contrasts the egalitarian aspirations of 1793–94 with the socially elitist expressions of 1795. The unimplemented Jacobin constitution of 1793 had put equality ahead of liberty, promised universal manhood suffrage, and proclaimed the right to work, subsistence, and even insurrection. In contrast, the Thermidorians wanted to ensure that France would be governed by "the best," that is, "those who, owning a piece of property, are devoted to the country that contains it, to the laws that protect it, to the tranquility that maintains it."[7] Those without property, therefore, were denied full participation in politics. Historians who stress the social exclusions of the "bourgeois republic" believe that it failed due to a lack of popular support. The unequal distribution of property that resulted from the sale of "nationalized properties" further increased social antagonisms to the point that they could not be overcome by the moral and institutional means available to a nascent liberal democracy.[8] Thus, excluding the mass of peasants and artisans from a greater share of wealth and power deprived moderate republicans of the broad base of support they needed to be able to parry challenges from political rivals without resorting to armed force.

Another important cluster of historians has provided explanations that reflect the approach of Vilfredo Pareto. These historians stress that it was largely the Thermidorian elite's inability to manage postrevolutionary politics that led to Brumaire, portrayed as the substitution of political will for political skill. In these accounts, the leading figures of the Directory appear as something akin to a faction composed of second-rate revolutionaries insufficiently talented to govern the tumultuous republic but determined to cling to power even when it meant subverting the constitution.[9] Such men repeatedly rejected opportunities to broaden the regime's political base, whether among conservatives or democrats, in favor of a series of coups

d'état and exceptional measures that eviscerated the regime's liberal principles. A prominent strain in this interpretation highlights the Directory's hostility toward republicans on its left, the so-called "neo-Jacobins," which is interpreted as a suicidal rejection of modern pluralist politics. In this version, narrow conceptions of political purity rendered would-be liberals incapable of consolidating a democratic republic.[10]

The Directory's failure to establish stability on the basis of consent has also been treated according to the tenets of Emile Durkheim. The revolutionaries' construction and exploitation of patriotism as an antidote to the alienation bred by the demolition of France's traditional corporative order marks the French Revolution as a founding event of modernity. The later historical evolution of patriotism into nationalism, however, highlights the weakness of purely political values as the basis for societal bonding. The political and ideological basis for overcoming internal conflict almost inevitably expanded to include affective cultural factors such as language and religion. However, the study of revolutionary festivals, for example, exposes the difficulty of using cultural practices to ameliorate the social anomie created by revolutionary upheaval. The ten annual festivals created on the eve of the Directory were designed to emphasize "only what could enhance national reconciliation and the sense of revolutionary closure."[11] Such cultural events strove to immerse individual liberty in a collective unity. The incarnation of this societal unity was the secular but sacralized *patrie.* Despite much progress in this direction, the pacific project of cultural bonding proved no match for endemic conflict. Lynn Hunt has claimed that democratic republicanism—which she astutely treats not as an ideology but as a mix of rhetorical assumptions, symbolic innovations, and collective political practices—"was the most important outcome of the Revolution." And yet it did not take root. In 1799, "republicanism crumbled from within," she writes, without further explanation.[12]

This variety of interpretations invites some clarification of post-Thermidorian republicanism. First, the political class hurt the later First Republic more by its political exclusiveness than its social exclusiveness. It is true that their identity was "bourgeois" insofar as it was predominantly urban, biased against the caste of former nobles, and determined to preserve the revolutionary property settlement from which they and their ilk had almost all benefited personally; however, their origins were too diverse to make them representatives of a coherent social class. Not until after 1802, when notability was defined on the basis of property ownership and state service, did a coherent sociopolitical elite begin to emerge. In the

meantime, Thermidorians-cum-Brumairians, and their supporters around the country, became a "syndicate of revolutionary politicians"[13] whose response to events amounted to trying to form a "party of institutionalized revolution" a century before it emerged in Mexico. Thus, it was political—rather than social—exiguity that undercut the regime's ability to stabilize and consolidate the republic. Second, this intolerance of political opposition led to repeated violations of the Constitution of Year III. Neither personal incompetence nor political cynicism adequately explains this pattern. Rather, a legacy of political strife untrammeled by clear limits to political contestation made it difficult to separate differences of opinion from efforts to subvert the regime. Third, the ambiguity of political opposition arose from the gap between the goals of the political elite and the social realities of 1795. Despite its intensity, the Terror did not complete the revolutionary transformation of France—far from it—and republicans were determined to finish the work. Their profound anticlericalism, their hostility to former nobles, and their commitment to an ideology of individual rights all served to alienate the mass of rural Frenchmen. Fulfilling the Thermidorian vision of the postrevolution, therefore, required a sustained *Kulturkampf* against many of the traditional values that shaped French life. A plethora of revolutionary festivals, a panoply of sacred republican symbols, a cult of the *patrie,* and a culture of jingoism could not create sufficient loyalty to the new order to overcome prevailing support for village autonomy and traditional religion. Given the level of latent resistance in the land, efforts to ensconce the republic meant continued recourse to revolutionary expedients that contradicted the constitution.

As we saw with the problem of periodization, as insightful as previous analyses have been, their rather narrow focus on the defining features of liberal democracy overlooks the violence that persisted as long as the practices of modern politics came before the construction of a modern polity. Since many opponents' loyalty to the constitutional order was suspect, elections became referenda on the very nature of the polity rather than contests over who would lead it. In the absence of even minimal consensus over political norms, the Directors and their friends interpreted all challenges to their leadership as mortal threats to the regime. Although certain forms of political violence have been the subject of specialized studies,[14] their focus has remained firmly fixed on the perpetrators with little attempt to examine the state's response and the effect this had on public support for the regime. This study does not ignore the actions and motives of the men, women, and sometimes children who openly challenged the republic's vision of order.

Rather, it restores them to a context in which their recourse to violence as well as that of the state competed vigorously for social acceptance and hence legitimacy. It is in this light that it becomes easier to see that the Thermidorians' combination of liberalism and democracy failed mainly because the Directorial regime took office without the institutional capacity to restore order. As long as the regime could not ensure the security of persons and property, it could not generate the legitimacy it needed to place effective limits on factional struggles for power. Regardless of whether the coup d'état of 18 brumaire VIII (8 November 1799) was considered assassination or euthanasia, few Frenchmen mourned the death of the Directory. The crisis of 1799 seemed to confirm a widespread belief that the regime was too flawed to provide public order and domestic tranquility. And yet, as we shall see, the regime had long decided to put security before democracy. It was its methods of doing so, however, that prevented the Directory from earning the legitimacy it needed to survive its final summer of discontent.

Conceptual Clarifications

Shifting the focus from democracy to disorder suggests the value of a more Hobbesian approach. Since Hobbes's time,[15] no regime had experienced the level of institutional breakdown, social chaos, and pervasive violence that confronted the French First Republic. Hobbes's answer to civil strife and the fear it engenders, of course, was the coercive power of a sovereign (whether incarnated in an individual or an assembly) that was conceptualized as indivisible, inviolable, relatively autonomous, and essential to converting a mass of individuals into a unified society.[16] In contrast to Machiavelli, Hobbes drew attention to the essential legitimacy that the sovereign earned from subjects by quelling civil strife and assuring social stability. Ending the war of all against all, or anything like it, induces "Awe" in the people, argued Hobbes, and the people in turn support the sovereign because its rules make life more commodious and predictable.[17] Thus, Thomas Hobbes's Leviathan has a certain kinship to Max Weber's definition of the state as "that agency in society which has a monopoly of legitimate force."[18] But what is legitimate force and what illegitimate violence? Who decides? On what basis do they decide? Weber never attempted to answer these questions. He did not describe the practice of repression, nor did he analyze the ways in which a state's use of force could enhance its authority and thereby increase the legitimacy of its coercive power.

Most people accept Hobbes's assertion that force is necessary to preserve the social order but reject his claim that the sovereign should have unrestricted use of force. If the methods of repression are generally deemed excessive, then it becomes a discredited use of force, or what could be called "domestic state violence." The difference between legitimate use of force and domestic state violence is easily missed. Violence and the legitimate use of force are not interchangeable concepts; they are intrinsically opposites, even if extrinsically indistinguishable. Despite appearances, the difference between force and violence is not like beauty, in the eye of the beholder, nor is it merely a matter of semantics. Hannah Arendt's statement, "Violence can be justifiable, but it never will be legitimate,"[19] captures an essential aspect of violence; it is a quasi-moral concept generally linked to assessing means in terms of ends. Therefore, to describe the use of force as violence is to question its legitimacy in terms of social harmony and public order. Nonetheless, even if described as violence, the use of force could still be justified by the norms it seeks to establish. This was the attitude of French revolutionaries, especially after the overthrow of the monarchy in 1792. They did not deny acting violently—in other words, disrupting existing social relationships through the use of force—but they justified their violence as an indispensable means to build a more just social order, one based on abstract concepts such as liberty, equality, and fraternity. By 1793, however, both those who revolted against the Jacobin-dominated National Convention (Vendéans and Federalists) and those who built the apparatus of the Terror on the basis of repressing these revolts (Jacobins and *sans-culottes*) sought to justify their use of force as counterviolence necessary to secure a greater level of social justice. Such a pattern is not unique to the French Revolution and always presents a problem of subjective perspective. Differences of opinion about the justness of a particular social order compared to a potential alternative become the basis for assessing the use of coercion. It is deemed illegitimate, and therefore takes on the appearance of violence, only in the eye of the beholder. Under these conditions, describing a particular use of force as violence essentially condemns it on moral grounds. States frequently deploy force against their own people in ways that are widely judged to be unacceptable and thus immoral. Hence, there is a need to distinguish between legitimate force and domestic state violence, something neither Hobbes nor Weber did. This distinction should not be made exclusively on the morally subjective terrain of assessing whether the end justifies the means.

In other words, historical debates about the merits of the constitutional

republic as a political project undertaken in the aftermath of the Terror need to be distinguished from assessing the ways in which force was used and the responses these generated. Taking a Hobbesian approach to understanding the First Republic does not mean being sympathetic to the concentration of coercion that ended the French Revolution: on the contrary, this book highlights the fear that any form of violence, including state-sponsored violence, generated in the populace. My purpose is to understand the context in which the constitutional republic deployed force, the precise nature of its various forms of coercive force, and the ways in which it sought to have them accepted as legitimate force rather than viewed as domestic state violence. Separating an assessment based on means and ends from one based on methods and responses requires conceptual clarity about the state's use of force.

Sergio Cotta, an Italian legal philosopher who wrote in response to the Red Brigade of the 1970s, developed a theory of violence that distinguishes between force and violence on the basis of their structural characteristics.[20] Both have a physical dimension and disturb existing relationships, but violence is distinguished from other forms of force by being sudden, unpredictable, discontinuous, and disproportionate. Nature offers a good example of this contrast. Although a lengthy drought may damage crops more than a hailstorm, only the storm is violent. In human affairs, Cotta argues, an act of force does not become violence as long as it displays measure along three axes: internal, external, and purposive. *Internal measure* means using force with regularity and precision in order to increase its effectiveness and decrease collateral damage. *External measure* means using force in accordance with a broadly accepted social, moral, or legal norm. *Purposive measure* means using force to defend or establish a specific form of polity. An act of force may conform to one or even two of these forms of measure and yet still be extremely violent; only the presence of all three modalities prevents an act of force from becoming violence and thereby losing legitimacy.[21] These three forms of measure are named according to their relationship to the act, not to the government that orders it or the agents who carry it out. It must be stressed that "purposive measure" is not related to an abstract end such as liberty or equality (or even racial purity or social justice) but only to the specific form of polity deemed capable of realizing such an end.[22]

Cotta's theory of violence helps us to analyze the use of coercive force by the constitutional republic (that is, once the republic was a clearly defined polity) with a greater awareness of the moralistic tint that any judgment about its ends would inevitably cast on an assessment of its means. At the same time, we must remain alert to the moral judgments and discursive

strategies of those people who actually witnessed resistance and repression during the period. This will help to reveal how the constitutional republic's deployment of force could either erode or enhance its authority. Such an exercise will involve evaluating such tangible matters as the sharp increase in death penalty cases, the use of military justice to try civilians, and the army's role in replacing community policing with policing communities. Rather than merely disparaging such illiberal tendencies, it is important to investigate the extent to which contemporaries viewed them as necessary and even legitimate, especially considering that our own standard of measurement—the rule of law—was only in its infancy.

Concentrating attention on the methods and modalities of repression raises two interwoven issues that are fundamental to understanding the broader significance of the role of violence, justice, and repression in ending the French Revolution: the search for both stability and legitimacy through adopting the rule of law and the centrality of exceptional measures that violated the rule of law in order to defend and impose the republic. Periods of rapid sociopolitical realignment often provoke popular resistance and open revolt, which in turn almost invariably cause the state's use of force to deteriorate into a morally tainted domestic state violence. To overcome the social alienation that results from excessive repression then requires the political elite to develop new means of restricting its own use of force while still protecting the new sociopolitical order. This cycle was repeated often in French history, but the years from 1797 to 1802 were especially important because this is when so many methods of repression developed in the period from early absolutism to the Terror were redeployed, only now wrapped in the restraints of a fully modern notion of the rule of law or defined explicitly as inherently dangerous exceptions to it.[23]

By developing the rule of law not only to promote liberty and equality but as a means to prevent the state's use of force from degenerating into discredited forms of domestic state violence, the French revolutionaries went well beyond Hobbes's theory, which was limited to the idea of rule by law. The revolutionaries shared his opposition to customary law, his support for the unbridled power of the sovereign to make law, and his belief that the sovereign was constituted on the basis of consent. Despite sharing some of Hobbes's basic assumptions, however, the revolutionaries' emphasis on civil rights and representative democracy transformed his "rule by law" into what we understand as the "rule of law." The basic difference is between a government that operates *through* the law in the name of serving the common weal—the basis of enlightened absolutism—and a government that

operates *under* the law in the sense that a constitution places limits or constraints on its action, usually in the name of individual liberty. Like peace or freedom, the rule of law is essentially an absence more than a presence. It signifies "an attitude of restraint, an absence of arbitrary coercion"[24] by the government, its agents, or other powerful members of society. In addition, the rule of law upholds certain basic tenets of criminal justice. These include protection from retroactive legislation, a presumption of innocence, access to legal counsel, and the assurance of a prompt and public trial before independent and impartial magistrates.

The Thermidorians enunciated all the basic principles that define the rule of law in the autumn of 1795 when they implemented the Constitution of Year III and the *Code des délits et des peines.* Despite this founding moment, scholars have done little to investigate the actual operation of criminal justice (as opposed to revolutionary justice) during the period.[25] The study of such practices undertaken in the next few chapters reveals that, although the republic made significant progress toward effective criminal justice, as far as the actual rule of law was concerned, it remained a wolf in sheep's clothing. Subversion of the rule of law by opponents and supporters alike simply increased the government's recourse to unconstitutional methods of coercion. Even in less tumultuous parts of the country, the republic was so shallowly rooted that using force to defend it was inseparable from continuing the revolutionary transformation of French society.

As just noted, the legitimate use of force usually means preserving or restoring order. It is far harder to have the deployment of force accepted as legitimate if it is being used to transform society. The problem became all the more acute when "exceptional measures" that violated the constitution and the rule of law were invoked in the name of defending the republic and yet manifestly functioned as socially transformative violence. Theorists as different in their political perspectives as Carl Schmitt and Giorgio Agamben share a concern with the intrinsic need of liberal democracies to use exceptional measures to preserve themselves.[26] Both thinkers highlight the profound tensions between legal norms and sovereign authority that result from recourse to exceptional measures. Schmitt preferred to see these tensions resolved in favor of sovereignty exercised by a state executive; Agamben wants them resolved by refusing to accept the state of exception as either legal or necessary but as the antithesis of politics. The relevance of Schmitt's assessment of the juridical relationship between democracy and dictatorship can best be appreciated only after the historical details of 1795–1802 have been covered; that analysis has therefore been left for

the epilogue to this book. In contrast, Agamben's response illuminates from the outset the significance of turning to exceptional measures to end the French Revolution.

Agamben has traced the power of temporary, legally defined exceptionalism over the past two centuries in more philosophical terms than Schmitt, but his conclusions are equally political. Recent infringements of civil liberties, infractions against international law, and violations of widely accepted definitions of human rights, all in the name of a "war on terror," have led Agamben to state, with a certain polemical intent, that the state of exception has today reached its fullest deployment around the world. As a result, he argues, it is pointless to try to restore the primacy of norms and rights by bringing the state of exception back within its spatially and temporally defined boundaries. Instead, we must recognize that the state of exception has become the norm and can be reversed only by restoring the vitality of popular politics. Agamben's theoretical position, if reversed historically, reveals the significance of the role of exceptionalism in ending the French Revolution. As we shall see, from 1797 to 1801, the political elite reacted to the alienation and loss of legitimacy created by exceptional measures that violated the rule of law not by abandoning them but by more closely regulating them. Furthermore, the normalization of various forms of exceptionalism as part of the Napoleonic apparatus of rule, all in the name of security and all with broad public support, helped to replace the messy political contestation inherent in representative democracy with a security state designed to generate consensus and willing to use coercion to do it. The "state of exception," despite being packaged as a necessary addendum to the rule *of* law, became the basis for a massive extension of a Hobbesian rule *by* law. Thus, examining the fate of France in the early nineteenth century, on one hand, and confronting Agamben's concern that the "state of exception" has itself become the norm in the early twenty-first century, on the other, are mutually illuminating exercises. How does liberal democracy survive the state of exception invoked to save it?

Overview

The Constitution of 1795 created the Directorial regime whose primary purpose was to consolidate revolutionary achievements within the framework of a liberal democratic republic. But six years of revolutionary calamity had rent the very fabric of the polity and left the new regime with little power

to stitch it together again. Extremist factions on the Jacobin left and the royalist right fought one another in towns and villages throughout France. Economic chaos, foreign war, Catholic hostility, and widespread banditry exacerbated the pervasive political strife. At first the Directory tried to end the revolutionary cycle of violence by applying an amnesty for all revolutionary crimes and implementing impartial justice and strict obedience to the law. This high-minded attempt to instill the rule of law failed. Not only did the amnesty have a partisan bias, it also deprived the new regime of the moral authority it would have acquired through punishing some of the most heinous crimes of the Terror. Furthermore, efforts to apply the rule of law depended heavily on a new system of criminal justice given great independence from the government. Elected judges with considerable legal expertise but a history of partisan politics, together with a remarkably liberal set of protections for the accused, greatly limited the Directory's ability to stabilize the republic through the judiciary.

Under these conditions, measures designed to promote liberty thwarted efforts to provide security. The collective violence of the early Revolution degenerated into increasingly solipsistic violence. Every day the government received a litany of reports containing lurid details of intercepted couriers, stagecoach holdups, assaults on government officials, and the intimidation of witnesses, too many of which went unpunished due to lamentable policing, ramshackle prisons, and a fledgling judiciary. Despite meting out far more repression than historians have realized, the new jury-based justice system defended village mores at the expense of the republican concept of order. By the summer of 1797, it was clear to the government that the justice system had yet to master the epidemic of banditry and political crime. When so many communities refused to cooperate with a regime based on the rule of law, the regime sought alternatives by ignoring the constitution and resorting to force, even though this seriously eroded its political legitimacy.

Exasperated by the threat posed to the regime's survival by popular disaffection and resurgent royalism, the Directory abandoned a strict adherence to the rule of law in favor of increasingly authoritarian means of restoring order. This major shift began with the coup d'état of 18 fructidor V (4 September 1797), which annulled many of the recent elections and purged crypto-royalists throughout the country. Although it hesitated to abandon constitutional legalism altogether, the so-called Second Directory believed it had to increase its use of military means to end the epidemic of violent crime. Because the local ties and general ineptitude of the other

"forces of order"—the National Guard and the gendarmerie—often made them politically suspect, the government used the army to protect law and order and to shore up the new regime. Local officials requisitioned soldiers to execute the mandates of government, disperse illegal gatherings, seize malefactors, make routine patrols, seek out deserters and draft dodgers, and fight brigandage, a dangerous amalgam of banditry and resistance to the republican regime. This wide range of tasks frequently brought army officers into conflict with civilian authorities, themselves torn between defending the local community against state intrusion and regulating internal instability. Three areas of civilian-military relations generated special tension: requisitioning national guardsmen to form "mobile columns" supported by regular troops for the pursuit of brigands; putting towns under a state of siege (a form of martial law); and using military courts to judge highway robbers and extortionists as well as rebels captured with arms in hand. Each of these instruments of repression shifted power from elected civilian and judicial authorities to appointed military commanders, thereby eroding the republican ideal of a political culture based on active citizenship and representative democracy. The Directory had come to believe that military force would have to be used to restore order before the judiciary could be trusted to maintain it. But the use of force had partisan purposes as well.

The Fructidor coup highlighted the inherent weaknesses of liberal rule. Rampant disorder in the summer of 1797 allowed the narrative of republican self-defense (first developed to explain and justify the Terror) to rise to the level of a paradigmatic myth. In doing so, it provided both a tendentious explanation for the sources of instability and radical solutions to it. A sharp increase in executive power in the wake of the Fructidor coup made it possible to contain counter-revolution, republicanize the judiciary, and professionalize the gendarmerie. All the same, the Directorial regime's revolutionary proclivities made it unable to prevent exceptional measures needed to defend the young republic from becoming domestic state violence used to persecute former elites and transform society. The resulting exploitation of ostensibly defensive measures for offensive purposes punched great holes in the regime's already dented credibility. The Second Directory's repeated recourse to authoritarian methods left the would-be liberal and democratic republic in ruins. The Brumaire coup d'état did not resolve these issues and is a highly misleading shorthand for the tortuous transition from democracy to dictatorship.

Efforts to establish a liberal democracy failed, and the French Revolu-

tion came to an end only after prolonged violence, perpetrated both by and against republicans, provoked widespread support for novel forms of controlled repression. The escalating judicial and military repression that resulted was far greater than previously known and provides the central continuity between the Directory and Consulate. Furthermore, the crackdown that occurred from 1797 to 1801 was a pivotal moment in the history of repression in France, not as bloody as the Terror but more fruitful in generating the pattern of "liberal authoritarianism" that confronted every uprising of the nineteenth century. The Faustian pact that ordinary citizens made with the so-called forces of order enabled the creation of a modern "security state" based on administrative surveillance, coercive policing, and the legitimacy that came with restoring and maintaining order. The emergence of this security state ended the French Revolution. Only the apparatus of the security state made it possible to allow émigrés to return, priests to take up their ministries, and citizens to respect the authority of the republic. It also provided Napoleon Bonaparte with the basis for his personal dictatorship, which may have been predictable but was certainly not inevitable.

Representative Regions

The level of violence and instability in the late republic depended greatly on the interaction between local, regional, and national experiences. Therefore, efforts to understand how the late republic sought to reduce civil strife and the consequences this had for liberal democracy in France require a national study that pays careful attention to local circumstances. In an effort to achieve this balance, four regions have been chosen for special emphasis. The choice of regions was determined by their range of experiences during the Revolution and the availability of comparable sources, especially court records. Given the importance of military aspects of repression in the period, these regions were defined on the basis of military jurisdictions. During the years 1795–1802, France was divided into twenty-six military districts, each of which covered an average of four departments. These military districts reflected the influence of both physical and political geography. In a few cases, they came close to replicating provinces of the *ancien régime.* This study concentrates on four of these military districts. Furthermore, in order to understand the importance of truly local factors, one department in each district (see figure 1) has been the subject of even closer

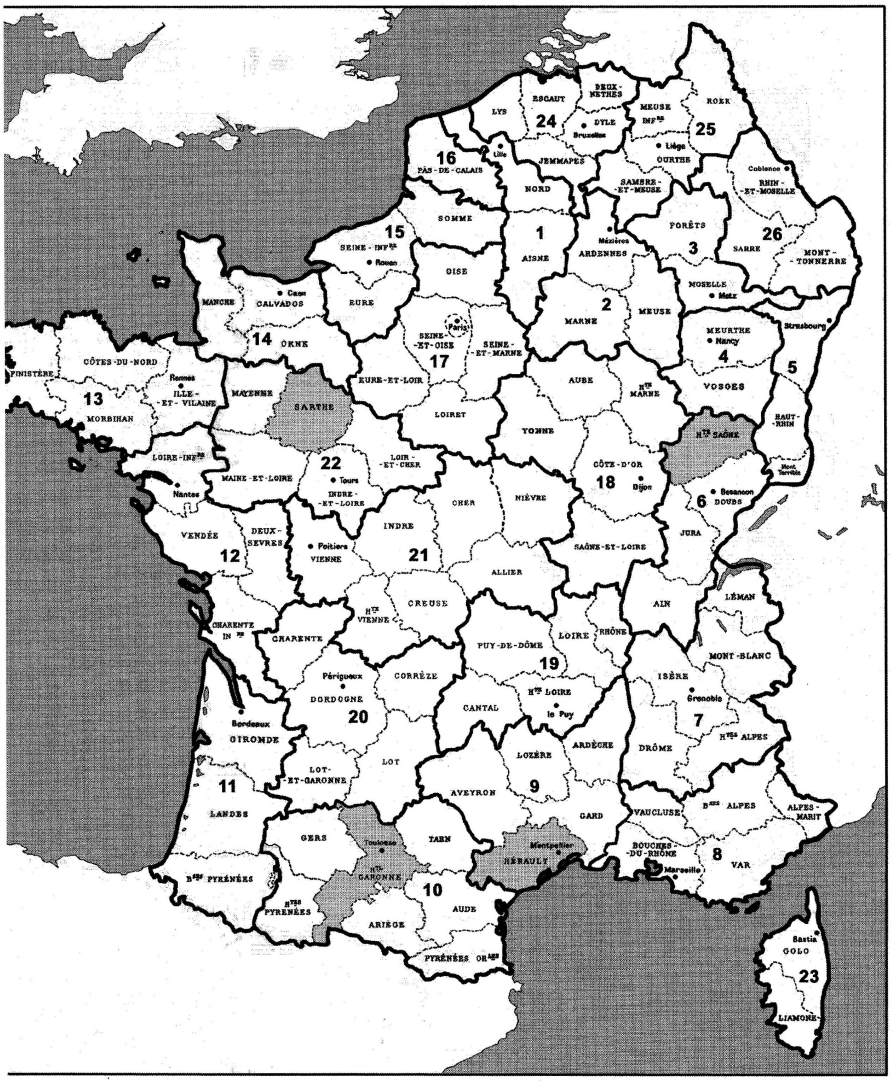

Fig. 1. Military districts (fructidor VII) 1799.

scrutiny. The four districts on which this study is mainly based were selected to represent a wide variety of social, economic, cultural, and political differences across France. The Tenth Military District included areas of remote mountain villages (the central Pyrenees), a large Jacobin-dominated city (Toulouse), and a localized peasant rebellion (that of 1799 in the Garonne valley). The Sixth Military District contained the former Franche-Comté, a region where serfdom helped to provoke widespread antiseigneurial rioting in 1789. This area also generated a large number of refractory priests (about two-thirds refused to take the oath to the Civil Constitutional of the Clergy) and had a porous frontier close to émigré centers in Switzerland. In western France, the Twenty-second Military District took in regions hit hard by civil war and *chouannerie,* as well as quiescent parts of the Paris basin where open-field farming and vagabondage thrived side by side. Finally, high political mobilization, both for and against the Revolution, intense sectarian violence, and endemic banditry characterized the Ninth Military District, which engulfed large parts of the southern Massif Central and Mediterranean coast. None of these districts lay in anomalous parts of France at the time, such as the recently annexed territories of Belgium, Luxembourg, the Rhineland, and the county of Nice, or in the former provinces of Brittany and Provence, all of which faced distinctive problems of integration or were dominated by the most extreme forms of political violence. Furthermore, none of the four districts emphasized in this study lay in the most thoroughly integrated regions of the country, such as the Ile de France, dominated as it was by the capital, or Champagne, a region of good communications, high literacy, and easy conscription. Picking regions characterized by extreme disorder would be unrepresentative; choosing areas of substantial tranquility would be uninformative.

Whereas the study does not focus on provinces dominated by extremes of either civil strife or general quiescence, these four districts did include both these features. Extreme disorder is well represented by both the western side of the Rhône valley and the eastern part of the *Vendée militaire.* High levels of stability and tranquility are represented by encompassing some of the Paris basin (Beauce and Orléanais) as well as a significant portion of the eastern uplands (Vosges Mountains). The four departments to be studied most closely—the Sarthe, Haute-Garonne, Hérault, and Haute-Saône—were chosen because they best typified their respective military districts and in themselves constitute a broad spectrum of revolutionary experience. They also reflect a variety of political trajectories during the

First Republic. These varied from remaining solidly republican throughout the period (Haute-Garonne) to swinging wildly from one extreme to another (Hérault). Moving down to the departmental level also made it possible to carry out one of the most important aspects of this study, a comparative assessment of the work of regular criminal courts.

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PART I
The Directory and the Problem of Order

ENDING THE FRENCH REVOLUTION by consolidating the republic on the basis of representative democracy and the rule of law would have been a remarkable and heroic achievement. The conditions were certainly not propitious. When the Directory took office in late 1795, it was faced with overcoming the legacy of not one, but two illiberal regimes. It had to consolidate the defeat of monarchical absolutism as well as to overcome the civil strife and political animosities bred by the Jacobin dictatorship. The full magnitude of this dual challenge emerged during the fifteen months between the overthrow of Robespierre on 9 thermidor II (27 July 1794) and the amnesty of 4 brumaire IV (26 October 1795). These months saw the Convention struggle to exit the Terror before it could even imagine an end to the French Revolution. In the process, deputies came to realize that the future of the republic depended on replacing the moral quagmire of revolutionary expediency with the rule of law. Even then, it took the Germinal and Prairial riots in the spring of 1795 before they finally began to discuss a new constitution.

The Constitution of Year III was simultaneously both a strategy to rally the nation behind a new regime—and thereby consolidate revolutionary achievements—and a goal in its own right: the embodiment of key principles of the early Revolution in a modern republic. The Thermidorians based their efforts to rehabilitate the republic on the political premise of 1789: representative democracy would shape the law; the law would control the exercise of coercive force; and political liberty would be assured. But with their eyes on liberty, the Thermidorians neglected security. Their hope that the rule of law would end domestic strife and build legitimacy for the republic foundered on both the unprecedented social and economic chaos of the mid-1790s and the republic's persistently revolutionary character. Much had yet to be done, especially in carrying republicanism to the countryside,

where the vast majority of Frenchmen lived. The Thermidorians deplored the demagogic and populist excesses of 1792–94, but this was not enough to endear them to the stolid men of property who dominated French society. As a result, efforts to adopt more scrupulous means severely limited the Directory's ability to put a swift end to endemic violence and widespread resistance.

The chapters in part 1 focus on the Directory's central dilemma of whether to adhere to constitutionalism and the rule of law despite stubborn resistance and widespread disorder or to use political exclusion and armed force to impose a republican concept of order. These chapters explore key issues in this dilemma ranging from the Convention's political amnesty of the eleventh hour to the effects of jury nullification in blunting political repression. What emerges is a stew of contradictions and incompatibilities. The Directory implemented an astonishingly liberal set of procedures to protect the rights of the accused at the very moment that the republic faced a novel economy of violence in which the restraining rituals of collective violence had largely collapsed and rampant lawlessness was made even more lurid by multiplying fears of political and criminal conspiracy. Likewise, the fledgling system of criminal justice proved its ability to mete out massive amounts of repression while also proving unable to overcome traditional village mores that condoned interpersonal violence and resistance to authority. A careful assessment of the Directory's problem of order in its early years helps to clarify the crisis of 1797 and the decision to alter dramatically the mix between liberal constitutionalism and revolutionary exceptionalism.

1 The Crisis of Republican Legitimacy

> During times of parties and revolutions, it is difficult for words such as order, security, and public tranquility to have as clear a meaning as during times of calm and political reason. Each faction thinks that public order is disturbed, that the security of the State is compromised, if their party does not triumph.
>
> —Minister of Police Lenoir-Laroche, *Le Moniteur universel,* 18 germinal IV (7 April 1796)

THE SITUATION CONFRONTING the Directory has since become familiar to all fledgling democracies facing a legacy of social upheaval and widespread violence. As a regime based on a liberal democratic constitution, the Directory's legitimacy depended heavily on its willingness to respect constitutional limits and uphold due process. This meant that the regime's policies would be judged on procedural characteristics as well as on results. Nevertheless, the Thermidorians repeatedly fudged or even openly ignored procedural norms for the sake of political expediency. The tension between constitutionalism and expediency became particularly acute after all the revolutionary rhetoric about the oppression of the *ancien régime* and after the republic itself had been badly discredited by the arbitrary excesses of year II. This dual legacy required republicans to make a shift from emphasizing ends to emphasizing means. In a pamphlet about ending the Revolution published in the summer of 1795, Representative Audouin admonished his colleagues that in the future they were to be "energetic, but less in the revolutionary sense than in the constitutional sense."[1] In fact, over the next four years, constitutionalism replaced popular sovereignty as the concept most frequently invoked in political debate. As the interminable wrangling of the period makes clear, the focus on liberal ideals during the Directory far exceeded the importance of similar rhetoric in the Legislative Assem-

bly when forms of democratic representation dominated political debate. After 1795, no matter where men stood on the political spectrum, from avowed royalists to unrepentant terrorists, they found themselves turning to the discourse of constitutionality to voice their criticism or defend their actions, even if only to gain partisan advantage. The near hegemony of constitutional discourse meant that flagrantly unconstitutional behavior always eroded political legitimacy.[2]

The difficulties inherent in the constitutionalist approach were manifest from the start. The Thermidorian deputies who sought to establish the republic on the rule of law were the same ones who boldly violated their new constitution both in letter and spirit.[3] The two-thirds law imposed on elections to the Councils by the Convention subverted the concept of representative democracy, supposedly the bedrock of republicanism. In addition, barring relatives of émigrés from holding elected office clearly contravened the newly adopted constitution, a point that supporters of the idea soon conceded.[4] Doing so *after* the elections added to the travesty of democracy. Much could be said and was said to justify these measures, but they still smacked of opportunism. In this atmosphere of uncertain legitimacy, only monumental naiveté and an exaggerated belief in the power of republican rhetoric[5] could explain why the government imagined that the judges and local officials elected in October 1795 would dedicate themselves to the rule of law. After all, these men were chosen by the very voters the Convention did not trust to choose republicans as national deputies. What would compel the newly elected justices of the peace, judges, and public prosecutors to uphold the highest principles of jurisprudence when the authors of the constitution found it acceptable to adopt such a heavy-handed expedient as the law of 3 brumaire IV (25 October 1795), an omnibus bill of political exclusion?[6] Nullifying the recent election of émigré relatives to various local offices could hardly have encouraged their remaining colleagues to forego expedients of their own. Although the Directory's inaugural proclamation announced to the French people that henceforth the fundamental principle of government would be "an inflexible justice and the strictest observance of the laws," the same proclamation included a promise "to wage an active war on royalism, revive patriotism, and repress with a firm hand all factions."[7] The example set by the regime's founding fathers suggested that it was the second statement that carried the most meaning.

Thus, the Directorial regime did not develop a crisis of legitimacy; it began with one. The Directory's formal institutional arrangements were a bold attempt to create modern liberal democracy, and yet the parlous state

of France in the mid-1790s bred deep contempt for republican politics. The exalted spirit of liberty and equality had degenerated into a smeary uncertainty. Frenchmen simply could not reconcile the liberal ideals of 1789 with the squalid politics of 1795. Though liberty was still under conceptual construction, it was obvious that a political order in which violence played a major role had not assured freedom. A free society does not experience fear as a salient feature of public life. To succeed, therefore, the republic needed more than a liberal constitution and legal protections for civil liberties; it needed more than a plethora of elections, an air of equality, or a veneer of democracy; the republic needed to provide peace and security. As long as the Directory could not separate political strife from basic issues of personal security, it could not generate enough legitimacy to survive. The design of the Directory embodied liberal ideals of freedom, but it proved a short-lived regime because it failed to provide freedom from fear.

Uncertain legitimacy and widespread trepidation made citizens reluctant to participate in the new polity, whether this meant holding public office, serving as jurors, or simply voting. In the first six months of the regime, to cite but one example, twenty-nine men either resigned from or refused places on Montpellier's eight-man municipal council. Criminal courts had to impose stiff fines to get jurors to do their duty because the loss of voting privileges proved insufficiently coercive. Across the republic, even the most important elections, those for town councillors, rarely brought out more than 20 percent of the electorate.[8] Such a debilitating withdrawal from the opportunities of citizenship was not a rejection of the republic per se. Most Frenchmen did not desire a return to the *ancien régime,* nor, by 1795, did they believe it was possible. And yet, citizens were deeply alienated by the economic crisis, continued warfare, and religious persecution associated with the republic. A government that had to "liquidate a crushing past and march, denuded of everything, toward an utterly uncertain future"[9] could hardly attract collaborators at the local level. In this climate, refusing to take part in political life also had much to do with self-preservation and future standing in local communities. The constant turnover in political personnel since 1789 as a result of collective violence and executive purges amply demonstrated the risks of political involvement. Where the Revolution had been especially tumultuous, however, it remained more dangerous to cede power to opponents than to take the risks of political engagement. Better to be an oppressor than oppressed. Thus, with deep reluctance to hold office except in areas of extremism and without a national consensus on either the limits of politics or the basis of social order, fear remained a key feature

of local politics. No matter the number of military victories, the extent of annexations, the permanency of land sales, or the stability of currency, the Directory could win lasting legitimacy only by making it both honorable and safe to participate in public life. This it did not do.

Transitional Justice and the Amnesty of 1795

The crisis of legitimacy at the start of the Directory and the persistent tension over constitutionalism and expediency owed much to the Thermidorians' failure to establish an effective form of retributive justice in the wake of the Terror. The obvious problem at the time was that any attempt to apply an impartial legal standard as the basis for a retributive justice that held "terrorists" accountable for their excesses would have deprived the republic of many of its most ardent supporters. Thus, the Convention's final failure was its inability to create what has come to be called "transitional justice," that is, a compromise between politics and law designed to broaden the regime's base of support. Political scientists have concluded that it is not the sheer number of convictions nor even the percentage of convictions that makes retributive justice effective after a change of regime; rather, it is far more important to have a clearly articulated policy of retributive justice in order to establish the new regime's credibility in moral terms.[10] The Thermidorians failed to develop such a policy due both to the desperate politics of personal survival and the unstable concept of justice generated during the Convention.[11]

Late in the evening of 4 brumaire IV (26 October 1795), the Convention passed its last decree: an amnesty for "acts purely related to the revolution." According to the rhetoric of the moment, only pulling a veil over the past could put an end to political hatred, factional struggles, and the interminable cycle of violence these generated. This momentous—but largely neglected—decree was presented to the Convention as necessary to "erase the memory of errors and mistakes that had been committed during the Revolution." More important, this act of amnesia was described as "the only means of ending the Revolution."[12] But the heated political climate following the elections and the Vendémiaire insurrection gave the amnesty a strong bias in favor of republicans. Coming the day after the laws of 3 brumaire IV, the amnesty explicitly did not apply to *vendémiaristes,* émigrés, and priests. Nor did it apply to rebels still locked in armed struggle with the republic in western France. Although the amnesty did not cover all political crimes

equally, no deputy objected. The law favored radical revolutionaries, those who had committed crimes due to "an excessive zeal and blind rage for liberty,"[13] while explicitly upholding renewed persecution of refractory priests and official émigrés.[14] Even a proposal to extend the ban on office holding to participants in the *sans-culottes* uprising of May 1795 failed.

The amnesty followed months of harassment, beatings, mob assaults, arbitrary arrests, and prison massacres directed against Jacobins and functionaries of the Revolutionary Government throughout the country. Viewed in the light of this "White Terror," as well as the royalist uprising of 13–14 vendémiaire IV (5–6 October 1795), the amnesty appears as a not unreasonable attempt on the part of beleaguered republicans to protect fellow travelers. The Conventionnels who voted for the measure included many who had worked closely with deputies now under arrest for their part in the Terror. Of course, there were also the many other leading officials appointed to high-level posts by the Convention and now in prison awaiting trial, notably those who had turned the Commune and War Ministry into *sans-culottes* fiefdoms. Equally, departmental prisons contained hundreds of men whose "terrorist" activities had relied on the support of deputies on mission who themselves had survived the purges of year III and continued to sit in the National Convention. Moreover, deputies knew that the elections had created a moderate if not reactionary magistracy inclined to ignore or exonerate violence directed at Jacobins. Various trials around the country on the eve of the amnesty, however, suggest that the Conventionnels' fear of overt judicial persecution was overblown. In other words, the amnesty was not necessary to preserve thousands of "terrorists" from the scaffold or even the *bagne*. Supporters of the amnesty more plausibly believed that giving radical republicans absolution would help to end internecine strife between various strands of prorevolutionary sentiment and thereby unite them all behind the nascent constitutional regime. According to the judges on the Criminal Court of the Haute-Saône, the amnesty was both a veil and a pardon "that we expect to result in a sincere forgetfulness of the past, a perfect union of all French republicans, and an unalterable accord for the strengthening and prosperity of the Republic."[15] And yet the amnesty undercut the Directory's ability to appeal to moderate revolutionaries who had suffered during the Terror. Too many felt legally emasculated by the amnesty and resented the rogue republicans who benefited from it.

Although the amnesty favored Jacobins, it also protected many of the thugs and vigilantes of the Thermidorian Reaction. Thus, it left both factions intact and fostered a climate of continued political violence. Further-

more, many magistrates appreciated the freedom not to prosecute acts of anti-Jacobin violence and even excused political murders as a form of justice.[16] Under these conditions, the Directory found it difficult to persuade members of either party that the regime could and would exact atonement for injury. Local politics made it clear that a strategy of relying on the rule of law could not bring the Revolution to a close unless it included some form of punishment for criminal abuses of power during the Terror. By preventing anyone from being punished for "acts purely related to the Revolution," the amnesty beautifully avoided defining the difference between what had been politically necessary and what had been criminally gratuitous. Protecting rogue deputies, *sans-culottes* militants, and village terrorists further sullied the republic in the eyes of potential supporters. The presence of all those *amnistiés* in society, men who had been imprisoned, indicted, and sometimes even sentenced for their activities during the Terror, did not incline their neighbors to forget the crimes perpetrated in the name of public safety. In sum, the amnesty adopted in 1795 eliminated any effective form of transitional justice; thus, rather than helping to heal the wounds of Revolution, it encouraged them to fester.

In lieu of transitional justice, the first year of the Directory saw repeated efforts to ameliorate the amnesty. Like so many of the circumstantial laws adopted in the revolutionary decade, the law of 4 brumaire IV was badly written and yielded widely variable results. The difference between "acts related purely to the Revolution" and crimes punishable by the Penal Code of 1791 was less than obvious. Moreover, the law lacked provisions for appeal, made no mention of soldiers, and did not deal with compensatory damages. The Directory asked legislators to fix these flaws,[17] but conservative deputies in the Council of Five Hundred insisted on linking the amnesty to the exclusionary law of 3 brumaire IV. The entire spirit of amnesty soon disappeared amidst tumultuous debate and sinister cries of "To the Abbaye!"[18] The parliamentary fracas eventually led to a badly compromised bill on 15 frimaire V (5 December 1796). Although deputies generally agreed that excluding the relatives of émigrés from voting or holding elected office was unconstitutional, a majority casuistically defended the measure by arguing "that an apparent breech can sometimes conform to its spirit and be necessary for its defense,"[19] and so only agreed to reduce the exclusion to émigrés and their relatives. In exchange, the bill broadened the amnesty to participants in the Vendémiaire uprising, as well as *chouans* now that civil war in the west had officially ended. The extension of the amnesty to crimes of revolutionary resistance was the only logical response to Deputy

Thibaudeau's mordant critique. "An amnesty must be complete," he argued, "because if it is partial, it is partisan; it is no longer a great act of national clemency, but impunity granted by the strongest party to itself."[20] As further compromise, the exclusionary law of 3 brumaire IV was extended to all those who had formally been amnestied, which mostly meant former "terrorists."[21] The result of this sporadic yearlong debate, therefore, was to increase the scope of national clemency by including certain right-wing opponents of the republic while at the same time decreasing the pool of potential candidates for political office by excluding all those formally granted an amnesty. This became a characteristic feature of the Directorial regime: seeking the *juste milieu* at the expense of a broad political base.

The Thermidorians' hope that an amnesty would rally republicans of all stripes, whatever their excesses or whatever their grievances, is understandable; but they were not prepared to live with the consequences. Within a year, the Directory began harassing amnestied revolutionaries. This was not based on new crimes they had committed. In fact, the government's problem in dealing with challengers to its left was their ability to stir up discontent while remaining largely within legal bounds.[22] Whereas the Directorial regime could have begun with a form of retributive justice limited and controlled by the new legal structures, the flawed amnesty forced it to use police harassment to distance itself from political pariahs within republican ranks. Such tactics did nothing to restore the dignity of victims of revolutionary violence and simply took the regime down the path of arbitrariness and exceptional justice. Thus, left largely unmodified, the amnesty wreaked havoc for the constitutional regime and its effort to instill the rule of law. Rather than inaugurating a period of national reconciliation, the amnesty eliminated the possibility of a limited retributive justice that would have appealed to the sort of "men of '89" that the regime most needed to win over. This enabled both extremes to preserve a dangerous purchase on national politics. The resulting *politique de bascule* contributed mightily to prolonging the French Revolution.

The Directory as a Revolutionary Regime

The problems surrounding the amnesty of 1795 reveal how difficult it was for the Directory to become a postrevolutionary regime. The Directory had to do more than protect the republic; it had to make France republican. Although constitutionalism was central to its legitimacy, the Directory's sur-

vival also depended on its ability to complete other tasks at the heart of the republican project. Foremost among these were establishing the primacy of the secular state-nation over the church-centered local community and establishing France's expansion to her "natural frontiers." Each of these tasks provoked enormous domestic opposition and made it all the more difficult for the Directory to adhere to representative democracy and the rule of law. Being in thrall to bellicose patriotism and angry anticlericalism thus made the Directory as much a revolutionary republic as a constitutional one, inclined to prefer coercion to compromise and force to favor.

If there was a single policy issue on which the survival of a liberal democracy in France depended in 1795, it was the attitude the republic would take toward Catholicism. Order could not be restored and the French Revolution ended until the religious issue had been resolved. The Concordat as the ultimate resolution to the problem was an unlikely as well as unsatisfactory outcome. It took a decade of republican intolerance and ineptitude to make the Concordat possible in the first place and attractive in the last. Although the Thermidorians had dressed up their separation of church and state as freedom of worship, the new clothing came with strict sumptuary laws: religion was to be kept quiet, dull, and indoors. The reopening of churches in the summer of 1795 allowed over ten thousand priests to resume their ministries, including thousands recently released from prison or returned from exile.[23] Despite the survival of the constitutional church, the religious revival of 1795 proved to be largely refractory and royalist. Hence the expiring Convention's maniacal idea that previously refusing to take an oath of loyalty to the 1791 Civil Constitution of the Clergy, even though it was now a dead letter, made a priest a counter-revolutionary rebel with little hope of republican redemption. When the new officials of the Directory took office, therefore, they had the unpopular task of enforcing the essentially terrorist law of 3 brumaire IV, which banished (under penalty of death) all refractory priests from the republic.

This renewed anticlericalism was more than a matter of faith: republicans were intent on dissolving the religious glue that held villages together in defiance of the nation. Various displays of piety had long functioned as essential enactments of community. By outlawing such practices as the bells of Angelus, calvary stations, penitent parades, and funeral processions, the Convention knowingly and deliberately subverted the rituals of public life that helped to give villages and neighborhoods their sense of collective identity. And yet most elected officials were inclined to turn a blind eye to acts of public piety. The harshness of laws against refractory priests made

such officials even more reluctant to cooperate with the government. Although republican departments arrested a considerable number of refractory priests in the course of year IV—twenty-nine in the Haute-Garonne; almost forty in the Sarthe—these men were generally old and infirm and, therefore, subject to internment rather than deportation or death.[24] From time to time, however, magistrates did apply the law in all its terrible rigor. On 25 nivôse IV (13 January 1796), the Criminal Court of the Haute-Saône condemned to death Pierre-Joseph Cornibert, an aging Capucin monk better known as Père Grégoire. His crimes: spurning all revolutionary oaths, carrying on clandestine services in the woods around Meurcourt, and, above all, possessing a damning parody of the Marseillaise that included the refrain, "Aux armes, vrais chrétiens, catholiques romains, marchons, mourons, que notre sang abreuve nos sillons." Père Grégoire's condemnation and execution at Vesoul was the first political use of the guillotine in the Haute-Saône. It sent a shock of horror throughout the region and provoked such opprobrium that, although the Criminal Court sentenced more than a dozen priests to prison or exile, it never sent another to the scaffold.[25]

The republic's renewed anticlericalism sparked innumerable outbursts of violence, as lawmakers surely knew it would. The success of collective action in getting churches reopened and constitutional priests replaced by refractories in year III emboldened citizens to meet force with force when local officials tried to apply the harsher policies of year IV. Every department experienced this religious violence. Often the number of protestors simply overwhelmed the police and municipal officials. Such clashes exposed the provocative impotence of law enforcement. In a typical incident, over three hundred people came together to rescue a refractory priest from the hands of gendarmes in the isolated Confracourt Wood (Haute-Saône) on 18 prairial IV (6 June 1796). Even putting priests in prison did not secure them. At Béziers, several hundred citizens stormed the local jail, beat up the jailor, and freed what he called "that monster of Jesus Christ," the *abbé* Joseph Mailhac.[26] Such incidents revealed that renewed religious persecution was badly discrediting the lawful exercise of authority. That the struggle was between the predominance of a secular republic over religion-centered communities is made obvious by the regime's rude handling of the constitutional church. Here was an institutional opportunity for the republic to make real inroads into peasant communities. But too many directorialists considered constitutional priests only half-hearted republicans inclined to fanatical and retrograde ideas. The fact that any priest, whether refractory or constitutional, tended to respond more to local pressures than

to the demands of the state made them all unreliable. The unofficial slogan of the constitutional church—"priests submissive to the laws"—did little to improve matters. Their legal status made them all the more dangerous when agitating for true freedom of public worship. Even in a department as divided as the Sarthe, central administrators proved hostile to the constitutional clergy: "the priests are again redistributing their daggers and their poison with the audacity of crime and the impudence of success," they complained.[27]

Republican officials who refused to temporize with religious resistance often responded with a heavy dose of armed force. Following a pattern established in 1792–93, they commonly sent several brigades of gendarmes, a column of national guardsmen, or a company of regular soldiers to deal with relatively minor disturbances. This could lead to real embarrassment. Sending a hundred grenadiers to St-Nicolas-de-la-Grave a week after women had occupied the local church did nothing to help arrest the leading agitators—who successfully hid behind a wall of silence—but a great deal to exasperate the local population.[28] Unfortunately for the regime's credibility, this was far from the only case in which local officials let a crowd of women demanding Catholic rituals goad them into over-reacting.[29] There was no doubt that every time the republic made a concession to Catholicism, numerous priests took advantage of the opportunity by flouting the law, inciting trouble, and even preaching rebellion. But these priests were not a majority; most priests simply wanted to be allowed to engage in traditional religious practices in relative peace. Republicans' unwillingness to tolerate these practices and their use of heavy-handed coercion to stamp them out ensured that resistance to other state demands often fused with religious resistance to produce yet more violence.

The Directory soon realized the damage that misdirected coercion was doing to its authority. Witness the often overlooked *Pastoralis sollicitudo* of July 1796.[30] Pius VI's draft circular described disobedience to the Directory as "a crime which would be severely punished not only by earthly powers, but worse, by God himself, who threatens with eternal damnation those who resist government." A papal statement of this sort exhorting priests to prove their submission to the regime would have preempted the Concordat. When the Directory realized what had been at stake in the failed negotiations, it published the draft document, only to have it greeted with skepticism from refractories and embarrassment from republicans. A great opportunity had been missed, and nothing like it recurred again before 1801. Witness also the government's own policies following Portalis's fa-

mous speech to the Council of Elders in which he boldly stated: "Force and violence have never succeeded in religious matters. Must we agitate spirits at the end of a revolution, at a time when they wish only for calm?"[31] By the autumn of 1796, the minister of police, Cochon de Lapparent, was instructing officials not to disturb peaceful priests by demanding oaths from them. A few weeks later, lawmakers abrogated part of the law of 3 brumaire IV that had reinvigorated the anticlerical laws of 1792–93. Residual doubt about so-called "deported" priests led some departments to practice a policy of no arrests, no releases; others boldly freed all their clerical prisoners.[32] Here, finally, was at least a de facto policy that could assist in placating the countryside. But it was typical of the Directory that it came a year late and was not actually adopted de jure. This ensured that anticlerical officials could continue legally to harass and even persecute priests. The sustained uncertainty also ensured that committed Catholics attached maximum opprobrium to the regime. In short, the policy was odious and ineffective. The most active refractory priests remained at large, busily subverting the regime by flouting its laws.[33] And so continued a veil of tears for refractory priests and a fount of resistance to the republic.

If the regime's hard line on refractory priests and public worship threatened the coherence of village life, then violent reaction from villages threatened the coherence of the republic. The protracted debates that followed the right-wing elections in the spring of 1797 led local officials to expect genuine freedom of religion balanced by severe penalties for political agitation.[34] Had the Thermidorians been willing to adopt such a stance earlier, it would have eviscerated much of the political reaction that gathered between 1795 and 1797. As it was, by the summer of 1797, the quasi-totality of parishes had resumed some form of Catholic worship, most of it led by refractory priests. Even though still illegal, public processions and church bells—the visual and aural symbols of traditional community—could once again be seen and heard throughout the country. Rather than trying to dissociate popular demand for Catholicism from the more elitist opposition to the republic that fed royalism, Directorial republicans stubbornly clung to policies that helped to fuse Catholicism and royalism into a more comprehensive rejection of the regime.

The Directory's war policy was as integral to its quality as a revolutionary regime as its religious policies and generated a similar groundswell of opposition and violence. By 1795, the patriotic national defense that had done so much to revolutionize the Revolution had become an essential source of political legitimacy. The Thermidorians needed the moral authority that

bellicose patriotism gave the republic and happily used the country's new military might to wage a war of expansion. Defense of the Revolution came to mean securing France's "natural frontiers" and became a war aim synonymous with republicanism. Settling for anything less was equated with capitulating to the forces of royalism, both French and Anglo-Austrian. And yet only an aggressive war effort could force the republic's enemies to accept France's expansion to its "natural frontiers." If French armies occupied the lands bordering the Rhine and the Alps, but the enemy refused to accept their annexation to France, yet more territories beyond the Rhine and the Alps would be conquered. These could then be used as bargaining counters in order to obtain peace on republican terms.

Continued aggression abroad spelled continued coercion at home. The Directors assumed office at a time of severe military reverses along the Rhine, stalemate along the Alps, and renewed civil war in the west. At the same time, financial and economic crises brought a near-total collapse of military supply services.[35] The Directory responded with revolutionary expedients: another forced loan, this time of 600 million francs (equivalent to two-thirds of the specie in France!), and another levy of horses, in this case one in every thirty in the country, as well as continued use of military requisitions.[36] All of these measures provoked enormous hostility and often violent resistance. The departments that showed any real success in collecting the forced loan had to resort to billeting troops on recalcitrant proprietors, an odious practice reminiscent of the seventeenth-century drive to absolutism. And still the final sum raised was less than one-quarter of what the law demanded. The levy of horses likewise yielded only half the expected total. In both cases, the resources wrung from an exhausted economy were of real assistance in the war effort. Nonetheless, the level of obduracy they aroused compared to the diminishing returns they produced led to both measures being wound up early in 1797.[37]

Military impressment provoked even greater conflict and coercion than collecting cash or requisitioning supplies. The deplorable conditions of army service together with a galloping war-weariness inspired massive desertion. In December 1795, the Directory moved to reverse this trend. In the spirit of earlier revolutionary emergencies, Minister of War Aubert-Dubayet appointed two dozen special *agents militaires* to fan out across the country and press local authorities and the gendarmerie to round up draft dodgers and deserters. He chose a mix of Jacobin generals and former Conventionnels—all hard-headed and hard-hearted men known for their terrorist past. Some of these men acted like representatives on mission,

ordering troop movements, making officer appointments, forming national guardsmen into mobile columns, and seizing the parents of draft dodgers as hostages. The energetic efforts of *agents militaires* helped to swell republican armies by a net fifty thousand soldiers in a few months. At the same time, however, some of the agents became so odious that their collective mission was canceled in the spring of 1796.[38] The concerted effort to replenish the shrinking armies required extensive use of force. This recourse to revolutionary men and methods in order to carry on the war effort clearly eroded the early Directory's efforts at constitutionalism.

As was so often the case around the country, opposition to military service and resistance to the Directory's uncompromising religious policies combined to pose a formidable challenge to the republic's authority. Draft dodgers and deserters became insurgents in waiting. Regions without a tradition of military service, such as the southwest, often rebelled openly. When soldiers appeared in the countryside west of L'Isle-Jourdain (Gers) in 1796 in search of refractory priests, several villages rang the tocsin in a call to arms. More than a thousand men and women turned out and easily disarmed the small detachments. A few weeks later, another large crowd composed of individuals from as many as forty communes and led by Dasolles, justice of the peace at Monferran, marched on L'Isle-Jourdain, where they broke into the prison and freed two of Dasolles' sons, one a priest and the other a deserter. The crowd then smashed its way into a warehouse in order to recover church bells confiscated in year II. Although the department authorities at Auch initially resisted the army's offer of assistance, the second incident won them over, and they promptly issued orders to assemble "an imposing force." The authorities supplied the names of four refractory priests and several leading deserters. The republican column was charged with rounding up deserters and again confiscating church bells. They began with a house-to-house search at L'Isle-Jourdain. A fifty-man detachment then marched into the countryside, where an ambush by three hundred men led to a veritable pitched battle. Only the sustained use of regular troops over several weeks finally subdued the region. Although deserters began to flow into the staging depot in Toulouse, the regime paid a high price for this local triumph. The district of L'Isle-Jourdain contributed heartily to the royalist uprising that erupted around Toulouse in 1799.[39]

It was axiomatic to the regime that resistance to the republic was support for monarchy. Opposition to religious restrictions and military service certainly provided fertile soil for royalist agitation. Regardless of republican rhetoric, however, not every form of opposition was a manifestation of royal-

ism. Many refractory priests refused to cooperate in counter-revolutionary conspiracies. These included some of the most influential bishops outside of France as well as many opponents of the new religious order inside the country.[40] Deserters and draft dodgers were even less political and rarely held to royalism as a matter of conviction. And yet being condemned to a marginal existence in the republic made them prime candidates to join the royalist cause. For those who actively assisted counter-revolution, the difference between fighting for the republic and fighting for the king was a matter of choosing between serving the nation and serving their own communities. As outlaws, refractories—whether secular or religious—relied heavily on the support of fellow villagers and the insularity of the village community for protection from dutiful officials and the local police. For this reason, *insoumis* became individual avatars of community resistance to the demands of the republican state. Naturally, wherever royalists were busy organizing counter-revolution, they could count on a few priests for moral support and on reluctant draftees for local muscle.[41]

Counter-revolutionary royalism went beyond mere resistance and involved at least some willingness to take risks and make sacrifices in order to bring back the monarchy. The few thousand émigrés who joined Condé's army or landed at Quiberon were among the most dedicated opponents of the Revolution. This served as the pretext for including an article in the Constitution of Year III banning in perpetuity the return of all individuals on the official list of émigrés (estimated by the Directory to be 120,000 persons). Such a ban was about property as well as politics. It ensured that land seized from émigrés remained in the hands of its new owners, whether peasant proprietors, urban *rentiers,* or the republic itself. The ban also treated émigrés as irreconcilable enemies of the republic, that is, as diehard royalists one and all. Factional rivalries had a hand in this. Official lists of émigrés had grown substantially in 1793–94, especially in the Midi following the Federalist Revolts, and Jacobins wanted to keep their erstwhile victims out of office under the Directory. Furthermore, republicans' fear that if relatives of émigrés gained office they would serve as a fifth column for a royalist counter-revolution easily trumped any impulse toward political inclusion and so squelched the possibility of a property-based *rassemblement pour la république.* Only the right-wing majority in the Councils was willing to end the blatantly unconstitutional ostracism of émigrés' relatives from the body politic. That this discrimination was revived after Fructidor underscores just how thoroughly exclusionary politics were woven into the fabric of Directorial republicanism.

The Directory's exclusionary policies helped to ensure that it got what it feared. Those émigrés who returned to France—they numbered in the tens of thousands—but could not get their names removed from the official list of émigrés, whether legally or not, could only hope for the regime's demise. Many actually worked for it. Thus, wherever royalism took a militant form, émigrés played leading roles. Émigré activists generally belonged to the camp of *les royalistes purs et durs* and took the lead in organizing violence against the regime. The success of their operations depended on their ability to exploit the various sources of opposition. Advocates of constitutional monarchy and proponents of absolute monarchy both tapped into the wellsprings of popular resistance. However, they found it difficult to cooperate amongst themselves, so bitter was the resentment against the perceived perfidies of the early Revolution. This has led some to suggest that the Directory should have been less paranoid and followed Carnot's lead by inviting moderate royalists to participate in the regime.[42] Yet such a suggestion presumes that the government could tell the difference between opportunists and purists, all while coping with conspiracies that spawned regional violence or used elections to subvert the regime.

Party Politics

Here lay another central aspect of the choice between republican constitutionalism and revolutionary expediency. The Directory failed to adhere to the democratic aspects of the Constitution of Year III largely because it could not distinguish life threats to the regime from challenges to its authority and purpose. Neither the royalist right nor the democratic left could be easily parsed. Both had their conspiratorial elements, both used elections as a stalking horse to transform the regime, and both trailed off into factional politics at the local level.

The Directory continued to exclude émigrés and their relatives from full citizenship because it was primarily through them that the Count of Provence and his court in exile at Blankenbourg; the Count of Artois at Edinburgh, then the royalist Agency in Paris; the Count of Puisaye in Brittany; and the British secret service operative William Wickham at Berne were all able to organize and fund counter-revolutionary violence in the French interior. Though the machinations of these leaders are generally known, the full extent of their campaign on the ground is still poorly understood. It certainly ranged far beyond the obvious efforts in western France.[43] In

Languedoc, for example, rebel units wearing royalist insignia appeared in five distinct regions ranging from the Haute-Loire to the Gers. This inspired major exercises in military repression involving hundreds of regular troops and thousands of national guardsmen.[44] The defeat or dispersal of these minor insurgencies took place at the same time as the Vendée and *chouannerie* were being pacified. In fact, rebels in the Aveyron managed to procure an amnesty for themselves modeled on the one offered by General Hoche in the west. In a fit of naive optimism, however, the department commander required the insurgents only to swear "to return to their native region and to forget all resentment"; he did not even demand that they turn in their guns.[45] But for a while at least, violence subsided.

As obtuse and disorganized as the "pure" royalists often were, even they could see that by the summer of 1796 isolated acts of counter-revolutionary violence generated more fright than fight and so hurt the royalist cause. Therefore they abandoned their plans to overthrow the regime through simultaneous uprisings, or even to sap its credibility through sporadic attacks, and accepted the new "Grand Plan" as a largely legal means to restore the monarchy. This required absolutists to cooperate with constitutionalists in an effort to gain control of the republic by winning elections in the spring of 1797.[46] Such a strategy meant turning off the financial spigot for para-military "companies" and instructing royalist commanders to stop all violent activity.[47] Rather than making it easier for the Directory to ensconce the republic, however, the reduction in violence and shift to an electoral strategy made it harder for the government to know where the real perils to its future lay. This is made most evident by the emergence of the secret "Philanthropic Institute," with its independent branches in various departments but with no overt connection to a national organization. These cells avoided public mention of the monarchy while supporting unavowed royalists as candidates for local and national office. All the same, an inner circle known as the "Coterie of Legitimate Sons" swore allegiance to the Pretender and continued to plan special operations, including cooperating with the Paris Agency in setting up a military coup against the regime, preferably led by the traitorous General Jean-Charles Pichegru once he had been elected to the Councils. The electoral triumph in the spring of 1797 helped the Institute spread to as many as seventy departments, where it busily influenced public opinion, co-opted local officials, and meddled in the National Guard. Only then did the directors Barras, Reubell, and La Révellière-Lépaux discover the Institute's true nature and precipitate the coup d'état of 18 fructidor V.[48]

The Triumvirate chose not to publish their evidence about the Institute as justification for the coup. Perhaps this was because they knew more about the Institute's modus operandi than about the individuals involved, or perhaps it was because the Institute's main purpose was to substitute a coordinated electoral strategy for the politics of violence. As far as the Institute was concerned, the decidedly reactionary drift of public opinion augured well for the elections of 1798. So promising was the political climate in the summer of 1797 that General Pichegru, now president of the Council of Elders, put off leading a royalist coup and committed himself to constitutional methods. Although antirepublican violence had risen sharply on the eve of the elections and spiked again around the anniversary of 9 Thermidor, there is little evidence that this was either coordinated or part of a royalist conspiracy.[49] Rather, it was quite clearly the fruit of spontaneous agitation based on ridding the country of Jacobins once and for all. Given the paucity of available evidence on a nationwide conspiracy based on counter-revolutionary violence, it was the Triumvirate's good fortune that the Baron de Saint-Christol and Dominique Allier launched their assault on the citadel at Pont-Saint-Esprit (Gard) before hearing news of the coup. Even better, by calling themselves the "The Army of the Two Councils," the paramilitaries gave the government just what it needed, prima facie evidence to support its claim that Fructidor had been a necessary preemptive strike against a royalist plot that centered on the Councils and radiated throughout the country.[50] The failed attack on Pont-Saint-Esprit ironically confirmed the premise of the "Grand Plan," that is to say, that as far as organized royalism was concerned, piecemeal violence and isolated acts of insurgency only played into the regime's hands. In this sense, overtly counter-revolutionary violence went a long way toward legitimizing the Directory's use of force and disregard for its own constitution.

Much of the success of the royalists depended on mobilizing fears of Jacobinism. Here too the regime had difficulty distinguishing various strands of opposition, of knowing when differences of emphasis and strategy slipped into subversion of the regime, either overtly or covertly. Just as republican officials seemed to find royalists behind every bush, many ordinary citizens relentlessly denounced the threat posed by Jacobins. It is difficult for a modern democrat to appreciate this near-hysteria, especially given the egalitarian language often employed by republican critics of the Directory. Many republicans had an admirable desire to expand the franchise, but it is worth recalling that a lot of republicans also had blood on their hands. Most Jacobins refused to disavow the violence that had brought them to

power and kept them there, and they never abandoned their hope of returning to power by force—hence the sympathy for Babeuf expressed by such newspapers as the *Journal des hommes libres* and *La Chronique de la Sarthe.* Furthermore, Jacobins' continuing penchant for the language of violence, such as was expressed in the Pantheon Club at Paris, could not be dismissed as mere rhetorical excess, not after Marat, Hébert, and Robespierre. If Jacobin politics had really changed, why did Antonelle, a prolific writer on social egalitarianism and representative democracy, publish an article in December 1795 in which he said, "I want to kill, to wipe out the nobility"?[51] How were his fellow Frenchmen to judge such language? Finally, Jacobins showed no more scruples about the mechanics of democracy or the limits of the constitution than those who heartily opposed the republic. The Jacobins of Marseille and Nîmes pioneered the use of subpoenas to take political opponents into custody on the eve of elections. Elsewhere, Jacobin army commanders used troops to gain control of electoral assemblies and determine the outcome.[52] When contemporaries brought these various elements of Jacobinism together they saw genuine "terrorists," that is, men who had adopted ardent patriotism as moral cover for local tyranny.

The contribution made by republican extremism to the Directory's dilemma needs to be viewed from two angles: that of the ordinary citizen and that of the government. Officials who enforced the latest laws against priests and émigrés were "terrorists" in the eyes of most of the population. Not so for republicans. According to the *Journal de Toulouse,* "the strict execution of laws may be called terrorism" by royalists and religious fanatics, but, when the constitution is followed, "terror" becomes a "chimera which can only find room in a madman's head or a villain's heart."[53] The law was the crux of the matter. For most Frenchmen, "terrorists" were republican officials, past or present, who committed gross violations of the traditional "laws" of the community as anthropologists would define them.[54] For the government, on the other hand, Jacobins became "terrorists" when they violated the actual laws of the republic, especially the Constitution of Year III or the *Code des délits et des peines,* in order to persecute their opponents or subvert the regime. These conflicting definitions left plenty of room for subjective judgment, as the dizzying number of appointments, dismissals, and reappointments during the period attests.

At first the Directorial government appointed hundreds of Jacobin-style republicans as departmental, cantonal, and court commissioners. The number multiplied when the Councils authorized the Directory to fill vacancies in elected offices of local administration and the judiciary.[55] In the mean-

time, the government began to reap the hatred and turmoil these appointments provoked. It was the Jacobin extremists' penchant for abusing state power that earned the regime such animosity. Take for example the actions of Sébastien Seguin, a former department administrator of the Haute-Saône whom the Directory appointed as its first cantonal commissioner at Faverney. Seguin assembled a column of thirty dragoons and thirty national guardsmen for a midnight descent on Provenchères, where a refractory priest had recently held services. Not only were the domiciliary searches conducted at an unconstitutional hour, the armed force got carried away, locked up the mayor, and ransacked several houses. Jean-Nicholas Bourgeois, a captain in the National Guard and commander of the expedition, behaved especially badly and was later charged with having "publicly assaulted the good morals of *citoyenne* Cheviron," the mayor's wife. All the same, in a letter to the minister of the interior, commissioner Seguin claimed that he had violated the constitution in good faith, having been "wandering due to an accusation of terrorism" at the time it was adopted and published. As bizarre as this sounds, the minister actually shielded Seguin from prosecution. Had he known more about the commissioner, he would have been less indulgent. Seguin was a bourgeois with aristocratic pretensions who had used his position as department administrator from 1792 to 1794 to become president of the department's *comité de surveillance générale* as well as inspector of horse procurement. In both posts he had shown a penchant for arbitrariness and graft. And now in the year IV, Seguin was the incarnation of the republic in the northern Haute-Saône. The minister's decision to protect him could only have outraged fellow citizens.[56] There had been no guillotine, no incidental killing, and no forced exile, and yet it was precisely this sort of "terrorism" that people around France had come to fear from their local Jacobins.

Like royalism, Jacobinism had its conspiratorial element aimed at toppling the regime. As with royalism, the connection between local sources of violence and grand plots was extremely tenuous. Despite the later fame of Gracchus Babeuf's protocommunist ideology, most of his coconspirators were primarily dedicated to executing a counter-Thermidor, a Robespierrist coup d'état in order to return to the Terror. The coup was planned as a day of slaughter, including all deputies and Directors, to be followed by a collective dictatorship.[57] To this end, the conspirators first tried to corrupt the Paris Police Legion and then the army units at the Grenelle military camp. The fact that decisive action from the government thwarted both efforts has obscured the alarming extent to which "terrorism" had infected

the security forces around the capital. The Directors had good reason to respond harshly, but their efforts to conjure a gigantic nationwide conspiracy out of a Paris-based plot alienated a great many republicans. Rather than destroying Jacobinism as a political force, the large police dragnet gave it a rallying point. At the same time, the government's strategy fed provincial fears about the danger posed by local Jacobins and so helped to stimulate the reaction expressed in the elections of year V.[58] Despite these drawbacks, disposing of the Babouvists ended any serious Jacobin conspiracy to overthrow the regime.

Partisan Politics and Discursive Signifiers

The appearance of modern politics during the First Republic was just that, largely an appearance disguising traditional sources of strife. The interaction between revolutionary forces and social sources of violence is not easy for historians to discern, trammeled as we are by the partisan language of the time. The constant invocation of "Jacobins" and "royalists," "patriots" and "fanatics," the innumerable warnings of "a second Vendée" or a return to "the tyranny of robespierrists," and the political cross-dressing of "royalistes à bonnet rouge" and "terroristes à talon rouge" all serve to obscure other aspects of social and cultural conflict. Some of these are more easily identified than others. Sectarian hatred between Catholics and Protestants in Languedoc; institutional and commercial rivalries between towns in Provence; and class conflict between tenant farmers and landed proprietors in Brittany all fueled revolutionary factionalism. A fine-grained analysis of village politics in the Massif Central, where the sources of fissures were especially obscure, led Peter Jones to conclude that the Revolution was "disciplined to the needs of the rural community and not vice versa."[59] And yet the prevalence of particular factional epithets across France despite its many regional differences suggests a more common, if more amorphous source of civil strife, one fueled by the uncertain legitimacy of the new social order emerging from the Revolution. Although ubiquitous in the period, the terms "Jacobin" and "royalist" are too exclusively political to capture the sense of social and cultural antagonism that infused local politics around the country. Two other widely popular epithets better expressed contemporaries' competing visions of a legitimate social order: *anarchistes* and *honnêtes gens.*

The epithet "anarchiste" had a longer revolutionary heritage than Ther-

midorian neologisms such as "terroriste," "vandalisme," "buveur de sang," and "anthropophage," and so gained pride of place following the uprisings of Germinal and Prairial III. The word "anarchiste" carried criminal connotations, being associated with the destruction of community through thievery, pillage, and murder. Its association with *sans-culottisme* gave it broader implications of social marginality based on a refusal of social deference, a rejection of property as essential to social standing, and a disparagement of those with wealth and power.[60] This set of conceptual resonances brought together social and cultural understandings of the basis for order in society. Anarchy was obviously the antithesis of order, and so radical republicans were tarred as the opponents of domestic peace, civic morality, and constitutional government.[61] In the lexicon of political ostracism, "anarchists" were juxtaposed to true republicans committed to defending constitutionalism and the rule of law. As such it gained official status in the oath of "hatred for royalism and anarchy" required by the laws of 19 ventôse IV (9 March 1796) and 19 fructidor V (5 September 1797).

Radical republicans responded to being called anarchists by sarcastically labeling their opponents "honnêtes gens," or "respectable folk." The concept of "honnêteté" went beyond morality to include the social respectability acquired through refined manners and graceful sociability. The underlying assumption was that probity, civility, and self-restraint derived from education and social responsibilities. The mass of people were too close to subsistence living to curtail their struggle for survival through carefully calibrated expressions of politeness and mutual respect. Only several generations of property holding could confer the cultural traits of respectability. In this sense, "honnêtes gens" implied the social snobbery that came from unquestioned economic independence. The essential wrong committed by many of those subjected to litigation in the *ancien régime* was to have lacked civility, been unduly intransigent, or resorted to imbecilic violence when greater subtlety and self-control were expected.[62] Such crude actions came to be widely associated with the behavior of revolutionary radicals. They in turn vehemently repudiated such criticism and responded by mocking its cultural foundations. Appropriating the term "honnêtes gens" for the purpose of derision, therefore, was a repudiation of the social hierarchy and attendant values that dominated society before 1789. It also had the merit of putting in doubt any intrinsic association between property and virtue, especially civic virtue. Self-proclaimed "patriots" defined their own social worth in terms of commitment to revolutionary institutions while casting aspersions on "honnêtes gens" as egotistical and reactionary. Here the epi-

thet of choice connotes opposition to egalitarian ideals of democracy, an opposition based on excluding the mass of Frenchmen from social respectability. In the eyes of self-proclaimed "patriots," "honnêtes gens" threatened the republic by refusing its new value system and insisting on the social and cultural markers of the *ancien régime*. It thereby became a derogatory term and shaded easily into charges of being "counter-revolutionary."

The epithets "anarchists" and "respectable folk" were widely used terms of partisan abuse because they expressed a more profound clash of social and cultural values than notions of either class conflict or political ideology alone connoted. Apart from whatever personal advantages were at stake, a great many of the men who were willing to enter the political fray sincerely believed that their opponents' vision of society threatened either personal freedom or social stability, or both. Such beliefs did not create class solidarity, nor did they amount to a coherent political ideology. Nonetheless, they deeply affected the willingness to use violence either to oppose or impose the new order. This relationship between epithets derived from alternative visions of social order, and the politics of factional rivalry is well conveyed by a primitive placard posted in the village of La Salvetat in the western Hérault in August 1799. This notice and (apparently) three others like it were made by painstakingly burning letters into heavy paper (see figure 2).

This text is a mix of apparent contradictions that all seek to legitimize armed rebellion against republican officials. Despite its phonetic spelling and bad grammar, the placard's block-print format and statement of "four copies" were clearly intended to capture some of the authority of official posters. The author does not mention either Jacobins or royalists, yet his text is saturated with the language of factionalism. Everything is couched in a sententious vocabulary designed to sway third-party opinion. The denunciation of blackguards who desire only blood and pillage, brigands whose families know neither virtue nor religion, is coded language for republican extremists. This is confirmed by the brave assertion: "we do not fear the Terror." All the same, the author implicitly denies being a royalist or counter-revolutionary by saying, "we love the republic whenever respectable citizens are in charge." It is almost ironic to see someone with such rudimentary writing skills advocate rule by "citoyens honnêtes," a phrase associated with education and the social elite. This is clearly a sign that popular opposition was not to the republic per se but to the perceived usurpations of power it permitted. The placard accuses the local ruling faction of calling on "rich egoists" to unite, in other words, of trying to constitute a property-based regime devoid of the community obligations formerly assumed

by the local elite. The author compounds the denunciation by adding that these men fail to understand that virtue (civic commitment and respectability) is incompatible with crime (dishonest wealth gained through the purchase of "national properties"). In order to set the social order right, the author announces a credit boycott by the artisans and workers of the village (ironically, the supposed social base of *sans-culottisme,* but here the opponents of the republican faction). This reversal of social stereotypes associated with revolutionary rivalries is offset by charges that local leaders have pursued the wealthy (presumably the former elite) in order to cover their own debts. Furthermore, members of the dominant faction are denounced for favoritism, graft, and violence when imposing the exactions of the republic. Local officials are described as villains and their followers as robbers, smugglers, terrorists, and even animals with a herd mentality. In sum, they are all criminal threats to social order. Therefore, their opponents are justified in responding to threats of terror with arms and a readiness to

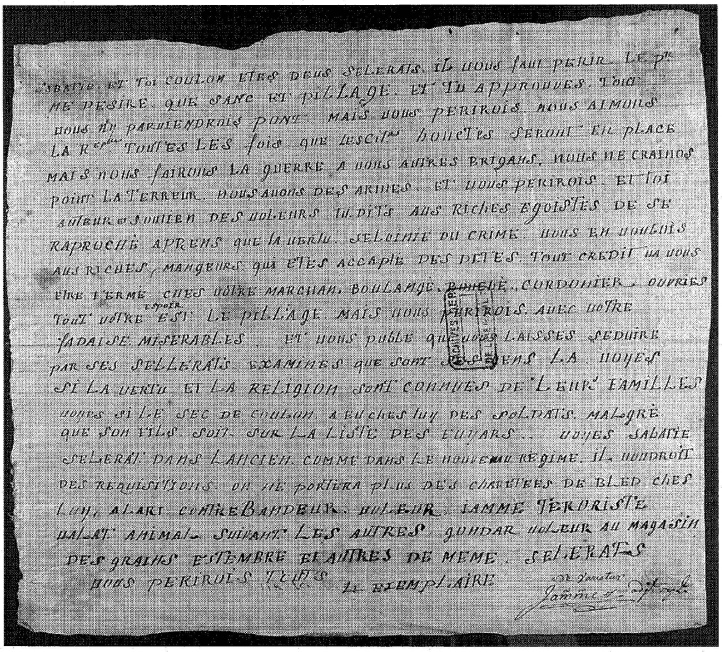


Fig. 2. Handmade placard posted in La Salvetat (Hérault) in August 1799. ADH L 970. (Courtesy of the Archives départementales de l'Hérault)

kill. The author insists that these villains must, shall, and will perish (three references).

Nowhere is there a hint of modern politics. Yet this convoluted and opaque placard captures the essence of local struggles for power and their ubiquitous expression in moral terms. Too often historians simply decode this discourse to find "political" alignments without reflecting on the moral challenges posed by the republic's politics. But we do not need to identify Sabatie, Coulon, Alari, Valat, Gondar, or Estembre, nor do we need to investigate their supposed misdeeds, in order to understand that their legitimacy, and hence the legitimacy of the national cause they chose to support, was cast by ordinary folk in the simple terms of virtue and crime. Thus, the discursive elements of factional conflict at both the national and village level reveal the profound social and cultural conflicts that made the Directory a revolutionary regime and fueled its crisis of legitimacy well after 1795.

The full impact of Catholicism, war, royalism, and Jacobinism on the Directory's crisis of legitimacy was the product of a complex interaction between the inevitable resistance provoked by continuing to push for profound changes in the social, legal, and cultural norms found at the local level and the polarizing political forces at the national level. The Directory's prolonged crisis lay partly in its inability to discern the difference between conflict bred by competition to control the levers of power and pervasive discontent bred by sweeping changes in the institutions and practices that had traditionally given structure and stability to the social order. This is not a facile condemnation of the regime's leaders. These were cruelly difficult matters to separate. The country had little basis for consensus in 1795. The politicians who dominated the Directorial regime were challenged by opponents, on the right and on the left, who strove to control the new institutions of the republic while simultaneously contesting their very nature. For this reason, the syndicate of Thermidorian politicians interpreted any challenge to its rule as a life threat to the republic itself. Equally, Thermidorians tended to interpret ordinary forms of resistance to the exercise of state power, such as reclaiming churches and avoiding conscription, as expressions of royalism and sometimes even as attempts to bring down the regime. This confusion between opposition to the regime's leaders based on rivalry for political power, on one hand, and traditional obstacles to ensconcing republican institutions and values, on the other, encouraged revolutionary responses and an economy of violence.

2 The Economy of Violence

> . . . the time wherein men live without other security than what their own strength and their own invention shall furnish them withall. In such condition there is . . . worst of all, continual fear.
> —Thomas Hobbes, *Leviathan* (1651)

A VAST INTERPLAY of economic collapse, widespread crime, and political strife imperiled the Directorial regime from the outset. Each problem was linked with others. Death due to dearth was the worst it had been since 1709. The helpless begged in aggressive packs, and the hopeless committed suicide in record numbers. Cities declined in population by 10 percent or more. The *assignat* experienced such Weimarian inflation that the government had to pay employees' salaries in measures of grain. The grain market, however, was so disrupted by short harvests, rural hoarding, and wartime expropriation that grain convoys needed military escorts to protect them from pillaging.[1] But even soldiers were falling into short supply. By the time the Directors took office, the army had shrunk 40 percent since its peak a year earlier. This meant tens of thousands of deserters tromping along broken-down roads and through hollowed-out woods on their way home. Back in their villages they found much sympathy for their plight and little for that of the new government. As official outlaws, deserters provided much of the manpower for the brigand bands that attacked farmsteads, held up stagecoaches, and assaulted travelers.[2] So prodigious was this criminality that it later spawned a subgenre of literature. These works reflected a scourge that stretched across the entire country, from the chouans of Balzac in the west, to the legendary Schinderhannes in the east, from the *chauffeurs* of Vidocq in the north, to the *Compagnons de Jéhu* in the south. It is almost impossible to grasp the extent of social collapse and criminal turpitude in the mid 1790s—especially since the Directory made no effort to collect

statistical data on crime—but there is no doubt that the regime suffered "France's worst crime wave in modern times."[3] Not since the Fronde had France fallen into such a Hobbesian state of civil disorder.

Ambiguity and Fear

The near-anarchy of 1795 reflected a profound change in the economy of violence. A society's economy of violence is as important as its class structure or its political organization. Just as the various processes of acquiring and exchanging material goods are basic to the quiddity of any society, the forms and frequency of violence, its place in definitions of honor or justice, its acceptance in politics or private life, are all fundamental to a society's nature. However, the inherently moral aspects of violence make it difficult to delimit for any period, and the destabilizing effects of revolution exponentially multiply the problem. As a result, the economy of violence in the early Directory was highly confused and highly confusing. By infusing elite rivalries and deeper social struggles with modern political ideology, the revolutionary cataclysm altered both the form and meaning of various types of violence. It is the task of historians to find patterns and reveal structures, and yet this often tears off the integument of ambiguity that confronted contemporaries. Persons closest to the context of violence best understood its meaning, whereas any physical or temporal distance from individual acts of violence quickly increased their ambiguity.

The difficulty of interpreting violence (both for contemporaries and historians) was further exacerbated by the conventions of officialdom. Not only were officials trapped in the wooden language of factionalism, but they tended to take violence out of its larger social context, thereby eliminating important cultural signifiers. It is striking that none of the thousands of contemporary descriptions of violent acts read during research for this project—whether administrative reports, personal memoirs, trial records, criminal interrogations, or witness depositions—describes weeping. Shock, horror, revulsion, fright, panic, trauma, terror—all these were commonly described responses to violence. But the tears and sobs of victims, witnesses, friends, and relatives go unmentioned. For some reason, official discourse dissociated acts of violence from expressions of grief.[4] Furthermore, standardized political rhetoric worked to simplify and obscure the polysemy inherent in many acts of violence. The discursive aspects of revolution and counter-revolution provided a convenient, ideologically elevated

language for the expression of personal or religious hatreds, clan or communal rivalries, and economic or class conflicts. What is missing, of course, is how revolutionary struggle both exacerbated and disguised these other sources of violence.

We are not dependent on official discourse alone, however. Popular violence generates its own discourse through the forms it takes. Early in the Revolution, the brutal and spectacular nature of crowd violence, in which the victims' heads were severed, corpses dismembered, and body parts mounted on pikes for public display, mimicked the *ancien régime*'s brutal methods of execution—breaking on the wheel, display of body parts on *patibulaires*, etcetera—and thereby gave the violence its meaning as popular justice. Both the limited targets and traditional forms of this violence suggest righteous behavior committed on behalf of the people in order to punish those who had perpetrated injustices against it. It has been claimed that the massacres of September 1792 also mimicked official justice, in this case through the formation of impromptu tribunals that "acquitted" some prisoners; even the discreteness of the killing—behind prison walls and without public display of body parts—acted out the novel, and more modern, way in which the law as an expression of popular sovereignty served to constitute society and deal with antisociety at the same time. The difficulty of accepting this interpretation is that a lot of those killed were neither counter-revolutionaries nor serious criminals—many were nuns and pickpockets. In such a case, imitating the forms of justice may have been an attempt to secure legitimacy for killing in defense of the Revolution, but it was widely understood as nothing more than a mask for criminal slaughter. The problem for observers, therefore, was whether to accept or reject the legitimating discourse propagated by the perpetrators through the forms of violence itself.

Matters deteriorated further after Thermidor. The prison massacres of 1795 involved neither impromptu tribunals nor public rituals. That is, the perpetrators made no attempt to legitimize their actions by mimicking forms of justice. Many of the revenge killings of year III were isolated events, ambushes carried out by murder gangs that superficially resembled traditional youth groups, but whose actions went well beyond mocking, dancing, and "rough music." "Elements of personal vengeance, social rivalry and political struggle mixed with themes of traditional disapproval and community self-regulation" in an attempt to capture the increasing ambiguity of Thermidorian violence. Ritual elements did not disappear: disposing of bodies by throwing them in the Rhône was a frequent practice and

served to purge the community of its human impurities.[5] By the time of the Directory, popular violence had become so common and served such diverse purposes that it no longer required the same level of symbolic justification.[6] This development was itself a sign, one indicating the growing triumph of collective criminality over crowd violence. Acts of violence increasingly shed the patterns and forms that had once constituted a widely understood discourse of legitimacy.

Thus, the economy of violence after 1795 had a distinctive feature: violence had become less ritualized and more individualistic than it had been before 1789. The Revolution dismantled social structures and effected rapid changes in values and systems of representation. These ran the gamut from the self as citizen to France as nation. In the process, the Revolution not only destroyed the institutional constraints on popular violence, it eroded many of the cultural ones as well. This included the diminished role of the clergy in community life, the decline in deference accorded social status, the disruption in patronage patterns, and the reduced primacy of the local community. Though murder gangs may have continued to dress up their killings in the rituals of retribution or to solicit popular support through public displays, these did not make them accepted extensions of traditional society.

In broader conceptual terms, what had once been communicative violence had increasingly deteriorated into solipsistic violence. Violence is more than a use of force; it is a use of force that is morally dubious because it harms individuals or relationships in society. And yet, even as a morally tainted use of force, violence can range from being a mode of communication designed to reshape social relations to being an absolute rupture in social relations. On one hand, violence makes the clearest statement about acceptable social relations when it has form and consistency, when perpetrators ensure that it is regularized, ritualistic, or predictable. Under these conditions, violence becomes a strategic instrument and an object of management. In other words, it becomes a deliberate means to a known end. It may challenge and disrupt existing social relations, but it is not fundamentally antisocial. On the other hand, when violence is essentially an outburst of unregulated passion, a sudden anger unleashed, or a categorical refusal of the "other," it achieves little more than a unilateral affirmation of the individual or group. Such an act of violence is essentially solipsistic. Furthermore, such violence is antisocial, an expression of a world without rules, unstable and uncertain. These two aspects—violence as a tool for changing social relations and violence as a solipsistic destruction of social

relations—are not mutually exclusive; they are polar extremes on a single continuum.[7] The shift along this continuum away from communicative violence toward solipsistic violence that took place in the 1790s has yet to be properly mapped.

The sheer incidence of violence during the late 1790s was enough to frighten most people, but the extent to which it was often ambiguous in motive and meaning made matters all the more alarming. Both highly structured "social" or "communicative" violence and seemingly irrational "antisocial" or "solipsistic" violence generate fear. This fear increases in intensity and spreads to other groups when an act of violence is ambiguous and difficult to interpret. Thus, we need to register more than the increase in crime and violence; we need to note its ambiguity. Consider, for example, how popular broadsheets helped to exacerbate the fear of violent crime both through their widespread dissemination and their tendency toward confusion. In figure 3, the lively image at the center of the broadsheet bears little relationship to the events recounted in the lyrics printed around it (two villains as opposed to one; rescue by a gendarme as opposed to being sabered, trampled by a horse, and left to die alone).

Violence that was not easily interpreted aroused yet greater concerns about prolonged social breakdown. Both the prevalence and the multivalence of violence posed a challenge to the Directory. The combination increased doubts about the republic's viability. No matter their initial inspiration or actual form, subsistence riots, smuggling, highway robbery, housebreaking, arson, and murder all became threats to the constitutional republic. They either embodied an overt rejection of the regime, or they highlighted its inability to provide security.

Subsistence Crisis

The weakening of the traditional constraints on collective, communicative violence in the course of the French Revolution, which made it both more ambiguous and more solipsistic, and hence more threatening, is clearly illustrated by the forms of violence arising out of grain shortages and high prices. The subsistence crisis of 1795–96 inspired thousands of violent incidents across the country. Many of these were traditional food riots in which crowds provoked confrontations with merchants and officials, thereby bringing the collective solidarity of communities to bear on the problem of prices. Such a riot took place at Montpellier on 19–20 pluviôse

IV (7–8 February 1796), when a large crowd from the *faubourg* Boutonnet imposed price fixing and the municipality cut the price of bread almost in half.[8] Still not satisfied, the demonstrators roughed up municipal leaders, invaded the town hall, and forced the assembly to set the price of bread at a derisory 5 *sous* a pound. The agitation continued the following day as people plundered fish stalls, vegetable stands, butcher shops, and bakeries.

Fig. 3. Complainte véritable sur la mort de Perrine Dugué. Handbill (colored woodcut) produced chez Letourmy at Orléans, 1796. (Courtesy of the Département de l'Arsenal, Bibliothèque nationale de France)

Local commanders arrived at the head of national guardsmen, uniformed students from the School of Health, and a battery of cannons. This show of force dispersed the crowd without bloodshed. Later, following instructions from the minister of justice, a handful of "principal agitators" were tried by the Criminal Court and received harsh punishment, while the rest were exonerated as "misled."[9] Incidents like this had been part of the repertoire of violence in times of dearth for generations. Though a riot could easily get out of hand, time-honored rules of the game established its meaning and controlled its trajectory. These helped to contain the riot and provided officials with a standard set of temporary measures that diffused the immediate crisis and limited judicial retribution.[10]

However, many people did not believe that the Montpellier riot was really about the dearness of food staples. The public prosecutor emphasized that the troubles had been launched in the name of "patriots," which he considered a mask for *sans-culottes.* He also charged the leaders with being part of a "plot intended to trouble the state with civil war by arming citizens against one another and against the exercise of legitimate authority, calls to sedition, provocations to pillage property, acts of violence against persons, revolt against legal authorities and seditious assembly, both armed and unarmed." Though couched in the phrasing of the criminal code, this strongly suggested that the popular quarter had been stirred to riot by political extremists interested more in orchestrating an overthrow of the conservative authorities of Montpellier than in the price of bread. Propagating the idea of such machinations made the riot more ambiguous than it initially appeared. Was it the result of working-class desperation or the return of the "henchmen of terror"? Such questions only heightened public fears, especially after the *sans-culottes* uprisings of Germinal and Prairial in Paris the previous spring.

The subsistence crisis of 1795–96 also led to hundreds of incidents that deviated from the time-honored script for food riots. This eroded any larger social message they may have communicated and gave them the appearance of increasingly solipsistic, antisocial violence. Rather than mobilizing large crowds in marketplace settings or along main arteries of supply, townsfolk began to gather in small groups to make sorties into the countryside. These forays were significantly less organized than the regional incidents of "taxation populaire" that took place in the autumn of 1792. The earlier events generally began with the forced setting of prices in town before proceeding to the countryside. Furthermore, participants distinguished themselves with some sort of rallying symbol, such as a twig

in the hat, and were accompanied into the countryside by national guardsmen flying a flag or beating a drum.[11] Unlike traditional food riots or even the excursions of 1792, the events of 1795–96 were more clandestine, more predominantly male, and more likely to involve the use of deadly weapons: most of the participants carried muskets, pistols, swords, or pikes. These armed groups raided isolated farms and plundered wagons caught alone on the road. This breakdown of popular protest into a host of sporadic attacks made it harder to distinguish from simple criminal assault, especially when carried out at night. Though such incidents were not unprecedented,[12] their predominance in year IV marked a deviation from the collective action that characterized most popular violence. Leaving so many *assignats* for each *boisseau* of stolen grain may have preserved some of the "moral economy" associated with "taxation populaire," but everyone knew the *assignats* were worthless, especially those *à face royale*, which made this common gesture merely an insult to the republic. Furthermore, the focus on isolated farmers and individual wagon drivers, rather than market stalls and municipal officials, removed the possibility of receiving moral legitimation from an approving crowd. That the Thermidorians had replaced the *sans-culottes'* discourse on subsistence with the language of a free market also challenged the justification for such violence on moral grounds. Merchants and farmers who might have been hauled before the courts as "speculators" and "hoarders" in 1793–94 were now treated as "respectable folk" victimized by "bands of brigands."[13] Finally, differences of opinion on how to punish these crimes highlighted their ambiguity. The president of the Criminal Court of the Sarthe tended to view them as acts of desperation provoked by the refusal of producers to bring grain to town markets or sell it at an affordable price.[14] On the other hand, Minister of Justice Merlin de Douai wanted the law applied in all its rigor as the best means to protect property holders. Similar differences of opinion among jurors led to schizophrenic verdicts. Most people charged with forcibly obtaining grain at a "vil prix" were acquitted on the grounds of intention; nonetheless, a carpenter received twenty-four years in irons.[15] Perhaps it was his participation in several incidents, or the level of "mistreatment" he dealt out, that made the difference. No matter: when townsfolk made clandestine raids into the countryside to obtain grain, whether their actions were morally justified mattered less than the fear they generated. Such actions inevitably made it harder to supply towns, the preeminent locus of republicanism, and threatened a complete breakdown in town-country relations. This in turn threatened the viability of the regime.

Thus the fear and uncertainty spawned by the sheer proliferation of violence in the mid-1790s was compounded by its multiple motives and ambiguous meaning. Moreover, the shift from communicative violence, with its discourse expressed in crowd action, to solipsistic violence, with its furtiveness and lack of disguise, indicated a severe weakening of traditional restraints on violence, and the correspondingly greater burden placed on republican officials to combat crime.

Brigandage

Even the most cursory treatment of the economy of violence in the 1790s requires addressing the problem of brigandage. No form of violence better reflects the decomposition of society and the ongoing revolutionary struggle over defining its recomposition. Brigandage was a cancer, an ill-defined malignancy, universally feared, hard to treat, and often fatal. Here too the fear and uncertainty spawned by the sheer proliferation of violence was compounded by multiple motives and ambiguous meaning. Eighteenth-century society, especially in those regions that remained marginal to the market and the state, suffered from an endemic petty banditry that swelled at times of dearth or war. This was a banditry of vagabonds and the deracinated, of seasonal laborers and the wandering poor, a barely organized activity characterized by constant thievery, occasional marauding, and incidental extortion, usually based on threats of a late-night fire or a poisoned well. Another, more organized form also existed, one that was familiar to the *ancien régime* but that reached an unprecedented level under the late republic. This was an opportunistic banditry. It took advantage of collapsed structures of authority to establish, with gun in hand and loot in mind, the power of violence over the more prosperous around them. In addition to these traditional forms, there arose structured forms of social and political resistance, often spearheaded by local leaders who organized bands of deserters and counter-revolutionaries into secret militias. It was inevitable that traditional banditry would mix with popular resistance and organized counter-revolution to blur the boundaries of both ordinary crime and righteous rebellion. As far as the republic was concerned, however, it was all politically dangerous, either deliberately or incidentally.

Although brigandage meant robbery by an armed band, contemporaries used the term to cover a gamut of radically different events. Two examples from among the thousands available illustrate how brigandage could range

from opportunistic robberies to paramilitary assaults. First, pure crime. On the evening of 6 messidor IV (24 June 1796), just outside the gates of Montpellier on the road to Toulouse, four armed men successively attacked and robbed a farm laborer returning home from the fields, a basket peddler on his way back from Balaru, another farm laborer, two merchants coming from Perpignan, a shoemaker with his ten-year-old son, and a cloth cutter from Montpellier. The total amount stolen came to almost 3,000 livres, mostly in specie—a sizable sum for two hours' work. Though none of these people was seriously injured, they had all been traumatized by having a pistol shoved in their faces.[16] The use of firearms, the proximity to the city, the range of victims, and the failure to identify or catch the bandits gave anyone traveling to or from Montpellier good reason to be afraid. That this was not an isolated case, either for this location or for the region, further justified their fears.[17] This purely criminal brigandage—the classic masked-face, two-pistols-in-the-belt, "Your-purse-or-your-life!" highway robbery—thrived in the social and administrative chaos of the mid-1790s. The perpetrators were antisocial bandits whose solipsistic violence threatened anyone and everyone.

Second, pure politics. Avowedly political banditry also thrived in these conditions. *Chouannerie* is the most famous form, though, as we shall see later, it too had its ambiguities. In extremis, political brigandage took the form of military-style incursions launched by counter-revolutionary activists against southern or western towns. In the south, these went back to 1792 and continued sporadically through to 1802. They took place anywhere from the Basses-Alpes to the Aveyron but were most common in the former Vivarais and Comtat Venaissin. One such attack occurred at Barjac in the northern Gard on 28 germinal IV (17 April 1796). Here at least two hundred men led by a typically motley group of notables—in this case, the inveterate conspirator Dominique Allier, his sadistic lieutenant Guillaume Fontanieu (alias *Jambe-de-bois*, or Peg-Leg), the brigand-priest Béranger, and the barrister Jacques Perrochon—stormed the bourg, overwhelmed and disarmed the garrison of eighty soldiers, and, in order to terrorize republicans throughout the region, shot to death its captain and lieutenant. Now unopposed, the bandits seized the town coffers, looted a number of houses, and took various officials prisoner. The large band then headed into the Ardèche loaded down with booty, service muskets, and a cannon. Along the way, they cut down liberty trees and broke into patriots' houses. When the band tried to enter Bannes, however, a detachment of troops from nearby Les Vans, with the surprising support of local national guards-

men, drove them back and even captured a dozen bandits in the process. In their panic, the rebels abandoned their provisions, their prisoners, and the cannon. Even though much was stolen, everything about this attack points to counter-revolution. Barjac was seized in the name of Louis XVIII. The men wore white cockades, and the leaders sported white belts and white plumes, clear signs that they belonged to the Catholic and royalist "companies" organized across the Midi.[18] The ranks were filled mostly by deserters and marginals recruited with the help of British funds. They acted as the shock troops of an émigré-directed conspiracy to bring down the Directory and restore the Bourbon monarchy. The incident at Barjac was planned as a show of force and as a means to procure cash and weapons for "the cause." It has often been assumed that such attacks were armed expressions of traditionalism that drew their strength from deep-seated Catholic and royalist antipathies to the secular republic.[19] Certainly the leaders believed they were engaged in a form of communicative violence, fighting for a just and proper social order. However, the fact that the citizens of Les Vans and Bannes, ordinarily hostile to the republic, actually helped to repulse the band speaks eloquently of how unsympathetic these violent extremists really were. Royalism of this sort won few converts. Rather, it was a form of intimidation designed to be every bit as frightful as the republic's own use of armed force.

If brigands were isolated highwaymen as well as royalist paramilitaries, they were also everything in between. Obviously, brigandage covered a confusing variety of incidents that were neither clearly organized crime nor plainly violent counter-revolution. It has rarely been noted, however, that this imbrication of criminal and political forms of brigandage greatly increased fears about all forms of organized crime. These heightened fears arose from the matrix of official perceptions as well as the matter of criminal practices. The relationship between these perceptions and practices hinged on the elements of ambiguity that characterized many acts of brigandage. Such ambiguities served to reify certain interpretative frameworks. Two of these are of special importance. On the criminal side, officials labored under a "banditry psychosis." On the political side, they suffered from a "plot mentality." These mental proclivities are understandable given the prevailing economy of violence, but they actually made the situation worse by heightening public anxieties about rampant brigandage throughout the country.

Officials afflicted with "banditry psychosis" tended to make dubious connections between different crimes and attribute them all to a single criminal

organization. Supposed connections could be based on any number of factors, such as form, regional density, or proximity in time. Thus, jury directors or public prosecutors would attribute several break-ins that occurred within the same vicinity over several months or even years to a single band. This happened even when the crimes took place under substantially different conditions each time. Where a band did exist and some of its members were arrested, officials frequently added other unsolved crimes in the area to the list of charges. Many of these crimes had nothing in common. The "banditry psychosis" also led officials to lump together individuals who had little, if anything, to do with one another. The official image of a brigand band was that of a slightly inchoate group, "a criminal nebula, where numerous occasional delinquents gravitated around a few especially intrepid malefactors."[20] With this image in mind, officials would inflate an already dangerous band into a virtual army of villains. The most famous example is the "bande d'Orgères." This was a sordid amalgam of 118 men and women, more than a quarter of whom died in prison before their trial by the Criminal Court of the Eure. The eighty individuals who did appear in court were charged with a total of ninety-three crimes, including seventy-five murders. Officials considered this only part of the band: "It must rise to four or five hundred," stated the indictment. That "they had their own signs of recognition and spoke a language of their own" was proof, according to the prosecutor, of a tightly knit criminal organization. However, the trial itself revealed only a very loose agglomeration of criminals with a variety of different leaders. The "bande d'Orgères," the most infamous band of the entire period, was, in fact, more a congeries of criminals thrown together in prison than an organized crime network.[21]

In addition to leading officials to link disparate crimes and assorted individuals with certain bands, the "banditry psychosis" fostered suspicions about grander criminal networks operating across a whole province and beyond. Professional criminals could be extraordinarily mobile, it is true. Richard Cobb has written evocatively of the "route du Nord" connecting Paris to the banditry around Lille, Tournai, and Brussels. Though he finds Dinah Jacob's account, the basis of the official version of the so-called "bande juive" and its extensive operations, too appealing to reject completely, he rightly remains skeptical. His own evidence makes it clear that this was likely five separate groups operating in close proximity and often willing to travel some distance to fence their stolen goods more safely.[22] In western France, the use of criminal slang, like the use of Yiddish in the northeast, certainly led police officials to suspect a vast clandestine

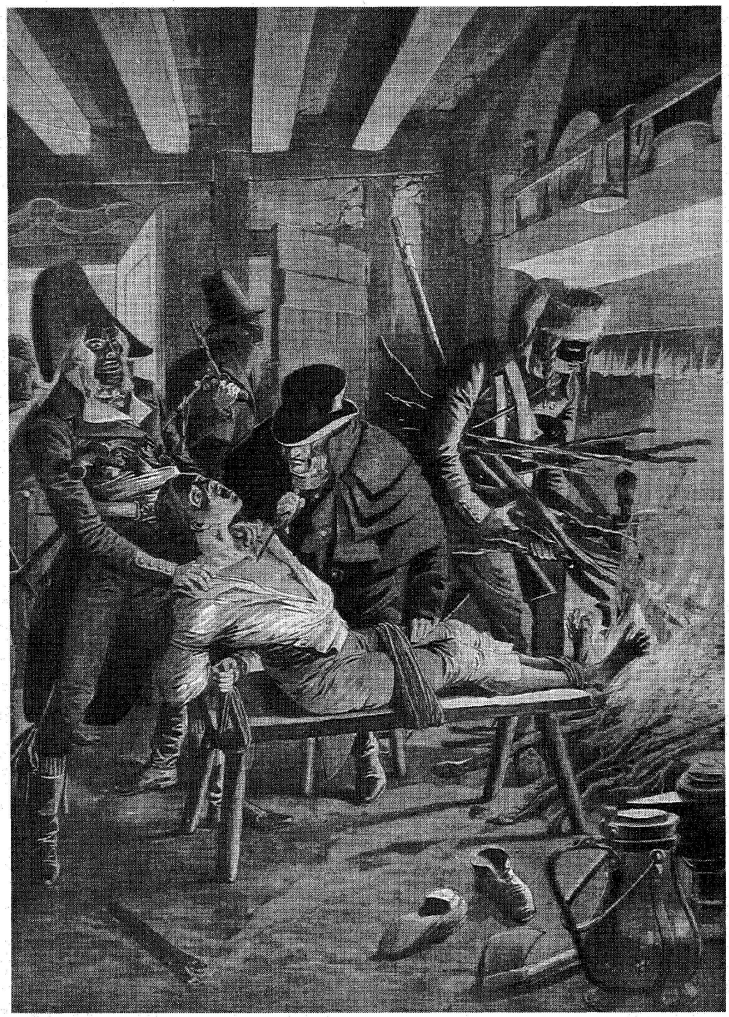


Fig. 4. The brutality of "chauffeurs" in the 1790s, epitomized here by the infamous "bandits of Orgères," remained notorious in the twentieth century. ***Supplément illustré du Petit Journal***, no. 939, 5 November 1908. (Author's collection)

criminal organization. This was at the heart of the "bande noire," a sprawling criminal network imagined by the Ministry of Police with the help of two important prison informants, as was so often the case.

It all began with the revelations of Jacques Descantes after he had been condemned to death by the Criminal Court of the Dordogne on 18 brumaire V (8 November 1796).[23] Convinced that his life would be spared if he provided plenty of information about criminal activity, Descantes began by solving a brutal murder he had learned about while in prison at Limoges. As he told it, the crime had been committed by fourteen men, all well-dressed, riding horses, and sporting pocket watches, pistols, and sabers. The leaders were a young innkeeper named Gallifer from Châtellerault (Indre-et-Loire), who had personally crushed the victim's skull with a club, and Luçon, an even younger calico merchant from Saumur. Their accomplices, all named, came from scattered western towns—Tours, Saumur, Angoulème, Périgueux, Rochefort—places visited regularly by "Le Grand Blondin," a dapper Gascon who rode a "fine steed." Descantes told the police "that the watchword between them is to refer to the innkeepers and tavernowners who lodged them as 'gens francs'; . . . that Dallifer [*sic*] and Luçon are the ones who determine the meeting places and write the notices; that in every commune where they meet, they have correspondents who provide the information needed to commit a crime, and that they call that 'distributing the work.'" Descantes embellished his tale over the course of four interviews. The number of crimes multiplied, the list of accomplices grew longer, and the range of activities grew wider: "a large number of these villains came down from Lyon and its environs and settled at Bordeaux and its environs," such as at La Rochelle, Bergerac, and Coutras, he explained. A few weeks went by, and more revelations came out. Soon the minister of police was sending letters to officials throughout the southeast, in the Gard, the Rhône, the Basses-Alpes, the Vaucluse, the Bouches-du-Rhône, etc. When the minister of justice refused to commute Descantes' sentence, he escaped from prison, undoubtedly thanks to the government commissioner of the Dordogne whose sympathy he had won. By then the "bande noire" had been born. At the least, it covered a half-dozen departments in the west; at the most, it was a gigantic organization that extended from the Loire valley to Bordeaux and from there across the entire south to Lyon and Marseille. Here was "banditry psychosis" at its most inflated.

The only reality behind the "bande noire" was a common criminal slang. This was revealed a few months later by another informant, André Pillet, a stonecutter from Tours. It was after being sentenced to death by the

Criminal Court of the Sarthe for a murderous *chauffage* near Tours that he became a prison informant, having been led to believe, like Descantes before him, that his loose tongue would preserve his short neck. Pillet's importance lay in his knowledge of the "argo outré" and "signes particuliers" used by criminals in the Touraine. (On the most basic level, they referred to each other as "garçon," "bon garçon", "franc garçon," and "garçon distingué" in a kind of hierarchy of villainy.) Using this metonymic passport to the criminal underworld, where he had his own enviable record, Pillet revealed the names of thirty-four murderers and robbers and linked individuals among them to a half-dozen of the most brutal attacks in the region. The names included Gallifer ("a bit hunchbacked, branded and probably living on the rue St. Séverin in Paris") and Tailleur ("dit Le Grand Blond . . . se-disant marchand"), both at the heart of the supposed "bande noire." The Ministry of Police made the connection.[24] The principal problem, however, was that Pillet named a different group of perpetrators for almost every crime. Any overlap seems to have been an accident of temporary cooperation, not of any organizational structure. In fact, the infamous "bande noire" of the police's imagination was nothing more or less than the tenuous acquaintance between any number of thieves, murderers, cutthroats, cutpurses, highwaymen, fences, lookouts, and front men who operated in small groups of dynamic composition. Pillet's promise to reveal the names of four hundred criminals and his boast that three hours in a "tapie" (slang for tavern) in any urban center from Blois to Angers would be sufficient for him to penetrate the local underworld make it clear that a shared argot and a common criminal ethos were all there was to the "bande noire." It was frightening enough that Pillet was one of ten men responsible for burning a farmer's feet so badly that months later he still had to be carried into the courtroom to testify.[25] To think that this and dozens of similar atrocities could be traced back to a single criminal organization, even one with a strictly regional scope, could only have induced cold panic in the good citizens and property holders of the region. Brigand bands did exist; in fact, they proliferated. This provided the basis for "banditry psychosis" by establishing its proverbial kernel of truth. However, while the brigands of the late 1790s may have been as cruel and predatory as Visigoths, they did not form hordes or maintain national networks.

Just as local officials tended to invest coincidental connections between small criminal bands with exaggerated significance, the Directory presented the proliferation of bandits as a vast conspiracy deliberately constructed to destroy society. It would be hard to find a more complete statement of the

"banditry psychosis" than a message the Directory sent to the Council of Five Hundred on 11 frimaire V (1 December 1796). It focused on robbers who "spread across various departments and desolate town and country."

> These are not isolated malefactors armed against the peaceful citizen by an instinct for crime or a thirst for pillage: these are brigands gathered in bands, organized under leaders, marching according to instructions, forming, in fact, in the midst of society a sort of confederation armed to destroy it piecemeal. Sometimes they penetrate private homes, seizing those who live there and subjecting them to all the forms of violence that the most refined ferocity can invent in order to force them to turn over what is most precious to them; sometimes they take to the roads, attack public carriages and mail coaches, rob them and present travelers with scenes of horror which make them fear even the shortest trips. We cannot pretend that these disasters have the characteristics of ordinary brigandage; for a long time, the enemies, not exactly of French liberty, but of France, have felt that their last resource is this wellspring of crimes which they feed in the heart of the republic.[26]

As this last line suggests, the Directory not only portrayed small groups of robbers as part of a great confederation bent on destroying society but once again blamed Anglo-royalism as the ultimate culprit.[27] Though it is tempting to dismiss this as mere propaganda, it seems to have worked rather well. Local officials were quick to take any signs of royalism brigands may have manifested as evidence that they were part of a coordinated effort to overthrow the republic.

In fact, criminal banditry did often take on a political flavor, even if it was not overtly royalist. Rapine and revenge bore no inherent contradiction, and republican officials, especially those who had served during the Terror, became prime targets. The attack on Citizen Monduteguy and his family at Ustarits (Basses-Pyrénées) in October 1796 is a case in point. Here was a typical *chauffage,* including beatings, roasting of feet, murder of the paterfamilias, and extensive theft. These heinous acts followed a long string of robberies and assaults in the canton over the previous year, but it was this attack in particular that spurred magistrates to act. The prosecutor indicted a total of forty-four individuals and charged them with thirty separate crimes. Monduteguy, a former justice of the peace, was an infamous local terrorist. He had sent seven people to the guillotine during his brief presidency of the *Commission extraordinaire* at Bayonne in year II. He also took the lead in carrying out the orders of representatives on mission to exile or imprison all Basques in the area, a notorious precursor to ethnic cleans-

ing. It is not surprising, therefore, that twelve of those indicted as band members were Basques *miquelets* away from their units.[28] Rather prosaic banditry had turned political, and the authorities took note. It confirmed their suspicions and inspired their actions.

This mix of banditry and counterterror was especially prevalent in Provence, where it blurred into paid assassination. Here rather than robbing or looting their victims, local murder gangs received their rewards from men of substance who wished to remain in the background—Richard Cobb suggests a reception at the local chateau replete with cash, drink, and sex with the servants.[29] Donald Sutherland needs no imagination, just diligent research, to connect the murderous "bande d'Aubagne" in the Bouches-du-Rhône to a set of discrete patrons among the town's traditional elite.[30] But killing could also result from internal band rivalries or as revenge for double-dealing. This is Gwynne Lewis's explanation for why twelve members of the Malbos family all had their throats slashed on their farmstead at Laudun (Gard) in brumaire V.[31] Colin Lucas has also parsed the finer points of political murder in Provence. Though killers frequently knew their victims personally—"'Je viens de venger la mort de mon père' was the commonest of all counter-jacobin phrases after a murder, much more so than 'Vive le roi'"[32]—such relationships were rarely known beyond the locality. Though each of these historians has done impressive work in discerning the motives and mechanisms behind such collective violence, such work risks eliding the opacity of this violence to anyone not in immediate proximity to it. How could outsiders tell what the motives were? When was an attack on a purchaser of national property politically motivated and when was it simply intelligent banditry? Contrary to some accounts, royalist motives cannot be inferred from the victim's status as a purchaser of national property.[33] It simply made sense to pick someone who had plenty to steal, someone resented by his neighbors for being more prosperous or more courageous when property was put up for auction. Rivalry and resentment could ensure a free hand during the robbery and a tendency to keep quiet later. And yet, if republicans believed that bandits singled out purchasers of national property because this was a sign of "patriotism," and they usually did, then such attacks became politicized by perception, if not by original motive.

As with "banditry psychosis," official fears that brigandage was part of a larger royalist conspiracy had some basis in fact; there was, after all, a real royalist conspiracy to destroy the republic from the inside, and it did involve recruiting royalist "companies." This made it harder to tell the difference between brigands who wore the mask of royalism for tactical rea-

sons and those who had a larger strategic purpose in mind. Furthermore, local officials had little incentive to discern the difference. Throughout the Revolution, the "plot mentality" had provided effective justification for using harsh measures against opponents. And yet, royalist brigandage was far more a matter of combining atavistic criminality with antirepublican sentiment than it was of any coordinated campaign to destroy the Directory.

Despite the delusional elements at work in both the "banditry psychosis" and the "plot mentality," it is important to reiterate that, even if they were not linked to grander criminal organizations or offshoots of a great royalist conspiracy, the sheer proliferation of brigand bands directly challenged the viability of the regime. Neither the king's highways nor remote rural areas had been very safe in the eighteenth century, and yet bands of robbers had never really threatened the social order. Under the late republic, however, the sheer frequency and manifold sources of brigandage together made it a grave challenge to the regime's political credibility in the most basic terms. Brigandage under the republic was not primarily a matter of spectacular criminality or even "social banditry," as it had been under the *ancien régime,* when the salt smuggler Mandrin and the robber Cartouche became brigand archetypes as well as popular heroes. The brigand bands that burst forth in the chaos of 1795 offered a more profound challenge precisely because they combined crime and politics, social resistance and counter-revolution.[34] This mélange of motives made it ambiguous violence of the most fearsome sort. Viewed from this perspective, officials' fears about the nature and scope of bandit activity make greater sense.

Brigandage took on an especially threatening demeanor because it challenged the regime's ability to ensure public order within the framework of its new liberal institutions. The Directory openly acknowledged this central aspect of the problem. It minced no words in its message to lawmakers on 13 frimaire VI (3 December 1797), "this bloody anarchy . . . will discredit the republic, will heap opprobrium on its government, will emphasize the weakness of its laws, and will lead the French people to counter-revolutionary regrets and odious comparisons."[35] The proposed solution, of course, was harsher laws and a greater use of force to restore order in the fledgling republic. However, years of revolutionary upheaval had created an indeterminate legitimacy for any and all uses of force and violence for political ends. The mutation of communicative violence into solipsistic violence and the imbrication of crime and counter-revolution increased multivalence and

ambiguity. Furthermore, the dubious justifications and competing social visions that accompanied so much of the violence made matters all the more alarming. Thus, any form of violence could generate fear in the populace due to the competing and contested sources of legitimacy working to justify it. This included using force to uphold the law or ensconce the republic. Circumstances such as these often made legality of dubious utility in defining acceptable uses of force.

3 Criminal Courts and Concepts of Order

Without the love of laws, no more order, no more government, no more society. What is needed to end the Revolution and allow us finally to enjoy the happiness that the conquest of liberty should provide? Few laws, but good ones, clear, precise and above all well executed: no compromise on this last item.

—*Journal de Toulouse,* 18 vendémiaire V (9 October 1796)

IN ORDER TO understand the role of the courts in confronting the Directory's problem of order, we need to distinguish, as best we can, the cultural obstacles to maintaining law and order using a fledgling judicial system from the instability caused by national political issues. This cultural dimension to the republic's problem of order resulted from two overlapping, but clearly distinct concepts of order, one based on the community and inclined to accept idiosyncratic accommodations between authorities and transgressive subjects, and one based on the state and insistent that subjects conform to legally defined codes of conduct.[1] The extent to which authority was contested openly, even violently, or simply mined and sapped by obstructionism and foot-dragging, depended on its combination of accepted legitimacy and coercive power. By the autumn of 1795, republican institutions had precious little of either. Traditional values and local autonomies reasserted themselves in a renewed clash of cultures at the village level.

Justice from Organic Society to Revolution

Changes in the judicial system lay at the very heart of the revolutionary project. The Declaration of the Rights of Man and Citizen promised Frenchmen equality before the law as well as protection from arbitrary arrest and unnecessary detention. The early revolutionaries sought to balance indi-

vidual rights with defense of the polity. Both individual liberty and public security required a powerful state based on the rule of law.[2] The paradox of increasing both individual rights and state power defined the new concept of order. It also constituted a massive assault on the organic society of the *ancien régime.*

Before 1789, order had generally been maintained by largely autonomous communities that called upon the state's machinery of repression only when their own methods had manifestly failed. Order as conceived in the context of the direct and daily interactions between villagers was largely an absence of disruptive conflict rather than an aspiration toward a preconceived standard of disciplined behavior. The essence of maintaining order lay less in enforcing impersonal regulations than in restraining conflict among individuals well known in their community context. In the organic society of eighteenth-century France, therefore, stability and public tranquility depended on a wide variety of institutions that were not extensions of the monarchical state: family, parish, corporation, seigneurie, and religion all exercised social discipline. These enduring sources of nonstate authority made public order inherently paradoxical; simply breaking the law, even violently, did not constitute a breach of public order unless it seriously threatened the village or openly challenged royal authority. The royal courts served more to protect communities from external threats than to suppress internal conflict. Thus, the ability of village communities to regulate themselves was crucial to village cohesiveness and fostered a general mistrust of external authority.[3]

The concept of order embedded in the enduring social structures and attitudes of village communities differed significantly from the concept of order developed during the Revolution. The deputies elected to different revolutionary assemblies, an overwhelming number of them legal practitioners, made a fetish of the law. They gave birth to the liberal fallacy that the law, by starting with a constitution and filling in the gaps, could create a set of institutional arrangements that would liberate individuals to satisfy all of their needs. The National Assembly considered the justice system of the *ancien régime* arbitrary, capricious, and cruel mainly because it had been designed to preserve a social hierarchy based on legal privileges. The lawmakers' alternative, therefore, was a cult of equality and consistency. This meant establishing mandatory sentencing for all felonies. Penalties were chosen to fit the crime; for better and for worse, they could not be tailored to fit the criminal. This contrasted sharply with practices in England at the time, where flexibility in sentencing was reaching its apogee.[4]

The Penal Code of 1791 replaced a variety of penalties, such as banish-

ment, mutilation, branding, whipping, and the stocks, with simple imprisonment or hard labor. The former punishments had always been associated with elaborate shaming rituals carried out in cooperation with village communities; eliminating them saw the work of disciplining offenders pass increasingly from the hands of the populace to those of the state. The revolutionary reforms also removed affiliations between the judicial establishment and the Catholic Church. After 1790, the legal system was no longer imbued with the spiritual value that had turned afflictive punishments into a theater of expiation. Moreover, priests were no longer called upon to read *monitoires* threatening excommunication for anyone who had vital knowledge about a crime but refused to inform the authorities. Finally, the requirement of making an abject apology to God, king, and justice was also eliminated because convicted criminals were no longer treated as sinners. Eliminating both the communal and religious elements from the punishment of crime shifted enormous responsibility to the state's wholly secular judicial apparatus.

This transfer was further enhanced by the separation of criminal punishment from compensatory damages paid to the victim or the victim's family. The prerevolutionary linkages between private judicial initiative, royal prosecution, and personal damage awards gave the former system of criminal justice a pronounced retributive character. When the reforms of 1790 separated criminal and civil justice and transferred all of the costs of prosecution to the state, they not only stripped out most of the retributive elements from the prosecution of crime, they also removed the systemic features that discouraged individuals from turning to royal courts. After 1790, once the victim had reported a crime, it was prosecuted on its merits as a threat to society, not on the basis of the victim's zeal or his purse. Henceforth, the state's standardized and inflexible concept of order was supposed to prevail. The inevitable consequence was an erosion of the mechanisms of internal equilibrium that had sustained communities for generations.

At the same time as revolutionaries imposed a concept of order that contrasted starkly with the organic society of rural France, they adopted laws that struck directly at the institutions that gave rural communities their moral unity. True, the notion of community never actually fit the reality of community. Any agglomeration of peasants, artisans, and larger landholders was bound to be riven by conflicts of authority, family rivalries, and personal hatreds. Whatever the pressures generated by village sociability, they were never strong enough to generate complete consensus.[5] Church, crown, and seigneurie exercised authority by involving peasants in the pro-

cess of their own domination. And there were always some members of the village ready to reap advantage from cooperating with such authority. Equally, there were always others who profited from invoking the notion of community to challenge rivals as intruders or oppressors. The Revolution cast all of these contests into a new light. The multistage destruction of seigneurialism that began on the night of 4 August 1789, the frontal assault on the Catholic Church embodied in the Civil Constitution of the Clergy of 1790, and the declaration of the "patrie en danger" in 1792 with the massive mobilization that followed utterly recast the tensions between the notion of community and the reality of conflict. Resistance to the Revolution in defense of the community served to infuse this notion with greater meaning. Donald Sutherland has argued that the truly popular movement was counter-revolutionary. But what was counter-revolution? If its royalist elements are set aside and it is treated as a popular movement, then counter-revolution was fundamentally a violent defense of the *idea* of a self-regulating community and thus an idealized version of the prerevolutionary reality.[6] In this sense, the community as an idea and its power to legitimize action was strengthened, at least in the short term, by the revolutionary process.

The ravages of revolution meant that the Directory confronted rural communities that were in important ways both stronger and more autarkic than before. Peter Jones has described a "revalorisation of the 'village'" in the late *ancien régime* but dates an even more profound shift to the Convention's decision in 1793 to replace the traditional term "community of inhabitants" with the more egalitarian "commune." The administrative chaos of the ensuing years, especially after the Terror, helped to make this rhetorical shift a social reality.[7] The elections of 1795 confirmed the trend. The Thermidorian perpetuals whose years in the Convention imbued them with the state-based rule of law were deeply at odds with the mass of officials elected to staff departments, courts, and cantons. The notables elected in the provinces had a natural impulse to reassert local independence. Constitutional efforts to minimize this dichotomy proved clumsy at best. The cantons instituted as part of the Directorial regime were designed to overcome the autonomy of individual villages by grouping six to twelve communes into a single administrative unit. These rural cantons proved extremely difficult to establish and operate. They did not correspond to social realities, engulfing rival communities as they did, and were overwhelmingly burdened with executing state mandates such as requisitions or tax collection rather than providing services. Thus, the new "municipal administrations" proved both

too intrusive and not sufficiently representative to acquire popular support or local legitimacy.[8] This made it all the harder to develop a modus vivendi, however precarious, between a republican rule of law and local customary practice. Reports on the state of the country in early 1796 were unrelentingly negative about "public opinion," a euphemism for commitment to the republic.[9] Therefore, one of the greatest difficulties facing the Directory was the even greater gulf the Revolution had opened between the two concepts of order.

Criminal Justice under the Directory

The difficulties inherent in installing a new legal system and instilling a new concept of order are easily obscured by the sheer chaos facing the Directory in the winter of 1795–96. This would seem to make the mechanics of justice a rather minor matter. And yet, these problems could not be redressed without effective law enforcement. The structure of the courts and the magistrates who manned them would prove crucial to the character and longevity of the new regime.

There is much to be admired in the judicial system of 1795. The Constitution of Year III did not change the principles introduced early in the Revolution and made only modest changes to judicial institutions. The basic structure for dealing with delicts remained in place. Justices of the peace and their assistants, as well as urban police commissioners, rural municipal officers, and their deputies, continued to deal with infractions punishable by a maximum of three days in jail or three days' wages. These were not deemed "offenses against public order." A handful of district-level correctional courts handled misdemeanors (*délits correctionnels*) punishable by up to two years in prison. A single departmental criminal court dealt with felony cases (*délits criminels*) as well as appeals from the correctional courts. At the national level, the Court of Cassation served as an appeals court for procedural issues only; in contrast to many "supreme courts," it did not deal with the substance of cases. The simple hierarchy, national uniformity, and clearly demarcated jurisdictions of the new courts could hardly have contrasted more sharply with the former system, a hodgepodge of overlapping jurisdictions extending from the patchwork of seigneurial justice to the differential privileges of provincial parlements. The republican system of justice epitomized the new concept of order, one based on a

uniform code of conduct brought close enough to ordinary people to shape their social interactions.

This study focuses on serious threats to public order and therefore will largely ignore judicial mechanisms used to repress petty offenses. However, controlling minor infractions—graffiti and jaywalking in the modern city, sheep grazing along paths in the revolutionary countryside—tends to reduce the number of major crimes, and so it is worth glancing at justices of the peace. JPs stood at the very nexus of competing concepts of order. Considered by one historian to be "the National Assembly's most inspired creation,"[10] elected JPs bore a heavy responsibility to keep the peace in their villages and neighborhoods. The duties of JPs fell into three categories. Above all, they handled minor civil disputes not involving property and limited to 100 *livres* in value. This was done with small fees, little paperwork, and no lawyers. In this respect, JPs brought a vast improvement over the spotty, sometimes costly, and often corrupt services provided by seigneurial justice. JPs also served as gatekeepers for civil justice. Parties who felt the need to resolve a dispute in court were obliged first to take it before a JP. Here again lawyers were barred. The revolutionaries' aim was to avoid actual lawsuits by requiring the parties to participate in semiprofessional but nonbinding arbitration. In this sense, the office of JP standardized the common practice of using notaries or clerics to help secure infrajudicial settlements. Thus, the JP's role in civil justice was a service provided by the state free of any code to regulate behavior or outcomes. Solutions depended solely on what the parties were willing to accept. Finally, the reforms of early year IV made JPs into police magistrates. In cities and towns, JPs had the assistance of police commissioners, whereas the rural JP remained largely on his own as the main officer of law enforcement for a half-dozen villages or more. Bailiffs, gendarmes, and national guardsmen merely provided coercive force when necessary. All criminal investigations began with the JP. He personally judged petty offenses involving small fines or a few days in jail. His verdict was final. He also exercised considerable de facto discretion in the prosecution of more serious crime.[11] Combining all of these functions in one individual made his personality and his politics crucial in determining the role official justice would play in shaping community relations. By having a role in both civil and criminal justice, either settling small matters definitively or overseeing the preliminary stage of more important affairs, the revolutionary justice of the peace helped to preserve a measure of local autonomy while also providing an instrument for greater state control. No

other official so completely embodied the tension between two concepts of order; he was the instrument of both plebeian justice and republican law.

Above JPs stood the formal machinery of criminal justice. The Thermidorians trusted the judiciary more than the Constituent Assembly, which had been forced to compromise with royal authority, or the National Convention, which had allowed the government to co-opt the courts for executive purposes. Thus, the judiciary emerged in 1795 as a substantially independent force. The Constitution of Year III gave judges greater protection from executive authority and brought them together in greater concentrations of judicial power. First, judges were elected by the same electoral assembly that chose national legislators and department administrators. This made them a critical part of the national political elite. Second, department judges served five-year terms and could only be dismissed following impeachment on criminal charges. Third, the twenty or so judges (plus five standing replacements) chosen by a department electoral assembly constituted a single pool of judges. Together, they staffed the department's civil, criminal, and correctional courts on a rotating basis.[12] This system fostered collegiality and gave judges an unrivaled exposure to the tensions and hot spots across their departments.

Besides choosing twenty or so regular judges, each department assembly elected a court president, a public prosecutor, and a chief clerk. The court president was essentially the trial manager. He handled the random drawing of jurors called to duty, convoked them at the appropriate time, took their oaths, instructed them, and summarized the case for them. He also maintained decorum during proceedings and freely deployed whatever ruses or confrontations he thought would elicit the truth.[13] As for the public prosecutor, he took charge of investigating and prosecuting a case only after a grand jury had voted to indict. In the case of rebels captured either alone or unarmed, he was authorized to bypass a grand jury and present the case directly to the criminal court. As the supervisor of all *officiers de police* in the department, however, he had considerable investigative reach—provided these men were willing and able to assist him.[14]

Judges had their greatest discretionary power when presiding over correctional courts. A correctional court president, assisted by two justices of the peace from the local town, made all judgments in misdemeanor cases and could sentence a culprit to as much as two years in prison. If the president of a correctional court believed that an offense constituted a felony, however, he assumed a second role, that of jury director. In this capacity, he drafted and presented formal felony charges to an eight-member grand

jury convened at the seat of the correctional court. The six-month stints judges served as jury directors often meant that just when one magistrate was getting to the bottom of a case, he had to pass it on to a successor. All sorts of considerations ranging from laxity or lethargy to factionalism and fear helped to determine whether a jury director rushed to present a bill of indictment before he returned to the civil bench or delayed long enough to leave it on a colleague's agenda. A sense of collegiality could mitigate such tendencies, but frequent illness or recusal posed greater problems. The rotational system also created economic hardship that destabilized the magistracy. In the early years of the Directory, when judicial pay was in arrears and merchants refused paper money, judges regularly resigned their positions simply because they lacked sufficient means to live away from home, in one district *chef-lieu* or another.[15]

The Constitution of Year III provided only limited executive restraint on judicial authority. This came in the form of appointed government commissioners (*commissaires du Directoire exécutif*) attached to each criminal and correctional court. Their functions were largely confined to invoking the law, providing regulatory oversight, and seeing that sentences were executed.[16] A commissioner's greatest legal power lay in appealing a case to the Court of Cassation on the grounds of procedural irregularity. And yet a commissioner's importance was not as limited as it might at first appear. His reports to the minister of justice revealed a great deal about the general conduct of the judges and public prosecutor. This made him a political as well as judicial overseer.

Due Process of Law

The courts' principal guide to judicial procedure was the *Code des délits et des peines,* adopted without discussion by the Convention in October 1795. The *Code* was both a landmark elaboration of the rule of law and a glaring example of Thermidorian contradictions. It was written almost singlehanded by Merlin de Douai, famous as the author of the "law of suspects," and yet it included many provisions designed to prevent the sort of police practices his earlier terrorist legislation had encouraged. Furthermore, the *Code* was adopted on 3 brumaire IV (25 October 1795), the same day the National Convention codified the continued persecution of priests and émigrés. Finally, the *Code* was poorly named. Most of its 646 articles pertained to procedural aspects of criminal justice, whereas its treatment of

crimes and punishments made only a few amendments to the Penal Code of 1791.[17]

As a code of judicial and police conduct, the brumaire *Code* was of major significance for the state-based concept of order and the rule of law. In fact, the *Code* helped to define these quintessentially modern concepts. Above all, the notion of public order was given clear definition by the *Code*'s conceptual distinction between criminal and civil justice. Plaintiffs continued to initiate indictments, but now the pursuit of compensatory damages could flow only from a criminal conviction. This meant that the state took sole responsibility for preserving public order and that criminal justice was not intended to provide victims with retributive justice. Here was an enormous change of principles to which historians have paid little attention. This was the revolutionaries' attempt to put an end to the ancillary role that criminal justice had played in sustaining agonistic social practices rooted in notions of personal honor and normative hierarchy that were as old as Western civilization itself.[18]

Despite some overlap in investigative and prosecutorial functions, a perennial source of concern in societies based on the rule of law,[19] the *Code* laid out impressive protections for those accused of crime. "We know that this *chef-d'oeuvre* of theory proved highly defective in practice," wrote an eminent legal historian, without elaborating on its functional flaws.[20] Had he done so, he would have been forced to conclude, somewhat embarrassingly, that its most liberal provisions were what proved least workable. Both investigation and prosecution were remarkably constrained for the period. The *Code* specified elaborate paper trails for summons, interrogations, court appearances, arrest warrants, jail bookings, and posting bail. Any procedural irregularity in investigation or prosecution could result in the later nullification of everything else in the case from that point forward. Particularly noteworthy are the protections from arbitrary arrest and detention. Fully aware of the myriad abuses of police power during the Terror, the Thermidorians sought to ensure greater protection for personal liberty. Merlin's *Code* complemented important provisions of the Constitution of Year III, which specified that a citizen's house was "an inviolable asylum." Domiciliary visits by the police or officials could take place only during the daytime. They had to be based on an official order specifying the purpose of the visit. Furthermore, the *Code* prescribed a penalty of six years in chains (that is, solitary confinement) for anyone who issued, signed, or executed arrest orders without proper authority, detained an accused anywhere but in an official jail, or imprisoned someone without a legal order. Even legal

detentions had some strict limits. A citizen's complaint needed corroborating evidence before an arrest could be made. When an accused appeared before a JP, voluntarily or not, he had to be either freed after questioning or remanded in custody to the nearest jury director within twenty-four hours. Once transferred to the district jail, the jailor was obliged to send copies of the arrest warrant to the local municipality and the home of the accused in order to inform his family and friends. After appearing before a jury director, those charged only with misdemeanors could obtain automatic release by posting a bail bond of 3,000 francs.

The *Code* also defined an elaborate system of judicial protections for the accused. These began the moment he was arrested. If witnesses had already given depositions, the JP had to read these to the accused before interrogating him. Any depositions taken after his arrest had to be taken in his presence. This extraordinarily generous provision both kept the defendant informed and discouraged malicious denunciations. Once the affair passed into the hands of the jury director, however, any further depositions could be gathered "secretly," as the *Code* put it—that is, without the accused being present. And yet, obtaining a grand jury indictment required more than "simple suspicion, a simple prejudice"; it required "strong presumption, a beginning of decisive proofs" (art. 237). Since any witness testimony crucial to reaching this level of assurance had to be presented orally and in person, the defendant knew the main evidence against him even before being indicted. Thereafter, once he had been transferred to the criminal court and interrogated by the court president, he received free copies of all police reports, expert statements, and witness depositions pertaining to his case. This enabled him and his lawyer to point out irregularities and to plan an overall defense strategy. At this point the government commissioner verified that every aspect of the arrest and prosecution had been handled correctly. If not, the criminal court met to consider his demand for annulment. This could mean setting aside a grand jury indictment, invalidating the original arrest warrant and starting the whole prosecution over again, or even abandoning the case entirely. Once procedural regularity had been assured, by retracing several steps if necessary, the case went to trial.

The trial, too, included many safeguards for the accused. These went well beyond the elimination of written evidence so often emphasized. If the accused did not have a lawyer, the court was required to appoint one for him. The defense team could then recuse up to twenty jurors without explanation, and more thereafter if the judges considered the motives valid. It is impossible to tell whether this led to attempts to shape the composi-

tion of juries along lines of age, occupation, or geographic origin, but if so, they were very rare. On the other hand, it would have taken an extraordinary insouciance for defendants and their lawyers to neglect their right to stage-manage the appearance of defense witnesses. These could be called without giving advance notice to the prosecution, could be recalled at any time, and could be heard either in isolation from one another or in each others' presence, all depending on the defendant's strategy.[21] In contrast, the defendant was entitled to receive a list of prosecution witnesses and the order in which they would appear. Of course, the defense had the right to cross-examine witnesses and always had the last word.

Most important of all, trials were open to the public. Thus, the fundamentally oral nature of the process ensured that anyone who attended the trial would be exposed to all of the evidence made available to the jury to decide guilt or innocence. Pretrial depositions could not be read aloud in court even when a crucial witness failed to appear at trial. The use of such depositions was limited to exposing major inconsistencies in the testimony given by the witness in court. Finally, a jury verdict could be reconsidered only when the five presiding judges unanimously agreed that the jurors had ignored fundamental facts in the case in order to produce a conviction. This led to a new jury vote including three supplemental jurors who had been present throughout the trial. Jury verdicts were based on a majority of ten of twelve in the first instance, or of twelve of fifteen in the second. In contrast, judges could not have an acquittal reconsidered, no matter how blatantly it contradicted material evidence or testimony in court. As the reader will have no doubt concluded, all of this amounted to an astonishingly liberal set of protections for the accused. They conformed fully to the idea of a fair trial or due process as it has been defined by twentieth-century jurists.[22]

All of these safeguards were added to a system of criminal justice that had been in place for only three years—years that had been especially hard on judicial norms. A new legal culture was being created under the Directory, and it took more than promulgating a code of conduct to bring it into being. New safeguards were meaningful only when assured by judicial oversight. Although the archives of the Court of Cassation were destroyed in the fires of the Paris Commune,[23] evidence scattered throughout the records of departmental courts indicates that the high court played an important role in educating lower courts on correct procedures. Even basic matters such as failure to pose the famous question of criminal intent (*question intentionnelle*) or convictions on charges not contained in the indictment were not uncommon. Certain cases are instructive about the

punctiliousness demanded by the high court. It was fine for magistrates to reject Claire Maffre's request not to have the prosecutor read out in court the contradictory explanations she had given about her involvement in an armed robbery—after all, this was about the only written evidence allowed in a jury trial—but when the top magistrates in the land discovered that this decision had not been explained to her, they quashed the verdict and sent the case to another court.[24] Similarly, the high court found grounds to annul François Tenton's conviction (for singing royalist songs in public) simply because the prosecution had been unable to supply him with the complete names and occupations of a few of the many witnesses against him a full twenty-four hours before these persons testified in court.[25] And yet, despite the procedural rigor of such decisions, the proportion of verdicts annulled by the Court of Cassation remained relatively small. In seven years, the court overturned only twenty-three verdicts from the Hérault and only sixteen from the Haute-Saône. These are representative numbers for the republic as a whole.[26]

In fact, enforcement of the more stringent regulations on arrest and prosecution came further down in the judicial hierarchy. The detailed procedural safeguards established by the *Code,* together with a general lack of expertise at the lowest levels of the system, led to many more annulments by criminal courts themselves. In the years IV through X, the Criminal Court of the Sarthe nullified 50 indictments (pertaining to 64 defendants) and that of the Haute-Garonne annulled 68 indictments (pertaining to 116 defendants).[27] Cases built on legal sand were either sent to different jury directors for renewed prosecution or downgraded to misdemeanors and sent before correctional courts. In contrast, trumped-up charges could lead to cases being dismissed and defendants freed.[28] All told, the number of nullifications on procedural grounds (*cassation*) at different levels suggests that magistrates were generally able to meet the high standards set by the *Code des délits et des peines.*

The rule of law would have been nothing more than a set of high ideals unless judges had substantial legal expertise and a strong vocational ethos. Though not required to be trained in the law, judges elected in 1795 were almost all men with considerable legal experience. In most instances, this had been acquired both before and during the Revolution. The most prominent positions in the criminal justice system, that of court president and public prosecutor, invariably went to men with long legal careers behind them. In the Hérault, for example, the electors chose as court president Rouch, a former law professor at Montpellier, and as public prosecutor François

Thourel, previously an attorney attached to the presidial court at Béziers, then a judge on the district court there.[29] Their counterparts elected in year IV in the Sarthe were also highly considered by their contemporaries. The court president, an attorney from Le Mans named Ysambart, was described as "educated, . . . sensitive, just and courageous" and the public prosecutor, Juteau-Duhoux, had showed "irreproachable conduct during twenty-five years of work in the judicial system [being] gifted with rare judgment and an uncommon natural intelligence."[30] The importance of such men in the new scheme of things often led to their election to the national legislature. In contrast, many ordinary judges were cut from less substantial cloth. Some had been simple notaries, even bailiffs; others had spent more time as mayors and syndics than as judges. Regardless, they all belonged to the cadres of the Revolution, men who had emerged in 1789–90 to lead the charge against the entrenched interests of the prevailing order. They were also almost all men of substantial property and could be expected to administer justice with a certain class bias. Their status as notables and their experience of revolution, frequently including a period of exclusion during year II, provided a basis for solidarity with their peers.

The Politics of Justice

The magistrates of year IV came from the upper echelons of revolutionary activists. "Patriots of 1789" and "federalists of 1793" abounded. Although not generally royalist or even antirepublican, most of the judges elected in 1795 tended to hate Jacobins and to mistrust the new government.[31] Whereas political moderates took up judgeships across most of France, open reactionaries triumphed in the Midi. Although the last representatives on mission in the area replaced numerous local officials, the protections of the constitution allowed avowedly antirepublican judges to remain in place. This facilitated a judicial reaction against the new government. Reactionary judges did the most harm simply by failing to enforce the law. Above all, they consistently refused to apply the laws against émigrés and refractory priests. Ministerial correspondence with local authorities and commissioners was painfully repetitive on this point. Such a policy of negligence easily extended to a host of attacks on former terrorists, even if they were appointed officials of the new regime. In one case in the Vaucluse, the local JP did nothing to investigate the collective murder of the government commissioner at Valréas because his brutality as former head of the revolu-

tionary committee there gave the community a right to commit "legitimate homicide," a right the judiciary was obliged to respect! Moreover, even if the minister of justice refused to believe in conspiracies of silence and other such excuses, there was little his agent the court commissioner could do. As long as the government respected the constitution, the rule of law was largely what local judges wanted to make it. In the southeast at least, the Directory's strategy of relying on the integrity of the judiciary to restore public order and political peace manifestly failed; judges sapped the regime with its own tools.[32]

Evidence of this sort makes it tempting to blame reactionary magistrates for politicizing the judiciary. This may be accurate as far as it goes, but such a stance obscures an important paradox at work in the legal establishment of the Directory. Many magistrates had played key roles in earlier phases of the Revolution. Such men understandably found it difficult to administer justice without being plunged back into partisan battles. Periods of wrenching fear, if not serious loss of property or kin, left them bitter and wary. Some could not resist using their positions to persecute their opponents, often justifying it as preemptive self-defense. Yet others worked simply to shield their political allies from prosecution. In either case, the legality of their actions inevitably became a public concern. This ensured that wherever factionalism continued to thrive, so too did a lively debate on the technicalities of police and judicial procedure. In this way, the corrupting influence of local and national politics under the Directory actually became an education in the rule of law.

This important paradox deserves a closer look. Take the experience of Jean-Joseph Janole, elected public prosecutor for the Haute-Garonne in October 1795. A brilliant young lawyer at the Parlement of Toulouse before the Revolution, he became a member of the local district court in 1792 and an activist in municipal politics.[33] In the spring of 1793, he took the lead in opposing the excesses of the representative on mission François Chabot, protector of the local Jacobins.[34] This got Janole sacked as a federalist and forced him to spend the next eighteen months in hiding. In the meantime, he was added to the list of émigrés, his widowed mother was locked up for six months, and he was condemned to death in absentia by the Revolutionary Tribunal at Paris. His friends and allies were even less fortunate: six perished on the scaffold. After the Terror subsided, Janole emerged from hiding and recovered his property, minus what had been pillaged in his absence. Given his experiences during the Terror, it is hardly surprising that Janole became part of the Thermidorian Reaction. He regained his old post

on the district court of Toulouse in June 1795 and quickly became associated with the *Anti-Terroriste*, the local organ of former federalists. Janole's subsequent election as public prosecutor in October 1795 soon pitted him against the Jacobin officials of Toulouse.

The discovery of the Babeuvist "conspiracy of equals" put Janole at the heart of a prolonged controversy over due process. On 10 floréal IV (29 April 1796), the Directory ordered all *Conventionnels* without official posts to quit Paris and return to their native departments. This included Marc Vadier, a prominent member of the Committee of General Security during the Terror, who had fallen into such poverty that he was forced to walk almost the length of France to return to the Ariège. While en route, the Directory exposed the "conspiracy of equals" and added him to its list of suspects. When Vadier arrived at Toulouse, Janole promptly had him arrested and, a few days later, sent by coach (!) back to Paris for the trial at Vendôme.[35] The prosecutor of the Haute-Garonne followed up his triumph by having the deputy's son, Jacques Vadier, seized in a "terrorist" café by a throng of gendarmes. The Jacobin municipality cried foul, claiming that the public prosecutor had violated the constitution by not first obtaining an arrest warrant from the local jury director. The government responded by issuing a subpoena to have Janole himself appear before the jury director. Fearing partisan persecution for his arrest of Vadier père, the public prosecutor once again fled Toulouse. Local Jacobins made the most of a sententious magistrate seeking refuge from the law. In the meantime, he and two officers of the gendarmerie were indicted by a grand jury. They opted to be tried by the more favorable Criminal Court of the Ariège. The newspapers at Toulouse turned Janole's trial into a regional cause célèbre. Numerous articles expounded the various legal aspects of the case, while never forgetting their partisan explanation for the course of events. Naturally, the *Anti-Terroriste* saw Janole's eventual acquittal as a vindication of the rule of law, whereas the *Journal de Toulouse* blamed it on a politicized court and stacked jury.[36]

Once back in office, Janole became drawn into the political tensions that mounted in the run up to the elections of 1797. Several rounds of bloody street fighting between *sans-culottes* thugs and royalist dandies helped to prevent the national tide of antirepublicanism from sweeping the elections at Toulouse. Janole zealously prosecuted agitators from the Faubourg St-Cyprien, but thanks to sympathetic jurors they were all acquitted.[37] With his party defeated at the polls, his efforts to prosecute Jacobin violence thwarted by "the jurors' partiality," and his most supportive minister, the

conservative Cochon de Lapparent, replaced by the Jacobin sympathizer Sotin, Janole became increasingly isolated in his office. His stature sank further when he refused to prosecute a group of armed townsfolk who had obstructed a search for émigrés at Beaumont and instead tried to prosecute the local JP for conducting an illegal search, which in fact had not taken place. Furthermore, he was soon forced to recuse himself from the prosecution of a leading royalist from Beaumont whom the Criminal Court of the Haute-Garonne sentenced to deportation for advocating resistance to republican laws and a return to monarchy and aristocratic rule. Janole's incessant partisan manipulation of the law so infuriated officials in the Ministry of Justice that they recommended he be impeached under the Penal Code.[38] Tempers were running high in Toulouse as well. The public prosecutor's appearance at the Festival of the Republic on 1 vendémiaire VI (22 September 1797) prompted the large crowd to begin chanting, "Down with Janole! Out with Janole!" and he needed a police escort to make it home safely. Dismayed by this event, he tried to blacken the regime's reputation by giving jury directors instructions to apply the law of 19 fructidor V (5 September 1797) to refractory priests in an even more draconian manner than the law required. The municipality and local press again erupted in denunciations.[39] And yet, even when given the opportunity, the Directory did not replace Janole. He continued to serve until the eve of the elections of 1798, when his term was artificially ended along with all prosecutors elected in 1795.[40] One might have expected Janole to receive a judicial appointment under the Consulate, but he did not. He had plainly used his office for factional ends and so, despite Prefect Richard's strong anti-Jacobinism, could not be trusted with a judgeship. And yet, from a broader perspective, Janole's controversial role had fueled extensive public debate about the rule of law he was supposed to enforce. In this way, his misdeeds, most of them relatively minor compared to the appalling practices of year II, provided an unexpected education in the new standards of due process.

It was not only the machinations of local magistrates that heightened public awareness of the importance of strict legality. The government itself frequently let political concerns infect the rule of law. Several high-profile controversies exposed the cynical way in which the Directory manipulated justice to suit its political purposes. No less a figure than Merlin de Douai, minister of justice in years IV and V, is said to have justified this legal legerdemain with the remark, "C'est la raison d'État qui dicte la jurisprudence."[41] Well-publicized clashes with the Councils and especially the Court of Cassation undermined the Directory's claim to be putting the rule of law above

political expediency. Matters would have been worse had effective government propaganda not helped to mask some of its manipulations of exceptional justice.

The government's discovery and exposure of the "conspiracy of equals" in the spring of 1796 gave it a rich opportunity to curry favor with conservatives and the propertied classes in general. On the other hand, Babeuf's arrest incensed radical republicans. Several months later, a bloody skirmish on the night of 23–24 fructidor IV (9–10 September 1796) at the Grenelle military camp, almost certainly set off by government *agents provocateurs*, led to the arrest of 144 men, including a bunch of Parisian militants and die-hard Montagnards. The Directory asked lawmakers to send the whole affair before a military court, arguing that this was a case of armed rebels captured in combat, even though a dozen of the accused had been arrested on the basis of house searches conducted days after the event. Fears that a long criminal trial would stir the embers of *sans-culottisme* prompted the Councils to endorse the use of military justice.[42] The recourse to military justice, the manifestly political nature of the trials, and the speed and harshness of sentences reeked of a return to exceptional justice. In two weeks, the *conseil militaire* (tellingly called a "commission militaire" by the press, thereby echoing the Terror) tried 147 men and convicted 86 of them. Thirty-one of these were quickly shot. The Court of Cassation confirmed the impression of arbitrary and exceptional justice by later annulling the sentences imposed on the rest, all condemned to deportation or hard labor, and ordering that they be retried by a regular criminal court. Although the high judges upheld the government's use of the law of 30 prairial III (18 June 1795), they noted that this law required rebels arrested unarmed and outside the field of combat to be tried by a regular criminal court. This was the case not only for those who appealed their sentences but for some of those who were executed. The supreme magistrates thus rendered a stinging rejection of the Directory's use of military justice in the Grenelle affair.[43] As had often been the case in year III, the Thermidorian elite had once again proved its antiterrorist credentials using terrorist tactics.

The Directory's reputation for judicial honesty took additional blows from the Court of Cassation for its handling of political trials in year V. The first episode came in the "Brottier affair," a royalist plot to overthrow the regime organized by the "Agence de Paris." Although clearly a conspiracy against domestic security and therefore covered by the regular Penal Code, the Directory ordered the conspirators prosecuted on the charge of recruiting soldiers for the enemy, a crime covered by the code of military justice.

When the Court of Cassation agreed to hear an appeal from the defendants regarding the proper jurisdiction for the case, the Directory caused a scandal by blocking the transfer of documents. This set off several days of tempestuous debate in the Council of Five Hundred, where both the Directory and the Court of Cassation were accused of grossly exceeding their powers. In the end, the Council refused to accept the high court's claim to regulate military justice despite an explicit law to this effect (21 fructidor IV [7 September 1796]) because doing so would have been a disavowal of the government and the start of a constitutional crisis. Nevertheless, the controversy seems to have intimidated the army officers who composed the military court, and on 19 germinal V (8 April 1797), they convicted the four principal conspirators, then essentially commuted their sentences from death to modest terms of imprisonment. They also acquitted all seventeen persons accused as accomplices. The audience greeted these verdicts with peals of applause. Not ones to be thwarted by this humiliating verdict, however, the Directors quickly ordered the main defendants prosecuted before a civilian court on charges of conspiracy to overthrow the regime. Here was conclusive proof that the initial charge of recruiting for the enemy had only been a ploy to get the case into a military court. The Directory may ultimately have outmaneuvered the Court of Cassation, but the press and public opinion judged the government's turn to military justice both cynical and unscrupulous. In the end, the accused did not get another trial. The coup of 18 fructidor V arrived first, and so they were simply deported to Cayenne.[44]

The discovery of the "conspiracy of equals" and the arrest of Babeuf and a dozen coconspirators in May 1796 presented the Directory with its greatest judicial dilemma. The chance to trumpet the danger of "anarchists" could not be missed. This called for a great show trial. Prosecuting a conspiracy with ramifications throughout the country made good propaganda for the government, but it also threatened to overwhelm the standards of due process. Those on the left correctly viewed the trial as the basis for a national witch hunt. The addition of a large number of suspects for political reasons, rather than on the basis of evidence, forced the prosecution to exaggerate its claims and seek to convict on guilt by association alone. The dubious inclusion of the deputy Drouet among the defendants provided the basis for sending all the defendants before a High Court of Justice convened at Vendôme. Babeuf and many of his codefendants refused to accept the authority of the court, and when the trial finally began in February 1797, they called it a "Punch and Judy show." Others skillfully deployed an array of legal tactics that exposed the bias of the court against the defendants.[45]

As with most famous trials, the alleged crimes captured public attention, but the judicial duel sustained it. Massive press coverage of the lengthy trial focused far more on judicial procedure than on political conspiracy. The government made available an unprecedented stenographic record, published as the trial unfolded. This official version competed with a melodramatic account published daily by the Babeuf sympathizer P.-N. Hésine and often excerpted in Jacobin papers such as the *Ami du peuple* and *Journal des hommes libres.* The extraordinary level of publicity given the three-month trial became a spotlight turned on the perils of politicized justice. Unfortunately for the government, this extensive coverage greatly aided the defense. As the trial unfolded, it became increasingly clear that the government's claim that it was providing defendants with the fullest guarantees of due process was at best overstated. First, it came out that handwriting experts had been coached by the prosecution; then a key witness admitted that Director Carnot had talked him into adding names to his original deposition; and finally, two other crucial witnesses strode into the courtroom and recanted their pretrial depositions, claiming that they had been coerced by the government. All of these troubles forced prosecutors to abandon the case against most of the accused. Furthermore, the jury voted that the main charge—conspiracy to overthrow the government—had not been proved. The Directory's credibility would have been completely shot had jurors not convicted seven defendants under the exceptional legislation of 27 germinal IV (16 April 1796) against calling for the Jacobin Constitution of 1793. Two were condemned to death (Babeuf and Darthé) and seven to deportation.

Though it appeared a modest victory at the time, these nine convictions proved the worst possible outcome for the Directory. What had been presented as a vast and terrifying conspiracy to overthrow the regime and return France to the anarchy of year II had been reduced in the course of the trial to a handful of isolated radicals condemned for their publications alone. The trial revelations and final verdicts convinced many republicans that there had been no conspiracy at all and that it had been wholly fabricated by the government (in the Ministries of Police and Justice no less) in order to ostracize and persecute Jacobins. A regime supposedly based on law and liberty had engineered the execution of a few utopian dreamers. Carnot, Cochon de Lapparent, and Merlin de Douai had clearly overplayed their hand. Having alienated moderates with their blanket amnesty in brumaire IV, the Thermidorians tried to make amends by using the "conspiracy of equals" (which was real enough, as Buonarotti revealed thirty years later) to draw a clear distinction between themselves and unrepentant terror-

ists or *sans-culottes* militants. This earned the government undying enmity from the republican left. Babeuf and Darthé became "martyrs for democracy," and the trial at Vendôme a rallying point for democratic opposition to the Directory.[46]

The irony of it all is that much of the adverse reaction created by the trial came from the unusually liberal conditions under which it unfolded. There is no doubt that the government and prosecution had at times been over-eager and high-handed. But this had been exposed by a free press and the government's unwillingness to commit really major travesties of justice. This trial avoided the political tautologies that led to Louis XVI's execution and the muzzling of the defense that sent Danton to the guillotine. The protections afforded the accused by an elaborate jury trial and the unprecedented publicity of the proceedings are precisely what made it a fiasco for the regime. The mistakes spawned by an excess of prosecutorial zeal were easily overlooked by those with a visceral fear of Jacobinism. Unfortunately, even moderate republicans considered it all badly handled and badly timed, giving aid and comfort to resurgent royalism. The disastrous elections of year V proved that the government's fudged liberalism had been the worst of both worlds.

The First Directory had hoped to consolidate the revolutionary settlement by applying the rule of law, but this strategy was often thwarted by partisan judges, especially in the polarized atmosphere of the Midi. However, the Directorial government itself, including the minister of justice who decried such practices, could not resist politicizing the judicial process in manifestly unconstitutional ways. Contemporaries understandably expressed their moral indignation at such practices, but historians are better placed to notice that the attention paid to these travesties was inspired by political rivalry more than a high-minded dedication to principles. Nevertheless, this lively tension between justice and politics served to raise awareness of the rule of law as a source of legitimacy.

Judicial Repression

Did the intrusion of politics into the operations of justice render the criminal courts ineffectual? Historians have routinely condemned the system without much knowledge of how it worked. Correspondence between public prosecutors and the Ministry of Justice provides plenty of evidence to argue that the regular system of criminal justice failed to uphold the rule

of law under the early Directory.[47] But these are invariably the voices of officials dedicated to stamping the authority of the law on French society. One could find a similar array of condemnations for almost any other period of French history. Even today, despite a vastly larger, more efficient, and more professional system of criminal justice, it would be easy to gather an impressive range of examples illustrating the failure of France's current system of criminal justice to meet its fundamental goals. The problem then becomes finding appropriate standards by which to judge the successes and failures of any particular system. Naturally, these standards are historically contingent.

How well did the criminal courts operate given the circumstances of the First Republic? Were the new procedures too beautiful to last, as one legal historian recently remarked?[48] Disparaging comments by contemporaries, as well as the republic's later turn toward military justice, give the impression that the criminal justice system of 1795, with all of its protections for the accused, was not tough enough to cope with the proliferation of crime and violence in the late 1790s. And yet a comparison with the criminal courts of the *ancien régime* clearly shows that the criminal justice system at work under the Directory had markedly increased rates of repression, whether measured in terms of judicial activity or amount of punishment.

It is not possible to make any sort of direct comparison between the level of judicial repression before the Revolution and that experienced during the late First Republic. The *ancien régime*'s variety of courts and thicket of overlapping jurisdictions pose an insurmountable problem for extensive statistical comparisons. That seigneurial courts could handle felonies as well as misdemeanors, that provostial and presidial courts issued summary judgments, that courts of first instance had their judgments appealed to *parlements,* and that salt and tobacco smuggling was handled by separate customs courts all combine to render any effort at uniform calculations foolhardy. Not only does this rule out any usable study of comparative crime rates, it even makes repression rates incalculable. Nonetheless, a few basic comparisons reveal that the criminal courts of the First Republic were impressively busy as well as shockingly repressive.

Despite sporadic efforts to gather more systematic data, the Ministry of Justice never succeeded in getting departmental courts to provide annual statistics, and a national data set did not emerge until 1825. In order to get a reliable basis for general statements, and in order to undertake some regional comparisons based on uniform methods, I have gathered data on four criminal courts, two in the north (Haute-Saône and Sarthe) and two in the south (Haute-Garonne and Hérault).[49] The combined data from these

four courts reveal that from 1795 to 1802, departmental criminal courts averaged 74 cases a year, not including misdemeanor cases heard on appeal. The actual totals varied widely from year to year and department to department. The Sarthe averaged only 52 trials per annum, whereas the Hérault, despite having a much smaller population, averaged 95 trials per annum.[50] In comparison, the *sénéchaussée* courts (the backbone of the criminal justice system) in the Guyenne in the last two decades of the *ancien régime* handled only between 20 and 25 cases a year.[51] Thus, despite having to rely on twelve jurors (plus three replacements) and conducting trials entirely on the basis of oral proceedings, the new criminal courts processed two to four times as many cases in a year than the old ones. How much this was due to the consolidation of all trials of felony offenses into a single court, how much to an increase in crime, and how much to increased policing is impossible to say. No doubt all three factors played a part. Whatever the causes, there is no denying that the criminal courts of the Directory handled a heavy caseload.

The sheer number of criminal trials is also a measure of judicial repression. Putting people on trial, even if they were acquitted, involved arrests, time in jail, and tarnished reputations; it could also mean police brutality, lawyers' fees, and lost income. All of these were coercive deterrents and constituted repression. From this perspective, it is worth making regional comparisons about rates of repression generated by regular criminal justice during the late republic. Here we see marked discrepancies between our northern and southern departments. Most important, southern courts practiced a considerably higher rate of judicial repression. This emerges from an assessment of trial frequency, number of defendants, and conviction rates. The southern courts of the Hérault and Haute-Garonne averaged 41 percent more trials per year than the northern courts of the Sarthe and Haute-Saône (86 versus 61). The average number of defendants per case was also higher in the south than in the north (1.53 versus 1.34).

Overall repression rates (defendants per capita per annum) are somewhat less easy to assess, however, and depend a great deal on how one accounts for persons judged in absentia. If the tabulations include all defendants whether or not they were present at trial, we find that the southern courts had an average repression rate 50 percent higher than the northern courts (see appendix A.1). The extent of actual repression involved in trying a defendant still at large is clearly less than trying someone who has already spent time in custody, and yet prosecuting absent defenders did constitute a form of repression. Their property was sequestered and the income it generated passed to the state until such time as they presented themselves

for trial. This makes data based on including absent defendants at least partially valid. However, it also tends to skew overall rates of repression. The disparity between southern and northern departments drops sharply when those absent at trial are excluded. Nonetheless, even when making calculations solely on the basis of defendants actually at trial, southern courts still produced 22 percent more repression per capita.[52]

This draws attention to one particularly distinctive aspect of southern judicial culture: the propensity to prosecute defendants who were not in custody, and hence not in court to defend themselves. One out of every three verdicts rendered in southern courts pertained to defendants who had eluded the clutches of the police; in northern courts this figure was only one out of nine.[53] One could speculate at length about the sources of this pronounced difference. Were northern police more adept at catching criminals? (Certainly the gendarmerie was the subject of fewer complaints.) Were southern defendants more afraid of the judicial apparatus? If so, was this due to real or perceived bias within it? Perhaps southerners experienced greater shame and dishonor simply by submitting to the machinery of justice, whether innocent or guilty. Or perhaps southern courts were considered especially harsh. After all, they tended to have somewhat higher felony conviction rates and lower acquittal rates. The felony conviction rate for defendants present at trial was 50 percent in the south versus 43 percent in the north. The acquittal rates were 40 percent versus 45 percent. The differences were made up by misdemeanor verdicts, which averaged 10 percent in the south and 12 percent in the north. (Chapter 8 will assess conviction rates more closely.) But southern criminals could hardly have calculated their chances on a statistical basis. A more credible explanation is that prosecutors were more inclined to seek convictions in absentia as a coercive alternative to lengthy police manhunts. A contumacious conviction often helped to force fleeing suspects to appear in court in an effort to clear their names. Where trying absent defendants was more common, however, the willingness to convict them was less so.[54] Apparently, therefore, southern juries were less inclined to interpret a defendant's flight as prima facie evidence of guilt. Whatever the reason for three times as many people being tried in absentia in the south as in the north—and undoubtedly the cultural legacy of Roman law played a part—this crucial difference should be kept in mind when comparing regional rates of repression.

Whereas the number of trials and overall conviction rates give a sense of *judicial repression,* the frequency of harsh sentences is a measure of *penal repression.* Here, too, the Directory's regular criminal courts had surprising bite. Although the multiplicity of courts and the spotty nature of existing

scholarship make it impossible to obtain accurate statistics for penal repression in the *ancien régime,* a reasonable calculation is possible. Extrapolations based on figures from four *parlements* (Toulouse, Rennes, Dijon, and Paris), the cumulative totals for all of the provostial and presidial courts of the kingdom, and the records of those sentenced to the *bagne,* which have the benefit of including those sentenced by the *cours des aides* for salt and tobacco smuggling, enable us to make the following calculations.[55] During the first half of the 1780s, a period of relatively high judicial activity, courts of last resort sentenced to death approximately 190 to 225 people a year throughout France. Another 900 to 1,000 men and women were condemned to hard labor either in the *bagne* or a *maison de force.* About one-fifth of these people were given life sentences. In comparison, under the Directory, regular criminal courts imposed an average of over 550 death sentences a year, about 475 sentences of twenty or more years of hard labor, and 2,400 sentences of four to eighteen years of hard labor.[56] The evidence is clear: the regular criminal courts of the Directory produced roughly two and one-half times the level of penal repression experienced during the peak years of the *ancien régime.*[57]

Such figures belie any hasty judgments about the inadequacy of criminal justice at the time. And yet, even this remarkable level of repression was too little and too late. Though the criminal justice system showed plenty of repressive capacity, it did not fulfill what Thermidorians saw as its primary function—defending the republican order. The judicial regime suffered from the same basic defect as the political regime: citizens were supposed to elect judges and lawmakers alike, but Thermidorians did not trust either to preserve the republic. The elected nature of the judiciary gave it great independence from the executive. The constitution entrusted civil liberty to the integrity of magistrates, but the government soon rued this idealistic arrangement. The government commissioner attached to each criminal court served to monitor the performance of prosecutors and judges but gave the government little coercive authority over them. These were not favorable circumstances for the regime. Judicial independence, the authority that came with legal expertise, and the influence of factional politics all combined to make the magistracy a serious obstacle to the Directory's plan to end the Revolution through a careful application of the rule of law. Was the revolutionaries' beloved jury also to blame? Was it a Trojan horse in which a community-based concept of order snuck inside the walls of criminal justice where they overcame defenders of the republican concept of order? Only a close look at the new trial by jury will tell.

4 Trial by Jury

La Sûreté publique
Liberté, Egalité, Justice
L'indulgence pour le crime est une conspiration contre la vertu.
—Letterhead of Fossé, public prosecutor of the Tarn

DESPITE A RENEWED focus on the creation of democratic politics during the French Revolution,[1] scholars have paid little attention to the democratizing effects of the new jury-based system of criminal justice. This is especially odd given the general tendency to emphasize positive aspects of what was by any standard of measurement an extraordinarily messy and often deeply flawed set of experiments in political democracy. If one wants to find citizens playing an effective and often determinant role in the construction of a newly democratic polity, however, one need only investigate the performance of juries. Historians' neglect notwithstanding, the new judicial system played a vital role in drawing citizens into the new apparatus of rule. Revolutionary reformers insisted on making jury duty a key attribute of active citizenship. In so doing, they ensured that jurors, at least as much as justices of the peace and judges, controlled the boundary between community concepts of order and those of the republican state. Citizens decided the fate of the Revolution at least as much when voting for judges and serving as jurors as they did when electing deputies and administrators.

Juries

Revolutionary reforms in criminal justice were a central component of the democratic project. After the great systemic reforms of criminal justice in September 1791, justices of the peace, correctional court judges, criminal

court presidents, and public prosecutors were all elected. The infusion of democracy into the judicial system went beyond elected officials to include English-style juries: an eight-member grand jury for indictments and a twelve-member trial jury for final verdicts. The Constitution of Year III required all jurors to meet the qualifications of an elector, which were considerably higher than those of an ordinary voter. To be eligible to be chosen as electors (that is, to be elected to departmental electoral colleges) men needed to own or lease property that generated income worth one hundred to two hundred days' wages a year, depending on the size of the community in which they lived. This meant that somewhat fewer than a million men were eligible for jury duty.[2] Jurors certainly had greater wealth and influence than most of the defendants who appeared before them, but they were in no way an isolated plutocracy. In fact, jurors came from a wider range of social and economic circumstances than the limited numbers might suggest. Regional variations in the distribution of wealth meant that a considerable number of prosperous craftsmen and better-off peasants qualified, including many leaseholders. Jurors came from the literate "respectable folk," whether urban or rural, who constituted a social penumbra around the notables of the eighteenth century.

Towns were disproportionately represented on juries, but the vast majority of the populace still lived in the countryside, and it would be a mistake to assume that differences in wealth outweighed village notions of justice. The class bias in the criminal justice system stemmed at least as much from the Penal Code of 1791, with its extremely harsh penalties for theft, counterfeiting, and infanticide. Occasionally magistrates complained that the law did not adequately punish theft of grain or threats of arson, but in general jurors tended to temper the full force of the criminal code. Once they had been called for jury duty, however, jurors became implicated in a system tilted in favor of those with property, and even if they were inclined to ameliorate it, they could not always do so. This became both the education and burden of citizenship.

Like the other people in their communities, most men who qualified to serve as jurors preferred to have nothing to do with the apparatus of criminal justice. Taxpayers who wanted to be eligible for election either as electors or as local officials, however, were obliged to register for jury duty at the district correctional court. Four times a year the president and vice president of each department used these eligibility lists to compile lists of two hundred potential jurors for the coming three months. Although broadly representative of electors, these lists could be skewed. Not only

was eligibility frequently contested, but choosing specific individuals rather than drawing names at random allowed department administrators to manipulate the composition of jury lists with an eye to political advantage. This became most evident following the Fructidor coup d'état. After the political pendulum swung sharply to the left, many departments discarded the jury lists prepared for the first three months of year VI by department administrators who had just been purged. Their appointed or co-opted successors then prepared entirely new lists. As the minister of justice pointed out, public prosecutors should no longer be concerned about administrators habitually choosing jurors opposed to the social order and the republican government, "now that the Directory has renewed all the administrators suspect of lacking civic spirit and hating the republic."[3] The law of 19 fructidor V (5 September 1797) also responded to widespread concern among magistrates and legislators that it took only three corrupt or unpatriotic jurors on any jury to thwart a conviction; henceforth, any verdicts reached in less than twenty-four hours required unanimity. Though designed to coerce consensus, this apparently made little difference to actual verdicts.[4]

The Constitution of Year III balanced a statement of citizens' rights with a statement of their duties. This was more than a constitutional preamble. It embodied the notion that, as Cambacérès put it, "La République précède le citoyen, et le citoyen précède l'homme." The innovation over the declarations of 1789 and 1793 was to make the fulfillment of duties the path to the enjoyment of rights. Merlin de Douai, author of the Declaration of the Rights and Duties of Man and Citizen of 1795, intended it to "extract the people from the state of disorder in which they find themselves."[5] This logic fit both the immediate concern to end the French Revolution and the metalanguage of a republican civilizing mission. This twofold significance was especially appropriate in the realm of jury duty. If a man wished to participate fully in the rights of citizenship, he was obliged to serve as a juror. By serving as a juror, he would become complicit in defending the new social order, as expressed by the Penal Code, and—theoretically at least—would become instrumental in making the new political order function effectively.

Once department administrators had put an *éligible* on a quarterly jury list, he could be chosen at random to provide jury duty for a monthly session of the criminal court. Just like cantonal administrators, jurors had to serve without compensation for their time or expenses. Anyone who refused to perform jury duty was to be fined 30 francs and deprived of his voting rights for two years. This did not prevent a fairly high rate of derelic-

tion since absentees could usually escape punishment if they produced a certificate of ill health. In an age when men suffered some nagging physical ailment most of the time, ranging from assorted bad humors and chronic respiratory ailments to deadly fevers and excruciating dental decay, reluctant jurors had little difficulty persuading a medical officer to certify their physical indisposition. All too obvious good health could always be overcome by a cash gratuity. Absentee jurors probably resorted to such false certificates of illness less to avoid a fine or loss of voting privileges than to avoid the time commitment and expense of doing their duty. Absenteeism was highest among the better-off bourgeois who lived in the same town as the criminal court. They generally considered their time especially precious, had become accustomed to having less influence on local affairs than their rural counterparts, and were more likely to have the ready money needed to acquire a certified medical excuse. In contrast, country dwellers were more likely to find that jury duty offered opportunities. It permitted them to experience the workings of the larger society, and a stint in the *chef-lieu* could be combined with the sale of wine, the purchase of new boots, or an inquiry into the latest laws on divorce.

Jury Verdicts

The revolutionaries took exceptional pride in having added juries to their system of criminal justice. Juries were to become the "palladium of liberty" in the new democracy. As a bulwark against the supposed arbitrariness of judges under the *ancien régime*, revolutionaries insisted that jurors deliberate in complete isolation from presiding judges. This permitted jurors to discuss reasons for their verdict without interference or manipulation.[6] It also left them largely devoid of legal guidance. Thus, jurors assumed a large measure of the discretionary powers formerly possessed by judges. In order to prevent judges from substantially altering jury verdicts through punishment alternatives—an essential component of the English judge's ascendancy over juries by the late eighteenth century—revolutionary reformers imposed mandatory sentencing. This still left trial juries with two means to ameliorate the harsh punishments specified by the Penal Code of 1791. The simplest means lay in a jury's ability to convict the culprit of a misdemeanor (*délit correctionnel*) rather than of the felony charge (*délit criminel*) contained in the indictment. In this way, attempted murder could be reduced to physical abuse, thus sparing the life of a defendant and substituting a few

months in prison. The jury gained additional control over sentencing by being required to vote on attenuating or aggravating circumstances. Had the thief been a regular guest in the home where she stole the silver cross? Did the neighbors' religious epithets make a shoemaker's violent outburst a misdemeanor rather than a felony? Such a system made jurors a fundamental feature of the new democratic order. The people, that vaunted repository of sovereignty, made laws through their deputies and dispensed criminal justice through their juries.

Despite the importance of the judiciary in the revolutionary project of democracy, the behavior of juries has not been included in recent studies of revolutionary political culture. What little has been said is generally unfavorable.[7] Isser Woloch's engaging and insightful account draws attention to the many charges of indulgence and laxity leveled at juries by judges, public prosecutors, and government officials. But these men were all employed in the business of repression, and their assessments naturally reflected this. Jurors did not have to explain their thinking, leaving only verdicts to speak for them. This calls for statistical analysis. Woloch seems to side with critics of revolutionary juries and cites the few studies that have compiled tabulations. These indicate that acquittal rates hovered around 45 percent. My own research, as well as the impressive recent work of Robert Allen, confirms this. Combining data obtained for four departments (Hérault, Haute-Garonne, Sarthe, Haute-Saône) reveals that an average of 45 percent of verdicts were acquittals, 45 percent were felony convictions, and 10 percent were misdemeanor convictions on felony charges.[8] A closer look, however, reveals that this is not straightforward evidence of a general failure of juries to uphold the rule of law.

Judging the work of juries during the Directory requires a comparative treatment. This can be done several ways. First, comparisons should be made over time. Doing so immediately reveals that the rate of acquittal was not particularly high during the early Directory, when the constitutional republic was still a novelty. In fact, during the First Directory the acquittal rate was somewhat lower (43 percent) than during the early Consulate (46 percent) (see appendix A.1). A similar trend is apparent for the rate of felony convictions, which declined from the First Directory (50 percent) to the early Consulate (43 percent). This was only partially compensated by a modest increase in the rate of misdemeanor convictions on felony charges (7 percent to 11 percent). These trends indicate that juries were generally tougher during the early Directory than they were during the early Consulate. Such a finding contradicts prevailing assumptions about the period.

Even more contradictory is that the lowest rate of acquittal (38 percent) came during the last two years of the Directory. This would suggest that jurors were more reliable in the years before the great judicial reforms of year VIII than after. Such a novel conclusion deserves closer attention (see chapters 8 and 11).

A second comparison confirms that juries generally performed effectively during the constitutional republic. The pattern of jury verdicts in the late republic did not differ dramatically from that experienced a quarter century later (see appendix A.2). In the ten-year period 1826–35, felony conviction rates stood at 45 percent, acquittals at 33 percent, and misdemeanor convictions at 22 percent. The only difference in results, therefore, is the shift of one-quarter of the acquittals to misdemeanor penalties handed out to those initially arraigned on felony charges. Although this may appear to be evidence of improved jury reliability as an instrument of state repression, several changed circumstances should be noted. Both policing and prosecution had been significantly strengthened in the first quarter of the nineteenth century, thus enabling the government to present stronger cases against those it accused. The stronger the case against a defendant, the harder it was for juries to reach verdicts based mainly on traditional mores. Also, restrictions on who could serve as a juror increased a generation later, making them both wealthier and better educated and, therefore, presumably less sympathetic to their social inferiors in the dock. Furthermore, increased flexibility in punishment reduced the likelihood of acquittal due simply to the severity of the Penal Code. Given these considerations, juries during the Directory do not appear to have been especially lenient.

A third basis for comparison is the work of the "special criminal tribunals" set up in 1801 in twenty-seven departments of the west and Midi. Special tribunals tried those crimes considered most threatening to the social order: counterfeiting, vagabondage, prison breaking, arson, and especially armed robbery committed in the countryside. Verdicts were handed down without appeal by a panel of three army officers and five civilian judges. Thus, special tribunals lacked juries and in fact were paradoxically justified as a means of preserving the institution of the jury for cases involving less-threatening crimes (see chapter 12). During their first eighteen months in operation, the special tribunals of the Drôme, Hérault, Haute-Garonne, and Sarthe had a felony conviction rate of 48 percent, a misdemeanor conviction rate of 7 percent, and an acquittal rate of 45 percent. Therefore, the actual results of special tribunals—Bonaparte's version of the monarchy's

provostial courts—differed surprisingly little from jury trials under the Directory.

A fourth basis for comparison, regular military courts charged with trying civilians, again confirms that acquittal rates for juries during the late republic were not exceptional. Military courts tried civilians either under the law of 30 prairial III (18 June 1795) pertaining to rebels or the law of 29 nivôse VI (18 January 1798) covering brigands. During two and one-half years (April 1798–September 1800), the six military courts of the Eighth, Tenth, and Twenty-second Military Districts (headquarters at Marseille, Toulouse, and Tours, respectively)—that is, courts operating either in the midst of southern brigandage, western *chouannerie,* or the aftermath of a large peasant insurrection—judged a total of 327 civilians. Only 40 percent were convicted; another 21 percent received misdemeanor penalties, and 38 percent were acquitted. Although the type of crimes involved meant numerous executions, the actual distribution of verdicts is less severe than in the case of jury trials.[9]

Finally, the comparison of rates of penal repression in the early 1780s and the late 1790s undertaken in the previous chapter provides further confirmation that the Directory's regular criminal courts did not lack repressive capacity despite relying on juries. The fact that jury verdicts under the Directory produced roughly two and one-half times the level of penal repression experienced during peak years of the late *ancien régime* may not have been enough to restore order quickly, but it belies any notion of simply failing to cope with crime.

Jury Nullification

All of this puts criticisms of the trial jury into some perspective; it does not, however, obviate the need to address them. In fact, juries did frequently acquit defendants and often to the great frustration of public prosecutors, trial judges, and the government in Paris. The problem is really whether juries acquitted against the evidence. In other words, it is worth exploring the extent to which juries during the First Republic practiced what modern jurists call "jury nullification." A survey of jury verdicts that pays particular attention to jury nullification will provide a way to assess the influence of traditional notions of public order on judicial repression at a time when republican institutions remained highly malleable.

Understanding the decisions and motives of jurors is not easy in any sys-

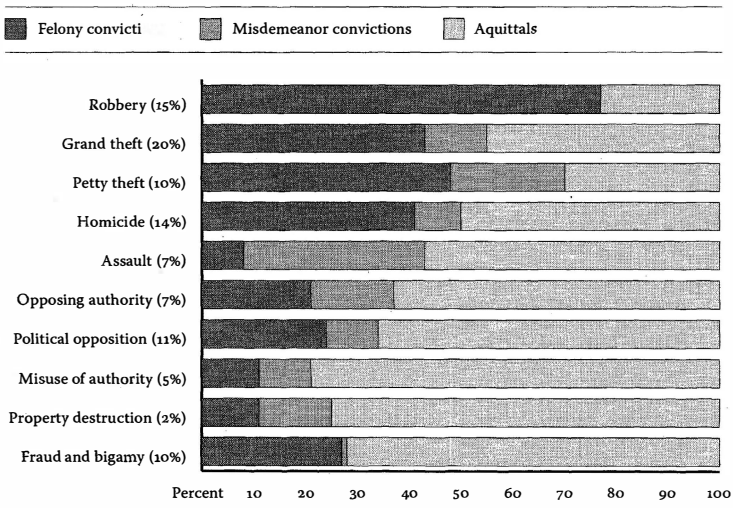
tem. It is particularly difficult for the revolutionary period due to the nature of the remaining evidence. Prior to the Revolution, professional magistrates relied heavily on written depositions and deliberated in camera. Enlightenment publicists roundly condemned this emphasis on written evidence and private judgment as the essential ingredients for judicial arbitrariness. In response, revolutionary reformers went to the opposite extreme. After 1791, trials relied exclusively on oral testimony presented in public. Only by seeing and hearing witnesses and defendants in person, looking them in the eye, so to speak, and observing the cut and thrust of cross-examination could jurors arrive at the personal belief (*conviction intime*) that revolutionary reformers considered essential to a just verdict. In order to prevent any substitution of a written record for this oral drama, the revolutionaries prohibited keeping a modern form of trial transcript. Therefore, extant records deliberately and systematically contain nothing about the verbal performances that lay at the heart of every criminal trial. After all, a theatrical performance cannot be judged by the script alone. Besides, the revolutionaries were determined to prevent trial transcripts from providing the basis to impugn a jury's judgment. They wanted *conviction intime* to be just that, a personal belief based solely on being present at court throughout the trial. Here was the very epistemology of democracy applied to justice.[10]

This has not left historians entirely bereft of evidence. Prior to any courtroom drama, the criminal justice system generated a variety of documents about the events in question. These documents include the original police report or victim's complaint, witness depositions, interrogations of the accused, and the final indictment. Each criminal court also kept a set of registers to record basic information about the outcome of each trial. Although there was no nationally standardized way of recording most of this information, the law required every departmental criminal court to write out in full the questions posed to the jury and their respective answers. These questions needed to address four issues in logical sequence: Did the alleged crime actually take place? If so, did the accused commit the crime? If so, did he or she commit it willfully and with malicious or criminal intent? And finally, did the crime include aggravating or attenuating circumstances? Although jurors were undoubtedly inclined to provide shaded answers to some of these questions, they were required to respond separately to each question by depositing either a black marble for "no" or a white marble for "yes" in a balloting container. The recorded answers to these questions provides an excellent, though still imperfect, basis for a study of acquittal rates and jury nullification under the revolutionary system of criminal justice. In

fact, despite the dearth of scholarship on the French jury in this period, in contrast to extensive work on English juries, the questions posed to jurors after 1795 make it possible to draw more definitive conclusions about jury nullification in France at this time than is possible in other times and places. Historians of English jury trials in the eighteenth century speculate intelligently about jury nullification but are unable to assess it with nearly the same precision.[11]

Jury nullification could occur in any sort of trial, but a systematic study of court registers reveals that it clustered around particular sorts of crimes. Figure 5 shows criminal court verdicts for four departments over seven years with crimes divided into ten categories.[12] The findings in this chart conform to expectations in a number of respects. It is not surprising that robbery cases generated the highest rate of conviction: more than three-quarters of defendants. A good share of the acquittals went to individuals included in the trial of others on charges of having received stolen goods from the perpetrators. Being able to dispose of "hot" property both safely and profitably obviously formed a vital part of professionalized robbery. Many robbers could be identified only by first finding some of their ill-gotten gain in the possession of others. Even if a person was caught with stolen goods,

Fig. 5 Criminal court verdicts by categories of crime
Defendants present



however, it was hard to prove that he had known their provenance when he acquired them. This frequently led to acquittal on the basis of criminal intent. The remaining acquittals on charges of robbery stemmed from lack of convincing evidence tying the accused to the crime. The threshold of what constituted convincing evidence in robbery cases was especially easy to attain. When someone was charged with actual robbery, and not just possessing stolen goods from it, the questions of motive or mitigating circumstances rarely arose to temper conviction. Hence trials for robbery produced a higher conviction rate than any other type of crime. The fact that robbery was a rational, calculated, and imitable crime made it both easy to understand and especially dangerous. Furthermore, acts of robbery sent a frisson of fear up the backs of well-heeled jurors and eliminated their qualms about condemning robbers to many years of disfiguring labor in the *bagne*. Even in the Haute-Saône, where aggravated theft rarely appeared in the court docket, jurors had no difficulty condemning a man and two women to sixteen years of hard labor regardless of the absence of violence in their spate of night break-ins at churches around Porentruy and Lure.[13] Jurors in the Hérault, where robbery was more common, proved at least as merciless. After a wave of arrests and four months of further investigation, sixteen people went on trial in connection with a series of holdups near the Valène woods north of Montpellier. Although the jury acquitted three men and five women of knowingly receiving stolen goods, it also found nine men guilty, all of whom had taken the well-trodden path of hardship from the hills of the Cévennes down to Montpellier. Their difficult life experiences did not soften the hearts of jurors, who condemned five of these men to death and four to twenty-four years of hard labor.[14] This contrasting mix of failing to prove criminal intent against fences and utter certainty leading to the ultimate penalty against robbers represents the most repressive attitude magistrates could expect from jurors. Thus, the conviction rate for robbery serves as something of a maximum against which conviction rates for other crimes can be measured. In other words, it should be expected that no matter the category of crime, at least one-quarter of defendants would be acquitted, usually on the basis of insufficient evidence.

Verdicts in cases of grand theft further illustrate the potential severity of juries and the range of reliable acquittals. Given jurors' powerful impulse to protect personal property, an attitude shared by their poorer countrymen, there is no reason to cast doubt on most acquittals for grand theft. Relying on a juror's personal belief (*conviction intime*) often made it easier to convict a culprit than would have been the case using the *ancien régime*'s sys-

tem of unequally weighted legal proofs. Under these conditions, prejudices against the most impoverished members of society, especially vagabonds and beggars, probably inspired more mistaken convictions than acquittals. Most acquittals on charges of theft were related to receiving stolen goods or taking property for reasons other than criminal appropriation, such as just compensation for work performed, lack of a clear owner, or simple mischief. The extreme punishments inflicted for theft under the Penal Code of 1791 might have led to more jury nullifications based on simple humanity. After all, stealing a linen handkerchief, a sack of potatoes, or an iron bar could bring eight or more years of hard labor. The possibility of reducing the crime to a misdemeanor helped to ameliorate that problem. Reducing felonies to misdemeanors quickly became an oft-preferred option in cases of petty theft: almost one-quarter of felony indictments led to misdemeanor convictions. The circumstances of the theft did more to inspire misdemeanor convictions than the value of the stolen goods. People worried about planned thievery, especially if the theft involved more than one person. Pilfering objects, whether from an employer or a neighbor, and especially from taverns, public markets, gardens, or fields, produced the largest number of misdemeanor penalties handed out by criminal courts. The circumstances of the culprit also helped to determine the jury's severity. Jean Valjean may have been punished to the fullest extent of the law, but occasionally juries took pity on destitute thieves. When Pierre Lafon, a wool-carder from Carcassonne, stole a national guardsmen's vest at Pézenas and sold it for 20 francs, the jury did not convict him of stealing public property because that would have brought a mandatory sentence of four years in irons. Instead, the jury noted that "misery and hunger" had compelled him to take it, and his misdemeanor conviction led to a brief fifteen days in prison.[15] Here criminal intent had been made flexible enough to cover criminal desperation.

Theft, especially robbery, was not the sort of crime that raised many questions of criminal intention, however. If we want to understand the importance of jury nullification, therefore, it is better to turn to verdicts in cases of homicide as a basis for comparison. Murder is abhorred as much as robbery, but unlike holdups and break-ins, the motive for killing someone is not always criminal. Death could be accidental or the result of self-defense. In this respect, homicide is like many other categories of crime—motives mattered and had to be determined at trial. As much as society condemned killing, half of those tried for it were acquitted, and another 8 percent were convicted only of imprudence. What led to these acquittals or misdemeanor

convictions? As with a quarter of all robbery indictments, jurors sitting on murder cases often decided that there was insufficient evidence to prove that the accused had committed the crime in question. However, in a large number of cases, jurors also found that the killer had acted either in self-defense or under attenuating circumstances. Thus homicide offers a more suitable category than robbery for comparing the willingness of juries to acquit perpetrators or reduce their sentences on the basis of motive.

As figure 5 shows, the category of homicide closely conforms to the overall profile of jury verdicts. Only the three categories of theft brought higher conviction rates than cases of homicide. The large number of cases of theft and the generally high conviction rates associated with them, however, are offset by the smaller number of cases in other categories of crime and the much lower conviction rates they produced. Looking at verdicts in other categories of crime besides theft and homicide draws immediate attention to the high acquittal rates for any type of counter-revolutionary offense or resistance to public authority. In both cases, almost three-quarters of defendants went free. The reasons for this high acquittal rate emerge clearly from jury responses to the *question intentionnelle*.[16]

If we use our data to isolate acquittals on the basis of the *question intentionnelle* from acquittals on the basis of a lack of convincing evidence, it becomes obvious that the *question intentionnelle* was the basis for the bulk of acquittals that amounted to jury nullifications. This was so because using the first two questions to the jury—Is the crime proved? If so, did the defendant do it?—as the basis for an acquittal against the evidence would have made jury nullification all the more blatant. Jurors did occasionally assert that a crime had not been committed despite overwhelming evidence to the contrary. On occasion, one jury might find the evidence of a crime utterly persuasive, whereas a later jury charged with trying others accused of participating in the same crime would conclude, for whatever reason, that they lacked adequate proof of the crime itself and use this as the basis for an acquittal.[17] However, both the prosecution's preparation of a criminal case and the need to obtain indictments from a grand jury strongly militated against this outcome. As a result, only a modest share of acquittals were the result of a trial jury concluding that the alleged crime had not been sufficiently proved.[18]

These same reasons also tended to reduce the number of acquittals based on insufficient evidence against the accused. Nonetheless, this remained an area of potential jury nullification. Should a jury have concluded that a defendant had indeed perpetrated the crime, using the question of criminal

intent to prevent conviction might save him from legal punishment and yet still stigmatize him for the criminal act. This judicial stigma began with the initial charges and arrest warrant, gained color when a grand jury found grounds for indictment, and became most visible after a grand jury confirmed that the accused had committed the crime. Furthermore, an acquittal could only partially purge the stigma created by arrest and indictment. Even if an acquittal on the basis of who did it, rather than whether it was done with criminal intent, were manifestly against the evidence—that is, even if it were a matter of jury nullification—such an acquittal could shape the defendant's reintegration into his community. Family members, friends, neighbors, and especially rivals and enemies might well respond with more animosity to a defendant returning to his village if a jury had publicly found him responsible for a crime, even if that same jury had also used the *question intentionnelle* to acquit him. Defendants and their supporters who sought more than mere jury nullification on the basis of criminal intent sometimes intimidated jurors into acquitting them of perpetrating the crime. For example, a violent feud between the Rouch and Teisserenc families over access to a water supply in Lodève led to a trial of the Rouch sons on charges of attempting to murder Barthélemy Teisserenc on the road from Montpellier. The jurors' fear of endorsing reprisals by Teisserenc's kin led to an odd form of acquittal. The jury decided that Jean Rouch had tried to shoot Teisserenc but did not deem it attempted murder, and, since he had missed and therefore the plaintiff had sustained no injuries, the perpetrator could not be convicted of any other crime. Thus, if there was no crime, his brother Pierre Rouch could be acquitted on the basis of a crime not being proved.[19] Had the jury acquitted on the basis of criminal intent, they would have confirmed the crime itself and thereby added legitimacy to the Teisserenc family's desire for revenge.

In other words, exceptional circumstances could produce clear jury nullification on the basis of the first two questions posed to jurors rather than confining nullification to the *question intentionnelle.* And yet, it was easier for a jury bent on acquittal simply to accept the evidence for an alleged crime, as well as the evidence of the accused's role in the crime, and then to nullify the charges through a negative response to the *question intentionnelle.* This reduced friction with magistrates. It also provided the weakest basis for criticism of the jurors' decision. With this option available, juries had little incentive to acquit against the evidence using one of the first two questions. Men who served as jurors found themselves in a liminal position: culturally shaped by village mores but called upon to support the prosecu-

tion's sense of social order. By accepting the facts of guilt, jurors could avoid directly affronting the authority of judicial officials, but by using the *question intentionnelle* to acquit, they could avoid offending widespread notions of more appropriate ways to control behavior.

Having established that jury nullification had a far greater likelihood of occurring on the question of criminal intent than on other questions does not mean that all acquittals on this basis represent jury perversity. Many potential crimes really did result from involuntary or unwitting behavior. That is why the legislators included the question of criminal intent in the first place. How then can we distinguish between an acquittal based on the evidence and one that ran contrary to it? It is best to start with a number of assumptions.

First, we can safely assume the validity of acquittals in cases of homicide or other violent crimes when the justification was self-defense, lack of mature discernment, or insanity. All of these justifications for acquittal would have been gratuitous falsehoods if they were not genuine, even though each type of defense offered its own peculiarities. Juries tended to rather strict interpretations of self-defense. Serious injuries inflicted during a brawl, for instance, even if the accused had not been the aggressor, usually led to misdemeanor convictions, not acquittals. Perhaps the greatest leniency of interpretation in cases of self-defense occurred in a case involving a quarrel between two gendarmes over how to handle a draft dodger. This led to an impromptu duel and the subsequent acquittal of Joseph Bolle, the victor and sole survivor, on the less than obvious but fully credible grounds of self-defense.[20] Thus, homicide committed in self-defense, whether with rock or club, knife or sword, pistol or musket, led to a steady but modest number of acquittals.

Juries also had to use their discretion in acquittals attributed to a lack of mature discernment, there being no fixed age at which it became possible to act with malice aforethought. The Penal Code specified that if a defendant were under sixteen years of age, juries would have to answer an additional question: "Did the perpetrator commit the crime with or without discernment?" Although a defendant's age prompted the question, his youthfulness alone did not answer it. For example, a jury in the Sarthe deemed a youth aged fifteen to have acted without discernment when he joined a small band of chouans who disarmed the commune of Courceboeuf and gave him a share of the loot they stole from one of the houses. Apparently the jury held the adults in the band responsible for his presence. In contrast, a jury in the Hérault convicted a homeless and obviously prepubescent street urchin—he

was aged thirteen and stood only 1.3 meters (3 feet, 7 inches) tall—of robbing a woman of her gold cross and chain at Montpellier. He was then sentenced to twenty-two years in a workhouse. All the same, the jury acquitted his junior partner in crime, an eleven-year-old, as below the age of discernment.[21] Clearly jury decisions on discernment lacked the nuances of Lawrence Kohlberg's theory of moral development. In fact, they gave considerably more weight to nonpsychological factors such as social independence.

A lack of discernment could also apply to individuals whose mental faculties never met the low grade of village standards. Jurors decided that only an almost lethal dose of feeblemindedness could explain why Claire Vincent repeatedly set her father's house on fire by casually bringing flaming materials into it.[22] Detecting the difference between simple stupidity and genuine imbecility surely presented its problems. Very few people had Joseph Naudet's tragic advantage of not only being moronic but also being deaf and mute, thereby thwarting efforts to determine his level of discernment and earning him an acquittal for using his shoemaker's knife to perforate a local farmer.[23] Jurors also needed to be careful when acquitting people on the grounds of insanity. In an age happily devoid of psychologists, one could expect jurors to be highly skeptical of any claims made by an obviously lucid defendant that the crime had been committed during a temporary period of dementia. Unfortunately, the sheer horror caused by the murder of her five-year-old nephew saved Anne-Claire Martin from the guillotine. Only a spell of madness ("un esprit aliéné à l'époque") made sense of her generously serving him lunch at her house and then hacking him to death with a pruning knife. The trial revealed no cause for hostility toward him or his parents but did reveal that she had attempted to commit suicide several times. If she had briefly hoped that the "sword of justice" would end her days, she received no help from the jury.[24]

Concluding that death or injury had been caused involuntarily, either through an unfortunate accident or some irresponsible behavior, also appears perfectly reliable considering the frequency of misdemeanor convictions for brawls, knife fights, and provoked assaults. Each of these cases appeared before criminal courts either because a jury director wanted to seek the maximum penalty against the accused or because he did not want to decide the issue of guilt or innocence in the correctional court over which he presided. These institutional factors dramatically increased the number of assault cases tried in criminal courts as attempted murder. This common practice placed the onus on juries to weigh the explanations given by the accused as well as those of his accusers before settling on both an appropri-

ate charge and an appropriate verdict. In one-third of assault cases, juries chose to reduce felony charges to misdemeanor convictions. No other type of crime led to such a reduction rate, which merits explanation.

The Penal Code made it easy for juries to reduce an assault charge to a misdemeanor offense. In order to qualify as a felony assault, the victim needed to have suffered the loss of an eye, a broken limb, or bodily injuries serious enough to prevent him from performing manual labor for forty days. These conditions required verification by a medical officer. This official could easily become complicit in bending the judicial process to fit community norms on interpersonal violence. In a number of cases, medical officers insisted that it would take a particular victim up to thirty-nine days, but not forty, to recover adequately from a serious beating in order to return to work. In numerous other cases, juries did the work of making the crime fit the punishment. The room for maneuver was considerable. On the extreme end of severity, a jury in the Sarthe convicted the middle-aged farmhand Gilles Moreau of attempted murder for several assaults he committed during a drunken rage. Although he had threatened to kill one person with a knife and bashed another on the head with a cudgel, he had killed no one. Nonetheless, he himself perished on the scaffold. The jury's harsh attitude surely stemmed from Moreau's history as a vicious bully (and possible chouan) known as Brise-Ville, or Town-Wrecker.[25] At the other end of the spectrum, where extreme leniency prevailed, lay the case of the *maître valet* François Tournier. Although he had struck his victim on the head three times with an axe, the jury bizarrely found that these blows neither had been delivered with criminal intent nor were the proven cause of death. This amounted to double coverage for what the jury obviously considered a justifiable homicide. Appalled at "the alarm spread by such grave excesses" but prevented from handing down any felony punishments, the judges could only use the jury's misdemeanor conviction to sentence Tournier to a year in prison and a fine of 500 francs.[26] These examples of the jury system's potential for extremes of severity and leniency within the broad category of convictions help to highlight their motives. Moreau's execution for drunken assault and Tournier's modest prison sentence for an axe murder suggest that neither a fear of excessive punishment prescribed by the Penal Code nor a lack of convincing evidence account for many of the misdemeanor convictions in cases of felonious assault. Only the jurors' greater tolerance of violence explains their reluctance to see many offenders sentenced to the *bagne*. Such tolerance becomes all the more obvious in cases of acquittal on the basis of criminal intent.

Considering that it was easy for juries to avoid harsh punishments for assault simply by resorting to misdemeanor convictions, why did they completely acquit so many defendants on the basis of criminal intent? Was this largely jury nullification stemming a fortiori from a high tolerance for interpersonal violence? Undoubtedly yes, but not in all cases. The diversity of jury responses to domestic violence highlights the dangers of overgeneralizing about such matters.

The Penal Code specifically prescribed the death penalty for parricide and twenty years in irons for mutilating one's parent, but it made no mention of other forms of familial violence. The sex-based nature of citizenship ensured that all jurors were men; almost all were husbands and fathers too. It is not surprising, therefore, that juries showed leniency toward husbands who battered their wives. Take the case of Guillaume Micouleau (alias Garrabuste), who was charged with attempting to murder his wife. He had whacked her on the head with a heavy stick while she was doing laundry in their *lavoir* and, when she struggled to climb out, pushed her back in and tried to drown her. She survived and therefore so too did he. The jury merely convicted him of a misdemeanor that brought three months in prison and 200 francs in fines.[27] Clearly the jury showed sympathy for Garrabuste's motives, whatever they were. Such was not generally the case when women fought back. For example, Marie Lavigne had cried out to her husband, "There's a scorpion on your neck!" and when he whisked off his hat and pulled back his collar, she repeatedly slashed his neck and head with a pruning knife. He would have died under the assault had a neighbor not burst in and stopped the blows. The history of wife battering that preceded her attack did not soften jurors' hearts. They considered this a crime of passion and, therefore, not premeditated and thus spared Marie Lavigne's life. Nevertheless, she still had to spend twenty years doing hard labor in a *maison de force*. Here are two cases of attempted murder, both in the context of domestic abuse, and it is the female victim of such violence, who, when she responded violently, was punished most severely. Not all juries refused to appreciate the predicament of women who suffered spousal abuse, however. Alexandre Ragot's wife and child took refuge at her parents' house at Moitron (Sarthe) to escape his torments. Despite a clear warning from his in-laws, Ragot appeared at their house five days later. His wife, her parents, and her sister overpowered him and promptly castrated him using a knife and scissors. He survived the ordeal only to see his genitals dug up from the yard of the Prodhomme house and presented in court. This persuasive evidence led to three death sentences. All the same, the jury acquit-

ted the battered wife, Anne Prodhomme, on the ground of lacking criminal intent. The local paper rightly questioned the logic of this verdict, but it did not doubt the justness of it.[28] Furthermore, this case reveals that despite a strong male bias in cases of domestic violence, jurors did not always seek to punish the female victim for perpetrating violence herself.

Such a pattern of jury responses could well stand for the whole category of assault cases. Jurors tended toward leniency when violence took place between individuals who knew each other and had a history of interaction. Nevertheless, there were clear limits. Lying in wait and unleashing a surprise assault on a passerby, whether known or unknown, provoked especially harsh responses. Whereas the Penal Code specified penalties ranging from two years in prison to six years in irons depending on the extent of the victim's injuries, it prescribed the death penalty for any felonious assault committed with obvious premeditation or as an ambush. Traditional codes of honor encouraged violent confrontations in public places. The publicity of the encounter ensured a rough sense of fairness and could powerfully enhance the message of courage or willingness to extract vengeance intended by the assailant. Such public incidents of violence implicated the community and, therefore, could be monitored if not fully controlled by it. Surprise assaults at night or in obscure places were designed to evade this communal involvement. In these circumstances, the state's concept of how best to maintain social order, as expressed by the Penal Code, converged with traditional village ideas about the role of punishment in preserving order. Jury verdicts in assault cases demonstrate the conditions of convergence.

On the other hand, these two concepts of order diverged widely in matters of folk beliefs. Juries tended to show much greater acceptance of popular superstition than magistrates found acceptable. This is best illustrated by the shocking cruelties perpetrated at La Chapelle Gaugain in the eastern Sarthe and the remarkably light sentences that followed. Marie Souriau, the *femme* Foussard, had suffered a long illness and sought the advice of Louis Foucault, a veterinarian from Couture with a regional reputation for divination. He persuaded her that her neighbor, Marie Dubray (better known as the *femme* Besnard), had cast a spell on her and that she would not lift it until her feet had felt the pain of fire. Souriau's husband and two sons, carrying a gun and fire in a clog, went to procure the remedy from Besnard, but her husband managed to drive them off. The *femme* Foussard continued to suffer for another six months. Having grown desperate for a cure, her sons and two companions kidnapped the *femme* Besnard, brought her back to Foussard home, and began applying red-hot irons to her feet in

order to force her to reverse the spell. Distraught by the excruciating torture his sons were inflicting on the *femme* Besnard, Pierre Foussard fled his own house. When he returned, he found her feet and legs so badly burned that they bled and "the sole and heel of the left foot hung in shreds." Magistrates quickly prosecuted the Foussards and their friends for this atrocity. When the case came to trial, however, the jury convicted them only of misdemeanor offenses that led to between one and two months in prison. The *femme* Foussard was excused because her long illness and its effects on her moral faculties had led her to believe the bad advice she received; Pierre Foussard was held responsible only for failing to stop the cruelties; the Foussard sons, aged nineteen and sixteen, were deemed to lack mature judgment; and their companions simply believed that the *femme* Besnard was a witch. A male divine, Louis Foucault, had been paid for his advice and so was later tried as an accomplice. His subsequent conviction and sentence of three months in prison and a small fine was the heaviest in the whole case. Such light sentences were the result of attenuating circumstances, to wit: "the ease with which country folk allow themselves to be persuaded about supernatural things, and how they are still imbued with the ancient and absurd belief that witches and divines exist and battle among themselves over the effects of their supposed evil spells."[29] The court's expression of the jury's deliberations artfully blamed the peasants for their credulity. And yet the verdict suggests that jurors shared similar attitudes. They were too representative of the populace for the belief in black magic not to have some purchase on them. Such attitudes continued to have an influence on juries longer than one might imagine. As late as 1830, jurors in the Oise acquitted a man of murdering his brother-in-law by treating it as self-defense against sorcery.[30] This sort of jury nullification provided just the evidence the French state needed to justify its civilizing mission in the countryside.

Blinded by their own sense of superiority, government officials failed to see the injustices that a uniform system of criminal justice could generate. Paradoxically, by being highly sensitive to local issues and individual circumstances, jurors could make the system more just by technically subverting it. Magistrates could hardly defend a breech of judicial procedures as the best means to a just end; therefore, such explanations are not to be found in their correspondence with the Ministry of Justice. All the same, at times juries obviously used their power of nullification to prevent the judicial system from being exploited by malcontents as a weapon against their enemies. Jurors in the Haute-Saône probably had a difficult time deciding who was more malicious, the woodcutter Garnier, who chopped down a

cherry tree with his fellow woodcutter Gérard still in it, or Gérard, who insisted on prosecuting him for attempted murder more than two years later. In this case, the jury acquitted Garnier on the basis of criminal intent rather than convict him of causing injury by imprudence—a misdemeanor. This decision appears designed to avoid rewarding Gérard's prosecutorial zeal but nullified the evidence in the process—after all, Garnier chopped down the tree precisely because Gérard was in it.[31] Ironically, nullification based on a commonsense notion of fairness worked to preserve the integrity of the judicial system as society's ultimate mechanism for the regulation of conflict.

Other jury nullifications on the basis of criminal intent reflected jurors' opposition to politically motivated prosecutions—another nefarious by-product of the state's civilizing mission. Despite the ostensible separation of executive and judicial powers, the government found ways to interfere directly in the work of criminal courts. Nonetheless, the jury remained a repository of alternative values the government could not easily penetrate and where apolitical justice could still be done. Early one fine morning, four men from Marnay (Haute-Saône) snuck up on Demolombre, secretary of the local municipality, who lay sleeping in a rye field. They fired a single shot and killed him on the spot. After a preliminary investigation, the jury director from Gray concluded that this was an accident, a prank gone horribly wrong, and so decided simply to have the men judged by the correctional tribunal over which he presided. However, when the government learned that Demolombre was a veteran recently returned from the war and that he had replaced a man sacked for his opposition to the Revolution, it appealed the jury director's ruling to the Court of Cassation. This being the Second Directory, the high court naturally followed the government's lead and transferred the case to another jury director for full prosecution. Despite such efforts, the jury at Vesoul used the *question intentionnelle* essentially to acquit the men, which allowed them to get off with a modest fine.[32] Thus, the government's political paranoia had led to a rigorous prosecution that the jury thwarted in the belief that several months in prison awaiting trial was punishment enough. Of course, juries were not always so apolitical as the Demolombre case suggests. Still, the political motives most likely to influence jury verdicts were those of opposition to the republican regime.

Juries generally sympathized with people on trial for opposing political authority. Like the mass of villagers they represented, most jurors disliked the extended reach of the revolutionary state no matter which regime was in power. When they were not serving as jurors, they were as likely as not

to be involved in resisting the new forms of public authority themselves. Men of property did not support the republic just because it was constitutionally designed to favor them. The political struggles inherent in ensconcing the republic created peculiar forms of opposition. For this reason, the broader category of resistance to authority should be subdivided into three types of crime: resistance to public authority per se, disobedience of particular republican laws, and politically motivated violence against the regime. Almost one-fifth of all criminal court defendants actually present at trial were charged with these three types of crime. Their trials produced some of the highest acquittal rates. Taken together, therefore, jury verdicts in these sorts of cases significantly increased the overall acquittal rate during the period. Furthermore, high acquittal rates for crimes of resisting officials or republican laws gave the regime understandable anxiety about its ability to take root throughout the country. The differences between these types of crimes are as important as their similarities, and each needs to be examined separately.

Resistance to public authority occurs under all regimes; it is the scale and scope of this resistance that determines any particular regime's viability. An extremely complicated set of social, economic, cultural, and political factors worked to animate as well as to obviate resistance to public authority. Jurors embodied many of these tensions because as jurors they assumed a position at the precise point where two concepts of order met. On one hand, they were drawn from towns and villages where they formed the broad elite of their communities. As substantial taxpayers, they had a major stake in social stability. They shared the norms and attitudes that had governed their communities for generations and usually subscribed to traditional, community-based notions of how best to preserve that stability. On the other hand, as jurors they were called upon to enforce an alternative concept of order, that generated by national legislators and the state machinery of policing and criminal justice. This made them responsible for upholding the authority of an innovative and alien apparatus of power in which they had little or no personal stake. No wonder they so frequently failed to side with the official instruments of order.

Juries proved especially sympathetic to those who openly resisted public authority. Three times as many people were acquitted (63 percent) as were convicted of felony offenses (21 percent). Equally remarkable, half of these acquittals were based on jurors concluding that the defendants before them had acted without criminal intent. In other words, proven overt resistance to clearly acknowledged officers of the law acting in their official capacity

often went unpunished because jurors chose to accept a variety of dubious justifications for illegal behavior as the equivalent of acting without criminal intent. It seemed perfectly natural to excuse a woman's frenzied assault on the gendarmes who had just arrested her husband. And would not most people physically oppose a bailiff removing their furniture? The occasional contretemps with an officious *garde forestier* or passing from a heated verbal exchange to a physical altercation with a pompous and pushy *adjoint municipal* could hardly be avoided by men socialized to defend their honor as much as their property. Nor could jurors convict in good conscience destitute peasants who, in the catastrophic winter of year IV, seized grain and distributed it at an affordable price.[33] Only a jury's sympathy with the defendants could explain how three men who had violently resisted arrest on charges of failing to pay their *patente* tax at Montpellier could be acquitted on the grounds that they had not "willingly" resisted the gendarmes.[34] In all of these cases, to understand really was to forgive.

The bulk of acquittals in cases of resisting authority came when citizens opposed the gendarmerie or National Guard for executing the republic's laws against draft dodgers, refractory priests, and the free exercise of religion. Some of the most blatant jury nullification occurred in such cases. The penalties for resisting authority were relatively light (unless it involved a mob of more than fifteen people—legally termed an *attroupement séditieux*), so it was less a fear of harsh penalties than an implied sympathy with resisters that motivated jurors to negate evidence by acquitting defendants. Many of these acquittals were based on a lack of criminal intent even though handed out to defendants in their absence. But, one might reasonably ask, how could jurors discern defendants' motives when their arrest and interrogation had yet to take place? Projected excuses could be the only explanation. A jury in the Haute-Garonne found that force and violence had been used to free a prisoner from the gendarmerie at St-Nicolas-de-la-Grave, and yet they acquitted the four absent men claiming that they had not acted "wickedly or with criminal intent." Such a verdict said more about the jurors' motives than those of the defendants.[35] In other circumstances, the motives for violence and for jury nullification were equally obvious and, in fact, the same. A pack of villagers clashed with the municipal authorities at Caraman (Haute-Garonne), first storming the town hall to reclaim the rope for the church bells and then breaking into the barricaded church to ring the bells. Jurors sympathized with this act of religious reclamation, however, and duly acquitted the ringleaders.[36] Jurors were all too familiar with the social cohesion the rituals and routines of Catholicism gave to

rural communities and had little incentive to punish those who sought to restore them. When confronted by such a manifest clash of two concepts of order, jurors clearly preferred the parish over the state.

As this case illustrates, the categories of resisting public authority and engaging in illegal antirepublican activity tended to merge. Nonetheless, cases involving indictments for crimes not contained in the Penal Code of 1791 constitute a distinct category of politically motivated opposition. Republican governments called it counter-revolution. This term had sufficient elasticity to include "royalistes à la bonnet rouge," that is, republicans of an "extremist" stripe.[37] Rather than distinguish crimes committed by radical republicans from those committed by reactionaries, it is better to separate violent forms of political opposition from nonviolent ones. This latter category included being an émigré or refractory priest returned from exile, harboring such a person, making counter-revolutionary statements in print or in public, and attacking republican symbols, most notably liberty trees. Juries acquitted three-quarters of the people put on trial for such crimes. This courtroom evidence perfectly summarizes the distaste the vast majority of Frenchmen felt for these laws. After all, by the late 1790s only deeply committed republicans invested liberty trees with sacred symbolic value or fostered the belief that epistolary exchanges with exiles was treasonous. It is not surprising, therefore, that acquittal on the basis of criminal intent occurred more often in this category of crime than in any other. Did an old widow sending money to her former priest living in Italy constitute a security threat to the republic? No, concluded one jury. Another went so far as to acquit the municipal agent and another leading citizen of Provenchère (Haute-Saône) of sheltering deported priests despite having clearly welcomed them back from exile, shown them great hospitality, and participated in a variety of their services. The municipal agent was even acquitted of failing to enforce the laws against refractory priests and public worship.[38] This does not mean that all such crimes went unpunished. When felony convictions did occur, sentences were severe, including several executions and more than a score of deportations. However, jury nullification and a lack of convincing evidence combined to acquit most defendants accused of political offenses.

Especially common was the acquittal of people who made statements against the republic. Some of these were simply silly: "Le Directoire est un pouvoir destructif pas exécutif," or "J'emmerde la République et tous ceux qui sont à son service, même les soldats et généraux des armées," or putting a liberty cap on a dog and saying to it, "Allez, citoyen!"[39] Actually

prosecuting such verbal frippery reflected an excessive political zeal that jurors gladly thwarted. For example, juries convicted only three of the fifteen people charged with chopping down liberty trees; one received six months in prison, whereas two others were sent to prison for four years.[40] The harsh penalties prescribed for such crimes also encouraged acquittal. The hastily adopted law of 27 germinal IV (16 April 1796) tried to make all political speech run along republican rails. Any public statement, whether made in speech or in print, provoking the dissolution of the legislature or the executive or calling for any constitution other than that of the year III became a "crime against the internal security of the Republic and against the individual security of citizens" and therefore a capital offense. The death sentence could be commuted to deportation if jurors decided that attenuating circumstances accompanied the offending statement. Only after the insurrection of 1799 around Toulouse was anyone sent to the scaffold for verbally inciting a return to royalty. Of course, the context of widespread rebellion proved critical to the conviction.[41] On the other hand, deportations were not so rare. More often, however, when jurors convicted someone of antirepublican speech, they preferred misdemeanor sentences of a year or two in prison. These distinctions could be extremely fine, but some juries felt confident enough to make them. Thus, one Nicolas-Joseph Vacheret was sentenced to two years in prison for crying, "Vive le roi, vive Condé, merde pour la République" in an *auberge* at Vuillemot, whereas a month later Nicolas Pauthier was sentenced to deportation for saying much the same thing ("Vive le roi, merde pour la République") to a clutch of people behind a café at Luxeuil.[42] If there was any real difference between the two offenses, one had to be there to appreciate it.

Almost all such condemnations for nonviolent political crimes occurred in years VI and VII, when Jacobins took advantage of their return to power to stack juries and persecute opponents of the republic. The rest of the time, juries overwhelmingly refused to convict in cases of this sort. This was especially apparent in year V, when the rising tide of antirepublicanism flooded courtrooms across the country. That year there were fifteen people tried for nonviolent counter-revolutionary crimes in the four criminal courts studied here, but none were convicted. Although such crimes continued to be prosecuted under the Consulate, convictions again became extremely rare. A jury in the Hérault even refused to convict in absentia a café owner from Frontignan for some very incendiary remarks about First Consul Bonaparte: "They missed that villain, that usurper, that tyrant at Paris. If I'd been there, the attempt would not have failed, because I would

have made it work. Ten like me could go to Paris to kill him, but before long some gutsy republican will spare us from it."[43] In this case, jurors boldly asserted that the evidence of these remarks was insufficient to convict. Thus, jury nullification based on lack of criminal intent, the most common form of acquittal for this type of crime, was stretched to the point of simply denying that a crime had taken place.

Not all trials for political crimes were for such apparently innocuous offenses. Plenty of opponents of the regime went beyond threats of violence to practice the real thing. Despite the seriousness of their supposed offenses, however, individuals charged with violent counter-revolution had only slightly more likelihood of being acquitted than those tried for crimes of nonviolent counter-revolution. Only one in five received felony convictions, whereas two-thirds were released back into society. Perhaps the most striking evidence of juries refusing to see matters from a repressive perspective comes from the Sarthe, where civil war and *chouannerie* had destroyed all semblance of political normalcy in the western half of the department, criminal justice being no exception. Witnesses could not travel from Sablé to Le Mans, for example, for fear of being attacked by chouans along the way. This state of affairs either genuinely delayed putting the Guibert sisters on trial for aiding and abetting rebels or gave magistrates a credible excuse to keep them in prison for over nine months awaiting more propitious circumstances.[44] The trials of others accused of *chouannerie* certainly gave magistrates just cause for concern. Of twenty-three such men tried by the Criminal Court of the Sarthe in year IV, none was convicted of a felony, seven received misdemeanor sentences of between five days and four months in prison, and sixteen were fully exonerated. This could hardly encourage local republicans or officials in Paris. Here, in the midst of a long guerrilla insurgency, jurors repeatedly allowed rebels to return to their villages.

Jury verdicts in cases of violent counter-revolution were generally no more heartening elsewhere. Most of these trials resulted from local factional struggles that had boiled over into violence. The prosecutions all took place after republicans gained control of the machinery of justice. However, even in the Hérault—where jury lists were revised after the Fructidor coup in order to favor republicans—jurors found fault on both sides and frequently used nullification to acquit. In a series of trials, different juries repeatedly confirmed that a conspiracy against the republic had existed in the strife-torn towns of Frontignan, Pignan, and Béziers between the elections of year V and the Fructidor coup six months later. Nevertheless, the various juries

acquitted almost everyone charged with these conspiracies, usually on the grounds of lacking criminal intent.[45] This had its internal contradictions, of course. By its very nature, conspiracy is a crime defined by the shared motive of those involved; jurors who voted to affirm a conspiracy and then voted to acquit on the basis of lacking criminal intent had a broader vision of the issues at stake than the government desired. Jurors' propensity to stretch the *question intentionnelle* to cover various justifications for resisting authority, and especially for politically motivated opposition, drew acerbic remarks from Minister of Justice Merlin de Douai. He repeatedly denounced such distortions, referring to the "question de l'excuse" when it was clear that even participating in certain crimes confirmed criminal intent.

> To ask if, in taking part in an act that is criminal by its nature, someone did it with criminal intent, is in itself to pose a ridiculous question that ill-meaning jurors will not fail to resolve in the negative. . . . Under this system, Babeuf would likewise be acquitted because jurors could claim that he honestly believed that the current constitution contravened the people's rights and that all means of overthrowing it were justified.[46]

In contrast to Merlin's sarcasm, however, jurors hardly needed to work out a sophisticated rationale to excuse opposition to the regime based on sincere ideological differences. Instead, jury nullification in cases of conspiracy or violent political opposition may have arisen from unabashed sympathy for the regime's opponents. More commonly, such acquittals reflected both great antipathy to continued political strife and an unwillingness to take sides. In theses cases, jurors declined to serve as instruments of factional oppression.

The greatest exception to the general pattern of acquittals in cases of violent political opposition came in the case of ninety-two people charged with conspiracy against the republic in the Tarn. Of the seventeen people actually present at the trial (which was held at Toulouse to escape the overheated political climate at Castres and Albi), four were condemned to death (including two former department administrators), six to deportation, and five to a year in prison each. The Court of Cassation later annulled the jury director's original bill of indictment on technical grounds, and the entire affair ended with a grand jury at Carcassonne (Aude) refusing to indict anyone.[47] As exceptional as this case was—and it alone significantly inflected the statistics on verdicts in its category—the final outcome did not differ much from the great majority of similar cases. When it came to prosecut-

ing resistance to authority or overt political opposition, the regime found trial juries utterly unreliable.

The Weaknesses of Juries

Inquiring into jury nullification naturally leads to an investigation of grand juries. Any quantitative analysis of one department's grand jury decisions would require many times the archival effort required to study those of the trial jury. Though the lack of such work is understandable, it is truly regrettable, for the importance of jury nullification at the level of grand juries may well have exceeded that of the trial jury. As the case from the Tarn suggests, grand juries could be equally unsympathetic to prosecuting opposition to political authority.

Several factors combined to make grand juries an especially critical point at which the state legal apparatus had to lean on men imbued with different notions about the role of punishment in maintaining public order. Grand jurors were chosen at random from the same lists of *éligibles* as trial jurors and, therefore, reflected a similar mix of concerns about partisanship. However, it took less time for a citizen to perform the duty of a grand juror. He only had to travel to the seat of the local correctional court, not to the departmental *chef-lieu,* and heard only the prosecution's side of the case. The jury director read out his bill of indictment and called a select number of witnesses to testify, including the plaintiff. Everything was done orally, in camera, and in the absence of the accused. A majority vote from the grand jurors would then decide if the evidence warranted proceeding with an indictment and trial. The oral testimony gave the hearing some semblance of a trial itself, and magistrates frequently criticized jurors for not deciding on the quality of the evidence against the accused but voting instead on his guilt or innocence.[48]

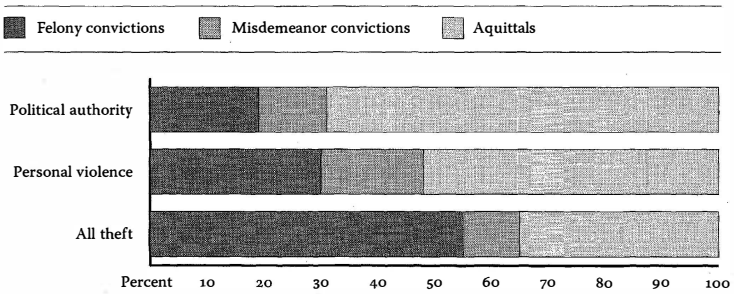
Although travel and procedural considerations lessened the burden of being a grand juror, deliberating at the local correctional court left them more exposed to extraneous influences. Grand jurors were far more likely to know details of the case before the actual hearing. Cases of regional renown generated plenty of background information as a myriad of rumors circulated in taverns and markets. One or two jurors may have been acquainted with family members or friends of the accused, or of the victim, for that matter. Even if no direct personal connection existed prior to the hearing, the proximity of the correctional court made it easy for one side or the other to try to influence jurors through bribery or intimidation. One

court commissioner complained that ignorance, cowardice, and factionalism had inspired grand juries to vote against indictment in thirty cases in four months even though they were "perfectly proved." He later supported his complaints with a recent example. A fight between a hussard and a couple of national guardsmen at Lavaur (Tarn) turned into a general mêlée in which several people were injured and one killed. The jury director assembled a grand jury to hear charges against five individuals. "Before and during the hearing, every sort of intrigue was attempted in order to have the accused acquitted; during the session the courtyard and garden of the court were filled with people; intimidated witnesses suppressed part of the truth, and four of the five accused were acquitted. Some jurors were so frightened that they tried to get the jury director to relieve them of their duty to serve in this case."[49] Few cases garnered this level of public attention, but those that did made jury duty an onerous burden for citizens to bear.

The Politics of Acquittals

This overview of jury verdicts has paid particular attention to acquittal rates and especially acquittals on the basis of criminal intent because this was the easiest means for trial jurors to nullify evidence. As figure 6 indicates, acquittals using the *question intentionnelle* clustered around crimes of opposition to political authority. In fact, 44 percent of all acquittals took place for such crimes, even though these were relatively infrequent cases. In general, jurors did not support the regime's political goals. It is little wonder that after a couple of years the government sought alternative judicial and administrative means of repressing political opposition.

Fig. 6 Criminal court verdicts by in three broad categories of crime
Defendants present



The range of acquittals on the basis of criminal intent in cases of apolitical violence highlights another struggle between the regime and its supposed base of support among would-be electors, the long-term trend of replacing a village-based concept of order with a more uniform, statist concept of the rule of law. The fact that patterns of interpersonal violence changed remarkably slowly between 1550 and 1850 indicates how enduring this struggle remained.[50] Though it is impossible to generate appropriately comparable data across this stretch of time, there is no doubt that the First Republic's system of criminal justice marked a major step toward the ultimate triumph of the state-based order rooted in the rule of law. The explanation for such a large portion of felony assault cases being reduced to misdemeanors or acquittals clearly lay with the jury's role as an intermediary between legislators' notions of justice and the greater acceptance of violence in many regional cultures. Local mores further encouraged juries to take these options. This obviously reflected traditional hostility to the intrusion of the state into village life, especially when exacerbated by the exigencies of war and the Directory's rabid anticlericalism.

Politically motivated violence posed serious problems for most jurors. Undoubtedly some juries sympathized with vigilante attacks on former terrorists or their collaborators. Such was most often the case in Provence but is easily exaggerated. In fact, most political bias in the criminal justice system was more the work of elected officials than of juries. Public prosecutors had fewer powers than under later regimes and therefore relied heavily on jury directors. When public prosecutors and jury directors held similar political attitudes, they could easily determine the whole tenor of a department's caseload. The Hérault provides a perfect example. A turnover in judicial personnel following the coup d'état of 18 fructidor V massively increased the number of cases brought before the criminal court there. Redrafted jury lists then helped to ensure a record number of convictions, even though half of them were against people still on the run.

This raises other critical factors: woefully inadequate policing and risible prison security. Not only was it hard to capture and hold on to perpetrators, their ability to elude capture or escape from jail seriously discouraged witnesses from testifying against them. Without adequate testimony, even willing juries were forced to acquit. Thus, it becomes increasingly evident that the Directory's difficulty in relying on the regular criminal justice system to restore order lay at least as much with the machinery of government as with unreliable juries. No matter the precise share of responsibilities, greater executive control of repression proved an irresistible response.

PART II
The Militarization of Repression

THE ARMY WAS the sine qua non of the First Republic, both on the frontiers and domestically. Histories of the Convention, Directory, and Consulate brim with military matters: swelling armies, renowned generals, decisive battles, and landmark treaties. These same histories fail to note, however, that the army's role in defending the republic domestically was equally important to the revolutionary outcome. Not since the early decades of Louis XIV's reign had the army been so important in establishing the state's authority. The influence generals had on national politics has not gone unnoticed, but generalizations about the political importance of the army in the period are invariably based on its intervention at moments of domestic political crisis (Prairial III, Vendémiaire IV, Fructidor V, Brumaire VIII).[1] And yet, it was not at these moments of crisis but between them that the army became a pervasive force in the provinces. A steady militarization of politics resulted from the inability of the regular institutions of the republic to cope with the challenges of ending the French Revolution. This included the judiciary, where most jurors proved unwilling to conduct political repression, the hierarchy of elected and appointed officials who were often factionalized and rarely in place for long, and the broader culture of republicanism, which was at once offensively anticlerical and inspiringly jingoistic. Under these circumstances, the army became an increasingly critical supplement to the regular forms of governance. The army offered expedited justice for use in dealing with political crimes; it furnished the government with less partisan reports on local conditions; it gave courage to weak administrators; and it provided the most important focal point for national pride, whether in the Festival of Victories or in grandiose funerals for fallen heroes such as Generals Marceau, Hoche, and Joubert.

Given that the Directory's legitimacy depended heavily on restoring order and providing security, the role of the army in these matters deserves

close study. At first, the army's role during the Directory strongly resembled its role under late absolutism, when it was known as "l'autorité" in domestic matters. This contrasted sharply with the early Revolution, when the army provided little domestic security. By the late 1790s, however, the republic came to rely far more heavily on the army than had ever been the case under the monarchy. This made the character and political leanings of interior commanders of real importance. The more reliable the army became as an instrument of government policy, the more the regime extended its role in public life. Not only did it frequently perform the duties of an overstretched gendarmerie, it wholly replaced the National Guard as the preferred instrument for applying martial law. Military justice too came to play an increasingly important role in imposing the republic.

The coup d'état of 18 fructidor V (4 September 1797) marked the decisive turning point in this process. Excessive attention to the ideological aspects of post-Fructidorian repression has taken it out of the broader context of restoring law and order on republican terms. This context included enhancing the repressive character of the criminal justice system, making the gendarmerie into a distinctly modern and substantially more professional police force, and expanding military justice to include common-law criminals as well as royalist rebels. Despite political opposition to the Directory's increasing authoritarianism, the regime's steady erosion of civil liberties in the interests of greater security responded to the public mood. In a country wracked by fears of crime and sedition, the restoration of order would earn the republic far greater credibility than careful adherence to a liberal democratic constitution. In this respect, the rupture of Fructidor proved as decisive in defining the authoritarian character of the postrevolutionary order as did Brumaire.

5 The Army and Domestic Security

> The armed forces that abroad perform the glorious duty of assuring respect for the independence and integrity of the Republic, are called upon in the interior to perform a duty, possibly less brilliant but no less useful: that of assuring execution of the laws and, along with other citizens, of honoring the repositories of civil authority.
> —Minister of War Berthier to district commanders, 5 messidor X (20 July 1802)

THE ARMY PLAYED an unprecedented role in domestic security during the years 1795 to 1802. Well before "citadel practice" emerged in Prussia in the 1830s,[1] the French First Republic saw an almost paranoid defense of the political regime combine with powerful demands for social order to increase greatly the army's integration into the routines of domestic rule. The highly contested nature of the First Republic, however, made its use of armed force for policing and internal repression fraught with questions of legitimacy. The revolutionary trajectory from popular violence to state-sponsored terror in the years 1789 to 1794 greatly complicated the use of force to restore order and thereby end the French Revolution.

As the introduction indicated, although scholars often speak of the state as the monopoly of violence in society, such a statement corrupts Max Weber's original idea by eliding the notion of legitimacy. If methods of repression used in particular circumstances are widely considered excessive, they become discredited and turn into what I have termed domestic state violence. Attempting to analyze various forms of repression without taking an a priori moral stance toward them—that is, without condoning or condemning them—can be facilitated by reducing the assessment of coercive force in terms of whether the ends justified the means and instead assessing coercive force in terms of methods and modalities. According to Sergio

Cotta, legitimate force distinguishes itself from illegitimate violence by being specific and precise in its targets, by being governed by clearly defined limits, and by being exercised in defense of a defined polity. None of these was assured in the late First Republic. Though this chapter will not belabor Cotta's terminology of internal, external, and purposive measure, his theory helps to refine its treatment of the following questions. To what extent did generals and officers commanding in the interior share a common vision of the polity? How constrained were they in the deployment of force? What was the army's role in policing? Did its various domestic duties provide security or provoke hostility? Was the application of force in the interior well regulated? Did the use of military justice conform to the legal norms of the period?

As noted earlier, taking a Hobbesian perspective on the First Republic draws attention to its potential to acquire legitimacy simply through assuring social order. Although a wide variety of sources of instability and insecurity have already been considered, the fear inspired by the regime itself has largely been ignored. The Directory was the offspring of bloody revolution. Almost inevitably, therefore, its use of force went beyond efforts to restore and maintain order. As the progeny of the Convention, the Directorial regime continued the revolutionary aim of transforming French society. For this reason, a great many people believed that the regime was not essential to preserve order but was itself the source of disorder. The political thinker Benjamin Constant tried repeatedly to reverse this perception in 1796 and 1797. His important pamphlets sought to win support for the Directory by developing several intellectual strategies. He lauded the basic principles of republican government; he tried to dissociate the republic's early years from the arbitrariness of the Terror; and he sought to win acceptance of the new regime by claiming that a return to the past would cause greater upheaval than staying the republican course. The election results of 1797 largely repudiated the republic and showed just how hollow Constant's arguments appeared to his contemporaries.[2] In fact, the regime's persistent revolutionary character helped to perpetuate the climate of fear that enveloped France in the 1790s. For this reason, the state, whose usual raison d'être is to provide order, continued to be the fount of much disorder.

To understand better how the Directory struggled to manage and even legitimize the force it deployed, where this failed, and when it succeeded, we need to appreciate the role the army played in the economy of violence. This points at the Directory's problem of establishing its legitimacy through the use of force, and not just through patriotic ardor or the ideals of liberal

democracy. To be familiar with the appalling state of France in the autumn of 1795 and the widespread loathing republicans had generated, especially in the countryside, is to know that ensconcing a democratic republic without recourse to some harsh measures would have been impossible. Simply applying republican constitutionalism and the rule of law to the continuing civil war in the west and the cycles of violence in the southeast was bound to fail.[3] These regions first needed to be pacified by force. Once he had looked into the sources of strife in the Midi, even Antoine Thibaudeau, that paragon of constitutional self-righteousness, advocated suspending the constitution and appointing a military dictator for the region,[4] which is precisely what the Directory did in western France. Because the Directory was inconsistent, being constitutionalist in principle but often revolutionary in practice, the regime found it agonizingly difficult to have its use of force accepted as legitimate.

The Army as an Instrument of Repression

One key to public acceptance of the army as a legitimate partner in domestic governance was the extent to which it was accepted as a normal feature of the political landscape. In this respect, the Directory inherited a mixed legacy. On one hand, the long-standing practices of the *ancien régime* served to legitimize military policing so long as it was balanced by other mechanisms of rule. On the other hand, the unrestrained use of military force to impose the Jacobin republic had made the army a discredited instrument of partisan politics. An understanding of this mixed legacy provides an essential basis to assess the nature of the army's domestic role during the constitutional republic.

The army had been an integral part of absolutist rule in eighteenth-century France. Though nominally subordinate to provincial governors, the military commanders appointed for each province had considerable scope for independent action. Because they were free to dispose of the only significant armed force available, provincial commanders constituted an alternative source of authority to *intendants* and *parlements*. Local communities frequently requested detachments of troops to undertake various security functions. Unless a community agreed to bear the entire cost of the mission, however, provincial commanders rarely sent troops. Despite pushy officials who wanted the army to take responsibility for public order, or influential seigneurs irritated by the "insolence" of their tenants, provincial

commanders resisted using troops to carry out mundane police functions. The army handled certain matters of prevention (standing guard at annual fairs or public executions) and detention (delivering *lettres de cachet* or arresting public agitators), but its ultimate policing function was to deal with collective violence such as quelling a tax revolt or dispersing grain rioters. But soldiers could be unpredictable in the face of a crowd, reacting with excessive rigor on one occasion and fraternizing on another. As a result, the late *ancien régime* used regular troops as little as possible in the interior. In fact, the number of refusals to use the army for repressive purposes far outstripped the few times it actually cracked heads. Even the military response to the "Flour War" of May 1775 was less aggressive than often claimed and certainly not decisive.[5]

This eighteenth-century reluctance to use the army to crush the crowd made the French Revolution possible. Though there were moments of bloody repression during the "prerevolution," most notably the Reveillon Riots in Paris in April 1789, officers often showed great unwillingness to put down political disturbances, such as at Rennes and Grenoble in 1788. Matters were little different in the hundreds of food riots provoked by the subsistence crisis of 1788–89. Sending small detachments here and there to cope with local disturbances exposed the overall shortage of troops and widespread lack of will to use force against the populace. Not even the presence of whole regiments prevented serious outbreaks of violence in such towns as Cambrai and Rennes. The ultimate failure of nerve came in July 1789, of course, when senior officers told the king that the twenty thousand regular troops stationed around Paris were too unreliable to assert royal power in the capital. Thereafter, military authority largely collapsed across the country. Where incidents of serious repression did take place, they were more often the work of the *milice bourgeoise* or the newly formed National Guard.[6] Thus, after the summer of 1789, the royal army, with its officers demoralized by years of contradictory reforms and its soldiers politicized by revolutionary ferment, no longer had a central part to play in maintaining order. This hastened the success of the municipal revolution and allowed waves of rebellion to sweep the country for years to come. According to John Markoff, almost 4,700 insurrectionary events took place between June 1788 and June 1793,[7] which illustrates the reluctance of even moderate revolutionaries to use the army to restore order and defend the new regime.

All the same, the army continued to perform certain police functions after 1789. As had always been the case, the mere presence of troops helped to discourage disorder, and so they were often assigned to stand guard in

markets or outside town halls, provide escorts for grain, or reinforce patrols in the countryside. Civilian officials frequently requested the presence of line units and detachments where there were signs of impending trouble. A timely appearance usually prevented actual violence from breaking out. But the army's role in repressing riots and large-scale revolts was decidedly mixed. Effective and well-disciplined in its response to the sectarian strife at Montauban in May and Nîmes in June 1790, the army proved insubordinate in the face of popular violence at Aix, Marseille, and Lyon in 1791 and into 1792. Revolutionary politics were the bane of military discipline, so much so that four-fifths of incidents of insubordination while performing police functions arose as a result of local conflicts between opposing political groups.[8] Thus, France experienced a lot of violence in the early Revolution, but little of it in the form of repression.

The men who had filled the vacuum of power created by armed insurrection, and whose legitimacy rested on novel concepts of popular sovereignty, simply could not define the difference between acceptable and unacceptable forms of popular violence. This left them bereft of a theory of justice that could have effectively legitimated their own use of coercive force to defend the new regime.[9] Without such a theory, but bent on radical social change and determined to preserve the fledgling republic, national leaders drifted into accepting and even condoning essentially unjustifiable forms of violence. On what basis could order be established in revolutionary France when Parisian Jacobins fêted the mutinous soldiers from Nancy, excused the cold-blooded "Glacière massacre" at Avignon, and protected *septembriseurs* from prosecution?

Whereas in the early Revolution, the royal army was deemed unsuitable for political repression, after 1792, it was unavailable for it. The outbreak of war increased demand for domestic coercion while removing its main supply. With the army and national guardsmen needed on the frontiers, the National Convention encouraged surveillance committees, exceptional tribunals, and *armées révolutionnaires* to proliferate across the country. This became repression administered "on a putting-out basis."[10] The "reign of terror" then became a prolonged struggle to bring these instruments of state-sanctioned violence under control while continuing to wage a life-or-death struggle with counter-revolutionaries and foreign enemies alike. The Terror also involved making the army into an instrument of the new order. The massive purge of senior officers, the intense political surveillance of executive agents and deputies on mission, and the concentration of control in the Committee of Public Safety created an army more responsive to gov-

ernment than had ever been the case during the *ancien régime*. The rank and file was equally transformed. Royal army veterans were submerged in a sea of national guardsmen, volunteers, and fresh recruits. In order to ensure their political loyalty, the new citizen-soldiers were inculcated with republican ideas using a host of radical newspapers and revolutionary marching songs.[11]

Under these conditions, the army gradually became an instrument of government repression once again. But the transformation was slow and uneven. The tide turned against the Vendée rebellion only following the arrival in September 1793 of ten thousand troops released from the siege of Mainz. Likewise, it took the fall of Valenciennes to furnish the core of regular troops used to defeat the Federalist Revolts at Lyon. But the troops of year II were notoriously unruly, an especially dangerous trait in matters of repression. Turreau's "infernal columns" of early 1794 replicated the brutality and self-defeating slaughter perpetrated on the Camisards in the Cévennes ninety years before. Such rampant destruction and uncontrolled killing could only provoke greater determination to resist the republic. Thus, eight months after the final crushing defeat of the "Catholic and Royal Army" near Nantes, the Convention still needed 150,000 soldiers to assert its authority over western France.[12] So numerous, varied, and ad hoc were the many types of armed force assembled during the Terror, however, that it is impossible to isolate the role of the army per se in this unprecedented build-up of state coercion. Suffice it to say that suppression of the Vendée and Federalist Revolts, including the 3,000 people who perished in the sinister drownings at Nantes or the mass shootings at Lyon, the condemnation and execution of 16,500 victims by over seventy military commissions and revolutionary tribunals, and the imprisonment of over 100,000 people as "suspects" never put on trial, would not have been possible without extensive use of military force against the citizens of France.

Not only was the domestic state violence of 1793–94 often terrifyingly arbitrary and counterproductive, but Jacobin ideologues failed clearly to define its purpose. The excesses of the Terror were not inevitable by-products of defending the nascent republic in the midst of a staggering war crisis, as the ruthless pursuit of such varied victims as Girondin deputies and former Farmers General attests. Furthermore, the reign of virtue did not constitute a clearly defined sociopolitical order. In fact, the famous speech Robespierre made on 17 pluviôse II (5 February 1794) to justify the Terror was merely a revolutionary radicalization of Domat and Pascal in which virtue and terror stood in for justice, authority, and force in an embarrassing attempt to put

a metaphysical fig leaf over the domestic state violence of the moment.[13] But Robespierre too understood the logic of an excessive use of force. Even while he supported the law of 22 prairial II (10 June 1794) emancipating the Revolutionary Tribunal from all jurisprudence, he started a campaign to recall those representatives on mission whose excesses were discrediting the regime. Such an ominous contradiction led directly to his overthrow.

The outcome of 9 thermidor II did not depend on who controlled the army or how it would deal with urban insurgency; it was simply one more violent *journée* in which the absence of line troops left the government at the mercy of the Paris sections, only this time the most committed sections sided with the Convention. Not until 1795 did the line army finally begin to emerge as a force able to prevent further revolutionary upheaval. The shift began with the rioting of 12–13 germinal III (1–2 April 1795), when the Convention proclaimed Paris under a "state of siege" and briefly placed all available forces under General Jean-Charles Pichegru. Six weeks later, the insurrection of 1–2 prairial III (20–21 June 1795) brought the line army back to the capital for good. What the monarchy had not dared to do in July 1789 or June 1792, the Convention now did in 1795. It deployed a massive contingent of troops against the citizens of Paris. Twenty-five thousand line troops and national guardsmen isolated the Faubourg Saint-Antoine from the rest of the capital, occupied its three sections, and proceeded to round up hundreds of resident "terrorists." At the same time, the army was serving the Thermidorian cause in similar fashion in the Midi. A contingent of several hundred cavalry under General Michel-Marie Pacthod, commander of Marseille, trounced a large expeditionary force of *sans-culottes* from Toulon. Soon thereafter, ten thousand troops arrived from the Army of Italy to put an end to any further revolutionary agitation.[14]

Despite the growing availability of troops for domestic repression, pusillanimous if not outright reactionary legislators failed to prevent the revenge killings in the summer of 1795. Once the Thermidorians let the politics of vengeance take over, they too lacked any theoretical means to distinguish between the legitimate use of force to preserve the polity and the vigilante violence that destroyed it. Moreover, when the Thermidorian Convention excluded all those active in the Terror from local office, it nearly handed the republic over to royalists. Having dismantled the institutions that provided the basis for revolutionary government in 1793, the Convention needed the army more than ever for domestic coercion. That the army could be used to repress reactionaries as well as *sans-culottes* was made clear when it took over the policing of Lyon in June 1795, thereby sidelining the dubious Na-

tional Guard, and above all by its part in crushing the insurrection of 13–14 vendémiaire IV (5–6 October 1795), when the use of cannons to demolish barricades and slaughter insurgents inaugurated a long tradition of military repression in Paris. Thus, by the time the Directory took office, nobody could doubt that the army was ready to play the sort of role in maintaining order that it had been unwilling to play in 1789, unable to play in the early Revolution, and unfit to play during the Terror. Whether it would be a bulwark of liberal democracy, an instrument of partisan violence, or the basis of military dictatorship remained an open question.

The Directory and the Politics of Army Policing

A regime as weak as the Directory depended on the army almost as much at home as it did abroad. Though not the sole source of coercive force in late 1795—the gendarmerie and the National Guard continued to operate—the army had clearly become the most responsive instrument available. Military service and repeated purges had rendered the gendarmerie nearly as worthless as *assignats*. The National Guard had fallen either into the hands of reactionaries or into utter desuetude due to economic dislocation and political apathy. Even the policing of Paris, always of paramount importance, had been handed over to the army. The strongly hierarchical nature of army command and the abundance of available senior officers gave the Directory more control over generals assigned to interior commands than over other, civilian institutions of governance. This did not, however, make the army a facile instrument for the government to wield against all forms of domestic disorder or internal opposition. Finding the appropriate level of authority and independence to confer on interior commanders as well as deciding just how much to use the army for policing remained a work in progress throughout the period. The republic's task was complicated by a host of factors: the institutional framework of policing, the constraints of the constitution, the shortage of troops in wartime, the eclectic careers and opinions of officers, and the instability of the government's politics.

In order for the army to contribute effectively to domestic security, for the use of armed force for domestic repression to have "external measure," it needed to be responsive to government control. This required both a framework for command and supply and a set of generals dedicated to upholding the regime. The institutional basis of the army's intervention in local affairs was the military district.[15] The National Assembly had divided France

into twenty-two military districts that consisted of three to six departments each. Extending the system to Corsica, Belgium, and the Rhineland brought the total to twenty-six military districts, each with its own general staff and commissary supply service. When the Directory took office, it found more generals on its hands than were needed or expected.[16] Therefore, with a surfeit of generals and obvious difficulty restoring order in the interior, the Directory decided that each military district would be staffed by a division general, two brigade generals, and an adjutant general.[17] Symmetry of this sort among districts was impractical and never realized—there were too many demands in the west and south and insufficient need in the center and east—nonetheless, it served as a basic template determining officer assignments throughout the period. As a result, an average of seventy generals, or one-quarter of those on active duty, were commanding in the interior at any one time, not including generals assigned to command key fortress garrisons throughout the country.[18] Such a concentration of generals in domestic postings underscores the importance of the army in establishing the authority of the republic at home.

Military districts had originally been an extension of national defense and naturally continued to serve the same function under the Directory. Being on guard against potential invasion along the frontiers and coasts obliged many district commanders to keep the bulk of their troops on the country's perimeter even when domestic strife called for more attention inland. The active role of military districts in the war effort meant that when the Directors first took office, about half of the military districts were directly subordinated to frontier armies. This was a legacy of year II, when the entire country was divided between fourteen armies.[19] These dozen districts were gradually emancipated from frontier armies between the summer of 1796 and the peace of Campo Formio in the autumn of 1797. The war crisis in the summer of 1799 later reversed the process, and the independence of many interior districts was restored only in the spring of 1801 following the peace of Lunéville. Generals who commanded military districts attached to regular armies came under the authority of army commanders-in-chief. Unlike generals who commanded combat divisions, however, generals who headed interior districts also corresponded directly with the government. This inevitably created tensions between field commanders, who focused on foreign enemies, and district commanders, who dealt mainly with domestic disorder. Army commanders usually won these disputes, though the struggle could be prolonged when interior commanders had the ear of legislators or ministers concerned about domestic politics. The tension fo-

cused above all on the allocation of resources, especially of regular troops. In preparation for the campaign of 1796, for example, the Directory ordered all available troops transferred out of southern France to the Army of Italy; only those necessary for maintaining order were to remain.[20] To General Châteauneuf-Randon, this meant keeping half of the eight thousand men stationed in the thirteen departments under his command (Ninth and Tenth Military Districts). Although the War Ministry supported his claim, the Directory allowed him to keep less than half this number.[21] Such a drastic cut in his regular troops made it impossible to preserve the peace and thus forced every department in the district to mobilize elements of the National Guard. This proved an expensive and largely ineffective solution and confirmed what was becoming painfully obvious: only line troops commanded by regular officers could fully meet the challenges of domestic disorder under the Directory.

The Revolution separated civilian and military functions and gave elected officials the upper hand. A decree of 10 August 1789 fixed the future revolutionary doctrine on using armed force to maintain order by placing the decision to deploy armed force against rioters exclusively in the hands of civilian officials. Henceforth, all army officers were required to swear "never to employ those under their orders against the citizenry except if requisitioned by civilian municipal officials and always to read such requisitions to their assembled troops" before sending them into action. Though hotly debated in terms of defining emergency circumstances, preserving executive authority, and holding local officials accountable for life and property, the new revolutionary doctrine of total civilian control at the local level was repeatedly affirmed.[22] The Constitution of Year III further ensconced this attitude toward domestic security. In marked contrast to the *ancien régime,* army officers could no longer employ troops to guard a market, patrol a town, or quell a riot unless they first received a written order from civilian officials (art. 291). Yet generals did exercise the freedom to station troops where they saw fit.[23] In fact, the Directory initially extended the authority of generals to call up and deploy national guardsmen beyond the borders of their home departments without waiting for approval from civilian officials on the grounds that article 292 of the constitution limited these authorities' requisitions to their own jurisdictions. But the National Guard was highly parochial and not inclined to perform dangerous duties away from home. Relying on it as the main armed force was likely to cost the regime credibility, either with the men who were ordered to serve or with the communities they were supposed to protect. Therefore, after some notorious abuses

and plenty of wasteful spending,[24] the Directory concentrated this power in its own hands. In early year V, the Directory began to require generals to obtain prior approval from Paris before mobilizing and deploying national guardsmen in neighboring departments. When the government granted such authority, it always stipulated that army officers and department officials jointly determine the number of men and term of service.[25] This gave department officials a practical veto and thereby preserved the principle of civilian control at the local level. The Directory relinquished its own control somewhat in late 1798 by authorizing generals and departmental officials in thirty-one departments to requisition national guardsmen to assist in the hunt for brigands in neighboring departments.[26] All the same, except in areas where the constitution had been officially suspended, generals never gained full authority over the National Guard, even in emergencies. Those who crossed the line faced a court-martial. In other words, interior commanders were crucial to preserving the regime, but at no time did the republic risk slipping into a Cromwellian rule of major-generals.[27]

Not only did generals not acquire great independence in the interior, they never formed a distinct political constituency. There was never a "party of generals" or a sense that the military was pitted against civilians across the republic, as later became the case in Latin America, for example. Rather, army commanders were well-integrated into the overall machinery of governance. They had their distinctive roles, to be sure, but this aided the government rather than undermined it. Interior commanders were a valuable alternative source of information, one that was usually, though certainly not always, less compromised by local politics than other sources. Often a general's perspective was more helpful than the partisan versions presented by local administrators, legislative deputies, or even the government's appointed commissioners. Early in the regime, Minister of War Annibal Aubert-Dubayet told his colleague, Minister of the Interior Pierre Bénézech, not to bother passing along so much information from the departments: "correspondence with generals informs me infinitely better than local authorities inform you."[28] Ministerial arrogance aside, a little-used series in the French military archives amply demonstrates that the correspondence between interior commanders and the War Ministry contained an abundance of information about politics and the problems of domestic disorder.[29] Minister of Police Marie Sotin was convinced of it as well, believing that generals provided more reliable information on troubled regions than any other source.[30] After all, they were more inclined than local officials to see things from a state perspective. And yet officials in Paris never forgot

that the quality of information they received depended on the qualities of the generals who sent it.

In order to make the army an effective instrument of domestic policing, the generals who commanded in the interior needed broadly to share the government's vision of the polity; otherwise, their use of armed force would both contradict and discredit the regime. However, the Directorial government, divided as it was between five Directors and six ministers, showed frequent signs of internal tension not dissimilar to the ministerial politics of the *ancien régime.* Furthermore, the staggering turnover in members of the government meant that they rarely had a full appreciation of the individual qualities and political opinions of the many generals employed in the interior. Certainly a few were personally known to one or more Directors or ministers. Information on those not familiar in government circles often came from trusted deputies, many of whom had been representatives on mission to the armies during the Convention. All the same, annual elections and constant shifts in the political wind made such reports susceptible to varying interpretations. These biased and often contradictory assessments, together with the Directory's own political inconstancy, produced huge instability in domestic appointments. Prior to 1789, provincial commanders usually spent many years in a single post; during the First Republic, generals rarely stayed more than a year in any one place (see appendix C).

The road to stability among interior commanders was long and rough with politics. The generals commanding military districts during the early months of the Directory came from across the political and professional spectrum. There were political figures past and future, men such as A.-P. Guérin du Tournel, marquis de Joyeuse, comte de Châteauneuf-Randon, who had been a representative of the nobility in the National Assembly and a Montagnard deputy in the National Convention, as well as J.-F.-A. Moulin, a civil engineer in 1789 and elected a Director in 1799 while commanding the Army of the West. There were also high functionaries like L.-A. Pille, whose frequent, detailed, and well-organized reports reflected his eighteen months as head of the Commission for Armies and Troop Movements in 1793–94. The first cohort of generals also included a wide range of political attitudes and military aptitudes. There were royalist veterans such as E.-G. Picot de Bazus, a former member of Louis XV's Garde du Corps du Roi, who had twice been cashiered during the Revolution, as well as inexperienced Jacobins like François Bessières, whose army career extended no further back than 1792, but who was nonetheless reactivated and reappointed to an interior command in the wake of the Vendémiaire uprising.[31]

This wide range of professional experience and political opinions made it difficult for the fledgling regime to present a coherent image of its policies. The diversity among interior commanders also made it difficult for them to deploy armed force with "purposive measure," in other words, in consistent defense of a moderate constitutional republic.

It was a full year into the Directory before the group of generals commanding in the interior began to acquire political consistency. The Directory had first to remove outright traitors. Three generals in particular were sacked for their overtly royalist machinations: Montchoisy, Lajolais, and Ferrand.[32] The government carried on removing extremists of one stripe or another, including Picot de Bazus and Bessières. The Directory's military man, Lazare Carnot, and the new minister of war, Claude Pétiet, steadily replaced dubious commanders with more reliable men. The turnover was remarkable. Only four district commanders in place on 1 ventôse IV (20 February 1796) held these same posts on 1 fructidor V (18 August 1797). During the same eighteen months, a half-dozen military districts had at least three different commanders each. Under the influence of moderates in the Councils, Carnot and Pétiet installed numerous tepidly republican generals in sensitive posts. These new appointees were men who owed much of their career success to the Revolution, but who found the Jacobin republic anathema to law and order and favored "anarchist" as an epithet. The most famous of these was General Amédée Willot, a former commander in the Vendée appointed to the sulphurous Eighth Military District (headquarters at Marseille). There is no evidence that he actively pursued a royalist strategy there, but his virulent anti-Jacobinism and strong-arm tactics made him one of the best friends royalists had in Provence.[33] Similar tendencies developed elsewhere. In the Twenty-second Military District (headquarters at Angers), Jean Guiot du Repaire found local Jacobins a greater threat to stability than chouan sympathizers among the traditional elite. In the Eleventh District (headquarters at Bordeaux), B.-A.-J. de Moncey joined a clumsy opposition to local democrats. Commanders of his ilk had a clear influence on the elections of 1797. Not only was it a right-wing landslide, but interior commanders such as the reactionary Willot and the royalist Ferrand were themselves elected as deputies.

After the coup d'état of 18 fructidor V, the Directory purged the corps of generals. This brought the dismissal of at least thirty-eight generals deemed to be royalist sympathizers. Well over half of these men held interior military commands.[34] Clearly the victors in the coup believed that generals commanding in the interior had not done enough to prevent the drift to-

ward royalism and the concomitant collapse in public authority. The government lacked material proof that these men conspired against the regime but acted on any evidence of reactionary tendencies.[35] Endless denunciations, investigations, and recriminations made truth a rare commodity for the government; almost anyone, no matter how unfaithful to the regime or corrupt in their activities, could find a few deputies to support their petitions.[36] Because the government needed support in the Councils to pass laws, but could rarely count on more than a minority of faithful deputies, it needed to earn added support by accepting recommendations from deputies it hoped to win over. If the political climate changed, however, generals appointed on this basis lost their jobs. The result was endemic turnover. The Directory's shift from fearing royalists to fearing Jacobins produced still more instability. In the twelve months between February 1798—that is, just before the government turned against the left—and February 1799, when it was gearing up for another round of elections, forty of the eighty-two generals assigned to interior military districts were moved or sacked.[37] Not all of these changes had political motives, but a high proportion certainly did. Political considerations had the greatest impact in military districts where factionalism had the greatest influence.[38] The influence interior military commanders could have on elections produced constant change as the government attempted to "prepare" elections from one year to the next. Some commanders candidly described their involvement: "the troops ... have been placed in such a manner as to protect patriots," wrote Adjutant-General Noguès, commander of Ariège, when discussing the upcoming elections.[39] The mixing of political and military influence became almost total when deputies owed their seats to the local military commander or generals were themselves elected—as happened to eight generals in 1798.[40]

In addition to short stints in any one place, generals were unlikely to be assigned to command in their native regions, especially in their home departments. As a result, interior commanders usually lacked intimate knowledge of the areas assigned to them. This limited the subtlety of their responses and made their recourse to force more common than it needed to be. Short stays in any one post and unfamiliarity with an area, however, both helped to keep interior commanders from developing the sort of local attachments that undermined their independence. Being fully aware that his career depended more on the government's opinion of his work than on that of the local populace encouraged a district commander to impose the regime's authority rather than let sympathy temper his response to collective resistance or open violence. Failure to understand this basic rule cost

a number of generals their posts. General Joseph Servan's brief tenure as commander of the Twentieth Military District (headquarters at Périgueux) in 1800 provides a glaring example of the discrepancy between function and performance. Despite being appointed with "extraordinary powers to repress brigandage," Servan, famous as the Brissotin minister of war in 1792, betrayed his hard-earned hostility to Jacobins by openly favoring their bitterest opponents, which included protecting the royalist dandies known locally as "jeunes gens du bouton." Even his friend Carnot, himself now minister of war, took offense: "I am distressed to see that far from fulfilling the mission given you by the government, you have only increased the disorder, inflamed the wounds, and reignited the furies of factionalism. . . . Your liaisons and your choices have all been marked by the same tendency. . . . You have ignored the brigands and gone to war with peaceful citizens. It is impossible for me, my dear general, whatever effort my friendship may make, to justify your conduct."[41] Servan had targeted a local faction, not criminals, and that was one definition of domestic state violence. The Consulate promptly rescinded his appointment and recalled him to Paris.

An officer's social conduct while assigned to the interior also shaped perceptions about how well he served the cause of domestic order. Dubious personal behavior alone could bring a quick change of venue. In October 1796, General Antoine Morlot lost his command once the government learned of his violence, arbitrariness, and notorious involvement in gambling and prostitution at Aix-la-Chapelle. All the same, this did not ruin Morlot's career. He was soon put in charge of the Tenth Military District, whose headquarters were then at Perpignan, a fortress about as far removed as possible, both geographically and culturally, from his sources of trouble.[42] But conduct unbecoming an officer could also mean conduct unbecoming a gentleman, and thereby also lead to an embarrassing transfer. The Directory did not hesitate to relocate the talented and politically well-connected "Achille" Duvigneau from command of the Tenth Military District once it learned of his social standing at Toulouse. Indulging his wife's unseemly behavior had "plunged him into an abyss of pressing debt which caused him to compromise the dignity of an army general"; as a result, continued Augereau, his predecessor and erstwhile supporter, "he can no longer handle his assignment effectively, being scorned by everybody, having lost all credit and above all the confidence of his subordinates."[43] Adding to the regime's small supply of credibility thus depended on not ignoring questions of social conduct. But charges of misconduct were also the stock-in-trade of political enemies; therefore, the government could

afford to take such charges seriously only when they came from reliable sources. Despite claims from local Jacobins that the very young François Watrin, commander of the Sarthe in early 1796, was socializing with the aristocracy of Le Mans, assurances about his political independence sent by the estimable General Hoche convinced the Directory to leave him in place.[44] Such was the delicacy of assignments to the interior, always balanced between issues of personal character and professional competence. And above both stood political considerations, which came to the fore with every swing of the political pendulum.

The instability of the First Republic increased the importance of generals in local affairs. Whichever faction could count on the local commander had a distinct advantage. This extended beyond the mere application of armed force in partisan ways. Brigade General Cambray made a national reputation for himself by leading the "ambulatory constitutional circle" in the Sarthe. Almost every *décadaire* in the run up to the elections of year VI, Cambray and Rigomier Bazin, the Jacobin editor of the *Chronique de la Sarthe,* led members of the constitutional circle of Le Mans out to another town to establish a local constitutional circle there. Cambray often gave the keynote speech in a day of feasting and oath-taking. The innovative effort paid off with an easy Jacobin victory in the department. Their combined success got Cambray sent to the eastern front and Bazin's newspaper banned.[45] This relationship between newspaper editors and generals significantly affected the credibility of another local commander. Brigade General Pierre Sol, who commanded at Toulouse from September 1795 to March 1798, took special pains to refute the portrait painted of him by the *Journal de Toulouse.* Eventually he earned grudging respect, which helped him to tame the National Guard and preserve his command despite being inclined to protect the "honnêtes gens" of the old judicial capital.[46] Local reputation and involvement in politics thus became key aspects of a general's successful deployment of force in defense of the republic. If generals, unit commanders, and even junior officers did not share the Directory's vision of the republic, they would not fulfill their mandate as guardians of the polity. In such cases, use of the army in domestic policing was perceived as nothing more than personal ambition or factional politics. It then lacked "purposive measure," lost all credibility as legitimate force, and became delegitimizing violence.

Since their most sensitive function was the preservation of order, generals with strong political biases routinely masked them with the language of law and order. It was not so easy, however, to disguise the working relation-

ship between the army and local officials. Any real tension quickly became public, and the government paid close attention to such rivalries. Military esprit de corps and disdain for civilian authorities provoked much of the trouble. Officers had a natural tendency to take the side of soldiers against civilians. Generals would claim that, at the very least, blame was shared, even when their officers were already in prison.[47] Too often this amounted to a cover-up, and unless units were reassigned, troubles would recur. Furthermore, units often had to be moved after developing political prejudices detrimental to their mission. The elitist traditions of the cavalry generally inclined them toward antirepublican politics, whereas artillery units usually had more egalitarian and hence prorepublican sympathies. The attitude of officers set the tone, as did a unit's service record. Being stationed in hotbeds of factionalism rarely left a unit unscathed. Sooner or later, it took sides.[48] Equally, discipline suffered when units were kept in the interior for long stretches at a time. Most assignments to the interior involved dividing demi-brigades, battalions, and squadrons into smaller detachments. Scattering them around several departments in this way eroded the authority of senior officers and gave NCOs more independence than was good for military discipline. This is when local attachments or antagonisms became especially dangerous. Political activism of any sort eroded a unit's reliability. It was worrisome enough when rogue elements savaged the local populace, as happened when three cavalrymen "cut a peaceable farmer to pieces" on the road to Lons-le-Saulnier; it was worse when a whole unit entered into battle with the local townsfolk, as the Ninth Dragoons did at Lyon. City officials had good reason to complain: this was the unit that had sabered to death initial survivors of the *mitraillades* (mass shootings) in 1793 and was still stationed there four years later![49]

The greatest difficulty with establishing the army as an acceptable instrument for domestic policing lay in the Directory's determination to use it for tasks that most Frenchmen opposed. The economy of violence in the period derived significantly from the regime's aggression against rural communities. This had a profound impact on the credibility of the army as a police force. The central problem is illustrated by an incident in the department of the Rhône in early 1798. A detachment of twelve grenadiers, six cavalrymen, and four gendarmes was charged with escorting five refractory priests condemned to deportation. On their way from Lyon to Rochefort, as they crossed the mountains of the Lyonnais in a thick February fog, they were ambushed by hundreds of local residents. A volley of musket fire killed a grenadier and a cavalryman, badly wounded six others, and left the

detachment commander with three gunshot wounds. Those soldiers not hit in the initial discharge turned their guns on the wagon full of priests, killing one and wounding another. Riding to the sound of muskets, eight officers of dragoons appeared in time to drive off the attackers. Nonetheless, the villagers managed to make off with the four living clerics, one bleeding profusely. The whole operation had been carefully planned, apparently by a priest from the aptly named village of Chapelle-des-Sauvages, and so invited massive military repression directed from Lyon.[50] This deadly skirmish in the heart of France was certainly not the sort of danger grenadiers and dragoons expected when they joined the army, whether willingly or not. Whatever glory they could earn serving the republic, it would not come from escorting priests, no matter how heroically the soldiers performed on Mount Tarare. And how many villagers in the Lyonnais could separate the army's triumph over foreign powers at Lodi in 1796 from the siege of Lyon in 1793, the effort to kill a wagonload of priests, or insouciant brutality in house-to-house searches? The same ambiguity, if it existed at all, was evoked by the equally loathsome and dangerous tasks of arresting émigrés and rounding up draft dodgers. As long as the regime pitted the army against the village, the officer against the notable, the soldier against the farmer, it would be the source of violence and disorder. Of course, historians who revel in the glories of the French army during the Revolution and Empire have nothing to say about its tragic and sordid role in these tasks.

The army performed other police functions of dubious legitimacy in the eyes of many. The difference between the need to use force to impose the demands of the state and the manner in which it was used had a major impact on popular attitudes. As we know, the First Republic made exorbitant demands for money, men, and materials in order to wage war. Most of these had to be extracted from the populace. When reluctance turned to refusal, the republic turned to billeting. The ancient practice of billeting troops in ordinary homes produced major results, both in increasing the desired yield and in alienating the population. The use of *garnisaires* was neither a uniform practice nor an uncommon experience and could cover a range of possibilities. The law of 17 brumaire V (7 November 1796) authorized imposing soldiers on villages that failed to pay their taxes. The parents of refractory conscripts and the families of outlaws also frequently found themselves billeting grenadiers. Woe to those forced to take in hussars or dragoons, with their horses and their attitudes. This sort of personal contact with soldiers did nothing to enhance the army's image. In fact, the level of hostility led to innumerable assaults and more than a few deaths among

the *garnisaires* themselves. The fiscal and military crisis of 1799 provoked a veritable panic in Paris and a wave of billeting in the provinces that only subsided in 1801.[51] In this way, among others, the army earned the victories of the Consulate, both inside and outside of France.

Domestic deployment of the army did not come as a complete scourge on the country, however, and offered a range of more socially approved policing activities. Despite frequent nastiness, the army could also be a useful, even welcome, presence, and not just for national defense. Every military district had its own special assignments. Hundreds of soldiers provided security for the annual exploitation of the salt marshes at Aiguemortes; hussars patrolled the Swiss border to prevent smuggling; and cavalry were stationed at intervals along the entire Mediterranean coast to prevent Barbary corsairs from bringing plague and "ravaging the shores of the Republic."[52] The army also played a vital role in protecting the markets around France. Beaucaire, the site of a famous international fair each year, was kept safe by 300 infantry and 150 cavalry. Troops served to safeguard smaller markets as well, usually by providing crowd control, as was the case when religious antagonisms rocked Sommières (Gard).[53] Less common, but more dangerous, was the use of troops to quell subsistence riots, a particularly delicate matter due to the moral implications of enforcing starvation prices. But the republic did not suffer from serious subsistence crises between the winter of year IV and the generalized hardship of year X; any troubles in between were strictly local.

In all of these situations, success depended on intelligent leadership and disciplined troops. No amount of civilian oversight or loyalty to the republic could instill these attributes; they were strictly the product of experience and professionalism. The troubles that led to "taxation populaire" at Toulouse in March 1800 illustrate the delicacy of military policing. A misunderstanding of municipal orders resulted in cannons being brought out the second day. The crowd, using a shower of rocks to repel the cavalry escort, seized the cannons and returned them to the town hall. The cavalry, rather than charge the crowd, serried its ranks to prevent the trampling of women and children and remained on the edge of the market. With matters on the verge of a massacre, General Commes withdrew all his troops. He then appeared without an escort and on foot, together with several city officials, and walked among the people, haranguing them to go home. Commes' bravery, the city's willingness to lower market prices, and, above all, the discipline of the troops prevented a catastrophe.[54] Though only a single incident, it reflects the steady gains made in establishing "internal measure"

in the use of armed force during the period, especially as the government chose officers more carefully and the rank and file acquired the discipline of grizzled veterans.

The army's most challenging police function at the time was to combat brigandage. Many aspects of the war on brigandage are covered elsewhere in this study; therefore, it is simply the ambiguity of the army's role in the struggle that will be noted here. Thwarting brigandage meant, among other matters, protecting public transportation. France's once-impressive network of highways and bridges was in shambles by 1795. Disrepair and a disastrous economy had sharply reduced traffic. The fewer people on the roads, the more dangerous they became. Many of the key arteries in the country were infested with highwaymen and brigands. The most dangerous routes were between Lyon and Strasbourg, Paris and Rennes, Toulouse and Montpellier, and, the absolute nadir, between Marseille and Lyon. So common was the danger that every time bank funds were transported between cities, a fee of 1.5 percent was added to cover the risk of robbery.[55] Constant peril required constant policing, but a lack of gendarmes often required soldiers to fill in. Every year the army provided thousands of escorts for stagecoaches, mail carriers, and treasury wagons throughout the country. Nonetheless, companies regularly complained about the slower pace their vehicles had to keep when under military escort, especially when on foot! We hear less complaining from passengers, however; there were simply too many holdups. Here it was not the citizenry who resented the omnipresence of soldiers but the soldiers themselves. Interior commanders frequently moaned about the heavy burden that providing escorts placed on their overstretched resources, especially in the west and south, but the issue was national and continual.[56]

The actual pursuit of brigands was another matter. Certainly few complained about the army hunting down *chauffeurs* and others of their ilk. Less satisfactory were the special expeditions sent after rebels and antirepublican outlaws. Most of these forays were into isolated areas where locals met outsiders with preemptive hostility. Armed youths and defiant notables opposed the state simply out of ancestral tradition. Brigands of this sort found a natural refuge in the entire region around Mount Aigoual in the Cévennes, especially in the magnificently treacherous Gorges du Tarn where the Aveyron, Lozère, and Gard come together. The army rarely had much success in such regions. A sweep through the area in June 1796 not only failed to capture any brigands, but column commanders "gave themselves over to abuses and pillage," thereby stoking fury against the republic.

Matters in the Lozère did not calm down until the swaggering Squadron Commander Rutteau was replaced by a more prudent commander who did not "spend time creating chouans and counter-revolutionaries in order to make himself valuable in appearing to fight them."[57] Across the highlands of the south, from the Ariège to the Ardèche, from the Basses-Pyrénées to the Basses-Alpes, the army confronted resistance from mountain villages, which, in the language of the republic, "teemed with brigands." The culture of guns in hill country posed a special problem. In the Ariège, the mountain people "were almost all armed with service muskets" and fully prepared to repel any expedition sent against them that did not consist of overwhelming force. But rarely did the republic have enough troops for the job. As a result, a desultory effort to take the struggle against brigandage to its topographical sources only inflamed passions. Almost insupportable fatigues on route to capture a rebel priest, an uprising of four hundred armed peasants, several gunshot casualties, and a return to base empty-handed did not make soldiers well disposed toward mountain villagers. "Abuses and pillaging" were predictable, either on the way home or the next time out. These were men who, after weeks of arduous excursions, might get a "bonus" of new shoes, and only if their commander were especially solicitous on their behalf.[58] Thus, an overstretched and undersupplied army, called upon to repress brigandage, that catch-all term for the most egregious lawlessness, had a strong tendency to behave badly. This could only lead to a loss of "internal measure" and corrosion of the army as a tool of domestic security. More will be said elsewhere on the military response to brigandage, but for now it provides the best example of the untenable ambiguity of the army's role in policing. As long as it had unstable leadership, inadequate resources, and served to coerce social change, the army would remain as much an instrument of domestic state violence as of legitimate force.

Military Justice for Civilians

In addition to providing extensive police services, the army offered alternative forms of justice. Initially, these were exceptional measures and therefore were not well integrated into the broader system of criminal justice. In the years 1792–95, military justice perpetrated some of the worst excesses of the Revolution. Thereafter, the Thermidorian republic gradually refined its use of military justice to deal with violent threats to the regime. This helped to give military justice greater "internal measure" and thereby re-

duced the moral taint associated with applying truncated procedures to civilians. Many of these changes arose out of the army's own needs for more effective forms of punishment, not the demands of liberal lawmakers. Moreover, even these refinements left much to the arbitrariness and discretion of individual military courts called upon to judge civilians.

From its earliest days, the Convention had systematically resorted to exceptional forms of military justice to punish resistance. This began in October 1792, when military commissions composed of five officers and devoid of any jurisprudence were charged with judging and executing émigrés within twenty-four hours. The Vendée uprising and Federalist Revolts of 1793 vastly expanded the practice as a firestorm of revolutionary revenge burned down judicial obstacles to repression.[59] Even when operating "révolutionnairement" (mainly without juries), criminal courts and military tribunals alike tended to balk at merely expediting executions. Hence, representatives on mission created veritable killing machines. Some of these were known as *commissions révolutionnaires* or *commissions populaires*, but most were simply *commissions militaires*. Despite historians' focus on revolutionary tribunals, military commissions actually carried out much of the repression of year II.[60] Whereas the guillotine quickly became the symbolic face of revolutionary justice, it was the military firing squad that executed most judicial victims of the Revolutionary Government. How many images even exist of victims being shot while kneeling, blindfolded, in front of a small detachment of grenadiers, as was the practice of the day? And yet the uncontrolled killing perpetrated by military commissions actually prompted an executive order to suppress them across the country in the spring of 1794, just as the "Great Terror" was beginning in Paris.[61]

Despite the Thermidorians' claim to have ended the Terror and replaced it with justice, they continued to find military commissions useful. The general relaxation of repression in the winter of year III, as well as the pacification treaties of La Jaunaye and La Mabilais in the west, seemed to presage the end of military commissions, but the crises in the summer of 1795 revived them with a vengeance. The Paris uprising of 1–2 prairial (20–21 June 1795), the Toulon insurrection of 17–18 floréal (6–7 May 1795), and the Quiberon landings of mid-messidor III (July 1795) all led to the summary justice of military commissions.[62] Though not as bloody as those of year II, the military commissions of year III were just as numerous and just as devoid of basic due process. As the transition to constitutional government approached, the Convention sought to wind down these instruments of revolutionary exceptionalism.[63]

In the meantime, the regular form of military justice created in 1793—*tribunaux criminels militaires*—had proved utterly utopian.[64] Laudable in theory, they were lamentable in practice. The exigencies of war forced the Thermidorians to revert to more militarized forms of military justice. The law of 2 jour complémentaire III (18 September 1795) abolished the jury-based and quasi-civilian system of military justice and replaced it with *conseils militaires.* The new military courts lacked features of due process. They operated without juries, excluded anyone with legal training, and had no regulations governing the interrogation of the accused, the confrontation of witnesses, or the process of deliberating on verdicts. Finally, there were no appeals, and so verdicts were executed "immediately." The only safeguards provided to the accused came in cases subject to the death penalty: murder, rape, arson, and robbery committed either by more than two people, with violence, or with effraction. First, convictions in capital cases required six votes, rather than the usual five. Second, in these cases, the commanding general appointed twice the usual number of members, and the accused nullified half of them. This reinforced the impression, already created by the low rank of most of those appointed to a *conseil militaire* and the fact that they were supposed to serve only for a single case, that verdicts were being rendered by a panel of soldier-jurors rather than military judges.[65] In sum, *conseils militaires* resembled the Convention's military commissions more than any other form of military justice adopted during the Revolution. In fact, journalists and legislators alike often referred to them as *commissions militaires,*[66] which is how the public perceived them as well.

Despite the Thermidorians' recidivism regarding actual military commissions, they made some effort to regulate the judicial response to rebellion. Rightfully skeptical of the royalists' intentions in the west and confronted with continued chouan activity, the Convention passed the law of 30 prairial III (18 June 1795). Though conceived as a purely circumstantial measure, this law provided the basis for using regular military justice against rebels throughout the remainder of the First Republic, into the Empire, and well beyond. According to the new law, rebels who took up arms after the pacification agreements would be tried by regular *tribunaux militaires.* Leaders, captains, and instigators of rebellion, as well as those who recruited for the rebels, were to be condemned to death and executed by a firing squad. So too were deserters and rebels captured armed and outside their native departments. On the other hand, ordinary rebels captured in armed gatherings would only be subject to between two and four months in prison and fined half their annual income, provided they were not convicted of

participating in murderous assaults. The mechanics of this legislation made its purpose clear: to separate sheep from shepherds and still punish wolves in sheep's clothing.

When the Convention dramatically transformed military justice by replacing permanent *tribunaux militaires* equipped with juries and legal experts with temporary *conseils militaires* composed of nine soldiers, it did not move to protect civilians from the new system. So attached were the Thermidorians to the new system for trying chouans that whenever legal or constitutional obstacles appeared to jeopardize it, they stepped in explicitly to ensure its survival.[67] Thus, participants in the Vendémiaire uprising were tried by *conseils militaires* applying the law of 30 prairial III. Such practices clearly violated the Thermidorians' ostensible commitment to ground the republic on the rule of law. There has been no study of how *tribunaux militaires* dealt with chouans in the last six months of the Convention, but it is clear that they worked extremely slowly and so left hundreds of accused rebels in prison for months on end.[68] The abandonment on the eve of the Directory of this extraordinarily liberal form of military justice in favor of juryless and purely military courts may have been necessary in the army, but it also severely eroded the protections afforded to civilians, especially those accused of guerrilla activities. And yet the Directorial government hoped to prevent *conseils militaires* from judging known rebels captured at any time other than in the act of rebellion, just as the law of 30 prairial III specified.[69] As Minister of Justice Merlin de Douai scornfully explained, trying rebels captured in flagrante delicto made it easy for the army to recognize those who were truly guilty. Less obvious cases would be tried by regular criminal courts.[70]

The actual practice of using *conseils militaires* to judge chouans did not merit the minister's confidence. He operated under a false assumption: it was not only rebels captured in the very act of rebellion who were justiciable by military courts; so too were rebels arrested outside armed gatherings but suspected of participating in deadly assaults.[71] Furthermore, the pattern of judicial pursuits against those tried for "chouannisme" in the Sarthe suggests that drawing a clear line between those who deserved civilian justice and those who merited military justice was easier done in the offices of a Paris ministry than in the chaotic conditions of a lingering guerrilla war. Even though the Criminal Court of the Sarthe tried a limited number of cases of *chouannerie,* even some of these should have gone to military courts where the vast bulk of such cases was heard.[72]

The nature of *conseils militaires* as temporary courts and the consequent

loss of most of their records make it impossible to determine how many supposed rebels had the direct experience of a court-martial. Nonetheless, three surviving registers from the Sarthe indicate a massive use of military justice to prosecute civilians even after the shift to constitutional government.[73] *Conseils militaires* were empowered to try civilians during a period of about nine months.[74] During that time, 151 individuals, or almost half of those tried by the *conseils militaires* at Le Mans and La Flêche, were civilians. Almost all of these cases involved charges of *chouannerie* or counter-revolution and so led to twenty-three executions by firing squad.[75] Most of these men had been captured red-handed, either transporting munitions for the chouans or actually fighting with them. In cases where the accused had not been arrested in the act of rebellion, the *conseils militaires* heard convincing evidence of direct involvement in killing. Such was the case of the locksmith Pierre Meiche, a sedentary rebel who never joined an armed gathering; however, because he repaired guns for the chouans and personally mounted guard against the Blues in his native village of Ivré-le-Pôlin, the death of two soldiers in a shoot-out there led directly to his own death by firing squad.[76] The number of executions ordered by *conseils militaires* in the Sarthe contrasts with their overall leniency.[77] Not only did they acquit 56 percent of the civilians they tried, but half of those found guilty received punishments of only four months in prison or less.

The overall leniency of *conseils militaires* reflects the clumsy contrasts built into the law of 30 prairial III. Because it contained no provision for penalties anywhere between death by firing squad and a few months in prison, the law tended to punish rebels either as cold-blooded murderers or petty delinquents. Such absurdity led to creative solutions. Young men subject to the *levée en masse* and yet caught in chouan gatherings were supposed to be executed, but these facts alone did not lead to death sentences. Instead, in a customary practice as old as the Romans, these youths were simply enrolled in the army and sent directly to the front. *Conseils militaires* found other ways to avoid the death penalty as well. Rather than being condemned to death for trafficking in munitions, Ferdinand Bras-d'Or and André Leloup (*noms de guerres*?) received sentences of fifteen years in irons. The court admitted that they acted with criminal intent but considered "the sincere repentance" they showed once arrested and their practice of defrauding chouans by shorting their bags of gunpowder to be sufficient mitigating factors.[78] This was strictly illegal, and yet the punishment fit the crime. Nor was there any legal basis for the courts' repeated recourse to "imprisonment until peace." This represented a form of preventive detention similar to the

plus amplement informé of the *ancien régime* or the "law of suspects" of 1793 in that the accused were clearly chouans who had violated the pacification agreement of year III but whose criminal intent or violent acts were insufficiently documented. In other cases, indefinite imprisonment offered a way of showing leniency. For example, Jacques Pioger had been arrested in possession of papers that proved that he was the leader of a group of chouans, and yet he was without arms, "had always prevented pillaging and theft and had saved several republicans from death while he stayed with the rebels."[79] Being jailed until peace both saved Pioger's life and kept him from rejoining his band. Such flexible sentencing provoked a noisy controversy,[80] and in mid–year IV, the Councils responded by introducing a new form of judicial oversight called *conseils de révision.*[81] This put an end to lengthy terms in the *bagne* or indefinite imprisonment until peace and thereby fostered the existing tendency toward leniency.[82]

The law of 30 prairial III and the speedy proceedings of *conseils militaires* proved an irresistible temptation for the repression of counterrevolutionary violence and even simple brigandage well beyond the civil war zones of western France. Internal commanders made credible arguments for using *conseils militaires* for repression in other areas of civil unrest. For example, the Cévennes Mountains all the way from the Haute-Loire to the Hérault were racked by attacks on republican purchasers of national land, violent incursions into villages and towns, and repeated clashes with the army. General Châteauneuf-Randon, commander of the Ninth and Tenth Military Districts and well-known in the region for his repression of the Charrier uprising in 1793, had no hesitation sending captured rebels before *conseils militaires* three years later.[83] Less legally credible were the various efforts to include ordinary brigandage under this rubric. Lejeune, court commissioner of the Eure, used the concept of "brigands chouans" to get the minister of justice to agree to have François Robillard and his notorious band of robbers judged by a *conseil militaire.* These were men with a history of serious crime extending back to the 1780s, and there was no indication that their latest attack, the violent robbery of a farmer at Préaux, had any connection to organized political insurgency. It may have looked like *chouannerie* from a distance, but it did not smell like it close up, and Lejeune was close enough to know the difference. Nonetheless, using a *conseil militaire* ensured two executions within hours of the trial.[84]

In contrast, there was nothing legally dubious about using *conseils militaires* to prosecute deserters for joining the chouans or engaging in brigandage. Many rebels and bandits, whether they operated in Maine, Languedoc,

or Picardy, had first been conscripted into the armies of the republic. Once they deserted, all of their crimes, not just that of desertion, became justiciable by courts-martial. Furthermore, any civilian accomplices of crimes committed by deserters also faced military justice, an extension of a principle that had applied to soldiers throughout the Revolution.[85] These provisions cast the net of military justice wider than the law of 30 prairial III alone would imply. In fact, when this law appeared insufficiently broad, the Ministry of Justice encouraged *conseils militaires* to prosecute all draft dodgers and deserters caught in armed gatherings as authors of "attacks on public security," as the law of 1 vendémiaire IV (23 September 1795) specified. The Penal Code had made this a capital offense, and the use of military justice ensured numerous executions. The *conseils militaires* at Le Mans alone condemned nine deserters to death (two in absentia) for joining the chouans.[86] After all, this was "desertion in the face of the enemy" and thus the ultimate betrayal of their brothers in arms. *Conseils militaires* meted out similar penalties around the country. The extensive scope of military justice meant that at Castres four deserters and two civilians were judged by a *conseil militaire* on charges of "armed robbery with violence in the countryside at night and on public roads in the day . . . saying that their activities were the result of the revolution." Three of the deserters were executed the next day.[87] In general then, some interior commanders found the law of 30 prairial III insufficiently rigorous, whereas others, especially civilian officials, found it a useful way to extend the scope of military justice to ordinary bandits. The various provisions of the law, therefore, as well as the ability to envelop civilians who committed crimes alongside military personnel, including thousands of deserters, made *conseils militaires* a potential threat to a far larger number of rebels than Merlin de Douai had initially imagined.

Whatever the utility of *conseils militaires* in the repression of counter-insurgency, they proved woefully inadequate to restore discipline in the army. This was as true on the Loire and the Garonne as it was on the Rhine and the Meuse. The fault lay primarily with the deplorable conditions at the start of the Directory. Conscripts without a specified term of service, pressed into a war of conquest, and so badly provisioned that they could survive only by pillaging, simply could not be controlled by the new system. In these circumstances, the fact that the majority of judges on a *conseil militaire* had to be either ordinary soldiers or NCOs severely impeded any return to army discipline. Soldiers had little fear of being punished for looting. Their judges were too often guilty of the same thing.[88] Matters were espe-

cially bad during the brutal subsistence crisis of year IV. It is not surprising, therefore, that army discipline reached its nadir that year. This prompted a chorus of demands from senior officers for a more effective form of military justice.[89]

Legislators responded to these demands by creating yet another form of military court, only this time, the reform endured: the *conseils de guerre* created by the law of 13 brumaire V (3 November 1796) remained the basis of French military justice until well after World War I. The new courts were both more authoritarian and more carefully regulated than *conseils militaires. Conseils de guerre* were permanent standing courts designed to strengthen the authority of senior officers. Six of the seven judges, as well as the investigator/prosecutor (*capitaine-rapporteur*) and court commissioner (*commissaire du Pouvoir exécutif*) were required to be officers. Most held the rank of captain or higher; all were appointed by the commanding general. The procedures of *conseils de guerre* also served to concentrate authority in the hands of officers. In the trial, the prosecutor read the various pieces of evidence to the seven judges before the accused appeared in court.[90] Once the defendant was led in "free and without irons," he identified himself for the record and heard the formal charges (but not the evidence) against him. The court president then interrogated him. The president was always the highest-ranking officer and therefore at least a *chef de brigade* (colonel). He cut an imposing figure and left the defendant in no doubt about who was in charge. The other judges could also pose questions. A small audience, limited to three times the number of judges, then heard the witnesses for and against the accused. Once the military prosecutor presented his "conclusions" and the accused or his legal advisor summarized the defense, the accused was returned to his cell and the courtroom cleared of spectators. The seven judges remained to deliberate their judgment, three votes being needed for an acquittal.[91] The defendant was not brought back into court to hear the verdict but had it read to him later in prison and in front of assembled troops, which made sure that he could neither insult the judges nor receive outbursts of empathy from the public. The whole dramaturgy of the trial, with the judges always present and everyone else being admitted or excluded on cue, emphasized military authority and hierarchy. The frequent reliance on written evidence, including interrogations and depositions, the failure to delineate the precise form and order of questions that the court had to decide, and the simple majority needed for a conviction all contrasted starkly with the jurisprudence governing the criminal courts of the day. Furthermore, division generals not only initiated

cases, they also could indict defendants even before they had even arrested or interrogated. Under these conditions, it is not surprising that one deputy called the new form of military justice "un despotisme régularisé."[92]

Hard on the heels of the new *conseils de guerre* came a more comprehensive penal code for the army. It specified death sentences for looting, destruction, arson, and recruiting for the enemy, as well as for the classic cases of murder, treason, and desertion under fire. Loss of rank was reinstated for any sentence over six months in prison. Such severity highlighted the wartime context and the desperate need to curtail marauding. It also had important implications for the army's role in domestic repression. Earlier forms of military justice had been limited to crimes committed by soldiers against soldiers and thus left crimes committed by soldiers against civilians to the regular system of criminal justice (except, of course, on foreign soil). The outbreak of war in 1792 extended the jurisdiction of military justice to include anyone attached to the army, its supply services, garrisons, or field camps.[93] This expansion of military justice to include a range of civilians provoked some loud controversies. Even the military penal code of 21 brumaire V (11 November 1796) did not clear up all of the ambiguities. It included "soldiers, individuals attached to the army and in its train, enemy recruiters, spies, and inhabitants of enemy territory occupied by armies of the Republic for crimes justiciable by *conseils de guerre*." Did "soldiers" include draft dodgers or officers on leave? Would "crimes justiciable by *conseils de guerre*" be determined strictly *ratione personae*? Did it make a difference whether crimes were committed inside the republic? All of these questions were eventually answered in the most expansive manner possible; that is, not only did civilians accused of spying or recruiting for the enemy fall under military justice, so too did draft dodgers who had never entered the army, officers who had temporarily left the army, and soldiers who committed any sort of crime against civilians at home or abroad. The results largely reversed the early revolutionaries' basic principles of military justice.

The vast extension of military justice into civil society did not stop with matters related to the army or its immediate servitors. In the wake of the Fructidor coup, the Second Directory sought to expand the law of 30 prairial III to include bandits and highwaymen. As we shall see, lawmakers decided instead to craft an entirely new set of criteria extending military justice into areas ordinarily covered by the regular system of criminal justice (law of 29 nivôse VI [18 January 1798]). In taking this route, the Councils made it clear that they had concerns about the imprecision and rude aspects of the military justice being used in counter-insurgency. *Conseils de guerre* improved

considerably on both the military commissions of 1792–95 and the *conseils militaires* of 1795–96. In that sense, the new military courts constituted an important enhancement of both "internal" and "external" measure and, therefore, a reduction in the perceived violence associated with the army as a tool of domestic repression. And yet, as was the Directory's hallmark, progress toward more controlled repression was soon offset by the regime's political weakness. Just as the system of regular military justice had been sorted out, the Fructidor coup resurrected the summary justice of military commissions. As important as the army had become in domestic security during the early Directory, its role would only grow after Fructidor.

6 Refining Terror and Justice after Fructidor

> What more could the most ferocious and bloody tyrant do than the five Directors? Robespierre reigned by terror. They have reigned by terror. Robespierre mutilated the Convention; they have mutilated the Legislative Body. Robespierre created revolutionary tribunals; they have created military commissions. Robespierre had émigrés guillotined. They have had them shot. Thus has reopened without obstacle and in another form, the appalling butchery of men that the death of Robespierre seemed to have irrevocably closed.
>
> —Jean-Pierre Gallois, *Dix-huit fuctidor; ses causes et ses effets* (Hamburg, 1799)

AT DAYBREAK ON 4 September 1797, a single cannon shot rang out in the deserted streets of Paris. Thirty-six hours later, with eighteen thousand troops around the capital and the walls plastered with shocking evidence of a royalist conspiracy, a cowed legislature proscribed two Directors, fifty-three deputies, three convicted royalist conspirators, two generals, and five other assorted suspects. Rather than besmirch the recently renamed Place de la Concorde with a lot of beheadings, however, the proscribed were ordered deported to Guyana. Seventeen were actually arrested and deported, and eight of these died there, giving rise to the sobriquet "dry guillotine." The legislature also annulled the elections of that spring in fully half the departments of France. This removed another 122 deputies, as well as scores of departmental administrators, judges, and public prosecutors. The Directory added yet more dismissals over the next few weeks, as well as a massive purge of government commissioners.[1]

Fructidor was the greatest coup d'état of the period. Not only was it greater in political scope and immediate impact than the Brumaire coup d'état two years later, it depended on a national deployment of military

force. The Directorial Triumvirate ordered a total of thirteen thousand troops sent to Dijon, Lyon, Marseille, Bordeaux, and the vicinity of Paris in order to consolidate the Fructidor coup. No serious resistance developed in these places, and most of the troops were sent back to the armies even before they reached their destinations.[2] It was surprising that the capital had remained completely calm despite the gathering of dozens of counter-revolutionary leaders there. But not every town acquiesced in the sudden destruction of the parliamentary opposition. The greatest resistance emerged in the Midi. Montauban erupted into "full counter-revolution," and General Pierre Sol had to respond by marching against the town with all the available troops and artillery from Toulouse.[3] In certain southern localities, military commanders actually encouraged resistance. This was especially the case in Provence, where reactionary commanders chosen by General Willot dotted the countryside. In response, General Lannes, in charge of a column sent from the Army of Italy, launched a chilling proclamation in which he threatened to wreak patriotic vengeance on the royalists of the region.[4] Though not needed in most parts of France, his mailed fist and chiliastic bombast befitted the events of Fructidor.

The Republican Narrative

The coup d'état of Fructidor was a dramatic response to a genuine royalist conspiracy with international connections, but the measures that accompanied the coup went well beyond preempting a plot. These measures have been called the "Fructidorian Terror" and were characterized primarily by a renewed assault on refractory priests and émigrés. In addition to annulling elections and proscribing deputies, the law of 19 fructidor V (5 September 1797) required all electors, public officials, and clergy to swear hatred of royalty and anarchy, reimposed the recently revoked laws of 1792 and 1793 against refractory priests, gave the Directory the power to order individual deportations of clerical agitators, again barred the relatives of émigrés from holding public office, and sought to purge the republic of returned émigrés. Those already in custody would be deported, and those who did not leave or who returned later would be put to death. In order to make good this last threat, the law resurrected the military commissions first used in 1792. These had a single task: to decide if the person sent before them was the same person included on an official list of émigrés. If so, the accused was to be executed within twenty-four hours. Any dubious cases went to civil-

ian authorities, who would investigate the individual's identity and then either release him or send him before a military commission again. Although military commissions were supposed to be established for a single case and the judges changed for each new case, many became quasi-permanent.[5] According to our contemporary critic, these new procedures reopened "the appalling butchery of men that the death of Robespierre seemed to have irrevocably closed." Thus, the Second Directory's military commissions became the sine qua non of the Fructidorian Terror.

The concept of the Fructidorian or Directorial Terror appears in all modern histories of the Directory;[6] and yet, this wave of politicized repression has not been the subject of sustained analysis since Victor Pierre's documentary diatribes of a hundred years ago.[7] Historians have simply accepted his conclusions about the work of the military commissions created by the law of 19 fructidor. These were: (1) that they convicted almost two-thirds of the time, (2) that even acquittals were of dubious legality, (3) that three-quarters of convictions went to clerics and former nobles, and (4) that the great majority of their victims "could only be blamed for having returned to France or for not having left in time." In other words, this was a brutal and clumsy persecution aimed overwhelmingly at clerics and nobles.[8] In this sense, the "Fructidorian Terror" was an echo of the Terror of 1793–94. Tocqueville even claimed that some of the Directory's laws were more barbarous than those of the Revolutionary Government.[9] However, such statements of similarity with a difference are made with little sustained analysis of the motives for returning to such extreme measures. It is inadequate simply to blame a Jacobin resurgence. Rather, as we shall see, the origins of the Fructidorian Terror lay in the mounting lawlessness of the summer of 1797 that enabled a republican narrative of the Revolution developed during the Thermidorian period to triumph over competing alternatives. Thereafter, the actual operation of military commissions produced waves of repression. The first wave was poorly regulated, whereas later ones became both less intense and more focused. This reduction in the range of targets made the Fructidorian Terror part of the Directory's broader use of military means of repression to restore order and ensconce the republic throughout the country. Although the terrorist trope of attacking nobles and priests did not disappear, the new evidence on the victims of military commissions reveals the government's intentions to judge and execute only those émigré notables whose presence in France posed an imminent danger to the republic.

The Triumvirate may have operated the Fructidor coup as a preemptive

strike against a perceived legislative conspiracy to restore the monarchy, but the draconian measures that followed were harder to justify. By September 1797, the Vendée had been pacified and France was on the verge of peace with victory; the Directory was plainly not facing the kind of war crisis that had done so much to stimulate and justify the Terror in 1793. In these circumstances, renewing the heavy-handed and often arbitrary persecution of priests and émigrés further eroded the regime's legitimacy as a constitutional republic built on the rule of law. More important, however, Directorial republicanism needs to be understood as a set of discursive practices and reflex responses developed not so much in the Enlightenment, or on the basis of classical republicanism, as in the midst of violence, repression, and war. By the autumn of 1795, mainstream republicanism had repudiated the demagoguery of populist democracy, restricted power to the hands of property owners, put up a constitutional fence between political power and individual freedom, and asserted an even-handed application of the law as the key to personal security. It had also excluded refractory priests, émigrés, and the relatives of émigrés from the body politic, accepted military expansion as an essential source of legitimacy, and promoted the use of state power to transform social mores. Political debate under the Directory often brought out strains of democratic liberalism—even though arguments in defense of the constitution, freedom of the press, citizenship, and voting rights were motivated as much by factional advantage as political principles—and yet most republicans were too conditioned by their revolutionary past to renounce authoritarian responses to real or perceived threats to the fledgling regime. Thus, the harrowing years between 1792 and 1797 forged a strong, yet inflexible republicanism that was more the product of revolutionary praxis than the detritus of revolutionary ideology.[10]

In the year following the overthrow of Robespierre, republicans of all sorts were forced to confront fundamental issues about their revolutionary experience in order first to find their way out of the Terror and then to plot a path out of the Revolution itself. Such tasks could not be accomplished without developing an interpretation of their revolutionary experience thus far. During the Thermidorian Convention, therefore, a variety of competing narratives developed to explain the trajectory from 1789 to 1794.[11] The Fructidorian Terror should be understood as largely the fruit of one of these narratives. That is, the renewed persecution was greatly encouraged by a republican myth, a particular form of narrative developed to explain past massacres. The legacies of the Couvent des Carmes and the Fort Saint-Jean, of Machecoul and Quiberon, prevented the republic from mastering

Fig. 7. Entre deux chaises: le cul par terre. Eau-forte by Lemonnier, 1797. Prorevolutionary allegory of the Directory falling "between the two chairs" of monarchy and republic. (Courtesy of the Département des estampes et photographies, Bibliothéque nationale de France)

its past within the framework of a liberal constitution. The narrative of the Revolution propagated by most Directorial republicans did not admit that the Revolution had skidded off course in 1792. The dominant narrative continued to stress the multitude of threats to the republic and the need for constant vigilance and armed repression. Most republicans believed that the Revolutionary Government of 1793–94 had been a necessary response to an unprecedented coalition of internal and external enemies. In their view, the excesses of the Terror were the product of personal ambition and ideological fanaticism alone and were certainly not inherent in the revolutionary project itself. Furthermore, they believed that a failure to understand the difference between these two had produced the political inanition of year III, when the republic almost perished. This narrative stressed that the republic was founded more on collective security than personal liberty. Furthermore, it denied that genuine republicans, not just isolated *buveurs de sang, septembriseurs,* and *anthropophages,* might have provoked much of the resistance to the republic by adopting a Manichean view of politics. This account of revolutionary events exonerated republicans of responsibility for the injustices of year II but in doing so prevented them from developing more flexible responses to the problems of year V. In other words, here was a peculiarly powerful form of narrative that explained—and largely excused—the revolutionary past and yet in so doing constrained the republican present.

Narratives that purport to recount past events can be usefully divided into three types—legend, history, and myth. Legends are those that lack enough persuasive power to gain credibility. History is a narrative account based on sufficient evidence to become credible and gain general acceptance. Beyond history lies the rarefied category of myth, a narrative possessing both credibility and authority. A myth is a narrative that begins with credible claims about the past but has the power to transcend these and achieve the status of paradigmatic truth about the present. The authority of myth makes it both descriptive and normative. In other words, a myth encodes important, but selective, information about society and its past and in so doing helps people to mold society on that basis.[12] This concept is similar to Georges Duby's analysis of the tripartite conception of feudal society as a "collective imaginary"[13] but differs by stressing a narrative rather than structural understanding of the society in which the myth operates. This concept of myth is also similar to the notion of ideology, except that a myth is sociohistorically specific and therefore, unlike an ideology, lays no claim to explain or shape other societies. A myth does not even present a

vision of the future for its own society but rather uses a widely believed, though tendentious, version of the past to meet challenges facing the contemporary social order.

This kind of myth cannot simply be fabricated; it must emerge from the course of events and only gains power when crucial elements of the narrative are supported by evidence and appear to be confirmed by subsequent developments. This happened late in the Revolution. During the Directory's first two years, political debate was shaped by the competing discourses of rigid constitutionalism and revolutionary exceptionalism. The most contentious subject in this debate was the law of 3 brumaire IV (25 October 1795), which revived the anticlerical laws of 1792–93 and excluded the immediate relatives of émigrés from holding public office. Naturally, conservatives saw refractory priests and the relatives of émigrés as potential allies and so used the language of civil liberty to discredit the regime's politics of exclusion. Staunch republicans defended the law as a vital prophylactic against the restoration of monarchy and managed to keep it largely intact until the right wing triumphed in the elections of 1797. Within three weeks, the new legislative majority annulled the law of 3 brumaire IV.[14] Supporters represented this measure as a return to the political liberalism of the early Revolution; in contrast, opponents considered it a royalist effort to sap the foundations of the republic. As the political winds blew against the exclusionary policies of the Convention, thousands of refractory priests and émigrés began returning from exile or emerging from forest shacks and farmhouse hideaways. Their reappearance brought the sale of national lands to a grinding halt. Crime and disorder spread rapidly, especially across the south, where antirepublican violence mounted throughout the summer. The trend included such headline affairs as the ambush and murder of Groussac, mayor of Toulouse in year II; the siege and massacre of members of the Constitutional Circle of Clermont-Ferrand; and repeated clashes between the "ganses blanches" and "ganses jaunes" around Castres. In each case, local magistrates showed little inclination to prosecute.[15] From the perspective of Paris, it appeared that the regime's authority was rapidly running into the sands of wait and see.[16]

Events in the spring and summer of 1797 confirmed republican fears about the sources and strength of antirepublican sentiment. This experience added sufficient authority to the republican narrative of the Revolution to elevate it from the status of a partisan history to that of transcendent myth. At the same time, these developments reduced the competing liberal democratic narrative of the Revolution from history to legend. Constitu-

tional monarchists and moderate republicans—men who believed that the Revolution could be consolidated through political tolerance, strict constitutionalism, and the rule of law, such as Boissy d'Anglas, Thibaudeau, and Carnot—rapidly lost their purchase on national politics. Legislative committees, all now dominated by the right wing, introduced one bill after another designed to cripple executive power and especially the Directory's means of repression. The Triumvirate responded by sacking the three conservative ministers in charge of the security forces and replacing them with staunch republicans. The choice of General Hoche as minister of war raised a furor, however, for he was in double violation of the constitution. Not only was he too young to be a minister, but he had marched parts of his army too close to Paris. Both his appointment and his soldiers were withdrawn. Nonetheless, a new force was entering national politics. The Triumvirate stimulated a flurry of illegal addresses from the more republican units in the army. These excoriated "villainous émigrés," "religious fanatics," "rebels against the law," and "the great politicians of Clichy." They ominously exhorted the Directory to protect the republic and its oppressed supporters. "Speak, citizen Directors, and promptly the villains who stain the soil of liberty will cease to exist. Their lives are in our hands and their pardon at the point of our bayonets," wrote the Army of Italy under Bonaparte.[17]

Thanks to the army, Fructidor marked the triumph of the republican narrative at the national level. The defeat of liberal politics and the triumph of the republican narrative are particularly clear in the speeches made supporting the exclusion of former nobles from the rights of citizenship in the wake of Fructidor. The deputy Thomas Rousseau provided a condensed version of the entire Jacobin narrative of the Revolution: priests inspired ignorant peasants of the Vendée to revolt; counter-revolutionary nobles provoked the Terror elsewhere, later co-opted the reaction against it, and finally duped the electors of years IV and V into voting for royalists. His colleague Gay-Vernon went so far as to blame nobles for all the foreign and civil wars of French history—"were the massacres not the work of their ambitions?"—and Deputy Guchan brought the narrative up to date by including the *compagnies de Jésus et du Soleil,* murder gangs active in the Midi since 1795, as well as the electoral reaction of 1797 and the recent revolt at Castres.[18] In this context, the law of 19 fructidor V became a natural, even inevitable product of the republican narrative of the Revolution elevated to the level of paradigmatic myth.

The Fructidor coup enabled the Second Directory to respond to the resurgence of popular Catholicism and antirepublican violence by reimpos-

ing censorship, enforcing republican symbols, and reviving the politics of exclusion. The Directory closed forty-two newspapers, imposed a heavy stamp tax on political journalism, and banned the use of private delivery systems favored by right-wing publishers.[19] In place of the nefarious influence of opposition journalists, the Directory sought to revive flagging republican spirit by reinvigorating revolutionary festivals.[20] However, this "surfeit of festivals risked the evil of banality"[21] and failed to transfer sacrality to the republic. Worse, by emphasizing such polarizing events as the execution of Louis XVI on one hand and the overthrow of Robespierre on another, the new calendar of festivals fostered more social anomie than it overcame. Like Orangist marches in Northern Ireland, such events repeatedly became the scene of bloody clashes.[22] Furthermore, the law of 9 frimaire VI (29 November 1797) extended the politics of exclusion from the relatives of émigrés to all former nobles unless they could provide proof of active service to the revolutionary cause. Patrice Higonnet considers this the height of antinobilism during the French Revolution because it combined with the persecution of émigrés by the military commissions created on 19 fructidor V. Such an analysis presumes a return to the "émigré = noble" formula of 1791–92 and views antinobilism as symptomatic of the cul-de-sac of bourgeois revolutionary ideology.[23]

There is no doubt that the Directory had an antinoble bias and that the military commissions reflected it. Nevertheless, portraying these commissions in purely ideological terms overlooks their roots in the myth of republican self-defense and ignores the crying need to restore order in regions wracked by violence. In contrast, paying attention to the prevailing economy of violence reveals the extent to which the persecution of returned émigrés was part of a system of repression established to combat both political and criminal fomenters of disorder. The records of these commissions reveal that the government systematically narrowed their scope in an effort to make them finely tuned instruments of intimidation and extermination directed as precisely as possible against those whom the regime considered its most implacable opponents. It was the republican narrative of the Revolution developed during the Thermidorian Convention, not a universalist ideology concocted in 1789–91, that determined which émigrés would be exempted. In other words, recent political developments led the Directory to focus not on members of a *ci-devant* caste, but on individuals who had committed the politically charged act of leaving revolutionary France. Even then, however, it did not treat all émigrés as enemies. Rather, the government sought to define a subset of émigrés that included only those who threatened the

republic's domestic stability. The Directorial government used military commissions to persecute returned émigré *notables*, not nobles or priests per se, and not even all émigrés as such.

Exemptions

Concern over the damage the law of 19 fructidor V did to the regime's constitutional legitimacy led the government to modify the law's application in practice. Attenuating the law made it less ideological and more part of an authoritarian restoration of order. This was essentially a bureaucratic means of tempering some of the demands that the triumph of the republican narrative was making on the regime. The military commissions began as crude instruments of terror designed to eliminate all returned émigrés from the country. As a result, their victims inevitably included individuals who did little more than flout emigration laws. Did the republic's survival really depend on executing three widows by firing squads at Toulon and Marseille? What level of insecurity made it necessary to shoot a seventy-one-year-old peasant farmer at Avignon and a seventy-six-year-old priest at Marseille, or deport a fourteen-year-old boy from Mézières?[24] Although these cases were exceptional, they caused the government to worry about arbitrary choices and gross injustices perpetrated by zealots who had lost sight of the larger goal.

Such "excesses" could only damage the regime's reputation. The Directorialist newspaper *L'Ami des lois* made this point clearly: "It is not by multiplying victims that we will make the event of 18 fructidor benefit the republic. Emigrés in rebellion against the law must no doubt be punished; it is the means to purge France of this wicked race, always dreaming of proscriptions and massacres; it is the means to intimidate the stragglers and to restore peace in the departments. But it would be unfortunate if we found a lot of guilty; it would be dangerous to present the people with frequent tragic spectacles of firing squads, which would familiarize them with blood and lead them to cruelty. Let us be just and severe; but let us not be bloody."[25] In order to reduce the number of "excesses" and bloody spectacles, as well as to focus the commissions on true enemies of the republic, the Directory devised categories of exemption. These exemptions were created by administrative fiat and without fanfare or explanation. Together they had a substantial effect in reducing the scope and impact of the Fructidorian military commissions.

The Directory's first exemption was applied to the canonized enemies of the republic—priests. When the Councils annulled the laws against refractory priests shortly before the coup d'état, they reversed a policy that had been central to republicanism from the very start. The law of 19 fructidor V inevitably restored the discrimination. At first, this meant that refractory priests were once again assimilated to émigrés and subject to the death penalty,[26] only now, instead of benefiting from the de facto immunity provided by civilian justice, they faced the rigor of military commissions. However, the government quickly restored distinctions dating from 1792 and thereby restricted the repression.[27] All elderly or infirm refractories, regardless of their peregrinations, were to be interned under administrative surveillance, and original deportees were simply to be "re-deported." Only those who had "voluntarily" gone into exile were subject to firing squads. Nonetheless, refractory priests under sixty years of age and well enough to travel once again faced the death penalty if arrested, whether they had actually left France or just kept their heads down for the past five years. But even this was attenuated in practice. After a few months, the military commission at Besançon refused to define exiled priests as émigrés, and the one at Bayonne, justifiably concerned about sloppy and inaccurate lists of émigrés, handed all its priests back to civilian authorities.[28]

The second type of exemption applied to returned émigrés was based on the political timing of emigration. This intersected with the social status of the accused. Four months after the law of 19 fructidor, the Directory exempted workers and peasants who had left France after the Montagnards' seizure of power in 1793 and registered their return in 1795.[29] This reflected a version of the Terror invented during Thermidorian debates on emigration laws. Moderate deputies argued at the time that many émigrés should be redefined as refugees. The difference was that émigrés had deserted the fatherland in its time of regeneration, whereas refugees had simply fled terrorist reprisals.[30] Thus, the Second Directory exempted those of the laboring classes who had left France after 31 May 1793, especially the Alsatians and Toulonnais who fled the impending repression of representatives on mission.[31] On the other hand, those who left France before 31 May 1793 were given no special consideration. Someone in this category was, as deputy Riou put it, "a true émigré, that is, the most dangerous and irreconcilable enemy of the Republic."[32]

The Directory eventually recognized one category of exemption even for these "true émigrés," that of sex. After four women had been condemned to death (three were executed and one reprieved due to pregnancy), the

minister of police ordered that all further sentences against women be suspended and referred to the government.[33] Although military commissions had already exiled sixteen women, the minister's directive virtually ended prosecution of women. The few who later appeared before military commissions were either acquitted or exempted.[34]

The fourth type of exemption applied to émigrés was based on social class. In July 1798, the government extended its politically defined exemption for the laboring classes to cover all workers, artisans, and peasants even if they had not fulfilled the conditions of Thermidorian legislation.[35] This accomplished by ministerial writ what had been narrowly defeated in acrimonious legislative debate a year earlier. As always, the government refused to exempt merchants (*négociants* and *commerçants*),[36] which put them in the same category as former nobles and priests, as well as anyone who lived from his property or profession. Conservatives had previously excoriated such class-based exemptions. During the debate on refugees in late year III, Tronson-Ducoudray cogently argued that such laws flouted the concept of individual responsibility because they implied that "a citizen is innocent because he belongs to a certain group; [that] he is guilty because he belongs to a certain other one. Thus the landowner, merchant, man of letters, lawyer, and investor (*rentier*) are criminals. . . . There is [a] privileged caste for the scaffold."[37] He went on to argue that even those who handed Toulon over to the English had been driven to this desperate measure by the logic of mounting repression after 2 June 1793. This interpretation effectively absolved the perpetrators of individual responsibility for collective treason against the fledgling republic. This was a powerful argument, but it did little good, either for the émigrés of 1793 or for Tronson-Ducoudray, who later died in Guyana, himself a victim of the Fructidorian Terror.

Within a few months of Fructidor, therefore, the government had exempted the majority of émigrés from the rigors of a military commission. Herein lies the key to understanding the Fructidorian Terror and the work of military commissions in particular. The categories of exemption—or, viewed from the opposite side, the commissions' true target group—emerged from the republican myth. The target group was first defined by the defiance, if not fierce resistance, that members of the prerevolutionary elite had generally shown toward the republic. This concept of target groups was then refined in terms of the Directory's crisis of public lassitude and lawlessness in 1797. That is, after initially being instruments of terror aimed at driving all returned émigrés from France, the military commis-

sions quickly became instruments of repression used against men whose social status gave them influence and who flouted the emigration laws expressly to foment opposition to the republic, or so the Directory justifiably believed. In the government's eyes, these people were as threatening to social and political stability as highway robbers. Simply put, although the republican myth served to justify the military commissions as an instrument of terror, it also made the work of military commissions part of a package of exceptional measures adopted to restore order and consolidate a democratic republic. This point needs to be emphasized: the military commissions created after Fructidor were instruments of both political terror *and* internal pacification. By treating these commissions solely as part of the "Fructidorian Terror," an inherently political concept, historians have neglected their place in the whole panoply of authoritarian and militarized responses to civil strife.

We can see the extent to which issues of public order and political stability combined in the Second Directory by looking at the types of people tried by military commissions. It comes as something of a surprise, given the prevailing image created by Victor Pierre, to learn that refractory priests and former nobles made up less than one-quarter of those arraigned before military commissions. This is particularly remarkable considering the massive exemption accorded émigrés from the laboring classes. Although the political prejudices of the period draw historians' attention to these categories, such individuals were generally condemned for their personal actions, not simply for being former nobles or priests. Each of them had chosen to join an outlaw group: that of émigrés who returned to France despite a constitutional ban on doing so. The republic treated all persons who violated that ban as traitors. In this way, the combined acts of leaving France during the Revolution and then returning illegally—whatever the real motives for either—were assigned a single motive: being an enemy of the republic come back to destroy it. Military commissions implemented a dubious and deadly form of political justice, but contrary to earlier claims they did not practice random acts of terror against individuals singled out solely on the basis of their social identity.

The Directory mistrusted all priests, but it concentrated on vigorous, mobile, refractory priests because it held them responsible for popular hostility to the regime. Above all, the republican narrative of the Revolution explained rural insurgency as the result of the influence fanatical priests had on a gullible laity. By September 1797, they saw such subversion spread-

ing like a cancer through the countryside. Though dangerously simplistic, this explanation did not lack evidence. For example, Joseph Poirot, a refractory priest from the Vosges who returned from exile in November 1796, was arrested for distributing incendiary pamphlets against the Directory and was quickly condemned to death and shot by the military commission at Nancy.[38] This was also the golden age of brigand priests. Ex-*curé* Jean-Baptiste Robert, the leader of a brigand band in the Lozère, managed to escape from the citadel at Nîmes two hours before he faced a firing squad only to be recaptured a year later and finally shot at Montpellier.[39] *Vicaire* Jean-Joseph Glatier was dispatched more easily. Arrested while armed, in possession of goods stolen in a highway robbery, and accompanied by three chouans, Glatier freely admitted preaching the restoration of monarchy at clandestine masses and was duly condemned and executed by the military commission at Tours. His demise sent shock waves through the region.[40] But such ordained guerrillas as Robert and Glatier stood out from the garden variety of refractory priests, many of whom received surprising leniency from individual military commissions, especially considering the commissions' deadly purpose and bloody reputation. All the same, the republicans' abiding belief in Catholic conspiracy ensured that forty-eight clerics were sentenced to death and duly shot. Although another twenty-two were sentenced to deportation, only six were actually deported. The remainder were simply expelled from France or kept in local jails, essentially assimilated to the ten priests condemned to confinement (*réclusion*) due to their age or poor health. The Directory's draconian response to clerical activism meant that "Catholicism may have suffered as much from the prolonged disorganization between year V and year IX as from the crisis of year II."[41]

The Directory also mistrusted nobles and made sure that nobles were not eligible for any exemptions from the law of 19 fructidor. This discrimination arose from the republican perspective spelled out during the postcoup debates about excluding nobles from civic rights. At the time, Crassous seemed to clinch the case for political ostracism in the Council of Five Hundred, where he argued that nobles had proved their disloyalty by abusing their political rights (that is, supporting conservatives and royalists), and, therefore, these rights should be temporarily suspended in order to "preserve the social pact."[42] The Directorialist deputy Creuzé-Latouche took a broader view. He argued that revolutionary experience thus far proved that the republic had more to fear from "the class of wealth" than from nobles alone. In fact, he argued, the only nobility the republic should take precautions against—but not oppress—was that of wealth.[43] Though

fellow deputies howled in protest, his attitude mirrored the government's policies toward émigrés.

Executions

As the various categories of exemption indicate, the Directory was especially concerned about émigrés with status and influence, not just nobles and priests, as a purely ideological explanation would suggest. The work of military commissions strongly confirms this. The military commissions sentenced to death at least 289 individuals, all but fifty of whom can be identified by occupation. Nobles made up the same proportion of those condemned to death as clerics (17 percent each); however, nonclerical and non-noble notables were equally well represented (17 percent) among the dead. These figures make it clear that the Directory saw the broader range of émigré notables as the main targets of the military commissions. Only when merchants, bourgeois, investors, surgeons, lawyers, artists, and non-noble officers are included with the priests and nobles, do we arrive at half of the people executed by military commissions. The other half belonged to the laboring classes.[44] This wide range of victims indicates that individual responsibility played a greater part in the fate of both those with and those without significant social status than Ducoudray-Tronson anticipated or historians have realized.

These data also make it clear that military commissions dealt severely with men who posed a serious threat to the collective security of republicans. The records abound with one case after another of notables who left France only to take up arms against the republic. The military commission at Nice executed three locals for serving as officers in the Sardinian Army.[45] Those condemned to death for serving in Condé's army included Victor Cazeneuve, a rentier from Paris; Jean-Pierre Guy de Villeneuve, a former cavalry officer from Belfort; and Philibert, chevalier de la Bussière, a seigneur from Vienne.[46] The most famous victim of the Fructidorian military commissions, Louis-Fortuné Guyon, comte de Rochecotte, had also distinguished himself in the prince's army before becoming commander of the "Catholic and Royalist Army of Maine." His extraordinary maneuvers had enabled him to rescue Sir Sidney Smith, an important English spy, from the Temple in Paris.[47] Another aristocratic victim, Joseph-Étienne, marquis de Surville, was one of the Pretender's principal agents in the Midi organizing royalist operations funded by stagecoach robberies and counterfeiting.[48] These

TABLE 1
Location and verdicts of military commissions created by the law of 19 fructidor V

Location	*Verdicts*	*Death*	*Exile*[a]	*Prison*[b]
Aix	1			
Angers	1	1		
Avignon	18	10	2	
Bastia	14	7		5[c]
Bayonne	4		3	1
Besançon	30	13	8	
Bordeaux	4	2		
Brest	1			
Brussels	3	2		
Caen	23	14	1	
Clermont-Ferrand	5	4		
Colmar	1	1		
Dieppe	3		1	
Dijon	26	4		
Douai	26	8	1	
Ghent	3	3		
Grenoble	29	11		
Huningue	3	3		
Koblenz	5			
Laval	1			
Liège	11	6	1	
Lyon	10	5		
Mainz	9		2	
Mannheim	3	2		
Le Mans	1	1		
Marseille	130	31	11	
Metz	12	3	1	
Mézières	8		1	4[d]
Milan	1		1	
Montbrison	1			
Montpellier	42	6		
Nancy	36	7	2	2
Nantes	12	6	2	
Nice	8	6		
Nîmes	33	3		5
Paris	65	29		
Périgueux	17	4	1	
Perpignan	59	9	1	
Poitiers	7	1	1	

TABLE 1 (*continued*)

Location	*Verdicts*	*Death*	*Exile*[a]	*Prison*[b]
Le Puy	2	2		
Quimper	2	1	1	
Rennes	2	1	1	
La Rochelle	3		1	1
Rouen	1			
Saint-Brieuc	7	3	3	
Saint-Lô	1	1		
Strasbourg	118	6	48	2[e]
Tarascon	1	1		
Toulon	215	66	25	1
Toulouse	2	2		
Tours	11	4		
Valence	1			
Verdun	1			1[d]
Total	1033	289	119	22

[a]Deportation, banishment, reemigration.
[b]*Réclusion* and imprisonment.
[c]Accomplices sentenced to four years in irons.
[d]Escaped Austrian POWs sentenced to 6 years in irons.
[e]Émigrés who left France before 1789 sentenced to prison until peace.

were not isolated cases of guerrilla operations or organized crime directed by émigrés. It was returned émigrés who gave the counter-revolution the semblance of a national organization. For example, Etienne-Martial, baron de Mandat, was originally from Champagne but served as a regional chouan commander in the west. His capture near Bayeux and execution at Caen in 1798 "was the greatest loss that the royalists of Lower Normandy sustained before the death of M. de Frotté" in 1800.[49] In fact, forty-seven officers in the Catholic and Royalist Army of Normandy were returned émigrés.[50]

Military commissions also killed émigrés regardless of social status if they had earlier committed crimes against the republic. For example, the military commissions at Toulon, Marseille, and Montpellier, the busiest of them all (see table 1), ignored the amnesty of 4 brumaire IV (26 October 1795) for acts connected to the Revolution, and applied defunct laws from 1795 to distinguish between Toulonnais refugees and émigrés who had collaborated with the English. As a consequence, dozens of people who had fled France in the summer and autumn of 1793 were spared anything worse

than reporting to their local municipalities. In contrast, at least a score of people who might otherwise have been exempted were executed, some for providing supplies, others for serving as gendarmes, one for helping to set the French fleet on fire, and another for having sat on a court-martial whose proceedings were dated "the first year of the reign of Louis 17."[51] Similarly, émigré brigands whose social status ranged from the chevalier Gérard de Saint-Elme to the farmhand Antoine Laquerre (nom de guerre: Intrepid) and the professionless Pierre-Charles Yvon all ended their days before military commissions.[52] These individual case histories make it clear that many of those executed by military commissions were men who at one time or another seriously threatened the republic's stability. The Directory expressed few regrets about applying a draconian law to such persons and was perfectly willing to accept the consequences.

The "Fructidorian Terror" involved more than military commissions. The law of 19 fructidor not only subjected deputies and royalist conspirators to the "dry guillotine," it also authorized the Directory to issue directives deporting individual priests without so much as a hearing. The Directory grossly abused this power and allowed department administrators to do the same. Purely administrative orders resulted in the deportation of almost 1,400 priests, 187 of whom died within two years.[53] As a result, three times as many priests died of deportation than were executed by firing squads.

Although military commissions also sentenced ninety-three people to "deportation," the total number of actual deportees was small—only five were sent to Guyana (three of whom died)[54] and thirteen to the islands of Ré and Oléron. Most of the rest were simply expelled from France, including forty-six people tried at Strasbourg who, in this respect, suffered the same fate as the twenty-six people sentenced to "re-emigration" by the commissions at Marseille and Toulon.[55] Military commissions resorted to expulsion in cases where people were deemed unable to obey the law of 19 fructidor, either due to imprisonment, illness, or infirmities (including insanity and old age), and when émigrés had been arrested on territory overrun by the French army. A number of émigrés were also expelled illegally. These expulsions could be either more harsh or more lenient than the law required.[56] Apparent clemency provoked a rash of denunciations from hard-line departmental authorities, which led the Directory to annul two dozen acquittals or lenient sentences on the grounds that individual military commissions had exceeded their authority.[57] Inscriptions on the list of émigrés, attestations of residency, and certificates of ill health were all the subject of a considerable traffic in money and influence. It took con-

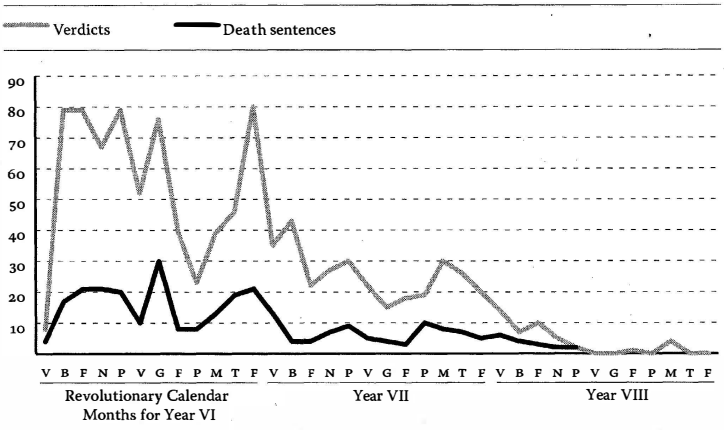
stant government vigilance to ensure that only departmental officials, and not military commissions, judged the authenticity of such documents. The dependence of military commissions on civilian authorities is reflected in the fact that one-third of the time military commissions neither acquitted nor convicted but simply referred the case to departmental administrators or the Ministry of Police.

The Directory's efforts both to narrow the focus of military commissions to those émigrés who posed a threat to republicans and to keep the commissions from exceeding their authority gradually reduced their impact over time. This decline in the activity of military commissions was not smooth or regular. In fact, sentencing patterns reveal distinct phases. These resulted as much from government efforts to restore order as from the influence of radical republicanism during the final two years of the Directory.

The initial phase extended from the antiroyalist coup of 18 fructidor V to the anti-Jacobin electoral machinations known as the coup d'état of 22 floréal VI (11 May 1798). Half of all the cases heard by military commissions were judged during these nine months (see figure 8). During this period, the activity of military commissions passed from considerable arbitrariness to increasingly well-regulated operations. At first, the law of 19 fructidor V inspired a mass exodus of returned émigrés, especially from the federalist cities of the Midi.[58] Large-scale roundups began almost immediately wherever emigration had been heavy in 1793. After two months of arrests, a hundred people were in prison at Strasbourg and two hundred in the Fort Jean at Marseille, all awaiting trial by military commissions.[59] Such early zeal was typical of the Jacobin resurgence that followed the Fructidor coup. Some of these cases clearly involved settling old scores. Déon Modeste of La Valette (Var) was stabbed nine times on the way to his appearance before a military commission at Toulon. This was a revenge assault for his part in the recent murder of Aubert, also from La Vallette, and now the commissioner for the correctional court at Toulon. One of Modeste's accomplices, André Geoffroy alias Le Chevalier, was later executed as an émigré, but the government quickly intervened to have several other political "cutthroats" transferred to regular criminal courts.[60] Such exploitation of military commissions for partisan ends only discredited the Directorial regime.

A relative lull in prosecutions during the three months following the elections of 1798 soon gave way to a renewed wave of trials and executions that summer. This sudden recrudescence was part of a broader effort to crack down on all forms of serious crime and resistance to the regime. In

Fig. 8 Trials by Fructidorian military commissions



July 1798, lawmakers authorized the Directory to order and conduct house searches throughout the country in order to arrest English spies, returned émigrés, priests subject to deportation, *égorgeurs*, brigands, and chouan leaders. This yielded a second harvest of émigrés to send before military commissions. A final wave of trials, albeit smaller and less deadly than the previous two, occurred during "the Jacobin Hundred Days"[61] of mid-1799. Contrary to Victor Pierre's claim, the military commissions did not disappear after the legislature's "counter-coup" of 30 prairial VII (18 June 1799) that ended the so-called Second Directory. In fact, a handful of executions took place after 18 brumaire VIII (8 November 1799), and the last trials took place eight months later—at Koblenz, no less.[62] All the same, the Consulate quickly repudiated the policies of the Fructidorian Terror once the republican narrative of the Revolution lost its status as myth.

Adding another eight hundred cases to the two hundred previously discovered forces us to reconsider the claims that contemporaries and historians alike have made about the judicial massacres committed after Fructidor. Whereas earlier work emphasized the cruelties perpetrated in the name of the republic, the new evidence highlights the difficulty of separating political subversion from criminal disorder. Fructidor suggests that the Directorial regime's republican narrative made it congenitally incapable of establishing mechanisms for pacification and reconciliation on the way to ending the French Revolution. Whereas the Terror of year II had been

conducted largely by local authorities imbued with extraordinary powers, the repression that followed Fructidor was generally a well-focused governmental operation. Military commissions were initially poorly regulated and truly terrifying, but the Directory's efforts to keep them from exceeding their authority and to sharpen their focus gradually reduced their impact. Although the trope of attacking nobles and priests continued to color the regime's efforts at pacification, the new evidence on the victims of military commissions reveals an effort to concentrate more on men of social status who had actively sought to bring down the republic. Military commissions, the sine qua non of the "Fructidorian Terror," can be understood only within the wider context of growing government repression. Both the resurrection of military commissions and their selective treatment of émigrés are best explained as the product of an exculpatory narrative of the Revolution that was elevated to the level of a paradigmatic myth on the basis of the rampant lawlessness and virtual collapse of government authority in the summer of 1797. This republican myth based on past massacres combined with the Directory's determination to restore order in the countryside through increasingly authoritarian means. Thus, more mundane matters of restoring public order—both shaped and distorted by the republican myth—provide a better explanation for political repression under the Second Directory than simple ideological prejudice. The result was a major shift in the regime's source of legitimacy. Fructidor moved the Directory from trying to end the French Revolution through constitutionalism and the rule of law (albeit with certain serious compromises), to trying to end it by restoring order in authoritarian terms (albeit within some important legalistic limits).

More Republican Justice

The crisis of 1797 also encouraged the Directorial regime to intervene more directly in the operations of the regular civilian courts. Though not a feature of the "Fructidorian Terror" strictly speaking, increased government involvement in the exercise of criminal justice assuredly put defense of the republic ahead of defense of the constitution. The great exceptionalisms of the coup d'état were followed by other, less apparent transgressions that markedly increased the repressive capacity of the machinery of justice. As we have already seen, the system of criminal justice in place during the Directory did more to punish crime than is generally claimed, and a substantial increase in repression followed the Fructidor coup d'état.

The dramatic increase in executive authority and the resurgence in republicanism that flowed from Fructidor helped to make the criminal justice system notably more responsive to the government's demands. Even before the coup, the Directory had acquired more power to shape the judiciary than intended by the Constitution of Year III. Early in the Directory, the law of 22 frimaire IV (13 December 1795) authorized the government to fill judicial vacancies resulting from incomplete elections or subsequent departures. These appointments lasted until the elections of 1797. The disgruntled mood of the electorate that spring ensured that their elected replacements made the magistracy even more conservative, if not reactionary, than it already was. Six months later, however, the law of 19 fructidor V covered judicial elections as well and thereby eliminated scores of judges elected to replace the government's appointees. This allowed the Directory to appoint replacements, only now the new men would serve the full five-year term specified in the constitution rather than simply serving until the next election.[63] The government predictably took the opportunity to appoint numerous staunch republicans, some of whom had no judicial experience at all. For example, the four judges appointed by the Directory to the court at Vesoul (Billard, Loys, Bouverey, and Garnier) were accused of "exaggerated principles" and "hatred of wise and moderate republicans." It did not help that Bouverey had no judicial experience, having only been an army officer in the west before suddenly being appointed a judge.[64]

The Directory's influence on the choice of judicial personnel grew further in 1798. First, the law of 21 nivôse VI (10 January 1798) sacked all court presidents and public prosecutors elected at the start of the Directory. This opened all of these posts for election that spring. It also allowed the Directory to make temporary replacements at a time when the government was putting great energy into influencing the electoral outcome. Despite the use of so-called "road inspectors" sent out to find suitable candidates and spread money around, the elections went badly, and the government responded with the "coup" of 22 floréal VI (11 May 1798). In some ways this postelection triage was a greater affront to democracy than the armed coup of Fructidor. The elected officials eliminated by it certainly represented less of an overt threat to the survival of the republic. The perverse Floréal operation strengthened the "Directorialist" element in the judiciary. The many splits in departmental electoral assemblies, most of them planned and provoked by supporters of the government, enabled the regime to prefer one set of choices for court president and public prosecutor over a rival set elected elsewhere in the same town at the same time. The choosing of

one slate of judges or another occurred in seventeen departments, most of them previously unaffected by the nullifications of 19 fructidor V. The law of 22 floréal went beyond settling disputed results and included a purge of undesirables. All judicial elections in a dozen departments, whether or not there had been a split, were nullified, even though few had experienced either violence or serious electoral fraud. In yet another dozen departments, the law targeted only specific individuals.

The Directory had paved the way for this travesty of democracy with a message to lawmakers about the election returns. It read, in part, "one sees men who would like to reopen the bloody chapter of revolutionary tribunals, the students of Fouquier-Tinville, reappearing in the position of public prosecutor." Such claims were not fictional bombast. The unrepentant Montagnard Joseph Fayau, an extremist in the Vendée and outspoken defender of the notorious Carrier, had been elected public prosecutor in the Seine-et-Marne; the "anarchist" mother assembly in the Allier chose Sadet as its public prosecutor and Gabriel Perrotin as its court president; both had been members of the infamous *Commission temporaire* at Lyon.[65] Such men were naturally eliminated along with many others, including a few royalists. In fact, the law of 22 floréal VI removed almost one-third of magistrates elected that year, a higher proportion than any other category of elected official.[66] The consequences were commensurately serious for the judiciary. It was one thing to leave fifty-three seats in the councils vacant; it was quite another not to complete the judiciary. Criminal justice would grind to a halt without replacements. Therefore, lawmakers once again authorized the Directory to fill vacancies.[67] These included twenty-one court presidents and sixteen public prosecutors.[68] And yet granting this renewed authority to the government did not always lead to new men. Louis-Nicolas Juteau-Duhoux, "a patriot of '89," was simply reappointed as public prosecutor of the Sarthe, for example.

Even counting the number of vacancies the Directory had to fill after Floréal understates the role the Second Directory played that year in the selection of key judicial personnel. In truth, the elections of year VI magnified the effect of executive influence by ensuring that many of the court presidents and public prosecutors appointed in the wake of Fructidor or on the eve of the elections received a form of rubber-stamp legitimacy from the assemblies of year VI. For example, when the law of 22 floréal VI accepted the choices of the electoral assembly in the Hérault, it was merely confirming the electors' choice of the Directory's own post-Fructidor appointees: Barthélemy Jouvent as public prosecutor and Joseph Fournier

as court president. At the same time, two new judges elected by the same assembly were removed for being Jacobins.[69] This combination of selectively nullifying election results and determining key judicial appointments enabled the Directory to begin reversing the antirepublican tendencies of the country's least effective courts, especially those in the southeast and the annexed departments.

The Directory also intervened in judicial appointments by using its constitutional powers to prosecute individual magistrates for negligence or corruption. The extent of this practice is difficult to determine, especially if only individual magistrates were involved. Such was the case in the Haute-Saône, where the Directory ordered the criminal prosecution of Lécurel, jury director at Gray, after a refractory priest was arrested in his house at nearby Rigny.[70] At times, however, the prosecution of magistrates became something of a national cause célèbre. In April 1798, for example, the Directory issued arrest orders for three members of the notoriously reactionary Criminal Court of the Gard: Vigier-Sarrasin, the president; Blanc-Pascal, the public prosecutor; and Labaume, the jury director at Uzès at the time. They were quickly indicted and sent before the Criminal Court of the Drôme, which ultimately acquitted them all in year VII. This was typical. Judges did not like to try other judges, even if their politics were diametrically opposed.[71] Thus, whether it was through replacing the relatives of émigrés in year IV, sacking officials after Fructidor V, filling vacancies created by Floréal VI, or having magistrates prosecuted in year VII, the Directory took an increasingly active part in determining who would hold the key posts of court president and public prosecutor throughout the country. Though the government had less influence on the selection of ordinary judges, these too felt the strong hand of the executive from time to time.[72]

Repressive Results

The Directory's increased role in choosing judicial personnel gave criminal justice a more republican aspect. But, as we have seen, the attitudes of ordinary jurors remained critical to the repressive capacity of criminal courts. Though jury directors and public prosecutors significantly shaped the caseloads of criminal courts, it remained up to jurors to decide the fate of the accused brought before them. Officials often complained about the composition of jury lists, especially those prepared after the elections of 1797. The administrators of the Haute-Saône appointed in the wake of Fructidor,

for example, believed that many of those on the jury list that they inherited were either relatives of émigrés or electors that spring. Therefore, in order "to prevent the sort of persecution under legal forms meditated by royalism against friends of the Republic," they drew up "a new list composed of upstanding republicans." Their initiative got strong support from Minister of Justice Lambrechts, who pushed for a speedy revision of jury lists across the country.[73] No historian has yet risen to the daunting challenge of comparing the social and political composition of different jury lists during the Directory. Nonetheless, it is safe to assume that post-Fructidorian officials would find it easy to cull out some of the most obvious opponents of the republican order and to replace them with men of a more sympathetic stripe. It is less clear how matters unfolded in the confused climate after Floréal, but it is unlikely that royalists returned to the lists in any great numbers. It is equally unlikely that jury lists anywhere were made up of compliant citizens eager to enforce the Directory's harsh policies.

By mid-1798, there were signs that the substantial changes made within the magistracy and among jurors were yielding better results for the republic. The commissioner of the Doubs had no doubts: "the regeneration of juries has terrified villains," he reported after only a single trimester.[74] The deputy Poultier, editor of the centrist *L'Ami des lois,* was certainly convinced that criminal courts had become considerably more effective: "the operations of criminal courts are becoming so rapid and firm that soon the soil of France will be entirely purged of all the brigands who have desolated it for so long." However, more news from the provinces led Poultier to temper his enthusiasm, "True, there are *some* criminal courts where *certain crimes* find either *mercy* or *indulgence,* but let us hope that the government's resolve as well as cold impartiality from the Court of Cassation[75] will succeed in regularizing the operations of those courts that still adhere to dead practices (*le système des revenants*)."[76] Was Poultier's optimism warranted? Was criminal justice in years VI and VII significantly more effective than in years IV and V? What sorts of crimes continued to receive either mercy or indulgence? The best way to assess the impact of interventions in judicial personnel after Fructidor is to move beyond journalistic impressions and undertake statistical assessment. In order to ensure that all data are gathered and analyzed in a uniform manner, it is best to return to the verdicts rendered by the four criminal courts of the Haute-Garonne, Hérault, Haute-Saône, and Sarthe. These data will be treated cumulatively in order to discern national trends. They will also be broken down by department and by various categories of crime to determine regional differences.

It is natural to begin with rates of general repression as measured by acquittal rates and sentencing results. The Second Directory saw a clear decrease in rates of acquittal. Overall this decrease was modest, going from 43 percent for the years IV and V to 39 percent for the years VI and VII.[77] This decrease was not common in all departments or for all types of crime. In fact, the overall trend was contradicted by an increase in the acquittal rates in the Haute-Saône. This local anomaly was due mainly to a rise in the number of fraud cases, which were always hard to prove. On the other hand, the Sarthe and Haute-Garonne both saw their acquittal rates, which had been over 50 percent during the First Directory, fall sharply after Fructidor. This brought them more into line with other departments. Nonetheless, major differences remained.[78] In addition to declining rates of acquittal, the activity of the criminal courts climbed noticeably after Fructidor (see appendix A.1).[79] Together a decrease in acquittal rates and an increase in the number of people who appeared in criminal courts meant that the total number of persons convicted of felonies increased by almost one-fifth from the first half to the second half of the Directory. This translated into marked growth in sentences of lengthy terms in irons (that is, hard labor). The number of persons actually present in court who were sentenced to ten or more years in irons grew rapidly from 118 persons in four departments during years IV and V to 174 persons in years VI and VII, an increase of almost 50 percent. Even more remarkable was the sharp rise in the number of death sentences. These went from twenty-seven in the Directory's first two years to sixty-eight in its last two (up 150 percent). More than half of this increase in death sentences was due to the antibrigandage laws of 26 floréal V (15 May 1797) and 29 nivôse VI (18 January 1798) (see chapter 9),[80] which highlights the importance of armed robbery in the overall totals. Appendix A.4 clearly shows the prevalence of brigands and highwaymen among defendants convicted by the criminal courts. In addition to the increase in death sentences, the number of deportation verdicts grew from three during the First Directory to twenty-four during the Second. Most of these deportations were the result of the law of 22 germinal II (11 April 1794) against harboring refractory priests, but ten of the deportation verdicts were based on the law of 27 germinal IV (16 April 1796), which prescribed deportation for joining a seditious mob. This manifold jump in deportations during the Second Directory reflected a newfound ability to clamp down on civil unrest directed against the regime.

In order to understand the impact of these general trends on the Directory's chances for survival, it is useful to isolate the response of criminal

courts to crimes that posed special problems for restoring order. These can be grouped into two types: interpersonal violence (including armed robbery) and overt opposition to the republic and its officials. To get a better sense of the repressive impact of the courts, the focus will be on cases in which defendants were present at trial. This reveals the increasingly repressive role of criminal courts during the Second Directory.

First, the number of persons prosecuted for interpersonal violence doubled in the two years after Fructidor.[81] This was a broad-based increase, both across departments and across types of crime. In general, France experienced an increase in prosecutions for every type of violence from infanticide and rape to homicide and highway robbery. This reflects both a higher rate of solipsistic violence and a greater determination to prosecute. It would be an abuse of evidence to claim a good correlation between the number of persons tried on charges of rape or assault and the actual frequency of these crimes. The changing attitudes of both society and the state toward these acts of violence made as much difference to criminal court statistics, if not more, as the actual incidence of such crimes. After all, this was a period when the prosecution of a gang rape by drunken sailors brought only a single sentence of six years in irons for the instigator, or when the fully attested rape of a ten-year-old shepherdess led merely to charges of "attempted rape" in order to protect the girl's future prospects for marriage. Outcomes such as these fit the pattern of contemporary social and judicial attitudes, not the pattern of actual crime.[82] And yet we need not abstain from drawing conclusions about the incidence of all types of violent crime. Prosecutions for highway robbery, for example, naturally correlate to their geographical incidence. Although many of the brigands and highwaymen tried in the criminal courts of the Haute-Garonne, Hérault, and Sarthe came from neighboring departments, it is not surprising to find these courts dealing with many more such cases than did that of the Haute-Saône. Plenty of other sources confirm that southern and western France had many more incidents of brigandage and highway robbery than eastern France.[83] Similarly, loose temporal correlations are worth noting. It was no accident that the greatest overall increase in prosecutions for acts of violence came in year VI. This surge in prosecutions directly reflects a surge in threats to public order in the second half of year V, combined with the normal delay in bringing such cases to trial, and a dramatic redrawing of the political landscape after Fructidor. The nature and implications of this republican redress merit closer examination.

As we have seen, trial juries had a strong tendency to acquit defendants

charged with political crimes or resistance to public authority. These acquittals often went against the evidence and therefore constituted "jury nullification." Though relatively high rates prevailed throughout the constitutional republic, years VI and VII witnessed a dramatic drop in the acquittal rate for such crimes. By combining into a single category verdicts from such offenses as harboring a priest, freeing prisoners from the gendarmerie, striking local officials, calling for the return of royalty or the constitution of 1793, rioting against the republic, and other such offenses, we are able to see clearly the improved ability of the criminal justice system to uphold the republican regime. In the two years that preceded Fructidor, the acquittal rate for these sorts of crimes stood at 73 percent. In the two years following Fructidor, this rate dropped to 58 percent.[84] This decline was largely the result of more overtly republican jurors. The new jurors clearly had less hesitation in defending the new republican and state-based concept of order against village mores and popular resistance. On the other hand, the role of a more republican magistracy in the prosecution of such crimes is revealed by the massive increase in the number of individuals brought to court for these offenses. Whereas jury directors and public prosecutors brought 137 individuals to court for crimes against the republic and its agents in the years IV and V, their replacements had 219 individuals tried for the same sorts of crime in the years VI and VII, an increase of 60 percent.

Such a dramatic increase becomes even more remarkable when the two northern departments of our study are contrasted with the two southern departments. Making such a comparison quickly reveals that the southern departments were responsible for the entire increase. In fact, both of the northern departments saw a decline in the number of individuals prosecuted for opposing republican authorities. The decline was slight in the Haute-Saône, a department characterized by strong tensions over Catholic worship and a timeless hostility to forest watchmen, but one with little intracommunal violence based on revolutionary politics. In contrast, the number of persons prosecuted for political offenses in the Sarthe dropped by over half. Here the explanation lies in the amnesty that accompanied the "pacification" of western departments in year IV. If chouans violated the amnesty, they were no longer treated as political opponents but rather as common criminals and, therefore, were subject to laws against brigandage and highway robbery. This decrease in the Sarthe was matched by a commensurate increase in prosecutions in the Haute-Garonne. There the replacement of the former federalist Janole as public prosecutor in April 1798 opened the door for a number of prosecutions arising out of the wave

of political violence that swept the south in the summer of 1797. However, the bulk of the overall increase in prosecutions for resistance to the republic or its officials came in the Hérault. The department's electoral assembly of year IV had produced a group of deputies and local officials who leaned to the right. The assembly of 1797 pushed this tendency further and included among its choice of deputies both the public prosecutor (Rouch) and the court president (Thourel). The assembly then elected two royalists (Auberet and Rech) to replace them. The result was a runaway antirepublican reaction. The election results in the Hérault were nullified at Fructidor, of course, and the entire department administration replaced.[85] This sudden replacement of royalists with staunch republicans led to the prosecution of numerous political offenses, most of which derived from riots and seditious speech during the reaction of year V.[86] This was a typical judicial response wherever the political complexion of department officials changed dramatically as a result of the Fructidor coup. In that sense, the mix of departments included in this study appears highly representative of the country in general. The most obvious changes came in the form of lower acquittal rates, harsher punishments, and increased prosecutions for resisting the regime.

In other words, there was an unmistakable movement toward both a more republican and a more repressive system of criminal justice. This development has been lost from view in the dark shadow cast back on the Directory by the judicial reforms of 1800. Historians have made little effort to analyze the effectiveness of the criminal justice system prior to these reforms and simply accept the criticisms that served to justify them. In this light, it is important to note that the system of juries survived the Consulate's reforms for more than ideological reasons. Once jury lists had been vetted for political undesirables, juries proved perfectly capable of defending both the republic and its new state-based concept of order. Furthermore, the vast majority of judges appointed during the Consulate had already been elected, appointed, or both during the Directory and so reflected greater continuity during the late First Republic than is generally acknowledged.[87] In fact, it was the Fructidor coup that constituted the most important turning point in the construction of authoritarian responses to the problems of public order. To appreciate the full significance of this moment for its contribution to ending the French Revolution, historians must move beyond the ideologically constructed notion of a "Fructidorian Terror." It was the regime's manner of asserting republican salvation over constitutional legitimacy, both through military commissions and greater executive control of the judiciary, that set the course for the future.

7 Strong-Arm Policing

Ten years of experience has fully shown that the National Guard in constant service is a powerless means for maintaining order and even for preserving public liberties.
—Deputy Duquesnoy, 7 July 1800

WHEN REVOLUTIONARIES REPUDIATED the social inequalities and corporative ethos that underpinned French absolutism, they inevitably changed the nature of policing. The integrity and autonomy of individual communities, especially rural communities, dominated notions of collective identity well into the nineteenth century. The construction of revolutionary patriotism and national identity, however, based as they were in individual rights ostensibly granted to all Frenchmen, challenged and complicated these established mores. The resulting clash of values sharply increased the tension between the two "concepts of order," that based in the community and that based in the state. Scholars have focused much attention on "the republic in the village" and the power of "modernization" to turn "peasants into Frenchmen."[1] Rather oddly, the contribution to this process made by policing has been given short shrift. Scholars tend to think of the police as an epiphenomenon of larger social changes—not as cause, just effect. As was the case with jury duty, however, the actual practices of policing were critical to how villages were absorbed into the nation. Before this happened, collective autonomies needed to be accommodated as much as confronted. The revolutionary institution of the National Guard made this possible. And yet the National Guard proved notoriously unable to preserve order and was often the source of disorder. Therefore, wherever the republic engaged in a protracted struggle to impose its concept of order on recalcitrant communities, it turned to strong-arm policing. This involved making the Gendarmerie Nationale into a truly national, truly professional police force.

In cases of extreme unrest, it also came to mean turning all local police functions over to the army by declaring a commune under "state of siege." Together these responses greatly accelerated the long-term shift from community policing to policing communities.

National Guard

The National Guard, like liberty trees, popular societies, and festivals of federation, played a major part in the burgeoning political culture of the early Revolution. In many ways, however, the presence of the National Guard meant an absence of the state. At the very least, the National Guard embodied local autonomy and politicized policing. As Duquesnoy's remark in this chapter's epigraph illustrates, by 1800 maintaining order and preserving public liberties could no longer be entrusted to such a revolutionary institution. The corollary of such a claim was that only institutions of the state could safeguard the citizenry. One reason the Revolution did not end until well into the Consulate is that it took successive republican regimes more than a decade to replace the National Guard with a more thorough monopoly of armed force.

Though famous for its contribution to the war effort in 1792, the National Guard began as an instrument of local autonomy and something of an amateur police force. The National Assembly quickly legalized the activity of the new bourgeois militias that sprang up in 1789, but it took another two years before the organic law of 29 September/14 October 1791 standardized the organization of the National Guard throughout the country. In the meantime, various laws restricted admission to "active citizens" and required it to be requisitioned for duty by local magistrates. The annual election of officers often proved a popular affair and made the National Guard another training ground for democratic practices. Early decrees specified that National Guard units were to "restore order and maintain obedience to the laws," "to disperse all popular riots and seditious gatherings," and to seize and turn over to justice "those guilty of beatings and violence captured in the act."[2] Apart from routine service and daily patrols, commanders had no authority to act independently of civilian officials. Lawmakers did not want the National Guard to become an independent force in politics. This is evident from the term limits on officers, the ban on deliberating once assembled, and the regulations guaranteeing civilian ascendancy. In order to avoid making the National Guard a career option and to prevent os-

sifying elitism, an officer's term was limited to one year, and he could only be reelected after serving another year in the ranks. Moreover, any use of guardsmen required a written order from elected local officials. Such terms made the National Guard a community-based militia expressly designed to offset the state-controlled constabulary and line army.

After years of improvised chaos and political controversy during the early republic, the Thermidorian Convention overhauled the National Guard with the law of 28 prairial III (16 June 1795). Part of the purpose was to restore its bourgeois character.[3] Equally important, officers could now be reelected for successive terms, which made the National Guard a greater force in local politics, particularly in urban settings. The new service conditions made it possible for politically active notables to remain in control of an essentially bourgeois, though not exclusively elitist, local force. Unfortunately, little is known about the elections for the National Guard after 1795, partly because many never took place. Neglect in organizing the National Guard in the early Directory had much to do with the new system of local administration. Each of the nascent cantons grouped together a handful of villages, often embittered by local rivalry, and required them to cooperate in the election of officers. Thus, the National Guard no longer embodied communal autonomy, except in urban centers of five thousand inhabitants or more. Where elections for officers of the National Guard did take place, it was at the same time as the annual spring elections, and the results naturally reflected the political shading of other officials elected at that time. An important exception arose in the autumn of 1797, when new officers needed to be elected once the Fructidor coup nullified elections in half the departments of France.[4]

The government's primary interest in the National Guard lay in having a force available for local officials to mobilize at times of pressing need. This could mean escorting convoys of grain at times of dearth, providing security for a controversial trial, or arresting a returned émigré. Tasks of this sort rarely required mobilizing a canton's entire National Guard. And yet allowing officials to designate those who would perform special duties could be so invidious and lead to such bickering that it would cripple any efforts at policing. In order to have an armed force available at all times and in all places, on 17 floréal IV (6 May 1796) the Directory ordered every canton to form one-sixth of its national guardsmen into a "mobile column." Each mobile column constituted a volunteer police force on call for six months and ready to respond to threats to public order the minute local officials called upon them. Some viewed this as a sign of desperation and predicted

a quick restoration of monarchy.[5] They were mistaken. By insisting that every canton have an active armed force, the Directory was creating a means to tip the balance in the republic's favor. The Constitution of Year III made guard duty a requirement of active citizenship; anyone who wished to vote had first to be a confirmed member of his local National Guard. During their time in the mobile column, guardsmen would assemble "only in exceptional circumstances" and only when formally called upon by local civilian officials.[6] These same officials determined the entire composition of the column, which included appointing the officers as long as they served at the rank to which they had originally been elected. Department officials and commissioners could both annul part or all of a cantonal column. This risked provoking partisan wrangling, however, and so rarely happened until after a column had performed badly. In practical terms, therefore, local officials had the ability to create and use an armed force favorable to their own opinions.

As one might expect, the effort to create mobile columns raised the political temperature almost everywhere. The willingness to organize them became a litmus test of commitment to the republic. Whether or not a canton formed a mobile column in 1796 was a good barometer of republican sentiment among leading inhabitants. Even staunch republicans, however, found it difficult to form a mobile column. Activating the National Guard had generally been used either as the basis for another military levy or to pursue refractory priests, émigrés, deserters, and draft dodgers. After all, the National Guard had served to impose the radical Revolution on the countryside and had been the basis of the "volunteer battalions" of 1791–92. The Ministry of Police tried to allay concerns that mobile columns would serve as a conveyor belt to the army by pointing out that mobile columns had rotating membership and so could not be used in military campaigns. The ministry made no effort to alleviate concerns about having to carry out dangerous or despicable police duties, however, for this was precisely why the Directory insisted on the formation of mobile columns in the first place. As the government commissioner of the Doubs reported, "Municipal officials generally say that they are threatened and that they fear for their families and their properties if they organize the mobile column."[7] Herein lay the causes of the protracted struggle to revive an institution that began as a spontaneous attempt to provide community-based policing.

Making the National Guard an effective force was special cause for concern in any place already torn by factionalism. Opponents of the Jacobins at Toulouse feared the political purposes to which the Guard would be put.

The *agents militaires* Fouché and Ferry did nothing to alleviate these fears by instructing department administrators to provide arms only to guardsmen whose "civisme" had been attested.[8] This veritable return to *certificats de civisme* led opponents to decry another *armée révolutionnaire* in the making. Such fears were neither uncommon nor unwarranted.[9] The Jacobins of Toulouse did, in fact, use the 2,000-man mobile column to dominate the city and impose "republican order" on surrounding communes. Several days of street fighting in January 1797 prompted the government to intervene by purging the senior command. According to Minister of Police Cochon de Lapparent, the majority of officers were republicans, but the four brigade chiefs were all "terrorists," and the rank and file drew heavily on the former *compagnie de Marat*.[10] In Montpellier, on the other hand, it was the conservatives who gained control of the mobile column. The young dandies heading the force provoked some nasty street brawls in early year V. Brigade General Frégeville, commander of the Hérault and an elector at Montpellier that year, blamed the royalist results of the local elections on a mobile column swollen with delinquent recruits. His pique brought the whole affair to national attention.[11] Politicization of the local mobile column was no less common in smaller centers. The very existence of mobile columns incited greater factionalism. "As for the mobile column," wrote Prefect Brun of the Ariège, "I have already had the sad experience in the Hérault that this selection from the National Guard is good only to antagonize citizens against one another and exclusively to arm one party and oppress the other."[12] As a result, mobile columns were "too often composed of men who see nothing but persons and parties where they ought only to see the Republic and order."[13] The men who controlled the mobile column controlled the canton. The power that had once come from social standing and networks of clientage increasingly passed to those who could muster the official armed force. These may have been the same people, but often they were not, especially after Fructidor. For example, contentious elections for the National Guard at Faucogney (Haute-Saône) in 1798 led to heavy state intervention in the form of troop billeting and criminal prosecution, a sure sign that traditional notables were no longer in control.[14]

The politicization of the National Guard also hampered its effectiveness away from home. Like the biblical demons who, when cast out of one man, entered a herd of swine and ran it into the sea, the Revolution's unclean spirit of partisan hatred took hold of hundreds of National Guard columns whenever they tromped off to a neighboring canton. Legion indeed are reports of national guardsmen who kicked down doors, smashed open

chests, ransacked farms, stole cheese, shot chickens, slapped wives, and beat servants, all without making an arrest. These problems were worst under the Second Directory, when guardsmen were increasingly pressed into service to assist in "grand sweeps" intended to arrest all manner of outlaws. Such elaborately planned excursions, often involving dozens of communes from two or more departments,[15] risked inciting more resistance than they quelled. In such cases, success was purely relative. Officials could rejoice at the scores of conscripts flushed out of farmhouses and mountain villages, but the price was ever more antipathy between the republic and the populace. In fact, the approach of guardsmen at Mont-sur-Monnet in the Jura was cause to ring the tocsin and rally the village to resist the armed invasion.[16]

Already it is clear that the National Guard was not "destined to become a lifeless corps" under the Directory, as its only serious historian has written.[17] True, the innumerable circulars stirring guardsmen to action suggest widespread complacency and lassitude. Furthermore, early images of national guardsmen resplendent in colorful uniforms, all armed with muskets and drawn up in serried ranks, especially common during Lafayette's ascendancy in Paris, had little in common with the later experience of most guardsmen. So ragtag were many guardsmen that observers often mistook a mobile column for a hunting party or a band of brigands. Special armbands or tricolor cockades might be the only signs of belonging. Not even weapons set them apart. Many mobile columns formed in rural communities lacked a full complement of guns and had to equip themselves with swords, pikes, and even simple clubs.[18] Regulations required municipalities to keep weapons for the National Guard safely stored in the town hall of the cantonal seat. Once taken out and distributed, however, they could be difficult to retrieve. A lot of guns fell into the wrong hands. Even passing them out to guardsmen could mean arming a mob. A mobile column was rarely in person what it was on paper. Usually it was an irregular and unreliable force, such as the "compagnie des républicains" assembled to track down brigands in the Puy-de-Dôme.[19] Even when it was an actual mobile column requisitioned for duty, it usually had stand-ins, hired replacements from the lower social orders or the right political persuasion.[20] These were men willing to accept dangerous duty for twice a worker's daily pay. Unlike regular soldiers, they did not have to be away from home for long. Replacements were fully legal and formed what was called the "paid guard." Citizens did not find their own replacements but simply paid the municipality the going rate. Those without the means to pay, or the good luck to be ill, could be

reluctant policemen indeed. Alongside them were replacements, that is, mercenaries. As such these men had less interest in local defense than in obtaining easy money, ready loot, or a thug's adventure. Thus requisitioning a mobile column could amount to nothing more than gathering a paid posse, supplying it with the community's stock of weapons, and giving it a license to kill.

Although the actual conditions of service in the National Guard did not match the ideals of the early 1790s, the National Guard did make a major contribution to the survival of the First Republic. Defense of the republic started at home. The presence of an organized mobile column could help communities, especially towns, retain their autonomy. The ability to supplement the gendarmerie with a few National Guardsmen had the potential to preserve such places from suddenly having a detachment of regular troops stationed there. Furthermore, the availability of a well-organized column—not a general experience, it must be admitted—also enabled communities to defend themselves against rebel incursions. Where the spontaneous organization of a mobile column was not primarily an extension of factional struggles within a community, it was a critical bulwark against a hostile environment. The durability of republicanism in western France in particular depended greatly on active National Guards, and not just in terms of political culture. Here uniforms were essential, so much so that they became the disguise of choice for chouans. Furthermore, in areas of *chouannerie,* a mobile column of guardsmen simply did not form unless it had service muskets and ample cartridges—anything less was suicidal. Generals always preferred the experience and discipline of regular troops over the partisan ardor of national guardsmen, and yet guardsmen often performed heroic feats in defending their native towns.

The security potential offered by the National Guard made it an irresistible temptation for the Directory. As the years passed, therefore, the government increasingly integrated local mobile columns into a larger strategy of republican self-defense. National guardsmen had always been available as a temporary stopgap when there were insufficient regular troops available; in some places guardsmen became a permanent substitute for troops.[21] A major turning point in this respect came in early 1798, when the Directory empowered municipal officials in communes of more than ten thousand inhabitants and department officials for all other communes to requisition mobile columns for continuous duty wherever and whenever they saw fit. This gave department officials the means to create their own defense forces for use anywhere in the department and, when the district commander

asked, even in neighboring departments. Some officials made extensive use of this new opportunity. Officials of the Lozère, for example, ordered cantons along the border with the Ardèche to be activated in order to destroy all forest shacks in the region. But Minister of War Schérer considered this a misuse of guardsmen and ordered them all to return home.[22] A year later, the Directory gave departments even greater encouragement to activate their mobile columns by regulating ordinary and extraordinary service.[23] Though extraordinary services had always been an option, they were now fully militarized. As a result, mobile columns in department capitals and republican strongholds were activated throughout the country. They were called upon to press conscription, collect back taxes, disarm communes, and suppress resistance. This could well mean turning guardsmen into dreaded billets.[24] This aggressive repression operated by guardsmen—that is, by patriots and mercenaries who were armed and dangerous—explains much of the anti-Jacobin reaction of late 1799.

Once this power had been granted to departments, the state itself tapped into the resources made available, which was now done in closer conjunction with the army. The regime had quickly learned that activating mobile columns for service beyond their own commune was ineffective unless accompanied by gendarmes or regular troops. Members of mobile columns feared compromising themselves with friends and neighbors if they proved too helpful in enforcing unpopular laws. The addition of a few line troops, therefore, helped to stabilize and even stimulate a detachment on assignment. The pervasive culture of male honor meant that most guardsmen did not want to appear less committed or less brave than the accompanying soldiers when faced with equal danger. Combining forces in this way would create harmony and unity between citizen-soldiers and soldier-citizens, as one commander put it.[25] The Directory also insisted that where possible the citizen-soldiers—that is, requisitioned guardsmen—be chosen from "the prosperous class, whenever patriotism is found paired with wealth," because this made it easier for them to perform their duties and ensured a commitment to protect property.[26] The War of the Second Coalition massively expanded these joint operations. The military crisis of 1799 forced the Directory to transfer tens of thousands of soldiers from the interior to the frontiers and thereby left the gendarmerie, conscripts in ill-equipped reserve units ("auxiliary battalions"), and mobilized national guardsmen as the main sources of armed force to combat a resurgence in lawlessness.[27] Month after month national guardsmen stepped in to fill the shoes of regular soldiers. Although not trusted on night patrols, still inclined to parti-

sanship, and prone to desertion when hunting brigands in difficult terrain, these mixed detachments proved valuable in manning military installations, guarding the coasts, patrolling roads, escorting stagecoaches, and responding to outbreaks of regional insurgency.[28] Using national guardsmen in neighboring departments had serious risks: "the chosen men will massacre, if only out of fear," wrote General Dutry about the men chosen from the mobile columns of the Loiret for use against *chouannerie*.[29] Nonetheless, they played an especially vital role in retaking towns and villages captured by rebels that summer and autumn.[30]

The crisis of 1799 reinvigorated the National Guard, but less as a source of communal self-defense than as a branch of the increasingly militarized state. When activated for more than two days at a time, guardsmen (or their paid replacements) essentially became soldiers controlled and directed by district and department commanders. Though they generally remained in their native departments, they were not always based at home. The departments of the Ninth Military District activated them in response to a rising tide of brigandage, and guardsmen formed a substantial portion of the forces sent against *chouannerie* in the Twenty-second Military District. In the Sixth Military District, they were mobilized explicitly for the purpose of defending the frontier, whereas in the Tenth Military District, guardsmen provided much of the armed force needed to press conscription. In fact, in many places, the efforts of national guardsmen were essential to form the "auxiliary battalions" that took shape in the autumn of 1799. Though of temporary use for domestic policing, these reserve units were soon called to the front, leaving national guardsmen once again as the main stopgap.[31] Therefore, despite being unreliable and often dangerous, scores of mobile columns and other temporary units remained in service well into the Consulate, especially in areas of prolonged turmoil.[32] The departments of western France formed a variety of units known as *compagnies franches, gardes territoriales,* or *légions françaises,* most of which remained active throughout the winter of year IX. Only after the Peace of Lunéville permitted a large number of troops to return in the spring of 1801 did the Consulate finally order the dissolution of all mobile columns on active duty. Even then many prefects, as well as Minister of Police Fouché, were reluctant to give up the irregular units created from the National Guard.[33] By 1801, however, the Consulate was committed to another major expansion of the gendarmerie, which further reduced the need for national guardsmen.

Some obvious lessons had been learned. The inability of the regular forces of order to cope with continued revolutionary upheaval had led to

the transformation of the National Guard from its origins in community policing in 1789–90 into yet another instrument for policing communities a decade later. Despite claims to the contrary, the National Guard did not become moribund under the Directory; it simply became more an arm of the state than of the community. As soon as it became possible, the Consulate turned this task over to the gendarmerie, France's real police force.

Gendarmerie Nationale

The Directory turned the gendarmerie into a modern, professionalized police force. This was not created ex nihilo. There were obvious continuities between the *maréchaussée* under the *ancien régime* and the Gendarmerie Nationale that served as the rural constabulary of nineteenth-century France. All the same, a Tocquevillian perspective obscures at least as much as it reveals. Reforms in the *maréchaussée* undertaken in the 1770s helped to improve the quality of service, but they did not make it a national police force. Besides, the progress toward central control and professionalization made in the early years of the Revolution was wiped out by the wrenching upheaval and abuses inflicted under the Convention. This left the Directory with a force riven by politics, practically unfunded, and bereft of service standards. In these circumstances, any efforts to restore law and order required completely rebuilding the force.

Alexis de Tocqueville famously claimed that even before the Revolution the monarchy's steady progress toward administrative centralization had led Frenchmen to depend almost entirely on the state to sustain the "social machine." Although his broadly sociological and structural analysis escaped many of the limitations inherent in a narrative approach, Tocqueville's analysis projected much of the strength and coherence of the Napoleonic state back to the *ancien régime.* This teleological flaw becomes especially apparent in a study of rural policing.[34] Robert Schwartz's otherwise fine study of the role of the *maréchaussée* in conducting the "great internment" of the poor and deracinated described the corps as the most extensive police of its day, "in many ways a modern national police force."[35] However, even a cursory look at the actual strength, activities, and composition of the force belies the claims of both Tocqueville and Schwartz.

The prerevolutionary *maréchaussée* simply lacked sufficient numerical strength to provide policing in the modern sense. The province of Brittany had fewer than 190 members of the *maréchaussée* to police a popula-

tion of 2.2 million; in Languedoc, 204 cavaliers tried to keep law and order amongst a population of 1.7 million contentious Frenchmen. As a whole, France averaged only one rural policeman for every seven or eight thousand inhabitants.[36] Furthermore, no matter the size of territory and population for which they had nominal responsibility, the *maréchaussée* rarely brought malefactors into direct contact with the machinery of justice. In the Soissonais, the average cavalier made only about three arrests a year, one of which would be a simple vagabond. Even their role in investigating crime was small, being charged with following up no more than two or three thefts each per annum.[37] Their presence on the roads may have decreased the general sense of insecurity, but they certainly did not embody social order in rural communities. At worst, they were a provocative intrusion; at best, a last resort. Finally, the reforms of the 1770s aimed only at reducing some of the *maréchaussée*'s basic flaws. These ranged from personal failings, such as rampant drunkenness and physical decrepitude, to professional inadequacies, including lack of military service and inability to read or write. Despite signs of increased regularity in patrols and improved discipline, these all remained persistent problems down to the Revolution.[38] Such a deficient constabulary made a meaningful contribution to preserving public order only because so little was required in the largely self-regulating society of eighteenth-century France. When we consider the meager forces of the *maréchaussée,* and that by the 1780s it was burdened with "almost total disciplinary control of the marginal population in the countryside,"[39] it comes as no surprise that the monarchy failed to cope with the widespread disturbances of 1789.

The early Revolution did not substantially alter the nature of the rural constabulary; most changes awaited the republic. The *cahiers de doléances* sent to the Estates General in 1789 had consistently called for more effective policing. Two years later the Constituent Assembly almost doubled the size of the force to 7,250 men, some on foot for the first time, and renamed it the Gendarmerie Nationale. The appointment of officers and men alike devolved to the new departmental authorities. New recruits needed three years of military service, and the choice of senior officers was limited to men already in the *maréchaussée.* Otherwise, almost all of the criteria and conditions of service remained the same. The cavaliers still had to buy their own horses, which excluded the average peasant or artisan, and the vast majority continued to be stationed in their native regions.[40] The Legislative Assembly did little other than add 300 more brigades, which brought total strength up to 8,784 men in April 1792.

The war utterly transformed the corps. From the summer of 1792 on, the gendarmerie expanded at a dizzying pace in order to meet growing demands for both military manpower and domestic repression. By the end of 1795, the gendarmerie numbered over 21,000 men, only half of whom served as rural policemen.[41] Such pell-mell expansion had degraded the force. It was now gangrenous with incompetence, illiteracy, and inexperience. Although fighting units suffered most, the problems were ubiquitous. Besides basic issues of professional competency, brigades stationed in areas of political extremism had suffered repeated purges. Jacobin clubs and representatives on mission made it a point to replace "moderates" and "suspects" with political favorites regardless of their credentials. Matters were worst in the Midi. There the grain merchant Pierre Jourdan, known as Coupe-Tête for his part in the "Glacière massacre" at Avignon, became a squadron commander in charge of several departments. The Thermidorian Reaction inevitably brought wholesale purges and another confusing array of appointments made outside the chain of command.[42]

By the start of the Directory, everyone agreed that the gendarmerie needed immediate reorganization. "Nothing is more urgent," wrote the minister of police; "the gendarmerie must be severely purged, everywhere its current composition reveals insouciance, laxness, and even the desire, frequently realized, to favor all crimes, banditry, murder, and desertion."[43] The gendarmerie lacked even the most basic equipment, including horses and weapons, and so found it difficult to make their rounds or disperse fractious gatherings. In the Marne, five-man brigades had only a horse or two each. In the Haute-Garonne, they lacked sabers as well as pistols. But even being properly mounted and armed did not guarantee reliability. In many places, such as the Jura, gendarmes openly refused to arrest refractory priests. Elsewhere, they took sides in local quarrels. Lieutenant Liger's superiors wanted him tried by a court-martial for personally stirring up hatred and revenge in the Lozère.[44] The sheer monotony of complaints makes it easy to believe what critics said about the laziness and cowardice of most gendarmes. After all, why would men hampered by ill-shod horses, bad lodging, and delayed pay repeatedly risk their lives defending a widely detested regime? Who could expect them to reject bribes from families sheltering draft dodgers or track down bandits more numerous and better armed than themselves? Why did so many prisoners, whether priests, deserters, or bandits, manage to escape en route to prison? Who would believe the brigadier who claimed that his unit had been overcome by eighty men, every one of them masked and armed with double-barreled muskets?

At Castres, officials blamed not the officers but the ordinary constables, who were described as "undisciplined, given to debauchery, unconcerned about their duties, susceptible to seduction, unable to keep the secrecy needed for the success of their operations, and, in fact, poltroons."[45] The Directory had little hope of restoring order until the gendarmerie itself had been restored to order.

The Directorial regime effected the most dramatic changes in the history of rural policing in France. The nature of these changes merits close attention. Despite the urgency of reform, partisanship among lawmakers delayed reorganization until 1797. Meanwhile, desperately short of funds and unimpressed by their lackluster performance on the battlefield, the Ministry of War dissolved most of the units serving in the cavalry. This, together with attrition due to deaths, retirements, and resignations, reduced the gendarmerie to 16,500 men by the end of 1796. A bureaucratic study determined that this was still twice the size the country needed and—of greater importance—could afford.[46] Finally, on 25 pluviôse V (13 February 1797), the Councils undertook an organic reorganization. This laid the basis for the modern Gendarmerie Nationale. The new law began by eliminating all existing units and appointments. The new corps would consist of a reorganized command structure giving direction to a force of 8,475 men divided into 1,500 brigades and 100 department companies. In order to implement this reorganization, the central bureaucracy undertook a massive effort to compile service records and performance assessments on every officer and constable. A national inquiry asked deputies, department administrators, and district commanders to evaluate officers and make recommendations. The inquiry whipped up a blizzard of paper swirling between patrons and protégés, between Paris and the departments, between the Ministry of War and the Directory's military bureaus. Although massively oversized, the corps had a shortage of senior officers. Furthermore, a case-by-case analysis persuaded the Ministry of War that a quarter of those on active duty lacked the necessary experience, morality, or talent to continue in their posts. On the other hand, there were three times as many junior officers as the new law permitted. Paring the officer corps down to the mandated number required hundreds of forced retirements, suspensions from active duty, and outright dismissals. It took five months of laborious screening before the government could finally name all of the corps' officers: 25 division chiefs with the rank of brigade general and in command of four or five departments each; 50 squadron commanders or two per division; 110 company captains (one for each department plus a few for large cities); and 200 lieutenants, each in charge of seven or eight five-man brigades.[47]

All of this restructuring took place in a climate of rising antirepublicanism confirmed and encouraged by the elections in the spring of 1797. This made the choice of officers highly contentious. The government was internally divided, with Directors and ministers increasingly polarized into opposing camps. Director Carnot, Minister of War Pétiet, and their respective staffs, all moderate republicans at best, did most of the work on officer appointments. Nonetheless, right-wing deputies believed that many republican officers drawn from the army had been given posts formerly held by officers of the old *maréchaussée* with more conservative opinions. Therefore, the Council of Five Hundred tried to limit the Directory's "arbitrary" powers to appoint senior officers and again to give departmental committees the power to appoint junior officers. The Council of Elders wisely rejected this bridling of executive action. Shortly thereafter matters swung to the opposite pole, and the Directory gained even more independence. After the Fructidor coup d'état, the Councils authorized the Directory to "rectify" officer appointments made in the summer of 1797. The government immediately culled senior officers who "did not merit its confidence." It also made some astute reassignments: Squadron Commander Virveins, for example, demonstrated that he was not "assertive enough" (*assez prononcé*) for southern departments and was duly transferred north to quiescent Chaumont.[48]

Meanwhile the reorganization proceeded at the department level. Once the new officers had taken their posts and had a few weeks to assess the NCOs and constables under their command, departmental review committees (*juries d'examen*) met to purge the brigades. These review committees reflected the many constituencies interested in the quality of the local police.[49] Their actions mimicked those of the government, only on a smaller scale. The law required a cut in active personnel by at least a third. Although some received retirement benefits, redundancy pay, or transfer to the army, the bulk of those not included in the reorganization were abruptly dismissed. The politics of factionalism, patronage, personal rivalries, and squabbles over where the remaining brigades would be stationed dragged out the work of review committees for up to three weeks. Then, just as most committees were concluding their work, the Fructidor coup disrupted their plans.

The purged Councils not only allowed the Directory to revise officer appointments, they ordered new departmental committees (*juries de révision*) to revise the work of the review committees. Although the ex officio composition of these revision committees remained the same, a huge turnover in official personnel in some departments due to the nullification of elec-

tions produced a very different set of opinions around the table. The government believed that review committees had dismissed many gendarmes whose "attachment to the Republic was the most pronounced" while preserving those with "notorious and sustained *incivisme*." In order to retain experienced and dedicated men, the revision committees were allowed to relax professional standards. One gendarme in each brigade could be exempted from the literacy requirement and redundant junior officers and NCOs could be considered for vacancies in lower ranks. It was hoped that after this final purification, the gendarmerie would consist of men "entirely devoted to the Republic, strongly attached to the laws of military discipline, combining zeal, morality, bravery and intelligence."[50]

The extent of turnover in personnel in 1797, and the impact of the Fructidor coup in particular, can best be appreciated by examining the process at the departmental level. Here we see that, in contrast to government expectations, the revision committees did not significantly alter the work of their predecessors. Applying the law of 25 pluviôse V (13 February 1797) had required the corps to be cut by 44 percent in the Haute-Garonne and by 39 percent in the Sarthe.[51] These departments had not been dominated by openly reactionary leaders before the coup, and so changes made by the revision committees were minor: no gendarmes were sacked, and only a few older men were recommended for retirement. On the other hand, in the Hérault, the political pendulum had swung far between the spring and autumn, and so the revision committee differed substantially from the original review committee. All the same, revisions were not massive. The first committee had reduced the Hérault's contingent by 29 percent to ninety-one men by removing six officers and thirty-one brigadiers. After the coup, the second committee went over existing notes and reinstated a dozen men, half of whom had failed to meet the literacy requirement and half of whom had been rejected on the basis of suspicion, hearsay, and "vague remarks [now] contradicted by certificates worthy of credibility."[52] The Haute-Saône had a similar experience. There the revision committee had to do the entire reorganization man by man because the Fructidor coup broke up the first committee before it could finish its work. In this department, political motives mingled with professional ones in the dismissal of fifteen men. One was "suspected of *incivisme*," another "drunk and insubordinate," and yet another "lacked the height." However, "the obligation to suppress five brigades forced the jury to dismiss subjects who have favorable records," and they were marked as the first to fill future vacancies.[53] Thus, although political factors clearly had an influence on choices in the Hérault and Haute-

Saône, both before and after the coup, this influence was less damaging to the corps' professionalism than any of the other changes made since 1792. In fact, as the evidence from four departments indicates, the careers of the vast majority of gendarmes were not determined by political factors; where politics did matter was at the level of officers. As a safeguard against unprofessional and inadequate gendarmes, the Councils had ordered department-level reviews to take place immediately after spring elections each year. Despite the tumultuous elections of 1798, with their numerous split assemblies and falling out among republicans, the new review committees made few changes in the composition of the gendarmerie. At last, after a decade of vertiginous expansion and contraction, the corps achieved a certain stability. It had also made the biggest step toward professionalizing personnel in the history of the rural constabulary.

No sooner had the second review committees finished their work than the Councils issued a new law substantially augmenting the number of brigades. Cutting the corps to 1,500 brigades in 1797 may have left it twice the size of the old *maréchaussée*, but this was manifestly too few to cope with the myriad challenges to law and order under the Directory. Therefore, the law of 28 germinal VI (17 April 1798) created five hundred new brigades, thus raising the corps' strength to 10,557 gendarmes stationed throughout the expanded hexagon. The men for the new brigades were again selected by departmental review committees. Factional politics had little influence on who was admitted to the new brigades.[54] In fact, many of them had been the last men reluctantly eliminated in the drastic downsizing of 1797. In the end, although it had provoked a lot of arm twisting, lobbying, and heated debate throughout the country, the multistage reform of personnel in 1797 and 1798 generated a rough consensus in each department. After this intensive screening process, the men who held positions either as gendarmes, NCOs, or officers had solid professional credentials. Charges of political bias, negligence, and even gross incompetence still appeared, especially when magistrates needed to explain failures, but total complaints dropped sharply. Standards had risen dramatically, and future recriminations tended to be based on higher expectations than ever before.

The law of 28 germinal VI (17 April 1798) also provided a definitive statement on the gendarmerie's duties and responsibilities. This veritable constitution of rural policing described the gendarmerie's mission as "to maintain order and enforce the law" as well as to exercise a "continuous and repressive surveillance." More specifically, gendarmes were expressly responsible for dispersing rebellious crowds; patrolling roads, markets, and

fairs; reporting any incidents that might affect public order; and collecting information about malefactors. In addition, the gendarmerie had the burden of maintaining order at elections, executions, and whenever requested by department or municipal officials. Public prosecutors and jury directors could also require them to perform the functions of judicial police. This meant assisting in investigations, executing arrest warrants, and escorting prisoners. In other words, they were at last thoroughly integrated into the civilian apparatus of control and repression. Professional admission standards were also refined. Entrants had to be between ages twenty-five and forty, stand at least 5 feet, 7 inches tall, and be able to read and write. Since only mounted units remained, all gendarmes needed to have served four years in the cavalry and have participated in three campaigns of the revolutionary wars. This would keep out shirkers and cowards. Candidates also had to present certificates attesting to their bravery, good conduct, upright morals, and loyalty to the republic. This general increase in professional standards was accompanied by a rise in pay and the assurance of a retirement pension at age sixty. Wage deductions were used to constitute a company chest for replacing horses, uniforms, weapons, and equipment. This removed the burden of being individually responsible for outfitting oneself. Finally, although the Directory chose all of the officers in the initial reorganization, thereafter a percentage of each grade, including NCOs, would be reserved for promotion by seniority.[55] This helped to build careerism and dedication to the service.

The massive personnel changes in 1797–98 and the organic law of 28 germinal VI completed the transformation of the gendarmerie into a modern police force established on a truly national footing. The tight control departments had exercised in the years after 1791, usually to the detriment of the local company, gave way to a balanced system. At the national level, the War Ministry managed appointments, promotions, discipline, and equipment; the Police Ministry made sure the brigades did their part to maintain order; and the Justice Ministry supervised their interaction with public prosecutors, jury directors, and justices of the peace. At the local level, departmental and cantonal officials could requisition brigades for special assignments, but once the assignment had been given, gendarmes executed it free of civilian interference. Finally, officers of the gendarmerie were empowered to requisition national guardsmen to assist in carrying out police functions.

Here we see a clear line between community policing and policing communities. Municipal officials had a heavy hand in determining the com-

position of the local mobile column. They also tended to determine when and how it would be deployed, which resulted in a parochial force motivated by local concerns. For the most part, guardsmen served when their community needed them and, therefore, proved notoriously unreliable for other assignments. In contrast, brigades of the gendarmerie belonged to a military corps. They were not antithetical to civilian law enforcement, however, but a professional extension of it. Only a dozen, or perhaps a score, of communities in each department had units of the gendarmerie stationed in their midst. Furthermore, brigadiers rarely came from the region where they served. Their assignment was implicitly to defeat villagers' resistance to the penetration of state authority. In that sense, gendarmes policed communities and the autonomy they sought to preserve as much as they policed individuals and the crimes they committed.

Despite all the obstacles to effective policing during the late First Republic, the gendarmerie acquired a genuine esprit de corps and a remarkably strong sense of duty in just a few years. The reforms of 1797–98 helped immensely, but more was needed than purges and organizational regularity. Even numerical expansion was not enough. True, size did matter. In the spring of 1800, the Consulate added 2,040 pedestrian gendarmes to fifteen departments in western France. In the summer of 1801, the gendarmerie expanded yet again, bringing it to a total of 15,689 men (11,179 mounted and 4,510 on foot). This was almost four times the size of the prerevolutionary *maréchaussée*. But quality mattered too. In each expansion, the government sought "elite men, fearless and above reproach." As we have seen, every candidate received careful and repeated screening. As a result, contemporary assessments indicated a rapid improvement in the quality of policing. Officials in the Haute-Saône, for example, unanimously agreed on the "zeal and exactitude" of the gendarmes in their department. The company of the Sarthe had "excellent officers, sharply turned out and widely respected." Though there was still room for improvement, notably in Brittany, Languedoc, and Provence, the overall force bore little resemblance to its shambolic state in 1795. By 1801, it had emerged as a thoroughly professional force with a daunting reputation for toughness.[56]

The demands of the service in the late First Republic discouraged the feckless and cowardly from joining. Life in the rural constabulary was never more dangerous than during the years of reform. It is no surprise that sustained police pressure often provoked a backlash from the local populace. Police reports about such incidents tended to exaggerate the danger gendarmes faced, and for a reason. The size of crowds, the number of men in

gangs, or the ferocity of resistance excused their failures. But what rings most true about these reports is the utter isolation of the gendarmes when they found themselves under attack, especially when it came to enforcing the republic's most hated innovation: conscription. If local people intervened at all, it was on the side of the conscripts. This cast the gendarme as an enemy of the community. "For the *gendarmerie* the arrest and escort of conscripts was not only a dangerous and unpopular assignment, it was an activity that lost them much of the local good will on which even the most basic policing was dependent."[57] As a result, the aggressive repression used to impose the republican order provoked thousands of violent encounters and deadly gun battles around the country. By the end of the century, several gendarmes were being killed every week! In these cases, there was little need to exaggerate—the facts were gruesome enough. Witness the report filed in March 1800 by three gendarmes from Viarouge in the Aveyron who, having handed off six deserters to the brigade from Millau, had just taken charge of escorting the tax receipts from Rodez when they were ambushed by three groups of men, one from each side of the road and one from behind.

> They kept up a line of fire which forced us to fall back in order to try to take them from behind. It was in executing this maneuver, ordered by citizen Bessière, brigadier, that this brave commander received eleven gunshots from the squad that was crossing the road from the right side, to wit: a ball in the middle of the neck that came out his mouth, another a little lower that pierced his collar and jaw, three in the sides, three in the lower back, two in the shoulder and one in the left hand that pierced it. At this discharge citizen Bessière fell stone-dead from his horse. Gendarme Nouls received five gunshots at the same time, one breaking his right hand, another taking off his index finger, one in his horse's eye. Another gendarme, Solanet, received six shots, which ripped up his coat without injuring him, but four balls killed his horse instantly; the other gendarme, Record, received three shots in his coat, but was not hurt; his horse got three as well, which put it out of service.[58]

Such violence against gendarmes was especially intense in the Midi and Massif Central, but similar events occurred in many parts of France. In a single week, these ranged from the Indre to the Sarre, and from the Tarn to the Seine-et-Oise. As late as June 1801, the gendarmerie was still experiencing an average of two "events" a day in which gendarmes were killed or wounded and forced to abandon their prisoners.[59] That the gendarmerie did not crumble in the face of this onslaught is testimony to how much rural policing had changed since 1789.

Those who oversaw the gendarmerie attributed the rural "spirit of rebellion" to pusillanimous mayors and insouciant juries. In other words, gendarmes were being left to fend for themselves. It was essential that the gendarmerie be backed by sufficient force to preserve its integrity; otherwise, successful resistance would become a galloping contagion. Under these conditions, only external support could enable the gendarmerie to cohere. Therefore, when local resistance became especially fierce, the government responded with overwhelming force. At times this could lead to a virtual war on the populace. The Escalquens affair of 1799 illustrates the range of measures the republic was willing to deploy in defense of its gendarmes. When the brigade from Castanet (Gers) arrested a draft dodger at nearby Escalquens, a crowd formed to demand his release. The gendarmes refused and started back to their headquarters only to be fired on from a distance. Not one to be intimidated, Lieutenant Daure assembled a detachment of three brigades and returned to Escalquens to disperse the armed gathering. There he found the road blocked by a passel of gun-toting youths. Suddenly another swarm of men armed with everything from pitchforks to carbines enveloped the sixteen gendarmes. Attempting to beat a hasty retreat only brought a hail of lead that killed the lieutenant and wounded four gendarmes and several horses. General Augereau, commander of the Tenth Military District, responded with awesome force. A column of 350 men and two cannons under Squadron Commander Regnard marched on Escalquens. There they encountered several hundred men gathered on the heights and using self-propelled explosives ("fusés volantes") to defend their position. A sustained assault dispersed the rebels. Several days later, a department administrator came to Escalquens, and in a calculated affront to the entire community, publicly stripped the *agent* and his deputy of their offices. A detachment of sixty troops was then charged with helping to round up conscripts and disarm the populace of five villages. To prove the organized nature of the revolt, Augereau had a detailed map of the original ambush drawn by a military engineer and presented to the Civil Court of the Haute-Garonne. This persuaded the court to order the citizens of Escalquens to pay maximum damages: 15,000 francs to Lieutenant Daure's widow; 1,000 francs to each of the four wounded gendarmes; 200 francs to each of the other twelve gendarmes; and matching sums to the republic. This made a staggering total fine of 42,800 francs. Later, when this fine went unpaid, soldiers were sent to collect it by force.[60] A response of this ferocity was possible only because the army provided the force necessary to sustain the gendarmerie. The ultimate recourse, and a measure not actually

used at Escalquens, was to turn local policing entirely over to the army. This was done through a state of siege.

State of Siege

The Directory's campaign to restore order in areas of endemic civil unrest was further militarized by declaring individual communes in a "state of siege." The absolutist monarchy had long used the state of siege to quell various forms of resistance ranging from a wine-growers' riot in Dijon in March 1630 to the widespread "Flour War" of May 1775, when the whole area around Paris was put under a state of siege.[61] The collapse of the royal army's repressive role in 1789 and the emergence of the National Guard across the country, and especially in Paris, encouraged the National Assembly to formulate an alternative to the *ancien régime's* "state of siege." Once the torrent of urban and rural violence of 1789 had made possible a radical break with the prevailing order, the National Assembly created a new form of martial law on 21 October 1789. This decree authorized municipal officials to requisition the instruments of armed force, including the National Guard, *maréchaussée,* and regular troops, in order to crush mob violence. This was a modified form of the British Riot Act of 1715. In both cases, a "riot" was officially at least twelve individuals who, having been read an official order to disperse by a civilian magistrate, refused to do so. They then became guilty of a capital felony and could be dispersed by armed force.[62] The new law temporarily gave civilians complete control of local police and military power. As elected officials, municipal leaders derived their authority from the people, the new repository of sovereignty. As long as elected officials decided when to invoke martial law, the equivalent of acting in self-defense, there was little juridical basis for dictatorship. Jacobins and Cordeliers fiercely opposed martial law, however, especially after its deployment in the massacre on the Champs de Mars in 1791.[63] Their ascent to power was based on popular violence, and their exercise of power was legitimized by forms of political representation radically different from democratic election. Therefore, when martial law became a useful instrument for so-called federalist authorities, the Montagnard-dominated Convention promptly abolished the law (23 June 1793). Thereafter, state centralization took over, first as the Convention's Revolutionary Government, then as the Executive Directory.

Martial law as an instrument of local government was not revived de-

spite the transition to constitutional rule. It was replaced instead by the state of siege. The differences between them were critical. The state of siege had been created by the law of 8 July 1791 as a purely military matter. It authorized a town's army commander to take direct control of everything pertaining to policing and public order inside the town at any time that it was besieged by an enemy. The original law described the wartime circumstances that created a state of siege and listed 218 fortified towns susceptible to it. This made military sense and kept the royal army from playing a role in domestic repression. Events soon erased these clear distinctions, however. During the Federalist Revolts of 1793, the National Convention used the regular army, now much modified by the desertion of noble officers and the incorporation of national guardsmen, to lay siege to Lyon, Marseille, Bordeaux, and Toulon. In a bit of twisted logic, representatives on mission sent to supervise the siege of these cities declared them under a "state of siege" only *after* they had fallen to the forces of the Revolutionary Government. This legal maneuver gave army commanders extra powers to mop up resistance and punish rebels. It also created a precedent for greater distortions of the state of siege.

Despite its rhetoric of constitutionality, the Directory completed the transformation of the state of siege from a defensive measure during times of war to a tool of domestic repression. Although not intended for use in internal repression, the state of siege was well suited for it. Declaring a state of siege transferred to the local fortress commander (*commandant de la place*) all the powers invested in civilian authorities for the maintenance of order and internal policing. This empowered the local commander to order arrests, expel people from town, control the prisons, and take whatever measures he deemed necessary to preserve order. It also enabled him to employ his troops without waiting for local civilian authorities to request them. In fact, municipal officials were not permitted to undertake any police action or introduce any security measures that had not first been authorized by the local commander.[64] Thus, more than a simple recourse to armed force to quell internal resistance, the Directory's use of the state of siege severely eroded municipal authority.

The Directory first made wide use of the state of siege in response to the civil war in the west. The secret instructions issued to General Lazare Hoche on 7 nivôse IV (28 December 1795) authorized him to declare all the large towns of the insurgent departments under state of siege, which was taken to mean all towns over three thousand inhabitants. This effectively militarized the administration of the entire civil war zone. Although this practice

conformed to the spirit if not the intent of the original legislation, local republican officials and even a few deputies bitterly opposed the measure, especially those from the Vendée. Officials at Les Sables-d'Olonne considered themselves too far from the fighting to warrant such action, and those at Fontenay-le-Peuple deemed it blatantly unconstitutional. Therefore, once Hoche eliminated the royalist leaders Stofflet and Charette in March 1796, he lifted the state of siege from all towns in the *Vendée militaire* except for Angers, Nantes, and Noirmoutier. Thereafter, it was progressively lifted from the towns of Brittany, Normandy, and Maine according to the pace of pacification. Finally, in July 1796, the Directory completed the process by lifting the state of siege wherever it still existed in western France, thereby allowing the constitution to take effect.[65]

If putting towns under state of siege in the west skirted the fringes of constitutionality, its use in the Midi during the First Directory was clearly a travesty. Terror and counter-Terror in the Rhône Valley and along the Mediterranean coast had created a region of ferocious intracommunal violence. Much of this radiated out from the major urban centers of the region. Lyon, Marseille, and Toulon, therefore, remained under a state of siege long after the Federalist Revolts had been crushed. This situation went largely unchallenged until the advent of constitutional government in 1795. Even then, Stanislas Fréron, on a controversial mission to end the bloody reaction in the Midi, asked that the state of siege be maintained at Marseille, Toulon, and elsewhere, in order to keep rival factions from tearing each other apart. But Fréron had a partisan perspective. Many of his appointees were notorious Jacobins whose very lives depended on the sustained presence of troops. After Fréron's belated departure in April 1796, the commanders of the Eighth and Ninth Military Districts took it upon themselves to apply the state of siege to various smaller towns.[66] As General Puget-Barbantane put it to the minister of war, "This extraordinary measure is requested by republicans; this proves their faith in the troops and in departing from the principles of liberty that subordinate military authority to civilian authority; [this measure] is necessary for the triumph of this same liberty in a region where a disastrous reaction has so cruelly attacked it."[67] In other words, as long as the army had the support of local republicans, it could supplant elected officials. But the government officially discouraged such measures. In accordance with its commitment to a constitutional rule of law, the Directory sought to restrict the use of the state of siege in the south, especially after lifting it from the towns of western France. Nonetheless, the Directory came to accept the state of siege as a necessary evil and condoned its use

in select towns and cities where political polarization prevented the legal machinery from functioning properly.[68]

Once allowed to apply the state of siege to southern towns, generals inevitably turned this measure into a personal instrument. Whether he sympathized with the right or the left, the local general used the tools at his disposal to hamstring his political opponents in the region. Thus, when the Directory replaced the staunchly republican Puget-Barbantane with the reactionary Amédée Willot in September 1796, Willot began lifting the state of siege from a number of towns where republicans had been persecuted. But this was not a return to constitutionalism. Willot considered Jacobins the greatest threat to stability in the region and so quickly applied the state of siege to towns supposedly subjugated by local "anarchists." This change in commanders rapidly politicized the state of siege as an instrument of repression. Once Marseillais republicans no longer had the army's support, they sent a petition with eight thousand signatures calling on lawmakers to lift the state of siege from Marseille and thus allow their city to enjoy the benefits of the constitution just as Vendéan rebels could now do. With their man Willot in charge, the reactionary deputies of the Bouches-du-Rhône opposed a return to civilian rule and backed their demand with another petition, equally signed by eight thousand Marseillais.[69] *Chef de brigade* Liégard, commander of Marseille, wrote a letter to the Council of Elders defending the Directory's domestic use of the state of siege. He stated: "The ill-intentioned keep saying that a town under state of siege is, so to speak, outside the constitution; but the constitution would be meaningless if . . . police powers were in the hands of men who have successively taken turns being the oppressors and the oppressed. The commander of a town under state of siege will uphold the government's views and preserve peace." He also argued that using the state of siege to maintain order in large cities like Marseille would prevent the constitution from being smothered in its cradle.[70] Caught between factions and inclined toward this form of law-and-order logic, the Directory let Willot decide what was best. Not surprisingly, he happily preserved the state of siege in Marseille, as well as at Toulon, Avignon, Aix, Tarascon, Arles, and several smaller towns.[71] Later, general ferment and a resurgence of political violence in the spring of 1797 prompted Willot to extend this measure to a half-dozen towns around Marseille.[72] The benefits of this policy soon paid off in personal terms: the Bouches-du-Rhône elected Willot to the Council of Five Hundred.

The triumph of conservative candidates in the elections of 1797 increased parliamentary pressure for a strict application of the constitution. Such an

approach limited both the discretionary power of the government and of its subordinates in the field. Successive ministers of war largely agreed with the new parliamentary majority. Pétiet certainly believed that using the July 1791 law for internal repression was unconstitutional and twice ordered Willot to lift the state of siege from all the towns under his jurisdiction. Even Pétiet's more republican successor, General Barthélemy Schérer, did not like to see generals resorting to this measure. He wanted all future uses expressly approved by the Directory.[73] As a consequence, the number of towns under state of siege steadily dropped. Nonetheless, military commanders were reluctant to give up such a powerful tool of repression.[74] Despite the Directory's self-restraint, its use of the state of siege to restore order became a matter of heated debate during the summer of 1797, especially when Lyon, a crossroads of royalism and organized crime, was threatened with this measure.[75] The conservative-dominated legislature moved to eliminate the Directory's use of the state of siege on constitutional grounds. A special legislative commission reported that the state of siege had been vital to repressing rebellion in the west and south and had generally been used wisely, but that it now posed too many dangers and should be severely restricted. Told that the state of siege equaled military dictatorship, the Council of Elders passed a law requiring the Councils to approve every future application.[76] Here was a blatant attempt to usurp executive authority. Days later, however, the Fructidor coup restored the Directory's power to put towns under a state of siege without needing legislative approval.

Having removed the "constitutional opposition" to the state of siege and determined to stabilize the regime through force, the Directory made increasing use of this measure to assert its authority over rebellious communes. Although the War Ministry continued to advise limited use and strict control of the state of siege,[77] it seemed vital to consolidating the coup, especially in the Midi, where a wave of disturbances lent credibility to the government's claim of having nipped a royalist conspiracy in the bud. Therefore, when the Directory named General Pille overall commander of the Seventh, Eighth, Ninth, Tenth, and Twentieth Military Districts (a vast area taking in twenty-seven departments), it authorized him to proclaim a state of siege in any commune under his command.[78] Pille used this measure often. To the principal cities of Marseille and Toulon, already long under state of siege, Pille added Aix, Montauban, Montpellier, Béziers, and Castres, as well as at least twenty smaller towns. Lyon too fell under a state of siege.[79]

This extensive use of the state of siege in the Midi following the Fructi-

dor coup does not mean that the Second Directory used this measure indiscriminately; indeed, the government continued to pay attention to legal forms even when acting in an authoritarian manner. Parisian officials saw the dangers of resorting to the state of siege—people at Montauban thought it was intended to prepare a return to the Terror and the Maximum[80]—and usually insisted that generals who applied such a measure have it confirmed by an executive order. The government also blamed local authorities for requesting the state of siege before they had made full use of the police powers at their disposal.[81] In particular, the government wanted local authorities to apply the harsh law of 10 vendémiaire IV (2 October 1795), which required communities to compensate victims of property damage and violence committed on their territory by any sort of group, whether a crowd of protestors or a gang of bandits. This could have been one of the most effective ways to maintain order in areas of widespread brigandage, but department authorities rarely asked courts to apply it, and when they did, local judges often refused.

The government's wish to avoid abusing the state of siege and the reluctance of local authorities to apply the law of 10 vendémiaire IV reflect one of the Directory's fundamental difficulties in trying to stabilize the regime. How could the republic turn the force of communal solidarity to its advantage, and if this proved impossible, how could such solidarity be overcome? The Revolution had provoked massive opposition simply by creating a new state apparatus that intruded in the day-to-day activities of local communities previously independent of most government authority. When the republic demanded men and resources for its war effort, many people put up a stubborn resistance. Community leaders who had sided with the republic then had to call upon outside forces to overcome the opposition of their neighbors. This violated the social code that gave village communities their moral unity and turned local leaders into "outsiders" if they cooperated with the revolutionary republic. The law of 10 vendémiaire IV sought to turn community solidarity against banditry and antirepublican violence through collective responsibility. The government admitted that it would be difficult for ordinary citizens to prevent antirepublican crimes committed secretly by lone assailants, but it held communes collectively responsible if they allowed groups of people to assault republican officials or destroy national property. This resuscitated the absolute monarchy's notion of a fiscal *contrainte solidaire* and applied it to a vigorous defense of the republic, thereby flagrantly contravening the revolutionary spirit of individualism. Such a contradictory and punitive response was defended by casuistical ref-

erences to the constitution, which specified that every citizen had a duty to defend society against its enemies and made no distinction between foreign attackers and fomenters of domestic disorder.[82] The Second Directory was so convinced that this approach would bear fruit that it extended the law of 10 vendémiaire IV to cover stagecoach holdups as well.[83]

Relying on collective responsibility to turn community solidarity to the republic's advantage still required the intervention of outside authority whenever it failed, which was distressingly often.[84] Department officials would then have to intervene to prompt the civil court to impose penalties. Rather than run the personal and political risks of acting decisively, however, department authorities frequently asked that military authorities do their dirty work. Prompted by the government, military commanders began systematically to petition courts to apply the law of 10 vendémiaire IV to those communities that did nothing to prevent attacks on agents of the state, from tax collectors to gendarmes. Army commanders sometimes took charge of collecting these fines as well. Even if they recovered a derisory portion of the original fine, they took whatever they could and so ruined whole villages. For example, after the attack on the gendarmerie at Escalquens described earlier, an armed force dispossessed local residents of cash, wheat, millet, and wool, but the total came to only 1,023 francs of the preposterously huge fine of 42,800 francs.[85]

In theory, enforcing collective responsibility was distinct from imposing a state of siege, which was not intended to be a punitive measure per se, despite the massive intrusion of outside force.[86] In practice, however, putting a commune under a state of siege was usually accompanied by billeting troops or levying fines in order to punish entire communities, not just local officials who had failed to keep the peace. This sometimes meant proclaiming a state of siege and adding an application of the 10 vendémiaire IV law in order to compensate victims. This was the case in January 1799 at St-Jean-sur-Erve (Mayenne), where the inhabitants were forced to pay an indemnity to the widow Michelet for not preventing the murder of her husband, a gendarme there.[87] More often, reinforcing collective responsibility for preserving public order included requiring inhabitants to provide lodging and provisions for troops. These could be aggravated by heavy financial levies. Both of these measures accompanied the proclamation of a state of siege at Bouère (Mayenne), where a band of chouans had attacked a detachment of republican troops, killing the commanding officer and several grenadiers. The villagers of Bouère not only failed to take up arms against the band, as their neighbors in the commune of Ballée had done, but they provided a haven for "several ferocious brigands." In fact, eighteen

members of the band lived at Bouère. For their collective failure to defend the republic, the villagers of Bouère were forced to billet the troops sent to implement the state of siege as well as being required to pay 10,000 francs to the army treasury (see figure 9). General Simon's orders emphasized that "using the state of siege was, in fact, an extreme measure, but the result

ARMÉE D'ANGLETERRE. 22e DIVISION MILITAIRE. 1re SUBDIVISION.

RÉPUBLIQUE FRANÇAISE.

LIBERTÉ. ÉGALITÉ.

LE GÉNÉRAL DE BRIGADE,

Commandant la 1.re Subdivision de la 22.e Division militaire.

VU le rapport qui lui a été fait de l'événement survenu, le quatre mais, dans la Commune de *Bouere*, Canton de Gres-en-Bouere, Département de la Mayenne, où des brigands, rassemblés au nombre d'environ soixante, tous bien armés, ont attaqué et poursuivi un Détachement de troupes républicaines, qui n'était fort que de dix-huit hommes, ont tué l'Officier qui le commandait, ainsi que plusieurs soldats qui en faisoient partie; et en ont blessé quelques autres;

Considérant que, d'après les renseignemens qu'il a obtenus, ce rassemblement s'est formé sur le territoire de la Commune de *Bouere*, dont les habitans, loin de s'y opposer, l'ont, au contraire, favorisé par tous les moyens possibles, puisqu'au lieu de prendre les armes pour courir sur les brigands, comme l'a fait la Commune de *Ballée*, ils sont restés dans une criminelle inaction.

Considérant que le mauvais esprit qui règne dans la Commune de *Bouere*, a servi et sert encore à encourager les ennemis qui désolent cette contrée, que c'est dans son sein où plusieurs brigands des plus féroces, trouvent journellement un asile;

Considérant enfin qu'un nombre des brigands qui ont assailli le Détachement, il s'en trouvait dix-huit de la Commune de *Bouere*, même....

En vertu de l'Arrêté du Directoire exécutif, du 27 thermidor, an 6, de l'autorisation du Général en chef Hoche, commandant la 22.e Division militaire, et des ordres du Général en chef de l'Armée d'Angleterre;

DÉCLARE la Commune de BOUERE, Canton de Gres-en-Bouere, Département de la Mayenne, en ETAT DE SIÈGE.

A compter du jour de la publication de la présente, toute l'autorité dont les Fonctionnaires civils sont revêtus pour le maintien de l'ordre et de la police intérieure de cette Commune, sera exercée exclusivement par le Commandant militaire.

Toutes les Troupes qui y seront stationnées, vivront aux frais des habitans, jusqu'à ce qu'il en soit autrement ordonné.

Il sera levé, dans ladite Commune, une Contribution de dix mille francs, qui devra être payée dans le délai de trois jours, et dont le produit sera versé dans la caisse de l'Armée, à Rennes, conformément aux intentions du Général en chef.

Au Quartier-général, au Mans, le 12 ventôse, an 7 de la République française, une et indivisible.

LE GÉNÉRAL DE BRIGADE,
SIMON.

A. LAVAL, chez POIRIER, Imprimeur du Département, rue Rivière.

Fig. 9. Poster announcing the state of siege and fine imposed on Bouère (Mayenne) on 12 ventôse VII (2 March 1799) for a deadly attack on republican troops there. (Author's collection)

should be to correct not to irritate or provoke hostility from the communes where it is applied."[88] Whereas the army's intent may have been corrective, residents needed cool heads indeed not to be provoked by a military takeover of their bourg.

As the Directory became increasingly determined to establish its authority, it extended its use of the state of siege to do more than just restore order. The state of siege became an instrument of political influence, if not outright electoral domination. In the spring of 1798, it was applied to major centers such as Nîmes, Avignon, and Luxembourg in order to prevent violence during the elections and to ensure "a satisfactory result for the republican government."[89] Even primary assemblies could be the site of bloody clashes and so drew added attention from the army. Prompted by the departmental administrators of the Hérault, General Petit-Guillaume put Pézenas under a state of siege because "the election period imperiously solicits this rigorous measure."[90] Here was but one way in which armed force intervened to help shape the republican, not to say Jacobin, outcome of the elections of year VI.

The Directory also used the state of siege to facilitate a range of more routine security measures. In 1798, the minister of war ordered Le Puy and Yssengeaux to be put under a state of siege for a few weeks during the trial of "several major royalist cutthroats." This included Dominique Allier, a leader in the attack on Pont-St-Esprit in September 1797, whose supporters were organizing a massive prison breakout. Here a veritable siege was in fact quite possible. On the other hand, this measure sometimes followed relatively minor incidents, such as the rescue of a refractory priest from the gendarmerie or a mêlée provoked by a farandole celebrating the anniversary of the king's execution. Some people claimed that the Directory even put towns under a state of siege for failing to pay taxes. Though not strictly true, a state of siege could provide a good opportunity to clear arrears. Applying the state of siege was more commonly provoked by widespread resistance to the so-called Fructidorian Terror. In fact, the canton of Canourgue in the Lozère fell under a state of siege for failing to deport priests, arrest émigrés, prosecute brigands, or enforce the revolutionary calendar. Such sins of omission were tantamount to counter-revolution and drew a tough response.[91]

The late Directory made extensive use of the state of siege to defeat even more threatening forms of resistance and criminal violence. Areas of widespread banditry were usually areas of counter-revolution, although clearly not all banditry was inspired by counter-revolution.[92] All the same, similar

measures could combat both. As recourse to army policing increased, a general rule of thumb emerged: a detachment of one hundred regular troops was to be stationed in every commune under a state of siege in order to impose order on the residents and the surrounding countryside alike.[93] This occasionally limited the number of places that could be subjected to this measure due to a shortage of troops in the district.[94] It also tended to transform the state of siege from a defensive measure to a basis for offensive operations. Moreover, such assumptions marked how the Directory's frequent recourse to this once-exceptional measure had come to standardize it.

During the crisis of 1799, when the republic again faced a powerful foreign coalition and a major recrudescence of banditry and counterrevolution, the Directory responded with a widespread application of the state of siege. Several district commanders received carte blanche to impose this measure whenever they deemed it necessary. The commander-in-chief of the *Armée d'Angleterre* was authorized to apply the state of siege to any commune in the four military districts under his command—a vast territory extending from the Charente-Inférieure to the Calvados. General Hédouville, overall commander of six departments in northern France (First, Fifteenth, and Sixteenth Military Districts), as well as Generals Colaud and Rey, commanders of the annexed departments of Belgium and the Rhineland (Twenty-fourth, Twenty-fifth, and Twenty-sixth Military Districts) all received the same power. Each of these authorizations was motivated by the need to extinguish renewed civil war and extensive brigandage.[95] Such blanket authorizations meant that by the coup d'état of 18 brumaire VIII, 40 percent of the country was under the jurisdiction of generals able to impose a state of siege on any town or village that openly opposed the republic. As a result of this new attitude, more than 220 communes saw the police powers of civilian officials pass to army commanders during the Second Directory. Most of these were towns, bourgs, and even villages in the Midi and the west. But the measure was not confined to these regions, nor was it applied only to small centers, for the list of places put under state of siege included France's second- and third-largest cities (Lyon, Marseille); its two principal naval ports (Toulon, Brest); several important annexed cities (Nice, Geneva, Antwerp, Ghent); and more than a dozen department capitals (see figure 10).

The Consulate did nothing to change this policy. In fact, the state of siege reached its apogee in the last months of 1799. The insurrection that erupted around Toulouse in August that year led to two dozen cantons in the Haute-Garonne, Gers, and Ariège being put directly under army rule,