

# *Crimes and Punishments in Eighteenth-Century France The Example of the pays d'Auge\**

by N.W. MOGENSEN\*\*

There has long been a wealth of studies of the history of crime and punishment in the genre of, for example, Christopher Hibbert's *The Roots of Evil*,<sup>1</sup> Raymond Boyer's *Les crimes et châtiments au Canada*<sup>2</sup> or Jean Imbert's *La peine de Mort*<sup>3</sup> which are rich in anecdote, in information on the evolution of laws, legal systems and penal methods. However, few of them give us much hard information, particularly for earlier centuries, about changes in the frequency of various types of crime nor about the evolution of jurisprudence over time.

In the past few years, historians have been discovering more and more information relating to these latter subjects by delving into court records, armed with an adding machine or a computer. A number of studies, many of which will be cited below, now exist, and these throw considerable light on changing patterns of criminal behaviour and on changes in jurisprudence in 18th century societies. In an indirect manner, they also contribute to a better understanding of processes of change at work in these same societies. As yet, however, little exists in the way of synthesis.

The object of the present study is to examine these phenomena in one small area of France, and wherever possible to relate trends observed in this area to similar trends in the rest of France, and in a few other countries, notably England and Canada. I know of no other published work where a similar attempt has been made to arrive at a synthesis for the whole of the 18th century, apart from a short article by E. LeRoy Ladurie, which is basically a commentary on a portion of my doctoral

\* This article is a much revised version of a paper presented at the annual meeting of the Canadian Historical Association in Edmonton in 1975. I would particularly like to thank the Canada Council and Dr. Pierre Chauu, Director of the Centre de Recherches d'Histoire Quantitative at the Université de Caen, for their aid and encouragement. I also owe a debt to the Killam Foundation which supported me as a post-doctoral fellow at the University of Alberta, where I did some of the research for this project, and to the Computer Centre at Laurentian University for their assistance in the treatment of the data.

\*\* Department of History, Laurentian University.

<sup>1</sup> Christopher HIBBERT, *The Roots of Evil. A Social History of Crime and Punishment*, Minerva Press, 1968.

<sup>2</sup> Raymond BOYER, *Les crimes et châtiments au Canada français du XVIII<sup>e</sup> au XX<sup>e</sup> siècle* (Montréal: Le Cercle du Livre de France, 1966).

<sup>3</sup> Jean IMBERT, *La peine de mort. Histoire — actualité*. (Paris: Armand Colin, 1967). More pertinent to the period envisaged here is another work edited by the same author and entitled, *Quelques procès criminels des XVII<sup>e</sup> et XVIII<sup>e</sup> siècles* (Paris: P.U.F., 1964).

thesis, and on a few related works by others.<sup>4</sup> Thus, the synthesis presented is a novel one, although many of the trends referred to here were known before.

If the following material is written in what might be called a positivist manner, I make no apologies for that. My own criticism of many of the books and articles dealing with the history of criminal behaviour is that they use an assemblage of anecdotes as a substitute for the sort of generalizations that only the hard work of gathering statistics can generate and substantiate.

Furthermore, no attempt is made here to explain observed changes explicitly in terms of class struggle, ethnohistory or collective psychoanalysis.<sup>5</sup> On the contrary, it is probably well to establish a few generally accepted facts before undertaking too much theory building. This does not mean that it has not been, and will not be eminently worthwhile, to develop a conceptual framework to account for the important changes witnessed in 18th century criminal behaviour. However, when such a conceptual framework is developed, it should probably not ignore the political, intellectual and economic history of the period (improved police forces, absence of acute ideological or religious conflicts, reasonable prosperity).

The area which will serve as a point of reference is the bailliage d'Auge, a jurisdiction in Lower Normandy composed of 121 parishes centered around the sleepy administrative and market town of Pont-l'Évêque. The economy of the region, which stretches south from the Channel coast just below the estuary of the Seine River, was even then largely dependent on stock-raising and dairying. The undulating countryside was covered with meadows and the occasional wheat field, or patch of flax, separated by hedgerows and sunken roadways.

It was relatively prosperous by 18th century French standards, but its population, in the neighbourhood of 40,000, grew by only about 10% over the century.<sup>6</sup> Thus, demographic growth or decline can have influenced but little the impressive changes observed in crime rates between 1703 and 1790.

The present study of these changes is based on the registers in which criminal sessions of the Bailliage court were noted in resumé.<sup>7</sup> Each register entry deals with an individual case, or a stage in the examination of an individual case, specifying the charge, the names of the accused and the victim, the date and manner in which the case was initiated, as well as detailed accounts of successive procedural steps and sentences.

<sup>4</sup> E. LEROY LADURIE, "La décroissance du crime... au XVIII<sup>e</sup> siècle: bilan d'historiens," *Contrepoint*, t. LX (1973): 227-233.

<sup>5</sup> My own doctoral thesis, rather unfortunately, as I now think, uses the latter approach.

<sup>6</sup> *Ibid.*, p. 177.

<sup>7</sup> France — Archives départementales du Calvados. 8-B Bailliage criminel de Pont-l'Évêque, registres des délibérés (1703-1790), 20 registres.

Table I: BAILLIAGE D'AUGE: MEAN ANNUAL NUMBER OF INDICTMENTS ALL CRIMES

1703-07 .....	35.8	1747-51 .....	19.0
1708-12 .....	28.8	1752-56 .....	20.0
1713-17 .....	38.8	1757-61 .....	16.4
1718-20 .....	36.3	1762-66 .....	19.2
1721-26 .....	no data	1767-71 .....	14.6
1727-31 .....	28.8	1772-75 .....	15.3
1732-36 .....	29.2	1776-80 .....	no data
1737-41 .....	21.0	1781-85 .....	14.2
1742-46 .....	20.0	1786-90 .....	14.6

The statistics derived from the registers give us a precise picture of the changing incidence of criminal prosecutions and of variations in sentencing practices over the span of nearly a century. The most striking feature of the statistics concerning crimes is the clear evidence they provide of a decline in the frequency of prosecutions of all types over the century. The mean annual case-load of the Bailliage falls from 35 in 1703-20 to 15 in 1767-90, with the bulk of decrease occurring in the intervening period, as can be seen from the figures in Table I. A similar decline has been noted in other Norman Bailliages, as well as in England and Canada.<sup>8</sup>

These global figures are not, however, really very enlightening, for they hide an equally striking change in the character of the crimes that the court found before it between the beginning and the end of the 18th century. In the present study, the various types of crimes encountered have been grouped into three categories: direct aggression, indirect aggression and cases involving moral charges.<sup>9</sup> The direct aggression category includes overt and generally unplanned acts of violence, ranging from insults to physical assault and homicidal behaviour. The category of indirect aggression covers crimes of a more calculated nature, aimed either at harming the victim through his property or reputation (fraud, theft, cattle-maiming, libel). The third category groups crimes such as infanticide, seduction, rape and adultery. It is most interesting to note how the frequency of crimes of each type evolves independently as the century advances.

In the pays d'Auge, under the Old Regime, no one ventured into the twisting sunken roads or paths, masked as these were on both sides by dense hedges, without carrying some sort of weapon. The peasant or labourer shouldered a wooden staff, often iron-tipped, whenever leaving his

<sup>8</sup> For evidence of a similar decline in crime during the 18th century in other regions of Normandy, see Colette THURIN, *La criminalité dans le Bailliage d'Orbec, 1715-1750. Mémoire de maîtrise, Université de Caen, 1969*, p. 12 and Marie-Madeleine CHAMPIN, "Un cas typique de justice bailliagère. La criminalité dans le bailliage d'Alençon de 1715 à 1745," *Annales de Normandie*, 1972, p. 50. The same trend is apparent in the 18th century in England and Canada, cf. J. M. BEATTIE, "The Pattern of Crime in England, 1660-1800," *Past and Present*, (1974): 47-95 and André LACHANCE, "Crimes, criminalité et répression pénale au Canada au XVIII<sup>e</sup> siècle (1712-1748)," paper read to the Canadian Historical Association Meeting in 1973, p. 12. See also E. LE ROY LADURIE, *op. cit.*, for an overview on France.

<sup>9</sup> These concepts are borrowed from A. HESNARD, *Psychologie du crime*. (Paris: Payot, 1963).

thatched, half-timbered cottage for field or market places. The middle-class townsman generally was armed with a cane, more elegant but still serviceable, while the nobleman retained his sword. There was ample reason for this, for aside from the danger of foul play, the natural truculence and hard-drinking habits of the inhabitants of the area made sudden violence a real possibility.

The 18th century witnessed a considerable decline in the frequency of occurrence of this type of violence. Between 1703-20 and 1767-90, the proportion of crimes of direct aggression declined from 81.2% to 51.9% of the total, while that of crimes involving indirect aggression rose from 9.8% to 37.1%. The proportion of indictments on moral charges increased more moderately from 5.9% to 8.0%. Thus, as Bernardette Boutelet has already shown to be the case in the neighbouring Bailliage of Pont-de-l'Arche,<sup>10</sup> impulsive violence was losing its primacy to a type of criminal behaviour aimed more at property and reputations.

What Boutelet did not notice, however, was that between the 17th and 18th centuries there was an all-over decline in indictments of all types, and that this was due almost entirely to a massive decline in crimes of violence. In the pays d'Auge, the mean annual number of prosecutions for crimes of direct aggression fell from 28 in 1703-20 to 8 in 1767-90, a drop of 350%. This dramatic decline was above all due to the dwindling frequency of cases of assault and battery, which we can probably attribute to the gradual effacement of what Robert Mandrou suggests as being the two principal traits of the collective psychology of the Early Modern era: temperamental hyper-irritability and (direct) social aggressiveness.<sup>11</sup>

Much of the violence was associated with drunkenness, as the following episode demonstrates. Pierre Pouettre, a 60 year-old farmer, was returning home from Pont-l'Evêque on a late November afternoon in 1757, accompanied by his daughter. Having spent a good part of his day making the rounds of the taverns, he was quite drunk, but was still managing to lead two pack-horses burdened with hides acquired at the market. Part of the way home, he encountered the Lainé Brothers leading a pack-horse carrying apples, at a spot where the sunken path was so nar-

<sup>10</sup> Bernadette BOUTELET, "Étude par sondage de la criminalité dans le bailliage de Pont-de-l'Arche (XVII<sup>e</sup> — XVIII<sup>e</sup> siècles). De la violence au vol, en marche vers l'escroquerie," *Annales de Normandie* (1962, n° 4): 235-262. The same is true in Northern France, in the jurisdiction of the Parlement de Paris and in Canada; Pierre DEYON, "Délinquance et répression dans le Nord de la France au XVIII<sup>e</sup> siècle," *Bulletin de la Société d'Histoire moderne*, 14<sup>e</sup> série, n° 20, t-70 (1972): 12; Jean LECUIR, "Criminalité et moralité; Montyon, statisticien du Parlement de Paris," *Revue d'Histoire moderne et contemporaine*, t. 21 (1974): 482; and André LACHANCE, *op. cit.*, p. 16. On his study of the geographic origins of those condemned to serve on the galleys, André ZYSBERG, "La société des galériens au milieu du XVIII<sup>e</sup> siècle," *Annales E.S.C.*, t. 30 (1975): 59, shows that Western France (especially Normandy and Guyenne) furnished most of those sentenced for theft, while Eastern France sent more for acts of violence. Brittany, as usual, seems to be an exception, as is shown by T. J. A. LEGOFF and D.M.G. SUTHERLAND, "The Revolution and the Rural Community in Eighteenth Century Brittany," *Past and Present* (1974): 108.

<sup>11</sup> Robert MANDROU, *Introduction à la France moderne. Essai de psychologie historique* (Paris: Albin Michel, 1971), pp. 336-338.

row as to be able to accommodate only one horse at a time. Pouette called out to the others to turn back to make way for him, adding a few choice insults, while he continued to advance. When the younger Lainé refused to move out of his way, the drunken farmer lashed his face with a bridle strap. In return the younger Lainé punched him in the face and followed that with five or six knee-blows in the stomach and the belly. Pouette then began calling out for help, and witnesses came running to his calls of "Oh, my God, I am dead", and "Help, thief, you have killed me, you scoundrel, you've danced on my stomach". When they arrived they found him quite alive, but beside himself with rage, stamping his own hat into the mud. Both Pouette and the Lainé's laid charges against each other, accompanied by certificates from their respective surgeons. The judges evidently esteemed that Pouette was the more guilty, for they dismissed the charges against his adversaries, and convoked him for questioning.<sup>12</sup>

Naturally enough, there are other sources of violence than drunkenness, and there is no reason to suppose that its gradual decline was the result of a lessening consumption of alcohol. Indeed, there was probably more money to spare in the average man's pockets for cider and eau-de-vie in the later 18th century than during Louis XIV's reign, when violence was endemic. Many instances of rough behaviour were simply due to the shortened tempers of tired labourers, and in fully half of the cases, juveniles and young unmarried adults were to blame,<sup>13</sup> none of which helps very much in explaining the changes which took place during the 18th century.

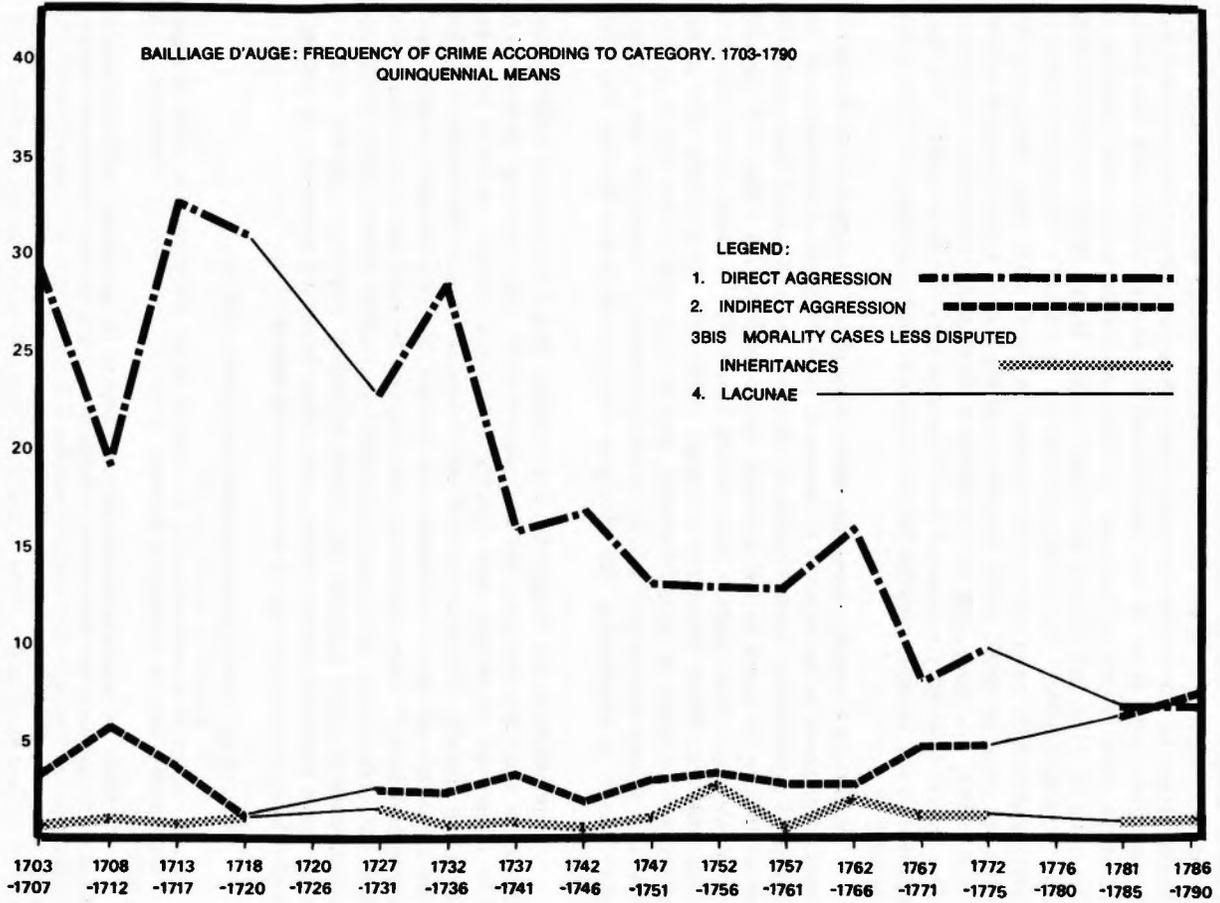
Prosecutions for homicide, for insults, and for resisting bailiffs also declined over the century, but at a slower rate. Only popular outbursts in the nature of charivaris and riotous behaviour appear to have been increasing slightly. The threshold of individual tolerance was improving, but the threshold of social tolerance, to borrow Pierre Chaunu's expression, remained low.<sup>14</sup> The individual was ceasing to take his own vengeance, but the collectivity obviously continued to render justice unto itself. As other authors have pointed out, such collective popular violence, while it may have troubled public order, was often intended precisely to prevent individuals from behaving in an anti-social manner<sup>15</sup>.

<sup>12</sup> France, Archives départementales du Calvados, 8-B 506.

<sup>13</sup> N.W. MOGENSEN, *op. cit.*, p. 245.

<sup>14</sup> A notion re-emphasized by P. CHAUNU in his introduction to Alain MARGOT, "La criminalité dans le bailliage de Mamers, 1695-1750," *Annales de Normandie*, t. 22 (1972): 186.

<sup>15</sup> There are several interesting recent studies on the increasingly politicized character of public opinion in the 18th century, notably E. LEROY LADURIE, "Révoltes et contestations rurales en France de 1675 à 1788," *Annales E.S.C.* (1974): 13-15; Louise TILLY, "The Food Riot as a Form of Political Conflict in France," *Journal of Interdisciplinary History* (1971): 25; and Marc RAEFF, "The Well-Ordered police State and the Development of Modernity in 17th and 18th Century Europe: An Attempt at a Comparative Approach," *The American Historical Review*, vol. 80 (1975): 1222. Pierre CHAUNU and Yves CASTAN, "Mentalités rurale et urbaine à la fin de l'Ancien Régime dans le ressort du Parlement de Toulouse," in *Crimes et criminalité en France sous l'Ancien Régime* (Paris: Armand Colin, 1971), pp. 162-165, place more emphasis on the self-regulating social mechanism at work here. Studies by N.Z. Davis provide a similar interpretation.



The observed decline in the incidence of crimes of direct aggression took place in two stages. The sharpest drop took place in the 1730's, and was followed by a period of relative numerical stability lasting until about 1765, when further decline set in. At each critical stage, the mean annual frequency of crimes of this type was halved, decreasing from about 30 prosecutions per year before 1736, to 15 between 1736 and 1765, to 8 in the years after 1765.

Each of the two sharp decreases coincided with the onset of a cyclical rise in food prices. In the 18th century, as in the 20th century, hard times tended to bring about a temporary drop in crimes of violence and an equally temporary increase in the number of crimes against property<sup>16</sup>. It is, therefore, not so much the declines of 1736 and 1765 that are surprising as it is the failure of violent crime to find its former level again when the crises were over.

When one actually delves into the transcripts of individual trials, particularly in cases of indirect aggression, it is rather sobering for the statistician to discover the number of infractions that sometimes go unpunished before a felon is actually brought to justice.

Joseph Boismare, a 25 year-old hardware dealer from the village of Beaufour, was arrested on October 28, 1788, following the burglary of a grocery shop in a nearby village. Boismare had a bad reputation in the area, according to witnesses, and when his home was searched by the *maréchaussée*, the missing articles were indeed found. In the course of the testimony given during his trial, a number of earlier thefts which had obviously been tolerated until then also came to light. Apparently Boismare was something of an expert at picking locks, and had been preying on local shopkeepers ever since 1786. Pierre Augustin Langlois, a dealer in hardware and wooden shoes, accused Boismare of at least four recent thefts. A haberdasher and a second grocer were able to identify merchandise which had been stolen from their shops. Boismare's own cousin, a cabinet-maker, had been burglarized three times, and found cloth, shirts, paper and planks belonging to him after the perquisition. His aunt, a widow who made her living spinning wool, claimed that when her house had been broken into in 1786, Boismare's mother had told her not to accuse anyone of the robbery, since it was her son who had done it. She claimed to have subsequently been robbed on several other occasions<sup>17</sup>.

Other individuals were able to commit numerous crimes without being troubled because of the sometimes incredible inefficiency of the *gendarmes* and the legal apparatus in general. Thomas Le Roide began his career as a petty gangster in 1765. At the time of his first theft he was working as a farmer's hired hand, and was forced to admit stealing a length of linen cloth that had been placed in a field to bleach. He managed to slip away, but was condemned in *absentia* to a life sentence in the

<sup>16</sup> Willem BONGER, *Criminality and Economic Conditions*, Abridged and with an introduction by Austin TURK (Bloomington: Indiana University Press, 1969).

<sup>17</sup> France. Archives départementales du Calvados. 8-B 321.

gallows. It is not clear what became of him between then and 1772, when we find him established in another part of the Bailliage as a cattle dealer. On January 2nd of that year he stole a cow from a pasture in the parish of Bonnebosq. When the victim, accompanied by his neighbours, approached Le Roide's house to recover the stolen animal, they were driven off by pistol and musket fire, one of them suffering head injuries as a result. Two weeks later the *maréchaussée* arrived at 2 o'clock in the morning, hoping to surprise Le Roide and his brother, but found them sitting up drinking with members of the Pont-l'Évêque brigade of Gabelle archers. Le Roide was brought in for interrogation, but escaped from prison in August 1773, before his trial was completed. Foolish enough to remain in the region, he was arrested in 1775, condemned to be hanged in 1776, which sentence he appealed to Parlement, so that his sentence wasn't carried out until March 1777<sup>18</sup>.

The wheels of justice may have turned slowly (it took 27 sittings of the court over 12 years to condemn Le Roide), and somewhat uncertainly, although usually less so than in the case just cited. In other cases, the local population was hesitant to turn people over to suffer the harsh punishment imposed by the official courts. However, a number of crimes of indirect aggression were sanctioned, and the frequency with which they appear to have occurred did not remain stable over the century.

There was indeed a long-term tendency for the incidence of prosecutions of this sort of crime to increase over the century, with the mean annual frequency rising from 3.5 in 1703-20 to 5.6 in 1767-90.<sup>19</sup> As might be expected, times of economic crisis, such as the years 1708-12, 1737-41, and the late 1760's, caused an upsurge in crimes against property, but while levels declined again after 1712 and 1741, they continued to increase between 1766 and the end of the Old Regime. It is true that food prices also failed to regain their former levels during this latter period. A similar relationship between trends in food prices and crimes against property has been noted in 18th century England.<sup>20</sup>

It was not only prosecutions for theft which were on the upswing between the 1760's and the Revolution, but also indictments for fraud, for forgery, for extortions by minor royal officials and false bankruptcies. Jail-breaking, too, had for some reason become commonplace by late in the century whereas it had been almost unknown earlier in the century. More than anything else, it was trials for libel which were growing in frequency by the century's close. For every 100 thieves prosecuted in 1703-20 there were 142 in 1767-90, but for every 100 suits for libel in the first

<sup>18</sup> France. Archives départementales du Calvados. Réquisitoire du procureur du roi du 18 juin 1765. 8-B.

<sup>19</sup> There is a negative correlation ( $r = -0.59$ ) between the annual movement of crimes of direct aggression and crime of indirect aggression and crime of indirect aggression over the century, but a much less evident negative correlation ( $r = -0.18$ ) between the evolution of crimes of direct aggression and crimes involving indirect aggression and morality charges ( $r = 0.01$ ).

<sup>20</sup> J.M. BEATTIE, *op. cit.*, p. 87.

period, there were 300 in the second. Only arson cases were diminishing in frequency, but it should be remembered that arson was above all a form of blackmail employed by vagabonds,<sup>21</sup> over whom the Bailliage court, which dealt only with domiciled persons, had no jurisdiction. Vagabonds were tried by Prévôté courts. Studies looking at prévôtal cases have shown that vagabondage and crimes committed by vagabonds, mainly pilfering, were on the increase in the last years of the Old Regime.<sup>22</sup>

Crimes against morality were somewhat more broadly defined in the 18th century than in more recent times. Right-thinking society even tended to consider that poverty and mental illness were somehow the results of immoral behaviour. This confusion of the asocial with the anti-social meant that mental cases and obnoxious beggars had to appear before the same criminal court as adulterers and rapists. Since the former troubled the moral order of society, there was an increasing consensus during the 17th and 18th centuries that they should be locked up to protect everyone else's peace of mind.<sup>23</sup>

An example of the association of mental derangement and moral disorder in the popular mind can be found in the suit lodged against Catherine Viel by her husband, Jean Le Compte, a Pont-l'Évêque merchant. The charges he laid against his spouse, whom one witness claimed to have seen wearing leather breeches under her skirts, were of insanity and immoral behaviour, and are worth citing in some detail.

The complainant pleads that he married Catherine Viel, widow of Jacques Leprime by her first marriage and of François Dumesiul by her second marriage. He had always shown probity and kindness in his treatment of this woman.

However well he may have treated her, over the past few years he has been unable to prevent her from falling into all kind of excesses, each more odious than the others. She has often given herself over to drinking and in the resulting delirium, has plunged herself into the most frightful states.

The financial state of the plaintiff has considerably suffered as a result of her misbehaviour. She has squandered his merchandise, selling it at low prices.

"But these mischiefs are not the least he has suffered. She sometimes pushed things to the point of piling up all kinds of furniture to throw in the fire, and at other times she took pleasure in smashing fragile items and throwing others out in the street, all the while vomiting all sorts of threats and curses against the plaintiff.

"These terrible scenes were only the prelude to the disgrace he later underwent. Her wild behaviour was not only directed against his fortune, but she also carried things to the point of striking him and several times he had to leave the house to escape her violence, and sometimes she scandalously pursued him into the street armed with all sorts of instruments, without the plaintiff ever having lifted a finger against her. The very life of the plaintiff has been in great peril, for she threatened to poison and burn him.

<sup>21</sup> André ABBIATECI, "Les incendiaires au XVIII<sup>e</sup> siècle," *Annales E.S.C.* (1970) n° 1: 235.

<sup>22</sup> Véronique BOUCHERON, "La montée du flot des errants de 1760 à 1789 dans la généralité d'Alençon," *Annales de Normandie*, (1971) n° 1: 54-86, and noted also by Pierre DEYON, *op. cit.*, p. 12.

<sup>23</sup> See in this regard works by Pierre FOUCAULT, especially *Madness and Civilization. A history of Insanity in the Age of Reason* (New York: Pantheon, 1965).

"This conduct caused the plaintiff to call upon the sovereign authority of His Majesty for a writ to have her locked up. It was granted, and she was held for some time in a convent in Lisieux. He had hoped that this detention would have brought about some change, and so he took her back. (She carried on as before), and then left him without saying where she was going. However, on enquiry he learned that she had taken the mailcoach to Paris. Nothing was more urgent for him than to discover from his correspondents there what sort of life she was leading, and he learned with deep sadness that she had taken up with a woman. In that frightful situation, the plaintiff can only apprehend the most shameful debauchery.<sup>24</sup>

However, most of the crimes of this category involved disputes between heirs carried to criminal court, seduction, rape, infanticide and abandonment of newborn children. Protestants too disturbed the moral unity of things, and a few relapsed diehards were the object of prosecutions in the first third of the 18th century.

If we exclude prosecutions involving disputed inheritances, the frequency of which diminished over the century here and in other areas of Normandy, we note that the incidence of crimes against morals showed considerable stability during the 18th century.<sup>25</sup> In general, these were neither more nor less numerous in 1767-90 than in 1703-20, although the mix changed somewhat. For example, there are more procedures directed against the insane at the end of the century than at the beginning, and slightly fewer indictments for infanticide and for abandonment of babies. In both instances, it is doubtful that the number of cases that came before the courts reflected any social reality. Indeed, the parish registers, especially for the towns in the pays d'Auge, show a startling increase in the number of baptisms of foundlings in the years preceding the Revolution.

During the period of absolute monarchy in France, there was a clear tendency for punishments to be made more harsh.<sup>26</sup> The same is true in a general sort of way in 18th century Normandy, at least for some types of crime.

In order to better understand the changes that were taking place, it is helpful to note some of the special characteristics of Old Regime criminal justice. For one thing, it was arbitrary in nature. Royal ordonnances defined punishments for each infraction and crime, but the judges were not bound to follow these to the letter, and the sentences they imposed were systematically less harsh than those prescribed by the law. Magistrates enjoyed and exercised almost total freedom of action in this respect. Thus, it was jurisprudence, or precedent rather than the letter of the law which determined the punishments meted out.<sup>27</sup>

<sup>24</sup> France. Archives départementales du Calvados. 8-B 391. Charge laid on 8 January 1773.

<sup>25</sup> The situation thus contrasted sharply with that which obtained in the 19th century, when the frequency of morality cases was in a state of "galloping inflation", and when crimes against property increased far more than crimes against persons: Michelle PERROT, "Délinquance et système pénitentiaire en France au XIX<sup>e</sup> siècle," *Annales E.S.C.*, t. 30 (1975): 76, and Henri JOLY, *La France criminelle* (Paris: Léopold Cerf, 1885), pp. 8-20.

<sup>26</sup> Jean IMBERT, *La peine de mort*, pp. 83-84.

<sup>27</sup> See the comments of Sébastien Mercier on this subject, quoted by Arlette FARGE, *Délinquance et criminalité: le vol d'aliments à Paris au XVIII<sup>e</sup> siècle* (Paris: Plon, 1974), p. 31.

As much as they enjoyed wide freedom in sentencing, insofar as procedure was concerned, matters were much more closely defined.<sup>28</sup> The Ordonnance of 1670 had defined criminal procedure in such a manner that before being in a position to pronounce a suspect guilty, the magistrates had to assemble formal proofs defined according to extremely strict norms. Without these, they could do nothing. Even a confession wasn't enough unless it was freely made, except if it was corroborated by the testimony of at least two adults of good reputation having a direct knowledge of the facts in question. Formal proofs of this sort counted for everything, and the opinion of the judge for nothing, so that even if he was personally convinced of a suspect's guilt, he could not pronounce him guilty without these proofs.

The result of this was, on the one hand, to justify the practice of torture in order to obtain a confession, and on the other, to cause a considerable proportion of cases to be abandoned. Because of this the law, and in a lesser measured judicial practice, depended for results on harsh and exemplary sanctions. Thus it is that in many of the trials studied, prosecution was halted for lack of sufficient proof, but when proof was available, the judge could inflict very harsh punishments.

Sentences almost never specified imprisonment because under the Old Regime jails were used only in criminal matters to detain the accused while he was being tried. The punishments then in use fall into three main categories. Lesser infractions were sanctioned by light penalties involving no civic degradation, and these might involve an order to give alms to the poor or to appear before the court for admonishment. More serious crimes were punished by various techniques designed to bring ignominy or civil degradation upon the guilty, ranging from the pillory to banishment from the Bailliage, the Province or the Country, depending on the gravity of the case. Really grave crimes involved punishments of a both ignominious and painful character: whipping, branding, the gallows, hanging, the wheel, and burning alive.

One of the most unpleasant deaths was surely the wheel. Charles Tollemer, who ambushed and shot Adrien Lindel with a musket on October 6, 1729, was sentenced five years later "...to have his arms, shins, thigh-bones and back broken with an iron bar on a scaffold, to be then placed on a wheel, his face turned toward Heaven to finish his life slowly. Once dead, his body will be transported to the edge of the wood of Saint-Vaast at the place where he committed his crime and to be left there as long as there is anything remaining of him. His worldly goods will be confiscated by the Crown."<sup>29</sup>

In a situation where proof was insufficient, the trial could be halted with the accusation left pending. The accused remained under suspicion

<sup>28</sup> The best study of this question is still that of A. ESMEIN, *Histoire de la procédure criminelle en France* (Paris: Larose et Forcel, 1882).

<sup>29</sup> France. Archives départementales du Calvados. 8-B Registres des délibérés. Sentence du 22 février 1734.

and the magistrates could re-open the trial at will. Another possibility, still somewhat unsatisfactory to the accused, was to send him out of court without condemning or absolving him. Neither of these judgements involved an acquittal, which was the third and last possibility open to them when no sentence involving a conviction could be brought down.

It is of considerable interest to examine trends in the repression of crime over the century, and it is useful in that regard to attempt to throw some light not only on sentencing practices, but equally on the degree of involvement of the Crown in initiating prosecutions, on the length of trials and on the proportion of cases which end with a conviction. It is also perhaps of more than academic interest to attempt to determine the influence of an intensification or a relaxation of repression on the incidence of a given type of crime.

The most common sort of infraction in the category of direct aggression, and that showing the greatest decline in the mean annual number of prosecutions over the century, is assault and battery. Charges for assault and battery were almost always laid by private parties rather than by the Crown, although it sometimes took over responsibility for the prosecution during the trial from the plaintiff. Such case usually went through the following procedural steps: (1) an inquiry in the course of which witnesses were heard, as a result of which (2) the accused was usually called to court for questioning, whereupon the case might be dismissed or (3) an award of damages might be made in favour of the victim. At this point, where some degree of guilt may have been said to have been established, the judges might either (4) authorize the complainant to continue his suit for further damages in Civil court, or (5) assume responsibility for further criminal prosecution themselves.

As Table II indicates, from 1756 onwards, more and more case continued through stages (4) and (5). Whereas only 18% of all cases were sent over to Civil court in 1703-56, the proportion increased markedly in the second half of the 18th century (23% in 1757-66, 35% in 1767-76 and 30% in 1781-90). Similarly, the court constituted itself as a party against the accused with increasing frequency; such action occurs in less than 1% of all cases in 1703-12 whereas in 1767-76 the proportion increased to 10%. The statistics in Table II summarize rather complicated proce-

Table II: TRENDS IN THE REPRESSION OF CASES OF ASSAULT AND BATTERY  
FINAL PROCEDURAL DECISION BY THE COURT

	<i>Case Dismissed After Questioning</i>	<i>Damages Awarded</i>	<i>Civil Suit Authorized</i>	<i>Crown Assumes Prosecution</i>	<i>Totals</i>
	%	%	%	%	%
1703-12	28 (12.4)	153 (68.0)	42 (18.7)	2 (0.9)	225 (100)
1713-20	42 (18.8)	128 (57.4)	47 (21.1)	6 (2.6)	223 (99.9)
1727-36	28 (13.0)	138 (64.2)	39 (18.1)	10 (4.7)	215 (100)
1737-46	26 (18.7)	86 (61.2)	21 (15.1)	6 (4.3)	139 (100.1)
1747-56	20 (18.7)	62 (58.1)	21 (19.6)	4 (3.7)	107 (100.1)
1757-66	20 (17.4)	64 (55.7)	26 (22.6)	5 (4.4)	115 (100.1)
1767-76	9 (17.6)	19 (37.3)	18 (35.3)	5 (9.8)	51 (100)
1781-90	15 (34.1)	13 (29.5)	13 (29.5)	3 (6.8)	44 (99.9)

dural developments, but the evidence quite clearly demonstrates that there was a reasonably consistent trend toward more stringent treatment of those accused of assault and battery, at least until 1776.

The amounts of damages awarded also increased sharply over the century, and this can also be interpreted as harsher penalization of delinquents, for the mean award quadrupled over the century while the cost of living did not quite double in the same period (see Table III). It will be noted that the amount of the awards only began to increase after 1756.

Table III: MEAN VALUE OF DAMAGES AWARDED TO VICTIMS OF ASSAULT AND BATTERY

1703-12	.....33.3 lives	1747-56	.....42.9 lives
1713-20	.....45.2 lives	1757-66	.....65.7 lives
1727-36	.....47.7 lives	1767-76	.....73.8 lives
1737-46	.....38.1 lives	1781-90	.....120.6 lives

The decline in the frequency of prosecutions for assault and battery was already quite noticeable by 1736, yet stiffer penalties for this offense only began to be applied after 1755. It would seem that the fewer cases there were on hand, the more time the judges devoted to them and the harsher the penalties appear to have been.<sup>30</sup> The judges could now afford to spend weeks and even months mulling over a case and adding steps to the procedure. In 1765-90 fully 38.4% of these trials lasted for over a month, as opposed to 14.7% lasting that long in 1703-20.

Table IV: TIME-SPAN TRIALS FOR ASSAULT AND BATTERY

(From the date at which charges were laid until that of the final sentence)

	<i>Less than one week</i>	<i>1 to 2 weeks</i>	<i>2 to 3 weeks</i>	<i>3 weeks to 1 month</i>	<i>1 to 2 months</i>	<i>3 to 6 months</i>	<i>More than 6 months</i>
	%	%	%	%	%	%	%
1730-20	45.2	19.9	7.5	12.6	7.0	1.6	6.1
1727-44	47.2	16.9	6.7	14.4	7.4	1.2	6.0
1745-64	41.6	19.5	6.2	14.2	12.8	1.3	4.4
1765-90	20.5	16.4	7.4	17.2	14.6	7.4	16.4

Punishments for homicide also became somewhat more severe between the early years of the century and the 1760's, but were softened somewhat thereafter. This latter phenomenon has been noted elsewhere in France, and has been attributed to the philosophers' campaign against torture and the death penalty.<sup>31</sup> In the pays d'Auge, fewer death penalties are pronounced against those charged with homicide after the 1760's, and *lettres de rémission* are more freely granted by the Crown.

<sup>30</sup> In the Paris region, the same phenomenon was in operation, although Jean LE-CUIR, *op. cit.*, p. 486 inverts the terms of the argument. "En phase d'afflux de procès (1775-1770 et 1785-1789) la proportion des accusés libérés faute de preuves, admonestés ou bannis augmente."

<sup>31</sup> Porphyre PETROVITCH, "Recherches sur la criminalité à Paris dans la seconde moitié du XVIII<sup>e</sup> siècle," in *Crimes et criminalité*, p. 231. It is confirmed by Dominique MULLER, "Magistrats français et peine de mort au 18<sup>e</sup> siècle," *Dix-huitième siècle*, (1972): 90, and by Pierre DEVON, *op. cit.*, p. 12.

Another significant change that occurred in the course of the 18th century is that private individuals tended to take a less active role in ensuring that murderers were brought to justice. Whereas in the early years of the century about a third of all such cases were initiated by charges privately laid, after mid-century charges were brought against suspects by the Crown in all but one case examined by the judges of the Bailliage d'Auge. The last vestiges of the older accusatorial tradition originating in customary medieval law appear to have died away during the 18th century as the King's subjects became increasingly confident in the efficiency of his officials. Furthermore, by the end of the century there was less evidence than there had been in earlier years of murder cases simply fizzling out without any final sentence at all being pronounced. In this case, the effectiveness of the repressive capacities of the state appears to have been improving.

The most representative and frequently encountered variety among the crimes in the category of indirect aggression was theft. As Table V demonstrates there was a sharp increase in the harshness of the treatment that was meted out to thieves after the 1720's. Fewer charges were dropped and more severe penalties were imposed (notwithstanding a temporary lull around mid-century).

Table V: SENTENCES IMPOSED FOR THEFT. BAILLIAGE D'AUGE

	1703-20	1727-46	1747-66	1767-90
	%	%	%	%
charges dropped	24 (70.6)	15 (40.5)	7 (41.2)	20 (45.5)
light sentence	1 (2.9)	1 (2.7)	2 (11.8)	2 (4.5)
whipping, banishment	4 (11.8)	9 (24.3)	5 (29.4)	12 (27.3)
gallies	5 (14.7)	8 (21.6)	3 (17.9)	7 (15.9)
death		4 (10.8)		3 (6.8)

As the harshness of repression of crimes against property increased, so too did the number of court sittings held to deal with each single case and consequently the length of trials. The tendency here as in the handling of other sorts of crime is in the direction of slower and more meticulous justice. As in the case of trials for homicide, prosecutions brought privately cease to be encountered after mid-century. Similarly, *monitoires*, a warning by parish priests during the sermon at mass that anyone who knew about a designated crime and yet failed to testify would be subject to excommunication, went out of use after the 1750's, although they had been employed in about a third of all cases earlier in the 18th century.<sup>32</sup> Lay magistrates were obviously working successfully toward a monopoly over the workings of justice at the expense of both the King's subjects and the Church. The process could indeed be termed one of a bureaucratization of justice.

Curiously enough, with respect to the third category of crimes, involving offenses against morality, the long-term tendency is the opposite to that encountered with the first two categories. On the whole, the trend

<sup>32</sup> See also in this respect Pierre DEYON, *op. cit.*, p. 12.

was toward milder punishments. For example, of the 10 women accused of infanticide in the first half of the century, two were whipped and four were hanged. Of 8 women accused of the same crime after 1750, only one was hanged and another whipped. Of the men accused of abduction or rape, 75% were prosecuted under criminal procedure after the first sentence condemning them to damages or support payments in 1703-20 whereas only 15% were treated in this fashion in 1767-90. Similar trends have been observed in Northern France and in the jurisdiction of the Parlement of Paris.<sup>33</sup>

The judges apparently did not consider this type of crime to be worth very much of their attention and time, for the tendency was also to treat them in a more expeditious fashion toward the end of the Old Regime. This change in the attitudes of the magistrature was quite likely a reflection of changing social values toward sexuality and the family. Certainly, demographic studies dealing with 18th century Normandy point to a proliferation of abandoned and illegitimate children and to incipient birth control in the towns from about 1765 onwards.

In concluding, it should be underlined that there is no simple cause and effect relationship between enhanced repression, which is basically the result of a more efficient and bureaucratic legal apparatus, and the declining incidence of crime in the pays d'Auge in the 18th century. Indeed, the all-over decrease in criminality is entirely a result of the decrease in crimes of direct aggression. The daily fare of the Bailliage judges at the beginning of the 18th century was trials for assault and battery, which made up 71% of all criminal prosecutions brought before the court in the years before, about 1736, when their long numerical decline set in. Crimes such as homicide, cattle-maiming and insults followed suit. However, and particularly with respect to assault and battery, it was not until between 1755 and 1765, that repression of this type of behaviour was made notably more severe. Thus, it is hardly the case that increased repression brought about a decline in this form of criminality. It would indeed be more plausible to argue that as the court was freed of its plethoric burden of cases of petty violence, it was enabled to operate in a more efficient and therefore repressive fashion with respect to those crimes which appeared to be deserving of repression.

With the exception of crimes against morality, which constitute a special case, they quite plainly felt that all crimes merited exemplary punishment when guilt could be clearly established, and they set out to achieve this. Such liberalism as might be apparent in the reduced number of condemnations to capital punishment for homicide was plainly superficial, a response to fashionable ideas from Paris, and did not reflect any movement toward a humanitarian attitude toward criminals in general. Indeed, the long-term trend was toward harsher punishments. Once

<sup>33</sup> Dominique MULLER, *op. cit.*, p. 95, notes a decline in the number of death sentences by the Parlement of Paris for infanticide and similar crimes. In the North, Pierre DEYON, *op. cit.*, p. 12, refers to a " ... recul de la répression judiciaire des atteintes aux bonnes mœurs..."

again, it should be underlined that these harsher punishments did not prevent a wholesale increase in crimes of indirect aggression in the years preceding the Revolution.

Given that repressive measures had so little apparent effect on the frequency of crimes of various types, criminality as a variable seems to have been rather independent of judicial action. The incidence of various types of crime is therefore that much more valuable as an indicator of modifications in the general temper and values of society. The progressive decline in crimes of direct aggression and the increase in crimes of indirect aggression are witness to a more sophisticated society in the second half of the 18th century, just as the passage from a situation where crimes against persons are predominant to one where crimes against property are increasing indicate that material values were exerting more and more influence on social interaction in the last half century of the Old Regime.<sup>34</sup>

<sup>34</sup> Cf. J. LECUIR, *op. cit.*, p. 476; D. MULLER, p. 96, and P. PETROVITCH, *op. cit.*, p. 233.

Appendix

ANNUAL FREQUENCY OF CRIMES AND INFRACTIONS IN EACH CATEGORY, 1703-1790

	1703	1708	1713	1718	1721	1727	1732	1737	1742	1747	1752	1757	1762	1767	1772	1776	1781	1785
	-07	-12	-17	-20	-26	-31	-36	-41	-46	-51	-56	-61	-66	-71	-75	-80	-85	-90
1. Direct aggression	28.6	19.2	32.6	30.9		22.8	26.0	15.8	16.6	13.0	12.8	12.8	15.8	8.0	9.7		6.6	6.6
2. Indirect aggression	3.2	5.6	3.6	1.0		2.4	2.2	3.2	1.8	3.0	3.4	2.6	2.6	4.6	4.6		6.2	6.8
3. Morality cases	2.6	1.4	2.0	2.1		2.4	1.2	1.2	1.0	2.0	3.2	0.2	2.4	1.6	1.4		1.0	0.8
3 bis. Morality cases less disputed inheritances	0.6	0.8	0.6	0.8		1.4	0.4	0.6	0.2	1.0	2.6	0.2	1.8	1.0	1.0		0.6	0.8
	0.7		0.7			0.9		0.4		1.8		1.0		1.0			0.7	
4. Mixed cases	1.2	1.4	0.6	1.1		0.2	0.2	0.2	0.2	0.4	0.4	0.6	0.4	0.4	0.6		0.4	0.2