

ABSTRACT

THE JUDICIAL REACTION IN SOUTH-EASTERN FRANCE, 1794-1800.

by

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The thesis investigates and analyses the hitherto neglected phenomenon of political reaction within the judiciary of south-eastern France during the period between the Thermidorian Reaction and the advent of the Consulate. The character, objectives and effects of the 'réaction judiciaire' are studied through a series of different perspectives. The first task is to highlight the discrepancy between the concepts of the social and political effects of a revamped judicial system formulated during the Year III and the corrupt abuse of judicial power by reactionary provincial judges. Indeed, the study constantly seeks to explore the conceptual as well as the practical damage inflicted on the Directorial regime by the supposed trustees of the post-Terrorist republican settlement. Emphasis is placed upon the collaboration between the southern judges and the counter-revolutionary elements within the local community, especially in the discussion of the origins of the judicial reaction. The changes of technique and of objective which the judiciary experienced are explored in full. It is described from its beginnings as a weapon of retribution for the aggrieved local community against the former agents of the Terror to its role in the subversion of regional jacobinism to its support for the period of unchecked counter-revolution during the Year V and finally to its function as a 'rearguard' defender of arrested counter-revolutionaries during the period of the Second Directory. In addition, due consideration is given to the motivation of individual judges who operated the reaction.

It is hoped that the thesis has provided a model for the study of the causes, techniques and aims of political reaction from within an independent state power. Furthermore, it is hoped that the work is seminal in its suggestion that judicial reaction and its many ramifications had both a direct and indirect bearing upon the fall of the Directory.

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Initially, the research for this thesis was undertaken to provide the first historical study of the operations of criminal justice in a specific region during the period of the Directory. Historians of the region had long been aware of an undefined 'problem' with the judiciary during the Directory, but this had never been fully explored or analysed to any great extent. The primary investigations, therefore, were intended to fill this hiatus. However, it soon became apparent that the scale and impact of what contemporaries knew as 'la réaction judiciaire' was far greater than had originally been envisaged. The judicial reaction was soon discovered to be not only a compelling problem in its own right, but had consequences which were to have a disastrous effect upon the Directorial regime.

The first problem was to 'uncover' the judicial reaction and to indicate its relevance to the general problems and plans of the regime. In order to assess the relative damage done by the southern judges to the concept, operations and reputation of the judicial system, it was necessary to describe how the Thermidorians created the revamped system of the Year III. In the introductory chapter to this thesis, there is a description of the theory and expectations of the judiciary together with an outline of the structure which was intended to enact and realise these theories. The theory and structure of justice as elaborated by the Thermidorian jurists and constitution makers is discussed in terms of their perceptions of the abuses of justice during the period of the Terror. Their neuroses regarding a possible return to the Terror, it is argued, determined their theories of the desirable social impact of

an autonomous, elected judiciary and their elaboration of the intricate internal procedures of criminal justice. An indication is given at the early stage of the areas and procedures of the complex structure and procedure (which would be exploited by unscrupulous judges) in order to focus attention on the deviations from the model which the judicial reaction in the south-east would cause to occur.

A major problem which the primary sources forced the thesis to confront was that of how the theory of justice, conceived in universal terms, was corrupted by local judges dedicated to the ultra-conservative, anti-republican ethos of their region. Thus, in the second chapter, the thesis addresses the problem of the 'origins' of the judicial reaction in the Midi. The southern region was chosen, less to epitomise the judicial reaction than to follow the indications given by the secondary sources, to show that, during the Thermidorian reaction and the Directory, the region was the most intractable, violent and anti-republican in the entire nation. The anticipated benefits of studying judicial operations within such a region were borne out by the evidence. The covert subterfuge of judicial cabals could not pass unnoticed in such a region because of the pressure imposed by the local community on the operations of justice. The intricacies, sophistry, machinations and objectives of the judicial reaction were thrown into sharp relief. To emphasise the co-ordination between a predominantly anti-republican (and in many cases neo-royalist) community and the reactionary judiciary, the second chapter places the development of the reaction within the historical perspective of the impact of the Revolution upon the highly independent region as well as the extraordinary circumstances of the Year III. It is argued that the reaction was the creation of the représentants -en-mission who were sent to the province during the Year III to dismantle jacobin institutions and purge the local authorities. These proconsuls attempted to canalise the widespread feelings of popular outrage against the

former agents of the Terror through the purged criminal courts. In the Year III and part of the Year IV the southern judiciary is depicted as a weapon of legalised retribution acting on behalf of the aggrieved local community.

The judicial reaction was in a constant process of development. An important theme to emerge throughout this thesis was that the judges could simultaneously appear to be fulfilling their duties as impartial executors of the nation's laws whilst also conniving at the internal subversion of republican institutions. Faced with a regime whose characteristic was political vacillation, the judges could not afford to be either inflexible or static. Yet, because they were the creatures of the local elite who elected them to office, they had to be consistently anti-republican even when faced with a radical government, as in the Years IV and VI. In order to elucidate the changing role of the judiciary from being a force of retribution to being the vanguard of what is termed 'internal counter-revolution, chapters III, IV and V analyse the judicial reaction in sequence but through several interrelated perspectives. The influence of the local community is, throughout these three chapters, shown to intrude into all levels of the judicial process. The judges could invoke the actions of the community either to manipulate the course of a trial or to provide themselves with an alibi. The most persistent theme to emerge from an analysis of the methods employed by the judges is that of the inversion of the safeguards decreed by the Thermidorians to protect the accused, being put to the service of local counter-revolutionaries such as émigrés, refractory clergy, deserters and members of the égorgeur bands. This thesis has tended towards the view that the strength of the judicial reaction derived from its versatility and its ability to draw upon the support of a like-minded local elite and a confederation of reactionary law courts in each of the south-eastern departments. The symbiosis was a simple one: the judges realised the prejudices of the local community and the leaders of the local community maintained the judges in office through the electoral system.

The reactionary judges' dual function as protector and propagator of counter-revolution became more sophisticated throughout the period of the First Directory(1795-1797). One of the perspectives used to assess the growing strength of the reaction was the judges' vital role in undermining and, ultimately, eroding the government-sponsored jacobin revival of the Year IV. Their concerted attack upon jacobin placemen had a detrimental effect upon the future of provincial radicalism in the region. This attack upon the jacobins is studied from the standpoint of the impact which it had upon the local jacobin clans in the region. The intention behind this approach is to highlight the personalised nature of the struggle between political factions, often representing feuding families, within the institutions of state.

The analysis of the techniques of the judicial reaction both in the liquidisation of republicans and in the protection of counter-revolutionaries takes many of its examples from the period of the First Directory. The judiciary's alliance with other anti-republican groups such as the murder gangs, the 8th Army division under the command of General Willot and the ultra-conservative central administrations who were elected in the Year IV, is discussed within the context of the attempt by the family-based local elite to monopolise all local and national office at the elections of the Year V. The judges' interference in the democratic process was only one of their range of techniques aimed at the extrusion of jacobin republicans from local political life.

A measure of the importance which contemporaries accorded to the effects of the judicial reaction was the widespread purge of judicial institutions throughout the republic following the coup d'état of fructidor Year V. The Directors used the judicial reaction as one of their excuses for carrying out the coup. Indeed, one of the objectives of this thesis is to assess the direct and indirect effects which the judicial reaction had upon the regime. It is

argued that the judges' betrayal of the powers vested in them by the Constitution of the Year III, their abuse of judicial procedures and their overt support for the enemies of the republic forced the executive to violate the separation of powers by the introduction of arbitrary law enforcement. The actions of the judges had hoisted the Constitution on its own petard . Inadvertantly, their actions led to the militarisation of justice under the Second Directory.

There is a discussion of the survival of the judicial reaction under the Second Directory in chapter V. Despite the strong anti-royalism of the final years of the Directory and the use of parallel forms of justice, the unpurged members of the reactionary judiciary who remained in the civil courts continued to disrupt the normal execution of justice and continued to offer their protection to the counter-revolutionaries who had been arrested by the republican authorities. The tenacity of the judges can be attributed to the personal motivation of the individual judges, many of whom had a vested interest in remaining in office. The final chapter of the thesis deals with the question of individual motivation among judges. It is shown that the convergence of motivating factors which came together in a concerted judicial reaction derived from different sources. The dearth of private papers made it impossible to attempt to delve into the 'psychological' reasons for the judges' actions, therefore they were interpreted in terms of their careers and reported actions. There were fine nuances which distinguished the anti-jacobin, the ultra-conservative, the royalist and the self-interested career judges. The judicial reaction is seen to be shaped more by what it tried to prevent than by what it aimed to create. Its only real and permanent creation was the exacerbation of sectarianism within the region which made it impossible for the government to lay the foundations of a republican consensus between 1795-1799. The most logical deduction to be made from this premise is that the judicial reaction was chiefly responsible for the Directory's inability to bring the recalcitrant region under control.

It is difficult to extrapolate a general contributing cause of the downfall of the Directory from a study of a unique region. Therefore, it would be presumptuous of this thesis to claim that it had identified a hitherto unrecognised reason for the regime's demise. However, it is hoped that this work can claim to be seminal and that it will lead to similar investigations in other regions. The scale of purges following the coup of fructidor indicates that the judicial reaction was quite probably a widespread, deep-rooted phenomenon. Until a systematic study of the judiciary has been carried out in those departments where the judiciary was purged then the tentative conclusions drawn in this thesis can only be confined to the Midi. If this thesis can claim any originality it is that it has perhaps provided an analytical model for the determination of 'internal' counter-revolution within the judiciary. In addition, it has also defined the techniques, objectives and motivations behind the judicial reaction. There have also been some small discoveries along the way: the 'assassinat judiciaire', the judicial cover up, the corrupt use of public funds by judges and the identification of royalist agents within the ranks of the judiciary. Certain parts of the thesis could also contribute to the history of the trans-revolutionary progress of the judicial profession in the south-east.

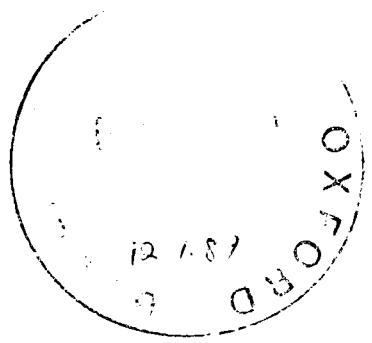
A major drawback, however, was the inability to provide the arguments deployed throughout this thesis a weightier statistical base. The main body of statistics used throughout the thesis are used in the analysis of the techniques of the reaction rather than as quantitative back up to the arguments. The reason for the absence of reams of statistics was that the greater part of the records were unreliable. In any study of the judiciary the most important statistics ought to be the court and police registers recording the incidence and type of crime, the rate of prosecution and the nature of the sentence passed. However, as a great deal of 'counter-revolutionary' crimes committed went unreported it was impossible to arrive at a realistic idea of the incidence or location of the crime dealt with in this thesis. As

several chapters demonstrate, this culpable negligence can be directly attributed to the juges de paix and the judicial police forces which they controlled.

The general conclusions are drawn that the judicial reaction can be seen as a microcosm of the reassertion of regional autonomy against the centralising, integrating republican state. This weakened the Directorial regime because it heightened the sense of insecurity felt by many holders of biens nationaux . It also undermined the republic's most ardent defenders which deprived the region of a coherent radical party. The subversive use of Constitutional inviolability by the judges also forced the executive into abandoning the cherished system of checks and balances which was intended to be a bulwark against the Terror. The consequent militarisation of justice prepared the south-east for the Consulate and undermined the idea of elected, independent judges. There is also a suggestion that the Directory was the interim period in the judiciary's transformation away from being the servant of local provincial interests towards becoming a vital part of the superstructure of the modern state.

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List of Abbreviations

A.N.	Archives Nationales
A.D.	Archives départementales
A.D. BduR	Archives départementales des Bouches-du-Rhône
A.M.	Archives Municipales
Calvet mss.	Miscellaneous manuscript collections held at the musée Calvet, Avignon

A.h.R.f.	Annales historiques de la Révolution française
R.F.	La Révolution française
F.H.S.	French Historical Studies

Footnote abbreviations

cre.pouv.exec.	commissaire du pouvoir exécutif
Min. de la Just	Ministre de la Justice

Table of Contents

Acknowledgements
List of Abbreviations

Chapters

I

Introduction (The theory and practice of criminal justice under the Directory). (pp.2-34).

II

De-Terrorisation: the origins of the judicial reaction. (pp.35-90).

III

Justice and the Jacobin Revival. (pp.91-154).

IV

The techniques of judicial counter-revolution, (pp.155-202).

V

The counter-reaction: justice and political conflict during the second Directory. (pp.203-245).

VI

The Serpentine progression: the careers and motivations of Reactionary judges. (pp.246-279).

Conclusion (pp.280-288).

Appendices

- A. The Tarascon assassins.
- B. Overall incidence of crimes brought before the public prosecutor of the Bouches-du-Rhône, November 1794-November 1799.
- C. The prosecution of anti-republican crime in the Bouches-du-Rhône, 1795-1800.
- D. Breakdown of political prisoners prosecuted for 'assassination' in the Bouches-du-Rhône, 1794-1800.
- E. Military justice in the Var, 1798.
- F. The Military Commission of General Férino at Avignon, floréal - messidor VIII.

Bibliography.

CHAPTER I

Introduction

The theory and practice of criminal justice under the Directory

"Il garantit la sûreté de chacun, il en surveille la propriété, il est le véritable gardien des bonnes lois, puisque c'est de la bonne application qu'il en fait que résulte la tranquillité de tous".

- Boissy D'Anglas
(describing the judiciary)

Discours préliminaire de la
Constitution de l'an III.

I

This study is an investigation into the phenomenon of institutionalised reaction as demonstrated by the judiciary of south-eastern France during the regimes of Thermidor and the Directory. It is not a legal study of the institutions of justice (although there is some analysis of the structure of the judiciary), but rather an attempt to show the discrepancy between the lofty theory of justice as formulated by post-terrorist regimes in France and the corrupt application of justice by southern judges. Within the terms of reference of this thesis, the judicial reaction is frequently described as 'internal' counter-revolution. The terminology is based upon the overall effect of the activities of the southern judges and helps to distinguish their subversion of republican institutions from other 'external' manifestations of counter-revolution. Traditionally, counter-revolution has been studied within the context of the émigré movement abroad, domestic conspiracy (controlled by agents acting on orders from royalist centres in enemy territories) or else armed insurrection against successive governments since the outbreak of the Revolution. Although the judicial reaction was closely related to all of these aspects of counter-revolution, it has been analysed as a distinct model of anti-republican activity. Indeed, the judges' model proved to be so successful in undermining the republic that, as far as the south-east was concerned, the royalist movement came to perceive it as a crucial element in precipitating the downfall of the constitutional republic and in securing the eventual restoration of monarchy.

Not all of judges who were involved in the judicial reaction were counter-revolutionaries in the conventional and accepted sense of the term. The final chapter of this thesis shades in the nuances between the various, convergent types of motivation which underlay the actions of individual judges. Despite the varieties of motivation, however, all of the judges were rabid anti-republicans. It was a type of anti-republicanism which was so virulent that, under the First Directory (1795-1797), it was, for all practical purposes, indistinguishable from royalist counter-revolution. Consequently, this thesis has tended to subsume the judicial reaction as a form of counter-revolution, albeit 'from within'. An analysis has been made of the judicial reaction (which many would tend to perceive as a simple manifestation of regional ultra-conservatism) as a form of counter-revolution, not because of its ideological similarity to royalism, but rather because of the direct and indirect effects which it had upon the Constitutional Republic. The view has been taken that, between the Years III to V, dedicated royalists and ultra-conservative judges collaborated in the monopolisation of local power to such an extent that the overall impact upon the Directory could be termed as counter-revolutionary. The nature of the collaboration and the techniques of the exploitation of institutional power are explored in succeeding chapters. Consideration is always given to the innate bias of all of the political camps under the Directory. For example, the jacobins tended to denounce those who abused the power entrusted to them by the state as counter-revolutionaries; the judges were, of course, frequent targets of their invective. It must be stressed, against the background of mutual denunciation which seeps from the archival records of the period, that the assumptions which are made

throughout this thesis do not represent an unqualified acceptance of the jacobin terminology. Political colours are not being nailed to the mast from the outset. The identification of the judicial reaction with counter-revolution is a means of assessing the overall impact of the merger between these two strands of anti-republicanism.

If the course of the judicial reaction was determined by the converging of anti-republican prejudices of individual judges, then the organisation of reaction was made possible by the electoral system. The electoral nature of judicial office under the Directory ought not to be confused with its democratisation; it was the means by which the local élite brought the departmental courts under their control. Indeed, throughout the thesis the view is taken that the judicial reaction was mainly due to an intimate relationship with the predominantly anti-republican, and often pro-royalist, family-based local élite. The proposition is based upon the evidence provided by the votes cast by the property-owners of the south-east in their secondary assemblies. In these assemblies, the ultra-reactionary judges were returned by a huge proportion of the votes cast. Often the secondary electors were even prepared to use violence to ensure that only their choice of judges were placed in the ranks of the departmental judiciary. Conversely, the effect of the judicial reaction upon the electoral process, which is examined in chapter IV, played a considerable rôle in the development of the 'legal' counter-revolution of the Year V. The system of electing judges permitted the ultra-conservative southerners to cast the judiciary in its own image and likeness. Although the origins of anti-republicanism among the southern élite is beyond the scope of

this thesis, an attempt is made (in Chapter II) to relate the origins of judicial reaction to the brutalised lands in which it later flourished. The judicial reaction, although subversive and conspiratorial in character, and counter-revolutionary in its impact, was essentially a product of the historical environment of the south-east. The judiciary was the constant factor in the equation between the southern community and counter-revolution.

II

In general terms the infiltration of the south-eastern judiciary by men dedicated to the anti-republican cause was a defeat for the republican theory of a unified nation living under the rule of law. This vision, conceived in the year after the fall of the Robespierriest jacobins, derived from two incompatible sources: the attempt to revive the 'uncontaminated' ideas encapsulated in the Constitution of 1791 and the desperate need to construct a bulwark against a possible return to jacobin terrorism. The theory was, therefore, one of judicial organisation and implementation which was constantly being adjusted to meet the practical demands of rapidly changing political circumstances. Thermidorian propaganda, which was by needs hyperbolic, depicted the judicial order as the foundation stone of the 'empire des loix', the antidote to revolutionary government, the means of achieving absolute dissociation from the terrorist ethos which was seen to have used the instruments of justice as arms of combat rather than as guarantors of civil and political liberty. Consequently, there was, among the legislators of the Year III, the belief (or self-

deception) that codified, egalitarian justice based upon the model organisation of 1791 would permeate society and remove discord. Justice would be the means of repairing the broken contract between the government and the governed. It was an unrealistic attitude which paid little attention to the realities of what had happened in the provinces during the Year III. For this negligence the Directory was to pay dear. The utopianism of the public utterances belied the true situation which existed throughout France, but in particular within the Midi: that of sectarian retribution and a rejection of central 'directives' and 'impulsions'.

The new judicial order was a hybrid of atavism, pragmatism and purgation. Its ideological tenets envisaged the reconstruction of the contract of legal relationships which promised each citizen impartiality, fairness and formal guarantees in the law courts: the interaction of citizen and justice would be rational and calculable, not haphazard and intolerant as it had been under the Revolutionary Government. Yet it had to also steer the state between, as the contemporary cliché stated, the twin evils of royalism and anarchy. It had to create a republican consensus whereby men freely obeyed the law as upheld by elected judges; it had to enact laws which reflected the needs and expectations of the nation's élite, who were also expected to be the vanguard of a national revival - a national revival which was, characteristically, expressed by Merlin de Douai as:

'Une seule morale, les mêmes principes, une politique uniforme qui se confondra partout avec la justice répandue sur la surface de la République....'

which (he believed) would have the effect of:

'Mettant les plus simples dans la confiance des vraie règles de gouvernement, repoussant les intrigues et les intrigants et dévouant à la honte les mal-intentionnés et assurant la prépondérance aux hommes connus pour honnêtes'.¹

In fact the Thermidorians succeeded in doing the opposite of what the jurists like Merlin de Douai had intended. The principal reason for this failure lay in the practical necessities of creating such a climate of thought and action. In order to build a judiciary corresponding to the imaged cherished by the theorists, every level of the structure of the revolutionary judiciary had to be purged of former terrorists and dedicated jacobins. In the southern provinces these purges created gaps and opportunities for the counter-revolutionaries to infiltrate the institutions of state and to distort the judicial objectives of the republic.

The jurists of the Year III were confident that the meticulous planning of procedures, together with the checks and balances built into the judicial structure, would make it safe from the corruption of men. Their attempt to create fair and egalitarian justice was determined by their interpretation of the uses of justice by Revolutionary Government. Revolutionary justice was, basically, seen as an active means of persecuting the innocent;

justice in the Year III was used as a means of compensating the victims of Revolutionary justice. This was true in both a local and

1. P.A. Merlin de Douai, Discours et projet de déclaration des principes essentiels de l'ordre et de la République française. (Paris, 23 germinal III).

national context. The Revolutionary Tribunal in Paris was used against leading terrorists such as Carrier and Fouquier-Tinville. Représentants such as Maignet and Le Bon were also brought to trial for their conduct during the Terror. The Thermidorian Convention became a forum for debate on those who ought to be punished for their deeds under the Terror and those who ought to be indemnified for their sufferings. And from these debates on the uses of justice arose the general belief that constancy in the application of the law could have an irenic effect upon a tormented society. The Thermidorians might have doubted the perfectability of mankind, but they were imbued with a deep bourgeois faith which was willing to entrust its social morality and political responsibilities to the forces of law and order. However, they believed too much in the powers of institutions. They did not consider the possibility that their well-wrought procedures and multiple guarantees for the accused might be put to the service of those who sought the downfall of the republic. Ironically, Thermidorian justice, intended to secure a national consensus by the eradication of party politics, in fact encouraged disruptive social schism.

How did this discrepancy between the theory of the social and political impact of justice and the manifest reality of judicial support for counter-revolution arise? In the first place, the Thermidorians over-estimated the social possibilities of the constitutional state based upon the division of powers. They intended the judiciary to be the trustee and executor of the liberal republic's revolutionary inheritance. The executors, it was generally believed, would, if submitted to election by the 'better' citizens and constrained by codified, invariable procedures, become

the propagators of republicanism. The 'mised' in society, under the tutelage and jurisdiction of these paragons of impartiality would, by osmosis, become rational and, above all, law-abiding. Thus, the major consensus to emerge from the disputes of the Year III was that a streamlined criminal justice system was a prerequisite to the foundation of a conservative republic based upon civil liberty and the rule of law. However, the sublimated produce of a perfected judicial system was dependent upon a set of circumstances and actions which could not be created at the simple behest of a late eighteenth century government:

'C'est, en effet, de la perfection des lois dans la justice criminelle que dépendent principalement la liberté civile et la jouissance paisible des avantages que la société promet et qu'elle n'assure pas toujours. Celui-là seroit donc l'un des plus grands bienfaiteurs de l'espèce humaine, qui donneroit la solution de ce problème politique: trouver le moyen de concilier la plus certaine et la plus prompte punition des crimes avec la moindre lésion de la liberté individuelle et la plus grande sûreté du prévenu innocent. Ce problème, une fois résolu, la paix régneroit dans la cité, la sérénité se répandroit sur tous les visages, les crimes ne seroient presque plus connus....'¹

Yet despite their proclivity for anticipating perfect justice, the Thermidorian jurists were acutely aware of the consequences of abused judicial power. They could look with equal horror at the excesses of the Parlements and the Revolutionary Tribunals. In the hands of a tyrant, they believed, justice was the assassin of liberty, the enemy of civilisation, the endorsement of corruption and crime.²

1 J. Maleville, Rapport fait au Conseil des Anciens (Paris, 12 germinal IV).

2 See, e.g., A.N. C228 R. Ronzier (Montpellier), 'Du pouvoir judiciaire'.

Despite their mistaken view that judges could be constrained by procedures into automatism, the Thermidorians had a clear idea of the perfect judge. Each member of a criminal court would have enough local prestige to win the support of the enfranchised property-owners. He would be well versed in the exact nature of evidence, the methods for questioning witnesses, the correct forms of arrest, indictment, sentencing, referral and appeal; he would be well aware of the statutory accountability of the judicial police; he would know how to address a jury impartially and to request a verdict on the question of fact before the question of intent. The great anxiety among the judicial architects was that an accused man might be arraigned before a court which was packed with judges ignorant of procedure:

'Il n'y a point d'état pire que celui d'un gouvernement dont les magistrats ne savent pas ou sont exposés à ne savoir qu'imparfaitement ce qu'ils ont à faire; or, tel est, par l'effet de la multitude et de la confusion de nos lois criminelles, la situation dans laquelle se trouvent forcément ceux de nos fonctionnaires publics qui sont chargés de la répression des délits'¹

The aim of these conservative jurists was to create a judiciary in the image of the nation's elite. They were imbued with the idea that jacobin judges had been the henchmen of a tyrant, conspiring against the rich and talented.² The perfect judge, according to

1 Ph. A. Merlin de Douai, Rapport et projet de Code des délits et des peines (Paris, 10 vendémiaire IV).

2 See, e.g., A.N. C228 'notaire honnête de Grenoble' (18 prairial III), A.N.C229 Gaudin-Lagrange, 'Réflexions inspirées par les événements des premiers jours de prairial' (20 prairial III).

the majority of descriptions sent to the Thermidorian committees, was a middle-aged, family man in possession of property and wealth, experienced in judicial affairs (preferably with qualifications which antedated the Revolution) and utterly devoid of political fanaticism. A premium was placed upon expertise and erudition, 'parce que l'expérience nous apprend combien l'ignorance des juges est préjudiciable à la société'.¹ It was generally preferred that the new judges be less precipitous in making their justiciables die in the name of the patrie. Ideally, the judge must be neutral in his politics (for no party could be above the law). He must be impassive ('comme la vérité'), display equanimity, ethical integrity, perspicacity, shrewdness in the evaluation of evidence and the assessment of character, impartiality in their judgements and assuredness in their sentencing.² It was also assumed that similar qualities would be demonstrated by similar paragons in the electoral assemblies.

The election of judges by an enfranchised élite was reintroduced in the Constitution of the Year III with the intention of protecting the judiciary from executive and legislative control. It is important to note that, in the Year III, the judiciary was seen as a vulnerable institution in need of statutory autonomy and protection. The judges were given special status: article 206 of the Constitution protected them from arbitrary dismissal or suspension by agents of the executive or legislature. Their powers were inviolable (article 204). This Constitutional wall built

1 A.N. C277 T. Cappé (Haute-Garonne), 6 prairial III.

2 A.N. C228 F.A. Presle (Deux-Sèvres), 'Conditions pour être un juge en général', 6 prairial III and also circulaire of Ministry of Justice (17 brumaire IV).

around the judiciary, this rigid separation of powers was, ironically, the means which reactionary judges later used to legitimise their anti-republican subterfuge. Throughout the First Directory (1795-1799) the lists of candidates for judicial office in the south-east were packed with ex-federalist rebels, émigrés, royalists and rabid anti-jacobins seeking the legitimising mandate of election.¹

Throughout the Directory the juges de paix were elected by the primary assemblies and the civil and criminal court judges by the secondary assemblies. The need to appeal to the local élite compromised the judges' duty to blindly and impartially apply the laws of the republic. Faced with the infiltration of the independent judiciary by men more dedicated to the anti-republican beliefs of local men of influence, the executive was frequently obliged to transgress the Constitution by co-opting republican judges and by purging the courts of counter-revolutionaries. The tenure of judges, therefore, became unstable because the executive could not come to terms with the consequences of the free election of judges. It was left to Bonaparte, who introduced permanent judicial tenure and direct executive appointment, to rupture the alliance between the judiciary and the local community. Under the Empire the French judiciary became the upholder of the status quo, the propagator of state propaganda, the servant of the Establishment.

1 A.N. AF^{III} 41, Merlin de Douai to the Directors, 18 brumaire IV: claimed that, in the departments of the west and south-east, as much as 75% of the judicial personnel elected in the Year IV were compromised by the anti-émigré legislation of brumaire.

Paradoxically, the reconsidered republican settlement, which was based upon the division of powers, the guarantee of the sale of biens nationaux and the limited franchise, was vitiated from the outset by electors who despised it and an executive which grew increasingly intolerant of the sharp diversity of political opinion among its judges, its police and its administrators. In a more stable, more unified nation where the electoral majority was bound by at least a tacit consensus on basic principles, the anticipated benefits of the free election of judges might have come to fruition. In practice, however, the consequence of the electoral process was more disastrous to the stability and security of the Directorial republic than all the anti-republican conspiracies and insurrections which aborted each year with regularity. As previously stated, the executive had to resort to direct appointment and co-optation - methods which it had professed to despise under the Revolutionary Government. Between the Year VI and the coup of brumaire some 50% of all judges in the republic were, by force of circumstance, executive appointees.¹ Between the Terror and the Consulate direct appointment and election to judicial office had co-existed uneasily. By 1799 the civil and criminal courts of the south were composed of groups of 'Directorials', crypto-royalists, jacobins, and disinterested, flexible careerists. Few met the Thermidorian description of the perfect judge.

The election of judges was only one of the cornerstones of the Thermidorians' scheme to regenerate the judiciary. They revived

1 J. Bourdan, La réforme judiciaire de l'an VIII (Rodez, 1941) p.199.

the gains made by justice in the early part of the Revolution - the independence of judicial power, trial by jury, the right to defence and appeal, the question of intent. As this thesis will seek to demonstrate, these high-minded principles, procedures and operations became the arms which the reactionary southern judges used to undermine the Directorial republic and to protect and to propagate counter-revolution.

When one takes into consideration the meticulous planning of the procedures of criminal justice, the confidence of the Thermidorians in the possibilities of justice seems much less surprising. The jurists believed that they had created an equipoise of checks and balances which would be immune to all attempts to pervert the course of justice. Yet they were confronted with the problem of how to maintain a balance within the structure. If they made it too independent, then it might endanger the liberty of citizens; if they made it too weak then it would be manipulated by a usurper or a tyrannical executive. Their strategy was to separate the judiciary from other state powers as carefully as possible and then to lock it into a rigid corset of procedural minutiae. In the minds of the men of the Year III, notably the members of the Commission des Onze who devised the Constitution of 1795, it was the Robespierrists' interference with the separation of powers which enabled the jacobin-dominated state to use justice to serve their own political ends. They made political capital from the fact that the 'tyrannical' Constitution of the Year II made no mention of the separation of powers. This had enabled Robespierre, Couthon and Saint-Just to politicise the law courts. The Thermidorians believed that the increased autonomy of the judiciary would result

in its political neutrality. As one pétitionnaire argued:

'Aucune institution n'a été plus funeste à la patrie que les tribunaux révolutionnaires et les commissions dites populaires. Ceux qui les ont créés les peignoient bien d'un mot en les appelant des tribunaux politiques. Ces deux idées s'excluent: la politique se plie aux tems, aux circonstances; elle est susceptible de modifications infinies; un tribunal au contraire dont le nom emporte avec soi l'idée de la justice, ne peut être que le sévère et aveugle applicateur des loix'.¹

The prerequisite to the règne des lois was the règne des divisions. Article 22 of the Constitution of the Year III declared that the division of powers was necessary to the wellbeing of society. What the jurists failed to foresee was that, in provinces like the south-east where there was a long tradition of political factions controlling the institutions of local government, an over-rigid separation of powers in a local context would increase the threat of in-fighting between administration, judiciary and agents of the executive.

Not only was the judiciary rigidly separated from the legislature and the executive, it was internally regulated to a degree which surpassed the judicial organisation of 1791. The over-elaborate nature of procedural guidelines set down by Merlin de Douai in his famous Code des délits et des peines betrayed a neurosis over the return of external interference in judicial

1. A.N. C230 P. Malfais to Commission des Onze, 2 jour complémentaire II. See also A.N. C228 treatise of Bayard, 17 prairial III.

matters. The Code des délits et des peines was a misleading title; it provided categorisation neither of crime nor of punishments: of the 646 articles which make up the text of the code, 598 were devoted to procedure. It was a significant omission, for there was no list of sentences for specified crimes to correlate with the intricate forms of arrest, trial, prosecution and referral. The immutable Code was soon to be undermined because of the amorphous and constantly changing categories of political crime. For example, former terrorists were considered to be political criminals during the Year III whereas the majority of non-royalist émigrés were amnestied: in the Year IV jacobins were amnestied and the émigrés were once more under threat of deportation. There were hundreds of laws passed between 1795 and 1799 on the criminal status of émigrés, refractory clergy and nobles. The status and legal rights of political prisoners could change several times in the course of their trial. Stable structures did not make a stable society.

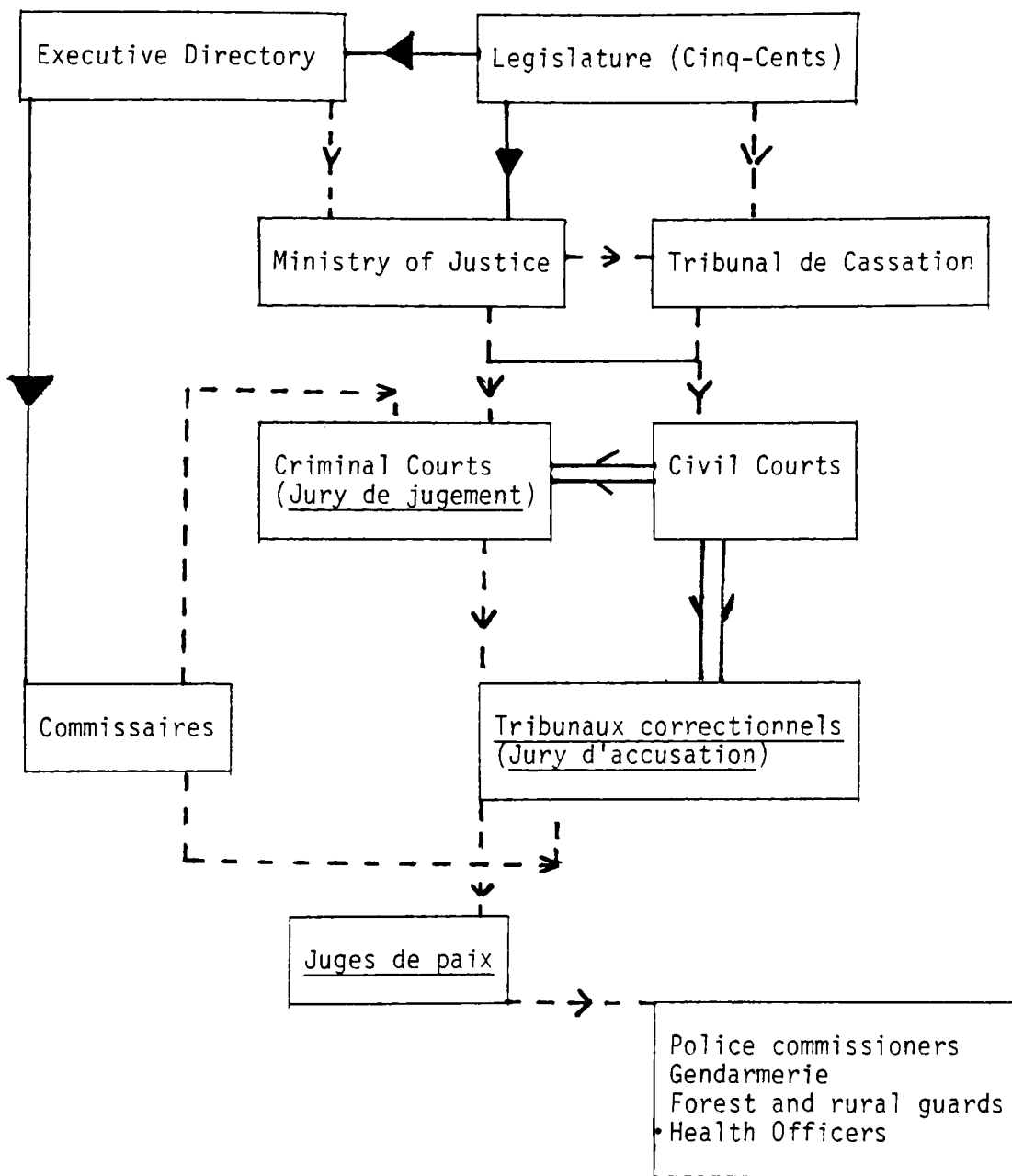
The legal architects and the members of the Commission des Onze took little account of the social realities within the provinces far from Paris and did not even contemplate that the elections of the Year IV would throw up judges who displayed such bad faith towards the republic. There had been glaring examples of counter-terrorist activity among southern judges appointed on an ad hoc basis by the représentants-en-mission of the Year III whilst the organisational plans were still in draft stage. The major error was to provide the accused in a criminal trial with an over-abundance of guarantees. Consequently, the procedures were moribund with details and escape clauses which ensured that even the most minor contravention would invalidate the entire trial. Indeed the over-wrought nature of the Code proved in itself to be something of




a loophole, especially when put to the service of counter-revolutionaries by reactionary judges. One of Merlin's intentions when framing the code was to preclude subjectivity in the interpretation of the law. Procedure in criminal cases, being known and determinate, would constrain the judges into automatism. The application of rational laws and the operation of justice through invariable forms could not, in such a short period, penetrate the morass of local traditions, corruption, customs and interests upon which the legal 'system' of Ancien Regime France had evolved and which had been exacerbated by six years of sectarian violence. The cracks in the structure were not apparent until well into the Year IV. Having crushed an attempted royalist uprising in vendémiaire Year IV, the Directory was confident that it could bring down the curtain on revolutionary tragedy. 'Républicains, le sort du Directoire ne sera jamais séparé du vôtre', proclaimed the executive Directors to the French nation, 'l'inflexible justice et l'observation des lois seront sa règle'.¹ There was little appreciation that the 'inflexible' judicial system would contribute to the downfall of the regime, albeit in an indirect way. Indeed, justice had been thoroughly corrupted before the inauguration of the Directory.

An explanation of the structure of justice at this stage will make successive chapters more comprehensible and will help demonstrate the subtle means by which determined reactionary judges

1 A. Débidour, Recueil des Actes du Directoire Exécutif. (Paris, 1910-1912. 4 vols), I, p.20.

Figure 1: The Structure of Criminal Justice During the Directory



- 
 direct control, ie power to appoint and dismiss.
- 
 supervisory control.
- 
 exchange of personnel by rotation.

subverted the republican state. (see Figure 1) The judicial structure and its procedures were supervised by the Ministry of Justice and a centrally-controlled network of executive commissaires. The function of the Minister of Justice was to ensure the widest possible publication of laws and decrees, to clarify legal enigmas, to arbitrate in disputes between the judiciary and other authorities of the state and to take responsibility for the payment of judges' salaries.¹ The commissaires, who reported to the Ministry of Justice but who were ultimately responsible to the executive, were bound to request the precise application of the nation's laws in both civil and criminal courts. Their duties sounded straightforward, but in a region like the south-east, it was a thankless, frustrating and often dangerous task. Much of our knowledge of the real operations of judicial counter-revolution derives from the reports of the commissaires, who, generally, were not in the pay of local counter-revolutionaries.

Merlin did not create a new judicial structure or novel procedures, he tightened and modified those which had been elaborated in 1791. He retained the division between civil, correctional and criminal justice. Criminal justice was perceived

1 There were four Ministers of Justice during the Directory: Genissieu (5 January 1793-2 April 1796); Merlin de Douai (twice, until January 1796, then from April 1796 to his appointment as a Director in September 1797; Lambrechts, 24 September 1797 until 20 July 1799 and Cambacérès from July 1799 until the Consulate. See L. Gruffy, La vie et l'oeuvre juridique de Merlin de Douai (thèse de droit, Paris, 1934).

as an 'action publique' - it could not be instigated, controlled or interpreted by the citizens of the republic. Civil justice, however, could be initiated by private citizens in the event of a breakdown in normal social, private or contractual relationships. Criminal justice was above and beyond the citizens; civil justice was palpably among them. The obligation to submit oneself to the due process of criminal law was a prerequisite of communal and national association. The judges in the civil and criminal courts were closely linked: they were all drawn from the same social élite, elected by the same assemblies and the judges from the civil courts served by rotation as directeurs of the jury d'accusation and as bench judges in the criminal court.

The juges de paix were less élitist because they were elected by the primary assemblies which had a wider suffrage. An accused man coming into contact with the criminal justice system for the first time would confront a juge de paix. It was the juge de paix, hitherto one of the more vaunted creations of the judicial revolution of 1791¹, who set the whole structure of judicial reaction in motion. The initiatory rôle of the juge de paix was crucial to the reaction. The influence of the juge de paix was not restricted to criminal justice; in the realm of civil justice his scope and competence had widened following the suppression of the bureaux de conciliation and the tribunaux de famille. Similarly, his powers within the criminal justice system had been extended. He

1 A. Esmein, Histoire de la Procédure Criminelle en France (Paris 1882) p.420.

was empowered to investigate crime, collect evidence, receive and compose denunciations on behalf of an injured party, hear witnesses, issue summons (mandat d'amener), arrest warrants (mandats d'arrêt) and to control the judicial police force. In communes with a population greater than 5,000 inhabitants, a police commissioner was appointed by the municipality. Often the commissioners investigated crimes on behalf of the juge de paix; they also drew up reports on riots, local criminals, political criminals and movements of population.¹ Although accountable to the municipality and the juge de paix, the entire judicial police force were under the overall control of the public prosecutor of the department.

Although not necessarily a trained legal expert, the juge de paix, like the superior magistrates, had to be sensitive to the needs of the local élite and the dominant political currents within their communes. Bound inextricably to parish pump issues, it was the juge de paix who had to make up his mind to bring a prosecution on behalf of the public prosecutor. They themselves were only permitted to pass sentences on minor crimes which carried a punishment of less than three days in jail or having a monetary value (in terms of fining) of three days of work. Within the context of the judicial reaction, the most important aspect of the discretionary power of the juge de paix was that of deciding on whether or not a suspect ought to be arraigned before the jury

1 On the techniques of the commissaires de police in the Directorial period see R.C. Cobb 'Notes sur la répression contre le personnel sans-culotte de 1795 à 1801'. AhRf, no.134, (1954), pp.23-49 and The Police and the People (Oxford, 1970), pp.3-45.

d'accusation. During the Directory, the southern juges de paix who were associated with counter-revolution frequently short-circuited the criminal justice system by failing to send, say, anti-terrorist égorgeurs to the jury d'accusation after declaring the original denunciations against the suspect to be either invalid or groundless. From his watchtower in the Ministry of Justice in the Year IV, Merlin, with characteristic, hand-wringing despair, looked upon the performance of the provincial juges de paix who were supposed to inject impartiality into the local application of justice, but saw instead the systematic degradation of the office:

'Ma correspondance est pleine de pareils traits; partout les assassins, les royalistes, les émigrés, les prêtres réfractaires sont favorisés par les juges de paix et les officiers de police judiciaire qui emploient tous les moyens possibles pour les soustraire à la loi'.¹

The complicity of the juges de paix of the Midi in counter-revolution had dire consequences for the enforcement of laws because it encouraged the men of violence within the locality to act with impunity. Political violence spiralled and, eventually, became uncontrollable. There were attempts in the Year IV and the Year VI by anti-royalist governments to appoint republicans as juges de paix in order to stem the tide of violence, but their efforts were, in the main, ineffective. The juges de paix who attempted to disrupt the pattern of reaction and collaboration were met with a battery of harrasement and intimidation. As these men, by the nature of their office, were condemned to live within the commune, it became a

1 A.N. AF^{III} 32 Merlin's note to the Directors, 23 germinal IV.

practical impossibility to conduct a sustained drive against counter-revolution and to live in safety in the majority of southern communities during the Directory. In larger communes, such as the chef-lieux of the departments, the lawlessness would be constrained by placing the commune in a military state of siege, but, in the sequestered villages and medium sized towns, there was no solution.

The interface of community and judiciary in the cause of counter-revolutionary reaction was the jury system. The Thermidorian jurists, following their predecessors of 1791, retained a double jury system in criminal justice and no juries in civil justice. This double jury system was based upon the Anglo-American system of grand jury (jury d'accusation) and trial jury (jury de jugement). Given the absence of juries in many of the ad hoc courts of the Revolutionary Government, the Thermidorians placed a great deal of faith in the idea of the jury system as the essential guarantee of the discovery of disinterested truth in criminal cases as well as being the means of realising the concept of the direct collaboration of omniscient citizens in the establishment of fact, motive and intent. In addition, as a further means of distancing the judiciary from the institutions of terrorist justice, it was maintained that the weight of such a moral absolute as capital punishment could only be supported by a majority verdict pronounced by twelve jurors.

Under the Directory the departmental administrations drew up lists of potential jurors each three months 'd'après ses connaissances personnelles et les renseignements qu'elle se fait

donner par les administrations municipales'.¹ No elected official and no person under thirty could be a juror. Each jury list had to be sent to a commissaire for scrutiny. This would often be a source of conflict with the judiciary, depending upon the political affiliations of the commissaire, which were usually republican. Furthermore, the defendant or his counsel also had the right to examine the lists of jurors and of witnesses. These rights, which were framed with a sense of fairness towards the accused in mind, led to extended sessions of bickering and denunciation during the pre-trial, especially over the issue of the social standing and political preferences of the men chosen. The squabbles were at their worst during the Years IV and VI when jacobin administrators vied with reactionary judges over the choice of jurors.

An accused man would first of all confront the jury d'accusation which was directed by a judge taken in six month rotations from the civil courts, and who also served as president of the correctional court (tribunal correctionnel). This directeur was accountable to the public prosecutor and was in control of the judicial police. He was the intermediate stage in the process of judicial operations and was supposed to act upon all denunciations made by the public prosecutor. The jury which he 'directed' was composed of eight men chosen by lot. Between the procedure initiated by the juge de paix and the hearing before the jury d'accusation there were several possible abuses of the judicial

1 Code des délits et des peines, tit.x, art. 485.

system which will be explored in later chapters. This section is intended to show what ought to have happened and to indicate the zones of stress and loopholes within the structure which were open to manipulation and exploitation by reactionary judges.

The prosecution of a suspect started at the sharp end, with the juge de paix and his police force. The instruction préparatoire which he conducted had been made deliberately complex in order, it was believed, to protect the suspect. Consequently, it became much more difficult to arrest a citizen than it had been under the Terror: in fact the Constitution of the Year III made arbitrary arrest a crime (articles 8,9, 'Droits'). The sensitivity over the forms of arrest derived from the imputed abuses of jacobin officials who had often acted without a warrant and dispensed with preparatory formalities. 'Si la tyrannie de Robespierre n'eût pas affranchi son infâme tribunal de ces formes préparatoires', stated Boissy D'Anglas, 'des milliers de français assassinés vivraient encore!'¹ The juge de paix, in arresting a suspect, had to fulfil many conditions and negotiate many safeguards laid down to protect the accused from judicial persecution. He could only make an arrest without a (documented) prior investigation when he caught someone in the act of committing a crime. Otherwise, in the absence of the maligned 'accusation populaire', the business of denouncing individuals was left to private citizens or to official reports which were translated into requisitions by the public prosecutor. If the commissaire of police reported a murder then the juge de paix could

1 Boissy D'Anglas, Discours préliminaire op.cit.

draft the complaint by proxy. This often led to colourful and exaggerated procès-verbaux far beyond the scope and intention of the original complaint.

Following the investigation, the juge de paix had the discretionary power to 'activate' the prosecution by issuing a summons against the suspect. The summons, which had to be signed and sealed by the juge de paix, compelled the suspect to come to his residence for questioning. If the suspect rejected the summons then he would be constrained by the gendarmerie. Following the interrogation the suspect was permitted to call witnesses in his own defence, and each witness had to make a statement in the presence of the suspect. It was after these hearings that the juge de paix made his crucial decision: if he decided that the suspect had given a sound explanation or defence of himself, then he could release the suspect on the spot provided that he made a full report to the directeur of the jury d'accusation. Alternatively, if he considered that the suspect was guilty, then he would issue an arrest warrant stating the prisoner's name, residence, occupation, the reason for his arrest and the law which authorised it. This was one of the most exploited zones in the criminal justice system. Hundreds of counter-terrorists assassins, captured by republican gendarmes, were released at this stage by reactionary juges de paix. Through fear or prejudice, or both, the majority of juges de paix in the south-east refused to issue arrest warrants against the enemies of the republic. Conversely, however, a zealous republican juge de paix could be foiled in his attempt to prosecute a counter-revolutionary by the jury d'accusation, the intermediate stage in the process of prosecution.

In the majority of cases, however, there was a unity of purpose and action between the juge de paix and the directeur of the jury d'accusation. This collusion, in practice, proved to be disastrous for republican suspects and beneficial for égorgeurs, royalists and refractory clergy. During the Directory this combination permitted so many criminals to escape that they undermined the system which they were supposed to uphold. Therefore, the number of reported crimes coming before the criminal courts in the southern departments give only a fractional amount of the total crimes actually committed. Much of the collaboration derived from the fact that the judges were prisoners of their environment. As one shrewd observer noted:

'Les juges de paix ont un pouvoir immense ils ont la faculté dangereuse de conduire un prévenu sur les éclaircissements qu'il donne, de l'admettre à caution arbitrairement. Ces juges de paix circonscrits dans les petits lieux s'imprègnent facilement des impressions locales, leurs actes de justice ne sont le plus souvent que les actes de ressentiment ou de faveur. L'incapacité et l'inexpérience, la crainte et des vains ménagements sont les moindres torts qu'on puisse leur reprocher'.¹

In essence the entire range of judicial operations during the Directory were disastrous because they were placed in the hands of compromised or vengeful local operators who looked at their task with parish-tinted spectacles. They disrupted the judicial system when it jeopardised the particularist interests of the dominant families of the region. A common refrain among the commissaires in their correspondence with the Ministry of Justice was that 'les juges et le juge de paix du canton se paralysent volontairement'.

1 A.N. D^{III} 379. 'Observations de Ricard'.

The Thermidorians jurists placed a premium upon evidence in judicial cases. For example, in the event that a juge de paix sent a prisoner before the jury d'accusation the witnesses were heard 'de vive voix'. After the hearing and cross-questioning, both the directeur and the commissaire would retire from the courtroom. Oral statements were given the same status as the written depositions of defaulting witnesses and the transcripts of the private interrogation of the prisoner by the juge de paix. The directeur, if he so wished, was permitted to question witnesses in secret. This was a conscious move away from the terrorist judges' insistence on l'oralité in criminal proceedings; indeed, it was a partial return to the old, despised system of written evidence. Oral evidence had its reputation blackened during the Year II because of the infamous scrutin public. Under the Directory, however, the defendant was allowed access to written evidence and could employ it in his own defence. Previously, only the public prosecutor had the right of access to such material. As a supplement to oral and written evidence, 'moral proofs' attesting to the civic morality of the prisoner could be used. On the surface, the concept of civic morality under the Directory was shorn of the sinister connotations which were associated with the tirades of the dénonciateurs of the Revolutionary Tribunals. As we shall seek to demonstrate in succeeding chapters, the public prosecutor could sway a jury by appealing to the changing concepts of civic morality which made yesterday's heroes tomorrow's villains.

Having heard the written and oral evidence, the jury d'accusation would deliberate and, if it reached a majority verdict (at least five out of the eight jurors), it could decide that there were grounds for further prosecution before the public prosecutor

and the criminal court. If, however, the jury returned a verdict stating that there were no grounds for prosecution then the accused was released. This intermediate sieve, intended to protect the accused from the wrongful arrest of the juge de paix, or to discover errors of form in the arresting process, became the fulcrum of the judicial reaction. Using this safety valve, many counter-revolutionaries were spared a trial in the criminal court by obliging, rigged juries.

In the event that an accused was sent to the criminal court, then he would be questioned by the president of the court within 24 hours of arrival. Following the interrogation the president would set about organising the trial and calling a jury. The southern presidents were to exploit every possible angle which their wide discretionary powers gave them, especially in the choice of trial juries and their 'instructions' to the assembled jurors. However, the most important member of the criminal justice system during the judicial reaction was the public prosecutor. His function was to instigate proceedings against all of those who had been indicted by the initiatory and intermediate levels of the justice system. He prosecuted in the name of the republic. In addition, he was in overall control of the judicial police and the presidents of the tribunaux correctionnels. In theory it was his task to ensure that all members of the police and inferior courts were not negligent in their duties. Therefore, the corruption of the juges de paix and the directeurs of the jury d'accusation was his ultimate responsibility. The public prosecutors of the south-east were the motors of internal counter-revolution. They had to appear as the incarnation of the state's right to impose its laws and prosecute its enemies by being seen to fulfil the requirements of form and

procedure, yet, simultaneously and surreptitiously, play the legal game according to their own rules.

The trial of a prisoner in the criminal court was far more complex under the Directory than it had been under the legislation of 1791. This very complexity and caution, paradoxically, made the abuses of the system a much simpler task. For example, the prisoner had the right to opt to be tried again in a neighbouring criminal court if he had suspected the machinations of the judges, or had been intimidated within or without the courtroom. This right had, inadvertently, elevated departmental criminal courts into courts of appeal. Their increased power became pernicious under the Directory, given the collusion between the criminal courts of departments of the Midi. As will be explained in later chapters, the release of many counter-revolutionaries was engineered by confederated courts who exploited this droit d'option.

Having chosen a departmental criminal court, and having been questioned by the president, and having argued over the choice of jurors (via his counsel), the prisoner would be led, unchained, to the dock. The public prosecutor would ask him his name, age, occupation and place of residence - which presented an instant social profile to the trial jury. Then there was the standard swearing of oaths: the defendant would swear to use only the truth for his own case and the jurors would accept the oath of impartiality. The public prosecutor would then present the indictment (acte d'accusation) to the clerk who read it aloud. Witnesses were called first by the prosecution and then by the defendant. Once all the questioning had been completed and all the depositions had been read, the president was obliged to reduce the

case to its simplest points and summarise the case. This was a much abused part of the proceedings which, in the criminal courts in Nîmes, Carpentras and Aix-en-Provence, was often used to threaten the jurors into returning the verdict which they had, invariably, been instructed to return by the public prosecutor before the trial had started. Despite the veiled threats which would often be expressed in the president's peroration, he would always read the standard code of conduct to the jurors. Two questions were then put to the jurors, the first on fact, the second on the intent of the accused.

The question of intent, which was crucial to the mechanisms of judicial reaction, had been maintained from the legislation of 1791 by the Thermidorians (law of 14 vendémiaire Year III/5 September 1794); it stipulated that an accused prisoner could not be declared to be guilty of the stated crime until the jury had declared that he had intended to commit it, either with knowledge or malice aforethought. The separation of fact from intent, together with the sensitive question of premeditation, was often criticised during the Directory. Jacobins argued that the question ought not to be asked of jurors during the trial of royalists and counter-revolutionaries, because no-one conspired against the republic or killed its defenders without premeditation. On the royalist side, the deputy for the Bouches-du-Rhône, Siméon, frequently cited a case in Marseille where the agent and creditor of an émigré sold all the property of his absconding client before it was confiscated by the nation to settle the émigrés' outstanding debts. When the émigré returned in the Year III he took his former agent to court to attempt to reclaim his property. The jury returned the verdict that there had been a fraud, but that the agent

had not acted with criminal intent because of the considerable debts which had not been settled and because the émigré had been banished in perpetuity. Therefore, the agent was not compelled to reimburse the émigré.¹ It was because of cases like this that many deputies campaigned for a British-style verdict of 'guilty or not guilty'. However, the lack of clarity of the demarcation line between fact and intent permitted the rigged juries to pass some outrageous verdicts in favour of counter-revolutionary prisoners. There were many cases of jurors, in the pay of a defendant, releasing him from the charges stated by declaring that the crime had never existed in the first place. Similarly, if the jury declared that the crime had been committed, then the accused could be exculpated by the return of a verdict which stated that the crime had been committed in self-defence and without premeditation. The verdicts of jurors had to be signed, which ensured that the local community knew exactly how each juror had voted. The concept of legitimate self-defence and the defence of the local community by self-help was exploited out of all proportions during the Directory. Murderers of jacobin patriots were frequently absolved of their crimes because they had argued their case on the grounds that they were defending their community from a return to the horrors of the 'tyrannie décemvirale'. Treatises on the right of the community to destroy jacobins abounded.

1 A.N. D^{III} 52 Siméon, Rapport sur la question intentionnelle posée dans les jugements criminels (28 thermidor IV).

In the event that the prisoner was found guilty on both counts then the commissaire attached to the criminal court demanded that the prescribed penalty be applied in the name of the French republic to the convicted criminal. The prisoner would be asked if he had anything to say in his own defence, but was prohibited from declaring his innocence. His standard permitted reply was to say that the crime did not merit the sentence demanded by the commissaire. After the president had passed sentence, he would read the texts of law upon which it was based and then request that each judge on the bench sign the sentence. In some cases, as we shall later see, the judge was obliged to state the supreme irony:

'... après avoir prononcé le jugement, le président retrace à l'accusé la manière généreuse et impartiale avec laquelle il a été jugé'.¹

In the following chapters the judicial reaction will be traced from its origins to the Consulate. Rather than simply analysing the functional mechanisms of the structure of judicial reaction, the activities of the judges will be set within the context of regional counter-revolution and sectarianism. Throughout the judicial reaction is analysed in relation to the historical environment, the peculiar characteristics of the Midi, the changing nature of the counter-revolutionary movement. Its origins are discussed as a factor of the extraordinary situation arising in the Midi in the Year III, but due consideration is given to the response of a highly independent Ancien Régime province evolving towards

1 Code des délits et des peines. Article 439.

homogeneity through the catalyst of Revolution. The judicial reaction is studied from several perspectives: as a weapon of counter-terrorist violence; as a subvertor of jacobin republicanism; as the vanguard of internal counter-revolution; as the protector of royalism; as the superstructure of the local family-based élite and, finally, in terms of the careers and motivations of the individual judges. The overall aim of the study is to advance the view that the judicial reaction played both a direct and indirect rôle in the decline and eventual collapse of the Constitutional Republic.

CHAPTER II

De-Terrorisation: the Origins of the Judicial Reaction

"Les membres qui composent le tribunal criminel, chargés de punir le crime, le frapperont sans miséricorde et ne frapperont que lui. Que tous les bons citoyens se rassurent à cet égard; qu'ils ne craignent de notre part, ni tiédeur dans la recherche, ni lenteur dans la poursuite. Qu'ils laissent aux loix et à leurs ministres le soin de venger la société outragée".(I)

The criminal court of the
Bouches-du-Rhône to the
citizens of the department
(I)

15 prairial Year III.

"Rassurez-vous donc, vous tous qui depuis si longtemps gémissiez sous la plus dure des oppressions...ne craignez plus les vautours qui voulaient déchirer vos entrailles; la terreur n'est plus faite contre vous.....

Mais tremblez-vous tous qui dans votre froide scélératesse avez marché de crimes en crimes, qui avez entassé forfaits sur forfaits, et avez fait rougir les eaux limpides de nos fleuves avec le sang des victimes que vous avez immolées à votre rage.....

Le règne de justice est arrivé!

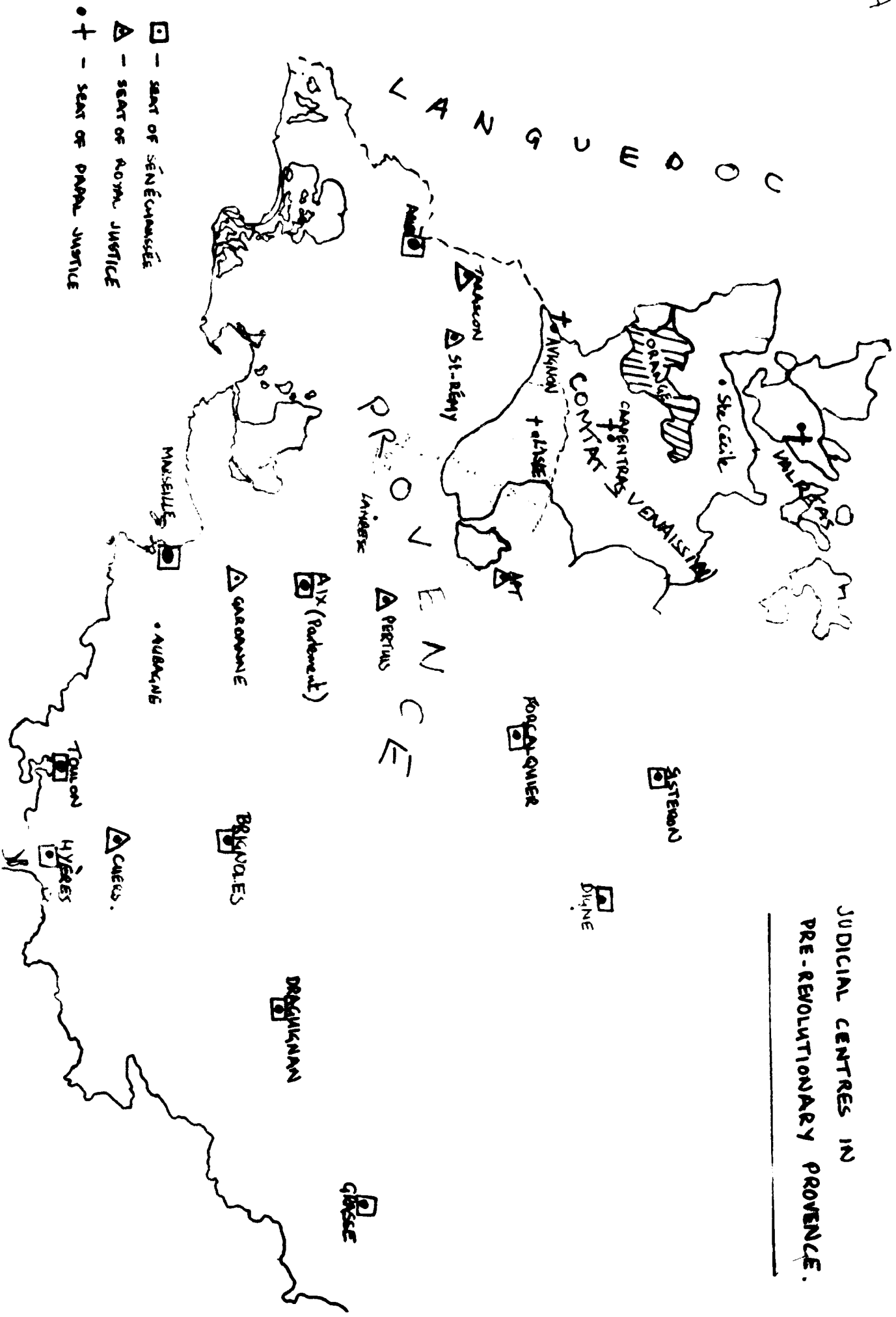
The criminal court of
· Vaucluse to the
citizens of the
department. 2

1 thermidor Year III:

I A.D. BduR L.481.

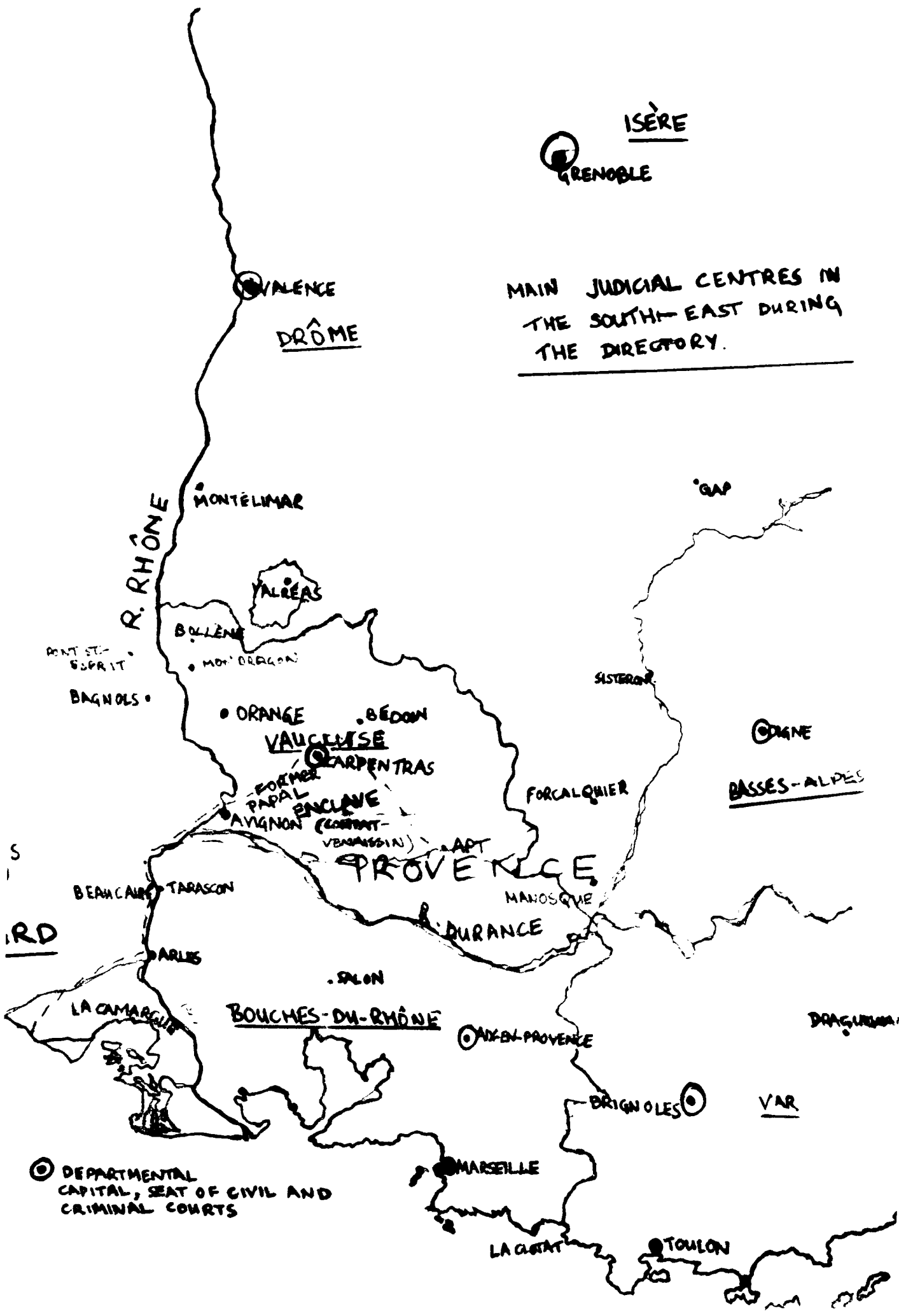
2 Calvet mss. 2510

JUDICIAL CENTRES IN
PRE-REVOLUTIONARY PROVENCE.



ISÈRE
GRENOBLE

MAIN JUDICIAL CENTRES IN
THE SOUTH-EAST DURING
THE DIRECTORY.



I

The judicial reaction did not originate in a conspiracy of anti-republican judges. It started as an outgrowth of the government-sponsored process of de-terrorisation in the period following the fall of Robespierre. Indeed, this Thermidorian phenomenon of institutionalised counter-revolution was the inadvertent creation of the représentants-en-mission operating within the troubled provinces. Their appointment of highly suspect returned émigrés, royalists and former federalist rebels to the ranks of the local judiciary began the reaction within the judicial system. It was a measure designed both to cleanse the judiciary of jacobins and to appease the collective anger of the local community whose vengefulness was directed primarily at the agents of the judicial terror of the Year II. The représentants hoped to neutralise the anarchy of 'white' terror by recasting the structures of local power in ways which would gain the support of the aggrieved local élite. Therefore, by reflecting the anti-jacobin prejudices of the local community within the judiciary, the représentants hoped to channel counter-terror through an institution of state, and thereby invest political violence with a semblance of legality.

The représentants made the error of trying to mitigate the effects of the upsurge of counter-terrorist violence in the Midi by appointing to the judiciary men more proficient in inflicting talion law than assuring the impartial application of republican justice. As the ultra-reactionary représentant, Chambon, exhorted: "Laissez à vos magistrats le soin pénible de fouiller dans les archives de crime et d'indiquer sûrement à la justice les scélérats qu'elle doit

frapper".¹ In the pre-Constitutional vacuum of the Year III these représentants had to use their placemen to manufacture a local consensus by several related policies of practical action. The most important of these was the dismantlement of the provincial terrorist institutions and the arrest or immobilisation of their personnel. The aim of this decisive policy of de-terrorisation was the eradication of jacobinism as a political and social force.

One finds that the more common verbs used in the correspondence between Thermidorian judges when discussing the 'jacobin problem' are frapper, écraser and exterminer. The prejudice which underlay the violence of their expression was considered as prerequisite to the second thrust of the plan of the représentants' which was the restoration of order in those areas excited by violence by all means at their disposal. Some of the représentants like Cadroy, Isnard and Chambon sought to appease sectarian murder gangs by attempting to patronise them.² The égorgeurs, in their turn, venerated the représentants; it was a destructive relationship which found its headiest expression during the crisis of the Toulon jacobins in the spring of 1795, or, vocally, in the marching songs of

1 Quoted in P. Barras, Mémoires ed. G. Duruy (Paris 1895-96, 4 vols), II, p.46.

2 See e.g., A.N. F⁷ 4628. (Cadroy papers).

the compagnons du soleil:

'Oui, nous avons été sabreurs,
 Et nous nous en faisons honneur,
 Nous avons encore des poignards
 Pour égorger les Montagnards:
 Des bons garçons, c'est là, la loi,
 Vive Chambon! Vive Cadroy!
 Vive DeBry, vive Liégard,
 Sans oublier le brave Isnard!
 Vive Chambon, vive Cadroy!
 Vive à jamais, vive le roi!
 Vivent les sabreurs trop humains!
 Périront les républicains!'¹

The régime created by the Thermidorian représentants was compensatory as well as purgative. The policy of the men whom they placed in positions of judicial power in the south-eastern departments was one of unilateral compensation and appeasement. In short, they simply swapped one form of political exclusivism for another by reintegrating the victims of the Terror at the expense of its former agents. Indeed, the victims of the Terror became the new, favoured élite. They were a confederated mass of aggrieved citizens who had been alienated from political life by the federalist rebellion, self-imposed exile, imprisonment, banishment or desertion. The generosity of the représentants towards these groups exceeded the intentions of the government amnesties. They were determined to compensate the victims for their tribulations and losses (financial, property, relatives, office, prestige, homestead) in order to win their support for the conservative

1 Printed in L'Observateur du Midi no. xix, 30 frimaire V. For the jacobin attack upon the accessorial rôle of the représentants of the Year III, see L.S. Fréron Mémoire historique sur la réaction royale et sur les massacres du Midi (Paris, an IV) pp.40-45.

regime.¹ The judges, echoing the Thermidorian newspeak which sanctified Girondins, non-royalist émigrés and federalist rebels and elevated them to the status of courageous opponents of 'le Néron français' who had bien mérité de la patrie, created local hierarchies of deserving citizens from these groups of erstwhile enemies of the republic. The représentant Girot-Pozouf, for example, encouraged the judges of the Gard to treat federalism and the surrender of Toulon to the British as a 'délit imaginaire'.² Indeed, the sympathy of the judges for these groups was enhanced because many of them had shared the same struggle against the republic and the Convention during the terrorist period. In the Vaucluse, the federalist rebel and royalist sympathiser, Etienne Jamet, was chosen as public prosecutor by the représentant Boursault on the grounds that 'il est l'homme qui a le plus souffert dans ce département'.³ At the apex of this hierarchy of aggrieved, bleeding hearts were those, like the hysterical Isnard, who had returned mentally depraved from a 'heroic' period in exile (Piedmont, Genoa, Rome, Spain, the stalactital caverns of the Alps, the woods of the Dauphiné were the more romantic settings) or those

1 See e.g. Méjanès mss. compte décadaire of agent national of Aix: 'Les émigrés demandent impérieusement la restitution de leurs biens et les effets leur ayant appartenu, la vente mentionnée dans les registres du district, ils insultent et menacent les propriétaires au point que bientôt les enchères publiques seront désertées et le crédit public détruit'.

2 e.g. A.N. D^{III}86 Address to the judges and juges de paix of the Gard, 4 therm. III.

3 A.D. Vaucluse 7L92, arrêté of 12 thermidor III. It should be noted that the government's amnesty of 19 fructidor III did not extend to the federalist rebels of Toulon, who remained émigré outlaws.

who had had a relative guillotined or shot by an institution of revolutionary justice. This group was fêted all over Provence in a series of civic receptions usually culminating in the destruction of the altar to the Mountain, the uprooting of the Liberty Tree and the singing of 'le Réveil du peuple contre les terroristes'.¹

The Thermidorian judiciary in the south-east was the antithetical surrogate for the institutions of revolutionary government which the représentants had destroyed. One can observe this simple inversion of the trends existing under the jacobin regime by the use of these newly appointed judges to prosecute their predecessors. The classic example of this was the trial of the personnel of the Commission Populaire of Orange in Avignon by the judicial appointees of Goupilleau during the summer of the Year III. However, the judges became more than a mere weapon of retribution against jacobins: their active collaboration with murder gangs, émigré networks and royalist spy rings indicates that their rôle was not entirely functional during the Thermidorian reaction. This assertion leads to the complex question of the response of the judges to the 'white' terrorist violence which surrounded them: did they attempt to root it out? Or did they encourage it? If so, then by what methods? Firstly, however, we must define the

1 See, e.g., Méjanes mss. 1438 (1573) Roux-Alphéran 'Journal historique de tous les événements remarquables qui sont passés à Aix-en-Provence entre l'an III jusqu'à l'an VI'. p.56 for the fête in Aix for the 59 families whose relatives had been 'envoyées judiciairement à la mort pendant la terreur'. The Convention had ordered, recognising a fait accompli, the destruction of all monuments commemorating the Mountain on 2 ventôse III. See also G. Lewis and C. Lucas (eds.), Beyond The Terror (Cambridge, 1983), ch.vi. (by C. Lucas) pp.173-175.

available terms. Counter-terrorism must be distinguished from Catholic royalism, although they intersected at a great many points. The main difference between them was that Catholic royalism had clear political aims: the restoration of the monarchy, church and (to a limited degree) aristocratic privilege whereas counter-terrorism was concerned mainly with vengeance and compensation.¹ They compounded in the solvent of pathological hatred for the jacobin and patriotic movement. Counter-terrorists moved gradually towards royalism without necessarily sharing their fanatical devotion to monarchy or the 'grand design' for restoration. They threw in their lot with the royalists because it promised peace (and therefore an end to conscription and war taxes) and the revival of the Catholic faith and church. The royalist agents in the south - Lestaing, Précý, Allier, Lamothe, Froment, Saint-Christol, Meissonnier - desperately needed a groundswell of constant popular support similar to that which had characterised the Vendean civil war. They employed all manner of emotional devices and denunciations to attract the support of the bourgeoisie and the peasantry. Therefore they had to be infinitely versatile, presenting themselves as pious Catholics in the rural communes, defenders of maritime trade and commercial profit in the seaports and rabid anti-jacobins in the towns and villages which had been the epicentres of provincial terrorism.² In other words they sought to restore the south to monarchism by the excitement of a spirit of

1 See Cobb The Police and the People (Oxford, 1970) p.196 for further definitions of counter-terror.

2 e.g. A.D. BduR L.3003. report of admin. of Châteaurenard on agents of Marquise of Eyragues, frim. III.

general schism and disaffection, perpetual fear of a return to the Year II and the creation of intense and violent disorder.

When dealing with the specific relationship between judicial counter-revolution and other forms of counter-revolution, distinctions are less difficult to make. It was the judicial reaction which permitted the social reaction and political violence to be so widespread and so uncontrollable. Can we say, then, that the Thermidorian judges encouraged insurrection and counter-revolution? The answer depends upon our definition of the term 'encouragement' within the context of the Year III. Basically, the judges did encourage all forms of counter-revolution by leaving their justiciables in no doubt that they would be exculpated if their crimes had been directed against former agents of the Terror. In addition, the juges de paix seldom even attempted to initiate justice against égorgeurs, refractory priests and royalist émigrés. There is virtually no case of a counter-terrorist assassin being sentenced by a judicial authority during the first half of the Year III¹, suggesting that the first phase of the judicial reaction was not so much a conspiracy of clemency as a conspiracy of organised inertia. Thus, the shared perception of counter-revolutionaries was that they would always be permitted by the local judicial

1 See A.N. D^{III} 325-328 Comptes rendus des tribunaux criminels (for vend-ventôse Year III) (Ardèche, Vaucluse, Basses-Alpes, Bouches-du-Rhône, Gard, Var). This is even more remarkable in the light of Cobb's estimate that some 420 persons were murdered by égorgeurs in the department of the Vaucluse, Gard and Bouches-du-Rhône in the Year III. Police and the People, op.cit. p.138.

institutions to act with impunity. The représentants did nothing to change this perception. Both public officials and government agents were prepared to allow a limited degree of self-regulatory violence; in fact, this was to make a virtue of a necessity because they would have been too weak to prevent the ravages of personal vendettas and the settling of old scores, especially after the unleashing of anti-jacobin hysteria in the spring of 1795.¹

This indulgence for violent self-help steadily increased throughout the Year III, having been intensified by the recrudescence of jacobin militancy in Paris and the Midi. Despite the Convention's hortatory proclamations to the French nation, telling them to put their divisions behind them and to distance themselves from the men who preached violent revenge, the représentants and their placemen were not naive enough to believe that a period of blood-letting was avoidable. There was no possibility of complete social concord in the Midi; all that could be expected was that the violence could be contained as isolated spasms of outrage. To allow the southerners to vent their hatreds was possibly regarded by some représentants as desirable. It united public opinion against a universal scapegoat. The best example of this is the jacobinphobia whipped up by the inflammatory propaganda of an ultra-reactionary group of représentants in the spring of 1795 (which had the cumulative effect of the grande peur in reverse)

1 However, Cobb, The Police and the People op.cit. (p.147) disagrees: 'the sabreurs....would have been rendered harmless had the judiciary made the smallest attempt to carry out government instructions'.

which brought the south-east to the verge of mass counter-terror. This scare-mongering unleashed a summer of obscene street and prison massacres, which, as Mathiez suggested, surpassed the worst excesses of the jacobin terror.¹ It was within this context that the judiciary faced the difficult task of attempting to bring the state of anarchy (to which it had indirectly contributed) under control without offending the local notables. Plain murder had to be gilded with legal sophistry; the populations of the southern communes had to be divested of the need for private vengeance. As the judges of Aix-en-Provence declared, the magistrates themselves would take up the burden of avenging an outraged society.

II

The intention of the reactionary judges after the massacres of the Year III was no longer to placate southern wrath by inaction and indulgence, but rather to institutionalise counter-terror. In this way the liquidation of jacobins could be patronised by men of property and, by extension, be made more respectable; it would be harnessed to the government's anti-jacobin chariot without disrupting social order or defiling the orthodoxy of l'empire des loix. Justice could be a manipulative force during the second half of the Thermidorian Reaction and the Directory, but it could not be

1 A. Mathiez 'La terreur blanche de l'an III' AhRf. 29 (1928), pp.401-423. See also P. Gaffarel 'Les massacres sanglants dans le département des Bouches-du-Rhône aux premiers mois de 1795'. Annales de la faculté des lettres d'Aix, vol.III (1909). P. Vaillandet 'Après le 9 thermidor; les débuts de la terreur blanche en Vaucluse'. AhRf 26 (1928) pp.109-127.

a disinterested one. The main impulsion behind the judicial reaction was that it was had to serve the conflicting special interest groups within the locality as well as having to create the illusion that it was the blind executor of the laws of the state. The judges themselves were inextricably bound to their own environment by recent events, by culture, by kinship bonds, by the demands of their profession and social class. By the end of the Year III, as the favourable electoral results of the Year IV were to show, the judges had won immense personal prestige but practically none for the republican regime.

To whom were the judges trying to appeal within the south-eastern region? What vested interests did they serve? Broadly we can say that the judges of the Year III supported anti-republican groups. The criminal and civil courts became the forums for the articulation of what one government agent in the region described as 'l'aversion passionnée que témoignent les citoyens aisés du Midi contre les jacobins'.¹ The leitmotifs of the judicial reaction were prevarication, sophistry and hypocrisy. It could not have been otherwise because the judges had to ingratiate themselves with the enfranchised local élite, retain the support of a succession of temperamental and politically diverse représentants-en-mission and guarantee the protection of counter-revolutionaries, whilst posturing as the stern executors of the nation's laws for the benefit of the jurists in Paris. Most importantly they had to maintain the imbalance of negligent

1 A.N. F⁷ 7171 (7915) report of vend. IV.

indulgence towards the égorgeurs and vigorous prosecution of jacobins. For their own safety as well as their prestige, the judges had to turn a blind eye to the activities of the strike force of the counter-terror: the peasants, brigands, draft-dodgers, deserters, returned émigrès and often priests and juges de paix. These gangs ruled the towns by intimidation and were often supported by members of the judiciary. The two most notorious examples of collaboration of the juges de paix and the égorgeurs were Henri Pellicot, the juges de paix of Aix who took part in the massacre of 29 jacobins in the town jail on 22 floréal Year III (11 May 1795) and Mousset of Tarascon who dined with the égorgeurs who had just butchered the jacobin prisoners in the château and then permitted them to go free without even a preliminary enquiry.¹ Yet there was more self-interest in this sort of collaboration than a simple fear for personal safety. For example, one of the frequent targets of the murder gangs were those who had purchased biens nationaux; most of the judges, as we shall later see, were also buyers, yet their properties remained immune to pillage and their families were free from harassment.

The judges could justify much of their biased sentences and intrigue during the Year III by invoking the chimera of the jacobin peril. But often they did not act swiftly enough to satisfy the murder gangs who had a low tolerance level for the inevitable delays of judicial courts. If the égorgeurs suspected even the merest hint

1 Calvet mss. 3026 (fol.130) F. Mercurin to Min. of Police, 16 thermidor III. See also AD BduR. L.3038, L.3051.

of clemency towards an ex-terrorist prisoner, then they felt it necessary to execute the prisoner themselves.¹ The normal corrective of the égorgeurs for judicial procrastination was to storm the prisoners' place of detention and murder them in their cells.² Jacobin prisoners were never murdered in the courtrooms - although they were jeered, threatened, spat upon whilst in the dock - the vestiges of respect for the inner sanctums of the process of law were just adequate enough to keep the killing business for outdoors or in the prison cell. Another frequent scene of massacre was the open road or the market square, usually when the prisoners were being transferred from one place to another.³ There, away from the fragile and illusory protection of the courtroom, the rumour could rapidly spread that the hated prisoners were being taken outside the community which they had persecuted, perhaps to stand trial before more lenient judges. The large number of street massacres in the Gard, Bouches-du-Rhône, Vaucluse and the Var demonstrated not only the vindictiveness of the community but also its impatience when it felt itself deprived of ultimate revenge. If we take as an example the imprisoned terrorist mayor of

- 1 A.N. D^{III} 30 The (purged) société populaire of Marseille called for the massacre of the Marseillais jacobins incarcerated at Aix because the criminal court was too slow, too formal and too faint hearted (1 floréal III). A massacre would terminate 'avec célérité ce débat trop longtemps prolongé entre l'opprimé qui demande vengeance et l'opresseur qui veut l'éviter'.
- 2 Although the anti-jacobin frenzy unleashed by the Toulon affair was generally accepted as the 'trigger' which led to the Tarascon prison massacre and the Fort St Jean massacre in Marseille, see A.D. BduR. L.3051 procès-verbal of Tarascon municipality.
- 3 C. Lucas 'Themes in southern violences after the 9 thermidor' in C. Lucas and G. Lewis (eds) Beyond the Terror (Oxford, 1983). pp.161-167.

Nîmes, Courbis, we can see how the relationship between 'legal' sentencing and violent self-help was clearly understood even by the victims:

'Il est certain qu'en nous traduisant de la citadelle au palais pour l'audience au tribunal nous serions égorgés; mais parvinssions-nous en sûreté devant le tribunal, les juges qui le composent, les jurés, les témoins, nos défenseurs officieux, n'auraient pas la liberté nécessaire pour remplir leurs fonctions; le jugement porteroit l'empreinte de la violence et de la contrainte, ou si ce jugement trompant le voeu des contre-révolutionnaires ne prononçait pas contre nous la peine capitale, nous serions massacrés aussitôt après le jugement, la menace nous en a été faite plusieurs fois'.¹

Courbis was right; by the time his letter reached the Convention he had been butchered along with fellow prisoners in the streets of Nîmes.²

The entire history of the judicial reaction in the south-east was characterised by this tension between the judges trying to work within the framework of what the law demanded and trying simultaneously to accommodate the often outrageous demands of the local community. Given the unique circumstances of the revolution in the south-east, it was a far easier task for the judges to betray the republic than to betray the local élite whose return to local pre-eminence had been facilitated by the représentants of the

1 A.N.D^{III} 86, 7 pluviôse III.

2 A.N. AF^{II} 197. For the response of the représentant Girot-Pozoult to this massacre, see proclamations of 6 ventôse III. 'Ces prévenus étoient sous l'empire de la loi; ils ne devoient être punis que d'après la loi; et cependant quatre entr'eux ont été massacrés au milieu de 300 hommes de la Garde Nationale et de la Gendarmerie'.

Thermidorian Convention. The announcement that there would be elections at the beginning of the Year IV made the judges' commitment to the locality even more paramount in their activities as trustees of the republic's laws. Being dependant upon the élite for votes, they had to tread a wary path between their two masters, the government and the men with the power to vote them in or out of office. The law of 25 brumaire Year III (15 November 1794) imposed upon the departmental criminal courts the responsibility of prosecuting returned émigrés. This increased the judges' dilemma and their problem of the division between local loyalty and rational duty. It was seen in microcosm during the panic of the spring of 1795 in the Bouches-du-Rhône when a gang of Aixois égorgeurs had gathered around the prisonhouse with the intention of forcibly liberating a group of 41 émigrés who had been captured by the much-hated and much-feared Army of Italy at Fréjus (Var). The president Ailhaud, came out of the courtroom to dissuade the égorgeurs from storming the prisonhouse; he did this by convincing them that such an action would only lead to the town being placed in a state of siege by the hated republican troops and that '....quelques terribles fussent ces décrets contre les émigrés, le tribunal criminel pallieroit de tout son pouvoir'.¹ Later that month the criminal court acquitted all of the émigrés.

The murder gangs would only permit captured terrorists to undergo trial by jury if they were certain that the death penalty was decided in advance. In addition, the judges usually had to

1 Roux-Alphéran, 'Journal historique', pp.23-24.

include several hours of public execration at the stake (poteau) before the prisoner mounted the scaffold. These verdicts and sentences had to be reached quickly and without equivocation with all rights to appeal denied. This formalisation of political extermination invested the term 'assassinat judiciaire' with a new and more sinister aspect in the critical vocabulary of republicans. When 22 former members of the revolutionary committee of Salon (Bouches-du-Rhône) went on trial in Aix, the witnesses, accused and defendants were subject to violent intimidation from the public gallery. (This was encouraged by the judges who frequently called a recess and exited to the anteroom of the court to deliberate for hours without clearing the court and leaving the prisoner in the dock).¹ The judges finally sentenced the seven most notorious terrorists to death, five minor officials to six years of imprisonment in irons and acquitted ten who had merely been denounced in Salon because they were acquainted with the main group of accused. All of those sentenced to death demanded an appeal as was their legal right. The public prosecutor, Casimir Constans, consulted the représentant Isnard about the possibility of appeal. Whilst awaiting a reply the crowd became incensed at the delay. They gathered outside the prisonhouse each night and chanted 'bourreaux! borreaux!', then attempted to storm the gates. When Isnard heard of the disturbances he recommended that Constans waive the right to appeal. Constans agreed and the president Ailhaud ordered that the prisoners be taken to Salon for execution. It was

1 For the details of the case see A.D. BduR L.3044-3047 (affaire de Salon).

only when this news was made known that the frenzy of the crowd abated and their ritual started. The Salonnais were marched around Aix in a torchlit procession, then, in chains to Salon surrounded by a cortege of howling women jabbing them with scissors and pitchforks. At Salon there was more public humiliation before they mounted the scaffold; the crowd demanded that they make a confession to the local priest. One of the prisoners, Jean-André David, cried out defiantly, 'il y a quelques jours que je me suis confessé à l'être suprême'. For his sacrilege the crowd dragged him down from the tumbril and placed him in a pillory for two hours; he was so severely beaten that he eventually knelt and begged God and the villagers to forgive him for his tyranny. He was then summarily guillotined amid collective rejoicing.

By the end of the Year III, the indulgence and corruptibility of the judges had enabled the émigrés to infiltrate the institutions of local power (the municipalities, the departmental administrations and directories, the purged sociétés populaires). This process helped to consolidate an institutionalised reaction which would gnaw away at the authority of central government in the region during the Directory. Reactionary judges tended to act with instinctual unanimity which often pre-empted the later, studied organisation of inter-departmental judicial cabals. In the main, the superior court judges did not squabble among themselves. Only on rare occasions, in departments such as the Drôme, were there cases of internal conflict. It would be too simple to use a cliché like 'trojan horse' to describe the relationship between the 'internal' counter-revolutionaries and their 'external' allies because as has been previously stated, they were not always working towards the same goals. Nevertheless, there was a tacit bond of collusion

between them, cemented in their joint support for the influential lobby of returned non-juring clergy.

In the traditionally catholic parishes of the south-east, the prestige of the bon curé was immense. No-one more than the parish priests was haloed with the martyrs' crown: during the Revolution they had seen their lands confiscated by the secular state and sold as auctioned lots; they had seen their church disestablished; they had been arrested, deported, executed, forced underground or into exile.¹ Yet they had survived, and during the Thermidorian Reaction, returned in droves to their re-opened churches. They were grudgingly accepted by the Thermidorian Convention which was forced to recognise the social reality of the Catholic revival. Forbidden to wear clerical vestments in public or to ring their churchbells, their comminatory sermons from the pulpit against the terrorists could often incite their congregations to murder. The refractories depicted the counter-terror as a return to the prelapsarian age: the end of the Terror had restored the dominion of God and had fructified the Earth. (One hitherto sterile woman in Sisteron (Basses-Alpes) was reported to have given birth to 5 children 'grâce à l'abolition du régime de la Terreur').² The ire of a non-juring priest, particularly in those areas of Provence which had undergone de-christianisation in the Year II, was often the death warrant for a former terrorist (or even a buyer of church lands) who was

1 See M. Vovelle 'Dé-christianisation provoquée et dé-christianisation spontanée dans le sud-est sous la Révolution française'. Bulletin de la société d'histoire moderne, 1964.

2 Journal de Marseille, 23 August 1796.

frequently depicted as an anti-christ who had usurped the patrimony of God.¹ Plenary indulgences were given to égorgeurs. Indeed, the relationship between counter-terrorist violence and spiritual propitiation is one which deserves further exploration by historians.

The judges' rôle in the protection of the non-juring priests from the full severity of the republic's laws became increasingly important towards the end of the Year III when the government's latitudinarianism disintegrated under the suspicion that the priests were the life and soul of the royalist movement. Deportation laws were reintroduced against the non-juring priests and the laws against the public manifestations of religious cults became more repressive. To avoid 'hubris' and the even more damning wrath of the congregations (especially the devoted women parishioners) the judges had to contrive all manner of tricks to avoid prosecuting the southern priests who blithely continued to toll their churchbells, organise processions to commemorate local saints, preach counter-revolutionary sermons and distribute communion to the faithful in open air masses.²

The judicial reaction was, in part, the product of the region's endemic political schisms, prejudices, private feuds and particularisms. Indeed, one could agree with Gwynne Lewis' analysis

1 See e.g. A.N. BB¹⁸ 317. Reports of Min. of Just. to Min. of Gen. Pol. on activities of refractory clergy preaching royalism around Alais (Gard).

2 See, e.g. A.N. BB¹⁸ 888^A report of judge Raphel to Min. of Justice, brumaire IV.

of the tortured history of the revolution in the Gard, that all forms of southern counter-revolution are directly related to indigenous conflicts, whether social, confessional, economic or political.¹ The influence of the royalist agents would not have been so great had they not been local men sensitive to the traditional sectarianism of the regions within which they operated. Thus southern counter-revolution after a Thermidor can be interpreted as the political manipulation of traditional, deep-seated conflicts. The Revolution had exacerbated the polarisation among rival families and social groups and intensified the violence of their feuds.

The judicial reaction also reflected the decay of public life in the Year III and later, under the Directory, the defeat of the authority of central government by determined local power groups. The Provençal region had been a pays d'état under the Ancien Regime with an influential and recalcitrant Parlement in Aix and a papal theocracy in Avignon and the Comtat-Venaissin. Pride in ancient privileges was strong among the aristocracy, gentry, property-owning and service bourgeoisie which is, arguably, why the region was so independently extreme throughout the revolution. It was always in the vanguard: Nîmes, Arles and Aix were among the first centres of

1 G. Lewis The Second Vendée: the continuity of counter-revolution in the department of the Gard (Oxford, 1978). See also J. Hood 'Revival and mutation of old rivalries in revolutionary France'. Past and Present 1979, no.82 pp.82-115, and for an excellent evaluation and synthesis of the available literature on the subject, Colin Lucas 'The problem of the Midi in the French Revolution'. T.R.H.S. 1978. pp 1-25 .

counter-revolutionary conspiracy; the Comtat-Venaissin was the most tenacious supporter of ultramontaniam in revolutionary France; the towns of the Midi, notably Marseille, had antedated Paris in the 'municipal revolutions' of 1789-1790; Avignon had been the scene of a large-scale prison massacre of 'moderates' almost a year before the September Massacres in Paris;¹ it was the federal contingent from Marseille which took the provincial lead in ousting the monarchy; the militancy of the Jacobin Club of Marseille was far in advance of the 'Mother' Club in Paris; it was the south-east which first raised the standard of the federalist revolt in 1793 and which mooted alternating schemes for southern kingdoms, southern federations and southern republics.

By the Year III this semi-autonomous region had degenerated into an amorphous patchwork of recrimination and discrimination, violence and brigandage, inter-communal and family feuding. Contemporary observers and theorists in the north attributed the violence to the scorching sun and the aridity of the soil which 'volcanised' southern heads;² they argued that no amount of wealth, education or fine living could exorcise these atavistic demons which haunted the southern psyche. This view tells us more

1 For an analysis of the various types of disorder in the early part of the Revolution see M. Vovelle 'Les Troubles sociaux en Provence, 1750-1792'. Actes du congrès des sociétés savantes (Tours, 1968).

2 e.g. A.N. AF^{III} 164. Directory's report to the Cinq-Cents, 24 fructidor VI: southern violence and political extremism was attributed to 'l'effet des circonstances et la nature du climat chaleureux'.

about the lingering influence of the ideas of Montaigne than it does about the educated eighteenth-century Frenchmen's appreciation of the collective mentalities in the south. The southerners themselves were well aware of the spoliation of the homelands by violence and disorder. Those who were most nostalgic in their laments portrayed the south-east as a land discovered by the Phoenicians who had taught them the arts of mercantile trading; they were succeeded by the Romans who gave them laws, administration, roads, aqueducts and bridges; then came Petrarch and the Italian settlers who gave their voices poetry and the succession of anti-popes. All of these lineages became crucially important throughout the Revolution: tension between trading interests and central government, religious division, changing nature of judicial institutions, oratory and propaganda, ethnic distinctiveness within a unified nation - these were the aspects of southern life which gave it a high profile throughout the Revolution. By 1795 the southern bourgeoisie were blaming the jacobins for the rupture of all aspects of traditional provincial life: they had assassinated the rich because of social envy and personal greed, they had abominated God's lieutenants and driven them from their flocks, they had caused personal heartbreak, dislocation of communities, even famine, pestilence, economic crisis - all because they despised the talented and industrious, lusted for blood and aspired to petty tyranny over their neighbours and each other.¹ The public prosecutor of the Gard's indictment against

1 e.g. A.N. D^{III} 343 The société populaire of Beaucaire (Gard) denounced the ex-terrorist Jean Borie as the 'vexateur de l'agriculture et du commerce, déprédateur de la fortune publique et l'organisateur de la famine'. Also A.N. AF^{II} 197 Isnard proclaimed to the citizens of Marseilles that the jacobins had 'anéanti le commerce.'

the former members of the Revolutionary Tribunal of Nîmes perpetuated the common prejudice: 'par un abus sacrilège de leurs fonctions, ils envoient avec sang-froid à l'échafaud des hommes vertueux dont le seul crime étoit d'être riche ou doué de talents'.¹

Counter-terrorist violence and royalist intrigue were most intense in the chef-lieux of the south-east where the criminal and civil courts of each department held their sessions. We also notice that the judiciary was more willing to collaborate with the murder gangs in those areas where the terrorist repression of the federalist revolt had been most intense: Marseille, Arles, Aix, Avignon, Tarascon, Nîmes, Carpentras, Toulon.² The co-ordination of their efforts resulted in a deadly quid pro quo on a massive scale. The correlation between the judicial reaction and violence established itself with some precision.

III

When did the reaction begin? It is arguable that a 'judicial reaction' began in Provence almost as soon as the Revolution had started; the conspiracy of Provence's leading Ancien Régime magistrate Pascalis in 1790 is one of the first examples of counter-revolution in France.³ Given that many of the reactionary

1 A.N. D^{III} 86 acte d'accusation contre Pallejai.

2 E. Baratier, G. Duby, E. Hildesheimer (eds.) Atlas historique: Provence, Comtat-Venaissin, Orange, Nice, Monaco (Paris 1969) map. 157 'Diffusion et répression du mouvement fédéraliste en 1793'.

3 E. Vingtrinier, La Contre-Révolution, 1789-1791 (Paris, 1925, 2 vols.) II, pp.230-241, pp.320-332. See also E. Camau, La Contre-Révolution en Provence (Paris, 1940), J. Viguier, Les débuts de la Révolution en Provence (Paris 1894).

southern judges of the Thermidorian and Directorial régimes had been associated with the Parlement of Provence, one can clearly perceive 'origins' in the earliest days of political upheaval. A second dimension was added with the removal of the papal law courts from Avignon and the eviction of the vice-legate after a powerful irredentist campaign. Many of the Vauclusian judges of the Year III were supporters of the papacy under whose regime they had learned their profession. It is also possible to distinguish an inchoate judicial reaction in the activities of the federalist tribunal populaire of Marseille which was also employed by the propertied and commercial classes as a weapon of retribution against the arrogance and incursions of the Jacobin Club on the rue Thubaneau.¹ Even in the months preceding the establishment of the Commission Populaire of Orange, the instrument of judicial terror in Provence, the terrorists of the Vaucluse had denounced the indulgence and leniency of the ordinary criminal courts towards the enemies of the republic.² The judicial reaction could be said to have started with the proclamation of the Convention's decree of 7 vendémiaire Year III (28 September 1794) which called for a general purge of all autorités constituées in the republic and the decree of 20 floréal Year III (9 May 1795) which entrusted the supervision of the law courts to the Comité de Législation and gave them the power to dismiss and appoint personnel through the medium of the

1 G. Guibal, Le Mouvement fédéraliste en Provence en 1793 (Paris, 1908). See also M. Kennedy, The Jacobin Club of Marseilles (Cornell, 1973). W. Scott, Terror and Repression in Revolutionary Marseilles. (London, 1973). P. Gaffarel, 'La terreur à Marseille' Annales de Provence (1913) x, pp.157-188.

2 A.N. F⁷ 4435 Maignet to C.S.P., 25 pluviôse II, A.D. Vaucluse 26¹⁷ circular of agent nat. of Apt, 4 floréal II.

représentants-en-mission. Therein lies the difference between the Thermidorian judicial reaction and that of the Directory: the judges were not submitted for the approbation of the local élite by the means of election.

The 'judicial reaction', which became so firmly implanted during the Directory, can therefore be interpreted on one level as a traditional form of provincial recalcitrance in the ancient judicial centres of a former pays d'état: a recalcitrance which one can constantly equate with the protection of the vested interests of the southern families who composed the élite. These tendencies re-emerged in 1795 because the grip of jacobin centralism had been broken and a greater degree of autonomy (most notably with the disestablishment of the Revolutionary Tribunal of Paris and the abolition of the Commission Populaire of Orange) had been granted to the provinces.

Anti-jacobinism, albeit an essentially negativist trend in local life, sometimes acted as a unifying force for traditionally antipathetic families, interests and even entire communes. In the department of the Bouches-du-Rhône the age-old rivalry between the legal and administrative centre of Aix and the commercial seaport of Marseille, which had been exacerbated under the Terror, dissolved temporarily in a united front led by the jeunes gens of each town. Both of these towns had declined during the Revolution.¹ Ironically, the rival mediterranean seaport of Toulon, as if in

1: E. Baratier (ed.), Histoire de la Provence (Toulouse, 1969) ch.xii. by M. Vovelle and Histoire d'Aix-en-Provence (Aix, 1977) chapter 'La Révolution à Aix' by B. Grissoïange and M. Vovelle, p.229.

expiation for the national betrayal in 1793, remained militantly jacobin, even throughout the Thermidorian reaction. Both of these important seaports were divested of the civic honour of being the chef-lieu of their respective departments in the Year III. In the Bouches-du-Rhône this was in retaliation for the Marseillais jacobins' forcible removal of the administration and judiciary from Aix in August 1792.¹ By a decree of the Convention (7 pluviôse III/26 January 1795) Aix was restored to its former status and remained as chef-lieu of the department until the Consulate. Throughout the Directory it was the nerve centre of judicial counter-revolution. The new seat of justice in the Var was Brignoles and that of the Vaucluse was Carpentras, after a sustained protest from the jacobins of Avignon, who felt extremely uneasy about the eastern part of the Vaucluse.² Nîmes retained its status and, by the end of the Year III, the criminal court of the Gard was the most notoriously anti-jacobin in the entire region.³ Judicial impartiality in such environments was impossible.

The Thermidorians sought to punish entire southern towns in a less brutal manner than their counterparts during the Year II. There were no Revolutionary tribunals, there was no burning of villages, plans of dechristianisation or removal of the names of

1 G. Guibal Le mouvement fédéraliste, p.4.

2 A.N. BB¹⁸ 888^B (3047,3459) petitions to Min. of Justice, pluviôse IV. Teste denounced the new seat of the criminal court as 'un cloaque infect et pestilent'.

3 A.N. D^{III} 86 The commissaire in Nîmes reported that it was generally known as 'le tribunal royaliste'. (28 messidor III).

rebellious communes (Marseille had been punished with the title Ville Sans Nom by Fréron and Toulon was renamed Port de la Montagne).¹ The nearest that the représentants of the Year III came to emulating the despised missions of the likes of Barras, Fréron and Maignet, was in their organisation of an anti-jacobin militia to halt the march of the Toulonnais towards Marseille in the spring of 1795. The arsenal workers of Toulon had captured the port and held it for four days; they had executed a government commissaire and evicted the représentants-en-mission; then they had decided to march on Marseille to put an end to the wholesale slaughter of their fellow patriotes in the western half of Provence. Isnard, Cadroy, Chambon, and Girot-Pozoul began a propaganda campaign to raise a volunteer force of property-owners to stop the 'anarchistes' of Toulon. Girot-Pozoul even went so far as to suggest that those who refused to enrol in the militia should be imprisoned as 'agents de la terreur'.² The response to their appeal was overwhelming and stood in stark contrast to the dearth of volunteers for service in the republican line armies, indicating the strength of local hatred and fear of a jacobin resurgence. Peasants, deserters, murder gangs, brigands and honnêtes gens from the Gard, Drôme, Hérault, Bouches-du-Rhône and the Vaucluse

1 See A. Dufraisse, 'La première mission de Fréron à Marseille'. Unpublished D&S Aix 1967. P. Gaffarel, 'Marseille sans nom' La Rev.fr. 1x (1911) and 'Le proconsulat de Barras et de Fréron'.

2 Calvet mss. 3026. (fol. 84). Girot-Pozoul to Admin. Dept. of Vaucluse, 7 prairial III. See also his proclamation 'Appel aux armes contre les Toulonnais', 6 prairial III.

assembled in Aix to hear the manic harangues of Isnard.¹ Yet the volunteer force led by the ultra-reactionary représentants was not needed; after some skirmishes at Cuges and Le Beausset, the motley jacobin contingent was scattered outside Aubagne by a regular force. Some 50 jacobins were killed and over 300 were taken prisoner. Like Auguis and Serres in Marseille in September 1794, the représentants used a military commission to prosecute the jacobin prisoners rather than the ordinary criminal court which could not act so irresistably. Within 24 hours the commission had sentenced 52 of the prisoners to death by shooting on the Plaine Saint Michel.² Fréron later denounced this action as a typical case of royalist overkill, conveniently ignoring the fact that he and Barras had ordered hundreds of similar executions during his first mission to the Midi.³ The aftermath of the repression was even more disastrous for the jacobins. They were massacred en masse by local murder gangs in the prisons of Tarascon and Marseille, whilst the forces of law and order stood idly by, spectating, indifferent, pleading their impotence.⁴

- 1 A.D. Vaucluse 7L7. Calvet mss. 3026 (fols. 110-130). A.N. A.F. ^{III}197. Isnard to the Convention, 6 messidor, III demanded 25,000F for personal expenses for having 'sauvé la république' and 120,000F for the purchase of arms for the volunteers.
- 2 Encyclopédie départementale des Bouches-du-Rhône (Marseille, 1929) v, p.75. See also Calvet mss. 1675 (fol.79), 3029,3030.
- 3 Fréron, Mémoire historique, pp.44-45.
- 4 A.N. D ^{III}18 30. For a formal indictment of Chambon and Cadroy, see BB ¹⁸177 (6916) report to Min. of Just., 28 ven. VII.

Following the failure of the Toulon jacobins the south-eastern counter-revolution intensified. The political geography of the region ossified into 'strongholds' and satellites of political pressure groups (mainly anti-jacobin) and were to remain in these fixed positions of entrenchment for the duration of the Directory. This stands out in contrast to the south-east between 1790-1794 when it was in a state of constant mutation and shifting political allegiances. An understanding of the topography of counter-revolution is, therefore, indispensable to an understanding of the judicial reaction during the Directory.

IV

The smaller mediterranean ports of the Var - La Ciotat, Bandol, Saint Tropez, Fréjus - were all so intransigently anti-jacobin that they were easily absorbed into the royalist camp. During the Thermidorian Reaction they were counter-revolutionary entrepôts which imported (and then re-exported when the government's représentants were changed at the end of the Year III) émigrés, priests and royalist spies from Genoa, Italy and Spain.¹ Inland, on the eastern frontier of the Var, there were no centres for xenophobic patriotism which were common on the war zones of France's northern frontiers: despite the presence of the republican armies,

¹ A.N. AF^{III} 41: Report of Year V to Directors said that, since Thermidor, there was mass-based support for émigrés in the Var: villagers frequently serenaded returned nobles.

the towns of Grasse¹ and Saint-Paul were centres of Catholic royalist conspiracy. Further north, in the impenetrable ranges of the Basses-Alpes, brigand bands swollen with deserters and outlaws constantly swooped to harass the supply columns of the regular line armies.² The stretch of territory along the river Durance between Sisteron and Manosque was vibrant with spies and agents provocateurs, recruiting peasants and draft-dodgers for the Bonne Cause. The mountains of upper Provence were havens for émigrés fleeing the republican backlashes of the Years IV and VI: in the Year VI especially, the Basses-Alpes was transformed into a refugee camp for those who had been fructidorisés. This reservoir of broken and leaderless royalist bands was permitted to roam free because the criminal court of the Basses-Alpes was one of the few south-eastern judicial institutions which remained unpurged by the Directory.

The geographical solar plexus of popular counter-terror in Provence was at the meeting place of its four departments. The compagnons du Soleil, de Jésus clustered around the towns of Manosque (Basses-Alpes), Pertuis (Vaucluse), Peyrolles and Jouques (Bouches-du-Rhône) and Rians (Var). This was a bocage hinterland infested with highly mobile counter-terrorists who could strike at towns like Aix and its surrounding district, then escape into the

1 See M. Vovelle and H. de Fontmichel, 'Deux notables provençaux sous la Révolution française' Provence historique xiv (1964), pp.182-203. for a case study of how the élite of Grasse responded to the Thermidorian Reaction.

2 Abbé J.M. Mauvel, Le Brigandage dans les Basses-Alpes (Marseille 1899). pp. 63-7

camouflage of the woods of La Sambuque and Cadarache.¹ Similarly, further south, along the border between the Var and the Bouches-du-Rhône, there stretched an unbroken frontier where it was virtually impossible to find one town or hamlet which had not been infiltrated and taken over by the murder gangs. The department of the Bouches-du-Rhône itself was strongly committed to the counter-terror, as was witnessed by the street and prison massacres in its towns during the Year III. There were some pockets of jacobin resistance in the Provençal region, notably in Toulon, Marseille², Arles, Avignon and Orange, but they tended to be driven underground by the ferocity of the summer of 1795 and the absence of any protection from the judges and juges de paix. The north-western part of the Bouches-du-Rhône even came to be known as la vendée méridionale with Tarascon as its centre.³ The number of jacobin republicans in Aix, as one contemporary observed, had been reduced to around 50, whereas the great majority were hostile moderates and royalists 'qui ne se déclarent pas hautement et qui feignent de vouloir la république et font la guerre aux

- 1 Y. Pavet, 'La Contre Révolution à Aix et dans le pays d'Aix de 1795 à 1802' (Unpublished mémoire de maîtrise, Aix-en-Provence, 1974). p. 85
- 2 For the emasculation of the jacobin movement in Marseille, see G. Martinet, 'L'éméute du 5 vendémiaire III: les débuts de la réaction thermidorienne' Actes du Congrès des sociétés savantes (Nice, 1965) and, by the same author, 'Quelques aspects de l'émigration dans le district de Marseille pendant l'an III' Information historique 2 (1961), pp.64-71.
- 3 Tarascon was a royalist point de ralliement in 1795, see below ch.VI p.273

terroristes'.¹ The eastern Gard had an anti-jacobin pedigree, having sent a bataillon to join up with the federalist troops of Marseille in 1793 and also during the general levée of property-owners and pères de famille during the Toulon crisis. The Revolution had exacerbated the divisions within this region; the Catholic revival of 1794-95 had forced the jacobins of the Gard to flee the left bank of the Rhône and seek refuge in the underground sanctuaries of Avignon or the predominantly protestant Orange.²

Within the department of the Vaucluse in 1795 there was an embittered situation similar in many ways to the civil war of 1790-1791 between irredentist 'patriotes' and loyalist 'papistes' which had only really been dampened down by the Terror.³ The Vaucluse was to prove even more schismatic than the Gard. The irreducible sectarianism of the Vaucluse was the legacy of the violent irredentist campaign in 1790-1791 and rather haphazard manufacture of the department in 1793 from the papal enclaves, parts of the Bouches-du-Rhône and the protestant principality of Orange with the intention of distancing the former pontifical states from the influence of the Marseille federalists. It was a microcosm of the general struggle throughout the south between the medieval inheritance of traditional autonomy (given concrete expression in

1 Roux-Alphéran, op.cit., p.27.

2 A.N. F⁷ 7109. petition to Min. of Justice on behalf of Jacobins of the Gard. A.N. F⁷ 7289. Report on origin of political divisions in Uzès.

3 See P. Charpenne, Les grands épisodes de la Révolution dans Avignon et le Comtat-Venaissin (Avignon, 1844, 2 vols) esp. vol.i. on the conflicts between 1789-1791.

the papal law courts, administration, the universities in Avignon and Orange) and the movement towards national unification, integration and homogeneity upheld by the jacobin republicans. The topographical contours of the divisions within the department can be taken broadly as a republican-dominated south-west (Avignon and its environs), a pro-royalist Haut Comtat and districts of Carpentras and Apt.¹ The rural mountainous regions, especially the Lubéron range, were devoted to a monarchial and papal restoration. The centre of counter-revolutionary initiative was the new chef-lieu of Carpentras.

This landscape, which enveloped so much private vendetta and political warfare, was further devastated by the harvest failure of 1794 and the phenomenally cold winter which followed. The Rhône estuary was frozen for months, disrupting the transportation and distribution of grain. In Marseille the citizens were issued with rationing cards. One of the great sources of wealth in Provence - olive oil - was lost following the olive grove blight of 1795. This had dire consequences for the rich oil merchants in the trading towns. The maritime trade of Toulon and Marseille was in sharp decline.² Dearth honed class as well as political hatreds in the south: the jacobins were made the scapegoats for natural

1 M. Lapied, 'Attitudes collectives et analyse des données: les clivages politiques en Comtat-Venaissin sous la Révolution, Annales du Midi 95 (1983), pp.67-89.

2 Ch. Carrière, 'Les entrées de navires dans le Port de Marseille pendant la Révolution' Provence historique (1957) p.207, The total number of commercial vessels entering the Port of Marseille had declined from 1,809 in 1789 to 339 in 1793 to an average of 77 between 1794-1795.

disasters. It was, therefore, important to the local élites, at a time of economic crisis, general misery and a rising rate of crimes against property, that they have men sympathetic to their 'cause' in the ranks of the judiciary to prevent the jacobins from making political capital from the condition of the artisans and peasants. The judges (many of whom spent some time during the Year III as local administrators) would not have been perceived by the poor as providers of subsistences in a time of dearth in any case. As the judges' correspondence with the ministries and the représentants-en-mission suggests, the judges exaggerated their own misery during the economic crisis of 1795-1795 (non-payment of salaries, inadequate heating in the courtrooms, shortages of paper and ink for the clerk, inability to re-imburse witnesses and jurors for travelling expenses and loss of earnings, fetid and overcrowded prisonhouses etc.) to divert the attention of meddling commissaires away from their intrigues and biased sentences. Thus, the supercilious intriguer of the criminal court of the Bouches-du-Rhône, Antoine Ailhaud, retorted to an agitated enquiry by the Minister of Justice about the conduct of his court that, if the ministry wanted fair justice then it ought to consider paying fair salaries and expenses.¹

V

Not only was the judicial reaction the symptom of a divided and violent locality, it was also a product of the general Thermidorian policy of decentralisation. The reaction would not

1 A.N. BB¹⁸ 176; see also AD BduR. L.173. (judicial expenses and salaries).

have existed without a clear set of government initiatives. We have already discussed the importance of the subjectivity of the représentants-en-mission. Another prerequisite was the Convention's policy of devolving the 'punitive will' of the Revolution to the provinces. Terrorists were no longer to be punished in Paris or by military/'popular' commissions; they were to be punished in the sight of the people whom they had tyrannized by the new judges who now represented the aggrieved. The law of 4 messidor Year III (22 June 1795) empowered the ordinary criminal courts with the prosecution of those convicted of the crimes of murder, assassination, extortion, abuse of power, committed since September 1792. This was a mandate to liquidate terrorists by legalised retribution.¹ It was this law which brought the personnel of the Commission Populaire of Orange back from Paris to stand trial for murder before their 'juges naturels' in Avignon.² This trial was the realisation of all the prejudices of the Thermidorian reaction, especially the belief in compensating the relatives of victims of the Terror with show trials open to the public in the locality in which their 'crimes' had been committed. The personnel of the Commission had a great deal of expiation to undergo in Avignon,

- 1 See e.g., A.N. D^{III} 30 petition of soc.pop. of Marseille to the Convention, demanding the return of the city's leading jacobins for trial... 'dans le lieu qui a été le théâtre de tous les crimes dont ils se sont couverts, car il n'est presque aucun de nos concitoyens qui n'ait souffert de leur vexation. Les uns demandent une juste vengeance pour la mort d'un père, d'une mère ou d'un fils, les autres d'un époux, d'un parent ou d'un ami'.
- 2 A.D. Vaucluse 8 L.33 Personnel of Comm. Pop. of Orange were almost all southerners: Fauvety (Gard), Roman-Fonrosa (Drôme) Fernex (Lyon), Viot (Drôme), Benet (Orange, Vaucluse), Ragot (Lyon), Barjonel (Carpentras, Vaucluse) Cottier-Jullien (Avignon), Meleret (Drôme).

given that it had been a fearful instrument of the 'Great Terror' in the south-east, consuming some 332 victims, often on the basis of circumstantial or non-existent evidence, within a period of three months.¹

Ironically, the Thermidorian judiciary in the south-east was to play the leading rôle in the destruction of those who had operated the 'legal' terror of the Year II. The trial of the personnel of Orange removed the dividing line between private vengeance and the execution of the criminal law ostensibly based upon the criminal justice codes of 1791. Even the choice of judges stressed the personalised nature of the trial: the public prosecutor Antoine Curnier, although a moderate republican, had been a prisoner of the Commission and was due to be guillotined on the day when news of its abolition reached Orange.² The president, Louis Raphel, was an associate of the Commission's arch-enemy, Rovère, who had worked all the means at his disposal to have the personnel indicted and returned to the Vaucluse.³ Two of the prosecuting judges, Félix and Gluais, were also creatures of Rovère, who had profited from his mission during the Year II when he and Poultier trafficked

- 1 A.N. F⁷ 4435. Fauvety, a judge on the Commission, wrote to Payan, the agent national of Paris that they had executed more traitors in 6 days than the Revolutionary Tribunal in Nîmes had done in 6 months.
- 2 A. Aulard Receuil des Actes, xv, p.547. and A.D. Vaucluse L VIII (33).
- 3 For Rovère's denunciation of Maignet and the personnel of Commission Populaire ('qui lèchaient la guillotine avec plus de plaisir que les chiens ne lèchent la brioche',) see A.D.V. 8 L.17 (5 fruct. II).

in biens nationaux. Another of the judges, Joseph Collet, was a former magistrate in the papal courts and had distinct royalist sympathies.

At several points in the trial, the rage of the local inhabitants intruded upon the due process of law. Initially the personnel of the Commission were rounded up by Debry and sent to Paris to be arraigned before the Revolutionary Tribunal. Whilst passing through Lyon one of the judges, a former silk weaver from the town called Fernex, was recognised by the widow of one of his victims who started to attack him: a crowd gathered, the judge's escort retired circumspectly as the mob began to mutilate him; his body was then thrown in the Rhône and harpooned by a bargeworker.¹ When the judges actually returned to Avignon, a huge armed escort was needed to protect them from the mob. In the evening the gendarmerie had to fight a pitched battle with the local compagnie du Soleil to prevent them storming the prison and lynching the members of the Commission.² Raphael, the presiding judge, refused to hold the trial in camera and called a special jury for the occasion. He could not have a secret trial (although the law of 8 nivôse III/28 December 1794 imposed upon him the duty to close the doors to the public if he suspected 'fermentation') because it would not have been tolerated by the community. Raphael had to take into account the fact that the trial was a public spectacle in which some

1 P. Vailland, 'Le procès des juges de la commission populaire d'Orange'. AhRf, 26 (1928). pp. 137f.

2 Calvet mss. 2981, 2530. A.D. Vaucluse 7 L.77. Report of captain of the gendarmerie, 2 messidor III.

villagers had travelled 60 kilometres to participate. The desire for openness betrayed a fear of alienating the community. During the trial the responses of the accused were drowned in a cacophony of jeers and threats; the relatives of their victims lunged at them, spat upon them, threw rocks at them when they tried to answer questions. Another concession which the judges made to the wrath of the public gallery was to leave the accused alone in the courtroom for hours, with only the mayor of Avignon and the gendarmerie trying to protect the chained men.

All of the judges predictably received capital sentences; only the non-judicial personnel received lesser sentences: the secretary Cottier-Jullian, the clerk Nappier and the factotum Dubousquet. Nappier had the misfortune of being sentenced to six hours of public humiliation at the stake in addition to his twelve years in irons. He was then butchered for backchatting the incensed crowd. The juge de paix of Avignon refused to launch an investigation into the murder of Nappier on the grounds that the deed had been committed by that ubiquitous 'poignée d'étrangers' which did so much to alleviate the investigative work-loads of the southern juges de paix throughout the Year III. Cottier-Jullian, who was sentenced several days later, terrified at sharing the fate of Nappier, requested that his six hour session of public pillory be added to his four year jail sentence: the judges granted his request ungenerously, commuting his pillory to a period of twenty years of hard labour.¹ It was small wonder that the prosecuting judges

1 Vaillandet 'Procès', p.162. Cottier-Jullian was later amnestied by the government on the grounds that the prosecution had acted with 'la partialité la plus révoltante'.

would later be roundly condemned for their biased conduct of the trial. During the hearing, Curnier had invited the public gallery to make 'spontaneous' denunciations when the witnesses who had been called failed to appear. The president of the court also flatly refused the accused an appeal for a retrial before another tribunal as was their right.

The conduct of the trial highlighted the Thermidorian's perception of the agents of the Terror: they believed that it was hypocritical of them to demand normal legal forms when they had granted none themselves. It is clear that Raphel believed that the personnel of the Commission were fortunate even to have been put through the motions of a court trial. The members of the Commission were indicted on several counts which would serve as a thematic model for all trials of former terrorists throughout the judicial reaction: conspiracy in a grand Robespierriest plan 'd'asservir la France', corrupt abuse of personal power and deliberate corruption of legal forms, personal immorality, ambition, cruelty and bloodthirstiness. The indictments on the charge of conspiracy were the personal additions of Raphel and had not originally been included in Curnier's indictment: this in itself was a vice of form. The categories of indictment denouncing the personal morality of the judges were intended as rabble-rousers and followed closely the tirades which Rovère had made in the Convention: the members of the Commission were portrayed as barbarians who had sent senile octogenarians and groups of nuns to the guillotine; details of their expenses for food and drink were trotted out: they were accused as debauchees, gluttons, perverts, frauds. Raphel told the gallery that they had robbed their victims of their valuables in order to pay for their sybaritic lifestyles. For Raphel their fate was a

'vengeance légitime' and Curnier indicted them 'au nom de la loi qui protège le malheureux, qui compatit aux misères de l'humanité, qui respecte la vieillesse...'.¹

The trial of the judges of the Revolutionary Tribunal of the Gard was conducted in the same air of sanctimonious hypocrisy. In this case, the représentant Olivier-Gerente had ensured that they would be tried in Nîmes as had been requested by so many of the surrounding communes.² In this case the president of the criminal court was Cazalis who had been drawn from the Rovère menagerie. The trial was virtually identical to that of the members of the Commission Populaire: manipulation of the evidence, a 'packed' special jury, intimidations of defendants' witnesses, extreme partiality in the instructions and interjections of the presiding judges, refusal of appeal despite a plea by the defendants to the Comité de Législation and extremely harsh sentences. On the 28 messidor Year III (16 July 1795) the court sentenced the ex-president Pallejai and the judge Pellissier to death, another three (Riffard, Rame, Beniqué) to deportation, Bonisoly was sentenced to life imprisonment, Gisquet to six years in irons and six hours at the stake.³ Bertrand, the former public prosecutor

1 A.D. Vaucluse 7 L.77, acte d'accusation and supplementary indictments.

2 A.N. D^{III} 86, see e.g., petition of the sociétés populaires régénérées of Saint Hyppolite, (3 brum. III), of Saint-Jean-du-Gard (9 floréal III) and Brion (25 prairial III); for specific denunciations of the rôle of Jean Borie and Courbis see A.N. D^{III} 343-344, soc.pop. of Beaucaire.

3 A.N. D^{III} 86, acte d'accusation and résumé of President.

of the Revolutionary Tribunal of Nîmes, had already been massacred in Nîmes, as had been most of the Tribunal's leading dénonciateurs and, of course, Courbis who had been accused of using the Tribunal to rid himself of his enemies.¹ Fortunately for Pallejai and Pellissier, the government intervened with a political amnesty following the post-vendémiaire anti-royalist crackdown.

The 'assassinat judiciaire' was clearly in competition with more traditional structures of violent communal redress throughout the Year III. The Terror had made the local inhabitants suspicious of the workings of law courts, therefore the Thermidorian judges had to exaggerate in everything in order to win their trust. The anti-jacobin laws of 5 ventôse Year III (23 February 1795) had confined ex-terrorist agents to their native communes under the surveillance of the agent national, upon whom was imposed the special duty of denouncing those whom he suspected of regretting the 'tyrannie décemvirale'. This virtual inversion of the repealed law of suspects not only immobilised and ostracised the southern jacobins, it made them an easy prey for the marauding slaughtermen. It was for these reasons that the représentants like Olivier-Gerente demanded the immediate trials of leading terrorists in their own communes which would, they hoped, 'ôter tout prétexte d'agiter le peuple'.²

1 See also, A.N. F^{1b} II Gard I 'Rapport..... sur les meurtres commis dans ce département depuis le 9 thermidor'. e.g. massacre of Courbis, Nîmes, 23 flor. III, murder of Pascalet (dénonciateur) Uzès, 28 pr. III, shooting of Tournels, Beaucaire, 17 messidor III, massacre of jacobin prisoners being transferred between Orange and Port St Esprit, 8 prairial III.

2 A.N. D^{III} 86 arrêté of 11 pluviôse III.

Yet the 'peuple' wanted more than a mere death sentence; they wanted to see their former tormenters humiliated by the relatives of their victims, they wanted confessions of guilt from the scaffold and a repudiation of the 'evil men' with whom they had collaborated. The trial and public executions of ex-terrorists of the Year III bore all the ritualism of a medieval morality play. To accentuate their previous bloody deeds, those convicted of 'terrorist' crimes were obliged to wear red shirts on the day of their executions. During these show trials it became a familiar tactic of the reactionary judges to induce the jacobin defendants to renege upon their accomplices and fellow terrorists. Raphel had tricked Cottier-Jullian into denouncing Barjavel for having instructed him to tamper with evidence. For this Raphel spared him his life. By turning the jacobins against each other the judges hoped to expose their much-vaunted fraternal solidarity as a sham and show them to be what the Thermidorian propaganda had said they were: disloyal self-seekers prepared to cut each others' throats for personal gain or, in this case, salvation. (The judges could already point to the in-fighting which had erupted in Avignon between Rovère's société accapareuse on the one hand and the Barjavel-Moreau-Maignet group on the other).

The major coup of the judges, however, was the indictment of the most notorious terrorist in the Bouches-du-Rhône on the evidence of his erstwhile colleague Emeric, the former ultra-jacobin mayor of Aix. In this case it was Ailhaud and the public prosecutor of the Bouches-du-Rhône, Casimir Constans, who drove the wedge between the former allies. The trial of Louis Isoard came at the end of the Year III, a fitting epilogue to the process of de-terrorisation which had been inaugurated by the représentants Auguis and Serrès in September 1794 following the arrest of the leaders of the Jacobin

Club of Marseille. By the time of Isoard's trial the 28 leading members of the Club were still incarcerated in Amiens in the north, whilst the rank-and-file had perished in the prison massacres of Aix and Fort Saint-Jean between May and June 1795.¹ Louis Isoard was indeed the prize catch for the judges of Aix, and one whose trial had been eagerly anticipated. He had been, like so many southern jacobins, a member of the Oratorian college; during the Revolution he was the most formidable of the presidents of the Jacobin Club of Marseille, a procureur of the commune of Marseille, president of the Comité révolutionnaire and dedicated opponent of federalism. An arrest warrant was issued against him on 19 fructidor Year III (5 September 1795); he was captured in hiding in Avignon and hastily transferred to Aix without being interrogated by a juge de paix and without pleading his case before a jury d'accusation. He was refused his right to opt for a neighbouring criminal court.² The bill of indictment against him enclosed eight separate charges relating to his activities during the Terror: complicity in murder, incitement to assassination of the rich of Marseille, breaches of public order, abuse of public power, provocation of civil war in the locality, mooted plans of mass murder of émigrés, extortion by violence and theft of funds.³ Isoard was not just another petty tyrant, but a figure who inspired

1 A.D. BduR. L.3048, massacre du Fort St Jean (117 pieces), A.D. BduR. L.3038, Troubles de Tarascon 1793- an III, A.D. BduR. L.3051 assassinats commis au château de Tarascon.

2 A.D. BduR. L.3031 jugements isolés, see also A.N. D^{III} 29.

3 A.D. BduR. L.3037 acte d'accusation contre Louis-François-Dominique Isoard.

genuine dread in the Bouches-du-Rhône: 'on ne peut prononcer son nom', declared Constans, 'sans exciter ce mouvement de crainte qu'on éprouve à l'approche inattendue d'un grand danger'.¹ Constans' most damning gravamen was that Isoard had planned the mass murder of the merchants of Marseille and was only prevented from executing his plans by the explosion of federalist revolt. This was a difficult charge to corroborate as there was no written evidence of Isoard's imputed plan. Constans then bargained with the captured Emeric who was finally inveigled into testifying that Isoard had indeed harboured such plans. Isoard denounced Emeric as a coward trying to save his head and then refused to recognise the legitimacy of the court. After his appeal was inevitably rejected, he stoically acquiesced in his fate. An observer reported that he marched to the scaffold at the Place des Prêcheurs in Aix' defiantly singing the Marseillaise at the crowd of spectators; he scoffed at the attempt of a priest to give him benediction and refused to confess; as he passed under the guillotine's blade he shouted out 'Vive la République! Je meurs innocent!'² With the execution of Isoard, the southern jacobins had lost their foremost chieftain.

VI

The complement to the 'assassinat judiciaire' in the Year III was the judicial cover-up. Initially, the judges' policy of non-involvement in the everyday endemic killings and beatings which

1 A.D. BduR. L.3037 1st hearing (29 fructidor III) acte d'accusation.

2 Roux-Alphéran, 'Journal historique' p.54. See also A.N. D^{III} 29 (Trial of Isoard).

went on in practically every commune in the south-east was tolerable to the government, but the prison and street massacres were so outrageous that they became a national scandal. The prison massacres at Lyon (4-6 April 1795), Aix (11 May 1795), Marseille (5 June 1795), Tarascon (24-25 May 1795 and 20-21 June 1795) and Lambesc (1 July 1795) together with the massacre of transferred prisoners between Orange and Port Saint Esprit (Gard) on 27 May 1795 and the street massacres in Lyon, Aix and Nîmes concentrated the horrified attention of the whole of France upon the region. Spies and agents were dispatched by the Comité de Salut Public, commissions of enquiry were set up, représentants were recalled and replaced by more moderate Thermidorians such as Boursault and Goupilleau. Some of the représentants had been directly compromised in these murders, most notably Chambon with the Aix prison massacre and Cadroy with the murder of 119 jacobin prisoners in the Fort Saint Jean.¹ It was discovered that the massacres had been planned well in advance by the local égorgeurs who had boasted in the cafés of Marseille of their intentions.² Cadroy forbade the military commander of the town to make any arrests after he had ordered the égorgeurs to call a halt to the massacre. Charges similar to this were also made against Girot-Pozoult and Olivier-Gerente following the massacres in the Gard.³ At no point after any of these massacres did the local juges de paix open

1 See A.D. BduR. L.3051. Warning letters of the deputy of the BduR, Durand de Maillaine to his constituents about reactions in the Convention, 20 pr.III.

2 See Fréron, Mémoire historique.

3 A.N. BB¹⁸ 893 evidence of Chayard.

preliminary enquiries or conduct interrogations. The Pont-Saint-Esprit massacre was covered up by the Avignon directeur du jury Marcellin in collaboration with the agent national Jamet, who would later be appointed as public prosecutor of the Vaucluse by Boursault.¹ Indeed there was an unbroken chain of connivance at these outrages from the représentant to the local commissaire de police. The Fort Saint Jean massacre, for example, involved the foreknowledge of Cadroy, and even his intervention when he felt that enough killing had been done; the culpable inertia of the judiciary and the judicial police force who did nothing either to avert the massacre or to hunt down, arrest and prosecute its authors; the collaboration of the commandant and garrison of the fort who opened the gates for the égorgeurs and who indicated the jacobins' cells by daubing them with red paint.² The Aix and Tarascon prison massacres, carried out during the mission of Chambon, involved the premeditated co-ordination of the juges de paix, the massacreurs, the municipal officers and the garrison of the château.³ The municipal officers of Tarascon did not even take the trouble to report the event until six hours after it had taken place, permitting the massacreurs to dine with the juges de paix before making their escape. Afterwards the juges de paix joined in a macabre, blood-soaked farandole through the streets of the town when

1 Calvet mss. 2510 see also below pp.114; A.D. Vaucluse 7L1., A.N. BB¹⁸ 893.

2 G. Martinet, 'Note sur la massacre du Fort Saint Jean'. Provincia, April 1952, p.65.

3 A.D. BduR. L.3051 report of 8 prairial IV. Calvet mss. 1675 (fol.79).

the last of the victims had been jettisoned from the watchtower.¹ Like the juges de paix of Aix and Avignon, the Tarascon incumbent blamed 'des étrangers' for the deed despite the fact that, during the first massacre, those taking part were known Tarascon men settling scores with known Tarascon jacobins. It was a precise, premeditated attack, followed up by a second equally brutal attack by égorgeurs from the surrounding villages who had come to dispose of the jacobins from their communes who were known (the lists of surviving prisoners had been posted all over their villages) to have been incarcerated in the tower.² In the interval between these two massacres the garrison was not changed and no security precautions were taken despite the fact that they had been demanded by the government. In fact the second wave of égorgeurs had arrived in Tarascon in the afternoon 'et avaient fait publiquement leur complot et leur marché partout'.³

The prison and street massacres brought about a temporary division within the judicial structure. The judges in the superior courts had publicly to repudiate the massacres and appear to be doing something about initiating the search for the authors, whereas the juges de paix in the communes could make no such public protestations, being entirely the creatures of the locality and the murder gangs. The initiatory part of the judiciary was, for the

1 A.N. BB¹⁸ 177. report of brumaire VIII; Calvet mss. 1675, 3030.

2 A.N. BB¹⁸ 177. procès-verbal, messidor VI (for re-trial).

3 A.N. BB¹⁸ 177 procès-verbal of commissaire municipal of Tarascon, 4 messidor III.

second half of the Year III, severed from the prosecuting element. This immobilised the operations of justice. It also provided the superior court judges with an alibi for the extremely low number of égorgeurs being brought before them throughout the summer of 1795. The public prosecutors were unscrupulous in the way in which they denounced the 'pusillanimous' juges de paix for their inaction. The juges de paix in their turn could indicate the fears of witnesses to come forward to testify. As Casimir Constans, who was a leading exponent of the judicial reaction in the south-east until his dismissal in the Year IV, disclaimed with characteristic hypocrisy:

'...c'est aux juges de paix seuls qu'il faut attribuer l'impunité des assassinats...Quel est le devoir d'un accusateur public? C'est d'exciter le zèle des juges de paix, de les surveiller et d'accuser les coupables qui sont désignés par les témoins. Aucun délit n'est venu à ma connaissance que je n'aie provoqué la poursuite. Que pouvais-je faire de plus? Était-ce à ordonner des mesures répressives autres que celles ordonnées par la loi?'.¹

Clearly the public prosecutor was failing in his duty, as the published statistics of the number of massacres which had taken place in the Bouches-du-Rhône during the Thermidorian Reaction would later demonstrate.² The plausible, open-handed manner of Constans, beneath which one instinctively feels mockery of the central authorities, was typical of the disclaimers of the Thermidorian judiciary. By transferring blame onto the junior members of their

1 Quoted in Fréron Mémoire historique (pièces justificatives) pp.180-183. (n).

2 A.N. BB¹⁸ 180 (Lists for Aix, Aubagne, Arles, Salon, Tarascon, Eygalières, Lambesc).

institution and to society at large (represented by the witnesses) they created the illusion that they were both powerless and blameless. Yet, as even Constans concedes, it was the duty of all public prosecutors to activate the judicial police forces. They were covering up their own cover-ups by webs of intrigue. Even the moderate représentant Boursault on mission in the Vaucluse admitted that, in the Provençal departments, 'l'inactivité des tribunaux est l'effet d'une volonté arbitraire pour sauver les coupables.'¹

VII

The indulgence of the judges and représentants towards counter-revolutionaries did not always manifest itself in the violent ways described above. Together with the local administrative authorities they all worked in harness to ensure the maximum exploitation of the government's ill-fated amnesties. Perhaps the most abused of these decrees was that of 22 nivôse Year III (11 January 1795) which permitted exiled cultivateurs and artisans to return to France or their native commune and have their names removed from the list of émigrés which hitherto had consigned them to civil death and deprived them of their property and the revenues accruing from it. The striking of names was done on a provisional basis by the local departmental administration, upon the production of eight witnesses signatures testifying to the status of the émigré. The abuses of this system were multiple. Royalist émigrés and former federalist landowners were declared as

1 A.N. D^{III} 292. to comité de législation, 20 therm. III.

cultivateurs. Pastoret, a former magistrate at the Parlement of Aix and an activist during the federalist revolt, was declared as an 'ouvrier' in order that he might have his political, civil and proprietary rights restored; in the Year IV Pastoret was elected as president of the departmental administration of the Bouches-du-Rhône.¹ Many of the ex-émigré judges who would serve in the law courts of the Directory were 'reintegrated' in this way. Some of them, such as the royalist supporter, Féraud of Arles, established agencies which enabled returning émigrés and ex-federalists to have their names removed from the hated list and to advise them on the best means of reclaiming their confiscated lands.² The final decision on definitive removal (radiation définitive) from the list was the prerogative of the Comité de Législation which tended to act upon the recommendation of the représentant-en-mission. It was the représentants who were largely responsible for restoring the ex-émigré judges of the Thermidorian period to full civic status, enabling them to present themselves for election at the assemblies of the Year IV.

The représentants were also involved in the sensitive process of returning émigré property to their original owners. Some représentants, such as Durand de Maillane, permitted émigrés to bring civil actions against former jacobins and buyers of biens nationaux on the grounds that it had been corruptly and fraudulently

1 A.N. BB¹⁸ 174 (affaire Pastoret, an IV).

2 Roux-Alphéran, Journal historique. A black market developed around fake evidence certificates which the judicial police did nothing to discourage pp. 28 - 36.

acquired.¹ Therefore, to a limited extent, the civil courts became involved in the judicial reaction of the Year III. This introduction of the civil court judges into the reactionary process was inadvertently brought about by the Convention which introduced legislation to lift many of the sequestration orders on the property of émigrés and suspects (law of 11 brumaire III) and ordered the re-examination of cases of confiscated property which had emanated from institutions of revolutionary justice during the Terror (21 prairial III).² However, the civil court judges were far less generous towards émigrés when dealing with property-based actions than they were when dealing with anti-jacobin violence and murder during their sessions in the criminal courts. Their circumspection was due to the fact that many of them had purchased sequestered lands at public auctions during the Year II, especially during the mission of Rovère and Poultier. It is in the civil courts that one can observe the greatest tension between the judges' personal interests and those of the local élite. Their characteristic response to such dilemmas was procrastination. Consequently, the restitution of property during the Year III to returned émigrés was an often ponderous business, lacking the clarity of bias to be found in the dealings of the criminal courts. Increasingly the émigrés turned to the représentants to demand a simple annulment of the original sale of their properties by the jacobin authorities.

1 Mathiez, 'La Terreur blanche' p.405.

2 See e.g., A.N. D^{III} 30 compensation of veuve Barras of Arles, whose husband was shot by firing squad in Lyon in 1793.

The major rôle of the civil courts in the attempted reversal of the revolutionary land settlement was in granting speedy annulments of divorces which had taken place during the Year II. Many federalists and émigrés had divorced their wives in order to protect their property whilst in exile. 'Alors le divorce', petitioned a lobby from the Gard, 'devint pour nos femmes l'unique abri sous lequel elles pouvaient espérer de trouver leur sûreté et de conserver leur liberté et leurs biens'¹. The Year III in the south-east was, therefore, characterised by the termination of a great many of these 'divorces of convenience' and remarriages before the altars of non-juring priests. Another means of providing legal aid to the returned émigrés was for the civil judges to rule in their favour when they brought actions against jacobin tax collectors on the grounds that they had levied exorbitant forced loans by intimidation. These rulings perpetuated the widely-held view that jacobin officials were motivated by the most invidious forms of social envy and that the examples ought to be made of those who had attempted to defraud their social betters. Yet there were no clear political guidelines on these matters; a dangerous amount of discretion was left to the presiding judge. It was also difficult to find means of indemnifying the plaintiff, given that most leading jacobins had been locked up, assassinated or forced into hiding. Many of those under police surveillance were insolvent due to unemployment; others were resolved to pay no compensation for

1 A.N. D^{III} 86 'Les divorcés du Gard' to Convention, 16 floréal III. They claimed that the agent national Jean Borie had snatched their children during their exile in order to try to blackmail their divorced wives into remarrying men of patriotic stamp.

carrying out what they considered to be their patriotic duty. A good deal of anti-jacobin violence originated in the frustration which these plaintiffs felt at the difficulties in obtaining monetary compensation. Thus the judges of the civil court of Orange complained to the Comité de Législation that it could not cope with the inundation of civil actions brought against the tax collectors and sequestrators associated with the Commission Populaire of Orange and that huge indemnities were being demanded for trivial misdemeanors.¹

The Thermidorian reaction revived a sense of local community which was inimical to the revolutionary settlement. It was counter-revolutionary because its schemes of selective compensation were undertaken at the expense of the jacobins. Fines collected from former terrorist officials were usually distributed to the wives of the victims of revolutionary justice. The municipality of Carpentras, under the presidency of the royalist Meissonnier, ordered the arrest of all former terrorist agents of the town, divested them of their wealth and used the proceeds to pay a monthly subvention to the families who were considered by the municipality to have suffered under the 'tyrannie décemvirale'.² Public appeals were often made to allieviate the hardship of the victims. The représentant Jean Debry spent half of his time rooting out jacobinism in the Vaucluse and the other half petitioning the local authorities and central government for financial aid to begin

1 A.N. D^{III} 293/19 flor. III.

2 A.N. D^{III} 293 Etat nominatif des malheureuses familles privées de leur soutien par des jugements des tribunaux sanguinaires.

the reconstruction of the town of Bédoin (Vaucluse) which had been razed upon the orders of Maignet.¹

A Directors' spy, looking back with hindsight upon the political effect of the représentants and their reactionary placemen, recognised that the activities of the Year III had utterly transformed the perceptions of the southerners:

'La réaction thermidorienne, en plaçant dans les administrations et les tribunaux du Midi les hommes les plus anti-républicains, en punissant l'opinion comme le crime, changea tout à coup la conduite politique des administrés et des justiciables. Chacun d'eux prétendit avoir rendu quelque service aux fugitifs. L'on vint même se distinguer en contribuant à la rentrée d'un émigré'.²

Indeed, by the time of the elections of the Year IV, strident anti-jacobinism was compulsive, persuasive and indispensable. The judges prepared for the elections by arresting the remnants of local jacobin activists who might disrupt the proceedings of the electoral assemblies. Another boost to their popularity was given by the decision of the criminal court of the Vaucluse to liberate the Catholic royalist leaders of the peasant bands from the Comtat-Venaissin who had attacked the town of Avignon during the mission of the représentant Boursault.³ Indeed, the operations of the murder gangs, the meddlesomeness of the émigrés and the audacity

1 A.N. D^{III} 293, Calvet mss. 2529. The Carpentras municipality raised 300,000F for the 'réhabilitation de Bédoin, victime de la rage de Maignet'.

2 A.N. F⁷ 7171 (7915) dossier: émigrés et fugitifs.

3 Calvet mss. 2510 (fol.64) report on insurrection of 6-8 vendémiaire IV. (fol.71).

of the priests soon grew out of all proportions to that which even the most reactionary représentants, judges and administrators had initially intended. Moderates like Goupilleau became sickened by the slaughter and made some attempt to rid the courts of the Vaucluse of their more dangerous reactionaries, such as Bernardi and Jamet.¹

VII

In a sense, then, the judicial reaction, although deriving much impetus from the recalcitrant history of the region, was artificially installed in the south-east. It was only through its determined anti-jacobinism that it won over conservative opinion during the Year IV. The reactionary judges emerged from the Thermidorian reaction as an extremely potent force of subversion and a mainstay of counter-revolution. Much of this strength derived not only from the powerful position of the judiciary within the new Constitutional state and not only because, after the elections of the Year IV, they could declare themselves the inviolable 'élus du peuple', but also because they had forged a consensus among themselves and had created a network of anti-jacobin courts throughout the south-eastern region. This confederation, together with the repressive actions of the représentants and the excesses of the murder gangs, almost brought the jacobin and patriotic movement in the south-east to the verge of extinction. The Thermidorian

1 A.N. AF^{II} 197, Goupilleau to Com de Lég., 16 therm. III. see also A.N. D^{III} 292., A.D. Vaucluse 7 L.92. (dismissal notices) 19 brum IV.

Reaction had been an apprenticeship in political corruption and for the southern judges; under the Directory they would professionalise their activities into a consolidated system of internal counter-revolution.

CHAPTER 3Justice and the Jacobin Revival

'La distribution de la justice est à la veille de devenir,
dans les mains d'un parti, une arme homicide'.¹

1 L. Jullian and A. Méchin, Mémoire sur le Midi (Paris, An IV), p.66.

The co-ordination of state-directed and spontaneous de-terrorisation in the Year III did not completely mortify the jacobin movement. In the month of vendémiaire Year IV, due to a conflation of changing political circumstances, individual resilience and government intervention, the jacobin and patriotic movement in the south-east was pulled back from the brink of extinction. After a long period of persecution, the beleaguered former terrorists were reorganised by a new breed of republican proconsuls sent by a government which had just expunged an attempted royalist insurrection. By the end of 1795 the exiled jacobins were back in their regions involved once more in local politics and administration. For many southern conservatives, the regrouping of local jacobin activists seemed like a return to the Terror: 'Si pendant un temps les jeunes gens ont gouverné', lamented the royalist diarist Roux-Alphéran of Aix, 'ils sont furieusement maltraités à présent. La réaction des républicains contre eux est complète et nous nous trouvons dans la même situation politique que depuis septembre 1793 jusqu'au printemps passé.'¹

However, despite the reverses which the reactionaries suffered during the first half of the Year IV, they did manage to recover their ascendancy by the elections of the Year IV and to expose the essential weakness and artificiality of the revived jacobin movement. This was partly due to the fact that the 'movement' was no longer as powerful as it had been during the years 1792-1794. In its heyday the Jacobin Club of Marseille had

1 Roux-Alphéran, Journal historique p.75.

sponsored the march of the fédérés to Paris in 1792, had encouraged popular terrorism, had carried out schemes of proselytisation all over Provence and had even drawn up contingency plans to create a southern republic if Paris had fallen to the armies of the coalition.¹ Despite the shock of the federalist revolt, they recovered their aggression and independence to such an extent as to be able to resist the authority of the proconsuls Barras and Fréron. They had sought to dictate their policies to the Convention - policies which were tantamount to controlling the Midi through a network of sociétés populaires.² Even after the fall of Robespierre the Marseillais clubbists remained unbowed; they outraged the Thermidorian Convention by sending deputations to denounce moderatism and to demand the full-blooded implementation of terrorist measures. However, the missions of a series of reactionary deputies, the defeat of the Toulon arsenal workers, the temporary imprisonment and exile of their leaders and the systematic massacres of the spring and summer of 1795, quenched their spirit of independent action. By the end of 1795 the southern jacobins were appealing to the government for help and protection.³ The

- 1 See M. Kennedy The Jacobin Club of Marseille (Connell, 1973). F. Ponteil 'La société populaire des anti-politiques et le sentiment patriotique à Aix-en-Provence en 1792-1795' Revue hist de la Rev. franc. (1916) pp.202-218, XIII (1918) pp.30-47, 266-299, 454-474, 577-589 XIV (1919) pp.40-45.
- 2 See Kennedy, op.cit., p.96, W. Scott Terror and Repression in Revolutionary Marseille (London, 1973) and H. Chobaut "Le nombre des sociétés populaires du Sud - Est en l'an II". A.h.R.f. (1926) pp.450-455. Chobaut estimates that there were 139 sociétés in the Vaucluse (i.e. in 90% of the communes), 260 in the Basses-Alpes, 132 in the Gard, c.140 in the Bouches-du-Rhône and 250 in the Drôme.
- 3 See e.g. A.N. F^{Ib} II Vaucluse I, Agricole Moreau to Carnot, 23 vendémiaire IV.

government eventually responded to such appeals, but upon the condition that the jacobins forego their rhetoric of patriotic exclusivity and adopt the new discourse of the rule of law and the defence of the Constitution of the Year III.

It was the government's general amnesty proclaimed in brumaire Year IV along with its anti-émigré measures which made the revival possible. This permitted the release of those being detained for "revolutionary" crimes committed during the Year II. In addition, many of the southern jacobin chieftains and outstanding personalities had managed to survive the persecutions of the Year III. This was partly due to good fortune and partly because of the formation of underground networks in various urban centres. In the south-east, the major sanctuaries were at Arles, whose Trinquetaille quarter, dominated by the 'Monnaidier' faction, helped the jacobins fleeing from the Gard; Toulon, where the sailors and arsenal workers provided a counterweight to the 'white' terrorists and Orange, a protestant island in a Catholic sea, which demonstrated that jacobinism, like Christianity, was most firmly upheld in those places where it had been imposed with the sword. There were also considerable jacobin reservoirs in Marseille, Valence and Grenoble. The practical tasks of bringing jacobins out of hiding and into the political arena was left to the government commissaires Reverchon in the departments of the Rhône and Loire (who also had the task of tracking down the égorgeurs of Lyon) and Fréron operating in seven south-eastern departments. These commissaires succeeded in reviving jacobinism in the urban centres and larger towns (where jacobins enjoyed the protection of the military and the reorganised national guard) but failed to do so in the countryside and smaller towns and

hamlets which remained steadfastly royalist and antagonistic towards all manifestations of the republican regime. It would have been possible for these commissaires and their patriotic placemen to contain popular royalism and counter-revolutionary intrigue if it had not been for the staunch opposition of the judiciary to all jacobin officials.

In response to the daily examples of jacobin resurgence, the rôle of the judiciary within the southern counter-revolution developed from being a legalised weapon of retribution in the hands of the aggrieved parties of the terrorist era into a more sophisticated force of anti-republican reaction within the structure of the republican state. The contribution of the southern judges to the erosion of the resurgent jacobin front by the end of the Year IV was of striking significance not only to the continuation of 'internal' counter-revolution within the Directorial regime but to the future of provincial jacobinism as an effective political force. It demonstrated that the judiciary was capable of direct, collaborative actions to resist the purges of Fréron despite the fact that at least 50% of all south-eastern judges were returned émigrés, or else related to émigrés, as well as having been active supporters of the federalist revolt of 1793. Not only did the southern judges interpret and dictate the law according to their own bias, they also used their constitutional inviolability as a base from which to exclude those who did not share their political views and to attack their political enemies in other government organisations. There was a concerted plan in the Year IV, led by the judges, to remove all implanted jacobins from every sector of public life. Thus, it was the judges who provided counter-revolutionary consistency in a time of mutation, thereby creating the vital openings which led to the crypto-royalist reaction of the

Year V. Before we examine the methods and nature of the judicial assault upon the jacobins, we must consider the men responsible for the jacobin revival in the south-east during the Year IV.

The most important figure in the renaissance was the controversial government commissaire Louis Stanislas Fréron whom the Comité de Salut Public, at the behest of Barras, had sent back to the Midi to crush the forces which opposed the republic. Fréron's orders were to suppress royalism and religious fanaticism, to neutralise anarchy, to dismiss from office those compromised by the anti-émigré laws of 3 brumaire Year IV (25 October 1795), to revive patriotism and to put an end to the persecution of republicans.¹ He was dispatched on the 18 vendémiaire Year IV (10 October 1795) and within weeks of his arrival in Marseille he demanded the extension of his authority to seven departments.²

The 'second coming' of Fréron to the Midi was open to different interpretations. No faction could be sure of his latest political stance, for he was one of the revolution's more capricious protagonists. At each episode in the history of the Revolution he had appeared as the extreme incarnation of the extremest views. Known mainly for his tergiversations, the only constancy to be found in his politics was his belief in the absolute freedom of the press,

1 A. Aulard, Recueil des Actes du Comité du Salut Public (Paris, 1889-) 28 vols), xxviii, p.357, arrêté of 18 vendémiaire IV.

2 A.N. F⁷ 7130 Fréron to Directory, 2 nivôse IV. His authority was extended to cover the Gard, Vaucluse, Drôme, Hautes and Basses-Alpes, Var and Bouches-du-Rhône.

for it was in propagandist journalism that he found the motor of his success. His forte was the assimilation of the 'langage du moment' into his own discourse which had the effect of making it seem like his own creation. He was possessed of the megalomania which dictated that he should not merely be in the vanguard but be the vanguard itself. Fréron was the Proteus of the French Revolution; what he lacked was a constant independence of mind and a sense of political realism. Therefore, it was ironic that he was moving towards a kind of private orthodoxy when his career was drawn to a premature close. After his recall from his second mission to the Midi his decline was precipitous. He moved from one mediocre post to another and, having lost the favour of Napoleon which he once enjoyed, his engagement to Pauline Bonaparte was brusquely terminated. Several times the idol of the Revolution, Fréron would die in obscurity of yellow fever during his tenure as sub-prefect of Santo Domingo in 1802, and the news of his death would not appear in any obituary column in France.

In Year IV he returned to the Midi, haunted by charges of mass-murder, treachery, venery and alcoholism, with everything to prove. The conservatives and royalists were initially unsure of how to receive Fréron back to the Midi. He had been the acolyte of Marat, a self-proclaimed 'vainqueur de la Bastille', the editor of the ultra-radical Orateur du Peuple; he was the 'butcher' of Toulon where he had arranged mass shootings of the federalists who had surrendered the town to the British fleet, he had established the 'Brutus' military commission, stripped the port of Marseille of its name and had mooted plans of systematic violence in the city and the deportation of its denizens to the French hinterland and the repopulation of the port with northerners. Yet, to his credit in

the eyes of the royalists, he had been instrumental in destroying his former school colleague Robespierre. He had been the most outré of the Thermidorian deputies who had revamped the Orateur du Peuple as the pretentious oracle of the jeunesse dorée. During the Thermidorian Reaction his invective was more directed against the sans-culottes of the Faubourg Saint Antoine than the mercantile aristocracy of Marseille.

The southern jacobins were as acutely aware of his reactionary postures during the Year III as they were of the bitter quarrels which had raged between themselves and Fréron during the Year II over the question of the exercise of power in Provence. Yet their predicament forced them into servility: during the Year II they had engineered Fréron's expulsion from the Jacobin Club of Paris, but, in the Year IV, they lined the streets of the southern towns to greet him as their saviour. In any case, they could console themselves with his most recent volte-face, exhibited during the vendémiaire crisis, when he joined forces with the armies of the Convention to crush the forces which he had hitherto patronised.

Both Fréron and the southern jacobins were becoming imbued with the dominant political spirit of the age which was the implementation and preservation of the Constitution of the Year III. They were the servants of the government's policy rather than its interpreters. They were forced into the unspectacular rôle of enforcing the republican law.¹ The esprit de corps of the

1 For the general response of the jacobins to the Directorial regime, see Isser Woloch Jacobin Legacy: the democratic movement under the Directory (Princeton, 1970) pp.18-32.

jacobins had been seriously damaged by the legislation of the Year III which had forbidden them to correspond, federate or hold spontaneous meetings. During the Directory they adopted the less radical name of 'les vrais patriotes de 1789'. Ironically, as well as defending a regime which was based upon a property franchise, the jacobins became the protectors of those who had purchased biens nationaux, especially those who were also tormented by the royalists, priests and émigrés and who were bound to equate the triumph of the republic with their own security and future prosperity. In a report to the Executive Directory, Fréron encapsulated the changing nature of jacobinism in relation to the state by using the specific reference of the powers of the proconsul:

'Sous le régime révolutionnaire, les représentants du peuple en mission avaient le droit de faire des arrêtés parce qu'ils avaient les pouvoirs illimités et que la Convention leur délèguait l'autorité dont elle était investie; mais sous le régime constitutionnel un commissaire du gouvernement doit surveiller et requérir l'exécution des lois, c'est là, le pouvoir dont il est investi, mais il n'a pas le droit de faire lui-même des arrêtés parce que les arrêtés sont des lois'.¹

Much of what Fréron said did not apply in practice; during the Year IV he had powers not dissimilar to those which he had during the Terror. What was significant was his willingness to employ them with moderation and circumspection and his use of contemporary clichés to describe his functions.

1 A.N. F⁷ 7130, letter to Merlin, 3 pluviôse IV.

Indeed, during the second mission, both Fréron and the jacobins whom he placed in power avoided the brutality and erratic methodology which had characterised the suppression of the federalist revolt in 1793 and the mission of the ultra-terrorist Maignet in 1794.¹ They had to capitalise upon the failure of the coup which had been led by the royalist adventurer de l'Estaing. In practice this meant the mass arrest of the insurgents, deserters and royalist brigands as well as a general policy aimed at breaking the bonds of collusion which existed between local officials and counter-revolutionaries.² The second mission of Fréron, therefore, was characterised more by purges and dismissals than arrests and executions: the rule of law could only be extended to the south-east if there were officials willing to enforce the law. Among the principal targets of Fréron were those in office whose inertia and culpable silence had been prerequisite to the mass slaughter of the summer of 1795.³

The efficacy of Fréron's mission was limited. Once he had been recalled the forces of counter-revolution began to re-assert themselves. After he departed (unwillingly) from the Midi, the

1 See P. Gaffarel "Le proconsulat de Barras et de Fréron". Annales de Provence (1913) pp.157-188, 229-269 and P. Vaillandet "La mission de Maignet dans les Bouches-du-Rhône et le Vaucluse". Annales de la faculté des lettres d'Aix, I, xii, 1912 and E.Poupé "La répression de la révolte de Toulon" in Le Var historique et géographique (1924).

2 See e.g. A.M. Aix LL. 32 Fréron's proclamation 'Aux Républicains persécutés d'Aix'. 24 nivôse IV.

3 A.N. BB¹⁸ 277 (Drôme) decrees from Valence and Montélimar.

forces of republicanism and reaction were so carefully poised that some of his critics claimed that he had planned to bequeath the best possible conditions for faction-fighting so that, in his absence, the Midi would slip back into chaos, and he would be held to be the only man capable of restoring order to the unquiet lands. In default of curing the maladies of the Midi, Fréron tried to perpetuate the illusion that a government mission could re-orientate an inbred collective mentality towards support of the republic. Only a complete purge of all authorities could have come close to achieving this: partial purges were a formula for in-fighting. Between the departure of Fréron and the arrival of the pro-royalist satrap General Willot, jacobin and judicial authorities vied for the control of local power.¹ This feuding culminated in the bloody municipal elections of the summer of 1796 when the jacobins made a last, desperate stance against extinction.

The proconsul Fréron had much more time for local radicals during his second mission than during his first: southern hero-worship, as he had already discovered, was infinitely preferable to southern wrath. Whilst in the Midi, this once anti-provincialist avenger of the Revolutionary Government postured as the harbinger of the good news, as the messiah who told the

1 See e.g. A.N. F⁷ 7186 Lefebvre (Fréron's adjutant) to La Revellière-Lépaux, 10 germinal IV: "...depuis que l'autorité de Fréron a cessé ou même dès qu'elle a paru chancelante, les deux partis ont repris leurs espérances criminelles". In their report Mémoire sur le Midi (Paris, Year IV) the 'moderate' deputies Jullian and Mèchin, whilst holding strong reservations about Fréron's choice of former terrorists to fill administrative posts, believed that the royalists would once more be in a position of strength after the recall of Fréron.

patriots that, despite the property qualifications and the anti-jacobin laws of the reaction, they were to be the inheritors of the nation. And so the demoralised jacobins regrouped around him, denouncing local and personal enemies, demanding office and proffering their nostrums for the defeat of royalism in the Midi.

Fréron's mixture of military circus and thundering diatribes sent the royalists scurrying to the mountains of the Basses-Alpes and the Dauphiné. Within days of his arrival in Marseille he ordered the billeting of three bataillons of line troops (two from Toulon and one from Avignon) at the expense of the richer inhabitants.¹ He ordered the arrest of the jeunes gens of conscription age who had supplied the manpower for the compagnies du soleil. In many towns and cities the reactionary National Guards were disarmed and, in some cases, completely purged. In Marseille, Fréron requested that every juge de paix submit a report giving a full account of the actions which they had taken after the massacres in Fort Saint Jean: those suspected of negligence or collusion were either dismissed or arrested and replaced by Fréron's hand-picked zealots.² These men were given specific instructions to open investigations into the authorship of the massacres and, where possible, to initiate a prosecution. In Lambesc (Bouches-du-Rhône)

1 G. Martinet "La vie politique à Marseille en 1795 et en 1796; lettres inédites de Ferréol Beaugéard à Paul Cadroy". Provence historique (1966) pp.126-176, p.132 (letter of 29 brumaire IV).

2 Requests reprinted in L.S. Fréron Mémoire pp.91-118. See also A.M. Marseille 13 D arrêté of 28 brumaire IV., P. Gaffarel "Le second proconsulat de Fréron à Marseille, 31 Octobre 1795 à 22 mars 1796". La révolution française LXIX (1916), pp.148-169. The lists of the suspects arrested in connection with the massacre at the fort are in the bibliothèque municipale in Marseille.

all the municipal officers 'qui avoient assisté aux massacres en écharpe' were imprisoned.¹ All over the south-east he used the re-organised departmental administrations as his means of purgation in the administrative sphere. Thus, in Marseille, the bureau central was dismissed by this body at the request of Fréron.² Similar operations were carried out in Toulon and Avignon and Carpentras. In the Var, Fréron dismissed half the office-holders because their names had appeared on the liste des émigrés during his first mission.³ New military commanders, such as Brune in the Bouches-du-Rhône and Puget-Barbentane in the Vaucluse stepped up the conscription drive, hunted down the compagnies du soleil and enforced strict police measures in the towns. Several royalist spies and agents provocateurs were captured and sent before military courts for summary execution.⁴ Fréron's prize catch was L'Estaing himself; this irrepressible royalist, whose life read like a Romantic novel, was executed on the Rocher des Doms in Avignon in the Year IV.

Although the various operations of Fréron during the Year IV were not characterised by either violent excess or extortion, they caused an uproar in Paris. A campaign of vilification was launched against him in the Cinq Cents by Isnard, Jourdan, Rovère, Durand de

1 A.N. F⁷7130 Fréron to Directors, 4 frimaire IV.

2 See also A.D. BduR L.173 suspension of the municipalities of Arles, Istres, Noves, Fontvielle, Salon, Châteaurenard, Tarascon, Saint-Rémy, Aix.

3 A.D. BduR. L.121 arrêtés of Fréron, 12 brum. IV.

4 See also BB¹⁸277 reports on capture of royalist agents Jean Crouzet outside Lyon and François Tassède in the town of Langogne (Lozère).

Maillane, Portalis and Siméon¹. An investigative committee was established to see what truth there was in the allegation that Fréron was attempting to revive the Terror in the Midi. Much of the controversy had arisen over Fréron's choice of appointees. His adjutant Louis Lefébure, (who later operated as a royalist agent), testified that the commissaire had given 'une confiance trop exclusive' to hated local radicals.² Few of Fréron's critics pointed out that most of the men whom he had chosen had been suggested to him by his predecessor Goupilleau. Lefébure did add, however, that the jacobins had approached Fréron dressed in a 'peau d'agneau', but when they were installed in power 'ont repris leur peau de loup'.³ Indeed, Fréron did admit to the Directors that some misjudgements were made in his choice of placemen, but felt that he had done the best possible in a land where the 'esprit du parti' reigned and where all factions were packed with 'des têtes naturellement volcanisées'.⁴ Barras, who always took Fréron's side, was quick to perceive that it was what the proconsul had done during his first mission which rankled in the minds of the southern deputies rather than a desire to see conservative order restored during the second, as they had publicly proclaimed.⁵ These

1 A.C. Thibaudeau, Mémoires II, pp.146-147.

2 Calvet mss. 2995, Rovère, letter to his brother, 28 ventôse V.

3 A.N. F⁷7186 Lefébure to La Revellière-Lépaux, 10 germinal IV. see also P. Vaillandet "Rapports de L.H. Lefébure, commissaire du pouvoir exécutif en Vaucluse (1793-anII)" Annales d'Avignon 1932, pp.69-85.

4 A.N. F⁷7172 Fréron to Directors, 20 ventose IV.

5 P. Barras, Mémoires ed. de G. Duruy (Paris, 1895-6.4 vols.) II, p.10. 'L'attaque contre Fréron était injuste et sans bonne foi.'

deputies succeeded in terminating his mission. Fréron's departure left the jacobin appointees in the south in an extremely vulnerable position: they were a prey to regrouped royalist murder gangs and fell victim to a second wave of persecution which increased in intensity after the discovery of the Babeuf conspiracy at the end of May 1796.¹

There could be no denying that many of Fréron's men had been leading terrorists. And not all of them were dispossessed of the temerity which they had displayed during the Terror. For example, the municipality of Toulon boasted Barry, a former member of a comité révolutionnaire of Paris; Degréans, who had drawn up the lists for the fusillades of 1793; Baraillon, an ex-officer in the local armée révolutionnaire; Marquezy, an ex-terrorist who had marched on Marseille in 1795; all the new juges de paix of Toulon had also been in the march and all were former terrorists.² The composition of the municipalities of Marseille, Grasse, Avignon, Carpentras and Nîmes were similar. In Aix, the reconstituted municipality was presided over by Emeric who, within weeks of taking office, had formed special patrols to arrest suspects, close churches and impose the revolutionary taxes.³ Throughout his tenure he struggled against the criminal court which released the

1 Calvet mss. 2505 ('son rappel était un coup de foudre pour les patriotes' according to Louis Raphel).

2 A.N. F^{Ib} Var I. All of these officers were placed on a blacklist by Willot.

3 A.M. Aix LL. 82 see arrêtés of municipality, pluviôse to ventôse IV.

suspects as soon as he arrested them. Frustrated constantly, he wrote to the Directors: 'Il y a une classe d'ennemis plus dangereuse et plus perfide, unie par les liens honteux du crime aux royalistes et aux fanatiques.....c'est dans cette classe malheureusement que se trouvent des hommes chargés de la distribution de la justice'.¹ This was a recurrent refrain voiced by the majority of jacobin placemen in the south-east during the Year IV.

Many of these jacobins, dubbed 'les élus de Fréron' by Merlin, had barely escaped the massacres of the Year III. Honoré Paris, Fréron's chief agent in Arles, was one of the few survivors of the Fort Saint Jean massacre able to give an eye-witness account (later to be converted into the more vivid pages of Fréron's Mémoire).² When the proconsul arrived he was serving a sentence of six years in irons in Nîmes for his activities during his tenure as president of the departmental administration of the Bouches-du-Rhône during the Year II. However, the majority of the rank and file members of the Jacobin Club of Marseille perished in the Fort Saint Jean massacre or the Aix prison massacre of floréal Year III. Others, such as Isoard or the jacobins of Salon, fell victim to 'l'assassinat judiciaire'. The Club's leaders were spared from the Fort Saint Jean massacres by the proconsuls Auguis and Serres who had sent them for trial before the Revolutionary Tribunal in Paris shortly before its abolition. These prisoners were transferred from Paris to the fort of Ham in Amiens; they were reprieved following the suppression of the royalist insurrection of vendémiaire Year IV

1 A.M. Aix LL.95 municipality to Directors, 22 floréal IV.

2 Paris was later assassinated in Milan by a royalist agent.

for which they had been enlisted by Barras to fight for the Convention. Afterwards they were amnestied and sent back to Marseille with a compensatory payment of 500 livres for each of them.¹ The other notable escapee from the 'white' terror was Peyre-Ferry, known alternatively as 'le Babeuf marseillais', the terrorist scribbler, the millionaire jacobin; this publisher of L'Observateur du Midi had obtained his release from Fort Saint Jean only days before the massacre.

The jacobins faced an implacable, reactionary judiciary. But they were no easy targets. With the departure of Fréron, only a few of them resigned out of fear; the majority became even more radical and doubled their efforts against counter-revolution. These were the irrepressible radicals whom the forces of reaction feared most - those who had learned nothing from the 'white' terror and who had remembered everything. These were the men who flourished in the docklands of Toulon where the Corsican refugees, sailors and arsenal workers had created a defensive, patriotic pact among themselves; the men who had been scattered by the line armies as they had marched on Marseille in 1795. These were the men who had fled the violent Catholic revival in the Gard and the Comtat-Venaissin and had taken refuge in the réseaux of Avignon and Orange. Some had walked to Paris in the Year III and walked back again in the Year IV. In Avignon the refugee jacobins flocked around Agricol Moreau, one of the last of the ultra-radicals.² Most of his inner circle,

1 A.N. AF¹¹¹ 158 Registre des délibérations du Directoire Exécutif, 12 brum. IV.

2 The importance of Agricol Moreau is often stressed by local French historians, but he has not yet been graced by a biography. For a brief, and often erroneous summary of his career, see Barjavel, Dictionnaire historique de Vaucluse (Carpentras, 1844 2 vols.) II. pp.204-5

known as the 'exclusifs d'Agricol Moreau', had been directly involved in the imposition of the Terror in their region.¹

Despite the prevailing political ideology of the Directory which aimed at an integrated society whose members were equal before the law, the radical set of Moreau continued to uphold the old-guard jacobin view of the exclusive nature of citizenship and patriotic morality.

These jacobins differed from their contemporaries in the Gard, Basses-Alpes, Drôme and to a lesser extent, in the Bouches-du-Rhône, in that they had not yet been tamed by the government. They were as entrenched as ever in their opposition to those whom they regarded as the enemies of their ideals. In 1791 these enemies had been the 'papistes' of Avignon and the Comtat; in 1793 it was the monopolists, the federalist rebels, the refractory clergy, the 'corrupt' jacobins such as Rovère, Poulthier and Jourdan coupe-têtes; during the Directory it was the royalist bandes, the reactionary judiciary, Willot and his toadies, their personal enemies. Moreau, still revelling in the sobriquet 'Le sans-culotte du Midi', had boasted the personal acquaintance of Robespierre and Payan. During the Directory his closest ally was Antoine Teste from the Gard. Moreau was a former Oratorian and had been a teacher of Roman Catholic theology at the collège of Beaucaire; Teste was a

1 This was the least derogatory of their titles: they were also referred to as 'les Nérons modernes', 'les cannibales enragés', 'les vampires de la France', les dépopulateurs', and, of course, 'les tigres altérés de sang'.

wealthy protestant squire who had been an avocat at the Parlement of Toulouse.¹ Their socio-economic backgrounds were similar to the judges whom they opposed with such tenacity. These men were professional revolutionaries, addicted to their own discourse on the revolutionary 'ideal type', yet who were not averse to exploiting their political power to settle old scores with their personal enemies. In Teste's case, the dividing line between the quest for the triumph of the nation over its internal enemies and his private vendettas is practically invisible. Within the context of the overall reduction of jacobin power in the south-east, the group which gravitated around these two men was the most resilient against the judicial reaction. Whilst former terrorists were being cut down by the royalist sabreurs or hiding out in the mountains, Moreau was reorganising the refugee jacobins in the Vaucluse, denouncing the royalists, challenging the authorities and petitioning the commissaires and the ministries of state. Whilst a dirge for professional revolutionaries was being intoned throughout the republic, they were gathering in their secret meeting places in the worst days of the 'white' terror to chant ça Ira. They seemed unkillable. Much to the dismay of the judges, they were to prove themselves to be as obstreperous a pack as ever bayed the royalist moon in the Midi.

In general these jacobins staffed the administration at all levels and were occasionally appointed as commissaires attached to

1 Teste's attachment to jacobinism was an anomaly among the Gardois gentry: Gwynne Lewis (The Second Vendée; the continuity of counter-revolution in the department of the Gard (Oxford, 1978) pp.145-151) describes him as a 'new type of politicised man... whose commitment cannot be explained purely in terms of religious or economic standing.'

the judiciary. They were constantly hindered in their work by the judges. Some of the law courts of the south-east, such as the criminal courts of the Bouches-du-Rhône, managed to evade the purges of Fréron despite the fact that the majority were compromised by the anti-émigré laws.¹ Unlike the juges de paix who, because elected by the primary assemblies, could be dismissed by a proconsul, the superior magistrates could only be sacked in extreme circumstances by the executive. The southern judges proclaimed ad nauseum that it was unconstitutional for Fréron to attempt to dismiss them because it was forbidden that executive agents and administrators interfere in the business of the judiciary.² The judges distinguished themselves from the 'Fréroniens' by the fact that they were 'les seuls fonctionnaires publics, qui tiennent leurs pouvoirs de l'élection libre du peuple'. Thus, in this scheme of things, selection by the honnêtes gens endowed them with moral superiority. They also believed that it gave them a mandate to oppose by all the means at their disposal the 'dregs' of the terrorist régime who had been illegally foisted upon them by an outsider. There was also great disquiet over the fact that the administrators controlled the payment of judges' salaries and prepared the jury lists.³ Several schemes were mooted for rooting out the counter-revolutionary element within the southern judiciary. Fréron

1 A.D. BduR L.3003 for the judges whose names appeared on the liste des émigrés

2 See, e.g., A.N. BB¹⁸176 (fol. 5564) Merlin, when explaining this assumption of inviolability to the Directors (7 prairial IV), also indicated its hypocrisy: '... les tribunaux, dans cette supposition deviendront les maîtres de s'immiscer dans tous les actes de quelque autorité sous le prétexte qu'ils n'appartiendront point essentiellement à cette autorité'.

3 A.N. BB¹⁸179 (fol. 7792) complaints of Ailhaud (President of crim. court of BduR) to the Min. of Justice.

was aware that les juges se tricolorent quand il le faut. Therefore, they had to be formally indicted as the relatives of émigrés because their powers of prevarication were so great that it was practically impossible to remove them from office on the charge of 'abusing their powers'. He planned to re-convoke the electoral assemblies and present it with new lists of republican judges, but his government advisors counselled against this, suggesting that it could lead to open violence. He then requested that the law of 29 vendémiaire Year IV (21 October 1795), which ordered the immediate prosecution of all public officials who had either collaborated in the southern massacres of the Year III or who had done nothing to prevent them, be rigorously applied to the judges. However, the Directors found it too difficult to distinguish between the accusation of the wilful obstruction of justice and the judges' protestations that it had been impossible to find witnesses who were willing to come forward and testify against the assassins. By the same token, Fréron stressed that the Thermidorian prison massacres and subsequent cover-ups ought to be considered as an integral part of the royalist conspiracy of vendémiaire; this would make the collaborating judges liable for prosecution before a military commission.¹ As with the other pragmatic suggestions, this was rejected by the Directors and the Minister of Justice who were unwilling to arrest magistrates whom they would have great difficulty in replacing. Thus the executive confined itself to direct replacement of members of the judiciary when places fell vacant. Unable to get at the roots of the judicial reaction, Fréron

1 A.N. F⁷ 7130 Fréron to the Min. of the Interior, 23 nivôse IV. See further correspondence on this matter in A.N. BB³⁹⁹ (fol. 1529).

had to content himself with trying to contain the judges by surrounding them with radical republican commissaires.

The response of the judges in the south-eastern law courts to this attempt to surround them with government surveillance was to close ranks and create even greater bonds of mutual co-operation. Some of the judges found it necessary to defend themselves against Fréron's accusations that they were related to émigrés and therefore unfit to hold public office. Some resigned, with aloof disdain for the proconsul, others fought his impeachments tooth and nail. The criminal court judges of the Var refused to open their sessions until the judges forced out of office by Fréron were reinstated. Those who did remain followed a rigid policy of non-cooperation which was tantamount to a judicial strike. If the executive appointed replacements then the new judges were treated as pariahs.¹ There was a striking example of this in the Vaucluse where the government's appointees, Raphel and Curnier, were not recognised by the judges on the civil court. These men had been appointed by Goupilleau and maintained in the posts of president and public prosecutor of the criminal court by Fréron. The civil court judges refused to recognise them in spite of the fact that it had been this duo who had dispatched the terrorist personnel of the Commission Populaire of Orange to the scaffold in the Year III. The reason was that Raphel was generally suspected of having been a 'glacierist', i.e. connived at the massacre of 'moderates' in the Palais des Papes in Avignon in 1791; Curnier, who had been

1 See, e.g., report of the Directory's observer/spy Madier in A.N. F⁷ 7172,13 thermidor IV. Also A.D. Vaucluse 7L 92.

imprisoned by the Commission Populaire, had gained notoriety as a jacobin-lover who had brought the Vauclusian judges into disrepute by accusing them of being 'gangrénés de royalisme'.¹

Indeed, it was Curnier who was the first to expose the corruption of the judges in the courts of the Vaucluse. He made it known to the authorities, for example, that he had been approached by the royalists with an offer of 1,000 gold louis if he could ensure the release of Roustan, one of the participants in the massacre of the prisoners of Orange being conducted to Pont-Saint-Esprit.² Together with the president Raphel and Teste (who had been appointed commissaire attached to the criminal and civil courts), he set about unveiling the conspiracy which had hitherto determined the course of justice in the Vaucluse. Their various exposés led to the executive issuing an official denunciation of,

'Les directeurs de jury, juges de paix et autres fonctionnaires publics du département du Vaucluse qui avoient laissé sans poursuites les assassinats commis sur les patriotes de ce département par les royalistes qui l'infectent'.³

The Directors did not take any further steps beyond issuing letters of warning against those concerned in the cover-ups. Fréron, however, did intervene and arrested the directeur du jury of Avignon, Pierre Marcellin. It was discovered that Marcellin had not

1 A.N. BB³ 99 Curnier to min. of Justice, 23 frimaire IV.

2 A.N. BB³ 99 procès-verbal of Curnier, 17 frimaire IV.

3 A.N. A.F.^{III} 158, arrêté of 25 frimaire IV.

only refused to investigate the massacre at Pont Saint-Esprit, but that he had also, upon his own authority, released 20 of the counter-revolutionaries who had led the attack on Avignon during the mission of Boursault. These men were notorious égorgeurs from the region of the Haut Comtat. It was also disclosed that the judges of the Vaucluse had been channelling the courts' expenses into a slush fund which provided money for reactionary southern deputies to go to Paris to denounce the représentant Goupilleau.¹ They bore a grudge against Goupilleau because he had forced the counter-revolutionary president and public prosecutor of the criminal court (Bernardi and Jamet) to resign from their posts and replaced them with two pronounced republicans.

These revelations, as well as the refusal of the republicans in the court criminal personnel to accept bribes, clearly disrupted the system of political corruption which had vitiated the dealings of the Vauclusian judiciary since the general re-organisation of the Year III. Frustrated and enraged by the new directions taken by the republicans, the counter-revolutionaries in the department resorted to intimidation: Marcellin died mysteriously in prison before he

1 A.N. BB³99. This evidence was supplied by Raphel when pressed by Merlin for a list of misdemeanors and political profiles of the judges on the civil courts. See also A.N. F¹⁰11 Vaucluse 1 and Calvet mss. 2510. It appeared that the control of the illicit fund was in the hands of the judge Pierre Jean, former Catholic Deacon in Avignon and former president of the departmental administration. Jean had made two payments of 2,500 livres to the deputy Chappuis. This money had been misappropriated from the departmental caisse when he was president in the Year III. He also had been dismissed by Goupilleau; Raphel's evidence is corroborated by an arrêté of the comité des finances which ordered the immediate repayment of the missing sum to the paymaster general.

could be brought to trial; Raphel's eldest son was assassinated in Mallemort; the estate of Teste in his home town of Bagnols was devastated and his family assaulted by the royalist band of Dominique Allier 'ayant comme toujours à sa tête les autorités constituées et soutenant elles-mêmes les vociférations assassines'.¹ Teste, outraged at the latest bout of rapine, made public appeals for compensatory redress through the normal channels of justice. Privately, though, he mistrusted the existing official channels; whilst making these appeals to the Directors he was planning a more familiar and trusted method of reprisal against his personal enemies in the Gard.

Teste became a principal target on the blacklist of the reactionary judges, but he refused to be ousted by a confederation of conservatives, anti-jacobins and royalists. He could call upon his own cabal. Throughout the Revolution he had been allied to the Chambon and Dutour families who also held estates in the Bagnols region. In a spectacular, long-distance local vendetta, Teste and his clan were ranged against the ultra-royalist Roussel and Allier families. During the Terror the Teste family had dominated the société populaire in Bagnols, after having been the victim of the federalists during the rebellion. Teste had answered the victimisation with equally tough measures of repression; as procureur syndic he wreaked havoc among his enemies by a long campaign of studied denunciation; as a result of this he managed to

1 A.N. BB¹⁸ 888^B Teste to Min. of Justice, 16 nivôse IV.

fill the tumbrils of Nîmes with those who had been responsible for the agonies of his family during the federalist revolt.¹ The Thermidorian authorities issued an arrest warrant against him on the charge of gross abuse of personal power during the Year II; he was subsequently incarcerated for nine months.² In the Year IV he persuaded Fréron into reinstating him as an agent of the government. Teste's specific case of gang warfare was a clear example of how the vindictive conflict between jacobin placemen and reactionary judges could lead to extra-legal forms of redress. The judges' most favoured anti-jacobin tactic was to have the opponent dismissed by producing damning evidence against him or else by tripping him on a legal technicality. The master manoeuvre was to have the opponent arrested. This is what the judges had managed to do against Teste and his son during the Year III. However, the amnesty of the Year IV cheated the judges of their victory and the mission of Fréron had put Teste back in business. Moreau had encouraged the proconsul to place Teste and his men (known alternatively as 'les patriotes de '89 persécutés' and the 'républicains d'action') in posts close to the judiciary, which they all regarded as the greatest threat to southern patriots. Fréron obliged, and Chambon, the least controversial of the group, was appointed as provisional public prosecutor (until the formal re-appointment of Curnier) with Dutour

1 A N F^{Ib} II Gard I, F^{Ic} Gard III.

2 Calvet mss. 3878 mémoires sur procès, vol.1, 1792-1794 and A.N. F^{Ib} 11 Gard 1.

as his deputy.¹ Teste and Dutour tried to create a permanent rallying point for persecuted jacobins in the convent of the Capuchins at Ile-sur--Sorgue. When the civil court judges heard of this plan they warned the local military commander whose first action was to place the town in a state of siege.² Having been foiled in this enterprise, Teste implored Fréron to unleash an anti-royalist witchhunt in the eastern Gard; he strengthened his plea by providing statistics of slaughter and heart-rending petitions from local republicans.³ Consequently, the republican general Puget-Barbentane was empowered to enter the eastern Gard and arrest all returned émigrés, refractory clergy and deserters.⁴ Without receiving any formal authority from Fréron, Chambon, Dutour and Teste accompanied the general's detachment. In Bagnols, the troops were billeted at the expense of the personal enemies of Teste and Chambon. Within days the troops were permitted to conduct a three-day campaign of pillage and looting after having carried out

1 A.N. BB³ 99. Raphel said that he preferred to work with Curnier because he suspected that Chambon and Dutour took their orders directly from Moreau (letter to min. of Justice, 10 nivôse IV).

2 This schismatic town reflected its geographical position between republican west and the predominantly royalist north and east. The large Jewish community were a constant prey to royalist brigands. See A.N. F⁷ 7172 report of spy Madier and F⁷ 7186 Merlin's letters to the Min. of Police in fructidor IV. At the Capuchins Teste and Dutour were joined by Louis Raphel's brother Vincent, who had failed to create a similar rallying place in Carpentras; Lafond, the director of the Avignon arsenal and Meigler, whose father had been butchered by the royalists in the Year III.

3 See, e.g., BB¹⁸ 174 Précis des cruautés arrivés à Beaucaire présentés à Fréron. (An. IV)

4 A.N. F⁷ 7172 report of Madier to Directory, 11 ventôse IV.

some rigorous house searches.¹ Dutour, for his part, had some accounts to settle in his native district of Roquemaure where his henchman, the juge de paix Chanut, had been forewarned of the forthcoming raids and had made advanced preparations. For several days Dutour and Chanut threatened and harried the municipal officers who had driven the former from the town and who had connived at the spoliation of his biens nationaux.

The activities of this special force brought down a torrent of protest from all quarters. The commissaire of the department of the Gard was sent to question Fréron concerning the powers extended to the Teste Group; Fréron disowned them and declared that only the general of the brigade had been granted special powers.² This disclaimer placed the clan outside the protection of the proconsul and left them open to attacks by the judges and the royalists. The directeur du jury of Uzès, a notorious reactionary, issued arrest warrants against all of them.³ All three of them refused to acknowledge the validity of the arrest warrants and began a long dispute with the judges. Meanwhile the attacks upon their properties began again. A short time later the Directors removed all of them from their posts.

1 A.N. F⁷ 7090 procès-verbal of j.d.p. of Bagnols, 21 pluviôse IV. The troops were also accused of having stolen the municipal caisse.

2 A.N. BB¹⁸ 319 Admin. Centrale of Gard to Min. of Police (s.d.).

3 *Ibid.* mandat d'arrêt of 23 pluviôse IV. This formal indictment of Fréron's men was used as one of the excuses to set up an investigative committee against him.

The judges campaigned with considerable success to have all jacobins removed from public office. The civil court of the Vaucluse ignored the appointment of Raphael and Curnier, despite the fact that the Directors had rejected an appeal against them. They proceeded to elect their own choice of criminal court personnel and obliged the departmental paymaster to refuse to pay their remunerations.¹ Furthermore, they refused to appoint civil judges to act as presidents of the correctional courts and did not make up a roster for service on the criminal court. Thus, the operation of justice in the Vaucluse was practically paralysed by the civil judges. They were supported by the majority of the juges de paix. All over the department there was a proliferation of petty crimes and crimes of violence. Faced with such chaos and inactivity, Curnier was put under pressure to resign: the Directors offered him the post of commissaire in his native department of the Drôme, which he grudgingly accepted. Teste and Dutour were forced out of Avignon where they had been working on another project with Moreau. Raphael was left alone in Carpentras, the impotent president of a criminal court which had been brought to a standstill, until finally ousted by a massive majority at the elections of the Year V.² Political assassination was also on the increase and desertion was so unrestricted that it brought frequent complaints from the Army of

1 A.N. BB³ 99 (doss. 1081), see also A.D. Vaucluse 7LI decree of 25 frimaire IV.

2 A.D. Vaucluse 7LI, Raphael to Min. of Justice, 30 pluviôse IV. Raphael offered his resignation on the grounds that his position was no longer tenable. He asked for a posting to the Ministry of Justice in Paris, but the government refused, saying that he was more valuable to them in Carpentras.

Italy that it was being stabbed in the back by the local authorities. Merlin could only report to the Directors that the criminal court created by Fréron 'n'a point d'existence' and, consequently, the patriots of the department were being butchered with impunity.¹

The judges were following the royalist strategy of 'Paix au dehors, guerre en dedans'. It is difficult to isolate a controlling force behind the actions of the reactionary judges. The evidence suggests overwhelmingly that the reaction was not merely endemic but that the judges, wherever possible, acted as a confederation. Fréron and the jacobins believed that their orders came from the royalist controls in Verona and Geneva. There is no doubt that there were several royalist agents among the ranks of the southern judges, but it is unlikely that they were 'orchestrated' by the same hand. Their most probable connection outside the region was the aforementioned southern deputies in Paris; both worked in harness to secure the recall of Fréron and the dismissal of particularly meddlesome jacobins. It was their constitutionally-sanctioned inviolability which made the southern judiciary such an impregnable fortress of reaction and counter-revolution; as Fréron astutely noted:

'Il est très difficile de faire exécuter la loi du 3 brumaire, notamment à l'égard des juges et des juges de paix par les obstacles qui empêchent d'acquérir la preuve de leurs malversations et prevarications, se soutenant trop les uns les autres et refusant leur ministère aux patriotes qui pourraient les dénoncer'.²

1 A.N. AF^{III} 158 report of 12 germinal IV.

2 A.N. F⁷ 7130 Fréron to Directory, 25 nivôse IV.

Those judges who had been forced out of office during the mission, and those who had been intimidated into circumspection in the operations of justice were encouraged by the remaining judges to take up their offices once again after the disgrace of Fréron. Those who did were endowed with extreme cunning. With renewed fervour they inaugurated a 'second reaction' against the jacobins. The remaining jacobins in local office felt gradually surrounded.¹ Although they made all manner of cacophonous shows of force as if to create the illusion of power, they were well aware that, in the absence of the protection afforded to them by Fréron, they were weak and vulnerable. Almost immediately the judges began to undo the work of Fréron.² Another of his appointees, the commissaires Réquier and Lardeïrol, were declared unfit to hold their offices by the courts in Aix. It was unconstitutional for the judges to declare upon the suitability of executive agents and, in this sense, the protests of the Aix judiciary were less valid than those made by their counterparts in the Vaucluse against the personnel of the criminal court. The reasons for the rejection of these commissaires was to be found in their revolutionary background: Réquier, a former schoolteacher in Marseille, had been a founder member of the jacobin club in the city and was thrice elected secretary: Lardeïrol was a

1 Ibid. Républicains of Marseille to the Cinq-Cents, 28 germinal IV: '....des prêtres, des émigrés, des assassins, des fanatiques retranchés dans les montagnes descendent en demandant un Roi et la domination de la religion catholique'.

2 A.N. F^{Ib} II Var I, Willot wrote to Carnot (6 floréal V) that the magistrates of this department and the Gard were worthy of the 'honnêtes gens' who had elected them because they had steadfastly resisted 'les projets dévastateurs de Fréron.

constitutional priest and an administrator in the department during the Terror. In the eyes of the Aix judiciary, the most objectionable part of Réquier's career was his brief tenure as public prosecutor of the Revolutionary Tribunal of Marseille between March and April 1794. Under Maignet's orders and in collaboration with the president Etienne Bompard, the work of the Revolutionary Tribunal was streamlined and accelerated by Réquier. This had earned him the title of 'Le Fouquier-Tinville du Midi'.¹ Réquier had been part of the Marseillais delegation which had gone to Paris after the fall of Robespierre to demand the continuation of the Terror; Lardeiol was one of the twelve Arlesian jacobins sentenced by the criminal court of the Gard during the Year III for alleged abuse of power during the Terror.²

The judges of the Bouches-du-Rhône, like the judges of the Vaucluse, postured as the 'élus du peuple' who opposed the 'destitutions scandaleusement multipliées' of the departmental administration and its municipal satrapies. There was constant quarrelling between the republican administration led by Guérin and the judiciary led by Ailhaud. Each claimed that the other had no right to interfere in the other's sphere of competence. The judges, however, managed to equate the appointment of Réquier and Lardeiol with a conspiracy to degrade their office and to remove the respect of their justiciables. In reality their prejudice against the two former terrorists was completely personalised. They claimed that

1 On Réquier, see Kennedy Jacobin Club of Marseille, pp.138,143,162 and A.N. BB¹⁸ 177.

2 A.N. BB¹⁸ 176 (fol. 4934 extract from the register of the criminal court, germinal Year III.

Réquier was a bad debtor and portrayed him as a man who had sent his creditors to the guillotine in Marseille because he was a bankrupt. The administrators coolly disregarded these denunciations as encroachments upon legislative and executive power.¹ This to-and-fro struggle between the jacobins trying to keep their men in office and the reactionaries attempting to exclude them epitomised the chaos of local government in the south-east during the Year IV. A closer look at a printed proclamation issued by the criminal court of the Bouches-du-Rhône gives us an example of how equivocation could be made to cloud the more deep-seated reasons for their fear of having Réquier as their permanent overseer:

'Considérant que sous le règne de la terreur qui, nulle part, n'a immolé autant de victimes que dans ce département, Antoine Réquier étoit, en qualité d'accusateur public, le provocateur des assassinats juridiques qui y ont été commis et que c'est après ses requisitions qu'une foule des citoyens ont été envoyés à la mort par ce tribunal de sang pour prétendu fédéralisme, parmi lesquels se trouvent des parens et alliés des membres du tribunal que ne peuvent, ni ne doivent siéger à côté dudit Réquier'.²

One notes the imperative tone at the end of this proclamation, suggesting that it would almost be an abomination of the laws of humanity to permit the tormentor of their kinfolk to be within working proximity of them. As a consequence, the judges defied the rulings of the government and refused to work with the new

1 A.N. BB¹⁸ 176 (fol. 4889) register of arrêtés of admin. cent. of BduR. See also denunciations of judiciary in A.D. BduR L. 173 ('...ils invoquent la constitution, ces lâches hypocrites, et ils mettent tout en usage pour la renverser').

2 Ibid. (fol. 4934) This proclamation was drafted by the public prosecutor, Casimir Constans, who had been proscribed and sentenced to death in absentia by the Revolutionary Tribunal of Marseille in the Year II.

commissaires. Réquier and Lardeiro1 were never informed about the details of trials, evidence was hidden from them and they were constantly threatened and insulted. They were both replaced at the elections of the Year V, having served no useful function since their appointment.

Not only did the reactionary judges aim to remove jacobin placemen in the judiciary and the executive's commissaires, they also attacked those juges de paix appointed by Fréron to arrest the égorgeurs of the Midi. The juge de paix Claude Dandaille of Marseille was fined heavily by the criminal court in Aix because he had had the audacity to arrest the president of the departmental administration, Antoine Pastoret, because he was an émigré rentré.¹ However, in most cases the juges de paix in the south-east were sympathetic to the counter-revolution. A juge de paix who had collaborated with a murder gang could defend himself by quibbling that he had done the best possible in circumstances which were adverse to the impartial prosecution of crime. They could always provide character references from local men of standing and flatly deny all charges made against them on the presumption that all dénonciateurs were vile anarchists who regretted the reign of Robespierre.²

Thus, in Aix, the ultra-royalist juge de paix Henri Pellicot, who was also a leader of a local murder gang, was saved from

1 A.N. BB¹⁸ 177 dossier Pastoret.

2 See e.g. A.N. BB¹⁸ 875 (dossier 4981/Monoyer).

dismissal by a lobby of southern deputies. The Ministry of Justice tended to defer to the views of the socially and politically prestigious until after the coup of 1797.

When the anti-jacobin juges de paix were at large then there was great danger for the patriotic republicans. These juges de paix could often exploit the alienation of minor republican officials in an isolated environment. Within this semi-rural context they could also enlist the help of the local refractory priest to cast all sorts of plaques upon the houses of the jacobin unbelievers. It is remarkable how swiftly the social nostalgia and traditional spirituality which surrounded le bon curé could transform itself into anti-jacobin violence. Even the most zealous republicans had to tread a wary path around the parish priest, even if he was refractory. The municipal officers of Hyères (Var) were dismissed by the ultra-conservative electorate of the Year V because they had sent a detachment of National Guards to arrest those celebrating an illegal Catholic religious festival at Le Crau. The local juge de paix, Delor, was a participant in the festival. When the republicans appealed against their dismissal, Delor organised petitions among the townspeople which repudiated them as undesirable aliens: 'Ils ne voyent pas qu'il n'y a rien de commun aux yeux de l'opinion publique entre les disciples de Marat et des magistrats vraiment élus par le peuple'.¹ Similarly, Eyrier, the deputy

1 A.N. F⁷ 7270 (doss. Hyères) see also A.D. BduR. L.3374 for the case of the jacobin attack upon the congregation of the Church of Saint Martin and its consequences, and A.D. BduR L.3020 release of abbé J.P. Ferrand.

mayor of the Tour d'Aigues (Vaucluse) attempted to arrest the local priest who was flaunting the laws relating to public manifestations of religious cults by holding open air masses. The local juge de paix forbade him to arrest the priest, but Eyrier denounced him to higher departmental authorities. The following Sunday the juge de paix led a crowd of incensed women, carrying an effigy of Eyrier on a makeshift gibbet, and surrounded the deputy mayor's house. They forced him to the door and the women threatened him with their scissors and pitchforks ('tu as dénoncé le curé, tu nous la payeras, tu es un foutu coquin, il faut que tu t'en dédises').¹ They only allowed him to live after he had gone on his knees to the priest and begged his forgiveness.

In the commune of Cuges (Bouches-du-Rhône), the local juge de paix, Roux, also led an armed group of women against the jacobin municipal officer, Antoine Bonafay, who had declared his intention to arrest the village's refractory priest. Bonafay was angered, but not daunted by the harpy-like mob, and, with the support of five gendarmes, proceeded to murder the priest in his own home. In his report, Bonafay said that the priest had hidden under a mattress and had swallowed poison in order to avoid arrest.² Recognising this as an implausible yarn, the judges in Aix, constantly vigilant against such jacobin felonies, ordered the immediate arrest of

1 A.N. F⁷ 7172 (doss. Eyrier). Women were the most strident in the cause of the bons prêtres: see demonstrations in Carpentras (A.N. BB¹⁸ 888⁷ (8360) in therm IV.

2 A.N. BB¹⁸ 176 (fols. 5562 and 6040) A.D. BduR L.3003. The health officer reported that there was an element of sexual sadism in the murder: 'la verge et les bourses se trouvaient dans un état de gonflement extraordinaire, la verge déchirée près du gland'.

Bonafay and the gendarmes. Under the articles of the Constitution, the Directory was obliged to annul the arrest warrant because it was forbidden that a judge arrest an administrative officer. Merlin stressed that the gravity of the crime could not be overlooked.¹ The arrest warrant was annulled, but Bonafay was suspended from office until one of the executive's commissaires had made a report on the killing.² Féraud, the judge dealing with the case, was dissatisfied with the executive's action and denounced it as another attempt by the jacobins to escape the full force of the law; he declared that all delays in judgement and independent enquiries were both illegal and immoral. However, the investigation conducted by the commissaire cast some light upon the case: it was discovered that both the bon curé Beaumont and the juge de paix had been exhorting the townspeople to exterminate all 'God's enemies' in the village and that Bonafay had been assaulted twice before the murder by crowds of women.³ Although Bonafay's statement about the death of the priest would have stretched the credulity of even the most gullible of republicans, his disclosures concerning pro-royalist sermons and communion for the faithful in the market square seemed much more credible. The upshot was that the case was referred by the Tribunal de Cassation to the directeur du jury of Forcalquier (Basses-Alpes) on the ground of extreme partisanship in the Bouches-du-Rhône. However, the judges in Aix refused to acknowledge the decree of referral; the prisoners lingered in prison for over 14

1 A.N. A.F.^{III}41, Merlin to Directors, 26 prairial IV.

2 A.N. A.F.^{III} 159 arrêté of 17 pluviôse IV.

3 A.D. BduR L. 3003 Report of comm.d.p.exec., 21 pluviôse V.

months despite the express orders of the Ministry of Justice to send them to the Basses-Alpes.¹

Taken together, these examples are symptomatic of the extreme alienation of jacobins when faced with a hostile environment and prejudiced police and judges. The inertia of the forces of law and order was the worst aspect and made the jacobins' plight all the more hopeless. In the town of Mallemort (Vaucluse) an elderly veteran of revolutionary wars found his son buried alive under a pile of stones with a desecrated tricolour placed on top. When he requested that the juge de paix begin an investigation to find the authors of the murder, the latter ruled that it was a clear case of death by misadventure!² It was not rare for the community to rid itself of these hated jacobins by a kind of violent, subrogated form of justice, exercised through time-honoured structures, with which the judicial police dared not meddle. This was a return to the self-help reminiscent of southern communities during the Ancien Régime.

On 12 ventôse Year IV (2 March 1796) the commissaire attached to the municipality of Valréas was brutally murdered by the townspeople. In relation to the course of events of the Year IV, there was nothing especially unusual about the fact of this murder given that the town, the former chef-lieu of the Haut Comtat, was isolated, royalist, Catholic and extremely traditionalist. It was a

1 A.N. BB¹⁸ 176 Min. of Police to Min. of Just., 23 nivôse V. Bonafay and the gendarmes were amnestied after the coup of fructidor V and Bonafay became mayor of Cuges. see A.D. BduR II M₃I.

2 A.N. BB³ 99 enquête of 27 brumaire IV.

politically-motivated killing typical of the time and place, almost a hackneyed episode in the grisly chronicle of counter-terror. Yet, when one looks beyond the mere facts of the case, the particular psychoses which brought about the murder go some way to revealing the relationship between the jacobin revival and the more traditional forms of 'popular' southern justice. The commissaire, ironically named Juge, was mutilated by the townspeople with the connivence of the local authorities; as expected the juge de paix took no steps either in the prevention or the prosecution of the crime.¹ Whilst wildly exaggerating the number of persons involved in the killing, the juge de paix informed Merlin that the removal of such a notorious ex-terrorist was the signal for a general insurrection in the Comtat-Venaissin.² The égorgeur Roustan had reared his much-feared head in his home town of Mondragon followed by a band of desperados who tried to evict the republican municipality; the surrounding countryside was swarming with the débris of de L'Estaing's hired band; a group of refractory priests was sighted in the region among whom was the notorious Richau, a papal agent who had been distributing plenary indulgences and communion to deserters and égorgeurs. There were anti-jacobin riots in the neighbouring towns of Bollène, Saint-Paul-les-Trois-Châteaux and Courthézon.

Clearly, contemporaries fitted this incident into a more widespread pattern of endemic counter-revolution. When one reads the commune's justification of its actions one becomes aware of the

1 A.N. BB¹⁸ 888^A (fol. 5051)/report of 12 ventôse IV.

2 Ibid. (fol. 5417)/17 ventôse IV.

intensely personalised nature of the encounter.¹ The fact that Juge had once been a member of the village community made him all the more heinous. In their interpretation of his revolutionary history he was depicted as an archetypal, bloodthirsty megalomaniac as well as someone who had besmirched the name of the town with his ceaseless obloquy. During the Revolution Juge had often called in troops to stamp out challenges to his local leadership and had billeted his private army at the expense of the rich - a detested jacobin practice. He and his ally Sabatery controlled the municipality, the National Guard, the juges de paix and the comité révolutionnaire. Juge had no mercy even for his old comrade Sabatery when he found him making a personal fortune from the extortion of forced loans and racketeering in biens nationaux. Like Jordan coupe-têtes, he was arrested and sent before the Revolutionary Tribunal.

During the Thermidorian Reaction the Comité de Salut Public issued an arrest warrant against Juge, but he managed to go underground in Paris where he was later amnestied. The news of his re-appointment as local commissaire caused great consternation in Valréas. When he returned showing his old arrogance and using his old methods, the inhabitants united against him. The southerners no

1 A.N. BB¹⁸ 88^B: Adresse individuelle des administrateurs municipaux et des habitants de la commune du canton de Valréas au Directoire Exécutif contre François Lambert Victorin Juge, notaire, nommé commissaire près l'administration municipale de Valréas.

Although this account is extremely prejudiced against Juge, most of the factual parts can be corroborated by other sources; its value lies in the insight it gives us into the collective anti-jacobin mentality.

longer feared jacobins as they had done during the Year II, probably because the ultimate sanction of repressive revolutionary justice had been dispensed with. The armed troops who had escorted Juge were overwhelmed in a fierce pitched battle. After the killing of Juge, regarded by the community as the spring-source of their torments, the townspeople gathered in the church to sing a Te Deum. Unlike other group assassinations, the inhabitants of Valréas did not protest their innocence: they felt that what they had done was legitimate homicide, that they had some unwritten, primordial right to dispose of a common foe in their own way:

'... la mort de ce monstre étoit une nécessité pour nous et que sa fin seule pouvoit nous donner quelque tranquillité... il falloit l'exterminer ou en être exterminés nous-mêmes: vous devez donc regarder cet événement moins comme la vengeance du passé que la prévoyance de l'avenir'.¹

This ritualised assassination was a determinate act within a traditional structure of redress.² It was almost inevitable that the judicial police and magistrates, being an inherent force within the locality rather than the servitors of an abstract regime, should collaborate in this ritual at least tacitly by their silence and inaction. It was ironic that Teste should demand the application of the law of the 10 vendémiaire IV (which imposed a general fine upon

1 A.N. BB¹⁸ 888^A juge de paix Moralis to Merlin, 13 floréal IV. See also fol. 4958 for Teste's correspondence on this issue.

2 For a fuller exploration of the motivating factors behind violent social regulation in the Midi, see, C. Lucas, Beyond The Terror op.cit., pp.172-182. Where there is a specific mention of the juge killing. ('Murder was the act of expulsion, the definitive extrusion of the individual from the community'.)

the community in which a murder had been committed if the authorities were unable to find the individual authors of the crime) for the murder of Juge, thus making collective guilt the punishment for collective self-help. Teste had his way and, on 8 floréal Year IV (27 April 1796), the civil court of the department condemned the commune to a fine of 150,000 livres in compensatory damages to be paid to Juge's widow. It was only then that the municipality of Valréas changed its story to say that Juge had really committed suicide and refused to collect the fine which had been universally condemned as exorbitant. The fine was never collected. The ringleader of the assassins, a 21 year old deserter, was arrested as a scapegoat and sent to Carpentras from where the criminal court released him because of 'lack of evidence'.¹

The jacobins were, therefore, under attack not only from the judges but from united communities which patronised the judicial police force. They were frequently the victims of violence whilst being accused of being men of violence. Some pro-royalist judges, such as Féraud of Arles, attacked the jacobins with with an impulsive violence which betrayed his political bias. During his tenure as directeur du jury in Aix he worked to ensure that the town passed back into the hands of the ultra-conservative oligarchy which had dominated in the Year III. Often he would lose the impassibility expected of distinguished magistrates and burst into beserk attacks upon 'les hommes rejettés par la constitution et par la société elle-même!'² During one investigation into a jacobin

1 A.N. BB¹⁸ 888^A acte d'accusation (Messidor IV).

2 A.N. F⁷7172 Féraud to Min. of Police, 25 pluviôse IV.

riot in the town he worked for 16 hours a day, without the help of either the gendarmerie or the juges de paix; in making his enquiries he was seen stalking the streets of Aix with an arrest warrant in one hand and a large cudgel in the other.¹ Similarly, the public prosecutor of the Gard, Blanc Pascal, had a long history of violence inside and outside the courtroom: he was suspected of having murdered an innkeeper during the 'bagarre de Nimes' in 1790 and was the organiser of the anti-jacobin gangs of thugs known as the 'pouvoir exécutif' during the Federalist revolt.² Joseph Mouret from Marseille had been a judge on the federalist Tribunal Populaire in 1793 and was president of the military commission in the city in 1795 which were established to punish terrorists; he was a constant delight to the gentry of Arles during his tenure as president of the correctional court, especially when he personally led 50 mounted National Guards armed with sabres against a jacobin rally in the quarter of Trinquetaille.³ The leader of the judicial reaction in the Bouches-du-Rhône, Antoine Ailhaud, the president of the criminal court, also had a proclivity for violence: when he had left the courtroom in Aix after having sentenced a jacobin to death, he stood on the steps accepting the applause of the crowd when a relative of the condemned man burst from the throng wielding a dagger; Ailhaud's bodyguard stopped him in his tracks, disarmed him and invited the

1 Roux-Alphéran, Journal historique, p.172.

2 G. Lewis Second Vendée p.65, 75 see also A.N. BB¹⁸ 317 (doss. Blanc-Pascal).

3 A.D. BduR L.279. (report of 25 nivôse V.).

president to deal with him; Ailhaud proceeded to beat him senseless with his walking stick whilst the crowd loudly acclaimed each strike on the head.¹

The belligerence of the reactionary judges enhanced their reputation with the local élites who were impressed with seeing the 'anarchists' beaten at their own game. Yet, despite the frequency of these violent demonstrations by the southern magistracy, the chief weapons against the jacobins were harassment, arrest and harsh sentencing for petty (and often unproven) crimes. This was often done on a grand scale, such as the juge de paix of Uzès (Gard) who ordered the arrest of the entire municipality of Tarascon because the members had criticised him for having dragged his feet over the rapid increase in anti-jacobin murders in his jurisdiction.² The underlying reason for this arrest (which was later annulled) was that the municipality had been quite successful in clamping down on royalist brigandage in their own town. It was against these effective actions and individuals that the judges pitted their considerable powers and guile. Further evidence of this confederated approach among revolutionary judges to republican agencies emerged from the frequent clashes between the courts and the personnel of the Army of Italy, the greatest threat to royalist infiltration of the south or even the establishment of the 'royaume du Midi' which was the well-beloved plan of some of the ultras. The

1 A.D. BduR L. 3020 report of cre. pouv. exéc., 10 brumaire IV.

2 A.N. BB¹⁸ 178 (fol. 6876). The subpoena was supported by the deputy of the Gard, Noailles, and the public prosecutor. It marked the beginning of a concerted campaign in two departments to destroy the radical municipality of Tarascon.

royalist agents provocateurs , who operated under the protection of the judiciary, sought to disrupt the advances of the Army of Italy by arranging the ambush of their supply columns and encouraging mass desertion. Fréron's promise of an amnesty to deserters who rejoined their regiments, although not entirely successful, did manage to reduce the effect of the insoumis upon discipline morale and battle-readiness. The relationship between the army and the local population was strained and uncordial and this was often exacerbated by the enforcement of the state of siege and street-fighting between the bandes and the regular troops. Much of the confidence of the jacobins who had been returned to office by the government in the Year IV derived from the knowledge that they could call upon the republican sympathies of the line troops and the predominantly anti-royalist gendarmerie.

The opportunity to destroy this co-ordination between jacobin administrators and their military protectors in the Arles-Tarascon region fell to the judges in floréal Year IV. In that month the military commander Lazare Hardoin ordered the arrest of a refractory priest who had been in receipt of a subsidy from the gentry and notables of Tarascon; the priest was a popular local figure and his arrest led to riots and protests from the conservatives and royalists. Many of the aspects of this protest were peculiar to the town. For example, one of the traditional forms of protest in Tarascon was the use of the fête of the Tarasque as a political demonstration. This involved the construction of a wooden bull by the anti-jacobin faction (similar to that built prior to the prison massacre of 1795); someone was placed inside with a baton which acted as a moving tail; the float was trundled through the streets in a provocative way, accompanied by the singing of royalist songs

and, at set points on the route, a known republican was dragged from his house and held underneath the tail to be clubbed on the head to the shouts of 'La tarasque a bien fait!'¹. Following their commander's arrest, the town garrison and some members of the jacobin municipality, conducted their own form of counter-ritual which took the form of a farandole which jiggged through the royalist quarters after a session of heavy drinking. They also sung some marching songs and the ça Ira, then pelted the windows of royalists with horses' excrement and stones.² During this time, Tarascon, described by Hardoin as 'la veuve de tous les amants de la république', was in a state of siege.³ Therefore, the military were held responsible for civil commotion. In addition, the local juge de paix discovered a cache of pamphlets attacking Cadroy, Chambon and Isnard and making a case for the return to the Constitution of the Year II. This gave the judges a pretext to declare the jacobin demonstration to be a tentacle of the Babeuf conspiracy and, consequently, a treasonable offense. The directeur, Louis Ripert, ordered the mass arrest of those involved in the farandole but not, significantly, those involved in the fête of the Tarasque.

At the preliminary hearing Ripert permitted the public gallery to be filled with armed égorgeurs who had been selected by the court officials. The municipal officers refused to recognise

1 A.N. BB¹⁸ 177 (fol. 7345 report of Verne, military commandant).

2 A.D. BduR L.3050.

3 A.N. BB¹⁸ 184 quoted in the Year VIII when the case was under review.

the ruling that they be held in custody in the château because they considered it a ploy to massacre them in the same way as their unfortunate colleagues had been massacred during the previous year. They accused Ripert of creating a diversion to avert the arrest of the égorgeurs who had murdered the 89 jacobins in 1795.¹ Their defence caused an outburst in the gallery and the jacobins had to endure a rain of spittle and several missiles being thrown at them. Each witness who testified against the jacobins was cheered by the égorgeurs and those who testified in their favour were insulted and threatened. Ripert took no steps against the blatant intimidation of the defendants and witnesses. It was clear that the trial had been stage-managed and that Ripert was trying to indict the municipality and the soldiers in order to impede the progress of the investigation into the local murder gangs. In a dramatic moment Hardoin burst into the courtroom with an escort of heavily armed soldiers and demanded that the hearing be open to all citizens and not those 'choisis en avance'. Ripert ordered him out of the court but he refused on the grounds that 'tout le monde avoit le droit d'y assister et que foutre il ne sortiroit pas'.² This was the unguarded moment for which the judges had been waiting.

Shortly after this incident the pro-royalist judge Simon issued an arrest warrant against Hardoin for contempt of court and this led to his incarceration. Simon, like Féraud, had unpleasant

1 A.N. BB¹⁸177 procès-verbal of trial.

2 A.D. BduR L.3050 report of Ripert to cre. pouv. exéc.

memories of Lazare Hardoin who had hounded him from Arles in 1792. He charged Hardoin not only with contempt of court but also for rearming terrorists, for having forced certain ineligible citizens onto the requisition lists, for having facilitated the escape of some soldiers being held in custody in Tarascon and for having permitted the murder of the commander of the National Guard of Arles in nivôse Year IV.¹ It was illegal for a civilian court to bring charges against an army officer, as Simon was well aware, and the Directors inevitably annulled the arrest warrant and reprimanded Simon. Nevertheless, Simon continued to issue others in order to keep Hardoin in a perpetual state of harassment. He was suspended from his duties and tried before a military commission following the accusations of abuse of power made against him by Simon and Ripert, but he was acquitted.²

The other Tarascon jacobins and the privates did not benefit from such judicial immunity. The municipal officers tried to escape by appealing to articles 194 and 196 of the Constitution which prohibited judges from arresting administrators for any matter which related to their public duties: as they had not yet been suspended by the executive, they pleaded, they were still outside the jurisdiction of the criminal court. When these arguments were submitted to the Minister of Justice for arbitration, Merlin ruled against them on the grounds that drunken sedition was a dereliction

1 A.N. BB¹⁸ 179 (doss. Hardoin) mandat d'arrêt, 12 thermidor IV.

2 A.N. A.F.^{III} 159, thermidor IV (dossier Hardoin).

of public duty and that they had forfeited their right to immunity from prosecution. Without the protection of the government the jacobins were doomed. Ripert was able to conduct the hearing according to his own rules. He accused them of having planned a general slaughter of the 'honnêtes gens' of the region. Ripert's indictment stated that the farandole was designed to overthrow the Directory and to re-establish the tyrannical Constitution of 1793. The jury d'accusation did not hesitate to send the nine suspected ringleaders before the criminal court in Aix.

No procrastinations or split verdicts hindered the operations of justice when such prize 'anarchistes' were in the dock. As the municipality of Aix put it in a petition against the conduct of the prosecution, 'les égorgeurs peuvent dormir en paix s'il en est pour le crime, mais malheur aux patriotes qui seraient l'objet d'un simple soupçon'.¹ The special jury found them all guilty and Ailhaud had no hesitation in pronouncing the death penalty.² Fortunately, however, the condemned men had friends in the town who had bribed the gaoler in advance; they all escaped and remained safely in hiding until the coup of 1797. They turned themselves over to the authorities in that year and demanded a retrial with Mauche, a former jacobin mayor of Tarascon, as their defence counsel. They were re-tried on 8 pluviôse Year VII (27 January 1799) by a purged criminal court in Aix. The jury returned a

1 A.N. BB¹⁸ 179 petition to Min. of Justice.

2 A.D. BduR L.3021 (register of sentences), 21 ventôse V.

majority verdict that no anti-government riot had ever taken place in floréal Year IV, thereby unconditionally exonerating the accused.¹

Few were as fortunate as the jacobins of Tarascon in evading the 'assassinat judiciaire'. They were liquidated by more sophisticated methods than they had been during then Year III. This system ensured that the elimination of political enemies could be carried out with limited risk to the executor under the guise of the rule of law. The over-punitive sentences were a return to the worst days of the Year III and confirmed the judiciary as an instrument of political warfare and partisan social control. The crude harshness of their sentences should not blind one to the fact that there was much legal art in their exclusion of jacobins from local politics and society. In the vindictive world of mutual denunciation the keynote was hyperbole. It was, therefore, difficult to decide between a justified complaint and gross exaggeration for effect in the verbal crossfire of the antagonists. Each faction had a set of stock phrases and models for incriminating their enemies: the jacobins denounced the judges as the lackeys of royalist princes, the protectors of murderers, enemies of the people whose every action was dedicated to the downfall of the republican régime; the judges portrayed the jacobin placemen as the disruptors of degree and order in society, anarchists whose purpose was to 'empiéter sur l'ordre judiciaire, et d'avilir les fonctionnaires

1 A.D. BduR L.3050 (register).

chargés de cette partie importante et délicate de l'organisation sociale..... à paralyser la force publique, et à ramener ainsi l'anarchie dans le sein du département au lieu de l'extirper'.¹

The denunciations used by the judges bred upon a sophisticated and pettifogging interpretation of the letter of the law whereas their opponents were more direct, plain-speaking and, in the eyes of the Minister of Justice, a little more vulgar. The judges articulated their political prejudices in impeccable legal terms which often veiled their more sinister motives. Although the Ministers of Justice, notably Merlin, continually exhorted the southern judges in a series of didactic homilies and to be 'impassibles comme la loi' and to return to their 'droit presque divin' (which was the punishment of the wrongdoer and not, as they insisted, the arrogation of the powers of the government), the judges pursued their own policies and developed their own political culture in local affairs. These were the judges who made hypocrisy sound magisterial. They permitted atrocious crimes to go unpunished, yet had the audacity to invoke the sacredness and independence of justice when the jacobins protested to prevent the arbitrary arrest of one of their fraternity.

Of all the reactionary southern courts none were more experienced or proficient in employing legal chicanery for their own ends than that of the Bouches-du-Rhône. We have seen how they used the tandem of Ripert and Simon to 'purify' the eastern part of the

1 A.D. BduR L.3031 extract from registers of crim. court, 29 floréal IV.

department. They made incursions into even the smaller towns in a systematic way. One of their sworn enemies was the Mercurin family in Graveson. During the Terror this family had dominated the town: they made many enemies as well as exacerbating feuds with long-standing ones such as the Raoulx family, the former agents of the comte d'Artois. During the Thermidorian reaction control of the town had passed to the Raoulxs who, like the Allier family in Bagnols, used their power to advance the royalist cause whilst also avenging themselves upon their personal enemies.¹ The Mercurins were forced out of office and into flight, and the biens nationaux which they had purchased were returned to their former owners. When Mercurin jeune was appointed as commissaire for the municipality by Fréron, he immediately ordered the arrest of Pierre Raoulx, a man crucial to the counter-revolution in the Rhône valley. In the Year V, when Willot was informed of this arrest he ordered a detachment from Tarascon on the charges that he was related to an émigré, of having dodged conscription and of having abused his powers.² The charge of being related to an émigré was a favourite ploy of the judges who, during the Year III, had placed those jacobins who had fled the 'white' terror on the list of émigrés. Simon also released Raoulx without submitting any form of report to higher authorities. In retaliation against the encroachments of the judiciary, the president of the municipality of Graveson, Laurent Chabert, brought an armed guard to the prison and ordered the

1 A.N. F⁷ 7094 (fol. 655) report to Min. of Interior, 10 nivôse IV. see also F7 7179 (fol.2572).

2 A.N. BB¹⁸176, BB¹⁸178 and A.D. BduR L.481.

gaoler to liberate Mercurin jeune. This was another pretext for the team of Simon and Ripert to move against an entire municipality: Mercurin cadet and three members of the Graveson municipality were led in chains to the prisons of Tarascon.¹

The flagrant use of the arrest warrant as a weapon of local vendetta was intolerable to the central government. This had become so widespread by the Year V that the executive, in a message to the legislature, invited them to do something about the 'multitude d'usurpations' and, in particular, made a barely concealed attack upon the collusion of the Tribunal de Cassation and the departmental courts.² Merlin was outraged by the fact that Ripert had decided to send the Graveson jacobins before the criminal court in Aix without a preliminary hearing before the jury d'accusation. Nor was he satisfied when the departmental administration decided to declare the arrest warrants issued against the men from Graveson to be null and void, thus overstepping the strict limits of their competence. The judges seized upon the disquiet of the government to expound their case against the authorities in general. Thus the Mercurin case was a decisive one in the general struggle to control the department. The judges stated that it was typical of jacobins to violate judicial independence and then declare themselves above

1 A.N. BB¹⁸ 182 report on the activities of the southern judges (22 brumaire VI).

2 A.N. AF^{III} 161 message of 18 floréal V.

the law:

'... des administrateurs qui auraient attenté à la liberté, à la sûreté, à la propriété, à la vie des citoyens, seraient-ils donc inviolables et à l'abri par leurs qualités, des poursuites de la justice? L'écharpe municipale, donnerait-elle à ceux qui en sont revêtus un brevet d'impunité?'.¹

This was a clear case of judicial hypocrisy. The administrative sash (symbolically ripped from Mercurin jeune and burned by his guards) was obviously no talisman against judicial aggression whereas the red robes of the magistrate seemed to signify detached inviolability, which, in practical terms, meant the right to arrest and prosecute whomever they despised. Like a biased public prosecutor, the judges acted from conclusions rather than premises and evidence. They reasoned thus: that the jacobins of Graveson and those who tried to protect them had forfeited the rights normally accorded to the 'honnêtês gens' because of their imputed crimes during the Terror; as they had not permitted others to argue their innocence by dispatching them to the Revolutionary Tribunal then they were, in their turn, devoid of legal rights. All attempts to whitewash the jacobins were subsumed as 'des révoltes ouvertes contre l'autorité judiciaire'.

1 A.D. BduR L. 3031 register/29 floréal IV.

Faced with such cant, Merlin had no other choice than to release the jacobins.¹ The judges responded to this ex-cathedra judgement by extending their dialectic. The government refused to concede and annulled the arrest warrants issued by Simon and Ripert; it appeared that they had finally become aware of the postures and prevarications of the southern judiciary. The judges claimed that the government decree was replete with misinterpretations and contradictions. They conjured up article 262 of the Constitution to support their case; this article excluded the executive from judicial affairs and stated that the only power which the Directors possessed was to refer suspicious cases to the Tribunal de Cassation, the highest stage of ordinary jurisdiction in the nation. The implications of this article was that the Tribunal de Cassation could assume mastery over the affairs of state and, in the wrong hands, could become like the Parlements of the Ancien Régime. Thus, by a simple tactical stroke the southern judges had forced the government into a redefinition of the exercise of power in the state. They saw no need to debate their righteousness, the articles of the Constitution did that for them. And so they constantly trapped and embarrassed the government by presenting them with the contradictions of an independent judiciary. .

1 A.N. A.F.^{III} 158 decree/3 prairial IV. See also A.N. BB¹⁸ 176, Merlin's report to the Directory.

The jacobin cause did have one heroic death-throe before its total subjugation in the Year V. With the victory of the ultra-conservative candidates at the elections of the Year V, the environment became entirely hostile to radical republicanism. The judges had perfected their methods of harassment, arbitrary arrest and, of course, the 'assassinat judiciaire'. They were joined by the pro-royalist military governor in the summer of 1796. If any jacobin was likely to survive such total reaction, then it was Agricol Moreau and his cohorts. Moreau had taken a leading rôle in the unification of France with the Comtat-Venaissin and Avignon, thus ending centuries of 'domination papale' in the enclave. He had survived the Federalist revolt and the 'white' terror; he had brought down Rovère and Poultier; he had broken the racketeering of the 'société accapareuse' in Avignon during the Year II¹: therefore, corrupt judges and royalist generals held few terrors for him. In the Year IV Moreau had taken over the clan bequeathed to him by Payan and unleashed his men against the chief tormentors of republicans, such as the Raoulx, Pellicot, Estrangin, Allier and Roustand families. His activities in this period could be interpreted in many different ways: Moreau the political worker-ant, the super-patriotic revolutionary who refuses to go down; Moreau the spinner of myths, such as that of his nephew's (the young Violla) martyrdom during the federalist revolt and his own

1 On this episode see C. Peyrard, "La spéculation sur les biens nationaux dans le Vaucluse" (Unpublished Mémoire de maîtrise, Aix 1973); P. Vaillandet "Le conventionnel Rovère et les Montagnards du Midi". Mem. de l'Institut de Provence, viii, (1931), pp.39-62 and "La mission de Maignet en Vaucluse". AhRf (1928) pp.109f and A.D. Vaucluse 6L 59 'Notices biographiques sur les chefs de la Révolution d'Avignon'.

rôle-model as the Robespierre of the south; Moreau the local gangster with political ambitions. Whatever he was, and the biographical evidence is not rich enough to give us a fuller portrait, we can be sure that he was the protagonist in the denouement of the southern jacobin tragedy. Whilst the south-east was in the grip of a neo-royalist reaction, Moreau and his followers attempted to seize the town of Avignon to restore republicanism. It was one of the few cases of old-style jacobin militancy during the Year V. After the defeat at the elections the jacobins seemed to have been consigned to the same impotent obscurity which they had experienced during the Thermidorian reaction. A closer study of this case of insurrection does not illustrate a wider theme, it is only valuable to demonstrate how weak and isolated the jacobin movement had become after the onslaught of the judges. In many sense it was the epilogue to the jacobin revival of the Year IV and the precursor of the bigger revival of the Year VI. The case demonstrated the general vulnerability of southern jacobins and their complete dependence upon a favourable government for survival. It was this lack of real political power which made the control of the electoral assemblies so vital. The jacobins were struggling not only against the judiciary and the military, but also against the coterie of reactionary southern deputies in Paris.

In republican terms, the background to the insurrection of 25 pluviôse Year V (13 February 1797) was ambiguous because it involved the proclamation of the victory of the Army of Italy at Mantua as well as the news of the discovery of the royalist conspiracy of the abbé Brottier in Paris.¹ Moreau had placed the recent attempts by

1 See A.N. F⁷ 6371 for the seized papers of Brottier.

the Avignon magistrates and municipal officers to close the remaining jacobin strongholds in the town (such as the arsenal and several masonic lodges) within the framework of a royalist conspiracy radiating out of Paris. Indeed, the local National Guard and the night patrol were packed with counter-terrorist activists and royalist sympathisers.¹ In addition, Teste claimed that over 100 patriots had been murdered in the month of pluviôse in the department.² Therefore, it was a mixture of desperation and fear which incited the jacobins to rise. Desperation because they were disarmed in a hostile locality, surrounded by implacable enemies and fear because they believed that a pogrom was being prepared by remote control. The plot hysteria reached a peak when one of the more prominent local patriots, Peyre, was hacked to pieces by a murder gang whilst tottering in a drunken stupor from a cabaret. His body was buried without ceremony by the municipality. The following day Moreau exhumed the corpse, placed it on a cart and trundled it through the streets singing the Marseillaise as a dirge. The municipality dramatically claimed that Moreau had used Peyre's body as Marc-Anthony had used Caesar's - to incite the plebeians to rise in revolt.³

1 A.N.F⁷ 7233 tableau général of citizens composing the night patrol.

2 A.N. BB¹⁸ 888^B Teste to Directory, 28 pluv.V.

3 Calvet mss. 3020 (fol.106) "Notte sur l'affaire d'Avignon", 25 pluv. V. A.D. Vaucluse 9J7 (fol. 60) procès-verbaux et rapports des autorités civiles et militaires sur les événements à Avignon 24-30 pluviôse

On the day of the insurrection Moreau had led a deputation to the town hall and demanded ('avec le ton impératif') the disbandment of the night patrol, the arrest of Peyre's assassins and the payment of compensation to his widow. After a heated argument and an hour of insults the jacobins walked out of the meeting and began to form themselves into patrols. The news of the capitulation of Mantua, proclaimed by heralds throughout the town sent them into a euphoria. They went on a rampage through the streets, seized all the arms in the arsenal and proceeded to occupy the bridges on the Rhône and the high cliffs of the Rocher des Doms. They were joined by Charlet's gendarmes; within an hour there was a fierce fighting between them and Tisson's grenadiers supported by the National Guard. The jacobins killed about 20 barge and water workers in an attempt to control all the means of access across the river and into the department of the Gard. By the evening the jacobins occupied the eastern part of the town and had begun to fraternise with the line troops. They proclaimed the restoration of the republic from the ramparts of the Palais des Papes.

Tisson decided that order had to be restored at all costs; he called in reinforcements from the Gard. The following day three brigades of colonnes mobiles ('seulement composées de bourgeois') under the command of general Hacquin, arrived to put down the uprising, proclaiming that they had crossed the departmental line to prevent further anarchist contamination of the south.¹ On the evening of 29-30 pluviôse mounted troops violently suppressed the insurrection and arrested some 100 jacobins. Moreau was found naked

1 A.N. F⁷ 7233 (6420) Hacquin to Willot, 30 pluv. V.

in a cellar 'se croyant sur le point d'être sacrifié à la vengeance'.¹ Willot lost no time in branding him as a conniving Babeuviste. He discovered, with well planned speed, secret papers in Moreau's bureau outlining plans for a departmental insurrection led by himself, Vincent Raphael and the Teste family.

The judges of the Vaucluse prepared for the trial of the jacobins with alacrity. Whilst in detention, the prisoners were defiant, chanting the ça Ira for up to six hours a day in the dungeons, driving their gaoler into wild tantrums.² The Minister of Police, Cochon, advised that the insurgents ought not to be tried in Carpentras because of the probable intercession of Vincent Raphael and his supporters.³ Yet both the criminal courts of the Gard and Vaucluse were anxious to prosecute. Merlin perceived two plots in the enthusiasm of these courts: one to release the jacobins (Vaucluse) the other to pass over-punitive sentences (Gard). Both Cochon and Willot pressed for a trial in the Gard. By the Year V the criminal court of the Gard had established a reputation as being the surest death trap for jacobins in the south-east. 'La justice ne parle à Nîmes que pour fournir des victimes aux égorgeurs', wrote Teste, worried about the fate of his son at the hands of Blanc-Pascal, 'et elle n'agit que pour amener les Républicains sous le couteau des monstres qui les détruisent en détail en attendant de les frapper en masse'.⁴

1 A.N. F⁷ 7172 Willot to min. of police, 4 vent. V.

2 A.N. F⁷ 7233 report of Glanjaud, 30 pluv. V.

3 A.N. BB¹⁸ 888^B (2070).

4 A.N. F⁷ 7233 (6420).

At the request of the Directors, the Tribunal de Cassation ordered that the prisoners be referred to the more neutral criminal court of the Drôme at Valence. Willot was outraged: he believed that the jacobin network in the town, led by Curnier, would work all the means at their disposal to have the prisoners exculpated.¹ The official ruling was a blessing for the jacobins because it delivered them from the murderousness of Nîmes, but it was also a hindrance because it meant the transportation of nearly 200 witnesses a distance of some 30 leagues to the north over difficult terrain.

The proceedings in Valence were long and complicated and finally proved themselves to be beyond the capacity of the public prosecutor Mottel. The jacobins took their case outside the courtroom by having their network publish several broadsides written by Agricol Moreau in his cell: these poured opprobrium upon Willot and his general staff, upon Rovère and the royalists of Paris, upon the authorities in Avignon, upon the murder gangs and even upon the government which they felt had deserted them. Moreau transformed his own imprisonment into a political duel. He pointed out the correlation between their arrest and the royalist successes at the elections; it was, in his view, a clear case of a 'conspiration contre la liberté des suffrages dans le Midi'.² It was only after 65 days of detention that they finally underwent

1 A.N. BB¹⁸ 888^B (2070).

2 Les Républicains d'Avignon traduits devant le tribunal criminel de la Drôme au peuple français (Valence, 24 floréal IV).

trial by jury. From the outset the proceedings were plagued by quibbling over the composition of the lists of jurors. The public prosecutor rejected two lists sent by the departmental administration of the Drôme (which was dominated by Curnier) on the grounds that the selected jurors were ignorant of the law and were politically partisan. As a result the jacobins were still under lock and key after the coup d'état of fructidor Year V. A pro-jacobin lobby in Paris began to agitate on behalf of Moreau and his men: on 19 vendémiaire Year VI (10 October 1797) the criminal court of the Drôme was denounced in the Cinq-Cents and, two days later, the new Minister of Justice, Lambrechts, ordered an immediate conclusion to the trial of the Avignonnais. Moreau was confident that the new directions taken by the government would lead to their release and confidently began to denounce his enemies from the witness box. Yet the public prosecutor still refused to release them on bail, although he privately, and perhaps belatedly, confided that he considered them to have been the victims of royalist intrigue.¹

It was the pro-jacobin minister of police, Sotin, who eventually took up their cause and exhorted Lambrechts to break the impasse in Valence. Consequently, the criminal court was reprimanded by the legislature for its conduct of the trial and a purge was ordered; but they also decided against relieving the prisoners without another trial. Acting upon government

1 A.N. BB¹⁸ 888^B (2070), letter to Min. of Just., 16 brum. VI.

recommendations, the Tribunal de Cassation referred the entire case once more to the criminal court of the Isère at Grenoble. Within a month the jury de jugement acquitted them and they were given the right to sue for damages. The trial had created great public interest and when Moreau and his men emerged from the courtroom, they were presented with an embroidered banner ('Aux Avignonnais, martyrs de la liberté') by the members of the Constitutional Circle of Grenoble. They returned in triumph to a purged department and were greeted by a guard of honour. Throughout the summer there was a flood of complaints that the jacobins were pressing for damages and compensation out of all proportion to what they were due.¹ Moreau was appointed as the commissaire attached to the departmental administration after a brief tenure as the provisional public prosecutor. He and his men had been among the rare cases who had escaped the clutches of the judicial reaction during the first Directory.

The period prior to elections was always marred by violence on a grand scale during the Directory. The judges' powers of arrest and detention were the mainstays in a reactionary election campaign. In the Gard, the public prosecutor Blanc-Pascal not only arrested the republican office-holders in Nîmes prior to the elections of the Year V, but also those who were most likely to be his successor in

1 A.N. BB¹⁸ 888^B Petition from citizens of Avignon to Directory, 22 thermidor VI: '...si cette tentative anarchique réussit, il n'est pas un seul citoyen de cette commune qui ne devienne tributaire de l'impunité du crime triomphante'.

the event of a government purge of the judiciary.¹ In Marseille the directeur du jury Claude Tassy arrested several of the juges de paix who had been appointed by Fréron and who had declared their intention to stand for election at the primary assemblies. All over the south-east in the spring of 1796 the electoral assemblies became political arenas in which the jacobins and the reactionaries pitted their strength. In Aix and Marseille there were pitched battles in and around the assemblies and some government officers were killed.² Despite the frantic efforts of the jacobins to keep the murder gangs out of the assemblies and to have the 'Fréroniens' elected, they generally emerged as the losers. A temporary moratorium was placed on the jacobin revival.

In the chamber of Cinq-Cents in Paris the southern deputies denounced the electoral assemblies of the Bouches-du-Rhône as theatres of anarchist murder and intrigue. The republican departmental administration, which had been the focal point of the revival and the centre of resistance to the judiciary, was dismissed by the Directory. A commission of enquiry, presided over by Thibaudeau, was set up to investigate the troubles surrounding the primary elections in the Bouches-du-Rhône. It was Thibaudeau's belief that the only way to restore public order in the south was to

1 A.N. F⁷ 7109 procès-verbal of juge de paix of Nîmes interrogating Blanc-Pascal, 29 messidor VI.

2 For the conflicting interpretations of the journées of 3-4 thermidor IV in Aix and Marseille see A.N.F⁷ 4268, BB¹⁸ 179 (7792), F^{1C} III Bouches-du-Rhône I; for Aix in particular see A.M. Aix LL. 82-95 and for Marseille A.D. BduR L.3020.

neutralise both political factions by force and coercion. Like many of his contemporaries, he believed that the intractable southern mentality was due to the heat of the climate, to an innate and incorrigible sense of violence and a proclivity for internecine tribalism. His opinions were greatly respected by the Directors and had some bearing upon their decision to send a military governor accompanied by an imposing armed force to the region.¹ However, Thibaudeau viewed the choice of Victor-Amedée Willot ('suspecté de royalisme, passionné, haineux, bon pour écraser un parti') who had been disgraced by Hoche in the Vendée as the military commander of the 8th Army division to be a major error.²

The arrival of Willot in the Midi did not diminish the rôle of the judiciary within the counter-revolution, it simply removed the strain of being the isolated opponent of jacobins from their shoulders. Willot swiftly made his presence felt by placing Aix and Marseille in a state of siege, purging the jacobin-dominated gendarmerie, suspending the National Guards and beginning to purge all office-holders appointed by Fréron from their duties. Willot's mission was the antithesis of that which had preceded him. Under his auspices the judicial reaction reached its apogee.

1 A.N. AF^{III} 379 minutes of emergency meeting of 4 fructidor IV.

2 Thibaudeau, Mémoires, II, p.147. See also A.N. AF^{III} 157. Directory suspicions concerning effectiveness of police and judges as upholders of the rule of law in the Midi.

CHAPTER IV

The techniques of judicial counter-revolution

Les tribunaux ont neutralisé toute dénonciation, toute procédure dirigée contre les partisans de la royauté, et jusqu'ici je n'avois pu pénétrer les secrets des démarches de ces hommes chicaneurs.

- Le jourdan, commissaire
attached to the criminal court
of the Bouches-du-Rhône, 30
praerial V. (1)

Des hommes qui, revêtus de l'autorité judiciaire, ont laissé pendant 15 mois commettre sous leurs yeux les forfaits les plus inouis, provoqué le retour de la royauté, le massacre et la dissolution de la Représentation Nationale, osent invoquer les lois quand les assassins de tant de milliers de républicains que l'impunité enhardit, commettent chaque jour de nouveaux crimes..... la loi est muette, et le peuple consterné se demande avec un sentiment de douleur quelle main puissante protège les assassins!

- Address from the department of
the Var, 27 floréal V. (2).

1 A.N. BB¹⁸ 174.

2 A.D. BB¹⁸ 875.

The techniques used by the southern judges to undermine Fréron's placemen of the Year IV rendered the jacobin revival insubstantial. Internal counter-revolution within the structure of a separated power was stronger and more effective than ever in the Year IV. Even the Directors, by the end of 1796, were slowly beginning to perceive the 'judicial reaction' as a distinct problem within the state.¹ Throughout the Year V their suspicions became, under the régime of general Willot, concrete fears. Willot killed off the major part of Fréron's work. Southern counter-revolution, adopting new strategies of infiltration, grew strong in the broken places. The judges were indispensable to the revised strategy of 'legal restoration' which sought to win power through the monopolisation of all elected offices and the exclusion of patriotic radicals.²

The judiciary's dual rôle of protector and propagator of counter-revolution was acted out in conjunction with the military regime of the 8th Army division under Willot and the ultra-conservative departmental administrations which had replaced Fréron's disgraced jacobins. The legacy of Fréron's mission was to leave behind a mass of égorgeurs, émigrés and refractory clergy (who had been arrested by his zealot placemen) and whose legalised

1 See e.g. A.N. A.F.^{III*} 157, message to the Min. of Justice, 17 therm. IV.

2 See Barras, Mémoires, II, p.354 (ventôse V). "ce parti royaliste prend tous les jours plus d'ascendant dans la société et dont les révélations ont déjà prouvé du reste que leur but est l'envahissement de toutes les autorités de la République, à commencer par l'autorité judiciaire".

exoneration the judges had to engineer. The second task for the judges was to ensure the ascendancy of anti-jacobin candidates at the local elections - a task which, in the eyes of the judges, was best achieved by removing all political opposition to the anti-republican élite. Their methods in executing these plans will be the subject of this chapter.

The regime of Willot gave a guarantee of support to the judicial reaction. When Willot was installed in power the judges at once desisted from the non-cooperation which had ruined Fréron's mission. The criminal courts of the Var, Vaucluse and Bouches-du-Rhône, hitherto immobilised by protest strikes, resumed their quarterly sessions. The judges were at once faced with the problem of prisons swollen with detainees whom they had refused to prosecute. Even in normal times, the prisons of the Midi were overcrowded, fetid places devoid of sanitation.¹ A prisoner being detained in these prisons whom the judges did not favour would soon be made aware of the realities of the bias which underpinned the custodial system during the judicial reaction. Jacobin prisoners, for example, were forced to wear fetters during incarceration whereas the émigrés and égorgeurs favoured by the judges remained unchained at all times. Indeed they were permitted all sorts of creature comforts. They were well fed, their cells were regularly cleaned, they could receive visitors and were frequently allowed to

1 e.g. A.D. BduR. L. 496, 499, 501, 501 bis (prisons of Marseille) L. 503, 504 (prisons of Aix) L. 505 (prisons of smaller communes of BduR).

venture out of the prison for short periods.¹ Jacobins, however, were frequently deprived of their daily rations, especially prior to their appearance in court.² They were crowded into dank, rat-infested dungeons without light or facilities for personal hygiene. Because of this treatment whilst in custody, many jacobins had a depraved look when they eventually appeared in the dock.

Faced with such a volume of counter-revolutionary detainees in the prisons, the judges, in an ill-considered action, started to connive at their escape. In the Year III the judges were accused of having arranged the transfers of counter-revolutionary prisoners in such a way that it made ambushes by the prisoners' allies possible; conversely, the accusations ran, jacobin prisoners were transferred from one place of detention to another as a preparation for massacre by égorgeur bandes.³ When counter-revolutionaries were transferred during the First Directory their escorts seldom made any form of resistance against ambushers. The incidence of prison break-outs and ambushes of transferred prisoners was, consequently,

- 1 A.N. BB¹⁸ 319 e.g. Treatment of Meissonnier, the foremost royalist égorgeur in the south-east: "il jouit à Nismes, quoiqu'écroué, d'une liberté entière, sous prétexte de maladie: il avait pour hôpital les promenades et les lieux publics, pour société et pour convives les membres essentiels (C'est ainsi qu'ils se qualifiaient au tribunal criminel).
- 2 See e.g., A.D. BduR L. 3048. The jacobin prisoners in Fort St Jean had been deprived of bread for a week before the massacre. A.N. BB¹⁸ 875: Jacobin prisoners in Fort La Malgue (Toulon) complained that they only ever received maggoty black bread.
- 3 For Bouches-du-Rhône, see A.D. BduR L. 497 L. 503 L. 3093 (évasion de prisonniers), for Vaucluse, see A.D.V. 7 L.92 (report of Testé, 11 flor. IV).

so great that the Minister of Justice demanded stricter sentences for compromised gaolers and guards.¹ Escapees tended to take refuge in key towns with underground organisations. Nîmes was probably the most important point de ralliement for men on the run from republican authorities.²

However, this method of protecting counter-revolutionaries from the due process of law was a rather unsophisticated one, even in comparison with the cruder repertoire of the judges' techniques. It focused the unwelcome attention of the Ministry of Justice on the area of jurisdiction and often led to an official enquiry. Thus, when a band of jeunes gens stormed the prison house of Aix in an attempt to release a group of refractory priests, the judges of the criminal court were furious, 'parce que cette aventure pouvoit nous compromettre et faire ouvrir les yeux du Directoire Exécutif sur les précédents enlèvements qui furent faits avec plus de précaution'.³ Even the ultra-reactionary public prosecutor Augustin Laurans found it necessary to discipline the concierge of the Aix prison who was being far too obvious in the way in which he was releasing émigrés: in groups of five, every day at dawn.⁴ The judges were also obliged to make perfunctory reprimands of the over-accommodating

1 A.N. BB¹⁸ 178(4140), 16 flor. V. correspondence on case of concierge of Château of Tarascon.

2 A.N. BB¹⁸ 888^A (7051) Comm. of Nîmes to Min. of Justice, 25 prairial V. Also A.N. BB¹⁸ 317 report of lieutenant of gendarmerie, Pont St Esprit.

3 Roux-Alphéran Journal historique p.218.

4 A.D. BduR. L. 3008, 16 prairial V:

gendarmerie who looked in the opposite direction whilst their charges were being 'sprung'. The Fort Saint Jean assassin, Dominique Bonifay, was ambushed during his transfer between Carpentras and the criminal court of the Basses-Alpes by a band of 'vingt-deux individus bien armés qui étoient tous revêtus de l'uniforme national' whilst the six gendarmes who were escorting him 'n'ont fait aucune résistance'.¹ The criminal courts of the Midi would always be careful to dissociate themselves from this and other similar ambushes, after having worked assiduously to create the conditions which made them possible. They preferred to have the ambushes take place in another department from their own so that they could in no way be compromised. Such was the case with the Laure brothers, two of the butchers of Fort Saint Jean, who first of all escaped from Marseille, were recaptured and taken before a military commission which did not hesitate to sentence them to death by shooting. However, after sustained pressure from the judges, the death sentence was commuted to a referred trial before the criminal court at Grenoble. They were again sentenced to death (the Isère was outside the orbit of the judicial reaction); but on the return to Marseille the brothers were freed by an armed gang led by their sister.²

The majority of judges preferred the simple biased sentence to remove the threat of capital punishment for counter-revolutionaries.

1 A.N. BB¹⁸ 177, report of dir. du jury d'Apt, 1 mess VII.

2 A.D. BduR. L.3132 (Commission militaire/8th Army division). See also A.N. BB¹⁸ 875 (doss. 3271) escape of Grimaldi and Sesiemond from Toulon.

So abundant and uncritical was the clemency of the reactionary judges that it permanently raised the threshold of expectation within the local community to such an extent that the community (and the prisoners) believed that an égorgeur could never be sentenced to the guillotine. As one commissaire stated:

'Le peuple, qui ne juge des choses que par les effets, croit que les assassins eurent raison d'égorger les républicains. On lui fait croire que tel est le sort réservé aux imprudens qui se mêlent des révolutions, que le triomphe de la république n'est qu'éphémère et que les maux qui ont affligé les républicains ne sont que le prélude des maux plus cruels qui les attendent. Et le peuple le croira et aura raison de le croire tant que les assassins restent impunis'.¹

To cope with the pressure of expectation the judges had constantly to refine and adapt their techniques. The most frequent complaint of the southern republicans concerning the situation in the Midi was that impunity hardened royalism and indulgence led to the proliferation of the number of égorgeurs and brigands and deserters.²

In order to maintain this high level of acquittals of counter-revolutionaries, the judges had to be able to 'pack' the juries with reliable jurors who would decide upon a verdict before the trial started. Fortunately for the judges they did not have to contend with so many republican administrations (who were responsible for drawing up lists of jurors) as in the time of

1 A.N. BB¹⁸ 176 Lejourdan to Min. of Justice, 14 therm. V.

2 see, e.g., A.N. BB¹⁸ 876, cre.pouv.exec. (Var) to Min. of Just., 8 prairial IV, A.N. BB¹⁸ 888^B cre.pouv.exec. (Vaucluse) to Min. of War, 10 ventôse V.

Fréron's mission. With the takeover of the departmental administrations by reactionaries in the Year V the jury lists were replete with 'des jurés complaisans qui sauront bien émousser le glaive de la loi et soustraire à la peine les auteurs des massacres'.¹ Biased verdicts poisoned justice and transformed the judicial system into an oppressive superstructure of ultra-conservative reaction.

The corruption started at the sharp end of the judicial process with the enquiries and arrests of the juge de paix and spread upwards through a series of legal sieves which prevented the favoured prisoner from facing the statutory sentence for his crime. Alternatively, judicial procedures could be used to accelerate the demise of the disfavoured prisoner. That a prisoner favoured by the reactionary judiciary should ever reach the criminal court was usually due to the tenacity of the commissaires in surmounting the stumbling blocks which were strewn throughout the initiatory and intermediary levels of justice. That a disfavoured prisoner should ever fail to encounter the severest possible sentence was usually due to direct executive action, either by the proclamation of an amnesty (Year IV) or by coup d'état (Year V).

This is not to say, however, that the southern judiciary was a monolith of reaction in the Year V. There was, following the appointments of Fréron, a degree of infrastructural tension between the republican juges de paix and the civil and criminal court

1 A.N. BB¹⁸ 876 cre.pouv.exec/Var to Min. of Just.

judges. The directeurs of the jury d'accusation spent a great deal of their time quarrelling with the republican juges de paix and annulling their arrest warrants issued against counter-revolutionaries, usually for specious reasons of technical inaccuracy in its draft or during the arresting process. A notorious example of this was the case of Antoine Pastoret, a royalist and former president of the departmental administration of the Bouches-du-Rhône who, upon the orders of Fréron, was arrested by the juge de paix Dandaille on the charge of emigration during the Toulon rebellion of 1793, fraudulent acquisition of civic status and abuse of public office.¹

After the southern deputies in Paris had launched a protest against the dismissal and arrest of Pastoret, the judges in Aix quickly moved in to annul the arrest warrant on the grounds that 'il n'exprime pas la loi qui l'autorise'.² When the Ministry of Justice ordered a re-issue of the arrest warrant, the judges adopted a new stratagem by depicting Pastoret, not as a pro-royalist émigré, but as a 'passive' émigré forced by the Terror 'd'abandonner son foyer pour se soustraire à la mort' thereby evading prosecution under the terms of the legislation of 3 brumaire Year IV. They also shifted the focus of the case by pouring ridicule on Dandaille whom they accused of abusing his powers. Their sophistry was as skilful as it was misleading. The judges transformed their own efforts to get Pastoret off the hook with a lofty defence of the judicial rights of the accused. Their prevarication led not only to the exoneration of Pastoret, but to the annulment of every arrest

1 A.N. BB¹⁸ 174, Merlin, Min. of Just. to cre.pouv.exec, 6 niv IV.

2 Ibid.

warrant which Dandaille had issued against counter-revolutionaries.¹ In a concerted attempt to ruin Dandaille, the judges then advised all those who had been arrested by Dandaille during the mission of Fréron to sue him for personal damages.² Pastoret was re-elected as president of the departmental administration. In Toulon the judges of the Var took similar measures, releasing all émigrés who had been arrested by the republican juge de paix Monnoyer.³ The criminal court of the Gard not only acquitted the royalist agent Meissonnier from the charge of having organised the vendémiaire insurrection in Avignon but also ordered the former représentant-en-mission Boursault (who had ordered his arrest) to pay 25000 livres as compensation for defamation of character and wrongful arrest despite the laws which prevented ordinary criminal courts from prosecuting a deputy of the national legislature.⁴ Another of the émigrés compromised over the surrender of Toulon to the British in 1793, Rampal, was acquitted by the judges of Aix after the president, Ailhaud, acting without the assistance of a jury, ruled that all evidence brought by the accusers was fraudulent and calumnious. The verdict delighted Rampal's friend and political ally Roux-Alphéran who freely admitted

1 A.N. BB¹⁸ 176 (4781), procès-verbal, Aix, 15 germ IV.

2 A.D. BduR. L. 3020, printed ruling, 24 pluv IV.

3 A.N. BB¹⁸ 875, A.N. AF^{II} 41, 29 flor. V.

4 A.N. BB¹⁸ 317. BB¹⁸ 319.

that he

'auroit été condamné à mort selon les loix de la république...ce citoyen a donc couru les plus grands dangers et si notre tribunal criminel n'eût pas été composé comme il est, il l'auroit déjà jugé depuis longtemps, mais notre tribunal n'a jugé cette affaire que parce que dans celles de cette nature les juges seuls décident sans l'assistance des jurés, car les jurés sont à la nomination du département qui a mis sur pied tous les voleurs et assassins terroristes'.¹

Roux-Alphéran raises two points which were crucial to the techniques of judicial reaction: firstly, the willingness of the judges to abandon correct procedure (i.e. the submission of the case to a jury de jugement) in the interests of favoured prisoner and, secondly, the problem (though, as previously stated a much lesser one than it had been in the Year IV) of a jury list filled with jurors selected by an administration whose political affiliations were diametrically opposed to their own.

These points presented the southern judiciary with two related problems: how to deal with witnesses who insisted on testifying against counter-revolutionary prisoners and with jurors who would not agree to a verdict dictated to them by the president before the trial had begun. For it was necessary, if a 'legal exculpation' without recrimination from the commissaires was to be achieved, that the judges satisfy the procedures set down in the Code des délits et des peines. Thus, one of the more useful techniques in the judges' repertoire was the intimidation and manipulation of witnesses and jurors. The judges were only willing to countenance counter-

1 Roux-Alphéran, 'Journal Historique', op.cit., p.11.

revolutionaries' compurgators or else hand-picked, 'reliable' jurors at the trials of royalists and égorgeurs. Often the judges attempted to intimidate the jurors and witnesses within the courtroom itself with violent cross-examinations and hectoring perorations, but in the majority of cases the judges were content to leave the business of intimidation to the local community.¹ As we have shown, trial judges were willing to permit provocation in the court. During trials, as we have seen, the judges never reprimanded the public gallery for hurling threats (and missiles) at republican witnesses; they would, instead, adjourn themselves to the anteroom of the court and leave the hapless defendants to the pleasures of the mob. Jurors were also intimidated at public selections because the judges had distributed the lists, which were supposed to be secret, to the local murder gangs.² On many occasions, the égorgeurs would visit the prospective jurors at their homes to get them to agree to their choice of verdict; jurors who resisted these overtures usually had their names posted all over their arrondissement in order to expose them to the general wrath of their neighbours.³

Such intimidation was an integral part of the strategy of releasing counter-revolutionaries. It was at its most effective

1 See, e.g., A.N. BB¹⁸ 690 on use of mobile bands at the trial of authors of prison massacres of Lyon. Also A.N. BB¹⁸ 177, intimidation at trial of Tarascon prison murderers.

2 See, e.g., A.N. BB¹⁸ 178 (2762) report of Vernier on intimidation of jurors at selection in Arles and Marseille.

3 See, e.g. A.N. BB¹⁸ 178 (2762) evidence of 30 ventôse V.

when used to help the authors of the prison massacres of the Year III. For example, when 15 witnesses were brought from Marseille to Nîmes to testify against the Fort Saint Jean assassins, they were confronted with a full barrage of extra-legal intimidation. These witnesses had previously made depositions to the juges de paix Dandaille and Sue in Marseille concerning the massacre of the 110 jacobins in the fort, to which some of them had been eye-witnesses and had been fortunate enough to get out alive. The case, however, was obstructed for around nine months by the directeur of Marseille, Claude Tassy, despite the protests of the commissaires and several petitions by the widows of the murdered prisoners.¹ Eventually, the Tribunal de Cassation referred the entire case to the criminal court of the Gard at Nîmes. The witnesses were threatened and jeered as they passed through each commune under escort on the way to Nîmes; when they entered the chef lieu itself they were met by an intensely hostile crowd and, as one of them later testified, '...à notre surprise nous avons rencontré quelques-uns des prévenus contre qui nous devions déposer, et qui devaient être détenus dans la maison d'arrêt, au milieu de la rue et d'autres confiés à la garde des portes du tribunal'.² At their lodgings in Nîmes the witnesses were inundated by 'émisaires' alternately offering bribes and threatening murder whilst outside a crowd had formed a cordon around their inn. On the night before the trial was scheduled to take place they were 'warned' that a beserk band of égorgeurs, who

1 A.N. BB¹⁸ 177 (doss. 6916).

2 A.N. BB¹⁸ 177, proc.-verb., 20 brum. V.

had already murdered four republican witnesses in Bagnols, were on their way to Nîmes to murder them.¹ In a state of terrified panic, the witnesses fled from Nîmes and made for the east; they were pursued as far as Arles (by the Nîmois compagnie du Soleil) where they found refuge in the jacobin-controlled Trinquetaille quarter.

The flight of the witnesses gave the public prosecutor, Blanc-Pascal, the opportunity to acquit the Marseille égorgeurs. The judges, jurors and defendants were all borne aloft by the inhabitants of the town and taken in triumph to the market square for celebrations. Blanc-Pascal, however, was not content with simply exploiting loopholes: he formally indicted the witnesses for having absconded with their expenses without having fulfilled their legal obligations. To add audacity to outrage, the released assassins were invited to bring civil actions against the witnesses for having defamed the character of the defendants and for compensation for loss of earnings during their period in custody.² Willot advised that the witnesses ought to be sent before a military commission.³ It was a classic strategy: to obscure the fundamental issue of the trial by the introduction of a plethora of subsidiary issues.

The most direct consequence of intimidation was that the impartial, the uncommitted and the patriotic refused to take part in

1 A.D. Gard L.3151 report of comm. of police/Nîmes, 21 brum. V.

2 A.N. BB¹⁸ 177, Blanc-Pascal to Min. of Just. 27 niv. V.

3 A.N. 200 AP, Willot to Liégard, 26 brum. V.

the operations of justice. They feared not only violence during the trials but also future ostracism and reprisal in their native communes - a threat frequently articulated by the presidents during their resumés of the proceedings of the trial. The best way to avoid jury service and the unknown horrors of the witness box was to declare oneself to be incapacitated. Thus, for 'political' trials, the clerk's bureau was usually littered with fake medical certificates attesting: maladie grave, femme en train d'expirer, femme enceinte and incapacité imposée par la vieillesse. Most were even prepared to pay the fine for non-appearance at trial rather than submit themselves to the night visits of murder gangs. Initially the fine for defaulting witnesses and jurors was set at 50 livres and two years' loss of suffrage; but by the Year V absenteeism was naively regarded as the chief source of the inertia of the southern judiciary by the Ministry of Justice. It was an idea which the judges, in their correspondence with Paris, continually reiterated. There were few better alibis for a suspended trial or acquitted prisoners than the 'lâcheté des témoins et des jurés'. Special committees were established to investigate non-appearance which called for the imprisonment of all defaulters for a period of two months.¹ .

Invariably, the witnesses were placed in an impossible dilemma such as the one outlined by the commissaire attached to the

1 A.N. AD^{III} Duprat, Projet de résolution d'une commission spéciale. 10 therm. V.

criminal court of the Var:

'Les témoins effrayés de tant d'attentats et craignant pour leur vie, n'ont point osé se présenter. C'est ainsi que la terreur est répandue par une bande d'égorgeurs qui jette la consternation dans l'âme de ceux qui découvriraient la vérité à la justice..... la circonstance où se trouvent les témoins est périlleuse, je pourrais envoyer un détachement pour les amener par devant un tribunal voisin et les mettre à l'abri des insultes et des vexations qu'ils pourroient essayer dans leur route, mais cette mesure deviendrait peut-être leur arrêt de mort et de retour dans leurs foyers ils seroient assassinés'.¹

But this dire predicament was well suited to the purpose of the judges. The local community was their greatest refuge and their greatest reprieve from enquiry by prying republican officials. It was the excuse for their own conscious dilatoriness in the prosecution of counter-revolutionaries.

The double jury system also provided the southern judges with ample opportunities to delay trials. The intermediary stage of prosecution - the hearing before the jury d'accusation and its directeur - also permitted the judges from the civil courts to participate in the judicial reaction. Not only could the civil judges influence the course of criminal justice during their periods of duty on the bench of the criminal court, but also, equally, if not more effectively, in their periods of secondment to the correctionnel courts during which times they also acted as directeurs and controlled the judicial police. As we have already pointed out, a directeur with a hand-picked jury d'accusation could

1 A.N. BB¹⁸ 876 cre.pouv.ex./Var. to Min. of Just., 6 therm V.

be a foil to a republican juge de paix who was intent on bringing counter-revolutionaries to justice. A rigged jury d'accusation manipulated by the directeur could prevent the accused from ever reaching the criminal court by simply denying the validity of the evidence and stating that there were no further grounds for prosecution. Thus, the intermediary jury, designed as a safeguard for the accused, could, like so many other safety mechanisms designed by the Thermidorians, be used to protect counter-revolutionaries from republican punishments. Indeed, in the Year VI, the future Director Roger Ducos condemned all interference with juries as counter-revolutionary.¹

In default of a rigged jury, the jurors could be intimidated in the same way as witnesses. Often the directeur would not permit the jurors to retire to consider their verdict by means of secret ballot; they were forced to stand up before the public gallery and give their individual verdicts. Some jurors, if disposed towards the accused, would often relish the opportunity of voicing his anti-republican sentiments. Pliable jurors were fêted as much as reactionary judges by the local inhabitants after a 'popular' verdict. And when an accused was sure of the favourable disposition of the jurors he might also indulge in some repartee with them. For example, Pierre Blanc dit Bayonne, a participant in the Tarascon prison massacre, received the applause of the jury d'accusation in Avignon when he shouted 'Vive le Roi! Merde à la République et aux républicains!' to each of the questions of the directeur on his rôle

1 A.N. AD^{III}46 Rapport au nom d'une commission spéciale, 21 brum. VI.

during the massacre.¹ Jacques Genevet, who was accused of having thrown his own father from the Tarascon watchtower, strutted into the dock during his hearing 'et avait solennellement promis de plonger son poignard dans le sein de tout juré qui se complairait dans le gouvernement républicain'.² Such outrage among defendants and hard swearing among witnesses was rooted in an assurance of the general prejudices and behavioural patterns of the local community who were, in a sense, collaborating with them against the formal justice of a state which was commonly perceived as alien and intrusive.

The non-appearance of witnesses could be vital to the deliberations of the jury d'accusation, because the jury had to be certain that the case could be sustained before the cross-examination of the public prosecutor in the criminal court. Sometimes the jurors would even judge the social, moral and political character and revolutionary history of the defaulting witnesses themselves and base their verdict on their findings: the facts of the case were entirely secondary, the defendant was on trial for what he was or had been, not for his imputed crime. The assassins of the jacobins being transferred from the prisons of Orange to Pont-Saint-Esprit were released by the jury d'accusation in Avignon after the directeur had informed them that the majority of prosecution witnesses were former terrorist officials.³

1 A.N. BB¹⁸ 177(6916); proc.-verb.

2 A.D. BduR L.3003; proc.-verb., 22 firm. V. See also A.N. BB¹⁸319, account of the trial of Meissonnier in Nîmes.

3 A.D.V. 7L.15.

Nor was there any possibility of the deliberations of a rigged jury being kept from the accused: in Nîmes, at the trial of the Fort Saint Jean assassins, the jurors and prisoners mixed freely in the taverns of the town on the evening before the acquittal.¹ The commissaires frequently complained to the Ministry of Justice about these abuses, but also underlined their inability to prevent them because, in most cases, the public prosecutors refused to hear the their complaints, for, as agents of the executive, they were not permitted to interfere in judicial business.²

The jury de jugement, or trial jury, had ultimate control over the fate of the accused because it pronounced on both the fact and the intent of a crime. Biased trial juries could often shorten their stay by simply stating that the crime described in the arrest warrant had never been committed. Alternatively, as was the case with the majority of the Thermidorian égorgeurs put on trial in the Years IV and V, the jury declared that the crime had taken place but that the defendants were innocent. Even in the Years VI and VII, when, under extreme pressure from a pro-republican government, they tended to declare that the defendants had not acted with malicious intent when massacring jacobins, thus saving them from the guillotine. In posing the question of intent the president was bound by the law codes to avoid all ambiguity, exaggeration, complexity and bias; therefore, one could reasonably argue that the

1 A.D. Gard L.3151.

2 A.N. BB¹⁸ 174, see reply of the public prosecutor Laurans to comm. Lejourdan, 20 vent. IV.

formulation of the question of intent by the majority of southern presidents of the criminal courts was the most abused of all legal forms during the reaction. The question, which had been central to the Thermidorians' concept of judicial fairness, re-introduced the distinction between action and motive. Within this distinction was the subtle nuance of what constituted malice and what constituted premeditation. This permitted a biased trial jury to make a preplanned homicide appear as accidental. Jacobin critics like Moreau, Mauche and Teste denounced the question of intent as a talisman which protected royalist murderers from the full force of the law.

When a trial jury did reach a verdict it had to be signed by each juror. The publicity given to these jurors' verdicts could determine their personal security within the community. Those who declared that, through fear or personal bias, the counter-revolutionary crime which they had judged to have been committed 'involontairement, sans aucune intention de nuire ou pour légitime défense de soi ou d'autrui', could be assured of a safe passage out of the courtroom and an untroubled future within their community. It was by using this safety mechanism that the trial jury of the Vaucluse saved the mass-murderer Jean Barry from the guillotine. At first the south-eastern judges had tried to avoid passing a definitive sentence upon Barry by moving him around various departmental courts through the referral system, but he ran out of 'options' in the Year VII when the jacobin commissaire Bidon made determined efforts to bring the full punitive weight of the law down upon him. The jury balked at sending such a popular égorgeur to the scaffold because the crowds outside demanded his acquittal; instead they returned the incredible verdict that he had committed

mass murder without premeditation, but in self-defence, which commuted his sentence to 20 years in irons. As Bidon observed (to the Minister of Justice); '...il est moralement et physiquement impossible que les prisonniers renfermés au fort Saint Jean eussent été massacrés s'il n'y avait pas eu préméditation de la part des assassins!'.¹ In the pre-fructidorian era such ridiculous verdicts had not been necessary - the jury simply declared that the prison massacres of the Year III were simple 'délits révolutionnaires' thus making the accused eligible for the amnesty of brumaire Year IV.

The regulation which stated that jurors could not serve on both juries in the same criminal case opened up further opportunities for the judges to protect their client prisoners. It meant that they had a second chance to rig the trial jury if they were unable to do so with the jury d'accusation. As well as this, in the event of a referral of the case to another department, the jury list had to be entirely renewed. Therefore, the judges could, if faced with a jury which was determined to have a mind of its own, deliberately commit a technical fault in order to induce cassation, referral and a consequent change of jurors.

The most persistent theme to emerge from an analysis of the techniques of judicial counter-revolution is that of an inversion of the legal safeguards which were originally intended to protect the accused from an ex-parte judiciary or extra-legal violence. In the

1 A.N. BB¹⁸ 177(6916), 28 vent. VII.

implementation of these techniques the judges could rely upon an awareness and like-mindedness within the local community and, in the Year V, upon other local power bases such as the administration and military. The overriding objective of their methods was the creation of an ultra-conservative, anti-republican ascendancy in the Midi through the liberation of the forces of counter-revolution from all constraints, both judicial and otherwise. The captured égorgeurs, émigrés and non-juring priests were the manpower and inspiration of the anti-republican movement. In order to remain in office and to retain any credibility with the government in Paris, the judges had to make these groups seem like their enemies and they had to go through the motions of blind and disinterested prosecution. Yet, by the end of the Directory they had succeeded in acquitting the grands égorgeurs whom Fréron's men had arrested in the Year IV. If we analyse and contrast the techniques employed by the southern judges in the prosecution of their most controversial cases - the assassins of Fort Saint-Jean, the Tarascon château and Pont-Saint-Esprit - we shall have a clearer idea of the subtler aspects of the judges' manoeuvres. These trials are worthy of comparison, not only because they resulted from some of the most brutal murders of the Thermidorian Reaction, but because they concluded with the release of amnesty of the majority of those accused. They did not all follow the same pattern because the judges had to change in response to the political vacillations of the Directorial regime. The Tarascon assassins secured their liberty by different routes from the Marseille assassins because the latter group were arrested in different places at different times by different juges de paix; some escaped from prison, some were acquitted soon after arrest, some were constantly referred until the Consular amnesty; only one was executed.

The crucial phase for the prosecution of the Fort Saint Jean assassins was the summer of 1796 following the violent primary elections in the Bouches-du-Rhône. Prior to this time the thirty captured égorgeurs had enjoyed the protection of the directeur of the jury d'accusation of Marseille, Claude Tassy. He had struggled to have the arrest warrants issued against them annulled on the grounds of technical incompetence.¹ However, the protests of the commissaire and the widows of the slaughtered jacobins had been so great that the Minister of Justice, Merlin, had to intervene personally to break the deadlock. Seeing that their first defence obstacle had been surmounted, the judges turned to a new strategy. They began a concerted attack upon those who had been responsible for bringing the assassins to justice: the juges de paix, commissaires and gendarmerie were derided as 'le ramas de ces agitateurs du peuple qui depuis l'an 1789 n'ont cessé de déshonorer par leurs excès la cause sacrée de la révolution'.² The judges made their attacks public by use of the reactionary press (such as Beugeard's Journal de Marseille) and the posting of printed opinions or declarations. The intention was to inflame the locality against the republicans which would make the task of intimidation of witnesses and jurors easier when the case went to the criminal court. Then the judges rather lamely demanded that the égorgeurs be released under the terms of the amnesty of brumaire Year IV which implied that the massacre was to be termed as a 'délit

1 A.N. BB¹⁸ 177, report of Lejourdan to Min. of Justice, 25 niv. V.

2 A.N. BB¹⁸ 177(6916) proc.-verb., 10 therm. IV. see also A.D. BduR L.3048 (trial of A. Pélard)

révolutionnaire'. When the government refused to entertain these notions, the judges changed their strategy and began to question the validity of the depositions made against the égorgeurs. Indeed there were among the witnesses several men who had survived the massacre and who could identify the arrested men. But their lawyer, the pro-royalist judge Jean Estrangin, drew up a petition against the witnesses on behalf of the prisoners:

'....peut-on nous juger coupables sur des dénonciations pareilles faites par des gens accoutumés au crime? Des gens qui, après avoir assassiné par la guillotine nos pères, nos enfants, nos amis, n'aspirent qu'à renouveler de pareilles horreurs pour conserver les biens qu'ils se sont appropriés illégalement?'¹

The campaign was successful and led the Directors to invite the Tribunal de Cassation to refer the trial to another court because of the 'fermentation' which the judges of the Bouches-du-Rhône had stirred.² Counter-revolutionaries all over the Midi rejoiced at the Tribunal de Cassation's decision to refer the trial to the much-requested criminal court of the Gard ('afin que la tranquillité publique ne soit encore troublée'.)³

As we have already seen, the intimidation of the witnesses in the Gard led to the temporary acquittal of the assassins. Among those who benefitted from the machinations of Blanc-Pascal were J.F. Pagès, the 32 year old ex-commandant of the Fort, suspected of

1 A.D. BduR L.3020, L.3021 printed denunciation.

2 A.N. AF^{III} 159* Directors' message, 12 therm. IV.

3 Ibid. decree of 30 therm. IV:

having co-ordinated the entire operation; Manoly, his secretary and right-hand man; Melle, the gaoler; Sicard, the hospital orderly accused of having hacked bed-ridden jacobins to pieces; Padelupe, Ourdon, Burel, Durand, and Guillem, the Fort guards accused of having forced the prisoners to drink poison from wine bottles; Deluze fils and Jean Michel, accused of having mutilated the corpses and burying them in prepared trenches filled with quick-lime.¹ These men, in contrast to the witnesses, had been greeted like heroes when they entered Nîmes, having been heavily escorted en route by Willot's personal guards to ensure that they would not fall prey to the jacobin clans of the eastern Gard. They were fêted by the municipality; some of them visited the cabarets of the town as guests of the compagnies du Soleil before retiring to their prison cells. When the witnesses did arrive, the president of the criminal court permitted them to carry arms and roam the town whipping up rancour against them. Elsewhere, the criminal court of Aix acquitted another group of Fort Saint Jean assassins on the same day that it sentenced two common-law criminals to death for burglary.² The atrocious Louis Dumoulin, accused not only of having butchered 18 jacobins in the Fort, but also of two related murders in the Var in 1795, was acquitted in Aix because the witness who testified against him was a former terrorist, had taken six months to make his deposition, had denounced Dumoulin with a zeal too reminiscent of the dénonciations publiques of the Terror and had spent some time in jail in 1792.³

1 A.D. Gard L.3151, proc.-verb., 10 vend.V.

2 A.D. BduR L.3021, proc.-verb., 16 frimaire V.

3 A.D. BduR L.3020, proc.-verb., 21 prairial V.

The Tarascon massacreurs had been rounded up after Fréron had placed the town in a state of siege and the replacement juge de paix had opened an intense investigation.¹ Troops were drafted into the town to protect the witnesses and, consequently, over 80 suspects were arrested and charged.² It was only after these hearings that the full horrors of the two massacres became known to the government. But the judges quickly closed ranks. The directeur in the Tarascon region, Louis Ripert, further intimidated the witnesses in the courtroom by closing with a summing up which was little more than a tirade against jacobinism. The jury d'accusation returned a verdict that there were no further grounds for prosecution.³ Again the Ministry of Justice intervened to order a re-trial, the upshot of which was that 20 were released and 62 were sent for trial before the criminal court in Aix.⁴ The trial, like that of the Fort Saint Jean assassins, turned upon the cross-examination of the gaoler (Claveau) and the concierge (Verdier) both of whom were crucial to an understanding of the motivation and organisation of the massacre. It was revealed that jacobin prisoners from the surrounding communes had been concentrated in the château, ostensibly for the greater security, but more probably to facilitate their liquidation.⁵ As the facts were disclosed, the public prosecutor, Augustin Laurans, came under

1 A.D. BduR L.3051 report of 8 niv. IV.

2 See Appendix A. for details of the authors of the Tarascon massacre.

3 A.N. BB¹⁸ 177 report to Min. of Justice, 6 fruct. IV.

4 A.D. BduR L.3051.

5 A.N. BB¹⁸ 178, evidence of 16 flor. V.

great pressure from Merlin to take all measures necessary for the severest punishment of the assassins. Laurans responded by conducting a token trial, which, in his own words, served as 'la meilleure réponse à faire aux reproches qu'on ne cesse d'adresser aux juges sur leur prétendue inaction et complaisance'.¹ His trick was to neglect to call the eye-witnesses who could identify the men on trial; he then proceeded to suspend the hearings through lack of evidence. In this way the trial was continually adjourned until the more comfortable atmosphere of the Year V permitted Ailhaud to acquit the assassins on the pretext of the non-appearance of witnesses and general lack of corroborating evidence.²

The organisers of the Pont-Saint-Esprit massacre, Roustand, Courtial and Meissonnier, were released through the benevolence of Blanc-Pascal in Nîmes. When Meissonnier was also charged with the organisation of the vendémiaire insurrection in Avignon, the trial jury in Nîmes returned the incredible verdict that there had never been an insurrection and, therefore, Meissonnier could not be found guilty of having organised it. This verdict had been secured when Meissonnier's defence counsel had called the discredited ex-représentants Poultier and Oliver-Gerente as character witnesses. They testified that the defendant had in fact helped Boursault to suppress the 'conspiration tendante à troubler l'état' in vendémiaire, which, according to the jury, had never taken place in the first place! Such discrepancies of testimony and verdict seldom hindered Blanc-Pascal.

1 A.N. BB¹⁸ 176 (5562) Laurans to Ripert, 28 mess. IV.

2 A.N. BB¹⁸ 177, Min. of Justice's report to Consuls, pluv. VIII.

Gradually, the majority of Thermidorian égorgeurs were released by foul means during the Years IV and V. But, following the coup d'état of fructidor Year V, the southern jacobins, who had studied every twist which the trials of their former tormentors had taken, pounced on them again the Year VI. This time the égorgeurs did not have the benefit of a collaborationist personnel in the criminal courts: the Ailhauds, the Constans, the Jamets and the Blanc-Pascals were all either dismissed or placed under arrest. All that remained of the judicial reaction were the civil courts judges who also served at the intermediary and superior levels of criminal justice. These men took on the responsibility for the protection of égorgeurs and it was their continuing efforts which secured the ultimate release of the majority of them during the Consulate. Most of the prisoners were released because of the longevity of their trials, which the Consular Minister of Justice Cambacérès attributed to:

'.....la répugnance des juges qui sans cesse flotans entre la crainte de déplaire au parti protecteur des coupables et le devoir de leur ministère.... donc ils n'osaient le détourner à rien de décisif et par conséquent ces procédures toujours actives ont traînées jusque par de là six années'.¹

Cambacérès appreciated the tension within the judiciary: they had to operate an internal counter-revolution to the satisfaction of the 'parti protecteur' but had to do so within the rigid legal regulations of the Directory which were upheld by the Ministry of Justice, the executive and its commissaires.

1 A.N. BB¹⁸ 177(6916) report to Consuls, vent. IX.

It has been stated previously that the very rigidity and cautiousness of judicial organisation presented the judges with several loopholes which could be put to the service of 'enemies of the republic'. How did the judges manipulate these devices to exonerate the mass murderers whom the government was so anxious to condemn? Beneath the complexity of their techniques lay two simple regulations which were the linchpins of the whole reactionary system: the right to referral and article 10 of the Code des délits et des peines. This article stated that in civil and criminal cases a definitive verdict had to be reached within a maximum period of six years; if the verdict had not been reached then the accused had to be released without further possibility of arrest or prosecution for the same crime. This article was dove-tailed with the referral system by the tacticians within the southern judiciary. The tactic turned the referral system into a protracted jeu au furet played between the departmental courts of the south-east, the prize for which was the irrevocable release of the prisoner after six years.

There were two ways in which a defendant could gain referral. The first was his constitutional 'droit d'option' which he could claim before the trial started when he suspected partisanship, extra-legal pressure upon the judges in the chef-lieu, vice of legal forms during arrest or arraignment before the jury d'accusation. The plea would then be submitted to the Tribunal de Cassation which, throughout the period of the Directory, always seemed a willing player in the games of the southern judiciary. In the event that the plea was upheld, the trial would be referred to a neighbouring departmental court. The second method was to make a plea after the verdict had been reached and a sentence given by the presiding judge. This type of appeal (recours en cassation) was made on the

defendants' behalf by the commissaires attached to the courts; it then passed to the Tribunal de Cassation via the Minister of Justice. This second method was not an appeal against the sentence itself, it was a request for a retrial. Given the slowness of communications and the natural procrastinations of judges, this system was exceedingly time-consuming and this factor in itself abetted the counter-revolutionaries under the threat of capital punishment or deportation.

The effectiveness of the referral system as a technique of judicial counter-revolution depended upon a reactionary confederation of criminal courts. As we have already observed in the case of Agricola Moreau and the republicans of Avignon, the only departments which deviated from the reactionary confederacy in the south-east were the Isère and, to a much lesser degree and in a much more haphazard way, the Drôme. An égorgeur arrested in the Bouches-du-Rhône, for example, was confronted with an embarrassment of riches: the Var, the Vaucluse and, best of all, the Gard. Such a prisoner could be kept moving within the system until they had gone past the statutory time limit of six years. The game was described by one Vauclusian judge as 'faire parcourir un cercle vicieux sans vouloir atteindre aucun but'.¹

The frequency of abuses of the referral system suggests that the Tribunal de Cassation was involved in the judicial reaction in the Midi. The suspicion was held at the time by the Minister of

1 A.D.Vaucluse 7 L.92, 10 pluv. VII (Cottier to Min. of Justice).

Justice, Merlin:

'Le Tribunal de Cassation, qui est le dernier degré de la juridiction ordinaire, deviendrait maître des affaires de l'état par des usurpations en usurpations et par des combinaisons qui ne sont pas malheureusement toujours étrangères aux juges en place. Il pouvoit devenir un Parlement et reproduire aux yeux de la république cette alliance monstrueuse de tous les pouvoirs qui choquait les partisans mêmes de l'ancien régime et qui érigeoit de simples juges en tuteurs et en arbitres des destinées de l'état'.¹

And these suspicions became certain fears in the summer of 1797, as can be deduced from the government purge of the Tribunal de Cassation which took place after the coup d'état. The Fructidorian Directors believed that the reaction had infiltrated the highest levels of the judicial structure. The collaboration between this supreme court and provincial courts had contributed to the general trend of inverting intended legal practice and purpose. In theory, the Tribunal de Cassation was supposed to survey and regularise the work of the departmental courts, intervening only when requested to arbitrate on disputes over legal forms; it was also prohibited from becoming involved in the issues raised in each case which was referred to it by making interpretations of the law.² In fact the main zones of conflict between the Ministry of Justice and the Tribunal de Cassation were those which involved referral; the Paris magistrates preferred to work from the secret recommendations made by the judges rather than from the official reports of the executive commissaires. They aggressively asserted their independence in

1 A.N. BB¹⁸ 176(5545) Min. of Justice to crim. court. of BduR., 11 mess. IV.

2 Godechot, Institutions p.123.

matters of referral, discipline and arbitration; they dragged their feet when it was politic to delay - indeed the regulation that all matters referred to the Tribunal de Cassation had to be dealt with within one month was so completely ignored that, after the coup of fructidor, the Directors had to set up a special section to deal with the proliferation of cases deliberately shelved during the worst days of the reaction.

In order to gauge the extent of the judicial reaction in the Midi, some sort of statistical quantification ought to be necessary. Yet, the number of delays and evasions in the prosecution of crime diminishes the usefulness of statistical analyses of reported crimes.¹ The available statistics give us a distorted picture of the incidence of, say, 'political' crimes because for much of the time the southern juges de paix permitted many assassinations to pass without either investigation or arrest. In some cases we can balance the available statistics on crimes such as 'political assassination' by the lists drawn up in the Year VI by each commune of their 'victimes de la réaction thermidorienne'. But, generally, these lists are uneven and often dubious and cannot give us an accurate bilan of the White Terror.

Therefore, the statistics of crime and punishment which are available are more useful in highlighting the techniques of the judicial reaction than in giving us an accurate picture of

1 See Appendix B for the types of crime brought before the criminal court of the Bouches-du-Rhône at Aix-en-Provence, 1794-1800.

criminality.¹ The techniques of the judges changed in response to the changes of government policy and direction, therefore, it is not possible to study the techniques of the southern judges as a constant. For statistical purposes the period between the Thermidorian Reaction and the Consulate must be sub-divided into the crucial periods after which strategies were changed to meet the new contingencies. As far as the judicial reaction is concerned, the first period was that of the Thermidorian Reaction, i.e. from the installation of the anti-jacobin judges to the arrival of Fréron; the second is that of the jacobin revival up to the arrival of Willot; the third covers the régime of Willot, the last months of the Year IV and the greater part of the Year V - the period of unchecked royalism; the final period covers the difficult times between the coup of fructidor and the advent of the Consular regime.

As Aix-en-Provence was the gravitational centre of the judicial reaction in the south-east, we should do well to analyse the ways in which it dealt with the various types of crime brought before it. As this thesis is concerned primarily with the political consequences of the judicial reaction, the figures for the prosecution of 'political' crime in the Bouches-du-Rhône have been given in Appendix C. Political crime under the Directory can be broadly defined as: assassination with political motives, such as vengeance attacks upon former terrorists, or in the pillaging done by royalist brigand bands; emigration, (concerning which there were

1 See appendices C and D concerning the incidence and prosecution of certain types of political crime in the Bouches-du-Rhône.

no less than 224 laws passed between 1795 to 1799); offenses relating to the exercise of the Catholic religion or the Constitutional oath; political insults and propaganda favouring the return of the Bourbons or the Constitution of the Year II; armed royalist insurrection or any other form of anti-republican conspiracy. In Appendix D, for the purpose of ascertaining the precise techniques of the reactionary judges, those convicted of pro-jacobin 'political crimes' have been separated from the Thermidorian égorgeurs and the royalist brigands.

The figures for the prosecution of political crime show that almost four times more jacobins were executed for this crime than anti-jacobin égorgeurs, despite the infinitely higher number of anti-jacobin murders committed over the entire period.¹ During the Thermidorian Reaction, the period of the mass slaughter of jacobins, there were five jacobins convicted of assassination for every égorgeur! And those rare égorgeurs who were arrested by the Thermidorian judiciary were all acquitted, whereas more than three quarters of the jacobins convicted were sentenced to the guillotine.² The tiny number of égorgeurs actually brought to justice in the Bouches-du-Rhône and other southern departments during the Year III is a searing indictment of the judicial police and the initiatory levels of the criminal justice system. Even during the republican clampdown in the Year IV the rise in the

1 see Appendix D.

2 Ibid.

number of égorgeurs arrested compares unfavourably with the number convicted and sentenced. Not one was executed. This demonstrates the efficacy of the intermediary levels of justice in blocking the prosecution of counter-revolutionaries and the criminal courts who preferred to refer them rather than to pass a definitive sentence. In periods of jacobin revival, such as the Year IV and the Year VI, the referral system was the most widely used of the judges' basic techniques. We notice that, in the years VI-VII, the criminal court of Aix was presented with an unprecedented number (67) of counter-revolutionary prisoners and its immediate response was to refer over half of them.¹ Of the 160 égorgeurs who were arrested during the 'Fructidorian Terror', the judges in Aix referred no less than 68% of them. The high percentage of égorgeurs referred in the Year IV were acquitted during the 'safe' period of the royalist reaction of the Year V. Conversely, the number of jacobins, despite their appeals, were rarely referred. Even following the republican coup of fructidor, when 87% of those arrested in the Bouches-du-Rhône for the crime of political assassination were égorgeurs and royalists, and despite the purges of the leading reactionary judges, only 10.6% of the accused were given capital sentences.² The clever procrastinations within the referral system outdid the jacobin lawyers and deputies who assiduously tried to bring successful indictments against their former tormentors. It must, however, be borne in mind that in the period following the coup of fructidor, much of the prosecution of 'political crime',

1 see Appendix C.

2 see Appendix D

such as brigandage and royalist insurrection, was prosecuted by military commissions who, using companies of chasseurs empowered to cross departmental boundaries, scored far greater successes against the internal counter-revolution than the judiciary. Yet, the overall statistics do show that the judiciary in one department could act as a legalised protection racket for counter-revolutionaries, and, in addition, that it could make the jacobins suffer to a far greater degree for their imputed crimes of the Terror than the égorgeurs who committed the hideous murders of the Thermidorian Reaction, even when under the scrutiny of a jacobin-minded government.

The cases which we have been using will serve as a description of how the referral system was abused to help the Thermidorian égorgeurs. In the Year VI, most of the assassins of Tarascon, Marseille and Pont Saint-Esprit, who had been acquitted in the Year V, were re-arrested by executive fiat. The decisions of the criminal courts in Nîmes and Aix were overturned. Roustand and Meissonnier were extradited from their refuge in Paris to face their 'juges naturels' in Carpentras. The new Minister of Justice, Charles Lambrechts, justified these anti-constitutional measures on the premise that the 'absolution générale et scandaleuse' of the égorgeurs had been the result of 'une partialité révoltante' among the southern judges.¹ Yet the re-opening of these controversial cases was vitiated by the attitude and the orchestrated obstructionism of the unpurged civil court judges who served in the

1 A.D. BduR L.3051, Lambrechts to crim.court, 5 therm. VI.

correctional and criminal courts by rotation. Only Pagès, the commandant of Fort Saint Jean in 1795, fell victim to the government-directed backlash, but even his token execution was not the sentence of the judiciary, but of a military commission which had captured him bearing arms in the royalist cause in Year VII.

The longer the civil court judges succeeded in delaying the trials, the greater became the expectations of their 'client' prisoners that they would be shepherded in safety past the crucial six year barrier. However, the manipulation of the legal system could not be carried out with the same impunity which had been the hallmark of the operations of the reaction during the First Directory. The Ministry of Justice had gained a greater awareness of the patterns and tricks of the judges. It was less convinced by judges taking shelter under the protection of their elected status. It replaced the permanent personnel of the criminal court with solid republicans, but stopped short of a complete purge of the civil courts. There were not enough qualified judges to replace them. But it was in failing to purge the civil judges who had been elected in the Year IV that the Ministry inadvertantly created further opportunities for the judges to help the égorgeurs to evade punishment.

Despite the dedicated efforts of both the conscientious and the vengeful, the pace of the trials could not be forced. The Tarascon égorgeurs were referred back to the original jury d'accusation in Tarascon which was under the direction of the ultra-reactionary civil court judge Fauverge. Roustand was referred four times between the Bouches-du-Rhône, the Vaucluse, the Drôme and, finally, the Ardèche where he lingered, unsentenced, until the

Consulate which decided to extend an amnesty to him.¹ It was the directeurs of various jurys d'accusation who protected the re-arrested assassins of Fort Saint-Jean. It was mainly through the efforts of the directeurs that the attempts by the republican judges and commissaires from Year VI-VIII to have the égorgeurs definitively sentenced were foiled. Consequently, the criminal proceedings against the grands égorgeurs outlived the Directorial regime itself.

The Consuls, and the Minister of Justice Cambacérès, recognised that their predecessors have been outmanoeuvred by the southern judges and agonised over extending the general political amnesty to the égorgeurs who had been in custody for over six years. The Special Tribunals refused to have them shot on the grounds that they had committed their murders before the coup of brumaire. But by 1801, a year of revived anti-jacobinism, the doubts had evaporated and the last of the égorgeurs were released:

'A l'égard de la gravité des délits, elle peut faire naître le regret de les laisser impunis. Le Législateur a sagement pensé qu'il valoit mieux courir le risque d'élargir un coupable que de s'exposer à retenir éternellement l'innocent dans les lieux des procédures criminelles... celui qu'on n'a pu convaincre pendant six années est vraisemblablement innocent'.²

Indeed, all that had been created, in a labyrinth of six years of

1 A.N. BB¹⁸ 893, 21 niv. IX. All of the prisoners charged with complicity in the Pont-Saint-Esprit massacre, including the ex-judges Jamet and Chayard, were also amnestied by this decree.

2 Ibid. Report to Consuls, an IX.

corrupt criminal proceedings, was a verisimilitude of justice. The jacobin-killers, having suffered only the discomfort of periodic incarceration, emerged from the reaction into a new, anti-jacobin regime. Their heads had been kept from the scaffold by a range of techniques - naked partiality, courtroom intimidation, harassment of witnesses, rigged juries, annulment of arrest warrants, transfer of blame, sophistry, pettifogging, delay and referral, suspension of hearings and constant, tactical inertia.

II

To overconcentrate upon the purely legal techniques of promoting the cause of internal counter-revolution, leaves us with an incomplete and unsatisfactory picture of the judicial reaction in the Midi. The protection of counter-revolutionaries was a prerequisite to the success of royalism. The relationship between the techniques of the judges and 'external' counter-revolution was symbiotic. The judiciary, the pro-royalist administrations, the murder gangs, the military under Willot were mutually reinforcing organs of reaction. It was through a series of co-ordinated actions that the royalists dominated at the elections of the Year V in the Midi. The expansion of counter-revolutionary strategy was, arguably, made possible because of the independent position which the judiciary occupied within the state.

Willot's orders were not only the restoration of order in the departments placed under his control, but also 'de surveiller la

marche de la justice et d'activer l'exécution des loix'.¹ He saw the southern judiciary as a special operations force within his own command structure which was to be used in a concerted campaign to annihilate jacobin republicanism and secure the monopoly of public offices for his own placemen. He operated through a sub-command of ultra-reactionary military commandants in the main cities and towns of the region. In places like Marseille, his views were amplified by the reactionary press, such as Beugeard's Journal de Marseille which eulogised the general on every move he made. The press also publicised the activities of the judges and the sentences of the criminal courts, which often had the effect of making them into local celebrities.

It was the task of the military commandants to ensure that the courts carried out Willot's wishes, therefore, their relationship was not always devoid of tension. The more senior of the henchmen, Merle, Liégard in Marseille, Tisson in Avignon, Vernet in Arles and Tarascon and Moynat-Dauxon in Toulon, each held a blacklist of local jacobin agitators whom they frequently obliged the judiciary to harass or prosecute.² Some of the judges themselves acted as Willot's agents, most notably the royalists Féraud in Arles and Gabriel in Tarascon.³ The judiciary was at the heart of the

1 A.N. 200 AP, 1-2, Willot to pub.pros./Var, 14 fruc. IV.

2 Full departmental lists in: A.N.^{Ib} II Vaucluse 1, F^{Ib} II Var I, F^{Ib} II Gard I, and A.N.F⁷ 4268 (BduR).

3 A.N. 220 AP, letter to Féraud, 8 brum. V, 28 brum. V; letter to deputy Siméon, 30 frim.V.

anti-republican counter-offensive, not just as a weapon for the repression of jacobins, but, equally importantly, in the control of the local elections and in the disruption of the flow of provisions and recruits to the Army of Italy. The senior officers of the Army of Italy frequently complained that they were being stabbed in the back by Willot and his judicial creatures who permitted deserters, insoumis, and the brigands who ambushed supply columns to go unpunished.¹ Indeed Willot's personal contempt for the Army of Italy and its rising star (whom he constantly referred to as 'ce petit Buonaparté' in his correspondence) was another motivating force in his augmentation of the forces of reaction in the south-eastern region. His own jealous ambition became the centre around which the disparate and, in many cases incompatible, forces of southern counter-revolution gravitated.

Conversely, the southern judges often employed Willot's military resources to achieve their own ends. Each member of the criminal courts within Willot's control was assigned a bodyguard by him. The judges would often use troops to settle their own scores out of court. Antoine Ailhaud, for example, had been fighting with Fréron's gendarmerie in Aix throughout the Year IV and, when Willot arrived, he asked for some assistance to rid the town of the gendarmerie; Willot promptly sent one of his crack detachments because he was 'si désireux de voir rétablir la bonne harmonie qui avoit existé jusqu'à ce moment entre les tribunaux et

1 Ibid. correspondence with Berthier, vend. V; see also Barras Mémoires op.cit. II, p.220, 18 vend.V. 'Bonaparte nous écrit que Willot fait la contre-révolution dans le Midi'.

nous-mêmes....j'ai écrit au commandant de la place d'Aix pour lui ordonner de seconder à cet égard de tout son pouvoir les intentions du tribunal'.¹ Yet Willot was not always so accommodating; he usually tried to countermand the judges when it came to dealing with arrested égorgeurs; thus he made it clear to his commandant in Marseille, Liégard, that he was making the decisions concerning the fate of the Fort Saint Jean assassins and not the judges in Aix.² When Ripert in Arles started to equivocate over sentencing the republican commandant Hardoin, Willot sent a bataillon of troops to bolster his confidence.³ Despite his initial circumspection, Willot, and his subsidised newspapers, depicted himself as the crusader against terrorism who had the support of the southern property-owners and their magistrates. 'C'est dans les tribunaux', wrote Willot, 'que se trouvent quelques hommes assez courageux pour s'élever contre les crimes des petits tyrans de l'atroce Fréron'.⁴ With such mutual flattery there were few within the courts who strongly opposed Willot's right to direct personally the operations of justice, although there were some vain rearguard actions among the remaining republican juges de paix against the encroachments of the reactionary commandants. Only the commissaires had the strength to resist what one of them described as 'le projet de vendéiser le Midi, de terroriser les républicains et les écarter des assemblées primaires'.⁵

1 A.N. AP 220. letter to Ailhaud, 6 frim. V.

2 Ibid. letter to Liégard, 5 brum. V.

3 Ibid., letter to Ripert, 16 vend. V.

4 A.N. 200 AP, Willot to Min. of War, 14 fruct. IV.

5 A.N. BB¹⁸ 876 cre.pouv.exec. of Var to Min. of Justice, 12 germ. V.

The co-ordination of military and judicial power was a formidable one: 'je vois', wrote the embattled commissaire Lejourdan,

'..le pouvoir judiciaire en érigeant l'impunité en système pour une certaine classe de coupables, les pouvoirs administratifs dépouillés des attributions que leur délègue l'acte constitutionnel, et le pouvoir militaire absorbant tout par l'état de siege, substituant une inquisition farouche à une police vigilante, donnant sa confiance à des êtres immoraux échappés à peine des prisons par l'abus ou la violation des formes, les établir tout à la fois espions et témoins, délateurs et agents-exécuteurs'.¹

Indeed, each of Willot's commandants employed the 'state of siege' as a means of conducting political warfare upon republicans. Moynat-Dauxon was perhaps the most draconian in his methods; he often clashed with the republican police over the rights of search and arrest. He worked hand-in-glove with the public prosecutor of the Var to destroy the juges de paix and municipality of Toulon.² In desperation, following the assassination of the republican commissaire Aubert by a henchman of Moynat-Dauxon, the juge de paix Bouis issued an arrest warrant against the commandant on the charge that he had violated his powers. The public prosecutor annulled the warrant and, consequently, Moynat-Dauxon escaped trial. With such an irresistible system, supported by bands of armed desperados, the reactionaries felt confident enough to extend their techniques into new realms with expanded objectives.

1 A.N. BB¹⁸ 189, Lejourdan to Min. of Justice, 9 pluv. V.

2 A.N. BB¹⁸ 879 (doss. Bouis).

The jacobins did not fold their tents in the face of the reactionary onslaught of the Year V, they tried to fight back through the institutions of local democracy. The battle between republican jacobins and pro-royalist reactionaries at the demise of the First Directory took place around the electoral and primary assemblies of the Midi. The judges, being dependent upon the election system to remain in office were determined that the floor of the assemblies would not be littered with rival jacobin candidates. The émigrés who had their names removed from the departmental lists by collaborationist administrations were permitted to vote and provided the muscle which prevented the jacobins from casting their votes. One Directory spy reported that, in the Var, the judges 's'occupent des élections dix mois à l'avance'.¹ In the face of a jacobin attempt to have Fréron's placemen elected to office, the judges resorted to their most cynical abuses of power: the use of arrest warrants and short custodial sentences against republican voters shortly before the assemblies were due to open. The republicans were usually released only after the votes had been counted and the candidates elected.

The use of arrest warrants against legitimate candidates and innocent voters was, of course, a last resort, intended for those who had taken no heed of prior threats made by murder gangs. In the Arles-Tarascon region, for example, the jacobin electoral machine was well-organised and tenacious, so the juge de paix issued over

1 A.N. F⁷ 7270, to Min. of Pol., 11 germ. V.

100 arrest warrants on the days of the primary assembly.¹ The organisers of the 'last resort' electioneering were the judges Louis Ripert and Joseph Mouret, both of whom Fréron had attempted to dismiss during the Year IV. Not only did they arrest their potential rivals, they also presented themselves at the assemblies armed with batons. In Arles the elections started with pitched battles and ended with the municipal commissaire being assaulted, tied to a horse and being dragged backwards through the town.² The judges directed the jeunes gens who guarded the doors of the assembly and 'ont assommé à coup de pierre beaucoup de républicains'.³ Consequently, neither republican voter nor candidate was allowed through the doors of the assembly; the 100 arrested activists were thrown in the dungeons of the Arles Arena on the specious charge that they had all conspired in the murder of an innkeeper during the Marseillais' occupation of the town in 1792.⁴

In Marseille, prior to the stormy elections of the Year V, Willot used his appointed juges de paix to arrest his enemies. Among the more dangerous of his political enemies were the veterans of the bataillon of the 10th August, who, having celebrated the fourth anniversary of the execution of the King, were arrested

1 A.N. BB¹⁸ 178 dispatch from dismissed military commandant of Arles to Min. of War, 2 germ. V.

2 A.N. BB¹⁸ 176 (2726) evidence of Natoire, (of Arles) sent to Min. of Just., 18 germ. V. The directeur du jury (Ripert), armed with a baton, leading a group of 'réquisitionnaires, deserteurs et étrangers', raided the primary assembly.

3 Ibid.

4 A.D. BduR L.274, mandat d'arrêt, 25 germ. V.

for 'subversion'.¹ His commandant, Liégard, locked up three of his drummers who were caught playing the ça Ira on the night prior to the elections.² On the day of the elections the members of the bureau central were scattered and one of them was assassinated. In Aix, there was violent fighting between the jeunes gens led by the judges and supported by Willot's troops and the jacobins attempting to storm their way into the primary assemblies.³ In the pro-republican town of Orange, Willot had prepared for the elections by breaking up the night watch and removing all canons from the garrison. The directeur issued around thirty arrest warrants for the town's municipal officers, the juges de paix and leading jacobin activists.⁴ All mail coaches were prevented from leaving the town; the municipal chest was seized and the biens nationaux of prominent republicans were confiscated.⁵ An anti-jacobin judge was drafted in from the Catholic royalist canton of Bédarrides to assume the functions of his incarcerated predecessor.⁶ All over the Comtat-Venaissin peasant bands led by priests and royalist agents formed protective cordons around the primary and electoral assemblies, although they themselves were not enfranchised. In the Var doors of the electoral assemblies were literally closed in the

1 A.D. BduR L.273, juge de paix (Marseille) procès-verbal, 8 germinal V.

2 A.N. BB¹⁸ 178 report of 4 fruct. V.

3 Calvet mss. 3028, report by Sahuguet. (s.d.).

4 A.N. BB¹⁸ 888^B juge de paix/Orange to Min. of Justice, 8 prairial V.

5 A.N. F^{1c} III Vaucluse 1 report of Admin. Dept., 18 flor. V.

6 A.N. BB¹⁸ 888^B Petition of citizens of Orange, 28 flor. V.

face of republicans.¹ At Saint Tropez (Var) the election of the new municipality was decided by the reactionary electors in a church guarded by the compagnie du soleil whilst the republicans remained locked inside the primary assembly.² For the election of the public prosecutor of the Drôme, Reval, special passes issued by Reval himself had to be shown at the door of the electoral assembly which had declared itself 'en permanence'.³ The judges had anyone who protested against these huis clos elections immediately arrested. 'Aux yeux des directeurs des jurys d'accusation', lamented Merlin de Douai, 'il n'y a dans ces affaires de criminels que les hommes qui ont défendu l'indépendance et l'intégrité de leurs assemblées, la sûreté de leurs villes, leurs vies et leurs propriétés'.⁴

The extended anti-democratic rôle of the judiciary was a contributing factor to the demoralisation and apathy of the electorate in the last years of the Directory. Not only had the judges corrupted the operations of the much-vaunted rule of law, but they had also undermined the democratic process which was the other great founding ideal of the Constitutional republic of the Year III. The southern judiciary was the propagator, and protector of counter-revolution, the superstructure of a reactionary,

1 see, e.g., A.N. BB¹⁸ 875, report of cre.pouv.exec. (Toulon), 2 germinal V.

2 A.N. BB¹⁸ 879 report of cre.pouv.exec., 12 germ. V.

3 A.N. BB¹⁸ 277, petition from citizens of Valence, 3 germ. V.

4 A.N. BB¹⁸ 888^B report to Directors, 24 flor. V.

anti-republican movement. The range of techniques employed by the judiciary ensured that the local democratic process under the Directory was a generator of ultra-conservatism. The reactionary judges had made the limited suffrage counter-revolutionary.

Chapter VThe counter-reaction: justice and political conflict during the Second Directory.

'Grâce à votre énergie, grâce aux dispositions nouvelles, une épuration salubre va redonner à la France des juges républicains et ennemis du sang'.

Lambrechts, Minister of
Justice, I vend. VI¹

'Vous verrez que la calomnie s'exerce à nous susciter des accusations mais soyez sûr, Citoyen Ministre, que nous sortirons toujours victorieux des combats qui nous seront livrés lorsqu'on n'employera contre nous que les armes avec lesquelles la Constitution et les lois permettent de nous attaquer'.

Antoine Ailhaud,
president of the
criminal court of the
Bouches-du-Rhône,
Year III - Year VI.²

1 A.N. AF^{III*} 41.

2 A.N. BB¹⁸ 182, letter of frimaire VI.

Following the coup of fructidor, the cataracts which had clouded the government's perception of the infiltration of the state by the supposed executors of the nation's laws were sliced away. It had taken the executive overlong to make the extent of the counter-revolutionary conspiracy of the judges a matter of public information. 'Nulle coalition dans un état libre n'étoit plus dangereux que celle des autorités judiciaires'.¹ Painful as the acknowledgement was to the Second Directory, it encouraged the government to implement a full-blooded purge of the independent judiciary, which, according to the letter and spirit of the law, would render their regime unconstitutional. After fructidor the government could not, as the Thermidorians had done, seek their mandate in the lofty realms of limited democracy and the rule of law. It was obliged by the social and political crisis to saw from under itself the tenuous branches upon which its legitimacy had rested. The southern judiciary had, in an indirect way, played a considerable rôle in forcing the government into the recreation of the very regime which it had been instituted to prevent from recurring.

In the aftermath of the coup of fructidor, special reports (not the first or the last) were commissioned on the nature of political factions, society and violence in the Midi. In a statement presented to the Cinq-Cents on behalf of the Executive Directors, the origins of the troubles were traced to the

1 A.N. AF^{III*} 161. Directors' message to Cinq-Cents, 18 floréal VI

Thermidorian period and 'les terribles effets de la vengeance nationale' as well as the time-honoured alibi for southern violence: 'le climat chaleureux'. The fructidorian post-mortem also isolated the 'funeste inertie des tribunaux criminels' as a contributing cause to the death of the revolution in the Midi. Not only deliberate inertia, but the direct collaboration of the judges with the anti-republican men of violence whereby the public prosecutors and the juges de paix 'participèrent eux-mêmes à ces horreurs, et qu'ils ont souvent dirigées et qu'ils figurent comme prévenus dans des procédures que l'on instruit en ce moment. Les magistrats chargés de la répression du crime étaient eux-mêmes de grands coupables'.¹ The government singled out towns in the Midi as notorious breeding grounds for the 'plague' of espionage, reaction and insurrection: Lyon, Montbrison, Montélimar, Beaucaire, Arles, Sisteron, Forcalquier, Manosque and, above all, Tarascon.² With foresight which would have been unusual to their predecessors, the Directors warned that the battle against the judiciary would continue because, despite the measures taken to 'disinfect' the criminal courts of the Midi, the government had intelligence of further 'entraves' being prepared by 'des tribunaux vendus au vil prétendant qui continuent à servir d'une manière plus ou moins active les fureurs des brigands'. Indeed, through Year VI the grands égorgeurs of the Thermidorian Reaction were still being released en masse by corrupt judges in control of puppet juries.

1 A.N. AF^{III*} 161, message of 18 floréal VI.

2 Ibid.

The executive's statement was clear recognition that the judicial reaction could not simply be eradicated by dismissing its foremost exponents. It was admission that republicans and holders of biens nationaux in the Midi could not yet have their security guaranteed by the government in the face of escalating brigand attacks. And although a purge had taken place, the government was still powerless to prevent the release and protection of émigrés and refractory clergy. With the publication of such declarations of remote impotence and the explicit need to root out negligent and conspiratorial judges, the executive prepared political opinion to accept the creation of a large-scale system of repressive military justice in the provinces which, it was argued, was the only means of by-passing the judiciary and the 'bouclier d'indépendance' with which it was surrounded:

'Le Directoire Exécutif ne croit pas devoir vous dissimuler que tant qu'il n'existera pas dans la loi des moyens coercitifs contre les tribunaux et notamment contre les accusateurs publics, les directeurs de jury et les officiers de police judiciaire qui foulent aux pieds leurs obligations les plus sacrées, tant que ces fonctionnaires pourront impunément substituer leurs volontés privées et leur inertie contre-révolutionnaire à la volonté formelle de la loi et sacrifier les grands intérêts de la société aux petites vengeances, aux passions haineuses indignes d'un magistrat républicain, tant que le gouvernement sera dans l'impuissance de donner à la marche de la justice cette activité qu'exige impérieusement la poursuite des délits, il sera presque impossible d'assurer la tranquillité publique et l'on verra se renouveler fréquemment ces crimes affreux qu'enfante l'esprit de parti et qu'encourage toujours l'assurance ou l'espoir de l'impunité'.¹

This was no less than a call for a system of parallel justice

¹ A.N. AF^{III*} 161.

similar to that which had been developed during the Terror. This was the only means possible to render useless the spirit of party in the criminal courts which was the prerequisite of royalism. Such an 'action publique' could only be held to be legitimate if it was seen as indispensable to the maintenance of public safety and individual freedom. The government moved towards this policy in two stages: firstly, a purge of the more notorious of the reactionary judges and their replacement by moderate republicans, and secondly, the revision of a great many of the biased sentences which had been passed against republican defendants since the elections of the Year IV (decree of 12 pluviôse VI/31 January 1798). In declaring these sentences to have been part of a counter-revolutionary conspiracy (and therefore illegal) the government hoped to rally the support of alienated republicans who had suffered under what contemporaries had come to call the 'réaction judicio-royale'.

Those who suffered most in the ranks of the southern judiciary from the implementation of the fructidor decrees were the permanent personnel of the criminal courts: the presidents, public prosecutors and clerks of court.¹ These excisions stunned, emasculated and threw the judicial reaction into confusion; yet they did not bring it to an end. Its source of inspiration and organisation shifted from the criminal courts to the civil courts and, in particular, those judges who served in the intermediary stages of justice as directeurs of the jurys d'accusation and those

1 See A.N.BB¹⁸184: list of the principal victims of the fructidorian coup in the BduR.

judges who served by rotation on the criminal court. As well as the disruption caused by these judges, the majority of property-owning southern electors remained antipathetic towards republican candidates for judicial office. Yet, the republicans, by activating their electoral machines and by winning back the support of uncommitted republicans, did manage to return to office with a vengeance, no longer shackled with the circumspection which had characterised their actions and official discourse during the revival of the Year IV. Thus, the battle lines for the second Directory were drawn between the civil court judges backing the brigand bands and the tough jacobin clans attempting to push as many of their cohorts into office as possible, while the moderate republican office-holders attempted to arbitrate and to keep the machinery of local law-enforcement functioning. The civil court judges fought a rearguard action against the new republican administrations, public prosecutors and commissaires by developing furtive, understated methods of resistance to their demands to prosecute the groups proscribed after fructidor. They achieved this with methods of obstruction, non-cooperation, delay and the propagation of misinformation.

Towards the end of the Year VI and throughout the Year VII the civil judges received some inadvertent help from the government, which could not come to terms with such a potent jacobin revival

and, whilst trying to perpetuate the fiction of its impartial centrism, struck at the radicals who had been elected in the Year VI by invalidating their elections. All of the non-legislative jacobin office-holders in the Vaucluse, for example, had their elections annulled; twelve were dismissed in the Bouches-du-Rhône and ten in the Basses-Alpes. Throughout the republic some 97 (28.45%) of the new personnel of the criminal courts elected in the Year VI were floréalisés. Thus the 'radical' judiciary of Year VI fared worse than the reactionary judiciary of the Years III to V, and was much more ephemeral. The post-fructidorian judiciary emerged from the annulments of floréal as the most purged of all non-legislative institutions, having lost almost one third of its total number of judges.¹ After the 'coup' of floréal it was clear that the government no longer placed any faith in the workings of the electoral system, nor had it shown any outright trust in its most ardent defenders who had been fighting royalist subterfuge and brigand violence with the same tenacity and with similar methods as the reactionaries had used against republicans during the first Directory. The executive seemed to be the enemy of everyone and friend of no-one. The consequence was the profound public apathy of the Year VII which, more than the perceived machinations of élites, brought the Revolution to an end.

1 J.R. Surrateau, Les élections de l'an VI et le coup d'état du 22 floréal an VII (Paris, 1971) p.483.

II

When the news of the arrest of Willot and the southern deputies reached the south-east it was greeted with mixed emotions: joy among the jacobins, apprehension among the conservative élite and consternation among the royalist bands. Those in office who had collaborated in the royalist movement sought to defend themselves through a mobilisation of public opinion and by unleashing a flood of scaremongering propaganda which depicted the coup as the first step back down the road to 1793. The initial impact on the region was striking. The paramilitary bandes, marshalled by the more fanatical judges and local officials, decided to resist the depredations of fructidor by force. In the Vaucluse there was a Pavlovian reaction among the bandes of égorgeurs who immediately began to pillage the homes of republicans.¹ News of the coup reached Aix around the 23 fructidor and there was immediate pandemonium. The compagnie du Soleil tried to storm the prison and massacre the jacobin prisoners as they had done in 1795, after news of the jacobin rising in Toulon. The juge de paix Henri Pellicot, who was the leader of the bandes of égorgeurs, along with the commandant of Aix, General Merle, and the royalist judge Féraud formed a committee of insurrection to protect Aix from 'le retour à l'anarchie'.² Between 22 fructidor V (8 September 1797) and 3 vendémiaire Year VI (24 September 1797) Aix was the theatre of some of the bloodiest

1 AN BB¹⁸ 890 (reports to Min. of Police, vend. VI).

2 A.M. Aix LL48. See also Roux-Alphéran, op.cit. pp.440-442.

clashes between political enemies yet seen in the south-east. The violence had been sparked by the promulgation of the decrees relating to the deportation of priests and the banishment of émigrés. The ex-émigrés of the departmental administration signed a protest against the decrees and, pre-empting the inevitable, resigned from office. As Aix had been the centre of the judicial reaction, so it became the centre of judicial resistance to the 'fructidorian' Directory. 'Les royalistes d'Aix', wrote Roux-Alphéran (who was soon to be arrested by the jacobins as a royalist sympathiser), 'se voient perdus et déjà, comme les conspirateurs de Paris, en route pour Sinnamary. La peur leur donne de l'audace: avant de disparaître ils veulent frapper les républicains'.¹

One of the main features of the post-fructidorian backlash was the government's attempts to impose the law of 10 vendémiaire Year IV. Indeed, the strict imposition of this law was an integral part of the policy of the Second Directory. This law, which had been rendered ineffective during the First Directory by indulgent judges and local officials, sought to make the community collectively responsible for the assassination of a republican by means of a fine imposed upon the inhabitants who lived in the jurisdiction where the murder was committed. It was similar in many ways to the 'murdrum' fine in Norman England. As a means of ensuring the internal security of the communes it had been a disastrous failure partly because of the refusal of the community to

1 Roux-Alphéran, op.cit., p.489.

make financial restitution and partly because of the reluctance of the civil courts to impose the fine within definite time limits. The civil court judges, who were charged with the setting of fines to be imposed upon communities, constantly frustrated republican claims for compensation. Several commissaires agreed that the non-application of the law was the major cause of assassination within the departments because it was a guarantee of impunity for criminals.¹

If the law had been unsuccessful before the coup of fructidor, attempts to impose it after fructidor in the face of escalating brigandage were farcical. When the civil court of the Vaucluse had imposed a compensatory fine of 69,165 francs on the Carpentras and neighbouring communes for the revolt of 1-2 brumaire Year VI (22-23 October 1797), the civil court judges also advised the citizens not to pay the fine to the municipal administration.² The Carpentras insurrection was a direct form of resistance to the coup of fructidor by a hysterical pro-royalist commune and was, significantly, led by elected judges. The revival of jacobin strength in Carpentras and the anticipated effects of the executive's decrees had welded together the disparate anti-republican groups in the town: ultra-royalists, ultra-montanists, deserters from the Army of Italy, constitutional monarchists, dispossessed émigrés, non-juring priests, égorgeurs and

1 See, e.g., AN BB¹⁸ 891, address of cre.pouv.exéc. to Min of Just., 4 therm VII.

2 A.D. Vaucluse 7L 87, report of cre.pouv.exéc., 23 floréal VI.

property-owning conservatives. These groups looked towards the judges to lead an 'official' insurrection against the recently installed republican municipality. In this case they called upon the public prosecutor, Etienne Jamet, the civil court judge Chayard (both of whom had experience in insurgency tactics at Toulon in 1793) and the commissaires attached to the courts in Carpentras, Cartier and Emeric.¹

The official explanation for the motivation behind the insurrection given by the judges of both courts (who were anxious to protect its fellow members) was surprisingly similar to those given to whitewash the atrocities of the Thermidorian Reaction: 'la peur de toute une population devant la possibilité d'un retour au terrorisme robespierriste'.² More impartial and independent enquiries revealed that the insurrection had been well planned and co-ordinated in the surrounding villages where the tocsin had been sounded and had included royalist agents whose 'accents français montraient qu'ils fussent étrangers au Midi'.³ It was much more likely that the insurrectionists led by the judges intended to strangle the jacobin municipality (which was controlled by the hated Vincent Raphel) before it could begin to reorganise the National Guard of the town. As the day progressed, the insurrection was crushed by the timely intervention of the National Guard of Orange,

1 For the insurrection of Carpentras see A.D. Vaucluse 7L 87, A.N. F⁷ 7328 (dossiers 7160, 6846), A.N. BB¹⁸ 890.

2 A.N. BB¹⁸ 890 proc. verb. of crim. trib., 18 brum VI.

3 A.N. BB¹⁸ 890, procès-verbal of juge de paix (8 brumaire VI).

which, throughout the Year VI, proved the most effective of the republican strike forces in the region. Six republicans had been killed and the town hall had been occupied after Jamet had demanded the surrender of the municipality to 'le peuple armé'. When the municipality had refused to surrender and to reinstate the dismissed National Guardsmen, Jamet and Chayard had opened fire with their muskets.¹

Never had any reactionary judges been caught in such a compromising situation. Their abortive seizure of the town resulted in the arrest of 188 rioters by the National Guard of Orange supported by a detachment of dragoons. It was difficult to open the prosecution of the rioters because the public prosecutor and the directeur of the jury d'accusation were among those arrested. Witnesses testified that the judges had given the order to sound the tocsin in the surrounding communes to rally the bandes of égorgeurs to the revolt of the chef-lieu. The municipality branded the entire affair as a concerted royalist insurrection, the death throes of the southern counter-revolution guided by remote control.² Because of the special circumstances involved, the prosecution was immediately referred to the criminal court of the Drôme which, despite its track-record of procrastination, was thought to be slightly less partial than its counterpart in the Vaucluse. The transfer of so many prisoners and witnesses to Valence was as daunting an undertaking as it had been for the authorities when they had to

1 A.D. Vaucluse 7L 87 procès-verbal of cre.pouv.exéc (Carpentras) II brumaire VI.

2 A.D. Vaucluse 7L 87.

escort Agricola Moreau and the 'Républicains d'Avignon' in the previous year. The arrested judges accused Vincent Raphel of having engineered the referral in order that the elections of the Year VI in Carpentras would be rid of 'honnêtes gens' - an accusation which most probably contained more than a grain of truth. Many of the accused managed to escape before trial and many of the witnesses refused to travel to Valence. The crucial witnesses, however, were the officers of the National Guard of Orange who had parleyed with Jamet after he had ordered a ceasefire. In his testimony, the commander claimed in the witness box that the insurrection was the work of 'les agents de la faction royaliste du baron Saint Christol qui exploitaient la complicité du pouvoir judiciaire'.¹ Following the preliminary hearing Chayard was taken to Valence whilst Cartier, Emeric and Jamet fled to the Gard, whose criminal court was still under the control of the hospitable Vigier-Sarrazin and Blanc-Pascal. Jamet made a statement before the criminal court of Nîmes in which he attempted to exonerate himself and the other officials who had taken part, and proclaimed himself as the man who had saved Carpentras from civil war. He then promptly boarded the mail coach for Paris.²

In Valence the trial degenerated into a farce because of the massive non-appearance of the witnesses, including those under court subpoena. Chayard managed to convince the jury that he, like Jamet,

1 A.N. BB¹⁸ 890 evidence of 15 pluv. VI.

2 A.N. BB¹⁸ 890, proc. verb. 11 brum. VI.

had only arrived bearing arms to try to prevent rioting and to uphold the law. He denied that he and Jamet had deployed troops along the ramparts of the town and that he had ordered the rioters to open fire on the infantrymen who were trying to gain access to the town.¹ In default of crucial witnesses, the perjuries of Chayard could not be exposed by the dithering public prosecutor Mottel. After much delay and pettifogging 197 of the accused were acquitted, 5 were sentenced to 2 months imprisonment, 21 to 4 months imprisonment and three (token ringleaders) to death in absentia.² Less than half of the accused were present to hear these generous sentences which, the public prosecutor later admitted to Lambrechts, had been ill-considered and over-lenient.³ More importantly, the civil court imposed fines upon Carpentras, Mazan, Pernes, Aubignan, Mallemort and Venasques to compensate the relatives of the soldier Imbert who had been killed and the troops wounded by the rioters.⁴ Inevitably, the fine was never collected and the aggrieved relatives were left empty-handed. In the Year XI the civil court of the Gard finally recognised that it was unrealistic to continue trying to collect the fine and quashed the ruling of the civil court of the Vaucluse in favour of the victims of the insurrection.

The fate of Jamet in this case demonstrates the sly tenacity of the reactionary southern judges during the period of the Second

1 A.D. Vaucluse 7L 87 (18 pluv. VI).

2 A.D. Drôme L.1770. (registre des jugements, an VII).

3 A.N. BB¹⁸ 890, letter of 9 flor VII.

4 A.D. Vaucluse 7L 87. The total indemnity was 69, 165F.

Directory. It was typical of the southern judges to posture as men of integrity, patriotism and goodwill, to envelop themselves in bourgeois respectability in their local communities, and then manage to pass unpunished into the Consulate, despite the fact that so much of their violent, corrupt and lie-ridden past had been laid bare. For the neutral observer the proliferation of exposés of the conduct of the reactionary judges under the Second Directory must have held all the fascination of the blurred image of a snake pit coming gradually into focus. And of all the reactionary judges, none had been more exposed (or venomous) than Etienne Jamet who 'depuis sa rentrée en France n'a jamais cessé de persécuter les républicains'.¹

In the Year VI Jamet had been tracked relentlessly by Teste, Moreau and Vincent Raphel not simply for his rôle during the Carpentras insurrection, but also for his connivence in the massacres of the Year III, to say nothing of the federalist revolt of 1793. The search for Jamet enabled him to appeal to various friends and ministers that he was the persecuted victim of a jacobin plot and that during his tenure as public prosecutor he had been solely responsible for protecting the honnêtes gens of the Vaucluse from Moreau's organisation. The reason why Jamet had fled the Midi was not that he feared the jacobins of the Vaucluse, but because he dreaded being sent before a military commission as an armed rebel. This would, without any doubt, have led to his summary execution by firing squad. Indeed, the official report of the departmental

1 A.N. F⁷7328 cre.pouv.exéc. Courthézon to Min. of Police, 2 floréal VI.

administration of the Vaucluse, which had been endorsed by the jacobin-minded Police Minister Sotin, called for Jamet to be arraigned before the military commission of Avignon on the charge of having reorganised the rank-and-file of the Saint Christol army and having led them to open revolt in Carpentras. In response, Jamet from his hideout in Paris, inundated the Ministry of Justice with disclaimers, alibis, an autobiographical synopsis, character references, denunciations and pleas.¹ When he eventually received an assurance from the ministry that he would not face trial before a military commission, (a decision which had been reached after intense lobbying from the civil court judges of the Vaucluse and several deputies), he permitted himself to be extradited back to the Midi to be heard by trial jury in Valence.² He was, along with Cartier, found guilty of having taken part in the revolt but was acquitted of the charge that he had incited the rioters to murder.³ Both men received a meagre four month prison sentence which caused an uproar among the jacobins who immediately claimed that the jury had been bribed by Jamet's accomplices.⁴

And so the reaction against reactionary judges was frustrated at every turn. For example, although the presidents and public prosecutors were the main targets of the fructidorian authorities

1 A.N. F⁷ 7328. (Correspondence relating to the prosecution of Jamet, Years VI-VII).

2 Ibid. printed ruling, vendémiaire VII.

3 A.D. Drôme L.1770 (jugements, brumaire VII).

4 A.N. F⁷ 7328, correspondence between 'républicains de Carpentras' and Min. of Police, brumaire-ventôse VII.

they frequently wriggled out of incriminating procedures. Ailhaud and Constans were dismissed then arrested, yet both cleverly avoided prosecution. The irrepressible Ailhaud even managed to secure himself a post on the Special Tribunal of the Bouches-du-Rhône in the Year IX. The public prosecutors Laurans, Jamet, Blanc-Pascal and Bernardi were all arrested but were either acquitted or escaped with relatively light sentences. For the jacobins of the south-east, the most long and eagerly awaited prosecution had been that of the duo from the criminal court of the Gard, Vigier-Sarrazin and Blanc-Pascal. After fructidor, several investigations at local and national level were launched into the activities of the criminal court of the Gard between the Thermidorian Reaction and the Year VI. Sotin at the Ministry of Police took a special interest in Blanc-Pascal, who, even in Paris, was infamous as the great protector of the jacobin-slayers of the Midi. The investigations, conducted by the Directory's spies and commissaires, in conjunction with local officials and the Moreau-Teste organisation, revealed not only the conspiracy that everyone had already known about, but also that both men had been operating a lucrative protection racket in Nîmes. In return for protection from police harassment, arrest or prosecution before any of the levels of the justice system during Years III-V, émigrés, deserters, murderers, royalist agents and outlaws in general were required to pay a monetary tribute to the criminal court in Nîmes which was collected from them by the clerk of court.¹ It is little wonder that, during the first Directory, Nîmes had become the criminal dustbin of the south-east.

1 A.N. BB¹⁸ 319 report of Min. of Police, 13 germ. VI.

Blanc-Pascal and Vigier-Sarrazin were ordered to cease their judicial functions by a decree of the Conseil des Anciens.¹ When they were arrested there was much outcry in the jacobin papers which gave extensive details of their 'assassinats judiciaires'. They were denounced in Paris for having released the murderers of Pont Saint Esprit and Fort Saint Jean. Almost as soon as they were dismissed from office in the Year VI, an arrest warrant was issued against them.² They were indicted for having promoted the cause of royalism at the elections of the Year V by issuing over 100 arrest warrants against republican voters for the duration of the primary and secondary assemblies, for protecting the enemies of the republic and assassins from the full force of the law, for fraudulently prostituting justice for their personal gain, for collaboration in several royalist plots, for the persecution of republican defendants within the courtroom and for the general abuse of judicial power.³ Their activities were a microcosm of the rottenness of justice in the south-east during the Directorial era. Yet for all the charges which were piled up on their account these judges proved to be very difficult to prosecute. Blanc-Pascal in particular, with his overbearing personality, devastated the rather timid juge de paix who had arrested and interrogated him. 'Cet individu', wrote the juge de paix, 'semble être un de ces hommes dont le génie prévoyant se couvre dans les révolutions des couleurs

1 A.N. F⁷ 7411, denunciation by Sotin (s.d.).

2 A.N. BB¹⁸ 319 (enquiry into criminal court of the Gard).

3 Ibid, acte d'accusation, 27 floréal VI.

de tous les partis. Il est imprenable'.¹ Blanc-Pascal had deliberately confused what ought to have been a straightforward prosecution because he had arrested several royalists after the coup d'état of fructidor who had failed to pay him for protection, thus making himself appear, by his own inadvertance and sophistry, to be a crusader against anarchy and royalism. Both men, whilst released on bail, counter-attacked by manufacturing the wholly fraudulent image of the 'complot anarchique' which, they claimed, was sweeping the Midi. The more the likes of Teste, Moreau and Pellissier denounced them, they argued, the more were they attempting to divert attention away from their main objective to re-establish the reign of Robespierre. Their oratory was persuasive, and this, together with their campaign of printing their speeches and having them posted in the larger towns of the Gard, ensured that their pre-emptive attack led to the arrest of the chief accusers, and Chanut, in ventôse Year VI.² The republicans were brought before the directeur of the jury d'accusation of Uzès who, despite frantic attempts to manufacture incriminating evidence of a neo-Babouvist plot, was, due to the prevailing political winds, forced to release them.³ Blanc-Pascal toured the Gard making speeches to local merchant élites, warning them of the imminent terrorist apocalypse which he 'proved' by producing at each meeting a fabricated letter

1 A.N. F⁷ 7411 report of j.de.p. to Min. of Justice, 29 messidor VI.

2 A.N. BB¹⁸ 319, also A.N. BB¹⁸ 322 (arrest of Teste, 20 ventôse VI).

3 A.N. BB¹⁸ 319 (procès-verbal of j.de.p. of Uzès, 29 ventôse VI).

which outlined the unhappy fate of the rich under the domination of Moreau and Teste.¹ At the height of their campaign both men fled to Paris to join Jamet 'pour intriguer'. As Sotin wryly observed, '...d'jà leurs partisans s'aperçoivent qu'ils ont été leurs dupes'.² When the judges arrived in Paris they were brought before the Directors themselves to explain their actions. As before, they made all manner of extravagant claims regarding their probity, their devotion to the republic, their tireless struggle against the twin evils of royalism and anarchy. In a statement replete with barefaced mendacity, Blanc-Pascal absolved himself of all the charges brought against him:

'Aucun prévenu d'assassinat n'a été libéré dans Nîmes, aucune compagnie du Soleil n'a existé dans tout le département; je n'ai donc pas dirigé leurs manoeuvres et je n'ai pas mieux dirigé des assassinats ni demandé l'anéantissement de la République.... je ne suis l'ennemi de personne'.³

After much deliberation they were referred to the directeur of the jury d'accusation of Montélimar (Drôme) where they brought all their social influence, connections and legal skills to bear on the jury which, to the amazement of informed observers, decided to acquit them of the charges brought against them in Nîmes.

1 A.N. BB¹⁸ 319, report by Min. of Police, 1 messidor VI.

2 Ibid. Sotin to Lambrechts, 9 germ. VI.

3 A.N. BB¹⁸ 319 see also A.N. BB¹⁸ 182 (doss. Remuzat) for the tortured events surrounding the release of Remuzat, former deputy accused of being a royalist spy.

Frequently, the hunt for pro-royalist judges after the coup of fructidor took on all the appearances of a crusade. The jacobins formed 'comités des patriotes opprimés contre le parti royaliste' which lobbied for the reversal of the sentences passed by the reactionary criminal courts against republicans during the reaction. They compiled dossiers on the background of the judges and took statements from the prisoners who had been their victims. They tried to intimidate the judges into resignation (when the government failed to dismiss them) by the use of threatening letters.¹ As the hunt progressed the jacobins spread their net and tried to catch anti-republican journalists such as Ferréol Beaugéard of Marseille whose Journal de Marseille had been a dedicated supporter of the counter-terrorist reaction. The rival jacobin newspaper in the Midi, L'Observateur du Midi, had accused Beaugéard of receiving a subsidy from the Austrian cabinet.² Like the other 40 editors of anti-republican journals arrested after the coup of fructidor, Beaugéard was accused of harbouring royalist sympathies; his arrest warrant was signed by La Revellière-Lépeaux and he was formally indicted by Barras.

Beaugéard, probably the most successful right-wing journalist in provincial France during the Directory, held opinions more akin to the conservatives of the Second Empire than to the royalists of

1 see, e.g., A.N. BB¹⁸ 184, letter from 'le comité réacteur des patriotes opprimés' to Féraud.

2 L'Observateur du Midi, 20 Oct 1796. The owner, Peyre-Ferry, described Beaugéard as the 'journaliste des royaux égorgeurs du Midi'.

his own day. He loathed southern jacobin fanaticism and had been a propagandist for the Federalist cause in 1793 which had led to his escape from Toulon on a British frigate. After the Thermidorian Reaction, during which time he had revived his Journal de Marseille, he became a strident spokesman for the conservative élite and the business interests of Provence. He built up connections with the southern deputies, the commanders of the National Guards and the judges. He derided the Revolution and the men of disorder for having destroyed traditional morality, suppressed religious habits, broken the powers of the father within the family unit, for having dislocated trade and industry, for having bred unfaithfulness among wives, ingratitude amongst children, for having bankrupted the better citizens, ruined family fortunes, for having strangled the economy by controls, maximum prices, for having destroyed the notion of personal liberty with revolutionary tribunals and committees.¹ He spent many long hours composing diatribes against the 'millionaire jacobin' Peyre-Ferry and his team of 'scribblers' at the Observateur du Midi which was his greatest rival in politics, to say nothing of circulation. The transcripts of his trial in the Year VI indicate quite clearly that he was not a partisan of the Bourbon monarchy although he would probably not have been averse to a moderate Constitutional monarchy.² His trial moved from Marseille to Aix in the summer of 1798 where he demanded a delay in the proceedings in order to prepare a proper defence against the

1 Paraphrased from his Journal de Marseille, editorial of 8 April 1797 during the local elections.

2 For the trial records of Ferréol Beaugéard see A.D. BduR L.3045.

charge of being a propagandist for the royalist cause. Then he attacked the jury lists because they contained too many 'unlettered men'. He sacked his defence counsel and quibbled over the witnesses. Consequently, he was not judged within the lifetime of the Directory. In germinal Year VIII he petitioned the criminal court at Aix that he had been held in custody for two years without a definitive verdict having been reached and added that the coup d'état of brumaire had, in an indirect way, absolved him of the calumnies of the Directory. On 22 messidor Year VIII (11 July 1800) the Minister of Justice agreed to grant him bail. The bail was to last until the general amnesty of the Consulate which cleared him completely. It was no great irony that he became a distinguished criminal lawyer in Lyon during the First Empire.

Despite the setbacks and their frustrating inability to bring the leading royalists and anti-republicans to prison or, preferably, the scaffold, the resolve of the 'fructidorian' jacobins was never compromised. The headings of the official notepaper of the republican municipalities of the Years VI and VII made this clear: 'Guerre éternelle aux royalistes'. The ranks were radically increased by many released jacobins who had benefitted from the executive's generous 'reviews' of the sentences passed by the courts during the first Directory.¹ Agricol Moreau lost no time in reasserting his hegemony in Avignon after his triumph in Grenoble, Vincent Raphel regained control in Apt and Carpentras after the

1 See A.N. BB¹⁸ 178 for various petitions against the sentences passed by the crim. court in Aix.

failure of the royalist insurrection.¹ In the Var the second jacobin revival was particularly intense: the jacobins relied heavily upon the support of the Army of Italy in its struggle against brigands and the dregs of the compagnies.² There was violent street-fighting in Grasse, Brignolles and Toulon; the municipality of Draguignan cleared the streets of pro-royalist youth groups and banned the fête of the 9 thermidor. The administrations throughout the Var imposed fines for failure to observe the republican calendar in official transactions; the old republican fêtes, especially that of the 10 August, were revived; liberty trees were replanted whilst all over the department jacobin patrols distributed 'hit' lists of wanted royalists and anti-republican officials.³ The new juges de paix of Toulon arrested over 200 'agents d'Angleterre' in a single sweep following the coup of fructidor, although the majority were released by the local directeur.⁴ In Aix, some 52 suspects were arrested of whom only 19 were brought to trial and were later released.⁵ The story was similar in Graveson (Bouches-du-Rhône) where seven political suspects were arrested by jacobin patrols and then released by the

- 1 A.N. BB¹⁸ 319 report of Dugua, accuses Moreau of intimidation at the election of Year VI. BB¹⁸889, accusation that V. Raphael controls one third of all public appointments in the Vaucluse and that he places illiterates in posts of major importance. See also A.N. BB¹⁸ 877, report of Barlet, 20 germ. VI.
- 2 A.N. BB¹⁸ 877. Report of cre.pouv.exéc. Barlet, 20 germ VI.
- 3 A.N. BB¹⁸ 878, Departmental circulars of municipalities (Year VI). see also A.N. BB¹⁸ 877, F⁷ 7322, 7348, 7398.
- 4 A.N. F⁷ 7348 (doss. 1959) petition of prisoners held in Fort La Malgue, 4 germinal VI.
- 5 Calvet mss. 3030, 3029 (Bouches-du-Rhône and Vaucluse during the Year VI).

directeur. In Marseille there were 24 arrests (5 as 'agents de Willot et d'Angleterre', 7 for royalist activities, 3 émigrés and 10 notorious égorgeurs, of whom four had been prominent in the Fort Saint Jean massacre). Of this group, 17 were released by the local directeur, one royalist was referred to Tarascon and a further 6 were referred to Aix.¹ Indeed, of all those arrested in the Bouches-du-Rhône in virtue of the law of 18 messidor Year VI (6 July 1798) which authorised house searches to root out spies, royalists, refractory priests, émigrés and armed brigands, not one was either executed or deported.²

Despite the growing bond between the jacobin municipalities of the Midi and the organs of military justice in the struggle against armed brigandage, the relationship was not without tension. In general the military commissions were, in the eyes of the local jacobins, over-lenient, although far more to their taste than the steadfastly reactionary criminal courts.³ The jacobins saw little return for their rigorous and abusive house searches which were often carried out throughout the night. In the absence of the patronage and protection usually afforded to them by republican proconsuls, the jacobins had to rely on the vague support of the military commanders such as Sherlock, Sahuguet, Kolckerack and Dugua. In the Year VI, although there were no direct appointments

1 A.D. BduR L.3027 (register of judgements, Aix, Year VI).

2 Ibid.

3 See eg A.D. BduR. L.121 (24 pluv. VII) Admin. Cent. of BduR. attacks Mil. Comm. of Marseille for leniency towards émigrés and brigands.

as in the Year IV, many of the radicals obtained high local office: Chanut, of Teste's inner circle, became the new public prosecutor in the Gard, Teste himself was given back his former post of commissaire, then had himself elected as public prosecutor of the Vaucluse, (which the Directors swiftly invalidated), Moreau was appointed commissaire then elected as a departmental administrator, then a deputy to Paris where he was joined by the former republican judges Bassaget and Bouvier.¹ The departmental administration of the Bouches-du-Rhône boasted the last of the leading radicals in the department: the Mercurin brothers, Mauche, Emeric, Pellissier, P. Constans and Ricard.² Polycarpe Constans, the brother of the dismissed public prosecutor, led the investigation into his brother's activities during the judicial reaction. His report to the Ministry of Justice was a stinging condemnation of his brother's activities in the criminal court of Aix during the previous two years:

'Les fautes les plus légères sont poursuivies avec une rigueur inouïe, des procédures iniques ont conduit à l'échafaud des hommes connus pour leur dévouement à la république. Les prisons ont été obstruées par la trop grande quantité de malheureux que le royalisme avait entassés au nom de la loi. La partialité la plus révoltante se montre à découvert. Je le déclare franchement tant que les juges vendus au royalisme, associés à tous ces crimes, seront en place, il n'y a nul espoir de retour à l'ordre et à la tranquillité. Les bourreaux jouissent de l'impunité et de la protection, ils cherchent de nouvelles victimes'.³

- 1 Calvet mss. 3029 appointments and elections in the Vaucluse.
- 2 A.D. BduR L.173 Admin. Centrale to Min. of Just. on elections of Year VI.
- 3 A.N. BB¹⁸ 182; see also A.N. BB¹⁸ 319: protests and demonstrations of judges from Pont-St-Esprit. See also A.D. BduR L.95.

The disclosures made by the investigative committees, some sponsored by the government, some formed 'spontaneously' by individual jacobin initiative, soured what was left of uncommitted 'public opinion' to the royalist cause. Some disinterested, less well-to-do republicans veered towards the jacobin camp at the elections of the Year VI on the strength of the revulsion felt for the égorgeurs, whose death tolls were trotted out by each southern commune in the Year VI.¹

At the elections of the Year VI the jacobins, released from the threat of arrest warrants which had overshadowed their electoral campaign in the Year V, used methods which were scarcely different from those used by the reactionaries in the previous year. Their methods did not seem to alienate the disinterested republicans in the generally declining electorate. However, they caused the ultra-conservatives to form breakaway electoral assemblies which refused to recognize the jacobin candidates for office. Whereas the judges had arrested potential republican candidates and voters, the jacobins used the threat of house searches to frighten reactionary voters away from the hustings. Many jacobins who did not meet the statutory requirements for enfranchisement were allowed into the various assemblies with special passes issued by the jacobin chiefs.² The only department in the south-east where the royalists could still claim a modicum of political control in the Year VI was the Basses-Alpes where the judiciary had not been

1 See A.N. BB¹⁸ 183 for lists from BduR.

2 A.N. F^{1c} II BduR. 1, report of cre.pouv.exéc. (Marseille) to Min. of Just., 3 germ. VI. A.N. BB¹⁸ 319 Dugua to Min. of Just., 5 germ VI.

submitted to executive purges. In the Vaucluse, the elected jacobin candidates altered the constitutional oath of 'haine à la royauté et à l'anarchie' to 'haine à la royauté et guerre éternelle aux thermidoriens'.¹ The electioneering and intimidation notwithstanding, the silent majority of conservative southern property-owners in the breakaway assemblies were still powerful enough to retain the judges of their choice in the ranks of the civil courts. This support acted as a lifeline to the judicial reaction. Central government was helpless to prevent the return of the reactionary judges to the civil courts because it was faced with the threat of mass resignation of existing judges from office in the event of further purges and the consequent dearth of qualified men to administer justice. When faced with the choice between the likes of Agricol Moreau or Teste and the reactionaries in the law courts, the government opted for the latter. The retention of civil court judges who had previously served the judicial reaction obviated the government's attempt to slice the jugular vein of the 'réaction judicio-royale'. Civil judges could create inertia in the intermediate levels of criminal justice and could obstruct the prosecutions of the criminal courts when they were called to serve on it.

Several attempts were made to induce the civil court judges into an even-handed application of the justice: for example, Vincent Raphael introduced differentials into the salaries of judges who were seen to be committed republicans eager to wipe out royalism and

1 A.N. BB¹⁸ 320. President of crim. court of Vaucluse to Min. of Just., 2 germ VII.

brigandage. A reactionary judge, Borrelli, ought to have received 6,000 F each year; he was given only 1,000 F and Raphael kept the difference.¹ Chauvin, a pro-jacobin judge, received double the salary he would normally have received from the government.² In the long run, however, these measures did the jacobins more harm than they did to the civil court judges, who remained an immovable bastion of reaction. It was this type of jacobin activity which alarmed the government in Paris and brought about the mass invalidation of elections in floréal Year VI.

Not all of the civil court judges, however, remained immune to the post-fructidorian investigations of the government. Most of them might have slipped through the dragnet if they had not blatantly continued to obstruct and corrupt justice as if the coup, and the subsequent purges of the criminal court judges, had never taken place. It was the subterfuge of some of the ultra-reactionary judges that led some of them to the brink of disaster in the Year VII. As has been previously stated, the fulcrum of the (diluted) judicial reaction after fructidor was the civil courts judges, especially those serving as directeurs of the jurys d'accusation.

In the Year VII, after a year of undisguised endeavours to release enemies of the republic or to abort their prosecution, the executive swooped on seven of the leading reactionary directeurs in the Bouches-du-Rhône in order to set an example to the rest. The

1 A.N. BB¹⁸ 889. report of Directory spy, 25 vent VI.

2 Ibid.

seven: Simon of Arles, Simon of Aix, Claude Tassy, Guillaume Faucon, Joseph Mouret, André Fauverge and Augustin Laurans, were all guilty of many individual crimes in the course of their tenure as judges during the First Directory, but the general accusation levelled against all of them by the executive was that of conspiracy against the internal security of the state.¹ These were the most serious charges brought against a group of southern judges in the entire course of the Directory. Simon d'Arles, for example, was paying the price for having arrested the military commandant Hardoin in the Year IV, to say nothing of the entire republican municipality of Tarascon.² Faucon, Tassy, Simon d'Aix and Fauverge were all notorious guardian angels of the égorgeurs of Thermidor as well as having regularly taken the lead in the persecution of jacobins. There had been an attempt in the Year VI to arrest Faucon after he had released a large number of the Tarascon assassins, but his hearing, before a sympathetic presiding judge in Aix, merely ended with a fraternal reprimand.³ Laurans had been a fearful public prosecutor after the temporary suspension of Constans, during which time he released many of the Fort Saint Jean assassins and organised the execution of minor jacobin prisoners.⁴ Joseph Mouret had a list of accusations against him which stretched back to the days

1 A.N. BB¹⁸ 184 acte d'accusation, 28 floréal VII.

2 A.N. AF^{II*} 164 Directory's report on Simon d'Arles, 22 therm. VI.

3 A.N. BB¹⁸ 184. Peisse to Min.of Just., 16 niv. VII.

4 A.N. BB¹⁸ 182, (dossier Lauvans).

prior to the federalist revolt.¹ The Directors, notably Barras, forced the pace of the trial by bringing the judges to Paris to answer the charges against them. However, the Tribunal de Cassation prohibited a hearing before the Directors and ruled that they be sent before a jury d'accusation. The curious choice of the Tribunal de Cassation for a place of referral was the small town of St. Marcellin in the Isère. The personal animosity of Barras towards the judges, however, delayed their transfer back to the south. Barras ensured that they were incarcerated in the Temple until his own downfall and, indeed, that of the regime; it was not until 21 pluviôse Year VIII (10 February 1800) that the seven judges were finally referred to the Isère.² Even in the Consulate's days of absolutism, the crimes of the judges were too great to be overlooked: each was stripped of his rights of citizenship for twenty years and 'toutes parties intéressées' were invited to bring proceedings against them.³ The commissaire Esculon denounced the sentence as over-lenient, but his objection was overruled. The sentences passed against these seven judges were the maximum which any southern judge involved in the judicial reaction between the Years III to VIII was forced to endure.

After the Year VI, social and political community life in the south-east began to fall apart. No one trusted elected officials,

1 A.N. BB¹⁸ 184 (dossier Mouret).

2 A.N. AF^{III*} 164, BB¹⁸ 185 (report of pluviôse VIII to Min. of Just.).

3 Ibid Report of Peisse, therm.VIII.

despite their long-winded discourses on their personal probity. The executive purges of the judiciary after fructidor were repeated against the republican elect in floréal Year VI - operations which marked the rupture of the constitutional contract between two structures of state power. It also ushered in a new element into the complex game of prosecuting political crime: the military. The 'fructidorian terror', which some historians have perceived as the end point of the Directory's pretensions to Constitutionalism, was little more than the transfer of the prosecution of political crime from a discredited judiciary to pro-republican military commissions backed up by ruthless special task forces. The laws of 29 nivôse Year VI (18 January 1798), which were the concrete expression of the government's distrust of the ordinary criminal courts, empowered military commissions with the right to arrest, prosecute and execute spies, collaborators with foreign powers, insurrectionists, refractory clergy, armed royalists and brigand bands.¹ For those demanding the return of the throne the penalty was, in theory, death by shooting. The militarisation of justice spread rapidly in the Years VI and VII as the challenge from the greatest social and security problem of the day - brigandage - escalated to dangerous proportions. Despite this harsher system, the period of the second Directory in the Midi was even more chaotic than the first. Although there were many more executions of 'enemies of the Republic', there were also a great deal of acquittals which tended to limit the dissuasive power of summary justice. Indeed, even the

1 See J.E. Richard, Rapportsur la répression du brigandage proposé aux Cinq Cents (26 pluv. V).

most efficient military commissions, such as those in Toulon, Marseille and Avignon, could barely keep pace with the rate of reported brigand crime.¹ One of the major problems which the military authorities faced after fructidor was that brigand bands attracted refugee groups which had hitherto pursued their own individual paths of rebellion. Royalists, priests, deserters, bandits, counter-terrorist égorgeurs were sucked into the bands. The royalist compagnies and private armies were leaderless: they had lost de L'Estaing in the Year IV, Willot had been deported, Saint-Christol was on the run again, Surville, Lamothe and Allier were all executed in 1798. These amorphous, brutal, highly-mobile vagabond bands could, in a vague sense, be termed counter-revolutionary because their component parts were counter-revolutionary or at least fiercely anti-republican, and, occasionally, they shouted 'Vive le Roi' when they held up mail coaches or ambushed columns of the Army of Italy or carried out guerrilla warfare against the National Guards or roasted holders of biens nationaux alive. But the exigencies of an outlaw life on the run diminished the political objectives which the brigands might have pursued in more auspicious times. Thus, the historian, when attempting to distinguish between common-law and 'political' brigands is faced with similar problems of nuance as the historian trying to distinguish between a southern royalist and a counter-terrorist.² It was also a problem for contemporary

1 See Appendix E 'Military justice in the Var, Oct.1797-March 1798'.

2 See Gwynne Lewis' views on this distinction: 'Political brigandage and popular disaffection' in Beyond the Terror pp.196-199.

law-enforcers. How could a military commission be expected to discover the real motivation behind the action of, say, the brigand band which pillaged the village of Chamaret (Drôme) and 'sont entrés au pas de charge, ont massacré l'agent municipal qui les prenoit pour la troupe de ligne, ont incendié deux maisons des acquéreurs de biens nationaux, ont enlevé onze mille francs de la caisse municipale et après, ayant dîné, commencent à violer une jeune fille de quinze ans devant sa mère'.¹ Whatever the differences and similarities of 'political' and 'common-law' brigands, the authorities' reaction was to subsume them under the designation of dangerous enemies of the republic. Although brigands remained an external menace who made no attempt at infiltration of state institutions as the judges and royalists had done, their anarchic lawlessness made them a political threat.

The chameleon-like aspects of brigandage, compounded with its ability to proselytise, made it the most difficult of crimes to suppress. In the last years of the Directory and the first years of the Consulate, the military commissions, and then the Special Courts, were augmented by detachments of éclaireurs and chasseurs who, unlike the gendarmerie, could cross departmental boundaries to track down their 'bounty' and deprive the brigands of their greatest weapon: their mobility. These official posses had to penetrate the craggy mountain passes of the Provençal Alps and the thickets of forest which helped to camouflage the bands. They had to surround

1 A.N. BB¹⁸ 892 report of cre.pouv.exéc. (Vaucluse) to Min. of Just., 12 therm VII.

the towns like Bollène, la Bastide-des-Jourdans and Sainte-Cécile (Vaucluse) or Sisteron and Manosque (Basses-Alpes) or Rians and Saint Maximin (Var) which were hideouts and rallying points for the various bands and lay them to siege for days on end. Bollène, for example, which had been one of the prouder possessions of the papacy, harboured the detritus of the Saint Christol band which 'n'ayant plus de solde vivaient de brigandage'.¹ In some departments, such as the Ardèche and the Basses-Alpes, the brigand bands were able to control entire towns in the winter months when normal raids were more difficult. Within the bands themselves leadership was based upon the survival of the fittest: in the absence of a well-respected leader there were endless internal power struggles which again makes any 'definition' of the 'type' of brigandage difficult to pinpoint. Thus Etienne Radet, who led an official enquiry into the causes and possible remedies for the brigand problem in the Vaucluse in the Year VIII, described the turmoil of the Saint Christol band after the failure of the insurrection in the Rhône valley:

'Cette bande se recréa et se donna de nouveaux chefs. Pastour, qui de temps de Saint Christol avait tué son chef nommé Pape auquel il succéda, fut, dit-on, assassiné à son tour par Castillon, son lieutenant. Celui-ci fut fusillé ensuite par jugement de la Commission Militaire, et le nommé Pépin de Sauman e, hérita du commandement de la bande dont il est encore aujourd'hui chef'.²

1 A.N. BB¹⁸ 890. Report of cre.pouv.exéc. (Carpentras) 6 germ VII.

2 Calvet mss. 3030. Report of E. Radet, commander of 24 division of gendarmerie, on brigandage in the Vaucluse, 27 germ VIII.

Such a constant change of leadership also made strategic planning impossible. This is reflected in the decline in importance of the south-eastern region in the plans of the royalist high command which tended, after the Year VII, to focus its attention on the possibility of counter-revolutionary insurgency in the south-west.

Another reason for the intense involvement of the military in the prosecution of justice after the coup of fructidor was that the ranks of the brigand bands were swollen by their own deserters and draft-dodgers. This process was accelerated after the promulgation of the loi Jourdan in 1798. As in many other parts of the republic, this law on conscription met with determined local resistance. The insoumis and deserters had many sympathisers among the local community who were prepared to take risks and hide them from the authorities.¹ One of the great services which the civil court judges and many of the juges de paix performed for the renegades was to keep them well informed about the activities and repressive projects of the military commission to whose hearings they were frequently granted access.² Radet's solution to the brigand problem and the clandestine aid which they received from the judiciary and other institutions was a rather crude one: inflict a reign of terror upon the bands, hunt them down, arraign them before the military commissions, condemn them unequivocally and, importantly, sentence them to death in the place where they

1 Calvet mss. 3030, Radet report, p.28.

2 A.N. BB¹⁸ 891, reports of cre.pouv.exéc (Toulon) 12 prairial VII.

perpetrated the main body of their crimes.¹

That these exhortations and those of the 'men of order' in Paris were taken up in the first year of the Consulate was a sign of the desperation of the local authorities before the undiminished threat to property and public peace. In another sense it was an indictment of the system of military commissions, which, as the jacobins never tired of telling the government, had not been as tough as their reputations.² Despite the intense counter-insurgency methods of the colonnes mobiles, the evidence suggests that the rate of reported, brigand-related crime was rising in the final two years of the Directorial regime and the first year of the Consulate.³ The reasons for this are varied and complex. We have already mentioned the dissolution of the royalist 'armies' and their drift into banditry and the massive disaffection caused by the introduction of conscription laws, but one must also take into consideration the conduct of the colonnes mobiles who frequently acted with the same sort of barbarism as the brigands themselves. The colonnes preferred to execute the brigands on the spot rather than bring them before the military commissions. Their effect upon the local community was intensely alienating. If we take the

1 Radet report, pp.63-63.

2 For attacks on the conduct of the military commissions of the South-east See AD BduR L.95.

3 See, e.g., A.D. BduR L.3027, 3028 (registers of criminal cases brought before the criminal court of Aix, Years VI-IX), See also Police reports in A.N. F⁷ 7523, 7216 on brigandage in the Bouches-du-Rhône and A.N. F⁷ 7687 (Vaucluse), F⁷ 7475 (Var), A.N. BB²³/A, judgements of military commissions in the Bouches-du-Rhône.

example of the military commission of General Férino in Avignon, which was generally regarded as the most severe and expeditious of the institutions of military justice, we find that the Commission was barely keeping up with the incidence of reported brigand crimes in the department and, also, that there were as many 'unofficial' executions during arrest as there were 'official' ones by the Commission's resident firing squad.¹ Similarly, the colonne mobile of the Var was frequently accused of brutality and indiscipline.² The judges, although unable to infiltrate military justice, played a crucial rôle in reducing its threat. In the first place they constantly fed the colonnes mobiles misinformation from their register of names of suspects and émigrés.³ This lack of co-operation led many military commanders to impose state of siege in towns which were suspected of harbouring brigands; in this way they could declare martial law and conduct their own searches and interrogations. However, the judges benefited from the legal stipulation that rioters and insurrectionists caught after the event could only be tried before the ordinary criminal courts. Much of the Year VII was taken up by squabbling between the military and the judiciary over the right to prosecute certain classes of accused.⁴ The colonnes mobiles made several attempts to federate in order to

1 See Appendix F on Military Commission of Avignon, floréal-messidor VII.

2 A.N. BB¹⁸ 890 cre.pouv.exéc. (Toulon) to Min. of Just., 28 frim VI.

3 See, e.g., Calvet mss. 3030, accusations of cre.pouv.exéc./admin. centrale to Min. of Police.

4 A.D. Vaucluse 1, 100 exchange of letters between Férino and crim. court of Vaucluse.

offset the challenge of a united judiciary and also to create a joint operations special task force which could act as a cordon sanitaire against the movement of brigands, but this failed several times in practice due to insufficient means of communication and the petty rivalries of generals. With better organisation and grim single-mindedness, the judges of the south-east recorded a whole series of minor victories over the military and republican authorities during the twilight of the Directory. Férino, in a report to the Minister of War, concluded that the major reason for the irrepressible nature of brigandage was the secret aid afforded them by counter-revolutionary judges 'qui vendent l'absolution aux brigands encouragés par l'impunité'.¹ Consequently, royalism remained a powerful current in the south-east, even under the Consulate, although deprived of the mass base which demagogues like Saint Christol and L'Estaing had given it under the Directory. When 53 brigands were captured in the southern Drôme in the Year VIII, they sung the 'Réveil du Peuple' whilst being escorted to the Military commission.² Two brigands, Payan and Darc, faced the firing squad in Marseille in the Year IX 'en prononçant des imprécations contre le gouvernement en criant Vive le Roi!'³ In Western Provence alone, in the Years VII to VIII, there were 112 assassinations attributed to pro-royalist brigand bands of whom the victims were: 12 republican office-holders, 10 army officers, 15

1 A.N. BB¹⁸ 279, report of 26 prairial VII.

2 A.N. BB³⁷, report of adjutant gen. of Montélimar, 30 floréal VIII.

3 A.N. BB²³ 1^A, report of commandant of Marseille, floréal IX.

gendarmes and the majority of the rest were holders of biens nationaux. In the same period, within the same region, there were over 100 acts of pillage of which at least 70 involved the theft of public funds. These crimes were in addition to spiralling rates of arson attacks, burglary and highway robbery.¹

According to Fabre de l'Aude, another who was commissioned to investigate the situation in the Midi in the first year of the Consulate, the widespread notion that southern brigands killed promiscuously all those who upheld republican ideals was completely unsound. He argued that the motivation of southern brigands in 1799 was the same as it was in 1795: '...toujours des vengeances particulières qui déterminent les assassinats, et ces vengeances sont suggérées par le souvenir du mal qu'on leur a fait à des époques plus ou moins éloignées'.² Another way of analysing the problem is to see brigandage as a revolt against the encroachments of the state in regional life. Conscription, taxation, enforcement of orthodoxy were among the more hated manifestations of the state and added to the list of transgressions in the final year of the Directory was the Law of Hostages (24 messidor Year VII/12 July 1799) which stipulated that, in seditious regions such as the south-east, the assassination of republicans would lead to the arrest and detention of at least four members of the family of a former noble, royalist and émigré who would be held as hostages

1 A.N. BB²³ 1^A. judgements of military commissions in BduR and Var also A.N. BB¹⁸ 882, 279, A.N. F⁷ 74I1.

2 A.D.V 1_u100 report of 10 mess. IX.

until the perpetrators of the assassinations were yielded to the authorities. It was another of central government's attempts to tame and regularise the local community - a kind of law of 10 vendémiaire with real teeth. However, like the law on the internal security of communes, it failed in practice and succeeded only in breeding deep resentment. The application of the Law of Hostages, as if to underline the government's distrust of the local judiciary, was entrusted to the departmental administrations. Under the Consulate, this much despised law was repealed as one of the government's conciliatory gestures to the provinces.

In general, as far as the south-eastern region was concerned, the Directory's attempts to repress political crime by use of militarised parallel justice was unsuccessful. The Consular approach, although better organised and less dilatory than that of the Directory, was not much of an improvement. Spearheading the Consulate's campaign of repressive justice against the sorts of crime which Duveyrier described as 'un poison domestique, une cause intérieure de destruction qui menace la liberté publique dans ses plus précieuses garanties', were the controversial Special Courts which were established by a decree of 18 nivôse Year IX (7 February 1801).¹ Installed in all the departments of the south-east, the overriding function of these courts was to protect the nation's highways and the property of individuals, especially that of the holders of biens nationaux who had frequently complained about the regime's inadequate guarantees of security for the individuals'

1 A.N. AD^{III} 53 H. Duveyrier, Rapport sur le projet de loi concernant l'établissement des tribunaux spéciaux.

person and property. The Special Courts were a fusion of military and the ordinary judiciary: three army officers and two judges were present at each hearing. A maximum delay of three days was permitted before the execution of the sentence which, of course, was without appeal. There were no juries because, given the reputation which the jury system had gained during the judicial reaction, juries were considered by their critics to be 'au dessous de la tache à accomplir'.¹ The absence of juries and a system of referral led to vociferous opposition from the liberals in the Tribunal who condemned the Special Courts as major threats to civil liberty. But the experiences of the judicial reaction had made the majority political opinion of the time scornful of lofty principles of justice: the law establishing the courts was passed by 192 votes to 88. 'Qu'est ce que la liberté civique?' asked Callaïmer,

'...le principal élément dont elle se compose n'est-il pas la sûreté, et comment peut-on vivre libre si l'on n'a pas la sûreté de sa personne, de ses actions et de ses biens. Si nous voulons rester libres nous devons nous débarrasser par tous les moyens possibles des bandes de brigands armés qui infestent le pays'.²

Par tous les moyens possibles - this was the characteristic attitude of desperate, determined pragmatism which informed the Consulate and the Empire. Pragmatism rather than principles was what distinguished the social conservatives of the Napoleonic

1 Ibid, Laussat, Discours sur les tribunaux spéciaux, 11 pluviôse IX.

2 Ibid. Callaïmer, Discours.... sur les tribunaux spéciaux, 18 pluviôse IV.

regimes from those of Thermidor. The Napoleonic élite had no fear of 'unconstitutional' methods in the execution of justice, it showed none of the liberal neurosis or political nostalgia for 1791 which had characterised the statements of the Thermidorians in Year III. The experiences of the Directory had taught the disaffected social élite that their position in society could only be upheld by a permanent professional judiciary supplemented by a powerful police force dedicated to the maintenance of the status quo established in the course of the Revolution through the transfer of property from privileged groups to various non-privileged groups.

Chapter VIThe Serpentine Progression: the Careers and Motivations of
Reactionary Judges

'Il n'ya plus de règle pour des fonctionnaires publics qui sont une fois hors du chemin de la loi. Les nuances peuvent changer, le fond est toujours le même, le retour au bien devient impossible. Ceci s'applique principalement aux fonctionnaires judiciaires; là, les fautes sont plus qu'ailleurs contigues au crime; et quand avec le crime on a une fois transigé, on est réduit à la honteuse nécessité de transiger encore toutes les fois qu'on le rencontre'.¹

- Report on the trial of Blanc-Pascal.¹

¹ A.N. BB¹⁸ 319.

'Je suis thermidorien, anti-anarchiste'¹ - the disgraced public prosecutor Etienne Jamet's self-definition is as close as one is likely to come to a lucid statement of motivation of reactionary judges. The judges' public statements can no more be trusted by the historian than they were by sceptical contemporaries. The deviousness of the judges' motivation was a complex hybrid which can never be fully revealed to the historian because of the dearth of individual private papers or family archives. By their very nature, the judges were equivocal and plausible, which undermines the value of their 'public' declarations, which only ever tended to be made when under pressure. Therefore, one must turn to the development of their careers during the Revolution in order to gain some sense of their political and private motivation. Reconstructing the judges' trans-revolutionary careers, not only serves to place the judicial reaction under the Directory in a wider historical context, it also helps in the exploration of the links between careerism, kinship, politics, personal experience in a revolutionary milieu as well as the socio-cultural demands of locality and community. Indeed, the most obvious general theme to emerge from a large-scale sample of judicial career histories was that the zealous southern judges of 1789 were swayed by the supra-personal revolutionary ideals of the times and then, aware of the forces which Revolution had unleashed, gradually retreated back to the more familiar world of the parish, kinship structures and local power struggles. Moreover, their case histories demonstrate that those who survived longest in office were those who followed the dominant socio-political forces of the local

1 A.N. F⁷ 7328 letter to Merlin de Douai, 24 germ. VI.

community rather than the impersonal directives of the abstract state.

The need for constant, unscrupulous flexibility forced the judges into being chameleon-like creatures who could, alternatively, appear as revolutionary republicans, ultra-royalists or conservative supporters of the Consulate and Empire. However powerful the cynical pursuit of office or the status and graft to be gained in office might have been in motivating the judges' reaction, they cannot be isolated as its overriding causes. In studying the judges' careers, stage by stage, from the Ancien Régime to the second Restoration, one notices a subtle interplay of commitment (either to political factions, or kin, or social group) with personal advancement and profit. Only a small number of judges who could, without hesitation, be categorised as ultra-reactionaries during the Directory, began their careers as middling lawyers in the ossified Ancien Régime Parlements or Papal Courts with little hope of preferment. The majority of Directorial judges progressed to high-ranking, wealthy imperial offices under Bonaparte. In the long-term perspective of the progress of a profession, the judicial reaction under the Directory can be seen as a catalyst which quickened the integration of the judiciary with the local élite who controlled the elections. Yet, there would have been easier paths to office available to provincial hommes de loi anxious to escape the rigidities of Ancien Régime career structures, or, later, the political demands made of public officials by the jacobin republic. Wealth, and its diversification into investment in commercial ventures followed by the purchase of estates, was a tried and tested way of winning access to social prominence. Many of the judges,

such as Louis Cappeau of the Bouches-du-Rhône, used their family wealth to advance their public careers in auspicious times, and to protect them in times of danger, such as the period 1792-1794. However, some judges used their office to build traditional bases of wealth and status from new sources, such as the purchase of church and émigré property. It is important, therefore, in order to gain a clearer understanding of the motivational nexus between political commitment and self-enrichment, to know the offices held by the Directorial judges prior to the Revolution and the rise or fall of their fortunes during the Revolution and the Empire.

Such an approach to this type of analysis has to be set within a framework of revolutionary phases, or eras, for it is only through an appreciation of the flexibility of the judges' responses to changing times and situations that we can arrive at any fixity of judgement regarding their deep-seated (as opposed to their short-term) motivation. For these purposes a sample of 60 judges have been chosen (mainly from the departments of the Bouches-du-Rhône and the Vaucluse) as a representative sample of Directorial reactionaries. In the first instance it is crucial that we know the professional background of these men during the Ancien Régime: for example whether or not they were magistrates in the Parlements, seigneurial agents, clergymen, crown servants, or simple local lawyers in private practice. Political viewpoints, when they were recorded, are of equal importance, and these can sometimes be deduced from career patterns: an avocat who willingly accepted a post under the new judicial order in 1791 can be taken to be more open to revolutionary ideas than Ancien Régime magistrates like Pascalis, who openly campaigned against the abolition of the old order of Parlements and eventually conspired against the early Revolutionary régime.

Another test of political opinion would be the judges' response, in the final year of the monarchy, to the rise of jacobin extremism in the Midi. These responses can be gauged against actions such as the purchase of biens nationaux, which, ostensibly, came to be seen as a gesture of commitment to the Revolution but which, in reality, was a touchstone which measured personal profit against local loyalties. For example, a judge who was 'controlled' by Catholic Royalist groups might find himself severely compromised by his purchases of biens nationaux of either the first or second origin. Another dilemma which would have faced the Directorial judges in the earlier part of their careers was the federalist revolt. Many of the judges supported the rebellious movement and many, as a direct consequence, temporarily forfeited their careers and fortunes and were cast into the wilderness of exile. Thus, it is important to try to discover whether the judges who collaborated in the revolt of 1793 were simply swimming with the most influential tide of local vested interests or whether they were deliberately taking a stance against Parisian centralism and the jacobin vision of republican society. This line of enquiry leads us, by extension, to the question of the Directorial judges' experiences during the period of Terrorist repression in the Midi. For those judges who were aggrieved by the Terror, or had families who suffered as a consequence of their actions in 1793, the experiences under the Terror became a central factor in their motivation during Thermidor and the Directory. Yet one must be careful here to distinguish between those judges who acted out of genuine feelings of personal revulsion and need to avenge themselves on their former jacobin tormentors and those who merely postured as rabid anti-jacobins because it was the dominant spirit of the times and compulsory for those seeking election by the local élite in the post-Thermidorian period.

We are helped in making this distinction by observing the actions of the judges during the Thermidorian Reaction. Some were obsessed with rebuilding a judicial career for themselves; some were solely concerned with repossession of their confiscated property and obtaining indemnification for their torments in 1793-1794; some established organisations which aimed at the reintegration of émigrés and outlaws into political life, whilst others, who had silently served the Terror, were anxious to distance themselves from the fallen régime and become plus royaliste que le roi. The various postures adopted by judges during the Thermidorian Reaction — ultra-conservative, anti-jacobin, royalist, moderate republican — usually remained with the judges throughout the Directory. Despite the struggle for control of the civil and criminal courts, the ultra-reactionary faction was in the ascendant until the government finally intervened against them in 1797. Yet, once more, we confront the problem of 'types' of reactionary. In this instance the most important distinction to be made is between outright royalist judges and those who, like Etienne Jamet, were 'thermidoriens anti-anarchistes'. The genuine royalists were those whose devoted political commitment made it impossible for them to reconcile themselves with the Consulate and Empire. It was the recurrent exploitation of changes of regime for personal gain that really exposed those reactionary judges who were, above all, tenaciously self-interested. The most frequent description in the prefects' reports of 1815 of the judges who had served under Napoléon was 'caméléon souple'.¹ For the dedicated careerist,

¹ See, e.g., A.D. BduR 2U₁ (general review of candidates for judicial office, August-September 1815).

dogmatic political loyalties was too heavy a baggage to carry on such a tortuous journey. Indeed there were some men, like Baffier and Cappeau, who served every régime, from Louis XVI to Louis XVIII—men whose accrual of personal fortunes was the only constant factor in their wending yet inexorable odyssey through unprecedented social and political eruptions. Most of the reactionary judges only ever faltered in their upward ascent when jacobinism dominated in either a local or a national context. They possessed an acute awareness of the pathways to local power and the need to appeal to influential patrons by attacking a commonly acknowledged enemy. It was generally understood that, in order to hold onto power in time of political mutation, one had to be protean. Longevity of tenure, as exemplified by those judges whom we are broadly categorising as outright careerists, was a remarkable achievement for those who served régimes which each obliged them to swear oaths of loyalty to it and hatred towards its enemies. Those who survived in office from Ancien Régime to Restoration were, ipso facto, political apostates.

The reactionary judges of the Directorial era had been entwined in the legal structures of the Ancien Régime. In Provence the patchwork of jurisdictions was complex and inefficient: royal justice, provincial parlements, papal and seigneurial justice operated in close proximity, and often in competition. The sale of legal office was widespread, despite the increasingly reactionary puritanism of the Parlements of Provence and Grenoble. In the Haut-Comtat and the Drôme many of the Directorial judges had completed their legal training at the Universities of Orange and Avignon, both of which were notorious for selling law degrees to the

highest bidders.¹ One tends to find, however, that the deeply reactionary Directorial judges had been well-qualified, high-ranking Parlementaires before the Revolution. A carefully chosen example of 60 reactionary judges from both the Bouches-du-Rhône and the Vaucluse indicates that the judges were drawn from the top tier of the former magistracy and service élite. (see figure 1).

Figure 1

Sample Careers of Directorial Judges During the Ancien Régime.²

<u>Bouches-du-Rhône</u>		<u>Vaucluse</u>	
<u>Office held</u>	(%)	<u>Office held</u>	(%)
<u>Procureurs du Roi</u>	44	<u>Avocats</u> in the papal courts (Avignon)	36
<u>Avocats</u> (Parlement de Provence)	24	<u>Avocats</u> (Parlement de Provence)	24
<u>Notaires</u>	12	<u>Avocats</u> (Parlement de Grenoble)	12
Clergy	5	<u>Notaires</u>	8
Seigneurial agents	5	Clergy	10
Non-office holders	10	Seigneurial agents	10

1 R.L. Kagan, 'Law Students and Legal Careers in 18th Century France' Past and Present, 68 (1975), pp.38-71, p.41.

2 The same sample of judges is used throughout this chapter as a representative indicator of the underlying trends of the careers and motivation of Provençal judges. The sources for these statistics were drawn mainly from series M and Q in the departmental archives of the Vaucluse and Bouches-du-Rhône of which further details are to be found in the bibliography.

These judges entered the revolutionary era imbued with a particularly southern deference towards traditional apartness. They were interwoven into the local socio-political fabric which would later deny them the possibility of serving the theorists' abstraction of the unified republic. The judges were not independent freethinkers, they were, and always had been, the servants, operators, right hand men of the political and social élite of their immediate environment, whether there were estate-owning noblemen, the king's Intendant, the papal vice-legate or the 'merchant aristocracy' of the sea and river ports.

The Directorial judges were not consistently reactionary. Because they were not opinion-makers, but rather followers of the dominant opinions of the locality, they could not afford to hold dogmatic and unchangeable views. The predominant feature of the chameleon is its ability to survive by adapting to its environment to such an extent that it is indistinguishable from it. Similarly, the judges who had served the Ancien Régime were quick to abandon it when it was modish to be radical. The Estrangin family had been feudistes and seigneurial factotums for the Prince of Lambesc, but when he emigrated, the eldest son, Jean, an avocat at the Parlement of Provence, became a district judge and bought up his noble patron's confiscated lands.¹ Antoine Ailhaud, who had been an avocat at the Parlement in Aix and the King's commissaire in Santo Domingo, became a colonel in the National Guard of Rians (Var)

1 F. Billot, Notice biographique sur la famille Estrangin (Arles, 1853).

in 1790.¹ Some judges, like Pierre Aguilon, vowed that, following the murder of the monarchist Parlementaire Pascalis, they would never accept a post from a Revolutionary Régime.² Aguilon kept his promise until 1791. Another avocat at the Parlement of Aix, Louis Cappeau, who had been under the direct tutelage of Pascalis, was not disaffected from revolutionary office by his master's murder: he married Marie-Françoise Pascalis, the niece of the victim, and accepted a post as a judge in the district court of Salon (Bouches-du-Rhône).³ Joseph Bernardi, who had belonged to one of the wealthier noble families of the Apt region, as well as being one of France's leading legal minds (he defeated Rousseau in the Academy of Chalôns-sur-Marne essay prize in 1780), became the mayor of Marieux (Vaucluse) in 1790 before he became a judge on the district court of Apt and reverted to royalism.⁴ Even those judges who were, by 1792, involved in royalist conspiracy, showed little opposition to the early period of revolutionary reforms.

Several arguments can be made for the judges' alacrity in accepting office in 1789-1791, or, in the case of Avignon and the Haut-Comtat, after its unification with France had been formally acknowledged. The simplest is that their desire to remain in public office overrode their private political views. The argument that

1 G. Saint-Yves and J. Fournier, Le département des Bouches-du-Rhône, 1800-1810. (Marseille, 1899) p.173.

2 A.D. BduR. 2U₁.

3 L. Bergeron and G. Chaussinard-Nogaret (eds), Les Grands Notables du Premier Empire (Paris, 1978, 6 vols) vol.VI by Abbé P. Geuyraud, pp.172-173.

4 A.N. F^{1c} III Vaucluse 1 (report on Bernardi, 24 germ V).

frustrated, intermediate Ancien Régime lawyers pounced upon the new offices created under the constitution of 1791 (following the abolition of the Parlements) is attractive, but, in the case of the Midi, is not a fully satisfactory answer to the question of motivation.¹ A more likely reason was that the local aristocracy, gentry and haute-bourgeoisie, seeing that the process of radical political change was irresistible, decided that their own choice of placemen ought to be installed in the new structures of power in order to protect their interests from the various menaces which were unlocked by the political upheaval. Few 'radicals' infiltrated the southern judiciary before the fall of the monarchy in 1792. If we take the same sample of judges, we notice that in fact the superior magistrates of western Provence absorbed the majority of the posts within the new judicial structures of the constitution of 1791 (see figure 2).

1 See, however, P. Dawson, Provincial Magistrates and Revolutionary Politics in France (Harvard, 1972) p.251 shows that, in Burgundy, the intermediate magistrates monopolised the offices created during early revolutionary period.

Figure 2

Posts held by Directorial judges, 1790-1794

<u>Bouches-du-Rhône</u>	%	<u>Vaucluse</u>	%
Administrators	32	Administrators	16
Judges (district courts)	20	Judges (various courts)	40
<u>Procureurs syndics</u>	16	Mayors	12
National guards	10	National guards	4
Deputy	3	Deputy	4
Various or unknown	19	Constitutional Clergy	12
		Various and unknown	12

The most significant conclusion to draw from these figures was that the judges were utterly flexible in their approach to public careers. It was not until the Directory that they were fully institutionalised: those who, by 1795, had become judges invariably remained judges for the rest of their public lives. And from this spread of public careers monopolised by the Ancien Régime lawyers, magistrates and service élite emerges the theme of status. Each of the offices held by the sample groupings of Directorial judges were, for a variety of reasons, offices of considerable local power and social prestige. For example, the trend among these future judges to opt for administrative office derives from the association of local administration with the higher social ranks during the Ancien Régime. Most of the judges entered the revolutionary era with concepts of local and national status which would soon be at odds with the power bases which were to develop within the process of revolutionary change.

With the opportunities for the acquisition of enhanced status opening rapidly before the ambitious and the self-seekers came new opportunities for the expansion of personal wealth. Yet, once more, the new sources of wealth appealed to those who looked backwards into the Ancien Régime where landownership outdid commercial and industrial investment in the priorities of the status-minded and the ambitious. We find that, from our examples drawn from the Bouches-du-Rhône and the Vaucluse, 64% of the total number of judges purchased biens nationaux of either the first or the second origin. What does this indicate? In the first place that many of them found no conflict of interest between soaking up the property of the dispossessed élite and, under the Directory, of simultaneously advancing the cause of that same élite. In addition, it showed that the reactionary judges of the Directory were as committed to traditional models of social eminence as they were to reactionary political views. These acquisitions of land later ensured the inscription of many of the reactionary judges on the Imperial lists of notables from which the leading local office-holders were drawn. Land-based wealth was among the more necessary assets required to appeal to political patrons. Even in 1815, Honoré Raybaud, a reactionary Aixois judge, was accused by the royalists of having exploited every public office which he held since 1789 to protect his vast purchases of émigré lands.¹ In his will, Baron Baffier, who more than any other typifies the general argument of this chapter, bequeathed 40,000F of property which had originated as

1 A.D. BduR. 1U₁, 10 November 1815. Prefect to Min. of Justice.

biens nationaux.¹ Even by the arriviste standards of the time, this was unusual for the son of an illiterate Corsican carpenter. His royalist convictions notwithstanding, by 1812 the ex-public prosecutor Pierre Mézard was earning 31,000F in revenue from his fat acquisitions of bien nationaux which he had accumulated whilst struggling against the Révolution.² The ultra-revolutionary Antoine Ailhaud dismissed under the Directory and reinstated under the Consulate, continually expanded his purchases of biens nationaux by a series of corrupt land speculations during his tenure as an imperial judge. His most notorious fraud was perpetrated in 1800 when he swindled the hospices of Aix-en-Provence out of the 80,000F which they had loaned him to purchase an émigré's estate. When the hospice administrators attempted to sue Ailhaud for the fraud, he used his influence on the Court of Appeal to have their case dismissed. Henceforth, he was known locally as 'le spoliateur des pauvres'.³ Together with their service to the régimes of Bonaparte, the purchase of émigré and clerical lands were the aspects of the reactionary judges' careers which the royalists of the second Restoration found most difficult to accept.

For the reactionary judges, private fortune and public status were mutually reinforcing. It was a view which governed the appointments made by the Thermidorians to judicial office. It was considered obligatory that judges were men of independent wealth in

1 A.D. BduR. 12Q1-7, 15 details of Baffier's property and bequest.

2 A.D. Vaucluse 3M₄ (electoral college lists, 1812).

3 A.D. BduR 2U₁ (1815), see also A.D. BduR II M₃I. (Electoral lists, collège¹ d'Aix, 1806).

order that they would be immune to the temptations of bribery and also that they might better reflect the property-owning ethos which all post-terrorist governments upheld. It was also a reaction against the jacobin judge who was branded as the enemy of the rich. There was little chance of a judge making anything substantial from their salaries: during the Directory the salary which civil court judges (haphazardly) received was 3,000F per annum, which was 1,000F less than a departmental administrator received. Public prosecutors received 4,500F and presidents of criminal courts were the most highly paid local judges with 6,000F per annum. After the fall of Robespierre, personal fortunes and financial corruption became fashionable again. Electors did not seem to mind their judges indulging in lucrative speculation or profiting from private legal work: the honnêtes gens of the Midi preferred anything to being judged by those whom they considered their social inferiors.

It is, therefore, unsurprising to find many judges employing their office to create personal fortunes and, alternatively, many employing these substantial personal fortunes to advance their personal careers in a way similar to that in which, during the Ancien Régime, commercial wealth had been used to purchase venal office. The career of Louis Cappeau was an outstanding example of a private fortune and family connections being put to the service of a judicial career. The Cappeau family's investment in office had started well before the Revolution. Louis' father, who had made his money in salt manufacturing, bought himself the office of avocat in the Parlement of Provence in 1760. He sent Louis to study law in Aix and, having received a doctorate in 1774, inherited his father's

office.¹ Louis also married into the family of the aristocratic parlementaire Pascalis. Having become the district judge of Salon in 1792, he was arrested by the local comité de surveillance on the grounds of his involvement with émigrés and royalists. He was taken before the Revolutionary Tribunal of Marseille where his well-timed contribution of 30,000F as a 'don patriotique' spared his head from the guillotine.² Similarly, when arraigned before a commission militaire in the Year VI as an émigré agent, he managed to buy his way out of the firing squad line. Under the Consulate and Empire his fortune and career merged: his tenure as a judge in the Court of Appeal saw his private assets rise to 240,000F of declared fixed and liquid assets.³ Much of this fortune had derived from the diversification of his commercial earnings into large purchases of biens nationaux in his native region.⁴ Even the royalists admired his financial acumen: they appointed him president of the Royal Court; in 1826 he became mayor of Istres and in 1832 honorary president of a chamber of the Royal Court. When he died in 1852 he could boast that he had served and outlived nine successive régimes.

Having argued the idea of the conjunction of judicial office and private fortune as a factor of motivation, one must also consider the Directorial judge's reaction to régimes which ruptured the bond. The rise of jacobin extremism in the Midi after late 1791

1 See Abbé Gueyraud Grands Notables, Vol.VI, pp.172-173.

2 A.D. BduR. 485 arrêté of 2 vend. II.

3 A.D. BduR IIM₃/Trente plus imposés.

4 P. Moulin, La vente des biens nationaux dans le département des Bouches-du-Rhône (Marseille, 1908-1911. 4 vols.), II, p.551.

confronted the Ancien Régime judges who had smoothly slotted into the public offices of the Constitutional Monarchy with their greatest crisis of conscience. It also tested their loyalty between nation and region, for many of the Directorial judges participated in the federalist revolt of 1793 not only as a protest against the jacobins' radical vision of society, but to reassert the pre-eminence of their region over jacobin centralism. From the sample of judges from the two departments, 40% of those in the Bouches-du-Rhône and 30% of those in the Vaucluse raised the standard of rebellion against the Convention. In the Bouches-du-Rhône only 16% of the judges remained in office during the Terror as opposed to almost 40% in the Vaucluse. One of the judges, Joseph Mouret, even became president of the federalists' Tribunal Populaire which executed 17 of Marseilles' leading jacobins.¹

The experiences of the repression following the collapse of the federalist revolt forms the next great motivating factor behind the activities of the reactionary judges during Thermidor and the Directory. With the victory of the Convention's forces came arrest, imprisonment or exile, separation from kin groups, confiscation of property and fortune. Some of the Directorial judges were, during the Terror, among the most wanted men in France. Blanc-Pascal, accused of having killed an innkeeper during the bagarre de Nîmes (1790) and of having organised the bands of anti-jacobin thugs known as 'le pouvoir exécutif' during the Federalist Revolt, became a

1 A.D. BduR L.279 report on Mouret, ventôse IX.

notorious outlaw.¹ Joseph Bernardi and Pierre Mézard, future president and public prosecutor of the criminal court of the Vaucluse, were the organisers of the Federalist armies in the Apt region.² Etienne Jamet, who had been among the first to sign the Marseille manifesto in 1793, also composed diatribes against Marat and Robespierre and fought on the side of the British in Toulon.³ Those who actively collaborated in the Federalist Revolt of 1793 and survived the Terror were the most vindictively reactionary members of the Directorial judiciary. Their feelings of personal vengeance were intermingled with their acquired rôle as the avengers of the local community.

Although the judges became as proudly nostalgic of their 'heroic exile' during the Terror as the republican war veterans were about the campaigns of 1792-1794, many judges accepted office from the republican régime of the Directory as a means of settling scores for their immediate kin group. In the Year VI, when Jamet was cross-examined on the rôle which he had played in the judicial persecution of jacobins between 1795 and 1797, he justified his actions by invoking his personal grievances:

'Je fus proscrit, mis hors de la loi par une minorité rebelle, par les clubs, comités révolutionnaires et par tous les apôtres du système destructeur, et ma famille fut sacrifiée à la commission soi-disante Populaire d'Orange.'⁴

1 G. Lewis, The Second Vendée, p.65, 124.

2 A.N. F^{1c} III Vaucluse 1, report to Minister of Justice, 24 germinal V. A.D. Vaucluse 1U₈₂.

3 A.N.F⁷ 7328 (dossier Jamet).

4 A.N. BB¹⁸ 890, procès-verbal, 4 prairial VI.

Indeed, Jamet's family had suffered far more than he during the Terror: after Etienne had sailed from Toulon on board a British warship, his father was arrested for sharing his son's 'principes liberticides' and was guillotined by the Commission Populaire of Orange, whilst his mother and sister were incarcerated as suspects.¹ The judge who successfully defended the Fort Saint Jean égorgeurs, Jean Estrangin, had played an active rôle in the organisation of the federalist rebellion in the Saint-Rémy and Eygalières (Bouches-du-Rhône) regions: with the onslaught of the Convention's armies he and his family were forced to flee to Marseille. In their absence their family enemy, Mauche, the president of the comité révolutionnaire of Orgon, placed their names on the liste des émigrés and seized their property. Estrangin's father, who had also played an active rôle in the revolt, was forced into hiding in a cellar in Avignon for over a year. Jean and his cousin Roustand, were forced to abandon their wives and children in Marseille and walk to Savoy dressed as peasants.²

The terror forced the feuding families of the Midi to take up either the banner of revolution or of federalism. The outrageous and divisive nature of the jacobin-led terror in the region ossified these feuds and exacerbated them. The politicisation of long-standing family rivalry and vendetta was a tangible motivating

1 P. Charpenne, Les grands épisodes de la Révolution dans Avignon et le Comtat-Venaissin (Avignon, 1901. 4 vols.), IV, p.48.

2 A.D. BduR B679 (archive privée) Chronique de la famille Estrangin (1936); B. Roustand Les Roustand d'Orgon et de Marseille (s.d.).

force among a good deal of the Directorial judges. The Estrangin family, for example, who were allied by marriage to the ultra-royalist Roustand family had had a long-standing rivalry with the Mauche family before the Revolution. In addition, the Estrangin family had been strongly attached to the magistrate Pascalis, whom Mauche denounced as a royalist conspirator, and who later swung from a gibbet in Aix in one of the first anti-royalist journées in the Midi. It was the Mauche family's commitment to jacobinism together with their acquisition of a great number of local offices, which drove Jean Estrangin and his family into the Federalist camp. Under the Directory, the feud between the Estrangin and Mauche families continued under the guise of a struggle between the departmental administration (of which Mauche was a member) and the civil and criminal courts (of which Jean was a leading reactionary). We have discussed in previous chapters the feuds of the clans of Teste, Moureau, Dutour and Chambon and those of Rovère, Roussel and Allier and its implications for the judiciary in the Vaucluse and Gard. The Revolution, and the federalist revolt and terrorist repression in particular, as we shall later see, could either accentuate pre-existing schisms within a family or between families or else strengthen their solidarity. Distant cousins were frequently thrown together by common ideals or in adversity. The anti-émigré laws of the Revolution, which were maintained under the régimes of the Directory, threw relatives together because they visited upon families the sins of their émigré members. Therefore, in our consideration of the various types of motivation which characterised the reactionary judges of the Directory, kinship alliances and feuds must figure strongly. For if the Midi was the embodiment of institutionalised regional autonomy under the Ancien Régime, the family-based élite which constituted and upheld these institutions

had a proclivity towards clannishness and vendetta. The judiciary was in a particularly vulnerable position because its professional and corporate loyalties were superimposed upon its family loyalties and rivalries. Kinship alliances were formed chiefly through marriage, such as the Cappeaus and Pascalis, the Estrangins and Roustands, the Jamets and Courtials, the Jourdans and Barthélémys. The ultra-reactionary judge Antoine Jourdan had a well-placed constellation of relatives: his father, Joseph-François, was the cousin of the monarchist Director Barthélémy and father-in-law of Pierre Sauvaire, a future deputy of the Bouches-du-Rhône under the Empire. Antoine himself was the uncle of the pro-royalist deputy for the Bouches-du-Rhône for the Years IV and V who plotted against Fréron and who was eventually deported after the coup of fructidor Year V.¹ The Jourdan family were to be the recipients of extensive patronage from the powerful Bathélémy during the Empire and Restoration. Mutual protection and nepotism were the major advantages of these intricate ties of blood or even friendship, as was the case with the Baffiers and Bonapartes, or Bernardi with the Portalis political dynasty.

Other judges joined the federalist revolt because the social élite who patronised them had decided to expunge jacobinism. This was certainly the case of the judges from Marseille and those judges, like Cappeau, who had business dealings with the seaport merchants. Some, it should be said, joined with the federalist revolt for purely ideological reasons. There were judges who had

1 Gueyraud Grands Notables, p.201.

been exasperated by the hanging of Piscalis, the Glacière massacre, the arrogance of the jacobin club of Marseille, the abolition of monarchy and the expulsion of their deputies from the Convention. Then there were the judges who hankered after the structures of aristocratic or papal patronage which had been the guarantor of their social eminence and who feared that the rise of radical populism would reduce their status. For many the access to biens nationaux was small compensation for the loss of an ethos. The Thermidorian and Directorial regimes presented many of these dispossessed judges with an opportunity to recoup the local influence and prestige which they felt they had lost to their social inferiors during the Terror.

Therefore, those reactionaries who took up judicial office in the Thermidorian and Directorial periods did so with a variety of motivations. This can be roughly interpreted as three distinct though not exclusive types: those who accepted office to reclaim or expand their personal wealth and careers, those who were ideologically motivated and those who sought revenge against personal cum political enemies. There were, of course, many areas of overlap between the three types: careerists and fortune-hunters were compelled to imitate the postures and pursue the activities of the rabid anti-jacobins in order to win acceptance and, by extension, electoral votes. Many flexible, disinterested careerists, such as Ailhaud and Cappeau, were dismissed and prosecuted after the fructidor coup, having been accused of supporting a royalist cause which they had little time for, as evidenced by the pattern of their careers and political behaviour under the Empire. Those like Jamet and Estrangin, whose feelings of revulsion and quest for retribution against jacobins were overwhelming, were quite easily pushed into

support of royalism without sharing the ideological fanaticism of the assortment of royalist agents operating in the south-east under the Directory.

The careerists were not easily distinguishable from other reactionary judges during the Directory. It is only by pursuing their careers into the Consulate, Empire and, in some cases, the Restoration, that their serpentine progression becomes distinguishable. Most of the judges in the sample drawn from Western Provence enjoyed excellent careers under the Consulate and Empire (see Figure 3).

Figure 3

<u>Consulate and Empire</u>	<u>Bouches-du-Rhône</u>	<u>Vaucluse</u>
	%	%
High judicial office	72	60
Government office	16	24
Deputy	4	8
Lawyer in private practice	8	8
•		
Elector/Notable	80	72
Member of the <u>Légion d'honneur</u>	44	36

Not only excellent careers, but also local prestige and influence over affairs. The majority of the judges were in possession of substantial private property and capital, which qualified them for membership of the departmental electoral colleges. Most of them

enjoyed greater fortune, office and status under the first Empire than they had either under the Revolution or the Ancien Régime. This says much for the course of the judicial reaction in the south-east and very little for the theory of natural justice.

The reactionary judges were better equipped to survive the transition from Revolutionary to Imperial régimes than their republican counterparts. Those who had consistently struggled against jacobinism throughout the Directorial years were usually appointed for life by Bonaparte. Bonaparte offered the judges the opportunity to consolidate their fortunes, immense social status and the stability of permanent, unelected office. Consequently, the judges dissociated themselves from the royalists and égorgeurs whom they had hitherto protected. For the dedicated careerists, however, 1814 was the time to abandon these imperial loyalties, time to appeal to new patrons. Virtually none of the judges were so ensnared in loyalties to the Emperor that they refused posts offered to them in the royal judiciary in 1815. The case of François Baffier is a revealing one. In the first year of the Consulate he was elected to the legislature, but the Senate did not ratify his candidature. As compensation Bonaparte appointed his old family ally to the presidency of the Court of Appeal in Aix. Under the Empire Baffier's honours proliferated: chevalier of the légion d'honneur (1808); Baron of the Empire (1810); President of the electoral college of Aix (1813). Unaffected by any notions of indebtedness to his great patron, he rallied to the Bourbons in 1814 and was awarded the cross of St Louis. His craving for medals unabated, he scurried back to Napoleon in guiltless haste during the Hundred Days in time to receive the order of merit. After Waterloo he rallied to Louis XVIII, was appointed by the King as president of

the Royal Court and had his baronetcy restored.¹ 'Ce caméléon', wrote an exasperated prefect, 'ce partisan outré de Buonaparté, est un esprit rampant, avide d'argent, bouffi d'un sot orgueil et d'une grossière irascibilité qui rappelle bien son extraction. Cet homme ne doit pas être le premier président d'une compagnie royale, surtout à Aix'.² Despite vitriolic royalist attacks, Baffier clung tenaciously to office as he had done for the past quarter century.

Those who were politically motivated under the Directory present a more complex problem in the long-term perspective. The judges who were inveterate royalists would have found the Imperial régime as impossible to serve as the republic. The fact that the majority of reactionary judges accepted offices after 1799 suggests that their motivation really derived from an extreme aversion to jacobinism and that they were prepared to go to extremes to prevent a return to the Year II. For many of the counter-terrorist judges royalism was merely a vote-winning flag of convenience. However, there were royalist activists within the law courts of western Provence during the Directory and to belittle their determination to use their office to facilitate the restoration of the Bourbons

leaves us with an incomplete picture of judicial motivation. Aside from denunciations and reports of espionage activities there is little personal evidence of royalist activities among judges. Those who did take their orders from Verona, Barcelona or Geneva were

1 A.D. BduR. 1U₁ Notification of royal assent.

2 A.D. BduR. 2U₁, 10 November 1815.

careful not to publicise their activities or leave compromising traces for the commissaires or jacobins to use as incriminating evidence against them. For example, Féraud, who was, even to the most guillible, a dedicated royalist agent who exploited his position on the judiciary to protect his political allies, was never convicted because he never left a shred of written evidence.¹ Yet, in the notes of the royalist Prefect of the Bouches-du-Rhône in 1815, there was a succinct note beside the name of Féraud: 'royaliste, fort riche'.²

The case of the ex-noble Joseph Bernardi was similar: all his actions pointed to royalist conspiracy and subversion, but he left no correspondence to provide incontrovertible proof. Bernardi was incarcerated in Digne (Basses-Alpes) in 1791 for having flirted with royalist conspiracy; he joined the armies of the King of Piedmont during the Terror. In the Year III he returned to the Vaucluse, procured a residence certificate from the pro-émigré administration of Carpentras and had his goods and properties duly returned to him.³ In the Year V he resigned his office of public prosecutor in favour of the ultra-reactionary Pierre Mézard to become a deputy. In Paris he was closely associated with the cabal of Willot, Rovère, Jourdan, Portalis and Siméon and was a fiery spokesman for émigrés

1 Although, see A.D. BduR L.279, the Minister of Justice received a petition signed by 226 Arlesians who denounced his involvement in royalist conspiracy.

2 A.D. BduR 1U₄ (report on candidates for judicial office, 1815).

3 A.D. Vaucluse I Q 109 (liasse II), arrêté of 28 prairial III.

and refractory clergy. It was for this association, rather than proven collaboration in conspiracy, that Bernardi was dismissed after the coup of fructidor; his royalist ardour had made him, for the third time in his career, the target of a republican backlash. By 1797, however, he was well practised in the arts of escape and went underground for the remainder of the Directory. Like the majority of anti-republicans in the south-east, he did well out of Bonaparte. His colleagues from the Parlement of Provence and fellow conspirators, Portalis and Siméon, petitioned on his behalf. Ironically, he was offered the post of head of a division at the Ministry of Justice which he occupied for the remainder of the Empire.¹ Further patronage brought his son a commission with the Grande Armée.² Adorned with the theatrical clothes of a glittering Imperial notable — chevalier of the Légion d'honneur, member of the Institut de France, president of the electoral college of Apt, author of several eminent works of legal scholarship, rich³ - Bernardi was uncomfortable under the rule of a man without royal lineage, although there is no record of him conspiring against or subverting the régime. In 1814 he rallied to the Bourbons with a royalist celerity and enthusiasm which was rare among the greater number of judges who broke from Napoleon merely to save their careers. He did not defect back to Bonaparte during the Hundred

1 A.N. F^{1c} III Vaucluse I, report of Year XIV. A.D. Vaucluse 1U₈₁.

2 L. Bergeron and G. Chaussinard-Nogaret (eds), Les Grandes Notables du Premier Empire, vol.1 by A. Maureau (on Bernardi). His son later became a legitimist deputy for Carpentras during the July monarchy.

3 A.D. Vaucluse 3M₂. He was among the 600 highest taxpayers in the department.

Days and, in 1815, he applied to Louis XVIII for the restoration of his lettres patentes of nobility which he was granted, together with the office of royal censor and, in 1816, procureur général of the Royal Court in Nîmes.¹

From the sample of judges in the two departments less than 20% could be described as 'pure' royalists or even royalist agents. Gabriel of Marseille, Simon of Arles and Estrangin of Eygalières were certainly agents using their judicial office as a front to cloak their subversive activities. They, along with other royalist activists, signed a manifesto at Tarascon on 25 October 1795 which stated:

'Nous soussignés chefs de districts coalisés convoqués à Tarascon pour rendre compte de nos pays respectifs et former entre nous une coalition pour travailler de tous nos moyens au rétablissement de la monarchie et de l'ordre public'.²

These three judges abided by their pledges, often to their own detriment: Estrangin incurred the wrath of the jacobins for his defence of the Fort Saint Jean murderers; Simon d'Arles doggedly pursued a vendetta against the republican military command in Tarascon despite being reprimanded by the Ministers of Justice and of War; Féraud, whom we have already mentioned, was responsible for the control of underground organisations which helped émigrés and refractory clergy either to escape from or to re-enter the Republic.

1 Annuaire de Vaucluse (1824) Notice biographique.

2 Hampshire Records Office, diplomatic and political papers of W. Wickham (Bonham-Carter collection) series, 1, liasse 10 (Drake), 25 October 1795).

Féraud had acted as Willot's personal agent, spying upon the local administrators and juges de paix; after Willot's fall, he and Henri Pellicot formed a counter-insurgency force in Aix to resist the 'new Terror'.¹ At the elections of the Year V the royalists forced the electors to vote the royalists Nicot, Peisse, Arnaud and Fabry into the civil court, although none of them had experience of judicial matters.² Fauverge, perhaps the only royalist to remain in office following the coup of fructidor, was largely responsible for the continued protection afforded to the Tarascon assassins by the judiciary.³ After the coup of fructidor, Jean Estrangin was dismissed from office on suspicion of having plotted the overthrow of the Republic. His father, also given eight days to quit the national territories tried to hide in Avignon but he was tracked down by Mauche and Agricol Moreau and handed over to the military commission which had him shot without compunction. Jean, disheartened by his father's execution, abandoned the collapsing royalist movement in 1798 and moved his family to Marseille where, during the Consulate, he became an avoué of the civil courts.

Royalist convictions often split judicial families into warring opponents. Political bias was honed by internal family feuds as much as it was reinforced by kinship solidarity. In some cases, the members of families came to prefer parricide or

1 Roux-Alphéran Journal historique, p.247.

2 Ibid. p.136.

3 A.N. BB¹⁸ 177. report of 24 thermidor Year IV: 'Il dévoua tout au système contre-révolutionnaire auquel il doit sa place de juge et sans lequel à coup sûr il ne l'aurait pas obtenu'.

fratricide to an abandonment of the cause of political allies. In these cases the co-occurrence of personal and supra-personal motivation is striking. In the divided town of Arles the Ripert family was rent by a political struggle between two brothers, Louis and Joseph. Both were the sons of a wealthy landowner and the nephew of Louis Joseph Ripert who had purchased the venal office of procureur du roi from his winnings at the gambling table. When he died in 1772 he left no direct heir and so his office passed to his eldest nephew, Louis.¹ Joseph had to settle for religious studies at the collège Teyragues, following which he became a parish priest in the Trinquetaille quarter of Arles. These pre-revolutionary callings were significant because, as far as Western Provence was concerned, clergymen trained in Oratorian colleges tended to favour the jacobin vision whereas venal office-holders regretted the Ancien Régime and were quick to join the federalist revolt.² The first crucial split between the brothers came in 1791 when Joseph swore the constitutional oath of the clergy despite Louis' protests. In 1792 Joseph joined with the jacobin militia from Marseille in evicting his brother and fellow royalist sympathisers from Arles. Under the Terror, Joseph became procureur syndic of Arles and placed Louis' name on the liste des émigrés.³ When Louis returned from exile in the Year III he accused Joseph of having forced his fiancée to marry him by threatening her with imprisonment for having been

1 P. Charpenne, Les grands épisodes, II, p.425.

2 On the relationship between the Oratorian colleges and the local jacobins see M.L. Kennedy The Jacobin Club of Marseille, pp.19-22.

3 A.N. D^{III} 29, arrêté of 28 September 1793.

engaged to an émigré.¹ Joseph was also accused of having brought up the lands of his former diocese after having chased the refractory priests from their churches. Louis united reactionary opinion against his 'Maratiste' brother and, consequently, Joseph was forced to flee from Arles to seek sanctuary in Marseille.

Under the Directory Louis established a formidable reputation as a persecuter of jacobins. He was constantly elected with huge majorities to the ranks of the civil court by a grateful local élite.² He was a frequent target of the republican newspapers and was bitterly attacked for having covered up the massacre at the château of Tarascon:

'...un plan infernal fut conçu et combiné au quartier général de la Vendée qui se tenait dans la maison du directeur Ripert, et après les mandats d'arrêt sortent de la fabrique de Ripert la force armée est sur pied pour tomber sur la proie qu'on lui désigne'.³

When Joseph returned to Arles in the baggage of Fréron in the Year IV and became president of the municipality, the judges of Aix shifted Louis to the correctional court in Marseille to avoid recriminations. Louis avoided arrest in the Year VI despite the reams of denunciations which his brother sent to Paris to try to incriminate him. At the elections of the Year VI each brother led a breakaway electoral assembly which represented the views of their

1 A.N. BB¹⁸ 185 report on Ripert brothers, 7 brum. VIII.

2 A.D. BduR L.279.

3 L'Observateur du Midi (no.27) 10 thermidor IV.

factions. Both elections were annulled. Under Napoleon, Louis fared better than his brother: he was appointed as president of the court of first instance in Tarascon for life.¹ Joseph was a jugé de paix during the Consulate and, failing to obtain a permanent appointment, began a private law practice in Arles.

Similarly, in the reactionary town of Aix, the blood feud between the Constans brothers shocked their family's social peers. As Roux-Alphéran remarked, 'Polycarpe Constans, aussi zélé dans le parti terroriste que Casimir l'est dans le parti contraire. La différence de principes dans la même famille est ce à quoi l'on s'accoutume le moins depuis la Révolution'.² Both brothers were highly influential in the struggle of political factions in the Bouches-du-Rhône. One can only guess at the origins of their mutual antagonism. Casimir, the reactionary, was, like Louis Ripert, the privileged child, the son who inherited his father's office of procureur du roi. Polycarpe, a minor legal official, clamoured for the abolition of the Parlements as stridently as Casimir opposed it. Polycarpe, an instigator of the lynching of Pascalis, called for his brother's execution; Casimir, an organiser of the federalist revolt in Aix, hounded his brother remorselessly; under the Terror Polycarpe, a member of the comité révolutionnaire, confiscated the lands of his émigré brother. Casimir, however, (who had a large number of friends and allies in Aix) returned after the 9 thermidor Year II and had his name struck from the liste des émigrés,

1 A.D. BduR. II M₃ I/appointments of Year IX.

2 Roux-Alphéran 'Journal historique', p.190.

reclaimed his property and had himself elected to the post of public prosecutor of the Bouches-du-Rhône with 100% of the votes cast.¹

Polycarpe could not tolerate his brother's blatant persecution of fellow jacobins. During Fréron's mission he engineered his brother's dismissal and provided the représentant with a great deal of evidence about his judicial activities, which later appeared in Fréron's Mémoire. The dismissed Casimir, in many ways the éminence grise of the royalists, was pushed towards political office by his friends. Their election plan was to have Casimir elected to the Cinq-Cents and replace him with the leader of the Compagnie de Soleil, Henri Pellicot, as public prosecutor. The Marseille contingent at the electoral assembly overrode this plan and instead sent Siméon to the legislature.² It is probable that Casimir was rejected by the royalists because of his consanguinity to such a notorious 'buveur du sang'. He rejoined Ailhaud on the criminal court bench in the Year V. The fructidor coup gave Polycarpe the upper hand again; he was appointed as commissaire to the departmental administration.³ No sooner was he installed than he had ordered the arrest of Casimir and Ailhaud as royalist subversives; he demanded that they quit the Republic within 48 hours or else face the firing squad. Both were banished. The jacobin electoral machine proved itself to be more tolerant of political skeletons in the family cupboard than its royalist counterpart when

1 A.D. BduR L.279.

2 A.D. BduR L.279.

3 A.N. BB¹⁸ 182/appointment of 10 nivôse VI.

it put Polycarpe forward as their candidate for the legislature. He was elected to the Cinq-Cents in the same poll as Barras. He became one of the few deputies to make a sustained protest against the coup of 18 brumaire and, for his enduring convictions, was proscribed by the First Consul. Casimir rose as his brother fell from grace. He was made an avoué at the civil court of Aix and became a member of the electoral college for the duration of the Empire.

There was no single motivation which was applicable to all of the reactionary judges. Their private and public ambitions, political prejudices, family loyalties and conflicts were tempered by the institutionalised nature of their profession under the Directorial republic, by the pressure of locality, by the need to be elected and by the ruptures and vicissitudes of an unstable regime. However, a general pattern of oscillation emerges from their trans-revolutionary careers: they began to rise under the Ancien Régime and into the early Revolution, they fell during the Terror, stabilised themselves during the Thermidorian Reaction, divided themselves into crests and troughs during the Directory and reached a zenith during the first Empire. Few judges came through the entire revolutionary decade unscathed. In terms of the complete cycle of career and motivation, the Directory can be seen as a time for salvage, revenge and reconstruction - an unattractive and insecure time which created a hankering for social certitude and occupational permanence. The magistrates and social élite of the Ancien Régime enhanced their position under the Empire - a complete upward gyration of status, power and wealth. It was the period of the Empire that made the counter-revolutionary judges of the Directory 'established' servants of the state, whatever its political complexion, whatever its impact upon the region in which they lived.

Conclusion

Corruption, even for the moralist, is a fascinating subject for historical investigation, especially when its pernicious consequences are observed in the double perspective of another country. In order to exert fascination there is no need for any study of corruption to fit into a broad historical argument. It entertains, and perhaps even instructs, in its own right. French historians would have good cause to criticise their British counterparts for a tendency to dwell upon the violence and corruption of their Revolution with what must often seem like detached, arch glee. Again and again the Revolution is depicted as an endless chronicle of organised, self-destructive violence in which a whole generation is consumed by its own political overreaching. It is possible that the chapters of this work might have contributed to this dark portrayal, if only in terms of southerners. To conclude that the objective of this work was to show that even the most advanced contemporary theories of social order and regulation and control of state power (given concrete expression in the creation of well-wrought, sophisticated structures) were inadequate to constrain an inveterately corrupt, devious and brutal set of communities into a modus vivendi, would be both unfair and unsatisfactory.

The conclusion which suggests itself most powerfully from the evidence deployed in these chapters is that, directly and indirectly, the judicial reaction, which can be taken as microcosm of the reassertion of regional autonomy against the centralising, integrating republican state, contributed to the downfall of the Directorial regime. Another striking conclusion to emerge is that the effectiveness of the judicial reaction highlighted the inadequacies of the Directorial regime, especially in its inability

to create a national consensus and to bring recalcitrant regions under control. However, such broad hypotheses must be qualified by indicating the limitations of extrapolating such general propositions from regional evidence. If the judicial reaction was an important source of the Directory's decline, then the argument is conditional upon the phenomenon of 'internal counter-revolution' in the ranks of the judiciary being widespread. Is there, then, any evidence to suggest a nationwide judicial reaction? It is an area worthy of the attention of historians of the later revolutionary period, for there is some reason to believe that the judicial reaction was not unique to the south-east. As has been described in Chapter V, there were purges of the judiciary throughout the republic following the coup of fructidor Year V as well as a general purge of the Tribunal de Cassation which contained elected judges from all over France. Moreover, the correspondence, messages and proclamations of the Directors are replete with warnings about the judiciary and its implications for national security. The abuses of the referral system, which had to be authorised by the Tribunal de Cassation, may well lead one to conclude that the judicial reaction in the south-east was perhaps only the most powerful tentacle of a centrally-based confederation of counter-revolutionaries. However, if the judicial reaction was not merely endemic, then it is still possible to argue that the set of long and short term variables which, in chapter II, are termed 'origins', were unique to the south-east. It is unlikely that the preconditions and conflation of extraordinary circumstances which resulted in the formation of the reactionary southern judiciary of the Year III could be applied to any other region. Anti-jacobinism in the Year III neither possessed the unique brutality of the southern égorgeur bandes nor did it reach the same level of retributive violence in any other region outside the south-east.

In addition, one can be sure that, if the Judicial reaction was widespread, then it did not always assume an immutable form, nor did it aim at a constant objective: the reactionary judiciary adapted to changing circumstances which depended upon the actions of the government and the consequent reverberations in the region. In the Year III, when the overriding aim of the government was the dismantlement of the institutions of provincial jacobinism, and that of the locality was for quid pro quo revenge against ex-terrorist officials, the judiciary was obliged to become an anti-jacobin force of retribution and unilateral compensation for the victims of the Terror. In the Year IV, during the 'manufactured' jacobin revival, the judges were the last line of defence for the forces of counter-revolution and, ultimately, the subverter of jacobin authorities and placemen. In the Year V, when, due to the arrival of Willot, the forces of counter-revolution ranged unchecked throughout the region, the judiciary played a strategic, functional rôle in the attempt to achieve 'legal restoration' through the monopolisation of all elected offices whilst also continuing to provide protection from final condemnation for the égorgeurs. During the Second Directory, although emasculated by purges of the leading reactionaries, the remaining reactionary judges continued to obstruct all attempts to prosecute political assassins and arrested royalists. They also acted as a foil to the forces of military justice by misleading, misinforming and distracting them from the coercion of political crime. Under the Consulate, when the executive decided the direct, permanent appointments to the judiciary, the judges became the staunch defenders of the new status quo and the implacable enemies of civil disorder. The only real constant factors which emerged through the operations of the judiciary under the Directory were the supremacy of self-seeking (at

the expense of fair, impartial justice), corruption, anarchial self-help, paramilitary violence and proliferating sectarianism.

The deliberate use of judicial procedures to advance the cause of counter-revolution led to a rise in social anarchy in the region. The abrupt escalation of brigandage after the coup of fructidor Year was the consequence of a series of decisive actions carried out by an executive which had only belatedly recognised the dangers of an inviolable state power exploiting its position to further the interests of groups dedicated to the overthrow of the Constitutional state. During the tenure of reactionary judges, and even more during their periods of nonco-operation, selective, violent crime had increased in proportion to the rise in paramilitary groups. The southern judiciary became more of a propagator than an adversary of crime. The normal relations which bound the citizen to the state disintegrated; electoral returns for the twilight years of the régime indicate mass disaffection from the normal practices of civil association. A corrupt judiciary had led its region through phases of collective anger, sectarianism, mass counter-revolution, violent disorder to eventual exhaustion, uninterest, alienation. It led the opinion-makers of the latter years of the Directory to cry out for order at any price and enforced national regeneration by an incisive executive.

The unleashing of these anti-social, anti-republican forces and the judiciary's connivance in them was, indirectly, a potent means by which the theory of the use of power in a Constitutional state was undermined. As the southern judiciary developed within the structure of the state into an organised system of covert subversion with counter-revolutionary aims, the government was

forced by the need to save the republic into an abandonment of the checks and balances of separated power which they professed to cherish. In order to curb the judicial reaction, the executive had to encroach upon the independence of the judiciary by purges, by co-optation of unelected judges and, ultimately, by the creation of parallel military justice to prosecute civilians. The attack on the judiciary after the coup of fructidor was an attempt to rupture the bond between the local élite and the judges which had been forged in the primary and electoral assemblies. It put an end to the judges' argument that election by property-owners legitimised their actions. No longer could the judges posture as 'les vrais élus du peuple' when attacked by the commissaires or the Ministry of Justice. Although robbing the reactionary judges of their legitimising notion by the extraordinary ad hoc measures taken in the Years VI and VII, the executive, relying heavily upon the despised military to maintain internal order, lost its credibility.

The Directory's militarisation of justice, which was a direct consequence of the defection of the judges to the anti-republican cause, prepared the southern region for the militarism of the Consulate and Empire. The absorption of the functions of a hitherto independent state power by the military had grave implications for the future of limited democracy and the rule of law. The Directory's attempt to protect the republican settlement was hoisted on the petard of its own Constitutionalism. The entire system of the election of judges was discredited.

With the exception of their flirtation with the anti-republican Willot in the Year V, the southern judiciary, until the advent of the Consulate, was perceived to be anti-military. The Army of Italy, as we have noted, frequently complained of being stabbed in the back by Willot and his 'autorités royalistes'. Yet, under Bonaparte, who made militarism popular in the Midi, the judges engaged in no opposition to the line armies. Under the Directory, despite the glory of the Italian Campaign, the southern community generally detested the encroachments of the military upon local life. Conscription disrupted the cycle of agricultural labour by reducing the available manpower; requisitions deprived already impoverished communities of vital livestock, foodstuffs and horses; billeting introduced an alien presence into the daily routines of fundamentally xenophobic communities; war taxes and forced loans were universally detested by rich and poor; 'states of siege' frequently brought about violent confrontations between military and civilians, restricted movements of population and eroded civil liberties. Therefore, the judges' protection of the insoumis, deserters and brigands who made up the murder gangs was a vote-winning issue, as their successes at the elections indicated. Similarly, their support for, and protection of, refractory clergy and returned émigrés won them the approbation of the local élite. However, the judges abandoned their previous support for counter-revolutionaries under Napoleonic rule. This suggests two possible conclusions: that the judges were chameleon-like careerists who prostituted themselves to whomsoever wielded the power of appointment and dismissal, or, that the local élite's anti-republicanism was converted into support for the imperial regime and they no longer pressed the judges into protecting the enemies of the state.

It was beyond the scope of this thesis to analyse the southern élites' possible conversion to Bonapartism and its underlying reasons. However, the evidence produced in Chapter VI does suggest that, although the majority of judges were self-seekers who served the Consulate and Empire, their support for the new status quo was not in conflict with the political sentiments of the local élite. Indeed, the judge, as part of the local élite, had to be the spokesman for its interests. Under the Directory the symbiosis of popular and 'official' anti-republicanism depended upon the merger of judiciary and local community. The local community had to be involved in the determination of judicial operations as much as the judges had to reflect and regulate the desires of the community by the ways in which ~~they~~ executed judicial procedures. As several of the preceding chapters have shown, the effectiveness of the techniques of judicial reaction was based upon the recurrence of traditional methods of community self-help within the framework of the legal process. For example, the ritual of violent extrusion of pernicious aliens from community life made the victimisation of jacobins by juges de paix a simple task; the 'charivaris near the places where jacobins were detained had a compelling effect upon prosecuting magistrates; the intimidation of witness and jurors by organised gangs representing the community provided an alibi for judges accused of political bias, as did the conspiracy of silence following political murders. Demands for physical humiliation and verbal repentance from condemned jacobins were frequently an adjunct to formalised execution.

The strength of the judicial reaction was based upon the roots it had in the community consensus. Jacobinism was repellent not only to the local élite, but also among the majority of townspeople, villagers and peasants. However, jacobin revivals of

the Years IV and VI, although divisive and supported by a minority, did provide a fragile base for the propagation of republicanism in the south. Had it not been for the staunch, conspiratorial opposition of the judges, republicanism might have been able to construct a 'party' network in the Midi which, in time, could have gained electoral support. However, to add to the subversive efforts of the judges, the post-fructidorian government, despite its fear of popular royalism, killed off the jacobin revivals, indicating that it continued to harbour a deep-seated distrust of radicalism. It is arguable that the judges played a direct, if not decisive rôle, in the erosion of provincial jacobinism under the Directory which had the effect of depriving the Midi of a coherent radical opposition in the first quarter of the nineteenth century. The temporary extinction of jacobinism (in a province which had once proclaimed its ultra-radicalism and revolutionary fervour) helped prepare the Midi for the anti-jacobin Consulate. Having conquered power, Bonaparte was quick to extinguish the embers of the radical movement. Those judges who had contributed to the anti-jacobin reaction were rewarded handsomely by appointment to the higher ranks of the judiciary.

As previously stated, the judicial reaction, viewed 'from above', highlighted the inherent limitations of the power of the late eighteenth century state. Despite the rhetoric of revivalism and the theories of homogeneity emerging from the rule of law, the exercise of primitive democratic power by a state devoid of a modern mass medium was inadequate to turn the medieval inheritance of regional particularism into an anachronism. The Thermidorian republicans had intended the Constitutional regime to exert its power, propagate its ideology and set the boundaries of civil liberties through its institutions in general and the judiciary in

particular. The reactionary judiciary, through its elaborate techniques, deliberately failed to forge an ethos which complemented the desires of the republican élite. They also attempted to liquidate rather than marginalise the republic's foremost defenders. This disastrous failure of the exercise of Constitutional power occurred not only because of the trust which was mistakenly placed in provincial judges, but also because of the failure to recognise that the breach between the southern community and the state which had taken place during the Terror was irreparable in the short term.

It is a truism to argue that Revolution propels society beyond the traditional dimensions within which it had imperfectly functioned, but it is a proposition that it is worth reiterating when discussing the overall effects of the judicial reaction. The southern judiciary, throughout the period of the Directory, was a buffer between traditional community and the growing requirements of the modernising, centralising state. Mental attitudes towards abstract concepts like the unified republic, national consensus and language, rule by the consent of the governed and the impartial distribution of justice had to be processed by far more sophisticated means than those available to the Directory. Ironically, the state was weakened by its independent judiciary — the system of elections enabled the anti-centralist, anti-republican élite to impose their views on the institutions of the state. For the judiciary itself, taken in isolation, the period of elections was an interim period, and their reaction was a 'morbid symptom' of their own transition from being the representatives of provincial, family-based interests into a more dependable part of the superstructure of the nineteenth century state.

APPENDIX A

The Tarascon assassins

Number of suspects arrested: 83

Average age of suspects : 38

Residence of the suspects
at the time of the massacre:

Tarascon (43)	Arles (1)
Eyragues (20)	Chateaufrenard (1)
Barbentane (8)	Saint-Rémy (1)
Mouriès (5)	Graveson (1)
Maillane (2)	Salon (1)

Occupation/
Social class of the suspects:

Property owners/ <u>rentiers</u>	(25)
Professional	(6)
Merchants/businessmen	(15)
Artisans	(33)
Unskilled labourers	(2)

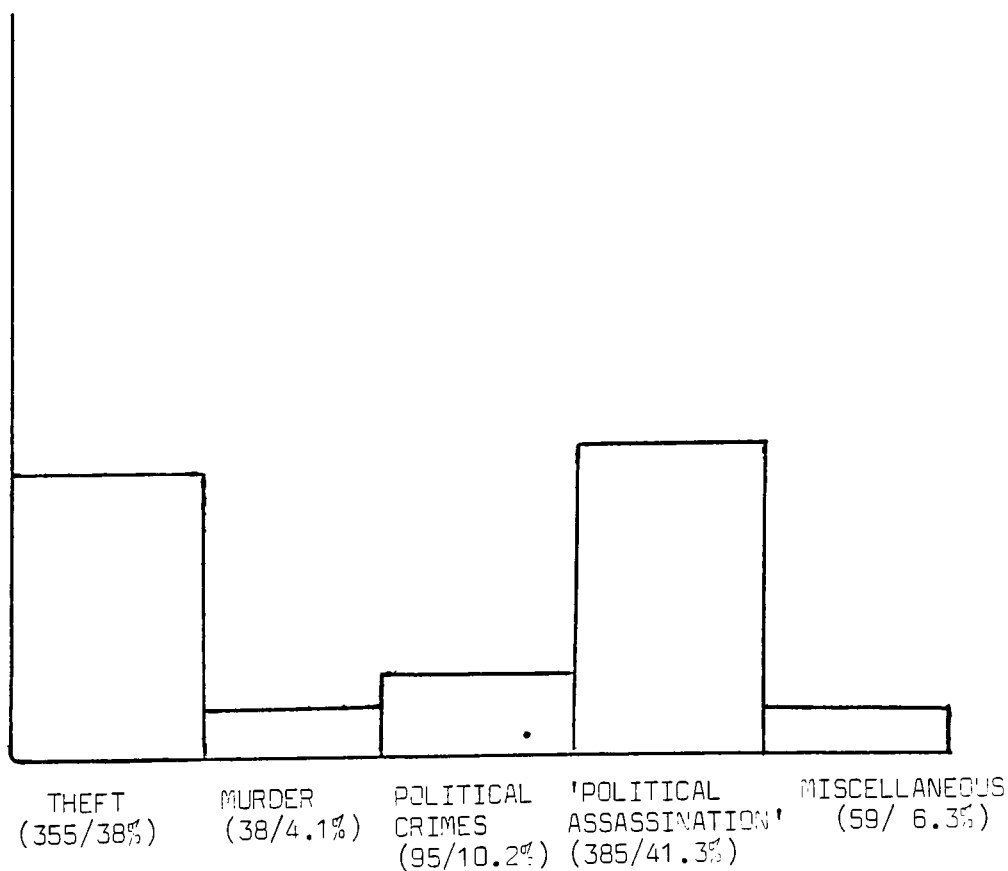
Source: A.D. EduR L.3051

APPENDIX B

Types of crime brought before the public prosecutor of the Bouches-du-Rhône, November 1794 - November 1799.

Total number of recorded cases: 932.

% of total reported crime



Source: the procès-verbaux
d'audiences and the répertoire
des jugements, A.D. SduR
L.3020-3032.

APPENDIX C

THE PROSECUTION OF 'POLITICAL
CRIME' IN THE BOUCHES-DU-RHÔNE, 1794-1800

PERIOD	TOTAL No. PROSECUTED	REFERRED	ACQUITTED	PUNITIVE SENTENCE
Nov. 1794- Nov. 1795	3	2	1	0
Nov. 1795- Nov. 1796	23	9	15	0
Nov. 1796- Nov. 1797	2	0	2	0
Oct. 1797- Jan. 1800	67	35	29	3
Overall Totals	95	45 (47.4%)	47 (49.4%)	3 (3.2%)

Source: as appendix 3.

Categories of 'political crime':
emigration, crimes relating
to the exercise of the
Catholic religion, royalist
conspiracy, insurrection
against the republican
regime, propaganda in
favour of the restoration
of the monarchy.

APPENDIX D

POLITICAL PRISONERS PROSECUTED BY THE CRIMINAL COURT AT AIX.

JACOBIANS AND FORMER TERRORISTS ('ASSASSINATION' and CONSPIRACY TO RESTORE THE CONSTITUTION OF 1793).

PERIOD	TOTAL No. OF PRISONERS	No. of above	No. acquitted	No. referred	capital punishments
1794-'95	39	33(84.6%)	3(13%)	0	26(78.8%)
1795-'96	80	23(28.8%)	3(13%)	6(26%)	14(60%)
1796-'97	92	48(58.5%)	8(16.7%)	6(12.5%)	34(70.8%)
1797-1800	184	24(13%)	15(62.5%)	9(37.5%)	0
TOTAL	385	128(33.3%)	33(25.8%)	21(16.4%)	74(57.8%)

ROYALISTS AND COUNTER TERRORIST ASSASSINS (POLITICAL MURDER OF REPUBLICANS)

PERIOD	TOTAL No. OF PRISONERS	No. of above	No. acquitted	No. referred	capital punishments
1794-'95	39	6(15.4%)	6(100%)	0	0
1795-'96	80	57(71.25%)	23(40.4%)	34(59.6%)	0
1796-'97	82	34(41.5%)	14(41.2%)	20(58.8%)	0
1797-1800	184	160(87%)	109(68.1%)	34(21.3%)	17(10.6%)
TOTAL	385	257(66.8%)	152(59%)	38(34.3%)	17(6.6%)

Source: as appendix B.

APPENDIX E

Military Justice in the Var

The judgements of the military commission of Toulon, 25 October 1797- 20 March 1798.

- i) Total number arraigned : 137
- ii) Frequency of prosecution: four cases (groups and individuals) each day.
- iii) Social class and occupation of prisoners.

<u>Professionals</u> 2	<u>Property owners/rentiers</u> 35	<u>Merchants</u> 15
<u>Public officials</u> 11	<u>Military</u> 5	<u>Clergy (Refractory)</u> 6
<u>Shopowners</u> 7	<u>Tradesmen</u> 29	<u>Women</u> 26

- iv) Categories of crimes stated in indictments

Emigration : 132 (96.35%) Assassination: 5 (3.65%)

- v) Sentences passed

<u>Deportation</u> 11 (8.03%)	<u>Panishment</u> 14 (10.22%)	<u>Referral</u> 8 (5.84%)
<u>Acquittal</u> 75 (54.74%)	<u>Capital punishment</u> 29 (21.17%)	

Appendix F

Military Justice in the Vaucluse, Drôme, Ardèche and Basses-Alpes.

Military Commission of General Férimo at Avignon, floréal Year VIII - messidor Year VIII.

<u>Military</u> <u>Judgements made during the quarter</u>		<u>Brigand</u> <u>Crimes reported during the quarter.</u>	
Death sentences	9	Assassinations	8
Acquittals	10	Grievous assault	5
Referrals	3	House robbery	7
Shot during arrest	10	Pillages	3
<u>Total</u>	<u>32</u>	Hijack of prisoners.	3
	<u>floréal</u>	Mail coach robbery	1
			<u>27</u>
Death sentences	10	Assassinations	16
Acquittals	5	Attempted murder	6
Referred	6	Mail coach robbery	2
Shot during arrest	16	Rape	1
<u>Total</u>	<u>37</u>	House robbery	10
	<u>praerial</u>		<u>35</u>
Death sentences	9	Assassinations	3
Acquittals	3	Attempted murder	2
Referred	10	Pillages	2
Shot during arrest	5	House robbery	3
<u>Total</u>	<u>27</u>	Highway robbery	2
	<u>thermidor</u>		<u>12</u>
Death sentences	3	Assassinations	11
Acquittals	5	Attempted murder	8
Referred	5	Theft of public funds	5
Shot during arrest	7	House robbery	3
<u>Total</u>	<u>20</u>	Arson attacks	2
	<u>messidor</u>	Pillages	5
		Highway robbery	5
			<u>42</u>

B I B L I O G R A P H Y

A. MANUSCRIPT SOURCES

(i) Archives Nationales

In completing the research for this thesis I have had the good fortune to find a rich and abundant range of excellent manuscript sources both in French local and central archives. Having spent so much time 'prospecting' for and delving into sources, it is now rather difficult to retrace my way back to the starting point of the search. As with most historical theses for the Directorial period, the initial phase of research was undertaken in the Archives Nationales in Paris using the series BB¹⁸. BB¹⁸ proved to be a valuable sieve because, as it provided contemporaries with a central focus (i.e. the Ministry of Justice) for discussion, it allowed me, as an historical researcher, to be able to grasp the details and general currents of the problems within the judiciary in the whole southern region. The voluminous cartons in this series held the authentic reports sent to the Ministry of Justice from the provinces and rough copies of the Ministry's replies. In addition, there were often entire procès-verbaux of trials and a mass of supporting material which would have taken an infinity to collate, had I started my research in the departmental or municipal archives. Therefore, it was with BB¹⁸ that my investigations began, and it proved to be a source which opened many avenues of exploration. For the south-eastern region I used:

BB¹⁸ 174-186 (Bouches-du-Rhône).

BB¹⁸ 277-280 (Drôme).

BB¹⁸ 316-323 (Gard).

BB¹⁸ 875-882 (Var).

BB¹⁸ 888^{A-B}-895 (Vaucluse).

A similar source of rich documentation for the revolutionary period which, despite the chaos of its classification, yields a panorama of problems relating to crime, internal security and justice, was F⁷ (Min. of Police). In particular I used the cartons in the sub-section affaires diverses:

Ardèche

(Year IV) F⁷ 7097, 7136, 7175.

Basses-Alpes

(Year IV) F⁷ 7152.

Bouches-du-Rhône:

(Year IV) F⁷ 4268, 7090, 7130, 7133, 7094.

(Year V) F⁷ 7170, 7171, 7191, 7210.

(Year VI) F⁷ 7439, 7534.

(Year VII) F⁷ 7523, 7617.

Drôme

(Year IV) F⁷ 7113, 7117, 7148.

Gard

(Year IV) F⁷ 7109, 7138.

(Year V) F⁷ 7287.

(Year VI) F⁷ 7289, 7411.

(Year VII) F⁷ 7457.

Var

(Year V) F⁷ 7270, 7286.

(Year VI) F⁷ 7322, 7348, 7398.

(Year VII) F⁷ 7348, 7475.

Vaucluse

(Year IV) F⁷ 7172, 6371, 7186.

(Year V) F⁷ 7124, 7233.

(Year VI) F⁷ 7328.

(Year VII) F⁷ 7687.

Also consulted in this series were:*

F⁷ 3659¹⁻⁷ (BduR), F⁷ 3673 (Drôme), F⁷ 3677¹⁻³ (Gard), F⁷ 3693¹⁻³ (Var) F⁷ 3694¹⁻² (Vaucluse) and for military matters, selections were made from the range of cartons in F⁷ 6139-6464.

AD^{III} The series AD^{III} (législation criminelle) can be of considerable help to those seeking an understanding of the thinking which underlay the formative legal texts of the Directorial regime, and, for my own purposes, the construction of the criminal law codes and judicial procedures of the time:

AD^{III} 42 law of 3 brumaire IV.

- AD^{III} 43 banished convicts and outlaws, 1789-Year X.
 AD^{III} 44 political crimes and punishments.
 AD^{III} 46-47 juries.
 AD^{III} 52-53 criminal procedure, witnesses, special courts.

An important part of this thesis was the rôle of the représentants-en-mission in the Midi after the 9 thermidor. Surprisingly, the sources were not quite as rich as one might have anticipated, given that the représentants were centrally controlled. Therefore, in the series AF^{II}, I cite only those cartons which I found directly useful:

- AF^{II} 87 (Ardèche).
 AF^{II} 98,99, 100 (Bouches-du-Rhône).
 AF^{II} 103 (Gard).
 AF^{II} 144, 145 (Var and Vaucluse).

There is a good deal of incidental material on missions (much of which is published in Aulard's Correspondance du Comité de Salut Public) in the series:

- AF^{II} 182-197 (bureau du Midi).
 AF^{II} 58, 59 (troubles in departments).
 AF^{II} 36-40 (correspondence of the représentants with the Comité de Salut Public).
 AF^{II} 42, 58 (riots of 13 vendémiaire, Year IV in Avignon and Marseille. Mission of Auguis and Serrès in BduR).

Subsumed under the title of 'justice' the series AF^{III} holds together a number of interesting materials for the Directorial period. For my own purposes I used:

- AF^{III} 32, 41 (Ministry reports, Years IV-V).
 AF^{III} 21^{A-C} Papers of Merlin de Douai (mainly those during his tenure as a Director).
 AF^{III} 33-36 Papers and reports relating to legislative questions, Year IV-VII and judicial organisation.
 AF^{III} 51^A Emigrés and counter-revolutionary intrigue in Switzerland and Germany, 1793-Year V.

AF ^{III*}	<u>Registers of correspondence</u>
145	Messages from the Directory to the Ministry of Justice.
145-156	Dismissal of public servants.
96-97	<u>Commissaires du pouvoir exécutifs</u> (regarding provincial administration and justice).

AP. Private Papers

The most useful contributions in series AP were 220 AP¹⁻⁴ (papers of Willot) which provided a useful insight into the reactionary mind of the later revolution, as well as being a study in calculated distortion of events. See also 175 AP (papers of Boissy D'Anglas and 284 AP (Sieyès archive).

When dealing with military involvement in justice I used BB³ 1-8 (judgements of the military tribunals, Years II-IX).

One of the cartons in this series, BB³ 99, gives a close analysis of the conflict between judiciary and administrative authorities in the Vaucluse during the First Directory.

BB²³ 1^A provides some data on extraordinary military commissions in the first year of the Consulate.

(Series BB⁵) on judicial organisation was of limited use, but did provide lists of judges demanding office:

BB⁵ 22-25 (BduR), 53-54 (Drôme), 62-65 (Gard), 203-204 (Var), 205-206 (Vaucluse).

In the first chapter of this thesis, much of the material was gleaned from the cartons in series C 227*-232* which contained the voluminous correspondence sent to the Commission des Onze during the Thermidorian Reaction. This material is indispensable to those analysing the Thermidorian mentality, for it forms a general sondage of opinions on the best form of government for the French republic as well as being the cahiers de doléance for the Year III. When, on 29 germinal Year III, the Commission requested that all good republicans send them their ideas for the new constitution, they could not have expected to have been inundated with such a mountain of constitutional projects, letters of 'sound advice', eccentric nostrums, treaties, lemmas, political pamphlets, outcries, obscenities, highbrow critiques and even astrological charts plotting the progress of the republican regime. Baudin, reporting to the Convention on behalf of the

Commission, whilst castigating much of the correspondence for its subjectivity and downright crankiness, was pleased to state that 'l'esprit public a fait d'heureux progrès vers la liberté'.

For the situation in the provinces during the Thermidorian era, I have found that the series D^{III} (mainly correspondence and petitions concerning disputed arrests, trials and civil justice) was extremely helpful. In particular I used:

D ^{III} 29, 30 (Drôme),	(BduR)	70-72 ^{A-B}
D ^{III} 13, 14	(Ardèche)	85-86 (Gard),
D ^{III} 11-12	(Basses-Alpes)	290 (Var), 291-293 (Vaucluse).

Cartons of further and supplementary interest were:

D^{III} 371, 372 (reports and mémoires sent to the Ministry of Justice).

D^{III} 312 Army of Italy, Year III.

D^{III} 318-319 Military commissions, Years II-IV.

D^{III} 344 (includes mission of Boursault in the Vaucluse).

D^{III} 345 (includes missions of Cadroy, Isnard and Chambon).

D^{III} 344, 349 Mission of Goubilleau.

D^{III} 348, 355, 357 2nd mission of Fréron.

D^{III} 356 missions of Poulthier and Poullain-Grandpré.

Also, the cartons 325-328 contain interim reports on the sentences passed by the criminal courts in each department for the Year III.

The normally popular historians' dip for the revolutionary period in the provinces, F^{1C} III 1 (Elections et esprit public) was of very limited usefulness to the needs of this thesis. Much of the material therein was replicated elsewhere, for example, in BB¹⁸ and in the Departmental Archives series L. The series F^{1D} 1 (Commissaires du pouvoir exécutif) and F^{1D} II (personnel administratif) were, however, more relevant in that they provided interesting information on the political background of local office holders.

(ii) Regional Archives

As a great deal of the sources upon which this thesis was based were found in the central Paris archives, I decided to concentrate in depth on only a selected number of departmental archival collections rather than try to spread my research work over too large a number of provincial archives. Many of the dossiers contained in the Archives Nationales in Paris are duplicated in the provinces.

By far the richest of the departmental archives of the south-east for this subject are the Bouches-du-Rhône, and the Vaucluse. The Vaucluse and the Bouches-du-Rhône (i.e. Western Provence) were chosen because it seemed to me from my investigations into the judiciary and local society in the central archives that these departments were easily the most corrupt, violent and tumultuous in the Midi under the Directory. Furthermore, because of the nature of the inter-departmental referral system, a great deal of information on neighbouring departments can be gleaned from an intensive study of a single department.

Bouches-du-Rhône (series L)

The staple of my research in this was series L (administrations et tribunaux de l'époque révolutionnaire, 1789-An VIII) for which there is an excellent reference catalogue first published in 1952. I was chiefly concerned with the second section (Fonds du tribunal criminel du département). I used the sub-division of section II:

L.300 - L.3007 correspondence, active and passive, of the commissaire du pouvoir exécutif and the Ministry of Justice. (Year IV-Year VIII).

L.3008 - L.3011 correspondence of the public prosecutor. (Year III-Year VII).

The dossiers L.3012 - L.3097 are crammed full of information on investigations, arrests, hearings, trials and judgements of notable and routine cases within the department during the revolutionary period. L.3020 - L.3035 are chronological registers of crimes and sentences of the criminal court in Aix. The rest of the dossiers (L.3036 - L.3097) are categorised either by causes célèbres, such as the individual dossiers on the Fort St Jean, Aix and Tarascon prison massacres or by types of crime (e.g. assassination, robbery, emigration, counterfeiting, royalism, sedition) occurring within the departmental jurisdiction.

There is also a fourth section on commission militaires and conseils de guerre, from which I used material from L.3131 (on the events of 5-7 vendémiaire Year III) and L.3121 which gives snippets of information on the activities of the Conseils de guerre of the 8th military division in Marseille.

Section XI contains ample dossiers on the intermediate stages of criminal proceedings in the department - the tribunaux correctionnels:

L.3358 - L.3380 contains jury lists, procès-verbaux (many printed) and verdicts of the jury d'accusation of Aix-en-Provence.

L.3381 - L.3387 gives much more limited information on the tribunal correctionnel/jury d'accusation of Marseille.

L.3388 - L.3397 gives straight forward lists of procedures and some correspondence for the important jury d'accusation of Tarascon.

L.3398 - L.3407 gives similar information for the tribunal of Arles.

As justice in Aix-en-Provence was, in many ways, both the focus and microcosm of this study, I spent some research time in Section XII which held the records of the justices de paix of the town. The records of each juge de paix in his respective arrondissement are contained in L.3409 - L.3418 bis.

The police records for the department during the revolutionary period also supplied me with a great amount of supplementary evidence. Most helpful were the dossiers under the sub-section L.264 - L.303 which provided a vast number of records on the conduct of elections in the towns of the department as well as the multiple instances of violent sedition across the revolutionary range.

Some general information on justice in the department is to be found in cartons L.481 - L.489.

Series M

Series M in the departmental archives of the Bouches-du-Rhône was, during the period in which the research for this study was being undertaken, largely unclassified. The researcher, therefore, has to approach this series (which is in the process of being classified) in the hope of finding his required information. As far as my own purposes were concerned, I exploited the series for data on the wealth, careers and social positions of the judges. In the sub-series II M₃ there are lists of the members of the Napoleonic Electoral Colleges which also provides a general assessment of their income and capital and, occasionally, a sketch history of their trans-revolutionary careers. Series M also contains the invaluable lists of the citizens paying the highest taxes in the departments: sometimes there are lists of 60, sometimes lists of 600. These are the tools by which it is possible to place the judges in their local social hierarchies as defined by the criteria of the day. They have been used widely in the last decade to analyse Napoleonic élites in the provinces.

Series U

Series U was an excellent complement to series M in reconstructing the public lives of Directorial judges. Under the broad heading of 'justice', it deals with the appointment of judges and the operations of justice in the Napoleonic and post-Napoleonic periods. My own researches focused on the dossier drawn up in 1815 (2U₁) by royalist prefects in which they made their assessments of the suitability of imperial judges for office under the Restoration by considering the individual's conduct from the beginning of the Revolution.

Municipal Archives

Although the records held in municipal archives are invaluable to most regional studies of revolutionary France, I found very little useful material that was not already duplicated either in Paris or in the departmental archives. However, I did consult the administrative decrees (series D) in the excellent municipal archive of Marseille and the series LL in the archives of Aix-en-Provence.

Bibliothèque Mejanès, Aix-en-Provence

This is in the home of the crucially important journal of Roux-Alphéran: 'Journal historique de tous les événements remarquables qui sont passés à Aix-en-Provence entre l'an III jusqu'à l'an VI'. (Manuscript 1438 (1573)).

This journal, despite its overt anti-republican bias, is an excellent chronological report on contemporary events from the Thermidorian régime to the aftermath of the coup of 18-19 fructidor Year V. It is a mine of day-to-day events and local details which did much to fill the gaps in my knowledge of the period. As well as being a chronology of events, it also provides insights into the prevailing local attitudes, customs and political twists of the times. It was written by an eminent royalist with one eye on posterity and a quill dipped in vitriol.

Departmental Archives of the Vaucluse

The most important of the series in this excellent archive for the purposes of my own researches was 7L, which covers the administrative and judicial history of the revolutionary period. It is less thematically structured than its equivalent in the BduR (many of the catalogues are hand-written), therefore, I shall list the dossiers which I have used individually:

- 7L1* Appointment, installation, resignation and dismissal of judges.
- 7L5* Register of procedures.
- 7L7 Papers of public prosecutors, clerks and commissaires of the criminal court, Years III-VIII.

- 7L8* Papers serving as evidence in criminal trials, Year III-1811.
- 7L9* Individual denunciations, Year IV-Year X.
- 7L10* Rulings of the criminal court, 1793-Year VIII.
- 7L12*-16* Registers of criminal cases, 1793-Year VIII.
- 7L26* Active correspondence of the criminal court, Year III.
- 7L27* Active correspondence of the president, Year V-Year XII.
- 7L30* Passive correspondence of the criminal court, Year VI-1810.
- 7L31 Personnel, organisation and installation of judiciary, 1790-Year VIII.
- 7L44 Decrees of the Tribunal/Court de Cassation, Year II-1812.
- 7L47 Procès-verbaux and courtroom hearings, Year V-Year VIII.
- 7L51-7L73 dossiers on individual cases tried before the criminal court of the Vaucluse, Year III-Year VIII.
- 7L72 Trial of the personnel of the Commission Populaire of Orange.
- 7L87 Riot and conspiracy in Carpentras, 1-2 brumaire Year VI.
- 7L91,92 Registers of active correspondence of the Commissaires du pouvoir exécutif, Year II-Year XI.
- 7L93-96 Passive correspondence of the commissaires attached to criminal courts.
- 7L100-7L102 Passive correspondence of the public prosecutors, 1793-Year VII.
- 7L103-104 Passive correspondence of the presidents of the criminal courts, Year V-Year VIII.

Series 3M

3M₂ lists of Notables and most highly taxed in the department.

3M₄₋₅ lists of electors in the departmental collège.

Series 9J

9J7 is a carton of documents on various episodes of the revolution in Avignon, notably the jacobin insurrection of pluviôse Year V.

Series U

Series U is similar, although fuller, than its counterpart in the Bouches-du-Rhône. It was especially useful in charting the post-revolutionary careers of Vauclisian judges:

- 1U₈₁ judicial personnel, Year VIII-1812.
- 1U₈₂ judicial personnel, Year VIII-Year XI.
 (includes all levels).
- 1U₈₃ juges de paix, Years X-XII.
- 1U₈₄ Elections of juges de paix, Years X-XI.
- 1U₁₀₀ Military commission of General Férino.
- 2U₁ Appointments to the Criminal Court,
 Year XI-1808.
- 2U₄₋₇ Correspondence of the commissaires du
 gouvernement then the procureurs impériaux.

Musée Calvet (Avignon)

The sources held in this charming library and archive are among the richest in Provence. The records, which are collected under the names of previous head archivists (Chobaut, Réquiem, Raynolt), are indispensable to the study of the town of Avignon, the department of the Vaucluse and the Midi in general.

Fonds Réquiem

- 3020 Miscellaneous documents on the Revolution
 in Avignon.
- 3025 Documents relating to the Year II.
- 3026 (Year III).
- 3027 (Year IV).
- 3028 (Year V).
- 3029 (Year VI).
- 3030 (Year VII-1815).

This large collection of documents are all bound in leather hide.

Fonds Chobaut

This collection is a major source of private papers of local 'men of influence' and revolutionary events.

- 2510 Correspondence of Louis Raphel, 1795-1800.
- 2529, 2530 Miscellaneous correspondence on events taking place in the Year III.
- 2531 (Years IV and V).
- 2532 (Years VI to VIII).
- 2821 Miscellaneous letters from Goupilleau, Chambon.
- 2981 Letters of Raphel on the trial of the members of the Commission Populaire of Orange.

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