An Essay of Political Cartography:
The Law of Citizenship Under the French Revolution (1793-1795)

The three maps upon which this commentary is based aim to delineate the history of revolutionary citizenship at a singular time, under the so-called "Terror", "Great Terror" and the Thermidorian Convention.

For reasons I am not going to justify here, the period which lies between the 10th of March 1793 and the 23rd Ventôse an II (13th of March 1794), usually known as the "Terror", is named *Éthocratie*, from the title of a book published by Baron d'Holbach in 1776, *Éthocratie or the government based upon morals*, from the ancient Greek "*ethos*, morals and *cratos*, strength, power, authority, government".

The time usually known as "Great Terror" is re-named *Théocratie*, a word Vadier had invented during his speech of the 27th Prairial an II (15th of June 1794), five days after the passing of the law reorganizing the revolutionary tribunal, and seven days after the celebration in full pomp of the feast of the Supreme Being. During his speech, Vadier reduced the Convention to tears of laughter by telling the story of Catherine Théos, a fool who considered herself as the "Mother of God", and would have been in close contact with Robespierre." We know, said Vadier, that the Greek word *theos* means divinity, just like *Jehovah*, *Adonaï* and many other words which express the different attributes of the Supreme Being". This stage of the revolutionary government under the auspices of the Supreme Being, which runs, according to my calculations, from the 23rd Ventôse (13th March of 1794) to the 5th Thermidor an II (23rd of July 1794), is named theocracy, -from the ancient Greek *theos*, divinity and *cratos*, strength, power, authority, government.

The third important stage in the history of the revolutionary citizenship corresponds with the period of the Thermidorian Convention, which spreads out from the 9th Thermidor an II (27th July of 1794) to the 4th Brumaire an IV (26th of October 1795). On the 9th Thermidor, Robespierre, Saint-Just, Couthon, Lebas and Robespierre le Jeune were outlawed and guillotined; the 4th Brumaire was the last day the Convention sat.

The idea to specify the abstract history of French citizenship, made by statutes passed by the Convention, usually referred to as "decrees", is inspired by the *Tableau schématique des positions politiques des factions et des courants de 1789 à 1799*, put forward by Jean-Clément Martin in his book, *Contre-Révolution, Révolution et Nation en France (1789-1799)* (Seuil, 1998).

The realization of the *Tableau de la citoyenneté sous l'Éthocratie* is indebted to Gérard Sautel's analysis, especially to his book, *Histoire des institutions publiques depuis la Révolution française* (Dalloz, 1974). In his opinion, if the revolutionary government made a distinction between types of citizens, it was not the difference between the *good* and the *bad* citizens, as had been emphasized by the political discourse, but a more

pragmatic one which consisted of distributing the citizens amongst various judicial categories:

> "Everybody found it necessary, before sentencing people, to establish the quality of the person designated as a bad citizen, and, according to the seriousness of the case, this proof had to be submitted to more or less severe requirements. That is why there was a continuous effort to classify the criminal subject in various groups each characterized by a particular status which preserved the quasi lawfulness of the accusation and of the proceeding; […]" (my emphasis) (*ibid.*, pp. 165-166).

Under the *ethocratie*, during which the revolutionary government enforced Baron d'Holbach's principles, a political community ruled by a penal moral law aimed to sanction but also to rehabilitate wrongdoers, and "to recreate the people one wants to give freedom back to" (Billaud-Varenne), it is possible to distinguish different categories of the enemy directly inspired by the pragmatic analysis of the current political situation, but also by the imagination which always lies behind judicial writing (Geneviève Koubi).

From one side to another of an axis made by penal law, the first picture, the *Tableau de la citoyenneté sous l'Éthocratie* distinguishes five categories of the public enemy identified through the procedures set up for their dismissal: the *hors-de-la loi,* the "outlaws" the *émigrés*, the *conspirateurs*, the conspirators, the *suspects*, and the *indignes*, the unworthies.

For chronological reasons, one must read the picture from left to right, the first decrees of the Convention dealt with the irreducible enemies of the political community, the *outlaws* (decree of the 19th of March 1793) and the *émigrés* (decree of the 28th of March – 5th April 1793). From the very beginning of the ethocracy, the revolutionary government had imagined an extreme figure of the public enemy, never constituted on such a large scale before: the one of the "non-subject of rights".

A "non-subject of rights", as specified by Jean Carbonnier in his book, *Flexible droit. Pour une sociologie du droit sans rigueur* (LGDJ, 2004), is not "a subject outlaw". This is a subject which "has a place in the judicial system", which is submitted to the positive law, but which is nevertheless a "non-subject" to the extent that he is deprived of his subjective rights: "Would it be possible to delineate the judicial condition of the non-subject of rights?" (*ibid.*, pp. 231-246). It seems to me that it is one of the essential functions of revolutionary law under the Terror to codify the condition of the non-subject of law, through the status of the *émigrés* and of the *outlaws*.

A non-subject of rights is, first and foremost, a citizen deprived by the revolutionary government of a fundamental right: the jury - this "property of every free man" as Bertrand Barère put it. A non-subject of rights is a subject who had no more right to be judged by his fellow citizens. The absence or the presence of the jury raised an impenetrable barrier between the people locked up in the non-right zone, and those, even if considered as bad citizens, still protected by the guarantees of criminal law and still

part of the political community. The simple fact of imagining judging citizens without a jury was more telling than anything else of the fracture inside the political community. That is why the axis of the *Tableau* divides up the various categories of the enemy according to this essential difference: the presence or the absence of the jury during the trial. Ruled by the absence of the jury, the left part of the *Tableau* delineates a space inhabited by the non-subject of rights. The condition of the non-subject of rights is the most terrible of all. Let us here take note of the fact that it is not uniform, and also permits gradations, more accurately also knows "degradations", the judicial condition of the *outlaw* was worse than the one of the *émigré*.

The bad citizens were submitted to different legal proceedings. Each category of the enemy was labelled by a specific procedure, summarized in coloured letters, and submitted to a specific punishment which created as much as demarcation lines among the population of the enemies: the *mise à mort*, the immediate execution of the "rebels" caught "with arms in hands" less than twenty four hours after judgment by a military commission; the perpetual banishment and the *mort civile*, the civil death, pronounced against the *émigrés*; the *jugement*, the sentence, by the revolutionary tribunal or by an ordinary criminal tribunal judging from a revolutionary point of view; the *detention*, in jail or at home concerning the suspects; the *infamie*, the infamy, concerning the unworthy civil servants.

A citizen who entered one of those five categories was not only punished, but relegated to a lower social status. As James Q. Whitman has written, the history of the punishment is less the history of sovereignty, as Michel Foucault said, than the history of the social status of the person considered as a criminal (*Harsh Justice*, Oxford University Press, 2003).

What happened to an unworthy civil servant, for example? As the inscriptions around the table itself show, this man had lost the public confidence and eventually his job, but kept his freedom, and his right to be established among his fellow citizens; the *suspect* had lost the public confidence *and* his freedom, but kept his right to be established among his fellow citizens; the *conspirator* had lost the public confidence *and* his freedom *and* his right to be established among his fellow citizens - the punishment which genuinely had to be enforced by the revolutionary tribunal was transportation. This, in fact, would rarely be enforced. Through the graduated attacks made at the enemy's judicial capacity, revolutionary public law rediscovered much more the logic of *retrogradation* embodied in the simply infamous punishment of the law of the Old Regime, than the roman *deminutio capitis*.

The *rétrogradation* or the logic of degradation influenced both the lawful zone of revolutionary citizenship and its non-rights area where the citizens who were excluded from it were confined. As has already been pointed out, the judicial condition of the *outlaw* was worse than the one of the *émigrés*: the *émigré*, deprived of the enjoyment of his civic and civil rights, kept his natural life, which the *outlaw* was stripped of.

The persistence of the logic of degradation shows that the *émigrés* and the *hors-de-la-loi* were located in a zone of non-rights, nevertheless still under the influence of the law. In the revolutionary imagination, this continuous ascendancy of the penal law was crucial. As Michaël Jeismann wrote in *La Patrie de l'ennemi. La notion d'ennemi national et la représentation de la nation en Allemagne et en France de 1792 à 1918* (CNRS Éditions, 1997), "the criminalization of the opponent played a fundamental part in reinforcing the self-image of the revolutionaries, underlining not only the legitimacy, but also the legality of the Revolution" (*ibid.*, p. 125).

Stable for quite a long time, compared to the quickness of revolutionary times which could radically change from one Convention sitting to another, the different categories of the public enemy were also changing, as is shown by the numbers of the decrees gathered to describe them.

If it is inaccurate to pretend that one could find here all the decrees dealing with each category of the enemy, it is nevertheless true that, because of the extensive use of the *Collection générale des décrets rendus par l'Assemblée nationale*, Baudoin's collection, an important number of them have been gathered here, and grouped together by theme for ease of reading.

A quick glance at this mass of texts makes more understandable the revolutionaries' fear confronted with those stacks of statutes, as fragile as stacks of plates. To abrogate a statute was very unusual under the Revolution. So, if a statute loosened, if we can put it that way, if it was not well understand, wrongly enforced or no longer observed, the old law the legislator had wanted to replace or to modify came back to life automatically. That is why, among revolutionaries who were also jurists, like Robespierre or Billaud-Varenne, we encounter this permanent fear to see the Revolution regress – go back on itself. Not as a result of irrationality, nor as a consequence of a never extreme enough political position, as Françoise Brunel pointed out ("Introduction". In Billaud-Varenne, *Principes régénérateurs du système social*, Publications de la Sorbonne, 1992), the widespread feeling of the downgrading of the Revolution among the revolutionary elite was challenged by the anxiety provoked by the multiplicity of the unabrogated decrees which launched a real "war of statutes" (Yan Thomas).

The two other pictures, the one dealing with the theocracy, and the one concerning the Thermidorian Convention were built upon the same principles.

The *Tableau de la citoyenneté sous la Théocratie* shows the radicalization of the revolutionary law of citizenship, through the widespread dissemination of more and more special proceedings (e.g.: a special jury, a new system of evidence). It also shows its impossible rationalisation by the creation of a unique category of public enemy, the one labelled *ennemi du peuple*, enemy of the people.

The enemy of the people, codified by the articles 5 and 6 of the famous statute of the 22nd Prairial (10th of June 1794) dealing with the reorganization of the revolutionary

tribunal, was a hybrid category, cobbled together from the categories of the *outlaw* and the one of the *émigrés*.

From the *outlaw*, the *enemy of the people* borrowed the physical death of the opponent, sentenced to death and sent to the scaffold, after a public trial nevertheless; from the *émigrés*, the *enemy of the people* borrowed the general seizure of goods. Contrary to what has been written by Patrice Guennifey, the *enemy of the people* was effectively an invention of year II (*La Politique de la Terreur*, Gallimard, 2000, p. 295). This new judicial category was intended to eradicate the distinction based upon the difference between the internal and the external enemy of the political community.

Under the theocracy, the vast majority of the enemies of the Revolution were supposed to become *enemy of the people*, and were going to be amalgamated in this exclusive category, which was deprived of the guarantees of the criminal law (no more cross-examination of the defendant; no more hearing of the witnesses; no more lawyer.) The non-subject of rights was no more the exception, but became the common rule. If the statute of the 22nd Prairial preserved the institution of the jury, this umbilical cord which linked the citizens together, it was also a completely new institution, dealing with new rules of evidence. The *enemy of the people* was the category which muddied the distinction between the external and the internal enemies, putting the people considered till then as internal enemies, the *conspirators*, the *suspects*, under the judicial regime genuinely imagined for the citizens who had broken every link with the political community, by carrying arms against it (*outlaw*) or by giving up the national territory (*émigrés*).

This attempt to unify judicially the various figures of the enemy can be considered, in my opinion, as the distinctive feature of the revolutionary theocracy. However, one must not forget the persistence of a heterogeneous judicial category, the one of the *faux-amis*, the false friends. This category was more fragile than the others, because it had not been rooted in a proceeding, but gathered people who had lost, for various reasons, the public confidence. The *faux-amis*, Barere would say in the Convention of the 7th Thermidor an II (25th July of 1794) were "those citizens reliable, but weak and gullible, vindictive and passionate; […] the hypocrite patriots, the speculators on exchange business, the unpunished scheming, and the moderates; […] the masked spies, the disguised aristocrats, and <u>then</u> follow the rank and file of the enemy of the people" [my emphasis].

There was therefore an intermediary category between the *bons citoyens,* the good citizens, who were living according to the voice of their consciousness and were accomplishing the duties dictated by the Supreme Being, and the *enemy of the people*: the category of the *false friends*.

In this category, one would find members of the nobility, various military men and also foreigners. All of them had had to leave Paris according to the decree of the 27th Germinal an II (16th April of 1794); there were also the careless civil servants who were liable to sanctions involving loss of honour enforced by a special jury without any appeal

(decree of the 19th Floréal an II - 8th of May 1794). The Jacobin jurists did not, however, imagine depriving them of their freedom, or of their rights to be established among their fellow citizens, but sanctioned them by shame. Under the theocracy, the *false friends* showed the belief maintained by the revolutionaries in the efficacy of the shame sanctions. Nevertheless, compared with the ethocracy, the system of the infamy by law had been hardened: some civic rights –the freedom of movement and the traditional jury- had been completely lost by the citizens who became false friends. The situation under which the civic capacity of the citizen was damaged by the definitive loss of the enjoyment of certain kind of rights is what I call here *mort civique*, *civic* death.

Under the Thermidorian Convention described by the *Tableau de la citoyenneté sous l'oeil de la police*, one can see a severe rupture in the conception of revolutionary citizenship. This breaking off was made visible by the re-establishment of the fundamental law principles, and by the revolution of the principles of the revolutionary public order. The role allocated to penal law under the ethocracy and the theocracy declined from this point onwards, to the benefit of that allocated to the police.

If the return to the rule of law can not be denied, one must nevertheless admit some shades – represented by fading colours: the progressive disappearance of the measures constituting of the law of the Terror (see e.g. "Légalisation et disparition de la catégorie du suspect", Legalisation and deletion of the category of the suspect in the column *justiciables*, criminal subjects), did not mean the complete disappearance of the area of the non-rights: the non-subject of rights remains, and the category of the *émigrés* was even extended. The prosecution of the outlaw was still enforced, but was based upon different principles. Under the ethocracy, genuinely imagined as a frontier of the political community, the search for the outlaw became a way to maintain public order inside the political community: the Thermidorians transformed it into a harshened martial law, as was shown by its use against the Parisian rioters during the crisis of Germinal and Prairial year III (April-May 1795). The Thermidorians would no longer outlaw rebels caught carrying arms, but the protesting people.

The ethocratic system of a citizenship ruled by penal law, which punished by graduated loss of rights the offences of the citizens, had been substituted by a public space no longer organised around the penal law, but based upon the police force: "The police, ruled by the executive power, was at the core of republican regulation, forcing back into the shadows the legislative power" (Pierre Serna, in Jacques Guilhaumou and Raymonde Monnier (dir.), *Des notions-concepts en révolution autour de la liberté politique à la fin du XVIIIe siècle*, Société des Études Robespierristes, 2003, p. 153).

The organisation of the police did not begun under the Thermidorian Convention (decree of the 19th July of 1791), but the Thermidorian Convention asked the police to play a part it had never had in the history of citizenship: it is henceforth the police which had to differentiate, to categorize, to separate from each other the good and the bad citizens (Paolo Napoli, *Naissance de la police moderne*, La Découverte, 2003, pp. 2111-240).

In the Convention of the 1st Germinal an III (20th of March 1795), Sieyès, in the name of the three committees (Salut Public, Sûreté Générale and Legislation) reported on a draft of a decree dealing with "the statute of a great police force". His speech could be considered as the charter of the Thermidorian system. He used the word "enemy" thirteen times, and gave a portrait of the Thermidorian public enemy very different from the *enemy of the people* of the theocratic phase of the Terror, but equally different from the public enemies identified under the theocracy.

According to him, the enemy was numerous. There was not one, but many enemies of the people - "And who did not know that you have many enemies?" The use of the plural was highly political: it broke the iron collar in which the category of "enemy of the people" was enough to lock up any political opponent. It was no longer necessary to try to discover the enemies and their political plots: the police superintendent, and not the judge, did the job. The police was the eye of the power. Its attention was caught not by offences, but by the slightest signs, "the conspicuous nature of the being was inseparable from its criminal nature: everything which shows up was, according to the keeping of public order, suspect and a transgression" (Jean-Paul Brodeur).

The first duty of the legislator, according to Sieyès again, had never been to punish, but to prevent crimes - "It is that way that you will accomplish your first duty, the duty to prevent crime, which eliminates the need to punish it". That is why the Thermidorians paid such close attention to the police. The police, whose activity is limited by the law, located many wrongdoings which escaped the law, "an archipelago of illegalities which had not been dealt with by the penal code" (Paolo Napoli). The executive power, by playing with the qualifications, could transform, or not, unlawfulness into criminal offences.

The political importance given to the police was an inheritance of the theocracy, which had created the "Office of administrative supervision and general police" in Germinal an II (April 1794). It had as a consequence to restrict the action of the penal law. No longer were all enemies of the Revolution criminal subjects. The *justiciable*, the criminal subject, was one of the categories of the Thermidorian public enemy.

Was it not at this precise moment that we find taking place what Niezstche, in his *Genealogy of Morals,* called the "great turnaround"? That is, the substitution of a moral of resentment for an aristocratic civic moral, of the wicked for the bad citizens of the ethocracy and the theocracy? The *méchant citoyen*, the wicked citizen, would be the one who was deprived of his penal status, and had to be countered because of his revolutionary ideas, under police supervision at a time when "the police office was transformed into representing the politics of the honest citizens" (Pierre Serna, *La République des girouettes*, Champ Vallon, 2005, p. 402). Consequently, the good citizen, the *bon citoyen*, was no longer someone who obeyed or respected the law, but someone who did not infringe it and who maintained visibly high moral standards.

In a short period of time - little more than two years - careful study of revolutionary penal law, statutes nowadays barely known, permits the mapping out of three major structures of republican citizenship.

It would be possible to emphasise the absences among the statutes gathered and presented here. It would also be possible to contest one or other category, without succeeding in questioning the correctness of comment of an author who signed him (or her) self N. Regnard, in a provincial review under the Restauration: “someone courageous enough to read the *Bulletin des Lois* from 1789 and someone patient enough to meditate on it, would have a healthier and fairer idea of our Revolution than the idea given by pamphlets dictated by passion, or novels decorated by the name of history […]”.

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