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HONOR, LAW AND SOVEREIGNTY: THE MEANING OF THE *AMENDE HONORABLE* IN EARLY MODERN FRANCE

James R. FARR

Purdue University, Dept. of History, USA-West Lafayette, IN 47907-1358, 1358 University Hall

ABSTRACT

In the sixteenth and seventeenth centuries royal judges in France increasingly imposed the penalty in criminal cases of the amende honorable, or "abject public apology." This article explores the rich meaning of this symbolic fine by situating it in the related contexts of first, a struggle between the kings of France and the royal magistracy over the definition and location of sovereignty, and second, of the system of honor. Central to this analysis is the fact that the amende honorable was seen as a linchpin between two rival rule-giving systems, the informal one of honor and the formal one of official law. In the sixteenth and seventeenth centuries the royal judges used this penalty as a way to bring together these rival systems, a union that was opposed by the king.

Key words: honor, law, sovereignty, amende honorable, punishment, jurisprudence, legislation, France, 16-17th centuries

On Friday afternoon, May 8, 1643, Philippe Giroux, formerly one of seven *Présidents* (presiding judges) at the royal, sovereign court of Parlement in Dijon, France, was executed by decapitation for the murder of his first cousin. Just before meeting his fate, Giroux underwent a series of judicial rituals, the most significant for our purposes (and, as we will see, for his) being the "payment" of the *amende honorable*, a deeply symbolic "fine" (ADCO, B, 12175; and BMD, mss 328 and 329).

Immediately after hearing his sentence, Giroux began the march to the scaffold. The first stop in this lugubrious procession was between the columns of the porch of the courthouse, the Palais de Justice. Here, as his death sentence explicitly commanded, he performed the *amende honorable*. This was a ritual where, standing barefoot and dressed in a simple black doublet and clutching a four-pound taper in his bound hands, the condemned man begged forgiveness from God, King, Justice, and, significantly, wronged, earthly enemies. This ritual Giroux dreaded more than

death itself. "He feared," reported an eyewitness who kept an account of the execution, "losing honor even more than life; he was less sensitive to death than to this humiliating and dishonoring action." Indeed, immediately after performing the disgraceful ritual, he cried out: "Ah, my father! My son! My kin! My friends! What will you not suffer from this affront that will burst upon you all!"(Larme, 1643). The affront he was referring to was not just the impending execution, but the honor lost when he "paid" the *amende honorable*.

In his dread of the *amende honorable* Giroux was far from singular. In 1632, for example, a gentleman condemned by the Parlement of Paris to nine years in the galleys *and* to perform the *amende honorable* would not dishonor himself by doing the latter. His refusal to perform that shameful ritual prompted the court to amplify his punishment to a life sentence in the galleys (Du Rousseau de La Combe, 1757, 11). Similarly, in 1614 the same court heard a nobleman refuse to perform the *amende honorable* as his capital sentence required, and for his recalcitrance he found his monetary fine doubled as well as the term of his banishment from the jurisdiction of that court (Muyart de Vouglans, 1762, 823).

What was the *amende honorable*, and why would nobles and gentlemen like Philippe Giroux consider it to be of such terrifying importance, more feared even than death? Clearly, as the name of the punishment implies, this ritual, which reached its peak of expression in France in the late sixteenth and early seventeenth centuries, was heavily weighted with the notion of honor. Moreover, the honorific aspect carried the importance of the ritual far beyond the narrow reaches of official law. In fact, in this ritual we can find compressed into one symbolic act, even performance, the intersection of fundamental-and conflicted- ideas about honor, the law, sovereignty, social hierarchy, and religion, ideas that fundamentally structured Old Regime configurations of society, power, and influence. More specifically, a close analysis of this judicial ritual and its uses can help us understand honor more fully as a multivalent, rule-giving system that rivaled the official legal system of the kingdom and, curiously, operated both within and outside of it.

The *amende honorable*, as the words reveal, was rooted in the informal system of honor and in the formal system of law. Both honor and law were fundamental props to social and political order, and during the sixteenth and seventeenth centuries were crucially important in the lives of French men and women. As one jurist put it, "Of all the benefits of society, the most precious, without question, is honor; it is the very soul and principle of social existence." (Muyart de Vouglans, 1762, 412). Indeed, honor carried political as well as social overtones. Robert Ashley, the first man to pen a treatise on honor in the Early Modern period, contended that the well-being of the polity rested upon honor. On the one hand, he contended, "the destruccion and overthrowe of a common wealthe [results from]...the want of regard to be had of honour and of shame." On the other, "mens mynds are not easilie of themselves stirred

upp to welldoing except some honourable reward be proposed for good deeds, and some ignominious punishmentes for foule faultes and offences."(Ashley, 1947, 28-29).

M. E. James, the most noted modern historian of early modern honor, situated the history of honor in a shift from a society whose values were rooted in the soil of chivalry and family lineage (feudalism) to one grounded in the humanistic virtues of stoicism and godliness (civil society). As a result, by the seventeenth century the ideal role for a gentleman had changed from the Christian knight to the godly magistrate, and the notion of honor in public office came aggressively to the fore (James, 1978, and Cust, 1995, 59). James writes only of the English context, but some of his insights apply to France as well. He certainly overdraws the completeness of the shift from feudal to civil society, for lineage even among magisterial families continued to be enormously important even in the Seventeenth century (witness Giroux's cries about the shame the *amende honorable* will bring upon his family). Still, as royal magistrates came more and more to rise to the top of the social hierarchy, they brought with them a justification for their exalted social status and this justification rested upon their role as dispensers of justice. They came to see this task as a god-given privilege and charge. Their honor, in other words, was increasingly bound to their part in administering the law, and their view of honor and the law as the glue that held society together became the foundation of their jurisprudence as well as the justification for their claim to high social rank. For them, the *amende honorable* was of great importance (illustrated by the drama and visibility of the ritual) because it was a linchpin between the *informal* rule-giving system of honor and the *formal,* rule-giving system of law.

What was, then, the *amende honorable?* One obvious definition was the official juridical one, meaning simply "abject public apology." (Andrews, 1994, 298). As such, the *amende honorable* had a prescribed place in the system of Old Regime penology. In this penal system, retribution for a crime was understood as reparation and thus payments of fines were central to its operation. An *amende* could be a public monetary reparation paid to the king and to the court of law in which the crime was being tried, as both a form of punishment and as an indemnity for the costs of the trial. Another kind of fine that was not monetary but was also levied with regularity was the *amende honorable.* The coin of the economy of reparation in this fine was reputation, the penalty "infamy," and so the simple definition "abject public apology," however accurate in a limited way, does not take us very far in understanding its richness of meaning.

True, the *amende honorable* had a prescribed place in the system of formal judicial punishment. In the Giroux case, like so many others invoking capital sentences, the *amende honorable* was a penalty meted out by secular courts of law. It was no simple apology, however. Nor was it just a minor part of the elaborated ceremony

leading to the death of a condemned person that preceded the corporal punishment to which he had been sentenced. To be condemned to "pay" the *amende honorable* required the convict to appear in public "bareheaded, barefooted, [and] clothed only in a...shirt...[then] kneel, loudly proclaim the crime, and beg forgiveness of God, the king, and justice" and sometimes, as Giroux was forced to do, of the plaintiff (Andrews, 1994, 299).

To plumb the richness of the *amende honorable,* let us first consider its place in legislation. In early modern France, honor was a well-established, customary, and traditional rule-giving system that had *daily* purchase on the people living within it (Farr, 1987, 1988). It pervaded the very souls of men and women and regulated their everyday actions by demanding that they conform to certain accepted standards of behavior and comportment. Legislation, in contrast, although equally a rule-giving system but one elaborated as official law and dictated by or in the name of the king in the form of ordinances *(ordonnances),* edicts *(édits),* or decrees *(réglements),* could boast no such pervasive purchase. Indeed, one can see systematic and universal legislation in the early modern period as a relatively new and occasional rival to honor as competing, rule-giving *systems.* Legislation in the sixteenth and seventeenth centuries in France, as is well-known, was only beginning to be codified and "rationalized" according to general principles, and though in theory its reach was total, in practice most people lived their daily lives well beyond its grasp.

Most of the time honor and legislation co-existed without conflict. Sometimes, they even overlapped At other times, however, their rivalry came into the open and contested for the men and women caught between them. That honor and formal law were rival systems needs no further testimony that the words of a well-known judge of the age and an immortalized man of letters, none other than Michel de Montaigne. In 1585 this former royal judge wrote: "There are two sets of laws, those of honor and those of justice, in many ways quite opposed." He added even more poignantly that "He who appeals to the laws to get satisfaction for an offense to his honor, dishonors himself." *(Essays,* book 1, chapter. 23).

This rivalry between informal honor and formal law became increasingly evident during the sixteenth and seventeenth centuries because it was at this time that royal legislation was attached to the new concept of royal sovereignty, and sovereignty now defined (most famously by Jean Bodin in 1576) would brook no competition. In other words, if the new sovereignty were to triumph, honor as a rival, rule-giving system had to be brought to heel. An analysis of the treatment of honor in general and the *amende honorable* in particular in royal legislation demonstrates well this disciplining process.

The uneasy relationship between honor and formal law is well illustrated by the *amende honorable.* During the Middle Ages the *amende honorable* appears in provincial customs and in municipal statutes, but never in royal edicts or decrees

(Lebigre and Leguai, 1979, 127). Its form-the convict appearing bare-headed, barefoot, clad in a shirt and holding a taper-is already established, but the condemned person is required to beg forgiveness only from the victim of the crime (God, King and Justice are as yet absent). Jean Imbert, an early seventeenth-century jurist and author of a popular judicial handbook, confirmed in 1609 that the *amende honorable* appears nowhere in written law (by that he means royal law), but he does specify now that "it is customary to inflict this penalty when the crime is against the authority and honor of God, king, the public welfare, or of the private party [that is, the plaintiff]." He suggests that this fine exists in law because in France "we do not have the talion." (Imbert, 1609, 764). In other words, judges rather than kings were the first to invoke God and king as wronged parties, now joining the plaintiff.

Equally important, in every account by jurists who discuss the *amende honorable*, there is an assumption that the convict is relinquishing his honor by this ritual and transferring it almost as a commodity to the wronged parties (Ferrière, 1740, "Amende honorable;" Du Rousseau de la Combe, 1757, 622; and Muyart de Vouglans, 1762, 823). Implicit is the notion that by the criminal act God, King, Justice and plaintiff have been robbed of honor, and that the reparation restores it. Moreover, the repayment must be done in public because honor is only made visible when the public is made aware of it (thus the importance of reputation and the loss of it through "infamy"). This is why the condemned man or woman is forced to declare the crime and beg forgiveness "in a loud voice" in an open setting for all to hear. Indeed, the stakes were especially great for men like Giroux, for, as Anthony Fletcher remarks, "The more public role a man assumed, the greater his honor. The more public his fall, therefore, the greater his disgrace." (Fletcher, 1985, 324).

Clearly, as jurists demonstrate, the *amende honorable* had an important place in official law at least through the seventeenth century.[1] How curious then that the *first* and *only* mention of the *amende honorable* in royal legislation occurs in the great criminal ordinance of 1670, and there it appears only in the ranking of punishments by severity. In this ranking it was held to be less severe than flogging, and far behind decapitation, hanging, or confinement in the king's galleys. In fact, it was held to be harsher than only one penalty, simple banishment, which was listed as the least severe punishment that the state could deliver for a capital offense. Nowhere else in royal legislation is there any mention of the *amende honorable*.

The *lack* of attention to this punishment in royal legislation stands in sharp contrast to its prominent place in jurisprudence, the practice of royal judges handing down sentences in courts of law. Here in *arrêts*, or sentences, the *amende honorable* appears with regularity, almost always attached to another capital penalty. Moreover,

1 Several eighteenth-century jurists point out that the punishment had fallen into relative insignificance and even desuetude by the mid-eighteenth century. See Rousseau de La Combe, Muyart de Vouglans.

as Giroux's reaction to being forced to undergo this punishment shows, its severity was perceived by criminal and judge to be much more intense than legislation would seem to grant. Why such a difference in perception of severity of this shameful punishment? Why, in other words, would judges and the condemned consider the *amende honorable* more severe than legislation would have it?

Part of the answer to this question lay in the paradoxical power relationship that kings and judges had built during the sixteenth and seventeenth centuries. Royal judges, despite their official capacity of dispensing the king's justice, had a different perspective on the judicial process (and on the idea of sovereignty in general) than their monarch who increasingly styled himself as lawgiver. In the reconstruction of authority amidst the chaos and crisis of the sixteenth century and in its aftermath in the authoritarian seventeenth, king and magistrate were often at odds over how the ideology and practice of law should be interpreted, and how the legal system should be constructed and ministered. Although these magistrates abandoned their outright rebellious stance of the late sixteenth century, they continued to negotiate a system of power-sharing with their king rather than capitulate to an absolutist regime under him. Authority, despite royal aspirations, was exercised in a context of power-sharing and negotiation rather than one of royal autonomy and imposition (Beik, 1985; and Hamscher, 1976 and 1987).

An important element of this occasionally contentious negotiation between king and magistrate was the construction of the meaning of sovereignty (Farr, 1995b). Kings, of course, claimed indivisible sovereignty in the person of the king, justified it by divine-right theory, and asserted its practice in legislation. The unified royal will was further advocated in the increasing codification of law, guided by the principle of *reductio in unum*. Magistrates, for their part and much to the disapproval of the crown, laid claim to a share of sovereignty, pointing to the sanctity of the law and their constitutional and divine right to interpret it while applying it. Jurisprudence, ironically often in the name of the king, therefore nonetheless challenged royal legislative sovereignty. The king might frown on this, but the system of power-sharing worked out over the early modern era precluded him from doing much about it. There may have been a drift toward codification, but there was still plenty of room for magisterial interpretation, and thus for "legislating" from the bench.

Thus, if we wish to know why honor was factored into jurisprudence by means of the *amende honorable* much more prominently and importantly than in legislation, we find the answer not in the king, but in the judges' sense of their social and professional esteem and their claim for a share of sovereignty. Of course, conversely one would need to know why the king minimized the importance of honor in legislation. As noblemen, the judges shared with their king a staunch commitment to social hierarchy (which in the seventeenth century was becoming increasingly rigid and increasingly defined by visual demonstration, by performance, what I have

called elsewhere a system of "social" absolutism.") (Farr, 1995b). They knew in their social selves that honor and the law were the cement that held this system together, and served as a crucial bulwark against the forces of social upheaval that crashed about them and threatened the social order and their place within it. They also knew in their judicial selves that they, as administrators of the law and as dispensers of justice, were divinely appointed to protect, defend, and uphold, even restore that order. Indeed, their social status depended upon their juridical function and their choice of punishment of criminals reflected this (Farr, 1995a). They knew, as R.J.E. Evans has pointed out, that "the body was not simply the integral possession of the individual human being, but rather a socially defined entity, signifying status and standing in a corporate, highly stratified social system...cemented by the pervasive notion of honor,...the glue that held this society together...The loss of honour...could spell ruin, ...infamy could mean the end of marriageability." (Evans, 1995, 53-54).

It is not by chance, therefore, that these judges tightly embraced the *amende honorable* just when France was plunged into a chaos that the Wars of Religion had unleashed. Nor is it by chance that this was just the time of unprecedented social mobility in France that seemed to threaten the imagined traditional, stable social structure. Nor is it by chance that this coincides with an increase in the incidence of dueling by the nobility of the sword, this despite royal legislation outlawing it (Kiernan, 1989, Billacois, 1990). In a sense, the noblesse de robe (royal officialdom) and the noblesse d'épée were *both* challenging their king by continuing to embrace that customary, rival rule-giving system, that of honor.

Of course, the king was as committed to social hierarchy as was his magistracy, and no king could even find it *thinkable* to refute altogether the validity of honor as the primary force that structured this hierarchical society. After all, the king was perched at its apex. For royal authority to be fully respected, therefore, honor had to be recognized. But for the royal will to be complete and legislation to be universal, honor (and the nobility) also had to be disciplined. French kings in the seventeenth century were increasingly incorporating the maintenance of civil peace in their claim for authority, and because honor and violence often went hand in hand, kings often viewed honor as a cause of disorderly behavior. Thus the outlawing of the duel, and the recognition but devaluation of the *amende honorable* in the official hierarchy of punishment codified by royal legislation.

Indeed, the importance of peace in the dispensation of justice brings forward yet another aspect of the *amende honorable* that reflects fundamental shifts in the notions of honor, law, and sovereignty. As John Bossy has shown, royal justice increasingly claimed justification for its validity from religion, a process he cogently called a "migration of the holy."(Bossy, 1985). Moreover, as part of their sacred duty priests had been called upon to maintain peace in the community of traditional Christians, so in the sixteenth and seventeenth centuries did kings and their judicial representatives -

the judges - claim a similar sacred function (Farr, 1995a, ch. 2). Recalling James's "godly magistrate" and turning the secularization thesis on its head, Bossy contends, correctly I believe, that the "state" was sacralized in the sixteenth and seventeenth centuries, and jurists like Jean Bodin became "high priests of sovereignty." Furthermore, judges in royal courts increasingly became priest-like (judicial confession took on sacral qualities), and the ritual that they increasingly invoked - the *amende honorable* - was laced with religious characteristics. Confession, penitence and expiation were now central to the act as the condemned was forced to confess and beg foregivess of God, King and Justice (recall that this was not part of the ritual in the late Middle Ages). Of course, that both king and judge were busy sacralizing their actions is further testimony that sovereignty was being hotly contested.

So, was the gap between honor and law bridged historically? Yes and no. The history of the *amende honorable* which we have traced in this article shows that for a time honor and law were linked in jurisprudence. By the eighteenth century, however, the link was severed as the *amende honorable* fell into desuetude. Judges were no longer invoking it as punishment, and legal commentators had even come to view it as an antiquated avatar leftover from a different past. Judge and king still contested for sovereignty in the eighteenth century, of course, but the struggle had moved onto different ground. Now royal judges increasingly claimed to be the voice of the nation and perceived sovereignty in that abstraction rather than in the person of the king. In the process the state was increasingly secularized, and so a religious ritual like the *amende honorable* found little relevance. Honor as an informal rule-giving system, however, did not. True, with the abandonment of the *amende honorable* by the judicial magistracy, honor can no longer be found in the field of jurisprudence and official law, but honor continued for centuries to regulate human affairs. It simply moved to different terrain, entirely outside the formal system of law but in spheres where it could thrive nonetheless (Nye, 1993; Reddy, 1994).

ČAST, ZAKON IN SUVERENOST: POMEN *AMENDE HONORABLE* V NOVOVEŠKI FRANCIJI

James R. FARR

Purdue University, Dept. of History, USA-West Lafayette, IN 47907-1358, 1358 University Hall

POVZETEK

V 16. in 17. stoletju so francoski dvorni sodniki čedalje pogosteje kaznovali obdolžence v kazenskih zadevah amende honorable s "ponižnim javnim opravičilom". Pričujoči članek raziskuje bogati pomen obredne, simbolične kazni, s tem da jo najprej postavlja v sorodne zveze z bojem med francoskimi kralji in dvorno sodno prakso

zaradi definicije suverenosti in nato s sistemom časti. Najpomembnejše v tej analizi je dejstvo, da so na amende honorable gledali kot na os med dvema konkurenčnima sistemoma določanja pravnih predpisov: neformalnega, ki zadeva čast, in formalnega, ki zadeva uradno pravo. V 16. in 17. stoletju so se dvorni sodniki zatekali k tej kazni kot načinu združevanja teh tekmujočih sistemov, zvezi, ki ji je kralj nasprotoval.

To tekmovanje med neformalno častjo in formalnim pravom je postajalo vse očitnejše v 16. in 17. stoletju, kajti v tem času je bila dvorna zakonodaja čvrsto povezana z novim konceptom kraljeve suverenosti, tako definirana suverenost pa ne bi trpela nobene konkurence. Z drugimi besedami, če naj bi nova suverenost doživela bleščeč uspeh, bi morala pokoriti čast kot konkurenčni sistem določanja pravih predpisov. Ta disciplinski proces nazorno pojasnjuje analiza ravnanja s častjo na splošno, specifično pa amende honorable v dvorni zakonodaji.

Ta članek napeljuje na misel, da je častiti vidik amende honorable ponesel pomen rituala daleč onkraj ozkih dosegov uradnega prava. V tem ritualu lahko pravzaprav najdemo - zgoščene v simbolično predstavo javnega priznanja - pokoro, spravo med temeljnimi in nasprotujočimi si zamislimi o časti, pravo, suverenost, družbeno hierarhijo in vero, ideje, ki so v osnovi oblikovale podobo družbe, oblasti in vpliv starega režima. Ali, če smo bolj specifični, natančna analiza tega pravnega rituala in njegove uporabe nam lahko pomaga pri boljšem razumevanju časti kot mnogovalentnega sistema določanja pravnega reda, ki se je kosal z uradnim pravnim sistemom kraljestva in je, presenetljivo, deloval tako znotraj kot zunaj njega.

Ključne besede: čast, zakon, suverenost, amende honorable, kazen, pravoznanstvo, zakonodaja, Francija, 16.-17. stoletje

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