

Occult Criminal Responsibility

WILLIAM G. POOLEY

Does anyone still believe in the ‘disenchantment of the world’ (Walsham 2008, Josephson-Storm 2017, Machielsen and Pfeffer 2023)? Rumours of the death of magic in modern Europe have been greatly exaggerated (Boy 2002) and the applicability of the idea of a ‘decline of magic’ to other parts of the world has never been clear, either (Geschiere 1997, Gosden 2020). This paper contributes to a growing body of work that asks not why magic disappeared, but what it continued – and continues – to *do* (Cornish 2021). It offers one example of what ordinary people made of magic at the end of the eighteenth century, and how these popular practices exerted a surprising influence on a well-known intellectual and legal historical development: the emergence of attenuating circumstances in French criminal courts.

What does it matter that Pierre Rivière claimed – and then denied – seeing the Devil and fairies before he killed his own mother, brother, and sister? Thanks to Michel Foucault’s seminar, Rivière is remembered today as an example of the foundational debates between medical men and jurists over criminal responsibility at the end of the long eighteenth century (Foucault 1973). Was Rivière mad when he committed his crime in 1835? Could a person be temporarily mad, or mad about one thing only? Historians have had a great deal to say about this transitional moment, when doctors and lawyers divided up authority over the terrain of conscience, will, and moral responsibility which had once belonged to theology. Rivière’s uncertain attitudes towards the supernatural appear incidental to these debates: an example among others of his possibly disordered thinking.

But questions of diabolism and witchcraft are omnipresent on the margins of the criminal trials where a new approach to moral responsibility was being elaborated. The intellectual history and legislative outlines are now well-known: from the revolutionary Penal Code of 1791 and its relative silence on the question of mental capacity and criminal responsibility, to the revised code of 1810, and the further revisions of 1832, which gradually encouraged greater consideration of attenuating circumstances, including insanity, influenced above all by Esquirol and his supporters, and the category of ‘monomania’ (Quétel 2009). Magic haunts both these medical theories and the case law. Many of the ‘scandalous acquittals’ that juries decided in the early nineteenth century, for instance, were cases involving magic (Claverie 1984). ‘Demonomania’ was important enough for Esquirol to include in his nosology of ‘monomania’, and, like monomania itself, continued to be evoked sporadically even after Esquirol’s ideas had fallen out of intellectual fashion. And when criminal courts in the 1830s looked for alternative theories to monomania, such as ‘frenzy’, it is striking that the criminals they sought to understand also talked of curses and spells (see Guignard on the 1835 Durand case, 2006).

Historians have long known that the debate was not about the triumph of an enlightened, reformist, secular psychiatric approach over conservative and Catholic jurists (Goldstein 1989, Renneville 2003). But they have paid less attention to the possibility that popular traditions of magic actively shaped the intellectual and medico-legal debates. In the court cases, supernatural beliefs were treated as somehow residual or symptomatic, rather than – for instance – explanatory or debatable. Of course, the doctors and jurists seem to admit, the common folk believe in this nonsense, but this is either taken as evidence of disordered thinking or of the deplorable backwardness of the rural population. This paper looks beyond the surface of the arguments between doctors and jurists to reconstruct the ongoing role of traditions of thought and practice concerning witches and demons. It draws on several hundred criminal trials and police investigations involving magic from 1791-1839,

from murders where monomania or frenzy was evoked, to more routine deployments of questions of insanity and supernatural belief in trials and investigations of fraud, assault, or slander. This large body of material provides the comparative depth to reconstruct the occulted attitudes to responsibility that are distributed in the margins, in passing comments, silences, euphemisms, jokes (that perhaps are not), and innuendoes.

What might magic be capable of in popular practices? The answers turn out to be strikingly similar to the theories that came to dominate medico-legal understandings: witchcraft could be a temporary dominance of the ‘will’, a negation of selfhood, an excess of passion, the porosity of subjectivity between individuals. This unacknowledged convergence meant that the medico-legal discussions of criminal responsibility were already ‘magical’ even before the well-known debates around suggestion, psychiatry, and parapsychology at the end of the nineteenth century (Harris 1989). Reading against the grain of psychiatry and jurisprudence reveals how the courts and experts were enchanted from below at the end of the long eighteenth century.

Works Cited

- Daniel Boy, ‘Les Français et les para-sciences: vingt ans de mesures’, *Revue française de sociologie*, xliii (2002).
- Elisabeth Claverie, ‘De la difficulté de faire un citoyen: les “acquittements scandaleux” du jury dans la France provinciale du début du XIXe siècle’, *Études rurales*, xcv (1984).
- Helen Cornish, ‘Fashioning Magic, Fashioning History: The Past and Present of Modern Witchcraft’, *Magic, Ritual and Witchcraft*, xvi (2021), 389-397.
- Foucault, Michel (ed.), *Moi, Pierre Rivière, ayant égorgé ma mère, ma soeur et mon frère* (Paris: Gallimard, 1973).
- Peter Geschiere, *The Modernity of Witchcraft: Politics and the Occult in Postcolonial Africa* (Charlottesville: University of Virginia Press, 1997).
- Jan Goldstein, *Console and Classify: the French Psychiatric Profession in the Nineteenth Century* (Chicago: Chicago University Press, 1989).
- Chris Gosden, *The History of Magic: From Alchemy to Witchcraft, from the Ice Age to the Present* (London: Penguin, 2020).
- Laurence Guignard, ‘Aliénation mentale, irresponsabilité pénale et dangerosité sociale face à la justice du XIXe siècle. Étude d’un cas de fureur’ *Crime, Histoire & Sociétés / Crime, History and Societies*, x (2006), 1-19.
- Ruth Harris, *Murders and Madness: Medicine, Law and Society in the Fin-de-siècle* (Oxford: OUP, 1989).
- Jason Josephson-Storm, *The Myth of Disenchantment: Magic, Modernity and the Birth of the Human Sciences* (Chicago: Chicago University Press, 2017).
- Jan Machielsen and Michelle Pfeffer, ‘A Work Out of Time: Religion and the Decline of Magic at Fifty’, *Past & Present*, cclxi (2023), 259-296.
- Claude Quézel, *Histoire de la folie: de l’antiquité à nos jours* (Paris: Tallandier, 2009).
- Marc Renneville, *Crime et folie: deux siècles d’enquêtes médicales et judiciaires* (Paris: Fayard, 2003).
- Alexandra Walsham, ‘The Reformation and the “Disenchantment of the World” Reassessed’, *Historical Journal*, li (2008), 528.