

PROJET
SUR LA FORMATION
D'UN TRIBUNAL
POPULAIRE ET SUPRÊME
EN MATIÈRE CRIMINELLE.

Design for the Creation of a Supreme Criminal Tribunal for the People.¹

Presented by Madame De Gouges, on the 26 May 1790, to the NATIONAL ASSEMBLY.

GENTLEMEN,

You can be in no doubt that I have devoted myself entirely to the good of my Motherland and that my only concern is her prosperity. No doubt these sentiments have earned me your esteem, and my projects your attention.

At the moment, GENTLEMEN, you are busy with the penal code. I admit that I have no understanding of a subject so repellent to a woman: but what exertions will I not make to fly to the rescue of the public good? Would a few ideas, ingenious rather than profound, seem unworthy of your attention? No, GENTLEMEN, sometimes simple and natural notions can offer useful solutions: deign, therefore, to listen to me, GENTLEMEN, with the indulgence that I require, and that you have always accorded me.

The people become ever more enlightened and yet they are still reproached for their ignorance. These people that you cherish, and that one can even admire for their recent violent acts, for they show both their aversion to vice and their love of public safety; these people often ask you, at present through me, the means of becoming the greatest in the world.

The people are always equitable and impartial when they are unbiased; but the people, who allegedly count for something today, still amount to nothing.

Therefore, GENTLEMEN, what steadfastness can you give these people to make them worthy of the constitution to which you draw them?

I will not permit myself to elaborate my ideas as fully as they deserve; you will develop them with ease.

It would seem to me [essential] to create a supreme tribunal for the people. Here is what I believe to be the utility, no I will say more, the necessity of this new tribunal. May you table my project for discussion and make it advantageous for the people, authors of the revolution, for whom I conceived it!

¹ In this pamphlet de Gouges puts forward her ground-breaking ideas for a form of trial by a popular jury; she believed that if ordinary people were involved in the process of the law they would feel more engaged in the system, learn to think more coherently, create a more equitable penal code and show an exemplary clemency that would lead to a reduction in violent crime. A law instituting trials by jury for criminal cases had been passed on April 30 1790 excluding most people from jury service. In September 1791 a further law was passed decreeing that jurors must have even more stringent property qualifications than voters. Robespierre and Pétion both argued against a law that excluded three quarters of male citizens from jury service. The first jurors sat in March 1792. Between 1792 – 1795, in theory, all adult males over a certain age were allowed to become jurors but by March 1793 the Revolutionary Tribunal (replacing the Criminal Tribunal of August 1792) dominated the criminal justice system with its own particular methods that had little regard for responsible jurors. The use, and composition, of juries was debated in France from the 1790s until the early 20th century; each political upheaval changing the system to suit its own ends. In the 19th century Alexis de Tocqueville repeated de Gouges's arguments in favour of the educational value of being a jury member.

The *châtelet* [parliamentary tribunal], not knowing which side to take, finds itself in a difficult and embarrassing position, fearing, no doubt, to distance itself from the spirit of your decrees yet particularly fearing to irritate the people. The latter, in their impatience, carry out illegal executions that are always violent and sanguinary. Whatever sensible methods you choose to establish a new criminal code, GENTLEMEN, you will never please everyone. The people will always be vexed and equality will always be imperfect until you persuade all men to work for the same ends.

The military are judged by the military: the people must be judged by the people.

I therefore propose the creation of popular councils similar to the councils of war; they will assemble in public squares. The popular class, in general the artisans, journeymen and labourers will have their own prisons and all working-class malefactors, arrested for a crime or for theft, will be subjected to the sovereign judgement of their peers. The malefactor will have a week or two to defend himself and will be free to choose an advocate from the popular assembly. His lawsuit will be heard and he will be condemned or absolved by a majority decision. The resultant judgement will be printed and distributed.² I would like the popular tribunal to meet on Sundays only, from eight in the morning till mid-day or one o'clock, so that the worker need not abandon his occupation. The accused, appearing for the first time before the tribunal, would be questioned, confronted by the witnesses and judged a week later, his advocate being apprised of all the facts. This new tribunal must swear to never violate the law and to severely punish its judges and members who, through a momentary fit of violence, might behave excessively towards a guilty party arrested *in flagrante*. This precaution must, in the circumstances, be specifically insisted upon with great vigour to ensure the public's peace of mind; the people will then have an idea of the value of the functions you have bestowed upon them.

This popular tribunal may show us great truths, GENTLEMEN, and could lead to useful discoveries. The people would learn to be rational in times of great crises. They are confused by the law: by exercising it themselves they will make it speak more clearly, perhaps with more integrity, than the magistrates who sit on the *fleurs de lys*, and who violated it on many occasions. This, GENTLEMEN, is the surest method to restore the people's goodwill and arrest its fury. This project, as new as it is singular, may rid us of all the foreign brigands whose numbers increase every day and who may become formidable, cut our throats without pity and harvest all the fruits of your painstaking work.

Ah! GENTLEMEN, allow me to applaud my project: all those to whom I showed it, before presenting it to yourselves, admired it and found it full of merit. This encouragement gave me the strength to put it forward for your consideration. You are seeking to spare men's lives by all means possible; I am offering you one worthy of your enlightenment and your noble maxims, should my project attract your attention and the people obtain a tribunal to judge all cases that will be within their scope and those that they are sent such as theft, murder, disputes, etc.

I would ask that the people of Paris hold their assembly on the actual place de la Bastille, on the ruins of the walls that enclosed so many victims for centuries, so that one day it will be said:

² [Original footnote.] Malefactors from the upper classes will not be subjected to this tribunal; yet, to render all classes of criminals condemned to death more august and more worthy of the majesty of both the new government and of humanity, I would wish those condemned by ordinary tribunals to be able, at the foot of the scaffold, to be free to appeal to the popular tribunals. What a source of decency! What an example of humanity! What a touching spectacle for citizens to see an unfortunate, whose crime might be pardoned, escape death and moreover hope to be absolved of his crime by the popular tribunal! This clemency could perhaps change the heart and mind of the criminal and the guilty man could be made honest. This clause may prove to be inconvenient; I only present it to facilitate the procedure, GENTLEMEN, with which you propose to soften the severity of our criminal laws.

Once upon a time innocent people were slaughtered here, in the shadows, but the den, the gloomy shelter of the inquisition, has disappeared and in its place a popular tribunal has arisen where justice hands down decrees in the pure light of day.

There, GENTLEMEN, is a succinct précis of a project that no doubt merits further development but time and circumstance do not allow me to perfect it to the degree that I believe it deserves. I offer it to you despite its imperfections; may you, GENTLEMEN, take the trouble to work at their disappearance.

From the press of the FRENCH PATRIOT,
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