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LAW AND LITERATURE IN FRENCH STUDIES

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Since its emergence in the late twentieth century, the law and literature movement has been enriched by contributions from the field of French studies. The purpose of this *état présent* is to assess the breadth and collective significance of these contributions. First, some brief background. In the 1970s, legal scholars in the anglophone world began to revitalize the study of law by working with literary sources and techniques.[1] This paved the way for ongoing dialogue between legal experts and literary specialists who, in turn, have incorporated elements of legal study into their scholarly remit. Today, 'law and literature' ~~together~~ comprise a movement that makes a virtue of its interdisciplinary exchanges.[2] Numerous monographs, edited series,[3] and three leading journals — *Yale Journal of Law and the Humanities*, *Law and Humanities*, and *Law and Literature* (formerly known as *Cardozo Studies in Law and Literature*) — have established the movement's scholarly credentials, and, moreover, have enlarged its remit. The study of law and literature may begin (and in some cases end) with texts; but increasingly legal-literary research is framed as part of a broader cultural enquiry into the arts of writing, reading, interpretation, representation, performance, and persuasion.[4] Surveys of these new directions in law and literature have tended to focus on the English-speaking world, and predominantly on English-language sources. There is nonetheless a turn towards recognizing the significance and scope of legal-literary research beyond the ~~English-speaking~~ world.[5]

Studies of French-language sources constitute a prominent subdomain within the global purview of law and literature. Over the last forty years, one can trace a

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[1] A widely accepted threshold is James Boyd White's 1973 study, *The Legal Imagination*. See the abridged edition (Chicago, IL: University of Chicago Press, 1985). See also Richard Weisberg, *Poethics and Other Strategies of Law and Literature* (New York: Columbia University Press, 1992).

[2] One can find a number of well-established joint-faculty degree programmes in US universities.

[3] For example, the 'Critical Studies in Law, Literature and the Humanities' series published by Edinburgh University Press, and the 'Law and Literature' series published by Oxford University Press.

[4] For a reappraisal of law and literature as a part of law in a humanities context, see the University of Warwick's Law and Humanities research cluster, <https://warwick.ac.uk/fac/soc/law/research/clusters/lawandhumanities>.

[5] Two of the best recent surveys are *New Directions in Law and Literature*, ed. by Elizabeth S. Anker and Bernadette Meyler (Oxford: Oxford University Press, 2017), and *Law and Literature*, ed. by Kieran Dolin (Cambridge: Cambridge University Press, 2018).

steady stream of legal-literary outputs in French studies from the medieval to the contemporary. Scholars focusing on pre-twentieth-century sources from mainland France have hitherto dominated the French field, and their work forms the bulk of our survey. Nonetheless, as we look to the future, we shall indicate how law and literature is beginning to consider other francophone regions. We have adopted a chronological approach from 1200 to the present, focusing on major studies whose subject matter shows a sustained combination of the legal and the literary. Several of the scholars named in this *état présent* have long engaged in legal-literary research. Some have contributed to the three journals mentioned above.[6] Others have a looser affiliation with the law and literature movement, in that their work encompasses legal-literary study within a wider scholarly remit.

Law and literature: opening lines

The law and literature movement has produced three main lines of enquiry, all three of which are represented in French studies.[7] The first seeks to establish the parameters of the partnership, showing how literary forms, genres, and structures correspond to particular legal objects, constructs, practices, or innovations. In this first line of enquiry, law *and* literature to many of its practitioners, if not to ~~its uninformed~~ readers, often means 'law *in* literature', a variant of conventional literary criticism that specializes in works of imaginative writing containing legal themes or depicting legal practice. A second line of enquiry interrogates similarities and differences: the extent to which 'law' complements or opposes 'literature' (thereby problematizing these two as distinct conceptual categories). Here, law *and* literature sometimes becomes 'law *of* literature': this variant typically overlaps with book and intellectual histor~~y~~ concerning the legality of literary production (copyright, contractual restrictions, obscenity laws, and the like). A consideration of literature's legal parameters raises further questions concerning a society's broader appreciation of its literary culture. Hence, a third preoccupation of the law and literature movement has been to evaluate the views of different audiences in interpreting the representation of law and literature put before them.

If law and literature comes in several distinct variants, where in French studies might there be common ground? Not all practitioners favour a theory-driven approach; nevertheless, the enduring influences of Michel Foucault and Jacques Derrida deserve comment. Foucault's 1975 classic on discipline and punishment has proved formative for many law and literature scholars irrespective of their period and main regional focus.[8] ~~And a~~lthough historians have ~~repeatedly~~ critiqued Foucault's *Surveiller et punir* for its inaccurate representation of the French criminal justice system,[9] much

[6] Indeed, Marco Wan, whose work we shall later discuss, currently serves as the managing editor of the journal *Law and Literature*.

[7] For further discussion, see Guyora Binder and Robert Weisberg, *Literary Criticisms of Law* (Princeton, NJ: Princeton University Press, 2000), p. 3, and Elizabeth S. Anker and Bernadette Meyler, Introduction to *New Directions in Law and Literature*, ed. by Anker and Meyler, pp. 1–25 (pp. 7–8).

[8] Michel Foucault, *Surveiller et punir: naissance de la prison* (Paris: Gallimard, 1975).

[9] For a discussion, see Paul Friedland, *Seeing Justice Done: The Age of Spectacular Capital Punishment in France* (Oxford: Oxford University Press, 2012), pp. 11–15.

of the work we shall survey in this *état présent* tacitly or overtly accepts a Foucauldian model of genealogy in which both legal and literary objects are conceived under the same historical conditions. Likewise, Foucault's *Histoire de la sexualité* has proved its analytical worth, especially to those seeking to unsettle a top-down model of legal prohibition that would prevent power circulating amongst multiple discourses.[10] Derrida's diverse interests in law, meanwhile, resurface frequently in his work on deconstruction and spectrality;[11] elsewhere, two notably direct contributions are his famous essay inspired by Pascal and Montaigne on the 'mystical foundation' of justice, and his equally renowned essay on the question of judgement in Lyotard and Kafka.[12] In Derrida's handling, justice becomes an unrepresentable experience of absolute alterity, exceeding all calculation, rules, and judgement inasmuch as this entails the application of a legal code. Derrida's legal languages of impossibility (the incalculable, spectrality, and aporia) have all proved versatile tools of enquiry for French studies scholars interested in literature's differing — but never entirely dissimilar — acts of authorizing its own discourses.

Having briefly surveyed general tendencies, we now move on to the particulars in three main periods (1200–1600; 1600–1789; 1789 to present). The ~~period~~ divisions here reflect a distribution of studies that bunches in the seventeenth and eighteenth centuries, owing principally to the prolific output of Christian Biet (1952–2020). A world-renowned professor of theatre studies, Biet had long exemplified legal-literary approaches to early modern French literature before his untimely death in July 2020. Our coverage acknowledges his legacy in the field, a chief aspect of which was his constellation of detailed case studies to show the wider cultural resonance of legal-literary analysis. Following his example, in each of our period sections we align our coverage with factors underlying the particularities and peculiarities of law and literature in that period.

Law, gender, and fiction ~~in historically~~ nuanced dialogue~~, 1200–1600~~

French medievalists have a long-established affinity with law and literature. A pioneering study was R. Howard Bloch's *Medieval French Literature and Law*, an early example of what is now widely accepted among pre-modern French scholars working at the interface of literary and the legal.[13] To study law and literature in *Ancien Régime* France is to encounter, in fact, a *ménage à trois* — law, literature, and history. All three require careful handling, as Bloch shows. In a new historicist

[10] Foucault, *Histoire de la sexualité*, ed. by Frédéric Gros, 4 vols (Paris: Gallimard, 1976–84). See especially volume I, *La Volonté de savoir* (1976). Foucault's late work on biopower and sovereignty, it should be noted, is less visible in the material we have surveyed; it is much more prominent in anglophone legal-literary research. For an overview, see Anker and Meyler, Introduction to *New Directions in Law and Literature*, pp. 19–20.

[11] See further *Derrida and Law*, ed. by Pierre Legrand (Aldershot: Ashgate, 2009).

[12] Jacques Derrida, 'Force of Law: The "Mystical Foundation of Authority"', trans. by Mary Quaintance, *Cardozo Law Review*, 11 (1990), 919–1045, and 'Préjugés: devant la loi', in Jacques Derrida and others, *La Faculté de juger* (Paris: Minuit, 1985), pp. 87–139. See also Katie Chenoweth, 'Derrida at Montaigne: A Stay of Execution', in *Deconstructing the Death Penalty: Derrida's Seminars and the New Abolitionism*, ed. by Kelly Oliver and Stephanie M. Straub (New York: Fordham University Press, 2018), pp. 101–18.

[13] R. Howard Bloch, *Medieval French Literature and Law* (Berkeley: University of California Press, 1977).

vein, he reacted against what he perceived to be the excesses of the linguistic turn in medieval scholarship that had resulted in overly formalist approaches to Old French literature. Through his work on Arthurian romance and the feudal epic cycle, read in conjunction with *coutumiers* from the early 1200s (Normandy, Brittany, Orléans, Beauvais, Anjou), Bloch identified striking resemblances of formulae, gesture, and ritual connecting the procedures of the feudal court with those of literary performance of inquest. So both *coutumiers* and early vernacular works are read as written traces of a world in transition; both have an organic role in shaping that transition towards greater political and economic centralization over the course of the thirteenth century.

Since Bloch, other medievalists have set literary and legal discourses in historically nuanced dialogue, sometimes with insights from poststructural developments. Coinciding with the emergence of gender studies in the early 1990s was Kathryn Gravdal's 1991 work on sexual violence in medieval French culture.[14] Gravdal showed how linguistic paradigms of rape in fictional texts resurfaced in legal documents, retaining their affective charge. Thus 'translated' into legal documents or a courtroom hearing, literary fragments might have a bearing on the way deeds were perceived, controlled, authorized, or penalized. Gravdal's reading of female saints' lives, Chrétien de Troyes, the *Roman de Renart*, and *pastourelles* reveals not only conflicting images of sexual behaviour, but also a complicity between Old French literature and medieval law in perpetuating rape of women as a culturally acceptable practice. No less significant, from a medieval male perspective it would seem, was what Helen Solterer has explored as the *femme–diffame* problem.[15] Damaging women's names and reputations became a matter of litigation and public redress in late medieval France, especially in the controversy provoked by Alain Chartier's fifteenth-century courtly poem about a remorseless woman, *La Belle Dame sans merci*. Chartier's *Belle Dame* and his ensuing *Excusacioun aus dames* sparked a female riposte: the *Response des dames faicte a maistre Alain*, attributed to a trio of courtly ladies (Jeanne, Marie, and Catherine).[16] As Solterer argues, the modern critical tendency to name the respondents as women of the court has unwittingly reinforced the medieval clerical stereotype of *damoiselles d'honneur* as gossips.[17] The *Belle Dame* controversy has stimulated further reflection on the juridical problem of the text's public accountability, and the difficulties of adjudicating this.[18]

[14] Kathryn Gravdal, *Ravishing Maidens: Writing Rape in Medieval French Literature and Law* (Philadelphia: University of Pennsylvania Press, 1991).

[15] Helen Solterer, *The Master and Minerva: Disputing Women in French Medieval Culture* (Berkeley: University of California Press, 1995).

[16] Pierre Champion named the three *Belle Dame* respondents as Jeanne Louvet (Mme de Bothéon), Marie Louvet (Mme de Vaubonnais), and Catherine de L'Isle-Bouchard; Pierre Champion, *Histoire poétique du quinzième siècle*, 2 vols (Paris: Honoré Champion, 1923), I, 71.

[17] Solterer, *The Master and Minerva*, p. 178.

[18] This juridical quandary might point to a crisis of courtly love in an increasingly urbanized society, as argued by Karin Becker in 'La Mentalité juridique dans la littérature française (XIII^{e}–XV^{e} siècles)', *Le Moyen Âge*, 103 (1997), 309–27. However, the later interventions in the *Belle Dame* debate show a more demonstrable move from juridical to medical discourses, in which legalistic innocent/guilty binaries may be resisted, and where disease metaphors may give a sense of hope. See Julie Singer, 'Penal and Palliative Discourses in the Debate of the *Belle Dame sans*

Turning from poetry to theatre studies we find a major contribution in the work of Jody Enders, who operates at the intersections of French medieval theatre and law. In a lively series of monographs, Enders has shown how forensic rhetoric (in the ancient lineage of Aristotle, Cicero, and Quintilian) is indissociable from the origins of medieval vernacular drama, characterized by a continuous snaking between legal statute, performance, and the poetic imitation of justice.[19] Enders demonstrates how the spectacular nature of violence is embedded in the very language of the law; conversely, the violence of the law expresses itself on the medieval stage, in scenes of violent births, miscarriages of justice, and especially torture.[20] Though Enders's most focused legal-literary work on torture, *The Medieval Theater of Cruelty*, is language-based, it does not reduce inflicted physical suffering to a series of linguistic or aesthetic constructs. For Enders, echoing Elaine Scarry, pain *is* pain, and not a metaphor of it; one that invites a broad spectrum of interdisciplinary investigation.[21] Medieval cruelty, moreover, is part of a long historical enquiry on theatre's potential for critiquing intentionality, and on texts as performance.

Recent work on the latter has taken a significantly different direction. Whereas Enders's work on drama and performance has forged connections with modern North American culture, the University of Amsterdam's 'Law and Drama' project has focused on historical performances of plays across France and the French-speaking Low Countries (1200–1600).[22] This is an ambitious project, spearheaded by Marie Bouhaïk-Gironès, Jelle Koopmans, and Katell Lavéant. Their collaborative work incorporates groundbreaking study of regional archives to understand more of the varying legal parameters that attempted to regulate pre-modern theatrical culture. What emerges is that actors' contracts have much to tell us about the staging of large-scale mystery plays, farces, and other spectacles. Legal constraints were imposed by ecclesiastical and municipal authorities to uphold a normative vision of responsible acting; actors sometimes managed to resist such constraints but faced stiff penalties when and where laws were enforced.[23]

Where law-breaking is concerned, it seems fitting to mention some of the myriad studies of the two great rogues of late medieval French culture: the poet François Villon and his (sometime) homologue, the lawyer Pierre Pathelin.[24]

Mercy: Achille Caulier's *Cruelle Femme en Amour* and *Hôpital d'Amour*', *Journal of Medieval and Early Modern Studies*, 46 (2016), 89–115.

[19] Jody Enders, *Rhetoric and the Origins of Medieval Drama* (Ithaca, NY: Cornell University Press, 1992); *The Medieval Theater of Cruelty: Rhetoric, Memory, Violence* (Ithaca, NY: Cornell University Press, 1999); *Murder by Accident: Medieval Theater, Modern Media, Critical Intentions* (Chicago, IL: University of Chicago Press, 2009).

[20] See further Paul Cohen, 'Torture and Translation in the Multilingual Courtrooms of Early Modern France', *Renaissance Quarterly*, 69 (2016), 899–939.

[21] Enders, *The Medieval Theater of Cruelty*, p. 9. See also Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (Oxford: Oxford University Press, 1985).

[22] Center for Medieval and Renaissance Studies Amsterdam, 'Law and Drama', <https://cmsa.uva.nl>.

[23] See Marie Bouhaïk-Gironès and others, 'Legal Theory, Legal Practice and Drama (1200–1600)', *Law and Humanities*, 5 (2011), 75–95; and, more recently, *La Permission et la sanction: théories légales et pratiques du théâtre (XIV^e–XVII^e siècle)*, ed. by Marie Bouhaïk-Gironès, Jelle Koopmans, and Karell Lavéant (Paris: Classiques Garnier, 2017).

[24] On the wider significance of both as villains, see Jonathan Patterson, *Villainy in France, 1463–1610: A*

Celebrated for centuries as landmarks of French literature, Villon's *Testament* and *La Farce de Pathelin* need no introduction. Both texts — if less so their elusive authors — have a connection with the legal-literary world of the *basoche* and with the Parlement de Paris.[25] *Basochiens* were renowned for their burlesquing of literary forms in unruly theatrical performances. Their activities accelerated the success of the literary personae of Villon and Pathelin, who would become synonymous with the genres of faux-legal testament and judiciary farce in France from the late fifteenth century. Testamentary writing, most frequently associated with Villon, is an amalgamation of poetic fiction and pseudo-will; as Tony Hunt, Jacqueline Cerquiglini-Toulet, and Jean Dufournet have shown, it should be considered in relation to much older forms, including Roman legal texts (the Code of Justinian), and the Old Testament.[26] Judiciary farce, exemplified by *La Farce de Pathelin*, makes a mockery of the legal professional through the staging of litigation and courtroom antics.[27] The slipperiness of language in *Pathelin* is frequently compared with the polyphony of voices in Villon's *Testament*; a strong indication, then, of their ongoing literary appeal, though their legal specificities tend to be more of a specialist quarry.

From a legal-literary perspective, the sixteenth century affords divergent approaches along the lines of gender. As we shall see, the woman's voice and the question of its status (legal or otherwise), has posed a rather different set of interpretative challenges from what has hitherto been the majority focus on male jurist elites. Regarding the latter, two important studies in intellectual history by Donald Kelley and Ian Maclean have enabled a host of detailed enquiries on how sixteenth-century legal thought and practice related to older medieval traditions.[28] Early twenty-first-century scholars in France have showed how Renaissance humanism evolved through complex legal and literary intersections, resulting in a particular male juridical *habitus*.[29] It is no accident that the writing habits of sixteenth-century jurists suggest a continuum of legal-literary discourse arising from rhetorical training, the diligent scrutiny of texts, an awareness of their multivalent forms and structures, and of their diverse applications. The drafting of legal documents (commentaries, *arrêts*) might inform literary composition; literary

Transcultural Study of Law and Literature (Oxford: Oxford University Press, 2021).

[25] A *basoche* was a guild of legal clerks attached to a regional Parlement. See Marie Bouhaïk-Gironès, *Les Clercs de la Basoche et le théâtre comique: Paris, 1420–1550* (Paris: Honoré Champion, 2007).

[26] Tony Hunt, *Villon's Last Will: Language and Authority in the 'Testament'* (Oxford: Clarendon Press, 1996); Jacqueline Cerquiglini-Toulet, *L'Écriture testamentaire à la fin du Moyen Âge: identité, dispersion, trace* (Oxford: Legenda, 1999); Jean Dufournet, *Dernières recherches sur Villon* (Paris: Honoré Champion, 2008).

[27] See Donald Maddox, *Semiotics of Deceit: The Pathelin Era* (Lewisburg, PA: Bucknell University Press, 1984), and F. R. P. Akehurst, 'Seeing Justice Done: Courtroom Scenes in Medieval French Theatre', *Cahiers de recherches médiévales et humanistes*, 25 (2013), 75–91.

[28] Donald Kelley, *Foundations of Modern Historical Scholarship: Language, Law, and History in the French Renaissance* (New York: Columbia University Press, 1970); Ian Maclean, *Interpretation and Meaning in the Renaissance: The Case of Law* (Cambridge: Cambridge University Press, 1992).

[29] See particularly *Littérature et droit, du Moyen Âge à la période baroque: le procès exemplaire*, ed. by Stéphan Geonget and Bruno Méniel (Paris: Honoré Champion, 2008); *L'Écriture des juristes XVI^e–XVIII^e siècle*, ed. by Laurence Giavarini (Paris: Classiques Garnier, 2010); and *Écrivains juristes et juristes écrivains: du Moyen Âge au siècle des Lumières*, ed. by Bruno Méniel (Paris: Classiques Garnier, 2015).

works, especially emblem books in the tradition of Andrea Alciato, contributed to the art of memorization in legal training.[30] Law and literature are intrinsically bound up with each other; thus, the question of 'écrire en juriste' necessitates a nuanced 'juridical' understanding of writers such as Michel de Montaigne, who worked as a magistrate and whose *Essais* rigorously resist any number of stable categories. In this regard, the leading study remains André Tournon's *Montaigne: la glose et l'essai*.[31] Highlighting the underlying affinities of Montaigne's *Essais* with sixteenth-century juridical commentaries, Tournon exposes an idiosyncratic scepticism in the work of Montaigne: an interrogative process of verification, judiciously weighing up evidence — and always provisional in its judgements.

Montaigne was one of a number of legally trained writers who grappled with the most intractable conflicts that occurred in and beyond the courtroom. Stéphan Geonget offers an extensive investigation of perplexity in Renaissance legal and literary contexts, with examples from Montaigne and especially from Rabelais to illustrate the problems of resolving a *casus perplexus* — be it through methods of chance (dice), awaiting a miracle, privileging one party over another, or simply giving up.[32] Geonget's learned handling of legal and biblical hermeneutics offers a cogent framework for reading well-known episodes of Rabelais: the comic trial between Baisecul and Humevesne (*Pantagruel*); the follies of Judge Bridoye, and, especially, the ongoing 'case' of Panurge's marriage dilemma throughout the *Tiers Livre*. Geonget's work illustrates a wider sixteenth-century preoccupation with fiction: at once a form of imaginative, verisimilar, or poetic discourse, and a form of juridical/judiciary argument *comme si*, that extends the law to new circumstances.[33] Legal and literary fictions could be conspicuously reshaped to produce narratives offering new perspectives on the same event. Natalie Zemon Davis's highly influential study of letters of remission and Ullrich Langer's work on Marguerite de Navarre's *Heptaméron* offer contrastive pictures of the Renaissance 'case narrative': an aptitude for inventiveness in law, and, in the literary text, a space where the law's authority is contested by male and female storytellers.[34]

The most famous test of legal authority in sixteenth-century France concerned Martin Guerre, the French peasant who abandoned his family, then sensationally reappeared in 1560 during the trial of the man accused of impersonating him. The case of Martin Guerre has prompted intriguing reactions over four hundred years,

[30] See Valérie Hayaert, 'Emblems', in *The Oxford Handbook of Law and the Humanities*, ed. by Simon Stern, Maksymilian Del Mar, and Bernadette Meyler (Oxford: Oxford University Press, 2020), pp. 757–78.

[31] André Tournon, *Montaigne: la glose et l'essai* (Paris: Honoré Champion, 2000) with a 'Réexamen' of the first edition (Lyon: Presses universitaires de Lyon, 1983). In his 'Réexamen', Tournon gives greater attention to the function of digression ('effets de rupture' as signalled by psychoanalytic approaches to Montaigne). Reflecting further on Montaigne's sifting of witness statements, he acknowledges his debt to the legal historian Katherine Almquist on Montaigne as a rapporteur of depositions.

[32] Stéphan Geonget, *La Notion de perplexité à la Renaissance* (Geneva: Droz, 2006).

[33] See further Kathy Eden, *Poetic and Legal Fiction in the Aristotelian Tradition* (Princeton, NJ: Princeton University Press, 1986).

[34] Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford, CA: Stanford University Press, 1987); Ullrich Langer, 'The Renaissance Novella as Justice', *Renaissance Quarterly*, 52 (1999), 311–41.

from its first commentators (the jurists Jean de Coras and Montaigne) to modern academics. Novelistic, screen, and radio productions are well known. As well as providing a test case of legal perplexity (Geonget), and of the analytical nature of fiction (John O'Brien),[35] Martin Guerre has raised two important questions of gender: firstly, the extent to which a woman in mid-sixteenth-century France (in this case, Bertrande, the wife of Martin) might have sufficient agency and independence to ensure herself a better life outside of the marriage covenant; and secondly, whether her testimony should be credible,[36] both in an early modern court and in academic retelling thereafter (Natalie Zemon Davis, Elizabeth Guild).[37]

The second question leads to wider considerations of historical process concerning the place of woman in Renaissance scholarship. Carla Freccero has long studied variants of female subjectivity in French literature with poststructural and psychoanalytic insights. In an early piece, Freccero analyses maternal authority vis-à-vis Marguerite de Navarre and her daughter, Jeanne d'Albret. Freccero reads their correspondence alongside court documents, notarial records, and literary texts, to interrogate the right of women to protest against arranged marriages or against other unwanted unions with men.[38] In a number of other pieces Freccero questions whether Panurge's trick on a haughty lady (*Pantagruel*, Chapter 22) should be considered as sexual assault by proxy.[39] Freccero reads this notorious episode as an allegory of a much longer historical phenomenon. The misrecognition of sexual harassment persists through the ages, whether the offence eludes a judicial enquiry (as it does in Rabelais's text) or is pursued through the courts, as per the high-profile Anita Hill versus Clarence Thomas hearings in the US (1991). The 2020 sentencing of Harvey Weinstein might afford a more optimistic counterpoint to Hill versus Thomas. Nevertheless, as Jonathan Patterson shows, Rabelais's version of *femme–diffame* remains problematic, given the absence of male advocacy for the female victim.[40] With its idiosyncratic combination of

[35] John O'Brien, 'Suspended Sentences', in *Le Visage changeant de Montaigne / The Changing Face of Montaigne*, ed. by Keith Cameron and Laura Willett (Paris: Honoré Champion, 2003), pp. 195–206, and John O'Brien, 'The Touch of Man on Woman: Dramatizing Identity in *The Return of Martin Guerre*', in *Filming and Performing Renaissance History*, ed. by Mark Thornton Burnett and Adrian Streete (London: Palgrave Macmillan, 2011), pp. 50–64.

[36] Reflections on the virtues and vices of man and woman had a practical application in law — to win cases in family disputes over inheritance and marriage. See Lyndan Warner, *The Ideas of Man and Woman in Renaissance France: Print, Rhetoric, and Law* (Farnham: Ashgate, 2011).

[37] Natalie Zemon Davis, *The Return of Martin Guerre* (Cambridge, MA: Harvard University Press, 1983); Elizabeth Guild, 'Adultery on Trial: Martin Guerre and His Wife, from Judge's Tale to the Screen', in *Scarlet Letters: Fictions of Adultery from Antiquity to the 1990s*, ed. by Nicholas White and Naomi Segal (London: Macmillan, 1997), pp. 45–55. See further Robert Findlay's critique of Davis's theory of Bertrande's collusion with the imposter, Arnaud Du Tilh, and Davis's response, both in *The American Historical Review*, 93 (1988): Findlay, 'The Refashioning of Martin Guerre', 553–71, and Davis, 'On the Lame', 572–603.

[38] Carla Freccero, 'Voices of Subjection: Maternal Sovereignty and Filial Resistance in and around Marguerite de Navarre's *Heptameron*', *Yale Journal of Law and the Humanities*, 5 (1993), 147–57.

[39] In particular, see Carla Freccero, 'Feminism, Rabelais, and the Hill/Thomas Hearings: Return to a Scene of Reading', in *François Rabelais: Critical Assessments*, ed. by Jean-Claude Carron (Baltimore, MD: Johns Hopkins University Press, 1995), pp. 73–82.

[40] See ~~further~~ Patterson, *Villainy in France*, p. 134.

misogynistic farce and gospel parody, Rabelais's 'plus grande villanie du monde' still eludes a final verdict.

Stage and page: broadening the dissemination of legal-literary discourses~~, 1600–1789~~

Law and literature studies of the seventeenth century propose a number of reflections on the relationship between text and spaces — the law court, public spaces such as streets and bookshops, the privacy of epistolary exchanges, and the theatrical stage.[41] Where questions of theatricality are at the fore, so are the numerous contributions of Christian Biet, spanning both comic and tragic forms, and covering the big three: Corneille, Molière, Racine.[42] In *Œdipe en monarchie*, Biet outlines how *Oedipus Tyrannus* — a potentially problematic play for absolutist monarchy — was translated and adapted for the seventeenth-century stage.[43] This investigation into the tragic representations of the judicial system leads him to consider a number of legal issues including incest, civil law, illegitimacy, and scandal. In a later work, *Droit et littérature sous l'Ancien Régime*, the law again takes centre stage as the subject of literary interpretation, this time with a stronger emphasis on legal vocabulary including *faits notoires*, proof by confession, and *demi-preuves*.[44] In a series of cases preceded by an in-depth exposition of his methodological framework, Biet demonstrates how the professional legal training of several authors filters into the plots, characters, and rhetoric of their texts. This in turns leads him to reflect on the law–literature interface as a locus for the evaluation, and finally to the questioning of contemporary societal and ethical modes of thought (bearing in mind legally ambiguous family members and rights of succession).

The legal world in literature is not of course confined to its representation on stage, allegorical or otherwise. Adopting a Foucauldian approach whereby justice is instrumentalized by the monarchy as a means of imposing its sovereignty, Thierry Pech's study of *histoires tragiques* works against such binaries as collective and individual, or moral and legal, whilst also demonstrating that this literary genre came to embody certain aspects of the judicial process including proofs, witnesses, and the *instruction narrative*.[45] Moving between the legal and the fictional, Thibaut Maus de Rolley offers an intriguing case study of a priest whose execution for witchcraft generated various pamphlets and tragical retellings from its initial

[41] On the theatre, see for example Adam Horsley, '"Ne l'as-tu point vu passer, mon garde?": Towards a Third Version of Cyrano de Bergerac's *Le Pédant joué*', *French Studies Bulletin*, 123 (2012), 28–31. For a recent literary consideration, see *Staging Justice in Early Modern France*, ed. by Valérie Dionne and Michael Meere (= special issue, *Early Modern French Studies*, 42.2 (2020)). Dionne and Meere present this issue as methodologically distinct from the law and literature movement.

[42] On comedy, see for example Christian Biet, 'Molière et l'affaire *Tartuffe* (1664–1669)', *Histoire de la justice*, 23 (2013), 65–79. Racine's one comedy, *Les Plaideurs*, has received nothing like the attention of his tragedies, and still less by way of sustained legal-literary analysis. See nonetheless Louise K. Horowitz, 'Justice for Dogs: The Triumph of Illusion in *Les Plaideurs*', *The French Review*, 52 (1978), 274–79.

[43] Christian Biet, *Œdipe en monarchie: tragédie et théorie juridique à l'âge classique* (Paris: Klincksieck, 1994).

[44] Christian Biet, *Droit et littérature sous l'Ancien Régime: le jeu de la valeur et de la loi* (Paris: Honoré Champion, 2002).

[45] Thierry Pech, *Conter le crime. Droit et littérature sous la Contre-Réforme: les histoires tragiques (1559–1644)* (Paris: Honoré Champion, 2000).

arrêt.[46] In the seventeenth and eighteenth centuries, the *histoires tragique* sat alongside the factum, another kind of forensic hybrid that has been a consistent focus in legal-literary studies of early modernity. The factum apprised a judge of the main facts in a court case, making it the 'case narrative' par excellence of the judicial process. Replete with rhetorically charged images, facta were often printed, and circulated news of trials among the literate public beyond the courtroom.[47]

When considering the forerunners of *faits divers*, however, one must not overlook the 'basest' genres — obscene sonnets, scurrilous canards, and street-songs. Historically, these were collected in large numbers by those with connections to the law. In a major study of Pierre de L'Estoile (a Parisian chancery official best known for his fulsome diaries), Tom Hamilton exposes the exchanges of lewd poems, pamphlets, and other ephemera in and around the Palais de Justice during the reigns of Henri III and Henri IV.[48] Such material circulated both in written form and orally, as news, gossip, and song. Una McIvenna's extensive work on execution ballads across Europe has opened up new lines of research in early modern sound studies.[49] Building on the work of McIvenna and Hamilton, Nicholas Hammond draws attention to the unequal treatment of homosexuals by seventeenth-century French law courts.[50] He follows the literary depictions of these legal events from private epistolary correspondence into oral exchanges in public spaces. The very ephemerality of the sonic encounter — talking or singing about what contemporary law and culture conceptualized as sodomy — made it all the more difficult for the authorities to identify, police, and prosecute the 'authors' of subversive songs and poems that could continue to circulate whether they left a written trace ~~or not~~.

Policing and prosecution shifts the emphasis from representation to confrontation, particularly in studies that consider how far authorities could attempt to regulate at least the written word. Far from being limited to strictly literary entities, texts as material objects could be perceived as illegal commercial products, seditious ideological weapons, or even as pieces of evidence to be brought into the criminal chamber during their author's trial.[51] With legislative acts and wider forms of subversion in mind, Adam Horsley analyses the criminal trial as a space for critical literary readership. Having outlined the mechanics of the criminal justice system relative to the prosecution of literature, he explores the ways in which

[46] Thibaut Maus de Rolley, 'The English Afterlife of a French Magician: The Life and Death of Lewis Gaufredy (1612)', in *Seventeenth-Century Fiction: Text and Transmission*, ed. by Jacqueline Glomski and Isabelle Moreau (Oxford: Oxford University Press, 2016), pp. 34–48.

[47] See Christian Biet, 'Judicial Fiction and Literary Fiction: The Example of the Factum', *Law and Literature*, 20 (2008), 403–22.

[48] Tom Hamilton, *Pierre de L'Estoile and His World in the Wars of Religion* (Oxford: Oxford University Press, 2017). For further legal-literary analysis of L'Estoile, see Patterson, *Villainy in France*.

[49] Una McIlvenna, *Singing the News of Death: Execution Ballads in Europe 1500–1900* (Oxford: Oxford University Press, 2021). McIlvenna's database contains many French examples: Una McIlvenna, 'Execution Ballads', <https://omeka.cloud.unimelb.edu.au/execution-ballads>.

[50] Nicholas Hammond, *The Powers of Sound and Song in Early Modern Paris* (University Park: Penn State University Press, 2019).

[51] See initially Alfred Soman's seminal article, 'Press, Pulpit and Censorship in France before Richelieu', *Proceedings of the American Philosophical Society*, 120 (1976), 439–63.

certain author traits (for example, the uses of *simulatio* and *dissimulatio*, the identity of the *je poétique*, and writers' ownership of the intellectual currency of their works) were translated from the world of letters to the criminal chamber, and posits that the magistrates' textual engagement was often dependent on legislation on comparable social and commercial infractions.[52]

A crucial case study in Horsley's monograph, and something of a watershed moment for the consolidation of the state's power both to regulate and to censor literary production in the nascent years of French absolutism, was the trial of the libertine poet Théophile de Viau (1623–25). Stéphane Van Damme's study of the Théophile affair goes beyond the confines of the courtroom in order to identify societal transformations which led to the poet's denunciation within an *espace polémique*.[53] By situating this legal event in relation to tensions between the worlds of the *satyrique* and discursive powers, Van Damme furthermore calls our attention to the battle for public opinion between the poet's literary engagement with his trial proceedings on the one hand, and his persecutors' efforts to instil fear of a nefarious libertine menace to society through judicial action on the other. This interplay between the legal repression of perceived literary and social ills is considered from a broader chronological perspective by Joan DeJean.[54] Focusing on Théophile, *L'École des filles*, and Molière, DeJean explores the transformation of obscenity from an elite literary concern to a wider threat to civic well-being protected by the law. This evolution, she argues, was triggered by the expansion of the book market to include non-elite readers and notably women, leading secular censorship to alter early modern understandings of the legal responsibility for textual production as well as the very concept of authorship.

This emphasis on legal responses to the widening dissemination of literature carries strongly through to eighteenth-century French studies. Robert Darnton tracks the networks used by non-elites to disseminate six poems critical of Louis XV in the famous Affaire des Quatorze (1749). Darnton's study foregrounds the role of oral culture as a facilitator for literary engagement, with an analysis of the corresponding legal records and the judiciary's response to literature as crime.[55] He returns to eighteenth-century Paris in his subsequent book, whose geographical and chronological scope is mirrored by his multifaceted treatment of censorship in terms of literary, political, and cultural stakes as well as the role of public opinion.[56] Here again, Darnton offers valuable accounts of the legal apparatus available to the absolutist state in policing what can at first appear to be

[52] Adam Horsley, *Libertines and the Law: Subversive Authors and Criminal Justice in Early Seventeenth-Century France* (Oxford: Oxford University Press, 2021). On law–literature intersections see also Horsley, 'Blasphemy Hunters: Nicolas de Verdun and the Punishment of Criminal Speech in Early Bourbon France', *French Studies*, 75 (2021), 145–62.

[53] Stéphane Van Damme, *L'Épreuve libertine: morale, soupçon et pouvoirs dans la France baroque* (Paris: CNRS, 2008), pp. 17–18.

[54] Joan DeJean, *The Reinvention of Obscenity: Sex, Lies, and Tabloids in Early Modern France* (Chicago, IL: University of Chicago Press, 2002).

[55] Robert Darnton, *Poetry and the Police: Communication Networks in Eighteenth-Century Paris* (Cambridge, MA: Belknap Press, 2010).

[56] Robert Darnton, *Censors at Work: How States Shaped Literature* (New York: W. W. Norton, 2014).

harmless texts, written or disseminated by individuals occupying unthreatening echelons of the social hierarchy. In consciously avoiding 'either/or' dichotomies in favour of a comparative ethnographic approach, he argues that the law–literature confrontation paradoxically fostered a shared and at times collaborative (re)defining of the nature of reading, writing, and the limits of both social and legal acceptability of literary expression in a world where the 'author' and legal 'censor' often merged as one.

When considering acceptable forms of expression in the eighteenth century, one should furthermore note that a factum was not the only legal document which could be presented before the court of public opinion. For, as David A. Bell has demonstrated, the factum's more overtly 'literary' cousin, the *mémoire judiciaire*, gained increasing prominence during the eighteenth century, since it could be published with relatively little obstruction from state censors.[57] As such, Parisian lawyers in particular were able to capitalize on professional and literary freedoms in order to influence public opinion in the decades leading up to the Revolution, including on the issue of citizens' rights as *porte-paroles* for reform, and to present their specialized legal reflections as literary texts to a non-specialist reading public. As with Bell, Sara Maza's work stresses the significance of *mémoires judiciaires* which amounted to sensational publishing events in themselves: in the build-up to the Revolution, barristers with a ready command of sentimental autobiography and theatrical melodrama spelled out to the public the implications of private crises, imploring their readers to 'judge' and 'witness' the truth of a given case.[58]

As in the previous century, the theatrical output of the eighteenth century attests to the creative and indeed reformative potential of justice. Yann Robert's study of legal trials both in and as theatre pairs criminal history with innovative readings of several plays. He explores how reforms to standard legal processes were often inspired by their refraction through the dramatic lens of the pre-revolutionary stage and resultant audience experiences, as well as interdisciplinary notions of justice as a public performance.[59] As Robert argues, part of what makes judicial theatre so fascinating is the challenge it poses to orthodox accounts that make eighteenth-century theatrical history a progression from ritual to bourgeois entertainment inaugurated by texts such as Diderot's *Le Fils naturel* (1757).[60] Robert's corpus offers a nuanced account of theatrical spectacles arising from causes célèbres: for instance, the infamous Affaire Jean Calas (1761–65), which saw

[57] David A. Bell, *Lawyers and Citizens: The Making of a Political Elite in Old Regime France* (Oxford: Oxford University Press, 1994).

[58] Sarah Maza, *Private Lives and Public Affairs: The Causes Célèbres of Prerevolutionary France* (Berkeley: University of California Press, 1993).

[59] Yann Robert, *Dramatic Justice: Trial by Theater in the Age of the French Revolution* (Philadelphia: University of Pennsylvania Press, 2018). See also Yann Robert, 'The Everlasting Trials of Jean Calas: Justice, Theatre and Trauma in the Early Years of the Revolution', in *Representing Violence in France, 1760–1820*, ed. by Thomas Wynn (Oxford: Voltaire Foundation, 2013), pp. 103–20; and Yann Robert, 'Des acteurs au barreau, ou l'invention de l'avocat moderne', *Dix-huitième siècle*, 49 (2017), 119–31.

[60] For a reading of Diderot's parodic ocular imperialism and its critique of judicial proofs, see Lisa Jane Graham, 'Les Témoins dans le droit et la littérature: la construction de l'intimité dans la France du 18e siècle', *Dix-huitième siècle*, 39 (2007), 145–60.

a Protestant dubiously condemned on the charge of murdering his son, and which in turn sparked Voltaire's famous *Traité sur la tolérance* (1763). Robert traces a flurry of late eighteenth-century re-enactments which transplanted to the stage the hardships of the Calas family, with subplots for Calas and Voltaire to boot — an example of what Robert calls 'trials of trials', in which historical failures of justice can be zealously reimagined.

Robert's work on theatre recalls Biet's, and both intersect with Maza's study of *mémoires judiciaires*, in that all three amplify the precarious status of the *Ancien Régime* family unit. In various ways they show how a legal-literary representation of marriage and the family served to entrench the major fault-lines of seventeenth- and eighteenth-century justice: infidelities, debts, inheritance feuds, imprisonments, executions, and marriage contracts.[61] If our prevailing view of *Ancien Régime* law is that it magnified and maintained historic prejudices against the underclasses — and indeed against women of all classes — then, as Biet points out, there will always be compelling historical exceptions, in which judicial dogma gave way to comprise. Biet points to the exceptionality of widows and unmarried women over twenty-five years of age who, unlike married women, did not require the permission of a male authority (husband, father, *tuteur*, or *curateur*) to enter into contractual negotiations and to engage in judicial proceedings.[62] Widows in particular, he suggests, could achieve a measure of justice in pre-revolutionary France — though it is questionable whether literary popularization of the injustices done to them significantly advanced their courtroom dramas.

Law and the modern novel: family, misfits, censorship~~, 1789 to present~~

The Revolution was itself a legal event, showcasing the law's powers, possibilities, and limitations. It kick-started the massive overhaul of *Ancien Régime* law that would culminate in the Napoleonic Civil Code. Poets reacted keenly, as Roger Pearson (echoing Shelley) claims, in the role of 'unacknowledged lawgivers': champions of justice, officiants of uncertainty and celebrants of alternative personal norms. Pearson thus studies aspects of the public careers and literary works of Chateaubriand, Staël, Lamartine, Hugo, Vigny, and most recently, Baudelaire.[63]

Gradually, post-revolutionary France saw the emergence of a new relationship of law to literature in France whereby the main literary focus would shift towards the novel, and the novel would be oriented more visibly at civil legal culture than at the criminal justice system.[64] Among *dix-neuviémistes*, much attention has been

[61] See further Julia Simon, *Beyond Contractual Morality: Ethics, Law, and Literature in Eighteenth-Century France* (Rochester, NY: University of Rochester Press, 2001). Simon discusses a number of well-known figures, including Rousseau, Diderot, Montesquieu, Charrière, and Sade.

[62] See Christian Biet, 'Quand la veuve contre-attaque: droit et fiction littéraire sous l'Ancien Régime', in *Femmes savantes, savoirs de femmes: du crépuscule de la Renaissance à l'aube des Lumières*, ed. by Colette Nativel (Geneva: Droz, 1999), pp. 17–26.

[63] Roger Pearson, *Unacknowledged Legislators: The Poet as Lawgiver in Post-Revolutionary France* (Oxford: Oxford University Press, 2016); Roger Pearson, *The Beauty of Baudelaire: The Poet as Alternative Lawgiver* (Oxford: Oxford University Press, 2021).

[64] For an overview, see Andrew Counter, 'Law and the Nineteenth-Century Novel', in *The Cambridge History of the Novel in French*, ed. by Adam Watt (Cambridge: Cambridge University Press, 2021), pp. 326–43.

paid to the literary representation of family law in the wake of the Revolution up to the First World War. Andrew Counter has investigated how the Code's provisions on the family emblematize the recreation of French society after 1789. Counter's legal-literary contributions trace the problematic trajectory of a familialist ideology, including a study of narratives of disputed paternity, and a 2010 monograph on inheritance as an intense matter of concern, be it the abolition of primogeniture, bequests, forms of testament, or 'spectacles of interest'.[65] Nicholas White considers the impact in French literature of the legalization of divorce in 1792.[66] Diluted by the Civil Code and suppressed by the Restoration, divorce was only fully established in France by the Loi Naquet of 1884. This law and its surrounding debates form the backdrop to White's account, which examines divorce in a series of Third Republic novels. White's work, like Counter's, highlights French literature's capacity to spotlight the pressure points on marriage and on family law in nineteenth-century France and beyond. As yet there is no legal-literary study that plots these pressure points in a longer, transhistorical narrative of the family unit; though, as we have seen in the work of Freccero, Biet, Maza, and Robert, the foundations of such a project may already be in place.[67]

Although nineteenth-century French novelists assign significant space to legal themes and discourses, only Balzac can rival the great British Victorian novelists (Charles Dickens, Wilkie Collins, George Eliot, Anthony Trollope) in the range and precision of his legal allusions. Accordingly, Balzac remains a favourite with legal-literary specialists: insanity law (*interdiction*) and the juridical status of paternity both stake their claim as prominent aspects of Balzacian realism.[68] A strikingly complex aspect of such realism is the many and varied queer characters — 'sexual misfits', in Michael Lucey's vocabulary — to populate Balzac's fictional universe. In his 2003 monograph, Lucey moves away from psychoanalytical approaches to Balzac, seeking instead a mode of connecting the sexual and the social with a strong focus on the Code and on property law.[69] Without a nuanced understanding of those deep-reaching tentacles of nineteenth-century French culture, Lucey contends, it is difficult to appreciate the implications of Balzac's more challenging thinking about misfit forms of sexuality that slip under the radar of institutions

[65] Andrew Counter, *Inheritance in Nineteenth-Century French Culture: Wealth, Knowledge and the Family* (London: Legenda, 2010); Andrew Counter, 'Always Uncertain: The Presumption of Legitimacy in Two *fins de siècle*', *Law and Literature*, 26 (2014), 65–85.

[66] Nicholas White, *French Divorce Fiction from the Revolution to the First World War* (London: Legenda, 2013). White's account of divorce projects forward into twentieth-century sociology of self-actualization, drawing on Anthony Giddens's notion of life politics and Zygmunt Bauman's notion of liquid modernity.

[67] See further Tony Tanner, *Adultery and the Novel: Contract and Transgression* (Baltimore, MD: Johns Hopkins University Press, 1979); Nicholas White, *The Family in Crisis in Late Nineteenth-Century French Fiction* (Cambridge: Cambridge University Press, 1999); and *State of the Union: Marriage in Nineteenth-Century France*, ed. by Rachel Mesch and Masha Belenky (= special issue, *Dix-neuf*, 11.1 (2008)).

[68] See Marion Mas, *Le Père Balzac: représentations de la paternité dans 'La Comédie humaine'* (Paris: Classiques Garnier, 2015), and Andrew Counter, '*L'Interdiction*, or, Balzac on the Margins of Law and Realism', *Law and Humanities*, 11 (2017), 24–43.

[69] Michael Lucey, *The Misfit of the Family: Balzac and the Social Forms of Sexuality* (Durham, NC: Duke University Press, 2003).

(the law, the family, the state). Illustrating this subsistence of the misfit by comparison with Balzac's canniest reader — Proust, no less — Lucey demonstrates how the socio-erotic forces of *La Comédie humaine* are irresistibly reinvigorated.

Moving from the discreet misfit to the misfit who arouses public outcry, we come upon another prominent site of scholarship at the juncture of nineteenth-century French law and literature: the obscenity trials that amplified the scandalous reputation of, among others, Gustave Flaubert and Charles Baudelaire (both were tried in 1857). Turning on the very question of what literature is, or should be, these major trials have long been a focus of attention;[70] but their importance has been reassessed in studies by Nicholas Harrison, Elisabeth Ladenson, Michèle Hannoosh, William Olmsted, and Marco Wan.[71] These studies trace a longer, transcultural narrative of literary censorship whereby obscene books became 'classics', as notions of 'art for art's sake' and sordid 'realism' over time became legally defensible principles. This trajectory followed no smooth teleology; it did not simply pit the ideals of literature against a repressive regime of censorship (Harrison, Ladenson, Hannoosh). Trial transcripts, prosecution and defence submissions, and oral argument all attest to the assiduity with which legal agents read provocative works. If *Madame Bovary* and *Charlot s'amuse* (a novel about an obsessive masturbator) bolstered, interrogated, and subverted orthodoxies about male identity, legal readers had no small part in it, as Wan argues.[72] Furthermore, according to Olmsted, hallmarks of modernist literary style — *style indirect libre*, multiple poetic personae — were negotiated through collaboration with the censor.

Within modern and contemporary French studies, the law and literature landscape is still taking shape. Two nascent periodicals may ~~bring these to the fore~~: the *Revue droit et littérature* (published by Lextenso), which has furthered reflection on legal and literary narratives of Europe, from the First World War to Brexit; and *Considérant: revue du droit imaginé* (published by Classiques Garnier), which promotes an interdisciplinary approach to topics such as judicial error.[73] Elsewhere, the multifaceted theme of censorship is likely to remain popular for book-length studies,[74] as Gisèle Sapiro's 2011 monograph suggests.[75] The 109th issue of *Romanic Review* extends coverage of the literary characteristics of the modern

[70] Various studies consider nineteenth-century literary censorship beyond Flaubert and Baudelaire; see especially Odile Krakovitch, *Hugo censuré: la liberté au théâtre au XIX^e siècle* (Paris: Calmann-Lévy, 1985).

[71] Nicholas Harrison, *Circles of Censorship: Censorship and Its Metaphors in French History, Literature, and Theory* (Oxford: Oxford University Press, 1996); Elisabeth Ladenson, *Dirt for Art's Sake: Books on Trial from 'Madame Bovary' to 'Lolita'* (Ithaca, NY: Cornell University Press, 2006); Michèle Hannoosh, 'Reading the Trial of the *Fleurs du mal*', *Modern Language Review*, 106 (2011), 374–87; William Olmsted, *The Censorship Effect: Baudelaire, Flaubert, and the Formation of French Modernism* (Oxford: Oxford University Press, 2016); Marco Wan, *Masculinity and the Trials of Modern Fiction* (New York: Routledge, 2017).

[72] Wan's expertise on legal habits of reading extends beyond French studies. See for instance *Reading the Legal Case: Cross-Currents between Law and the Humanities*, ed. by Marco Wan (Abingdon: Routledge, 2012).

[73] One could also mention the 'Droit et littérature' sub-series of 'Le Bien Commun' published by Éditions Michalon, a series exploring the legal, political, and ethical ramifications of the works of major writers and thinkers, including French ones.

[74] As Harrison notes (*Circles of Censorship*, p. 4), many socio-economic factors can create a form of 'censorship', including literacy, racism, structures of media ownership, state secrecy, privacy regulations, and the extraordinary powers assumed by governments in times of national emergency.

[75] Gisèle Sapiro, *La Responsabilité de l'écrivain: littérature, droit, et morale en France, XIX^e–XXI^e siècle* (Paris: Seuil, 2011).

censor who, it turns out, has a rich and varied repertoire of styles: administrative, pamphleteering, polemical, satirical, even quasi-academic.[76] Censorship will perhaps never go away quietly — and few know this better than legal practitioners themselves. Witness the lawyer Emmanuel Pierrat, who has written extensively on the subject, who has defended Michel Houellebecq against incitement to racial hatred, and, for whom, 'le livre n'est jamais en paix'.[77]

Book censorship is part of a wider discussion around what might constitute the final frontier of freedom of expression in modern France. No longer is it Sade, whose *œuvres complètes* have been in the literary mainstream for more than seventy years.[78] In the course of the twentieth century Sade enjoyed considerable intellectual backing, notably from the surrealists and then from the Tel Quel group, which would also back Pierre Guyotat's obscene novel, *Éden Éden Éden* (1970; banned from being advertised or sold to minors). For the late-twentieth-century avant-garde, countering censorship of the most subversive of texts amounted to seeking a utopian readerly *plaisir*,[79] but this asocial pursuit of pleasure has not been without its critics, who point to its failure to account for a more ambivalent outlook on censorship among writers in other legal-historical circumstances.[80] In other words, those who write as custodians of human liberty may find themselves oriented — and sometimes compromised — by legal phenomena more or less visible. On the one hand there is what Sapiro calls 'responsabilité-mérite' (recognition, honours, remunerations), and, on the other, penal sanctions.[81] All this raises the vexed ethical question of how authors should work out their sense of writerly vocation within the socio-legal regime they inhabit. If a Gabriel Matzneff can use literature and literary prestige to evade justice for a paedophilic obsession until very recently, can a Vanessa Springora, in turn, use literature to achieve for herself a sense of healing and closure that the law could never fully supply?[82]

Literature's power to instantiate lasting change is now an emergent theme in legal-literary research on francophone cultures beyond France.[83] There is a particular interest in women's manipulation of language and literary form vis-à-vis legal institutions after colonial administration ceased in Algeria. Ranjana Khanna

[76] For preliminary remarks, see Jean-Baptiste Amadieu and Thomas Hochmann, 'Introduction: Censure et style', *Romanic Review*, 109.1 (2018), 1–3.

[77] Sylvain Goudemare and Emmanuel Pierrat, *L'Édition en procès* (Paris: Léo Scheer, 2008). The phrase is taken from the publisher's online publicity material, <http://leoscheer.com/spip.php?article135>.

[78] A watershed moment was the trial and eventual exoneration (1956–57) of the publisher of the Sadean corpus, Jean-Jacques Pauvert, including legal depositions in defence of the latter from Jean Cocteau, André Breton, Jean Paulhan, and Georges Bataille.

[79] See notably Roland Barthes, 'Préface', *Sade, Fourier, Loyola* (Paris: Seuil, 1971), pp. 7–18.

[80] See Harrison, *Circles of Censorship*, pp. 121–204.

[81] Gisèle Sapiro, 'Responsabilité légale et responsabilité morale de l'écrivain: une perspective socio-historique', *Revue droit et littérature*, 1 (2017), 9–23.

[82] Vanessa Springora, *Le Consentement* (Paris: Grasset, 2020).

[83] On the wider relevance of the law to postcolonial thought (international law, imperial sovereignty, emergency law, human rights, biopolitics, necropolitics), see for instance, Achille Mbembe's *De la postcolonie: essai sur l'imagination politique dans l'Afrique contemporaine* (Paris: Karthala, 2000; rev. edn Paris: La Découverte, 2020), *Politiques de l'inimitié* (Paris: La Découverte, 2018), and *Necropolitics*, trans. by Steven Corcoran (Durham, NC: Duke University Press, 2019). See also Aimé Césaire's *Discours sur le colonialisme, suivi du Discours sur la négritude* (Paris: Présence africaine, 2004).

considers the much-publicized partnership between Gisèle Halimi and Simone de Beauvoir, resulting in a book defending the Algerian activist Djamila Boupacha, who had been tortured by the French police in Algiers.[84] For Khanna, *Djamila Boupacha* presents itself as the only recourse to a kind of virtual justice, as a quasi-legal record that goes beyond a referential account of Boupacha's ordeal. For all its ~~juridical~~ gravity, the book's literary effects are unmistakable, as Jill Jarvis has recently suggested, especially at points in Halimi's narrative that reveal moments of faltering and failure in legal language and protocols.[85] Therein lies the potential of a decolonized form of French writing, instantiating a singular denunciation of legalized violence. Others have since sought to establish an idiosyncratic idiom of denunciation in a novelistic format. In her novel of protest, *Le Blanc de l'Algérie* (1995), Assia Djebar offers a testimony against the violent rhetoric of Islamist militants. As Jane Hiddleston has shown, Djebar's multiple voices work to undermine ceremonial prescriptions imposed by religious fundamentalists at the funeral of the assassinated Algerian writer Kateb Yacine.[86] Where legal institutions are capable of organizing the process of mourning, Djebar's text affords diligent scrutiny of the repressive effects of the law on singular affect;[87] literature once again exhibits a capacity to shape modes of remembrance and melancholia that resist the resolution imposed upon them from outside.

Throughout this *état présent* we have traced an evolving affiliation of law with French literature, moving beyond mainland France. As a multicultural field, French studies affords important insights into transhistorical and transcultural problems shared by law and literature: the pursuit of freedom of expression; the shaping of different kinds of 'fiction'; the identification, administering, and performance of justice, in both public and private spaces; the representation of civil and criminal law beyond legal documents and court trials. Looking to the future, there is still much work to be done, especially on francophone cultures beyond France. We should be wary of any hasty impulse to foreground literature's alterity to the law, even if literary discourses have long been — and doubtless will continue to remain — the privileged medium through which legal systems can be *mis en examen*. Our legal-literary lenses will need further adjustment to the changing conditions of identity formation with respect to gender, race, and the processes of decolonization. And that means staying alert to literature's visionaries, not least those who create, in the words of Pearson, 'a framework for uncertainty [. . .] in which we begin to see the possibility of another, richer and more complex legislation'.[88]

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[84] Ranjana Khanna, *Algeria Cuts: Women and Representation, 1830 to the Present* (Stanford, CA: Stanford University Press, 2008); Gisèle Halimi and Simone de Beauvoir, *Djamila Boupacha* (Paris: Gallimard, 1962).

[85] Jill Jarvis, *Decolonizing Memory: Algeria and the Politics of Testimony* (Durham, NC: Duke University Press, 2021).

[86] Jane Hiddleston, 'Political Violence and Singular Testimony: Assia Djebar's *Algerian White*', *Law and Literature*, 17 (2005), 1–20.

[87] See Peter Goodrich, *Oedipus Lex: Psychoanalysis, History, Law* (Berkeley: University of California Press, 1995).

[88] Pearson, *Unacknowledged Legislators*, p. 30.