Early Modern & Modern Period

From Obsessive Metaphors to Juridical Myth: Some Proposals for a Metaphorical Reading of Early Modern Law and Literature

Romain Jobez[*]

As scholars of French literature will immediately recognise, the title of this paper is indirectly, perhaps ironically, borrowed from Charles Mauron's study *Des métaphores obsédantes au mythe personnel* (*From Obsessive Metaphors to Personal Myth*), which was a landmark text in psychoanalytic literary criticism.[1] When he published his first book *L'inconscient dans la vie et l'œuvre de Jean Racine* (*The Unconscious in the Life and Work of Jean Racine*)[2] in 1957, Mauron was among the pioneers who broke with the biographical analysis of literature and paved the way for the French move towards new criticism in the field of Racine studies.[3] In 'History or Literature?', the last chapter of his essay *On Racine*, Roland Barthes, undoubtedly one of the leaders of this movement, considered that this method was about deciphering the work of the French playwright as an allegory.[4] His plays were seen as 'a system of signification'[5] to be allegorically read; hence 'allegory is essentially a signification, bringing together a signifier and a thing signified'.[6] However as Barthes rightly pointed out, 'Racinian criticism does not discuss whether it might not be more interesting to study allegorical language as a phenomenon

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1   C Mauron, *Des métaphores obsédantes au mythe personnel. Introduction à la psychocritique* (José Corti, 1963).
2   C Mauron, *L'inconscient dans la vie et l'œuvre de Jean Racine* (Gap, 1957).
3   See S Doubrovsky, *The New Criticism in France*, D Coltman (trans) (Chicago University Press, 1973).
4   R Barthes, 'History or Literature?' in *On Racine,* R Howard (trans) (University of California Press, 1992) 153–72.
5   *Ibid*, 163.
6   *Ibid*, 164.

of the period, than to examine the probability of that key'.[7] At this point, Barthes wanted to stress the dangers of an analogical reading of literature, which risks constraining it within patterns of political meaning.

Indeed, should we not be just as cautious when attempting to bring together law and literature in the early modern era, and seeking to link them in analogical terms? Since the publication of Jean-Marie Apostolidès' *Le prince sacrifié* (*The Sacrificed Prince*), nobody contests the fact that seventeenth-century drama deals with the foundations of royal sovereignty, as built on the ruins of its medieval legitimacy.[8] Nevertheless, some scholars have recently shown their reluctance to concede that literary fiction can pass judgement on legal cases, when law itself, if considered as a fiction, fails to create an adequate judging narrative. Hélène Merlin-Kajman, for example, in her study of absolutism in French literature under the reign of Louis XIV, cautiously defends herself from any accusation of making too quick an analogy between the two:

> Ce qui est vrai des représentations juridiques ne le serait-il pas *a fortiori* des représentations littéraires dont la discursivité ne vise pas directement à organiser telle ou telle partie du réel? Quand il devient personnage littéraire ou figure discursive, le 'roi' ne peut-il pas se charger d'une force métaphorique libre, c'est-à-dire susceptible d'appropriations indéterminées?[9]

The metaphorical potential of the royal personage (the 'force métaphorique libre'), then, allows us to establish an analogical relationship between the two realms of literary and juridical fiction. Consequently, early modern tragedy relentlessly investigates the constitution or 'origin' of the metaphor of the king, to quote Apostolidès, who uses the latter term:

> Le théâtre met constamment en scène l'origine de la situation présente; il revient au moment de la fondation de l'État pour le célébrer comme un instant unique, religieux, à partir duquel l'histoire présente s'est instaurée.[10]

Drama essentially stages the history of the origin of the state. This idea has been noted and developed by John D Lyons in his study on Corneille, *The Tragedy of Origins*,[11] and was first conceived by Walter Benjamin:

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7   *Ibid.*
8   J-M Apostolidès, *Le Prince sacrifié* (Minuit, 1985).
9   'Might that which is true of juridical representations not apply all the more to literary representations, whose discursivity does not aim to organise directly any specific part of the real? When he becomes a literary character or a figure of the discourse could not the 'king' be endowed with a free metaphorical potential, that is to say capable of indefinite appropriations?' H Merlin-Kajman, *L'absolutisme dans les lettres et la théorie des deux corps* (Champion, 2000) 13.
10 'Theatre constantly stages the origin of the present situation; it returns to the State's founding moment in order to celebrate it as a unique and religious moment, on which the present instituted itself.' Apostolidès (n 8) 10.
11 JD Lyons, *The Tragedy of Origins: Pierre Corneille and Historical Perspective* (Stanford University Press, 1996).

Origin, although an entirely historical category, has, nevertheless, nothing to do with genesis. The term origin is not intended to describe the process by which the existent came into being, but rather to describe that which emerges from the process of becoming and disappearance.[12]

The Origin of German Tragic Drama shows again how allegory (defined by Quintillian as a 'continued metaphor' in his *Institute of Oratory*) allows a continual replaying of the founding scene of sovereignty, within the bloody dislocation and glorious reunification of the king's two bodies.[13] However, rather than discussing my work on the German mourning play and its connection with Kantorowicz's political theology, I will now concentrate on the idea of the metaphor itself as the tool that legitimises the analogical relationship between law and literature—a concept which, in my opinion, characterises the thought of the early modern period. In the aesthetic of French classical tragedy, fiction acquires its own legitimation and coherence from its verisimilitude. This notion should in turn be considered as a metaphor, enabling theatre audiences to take the place of the judge in both real and fictional cases concerning sovereignty, by drawing links between the first monarch and the most recent in an analogical process of reflexion.

The German philosopher Hans Blumenberg devoted a large part of his work to the study of metaphors.[14] In his *Paradigms for a Metaphorology*, he shows how every attempt to conceptualise the human experience uses a metaphorical discourse, whose function is to act as a middle ground between myth and the complete rationalisation of human thought. However, some of the metaphors are called 'absolute metaphors' because they demonstrate the limits of human reason when it is required to move towards the metaphysical: 'But metaphors can also—hypothetically, for the time being—be foundational elements of philosophical language, "translations" that resist being converted back into authenticity and logicality.'[15]

Here, Blumenberg underlines how philosophical language reveals its desire for universal knowledge in the rhetorical structure that defines its logic ('logicality'). According to Blumenberg, even the clearest philosopher has to rely on the transfer of meaning ('translations') entailed in the use of metaphor. As David Adams comments: '[H]e uses the concept of absolute metaphor to delimit and limit this type of knowledge, revealing an interest and optimism in the ability of reason to intrude further into the realm of rhetoric.'[16]

The study of these absolute metaphors is the topic of Blumenberg's metaphorology. In my opinion, theories on sovereignty, which focus on the monopoly on violence concentrated in a single person, should also be subjected to such a 'metaphorological'

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12 W Benjamin, *The Origin of German Tragic Drama*, J Osborne (trans) (Verso, 1998) 45.

13 See R Jobez, *Le théâtre baroque allemand et français: le droit dans la littérature* (Garnier, 2010).

14 For a brief introduction to Blumenberg's thought see D Adams, 'Metaphors for Mankind: The Development of Hans Blumenberg's Anthropological Metaphorology' (1991) 52 *Journal of the History of Ideas* 152–66.

15 H Blumenberg, *Paradigms for a Metaphorology*, R Savage (trans) (Cornell University Press, 2010) 3.

16 Adams (n 14) 156.

analysis. In his *Legitimacy of the Modern Age*, Blumenberg reproached Carl Schmitt (with whom he was embroiled in an ongoing debate) for taking the state of exception for granted, even though it is no more than a metaphor establishing an illegitimate political theology.[17] From this perspective, we can read Ernst Kantorowicz's *King's Two Bodies* as a metaphorology of political medieval theology.[18] In the latter case, the goal is to go back to the *origin* of the seizure of power by a real and/or juridical person, who ultimately accords himself a monopoly on violence. German baroque drama, as a contemplation of the *origin*, follows the same movement.

To return to Blumenberg, what is striking in his definition of 'absolute metaphors' is the use of the word 'transfer' in quotation marks, as if the author wishes discreetly to highlight the quasi-metaphorical sense in which it is employed. Apparently, even Blumenberg himself cannot avoid using some metaphors in his philosophical discourse. Theoretically, metaphor is indeed a transfer of sense, however the original German word 'Übertragung' also applies to Freudian transference. In some ways, metaphorical language transfers unconsciously significant elements into our conception of reality. At this point we can return to our discussion of the study of law and literature, by considering the work of Pierre Legendre. As both a psychoanalyst and jurist, he developed, according to Peter Goodrich, 'a Lacanian theory of the possession of the legal subject by law, a theory of subjective adhesion or love of law as faith in the Other, in Knowledge and Text'.[19] Speaking in terms of Lacanian psychoanalysis, we can state that transference belongs to the symbolic order and consists of the attribution of knowledge to the Other. This phenomenon is known as the Mirror Stage in Lacan's work. For Legendre, each society constructs its institutions as a reflection of itself through the Mirror as a Third, which, at the same time, helps social constructions or cultural representations to divide and reunite in the constitution of their identities:

> In the same manner that the mirror divides the subject-individual in some rather special ways, it separates it from itself by endowing it with an indubitable and infallible image of itself, in the same way as the discursive foundation of the Third (Mirror) acts as a stopper, as the 'buffer' device, which, although always modernizable as to the precise layout of the divided lines, ever and unfailingly accompanies the play of image and thought within a culture.[20]

All institutions, particularly juridical ones, are referred to as the 'absolute Other' or 'the Reference'. At this point, the psychoanalyst and jurist refers to the story of Narcissus, which he considers an allegory for the foundation of societies: 'The metaphor of the

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17 H Blumenberg, *The Legitimacy of the Modern Age*, RM Wallace (trans) (MIT Press, 1983).

18 For an attempt to link Blumenberg's philosophy in his theoretical fight with Schmitt with Kantorowicz's work see A Haverkamp, 'Bracton, and the End of Political Theology' (2004) 16 *Law and Literature* 313.

19 P Goodrich, *Languages of Law: From Logics of Memory to Nomadic Masks* (Weidenfeld and Nicolson, 1990) 262.

20 P Legendre, 'Appendix: Fragments' in P Goodrich, L Barshack and A Schütz (eds), *Law, Text, Terror: Essays for Pierre Legendre* (GlassHouse Press, 2006) 151.

absolute Other should be understood as the representation of a relation of identity for the divided subject.'[21] Although Legendre demonstrates a most comprehensive knowledge of Lacanian phraseology, he persists in considering it as a metaphorical apparatus throughout its anthropological analysis of Western societies. Moreover, he assumes that societies operate on a metaphorical level by producing images as a reflection of themselves:

> Principally, as a matter of fact, it is necessary for the social to assume the function of the Mirror, that of imposing the separation of oneself from oneself, from one's image, and it has thereby given rise to genuinely *theatrical* features. The social functions dramatically like the hierarchy at work on every stage, and like the manipulation which lies in the very principle of fiction. How it is done? To the same extent to which life effectively always requires a stage for a discourse to appear, a *scene*—which is to say, in literal translation, a site of shadow and darkness …—the life of society requires such a scene, such an empty logical space, as a site for itself, for the discourses of images and the plots *through which* it exists. … [I]n other terms again, society, every society, understood structurally, namely as an agency of civilization, cannot help wielding power, the power of instituting the human life that takes place in it. And in order to do so, it cannot but establish itself theatrically, as the stage or the scaffold that carries the social edifice. It is on this stage that society ceaselessly releases the fictions which enable its subjects to think the normative order theatrically, which is to say, structurally.[22]

It is immediately clear how Legendre's assessments can be applied productively to the connection between law and literature in early modern drama. Theatre offers society an image of itself by reflecting its own Mirror Stage, understood by the psychoanalyst and jurist as the theatrical foundation of institutions. Theatre does not simply state that 'the world is a stage'; rather it stages the institutions of the world in their own theatricality, disclosing the Third which simultaneously splits and joins the subject as it acts within political and juridical institutions.

This idea can already be found in Corneille's writings, especially in his *Examen de Clintandre*:

> Je dis qu'un Roi, un héritier de la Couronne, un Gouverneur de Province, et généralement un homme d'autorité, peut paraître sur le Théâtre en trois façons: comme Roi, comme homme, et comme Juge, quelquefois avec deux de ces qualités, quelquefois toutes les trois ensemble.[23]

Here the French playwright posits the existence of a third stage 'body' for the juridical king, that of the 'judge', who appears alongside the mortal man ('homme') and the eternal

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21 P Legendre, 'Introduction to the Theory of the Image: Narcissus and the Other in the Mirror' in *Law and the Unconscious: A Legendre Reader*, P Goodrich (ed), P Goodrich, A Pottage and A Schütz (trans) (Macmillan, 1997) 61.

22 Legendre (n 20) 148.

23 'I say that a King, an heir to the Crown, a Provincial Governor, and generally a man of authority, may appear in the Theatre in three ways: as a King, as a man, and as a Judge, sometimes with two of these qualities, sometimes with all three together.' P Corneille, 'Examen' in *Clitandre ou l'Innocence délivrée, Œuvres complètes*, 3 vols, G Couton (ed) (Gallimard, 1980) 1: 102.

institution of monarchy ('Roi') which he temporally embodies. Hélène Merlin-Kajman sees in the figure of monarch as jurist 'un tiers symbolique, [qui] dessine une fonction médiatrice de la représentation dont il est alors le représentant, fonction qui ne se trouve pas forcément perdue quand le roi n'apparaît plus dans ce rôle'.[24] The staged king acts as a Third ('tiers symbolique'), reflecting the Mirror Stage of the monarchical institution that rules over its subjects. In terms of Legendre's psychoanalysis of law, 'the "Third" … is always involved in the relationships between individuals and society, and without which no human subject has ever been constituted'.[25] In this way, the king as judge in seventeenth century French tragedy helps to re-enact the origin of the sovereign, at the very moment at which the monarch divides and reunites his two bodies. Moreover, by linking fiction to reality, he inscribes himself as an 'absolute metaphor' within the theatrical representation. The coherence of this metaphor is guaranteed by verisimilitude, a concept that underwent various transformations, and was received with controversy in the Classical Age. Blumenberg sees in it an absolute metaphor with ambiguous meaning:

> … the semblance [*Schein*] of truth [*Wahrheit*], whereby semblance has the double meaning of reflection, irradiation, aura, translucence, of representative and apophantic shining, on the one hand, and empty glitz, chimerical deception, illegitimate simulation, of fakery and forgery, on the other.[26]

Thus, with the beginning of modernity, verisimilitude lost its value as the semblance of truth ('Schein der Wahrheit') as defined by the Platonic tradition, instead becoming only 'Wahr-Scheinende' ('truthful appearance'), part of the calculating operations of reason.[27] Through verisimilitude, opinion acquires the value of a reasoned judgement, but, at the same time, verisimilitude still remains a product of speculative reasoning.

Corneille himself seems to be aware of these mutations of verisimilitude, stating that in his *Discours de l'utilité et des parties du poème dramatique*

> les grands sujets qui remuent fortement les passions, et en opposent l'impétuosité aux lois du devoir, ou aux tendresses du sang, doivent toujours aller au-delà du vraisemblable, et ne trouveraient aucune croyance parmi les auditeurs, s'ils n'étaient soutenus, ou par l'autorité de l'histoire qui persuade avec empire, ou par la préoccupation de l'opinion commune qui nous donne ces mêmes auditeurs déjà tous persuadés.[28]

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24 'a symbolic third [who] draws a mediating function of representation that he himself represents and does not necessarily vanish when the king does not appear in this role any more.' Merlin-Kajman (n 9) 16.

25 Legendre (n 20) 150.

26 Blumenberg (n 15) 81 ff.

27 *Ibid*, 21.

28 'major topics that stir strong passions, and by opposing impetuous decisions to the laws of duty, or to the tenderness of blood, must always exceed verisimilitude, and would not find belief among the listeners, if they were not supported, either by the authority of history which undoubtedly convinces, or by the concern of the common opinion that gives us all of those listeners as already convinced.' Corneille, 'Discours de l'utilité et des parties du poème dramatique' in *Œuvres complètes* (n 23) 3: 118.

John D Lyons comments on Corneille's statement thus: 'Tragedy, as excess, as transgression of human belief, seeks its foundation in history, which is beyond human law. History is the vehicle of violations of the "law of duty" as well as a violation of the believable.'[29] Exceeding verisimilitude ('aller au-delà du vraisemblable') allows theatrical representation to pass through the mere appearance of truth in order to approach plausibility ('l'opinion commune'), thus convincing the theatrical audience beyond reasonable doubt ('ces mêmes auditeurs déjà tous persuadés'). In fact, the broadly accepted definition of verisimilitude in French dramatic theory of the Classical period bears a moral meaning, as John D Lyons rightly remarks:

> [I]t is clear that this coded term, so easily misunderstood to signify a reflection of life as it normally appears, contains a heavy ethical and emotional charge. The verisimilar is the lawful, not only in terms of what the playwright is permitted to compose but in terms of what the characters are permitted to.[30]

Corneille's understanding of tragedy, whose subjects are legitimated by history ('l'autorité de l'histoire'), reveals how hypocritical verisimilar common sense can be: 'History, as the record of *broken patterns*, is already a form of prototragedy'.[31] It is not 'what happened but rather a selection of events that should not have happened!'[32] The representation of history in tragedy offers the spectator an insight into the origins of juridical institutions, at the point at which transgression lays the foundations of the law. Therefore, verisimilitude is not an objective category of truth, but rather comes from the audience's ability to pass judgment on historical events concerning both law and its transgression. In this sense, tragedy has to be excessive because it claims to reverse the Mirror held by the king's third body, turning it to reflect the sovereign itself, and thus reminding him that his legitimacy is merely the result of his seizure of a monopoly on violence.

In conclusion, studying law and literature of the early modern period involves deciphering the political myths that constitute early modern society. These myths are supported by metaphors that not only organise legal institutions, but affect the whole system of representation. The task of the critic is to reveal the obsessive and absolute metaphors that organise the theatrical representation of society through literary images. Drama indirectly reveals the tensions that sustain the use and misuse of power: 'To write is to jeopardize the meaning of the world, to put an *indirect* question that the writer, by an ultimate abstention, refrains from answering.'[33] It is the spectator that ultimately provides the answer, passing judgment over the significant and extraordinary events depicted by tragedy, an allegory of the whole world.

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29   Lyons (n 11) 177.
30   JD Lyons, *Kingdom of Disorder: The Theory of Tragedy in Classical France* (Purdue University Press, 1999) 106.
31   *Ibid*, 101.
32   *Ibid*.
33   Barthes (n 4) foreword, ix.