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Legal Shandeism: The Law in Laurence Sterne's *Tristram Shandy*

Laurent de Sutter*

Abstract: *Tristram Shandy* is the novel of scholasticism. Or, more precisely, it is the novel of casuistry. But rather than offering a mere critique of the grotesque of casuistry (a usual cliché of literature when confronted with law), it offers a very strange and very unexpected praise for casuistry, and for scholasticism generally. What *Tristram Shandy* allows us to understand is that what was considered grotesque in law actually is what should be regarded as its most precious treasure. But why is this so? The answer is simple: because it is through casuistry and scholasticism that law has succeeded in achieving what still remains the dream of literature—to consider the possibility of everything. Because casuistry and scholasticism are stubbornly formal, they allow lawyers to imagine possibilities, to play with hypotheses, that go way beyond the boundaries of social acceptability, artistic rules, or economic necessity. Law is the real world of imagination. Of this world, literature can only offer an approximation. And *Tristram Shandy* is the closest that literature can get.

Keywords: Laurence Sterne / Robert Graves / *Tristram Shandy* / law / literature / casuistry / swearing

I.

In 1925, at the age of thirty, Robert Graves was suddenly offered a teaching position at the University of Cairo. When he embarked for Egypt, in the company of poet Laura Riding, did he imagine that he would not see the United Kingdom again until 1939? No one knows. What is known is that during his trip, he began writing *Goodbye to All That*, his memoir of his experience as a soldier during World War I and the book that would ultimately

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make him famous. At the same time as Graves was thus revisiting his memories of the front, however, he also devoted himself to the writing of a small, strange brochure. This brochure was released in 1927 under the title *Lars Porsena—or The Future of Swearing and Improper Language* (Graves, 2008).¹ At first glance an erudite and joyful study of the art of swearing, the brochure was in reality a somewhat melancholy critique of the doublespeak and equivocation imposed upon language by the censorship of his day. According to Graves, contemporary society had become so rigid that henceforth even blasphemy and swearing wore the trappings of morality—that is, conformity to the present-day order—to the extent that their critical edge had become dulled. For Graves, in contrast, it was necessary to get reacquainted with the noble tradition of the art of swearing that censorship had slowly managed to consign to oblivion—and *Lars Porsena* was an attempt at the archaeology that could facilitate such a reacquainting.

Among the great figures belonging to this tradition, Graves had a particular predilection for Tristram Shandy, the luckless narrator of Laurence Sterne's eponymous masterpiece. Graves's claim was that a complete theory of swearing could be found in *Tristram Shandy*, a theory whose main arguments help to recall how periodic swearing constitutes the condition of all true mental health—and from there, all freedom. The problem with this claim, however, is that the arguments contained in *Tristram Shandy* are contradictory: on the one hand, the novel presents swearing as a dangerous and deleterious practice, and on the other, as an act of vigor and vitality. To illustrate the first argument—that the practice of swearing causes certain damage to both mind and body—Graves gives the floor to the narrator's father, Walter Shandy:

Small Curses, Dr. *Slop*, upon great occasions, quoth my father, (condoling with first upon the accident) are but so much waste of our strength and soul's health to no manner of purpose. — I own it, replied Dr. *Slop*. — They are like sparrow shot, quoth my uncle *Toby*, (suspending his whistling) fired against a bastion. — They serve, continued my father, to stir the humours — but carry off none of their acrimony: — for my own part, I seldom swear or curse at all — I hold it bad — but if I fall into it, by surprize, I generally retain so much presence of mind (right, quoth my uncle *Toby*) as to make it answer my purpose — that is, I swear on, till I find myself easy. A wise and a just man however would always endeavour to proportion the vent given to these humours, not only to the degree of them stirring within himself — but

to the size and ill intent of the offence upon which they are to fall. — “*Injuries come only from the heart,*” — quoth my uncle *Toby*. (Sterne, III, X: 151–52)²

Walter Shandy continues his homily by praising a certain bishop Ernulphus, who had discovered a method to preserve his health while continuing to practice the art of swearing. This method consists of a catalogue compiling “fit forms of swearing suitable to all cases, from the lowest to the highest provocations which could possibly happen to him” (Sterne, III, 10: 152). As Walter Shandy recounts to Dr. Slop and Uncle Toby, he himself has a copy of this catalogue in his possession, lying ready for use—just in case—atop his chimney piece. Such a catalogue not only provides a useful aid to the imagination; insofar as it draws from the historical and vital sources of the art of swearing, it also helps to preserve the health of both mind and soul. As the narrator adds, there is a vast difference between such a catalogue and the practice of those academicians of blasphemy who, like literary critics, constantly criticize praxis in the name of a formal ideal. Here lies the true reason for the dangerousness of swearing: that it has been cut off from its apollonian origins (origins to which Ernulphus’s catalogue still bears witness) and surrendered to a calculus owing more to the spirit of Mercury than anything else.

Here is where the theory of swearing that Graves discovers in *Tristram Shandy* derives the second part of its argument: the living, vital aspect of swearing is stifled by the academism of those who pretend to be in a position to judge it on the level of both form and content: in other words, to censor it. Tristram Shandy himself outlines the vital aspect of swearing as manifested in Ernulphus’s catalogue:

... besides, he is more copious in his invention, — possess’d more of the excellencies of a swearer, — had such a thorough knowledge of the human frame, its membranes, nerves, ligaments, knittings of the joints, and articulations, — that when *Ernulphus* cursed, — no part escaped him. — ’Tis true, there is something of a *hardness* in his manner, — and, as in *Michael Angelo*, a want of *grace*, — but then there is such a greatness of *gusto!* — (Sterne, III, XII: 165)

For Graves, the theory of swearing in *Tristram Shandy*—particularly the second part of the argument—matched his own desire to mourn swearing’s disappearance, and to attribute responsibility for this disappearance to the very order of which both the practice of swearing and its practitioners were part. If the art of swearing had vanished, it was because circumstances had

succeeded in separating the practice of swearing from the apollonian origins that *Tristram Shandy*, in somewhat fantastical fashion, describes. The living art of swearing had been replaced with a deadly scholasticism. And this replacement had significant consequences: not only had swearing been severed from its vital origins, but also the order that presided over this severing had thereby gained an unassailable position.

In the melancholic conception of swearing that Graves develops, there is a symmetry, or even an equivalence, between the affirmation of the vital aspects of the act of swearing and the questioning of the order that attempts to regulate its usage. Thanks to its inherent vitality, swearing represents a crack in the surface of the ruling order, a way to question its *raison d'être* through the mere fact of its irruption. There is a *performance* of swearing, which grants it the status of an authentic profanation. But since the act of swearing must also take into account the decrees of the great minds charged with defending the ruling order, such a performance is in fact voided of its force. With the possible exception of provoking minor scandals amongst the genteel clientele of a salon, to swear according to the rules and to not swear at all are one and the same thing.

II.

The corrosive power of the art of swearing, as Graves understands it, may be illustrated by another scene from *Tristram Shandy*. Among Walter Shandy's many eccentricities, there is one that has dramatic consequences for the narrator of the novel: namely, his fetish for baptismal names, which, according to him, determine the destinies of their bearers. As it happens, a mistake made by the midwife attending his son's birth leads to the vicar's registering the infant under the ill-omened name "Tristram," instead of the propitious "Trismegistus" carefully chosen by his father. The latter, panic-stricken over this mistake now permanently inscribed in the baptismal register, subsequently decides to set out for a dinner organized in honor of the bishop Didius, not far from Shandy Hall, to ask him if canon law might permit a name change. Just as this conversation is taking place, a powerful "Zounds!" suddenly rings out from the other end of the table (Sterne, IV, 27: 286). Although this "Zounds!" fails to prevent Didius from telling Walter Shandy that his demand, alas, is hopeless, it nonetheless occasions a profound disorder in the conversation. In other words, it is an *event*.

And yet, the fact that this event entails no real consequences for the scholastic discussion of the casuists gathered at table is perfectly normal within the novel. For it is not to the dominant order that the performance of swearing represented by Phutatorius's "Zounds!" is opposed, but rather to this order's pretensions to regulate it. If Phutatorius's exclamation is indeed an event, it is because it exposes the conditions defining the conversation's decorum, conditions that supposedly exclude any form of ridicule. The conditions of the conversation in which Walther Shandy, Bishop Didius, and the canonists in his entourage are engaged are guided by the most serious seriousness possible: the seriousness required for the examination of legal questions and, in the present case specifically, of questions of canon law. With his "Zounds!" Phutatorius exposes the paradox of seriousness: that is, that *nothing is more comical than seriousness itself* when such seriousness is prescribed by an order of any kind. Nothing is more comical than a scholastic discussion that tries to avoid the comical aspect of life, as embodied in the event of swearing, by invoking principles of order.

And in fact, the conversation of the canonists does have something buffoonish about it:

I beg your pardon, replied *Kysarcius*, — in that case, as the mistake was only in the *terminations*, the baptism was valid — and to have rendered it null, the blunder of the priest should have fallen upon the first syllable of each noun — and not, as in your case, upon the last. —

My father delighted in subtleties of this kind, and listen'd with infinite attention.

Gastripheres, for example, continued *Kysarcius*, baptizes a child of *John Stradling's in Gomine* gattris, &c, &c instead of *in Nomine* patris, &c — Is this a baptism? No, — say the ablest canonists; inasmuch as the radix of each word is hereby torn up, and the sense and meaning of them removed and changed quite to another object; for *Gomine* does not signify a name, nor *gattris* a father. (Sterne, IV, XXIX: 293–94)

This conception of the art of swearing—as a surprising event that exposes the conditions of order presiding over a given situation—is, however, nothing new. One might even go as far as to say that Graves's melancholia perfectly exemplifies what François Jullien has called the "mythology of the event."³ Indeed, it seems that we have not yet been able to free ourselves of this mythology: there are still those who, appealing to the theories of Jacques Lacan or Alain Badiou, continue to defend its premises. For them, the ringing out

of Phutatorius's "Zounds!" or Tristram Shandy's defense of the originality of Ernulphus's catalogue are moments of *critique*. The event, insofar as it is a privileged moment of surprise, thus constitutes the horizon of all critique, the place where critique manifests itself as act or performance. This critical aspect is a necessary corollary of the idea of the event. Every event is a critique, and every critique depends on an event, so long as this event is not itself merely the expression of a different order's claims.

The theory of swearing that Graves reads in *Tristram Shandy* is, then, something like a plea for a *passage à l'acte*, or more accurately, a *passage à la performance*, at the same time as it is a mourning of the absence of this very phenomenon. As Badiou himself has often reminded his readers, events are rare. And insofar as such rarity is inherent both to circumstance (i.e., the present-day order) and to nature (there can be no permanent rupture), it inevitably leads to melancholia. The choice is then between contenting oneself with this or, on the other hand, fighting against it. If Badiou's choice always was, and still is, to continue fighting,⁴ one cannot help but think that Graves's mourning of the possibility of an operative blasphemy was precisely a way to escape the requirements of such a struggle. This is how one can speak, with Jullien, of a "mythology of the event": a mythology accompanied by a parallel mythology of its own critique. Critique, to the extent that it is based upon an impossible event, itself emerges out of a kind of futility, one both nostalgic for life and incapable of actually living it: a well-meaning futility from which it is impossible to generate anything positively, like a rage that can only end up as irony.

In Graves's defense, one should emphasize that *Tristram Shandy* is thoroughly permeated by the first great modern literary incarnation of irony, *Don Quixote*. Among Laurence Sterne's three great masters—Cervantes, Montaigne, and Rabelais—it is without a doubt the first who has left the most traces in *Tristram Shandy*.⁵ From Cervantes, Sterne effectively learned the fundamental lesson that a novel is only possible on the condition of its self-destruction. Sterne understood this self-destruction of the novel's fiction as the necessity of the omnipresence of irony: that is, of setting apart. In this sense, *Tristram Shandy* is the novel of perpetual setting apart from the novel; it is the novel that constantly critiques its own system, and in which the fiction of the novel is indistinguishable from the events that constitute its critique. Thus Phutatorius's "Zounds!" is not only a critique of the system of scholastic debate, it is also a critique of the novel's own form and of the plot mechanisms whose own disordering it instantiates in the form of a long digression. It may be that Graves was

able to find a remedy for his melancholia in this systematized digressiveness, in the sense that *critique can be saved from its own impotence through idle chatter*. And the event of swearing is what allows for the inauguration of idle chatter, the multiplication of senseless digressions, and thus a performative critique of the teleological system of (novelistic) plot or of (scholastic) debate.

III.

Such a consideration may constitute grounds sufficient to rescue the critical program of the art of swearing from the nostalgia that it evokes in Graves. But it may also be merely a way to avoid, through the detour of a chatty irony, the real impossibility of having finished with systems. For a careful reading of *Tristram Shandy* leads to the strange conclusion that the curses that so fascinate Graves are actually nothing very special. Rather than being rare exceptions in the book—something on the level of an event—they in fact constitute the very basis upon which the fiction of Sterne's work is built. In *Tristram Shandy*, in other words, there is *only* either swearing or digressions. At no point in the novel does a properly novelistic plot manage to overtake its own deconstruction through the comic art of chatter that characterizes Tristram Shandy's adventures. If "fiction" is to be understood as a system implying a continuous narrative and a plot to structure it, such a system exists here solely on the level of pure hypothesis, in the same way as the chivalric tale functions in *Don Quixote*. Since it exists only as hypothesis, the fiction of *Tristram Shandy* presents itself as if it never took place, indeed never *could* take place. And yet the fact that swearing is granted the privilege of revealing the conditions for a novel of which this revelation is itself the critique means that the fiction of the novel is *also* real, if only provisionally. In this sense, the fiction of *Tristram Shandy* only exists for its critics, and not for those who accept that it was never really a novel, or like *Don Quixote*, that it was always the novel of the impossibility of the novel. This means, however, that *Tristram Shandy* cannot be critiqued. The event that, in Graves's thinking, would represent the critical moment always comes too late, at the moment when it can no longer take place—because it never had a place to take place in the first place.

Walter Shandy explains this himself in the passage in which he criticizes the bishop Ernulphus's list of swear words as being less original than one would like to believe:

My father, who generally look'd upon everything in a light very different from all mankind, — would, after all, never allow this to be an original. — He consider'd rather *Ernulphus's* anathema, as an institute of swearing, in which, as he suspected, upon the decline of *swearing* in some milder pontificate, *Ernulphus*, by order of the succeeding pope, had with great learning and diligence collected together all the laws of it; — for the same reason that *Justinian*, in the decline of the empire, had ordered his chancellor *Tribonian* to collect the *Roman* or civil laws all together into one code or digest, — lest through the rust of time, — and the fatality of all things committed to oral tradition, they should be lost to the world for ever. (Sterne, III, XII: 165)

Thus the original vital source of swearing, in which one must only immerse oneself to transform swearing from a toxin into a physic, is itself only a copy. It too is the result of the scholastic manoeuvres of a skillful compiler whose formulations, far from destroying any system, are in fact its most precise manifestation. The long passage of the recitation to Obadiah, in Latin and English, of *Ernulphus's* swearing formulary does not return swearing to its vital source; it merely returns it to its scholastic interpretation, which may nevertheless be the closest approximation to the source that it is possible to attain.

Is it necessary, then, to submit to nostalgia? According to Tristram Shandy—whom up to this point Graves has faithfully followed—it might be more interesting to accept his father's hypothesis, namely, that even though *Ernulphus's* formulary is *not* the vital origin of an ancient art of swearing, this does not mean that it cannot *still* be the original source, and without any necessity to lament the fact. Thus Tristram concludes:

For this reason my father would oft-times affirm, there was not an oath, from the great and tremendous oath of *William* the Conqueror, (*By the splendour of God*) down to the lowest oath of a scavenger, (*Damn your eyes*) which was not to be found in *Ernulphus*. — In short, he would add, — I defy a man to swear out of it.

The hypothesis is, like most of my father's, singular and ingenious too; — nor have I any objection to it, but that it overturns my own. (Sterne, III, XII: 165–66)

This objection—the only one that Tristram Shandy raises against his father's interpretation—is itself a purely formal, indeed even a purely scholastic one. The reader is to hear nothing more of it: the narrator never returns to his

argument to elaborate or illustrate it. Walter Shandy's strange logic, left unresolved by his son's formal objection, will remain the last word in the theory of swearing that Graves attempts to develop. And it is indeed a strange logic: on the one hand, as we saw above, Walter Shandy recognizes the necessity of rescuing swearing from its harmful aspects, while nevertheless admitting that this rescue is only possible to the extent that swearing has its origin in some vital source. And yet, at the same time, he rejects the vital character of the only apparently vital source he has available to him in order to declare it the product of a force still more original. And yet again, he adds that this false vital source nevertheless contains absolutely everything that it is possible to know about the art of swearing, with nothing left over.

Does this mean that Walter Shandy returns *in extremis* to the first thesis of Graves's theory of swearing: that is, its generally harmful quality? There is nothing to indicate this. To the contrary, Walter Shandy strongly emphasizes to Dr. Slop how much the mere reading of this scholastic formulary evokes "veneration" in him. The vital nature of swearing, which brings him the relief of which he tells Dr. Slop, comes from a pharmacopoeia nevertheless cut off from the only source that could bring him this vitality. This is as much to say that the interruption or rupture itself is what brings him vitality: the fact of being disconnected from every vital principle is what gives the curse its vital dimension. One could call this the scholastic paradox of the art of swearing. Far from constituting scholasticism's deathblow, the proliferation of swearing is, if not its confirmation, at least one of the modalities of scholasticism's existence. Paradoxically, however, this is not a regulative modality. Just the opposite, in fact: order, as it appears in Ernulphus's scholasticism, is the site of the possibility of every disorder—so long as the scholastic form of such disorder is respected, that is, as long as the *appearance* of order is retained. As far as the order itself is concerned, naturally no one actually believes in it.

IV.

Tristram Shandy is the novel of scholasticism. Or, more precisely, it is the novel of *casuistry*. And it is thus the novel of digression as case study offered up for the reader's examination. For Graves, these digressions of the novel should be considered as so many manifestations of critical irony directed against themselves as much as against the novel as such. As we have seen, however, Graves

was mistaken. What Sterne inherited from Cervantes was not a view of the world—lived as well as literary—to which Don Quixote belonged. His is not the stance of ironic distance. To the contrary, what Sterne inherited was a nearness to the world and its structures. Sterne’s recourse to casuistry is not his way of critiquing the grotesque abstruseness of scholastic dignitaries, but rather a way of describing the way in which the world functions according to its system. For the world does not function monolithically or univocally. Rather, the world is a collection of cases, some of which we encounter in the course of our existence, knowing all the while that others are nonetheless also possible. What is more, beyond this mere possibility is a whole infinity of hypotheses, of which only casuistry, understood as the never-ending study of cases, can allow itself to conceive. In *Tristram Shandy*, some such hypotheses, including the most outlandish, become the objects of literary examinations every bit as serious as if they concerned matters of life and death. But in fact, for the characters of the novel, they do concern matters of life and death. The license written up by Didius to facilitate the instruction of the village midwife, the marriage contract between Walter Shandy and his spouse, or the deliberations in the tale of Slawkenbergius are not merely comical moments integrated into a plot. Nor do they constitute a method of restarting the plot by means of a detour or a joke. *They are the very essence of the plot itself.*

The novelistic aesthetics of *Tristram Shandy*, far from being an aesthetics of deconstruction, is a *total* aesthetics, one that takes the whole field of hypotheses capable of furnishing a plot into account, albeit in a purely formal manner. *Tristram Shandy* is, as it were, the formulary of the novel. And because it is the formulary of the novel, it is also the formulary of reality, because novel and reality share a common structure: that of the case. Thus the art of swearing that so interests Graves can no longer be considered as the art of the disruptive event, but must rather be seen as the art of the establishment of continuity. Swearing disrupts neither scholasticism’s rigid order nor the novel’s arbitrary one; as Walter Shandy well understands, it merely continues these orders by other means, means that are, moreover, every bit as arbitrary and scholastic.

These means are those of casuistry—that is to say, of law, as Walter Shandy once again reminds us with his comparison of Ernulphus’s formulary to the *Institutes* of Justinian. Laurence Sterne (or *Tristram Shandy*) himself provides the key in the “Author’s Preface” (inserted, appropriately enough, in the middle of Chapter XX of Book III):

In that spacious HALL, a coalition of the gown, from all the barrs of it, driving a damn'd, dirty, vexatious cause before them, with all their might and main, the wrong way ; — kicking it *out* of the great doors, instead of, *in*, — and with such fury in their looks, and such a degree of inveteracy in their manner of kicking it, as if the laws had been originally made for the peace and preservation of mankind: — perhaps a more enormous mistake committed by them still, — a litigated point fairly hung up ; — for instance, Whether *John o'Nokes* his nose, could stand in *Tom o'Stiles* his face, with-out a trespass, or not, — rashly determined by them in five and twenty minutes, which, with the cautious pro's and con's required in so intricate a proceeding, might have taken up as many months, — and if carried on upon a military plan, as your honours know, an ACTION should be, with all the stratagems practicable there-in, — such as feints, — forced marches, — surprizes, — ambuscades, — mask-batteries, and a thousand other strokes of generalship which consist in catching at all advantages on both sides, — might reasonably have lasted them as many years, finding food and raiment all that term for a centumvirate of the profession. (Sterne, III, XX: 179)

Faced with the frenzy and folly of a tribunal, only “good plain *household* judgment” serves to achieve the “wit” and “judgment” to which Tristram Shandy here appeals. Wit and judgment alike are the opposite of casuistry: they derive from the sound principles that should govern every existence worthy of the name. But the opposition between judgment and madness that Tristram Shandy makes the cornerstone of his strange “Preface” is just as soon belied by the counter-examples he provides. The madness of the case of John O’Nokes’s nose is essentially not that of the case itself but of the indecent length of its narration, as well as, doubtless, of the mildness of the measures taken. *It is normal to examine the case of a displaced nose.* What is neither normal nor sound, however, is that this examination should take place without having made use of the entire battery of methods available to the “centumvirate.” The madness of the tribunal to which Tristram Shandy draws attention is the madness of its simplicity, precisely where the hygienic practice of Wit and Judgment would require the most torturous convolutions.

But, again, is it really Wit and Judgment that are at stake here? Clearly it is not. What Tristram Shandy recounts in his “Author’s Preface” is, above all, a part of the novel’s fiction. In other words, the inquiry into the opposition between Judgment and madness is *itself* a case study; the opposition is a hypothesis of which at least two permutations come under interrogation: the Sense (*Esprit*) of madness, and the madness of Sense.⁶ The fact that one finds

a displaced nose worthy of interest is merely the occasion for thinking about the question *What if Sense itself were mad?*, also granting that one can simultaneously consider other questions. John O’Nokes’s missing nose is merely that which provides the occasion for such considerations; but at the same time, without the occasion for such considerations, the case of the missing nose would never have taken place. This is the meaning of Tristram Shandy’s generalized casuistry: each case is the occasion for a new case, elsewhere, otherwise, and on a different plane. Each case gives rise to another: the case of the narrative and that of the novel, the case of the plot and the case of the fiction. From no matter which point of view—that of reality or that of fiction—the case is the sole horizon of any possible reading. And, as the “Preface” reveals, the paradigm of this casuistry is, precisely, law.

V.

Because it is caught up in the whirlwind of casuistry, law, like everything else in *Tristram Shandy*, displays a comical aspect. This comedy, however, is not the comedy of critique, in the way that the event of cursing is for Graves. For Sterne’s comedy to be one of critique, it would have to put a stop to the game of the infinite permutation of cases, if only temporarily. Critique is a form of power, and every form of power requires an instrument for its execution. In the case of the critique of law, this instrument is necessarily a principle, whether political, moral, religious, and so forth. For critique to be effective, in other words, there must be at least one point where it is no longer a matter of hypothesis, but rather of certitude. *Critique is always external to casuistry*. That is, critique is always external to the novel; critique always requires that it be possible to distinguish between reality and fiction. This distinction is precisely what *Tristram Shandy* rejects (*réfuse*)—just as the law rejects (*réfuse*) it. In the law as well as in *Tristram Shandy*, the case establishes an unbroken continuum between reality and fiction: a continuum based on the hypothetical character of that of which the case is a case. As long as it remains a question of hypotheses, reality (like fiction) remains indifferent; the only thing that matters is that the imagined case is theoretically possible. By definition, however, *everything* is theoretically possible. In this way, casuistry can be defined as the art of considering the possibility of everything, and thus as the art of considering everything’s hypothetical reality.

To consider the possibility that a nose could move from one face to another thus constitutes a case every bit as interesting as that of finding out whether a Negro has a soul (as Trim asks Uncle Toby). The only thing that counts is the *way* in which the hypothesis is taken into consideration, not whether it is of a more or less serious, more or less profound, more or less significant nature. Seriousness, profundity, and significance are the binding criteria of critique, tools of judgment whose existence precedes the hypotheses they are called upon to judge. Casuistry, however, does not claim to pronounce judgment on the cases it considers; its only claim is *that* it considers them. Thus Tristram Shandy's confusion when he sees the case of John O'Nokes's nose too quickly settled, just at the point where it should logically become the object of prudent examination. Thus also the construction of the novel's chapters, in which each division is only a response to the arbitrariness of that which is occurring, just as a case is defined by the arbitrariness of the hypothesis that it contains. It has often been remarked how much the division of the chapters (as well as the typographic games and the play with layout) constitute a fully new innovation on the part of *Tristram Shandy*. Long before Mallarmé's *Un Coup de dés*, Sterne made the very form of the novel—its form as object—implicit in the fictional enterprise itself. The novel as object becomes a part, or rather a manifestation, of the fiction that unfolds as plot and style all at once. In this way the novel, the object, becomes itself wholly a *container for cases*, like those cabinets in apothecaries' shops that contain all the necessary ingredients for the preparation of medicaments. What would happen if every chapter began at the top of the page? What would happen if some black-letter type were inserted in a page? What would happen if, rather than describing a gesture, the gesture was drawn as an arabesque? Such are some of the hypotheses that Sterne explores in *Tristram Shandy*, inaugurating a tradition that will eventually find its culmination in the productions of *Tel Quel*. These hypotheses, far from being merely the games of an aesthete, are rather the manifestation of the inexhaustibility required by the casuistry that governs the novel in its entirety. This casuistry has not only to be inexhaustible with respect to the *number* of cases that it is permitted to handle; it also has to be inexhaustible with respect to the *viewpoints* proposing hypotheses that lead to cases. Whether these viewpoints are in regard to the plot, the writing, or the object, the novel's fiction consists wholly in the unlimited exploration of infinite hypotheses. If this exploration is also comic in nature, it is a comicalness without fixed point—without a principle upon which one could securely

rest—unless of course the case is already no longer within the system of casuistry (but instead, say, in the catalogue⁷).

Thus the comedy belonging to casuistry, rather than being “critical,” would more appropriately be called “clinical,” according to the well-known distinction of Gilles Deleuze. In the preface to *Essays Critical and Clinical*, Deleuze applies this distinction to the reading of literary works that take only their “clinical state” into account, that is, the moment in which, in these works, “words no longer open out onto anything.”⁸ This clinical state, however, is not the same thing as a “pure” literature, finally free of the contingency of all real reference. It is in fact an *impure* literature, one in which reality continually irrupts into its self-enclosed world, as arbitrarily and as singularly, that is, as literature itself:

Every work is a voyage, a journey, but one that travels along this or that external path only by virtue of the internal paths and trajectories that compose it, that constitute its landscape or its concert.⁹

To this clinical status of literature, Deleuze seeks to apply an analogous form of reading. Such a form of reading, in contrast to criticism, would forego all questions of judgment, and hence the law (or the principle) upon which such judgments would be based. Instead of *judging*, says Deleuze, perhaps it would better to *evaluate*. “Evaluation” should here be understood as a way of taking into account the magnitude and intensity belonging to any literary enterprise. In Deleuze’s sense of the term, evaluation implies the existence of a system of measurement that can be manipulated in various ways. This system of measurement nevertheless has nothing to do with the *nomos* of measuring; it rather resembles the gyroscope of an airplane, which keeps the airplane centered outside of any specific frame of reference. For Isabelle Stengers, this kind of evaluative metrology tends above all to what she calls an “art of consequences”: a way of not pronouncing judgment on a case except insofar as it allows for new actions. Casuistry, as practiced by Laurence Sterne in *Tristram Shandy*, falls under the jurisdiction of just such an art of consequences. Since the number of cases is infinite and their exploration inexhaustible, every case, once decided, is immediately the occasion for a new case—without which there would be no novel, only an equation to be solved. An art of casuistry, accordingly, consists in what, in the new case, could be considered *interesting*, that is, as opposed to that which offers solutions, that which occasions consequences rich in possibility.

VI.

The genius of Laurence Sterne is the genius of consequences. The creation of a case—whether discursive, fictional, or formal—is always a way of drawing new consequences from its existence. In this sense, *Tristram Shandy* is the novel of casuistry's eternal zigzag, the novel of the situation of consequences in a world of surprises. For such a world, the comedy of law can no longer be a comedy that calls for law's demolition, its destruction, or even merely its deconstruction. Deconstruction is not a game in *Tristram Shandy*. At issue is in fact neither the destruction of the edifice of the novel nor that of law, but the reconstruction of their aleatory and consequentialist logic, beyond all critical agendas. In this sense, the terminus ad quem of the question Sterne takes on in his writing of the novel is, *How to write a novel without a guiding principle? How to think law [droit] without Law [loi]?* The answer is contained in the questions themselves: despite what Cervantes imagined, a novel can no more be based on principle than law can be based on Law. Cervantes was essentially a dissident. *Don Quixote* was conceived as a weapon directed against an enemy whose legitimacy, according to Cervantes, had to be destroyed. In contrast, Sterne has no enemy to destroy—unless it is perhaps those literary critics who continually *judge* novels according to external principles. Eccentric theologians and idiosyncratic legal experts, on the other hand, as the most perfect—that is to say, the most abstruse—of casuists, count as Sterne's allies: they are the best characters possible for a novel to have. But why is this? Simply because it would be impossible to have even the most minimal of novels without these characters' prodigious capacity to invent new cases, and more, their capacity to believe in them no matter how crazy their hypotheses. *Casuists are the only novelists*. Or, to put it another way: there is no novel that is not juridical—just as there is no law that is not novelistic. The essence of the novel coincides with the essence of the law, insofar as both owe their existence to the perpetual invention of impossible cases.

Such a thesis is not merely fantastical. To the contrary, the affirmation of the identity of law and literature is without a doubt the most *pragmatic* claim that it is possible to make in regard to both practices. In his classic work, *Dogma and the Law in Islam*, the great Islamologist Ignaz Goldziher expresses outrage over the casuist perverting of the Sunna by its interpreters. Among several examples of this, he cites the following question: under what conditions can a marriage be performed, asks one of the masters of the Sunna, if one

of the individuals to be married is human and the other djinn.¹⁰ This question, which was the subject of bitter debates, is rejected by Goldziher as evidence of the degree to which Islamic juridical theology had strayed from the sensible principles upon which it was founded. But Goldziher should have in fact argued just the opposite: by conceiving the possibility of marriage between humans and djinns, the masters of the Sunna actually remained *more* faithful to the essence of the law that they practiced than those who would simply refuse the hypothesis out of hand. Is it comical? Certainly. But this is not the comedy of critique, of an irony directed at something *that should not take place*; it is rather a clinical comedy, which affirms that *everything might take place*.

According to Deleuze, it is irony that characterizes the work of the Marquis de Sade, whereas humor—also understood, he writes, as an art of consequences—is characteristic of the work of Sacher-Masoch. To the ironic sadism of principles is opposed the humoristic masochism of consequences:

The law is no longer subverted by the upward movement of irony to a principle that overrides it, but by the downward movement of humor which seeks to reduce the law to its furthest consequences. . . . In so doing he overthrows the law as radically as the sadist, though in a different way.¹¹

Perhaps, then, one can declare that there is a masochism of law just as there is a masochism of literature—and just as there is a sadism of whatever attempts to subsume either literature or law under principles external to them. Indeed, another shared characteristic of law and literature is their mute vulnerability before everything that would make them the tools of this or that agenda. This agenda, of whatever kind it may be (political, religious, scientific, economic, and so forth) is always stronger than law, just as it is always stronger than literature. But this strength is one of appearance only. For even when they are subordinated to principle, law and literature still always retain their little machine for inventing impossible cases. That some of these are dismissed in the name of a principle or an agenda does not in the least remove the possibility that they will, sooner or later, be treated in the manner that they deserve. *The casuistry machine is indestructible*. Only practice and custom can, for a time, pretend to curb its productivity, in the same way that they are the only things that claim to be able to reason with madness. Fortunately, however, this never happens: since madness is the reality in which law and literature eventually merge, it is *also* the domain of reason, which is itself no more than one of the

infinite varieties of madness. The reasonable, the serious, the critical, and the ironic are, after all, nothing more than cases among others. This, at least, is the mad hypothesis upon which rests the vital value of all Shandeism, that chimerical realism:

True *Shandeism*, think what you will against it, opens the heart and lungs, and like all those affections which partake of its nature, it forces the blood and other vital fluids of the body to run freely thro' its channels, and makes the wheel of life run long and chearfully round. (Sterne, IV, XXXII: 303)

Translated by Erica Weitzman

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- * Thanks to Lissa Lincoln and David Rabouin for their comments on the presentation that provided the basis for the present article.
1. Cf. Robert Graves, *Lars Porsena—or The Future of Swearing and Improper Language* (Richmond: One-world Classics, 2008).
 2. *Id.* at 31–32. All quotations of *Tristram Shandy* are made from the IULM Online Edition, at <http://www.tristramshandyweb.it/>. Reference to the pages of the Penguin Classics edition of the text first published by Melvyn New in 1978 (the latter known as the Florida Edition) are offered for the reader's convenience.
 3. Cf. François Jullien, *Les transformations silencieuses. Chantiers*, 1 (Paris: Grasset, 2009), 143.
 4. Cf. Alain Badiou & A. Finkielkraut, *L'explication. Conversation avec Aude Lancelin* (Paris: Lignes, 2010), 172.
 5. Explicit and implicit allusions to Cervantes's novel in Sterne's own are legion; for example, in *Tristram Shandy*, II, 3; III, 20; VII, 36; etc. For a point of comparison, see Donald R. Wehr, "Sterne, Cervantes, Montaigne: Fideistic Skepticism and the Rhetoric of Desire," 25 *Comparative Literature Studies* 127 (1988).
 6. Here I am exploiting the infamous ambiguity of the French word *esprit*, meaning, among other things, not only "wit" (as in Sterne) and "wittiness," but also "sense," "mind," "mood," "sanity," and "spirit."
 7. On the concept of the catalogue, see Laurent de Sutter, *Contre l'érotisme* (Paris: La Musardine, 2011).
 8. Cf. Gilles Deleuze, *Essays Critical and Clinical*, trans. Daniel W. Smith & Michael A. Greco (Minneapolis: University of Minnesota Press, 1997), lv.
 9. *Id.* at lvi.
 10. Cf. Ignaz Goldziher, *Introduction to Islamic Theology and Law*, trans. A. & R. Hamori, rev. ed. (Princeton, NJ: Princeton University Press, 1981), 27.
 11. Cf. Gilles Deleuze, "Coldness and Cruelty," in *Masochism* (Cambridge, MA: Zone Books, 1989), 88–89; see also Laurent de Sutter, *Deleuze. La pratique du droit* (Paris: Michalon, 2009) 29; Laurent de Sutter & Kyle McGee, eds., *Deleuze & Law* (Edinburgh: Edinburgh University Press, 2011).