

# From *Cause Célèbre* to Revolution

David A. Bell, *Lawyers and Citizens: The Making of a Political Elite in Old Regime France*. Oxford: Oxford University Press, 1994. Pp., 280. \$35.00.

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It seems clear enough that there is *some* link between the legal profession and the making of revolutions in the Western world. It is clear, at the very least, if we consider the Big Three liberal revolutions of the early high era of revolutionary activity: the American Revolution,<sup>1</sup> the French Revolution of 1789 (as opposed to 1793),<sup>2</sup> and the German Revolution of 1848,<sup>3</sup> all three of which began in fevered deliberations in lawyer-dominated representative assemblies; all three of which, we might argue, failed at first to create satisfactory political institutions; but all three of which, we might further argue, ultimately gave rise to lasting, if troubled, liberal traditions, founded in that characteristic lawyer's concept, "rights." But the story well predates the great modern liberal revolutions. The Glorious Revolution too shows, in its way, much the profile of a lawyers' revolution, with lawyers in leadership positions, working hard to fix lawyerly guarantees of "rights."<sup>4</sup> For that matter, we can push the story back yet a century further, to the beginnings of the modern revolutionary tradition: We can see that the great resistance theorists of the late-sixteenth century, the Calvinist pamphleteers who stand at the headwaters of modern revolutionary thought, were very much working in a lawyers' tradition.<sup>5</sup>

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1. See Stephen Botein, "The Legal Profession in Colonial North America," in Wilfred Prest, ed., *Lawyers in Early Modern Europe and America* (Holmes & Meier, 1981), 141.

2. See Alfred Cobban, *Aspects of the French Revolution* (G. Brazziller, 1968), 100-01.

3. See Wolfram Siemann, *Die Frankfurter Nationalversammlung 1848/49 zwischen demokratischem Liberalismus und konservativer Reform. Die Bedeutung der Juristendominanz in den Verfassungsverhandlungen des Paulskirchenparlaments* (Herbert Lang, 1976).

4. See, e.g., Lois G. Schwoerer, "The Role of Lawyers in the Revolution of 1688-1689," in Roman Schnur, ed., *Die Rolle der Juristen bei der Entstehung des modernen Staates* at 473-98 (Duncker & Humblot, 1986).

5. See generally Julian Franklin, *Constitutionalism and Resistance in the Sixteenth Century: Three Treatises by Hotman, Beza & Mornay* (Pegasus, 1969).

But what *is* the link, precisely? What is it that lawyers do that contributes to the making of our great political upheavals, premodern and modern? The superficially obvious answer is that lawyers have skills, oratorical and organizational, that make them particularly useful to revolutions. But focusing on lawyers' skills really does seem superficial. Lawyers were not just useful tools of the great revolutions. They *made* those revolutions in some fundamental way, or so one senses: Our revolutionary tradition has in fact been a lawyers' tradition from a very early date and (one suspects) in some very deep way. But just what is it, in the works and days of lawyers, that has made them instigators and leaders of revolution? How should we analyze what seems so much the tradition of the "lawyers' revolution"?

The leading answer to this question, as David Bell observes early on in *Lawyers and Citizens*, his elegant and important book on the runup to the French Revolution, is Tocqueville's. For Tocqueville there is, above all, a deep, but ultimately simple, sociological connection between lawyers and revolution: The world of the practicing lawyer can be a world of frustrated upward political mobility. The law is a realm of persons with, not only great skills, but also great pretensions to leadership. Yet lawyers are often persons without high political standing: "There are societies in which men of law cannot take a position in the world of politics analogous to that which they hold in private life; one can be sure that in such a society lawyers will be very active agents of revolution."<sup>6</sup> Such are revolutionary lawyers: able men, thwarted in their ambitions.

Bell, like other historians of the early modern legal profession—like all of us—is an eager reader of Tocqueville; and in fact it is one of the merits of his book that he takes Tocquevillean analysis very seriously in building his account of pre-Revolutionary French developments. But, like other scholars who have tried to evaluate the social history of the early modern bar, Bell is ultimately not content with Tocqueville's account of the role of lawyers in the making of revolutions in general, and of the French Revolution in particular. Bell, in his virtuoso reconstruction of the eighteenth-century Parisian Order of Barristers, uncovers, to be sure, some wide differences in the fortunes

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Indeed, lawyers have been prominent enough in the revolutionary tradition to make at least a few sociologists wonder whether, or when, it is more correct to call lawyers a force for conservatism or a force for revolution. See the comments of L. Friedman, "Lawyers in Cross-Cultural Perspective," in Richard Abel and Philip Lewis, eds., *Lawyers in Society* (University of California Press, 1989), 3:20.

6. Alexis de Tocqueville, *Democracy in America*, ed. J. P. Mayer, trans. George Lawrence (Harper & Row, 1966), 243.

of various individuals, both as regards wealth and as regards power.<sup>7</sup> But the idea that the law was a gathering place for unrecognized and resentful talent just does not seem to hold up in Bell's Paris any more than it does in the other regions studied in the growing literature on this topic.<sup>8</sup> It is just too difficult to make Tocqueville's model of the "lawyers' revolution" stick.

But if Tocqueville did not get it quite right, that does not mean what historians sometimes seem to think it means: that there is no connection between the legal profession and the making of revolutions. What it means is that we need a different, and subtler, model of the lawyers' revolution. Providing a different, and subtler, model, is the goal of Bell's exciting book, which aims to draw some new, and newly deep, connections between the activity of practicing lawyers and the making of our most important revolution. The result is a thoroughly imposing piece of scholarship, an ingenious and highly professional book. It is also a book which offers an authentically stimulating model of the "lawyers' revolution"—though it is a model about which I am going to air some doubts.

## I

But doubts are for later. What is Bell's model? Like other current historians, his initial impulse is much less sociological than Tocqueville's, and much more cultural. Bell's argument—like the argument of another important book that should be read alongside his, Sarah Maza's new *Private Lives and Public Affairs*<sup>9</sup>—belongs to the newest school in studies of the French Revolution, the school that makes its study the rise of a new "political culture" in the pre-Revolutionary period. The focus, for the new school, has been on new sorts of sources; the main concern is no longer with socio-economic records. Nor is it with the grand ideas of the Enlightenment, although the new history is certainly a history of ideas, in its way, and the ideas of Enlightenment play their part. The focus for the new history has been on other sorts of cultural phenomena, phenomena with a life outside philosophy textbooks. Scandalous sexual literature, public rituals, works of the mind that had immediate political impact on the perception of the King's person and the King's

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7. David A. Bell, *Lawyers and Citizens: The Making of a Political Elite in Old Regime France* (Oxford University Press, 1994), 29-30.

8. See the careful survey of the literature on this question in Sarah Maza, *Private Lives and Public Affairs: The Causes Célèbres of Pre-Revolutionary France* (University of California Press, 1993), 86-97.

9. See generally Maza.

court: These and the like have been the stuff of the new history, which has produced remarkably revealing results.

For Bell, as for Maza, working in this new tradition, the search must be for legal records with an emphatically *cultural* impact. What both historians focus upon is accordingly something of great prominence in the political culture of pre-Revolutionary France (as perhaps still in our own day, if to a lesser degree): the *cause célèbre*, the highly publicized case. *Causes célèbres* were many in the decades before the French Revolution, and they riveted the attention of the French public. The granddaddy of these, and undoubtedly still the most famous, was the Calas affair, recounted here in Bell's fine prose:

[O]n March 9, 1762, the *parlement* of Toulouse passed sentence on Jean Calas, a Protestant wrongfully accused of having murdered his son to prevent him from adopting Catholicism. The judges ordered the public executioner to extract a confession by stretching Calas' limbs and forcing him to drink vast quantities of water, then to end his life by binding him to a cartwheel and shattering his bones with iron bars. The sentence was carried out the next day. Within weeks, the case had come to the attention of a horrified Voltaire, who seized upon it as an emblem of the evils of religious intolerance. He immediately began a campaign to have the verdict overturned, aided by barristers from both Toulouse and Paris.<sup>10</sup>

Voltaire's efforts eventually produced posthumous vindication for Calas, and the Calas affair set a pattern of widespread and indignant agitation that would mark *causes célèbres* over the next several decades. But the pattern of the Calas affair did not, in some ways, remain typical. On the contrary, what makes *causes célèbres* such fine material for the new cultural history is the fact that many of them, after the Calas affair, revolved not around classic Enlightenment claims of injustice, but around the stuff of scandal of everyday life. Sex, in particular, loomed large in some. The famous affair of the Diamond Necklace, a bizarre scandal involving a clever scam and much public innuendo about the sexual life of Marie Antoinette, was one. Others, in the last years before the Revolution, included cases heavy in maudlin public rhetoric about the threatened virtue of young serving girls.<sup>11</sup>

How are we to interpret these *causes célèbres*, in all their variousness? There was, of course, a time when the post-Calas scandals would have been treated simply as piquant anecdotes of the crumbling

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10. Bell, 129-30.

11. See generally Maza, chaps. 4 ("The Diamond Necklace Affair") and 5 ("Innocent Blood Avenged").

Old Regime, not really worthy of serious historical attention. But the new history has changed all that; and to Bell, these *causes célèbres* are something more. They are events in the development of the political culture that was to produce the Revolution. Swimming with the new scholarly current at least most of the time, Bell wants to use the *causes célèbres* to explain how a modern public, acquainted with what would turn out to be subversive ideas, formed in France. The *causes célèbres* are, to him, not so much legal cases as episodes in the formation of a French literary-political public.

This is an exciting interpretive idea, and it would be enough in itself to make this a worthy book. But what makes the book not just worthy, but thoroughly impressive, is Bell's determination to do more than just interpret in the mode of the new cultural history. For Bell also swims, some of the time, a little against the new current: He still sees strength and wisdom in the sociological and institutional approach of Tocqueville, and it is the imposing achievement of his book to link cultural interpretation with professional sociology. It is his achievement to have produced a work of cultural interpretation, thoroughly integrated into an institutional sociology and based on archival research, of the profession of *avocat*, of barrister, in eighteenth-century France. Taking as his subject the Parisian Order of Barristers, the loosely organized society of pre-Revolutionary Paris attorneys, Bell has composed a work of cultural interpretation *and* of institutional sociology.

The central institutional fact around which Bell builds his cultural-sociological argument is a notable phenomenon of the eighteenth-century French world: the publication of trial briefs, known in the technical language of the French courts as *mémoires judiciaires*. By contrast to other participants in the heavily censored world of eighteenth-century France, barristers could speak relatively freely; for they had the privilege of publishing their briefs, and those briefs circulated to a large and eager public. Bell sees in this a critical fact:

As the "politics of public opinion" began to take shape in the eighteenth century, barristers . . . found themselves at the center. Above all, because of their privilege of publishing legal briefs without preliminary censorship, these documents—in theory, internal court memoranda—became an important means of appealing to, and speaking for, the new and nebulous creature called the "public."<sup>12</sup>

Bell's barristers thus offered something that French historians have been searching for since Robert Darnton first pressed his famous

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12. Bell, 15.

challenge to the tradition of linking the High Enlightenment with the Revolution: They offered a species of literature that could easily bring the potentially inflammatory ideas of the literary and intellectual worlds to a wide readership.<sup>13</sup>

Bell's excellent archival reconstruction of the history of the Paris Order of Barristers is calculated to show how a class of lawyers that produced inflammatory and widely read *mémoires judiciaires* was born. Keeping his eye, at all times, both on the internal structure and social standing of the profession, and on the intellectual and political convictions of individual barristers, Bell builds an elegant tale.

He begins early in the century with the great Jansenist controversies. Bell portrays the barristers as having a corporate allegiance to the Jansenist faith of Pascal, the austere strain of reform Catholicism that attracted many followers in seventeenth- and eighteenth-century France. But Bell is too good a historian simply to declare without elaboration that the barristers were Jansenists: He does deft work on the internal history of the profession, showing how committed Jansenists attained their leadership.<sup>14</sup> Nor is he content to speak of Jansenism simply as a theological phenomenon. Setting the groundwork for his literary history of French legal briefs (and following the fascinating lead of Marc Fumaroli), he focuses on the question of austere oratorical style, showing the importance of the Jansenist commitment to simplicity and modesty of rhetoric.<sup>15</sup> With his picture of a Jansenist bar complete, he then shows how a tradition of publishing trial briefs gathered its first momentum as barristers struggled against the anti-Jansenist Papal Bull *Unigenitus* (1713).

The tale of the rest of the century, for Bell, is the tale of how a Jansenist tradition became something much more complex and (to us) much more recognizably political. The tradition of publishing trial briefs continued. But it lost its Jansenist tinge. Around midcentury, a new generation of barristers, associated with both a new kind of cause and a new style, began to come to the fore. The great flood of *causes célèbres* that followed Voltaire's championship of Jean Calas created a new arena for barristers, who took up one case after another in bids for public prominence. These barristers represented a new type, "the barrister as *homme de lettres*," and they established their new prominence in the world of letters by abandoning the austere rhetorical style that characterized their elders in the profes-

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13. Compare Robert Darnton, "The High Enlightenment and the Law-Life of Literature in Pre-Revolutionary France," in *The Literary Underground of the Old Regime* (Harvard University Press, 1982), 1-40.

14. Bell, 72-73.

15. See especially *ibid.*, 48 (citing Marc Fumaroli, *L'âge de l'éloquence* (Champion, 1980)).

sion.<sup>16</sup> Indeed, by the 1760s, the whole profession had begun a process of assimilation to the literary world, and especially to the world of the “literary underground” that Darnton has made famous for us. “The perception of growing similarities between barristers and *hommes de lettres* was only heightened by a steady flow of aspiring poets, novelists and playwrights into the bar.”<sup>17</sup>

The creation of a whole culture that united law and literature was underway. The real breakthrough in this development came, as Bell recounts it, during the great Maupeou crisis of the early 1770s, in which the reforming minister Maupeou replaced the venerable *parlements*, the powerful “sovereign” courts staffed by judicial nobility, with new courts. The crisis is famous, but Bell observes that the critical consequences for the legal profession are not. They were consequences that opened the floodgates to the new tendencies in literary law. A great split opened in the ranks of the advocates, between those who agreed to practice before Maupeou’s new courts and those who, faithful to the venerable traditions of the profession, refused.<sup>18</sup> Perhaps more important yet, the Order of Barristers lost its power to license practice, thus opening the career to anyone who went through the startlingly minimal inconvenience involved in acquiring a law degree, and the old-line Jansenist leadership lost its control over the profession.<sup>19</sup> The result was the full-scale emergence of the new-model barrister, willing and eager to take on the highly publicized cases that appeared in profusion in the decades before the Revolution, and eventually ready, in many cases, to exercise a leadership role in the Revolution itself once it came.

Such, omitting much fascinating detail and impressive archival work, is Bell’s tale. It is a real piece of virtuoso historiography, setting professional sociology in a marvelously grand cultural context, tracking the internal disputes of the profession with wonderful skill and large vision, and proposing authentically stimulating answers to authentically grand questions. Even if the book made no larger theoretical claims, it would be a piece of work that deserved to attract readers.

But the book does make larger theoretical claims as well, and they are claims that should make the book an even more attractive read. For to Bell (as to Maza), it seems clear that the importance of the *cause célèbre* is to be understood in theoretical terms drawn ultimately from Habermas: We witness, in the work of the pre-Revolutionary

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16. Bell, 133.

17. *Ibid.*

18. *Ibid.*, 145ff.

19. *Ibid.*, 150.

lawyers, the creation of a "public sphere," the creation of a realm of legitimate public opinion which had not existed in the pre-eighteenth-century world. Thus Bell's argument amounts to something rather more than a claim that there was a paradise of law and literature sometime long ago in France; and it even amounts to something more than a claim that the culture of law and literature contributed something to the making of the French Revolution. Bell's argument amounts to the claim that the rise of law as literature, two centuries ago in France, was fundamental to the making of a modern political-intellectual order.

## II

This idea, that lawyers, acting as *litterati*, created, or helped create, the modern "public sphere," certainly is exciting and certainly has a great deal to tell us (though I will voice some qualms in a moment). By focusing on the analysis of *causes célèbres*, moreover, Bell (like, I must once again add, Maza) has opened up a fundamentally important topic in legal history; their lead should be followed in the history of other Western societies as well. Not least, Bell's model of the way in which lawyers helped make the French Revolution really represents an advance. This is a new, elegant, beautifully researched and argued hypothesis that deserves to stimulate admiring debate, and not only among historians of France.

Nevertheless, I wonder if there are not ways of regarding these phenomena that might in the end prove equally, or more, revealing. In particular, I feel some qualms in my role as a legal historian, for Bell seems a shade too reluctant to treat his lawyers as though they were *lawyers*. For Bell, the conclusion to be drawn from the great flood of *mémoires judiciaires* that preceded the Revolution is that a new audience had been born, the Public. What this new audience received from the hands of the lawyers was above all the wisdom of the literary Enlightenment. His barristers thus provided nothing fundamentally different from what other literary persons might have provided: they were a species of politico-philosophical agitator, different from novelists and essayists basically because they had the right, rare in France, to publish freely.<sup>20</sup> Thus it was that the existence of barristers served the function of giving France the sort of public forum available in countries with a free press.

This is an ingenious and important argument, but I cannot help feeling that it obscures something important when it treats lawyers simply as a species of *littérateur* little different from other species of

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20. See *ibid.*, 136.



*littérateur*. Of course there is much truth in this picture of lawyers, and in particular of eighteenth-century French ones, as Bell and Maza show. They *were* much like literati and philosophes. But the fact remains that there are some real differences, in both style and content, between the writings of even the most literate and philosophically minded lawyers on the one hand, and the rest of the literary world on the other. And they are not differences we can comfortably neglect: for it is not plausible to hope that we will solve Tocqueville's great problem of the role of lawyers in revolution, unless we keep a firm eye on what it is that makes lawyers lawyers.

In particular, what I miss in Bell's book is any deep discussion of the concept that is at once most characteristic of the way Western lawyers think, and most obviously linked to the mental world of revolution: the concept of "(justified) rights." Bell is of course not unaware that "rights" were somehow at issue in the history he tells; the legal literature he describes is much too full of discussion of "rights" for that, and I do not mean to accuse him of saying *nothing* about the subject. But his focus remains very much upon the building of the idea of the Habermasian "public"; unless I am mistaken, there is no sustained analytic effort in Bell's account that assesses the diffusion of the idea of "rights" in France. And yet, and yet—I fear that I thump on an obvious point when I say so, but what linked the great Calas affair with the Revolution, at least at first glance, was that both of them were in some way about the trampling of individual rights. And the obvious approach, in explaining how lawyers moved out of their offices and onto the barricades, is to say that they moved somehow from maintaining claims of "right" in petty private causes to maintaining claims of "right" in great public ones. The Habermasian line of argument is by no means irreconcilable with this approach: Working in the tradition of Voltaire, as well as in a tradition of their own that went back to the great Jansenist controversies, we could say the lawyers of the pre-Revolutionary period "publicized" the very lawyerlike idea that the real structure of society lay in the conflict between claims of right. By the time of the Revolution, this campaign had had some measure of success in creating that strange modern Western phenomenon, "rights consciousness," in a French readership. This rights consciousness had, of course, some affinities with the philosophical ideas of a Rousseau. But it was very much a lawyers' contribution—though one that it would take all our resources as cultural historians to chart.

Perhaps Bell would reject this focus on rights consciousness; perhaps it is not the right way to approach the problem. But it seems to me absolutely necessary to speak in *some* more searching way about what was characteristically lawyerlike in French lawyers'

writings. For if we do not do so, we will never make any *comparative* sense of a tradition that reaches, as we know, well outside the borders of France. Bell has, after all, produced an elegant model of the *French Revolution* as a lawyers' revolution. But what about the rest? The cases both of the American Revolution and of the German Revolution of 1848 strike me as weak ones for extending his thesis. Literary censorship was simply not the problem in America that it was in France; and, while there was plenty of censorship in Germany (though, as in Bell's France, there was somewhat freer circulation of legal pamphlets), the ideas of the French Revolution were surely so broadly diffused that lawyers were not needed to diffuse them further. Yet a successful model of the "lawyers' revolution" must be able to account for more than just the French experience.

My first discontent with Bell's book is thus that he does not write enough about the culture of the legal world as a distinctively *legal* world, and that he leaves our most pressing comparative questions dangling as a result. Nor can he adequately respond by saying that the French legal world was not terribly legal, since the traditions that he traces are so very sentimental and novelistic. French legal tradition was indeed sentimental and novelistic—even more so than Bell argues, as I will suggest in more detail in a moment. But even literary law is *law*; it must be understood as belonging to the dynamic of legal reasoning and legal argument, not merely as diffusing philosophical ideas. In fact, by treating lawyers as *hommes de lettres* plain and simple, Bell returns in some measure to the superficial argument with which I began: the argument that lawyers are the instruments of revolution and not its makers. His lawyers simply *serve* the revolution, not through oratorical or organizational skill, but through their freedom to publish. His legal profession does little that makes it a revolutionary force with its own independent momentum.<sup>21</sup>

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21. I feel something of a parallel discontent, finally, with respect to what seems to me the book's main (though far smaller) failing as a work of narrative political history. Bell is relatively slow, especially in the early part of the book, to integrate his story into the most well-known aspect of the legal-political history of the French eighteenth century: the history of the *parlements* and of the famous *thèse nobiliaire*. Readers who know nothing else about French political history in the eighteenth century know something about the *parlementaires*, the nobility of the robe, which made its great constitutional claims against the crown beginning with the accession of Louis XV. Of course it is not Bell's duty to recite what is familiar history. But he does have a duty to explain to his readers, in somewhat more detail than he does, just how the ideology of his barristers differed from the rather more famous ideology of their counterparts on the bench. In particular, again, I wanted to hear more about how Bell's barristers' "rights" differed, in kind or in impact, from the "rights" of the *parlementaires*. For while Bell speaks to this important question, it must be said that he speaks to it in a way that is more narrative than analytical. See especially Bell, 203-04. It is hard to overcome the sense that Bell has missed a real opportunity to show, in deeper detail, how the strange "rights"-oriented world of the law became our strange modern "rights"-oriented world of politics.

## III

To the qualms of a legal historian, I must also add a qualm as a lover of the sixteenth and seventeenth centuries. The revolutionary tradition is, again, a tradition that clearly stretches back in time into the sixteenth century, just as it stretches westward across the Atlantic and eastward across the Rhine. Any really good account of lawyers and revolution must have a long historical, as well as a broad geographical, perspective. Bell is aware of the antiquity of his tradition, of course, and he has things to cite and things to say. Nevertheless, the reader leaves his book feeling that Bell has not fully conjured with the earlier history of law in France.

This is not so much because Bell fails to deal with the sixteenth-century Calvinist resistance tradition. On the contrary, he is very good about alluding to this part of the sixteenth-century background to his study, and he can fairly claim the right to leave analytic study on this very different period to others. My concern is not so much with the Calvinist resistance theorists as with the style of pre-eighteenth-century French legal writing.

In particular, it seems to me that the literary style that Bell presents as a phenomenon of the pre-Revolutionary period has a more complex history than he grants. The great years of the early seventeenth century, to Bell, are a time when the austere style established itself<sup>22</sup>—the austere style which, in Bell's schema, stands opposed to all that he associates with the lawyer as *homme de lettres*. And there may well be some truth in what Bell says. Nevertheless, it seems to me clear that early-seventeenth-century French lawyers had *already* developed the novelistic style of legal reasoning that Bell links to the literary revolution of the mid-eighteenth century.

The only way to prove this is through example, by doing a little cultural history of my own. I will take an example from a 1616 case. In particular, I will take an example that raises one of the typical issues of the *causes célèbres* of the pre-Revolutionary period: masters and servants. What I offer is not a *mémoire judiciaire*, the typical form of the eighteenth century. Rather, I offer a case report, much more typical of the early seventeenth. The case is reported by the estimable Claude Henrys, a fine jurist who himself sat as judge of the first instance in the dispute. I reproduce the bulk of Henrys's account, which was published, in a way typical of the French literary tradition, along with the rest of his complete works:

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22. See especially Bell, 47-48.

Laurent Bernard, a widower burdened with a child at the end of the Civil Wars [i.e., the devastating religious wars of the late-sixteenth century], had suffered grave financial losses as a result of the storms of war. He had no other recourse than to enter into the household service of his neighbor and kinsman Pierre Chambon. He was to remain a servant of Pierre Chambon a long time; and then again to continue as a servant to Barthelemi Chambon, the son and heir of the said Pierre Chambon, without interruption, for the space of approximately twenty-four years; during which time the Chambons, father and son, fed and supported not only him, but also his son.

But as all things are subject to change, the said Bernard, nearing the end of his days, at the age of approximately seventy-five, leaves the Chambon house, and moves in with his cousin Gabriel de Combes, ceding to de Combes his right to all wages and salaries which he regarded Barthelemi Chambon as owing him for twenty-four years of service.

As a result . . . Gabriel de Combes sued the said Chambon . . . for the payment of twenty-four years of salary at eighteen pounds per year. The argument in the courtroom was rather long. The plaintiff maintained that the said Bernard had served during the aforementioned period, performing both agricultural and household labor until his retirement. To deny him payment for his service would display ingratitude and bad faith; moreover his cause was all the more sympathetic, since this was the only recourse that remained to him in his last days.<sup>23</sup>

The story tugs at the heart: Ruined by the French civil war; reduced to working as a household servant for a quarter of century; at last, an old man, thrown upon the hospitality of a cousin to whom he can offer, in payment, only his right to twenty-four years of wages never collected; otherwise, Laurent Bernard stands upon the threshold of death with nothing. The facts are a tale of woe, punctuated with Spenserian sighs (“all things are subject to change”).

What could the defendant say in response? He focused on what would eventually be the winning issue after three appeals: that the claim was time-barred. But hear how the defendant argued this point:

The defendant said, on the contrary, that during the years of calamity the said Bernard had lived with him, as well as with his deceased father, more as a relative or kinsman than as a wage-earner; that in practice he and his children had been supported and clothed, even though during the better part of this period in

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23. Oeuvres de M. Claude Henrys, 6e. éd., 4. vols., (Paris, 1772), 2:251-52. (Livre IV, Chapitre, VI, Question XX: “Des salaires des serviteurs, & de quels tems ils peuvent être demandés.”)

question, this Bernard had been incapable of performing services, as much because of his frequent illnesses as because of his advanced age. In any case, having been satisfied with what he received before, he was not now permitted to demand salary from such a long period, the presumption being for the defendant, it being incredible that without payment of salary, or some substitute for salary, Bernard would have been able to support and clothe himself or his son, following the analysis given in the final of law of *Cod. de alim. pupillo praestandis*. Moreover this presumption in favor of masters is founded in manifest equity, there appearing no need for masters to prove, after such a long interval of time, that they had made payment without witnesses—nor to prove that they had good faith with regard to their servants. This indeed had motivated the [time-barring] ordinance of Louis XII. Finally the defendant pled that he was excused not only for the earlier years, but also for the last three, with regard to which he said that Bernard, ailing and reduced to extreme old age, had not been capable of earning any salary whatsoever. He had only been kept on out of pity, and had left only as a result of artful inducements practiced by de Combes, his successor in interest.<sup>24</sup>

To our tastes, there is a little more legal content here than in the plaintiff's account. There is citation of a passage from the Code of Justinian—though one startlingly bereft of the usual apparatus of Italianate citations. There is also, most importantly, a reference to the statute time-barring the claim. But even the reference to the statute is justified by an appeal to “manifest equity.” And the account of manifest equity itself is another novelistic tug on our heartstrings.

In fact, the defendant has contested the issue of “ingratitude.” Henrys, as it turns out, managed to decide this case on the most cold-hearted of grounds, the time-bar. But what is revealing, for my purposes, is not so much how Henrys decided the case, as how it was argued. It was, in fact, argued in the style of a cheap novel. Indeed, Henrys's presentation of this case fits very comfortably alongside the *mémoires judiciaires* about suffering female servants of the 1780s—*causes célèbres* that Sarah Maza highlights as reflecting a new pre-Revolutionary willingness to agitate novelistically on behalf of “the truly wretched of . . . society”<sup>25</sup>—though to be sure, the protagonist here is a suffering elder, rather than a suffering nubile young woman. Perhaps this reflects a shift, from the early-seven-

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24. *Ibid.*

25. Maza, 215.

teenth century to the late eighteenth, in what stirred the sentimental juices of French readers.

But while French sentiments may have shifted, the fact remains that French law, already in the early seventeenth century, was very noticeably a law of appeal to the sentiments: Sentimental jurisprudence, as we might dub it, was the French tradition long before Bell's *mémoires judiciaires* began circulating among the pre-Revolutionary public; long before the Maupeou crisis split the French bar; long before the anti-Jansenist reaction set in among young attorneys of the mid-eighteenth century; long before *littérateurs* began swarming to the Paris bar. The fact is that the French tradition whose rise Bell chronicles against the fortunes of the eighteenth-century bar seems to have been significantly older than the eighteenth century.

Sentimental legal reasoning, it seems to me, is in fact a very old form in France, and it is a significant failing of Bell's book that he tries to account for it as though it were an eighteenth-century phenomenon. This sentimental legal reasoning is, it must be emphasized, a form of legal reasoning, strange though it may appear to us. It is about the contest between claims of right just as much as are our own forms of legal reasoning. The fundamental difference, I would argue—though the point must be more fully argued elsewhere—is that this French form, sentimental jurisprudence, revolves around the characterization of *persons* rather than around the characterization of *transactions*: French sentimental jurisprudence, of the seventeenth- and eighteenth-century kind, asks "Who is this *person*? Is this person good or bad?" where our own reasoning asks "What is this *transaction*? Is this transaction good or bad?" This does not mean that French law is not law. It means that French law is a species of what modern legal philosophy calls the Jurisprudence of Interests<sup>26</sup>—though to be sure, a particularly elegant species.

#### IV

All of this, it must be clear, leaves me unsatisfied with Bell's account, polished and virtuosic as his book is. There is, for me, too much neglect of what makes law law-like, and, as a result, no real account of what makes revolutions law-like. There is also too narrow a view of what has made *French* law so very French; and something important is missing as a result. France was indeed a paradise of law and literature in the Old Regime. But it was a paradise of a kind different from the kind Bell describes.

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26. See especially P. Heck, *Gesetzesauslegung und Interessenjurisprudenz* (Tübingen, 1914).

But having said all that, it would be very wrong to end on a note of complaint. For this really is a virtuosic book, a book that greatly advances our knowledge on topics that have escaped French historians' attention for too long. More yet, this is a book that offers something rare indeed: a real argument. David Bell has written a piece of history that deploys a startling spectrum of historiographical skills to produce an admirably well-wrought interpretation. This is not the sort of accomplishment that comes along very often, and Bell deserves a lot of admiration and, not least, a large readership.

