

Articles

Epistolary Justice: The Love Letter as Law

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I am Arnaut, who hoards the wind
And hunts the hare with an ox.¹

I. INTRODUCTION

In a striking biographical depiction of her contemporaries, first published in 1659 under the title *Divers portraits*, Madame de Montpensier describes a “kind of Republic” of learned women within

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1. THE POETRY OF ARNAUT DANIEL 43 (James J. Wilhelm ed. & trans., Garland 1981).

the French monarchical state.² That Republic of erudite or illustrious women, known collectively as *les précieuses*, constitutes one of the last flowerings of the literary tradition of women's courts and the jurisdiction of love.³ The *précieuses* can be depicted best as a short-lived radical movement of separatist women who endeavoured to found and govern an oppositional feminine public sphere within the patristic autarchy of the civil society of their time. Most dramatically, they reconstituted the tradition of courts and judgments of love, both the legislation and the casuistry of amorous relationship, as determinants of the rules of a feminine public sphere. Administered by women, judged by ethical norms and enforced in aesthetic and poetic as well as political terms, the laws of this feminine public space took the form of a literary and specifically epistolary justice. The love letter was the trope of writ or law in the courts of love and it was in the form of letters, through correspondence, that the *précieuses* would map the most profound domain of human relations or interactions, that of the heart or of the *carte de tendre*.⁴

The response both of their contemporaries and of more recent legal history to the oppositional laws and courts of love, to this jurisdiction of dissent, has been dismissive.⁵ The *précieuses* and their litany of radical challenges both to the form and to the substance of the masculine polity posed too great a threat to the social norm to be valued by their contemporaries or transmitted by legal historicism as part of the tradition of law. The feminine Republic of letters, the casuistic norms and the amorous missives of the courts of love were not delivered or, more optimistically, have yet to arrive. The notion

2. MADAME DE MONTPENSIER, *DIVERS PORTRAITS* 301 (Caen, n.p. 1659) ("Ce seroit quasi une sorte de Republique, si ces personnes n'estoient pas nées dans un Etat Monarchique."). For a contrasting view, see ABBÉ D'AUBIGNAC, *HISTOIRE DU TEMPS* 26-29 (Paris, Sercy 1654). For an analysis of the politics and geography of *amour précieux*, see JEAN-MICHEL PELOUS, *AMOUR PRÉCIEUX. AMOUR GALANT (1654-1675)* 13-34 (1980).

3. On the earlier tradition, see Peter Goodrich, *Law in the Courts of Love: Andreas Capellanus and the Judgments of Love*, 48 *STAN. L. REV.* 633 (1996).

4. On the *carte de tendre* or "map of the heart," see 1 MADELEINE DE SCUDÉRY, *CLÉLIE, HISTOIRE ROMAINE* 399 (Paris, Augustin Courbé 1660) (1654) (currently available edition). For contemporary commentary, see JOAN DEJEAN, *TENDER GEOGRAPHIES: WOMEN AND THE ORIGINS OF THE NOVEL IN FRANCE* 55-57 (1991) (arguing that the *carte de tendre* or "map of the heart," the fictive geography of amorous relationships, was simultaneously located in the domain of literature and in that of the actual interaction of the sexes); PELOUS, *supra* note 2, at 13-26.

5. With respect to the earlier tradition, see, for example, JACQUES LAFITTE-HOUSSAT, *TROUBADOURS ET COURS D'AMOUR* (5th ed. 1979) (arguing that the courts of love existed only for social diversion or amusement); Paul Remy, *Les 'cours d'amour': légende et réalité*, 7 *REVUE D'UNIVERSITÉ DE BRUXELLES* 179 (1955) (arguing that the courts of love had, at best, a literary and loosely didactic existence). In terms of theoretical dismissal, see JACQUES LACAN, *Courtly Love As Anamorphosis*, in *THE SEMINAR OF JACQUES LACAN: THE ETHICS OF PSYCHOANALYSIS 1959-1960*, at 146-49 (1992) (describing the tradition of courtly love as a fantasm, comparable to the hallucination that emerges from a syringe); see also SLAVOJ ZIZEK, *THE METASTASES OF ENJOYMENT* 108 (1994).

of women taking over a portion of public space was dramatically dismissed as ridiculous by the *précieuses*' contemporaries and as amusing diversion or dangerous fantasy by later historians.⁶ The reasons for such denial or repression are relatively obvious: The courts were administered by women, their law was explicitly oppositional, their norms aesthetic, their substantive doctrine developed out of literary pretention, and their politics utopian or revolutionary. Furthermore, the object of their regulation, the affectivity of relationship and of amorous exchange, belonged to a patriarchally governed private sphere. It was and still is deemed laughable to treat the imaginary domain of love or the intensivity of relation as a subject of law, or as a dimension of political space.⁷ In consequence, the notion of a feminine public sphere which would adjudicate and facilitate the space of relationships, the space in between lovers and friends, women and men, must remain part of a negative history of law, a history of repressed jurisdictions, failed doctrines, or minor jurisprudences. For this reason I will recapitulate briefly the positive context or the reality of the *précieuses* and of their laws.

The *précieuses* were a political movement based around the work of a group of prominent female intellectuals, authors, and letter writers in mid-seventeenth century France. The movement can be dated fairly specifically by reference to Madeleine de Scudéry's *Les femmes illustres* of 1642, which reinvoked the classical figure of Sappho, and argued in emancipatory terms for a "justice and truth" proper to women.⁸ Although the demands of the *précieuses* were couched in literary terms, it is worth emphasizing that their initial context was that of armed rebellion and the exceptional role played by women in the French civil war, the Fronde, the armed uprisings

6. See MOLIÈRE, *LES PRÉCIEUSES RIDICULES* (Denis Canal ed., Larousse 1990) (1659) (exemplifying this tendency). As regards modern dismissal of such a movement, Pelous has remarked: "[E]very attempt to justify the idea that the *précieuses* existed in reality results in incoherence and insoluble questions." PELOUS, *supra* note 2, at 376; see also *id.* at 44-50, 359-78. Ian Maclean has expressed a similar view: "[T]hese ideas are indeed revolutionary, but they lack reference to everyday life . . . [or] mundane reality." IAN MACLEAN, *WOMAN TRIUMPHANT: FEMINISM IN FRENCH LITERATURE 1610-1652*, at 115 (1977); see also *id.* at 115-17, 152-54. Domna Stanton has argued that *préciosité* was a fiction of male fantasies. See Domna Stanton, *The Fiction of Préciosité and the Fear of Women*, 62 *YALE FRENCH STUD.* 107, 109-11 (1981). René Bray offers the appropriate corrective: "[I]n defining *préciosité* history should keep its modest place as the servant of critique. . . ." RENÉ BRAY, *LA PRÉCIOSITÉ ET LES PRÉCIEUX DE THIBAUT DE CHAMPAGNE À JEAN GIRAUDOUX* 8 (1948).

7. See, e.g., CHARLES SOREL, *LES LOIX DE LA GALANTERIE* 15-17, *passim* (Paris, Sercy 1659) (satirizing the *précieuses* by setting out an inverse set of laws of male galantry); see also CHARLES SOREL, *LA DESCRIPTION DE L'ISLE DE PORTRAITURE ET DE LA VILLE DES PORTRAITS* 57-59 (Paris, Sercy 1659) (discussing the narcissism of the *précieuses*). For a recent, jejune yet amusing example, see Gretchen Rubin & Jamie Heller, *Restatement of Love: Tentative Draft*, 104 *YALE L.J.* 707 (1994).

8. MADELEINE DE SCUDÉRY, *LES FEMMES ILLUSTRES* 155 (Coté-femmes 1991) (1642). On the reference to Sappho, see JOAN DEJEAN, *FICTIONS OF SAPPHO 1546-1937*, at 96-110 (1989).

against the influence of Anne of Austria's prime minister Cardinal Mazarin of the late 1640s.⁹ The role played by women as political and literary leaders, as generals, agitators, and pamphleteers in the Fronde has been well documented, and gave rise to the popular seventeenth century figure of the female Amazon.¹⁰ The role of the *précieuses* in the Fronde has another significance. It dramatically demonstrated the potential power, the political importance and threat of the feminine in the masculine polity or extant public sphere. The boundaries of the *gynaeceum* and of a femininity exiled by Salic law to the domain of domesticity, exploded in the public domain.¹¹ It also indicated the reality, the political commitment and the absolute seriousness of the social movement, of the salon, more specifically of the *ruelle*, and of the judgments of love that the *précieuses* embodied and disseminated.

Whatever the threat posed by the direct military engagements of the *précieuses*, there is an indisputable political radicalism both to the involvements and the demands of the movement. They sought justice and they conceived it to require a radical legislation of new forms of public space, of institution, of relationship, and of language. The preferred means of achieving these goals was that of a separate jurisdiction, an imaginary space or domain, of women's law within a distinct public sphere.¹² Developed out of the salon and the *ruelle*, the new courts of love took their place within a feminine public space and within a context of literary rules and judgments concerned with new forms of relationship, of lifestyle, and of love. In doctrinal terms,

9. For a contemporary account of the origin of *La Fronde*, see MADAME DE MONTPENSIER, *LA FRONDE. LE COMBAT DU FAUBOURG SAINT ANTOINE* 263-65 (Paris, Henri Gautier 1896) (1652) (work only existed in manuscript form until publication in 1896). Madame de Montpensier describes the coining of the term, early in the course of the troubles, when a parliamentary counselor embarked upon an attack on Cardinal Mazarin with the words "*je le fronderai bien*" [I will attack him thoroughly]. *Id.* at 263.

10. For a brief but interesting interpretation of the Fronde, see DEJEAN, *supra* note 4, at 33-43; see also NINA RATTNER GELBART, *FEMINISM AND OPPOSITION JOURNALISM IN OLD REGIME FRANCE* (1987) (arguing that *La Fronde* was a formative part of the tradition of feminist oppositional journalism and political dissent, and linking feminism to other political causes). A similar genealogy is suggested briefly in DENA GOODMAN, *THE REPUBLIC OF LETTERS: A CULTURAL HISTORY OF THE FRENCH ENLIGHTENMENT* 112, 158-59 (1994).

11. On the scholastic distinction between the *gynaeceum* or women's realm and the public sphere, see JEAN BODIN, *DE REPUBLICA* 746-53 (London, Knollers 1660) (1576) (first English edition) (depicting the law of masculine succession of the monarchy, and reiterating the Roman law exclusion of women from political and judicial office, and from possession of property); ANTOINE HOTMAN, *TRAITÉ DE LA LOY SALIQUE* 267-69 (Paris, Mathieu Guillemé 1611) (describing and justifying the exclusion of women from all forms of succession and office in terms of antique custom, unwritten law, antiquity of greatest weight and authority, "the most ancient memory . . . et sunt haec arcana imperii" [and these are the mysteries of government]).

12. See 10 MADELEINE DE SCUDÉRY, *ARTAMENE OU LE GRAND CYRUS* 573-80 (Paris, Augustin Courbé 1656), which depicts the *loix d'amour* as applicable in the first instance to the subjects of the rebel principality of Sauromates. In this aspect de Scudery borrows from the 15th century tradition in which the courts of love had separate jurisdictions for distinct amorous activities and for different moods.

the blank space or utopian project of the *carte de tendre* or oppositional political domain of affectivity, what I have called the jurisdiction of dissent, was governed by what would now be termed a feminist ethic.¹³

The model of relationship was that of love between women, and its basis was to be stylistic and aesthetic as well as ethical and political. At a most general doctrinal level, the *précieuses* were women of letters who valued an aesthetic of social exchange, of conversation, and of correspondence. They sought “subtlety of thought, method in desire, and purity in style.”¹⁴ Such attributes of “nobility of spirit,”¹⁵ of a feminine “*bel esprit*,”¹⁶ were to be achieved through the cultivation of *préciosité*, of the value and valuation of the feminine, through a “state of the soul . . . a collective spirit, a technique, an ethics, and a certain form of social life.”¹⁷ The predominant practical forms of such a social life or, in Montpensier’s term, of this kind of Republic, were in essence those of a feminine domain within the public sphere, a domain which included, in a minor key, a legislature and courts which would adjudicate all questions of lifestyle, of relationship, of affectivity, and of love.¹⁸

The means which the *précieuses* chose to achieve their goals and particularly the abolitionist and separatist terms of many of their demands have frequently and inappropriately distracted attention from the substantive goals of the movement. Most specifically, they sought the abolition of the institution of marriage and its replacement by a *douce liberté* in matters of amorous inclination or of choice of lovers.¹⁹ If there was to be a law of relationship it was, in Scudéry’s terms, to be contractual, an *alliance d’amour*, and not a permanent or proprietary conveyance. In the words of one *précieuse*, which interestingly foreshadow the language used by contemporary feminist theory, one should at the very least be married to someone—*se marier à*

13. See ERICA HARTH, *CARTESIAN WOMEN: VERSIONS AND SUBVERSIONS OF RATIONAL DISCOURSE IN THE OLD REGIME* 34-54 (1992).

14. 1 MICHEL ABBÉ DE LA PURE, *LA PRÉCIOSITÉ OU LE MYSTÈRE DES RUELLLES* 192-93 (Paris, Guillaume de Luyne 1656).

15. The *précieuse* in this respect belongs within a long tradition of “illustrious” or erudite women and is defined by Antoine Baudeau de Somaize in the dual terms of a woman of spirit and a woman who writes: The *précieuse* has two sorts of nobility, “a noble spirit by heredity and a noble spirit by letters.” 1 ANTOINE BAUDEAU DE SOMAIZE, *LE GRAND DICTIONNAIRE DES PRÉCIEUSES* 47 (Paris, Jean Ribov 1661).

16. On the definition and *differentia* of *bel esprit*, see FRANCOIS CALLIÈRES, *DU BEL ESPRIT OÙ SONT EXAMINEZ LES SENTIMENS QU’ON EN A D’ORDINAIRE DANS LE MONDE* 98-100 (Paris, Anison 1645) (distinguishing *bel esprit*, the faculty of imagination and of beautiful thoughts, from *bon esprit*, which is similar to reason and good sense).

17. BRAY, *supra* note 6, at 15.

18. For an introduction to the ethics and casuistry of the *précieuses*, see DEJEAN, *supra* note 4, at 17-42, 85-93; PELOUS, *supra* note 2, at 67-70, 307-25.

19. See, e.g., DE SCUDÉRY, *supra* note 12, at 343-45.

quelqu'un—and not be married, as she stated was then the case, against someone—*se marier contre quelqu'un*.²⁰ Attendant upon the contractual scheme of voluntary and volitional affection, the responsibility for child rearing was passed from women to men. Such a novel arrangement would allow for the revaluation of exclusively feminine company and conversation, and would change the nature of public discourse and social exchange. At one juncture, the *précieuses* proposed a corresponding revision of the French language which would banish all words of the masculine gender.²¹ The latter project, that of purification of the French language and the institution of aesthetic criteria of discourse, was not as absurd as satirists or predominantly male opponents have sometimes suggested. The *précieuses* proposed, in essence, a literary model of relationship aligned to the development of an art of amorous interaction. The notion that affective or private discourse, the language and the practice of love, could be judged by women was peculiarly threatening. It was predicated upon the revolutionary idea that the actual practice, the reality of the relation between the sexes, could be subject to scrutiny and to judgment. It was predicated upon the idea of a justice of relationship and countenanced the notion that women could desire differently from men. The *précieuses* in this sense advocated a revaluation of discourse, and a corresponding revaluation of the word as written by, or as the writing of, the feminine.

The value to which *préciosité* refers is in form a linguistic one. The epistolary novel of the *précieuses* and their literary development of a new era of the salon and of courts of love shared a common and constant theme. It was that of placing the domain of affectivity upon the political map. To make relations of love objects of judgment required that they belong to a public sphere or demi-monde of the social. The metaphor of law and the judgments of the courts of love were the method which was used to achieve this end. The love letter specifically acts as the transgressive emblem of the possibilities of the new forms of sapphic relationship and of love. In de Scudéry's view, if the feminine was to have a social value other than that of property and servile sexual use, it could only be through the legislation of an objective space of relationship, a public sphere or Republic of affective exchange, in which space—or territory—specified values, those of *préciosité*, would demarcate the domain and freedom of

20. See 2 DE LA PURE, *supra* note 14, at 216; see also LUCE IRIGARAY, J'AIME A TOI. EQUISSE D'UNE FÉLICITÉ DANS L'HISTOIRE 223-35 (1992).

21. See 2 DE SOMAIZE, *supra* note 15, at 10-11. See generally ROGER LATHUILLÈRE, LA PRÉCIOSITÉ. ETUDE HISTORIQUE ET LINGUISTIQUE (1969) (classic study of *précieuses* and language).

amorous relations.²² Love as a relationship was to be understood as an intrinsically platonic enterprise and only secondarily as sensuality: "I understand that to be loved ardently is to be loved exclusively and with respect . . . and that [such love must] be based upon the solidity of friendship and founded upon esteem and upon inclination. I further demand that a lover be faithful and sincere."²³ In pursuing the value of the feminine, and the subjective space of a love *entre deux*, or between separate and different subjectivities, de Scudéry and the *précieuses* who followed her placed an inordinate value upon the literary and upon letter writing as the proper expression of the space of relationship and as the appropriate form of love.²⁴ It was the love letter—the *billet doux*, the amorous poem, verse, and declaration—that could best institute and express the space in between lovers. The love letter articulated the necessary space of relationship, the distance through which both intimacy and affection were made possible.

The feminine Republic of the *précieuses* was a species of outlaw public sphere. It was also explicitly an imaginary domain, an impossible politics, a utopian assertion of a women's law within the context of a constitution governed by an antique Salic law which denied women all political and legal rights.²⁵ The Republic of the *précieuses* was free to adopt any law. Its oppositional character allowed it to legislate any jurisprudence it pleased, to develop whatever case law or ethical casuistry it wished. As an experimental and loosely heretical movement, the *précieuses* were free to rewrite the law and to choose whatever mechanism or doctrine best suited their political enterprise. They chose the love letter. The love letter established the public space of amorous relationship, the space between lovers, that of intimacy and of affectivity, with which the Republic of the *précieuses* and their *carte de tendre* were concerned. The epistolary art was the means used to institute and express a separate jurisdiction appropriate to relationships, a justice and judgment that attended to the space between lovers. The love letter was in that sense the legislation and the writ of an alternative or oppositional public sphere. In the language of the period, the love letter was the law of the first Venus,

22. See 10 DE SCUDÉRY, *supra* note 12, at 607-13.

23. *Id.* at 342-45. See BRAY, *supra* note 6, at 154-55, for a discussion of the relevant passages.

24. See 1 DE SCUDÉRY, *supra* note 4, at 259-397; see also DEJEAN, *supra* note 4, at 78-79; HONORÉ D'URFÉ, *LES EPISTRES MORALES ET AMOUREUSES* 493-548 (Paris, Gilles Robinet 1619).

25. The Salic law precluded women from inheriting or owning property in France. See HOTMAN, *supra* note 11, at 267-69. For the most important constitutional expression of this view, see BODIN, *supra* note 11, at 646-54. For discussion of this source, see PETER GOODRICH, *OEDIPUS LEX: PSYCHOANALYSIS, HISTORY, LAW* 116-20 (1995).

it was both statute and writ of a feminine domain. In its strongest formulation, the law of the first Venus and its manifest form, the love letter, was a higher order of rule, a law of conscience and of the spirit, a governance of the soul.²⁶ The love letter was not only another and competing model of law within its own domain or sphere, it also represented and inscribed an order of decision and of judgment, a case law. The love letter was the means used to articulate the decisions and casuistic rules that were to mark and regulate the space of relationships and of disputes between lovers. To the extent that a culture views questions of life style, of affective relationship and love as important, the rules of love and the justice of correspondence will be matters of concern within the public sphere. The *précieuses* did no more in that sense than formulate explicitly the casuistic tradition of love in the form of amorous writ and epistolary justice.

The love letter was the trope of law within the courts of love. It is this feature of the history of the *précieuses*, of their courts and their judgments in cases of love, that I wish to pursue in this Article. In Part II, I argue in broad trans-historical terms that it is no accident that the *précieuses* adopted the love letter as the form of law in the Republic of women. There is a remarkable correspondence between the love letter and the legal writ, or positive law. They are both developments of the same rhetorical art, that of the *ars dictaminis*, and they share a parallel history and express comparable substantive rules. It will be my argument that the love letter precedes and dictates the form of modern law. The love letter governs the domain of relationships and of affective life. It expresses and institutes what was termed the law of the first Venus, of which positive law and secular writ were a divergent and secondary strand.²⁷ The laws of the second Venus, the laws of men, were municipal and local, they were the pale shadow or vague reflection of a higher and repressed jurisdiction.²⁸

In Part III, I argue that the love letter and positive law share a specific substantive or doctrinal project. They are both concerned with addressing the intensities, the emergence, the transitions, and the breakdowns of relationships and other forms of human exchange. In this sense the love letter is its own law, it belongs to a separate and superior jurisdiction, and it sets out an aesthetic, a style, and an ethic of social relations of which love is an extreme but exemplary form.

26. See JOHN SELDEN, *JANI ANGLORUM FACIES ALTERA* 11 (London, T. Bassett 1683) (1610) (first edition unavailable). The law of the first Venus is that of nature, of the divinity, and of the spirit, while that of the second Venus, secular law, is the shadow of nature, and refers to the merely municipal rule of positive law. See *id.*

27. See, e.g., 3 JEAN DONNEAU DE VISÉ, *L'AMOUR ÉCHAPÉ OU LES DIVERSES MANIÈRES D'AYMER* 332-431 (Paris, Thomas Jolly 1669).

28. See D'URFÉ, *supra* note 24, at 544-48.

The love letter is thus both more than law and in breach of law. It is an intimacy made public, a fantasm on the borders of which reality is constructed, a justice that determines the fate of positive law. If positive law is principally a mechanism for the governance of human relationships, the understanding or the truth of such relationships is first mapped and defined by the epistolary rules of love. In short, the *carte de tendre* or map of the heart precedes and defines the more distant, indirect, and indeterminate rules of the public sphere of positive law. If positive law is capable of attending to the missives or laws of the first Venus, it can both develop an understanding of the affective dimensions of lawyering and begin to appreciate the plurality of domains and of forms both of justice and of law.

In Part IV of the Article my argument will be a more tenuous one. It is my thesis that the love letter and law share a comparable yet distinct concern with authenticity and truth. More specifically, the love letter as law can teach us a considerable amount about the justice of relationship and the space of affective exchange. By this I mean that the love letter institutes the domain or space in which relationships of love can occur in the same way that historically the writ instigated the space of a legal form of exchange. The love letter instituted correspondence, or more technically epistolarity, as the form of justice. Positive law borrowed that model but rapidly repressed its sources and forgot its rules as it also grew to ignore or annex the plurality of jurisdictions of which the love letter, and the feminine public sphere, were symptoms. The law of love was in a Freudian sense destined to become “the other scene,” the unconscious or repressed domain of positive or secular law. The domain of affective relationships was to become a “private sphere,” a hidden jurisdiction, governed by unconscious or unseen laws. The love letter can here act as a species of therapy for lawyers. Psychoanalysis has for some time recognised the insistence of the letter in the unconscious. This refers in a general sense to the linguistic structure of the unconscious and more specifically to the priority of the signifier over the subject. It refers to the law—the insistence—of the letter as the determination of unconscious causes.²⁹ Legal analysis could do well to recognise that the insistence of the letter in the unconscious of law is the insistence of the love letter.

29. See JACQUES LACAN, *L'instance de la lettre dans l'inconscient*, in *ECRITS* 136 (1966) (arguing the priority of the letter in the unconscious of the subject); see also Jacques Lacan, *Seminar on The Purloined Letter*, 48 *YALE FRENCH STUD.* 39 (1972) (analyzing the narrative of *The Purloined Letter* as an instance of the priority of the signifier—the insistence of the letter—over the intentions of the subject); cf. JACQUES DERRIDA, *Le facteur de la vérité*, in *THE POST CARD: FROM SOCRATES TO FREUD AND BEYOND* (Alan Bass trans., 1987) (discussing and extensively criticizing Lacan's *Seminar on The Purloined Letter*).

Purloined Letters: The Case of Celie

To trace the history of what the institution has denied, negated, repressed, or simply relegated to the *gynaeceum* or feminine sphere³⁰ inevitably involves an historical methodology that relies both upon the vestiges of the past and the imaginative reading of what historiography has failed to relay. The records reflect the preferences and privileges, as well as the emotional or imaginative limitations, of those whom history was written to serve. The present reconstruction of “another power” or “imaginary space”³¹ addresses seriously a documentary tradition that would otherwise be termed merely literary, purely aesthetic, a feminine divagation rather than evidence of any genuine institutional positivity. It is also for this reason that it is necessary to adopt a somewhat syncretic approach to the textual evidence of the epistolary domain and jurisdiction of courts of love. Much of the extant evidence or express depictions of cases and judgments are reported somewhat after the era of the *précieuses* and often in texts written with satirical or hostile intent by masculine novelists. Rather than simply discount such literature, it seems preferable to read it symptomatically, that is to say, as a negative expression of an institutional history that has yet to be fully recovered in more positive forms.

It is in this vein that I will address my first example, the history of Celie. The case is reported in a late seventeenth-century compilation of cases of love, authored by Jean Donneau de Visé with clear *fin de siècle* satirical intent. It is nonetheless an exemplary story of love letters and law, of justice and its epistolary forms, and can thus serve well as an introduction to the principal arguments to be made in this Article. In short, Celie is a *précieuse* even if the report makes little of that context, being written somewhat later by a male author. There is scant factual detail to the narrative; it is simply reported as a casuistical question of the law of love, and its determination is noted without comment or extensive judgment.

The occasion of the report is literary. Celie, described by the historian narrator as “the best and most spiritual person in the world”

30. The reference to the *gynaeceum* is to the glossators' reception of the traditional Roman law concept of a womens' sphere, a private familial sphere outside of politics, law, and proprietary right. See ANDREAS ALCIATUS, *DE VERBORUM SIGNIFICATIONE* 204, 229 (Lugduni, Gyphius 1536) (providing the classic glossatorial definition of *gynaeceum*). However, the *gynaeceum* was the space of tutelage of virtue, and it was there the duty of women to inculcate ethics. See [SIMP HORIEN CHAMPIER], *LA NEF DES DAMES: VERTUESES COMPOSÉE PAR MAISTRE SIMP HORIEN CHAMPIER* 55-66 (Paris, n.p. 1515).

31. The expression is taken from PIERRE LE MOYNE, *LA GALLERIE DES FEMMES FORTES* 13 (Paris, Cockart 1663).

has been seen in tears in the suburbs of Paris, "towards Vincennes."³² To this it should be added that she was observed "at the hour when the legal profession left work and went to dine."³³ The occasion and time of the report is thus literary in that it is defined at the margins of law. Its subject is doubly marginal in that it concerns a woman who is also a spiritual person, a *précieuse*, and it is recounted at the time when the profession goes to eat, when the law has ceased to sit or is no longer in term. On another boundary or limit of law it can be noted also and proleptically that the subject of the case is both in motion and in tears, visibly affected by law and by a peculiar epistolary fate. The hour of the report is dusk and this finally suggests, as does femininity itself (which law has defined classically by reference to the furies and to night) a border, a space of possibility and portent, of transgression and truth, of fiction and law.

Celie is not simply a spiritual woman. She is also a learned, erudite, or strong woman, an author of letters, a practitioner of that branch of the *ars dictaminis*, the legal art of writing, which was classically termed *ars epistolandi et amandi*, the art of writing and loving.³⁴ Celie was a specialist in classical authors and the Latin language. She was reputed both to speak and write exquisite Latin. Her case begins with an exchange of letters with an admirer, Thersandre. Thersandre, a man, a potential lover, a competitor and immoralist, a galant, was a fellow Latinist who prided himself upon his skill in the classical tongue. Upon hearing of her reputation, he sought out Celie's company so as to measure her competence in Latin. Upon acquaintance his conclusion was that she spoke it as well as he did. It remained only to discover if she could write Latin, if her pen was as powerful as her tongue. To this end, Thersandre sent Celie a number of *billet doux*, love letters, in Latin. She responded in the most elegant of styles and, in time, Thersandre fell imperceptibly in love with Celie. Thersandre declared his love for Celie "in so spiritual a Latin that she could not help but be impressed by it."³⁵ Over time, and with the passage of correspondence, Celie began to reciprocate Thersandre's

32. 1 JEAN DONNEAU DE VISÉ, *LES NOUVELLES GALANTES, COMIQUES ET TRAGIQUES* 62-63 (Paris, Estienne Loysen 1680).

33. *Id.* at 62.

34. See generally BERNARD BRAY, *L'ART DE LA LETTRE AMOUREUSE. DES MANUELS AUX ROMANS* (1967) (discussing the history of the early modern tradition of letter writing). The most influential works were probably ESTIENNE DU TRONCHET, *LETTRES AMOUREUSES* (Lyon, Paul Frellon 1595) (first edition available in British Library) and JAN PUGET DE LA SERRE, *LE SECRETAIRE À LA MODE* (Amsterdam, Elzevier 1644) (1632) (first edition available in British Library).

35. 1 DE VISÉ, *supra* note 32, at 63.

love, she found him “almost as lovable as his Latin,”³⁶ and began to admire his person as well as his letters.

The love affair began as a philological encounter. It began as an exchange of letters in Latin, and so is immediately also a question of law, of translation and interpretation, of tradition and its truth. More specifically, written reason or *ratio scripta*, the spirit and the language of Latinity, established a space of text and of writing, of history and of civility in which both love and law were joined through a common dependence upon the inheritance of the archaic language of Rome. For the moment I will simply observe that the epistolary discourse of desire preceded and engendered its corporeal equivalent, lust; the opening of one envelope led to the opening of another, a serial invagination. Writing, in other words, here preceded speech, and letters came in advance of the real or the flesh. A series of letters, in Latin, a philological and amatory correspondence or exchange, preceded and prescribed the love affair. Such is an inversion of the norms of amorous exchange. Within the code of courtly love and the rules of letter writing which it inherited from Ovid, the love letter signals either the abandonment or the absence of the lover and the consequent impossibilities of frustrated passion or *amour lointain*.³⁷ Here, however, the classical references and humanistic pretensions of the exchange perform a more modern function: the epistle anticipates the real, the fiction prefigures the truth. The letter of the law is the law of the letter.

The law and the letter raise further questions of transmission and of fidelity, of the faith or belief upon which all law, public and private, political and domestic, is founded.³⁸ The latter question arose in the case of Celie by way of other letters, and arose in a complex form. Celie’s husband, Celian, who was at that time residing at another house in the country outside Paris, received an unsigned

36. *Id.* at 64.

37. On the laws of courtly love, see ANDREAS CAPELLANUS, *TRACTATUS DE AMORE ET DE AMORIS REMEDIO* 310-12 (Havaniae, Gadiana 1892) (1176) (definitive revised edition). See also my discussion of that work in PETER GOODRICH, *LAW IN THE COURTS OF LOVE: LITERATURE AND OTHER MINOR JURISPRUDENCES* 29-71 (1996). On the broader tradition of love letters, see generally PEGGY KAMUF, *FICIONS OF FEMININE DESIRE: DISCLOSURES OF HELOISE* (1982) (tracing the survival of Heloise and of her correspondence in the epistolary genre of the novel in the 17th and 18th centuries); LINDA KAUFFMAN, *DISCOURSES OF DESIRE: GENDER, GENRE, AND EPISTOLARY FICIONS* (1986) (tracing the reception and sometime reversal of the Ovidian tradition of the *Heroides* in feminine inscriptions of epistolary desire from Heloise to *The Three Marias*).

38. For a classic statement of this dependence of law upon faith, see SIR THOMAS SMITH, *DE REPUBLICA ANGLORUM* 111 (London, Middleton 1565):

[N]o man holds land simply free in England but he or she who holds the Crown of England: all others hold their land in fee . . . or feoda which is as much to say in fide or fiducia, that is upon faith or trust, that he shall be true to the Lord of whom he holds it.

letter warning him that his wife was in love with one of his friends. He returned to Paris to investigate the matter. Celie had in the meantime herself been warned that one of Thersandre's relatives had wanted to put an end to their love and had written to her husband. Celie had therefore agreed with her "faithful lover" that they should not see each other so often but that they would continue to correspond and that she would keep his letters hidden.³⁹ Celie's husband, believing that if his wife was in love, there would be letters, searched for them. He eventually found one letter that Celie had received that day and had forgotten to hide. The letter, however, was in Latin, and not being conversant with the language, he could make nothing of it. Celian said nothing to Celie and was meanwhile faced with the delicate problem of how to have the letter translated without publicizing his wife's possible infidelity or otherwise embarrassing himself by exposing a circumstance which he would prefer to keep secret. He then remembered that one of his best friends, Thersandre, was a Latinist and so resolved to take the letter to him and, after swearing him to secrecy, have him explain its contents.

Thersandre agreed to Celian's demand. Both friend and lover, confidant and translator, author and interpreter, Thersandre is described as being "extremely surprised when [shown] a letter which he himself had written to Celie."⁴⁰ He conceals his astonishment and after reading a few words he says that he does not need to read it, he has seen the letter before, it is the text of a polemical lecture delivered by the ambassador of Poland attacking certain policies of the King of France. The husband is delighted by this news and drops the subject. Thersandre meanwhile writes a brief note in Latin to Celie warning her of what has happened and preparing her for possible discussion of the Polish ambassador's speech. He gives this note to a servant to deliver and then talks with the husband until the servant returns. The purloined letter is then returned by Celian to its addressee and what could plausibly and literally be described as the betrayal of translation is complete.

The next moment of the story is hermeneutic in the most classical of senses: it involves the theft, translation, and recirculation of messages. Celie ceases to love Thersandre and has an affair with a young man, Cleobulle. Here the desire was immediate, she loved him at first sight, but that love was again expressed in Latin and they began to write to each other on a daily basis. The husband suspects the existence of a love affair between Celie and Cleobulle and

39. 1 DE VISÉ, *supra* note 32, at 65.

40. *Id.* at 66.

confides this suspicion to Thersandre, who is himself jealous of Celie's apparent transfer of her affections. Thersandre has no doubt that their correspondence is a sign of love and therefore advises Celian to have a key made to the box in which Celie keeps her letters. Celian has a key made and takes out a single letter. The letter is again in Latin and so the husband brings it to Thersandre to translate. Thersandre reads the letter and learns of Cleobulle's love for Celie. Wanting to revenge himself upon Celie but not yet ready to reveal all to the husband, he tells Celian that Cleobulle is deeply in love with Celie, but adds that Celie has not yet reciprocated that love. Thersandre subsequently visits Celie and in a heated exchange lets slip that he has read one of Cleobulle's love letters. Celie thus learns of her husband's access to, and theft of, her secret correspondence.

The last phase of the story is postal and involves a further disruption in the relay of messages and the deferral of the arrival of letters at their destination. Upon learning of her husband's theft of her secret papers Celie empties her box of all correspondence and puts in its place a single letter in her own hand addressed to Thersandre. In this letter she berates Thersandre, castigating his recent behaviour, his betrayal of their love and his collusion with her husband. She also threatens that if Thersandre does not desist in his ruses she will reveal everything to her husband. Celian takes the letter to Thersandre to translate. Thersandre changes colour while reading the letter and, despite the husband's presence, mutters several times that Celie is evil and treacherous. Not knowing what to say about the content of the letter, Thersandre, out of spite and a desire for revenge, eventually tells the husband that the letter is from Celie to Cleobulle and that it acknowledges and reciprocates the love that he has shown her. Thersandre adds that his physical expression of emotion upon reading the letter, his blushes and stammers, are the result of the outrage he feels for the wrong done to his friend. The husband returns and confronts Celie in a rage. She eventually forces him to admit that his anger results from his theft of the letter and she demands that he tell her what he thinks it contains. The husband repeats Thersandre's misdescription of the contents of the letter and Celie responds by demanding that the husband take the letter to be translated by a third party, which the husband does. "[A]n old pedant at the University"⁴¹ translates the letter. Celie is vindicated and the husband severs all bonds with Thersandre.

For the sake of completeness I will note that the question posed as a case of love is whether Thersandre or Celie had been in breach of

41. *Id.* at 73.

faith, of their original *alliance* or contract of love. At first instance, Thersandre was vindicated, but on appeal this decision was reversed on the grounds that love was its own law and that Celie had simply followed her heart. Irrespective of the various thefts, returns, and redirections of letters, irrespective of philological betrayals, mistranslations, and rewritings, the positive principle was one which admitted the fluidity of relationships over time and thus acknowledged the priority of affectivity over normativity, of desire over propriety, and of love over positive law. Thersandre had lost the love of Celie and it was that loss of affection or passion that could neither be rewritten nor reversed but had simply to be accepted by law and as law. As for Celian, the proprietorial husband, Celie probably had both the first and the last word. When Celian returned the first stolen love letter, Celie had smiled and warned him to be careful of taking her papers "because next time he might walk off with one of her lovers' letters and become upset, because a husband who knows how to live, should be more upset by learning of his wife's lovers than she would be on learning of his."⁴²

While it is interesting that it is the wife who clearly wields the greater degree of affective power, a more structural interest attaches to the husband's continual failure to intercept or divert the love letters. The correspondence is lodged phantasmatically on the borders of the legal realm, it obeys its own jurisdiction and laws. It is in this sense that the amorous correspondence is an emblem of another law. It represents what Selden termed the law of the first Venus, of desire or of nature, to which the hermeneutic incompetence of the husband is but the dim reflection.⁴³ The husband represents a secondary or positive law, that of the second Venus, a law which is but the shadow of the first. The law of property and of secular possession, of propriety, appearance, and prosaic rules is tied not only to the empty formality of positive law but also to its deceit. Like Hermes, the husband steals and passes on messages that he neither has title to nor understands.⁴⁴ It is positive law which in this sense fails because it is inadequate to nature and uncomprehending of relationship. The husband never understands that crucial message and so remains an outsider to affective exchanges which he cannot understand, and a spectator to the amorous life, the fantasies, emotions, writings, and other realities of his wife. That his wife speaks and writes Latin is

42. *Id.* at 67.

43. See SELDEN, *supra* note 26, at 11.

44. On Hermes as messenger and thief, see COSTAS DOUZINAS ET AL., POSTMODERN JURISPRUDENCE: THE LAW OF TEXT IN THE TEXTS OF LAW 32-46 (1990); Peter Goodrich, *Hermeneutics*, in ENCYCLOPEDIA OF PHILOSOPHY (David Craid ed., forthcoming 1997).

merely the humanistic emblem of his incomprehension of the differences of gender.

The question of love posed by the case is not only that of the ethics of desire, of the freedom of the wife to pursue her inclinations outside the proprietorial bonds of marriage. The case can be read also as an instance of the letter as the unconscious form of law. What is most striking about the case is not its substantive narrative, nor the litany of its passage from laughter to tears, from love to law, from affection to anger, from one lover to the next. Its significance is altogether different, it is a matter of form and, put more strongly, of fate. The formal properties of the various correspondences or letters is of much greater significance than their content or apparent destination. What is important is the economy and circulation of letters, their obedience to a law of desire, to a law of unconscious destination whereby the letter may always be intercepted, deferred or delayed, but by which it also always eventually, destinerrantly, arrives. What, therefore, determines events is not the explicit message or address of the missive. It is rather the form and circulation of the message which determines its subsequent meanings. What is significant in the final analysis is the indirection of address and the mutability of destination, what has been termed the destinerrancy of the message, its insistence or unconscious cause.⁴⁵ The meaning of the final letter, addressed to Thersandre but intended for the husband, or more precisely intended to produce effects on the husband and not least a reinterpretation of previous letters, lies in its positioning, its placement, its form or mode of address, as much as in its evident content. The hermeneutic significance of the letter is captured best in the fact that whatever the nature of its message, whether it is taken as one of pure form or of a mixed meaning, it is the letter that "insists," that plays the law and determines the outcomes of the case. The logic of such outcomes obeys its own imperative: To be in love means to write and to write means to touch upon a primary law, to touch upon a force—a nature, desire, or justice—that exceeds both intention and address. The letter, I will argue, is the pre-eminent form of writing law. Although the

45. On the notion of "destinerrancy," see Jacques Derrida, *For the Love of Lacan*, 16 *CARDOZO L. REV.* 699, 702 (1995):

As for being shocked to see someone say "we," speaking on his own after the death of the other: there is nothing to be shocked about. There too, it is one of the best-known phenomena of the destinerrance which inflicts an internal drift on the destination of the letter, from which it might never return, but to which we should return.

See also DERRIDA, *supra* note 29, at 121. The destinerrancy of the letter should not be interpreted as precluding its arrival. It simply implies the failure of conscious causes and meanings, and so also the priority of unconscious causes. On this important point, see SLAVOJ ŽIŽEK, *Why Does a Letter Always Arrive at Its Destination?*, in *ENJOY YOUR SYMPTOM: JACQUES LACAN IN HOLLYWOOD AND OUT* 1-28 (1992).

jurisdictions of the letter vary, they are bound by a similar principle: for there to be law there must be inscription, and yet inscription is its own law, and pays its own dues. More than that, inscription takes the form of the letter and thereby inevitably raises questions of ethics and of destination, of sending and of receiving. Justice will be understood as a matter of correspondence.

What is significant initially about the case of Celie is not the disjunction of love letters and positive law but their proximity. That proximity is both theoretical and historical, recollecting the common origin and separate yet parallel development of the two epistolary forms and their domains of law. In Part II, I will address the homology between the love letter and legal writing by tracing briefly the historical commonality and theoretical relation of writ to letter, of forms of action to forms of writing, in the separate jurisdictions of love and of secular law. In Part III, I will analyze the place of the letter, of epistolary and amatory forms, within the tradition of judgments and courts of love. That history of a distinct jurisdiction, of another law, raises questions both of justice and of politics, of law and of writing, of gender and of genre. In its strongest form the argument will be that the love letter belongs to an alternative public sphere and to laws whose object is the writing of the soul. The love letter is here to be understood as an alternative and contingent form of law: it is both a radical challenge to the boundaries of positive law and an alternative model of the forms of application, the procedures, spaces, and objects of justice. The insistence of the love letter in the discourse of law is the insistence of law's other domains or jurisdictions, the insistence of the plurality of laws, the insistence of law's openness and not its closure.

The final theme raised by the history of Celie is concerned with the politics of discourse which the love letter reveals. In Part IV, I will suggest that the history of the love letter has a dual significance for law. It offers the possibility of rewriting law through the analysis of one of its boundaries, that of the jurisdiction of literature and specifically the judgments and rules of love. If the love letter is the unconscious or repressed form of law, if it is what can be termed law's other, its prior cause, it might be argued finally that the history of Celie and the fate of the letter both offer an example and a vivid application of an alternative conception of justice. It is the notion of justice as correspondence, as a site or space in between subjects and across which the written is transmitted. The love letter is radical because it assumes no prior identity or proprietary self. It suggests instead a space of relationship predicated upon an affective and fluid sense of self and of its possibilities or styles. Like law and like writing, the love letter is addressed to the other, to a contingent, fragile, and

mobile destination. The love letter, the amorous missive, is subject more than anything else to a law of sending, to a law of indefinite address. In crossing the distance that separates subjectivities it is destined, but it may not arrive at its intended or apparent destination. Following and reinterpreting a classical model, the love letter suggests forms of justice that pertain to different spheres and spaces of relation, forms of justice that belong to relays or networks, correspondences or exchanges, that far exceed the languages and boundaries of what is contemporarily misrecognised as positive law.

II. LETTER AND WRIT

A central feature of the case of Celie is the semiotic principle that if there is love there must be letters. Love is the occasion of writing, and writing is the evidence, or the letter is the proof, both of love and of change, of art and of the space of relation or, philosophically, of address and of destination. A new love is a new correspondence, the next exchange of letters. In the case of Celie, the philological nature of love or passion was explicit, the correspondences in Latin specifically took up the classical epistolary tradition of desire and acknowledged both that love occurred through writing and that the letter was the site, expression, and substance of desire. In the more contemporary idiom of psychoanalysis, the text or letter is quite literally the object of desire or the body, the *corpus iuris*, or the law of love. Love is in this respect inevitably a matter of writing, and letters are its necessary yet illicit form. The letter is bound to the paradox of epistolary love. In one aspect it addresses the impossibility, the distance, and the illegality of love and of its end, fornication. In another aspect, the love letter creates the possibility and the space or freedom to choose a lover or to express desire outside the bond or tomb of instituted relationships:

For the troubadour and the lawyer, to write is not to give way to impossibility but rather to put it in place through the act of writing. In this respect it resembles transference, that other form of love, by means of which psychoanalysis teaches us to live with the impossible.⁴⁶

46. JEAN-CHARLES HUCHET, *LITTÉRATURE MÉDIÉVALE ET PSYCHANALYSE* 24 (1990); see also MICHEL SILVESTRE, *DEMAIN LA PSYCHANALYSE* 131-42 (1987) (discussing the connection between love and writing); Juliet Flower MacCannell, *Love Outside the Limits of the Law*, 23 *NEW FORMATIONS* 25, 25 (1994) (arguing that “love [the love letter] opens where the Symbolic chain is broken down, revealing something unsayable, even transcendent that escapes its range. Or something poetic. Words diverted from their purely symbolic—which is to say militantly meaningless arrangements—become objects in themselves.”).

In arguing that there is both an historical and a doctrinal homology between love letter and legal writ, I will focus upon three aspects of the dual development of the epistolary and juridical forms. First, I will consider briefly the question of origins and love of truth in letters and in law. The authenticity of the love letter, its authorship or amorous source, finds a direct reflection in the lawyer's love of letters, in legal philology and the requirement of originals. Second, I will suggest that the epistolary and legal forms had a common disciplinary basis in a branch of rhetoric, the *ars dictaminis* or art of letter writing. The two species of letter develop as parallel forms of *artes dictandi* and if it is plausible to assert that the love letter represents a greater law, that of the first Venus, then it is equally feasible to argue that the legal letter is no more than a sub species of the epistolary genre. I will suggest finally that there is a substantive homology between love letters and laws that is played out in the act of writing and the ethics which it entails. It is not simply that letters establish and map a relationship but also that the desire expressed in the letter, the desire addressed to the other, constitutes a novel ethics, and potentially a means of writing the self. The letter is in legal terms an instrument, an action or deed, whose original performs (tables or notes) the cause that the writing inscribes and sends on.

It should be noted finally that my argument is, in historical terms, self-consciously syncretic. I place disparate periods, distinct genres, and different juristic traditions in proximity to each other for the explicit purpose of constructing an argument. The historically and institutionally specific example of the *précieuses* will be juxtaposed with earlier traditions of the notarial and amorous arts. The genealogy and the political significance of the courts of the *ruelle* will be traced by reference to a formbook literature of intimate and amorous letters that seem both distinct from the novelistic tradition and far removed from the prolix and inelegant cold prose or *litera mortua* of the legal system of writs. As if placing literature side by side with law were not bad enough, the argument that the love letter both precedes and dictates the form of legal writing will be made primarily by reference to that variant local form of Gallic law that developed in England as the Anglo-Norman *ius commune* or common law.⁴⁷ The justification for such historicist liberties is only partially predicated upon the thesis that a history of the feminine in the public sphere requires different rules of historical method, and that its object—the history of the

47. This argument is addressed in more detail in GOODRICH, *supra* note 25, at 81-89, and in a more political form in Peter Goodrich, *Critical Legal Studies in England: Prospective Histories*, 12 OXFORD J. LEGAL STUD. 195, 203-19.

image, of the love letter, of difference—requires a rethinking of what is to count as proof or as an object of historical investigation. It is also a grammatological argument that addresses directly the *longue durée* or dual structure of the written form, of *ratio scripta* and *fictio iuris*, of written reason and image or fiction of law, in the growth of western institutions. It is my argument that just as the reason of law depends upon fiction, so too the scriptural expression of law hides an epistolarity, an amorous direction or correspondence, a repressed trauma of origin that is destined contemporarily to return in ever more positive institutional forms. The history of the legal passion for texts and specifically for writs, the history of philology as the method of law, is, in essential respects, definitive of the Western institution.⁴⁸

The Rhetorical Arts of Legal and Amatory Letter Writing

The lawyer's philological passion and love of *literae* or texts is not, however, the most striking feature of the formal homology between love letters and laws. That law necessitates inscription, and that inscription is its own law, and must pay its own dues, is less significant than the specifically epistolary form of legal writing. It has been insufficiently remarked of the early common law tradition, of its itinerant courts and itinerant justices, that law was a system not only of writing, but of writing in the specific form of the letter. What, in other words, does it mean that the writ was a letter and that the earliest meaning of the post or *postea* is a legal one relating to the sending of writs, records and fines by the protonotaries of the King's courts to the keeper of writs, the *custos brevium*?⁴⁹ Further, what does it mean that by their own confession lawyers love letters? What does it mean that they are addicted to law?⁵⁰ The genre or form of the letter embraces both love and law not simply for the reason that both are forms of human relationship but more because both are concerned with the mapping of relationships, with a war against

48. This argument is made in considerable detail in PIERRE LEGENDRE, *LES ENFANTS DU TEXTE. ETUDE SUR LA FONCTION PARENTALE DES ETATS 183-232* (1992).

49. See JOHN COWELL, *THE INTERPRETER OR BOOKE CONTAINING THE SIGNIFICATION OF WORDS 138* (Cambridge, Legat 1607).

50. The notion of being in love with or addicted to law is a common theme in early treatises:

If the language or style do not please thee, let the excellency and the importance of the matter delight thee, thereby thou shalt wholly addict thyself to the admirable sweetness of knowledge and understanding: *in lectione non verba sed veritas est amanda* Certainly the fair outside of enamelled words and sentences, do sometime so bedazzle the eye of the reader's mind with their glittering show, as they cause them not to see or not to pierce into the inside matter . . . *projicit ampullas et sesquipedalia verba*

SIR EDWARD COKE, *REPORTS* pt. 3, fol. c7b (London, Rivington 1777); see also WILLIAM FULBECK, *DIRECTION OR PREPARATIVE TO THE STUDY OF LAW; WHEREIN IS SHEWED, WHAT THINGS OUGHT TO BE OBSERVED AND USED OF THEM THAT ARE ADDICTED TO THE STUDY OF LAW* (London, W.T. Clarke 1829) (1599) (facsimile of first edition).

distance, with communications between absent parties. To cease to write would in legal terms be to cease to rule. Similarly, to end a correspondence was to recognize the end of love or, in the terms used earlier, the triumph of impossibility over writing. The opposition between writing and distance is played out in the love letter, in the form of the antinomy of *jouissance* and death or, in Julia Kristeva's words: "If it lives, your psyche is in love. If it is not in love, it is dead. 'Death lives a human life,' Hegel said. That is true whenever we are not in love or not in analysis."⁵¹ To be in love is to write, and each new love is a new correspondence.

There is, it may be surmised, a multiple significance to the fact that all the early literary sources of common law refer extensively and even at times obsessively to the scriptorial functions and offices that emerge with the early form of a national legal system.⁵² Thus *Fleta*, in describing the offices attached to the King's Bench, remarks that there are also in this court clerks (*clerici*), protonotaries (*protonotarii*) and cursitors (*cursarii*) who enrol pleas and write judicial writs, and there are two chirographers (*chirographarii*), who also accompany the justices in Eyre, concerning whom it is enacted that they are to be content with four shillings for writing each chirograph, and for writing a judicial writ, the writer is to receive one penny only.⁵³

The itinerant character of justice required an elaborate system not only of inscription and of writing but also of sending, storing, summoning, tabling, noting, and engrossing. The system which the English common law adopted was one imported from France, and, according to Lambard:

[W]riting and writs came also with the Normans, [whereas] the Saxons (our Ancestors) whose proceedings were *de plano*, and without solemnity, did not use (so far as I have hitherto observed) to call the parties by writ or writing, but to send for them by certain messengers, which they termed *Theignes*; that is to say Ministers or servants.⁵⁴

51. JULIA KRISTEVA, *TALES OF LOVE* 15 (1987); see also LUCE IRIGARAY, *MARINE LOVER: OF FRIEDRICH NIETZSCHE* 28 (1991) ("This is the worst peril today, the death that is taken for life. The death that you forced upon me so that you could control it and resist it and which now pushes us aside into a mere appearance of living beings.").

52. For discussion of this theme, see PETER GOODRICH, *READING THE LAW* 4-20, 126-32 (1986).

53. *FLETA* 138 (H.G. Richardson & G.O. Sayles eds., 1955).

54. WILLIAM LAMBARD, *ARCHEION OR DISCOURSE UPON THE HIGH COURTS OF JUSTICE IN ENGLAND* 53 (London, H. Seile 1591). For discussion of the uses of writing in early common law, see M.T. CLANCHY, *FROM MEMORY TO WRITTEN RECORD* 16-57 (1979); DAVID MELLINKOFF, *LANGUAGE OF THE LAW* 116-34 (1963). See also Peter Goodrich, *Literacy and the Languages of Early Common Law*, 14 *J.L. & SOC'Y* 422, 428-36.

The writ or letter was initially "a silent messenger" and would bring the words of the absent party to the ear of the addressee without voice.⁵⁵ The letter was to be read, just as the lover's song was to be sung and her poem intoned.

Initially I will simply note that the early development of the medieval legal system, the reception of Roman law in Europe and the expansion of the common law system of writs, coincided with the establishment of the code of love and the emergence of the poetic and epistolary traditions of the courts of love. The specific coincidence is less remarkable than the parallel development of arts of writing or *artes dictandi* that governed both letters of law and letters of love. The formbook literature that dictated the proper forms and expressions of legal missives and lovers' letters was not a diversion or amusement but rather a code that put in place the possibilities, the spaces, of the public sphere and of the various institutions or jurisdictions of relationship. In this aspect it is necessary to remember that both legal writ and lover's letter served to write the self as action or as passion, as deed or devotion within the separate jurisdictions of the public and private, the divergent domains of the political and affective spheres. What is crucial for my present argument is that both epistolary enterprises were governed by rhetorical norms of public speech and of writing and by their correlative codes of ethical action and of the justice of correspondence.

The *ars dictaminis* or legal art of letter writing was a medieval development of a branch of rhetoric.⁵⁶ Being a rhetorical art its primary concern was with the means of persuasion through the construction of a mode of address in the various forms of correspondence. Its focus was thus both upon the person to be addressed and the contexts and effects of such written speech. The model or form of the letter was thus based upon a notion of dialogue in which the letter was conceived as a written form of oral transmission and was to elicit an effect, a reaction or response. In classical rhetorical terms there were only two branches of *epistola* or letter: letters were either official or intimate, *negotiales* or *familiares*.⁵⁷ The love letter was a species of intimate or secret letter but it was one which in early rhetorical theory was not distinguished other than by the substance of its

55. ANDREAS ALCIATUS, *DE NOTITIA DIGNITATEM* 190 (Paris, Cramoisy 1651) ("Quid est epistola? Tacitus nuncius.").

56. For a critical discussion of this point, see BRIAN VICKERS, *IN DEFENCE OF RHETORIC* 232-38 (1988).

57. See JAMES J. MURPHY, *RHETORIC IN THE MIDDLE AGES* 220-55 (1974); see also C. Iulii Victoris *Ars Rhetorica*, in *RHETORES LATINI MINORES* 448 (Charles Halm ed., 1964). See generally ERNST CURTIUS, *EUROPEAN LITERATURE AND THE LATIN MIDDLE AGES* (1979) (discussing *ars dictaminis*).

'petition' and the consequent need to keep its subject matter, its sender and addressee, secret. Whatever the letter, it was to retain the specified form set out in the principles of letter writing, the *rationes dictandi*, the most important of which was the first, the salutation which was to be appropriate to its addressee and to its cause or petition.⁵⁸ What is abundantly clear is that in terms of official transactions and the business of government, the lawyers borrowed directly from the *ars dictaminis* and its established principles and divisions of the letter.⁵⁹ In later tradition the protocols of letter writing were said to constitute the virtue of love, just as much as the precise wording and due forms of the writ or other legal writing constituted the force of law.⁶⁰

In that it was a rhetorical form, the letter was designed principally to plead or state a cause, to persuade or to move to action. In both civil and common law, the numerous offices of writing, of sending, receiving, noting, proclaiming, and filing letters are organized, therefore, around the act or message which the letter performs or announces. Early legislation thus took the form of letters patent and was addressed to specific officials.⁶¹ Although later legislation was more general in its address in that it touched upon all or was sent *erga omnes*, to all—to God, the faithful, the Christian, the subject—its doctrinal function did not greatly differ from earlier forms.⁶² The later form provided an explicit recognition of what was implicit before, namely the ultimate or divine addressee of all correspondence, of all justice. Early law was addressed to specific correspondents or recipients, from a sovereign who was explicitly acting vicariously or as the vicar of God. The usual forms, offices, and functions of the legal writ or epistle are specific and specifically addressed. Describing the Court of Exchequer, for example, Sir Thomas Ridley depicts a sacral system of delegation and inscription, of honor and correspondence. The officials of the court were termed *sacerdotes* "because

58. On the parts of the letter, see, for example, the work of an anonymous *dictator*, Anonymous of Bologna, *Rationes Dictandi*, in *THREE MEDIEVAL RHETORICAL ARTS* 5 (James J. Murphy ed., 1971).

59. See MURPHY, *supra* note 57, at 263-68.

60. See DU TRONCHET, *supra* note 34, at 5-6 ("[T]he affections are declared in love letters whose power is that of allowing encounter with others and facilitating the possibility and pleasure of sincere love, and the declaration of private inventions and imaginations . . ."). In another work, Du Tronchet provides an equivalent depiction of the dependence of government upon letters. ESTIENNE DU TRONCHET, *LETTRES MISSIVES* fol. a.iii.a (Lyon, Frellon 1567).

61. For discussion of this point, see Desmond Manderson, *Statuta v. Acts: Interpretation, Music, and English Legislation*, 11 *YALE J.L. & HUMAN.* 131 (1995). See also DAVID WILKINS, *CONSILIA MAGNAE BRITANNIAE ET HIBERNIAE AB ANNO MCCCL AD ANNUM MDLXLV* (London, n.p. 1737).

62. See, e.g., WILLIAM RASTELL, *A COLLECTION IN ENGLISH OF STATUTES NOW IN FORCE* (London, Society of Stationers 1566) (translation of statutes in force at time of publication).

their office was *Deo sacra dare*, to sacrifice to God.”⁶³ The sacrifice that constituted the office of lawyer was one that separated the divine or consecrated order of law from the secular domain of its subjects. The distance and the division both within and between the orders of law and of laity necessitated correspondence. The letter traversed the space of difference just as much as it travelled the itinerant path of the justices in eyre. The hierarchy of legal honour, in other words, reflected a divine order of inscription and was expressed in terms of the various clerical and notarial offices, the *notitia imperii* and the order of writings:

[N]ext to the Chancellor or Master of the Rolls, were the clerks, and others that served in the Rolls, in which the decrees and rescripts of the Prince, the supplications of the subjects, and the orders thereupon set down are recorded, laid up and kept, as the Rolls of Remembrances, of Epistles, Libels, Ordinances, Gifts and such like.⁶⁴

The clerks would write and write back, they would send and receive the post, they would summon, order, grant, and give by epistle, letter, or writ and the same would be noted, enrolled, scrivened, or inscribed.

The details of the various offices of the legal postal network and the varied forms of written salutation and address form a cumulative evidence of the epistolary structure of legal writing. If we take the example of written instruments, a comparable form of address is common to the most diverse kinds of formal legal writing or obligation. The various forms of legal instrument are collectively described in William West’s formbook the *Symbolaeography*.⁶⁵ In common with legislation and royal charters, the first addressee of formal writings is mystical, it is memory, posterity, or more directly the Christian community, the usual address being *ad omnibus christi fidelibus . . . salutem*. The general addressee of legal language was thus not the extant community but the audience of record and of perpetual registration. West therefore defines the contractual writing or instrument as being distinct from “ordinary letters, private notes, reckonings and remembrances made by any for a man’s own private use or memory, and from all books or arts, histories, divinitie, philosophy and such like.”⁶⁶ Where the formal writing differed from

63. SIR THOMAS RIDLEY, A VIEW OF THE CIVILLE AND ECCLESIASTICALL LAW 44 (Oxford, H. Hall 1676) (1607) (first edition available in British Library).

64. *Id.* at 61.

65. WILLIAM WEST, SYMBOLAEOGRAPHY WHICH MAY BE TERMED THE ART, DESCRIPTION OR IMAGE OF INSTRUMENTS . . . OR THE PATERNE OF PRESIDENTS OR THE NOTARIE OR SCRIVENER (London, T. Wright 1603) (1599) (citing augmented edition).

66. *Id.* at fol. A8a.

both private forms of record and other literatures was not in its structure of address but rather in the coding of that correspondence as being more than “bare speech” or “ordinary scrivening.” Formal writing belonged to a transcendent order of correspondence, it was written by the grace of God, *dei gratia*, and it was capable of demanding a response not simply from someone addressed now but from their successors or heirs as well.

The language of divine address is explicitly one of faith and of defense of the faith. It is also a discourse of love, of *amor purus* or spiritual desire. God is addressed through faith, and the essence and idiom of faith is love. That Latin is the language of such address in early modern law again reflects not only the encrypted nature of the correspondence, the equivalent of amorous secrecy, but also the hierarchical and exclusive nature of this public and professed passion or faith. Philological love or the lawyer’s *amor purus*, his morbid belief in the timeless and perfect letter of the law, establishes a conversation across and in spite of time. It is in essence not a dialogue with contemporaneity or the living, but rather a fantasmatic correspondence within an exclusive and homosocial professional world and addressed not to contemporaries or the living but *de futuro*, from the dead to the unborn. The language of law was uncorrupted by speech, it was the inscription of nature, reason manifest, and not some lesser scrivening.⁶⁷ The pristine language of precedent and of legal record was said to speak across the temporality of law’s subjects, conveying a message to an indefinite future time. Even where these letters of record or this correspondence of tradition was falsified by living testimony, it still remained true as sent until a writ of error or countervailing writing was delivered.

Sir John Doderidge records a case that provides a dramatic and disturbing example of a principle that “if a record once say the word, no man shall be received to aver; speak against it; or impugn the same. No though such record contain manifest and known falsehood, tending to the mischief and overthrow of a person.”⁶⁸ In the case in question a number of individuals were outlawed in the King’s Bench, their goods forfeit and their names certified in the Exchequer with an abstract of their goods. It so happened that by misprision of the Clerk to the court the name of one individual was included on the list sent to the Exchequer even though that person was not outlawed. A writ

67. On the relation of legal language to nature, see SIR JOHN FORTESCUE, *DE LAUDIBUS LEGUM ANGLIAE* 108-09 (London, Gosling 1737) (1470) (best available edition). For discussion of that theme, see PETER GOODRICH, *LANGUAGES OF LAW: FROM LOGICS OF MEMORY TO NOMADIC MASKS* 83-95 (1990).

68. SIR JOHN DODERIDGE, *THE ENGLISH LAWYER* 200 (London, I. More 1631); see also GOODRICH, *supra* note 67, at 111-48 (addressing these issues in more detail).

was issued. The individual in question came to the court of the King's Bench and along with a judge of the court testified that he had not been outlawed and gave evidence that what had been done was the result of a clerical error or misprision. Justice Skipworth

returned this answer: That although all the justices would now record the contrary, that they could not be permitted, nor any credit given thereunto, when as there was a Record extant, and not Reversed, testifying the same outlawry: yea, the Law so mightily upholdeth the intended Credit of a Record, that it preferreth the same before the oathes of men, sounding to the contrary.⁶⁹

If the formality of legal writing is an expression of the divinity of the word, of the letter's addressee, it is unsurprising that the temporal exchanges that legal instruments devise or record should also be structured around a formal sense of correspondence, of signature and delivery, of address and of sending that exceed their temporal use or living forms. The deed was delivered dogmatically in just the same way that the fine or charge on land was not simply to be written (engrossed) by the chirographer but also sent, tabled and fined in the courts.⁷⁰ It was not enough merely to write, the chirographer had also to deliver in the eyes of the other, in the forms of an absolute or atemporal law, because law was in structure rhetorical and in practice epistolary. Both text and letter of law implied an inscription, *sub specie aeternitatis*, and so was addressed to the eye of posterity or the source of law.

The notary, for William West, was explicitly a species of poet or rhetorician whose rules of composition, "the tenors and forms of special instruments," were comparable directly to "the several kinds and measures of verses, [together with] the laws of versifying" or to the "tropes, figures, and precepts of rhetoric."⁷¹ Similarly and finally, at the level of the process of litigation, the forms of writing took the explicit form of correspondence.⁷² The process started with a complaint and answer, followed by replication, rejoinder, and surrejoinder. The complainant was explicitly termed the orator, the form of the bill of complaint being listed by West as follows: "[I]t may please your good lordship, to grant unto your said orator, her majesty's most

69. DODERIDGE, *supra* note 68, at 201-02.

70. See WEST, *supra* note 65, at pt. 2, § 170-72.

71. *Id.* at fol. C1a.

72. See, e.g., SIR EDWARD COKE, A BOOK OF ENTRIES (London, Streeter 1610) (exemplifying the way in which legislation and writs were formulated and addressed as letters in the early 17th century); WILLIAM RASTALL, A COLLECTION OF ENTREES (London, Totell 1566) (same).

gracious writ of subpoena, to be directed to the said H.H.” and so on. The standard form answer was that:

[T]he bill is untrue, uncertain and insufficient in the law to be answered . . . [the orator] out of malice and evil . . . conceived against the defendant, to the intent thereby unjustly to vex and molest him with tedious travel, being an aged man, and to put him unto great expense, being very poor; but chiefly to weary, impoverish and terrify him this defendant.⁷³

The further rules relating to modes of address of instruments concerned the requirements, known as exceptions, which listed in minute detail the name, rank, place, occasion, and cause of the transaction. In all its forms the law was inscribed, and yet, inscription is its own law and pays its own dues. In relation to law, the dues of writing, the insistence of the letter, press against the repression barrier of the constraints or the formalism of the discourse of law, its fear of, or its distance from, the living. These dues or this insistence may be summarised as follows. First, the legal writ or written form of sovereign communication develops from a rhetorical form concerned with address to an individual or audience and formulated so as to produce effects of persuasion or action. The legal writ demands either deed or response at the behest of a superior. It is imperative and if ignored results in the exile or outlawing of the addressee. The love letter, by way of comparison, obeys a similar imperative, for “like desire . . . [it] waits for an answer; it implicitly enjoins the other to reply, for without a reply the other’s image changes, it becomes *other*.”⁷⁴ Second, and inversely, the epistolary form of rhetoric traverses or transgresses diverse genres but nevertheless retains its form or its own law. Most broadly, it necessarily transgresses the contingent boundaries of public and private. The legal writ is addressed to an individual, a judge in Eyre, an officer of the realm, or a subject, but has to be delivered and has to be seen to be delivered in the course of the post. Whether the letter concerns the king’s pleasure—for as *Fleta* remarks, what pleases the prince has the force of law⁷⁵—or the affective or amorous desire of another subject, the letter implies an intimacy made public, a private action or response, in short a correspondence. Third, the letter is formulaic in structure, which means that it is coded, and whether legal or amorous

73. WEST, *supra* note 65, at pt. 2, § 68.

74. ROLAND BARTHES, *A LOVER’S DISCOURSE: FRAGMENTS* 158 (1979); see also KAUFFMAN, *supra* note 37, at 303 (“To evoke a response, after all, is one aim of all amorous epistolary discourse. One asks the beloved questions in the implicit hope and faith that the beloved will answer, not just once but again and again.”).

75. See FLETA, *supra* note 53, at 36 (“quod principis placuit legis habet potestatem”).

it endeavours to restrict its publicity or publication through both seal and language. What is public, in other words, is the form, the sending and the arrival of the letter, and not its content: whether it be a matter of law or love, the epistolary form requires a destination, a named and exclusive addressee.

That the letter presumes an addressee implies that the letter is transgressive of genre in a further sense. The letter is personal, it is defined by the *ars dictaminis* as a matter of expression of sentiment, in the form of salutation, persuasion, narration, petition, and conclusion.⁷⁶ Even where the letter is borrowed from a formbook, from West's *Symbolaeography* or from its amatory equivalent, let us say from the pseudonymous Philomusus, *The Academy of Complements*,⁷⁷ the letter is a messenger and like language or indeed as language it is "the messenger of the human mind,"⁷⁸ or alternatively, when written, "the messenger of the absent."⁷⁹ The letter, in short, always also has an affective purpose and necessarily engages sender and recipient in a relationship with both a personal and a public dimension, with both an emotional and a cognitive content. The legal letter is nonetheless a letter. Not only does it in historical terms share many of the substantive features of the love letter, but in formal terms it does not differ from poetry or the rhetoric of persuasion except in that it expresses different pleasures and other desires. The love letter, in history and in theory, expresses a greater freedom and a more authentic form of correspondence. In this sense the love letter is the soul of law, it represents the possibility of justice as the affectivity addressed to the particular correspondent, the subject who, by virtue of the letter, by virtue of writing, is called but is not yet before the law. The insistence of the letter in the unconscious of law is the insistence of the love letter, the insistence of other possibilities and potentials derived from the plurality of laws.

The letter is not only a messenger of the mind, it is also depicted by West as a "confession" and as evidence of what the subject desires to be done.⁸⁰ Even in law, it may be hazarded, the letter is linked to

76. See Anonymous of Bologna, *supra* note 58, at 7.

77. PHILOMUSUS, *THE ACADEMY OF COMPLEMENTS WHEREIN LADYES, GENTLEWOMEN, SCHOLLERS, AND STRANGERS MAY ACCOMODATE THEIR COURTLY PRACTICE WITH MOST CURIOUS CEREMONIES, COMPLEMENTALL, AMOROUS, HIGH EXPRESSIONS AND FORMES OF SPEAKING, OR WRITING* (London, H. Mosley 1638). For another slightly earlier example, see NICHOLAS BRETON, *CONCEYTED LETTERS, NEWLY LAIDE OPEN: OR A MOST EXCELLENT BUNDLE OF WIT, WHEREIN IS KNIT UP TOGETHER ALL THE PERFECTIONS OR ARTE OF EPISTELING* (London, B. Alsop 1618).

78. ALCIATUS, *supra* note 30, at 16, col. 1.

79. ANGEL DAY, *THE ENGLISH SECRETORIE OR METHODE OF WRITING OF EPISTLES AND LETTERS 1* (London, Cuthbert Burby 1607).

80. WEST, *supra* note 65, at fol. A8a; see also THOMAS PHAYR, *A NEW BOKE OF PRESIDENTES, IN MANNER OF A REGISTER* (London, Whychurch 1544) (construing the letter as

desire and to the affective pleasure of the subject—the letter is the internalization of law and in that specific sense it precedes the law, the letter is the law. Two themes will focus analysis of the possibilities contained in that proposition. First, the homology of law and love letters, of legal writ and amorous correspondence, has been addressed, if at all, in terms of the priority or prior reality of the legal writ.⁸¹ I will reverse that privilege by arguing that the love letter precedes the law in precisely the same sense as language or writing precedes and dictates the terms of law's rule. Furthermore, the desire which structures all writing finds a comparable expression in both legal writ and amatory epistle. The themes of fidelity and infidelity, of acceptance and rejection, of care and of indifference, and even of conquest and loss suggest that within their own spheres, the fantasies of love and law are not so different either in form or substance. Within the tradition which we know as that of western law, to love is to write, and to write is to touch upon law. My second focus is therefore concerned with the relational space as well as the affective idiom that the letter opens up. The letter exceeds the law and so plays the law, it is itself an order of law that structures law in the same way as it structures love.

III. THE CHANCELLERY OF LOVE

In a literal sense the letter writes the self. We write so as to change ourselves, so as to become ourselves, so as to postpone or lose ourselves, not through the externality of law but through the internality of writing as the space of self-fabrication. To write is in this sense the most powerful of ethical activities, it is both the construction of a space of possibility for the self and a positioning of the self within that space and in relation to the other. Writing inserts the self in history, in the domain of the other, and it is that relation of the self to writing which suffuses both law and the other genres of correspondence. We should not conclude too readily that lawyers no longer write, but we can argue that the legal structure of the letter has not been fully understood, or “known and significant” in law. The letter represents, I will suggest, another law, an unconscious or fate which can be addressed more directly through the courts of love than through the rules that are misrecognized as being a secular or positive law.⁸²

evidence).

81. See, e.g., ZIZEK, *supra* note 5, at 89-94; Renata Salecl, *Love: Providence or Despair*, 23 NEW FORMATIONS 13, 13-25 (1996).

82. See generally GOING PUBLIC: WOMEN AND PUBLISHING IN EARLY MODERN FRANCE 1995 (Elizabeth Goldsmith & Dena Goodman eds., 1995) [hereinafter GOING PUBLIC]

In cases of love, the letter is a trope of law. It signals desire and its destination, but it also marks the fate of love in the form of the distance that separates lovers. Ironically, therefore, the letter plays the part of signifying the limitation or mortality of love, its subjection to and rebellion against law.⁸³ The trope or role of the letter can be understood initially in terms of an internalized exteriority. A letter is written by a subject, it is written to the other as the object of desire and yet once sent it is beyond all redemption or recall. Once sent, the subject's fate is sealed, and the letter in its turn becomes an absolute: It takes on the role of law and determines the outcome of love without further intervention. This absolute or spiritual and so destined quality of the love letter is apparent from early within the tradition of amorous missives. The love letter is addressed to the space or domain of love and because that space is one of affectivity, because it is an imaginary domain across which correspondence occurs, the letter itself becomes an exterior force or law. It is law in several senses. Within the doctrine of love, amorous passion is a divine force, a law of the first Venus, and it dictates the terms, intensities, and direction of affection. The earlier courts of love and all of the formbooks of love letters are unanimous in referring the lover's passions to the deity of love, to the divinity or other that presides over and demarcates, that writes invisibly, the narrative and drama of love. Love is a virtue dictated by natural law and one of the primary purposes of the collections of love letters is precisely that of showing "that love is a sacred desire . . . without which we would be deprived of reason and human society."⁸⁴

The subjection of the domain of love to the principles or law of correspondence dictated by a God of love is a theme which can be found throughout the tradition of amorous missives. One popular collection of diverse forms of letters begins a letter to a mistress in typical style by referring to: "That powerful Deity . . . [which] has at this time manifested his sovereignty over me, who being taken in the snare of love, and fettered in the bonds of affection am in the same predicament of passion . . ." ⁸⁵ While love is clearly and consistently depicted in terms of a domain ruled by a higher law and is perceived as a progressive spiritual endeavour, it is also a domain of chance or

(discussing women's letters and the public sphere); Janet Altman, *Women's Letters in the Public Sphere*, in *id.* at 99 (discussing same).

83. See, e.g., HENRY STATEN, *EROS IN MOURNING* 7-17 (1995) (arguing that mourning is intrinsic to the structure of love); see also JACQUES DERRIDA, *MEMOIRES: FOR PAUL DE MAN* 6-13 (1986); GOODRICH *supra* note 25, at 16-30 (suggesting that in this sense, the love letter represents the revolt of desire against the institution).

84. DU TRONCHET, *supra* note 34, at 6.

85. NICHOLAS BRETON, *A POSTE WITH A PACKET OF MAD LETTERS* 2 (London, John Marriot 1633).

fortune. The spiritual and empowering quality of love not only reflects the divinity of its source—love is a higher law—but is equally expressed in the advocacy of the love letter. A very typical argument within the letters of love is the admonition of those who refuse to love or who have abandoned all amorous correspondence.⁸⁶ Thus one of the first and most frequently repeated of love letters is addressed to those who will not love. The second letter in Estienne du Tronchet's highly successful collection is addressed to someone who prefers not to love.⁸⁷ The appropriate response was as follows:

The law and majesty of love cannot be contradicted. By looking at that law you can see how heretical and stubborn it would be never to want to love and never to suffer someone to love you, and to refuse to be converted . . . by services, by prayers, by admonitions, by the menaces of the justice of love. I fear that you will suffer worse punishment than Narcissus⁸⁸

Love for the lover is the presence of God on earth. More than that, love creates a space in which the lover writes herself and for which reason the *précieuses* were so concerned to reform the language and discourse of affections. The space of love was the space of writing the self.

The divine regency of the domain of love, the laws of literary self-creation through love letters, through the books of love, finds further expression not only in the absolute power of love but also in the exterior or real quality of the rules and the judgments that dominate the space of correspondence. The writer of the letter, the lover, can neither know nor otherwise control the destiny of the epistle or the fate of love. The letter exceeds its author and so potentially can change her by returning in a different form, by falling into other hands or by betraying secrets both of passion and of infidelity. In other words, the letter becomes the law, both by virtue of its entry into an external domain of relationship, and by dint of its acknowledgement of the difference that constitutes the relationship of love. The domain of love, and indeed the duty to love, are both expressions of an economy of desire which recognizes that love takes place between different subjectivities and by implication that it does not belong to either one of the parties to amorous exchange. Such a proposition can be illustrated briefly by a further case concerned directly with the relation of love and law.⁸⁹

86. See, e.g., PHILOMUSUS, *supra* note 77, at 5-9; DU TRONCHET, *supra* note 60, at fol. a, 3a; D'URFÉ, *supra* note 24, at 536.

87. See DU TRONCHET, *supra* note 34, at 29.

88. *Id.* at 30.

89. See DE VISÉ, *supra* note 32, at 207-16.

A young Prince was in love with a woman, a *précieuse*, called Aristie. He would visit her every night. A friend of his, Theodate, was also in love with Aristie and would also visit her at night after the Prince had left. Theodate had a valet whom he treated very badly. The valet knew his secret and because he was so ill-used by Theodate he broke the code of silence and told the Prince of his rival. He further promised to inform the Prince when Theodate was with Aristie so that the couple could be surprised together. The Prince told a confidant of this plan. The confidant was a friend of Theodate's and warned him of the scheme. Theodate gave his valet a letter addressed to a friend of his who lived a considerable distance away and told him to deliver it. The valet left with the letter but was drowned when the boat he took for part of the journey sank. Theodate was pleased when he learned this news, whereas the Prince was saddened because he now feared that he would never learn the truth. Some time later the Prince was walking by the coast when his attention was drawn to a body that had been washed up on the shore. It was the valet, and when searched he was found to have the letter still in his pocket. The Prince opened the letter. In it, Theodate asked the friend for a favour, which was to get rid of the man who delivered the letter, namely the valet. The Prince ordered the arrest of Theodate for conspiracy to murder and banished Aristie.

The trope of the letter is peculiarly strong even though it is only indirectly a letter of love. The anecdote belongs within the genre of *historia calamitatum*—the story of misfortunes—but it invokes many of the key topics of the questions of love. It is striking, first, for the homosexual character of the various amorous exchanges. The case is more directly concerned with competition and signification between men than with a love between the sexes. It is in that sense proprietary and homosocial in its structure, but it also raises more classical and equivocal questions of love. If one's lover takes another lover, is it better to share one's love or to end it altogether? If a servant or confidante breaks their trust and confesses or reports a love affair, what is the appropriate punishment? Is a subject bound to defer to the sovereign, or to hierarchy, in matters of amorous pursuit? Is it better to know of an infidelity or to ignore it and to continue to love? Is it appropriate to endeavour to prove what is learned of a lover by means of breach of confidence and faith? These questions do not receive any direct answer in this particular case. The law is rather enacted through the sending of the letter: the letter dictates the law both in surviving the demise of its bearer and in fulfilling its terms or, more metaphorically, in arriving at its destination without being opened. As in the history of Celie, the letter here circulates in indeterminate ways and with indirect effects. The valet is punished for

his infidelity. Theodate is equally punished for mistreating his servant and for sending him to his death. The Prince gains nothing from the letter save the knowledge or at least confirmation that he has been betrayed by Aristie and the right to exercise judgment in response to that betrayal. Aristie, the object of so much desire, is banished, but under the circumstances that is probably as much an external expression of her interior state as it is a novel punishment or release. The issue which I wish to pursue is a rather different one: In each instance what was crucial was not so much the content of the letter but rather the space of love—of correspondence—itself. In this instance it is thus the envelope rather than the letter that counts and makes the law of love possible, just as it is the space of relationship that precedes and determines the occasions of love.

What is interesting about the history of Aristie is the independence of the letter from the immediate purposes of those who send, carry, and receive it. The letter acts on its own, or has its own meaning, not least by virtue of surviving the death of its messenger and arriving at an alternative destination. The letter determines the meaning and the outcome of the case for all the parties. It is the means of transmission of law. It *is* the law, beyond the death of its bearer and despite its unexpected arrival, despite its being lost or deferred in the course of the post. In short, the letter arrives, like law or like fate, as the necessary but indifferent messenger bearing the meaning of the other. I will address one aspect of that deferral or indeterminacy of destination. The letter opens a space of possibility, it represents a transcendent meaning, one which exists between the sender and recipient as a site of possibility or an unmapped domain. It is because it can never in the end be known that the letter will arrive at its designated destination that the formal properties of correspondence have such dramatic significance. Nor can it be known that the letter will be read, a point which has a peculiar significance in a more classical case of love reported by Francois Callières in his *Nouvelles amoureuses* of the latter quarter of the seventeenth century.

A Marquis of distinction, who “never had any profession save that of agreeably passing his time with the other sex,” fell in love with the wife of a rich merchant.⁹⁰ Although aware that it was hard to find merit in the bourgeoisie and that falling in love did not always lead to the most satisfactory affairs, he endeavoured over time to seduce the merchant’s wife. The couple spent much of their time together and the merchant’s wife slowly succumbed to the Marquis’ discourses of

90. FRANCOIS CALLIÈRES, NOUVELLES AMOUREUSES ET GALANTE 5-6 (Paris, Quinet 1679).

seduction. The husband, whose head was full of business and details of trade, gradually became jealous of the time and attention that his wife was showing to the Marquis. The matter came to a head when, looking for his wife, he came upon her and the Marquis in a park, staring into each others eyes. He began to watch her movements obsessively and to remonstrate and plead with her not to see her suitor again. This she was eventually forced to promise although only after many tears and much resistance. The merchant even then did not believe her word and constantly placed obstacles in the way of her leaving the house or visiting anyone but her parents. He also employed a lackey specifically to watch over her every move and to report it to him.

The difficulties imposed upon the lovers had the effect of inflaming their passions and forcing the Marquis to adopt ever more ingenious methods of communicating with the wife. On the occasion in question the Marquis dressed up as an old woman begging for alms and placed a letter in the hands of the wife complaining of his unhappiness and begging for a rendezvous. The wife acceded to this request in the following way. A short time later the husband had to leave Paris for the country on urgent matters of business. He tried to persuade his wife to accompany him, but she refused. He therefore left the lackey behind with strict instructions to watch his wife constantly. On the appointed day of the merchant's departure the Marquis disguises himself most meticulously in the drab grey and dirty costume of a bearer of letters (*porteur des lettres*) or what we would now call postman.⁹¹ He also takes a hundred pages of paper and folds them as letters, carefully placing a blank letter addressed to the merchant at the bottom. He then goes and waits across the street from her house. Once he has seen the merchant and the other servants leave the house, he presents himself at the house and the moment the lackey opens the door he hands him a letter addressed to the merchant. The lackey gives the letter to the merchant's wife. She pretends not to have any change with which to pay for the delivery of the letter and so sends the lackey out of the house to change a bill. While the lackey is out of the house, the wife sends the Marquis to her bedroom and shuts the door. When the lackey returns with the change, she tells him that she had found some change in another pocket (*dans une autre poche*) and had sent the postman on his way.⁹² The wife then goes to church with the lackey and on returning goes to her room.

91. *Id.* at 20.

92. *Id.* at 21.

A love scene ensues and the couple stay together for the rest of the day. When night comes, the Marquis refuses to leave. While they are still arguing about this, the merchant returns. The Marquis is forced to climb out of the window and into the yard of a neighboring house owned by a lawyer. There he is apprehended by a servant who takes him to be a burglar and he is arrested. Unable to give the reason for his presence without betraying the secret of his affair with the merchant's wife, the Marquis is forced to choose between *amour propre* and love of another. Having frequently declared that he loved her more than himself, the Marquis sacrifices himself and is imprisoned as a thief.

The case revolves around a series of appearances or simulations, as well as disguises and displacements. The most significant of these is the blank page, folded as a letter, addressed to the merchant and delivered to his house. The letter is the means of entry into love although ironically in this instance the letter is a blank sheet of paper. Let us say that the blank letter represents the possibility of writing the self rather than its prescription. It is the carrier of truth as an empty place or space rather than as a substantive referent or content. More than that, the empty page directs attention away from questions of content and indeed of delivery and towards the image of a blank sheet or empty envelope. The case revolves around the letter as a form, around the absolute nudity of oneiric content, around epistolarity as "the use of the letter's formal properties to create meaning."⁹³ However defined, the letter bears the double mark of a literal absence enclosed in a material presence, an absence addressed and delivered. This lack of writing, as if the address alone were sufficient, does not mean that there is no message. It suggests rather that the message is figured not by words but by the messenger and that in consequence the letter is in this instance but a sign of a more corporeal writing or bond.

There is a curious poetry to the case of the imprisoned lover. With respect to the letter, it can be recounted in terms of the indirection of correspondence: The lover delivers a letter addressed to the absent husband, the wife receives this empty envelope or blank page and sends her husband's representative, the lackey, to exchange a bill, a note, another letter. While the various letters circulate, we might almost say go unread, the lovers consummate their love. If we were to interpret the case as an allegory of interpretation it would be tempting to read the message of the non-message, the meaning of an

93. JANET G. ALTMAN, *EPISTOLARITY: APPROACHES TO A FORM* 96 (1983); see also DARIAN LEADER, *WHY DO WOMEN WRITE MORE LETTERS THAN THEY POST?* 94 (1996).

absent writing, as an allegory of the lover's discourse. The empty envelope is first a sign of the secrecy of correspondence, and of conversation between lovers. The code of love, the twelfth century compilation of rules for amorous exchange, insists upon the secrecy of letters. In one of the judgments of love based upon that code it is held: "Nor should they stamp letters sent to each other with their own seals, unless they have secret ones known to none except themselves and their confidants. By this means their love will always be preserved undamaged."⁹⁴ Similarly Ovid in *Ars amatoria* urges secret correspondences to be conducted via a confidante who should hide the messages on her person. He further advises that if this method is discovered,

use your confidante's body for paper, write a note on her back. A letter too is safe and escapes the eye when written in new milk: touch it with coal dust and you will read . . . or write in moist oil of linseed: the seemingly blank tablet will preserve your hidden words.⁹⁵

To which it might be added that nothing will hide the message so completely as an empty envelope or blank page. The act of sending becomes the message, the empty envelope the sign of entry into the space of love.

The secrecy of the amorous letter suggests an outlaw or oppositional writing. It marks the politics of the epistolary not only as marginal to genre and law, but also as an intimate and radical challenge to the established order of discourse. In Kristeva's words: "Love always contains some element of love of power . . . [and] no matter what it is, love brushes us up against sovereignty."⁹⁶ That encounter with sovereignty or law can be reconstructed in various ways, all of which repeat in different forms the interconnection, the indissoluble opposition, the bond that ties the love letter to law. First, and in the context of the blank page ironically, the love letter belongs to rhetoric and specifically to poetics and as such it introduces the image or figure into writing and so also into the margins of secular law. At the level of doctrine, the love letter here mixes genres and challenges law, because any play upon the order and gender of established genre is a threat or challenge to the legality of reason and the system of writing law. The letter that delivers a blank page delivers a figure or image and the image, even or particularly when it is an image of nothing, when it is the blank space of amorous

94. CAPELLANUS, *supra* note 37, at 271.

95. OVID, *THE ART OF LOVE* 233, ll. 620-30 (Peter Green ed., Penguin Books 1982).

96. KRISTEVA, *supra* note 51, at 9; see also PIERRE LEGENDRE, *Protocole de la lettre d'amour*, in *PAROLES POÉTIQUES ÉCHAPÉES DU TEXTE* (1982) (articulating a similar point).

possibility, has a special and even heretical power. In Barthes's memorable analysis, the figurative quality of the lover's language is to be understood in terms of words that move, words that are "the body's gesture caught in action . . . [The lover] struggles in a kind of lunatic sport, he spends himself like an athlete; he 'phrases,' like an orator The figure is the lover at work."⁹⁷ The image, in short, is active and amatory, and the space of the amatory, as poetry has long recognized, is writing. The force of the written, invoked here by an image, is the force of a space of alterity, a space beyond the self, in which "I becomes an other."⁹⁸ The love letter, as poetics and as writing, breaks down identity, it takes away the boundary of the "I" and rewrites it as style, aesthetic, or hallucination.

It should not take much to persuade an academic audience, and yet perhaps it is at times the most recalcitrant or dead of audiences, that writing is an ontological pursuit. "One writes," Foucault famously remarked, "in order to become other than what one is,"⁹⁹ so as to go beyond the self, so as to invent a self. In his work on *The Care of the Self* Foucault links sexuality to the possibility of a creative politics, and the style or aesthetics of self-fashioning to the encounter with otherness that change or becoming necessarily entail.¹⁰⁰ To identify with one's desire is to open oneself to the possibility of new forms of relationship. In another formulation "you are free to construct your reality as a more or less fragile border of your love life."¹⁰¹ Such an inversion of the style of self and of writing allows us now to attempt a more political reformulation of the love letter as law.

If the love letter is not viewed as a politically significant form of writing, if the fantasms of abandonment and desire of which the letter writes seem distant from the domain of institutional relations, that is because they are defined as part of a private and inconsequential sphere of the self. It is associated at best with the literary tradition and feminine fantasms of amorous power.¹⁰² If the love letter marks the threat or possibility of change or of becoming other, then for the masculine it represents the threat of self abandonment, the threat of love, of becoming a little feminine, a little alive, a little mad. For the feminine, by contrast, the movement beyond the self is a movement into politics and into law. What I would like to suggest is that whether

97. BARTHES, *supra* note 74, at 3-4.

98. KRISTEVA, *supra* note 51, at 5.

99. DAVID HALPERIN, SAINT FOUCAULT: TOWARDS A GAY HAGIOGRAPHY 76 (1995).

100. See MICHEL FOUCAULT, THE CARE OF THE SELF 37-68 (1986); see also JULIA KRISTEVA, NEW MALADIES OF THE SOUL 3-27 (1995).

101. KRISTEVA, *supra* note 51, at 8.

102. See, e.g., PELOUS, *supra* note 2, at 44-50; Maclean, *La voix des précieuses et les détours de l'expression*, in PRÉSENCES FÉMININE: LITTÉRATURE ET SOCIÉTÉ EN XVII^e SIÈCLE FRANÇAISE 47, 49-55 (Ian Richmond & Constant Venegoen eds., 1987).

public or private, literary or legal, the letter shares its fantasmatic form of desire; it writes the self. To understand the homology of love letters and laws we need merely to distinguish the differing content of the desires expressed and the different degrees of directness with which they are expressed. And we need also to recognize the antipathy of law towards its boundaries, its weakness when faced with its own illusions:

Illusion no longer has the freedom of the city. It is no longer the companion, the adornment of life. It fascinates like something beyond good living that must be expelled, wiped out of everyday life. The fact that illusion, in the final analysis, determines the laws of society cannot and must not be seen.¹⁰³

To address the love letter seriously is to take the self, the culture of being, the meaning of relationship, and the care of the soul as public issues and as objects of serious social thought. That, in a grand historical sense, is the political project of the love letter, and it is aimed at nothing less than the subversion or transformation of institutions as spaces of relationship. From the epoch of courtly love to the present day, the love letter has always had ethical and feministic implications.¹⁰⁴ The love letter expressed the priority of desire over duty, of freedom of choice over marital subjection, of feminine autonomy over property interest.¹⁰⁵ The love letter and the love affair were the real escapes, the vivid fantasms of the married woman and of the unhappily confined. The question to be posed of that fantasm of love is not whether it was real, or whether it existed, but rather the opposite, namely, in what sense do we exist without it? Such is a question of value, a matter of ethics, a case for the courts of love.

The ethical and political origin of the love letter can be elaborated in terms of two further specific features. In challenging the ordained or patristic form of marriage, and the legality of restraining a woman—a *femme covert*—to an unchosen partner, the love letter challenges law with desire. It does so in a very specific form. The love letter addresses a singular other and endeavours to build a relationship with that other in the face of law and of propriety. The relationship may be virtual, fantasmatic, fragmentary, yet it plays the law both by mimicking the rhetorical structure of the writ and by dictating a course of events in sovereign terms. In addition, the love letter lodges the legal at the level of being, it faces the law with a singular relation

103. IRIGARAY, *supra* note 51, at 99.

104. See ALTMAN, *supra* note 93, at 1-11; KAUFFMAN, *supra* note 37, at 279-311; Altman, *supra* note 82, at 99-116.

105. See DEJEAN, *supra* note 4, at 85-93.

and says "either I love, or I die." In more contemporary and less dramatic terms, the love letter does not represent an outside or other of law, it represents a difference, an internal alternative, the possibility of other jurisdictions and other laws. In rhetorical terms we can return to the blank letter as the sign of a space of possibility. The function of ethics and the role of the love letter are alike that of creating empty spaces between lovers, between friends, between siblings, spaces within which new forms of relationship and new formulations of identity are possible. The love letter, one might say, dwells temporarily within the indeterminacy of law, in the not yet written of legality, in the possibility of justice.

IV. TRUTH AND TRANSGRESSION IN THE DOMAIN OF LOVE

The affect or authenticity that is harbored unwittingly, or simply repressed, in the history of law's passion for writ, the philological apprehension of an indeterminacy or possibility inhabiting the "ghostly realms" of the text, of its interpretation and transmission, can be illustrated by an anecdote from the Renaissance humanist lawyer Jan Luis Vives. It is a narrative of the repressed affectivity of law, of displaced obsession and of the unwitting or simply "other worldly" amatory attachment of lawyers. In the course of a discussion of the laws of marriage, and specifically of the spiritual as opposed to physical sources of unity or affinity within wedlock, Vives offers the following curious reminiscence:

[W]hen I was in Paris, I talked with Guillaume Budé, at his own house and his wife came by He said to me "this is my wife which so diligently follows my pleasure, that she entreats my books no worse than her own children, because she sees my love of study so well" ¹⁰⁶

Budé, possibly the greatest of the humanist lawyers who founded the post-glossatorial historical tradition of legal scholarship,¹⁰⁷ was happy to abandon his children and to ignore his wife because his principal commitment and love, his greatest addiction, was expended upon texts of law.

In even stronger terms, Budé elsewhere describes a life-long infidelity to his wife and family, a "sweet loving companionship" or affair which he had pursued from his youth to his old age.¹⁰⁸ His confession of faithlessness is expressed in troubled but direct terms:

106. JAN LUIS VIVES, *DE INSTITUTIONE FOEMINAE CHRISTIANAE* fol. z, 1a (London, Wykes 1523).

107. See generally DONALD KELLEY, *FOUNDATIONS OF MODERN HISTORICAL SCHOLARSHIP: LANGUAGE, LAW, AND HISTORY IN THE FRENCH RENAISSANCE* 53-87 (1970).

108. GUILLAUME BUDÉ, *DE PHILOGIA* 42 (Paris, M. Vascosan 1536).

“I must admit that I have also a second spouse (*altera coniux*) whom I call *Philologia*.”¹⁰⁹ It is to Dame Philologia that, from an early age, Budé elsewhere relates having “consecrated uniquely all the ardour of my soul and all the passion of my nature . . . in an absurd and exclusive love.”¹¹⁰ Dame Philologia was Budé’s other wife, his lover, his sweet companion, his obsession.¹¹¹ She was both the spirit of Latinity and the text of Roman law from which the *ius commune* or universal law of Europe was constructed. What should also be noted is that this was an obsession with texts, a love of dust and death, of history, and not of life or living beings. The historical coincidence of philological and legal passion can be elaborated much further in the specific technical terms of the scriptural development of early modern western law.

The historical link between philology and law, between the Latin tradition and the legal form, is expressed quite explicitly and repeatedly in amatory terms by the early glossatorial tradition. Philology is another name for law, and etymologically it hardly needs be noted that the word philology means love of words, and more broadly the expression, the speech, the letters, or the laws of love.¹¹² Philology is the lawyer’s figure of desire, she is the “Lady of Learning” and lawyers are her “chiefest darlings.”¹¹³ It is not simply that the tradition is a textual one. It is more that law in the west originated—we might say contingently arrived—as a correspondence from Rome, misplaced or redirected through Byzantium and the *Corpus Iuris Civilis* compiled by Justinian.¹¹⁴ The original text of Justinian’s law is described by Francois Hotman as being “guarded like a precious and sacred relic, only rarely being shown, at night, surrounded by candles and torches—thus did the ancient mystagogues show their sacral law to the faithful.”¹¹⁵ The legal tradition was built from the fragments of an obscure legal past and from what the

109. *Id.* at 43.

110. *Id.* at 45.

111. *Id.* at 47, 143.

112. For the best discussion of this theme, see FRIEDRICH NIETZSCHE, *We Philologists, in THE CASE OF WAGNER* 111 (1911).

113. JOHN SELDEN, *THE HISTORIE OF TITHES*, at xix-xx (privately published, 1618) (collection in British Library). On the relation of law to philology, see KELLEY, *supra* note 107, at 53-87.

114. See generally PETER GOODRICH, *The Unconscious is a Jurist: An Introduction to the Work of Pierre Legendre*, in *LAW AND THE UNCONSCIOUS: A LEGENDRE READER* 1, 1-33 (1997) (discussing this phenomenon).

115. See FRANÇOIS HOTMAN, *ANTI-TRIBONIAN OU DISCOURS D’UN GRAND ET RENOMMÉ IURISCONSULTE SUR L’ESTUDE DES LOIX* 120-29 (Paris, Perrier 1603). For discussion of Hotman’s analysis of the reception of Justinian’s *Corpus Iuris*, see GOODRICH, *supra* note 67, at 83-108.

glossators termed the spirit of Latinity.¹¹⁶ Its major crises were over the loss, interception, or rewriting of a correspondence in a foreign language and sent from an archaic past. The lawyer was lovesick for a lost original, he mourned the passing of a textual system of reasons, rules, and laws that had, or so he imagined, at one time in the past been complete. He mourned a relay or network, an imperial correspondence, which he ceaselessly transcribed and endeavoured to reconstruct. The jurist or lawyer sought to expound a logic of missives or messages. In slightly more brutal terms, “transmission of law, love at the level of the social, is not a matter of thought . . . [J]urists do not have the pretention of thinking, they practice the social art of putting texts into circulation. And it is for that reason that the company of lawyers is usually dreaded”¹¹⁷

There is of course a spiritual or more properly dogmatic dimension to philological passion, to Budé’s *literarum studium* (study of texts),¹¹⁸ or to the humanist lawyer’s obsession with lost originals and abandoned laws. It is possible to hazard a hypothesis: There is a common structure to the lawyer’s love of letters and the passion of amorous correspondence, but it is one that diverges in its practice as sharply as the historical jurisdictions of public and private, or the boundaries of gender and genre. Thus in a relatively unexceptional statement of the rules of amorous correspondence, the galant Charles Cotin insists that one should never keep one’s own love letters: “I never keep a copy but always send the original. I believe that one should write as one speaks, and one should not keep a register of one’s letters any more than one should of one’s conversations.”¹¹⁹ There are, in other words, only originals of love, and it is those originals, the letters or words of love that both are, and express, the lover’s passion, the lover’s law. What is striking is that the lover sends the original, that she writes authentically, under the erasure and reflexivity of correspondence, rather than in the proprietary and retentive mode of law. Law shares the lover’s concern with the structural significance of originals—with authenticity and the iconic status of written expressions—but it keeps those originals, because, it

116. On *latinitas*, see PIERRE LEGENDRE, *L’EMPIRE DE LA VÉRITÉ* 153 (1984):

Through the narrowness of its style, scholasticism set Roman law in motion, in the form of a legendary genealogy of the discourse of the law. This recourse to genealogy, that is to say, to the chart of descent of names—names of authors, names of texts, names of institutions—presents itself, according to the scholastic labour of qualification, as the time or the times of law.

117. *Id.* at 160. Legendre has discussed this theme at length in a series of other works. See, e.g., LEGENDRE, *supra* note 48, at 108-17 (1992).

118. See BUDÉ, *supra* note 108, at 143.

119. CHARLES COTIN, *OEUVRES GALANTES* 154 (Paris, Estienne 1659).

may be ventured, it does not dare to face the erasure of sending or the openness and possibility of authentic reflexivity.

The love of originals and the belief that what comes first is both true and to be loved, is a foundational principle of legal method.¹²⁰ The origin of positive law is an immemorial or natural past whose original has always already been sent, invisibly repeated and further sent on. In terms of legal doctrine, there is an originary correspondence which occurs between the author or source of law—*Deo auctore*—and the legal tradition. Law is a matter of originals because it is always bound to the inscription of prior forms. Legal writing is a correspondence, a writing that is always a rewriting of invisible or unknowable sources, of precedents which repeat or customs which inscribe a prior and superior law. In doctrinal terms, knowledge of law is knowledge of things divine and human, of God's law and of the law of the sovereign.¹²¹ With respect to the higher law, that of the first Venus, that of nature, God, or conscience, love is the immediate and profoundest form of knowledge. Doctrine explicitly dictated that the texts or signs through which such law was to be known were to be read through faith, through an Augustinian *caritas* or love.¹²² Where the correspondence of the lover must on each occasion reinscribe the lover's passion, and so send an original, a quality or value created through writing, the lawyer, as scribe or cleric, had a more passive and arguably morbid task. It was that of preserving the originals of a past love or correspondence, the missives of a divine subjection and its cadaverous or textual forms. The legal obsession with preserving the original threatened to erase the practice of love or the affectivity of law.¹²³

There could be no doubt, however, that the divine correspondent loved its subjects or was there for those that loved the divinity in return. Such a love was textual in that it was only through the word,

120. On the legal compulsion to find originals, and to define the original as *instar omnium*, as the beginning of everything, see JOHN SELDEN, *TITLES OF HONOUR* at fol. C4b (London, W. Stansby 1614) (“[T]he best or first I took always for *instar omnium*.”). On the theme of the “immemorial” origin as first law, see COKE, *supra* note 50, at pt. 4, fol. Zca; HOTMAN, *supra* note 11, at 126-27.

121. The classical source is recorded in JUSTINIAN, *DIGEST* 1113 (1.1.10.2) (Alan Watson ed. & Alan Watson et al. trans., 1985) (534 A.D.) (“*Iuris prudentia est divinarum atque humanarum rerum notitia, iusti atque iniusti scientia.*”). As regards the common law tradition and its reception of the Justinian conception of the dual law (*utrumque ius*), see SIR JOHN FORTESCUE, *DE NATURA LEGIS NATURAE*, in *THE WORKS OF JOHN FORTESCUE* 193 (London, private distribution 1869) (collection in British Library).

122. See SAINT AUGUSTINE, *ON CHRISTIAN DOCTRINE* 35-44 (D.W. Robertson trans., Bobbs-Merrill 1958) (ca. 427). For a discussion of the reformation debate on the relation of text and tradition to the divine source, see GOODRICH, *supra* note 67, at 53-82.

123. See Cornelia Vismann, *Cancels: On the Making of Law in Chanceries*, 7 *LAW & CRITIQUE* 131, 131-51 (1996); see also PETER GOODRICH, *Eating Law: Commons, Common Land, Common Law*, in GOODRICH, *supra* note 37, at 72-95.

through scripture or through tradition, that the source of law, the object of love, could be known. That textual relation, that correspondence, instituted the space within which the higher being, divinity or truth, God or law, could be known. The reference to a higher law of love, to an original in nature or structure can be reformulated in psychoanalytic terms that embrace both love letters and law's letters. The original is the letter that arrives. It is fate or law, the missive that arrives, contingently yet exigently, at its human destination. In its most portentous sense the letter is the real, it is death:

A common pre-theoretical sensitivity enables us to detect the ominous undertone that sticks to the proposition 'a letter always arrives at its destination': the only letter that nobody can evade, that sooner or later reaches us, i.e. the letter that has each of us as its infallible addressee, is death. We can say that we live in so far as a certain letter still wanders around looking for us.¹²⁴

Within its divergent jurisdiction, love, just as much as law, is *amor fati*, the positive act of embracing or making something out of destiny. What is significant is what in phenomenological terms would be best described as an interior exteriority, an interior sense of an exterior fate, towards which all writing is addressed and bound:

[3 June 1977] Yes you were right, henceforth, today, now, at every moment, on this point of the *carte*, we are but a miniscule residue 'left unclaimed': a residue of what we have said to one another, of what, do not forget, we made of one another, of what we have written one another. Yes, this correspondence, you're right, immediately got beyond us, which is why it should all have been burned, all of it, including the cinders of the unconscious—and 'they' will never know anything about it.¹²⁵

Love mimics nature and each correspondence in its turn seeks to inscribe a letter that will not fail, an intimacy absolutely bound to us, to you and I. The original was equally in legal terms source, fate, and truth. It was *instar omnium* or the beginning of all and so, wherever possible, was to be both venerated and repeated. Its failure, however, resided in its being a restrictive love, a passion for the dead, for the custodial and curatorial, for objects without voice, for letters that could no longer correspond. The tradition of law is in this sense a repressed tradition of love letters.

The common object of the two systems of letters and their common dependence upon criteria of truth and fidelity can be adduced further by reference to decisions in the courts of love. The tradition of legal

124. ZIZEK, *supra* note 45, at 20-21.

125. DERRIDA, *supra* note 29, at 7.

letter writing gains many expressions in the history and judgments of the women's courts. It is not only that the cases and questions of love represent a literary tradition, they also devise and develop a legal jurisdiction and procedure of trial. The status and legality of that jurisdiction is not so much a question of history as it is an ethical and political issue. The value of such a jurisdiction and form of writing will depend upon the importance that our culture attributes to, or is willing to recognise in, questions of lifestyle, of aesthetics and relationship, pleasure and love. What cannot be doubted is that the traditions of legal writ and love letter developed out of the same rhetorical genre and enjoyed a parallel historical development. The *quaestiones disputatae* of the glossators were matched by the *quaestiones amoris* of the courts of love. The writ system of chancery did not differ greatly from the letters of pardon, remission or summons that were inscribed in the *Chancellerie d'amours*.¹²⁶ Both systems were fashioned upon the written form of conversation and in principle at least both systems were addressed to the subject in his or her or its uniqueness. Each system sought to do justice to the subject as she appeared before either law or love. In that the language of love and the ethics of relation are of greater accessibility and more immediate importance or at least of greater everyday significance than the rules of law, it can be argued that *maior lex amor est*, that love is the greater law.¹²⁷ Even if that argument will at first fail, the secondary implication seems irrefutable: the form of the love letter and the jurisdiction and casuistry of love must be accorded the attention of political possibility. The question to be raised is what such a possibility would mean or to where such letters should be sent.

In cases of love, the love letter is a trope of law. It refers most directly to the general ethical requirement that lovers create a space between themselves that is both open and secret, both publicised through the writing of letters and kept secret by the alternative means of their delivery, as well as by the use of codes and the absence of signatures. The love letter, as I have tried to show, crosses and mixes the domains of public and private. Its prime virtue is that of honesty: The love letter must be a true messenger of affection, love must be "honest" and honestly expressed.¹²⁸ In the courts of love, the love letter is treated in the same manner as the confidante or messenger: fidelity to the message is a foundational virtue, an absolute ethical

126. See MARTIAL D'AUVERGNE, *LES ARRÊTS D'AMOUR* 215 (Paris, Picard 1951) (1533).

127. See BOETHIUS, *CONSOLATION OF PHILOSOPHY* 160 (London, Stock 1897).

128. One of the most common titles under which manuscripts of Capellanus, *Tractatus de amore*, circulated was *De arte honeste amandi et de reprobatione inhonesti amoris*. See ANDREAS CAPELLANUS ON LOVE 12-15 (P.G. Walsh ed., 1982).

requirement for the reason that such outlaw honesty, such fidelity to the message, constitutes the space and justice of correspondence. To eroticize speech, to imbue writing with intimacy, to align the letter with desire and so also with the power to reach its object, requires a faith in the existence of a space of transmission. The art of the love letter was an art of self inscription in a dual sense. First, to write was to create a self and to overcome a narcissistic melancholy of repose. Second, the inscription of the self was only possible upon the basis of the creation of an alternative public space, a jurisdiction or "kind of Republic" of the soul.¹²⁹

The lover's discourse literally creates a language and a world, a theme which is again frequently and directly expressed in the collections of specimen love letters. The real of love grows out of correspondence, although in other cultures or periods it could equally be engendered by gifts, dance, music, icons, or other signs. For the Latin tradition love springs from the word and each letter to a new lover begins with the problematic of writing: "I am certain that in place of a letter I must write you an entire book . . . and even then the fruits of my love would not correspond to the beauty of the things I propose to you."¹³⁰ Love dictates, which means that writing sets up the space and law of love and it is through writing that the fascination of the body and the beauty of the soul come to be visible. Even where writing fails or words run out, it is through the letter that the lover glimpses or imagines the beloved: "I often find pleasure in your letters, even though they are very brief, because it seems to me that they form a perfect book, because where writing is missing I see love . . ."¹³¹ The problem of the Republic of letters is thus that of establishing and maintaining or keeping open an intangible space, another public sphere, that of writing and of the justice of its various erotic correspondences.

Judgment 41 of Martial d'Auvergne's *Judgments of Love* can illustrate the point.¹³² An action was brought jointly by a rejected lover and the Procurator General of Love—the senior advocate of the High Court of Love in Paris. It was pleaded that the plaintiff had spent a great deal of time with the defendant who was his friend and with whom he frequently shared the secrets of his loves and of the pleasures and disappointments of his relationships. He would often recount in private the secret fortunes of his affairs and in doing so he

129. See generally JULIA KRISTEVA, *NEW MALADIES OF THE SOUL* 3-27 (1995) (discussing eroticized speech and its rewriting of the soul).

130. DU TRONCHET, *supra* note 34, at 150.

131. *Id.* at 94.

132. See D'AUVERGNE, *supra* note 126, at 178.

many times touched upon his greatest passion, a love for a woman whom he was able to see only rarely. The friend would comfort him and in doing so elicited the name of this woman, the object of this intense passion. The friend then devised means to meet the woman himself and used his knowledge of her secrets to gain her favor. He also used the knowledge gained as the plaintiff's confidant to compose letters under a false seal purporting to come from the plaintiff. In these letters her lover complained of her treatment of him and professed indifference to her and insulted her honour and her person. "None of these things had the lover ever thought or written. He knew nothing of these abusive letters, but rather loved the woman and would have preferred to have been torn to pieces than to have thought or said anything ill of her."¹³³ For her part she fainted upon receiving the first of these letters and subsequently became seriously ill. When her lover eventually saw her again, she turned her back on him, "and cursed him, saying she hoped he would burn in hell and that if she could ever harm him in his goods or person, she would do so."¹³⁴ The friend became the woman's lover and would mock him when they passed each other in public. The plaintiff, however, managed with the help of a clerk who had composed the letters at the instigation of the friend, to obtain the false letters. The bailiffs of the court of love seized the friend and the Court ordered the letters burned. The friend was fined, his goods confiscated and he was ordered to walk up and down outside the woman's house publicly declaring that he had "evilly and maliciously betrayed and deceived his friend."¹³⁵

At one level the decision evidences a love of the text which matches the lawyer's love. The truth of the love letter is in every respect as important as the truth of speech or conversation. Indeed in one sense it is more important in that the use of the letter or of the confidant introduces in a material or explicit way the distance to which all language is subject. The principle of fidelity precedes that of law. Numerous other rules and judgments of love are concerned precisely with speaking the truth and with speaking well in the sense of not spreading false reports or otherwise maligning lovers. What is protected in and circulates with the letter is an image of the lover and an image of relation. That image is what is lived. That image is the reality of *amour lointain*, of love at a distance; it both is and makes

133. *Id.* at 179. See generally LA COUR AMOUREUSE DITE DE CHARLES VI (Carla Bozzolo & Hélène Loyau eds., 1982) (explicating the procedures of the High Court of Love and the statute of 1400 which established them).

134. D'AUVERGNE, *supra* note 126, at 180.

135. *Id.* at 181-82.

the space of relation.¹³⁶ The Procurator of Love thus had good reason to join the cause of the lover defamed by false letters. If there is to be a law of love then it must protect the poetic space within which the love affair is lived, the portrait painted, and the word spoken, read, or sung. To destroy the communication, to falsify the letter, or to deface the portrait is to collapse the space and possibility of love, it is sacrilege in the domain of affections. One final example, drawn from a compilation of cases of love written by a woman, a *précieuse*, Marie Catherine Desjardins, in the latter quarter of the seventeenth century, makes the point most vividly.¹³⁷

A woman much in love had heard of a portrait painter of exceptional skill. Using new techniques, this painter could produce the finest and most delicate of paintings, portraits "which were so lifelike that all they lacked was speech."¹³⁸ She therefore commissioned the artist to make a portrait of her, and because a portrait of herself without her lover would be odious she asked the painter to find a way of including him as well. The painter represented the woman as the muse of painting and portrayed her painting a small medallion within the canvas on which was traced the face of her lover. The picture was a perfect resemblance and the woman was delighted. The painting was delivered to the woman while her husband was out of the house and so she had it put in her closet while she went out on some errands. While she was out a suitor of hers visited the house. Learning of her absence he decided to take advantage of it by writing a love letter. For this purpose he opened the woman's closet and saw the portrait. He was struck by the beauty of the picture and decided to make use of it. He moistened his handkerchief and erased the portrait of the woman's lover and in its place he wrote a love note in verse. After writing the lines the suitor left. The woman returned and was told of the suitor's visit. She went to the closet and saw her painting disfigured and the face of her lover removed. She realizes, in that moment, intuitively, inexorably, and to her horror that her lover was thereby destined to die. A short while later he is killed by friends of the suitor.

The erasure of the image destroyed its object. The theft of the space of inscription ended the possibility of love. Although the case is highly metaphorical it vividly portrays the absolute character of the

136. On the tradition of *amour lointain*, see JEAN-CLAUDE HUCHET, *L'AMOUR DISCOURTOIS* 179-216 (1987). See also JEAN MARKALE, *L'AMOUR COURTOIS OU LE COUPLE INFERNAL* 31-87 (1987). These texts and others are discussed in Goodrich, *supra* note 3, at 659-62.

137. MARIE CATHERINE DESJARDINS, *ANNALES GALANTES DIVISÉE EN HUIT PARTIES* 133-92 (Paris, Barbon 1670). Desjardins also published under the name Villedieu.

138. *Id.* at 147.

communication of love. The image or correspondence is the relation, it is the love affair, it is the space of amorous exchange. In Freudian terms, the imaginary is the basis of identity, and to protect the space of that identity is the principal purpose of the love letter as law, as the writ of the court of love. In contemporary terms that imaginary domain is both a feminine and a feministic political sphere.¹³⁹ In the immediate context of this analysis the case of the erased portrait connotes a war of different laws correlated to the antinomy of different genders. In raising the question of difference and gender the case allows us to face directly both the political implications of the other “kind of Republic” and the incommensurable nature of the different jurisdictions of the arts of law and of love. The justice of correspondence is concerned with the circulation and the inscription of images, with a rewriting of the soul. Its law is self-confessedly a spiritual one and it depends upon the availability of a territory, an empty space within the public sphere.

V. POSTFACE

There are occasions when it seems appropriate to acknowledge that an argument is tenuous or its outcome uncertain. To present such an argument is to admit that it may not convince, that it is not even necessarily designed to persuade, so much as it simply requires to be said or to be heard. The tenuous or, in rhetorical terms, probable argument is incomplete, unfinished, nascent. Such a form of argument, according to Aristotle, is appropriate to matters of human relationship and yet, because it is indeterminate and uncertain, it will not yet instruct us on what to do or where and how to progress.¹⁴⁰ Such an argument does not offer any necessary conclusions but it is also, I will suggest, a most radical form of intellectual engagement and of critical exchange. Arguments, traditions, and laws do not always succeed, but rather tend to burn briefly or fail. Like their authors they die, and like love letters they may always arrive at an unexpected destination. It is that uncertainty which makes the tentative argument the most radical in potential, and it is that species of political possibility that the history of law’s letters and of the *précieuses* can offer.

The domain of relationship is an imaginary space. The project of incorporating such a space into the public sphere was always likely, at least initially, to be unsuccessful, and its products to belong to a negative history of lost social movements. That lack of immediate

139. See generally DRUCILLA CORNELL, *THE IMAGINARY DOMAIN* (1995) (sketching this argument).

140. See ARISTOTLE, *RHETORIC* 13 (A. Jebb trans., Cambridge Univ. Press 1925).

success is certainly one feature of the politics of the *précieuses*. In an era which is not yet over, in which women were at best images and at worst objects, the proposal of a feminine Republic was both dramatic and doomed. My argument is that it is precisely that dimension of failure which makes the social movement and political itinerary of *préciosité* both challenging and fecund in possibilities. The *précieuses* advocated a new social form and devised a novel system of rule and of law. They proposed a public domain of relationship governed by women's courts and a law of amorous correspondence. The explicit concern of such justice was to institute a space for the difference of the feminine and to revalue the domain of the image, of the aesthetic and literary imagination, in such a way as to allow for the development of new forms of relationship and lifestyle. The virtue of their law was its literary character, the power of their jurisdiction was its imaginary quality, and the truth of their judgments lay in their fantasmatic appeal. What historiography would judge immediately as the most negative and ephemeral features of the feminine Republic can equally be viewed as the guarantees of their survival and eventual success. The *précieuses* embarked upon a politics of the image, and it is that image of letters and of laws that history now re-encounters.

The various wars over the governance of the soul have always been wars over images. The first concern of law has similarly been that of a control over the soul which was perceived to be inevitably a matter of a visual governance or regimen of images. The Church sought to watch over, to nurse, and to govern the emotional domain or desire of the subject through a ghostly power that had as its object the direction of the soul. Secular law inherited that object of governance and progressively joined the spiritual powers to mundane government through the jurisdictions of equity and conscience. Again the various images of sovereignty and subjection, of order and of obedience, of hierarchy and subordination structured a public sphere around the images and language of patristic interests and their proprietorial values. The reality of those interests and the practices of relationship in which those governed images resulted belonged to the unconscious of the public sphere. The domain of affection was conceived to be an invisible, spectral, or imagistic realm. The political project of the *précieuses* was in a sense that of making the unconscious conscious and the soul visible. The means they chose for such an endeavour was that of supplementing and transgressing the extant discourses of spiritual value and the institutions of relationship upon which they depended. They offered a dangerous supplement by means of creating a space for the image, for love and its various correspondences, within the public domain. The image—the lover at work in language—was

the object of the feminine public sphere, it was both its goal and its means of transgression.

From the very beginning the argument of the *précieuses* had been political and had been concerned with the creation of a public space within which women could write themselves and so establish a separate domain of value or *préciosité*. The means of this politics was linguistic or discursive in that the purpose of the feminine public sphere was to establish an alternative conception of value and of relationship within and between the sexes. The concern with language was a concern with the deep structures of social interaction, of genre and law. For the *précieuses* writing was a political act as well as an intimate and erotic activity. To write, to create the space of correspondence and the possibility of a justice for intimacy, was to reclaim a hugely significant dimension of the public sphere, to lay claim to an alternative symbolic and institutional space.

Without burdening the analysis with too great a degree of detail, it can and has been argued that the politics of the *précieuses* was not only a literary politics but that it grew out of the need to understand and regulate, to think through, the rules of communication between lovers. That problem of relationship addressed by the *précieuses* was one of ethics *and* of language, of law *and* of love letters, of style *and* of judgment. To read those love letters, to recoup that history, not as reality but as fantasm, not as truth but as a possibility, opens up an ethical-political space—perhaps a space of the feminine—within the public sphere. The love letter is its own law and if it is still not clear what that law is, that is in part a reflection of our fear of difference and in part a tribute to a space and aesthetic, a judgment or law, that has yet to be fully inscribed. The philosopher Agamben has argued in a work on the *Idea of Prose* that “justice is the handing on of the Forgotten [It is not] the transmission of memory [but] the transmission of oblivion.”¹⁴¹ What I take that to mean is that it is neither possible nor desirable to recover or pass on the substance of history or the plenitude of lost love letters. What is forgotten constitutes an empty space, an oblivion or unconscious, and it is just to pass on, to transmit, that space of unconsciousness. That space or forgotten domain is one of ethics and not of rules, of love and of love’s law. One could say that it *is* the unconscious, it is the possibility of justice. By that I mean that the forgotten, the blank space or empty envelope, institutes the possibility of subjective transformation. To pass on the space of the forgotten is to imagine another public sphere, a kind of Republic, an empty tableau in which the subject, feminine

141. GIORGIO AGAMBEN, *IDEA OF PROSE* 79 (1995).

or masculine, has the space within which to come to terms with their unconscious, to write themselves. Such would be the law of the Republic of letters, and such would be epistolary justice.

