

L’Affaire Contrafatto: Law, judicial narratives and innovation

Sharon P. Johnson, Virginia Tech

Law through judicial narratives seek to maintain a world of right and wrong, of lawful and unlawful of valid and void. In this *crime célèbre*, *L’Affaire Contrafatto*, the priest Joseph Contrafatto is accused of having raped 5-year old Hortense Le Bon in 1827 by luring her into his apartment, in the same building where the LeBon family resides. The analysis of Contrafatto’s crimes and trial, especially the rhetorical strategies used by the prosecuting and defense attorneys reveal that truth and justice are sought, innocence is proclaimed and a guilty verdict is rendered.

[SHOW SLIDE] During the arraignment of this 58-page transcript of Contrafatto’s trial, the evidence sides with the prosecution and Hortense’s testimony; her painful, naïve accounting of the events is said to “respire la vérité” in all of its “sincerité” (,38).

Today, however, I turn my attention to the closing arguments that both lawyers advanced, asserting or negating that Hortense was a victim of “des attentats à la pudeur avec violence et du viol.” They present two different interpretations of the law that I argue, demonstrate a somewhat parallel situation that Robert Cover analyses in his *Justice Accused* in which he “[studied] the white society of the antebellum period of the United States.” That historical period began after the 1812 war and ended when the civil war broke out in 1861, a time period encompassing Contrafatto’s 1827 trial across the ocean. In the decade preceding the Civil War, anti-slavery agitators and defenders of slavery clashed. Among those tugged by competing affiliations were the judges asked to enforce the fugitive slave laws. Cover examined how leading judges revealed in their private letters and diaries their basic sympathies with

efforts to abolish slavery, yet how the same men proceeded to demand that federal law protect the property interests of slaveholders by returning the slaves who had escaped into Free states or territories. Cover showed how the judges at least before 1850 could have forged available legal materials into arguments abolishing slavery and he wonders why they did not do so. “Why instead, did the judges announce their powerlessness to resist implementing the fugitive slave law”, a critic of Cover asks (Minow 3)?

[SHOW SLIDE] For Minow, “the judges exhibited what Cover called the ‘judicial can’t’, a rhetorical move indicating that the judge could do nothing but apply and enforce the command of a fugitive slave law. The judges treated the manner as if law simply specified rules of the game, rules that narrowly specified the judge’s own latitude for action.

Accordingly, a judge simply could not do otherwise than enforce the fugitive slave law. To do otherwise would fall outside the judicial role” (4).

“As a result, an influential group of judges tended to respond with avowed helplessness and exaggerated formalism. They acted as if they were followers of the legal system rather than innovators; obedient servants [to the law] rather than leaders” (Minow 5).

The judges’ rulings in Cover’s book resemble the defense attorney’s arguments in the *Contrafatto* case. The defense proves to be a powerless entity, an “obedient servan[t]” to the law using greater interpretive formalism and rigidity in its thinking. The attorneys for the prosecution prove to be legal leaders and innovators before the jury and judge. Both sides base their arguments on articles 331 and 332 of the Penal code. Article 331 specifies how special considerations need to be made for children under 13 as ‘il y a présomption jusqu’à cet âge que

l'agent a abusé de l'ignorance de l'enfant pour le flétrir ou le corrompre' (Hélie, 1928: 661–2). In article 332, '*De l'attentat à la pudeur avec violence et du viol,*' the perpetrators must use violence in attacking their victims, who in turn must fight off their assailants. The stakes were considerable because if a lawyer could not prove the use of violence, the defendant would be set free without a conviction.

First, the King's attorney for the prosecution, Maitre DeVaufreland, defines what constitutes des "violences" arguing that it should neither be limited to the perpetrator's violent sexual assault nor to the victim's efforts to fight off her aggressor. The King's attorney wishes to problematize this narrow understanding of the law because Hortense did not scream. She did not resist. The accused did not need to use any violence or force to rape her. Maitre DeVaufreland underscores the victim's 5-year old age and that the provision in the jurisprudence about physical violence was meant to be applied when the child was 12, 13 or 14 years old. With suppleness, or ingenuity, he broadens what the legal definition of violence includes: "la loi, dans le terme absolu de violences, a compris la violence morale" (37), using the following reasoning:

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Ne résulte-t-elle pas suffisamment dans la cause, à l'égard de la jeune Hortense, de l'influence extrême qu'exerçait sur elle un homme plus âgé, de cette crainte révérentielle [sic] que lui inspirait un homme revêtu du caractère de prêtre. Elle résulte même de cette circonstance établie dans la cause, que la famille de la dame Le Bon avait appris d'elle à révéler le sacerdoce. [...] Lorsqu'un prêtre abusait contre elle de l'autorité de son âge et de son caractère, il est impossible qu'elle ait même songé à résister. (37)

The lawyer for the defense, Maitre Saumière, wishes to prove Contrafatto's innocence. He argues more narrowly what *attentat à la pudeur avec violence et du viol* means within the legal statutes: [SHOW SLIDE]

Si cette violence n'a pas été absolument physique, si elle n'a pas été employée contre la personne, il n'y a pas violence **dans le sens légal**. La violence morale ne serait véritablement qu'une espèce de corruption. La violence physique n'est autre chose que le moyen employé pour vaincre la résistance opposée (48, 49)

DeVaufreland adeptly introduces the issue of consent to represent violence and intertwines law with morality. He is very categorical: Where there is consent, there is no violence, but when there is **not** the possibility of **consent**, violence occurs when carrying out the rape. This innovative framework further suggests law's ethical intention: [SHOW SLIDE]

C'est par suite de ces réflexions [sic] qu'il est facile de concevoir qu'avec le système qu'on vient d'invoquer, il ne pourrait jamais avoir violence exercée lorsqu'il s'agit d'enfants aussi jeunes que celui dont nous nous occupons en ce moment. D'horribles attentats consommés envers ces enfants ne pourraient jamais être punis. La loi n'a pu le vouloir ainsi. La loi n'a pas spécifié, en parlant de violence, que cette violence serait de telle ou telle espèce. Elle n'a pas fait de distinction. Il n'y a donc que subtilité dans le système de défense qu'on vous a plaidé. (52)

The trial document and two *canards sanglants* that published on this crime did not mention the issue of violence used against Hortense Le Bon in the jury's verdict and punishment. Contrafatto is condemned to a life of hard labor and **Travaux à Pépétuité**. This conviction was the harshest the jury could impose after the death penalty (art. 6) as it sentences the criminal to a "mort

civile.” The presiding judge states to Contrafatto that he abused the confidence of a child and that his actions were « [les] plus révoltantes brualités.” We presume that Contrafatto was found guilty of attentat à la pudeur avec violence, but the transcription of the trial does not state that definitively. [SHOW SLIDE] Although this newspaper states Contrafatto was found guilty of “seduction,” which is a kind of entrapment for the crime of rapt, other sources written 1 year and 20 years after the trial affirm rape occurred through 4 euphemisms: [SHOW SLIDE] In *Causes criminelles célèbres du XIXe siècle réédigés par une société d’avocats dans Tome IV en 1827-28*, Contrafatto’s crime is described as les « **impurs débordemens** [sic] » (107). The word “impure” is code for rape, as is « **crime inouï** » (189). Twenty years later, in *Les Guêpes d’Alphonse Karr*, Contrafatto’s crime is called an “**attentat infâme**,” relating back to the two crimes of Article 332—attentat à la pudeur avec violence et viol. *Infâme* is another euphemism for rape, as is the victim, described as being “**souillée**.” These publications confirm that the jury did accept a broader meaning of violence.

Law restored order through narrative: the victim’s testimony, the king’s lawyer’s closing arguments and the presiding judge’s summary rang truest with the jury, only taking 15 minutes to come to its verdict and punishment. This is a perfect example of what Cover would consider moral and legal innovation. De Vaufréland took on the responsibility to question a narrow interpretation of what one might define as violence on a child younger than 13. To my knowledge, never has the issue of lack of consent related to article 332 been used in a rape trial; This convincing interpretation of article 332 opened up the possibility for the jury to consider violence also meant a victim’s lack of consent when under the age of 13. As a result, Contrafatto was found guilty of rape and punished for his crimes.

