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READING THE TRIAL OF THE *FLEURS DU MAL*

'Je vais voir juger Baudelaire en police correctionnelle: si je peux entrer, le spectacle sera curieux. Baudelaire devant les juges, et les *Fleurs du mal* disséquées par le procureur impérial!'[1] As this letter from Champfleury implies, the trial of the *Fleurs du mal* was expected to be an event; on 20 August 1857 a crowded courtroom awaited a duel between 'modern' literature and that of the reigning 'bourgeois'.[2] Instead, the whole affair was over and done with in a single day: the judges heard testimony from the defendant and statements from the prosecution and defence;[3] rather than deliberate over several days, as sometimes happened, they then promptly handed down the verdict, throwing out the charge of religious immorality and retaining the charge of obscenity and offence against public morality. Baudelaire was sentenced to a fine of 300 francs, his publisher and printer to fines of 100 francs, and six poems of the thirteen charged were ordered to be removed from the volume.[4]

The rapidity of the trial is matched by the relative paucity of attention devoted to it by scholars. The trial of Flaubert's *Madame Bovary* has spawned entire books, and those studies which deal with both trials accord considerably more space to Flaubert's, treating Baudelaire's as a 'miniaturized replay'.[5] It was indeed acknowledged early on that Baudelaire's trial had played itself

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[1] Letter from Champfleury to Max Buchon, 20 August 1857, in 'Lettres inédites de Champfleury au poète franc-comtois Max Buchon', *Revue mondiale*, 133 (1919), 531–45 and 701–10 (p. 545).

[2] Georges Brosset and Claude Schmidt, *Le Procès des 'Fleurs du mal', ou l'affaire Charles Baudelaire* (Geneva: La Basoche, 1947), p. 74. It is difficult to know which writers and artists, in addition to Champfleury, attended: Barbey d'Aurevilly did, for he described the proceedings in a letter to Trébutien of 23 August 1857 (Jules Barbey d'Aurevilly, *Correspondance générale*, ed. by Jacques Petit, 9 vols (Paris: Les Belles-Lettres, 1980–89), VI (1986), 44). Baudelaire wrote on 27 July 1857 that the case was causing 'une vraie émotion à Paris' (*Correspondance*, ed. by J. Ziegler, 2 vols (Paris: Gallimard, 1973), I, 418; henceforth *Corr.*).

[3] Baudelaire's testimony has not been preserved. His counsel said to the judges: 'Vous l'avez entendu lui-même il n'y a qu'un moment, dans les explications si loyales qu'il vous a données, et vous avez été frappés sans doute et émus de ces protestations d'un honnête homme' (Charles Baudelaire, *Œuvres complètes*. ed. by Claude Pichois, 2 vols (Paris: Gallimard, 1976), I, 1210). References in the text, identified by *OC*, are to this edition.

[4] Although flouted as early as 1881, this order continued to be acted upon occasionally (in 1924, for example, a copy of the unexpurgated 1857 edition was forcibly removed from a sale at the Hôtel Drouot), and was not formally overturned in France until 1949. The incriminated poems were: 'Lesbos', 'Femmes damnées (Delphine et Hippolyte)', 'Le Léthé', 'A celle qui est trop gaie', 'Les Bijoux', and 'Les Métamorphoses du vampire'. Baudelaire's fine was later reduced to 50 francs: see H. Patry, 'L'Épilogue du procès des *Fleurs du mal*: une lettre inédite de Baudelaire à l'Impératrice (1857)', *Revue d'histoire littéraire de la France*, 29 (1922), 67–75.

[5] The term is Dominick LaCapra's: 'Memory, Law, and Literature: The Cases of Flaubert and Baudelaire', in *History, Memory, and the Law*, ed. by Austin Sarat and Thomas R. Kearns (Ann Arbor: University of Michigan Press, 1999), pp. 95–130 (p. 103). See also his *'Madame Bovary' on Trial* (Ithaca, NY: Cornell University Press, 1982); Yvan Leclerc, *Crimes écrits: la littérature en procès au XIX^{e} siècle* (Paris: Plon, 1991); Elizabeth Ladenson, *Dirt for Art's Sake: Books on Trial from 'Madame Bovary' to 'Lolita'* (Ithaca, NY: Cornell University Press, 2007).

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out against the background of Flaubert's, argued by the same prosecutor before the same court for the same offence just six months previously.[6] With one major difference: Flaubert was acquitted and Baudelaire convicted. The suit against Baudelaire was widely believed to have been governmental 'revenge' for Flaubert's acquittal: the imperial prosecutor, Ernest Pinard, would have been eager to restore his reputation, and that of the Ministry of the Interior which he represented, after their humiliation at the hands of Flaubert's brilliantly theatrical, resolutely republican, and devastatingly effective counsel, Jules Senard.[7]

Yet things may not have been so clear-cut. Baudelaire's conviction can hardly be attributed to the sole efforts of the prosecutor Pinard, whose case, as has long been noted, was weak and perfunctory, noticeably lacklustre and off-hand, perhaps even deliberately restrained.[8] The poet's counsel, Gustave Chaix d'Est-Ange, far from failing miserably at his task, as many have asserted after the fact, did a respectable job of defending him, taking his cue from the successful Senard and invoking many of the same arguments which had been so effective in the Flaubert case.[9] More important, he followed the specific rhetorical strategies set out for him by two consummate masters with words: Sainte-Beuve, who drafted a series of 'Petits Moyens de défense tels que je les conçois', and Baudelaire himself, who penned several pages of notes for his use.[10] Baudelaire reportedly expected not just to be acquitted, but to be issued

[6] P. Dufay, 'Le Procès des *Fleurs du mal*', *Mercure de France*, 547 (1 April 1921), 84–103 (pp. 89–90). The charge was 'outrage à la morale publique et religieuse, et aux bonnes mœurs'. *Bonnes mœurs* relates specifically to obscenity; *morale publique* is a broader category (Leclerc, *Crimes écrits*, p. 23).

[7] On Senard, former President of the Constituent Assembly in 1848 and Minister of the Interior in the Cavaignac government, see Jean Joubert, *Jules Senard: de la défense de Flaubert à la défense de la République 1800–1885* (Paris: Presses du Palais Royal, 1984).

[8] Dufay, 'Le Procès des *Fleurs du mal*', p. 90. Barbey wrote to Raymond Brucker, a mutual friend of his and Baudelaire's: 'L'avocat général a parlé de votre ami avec une considération qui vous eût fait plaisir, et a montré à Baudelaire une sympathie inconséquente. On voyait qu'il était entre l'ordre du ministre et sa conscience' (*Correspondance générale*, VI, 44). The editors of the *Revue des grands procès contemporains* remark that the statement for the prosecution was 'moderate for the period' (see below, n. 12).

[9] Beginning with Barbey, commentators have been harsh on Chaix. Barbey wrote: 'Chaix d'Est Ange le fils, [. . .] du valet de son père pour le talent, a plaidé je ne sais quelles bassesses, sans vie et sans voix' (*Correspondance générale*, VI, 44). See also Charles Asselineau, *Charles Baudelaire, sa vie et son œuvre* (Paris: Lemerre, 1869), Chapter V, and more recently, Patrick Née, '1857: le double procès de *Madame Bovary* et des *Fleurs du mal*', in *La Censure en France à l'ère démocratique*, ed. by Pascal Ory (Paris: Éditions complexe, 1997), pp. 129, 138–40, nn. 32, 36, 38. But contrast Dufay, 'Le Procès des *Fleurs du mal*', pp. 97–98. And as Elizabeth Ladenson observes, 'the odds against [Chaix] would have required Ciceronian talents to overcome' (*Dirt for Art's Sake*, p. 243, n. 40). While Chaix's *performance* might have been unimpressive, his text seems more than adequate to the task.

[10] Sainte-Beuve's arguments were: (1) that poetry had progressively taken up all subjects, and that Baudelaire had treated what remained, evil; (2) that Béranger's songs were far more dangerous,

with an apology.[11] Notwithstanding an occasional tendency to self-delusion, the expectation of acquittal does not seem unreasonable. So what went wrong?

A reading of the materials from the trial such as we have them, although they are regrettably incomplete, can shed light on this somewhat surprising outcome.[12] This suggests that something had changed between the trial of *Madame Bovary* and that of the *Fleurs du mal*. Constantly alluding, mostly *sotto voce* and sometimes overtly, to its famous precedent, the case for Baudelaire's defence none the less failed *precisely* where Flaubert's had succeeded. On the basis of the arguments which had worked for Flaubert, the *Fleurs du mal* should have been acquitted. But, as I shall argue, making the trial a counter-weight to Flaubert's, crafting the prosecution and the verdict against the arguments which had led to the earlier acquittal, produced an interpretation of the poems which ran counter to standard norms of interpretation. In so doing, it may have made a special contribution to the history of reading: for this strange and unexpected verdict was based on principles of reading which, ironically, were deeply 'Baudelairean', close to those later thematized by Baudelaire himself—ways of reading we now call modern.

Trials of literary works are justifiably considered examples of a collective 'social reading', in which a public's reading practices and criteria of judgement are mobilized, defined, and carried out, as they are also seemingly called into question by the offending work.[13] The social issues in such trials—political seditiousness, blasphemy, obscenity, libel, plagiarism, etc.—thus depend fundamentally on issues of interpretation, which account for the different readings of the prosecution, defence, witnesses, judges, and jury. These latter questions have remained remarkably stable over time: is a quotation taken out of context? Is the narrator the voice of the author? Does the text advocate what it represents? Can a fragment mean on its own, or does its meaning depend on the larger whole? What is the status of irony, of understatement, of authorial intention, of linguistic connotation, of the

yet he had become the national poet; and (3) that Alfred de Musset's poems contained lines which one would hesitate to read aloud in a courtroom, yet had led him to the Académie française.

[11] 'En sortant de cette audience, je demandai à Baudelaire, étourdi de sa condamnation: "Vous vous attendiez à être acquitté? — Acquitté! me dit-il, j'attendais qu'on me ferait réparation d'honneur!"' (Charles Asselineau, *Vie de Baudelaire*, reported in *OC*, I, 1182).

[12] The dossier from the proceedings was allegedly destroyed in the fire of the Palais de Justice during the Commune, on 24 May 1871. There are no accounts in the press, since a law of 1852 prohibited reporting on trials, apart from verdicts. In 1885 the *Revue des grands procès contemporains* nevertheless published, without citing a source, a version of the statements for the prosecution and defence (see vol. III (Paris: Chevalier Maresq, 1885), pp. 367–87). They are generally thought to have come from the prosecutor Pinard, but this is uncertain (see Brosset and Schmidt, *Le Procès des 'Fleurs du mal'*, pp. 71–72). Baudelaire testified for three hours at a preliminary hearing before a *juge d'instruction* (*Corr.*, I, 418, 27 July 1857), and although his statement has not been found, he quotes a few remarks from it in his 'Notes pour mon avocat' (*OC*, I, 194, 195).

[13] LaCapra, *'Madame Bovary' on Trial*, p. 7.

reader's participation? From *Madame Bovary* to *The Satanic Verses*, trials have reflected and highlighted the expectations, presuppositions, and conventions which their societies have brought to the act of reading, and the ambiguities, uncertainties, and complexities inherent in it.[14]

In this respect, trials differ significantly from censorship, however close the two may be. As others have noted, trials take place within a regime of freedom, *after* a work has been published, whereas censorship operates within a regime of restriction, *preventing* a work from being made public.[15] Trials depend on established laws which are applied to the work, in its favour or to its detriment, whereas censorship is arbitrary, based on a single person's (or committee's) judgement, with no requirement of rationale, and no possibility of appeal. Trials happen in the public space of a courtroom; censorship, although a public function, takes place in private. Unlike censorship, then, trials stage a kind of open debate in which a work is measured against a society's laws and judged to be in conformity with them or not; in this sense, trials bring out various arguments, and with them diverse conventions, by which works might be interpreted.

Press and publishing laws made such trials relatively frequent in nineteenth-century France, furnishing rich material for studying modes and practices of interpretation in the period. Nothing else provides such a full picture, for only trials bring together in one moment, applied to one work, conflicting sides of the debate and, in the verdict, a judgement which must be justified and explained. Dominick LaCapra has shown how, at the socio-cultural and political level, Flaubert's novel challenged the assumptions of those called upon to judge it, notably with respect to religion and the family.[16] Beyond the topical questions of politics and mores which overtly motivate them, and the ideological assumptions underlying these, however, trials of art-works also reflect and bring out crises of interpretation, in which principles and practices of reading—formal and hermeneutic ones, why and how the text means what it is claimed to mean—are called into question and, in some examples, radically *redefined*. Interestingly, these *new* principles and practices are not necessarily those argued by the defence on behalf of the 'modern' work, or even those implied by the work itself; as many have pointed out, in the case of *Madame Bovary* the novelty of the work was intuited more by the prosecutor Pinard than by the victorious counsel for the defence Senard, whose moralizing arguments, as Yvan Leclerc observes, could easily have come from the mouth

[14] Ibid., pp. 15–16.

[15] Maxime Dury, 'Du droit à la métaphore: sur l'intérêt de la définition juridique de la censure', in *La Censure en France*, pp. 13–24; Alain Vaillant, 'Les Sociétés d'auteurs et la censure au XIX^e^ siècle', ibid., pp. 103–18.

[16] Thus the opposition adultery–marriage which underlay the case for the defence and the prosecution, and which the judges accepted, was undermined by the novel in which the two were constantly identified (see *'Madame Bovary' on Trial*, pp. 31–32).

of that purveyor of cliché, the ludicrous and sinister bourgeois pharmacist of Flaubert's novel, Homais.[17] Instead, the unorthodox, often unformulated, principles of interpretation are brought out through the give and take of the debate which constitutes the trial itself.

The prosecutor in the trial of the *Fleurs du mal* understood well that success or failure would turn on the force of a particular interpretation, and he sought, from the start, to forestall this:

> Le juge n'est point un critique littéraire, appelé à se prononcer sur des modes opposés d'apprécier l'art et de le rendre. Il n'est point le juge des écoles, mais le législateur l'a investi d'une mission définie: le législateur a inscrit dans nos codes le délit d'offense à la morale publique, il a puni ce délit de certaines peines, il a donné au pouvoir judiciaire une autorité discrétionnaire pour reconnaître si cette morale est offensée, si la limite a été franchie. Le juge est une sentinelle qui ne doit pas laisser passer la frontière. Voilà sa mission. (*OC*, I, 1206)

This is true to a certain extent, explaining why, for example (and to the evident surprise of many scholars), neither Baudelaire's defence nor Flaubert's argued for the autonomy of art, concentrating instead on the same issue of morality as the prosecution—the subject of the specific law which was the basis of the trial.[18] The judge was meant to pronounce not on the literary value of the work, but rather on whether it crossed the boundary of decency established by law. In this sense, however, the judge *is* a literary critic, as are the other actors in the trial, each called upon to formulate and defend a particular reading of the work, which would show it to be in compliance with the law or not. The principles of interpretation on which such readings are based—what the work expresses and how—and, in the case of the trial of the *Fleurs du mal*, the new type of reading which they define, are my subject here.

Flaubert's trial had been in what we might call the 'classic' form, with both sides making arguments about the author, the novel, and its relation to earlier works. To counter the charges of indecency and blasphemy, Senard relied on tried and true conventions of reading: the referentiality of the text (Flaubert's depiction of evil reflects the evils of society itself);[19] authorial intention (through the depiction of evil, the author tries to teach a moral lesson);[20] the integrity of the text as a unified whole (the perception of immorality derives

[17] *Crimes écrits*, p. 187. LaCapra (*'Madame Bovary' on Trial*, p. 27) cites André Pasquet as making the same point in 1949 in his *Ernest Pinard et le procès de 'Madame Bovary'*.

[18] Nearly all modern scholars since LaCapra have commented on the fact that the defence in both cases shared the same values as the prosecution (*'Madame Bovary' on Trial*, p. 42). See also Ladenson, *Dirt for Art's Sake*, pp. 20–21, 64; Leclerc, *Crimes écrits*, pp. 36–38, 190; Née, '1857: le double procès de *Madame Bovary* et des *Fleurs du mal*', p. 129.

[19] For example, 'les grands travers de la société figurent à chaque page' (Gustave Flaubert, *Œuvres*, ed. by A. Thibaudet and René Dumesnil 2 vols (Paris: Gallimard, 1951–52), I, 672).

[20] For example, 'la pensée de son livre, depuis la première ligne jusqu'à la dernière, est [. . .] une pensée éminemment morale et religieuse pouvant se traduire par ces mots: l'excitation à la vertu par l'horreur du vice' (ibid., I, 668).

from citing fragments out of context, the true morality of the work emerges when they are reinserted into their proper place);[21] the transparent relation of the representation to the reader's reality (anyone will recognize the dangers depicted).[22] To these he added the biography of the author, implying from the author's moral character the morality of the work; and the citation of numerous literary parallels, works by other authors which were as risqué but had not been prosecuted, and indeed had become classics of French literature. Senard quoted analogies from the likes of Rousseau, Montesquieu, Sainte-Beuve, more than one 'honorable membre de l'Académie française' (notably Mérimée), and even the pious Bossuet, whose discourses on 'the delusion of the senses', on 'sinning', on 'illicit pleasures', and on the 'sinful woman' were, according to Senard, adapted, indeed almost plagiarized, by the novelist in some of the offending scenes.[23]

Baudelaire's counsel followed this model, crafting a full-fledged defence in response to a cursory speech by the prosecutor Pinard: Chaix gave an opening statement about the author's literary and moral intentions; a long analysis of the poems which, following the specific suggestions of Baudelaire and Sainte-Beuve, responded to the charges of blasphemy and immorality; and substantial quotation from classics of French literature. The examples of the latter were less dramatic than Senard's had been for Flaubert—Chaix cites Gautier, Lamartine, the recently deceased Academician Alfred de Musset, and that popular poet of the national spirit, Béranger, for whom, as Sainte-Beuve and Flaubert had astutely pointed out, the Emperor had recently ordered a state funeral—but were no less relevant as parallels.[24]

[21] For example, 'vous n'avez pu [. . .] trouver [cette phrase] lascive qu'en l'isolant de ce qui précédait et de ce qui suivait' (ibid., I, 685); 'pour faire disparaître tout l'échafaudage de votre accusation, je n'ai qu'une chose à faire: restituer ce qui précède et ce qui suit vos citations, substituer, en un mot, le texte complet à vos découpures' (ibid., I, 693).

[22] For example, 'si je vous disais [. . .] ce qui m'a été dit à moi-même par des mères de famille qui avaient lu ce livre, si je vous disais leur étonnement après avoir reçu de cette lecture une impression si bonne qu'elles ont cru devoir en remercier l'auteur' (ibid., I, 675); 'Pour mon compte personnel, je comprends à merveille que le père de famille dise à sa fille: "Jeune femme, [. . .] regarde combien d'ennuis, de souffrances, de douleurs et de désolations attendent la femme qui va chercher le bonheur ailleurs que chez elle"' (ibid., I, 692).

[23] Ibid., I, 684–712.

[24] Béranger had died on 16 July and the Emperor had announced the state funeral the following day. Flaubert wrote to Baudelaire: 'Et on vient de rendre les honneurs *nationaux* à Béranger! à ce sale bourgeois qui a chanté les amours faciles et les habits rapés! J'imagine que dans l'effervescence d'enthousiasme où l'on est à l'encontre de cette glorieuse binette, quelques fragments de ses chansons (qui ne sont pas des chansons mais des odes de Prudhomme), lus à l'audience, seraient d'un bel effet. Je vous recommande *Ma Jeanneton*, *La Bacchante*, *La Grand'mère*, etc... Je crois qu'un parallèle entre vous deux ne serait pas maladroit. Communiquez cette idée (pour ce qu'elle vaut?) à votre avocat' (*Correspondance de Gustave Flaubert*, ed. by Jean Bruneau, 5 vols (Paris, Gallimard, 1973–2007), II (1980), 759). The trial had taken place by then, but Baudelaire had already suggested to Chaix that he cite 'avec dégoût et horreur, de bonnes ordures de Béranger: *Le Bon Dieu*, *Margot*, *Jeanneton*' (*Corr.*, I, 419).

The prosecution, in contrast, had made a statement which was very short, occupying a mere four pages of text in the Pléiade edition, and consisting mainly of quotations which Pinard literally let speak for themselves ('Messieurs, je crois avoir cité assez de passages pour affirmer qu'il y a eu offense à la morale publique' (*OC*, I, 1207)). Although they constituted most of his speech, these quotations amounted to only forty-six lines of verse out of the nearly six hundred which composed the thirteen poems originally charged. The same prosecutor had pronounced a speech four times as long against Flaubert, and had spent considerable time, and demonstrated considerable subtlety and skill, on interpreting the scenes which he summarized and quoted. In contrast, he offers virtually no interpretations of Baudelaire's poems.

Instead, Pinard concentrates on principles, crafting his arguments so as to turn on its head the defence which had been so successful for Flaubert, whose trial is tacitly evoked in the very first sentence: 'Poursuivre un livre pour offense à la morale publique est toujours chose délicate. Si la poursuite n'aboutit pas, on fait à l'auteur un succès, presque un piédestal. Il triomphe, et on a assumé, vis-à-vis de lui, l'apparence de la persécution' (*OC*, I, 1206). The trial had indeed made Flaubert famous and Baudelaire's was already doing the same for him,[25] but the point here is that Pinard signals the background against which his strategy will take shape. In contrast to the earlier trial, he separates the man from the work: 'ce n'est pas l'homme que nous avons à juger, c'est son œuvre' (*OC*, I, 1206). As we have seen, he brackets the question of literary value, acknowledging from the start that Baudelaire 'arrive [. . .] protégé par des écrivains de valeur, des critiques sérieux' (*OC*, I, 1206): indeed Baudelaire had brought out a collection of four articles by prominent critics defending his work and had distributed it to the judges and prosecutors, and Barbey had interceded with friends to use their influence with Pinard.[26] Most notably, Pinard confronts head-on the issue of the morality of the depiction of vice, its value as a moral lesson and warning.

In the Flaubert trial the court had accepted the defence's assertion that the depiction of vice in *Madame Bovary* was moral in intent and principle, and that Flaubert had merely made an error of judgement in failing to exercise proper 'restraint'. This had been the main basis for the acquittal: 'il a eu le tort seulement de perdre parfois de vue les règles que tout écrivain qui se res-

[25] See the letter from the poet Henri Cantel to Baudelaire, 21 July 1857: 'J'ai ouï dire tant de mal de votre beau volume que, à mon corps défendant, j'ai voulu y fourrer le nez. [. . .] On m'avait dit [. . .], à droite et à gauche, que M. Baudelaire était un homme d'un réalisme effréné' (*Lettres à Charles Baudelaire*, ed. by Claude Pichois (Neuchâtel: La Baconnière, 1973), p. 76).

[26] The *Articles justificatifs* included two articles which had already appeared (Édouard Thierry's in *Le Moniteur universel*, 14 July, and Frédéric Dulamon's in *Le Présent*, 23 July) and two which had not (Barbey d'Aurévilly's and Charles Asselineau's). For Barbey's intervention see *Lettres à Charles Baudelaire*, p. 47 (17 August 1857).

pecte ne doit jamais franchir, et d'oublier que la littérature, comme l'art, pour accomplir le bien qu'elle est appelée à produire, ne doit pas seulement être chaste et pure dans sa forme et dans son expression', but also, presumably, in content.[27] In prosecuting Baudelaire, Pinard takes pains to anticipate and refute this argument that the depiction of vice could be moral. He first questions whether depicting the consequences can compensate for the extent of the vice, much as a sinner might cheerfully tell himself that he can always repent in the end: 'De bonne foi, croyez-vous qu'on puisse tout dire, tout peindre, tout mettre à nu, pourvu qu'on parle ensuite du dégoût né de la débauche et qu'on décrive des maladies qui la punissent?' (*OC*, I, 1207). He then maintains, incorrectly, that the book had been printed in thousands of copies and sold at a low price, and thus had a large, popular audience, composed of readers of all classes, ages, and conditions.[28] By taking a detour through Christian notions of pride, human weakness, and, bizarrely, that very Baudelairean concept of original sin, he concludes that such readers, undisciplined and imperfect moral subjects that they are, would not take the evil as an antidote, but at face value; they would be more interested in the lasciviousness of the poems than in any moral lesson that the author may have wished to put across. 'L'homme est toujours plus ou moins infirme, plus ou moins faible, [. . .] portant d'autant plus le poids de sa chute originelle, qu'il veut en douter ou la nier' (*OC*, I, 1208), he stated, in a curious foreshadowing of Baudelaire's prose poem 'Le Joueur généreux'.[29] Authorial intention is thus irrelevant before the power of the text, and the meaning of the part is self-sufficient, not subordinated to, or modified by, the larger whole.

The prosecution also sought to counter the potential objection of precedents, which, Pinard asserts, should not be considered binding: 'Si l'immoralité des productions s'accentue, il faut qu'il [le ministère public] puisse toujours punir le vice, sans qu'on ait à lui reprocher de n'avoir pas antérieurement poursuivi' (*OC*, I, 1209). This nullified in a stroke not only the tried and true 'classics of French literature argument' (the Bossuets and Montesquieus, the venerable Academicians who had never been prosecuted for licentious writings), but also the precedent of the Flaubert acquittal: the court must not feel bound by the previous judgement. Moreover, Pinard warns

[27] Flaubert, *Œuvres*, I, 717. It should be noted that, as it stands, the text of this verdict is puzzling: 'ne doit pas seulement' is not completed by any 'mais aussi . . .'; and in contrast to what the text says here, the rest of the verdict implies that Flaubert has forgotten precisely that literature *should* be 'chaste et pure dans sa forme et dans son expression'. The text is either mistranscribed or, as I suggest here, elliptical. Some scholars omit the negative around the second 'doit' and others interpret '*et* dans son expression' as '*mais aussi* dans son expression', but neither of these is consistent with the French.

[28] The print-run was 1300 copies, according to a note by the publisher, Poulet-Malassis (Eugène Crépet, *Baudelaire: étude biographique*, revised edition by Jacques Crépet (Paris: Vanier, 1906), p. 104).

[29] 'La plus belle des ruses du diable est de vous persuader qu'il n'existe pas' (*OC*, I, 327).

the judges not to be content with criticizing the book while still acquitting the accused. This is a clear reference to the Flaubert case, in which the court had issued a harsh criticism of the work but nevertheless acquitted the author. 'S'il y a acquittement, le public croit le livre absolument amnistié; il oublie vite les *attendus*, et s'il se les rappelait, il les réputerait démentis par le dernier mot de la sentence. Le juge n'aurait mis personne en garde contre l'œuvre, et il encourrait un reproche, [. . .] celui de s'être contredit' (*OC*, I, 1209): Pinard's view of the Flaubert verdict could not be clearer.

Finally, the prosecution showed its hand in the unstated game of scapegoating: Pinard argues that a conviction would send 'un avertissement [. . .] nécessaire' against that 'fièvre malsaine', those 'tendances croissantes' to depict everything without restraint, 'comme si le délit d'offense à la morale publique était abrogé, et comme si cette morale n'existait pas' (*OC*, I, 1209). This is a direct allusion to the Flaubert trial, in which the court, while ruling in the author's favour, had nevertheless taken him to task for overstepping the bounds of decency and good taste. Baudelaire's counsel, without naming Flaubert, exploits this suggestion that his client should pay for the earlier acquittal: 'Il lui faut [au ministère public] une condamnation, il veut bien qu'on la prononce légère, il vous convie à l'indulgence, mais il tient absolument à ce que nous soyons condamnés, parce qu'il faut, dit-il, un avertissement. Eh bien, je vous demande s'il est juste, parce qu'un avertissement paraît nécessaire au ministère public, que cet avertissement tombe sur la tête de Baudelaire?' (*OC*, I, 1217).

For the offence against religion, Pinard condemns the poet's taking the side of Peter's denial against Christ, of Cain against Abel, of Satan against the saints. But he also alludes to 'explications contradictoires' at the hearing, explanations which have not come down to us. He thus leaves the question open, suggesting that Baudelaire, 'cet esprit tourmenté, qui a voulu faire de l'étrange plutôt que du blasphème', may not be guilty of the latter offence (*OC*, I, 1207).

The ruling was, like the rest of the trial, very short. In a single sentence the court threw out the charge of offence against religious morality, giving no explanation or justification but simply stating that the accusation had not been proved. In a second sentence, the court upheld the charge of offence against public morality and decency for the following reason:

> Attendu que l'erreur du poète, dans le but qu'il voulait atteindre et dans la route qu'il a suivie, quelque effort de style qu'il ait pu faire, quel que soit le blâme qui précède ou qui suit ses peintures, ne saurait détruire l'effet funeste des tableaux qu'il présente au lecteur et qui, dans les pièces incriminées, conduisent nécessairement à l'excitation des sens par un réalisme grossier et offensant pour la pudeur [. . .] (*OC*, I, 1181–82)[30]

[30] A copy of the verdict addressed to Poulet-Malassis was sold at the Hôtel Drouot on 20 December 2007 (Beaussant-Lefèvre, *Baudelaire: collection d'un amateur*, lot 30).

The language responds directly to a rhetorical question in Chaix's speech for the defence: 'Est-ce que, sérieusement, ses *intentions* peuvent être douteuses; est-ce que vous pouvez hésiter un instant *sur le but qu'il a poursuivi et sur la fin qu'il s'est proposée*?' (*OC*, I, 1210, emphasis added).

Let us analyse these points one at a time. The unexplained rejection of the charge of religious immorality has never been adequately accounted for. Gaps in the record indeed make this decision difficult to interpret with certainty, and the prosecution itself made the case only half-heartedly, alluding enigmatically to 'ambiguities' at the hearing. Yet the argument used by the defence against this charge is surely revealing. Chaix had quoted the note which Baudelaire had originally placed at the head of the section 'Révolte' from which the incriminated poems were drawn, and one wonders whether this was the 'contradictory evidence' that, according to Pinard, Baudelaire had produced at the hearing: 'on ne doit les considérer [. . .] que comme un pastiche des raisonnements de l'ignorance et de la fureur; fidèle à son douloureux programme, l'auteur des *Fleurs du mal* a dû, en parfait comédien, façonner son esprit à tous les sophismes et à toutes les corruptions' (*OC*, I, 1215).[31] The irony is worthy of the *Petits poèmes en prose*, but in legal terms, the defence of pastiche had no rejoinder and thus seems to have worked. The charge was not proved because if the evidence were pastiche, it could not, in a sense, *be* proved. Baudelaire the *vieux saltimbanque*, the perfect *comédien*, the master of *dédoublement*, enjoying the 'incomparable privilège qu'il peut à sa guise être lui-même et autrui' ('Les Foules'), mimicking the many voices of nineteenth-century French society: this aesthetic, theorized in his critical essays and enacted in the prose poems, had, in this instance, a crucial effect in the quashing of the charge.[32] Irony and pastiche were essentially 'contradictoires', ambiguous, unable to be pinned down 'avec la certitude nécessaire' (*OC*, I, 1207) for conviction.

The second part of the ruling, on public morality and decency, is more complex. Pinard had tried to counter the standard, eminently Flaubertian, argument that depicting evil could have a moral purpose, showing the degradation and shame which evil brings. This argument had been highly effective for Flaubert, whose counsel had sought to prove that the depiction of vice was an incitement to virtue, tantamount, as he described it, to a father's advice to his daughter: Emma's death at the end was, in this reading, a moral lesson, show-

[31] Cf. *OC*, I, 1075.

[32] In *De l'essence du rire et généralement du comique dans les arts plastiques*, *dédoublement*, 'la puissance d'être à la fois soi et un autre' is the quintessential characteristic of the artist (*OC*, II, 543). In *Le Peintre de la vie moderne*, the ability to enter into the character of others while observing them from without is the defining quality of the artist-flâneur, what Baudelaire there calls cosmopolitanism (*OC*, II, 691–92). See my *Baudelaire and Caricature: From the Comic to an Art of Modernity* (University Park: Pennsylvania State University Press, 1992), pp. 69–73 and 288–99.

ing the punishment which awaited the adulterous woman. At Baudelaire's trial Pinard anticipates and refutes this, as I noted above, by an argument based on human weakness and original sin. In their verdict, however, the judges accepted the moral *intention* of Baudelaire's work, as their explicit response to the defence's rhetorical question about his intentions makes clear: like Flaubert, Baudelaire had simply made an 'error' or miscalculation. Indeed, they affirm the book's moral *character*, acknowledging 'le blâme qui précède ou qui suit ses peintures'. But they hold that this is *irrelevant*: whatever the blame which precedes or follows the offending scenes, the poems will 'necessarily' have a 'harmful effect' by the sole force of their 'vulgar realism', which somehow overwhelms the moral *that is nevertheless there*.

This is very different from the trial of Flaubert. There, the debate had turned on the morality or immorality of the novel, and Senard had claimed that he could dismantle the prosecution's whole case by placing the fragmentary quotations back into their context: 'restituer ce qui précède et ce qui suit vos citations'.[33] Addressing the judges, he had concluded his speech with the same point: 'Vous avez jugé le livre dans son ensemble et dans ses détails; il n'est pas possible que vous hésitiez!'[34] The court, in its ruling, had acknowledged the morality of Flaubert's objective, while nevertheless complaining about the coarseness of the representation.[35] The judges had stated, hypothetically, that the representation of immorality for the sole purposes of character portrayal or local colour *could* constitute an offence, but they had concluded that the moral context of the book ultimately outweighed this. In Baudelaire's case, the force of the 'immoral' representation was seen to prevail not only over the 'moral' parts, but also over the moral which the work *as a whole* actually contained.

This disregard for authorial intention and for the integrity of the work of art is highly problematic. On the first point, the defence had pointed out that the law required, for 'outrage against public morals' to be proved, that intention be paramount: 'ce qu'il faut, pour condamner, c'est le *cynisme* grossier, c'est une brutalité *calculée* et *volontairement* dangereuse'. Intention had led to the acquittal of both Flaubert and the Goncourts, and to the conviction of Xavier de Montépin.[36] At the time, no one doubted that the judges had recognized Baudelaire's moral intentions.[37] The editor of *Le Présent* wrote, in publishing a poem by Émile Deschamps on the trial, 'A quelques censeurs', that the

[33] Flaubert, *Œuvres*, I, 693.

[34] Ibid., I, 715.

[35] The court stated that Flaubert's idea, 'morale sans doute dans son principe, aurait dû être complétée dans ses développements par une certaine sérénité de langage et par une réserve contenue' (*Œuvres*, I, 716).

[36] See Alexander Zévaès, *Les Procès littéraires aux XIX^e siècle* (Paris: Perrin, 1924), pp. 65, 69.

[37] So much so that, in the verdict, the word 'intention' is frequently substituted (mistakenly) for 'error' (see Crépet, *Baudelaire: étude biographique*, p. 109; Brosset and Schmidt, *Le Procès des*

verdict had 'proclamé les intentions louables de l'auteur des *Fleurs du mal*'.[38] When Baudelaire later requested that his fine be reduced, he stated that 'les termes mêmes du jugement impliquent la reconnaissance de mes hautes et pures intentions', and the attorney-general concurred, stating, as a reason for granting the appeal, that the court had recognized 'la bonne foi et la droiture des intentions de l'auteur'.[39] This recognition continued long after, as well: the 1949 rehabilitation of Baudelaire was made partly on the grounds that the original court had acknowledged the poet's moral intentions. The counsel for the Société des Gens de Lettres, which had brought the appeal, argued:

> Les juges de 1857, par une singulière contradiction de motifs, loin d'affirmer cette volonté délictuelle dont la constatation semble cependant exigée par vos arrêts, avait au contraire déclaré qu'en dépit des intentions du poète et des efforts déployés par lui pour atténuer l'effet de ses peintures, elles 'conduisaient nécessairement à l'exaltation des sens par un réalisme grossier et offensant à la pudeur'.

The 1949 court accepted this argument, ruling that the offence required intention and that the original judgement 'a reconnu les efforts faits par le poète pour atténuer l'effet de ses descriptions'.[40]

In 1857 the integrity of the work had likewise been vigorously defended. Baudelaire had stated: 'plusieurs morceaux non incriminés réfutent les poèmes incriminés. Un livre de poésie doit être apprécié dans son ensemble et *par sa conclusion*'.[41] He had urged Chaix to argue this as well: 'le livre doit être jugé *dans son ensemble*, et alors il en ressort une terrible moralité'.[42] This 'ensemble' involves counterposing the famous two tendencies towards 'spleen' and 'ideal': 'Je répète qu'un livre doit être jugé dans son ensemble. A un blasphème j'opposerai des élancements vers le ciel, à une obscénité, des fleurs platoniques' (*OC*, I, 195).

On these two points, then—authorial intention and the integrity of the work of art—the judges' verdict ran counter to accepted ways of reading and were seen to do so at the time.[43] Indeed, in no other trials are the moral intention of the author and the moral character of the book accepted but considered secondary to the immoral nature of particular scenes, as though

'Fleurs du mal', p. 122; Yolande Cassin, 'Le Procès des *Fleurs du mal*', *Europe*, 45, nos 456–57 (April–May 1967), 183–96 (p. 193)).

[38] A. Guyaux, *Baudelaire: un demi-siècle de lectures des 'Fleurs du mal' (1855–1905)* (Paris: Presses de l'Université Paris-Sorbonne, 2007), p. 251.

[39] Patry, 'L'Épilogue du procès des *Fleurs du mal*', pp. 71, 72.

[40] Cour de cassation (chambre criminelle), 31 mai 1949, 'Révision du jugement du Tribunal correctionnel de la Seine du 25 août 1857 [. . .]' <http://www.poesies.net/leprocesdesfleursdumal.txt> [accessed 10 December 2010].

[41] Note to the article by Dulamon in the *Articles justificatifs* (*OC*, I, 193 and 1190).

[42] 'Notes pour mon avocat' (*OC*, I, 193, Baudelaire's italics).

[43] Baudelaire always considered the verdict a result of *mis*understanding. See his fourth 'projet de préface' (*OC*, I, 184); *Articles justificatifs* (*OC*, I, 193); *Mon cœur mis à nu* (*OC*, II, 685).

the part mattered more than the whole, as though intention were negated by the brute immediacy of literary 'shock', as though atomistic moments won out over 'whatever blame precedes or follows': that is, over the message conveyed by the narrative sequence.

Yet these are features, ironically, of a consummately Baudelairean reading as he later defines it in the 'Dédicace à Arsène Houssaye' from *Le Spleen de Paris*. The 'Dédicace' is a lesson in the practice of reading.[44] The famous image which it proposes of the collection of prose poems as a cut-up serpent takes on new resonance in the context of the earlier 'livre [. . .] poursuivi et mutilé' which was the prosecuted *Fleurs du mal*:[45] when the collection of prose poems is cut into pieces, the 'Dédicace' states, each fragment constitutes a whole; one can cut wherever one likes, stop whenever one wants, for, as the poet says, he will not suspend the 'restive will' of the reader on the 'interminable thread of a narrative plot'—that is, in the terms of the verdict, on 'what precedes or follows'.[46] This central issue of the trial—citing fragments out of context—modulates into the 'Dédicace' as a reading practice imposed by the fragmented, diverse, and excessive conditions of existence in the modern city. In the same way, the final sentence of the 'Dédicace', noting the 'profound humiliation' of the poet who produced something utterly unexpected, against his ideal of accomplishing '*juste* ce qu'il a projeté de faire' (*OC*, I, 276), is an ironic commentary on authorial intention in which Baudelaire's emphasis on the italicized *juste* is not the least reference to the earlier trial.

In this respect, the 'Dédicace', published on 26 August 1862, may be taken as another *projet de préface*, like the four which Baudelaire drafted for the 1861 edition of the *Fleurs du mal*, the edition meant to compensate for the 'mutilated' one of 1857. Presenting his aesthetic principles, the other *projets* all refer explicitly, and with high irony, to the trial or the issues raised in it: the morality or immorality of the poems, the intended audience ('ce n'est pas pour mes femmes, mes filles ou mes sœurs que ce livre a été écrit; non plus que pour les femmes, les filles, ou les sœurs de mon voisin'), the confusion of the representation with reality ('on m'a attribué tous les crimes que je racontais'), the misunderstanding which had led to its prosecution and 'mutilation' (*OC*, I, 181–84). The 'Dédicace' may be a preface of this sort, alluding, whether consciously or not, to the kind of reading the judges had performed: an example which, as in the other *projets de préface*, proved to Baudelaire 'une fois de plus que ce siècle avait désappris toutes les notions classiques relatives à la

[44] Ross Chambers characterizes it as a preface or liminary text, a 'prose-poem about prose-poems' which 'launch[es] the concerns of the text itself' ('Baudelaire's Dedicatory Practice', *SubStance*, 17.2 (1988), 5–17 (pp. 9–11)).

[45] Fourth 'projet de préface' (*OC*, I, 184).

[46] Sonya Stephens has pointed out how this passage plays on the idea of the newspaper, the transitory, commodified, disordered culture of modern life (*Baudelaire's Prose Poems: The Practice and Politics of Irony* (Oxford: Oxford University Press, 1999), p. 83).

littérature'.[47] It is noteworthy that in 1857 Baudelaire himself did not defend the *Fleurs du mal* in these terms: the notes which he made for his counsel concentrated on the morality of the ensemble, on his authorial honesty in expressing remorse and a horror of evil, and on the book's limited audience. Instead, the unorthodox principles of reading applied in the verdict made their way into the 'Dédicace'.

This may indeed be one of the main effects of the trial of the *Fleurs du mal*. It represented those very features of a 'modern' reading practice which Baudelaire would so brilliantly exploit in the *Petits poèmes en prose*: the reader/flâneur wandering aimlessly through the text, submitting to the momentary shocks of a fragmented reading experience, unconcerned with 'what precedes or follows', the work emerging accidentally, like the chance intersections of urban phenomena which inspire the form of the volume, independently of the author's intentions. The poems treat this with high irony, creating a dizzying range of conflicting interpretations, stylistic registers, parodic clichéd discourses and ambiguous ideological positions, a confusing multiplicity of poetic voices and subjectivities to choose from, making the poems into the kinds of commodity, and the reader into the kind of 'consumer', so undermined in the text.[48] The literary values brought out in Flaubert's trial were classical ones: the work judged as a whole, the reader interpreting correctly or not the message which the work contained; those present in Baudelaire's trial were, for better or worse, resolutely modern—fragmented, random, non-narrative, haphazard, appropriate to a state of distraction and to the commodification of life in the modern city. The trial may have been a perfect example *avant la lettre* of that modern reading practice which the prose poems simultaneously reflect, ironize, and expose.

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[47] *OC*, I, 181. The context is those who believe the book will do either harm or good, in either case a confusion of beauty and morality.

[48] See Stephens, *Baudelaire's Prose Poems*, especially pp. 81–90.