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Claire Wrobel

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## Lost in “a labyrinth without a clew”: the subject of the Law in Gothic fiction

Claire Wrobel (Université Panthéon-Assas)

*Droit, Langues et Cultures : Regards Croisés sur les Difficultés d'Accès à la Justice au Royaume-Uni*, sous la direction de G. Gadbin-George, Paris : Editions Panthéon-Assas, p. 153-169.

### Introduction

In late eighteenth-century Britain, the consensus on the panegyric presented by William Blackstone in *Commentaries on the Laws of England* (1765-69) made any questioning of the institutions barely audible. As Linda Colley pointed out in *Britons: Forging the Nation* (1992), patriotism prevailed, and access to the Law featured among the much praised British liberties. Although Blackstone acknowledged that some areas needed to be rationalized, he influentially argued that the Law as it stood was predictable, in the sense that it left no room for arbitrary enforcement; that the common law was the embodiment of the English spirit; and that the legal system was blind to social distinctions<sup>1</sup>.

Britain was at war between 1793 and 1815 and any attack on the law and/or the institutions could be interpreted as sedition, which was a crime. Not until the 1830s were there significant endeavours to reform the English legal system. However, criticisms *were* voiced in the last decades of the XVIIIth century. This paper will draw on one of Blackstone's most vocal adversaries, Jeremy Bentham, the well-known reformer and father of utilitarianism, who provided a systematic challenge of Blackstone's view of the common law system.

This paper aims at showing that Gothic fiction provided an indirect means to describe, in an exaggerated way, the throes of legal subjects facing a legal system they had no grasp on. The critical discourse developed by Bentham and others found echoes – albeit indirect ones – in the Gothic fiction of the time, which can be demonstrated by focusing on three images which circulated from one discourse to the other: first, the image of the Law as a castle and/or labyrinth; then the assimilation of legal uncertainty to torture; and finally the idea that legal narrative is a trap. Having “access to the law” will thus be understood as understanding what the law prescribes and forbids; the possibility to anticipate verdicts; and the opportunity to give one's version of events in the context of a trial.

### 1. The Law as a castle and /or labyrinth

The most famous architectural image used by Blackstone in his *Commentaries* is that of the old Gothic castle.

The only difficulty that attends [the new expedients] arises from their fictions and circuities: but, when once we have discovered the proper clew, the labyrinth is easily pervaded. Our system of remedial law resembles an old Gothic castle, erected in the days of chivalry, but fitted up for a modern inhabitant. The moated ramparts, the embattled towers, and the trophied halls, are magnificent and venerable, but useless, and therefore neglected. The inferior apartments, now accommodated to daily use, are cheerful and commodious, though their approaches may be winding and difficult<sup>2</sup>.

In this particular passage, Blackstone is explaining how the presence of feudal Norman elements forced jurists to use “fictions and circuities” so as to adapt the law to the needs of their time. It is when he is dealing with this specific part of the Law, “our system of remedial law”, that the image of the Gothic castle appears. In his account, the presence of fictions led to a complexity that made the study of the Law difficult but not impossible. However, Blackstone's optimistic suggestion that the legal labyrinth could be “easily pervaded” with the proper clue was challenged both in reformist discourse and in literature.

Although it had not been Blackstone's intention to produce a legal text in writing his *Commentaries*, his work soon became identified with the common law itself and was used as such, for study and reference. Therefore, challenging Blackstone's panegyric amounted to challenging the common law system itself. In reformist discourse, architectural images, and particularly the labyrinth, were used to question the validity of both Blackstone's text and the system it claimed to present. Form and matter were indissociable.

While Blackstone's endeavour was widely hailed as a major contribution to making the English common law more accessible, critics like Jeremy Bentham took the opposite view and argued that the very text of the

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<sup>1</sup> Blackstone wrote for instance: “[I]t is moreover one of the glories of our English law, that the species, though not always the quantity or degree, of punishment is *ascertained* for every offence; and that it is not left in the breast of any judge, not even of a jury, to alter that judgment, which the law has beforehand ordained, for every subject alike, without respect of persons.” and that the common law was “excellently adapted to the genius of the English nation.” BLACKSTONE, *Commentaries on the Laws of England.*, [1765-1769], London, W. Reed, 1811, ARCHBOLD, ed, 4 vols., vol. IV, p. 376-377, vol I, p. 16-17.

<sup>2</sup> *Ibidem*, vol. III, p. 268.

*Commentaries* was a labyrinth. He referred to Blackstone's text as "a labyrinth of confusion" and used further down the phrase "the labyrinth of these Commentaries"<sup>3</sup>. The reformer had a first-hand knowledge of Blackstone's analysis of the common law as he had attended his lectures at Oxford in 1763, which he deemed "illogical"<sup>4</sup>. His first attacks on the consensus around common law can be found in a text entitled *A Fragment on Government*, published in 1776, and in *A Comment on the Commentaries*, which was left unfinished and published posthumously. The image of the labyrinth may be found in both texts to describe Blackstone's works as well as the common law system. In *A Fragment on Government*, one of Blackstone's digressions was described as an instance of the author "bewilder[ing] himself in a labyrinth of quotations"<sup>5</sup>. Bentham presented himself as a guide who would rescue Blackstone's readers, whom the latter had left "bewildered and deluded"<sup>6</sup>. He presented his own task as the disentangling of the language used in the *Commentaries*:

[L]et us disentangle the sense from these ambiguities; let us learn to speak distinctly of the *persons*, and of the *quality* we attribute to them; and then let us make another effort to find a meaning for this perplexing passage.<sup>7</sup>

In this quotation, the phrase "perplexing passage" refers to an extract from the *Commentaries*, but may also be understood as an architectural feature – a passage or a corridor – pointing back to the image of the labyrinth. On a conceptual level, Bentham used the same metaphor to expose the common law system itself. For him, it did not have a legal status; only the statutes enacted by Parliament were valid because they were supposedly clear and enabled subjects to choose what they deemed to be a rational course of action. They made it possible to "mark out the line of the subject's conduct by visible directions, instead of turning him loose into the wilds of perpetual conjecture"<sup>8</sup>.

In Bentham's analysis, the law was labyrinthine by its very length, which itself was due to the use of "technical language" or "legal gibberish" as opposed to what he called "the common modes of phraseology"<sup>9</sup>. He described the Common Law as a "dark Chaos" characterized by obscurity, uncertainty and confusion<sup>10</sup>. Rather than being the embodiment of wisdom, it was presented as an accumulation of confusion:

[N]othing can be more heterogeneous, more unfathomable, more indefinite than its contents: nothing more dark, more impure than many of the sources of it. These contents have been long ago immense, and are and will be still increasing, and that indefinitely till some order shall be taken to the contrary<sup>11</sup>

This quotation raises a worrying prospect: the idea that the tortuous legal labyrinth is bound to grow and expand. In a long passage, Bentham summed up the many flaws which the law presented in his time - namely ineffectiveness, lack of proportion, costs, irrationality, length, and unfairness - and concluded that the "whole fabric of jurisprudence" was "a labyrinth without a clew":

I saw crimes of the most pernicious nature passing unheeded by the law: acts of no importance put in point of punishment upon a level with the most baneful crimes: punishments inflicted without measure and without choice: satisfaction denied for the most crying injuries: the doors of justice barred against a great majority of the people by the pressure of wanton impositions and unnecessary expense: false conclusions ensured in questions of fact by hasty and inconsistent rules of evidence: the business of hours spun out into years: impunity extended to acknowledged guilt and compensation snatched out of the hands of injured innocence: the measure of decision in many cases unformed: in others locked up and made the object of a monopoly: the various rights and duties of the various classes of mankind jumbled together into one immense and unsorted heap: men ruined for not knowing what they are neither enabled nor permitted to learn: and *the whole fabric*

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<sup>3</sup> BENTHAM, *A Comment on the Commentaries*, in *A Comment on the Commentaries and A Fragment on Government*, London, Athlone Press, 1977, BURNE and HART, eds., p.17, p. 123.

<sup>4</sup> BENTHAM, *The Works of Jeremy Bentham*, Edinburgh, William Tait, 1843, BOWRING, ed., 11 vols., vol. X, p. 45.

<sup>5</sup> BENTHAM, *A Fragment On Government*, in *A Comment on the Commentaries*, in *A Comment on the Commentaries and A Fragment on Government*, London, Athlone Press, 1977, BURNE and HART, eds., p. 221.

<sup>6</sup> *Ibidem*, p. 114-115.

<sup>7</sup> *Ibid*, p. 476.

<sup>8</sup> BENTHAM, *A Comment on the Commentaries*, p. 95.

<sup>9</sup> *Ibidem*, p. 144, p. 170

<sup>10</sup> *Ibid.*, p.198.

<sup>11</sup> *Ibid*, p. 331

One could multiply such examples almost indefinitely because Bentham's controversy with Blackstone was life-long and, throughout his career, the reformer consistently identified the same flaws, whatever part of the law he examined. Later in his career, he came to the conclusion that the delays, confusions, and costs served the interests of judges and lawyers at the expense of litigants. Indeed, around the years 1808-1809, Bentham's thought took a more radical turn. The reformer became convinced that no reform of the Law would be possible without first reforming the political system. To him, the landed and religious elite were in collusion with judges and lawyers to leave the system unchanged in order to serve their own interests, which he called "sinister interests<sup>13</sup>".

It is the contention of this paper that the fear that the Law was an impenetrable labyrinth meant to maintain tyrannical power was explored in the Gothic fiction of the time, by the use of similar images, taken very literally. Before attempting to highlight the complementary and dialectical link between Gothic fiction and calls for legal reform, it may be useful to explain briefly what the phrase "Gothic literature" refers to. From the point of view of literary history, "Gothic" is used today to refer to a genre which developed in the second half of the XVIIIth century and dominated the market of the novel in the 1790s. Horace Walpole's *The Castle of Otranto*, published in 1764 and identified by its author himself as "A Gothick story", is usually regarded as the first instance of the genre. Robert Miles has analyzed Gothic literature as a phenomenon which burst onto the literary scene between 1788 and 1793, reached a peak in 1800 and started declining after 1807, even if Gothic influences can be traced in literature – and in other fields – much later than that. David Punter's overview of the history of Gothic fiction in *The Literature of Terror* thus includes contemporary authors such as Thomas Pynchon or Angela Carter<sup>14</sup>. Although some critics identify the end of the genre in the 1820s, others have adopted a broader approach enabling them to define a Gothic vein still running in today's literature – not to mention films and series.

The Gothic has been defined in a number of ways, one of which is the "recipe", featuring a number of recurring ingredients such as the setting in medieval Catholic southern Europe, usually in a partly ruined haunted castle, a property dispute and a despotic villain chasing a young heroine through subterranean vaults. The term "Gothic" itself is for instance used in Ann Radcliffe's novels to characterize the ruins which often appear in the setting or their architectural features<sup>15</sup>. Already in the XVIIIth century, detractors of Gothic fiction parodied the genre as a combination of stock elements, which could be summed up in a recipe. Thus, an anonymous author wrote in 1798:

Every absurdity has an end, and as I observe that almost all novels are of the terrific cast, I hope the insipid repetition of the same bugbears will at length work a cure. In the mean time, should any of your female readers be desirous of catching the season of terrors, she may compose two or three pretty volumes from the following recipe:

*Take* – An old castle, half of it ruinous.

A long gallery, with a great many doors, some secret ones.

Three murdered bodies, quite fresh.

As many skeletons, in chests and presses.

An old woman hanging by the neck; with her throat cut.

Assassins and desperadoes '*quant suff.*'

Noise, whispers, and groans, threescore at least.

Mix them together, in the form of three volumes to be taken at any of the watering places, before going to bed.  
PROBATUM EST<sup>16</sup>.

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<sup>12</sup> Quoted in HARRISON, *Bentham*, Routledge and Keegan Paul, London, 1984, p. 47.

<sup>13</sup> See SCHOFIELD, *Utility and Democracy*, Oxford, Oxford University Press, 2006, p. 137-170.

<sup>14</sup> MILES, "The Effulgence of Gothic", in HOGLE, ed., *The Cambridge Companion to Gothic Fiction*, Cambridge, Cambridge UP, 2002, pp. 41-60; PUNTER, *The Literature of Terror: A History of Gothic Fictions from 1765 to the Present Day*, New York, Longman, 1996, 2 vols.

<sup>15</sup> "The pile was venerable from its antiquity, and from its gothic structure; but more venerable from the virtues which it enclosed."; "The edifice was built with gothic magnificence upon a high and dangerous rock." RADCLIFFE, *The Castles of Athlin and Dunbayne* [1789] London, Folio society, 1987, VARMA, ed., p. 1, p. 10; RADCLIFFE, *The Mysteries of Udolpho* [1794] Oxford, Oxford UP, 1998, DOBRÉE, ed., p. 91, p. 14, p. 22.

<sup>16</sup> Anonymous, "Terrorist Novel Writing" [1798] in CLERY and MILES, eds., *Gothic Documents: A Sourcebook (1700-1820)*, Manchester, Manchester UP, 2000, p. 183-184.

As James Watt has explained, “The Gothic romance as a descriptive category is a product of twentieth century literary criticism<sup>17</sup>”. Its study was long dominated by psychological or psychoanalytical readings, but more recently, this type of literature has been interpreted in ideological terms, an approach which may prove fruitful to analyze the relationships between the Gothic and the Law. Thus, the Gothic has been defined as a “symbolic site” enabling the enlightened XVIIIth century to define itself by rejecting what it regarded as barbaric, including in the legal field, thereby contributing to the general consensus. According to Fred Botting, the use of the term *Gothic* enabled Augustan England to define itself as a classical age:

This equation of the Gothic with a barbaric, medieval past served not only to establish through difference the superiority of the more classical traditions of Greece and Rome, but also to confirm the virtues of the equally civilized, ordered and rational present<sup>18</sup>.

Indeed, the XVIIIth century claimed a classical legacy defined in terms of civilization, virtue, harmony as well as social, moral and aesthetic maturity, thus appropriating those qualities in the process<sup>19</sup>. Botting describes a phenomenon of “condensation” under the term *Gothic*:

The rejection of feudal barbarity, superstition and tyranny was necessary to a culture defining itself in diametrically opposed terms: its progress, civilisation and maturity depended on the distance it established between the values of the present and the past. The condensation, under the single term ‘Gothic’, of all that was devalued in the Augustan period thus provided a dis-continuous point of cultural consolidation and differentiation<sup>20</sup>.

Robert Mighall too underlines the cultural function of the term:

From the start, the idea of the Gothic carries a (pseudo-)historical inflection, and testifies to one culture’s views about its perceived cultural antithesis<sup>21</sup>.

In legal terms, what was rejected as “Gothic” was the use of torture to extort confessions, the absence of a jury in trials, arbitrary imprisonment, and the lack of presumption of innocence. However, the abuses depicted in Gothic literature as belonging to another context can also be read as a staging, in an exacerbated, dystopic mode, of the difficulties encountered by litigants in the English legal system. Such a hypothesis is corroborated by the fact that reformist discourse and Gothic literature complemented each other, exchanging arguments and metaphors.

The image of the labyrinth is one of the topoi of Gothic literature. Gothic castles, but also prisons, convents and forests often feature underground mazes, which seem to be interconnected and prolong one another. In this context, the labyrinth has been analyzed as a place where the individual is exposed to arbitrary power. For instance, Fred Botting interprets labyrinths as “spaces of inversion”:

Labyrinths thus become spaces of inversion, spaces in which the traditional poles of good and evil are reversed: evil has power, good is the victim; vice can strut while virtue must hide or flee. For villains the labyrinth is a site of desire; for heroines it is a place of fear<sup>22</sup>.

Botting illustrates this general principle with the episode in which Manfred, the Gothic villain, is chasing the betrothed of his late son, Isabella, whom he intends to marry, through the underground labyrinths of the *Castle of Otranto*. Similarly, the labyrinth which features in Lewis's *The Monk* is a space of inversion in which Ambrosio can exercise absolute power, a space which lies outside of the reach of the law. Thus, Ambrosio tells his sister Antonia: “You are imagined dead: Society is for ever lost to you. I possess you here alone; You are absolutely in my power<sup>23</sup>.” Comparing the law, which was supposed to protect English subjects and their freedoms, to a labyrinth implied that it was in fact a site in which arbitrary power persisted. More generally

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<sup>17</sup> WATT, *Contesting the Gothic: Fiction, Genre and Cultural Conflict, 1764-1832*, Cambridge, Cambridge UP, 1999, p. 1.

<sup>18</sup> BOTTING, “In Gothic Darkly: Heterotopia, History, Culture”, in PUNTER, ed., *A Companion to the Gothic*, Oxford, Blackwell Publishers, 2000, p. 3-14, p. 4.

<sup>19</sup> *Ibidem*, p. 3.

<sup>20</sup> *Ibid.*, p. 4.

<sup>21</sup> MIGHALL, *A Geography of Victorian Gothic Fiction: Mapping History's Nightmares*, Oxford, Oxford UP, 1999, p. xv.

<sup>22</sup> BOTTING, “Power in the Darkness: Heterotopias, Literature and Gothic Labyrinths”, *Genre*, 1993, n° 26, p. 253-282, p. 251.

<sup>23</sup> LEWIS, *The Monk* [1796], Oxford, Oxford UP, 1995, Anderson, ed., p. 382.

speaking, it raised the possibility that, far from being fully enlightened, England still had dark areas where abuses persisted.

It could be argued that the toils of the reader of the *Commentaries* lost in a confusing text about a confusing legal system echo those of Gothic protagonists. For example, in Anne Radcliffe's *The Italian*, which was published in 1797, a character called Vivaldi finds himself at the hands of the Inquisition and when he is taken from its court to its prisons, he discovers a labyrinthine space which repeats itself. A guard opens a door; Vivaldi and the officers walk under an arch and down a flight of steps, reach another door leading to a large room, which is not a point of arrival, but a new starting point: "Several avenues, opening from the apartment, seemed to lead to distant quarters of this immense *fabric*<sup>24</sup>." Although it is used here in the sense of "building", the term "fabric" evokes the etymology of "text" (from the Latin *texere*, to weave), thus creating a link between the labyrinthine architecture and the convoluted legal text. As he is taken down different avenues and through a number of rooms, Vivaldi encounters a succession of points, none of which turns out to be the center of the prison. Such points multiply, from which arcades and ramifications branch off:

The avenue, through which the prisoners passed, opened, at length, into an apartment gloomy *like the first one they had entered*, but more extensive. The roof was supported by arches, and long arcades branched off from every side of the chamber, *as from a central point*, and were lost in the gloom, which the rays of the small lamps, suspended in each, but feebly penetrated<sup>25</sup>.

The syntax itself, with the embedding of relative clauses and the accumulation of propositions, can be described as labyrinth-like.

While for Backstone, the castle of English law was worth preserving and its labyrinth could be pervaded with the proper clue, for Bentham, both the common law system and the *Commentaries* were labyrinths to which there was no clue, leading to the perpetuation of the established order. The scenario presented by Bentham was echoed in Gothic literature, in which characters are very literally lost in mazes in which power relations are at stake. It followed from the fact that the Law could not be known that subjects were plunged in a state of uncertainty, another scenario which was taken to its extremes in Gothic fiction.

## 2. Opacity and the tortures of suspense

Among the many criticisms which Bentham levelled at the common law was its opacity. In *The Italian*, the judicial process of the Inquisition is very literally opaque. Indeed, in the following passage, the court is presented as an esoteric space:

Vivaldi found himself in a spacious apartment, where only two persons were visible, who were seated at a large table, that occupied the centre of the room. They were both inhabited *in black*; the one, who seemed by his piercing eye, and extraordinary physiognomy, to be an Inquisitor, wore on his head a kind of *black turban*, which heightened the natural ferocity of his visage; the other was uncovered, and his arms bared to the elbows. A book, with some instruments of singular appearance, lay before him. Round the table were several unoccupied chairs, on the backs of which appeared figurative signs [;] at the upper end of the apartment, a gigantic crucifix stretched nearly to the vaulted roof; and, at the lower end, suspended from an arch in the wall, was *a dark curtain*, but whether it veiled a window or shrowded [sic] some object or person, necessary to the designs of the Inquisitor, there were little means of judging<sup>26</sup>.

In this passage Vivaldi is at pains to decipher his surroundings, and the narrator is not helping the reader. Apart from the gigantic crucifix emphatically telling them that the scene is located in a Catholic country, readers are given nonvisual information: "a book" is by essence indefinite; "some instruments of singular appearance" is not really descriptive; the allusion to "figurative signs" is not explained and neither are keys given to interpret them. Part of this is of course due to the author's desire to give macabre hints to suggest torture and death. But the several layers of black robes, black turbans, and dark curtains also point to an opaque justice system.

Although the inquisitorial system was supposed to be at odds with the English system, a dreary reminiscence of the Star Chamber which was only a memory in English history, one could use the same reasoning as with the image of the labyrinth and argue that by depicting the exacerbated opacity of the justice system, Gothic fiction presented a distorted reflection of the reality English laymen experienced in different ways. For the

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<sup>24</sup> RADCLIFFE, *The Italian*, p. 196.

<sup>25</sup> *Ibidem*, p. 197.

<sup>26</sup> *Ibid.*, p. 201

subjects of English law, its opacity came from different layers of foreign languages. Indeed, for a long time, the language of written law had been Latin and once it had been translated into English, the technical language remained an obstacle. Moreover, as Blackstone himself had noted, the common law was replete with Norman words. In such circumstances, subjects could not reasonably be expected to read and understand the Law.

According to the proponents of the immemorial doctrine, the common law was an “ancient collection of unwritten maxims and customs” which “had subsisted immemorially in [the] kingdom<sup>27</sup>”. Blackstone stressed the almost organic link between the common law and the people, as the common law was supposed to emanate from the people: “This had endeared it to the people in general, as well because its decisions were universally known, as because it was found to be excellently adapted to the genius of the English nation<sup>28</sup>.” In this quotation, the origin of English law cannot be identified clearly; what matters is that it is “ancient”, that it has been confirmed through time and that it fits the English nation. If a custom was to be found among English people, then it meant that it had “probably” been “introduced by the voluntary consent of the people” and by maintaining the custom, the people showed they still approved of it<sup>29</sup>. Blackstone wrote that: “[Immemorial usage] is in its nature an evidence of universal consent and acquiescence<sup>30</sup>.”

The immemorial doctrine implied that the English could have an almost instinctive knowledge of their legal system, at least of its common law component. Bentham paraphrased and attacked this assumption when he wrote: “People [...] are supposed to know the common law: it is their own Custom; they make it of themselves. Such is the gibberish with which Lawyers blush not to insult the public. [...] The truth is that, take it all together, [the Law] is not yet in a condition to be known<sup>31</sup>.” He acknowledged that the 1730 statute which had provided for the translation of written law from Latin into English had made the law, which used to be “locked up in an illegible character, and in a foreign tongue” more accessible. However, his diagnosis was that a lot remained to be done: “This was doing much; but it was not doing every thing. Fiction, tautology, technicality, circuitry, irregularity, inconsistency remain. But above all the pestilential breath of Fiction poisons the sense of every instrument it comes near<sup>32</sup>.”

Although the dominant discourse on English law excluded the idea that it was unpredictable or at least uncertain, Gothic fiction provided a space in which the anxieties caused by legal uncertainty were fully explored and were assimilated to torture. Torture, or rather the suggestion of torture, was very much present in Gothic literature. Cruel and unusual punishment had been prohibited since the *Bill of Rights* and enlightened English readers seemed to enjoy shuddering at the violence of their past when they read accounts of inquisitorial practices. For instance, in *The Italian*, Vivaldi is told that “torture is applied to those who have the folly and the obstinacy to withhold the truth<sup>33</sup>.” Here, Vivaldi voices the point of view of Radcliffe's readers as he replies: “It is not the truth, which you seek; it is not the guilty, whom you punish; the innocent, having no crimes to confess, are the victims of your cruelty, or, to escape from it, become criminal, and proclaim a lie<sup>34</sup>.” A dive into Vivaldi's consciousness shows him developing this train of thought and using arguments which were already well-rehearsed at the time about the “frenzied wickedness of man”, the “horrible perversion of rights” and the “inveterate cruelty” inherent to this debasing practice<sup>35</sup>.

Torture is never depicted in Radcliffe's novels but merely suggested, and seems to confirm ideological readings of the Gothic as a mirror which allowed the lights of the present to shine even more brightly. But torture is also used in a metaphorical sense to refer to the anxiety experienced by characters about uncertain sentences. The uncertainty is due to the fact that in Gothic space the law is unpredictable because it is either distorted or made by whimsical tyrants. In Radcliffe's first published work, for instance, the prototypical Gothic villain discovers that “the sufferings of suspense are superior to those of the most terrible evils” and decides to impose “the tortures of anxiety and despair” on his prisoner<sup>36</sup>. Similarly, in *The Italian*, a secondary character remarks: “What are bodily pains in comparison with the subtle, the exquisite tortures of the mind<sup>37</sup>!” Mental

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<sup>27</sup> BLACKSTONE, *Commentaries on the Laws of England*, vol. 1, p. 16-17.

<sup>28</sup> *Ibidem*, vol.1, p. 16-17.

<sup>29</sup> *Ibid.*, vol. 1, p. 66-67, p. 74.

<sup>30</sup> *Ibid*, vol. 1, p.189, vol. 2 p, 28.

<sup>31</sup> BENTHAM, *A Comment on the Commentaries*, p. 320.

<sup>32</sup> *Ibidem*, p. 410.

<sup>33</sup> RADCLIFFE, *The Italian*, p. 203.

<sup>34</sup> *Ibidem*, p. 203.

<sup>35</sup> *Ibid.*, p. 198.

<sup>36</sup> RADCLIFFE, *The Castles of Athlin and Dunbayne*, p. 13, p.15.

<sup>37</sup> RADCLIFFE, *The Italian*, p. 127.

pain is described as more painful than physical pain and uncertainty as more painful than certain pain, to which one can prepare oneself.

As critics have noted, Radcliffe herself was an expert at creating suspense in her novels and thus led her readers to experience “the tortures of suspense” themselves. Thus, in 1794, a critic wrote in *The Monthly Review* that Radcliffe displayed an “admirable ingenuity of contrivance to awaken [the reader's] curiosity, and to bind him in the chains of suspense<sup>38</sup>”. Another praised Radcliffe's ability to keep her readers “stretched so long on the rack of terror and impatience<sup>39</sup>”. In *The Romance of the Forest*, Radcliffe uses a *mise-en-abyme* device and puts her protagonist in a situation where she experiences the torture of suspense, like the reader. Indeed, Adeline finds a manuscript in the old part of the Abbey where she is detained. The author of the manuscript, which is written in the first person, happens to have been held prisoner in the very same place as Adeline and expects to be assassinated at any time. Adeline's reading is constantly interrupted, which leaves her in suspense as to the fate of the author of the manuscript. The uncertainty about the time when the assassination will be perpetrated is a source of suspense and a form of psychological torture both for the author of the manuscript and for Adeline. Here, again, the phrase “tortures du suspense” is used to describe this state of uncertainty<sup>40</sup>. Although physical torture in England was already a thing of the past at the time when Radcliffe wrote her novels, it may be argued that the evocation of the tortures of suspense echoed the anxieties caused by a legal system which remained inaccessible to laymen and therefore produced uncertainty in their minds.

In *The Italian*, Vivaldi himself barely escapes torture. Inquisitors first try to use the fear of torture to push him to confess the crimes he stands accused of<sup>41</sup>. Faced with his refusal to confess crimes he has no knowledge of, they then decide to apply the question to him<sup>42</sup>. Vivaldi then enters a room which is obscure in the literal and figurative senses. As in the first description commented above, a literal obscurity is used to confer a solemn aspect on the officers of the Inquisition and a figurative obscurity surrounds the tribunal's proceedings:

Vivaldi found himself in a spacious chamber, the walls of which were hung with black, duskily lighted by lamps that gleamed in the lofty vault. [...] [T]he gloom of the place prevented his ascertaining many appearances. Shadowy countenances and uncertain forms seemed to flit through the dusk [...] In a remote part of this extensive chamber, he perceived three persons seated under a black canopy, on chairs raised several steps from the floor, and who appeared to preside there in the office of either judges, or directors of the punishments. [...] A portentous obscurity enveloped alike their persons and their proceedings<sup>43</sup>.

Here, torture is suggested but not described. Indeed, in the following passage, the author chooses to evoke the possibility of torture through the mediation of a character's consciousness – his suspicions, what he “conjecture[s]”, what “seem[s]” to be happening: “[M]any instruments, the application of which he did not comprehend, struck him with horrible suspicions. Still he heard, at intervals, half-suppressed groans [...] At some distance from the tribunal stood a large iron frame, which Vivaldi conjectured to be the rack, and near it another, resembling, in shape, a coffin, but, happily, he could not distinguish through the remote obscurity, any person undergoing actual suffering. In the vaults beyond, however, the diabolical decrees of the inquisitors seemed to be fulfilling; for, whenever a distant door opened for a moment, sounds of lamentation issued forth<sup>44</sup>”. In this instance, too, uncertainty prevails.

In Radcliffe's *The Romance of the Forest*, the fate of Theodore is uncertain because he has been convicted but tries to obtain pardon from the King. Here, what is dramatized is the lack of certainty, in the sense that the fate of a character depends on another person's whim. In *The Italian*, what is exploited is the dramatic potential of waiting for a verdict. Indeed, Vivaldi's trial spreads over several hundreds of pages. Moreover, Vivaldi, just like Theodore, is not saved by the application of a legal text which is clear and stable, or by the reconstruction of truth, but by an arbitrary decision, which could have been the opposite.

Thus, the fact that the functioning of the legal system remained opaque and unpredictable to laymen, in stark contrast with Blackstone's optimistic version of the immemorial doctrine, was both exposed in Bentham's polemical writings and explored in Gothic novels, which dwelled on the psychological effects of such a

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<sup>38</sup> *The Monthly Review* [1794] in *The Critical Response to Ann Radcliffe*, Greenwood Press, 1994, ROGERS, ed., p. 22

<sup>39</sup> GREEN, *Extracts from the Diary of a Lover of Literature*, 1810 in *ibidem*, p. 47.

<sup>40</sup> “Her mind was now in such a state, that she found it impossible to pursue the story in the MS. though, to avoid the tortures of suspense, she had attempted it.” RADCLIFFE, *The Romance of the Forest*, p. 141-142.

<sup>41</sup> RADCLIFFE, *The Italian*, p. 306.

<sup>42</sup> *Ibidem*, p. 308-309.

<sup>43</sup> *Ibid.*, p. 310-311.

<sup>44</sup> *Ibid.*, p. 311.



situation. The last section of this article will analyze how this dynamic operates in one specific step of legal proceedings, which is the elaboration of the narrative that will constitute legal truth.

### 3. Legal narratives as traps

Narrative has recently attracted critical interest as an area in which Law and Literature intersect, raising, among other questions, that of whether the “story model” from literature can be applied to legal proceedings<sup>45</sup>. It has been argued that narrative operates at different stages of adjudication, for example in opening and closing statements or in the announcement of sentences. The elaboration of legal narrative is closely linked with the theory of evidence, which determines for instance which testimonies will be heard. As William Twining has underlined, in Bentham's time, the law of evidence which prevailed in common law courts was an obvious target for criticism because of its technicalities which entailed delays, expenses and confusion for the parties. He explains for example: “In 1800, adjective law in England hardly deserved to be called a 'system': it was the confused and confusing product of largely *ad hoc* and often arbitrary growth, developed very largely by lawyers and judges with little regard for principle or consistency. Civil litigation was at once over-centralized and unduly complex. Criminal procedure was a mass of technicalities<sup>46</sup>”. It is therefore no surprise that the law of evidence underwent reform in the nineteenth century and that Bentham, who examined the area systematically between 1803 and 1812, was given some credit for it<sup>47</sup>. Because the theory of evidence was so incomprehensible and unpredictable, defendants could have the feeling they had no control over the narrative which was elaborated in court, although they would be directly affected by the verdict it would lead to. Here again, Gothic fiction provided a means to explore such fears. Indeed, Gothic novels play on anxieties about being trapped in incriminating narratives in which one's actions are placed in such a light as to prove one's guilt while being deprived of a voice to defend oneself. This anxiety could be read in the light of the specificities of eighteenth-century law of evidence, as suggested above. However, beyond this specific historical context, this scenario can also be interpreted as the exploration of what may be a more philosophical anxiety, that of the subject trapped in a system in which s/he does not have a voice.

Gothic fiction proves an apt tool to explore such anxieties, as it stages individuals facing the legal system and describes their experience, as opposed to the accounts of legal commentators who tend to describe the system in general, more abstract terms. Readers are thus offered individual examples providing potent illustrations of the functioning or rather dysfunctioning of the legal system, this effect being reinforced when the narration is written in the first person. Such is the device used for instance by William Godwin in *St Leon* (1799), which will be the last example analysed in this section. First-person accounts indeed make it possible to explore the inner experience of subjects trapped in a legal system they have no access to, and to depict at length the effects this situation has on them.

The presence of narrative in legal discourse has been a source of suspicion about its “deceptive power<sup>48</sup>”. Indeed, there are tensions between the “characteristic features” of narratives and the “truth-seeking aspirations of trial<sup>49</sup>”. Pieces of evidence are not considered in isolation but as potential parts of competing narratives. Once the most persuasive story has been chosen, inconsistent evidence is cast aside. The danger here is that the dominant narrative may lead to ignore evidence which is nonetheless relevant and may cast doubt on the former. Rather than logic, familiar plots may be relied on, and the need for completeness and closure may lead to distortions<sup>50</sup>.

Gothic novelists repeatedly drew on these fears. For instance, in Lewis's *The Monk*, a character called Agnes who has been locked up in convent becomes pregnant. She is accused in absentia of violating her chastity vows, at a council during which the Prioress at the head of the convent exaggerates her failings. She is sentenced to be buried alive after a vote, but the Prioress decides to grant her an “examination” to prevent any opposition. However, this examination is not a chance for the defendant to be heard. Rather, it is a trap. In the Gothic world, defendants are deprived of voices of their own and find themselves ensnared in the narratives planned by their enemies. The nun that rushes to warn Agnes later notes that the latter was “Conscious, that her Enemy would strive to confuse, embarrass, and daunt her” and that she “feared her being *ensnared* into some

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<sup>45</sup> See for example BROOKS, “The Law as Narrative and Rhetoric”, in *Law's Stories: Narrative and Rhetoric in the Law*. New Haven, Yale UP, BROOKS and GEWIRTZ, eds., p. 14-22; BROOKS, “Narrative in and of the Law”, [2005] in *A Companion to Narrative Theory*, Oxford, Blackwell, 2008, PHELAN and RABINOWITZ, eds., p. 415-26; BERNARD, “Narrative Theories and Legal Discourse”, in *Narrative in Culture*, London, Routledge, NASH, ed., p.23-50.

<sup>46</sup> TWINING, *Theories of Evidence: Bentham and Wigmore*, Stanford UP, 1985, p. 21-22.

<sup>47</sup> *Ibidem*, p. 32.

<sup>48</sup> GRIFFIN, “Narrative, Truth, and Trial”, *The Georgetown Law Journal*, 2013, vol. 101, p. 281-335, p. 333.

<sup>49</sup> *Ibidem*, p. 281.

<sup>50</sup> *Ibid.*, p. 310.

confession prejudicial to her interests<sup>51</sup>". As it happens, the examination is in fact an opportunity for the Prioress to administer a poison which leads to Agnes's apparent death. The source of anxiety here is not that the charges are groundless and that an innocent is being prosecuted - after all, Agnes did violate the rules of the convent -, but that a narrative will be able to develop and distort her failings, leading to an excessive sentence.

Another nightmarish trial in the same novel is that of Ambrosio at the hands of the Inquisition. Justice is administered anonymously and in an absurd way: "In these trials neither the accusation is mentioned, or the name of the Accuser. The Prisoners are only asked, whether they will confess<sup>52</sup>." There is obviously no presumption of innocence. The inquisitors are said to be "Determined to make him confess not only the crimes which he had committed, but those also of which He was innocent", and the protagonist cannot but understand that the Inquisitors "were bent upon condemning him<sup>53</sup>". Readers know Ambrosio is indeed guilty of a number of infamous crimes which include rape and murder, but the process used here leaves him voiceless and seems to be only aimed at convicting him of a maximum amount of crimes.

In William Godwin's *St Leon*, the protagonist finds himself charged with robbery and murder by a Swiss court. He is struck by the way the magistrate has arranged the facts so as to make him look guilty and by how efficient this narrative construction is: "I was, I confess, struck with the coincidence of circumstances, which the magistrate had placed in a light equally unexpected and forcible, and which I now saw calculated to subject me to the most injurious suspicions<sup>54</sup>." Another character explains that "The chain and combination of events, that proceeds systematically from link to link, is the criterion of guilt and the protector of reputation. Your case, as it now stands, is scarcely to be termed equivocal: upon the supposition of your criminality all is plain and easy to be accounted for; upon any other supposition it appears an inscrutable mystery<sup>55</sup>". What matters is not the innocence or guilt of the character, but the logic of the narrative, "the chain and combination of events". The figurative chain of causation becomes a very literal chain as the narrative leads to a prison sentence. In this novel too, the protagonist is not entirely innocent. The fear Godwin is drawing on is that narratives may acquire an autonomous life of their own and that the urge to produce a consistent account of what happened may lead to the exclusion of relevant evidence on the ground that it does not fit in the global explanation of events.

Of course, since the favoured setting of Gothic fiction is continental Europe and all the trial scenes depict inquisitorial systems, one may argue that the anxieties depicted above may be caused by a clash between legal cultures, between adversarial and inquisitorial systems. Protagonists at the hands of the inquisitorial system would then be representatives of the adversarial one. A similar point has been made about Anne Radcliffe's normative characters, who seem to be the embodiment of eighteenth-century Englishmen and women anachronistically sent to visit a nightmarish past in continental Europe<sup>56</sup>. Since trial by jury was supposed to be a bulwark against oppression and was much praised by panegyrists such as William Blackstone, it comes as no surprise that normative characters being tried in foreign inquisitorial systems in which judges play an essential role in determining the proceedings may experience anxiety. However, ultimately, both judges and juries have to produce "master narratives" and it seems that, beyond providing a critique of inquisitorial systems, the scenes evoked above draw on fears and suspicions surrounding the role of narrative in adjudication.

## Conclusion

Because of the predominance of Blackstone's panegyric and of patriotic discourse, the late eighteenth century was not a propitious time for legal reform in any respect. In this context, Gothic fiction may have provided an indirect means of voicing the anxieties caused by a legal system which remained out of reach to most, for a number of reasons which Bentham repeatedly highlighted: its complexity, its opaque language, the presence of fictions, the muffling of litigants.

Some of the reforms advocated by Bentham and others were eventually implemented, but later – in the Victorian era. A text like *Bleak House* (1852-3) can thus be read, as Marjorie Stone has suggested, in line of the debate on common law opened by Jeremy Bentham, particularly on the question of fictions. She explains

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<sup>51</sup> LEWIS, *The Monk*, p. 352; emphasis added.

<sup>52</sup> *Ibidem*, p. 423.

<sup>53</sup> *Ibid.*, p. 424-425.

<sup>54</sup> GODWIN, *St Leon: a tale of the sixteenth century* [1799], New York, AMS Press, 1975, p. 222.

<sup>55</sup> *Ibidem*, p. 228.

<sup>56</sup> MILES, *The Great Enchantress*, Manchester, Manchester UP, 1995, p. 77; MIGHALL, *A Geography of Victorian Gothic Fiction*, p. 9.

that “Bentham's assault on the fictions of English law ... generated a great deal of controversy throughout the 1830s, 40s and 50s” and that law reformers eventually managed to eliminate “some of the absurd fictions obstructing English legal procedure”, for instance with the *Chancery Procedure Act* of 1852<sup>57</sup>. Dickens's angry satire of Chancery procedure in *Bleak House* can then be read as a sign of support for ongoing legal reform. *Bleak House*, which reworks Gothic motifs and adapts them to an English setting, shows that, as Robert Mighall has argued, by the Victorian era, Gothic fiction no longer needed to use remote locations to evoke the flaws of the legal system but had been repatriated and put to use in the movement for legal reform.<sup>58</sup>

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<sup>57</sup> STONE, “Dickens, Bentham, and the Fictions of the Law: A Victorian Controversy and its Consequences”, *Victorian Studies* 29, 1985, p. 125-54, p.371.

<sup>58</sup> Mighall writes about the dark passages of *Oliver Twist* that “Dickens situates 'horrors' in the very localities from which Austen categorically debars them – in the heart of modern England” and identifies *Bleak House* as an instance of “Urban Gothic”, in which anachronistic pockets remain at the very heart of modern London. Incidentally, Mighall writes, about *Bleak House*: “The most terrifying labyrinth of all is Chancery, for it creates slums. Dickens thus transfers the attributes now firmly associated with the figure of the labyrinth (in Urban Gothic writing), to its cause – the legal labyrinth.” *A Geography of Victorian Gothic Fiction*, p. 41, 70-76, 73.