

**MIGHTIER THAN THE SWORD: WRITING 19<sup>TH</sup>-CENTURY CRIME**

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## ABSTRACT

Nineteenth-century France, obsessed with personal property, strained under multiple changes in government and the new 1804 Code Napoléon, becomes fascinated with criminal literature. Victor Hugo, Eugène Sue, and Emile Zola span the century with their criminal literature and fascinate their audience. Taking advantage of this nineteenth-century French interest in crime, these popular authors also spread political commentary through their novels. Theft, rape and murder are each treated differently in the nineteenth-century French Penal Code, and I suggest that Hugo, Sue and Zola mirror this inconsistency on the part of the law and its resulting effect on society so well that the out-of-touch law slowly draws nearer to the people it is created to protect. I demonstrate my argument by comparing nineteenth-century French Penal Code articles on theft, rape and murder to Hugo's messages in *Notre-Dame de Paris* (1833) and *Les Misérables* (1862), Sue's messages in *Les Mystères de Paris* (1840) and Zola's messages in *Au Bonheur des Dames* (1883) and *La Bête Humaine* (1889). This comparison shows that some nineteenth-century French Penal Code modifications occur after each of these authors' publications, and moreover, these modifications are made in the very areas Hugo, Sue and Zola critique in their crime novels.

## INTRODUCTION

In the relationship between law and literature where each influences the other, I ask, does criminal literature have the power to change law? Most research in this area links law and literature, but this thesis will show fluctuations in nineteenth-century French law<sup>1</sup> and in literature side-by-side and measure the power of both to determine if authors did affect the French Penal Code. Nineteenth-century law and law enforcement try to adapt to changing governments and to modernization. The introduction of property rights, urban renewal, class redistribution, lack of monarchy, the advent of a more industrial society, commercialization, and the introduction of department stores are only some of the changes and novelties France experiences throughout this century. French society suffers under the law's inefficiency. Balzac writes in his 1834 novel *Ferragus* on the impotence of police, "*La police, mon cher enfant, est ce qu'il y a de plus inhabile au monde, et le pouvoir ce qu'il y a de plus faible dans les questions individuelles.*"<sup>2</sup> Authors observe their environment and portray this lop-sided law and Penal Code. Unable to ignore the legal system's unfortunate consequences on its people, and the ironic injustice of the justice system, some authors write on those who suffer from both crime and the law. This literature cleverly meets an eager market of readers, fascinated with crime and the criminal. Authors also use the popularity of their novels to disperse their political commentaries. These criminal novels open society's eyes to its own suffering under insufficient Penal Code articles.

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<sup>1</sup> French law is a civil law system. The Civil Code, the Code of Civil Procedure, the Commercial Code, the Penal Code/Criminal Code, and the Code of Criminal Procedure all make up French written law, which is also referred to as the Napoleonic Code.

<sup>2</sup> Balzac, Honoré de, *Ferragus, chef des dévorants*, Deuxième volume. Paris : Madame Charles-Béchet, 1834. 2 March, 2009, University of Chicago website : *Edition critique en ligne*: <<http://thyme.uchicago.edu/cgi-bin/newphilo/balzac/navigate.pl?balzac.39>>, p. 36 "The police, my dear boy, is the most incompetent thing on this earth, and government the feeblest in all matters concerning individuals."

I have chosen to study Victor Hugo, Eugène Sue, and Emile Zola because these authors and consequently, their works, span the nineteenth century from 1833-1889. In this way, it is possible to compare criminal literature over this period alongside the modifications that occurred in the nineteenth-century French Penal Code. The scope of this thesis is too small to address every crime and Penal Code Article, and in consequence, I will address three crimes and three authors in this work. Each chapter will discuss the French Penal Code and literary representations of the Penal Code. Chapter one addresses incidences of theft in the Penal Code and in Sue's *Les Mystères de Paris*, Hugo's *Les Misérables*, and Zola's *Au Bonheur des Dames*. Chapter two focuses on rape and its treatment in the Penal Code, and examines three fictional representations of attempted rape in Hugo's *Notre-Dame de Paris*, Sue's *Les Mystères de Paris*, and Zola's *La Bête Humaine*. Chapter three examines the crime of murder in the Penal Code and in Hugo's *Notre-Dame de Paris*, Sue's *Les Mystères de Paris*, and Zola's *La Bête Humaine*.

Crime-fighters in official state authority (police, gendarmes) do not have as powerful an effect on society as these widely popular writers. I will demonstrate in this thesis that in the hands of Hugo, Sue and Zola, the pen is mightier than the sword of the legal system. All of these authors observe their nineteenth-century surroundings and artfully portray the injustices, hypocrisies, and dangers of government, society, and law, which are relevant concerns from this tumultuous time period. The nineteenth-century French audience welcomed these narratives with avid curiosity mixed with pleasure, key reactions law and law enforcement certainly do not inspire.

## CHAPTER 1. AUTHOR OF THE CRIME : THEFT

...c'était un acte de folie, à lui, malheureux homme chétif, de prendre violemment au collet la société tout entière et de se figurer qu'on sort de la misère par le vol ; que c'était, dans tous les cas, une mauvaise porte pour sortir de la misère que celle par où l'on entre dans l'infamie ; enfin qu'il avait eu tort.<sup>3</sup>

Victor Hugo, *Les Misérables*

The first crime in this thesis is theft. As the nineteenth-century French middle class became increasingly obsessed with amassing personal property, thieves, out of necessity, opportunity, greed or disease, covet and steal these now abundant items. An increase in property theft leads to an increase in paranoia among property owners, fueling property obsession. Property needs protection from theft, as Justice Oliver Wendell Holmes explains “We think it desirable to prevent one man’s property being misappropriated by another, and so we make larceny a crime.”<sup>4</sup> Nineteenth-century law must treat the crime of theft in order to protect the individual’s right to property, as theft was not defined during the French Revolution, and in consequence, was not a crime.<sup>5</sup> Yet Article 379 of the French Penal Code is unclear as regards the definition of theft in the nineteenth century. The effects resulting from this lack of precision do not go unnoticed. Authors such as Eugène Sue in *Les Mystères de Paris*, Victor Hugo in *Les Misérables* and Emile Zola in *Au Bonheur des Dames* show the tension between property rights in theory (everyone equally entitled) and in practice (some cannot afford ownership). These three authors are moved to portray the struggle associated with law and the condemnation of society for both the lower and upper classes, and use the right of property to convey their messages.

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<sup>3</sup> Hugo, Victor, *Les Misérables*, France, Gallimard, 2007. English translation from : Hugo, Victor, *Les Misérables*, New York: Signet Classic, 1984. p. 87 “...it was an act of folly in him—a poor, worthless man—to grab all of society forcibly by the collar and imagine he could escape from misery by theft; that, in any event, it was a bad door for getting out of misery, by entering into infamy; in short, that he had done wrong.”

<sup>4</sup> Holmes, O.W., “The Path of the Law,” *Harvard Law Review* 10 (1897) pp 457-78

<sup>5</sup> Garçon, E., *Code Pénal Anoté*. L. Larose & Forcel. Paris: 1901-1906. p. 1116; see footnote 12.

Before we discuss theft, we must first discuss property. Let us look at John Locke's philosophy on property:

This nobody has any right to but himself. The 'labour' of his body and the 'work' of his hands, we must say, are properly his. Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labour with it, and joined it to something that is his own, and thereby makes it his property.<sup>6</sup>

To be clear, a person's time and effort are exclusively his or her own, therefore the reward that comes from this work is attributed to the same person. Applying this natural law to the economic and social structures of the 19<sup>th</sup> century, however, we find that those who toil are usually the lower classes, and those who do not work for their money or property are upper-class. Locke would consider this a violation of the natural law and accuse the wealthy of hoarding.

Locke's 1690 *Two Treatises of Government*, translated into French as "*Du gouvernement*," was popular in nineteenth-century France. According to Savonius,<sup>7</sup> Locke's work had been prevalent in France since 1691. The writers of the French civil code of 1804 were most probably familiar with Locke when they drafted the definition of property. However, according to Sir James Fitzjames Stephen,<sup>8</sup> the French law makers in the civil code and the penal code remained as close to Roman law<sup>9</sup> as they could. They defined property in Article 544: "*La propriété est le droit de jouir et disposer des choses de la manière la plus absolue, pourvu qu'on n'en fasse pas*

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<sup>6</sup> Locke, John. *Two Treatises of Government*, (1680-1690). London, 1698. Of Property, Book II, Chapter 5.

<sup>7</sup> Savonius, S.J. Locke in French: The *Du Gouvernement Civil* of 1691 and Its Readers. *The Historical Journal*, 47, 2004, pp 47-79.

<sup>8</sup> Stephen, James Fitzjames, *A History of the Criminal Law of England*, London: Macmillan, 1883. p. 171: Both English and French law are "...founded upon an adaptation of the roman law, and each rejected the same parts of the Roman law, namely, the *lucri causâ*, and the *usus cjus possessionisve*, though the French law appears to have retained them longer than the English."

<sup>9</sup> Natural law is somewhat ambiguous, mostly based on theories of human nature and morality, and Roman law is the system of laws used by the Roman Empire.

*un usage prohibé par les lois ou par les règlements.*”<sup>10</sup> These lawmakers maintain that property is absolute control over a thing within the confines of the law or “regulations,” and according to the next article, Art 545: “*Nul ne peut être contraint de céder sa propriété, si ce n’est pour cause d’utilité publique, et moyennant une juste et préalable indemnité.*”<sup>11</sup> These articles protect people’s property through defining the term “property” and stipulating that no one but the state (acting in the interest of the public good) can force a person to give up his or her property, and stating that even then, he or she will be fairly and firstly compensated.

With this theoretical and legal framework in place in we may now turn to the violation of property in nineteenth-century France.

If only the state has the power to take away a person’s property, how does property function on an individual/interpersonal level? How is personal property protected by the law? In 1810 the French Penal Code was amended to specify a definition of theft.<sup>12</sup> The legislators merely translated the old Roman law: *contrectatio fraudulosa rei alienae*. Let us look at the definition of theft in Article 379 of this code:

*379. Quiconque a soustrait frauduleusement une chose qui ne lui appartient pas, est coupable de vol.*<sup>13</sup>

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<sup>10</sup>Stephen, p. 171, My translation: Property is the right to absolute enjoyment and disposal of things, provided that this use is not prohibited by law or regulation.

<sup>11</sup> Stephen, p. 171, Art. 545: “No one can be forced to give up his property unless it’s for the public good, for a fair and preliminary compensation.”

<sup>12</sup> Garçon, CPA. Garçon in paragraph 6 of his annotations on theft Article 379 states that, “...*le Code Pénal du 25 sept. 1791 n’en donnait aucune définition et semblait ainsi s’en rapporter à la tradition. ...*” and in the next paragraph 7, “*Les controverses que ces textes soulevèrent pendant le période intermédiaire avertirent le législateur de leur insuffisance. ...*” The principle that there is no punishment without a written law in the French Penal Code was introduced under the French Revolution, according to E. Garçon.

<sup>13</sup> Pailliet, J.B.J. *Manuel de Droit Français*, Deuxième Partie. Paris : Imprimerie le Normant, 1837. Livre III, Titre II. p. 1436.

1. *L'art. 379 définit le vol. Ce délit exige trois éléments constitutifs: 1. une soustraction; 2. la circonstance que la chose soustraite n'appartient pas à l'auteur de la soustraction; 3. l'intention délictuelle.*<sup>14</sup>

Anyone who takes something that does not belong to him or her has committed the crime of theft. Examining this definition, Garçon says it is far from clear. For example, the French word “soustraction” (taking away), a translation of the Latin word “*contractatio*”<sup>15</sup> from the original Roman law, is problematic, as theft can be committed without carrying the thing away. I will add that theft can also be committed without carrying the thing away *fraudulently*. The Latin word “*contractatio*,” has no equivalent in French, placing the object more *in the hands* of someone other than the owner, and more of an intentional “handling.”<sup>16</sup> In contrast, the sense of the French word “soustraction” is taking, displacing, or tearing away.<sup>17</sup>

Furthermore, French translation of the Roman law, the *Droit Romain*, appears in 1803,<sup>18</sup> and the definition of theft is translated differently in these French translations:

<i>Furtum est contractatio rei fraudulosa, vel ipsius rei, vel etiam usua ejus possessionisve, quod lege naturali prohibitum est admittere.</i>	<i>Le vol est l'appréhension frauduleuse d'une chose, de son usage, ou de sa possession, ce que la loi naturelle défend d'admettre.</i> <sup>19</sup>
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<sup>14</sup> Garçon, CPA, p. 1113 -1115. Translation from Mueller, Gerhard, *The French Penal Code*, London: Sweet & Maxwell, 1960. p. 128 “Any person who fraudulently takes away anything of which he is not the owner, is guilty of larceny. 1. Article 379 defines larceny. This offense requires three components: 1. taking away; 2. that the thing taken does not belong to the person taking it; 3. wrongful intentions.”

<sup>15</sup> Garçon spells this Latin word differently from DeFresquet. See below.

<sup>16</sup> Berger, Adolf, *Encyclopedic Dictionary of Roman Law*, Philadelphia: The Lawbook Exchange, Ltd., 2002. p. 480.

<sup>17</sup> Garçon, CPA, p.1116

<sup>18</sup> Brunet, Jacques-Charles and Gustave Brunet. Recorded in the *Manuel du libraire et de l'amateur de livres: contenant Un nouveau dictionnaire bibliographique et Une table en forme de catalogue raisonné*. Paris : Firmin Didot frères, fils et cie, 1862.

<sup>19</sup> De Fresquet (Professor of Roman Law at Aix), *Traité Élémentaire de Droit Romain*, 2 vols. 8vo, Paris, 1855. p.223 My translation : “Theft is a fraudulent intellectual seizure of a thing, of its use, or of its possession, which natural law fights to allow.”

Notice the translation of “*contractatio*.” It is the French word “*appréhension*,” which means an intellectual seizure, touching on the offender’s intent. Garçon is right to point out the problematic translation of “*contractatio*.” By translating the Latin word “*contractatio*” into the French word “*soustraction*,” the Penal Code loses an important component of theft: intent. In other words, the question: does the accused intentionally take property to which he knows he is not entitled, intending to deprive the rightful owner of the possession permanently? is lost. Eugène Sue plays with this particular situation in literature, which we will discuss below.

Ideally though, this law was drafted to protect labor by protecting the fruit of people’s labor. It allows persons to have private property by punishing those who infringe on another’s property rights.

So what happened in 19<sup>th</sup>-century France in regards to theft? Sociologists Lodhi and Tilly research France after 1830 and reveal that “Over the long run, crimes against property appear to have declined significantly in frequency...”<sup>20</sup> They also note that after 1880, shoplifting increased dramatically. The rights of ownership and property are protected by the law, as we have discussed above and will see later in Articles 381-386. But, if we keep in mind Pierre-Joseph Proudhon’s declaration that “Property is theft!...and all proprietors are robbers and traitors,”<sup>21</sup> we may have to re-consider the idea of ownership and property. Property would no longer be owned by an individual, but owned by everyone, negating boundaries and creating chaos. In all fairness, perhaps it is a worthy venture to examine the realities of society and the consequences of its laws, and judge for ourselves. Sue’s *Les Mystères de Paris*, Hugo’s *Les Misérables* and Zola’s *Au Bonheur des Dames* all investigate society and comment on theft ranging from the years 1840-1883. We will look at each of these novels, extract and examine the authors’ messages,

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<sup>20</sup> Lodhi, Abdul Qaiyum and Charles Tilly, “Urbanization, Crime, and Collective Violence in 19<sup>th</sup>-Century France,” *The American Journal of Sociology*, vol. 79, No. 2. (Sep., 1973), pp. 296-318. University of Chicago Press.

<sup>21</sup> Proudhon, Pierre-Joseph, *What is Property?*, New York: Cambridge University Press, 1994.

compare the laws that punish these thieves, and consider whether these nineteenth-century laws fit the crime of theft.

Eugene Sue's *Les Mystères de Paris* from 1840 uncovers the Parisian criminal underworld.<sup>22</sup> He treats many kinds of criminals. For the purposes of this chapter, we will look at the Chourineur, the Martial family, and the character Jacques Ferrand. Sue begins by softening the reader with a heart-breaking story of an honest "street girl," named Fleur-de-Marie or la Goualeuse, and leads the reader directly into the Chourineur's more brutal story. This Chourineur, an angry convicted murderer, born on the streets of Paris, keeps a glimmer of honor through his noble, tenacious refusal to steal. The Chourineur endures hunger and homelessness, yet remains impervious to the temptation to learn from expert thieves in prison:

*-Tu étais à bonne école pour apprendre à voler.*

*-Oui, mais le gout n'y était pas. Les autres fagots me blaguaient là-dessus, mais je les assommais à coups de chaine.*<sup>23</sup>

The character rages to the point of committing murder, but he does not steal. When Roldolphe asks why, he says only "it's not in my mind to steal." Sue gives a convicted murderer "honor amongst thieves" by showing the reader his incapacity to steal. Instead of judging him for his homicidal rage, the reader is forced to look at the entire picture Sue presents, and the complexity of criminals becomes undeniable. Here, "the criminal" is no longer just a stock character in a side plot, but rather a central focus of the novel with a fuller picture.

Sue portrays theft as the ultimate corruption in this story. Why? We find out later in the novel when Sue writes,

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<sup>22</sup> See Appendix

<sup>23</sup> Sue, Eugene, *Les Mystères de Paris*, Paris: Robert Laffont, 1989. p. 65 I translate LMP myself because the English translation is outdated and contains many quirks. My translation: "'You were in a good position to learn how to steal.' 'Yes, but the taste wasn't there. The other convicts made fun of me for that, but I knocked them out with blows from my chain.'"

*Sans doute l'héritage, la propriété sont et doivent être inviolables, sacrés [...]  
Mais,...que ces disproportions inévitables sont consacrées, protégées par la loi,  
ceux qui possèdent tant de biens en doivent user moralement comme ceux qui ne  
possèdent que probité, résignation, courage et ardeur au travail [...]*<sup>24</sup>

Sue, like Locke, believes that the fruits of labor should be protected. Theft removes someone else's property, and the thief profits from another's labor, breaching Locke's Natural law. Sue delves deeper into this message by creating a dangerous, criminal family, the Martial family. We will now discuss this message.

Stealing is the livelihood of all but one character in the Martial family. Sue has this one member disdained by his family and even beaten and left to die because he refuses to steal. The two youngest Martial characters, François and Amandine, who love their older brother, are caught between his wishes for honest living and the rest of the family's desire to steal for a living. Day in and day out, the children live with their family of criminals. They do not have the opportunity for education on right and wrong, yet they do notice a difference between the oldest Martial and the rest of their criminal relatives. Let's look at a conversation that occurs between the two children after they receive some stolen goods from their brother Nicolas. Sue uses this scene to demonstrate their reasoning capabilities:

*-Mais, dis donc, François..., reprit Amandine après un moment de réflexion, s'ils  
savaient que les mouchoirs que nous portons sont volés, ils nous appelleraient  
petits voleurs...*

*-Puisque Nicolas nous les a donnés, ces deux mouchoirs, nous ne les avons pas  
volés.*

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<sup>24</sup> Sue, LMP, p. 821. "No doubt inheritance, property are and must be inviolable, sacred [...] But ... since these inevitable disproportions are consecrated, protected by the law, those who possess many goods should use these morally just as those who only possess integrity, resignation, courage and zeal for their work[...]"

*-Oui, mais lui, il les a pris sur un bateau, et notre frère Martial dit qu'il ne faut pas voler...*

*-Mais, puisque c'est Nicolas qui a volé, ça ne nous regarde pas.*<sup>25</sup>

A difference between Amandine and François is clear in this dialogue. Though François is beginning to blur the lines between wrong and right, Amandine still tries to hold the distinction. Sue demonstrates through François that corruption sometimes begins with compromising and rationalizing, followed soon by laziness, as we will discuss below. Sue also shows the importance of a role model and environment early in life through the positive character Martial and the negative Martial family.

Taking advantage of the tension between wrong and right, Sue creates a dialogue about labor: “*Dame ! être enfermé dans un atelier toute la journée, c’est triste...et puis être apprenti, c’est ennuyeux... !*”<sup>26</sup> Sue shows François beginning to pull away from honest labor, and through Martial’s response, tells the reader that not working is laziness and leads to thieving, “*Vaut mieux être paresseux, vagabond, flâneur, n’est-ce pas ?*” lui dit-il sévèrement, *‘en attendant qu’on devienne voleur...!’*”<sup>27</sup> Sue discourages laziness, the road to thieving, and encourages work using as a mouthpiece the only Martial who does not steal. After the reader’s introduction to the other corrupt members of the Martial family, his words are surprising and revealing. From this character’s perspective, the world does not owe him anything. His focus is not on economic inequality; instead, his focus is on loving his two youngest siblings and working for a living. Sue

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<sup>25</sup> Sue, LMP, p. 740-41. “Say François,’ Amandine continued after a moment of reflection, “if they knew that the handkerchiefs we wear are stolen, they’ll call us little thieves...” “They’d bother themselves with that to call us thieves!” “when it’s not true, whatever...but now...” “Since Nicolas gave them to us, these two handkerchiefs, we did not steal them.” “Yes, but he took them off a boat, and our brother Martial says you shouldn’t steal...” “But, since Nicolas stole, we have nothing to do with it.” “You think, François?” “Of course...” “Though I think I would like it better if the person who they belonged to would have given them to us...and you François?” “I don’t care...he gave us a present; it’s ours.”

<sup>26</sup> Sue, LMP, p. 746 “God! To be shut in a workshop all day, it’s sad...and then to be an apprentice, how boring...!”

<sup>27</sup> Sue, LMP, p. 746 “It’s better to be lazy, a hobo, a loiterer, right?” he said severely to him, “just waiting to become a thief!”

thus distinguishes this character from the rest of the family. Sue reveals more of this Martial son with his “...*profiter d’un vol, c’est comme si on volait soi-même.*”<sup>28</sup> Sue’s message to the reader is that theft turns on the thief and, in turn, steals parts of him or her, leading to a degradation of the self. He presents this degradation throughout this novel, but for his reasons, to show the “power of contrasts,”<sup>29</sup> he’s placed several particularly degraded characters into this Martial family. Sue describes one in particular, Nicolas Martial. His character is a pirate, stealing daily, and he is also used by the wicked notary character, Jacques Ferrand. Ferrand uses Nicolas to murder innocent people for money, and soon Nicolas tries to murder his own brother, Martial, echoing the biblical story of Cain and Abel. However, Sue changes that famous story, letting both characters live. To impress his message that thievery is like stealing from one’s own self, Sue has Nicolas become more corrupt in prison, allowing the other brother to continue down his chosen path of love and labor.

Sue does not leave out the bourgeoisie for his commentary, revealing his message through two characters, a notary and his apprentice. It is important to highlight domestic theft in this novel. As early as 1724, punishment for this crime was death. Ferrand earned his position and domestic theft threatens his entire existence. By 1840, the punishment for domestic theft was eased to 8 years in iron and again to 1-4 years in iron. Here is the reason why domestic theft is particularly offensive:

*220. ...Le vol domestique suppose, non seulement un acte d'improbité, mais encore la violation du devoir particulier qu'impose à un domestique la confiance nécessaire que le maître est obligé de lui prêter.*<sup>30</sup>

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<sup>28</sup> Sue, LMP, p. 746 “...to benefit from a theft is as if one steals himself.”

<sup>29</sup> Sue, LMP, p. 32

<sup>30</sup> Garçon, CPA, p. 1209 Q. Vol domestique. “Domestic theft assumes not only an act of dishonesty, but even more a violation of a specific duty which imposes trust to the staff, which the master is forced to give.”

The “master,” either bourgeois or noble, is normally able to afford a household or workshop with many maids and servants, who also live in the same house, privy to family quarrels or secrets. This master is threatened in many ways by the dishonesty of any one of his servants. Familiar with the upper class’s fear of being robbed by their workmen or maids, Sue creates a domestic theft, not even theft—it should be called “borrowing”—that is pure and heartfelt.<sup>31</sup> Sue has one of the notary’s students, the character Germain, take money to save a poor family from ruin of his own boss’ making. He is explicit with his character’s intentions: Germain plans to replace the sum he borrowed with his own money as soon as possible. Sue’s story makes the reader think twice before judging maids, servants and workers. He creates a worker nobler than his boss. Sue also wants the reader to know the complexity of human nature through the character Germain. Remember the French Penal Code lost theft’s essential component, intent (through the faulty translation from the original Latin). In addition, as we have discussed above, the definition of theft is unclear due to the French word “*soustraction*,” so what happens when the object is replaced quickly- could that be considered a “*soustraction*” since the character Germain intended to replace the sum immediately? The amount was not intended to be stolen and Germain did not intend to deprive Ferrand of the money permanently, as Sue stresses. His use of imagery is poignant here: the character Germain was arrested for theft with the repayment of the sum he took in his very hands. Intent is important to Sue, to avoid the tragedy of putting an innocent person in prison. Consequently, to relay Sue’s message, the character Germain is unfairly exposed to danger in prison.

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<sup>31</sup> Germain is a character who is arrested by his boss for theft. He was borrowing the money, he’d given the sum to a poor family almost ruined for good by his boss, and ran to the bank to replace his boss’ money. In a few hours, he returned to his boss with the full amount, but his boss is the wicked notary and had him arrested for domestic theft.

Before we leave Sue, we must consider a publication detail. *Les Mystères de Paris* is first a newspaper series in the *Journal des Débats*. It is published from 1842-1843, after the 1835 September laws<sup>32</sup> were in force under the July Monarchy. It is interesting that Sue's critiques of society and the law were published in a newspaper. It seems that *Les Mystères de Paris* itself is published in this way to defy laws with which Sue disagrees.

Similar to Eugene Sue, Hugo uses his novel as a political commentary on the government, focusing on the misery and injustice society inflicts on "its own" in his 1862 novel *Les Misérables*. Hugo shows what happens to honest people in desperate situations (poverty) through the character Jean Valjean, who steals a loaf of bread to feed his seven nieces and nephews. He is caught by the baker and brought to court for the crime of "burglary at night, in an inhabited house."

*Jean Valjean fut déclaré coupable. Les termes du code étaient formels. Il y a dans notre civilisation des heures redoutables ; ce sont les moments où la pénalité prononce un naufrage. Quelle minute funèbre que celle où la société s'éloigne et consomme l'irréparable abandon d'un être pensant !*<sup>33</sup>

Hugo created Valjean to put a face on those who steal out of necessity. Similar to how Sue accentuates Germain's good intentions, Hugo emphasizes Valjean's desperate state of mind when he stole bread. Arresting and sentencing Valjean not only doomed him, but it destroyed 8 innocents along with him (i.e., his sister and her family) by removing their main support. The code does not take this impact into account, and society labels this character Valjean as an

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<sup>32</sup> Laws that censored the press from criticizing the government and societal systems. Goldstein, Robert Justin, *Censorship of Political Caricature in Nineteenth-century France*, Kent State University Press, 1989. p. 163

<sup>33</sup> Hugo, LM, p. 90 "Jean Valjean was found guilty: The terms of the penal code were explicit. In our civilization there are fearful times when the criminal law wrecks a man. How mournful the moment when society draws back and permits the irreparable loss of a sentient being."

outcast. Hugo believes that the law blindly takes a member of a family, as he wrote earlier in 1829:

*N'est-il pas, à un titre bien autrement sacré que l'esclave vis-à-vis du maître, la propriété de son père, le bien de sa femme, la chose de ses enfants ? Nous avons déjà convaincu notre loi d'assassinat. La voici convaincu de vol.*<sup>34</sup>

Notice his legal vocabulary: property, good, thing. At this point of *Les Misérables*, Hugo accuses the law of breaking its own rules by committing theft. The law was written for man, and Hugo shows it as distant from the nature of man and life as man knows it.

As for Valjean's crime, Article 385 of the Penal Code of 1810 dictates a sentence of 5 years.

*Art. 385. Sera également puni de la peine des travaux forcés à temps tout individu coupable de vol commis avec deux des trois circonstances suivantes:*

- 1. Si le vol a été commis la nuit ;*
- 2. S'il a été commis dans une maison habitée, ou dans un des édifices consacrés aux cultes légalement établis en France ;*
- 3. S'il a été commis par deux ou plusieurs personnes ;*

*Et si, en outre, le coupable, ou l'un des coupables, était porteur d'armes apparentes ou cachées.*<sup>35</sup>

Hugo adds to this sentence by having his character Valjean attempt escapes, so many that he remains in the galleys for nineteen years. Hugo wants readers to ask how a man can serve

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<sup>34</sup> Hugo, Victor, *Ecrits sur la peine de mort*. Arles: Actes Sud, 2002. p. 34 "Does he not belong to a title quite differently sacred than the slave to master, the property of his father, the belongings of his wife, the thing of his children? We have already proof of murder in our law. And here is proof of theft."

<sup>35</sup> Garçon, CPA, p. 1183 "Equally punished by the hard labor for a term, any individual guilty of theft committed with two of three following circumstances: 1. If the theft was committed at night, 2. If it was committed in an inhabited house, or in a building consecrated to religion legally established in France, 3. If it was committed by two or more people. And, if in addition, the guilty, or one of the guilty, was carrying a weapon in plain sight or concealed."

nineteen years for stealing one loaf of bread for a hungry family, and he wants readers to examine their Penal Code. Hugo says, “*Il faut bien que la société regarde ces choses puisque c’est elle qui les fait.*”<sup>36</sup> He wants readers to ask themselves, “Could I wait when I was hungry?” Having presented the judgment of the law already, Hugo has the character Valjean put himself on trial:

*Il reconnut qu’il n’était pas un innocent injustement puni. Il s’avoua qu’il avait commis une action extrême et blâmable; qu’on ne lui eût peut-être refusé ce pain s’il l’avait demandé; que dans tous les cas il eût mieux valu l’attendre...qu’il fallait donc de la patience; que cela eût mieux valu même pour ces pauvres enfants; que c’était un acte de folie, à lui, malheureux homme chétif, de prendre violemment au collet la société tout entière et de se figurer qu’on sort de la misère par le vol ; que c’était, dans tous les cas, une mauvaise porte pour sortir de la misère que celle par ou l’on entre dans l’infamie ; enfin qu’il avait eu tort.*<sup>37</sup>

All these thoughts, logic and remorse show that Valjean is able to see soberly how his theft negatively impacts society. Hugo reveals his internal struggles and epiphanies throughout the novel, documenting Valjean’s rehabilitation. Hugo turns to a larger picture: he puts society on trial:

*S’il n’y avait pas plus d’abus de la part de la loi dans la peine qu’il n’y avait eu d’abus de la part du coupable dans la faute. [...] Si cette peine, compliquée des aggravations successives pour les tentatives d’évasion, ne finissait pas par être*

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<sup>36</sup> Hugo, LM, p. 93 “Society must look into these things since they are its own work.”

<sup>37</sup> Hugo, LM, p. 87 “...He recognized he was not an innocent man unjustly punished. He acknowledged he had committed an extraordinary and reprehensible act; that the loaf might not have been refused him, if he had asked for it; that in any event it would have been better to wait...that he should, therefore, have had patience; that that would have been better even for the poor little ones; that it was an act of folly in him—a poor, worthless man—to grab all of society forcibly by the collar and imagine he could escape from misery by theft; that, in any event, it was a bad door for getting out of misery, by entering into infamy; in short, that he had done wrong.”

*une sorte d'attentat du plus fort sur le plus faible, un crime de la société sur l'individu, un crime qui recommençait tous les jours, un crime qui durait dix-neuf ans.*<sup>38</sup>

According to the character Valjean, the true criminal in this first part of *Les Misérables* is society, though in the end, Hugo has him change his mind. Not only has the character paid for a loaf of bread with nineteen years of his life, but his fate remains one of poverty and abjection. Hugo overshadows Valjean's crime with misery and torment that follow the character during his nineteen years in the galleys, and tragically, haunt the rest of his life. As soon as Valjean is released from prison, the reader is treated to a parallel lesson on mercy. A kind bishop allows Valjean to spend the night in his house, treating the convict as he would honor any guest. When Valjean steals the bishop's silver candlesticks, and leaves the bishop's house early in the morning, he is stopped by officials and brought back to the bishop. At this point, the bishop allows him to have the candlesticks, telling the officials they were a gift to Valjean. Hugo shows this mercy, divine law, is stronger and more just than the Penal Code. Hugo believes the Penal Code is too rigid for offenders such as Jean Valjean. In *Le dernier jour d'un condamné*, Hugo speaks through the poet in the preface:

*Comment intéresserait-il ? il a un crime et pas de remords. J'eusse fait tout le contraire. J'eusse conté l'histoire de mon condamné. Né de parents honnêtes. Une bonne éducation. De l'amour. De la jalousie. Un crime qui n'en soit pas un. Et*

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<sup>38</sup> Hugo, LM, p. 94 "If there were not a greater abuse on the part of the law, in the penalty, than there had been, on the part of the guilty, in the crime. [...] If that penalty, in conjunction with its successive extensions for his attempted escapes, were not finally a sort of outrage of the stronger on the weaker, a crime of society upon the individual, a crime committed afresh every day, a crime that was committed for nineteen years."

*puis des remords, des remords, beaucoup de remords. Mais les lois humaines sont implacables : il faut qu'il meure.*<sup>39</sup>

This shows the further development of Hugo's desire to write a sympathetic narrative. In *Les Misérables*, he presents Jean Valjean at his worst, an unwelcome convict, and uses the character to take the reader on a journey of rehabilitation, education, and love. In order to show the reader just how rehabilitated Valjean is, Hugo provides a contrast: the character named Thénardier, a thief by nature. He and his wife are innkeepers who steal and cheat. Hugo puts Valjean and the Thénardiens together in a scene with the character Cosette, a child Valjean promised to find. When Cosette's mother dies before he has the chance to reunite the two, Valjean decides to adopt this girl, but first he must deal with her caretakers who happen to be the deceitful Thénardiens. Though they had already decided to throw Cosette out of the house, they recognize an opportunity to extort money from Valjean for Cosette. Valjean and Thénardier agree on a sum of 1,500 francs for the girl, however, Thénardier ever more greedy, follows Valjean out of town in hopes of swindling more money from him. In this scene, Hugo sets up a confrontation between the two men and likens Thénardier to a wolf:

*Le Thénardier éprouva ce qu'éprouve le loup au moment où il se sent mordu et saisi par la mâchoire d'acier du piège [...] Il donna une secousse. L'audace lui avait déjà réussi une fois[...] -je reprendrai Cosette ou vous me donnerez mille écus.*

*L'étranger dit tranquillement : -Viens, Cosette.*<sup>40</sup>

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<sup>39</sup> Hugo, Victor, *Le Dernier Jour d'un Condamné*, Paris: J. Hetzel & Cie. Paris, 1832. Préface. "How could he be interested? He has a crime and no remorse. I would have done the complete reverse. I would have told the story of my condemned. Born from honest parents. A good education. Love. Jealousy. A crime that is not one. And then remorse, remorse, lots of remorse. But human laws are harsh: he must die."

<sup>40</sup> Hugo, LM, p. 442 "Thénardier felt like the wolf the instant he is being seized and crushed by the steel jaws of the trap[...]he sprang. Audacity had succeeded with him once already[...] 'I will take back Cosette or you must give me a thousand crowns.'" The stranger said quietly: "Come, Cosette."

Hugo uncovers one of Valjean's new qualities, a calm steadfastness to do good, when he faces Thénardier's animal-like obstinacy to steal. Here, Valjean calmly overpowers Thénardier, he "*le regarda d'un air si sombre que le Thénardier jugea 'inutile' d'aller plus loin.*"<sup>41</sup> Valjean's new great power, revealed through a mere look, is easily recognizable by the thief Thénardier, who stops following Valjean and Cosette at that moment. Valjean is no longer the young cynical man who spent nineteen years in prison for stealing bread. He is instead intent on doing good, even if it means he must face down evil.

Hugo's story of Valjean in the beginning, a man turned out of society who may not find honest work, evokes part of Locke's philosophy on property we discussed earlier: A man works, and his labor is his own, as well as the fruits of that labor. Hugo shows that this law is true even when a man breeches that natural law. He supports this belief by reminding the reader of the unequal distribution of wealth: "*S'il n'était pas exorbitant que la société traitait ainsi précisément ses membres les plus mal dotés dans la répartition de biens que fait le hasard, et par conséquent les plus dignes de ménagements.*"<sup>42</sup>

Locke also addresses inequality and the problem of hoarding property, as he points to the change from gathering perishables like food and water to imperishable metals such as gold, silver and precious stones. Once a man could not store more than his share because the food would rot and this would be an offence "against the common law of Nature,"<sup>43</sup> but with the entrance of precious metals as currency, it is now possible to hoard more than one's "share" due to the imperishable nature of metals, leaving the "common law of Nature" Locke describes in his

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<sup>41</sup> Hugo, LM, p. 443 "looked at him so forbiddingly that Thénardier judged it "unprofitable" to go farther and went home."

<sup>42</sup> Hugo, LM, p. 94 "If it was not outrageous that society should treat with such rigid precision those of its members who were most poorly endowed in the chance distribution of wealth and were therefore most deserving of tolerance."

<sup>43</sup> Locke, Of Property, Book II, Chapter 5

Treatise “unoffended.” Remember that Eugène Sue also stresses the negative effect of unequal wealth on those left with very little economically. However, Hugo’s message is that the poor, like his character Valjean, are most deserving of tolerance.

If Hugo wrote specifically to try to effect legal change, how did the legal system respond? Perhaps the popularity of this novel led the judges in the court to examine the failing of the Code Pénal and render legal decisions with more merciful comprehension as the century continues. In April 1898, a woman from Amiens, caught stealing bread to feed her children, is acquitted by reason of necessity.<sup>44</sup> The note on the case reads: “*L’individu, qui, sous l’empire de la faim, vole un pain, commet-il un délit de nécessité, qui ne peut par suite être incriminé ?*”<sup>45</sup> The answer is yes, and with this answer lawmakers establish the *délit nécessaire*, or a necessary wrong. As long as a person’s intent is first and foremost to keep from starving, there is no crime. With this proof, it is clear that Hugo successfully presents a complete, humanizing story in *Les Misérables* moving many readers, judges included, to compassion.

While Sue and Hugo are able to compare the law and punishment to their theft stories, Emile Zola’s 1883 novel *Au Bonheur des Dames* cannot: no law against his chosen category of theft existed. With the rise of the big department stores, a certain type of theft becomes more prevalent: kleptomania. Patricia O’Brian notes that “After 1880, kleptomania was recognized almost universally as a morbid impulse to steal perfectly useless objects or those that could be easily be paid for.”<sup>46</sup> The department store multiplies the temptation to steal for those people with fetishes or manias to steal. The consumer can now engage in a more anonymous atmosphere where he or she can handle the goods her or himself.

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<sup>44</sup> Garçon, CPA, p. 1145.

<sup>45</sup> Garçon, CPA, p. 1145 My translation: “Does the individual who, under the influence of hunger, steals bread, commit a tort of necessity, who cannot as a result be incriminated?”

<sup>46</sup> O’Brian, Patricia, “The Kleptomania Diagnosis: Bourgeois Women and Theft in Late Nineteenth-Century France.” *Journal of Social History*, Vol. 17, No. 1 (Autumn, 1983), pp. 65-77

Zola's character, Madame de Boves is a kleptomaniac. He says she is :

*...ravagée d'un besoin furieux, irrésistible. Les crises empiraient, grandissaient, jusqu'à être une volupté nécessaire à son existence, emportant tous les raisonnements de prudence, se satisfaisant avec une jouissance d'autant plus âpre, qu'elle risquait, sous les yeux d'une foule, son nom, son orgueil, la haute situation de son mari. Maintenant que ce dernier lui laissait vider ses tiroirs, elle volait avec de l'argent plein sa poche, elle volait pour voler, comme on aime pour aimer, sous le coup de fouet du désir, dans le détraquement de la névrose que ses appétits de luxe inassouvis avaient développée en elle, autrefois, à travers l'énorme et brutale tentation des grands magasins...*<sup>47</sup>

Note Zola's descriptive language: "ravaged by a furious need." This language shifts the blame on something powerful inside the kleptomaniac character, something savage and out-of-control: she is ravaged. When Zola's character is caught for shoplifting, he shows her confused and indignant: "Prenez garde, monsieur! mon mari ira jusqu'au ministre."<sup>48</sup> Mme de Boves does not admit to a crime. She only denies the charges and signs a confession through force. As a result, the reader never knows if this character is conscious of her shoplifting, though Zola shows the effect of kleptomania on the character's daughter Blanche and son-in-law Vallagnosc.

*Dans sa détresse, elle dit tout à voix basse.*

*-Maman, maman...Elle a volé...*

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<sup>47</sup> Zola, Emile, *Au Bonheur des dames*, Paris: Pocket, 1998. p.435 My translation "ravaged by a furious, irresistible need. The fits worsened, grew to be necessary to her existence, carrying away all prudent reasoning, satisfying itself with a much more bitter pleasure, that she risked, under the noses of a crowd, her name, her pride, her husband's high position. So now that he let her empty his drawers, she stole with her pockets full of money, she stole to steal, like one loves to love, under the whiplash of desire, in the derangement of the neurosis that her unappeased, luxurious appetites developed in her, formerly, through the enormous and brutal temptation of department stores..."

<sup>48</sup> Zola, p. 435 "Watch yourself, monsieur! My husband will go to the high offices"

*Comment! volé ! Enfin, il comprit. La face bouffie de sa femme, ce masque blême, ravagé par la peur, l'épouvantait.*<sup>49</sup>

Notice “*ravagé*” again. The mother is ravaged by disease, which leaves her daughter ravaged by fear. Mme de Boves does not take responsibility for her crime, and does not appear to be ashamed. Her daughter, however, is ashamed: “*ce masque blême, ravagé par la peur*”.

According to the law, stealing is a crime but kleptomania is not. The law is caught in a bind by those persons with the disease to steal. Society has yet to excuse kleptomania as a disease, and still sees this disease as theft, as Zola indicates through Mme de Boves’ daughter.

Zola creates a preexisting friendship between the son-in-law and the character Morel, the owner of the department store. This son-in-law goes straight to the owner, telling him how horrified he was to have married into “a family of thieves,” and how his bourgeois ideals were repulsed at his mother-in-law. Similar to Sue, Zola is commenting on the upper class in his novel. Reality hits his character, and Zola describes the effects:

*...Toute son éducation bourgeoise repoussait en indignations vertueuses contre sa belle-mère. Dès que l'expérience tombait sur lui, au moindre effleurement de la misère humaine, dont il ricanait à froid, le sceptique fanfaron s'abattait et saignait. C'était abominable, on trainait dans la boue l'honneur de sa race, le monde semblait en craquer.*<sup>50</sup>

Zola’s portrayal of kleptomania creates a feeling of shame around the family members, and succeeds in showing the disgraceful consequence that accompanies this disease. In the same

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<sup>49</sup> Zola, p. 437 “Distressed, she whispered : ‘Mamma, Mamma...stole..’ What! stole! Finally, he understood. His wife’s puffy face, her pale expression ravaged by fear, horrified him.”

<sup>50</sup> Zola, p. 438 My translation : “All his bourgeois education revolted with virtuous indignations against his mother-in-law. Once the experience fell on him, at the least brush of human misery, which he coldly giggled at, the blustering skeptic fell and bled. It was abominable, dragging the honor of his race through the mud, the world seemed to split.”

way, the department store must avoid scandal and shaming its customers in front of other customers. Elaine Abelson writes that, "...any possible commotion or hint of scandal damaging to the reputation of the store or the respectable woman [is] to be avoided in this world of fantasy."<sup>51</sup>

The exception for kleptomania in the Penal Code of 1810 leaves the department store with no legal recourse to take against her. Kleptomania does not fall under theft, but under Penal Code Article 64: "*Il n'y a ni crime ni délit; lorsque le prévenu était en état de démence au moment de l'action, ou lorsqu'il a été contraint par une force à laquelle il n'a pu résister.*"<sup>52</sup> This article was written before kleptomania was diagnosed, of course. However, French law at the end of the nineteenth century does acknowledge and provide a note for kleptomania under the article for theft:

*...il ne faut pas oublier que le vol cesse d'être punissable, s'il existe un fait qui le justifie. Ainsi d'abord, il est clair qu'aucune peine ne peut être prononcée, lorsque l'auteur de la soustraction était frappé d'aliénation mentale au moment où il s'est emparé de la chose d'autrui. La kleptomanie, délire restreint à une impulsion irrésistible de prendre un objet, presque toujours un objet exposé à la vue du public, peut à elle seule, au moins dans les cas les plus graves, faire complètement disparaître la responsabilité.*<sup>53</sup>

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<sup>51</sup> Abelson, Elaine, *When Ladies Go A-thieving*, New York: Oxford University Press, 1989. p. 140

<sup>52</sup> Pailliet, J.B.J., *Manuel de Droit Français, Deuxième Partie*, Paris : Imprimerie le Normant, 1837, p. 1375. "There is no felony or misdemeanor if the accused was insane at the moment of the action, or if he was under a duress he could not resist."

<sup>53</sup> Garçon, CPA, p. 1146 #309 My translation : "...must not forget that theft ceases to be punishable, if there exists a fact that justifies it. First, it is clear that no punishment can be applied, when the one who takes away a thing is mentally handicapped the moment he has taken hold of the thing belonging to another. Kleptomania, a disease confined to an irresistible compulsion to take a thing almost always a thing in public view, can alone, at least in the most serious cases negate responsibility."

The thief by compulsion points to something other than the intent to steal. It is rather, a sickness that controls the afflicted person. In 1880, the kleptomaniac is not responsible for his or her compulsion to steal, and will not be punished by the law. In this case, intent is taken into account. So what can merchants do to protect themselves from these thieves?

According to Patricia O'Brian,

...department stores actively suppressed information on thefts out of fear that publicity would adversely affect sales...the stores, the courts, and the legal and medical professionals sought to protect from public scrutiny many of the individuals arrested, especially if they were otherwise respectable bourgeois women. With Kleptomania, protection was even more certain because of concern for the patient and her family's honor.<sup>54</sup>

Because of the lack in the legal system, Zola shows that this department store maintains its own system of police, judge and punishment. After Madame de Boves is searched by the lady salesclerks, the security officer sends the clerks away, and then begins his judgment and punishment based on her guilt by the items found hidden on her.

*Nous voulons bien, madame, étouffer cette fâcheuse affaire, par égard pour votre famille. Mais, auparavant, vous allez signer un papier ainsi conçu : « J'ai volé des dentelles au Bonheur des Dames », et le détail des dentelles, et la date du jour... Du reste, je vous rendrai ce papier, dès que vous m'apporterez deux mille francs pour les pauvres.*<sup>55</sup>

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<sup>54</sup> O'Brian, Patricia, "The Kleptomania Diagnosis: Bourgeois Women and Theft I Late Nineteenth-Century France" *Journal of Social History*. Vol. 17. No. 1 (Autumn, 1983), pp. 65-77.

<sup>55</sup> Zola, p. 435 "Madame, we really want to snuff this annoying affair, out of respect for your family. But first, you will sign a paper written: 'I stole lace at the Bonheur des Dames' and the lace description, and today's date...Moreover, I will return this paper to you, once you bring me two thousand francs for the poor."

This signed confession does not seem to reflect the character's sentiments. Zola portrays Mme de Boves as indignant. But Zola's portrayal of this note is favorable to the department store because it treats kleptomania as a disease, and not a crime. Through they lost money through her many thefts, they only receive a signed confession. Is this for the kleptomaniac to admit and face her illness? Or is it extortion? Rarely do the women return to pay for the note. Bourdoncle, forcing her to write this confession, says while placing the paper in a drawer with others, "*Vous voyez qu'il est en compagnie, car ces dames, après avoir parlé de mourir plutôt que de les signer, négligent généralement de venir reprendre leurs billets doux...*"<sup>56</sup> When Bourdoncle stresses that she must give him two thousand francs for the poor, it seems that this department store "court" offers the accused an opportunity to perform an action of remorse and rehabilitation, after which the record will be erased. The written proof of her confession must be bought by a good act: giving money to the poor. Like Sue and Hugo, Zola presents his thief's intentions, which in de Boves' case, are not even intentions, but rather mania. Unfortunately, these new kleptomaniacs are able to steal from department stores without legal punishment in the late nineteenth century. The department stores must fend for themselves by creating their own court that mirrors the legal system.

The philosophical, legal and social constructs around theft and property affect these three authors' fictions. Sue concerns himself with the philosophical, the natural right to one's reward for labor. Hugo focuses on the legal perspective, on justices and injustices of the law. Zola approaches the pathological side of theft, the disease of kleptomania. The struggle associated with the punishment of the law and the condemnation of society on both the lower and upper classes are also admitted and addressed by each author.

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<sup>56</sup> Zola, p. 436 "You see that it's got company because these ladies, after having spoken of death over signing them, generally neglect to come collect their love letters."

## CHAPTER 2. WRITTEN ON THE BODY : RAPE

*...sa fille Louissette, la cadette, placée comme femme de chambre chez madame Bonnehon...s'était sauvée un soir, affolée, meurtrie, pour aller mourir chez son bon ami Cabuche...Des histoires avaient couru, qui accusaient de violence le président Grandmorin ; mais on n'osait pas les répéter tout haut. La mère elle-même, bien que sachant à quoi s'en tenir, n'aimait point revenir sur ce sujet.<sup>57</sup>*  
Emile Zola, *La Bête Humaine*

Though the nineteenth-century Penal Code defines the crimes of theft and murder, it does not define rape.<sup>58</sup> What is rape, then? This oversight leaves a void, an illogical absence, and in consequence, births an odd sort of law. If rape is not defined in the Code, how do judges and jury make decisions on rape cases? How do lawyers argue rape cases? Why is the juridical process lacking here?

Let's look first at how individuals' rights were treated in France of the 1800's. Thanks to the Declaration of the Rights of Man and Citizen in 1789, the nineteenth century enjoyed one hundred years of the individual's place and the rights associated with the individual body. For this chapter, the question is, how does one treat other's bodies? According to Article 4 in the Declaration of the Rights of Man and of the Citizen, "...the exercise of the natural rights of each man has only those borders which assure other members of the society the enjoyment of these same rights."<sup>59</sup> The boundaries of a man must be monitored so that they do not infringe on another man's natural rights. According to Mary Douglas, the body's "boundaries can represent any boundaries which are threatened or precarious."<sup>60</sup> That said, women are not included in this

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<sup>57</sup>Zola, Emile, *La Bête Humaine*, Paris: Editions Gallimard, 2001. p.73 " ...her daughter, Louissette, the youngest, working as chambermaid in Madame Bonnehon's home in Doinville, ran away one evening, crazed and bloody, to die at her best friend Cabuche's home, who lived in a house in the middle of the forest. Scandal went around, accusing president Grandmorin of savagery-but noone dared repeat them out loud. The mother herself, knowing what took place, did not like to return to this subject."

<sup>58</sup> Garçon, E., *Code Pénal Annotée*, Paris : Hemmerlé, Petit, 1901-1906. Livre III Arts. 331-333, Section I.A., p. 844

<sup>59</sup> Ministère de la Justice, République française. 16 Jan. 2009, <<http://www.textes.justice.gouv.fr/index.php?rubrique=10086&ssrubrique=10087&article=10116>> .

<sup>60</sup> Douglas, Mary, *Natural Symbols*, New York: Routledge, 1996.

Declaration, and consequently do not receive the same rights as men. In a patriarchal society like nineteenth-century France, men (husbands, fathers) own the female body. To own the female body is to take away the individual woman's right to enforce her boundaries. The owner, the man, speaks for and represents his property, and as a result, the woman's voice carries little or no weight.<sup>61</sup> The man's voice, along with his views, is heard over the woman's; and so in literature too, "...men have produced and enforced a representation of the female body as passive, helpless, or in danger of violation."<sup>62</sup> This literature, which perceives the nineteenth-century woman's body "in danger of violation," is the literature I have chosen to examine.

This chapter will now analyze a woman's right to her body in regards to the crime of rape.

During the nineteenth century, it is accepted that those who commit a crime of this nature, men, do not target a man's body, but the "weak" bodies of women and children. In "Women, Crime, and Penal Responses," Lucia Zedner uncovers the "...far wider assumption that all women are morally weak because they are biologically and psychologically inferior to men..."<sup>63</sup> Male lawmakers avoid defining the act of rape because Articles 331-333 of the Code Penal are intended to protect not equals, but those whom they perceive to be of lesser worth: women and children. Nineteenth-century literature Professor Elisabeth Bronfen believes that "...the refusal to acknowledge the other...brings a further aspect of morality into play...not seeing the other is tantamount to denying his or her humanity..."<sup>64</sup> Dehumanizing women and

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<sup>61</sup> According to Roman law, a woman was not allowed to represent herself. Either her husband, father or appointed guardian spoke for her.

<sup>62</sup> Conboy, Katie and Nadia Medina, Sarah Stanbury, eds, *Writing on the Body: female embodiment and feminist theory*, New York: Columbia University Press, 1997. p. 3

<sup>63</sup> Zedner, Lucia, "Women, Crime, and Penal Responses: A Historical Account," *Crime and Justice*, The University of Chicago Press, vol. 14, (1991), p. 315.

<sup>64</sup> Bronfen, Elisabeth, "Femme Fatale-Negotiations of Tragic Desire," *New Literary History*, 2004, 35: 104.

children facilitates domination and creates a society of inequality. Women and children's bodies are not seen as equal to men's and, as I will demonstrate, the Code reflects that sentiment.

The law seems to have trouble codifying *acts with the intent to rape* as crime, as well as other problems noted in novels such as *Notre Dame de Paris* (1832), *Les Mystères de Paris* (1843), and *La Bête Humaine* (1889). It was not uncommon for authors such as Hugo, Sue, and Zola to use novels as political and social commentary, and with the ever-changing nineteenth-century government, politics became a sort of law. If the accused had political ties to the right party, then the matter may disappear into thin air. Those not part of the privileged class may be brought to pay for the crimes of that same class. Sociologists Lodhi and Tilly research post-1830 France and discover that "Over the long run...crimes against persons fluctuated mildly without trend..."<sup>65</sup> As crimes against persons remain unremarkable, and as violence against women decreases in the nineteenth century, authors still use these incidents to convey the atrocities of an inadequate legal system and unjust government. Each author sends a different message in his novel through stories of violation and attempted violation of the female body and will. Notably, none of these authors described an actual rape. At most, if rape does occur, it is implied.

Subtlety dissipates with time in law and literature, so that eventually both law and literary representations of law become more graphic at the end of the nineteenth century. In consequence, as the codes change with the years, so do literary representations. Law and literature are both in a constant state of evolution, reflecting the mores of their time. Thus the messages in literature show subtle differences from Hugo to Sue and Zola. All of them put a face on the rape article's unfortunate effects and all of them silence their characters who are victims of unwanted sexual advances. In addition, a knife appears in each attempted rape narrative. This

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<sup>65</sup> Lodhi, Abdul Qaiyum and Charles Tilly, "Urbanization, Crime, and Collective Violence in 19<sup>th</sup>-Century France," *The American Journal of Sociology*, vol. 79, No. 2. (Sep., 1973), pp. 296-318. University of Chicago Press.

weapon, used in three different ways, helps to relay each author's legal commentary to the reader.

On June 25, 1857, the Cour de cassation wrote "*ce crime consiste dans le fait d'abuser d'une personne contre sa volonté,*"<sup>66</sup> but Articles 331-333 fail to clearly define the act of rape which they forbid. Admittedly, even the Cour de cassation's attempt to define rape lacks specificity. "Abuser" could mean many things in French. According to the context, it could mean "sexual abuse." Here below are Articles 331 and 332 from 1811:

*331. Quiconque aura commis le crime de viol, ou sera coupable de tout autre attentat à la pudeur, consommé ou tenté avec violence contre les individus de l'un ou de l'autre sexe, sera puni de la réclusion.*<sup>67</sup>

331. Any person who commits the crime of rape or attempts an indecent assault with violence against persons of either sex, shall be punished by solitary confinement.

Let us examine Art. 331. In the absence of a definition for rape we must look at the wording of the article to search for clues. The Article reads, "Any person who commits the crime of rape" but what is "rape"? Also, the next phrase, "or attempts an indecent assault with violence" - what is an attempt? We may ask how legal professionals of the period answer these questions if the act of rape is not defined and described. Rape is even further behind than theft with regards to the element of intent being included in the Penal Code. One must first define an

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<sup>66</sup> Garçon, CPA, p. 844 Arts. 331-333, Section I.A., "this crime consists in the case of abusing someone against his/her will."

<sup>67</sup> Garçon, CPA, Livre I, ch 1, Art. 20, p. 71 "Tout individu de l'un ou de l'autre sexe, condamné à la peine de la réclusion, sera enfermé dans une maison de force, et employé à des travaux dont le produit pourra être en partie appliqué à son profit, ainsi qu'il sera au moins de cinq années, et de dix ans au plus." Solitary confinement can be exceeded by hard labor.

act before one is able to examine the events and acts surrounding that act, in order to determine intent.

To help convict rapists and molesters, judges, lawyers, and juries need to identify the act in the code that they use to punish that act. Michel Foucault writes on rape, perversion, desires and drives:

...judgment is not actually being passed on them; if they are referred to at all it is to explain the actions in question, and to determine to what extent the subject's will was involved in the crime<sup>68</sup>

The “crime” under discussion here is murder or theft, though, not rape. Foucault documents the way rape, and consequently, its victims, are dismissed in the courts, and how the written Penal Code is not enforced. In *Writing on the body: female embodiment and feminist theory*, the 20<sup>th</sup> and 21<sup>st</sup> -century victims of rape who manage to press charges on their rapists “...say they were raped twice, the second time in court,”<sup>69</sup> but the women of the nineteenth-century were brushed aside. The nineteenth century does not constitute rape as a crime to the court, according to Foucault’s quote above. This soft attitude towards rape mirrors its treatment in the nineteenth-century Penal Code.

Let us turn to Article 332.

*332. Si le crime a été commis sur la personne d'un enfant au-dessous de l'âge de quinze ans accomplis, le coupable subira la peine des travaux forcés à temps.*<sup>70</sup>

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<sup>68</sup> Foucault, Michel, *Discipline and Punish*, New York: Pantheon books, 1977, p.17.

<sup>69</sup> Conboy, Katie and Nadia Medina, Sarah Stanbury, eds, *Writing on the Body: female embodiment and feminist theory*, New York: Columbia University Press, 1997.

<sup>70</sup> Garçon, CPA, Livre I, ch 1, Art. 15, p. 71 “*Les hommes condamnés aux travaux forcés seront employés aux travaux les plus pénibles ; ils traîneront à leurs pieds un boulet ou seront attachés deux à deux avec une chaîne, lorsque la nature du travail auquel ils seront employés le permettra.*” 1854 modification : “*la peine des travaux forcés ne peut être prononcé contre les vieillards de plus de soixante ans.*” CP, Art. 72. According to Art. 19, the duration of hard labor can be doubled to 40yrs. or lessened to 5 yrs.

332. If the felony is committed on a child under fifteen years of age, the perpetrator shall be sentenced to hard labor for a limited time.

Minors under 15 years of age are unable to consent to sex according to this article. All three authors, Hugo, Sue and Zola disagree with this age limit as each demonstrates in his literature, and all write characters, girls aged 15 and 16, as their *very innocent* attempted rape victims. Do these messages help? A little. These authors are quite popular at this time, and have the power to influence society and the law through their writing.

Articles 331-332 were modified in 1832<sup>71</sup> and again in 1863,<sup>72</sup> mirroring the slow evolution of the government's perspective on this crime. As for punishment, imprisonment is less extreme compared to the galleys. But, if the perpetrator is over sixty years old then he is able to receive the lesser punishment, imprisonment for only five to ten years. With regard to the galleys, the convicted rapist would normally expect his length of punishment to last anywhere from five to twenty years. The convict may be out as early as five years or even earlier, and as late as forty years in certain instances.<sup>73</sup>

In this chapter, we will focus on rape law, a law which lagged behind the consciousness of individual rights of man reflected in other contemporary legislation. Hugo, Sue and Zola all cleverly comment on the insufficient Penal Code Articles 331-333. Let's take a look at those comments now.

When Hugo publishes *Notre Dame de Paris*, in 1833, the law did recognize abuse of power, but as the setting of the novel is 1482, rape laws were only oral customary laws<sup>74</sup> at that

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<sup>71</sup> See below

<sup>72</sup> See below

<sup>73</sup> Garçon, CPA, p. 71 "Three criteria considered for punishment 1. the victim is less than 15 years old, 2. the offender has a position of authority over her, and 3. the crime was committed with the help of one of more persons."

<sup>74</sup> Customary law is "Law consisting of customs that are accepted as legal requirements or obligatory rules of conduct; practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are

time, not written Code.<sup>75</sup> In consequence there is no solid record of the fluctuations in those laws. *Notre Dame de Paris* ridicules these customary laws as archaic, as we will discuss below. The layered plot of *Notre Dame de Paris* involves many subplots and complications too numerous to recall here.<sup>76</sup> I will focus in particular on the character of Esmeralda. She is sixteen years old, lives among the gypsies, dresses like a gypsy, and dances in the streets for money. Though biologically French, her outward appearance and upbringing represent her as a lower class gypsy, and therefore in a relatively powerless position compared to her aggressor, Priest Frollo. Here is the attempted rape scene, found in the chapter titled “Suite de la clef de la Porte-Rouge”:

—*Aime-moi! aime-moi ! pitié ! criait le pauvre prêtre en se roulant sur elle et en répondant à ses coups par des caresses.*

*Tout à coup, elle le sentit plus fort qu'elle.—Il faut en finir ! dit-il en grinçant des dents.*

*Elle était subjuguée, palpitante, brisée, entre ses bras, à sa discrétion.*<sup>77</sup>

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treated as if they were laws. -- Also termed *consuetudinary law*. ” Garner, Bryan A., ed., *Black’s Law Dictionary* (8<sup>th</sup> ed. 2004) on Westlaw website, Thomson Reuters, April 7, 2009, <www.westlaw.com>

<sup>75</sup> Customary laws-oral laws-were Germanic laws, and written laws were Roman law. See Drew, Katherine Fischer, *The Laws of the Salian Franks*, translated by Katherine Fischer Drew, Philadelphia: University of Pennsylvania Press, 1991. p. 30

<sup>76</sup> Hugo, Victor, *Notre Dame de Paris*, France: Editions Gallimard, 2002. For the reader’s memory, the baby Esmeralda is stolen from her French mother and replaced with a deformed baby, Quasimodo. Esmeralda is raised by the gypsies, and Quasimodo is taken by Frollo of Notre Dame de Paris (NDP). Esmeralda dances in the streets of Paris and catches the lustful eye of the priest. She was revolted by the priest and also believed that she would one day meet her biological mother if she remained chaste. Frollo has Quasimodo, now bell ringer of NDP, try to kidnap her, but the King’s archer, Phoebus, intervenes and Quasimodo is sentenced and punished. Esmeralda takes pity on Quasimodo even though he tried to kidnap her, and earns his complete devotion. Esmeralda falls in love with her rescuer, Phoebus, and almost gives herself to him one night when Frollo surprises them and, out of a jealous rage, stabs Phoebus. Esmeralda is charged for his murder (even though he lives). Frollo unsuccessfully continues his sexual advances on Esmeralda. Before her execution she is brought to NDP and Quasimodo suddenly drags her into the church for asylum. Frollo eventually breaks into her room and attempts to rape her, when Quasimodo comes to her rescue. Eventually, Esmeralda chooses death instead of life with the priest. Quasimodo renders justice in the end and kills the priest.

<sup>77</sup> Hugo, NDP, p. 490. “‘Love me! Love me! for pity’s sake!’ cried the poor priest rolling onto her, answering her blows with caresses. All at once, she felt him overpower her. ‘There must be an end to this!’ he said, gnashing his teeth. She was conquered, palpitating, crushed between his arms, at his mercy.”

Hugo, of course, stops the attempted rape with the character Quasimodo, who saves Esmeralda. But notice that Frollo meets her blows with caresses, then he overpowers her. Notice Hugo’s language: “at his mercy” -- she is panicked, palpitating like a trapped animal and finally, “crushed in his arms.” Frollo’s desire has turned into an obsession, and he attempts rape. Why does Hugo place this incident here? Partly to show the ignorance of the absent law and its effect on disempowered innocents, but also partly to make sure the readers keep their interest on the “right” side of the equation—it is too easy, in the midst of the increasingly religious, dynastic leanings of two restoration kings (Louis XVIII and Charles X) of 1830 France, to balance the outsider: Hugo has to show her as a victim all around. He stirs the passions of his readers with this violation. The reader is in an “erotic” position as voyeur to underscore the importance of this injustice and the role of Quasimodo.

Quasimodo,<sup>78</sup> a being on the margin of society, is Esmeralda’s only defender against the priest’s attempted rape:

*Presque au même instant il [le prêtre] se sentit enlever par un bras vigoureux ; la cellule était sombre, il ne put distinguer nettement qui le tenait ainsi ; mais il entendit des dents claquer de rage[...] il vit briller au-dessus de sa tête une large lame de coutelas [...] Quasimodo ! [...] En un clin d’œil le prêtre fut terrassé, et sentit un genou de plomb s’appuyer sur sa poitrine[...] Le coutelas se rapprochait de sa tête [...] Tout a coup son adversaire parut pris d’une hésitation. –Pas de sang sur elle! dit-il d’une voix sourde.<sup>79</sup>*

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<sup>78</sup> Quasimodo represents the spirit of Notre Dame de Paris. Hugo writes that by living in the church day in and day out, Quasimodo takes the form of the building like a snail takes the form of its shell.

<sup>79</sup> Hugo, NDP, p. 490 “Almost as he spoke he felt himself dragged away by vigorous arms; the cell was dark, he could not distinguish clearly who it was that held him, but he heard teeth gnashing with rage [...] to show him the glitter of a great knife-blade just above his head.[...] Quasimodo! [...] In a trice the priest was thrown upon the floor and felt a knee of iron planted on his chest[...] The knife was nearing his head [...] Suddenly his adversary seemed to hesitate. “No blood near her!” he said under his breath.”

Why does Hugo want Quasimodo, Esmeralda's sole protector, not to use the knife in front of Esmeralda? That action acknowledges Esmeralda's innocence. No stabbing, no penetration in front of the virgin character Esmeralda, whom he is saving from unwanted penetration by Frollo. Hugo demonstrates throughout the rest of the novel that the "half-man" Quasimodo (more sensitive to humanity than Frollo) is Esmeralda's "stand-in" for justice. At the same time, this conflict, a disabled servant (Quasimodo) versus his master (Frollo), introduces the notion of woman's will. One character defends woman's will while his master violates it.

Hugo uses this situation to show how powerless the character Esmeralda is. He introduces her desire to free herself and sets up a struggle where not she, but the character Quasimodo enforces her will. To be sure, Hugo underlines that Esmeralda is completely terrified by the priest when he attempts to rape her:

*-...baise-moi, folle! La tombe ou mon lit!...Elle se débattait dans ses bras. ...Il la couvrait de baisers écumeux.*

*-Ne me mords, pas, monstre, cria-t-elle. Oh ! l'odieux moine infecte ! laisse-moi !...Toi, prêtre, tu es vieux ! tu es laid ! Va-t'en !"<sup>80</sup>*

Hugo's choice of words is noteworthy: "baise-moi" is a double entendre, meaning either "kiss me" or "have sex with me." Esmeralda is easy prey for any man. Here is an excerpt from her trial:

*Fille, vous êtes de race bohème, adonnés aux maléfices. Vous avez, de complicité avec la chèvre ensorcelée impliquée au procès, dans la nuit de 29 mars dernier,*

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<sup>80</sup> Hugo, NDP, p.595 "Come! kiss me, little fool! The grave or my bed!" ...Froth stood on the lascivious lips that covered the girl's neck with frenzied kisses... "Bite me not, monster!" she shrieked. "Oh, the hateful, venomous monk! Let me go, or I tear out thy vile gray hairs and fling them in handfuls in thy face!"

*meurtri et poignardé, de concert avec les puissances de ténèbres, à l'aide de charmes et de pratiques, un capitaine des archers de l'ordonnance du roi, Phoebus de Châteaupers. Persistez-vous à nier ? [...]*

*-Je l'ai déjà dit. Je ne sais pas. C'est un prêtre. Un prêtre infernal qui me poursuit !*

*-C'est cela, reprit le juge. Le moine-bourru.*

*-O messeigneurs ! ayez pitié ! Je ne suis qu'une pauvre fille...*

*-D'Egypte, dit le juge.*

*Maître Jacques Charmoulou prit la parole avec douceur :*

*-Attendu l'obstination douloureuse de l'accusée, je requiers l'application de la question.*

*-Accordé, dit le président. [...]*

*-La fâcheuse et déplaisante drôlesse, dit un vieux juge, qui se fait donner la question quand on n'a pas soupé !<sup>81</sup>*

Hugo is ridiculing the court a bit here with its charge that the goat is her accomplice.

Secondly, he uses Esmeralda to demonstrate that a woman in this unfortunate position has no voice and does not receive justice. The courts are blind and deaf to her, and can only see and

hear the victim Phoebus, a symbol of the King. Foucault recognizes the importance of this

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<sup>81</sup> Hugo, NDP, p.398 "Girl, you are of the race of Bohemians, and given to sorcery. In company with your accomplice, the bewitched goat, also implicated in this charge, you did, on the night of the twenty-ninth of March last, in concert with the powers of darkness, and by the aid of charms and shells, wound and poniard a captain of the King's archers, Phoebus de Châteaupers by name. Do you persist in your denial?" "I have already said," she answered brokenly, "I do not know. It is a priest, a priest who is unknown to me; a devilish priest who persecutes me——"

"There you have it," interrupted the judge; "the spectremonk."

"Oh, my lords, have pity! I am but a poor girl——"

"Of Egypt," said the judge.

Maître Jacques Charmoulou here interposed in his mildest tones: "In view of the painful obstinacy of the accused, I demand that she be put to the question."

"Accorded," said the President. "The troublesome and vexatious jade," said an old judge, "to force us to apply the question when we have not yet supped!"

symbol, and writes that “an offense on the king/Emperor requires redress for the injury that has been done to his kingdom” and includes that it is “the sovereign’s right to make war on his enemies.”<sup>82</sup> Esmeralda’s body quickly takes on the enemy position in relation to the crown through an assault on the King’s archer even though she is innocent. With this in mind, Hugo cleverly uses Phoebus’ name to demonstrate the futility of Esmeralda’s speech. Hugo gives Esmeralda few words, and eventually she is only able to repeat the name “Phoebus” which is precisely the only word the courts are able to hear.

We can consider Esmeralda’s position in the context of theoretical work on descriptions of the body. First let us read Hugo’s description of Esmeralda:

*...et chaque fois qu’en tournoyant sa rayonnante figure passait devant vous, ses grands yeux noirs vous jetaient un éclair...autour d’elle tous les regards étaient fixes, toutes les bouches ouvertes...c’était une surnaturelle créature...*<sup>83</sup>

Hugo makes Esmeralda beautiful, and instead of appreciating a thing of beauty, the priest wants to possess it or destroy it as one would treat an object. Edward Shorter in “On Writing the History of Rape,” reflects on Susan Brownmiller’s idea of women’s bodies as pawns: “For the defenders they are goods to be safeguarded behind high walls and strict controls. For the attackers they are objectives to be seized and violated. In both cases, politics are inextricably entwined with rape...”<sup>84</sup> Hugo has made a pawn out of Esmeralda’s body, and by disguising her as a gypsy, he sets the aforementioned unfortunate chain of events into action. The courts and the priest character attack the vulnerable “gypsy girl,” but the “pawn” cannot defend herself. In this void of power, Hugo inserts Quasimodo, a rejected member of society and symbol of Notre-

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<sup>82</sup> Foucault, p. 48

<sup>83</sup> Hugo, NDP, p. 103 “...and each time her radiant face passed before you as she twirled, her big black eyes threw you a flash of lightning...all around her gazes set upon her, every mouth open...it was a supernatural creature...”

<sup>84</sup> Shorter, Edward, “On Writing the History of Rape,” *Signs*, Vol. 3, No. 2 (Winter, 1977), p.472

Dame de Paris cathedral, to defend her will and to deliver her justice because she is only perceived as a foreign body.

As for the political, Foucault writes on the body in *Discipline and Punish* concerning power. He suggests that the dominant class uses power strategically so that it manifests in and down through the classes who are dominated, so violence is mostly unnecessary for subjection.<sup>85</sup> Frolo reflects Hugo's view of Realism in that the lower classes are prey to abuses of power.<sup>86</sup> He shows the priest's attraction to the manifestation of his power in Esmeralda's character, and shows how he exercised his power for wrong by attacking her.

As I mentioned above, Hugo uncovers the extent of the king's power when Esmeralda is accused of murdering a symbolic figure of the king himself, the captain of his archers. The ultimate power and ownership of the king is now exercised on Esmeralda's body: the power over her life and death. Hugo underlines this power play in the novel: "*ce roi a une main qui prend et une main qui pend.*"<sup>87</sup> Cleverly, the author uses the corruption of Frolo to thwart the king's power and return Esmeralda's rights over her body. Frolo conveys Hugo's message that although Esmeralda is objectified, she still has a choice to resist or to submit to evil, remember "*La tombe ou mon lit!*" In the absence of her defender, Quasimodo, Esmeralda must choose death to defend her will. Hugo uses this somber situation to demonstrate not only his character's chastity, but her chance to finally demonstrate her will, an opportunity which leads to her death.

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<sup>85</sup> Foucault, p. 26

<sup>86</sup> Hugo treats us to an uncodifiable element: the soul of the criminal. The true criminal is the priest, and his soul becomes darker and darker. In contrast Esmeralda is portrayed as stubbornly pure and innocent. The priest not only allows her to be convicted and executed for a crime he committed, but he also takes advantage of her vulnerability when he attempts to rape her while she is granted asylum in his church. Quasimodo is a witness to the priest's attempted rape, but not a strong solid witness. He is on the wrong side of the law and society.

<sup>87</sup> Hugo, NDP, p. 587 "this king has a hand that takes and a hand that hangs"

Coincidentally, eighteen months after *Notre Dame de Paris*'s first publication, but before its re-issue in 1833, the French legal code is amended. The law against rape and indecent assault is in Articles 331-333 of the French Penal Code. In 1832 the law was amended in three ways:

1. *Elle a nettement distingué les deux crimes de viol et d'attentat à la pudeur avec violence.*
2. *Elle a incriminé l'attentat à la pudeur sans violence sur des enfants de moins de onze ans.*
3. *Elle a modifié le système des peines et les a rendues plus sévères, car le but du législateur était ici de renforcer la répression... Pour le viol, la peine fut élevée à celle des travaux forcés à temps.*<sup>88</sup>

Initially, these modifications seem to acknowledge a larger scope of this crime by distinguishing rape from aggravated rape and declaring both acts crimes. They also acknowledge that molestation is a crime-but only on those younger than eleven years, while recognizing that the previous punishment for rape was not severe enough to fit this crime. This modification shows some forward progress, and its temporal proximity to the publication of Hugo's novel demonstrates the author's power to affect change through literature.

Hugo quickly recognizes this opportunity to modify his statement on new rape code articles. The victim in this story is older than eleven years of age, and has no legal "leg to stand on" against a Priest (her foot is even tortured at her trial). Hugo carefully places his victim of attempted rape outside the words of each of the three newly modified rape articles. He stresses that her position is an exception to the provisions of the law. The law, even newly modified,

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<sup>88</sup> Garçon, E., *Code Pénal Annotée*, Paris : Hemmerlé, Petit, 1901-1906. p. 843. "1. It distinguished the two rape felonies and indecent assault with violence. 2. It incriminated indecent assault without violence on children under 11 years of age. 3. It modified the punishment system making it more severe, because the legislator's goal was to reinforce repression...For rape, punishment was raised to forced labor for a limited time."

cannot protect Esmeralda in her current circumstances. Hugo shows the failure of brand-new codes when he represents them as deaf, impotent, unjust, insufficient, etc... In fact, "*Le juge, sourd et que rien n'avertissait de la surdité de l'accusé, crut qu'il avait répondu, comme faisaient en général tous les accusés, et poursuivit avec son aplomb mécanique et stupide*"<sup>89</sup> is Hugo's portrayal of the legal system in *Notre Dame de Paris*.

Sue is even less subtle than Hugo in his attempted rape scenes. His feuilleton novel *Les Mystères de Paris*<sup>90</sup> identifies him as a writer with a criminal mentality. His reading public is mostly women, so the existence of his story depends on keeping his audience interested and engaged. Sue includes countless stories in this encyclopedic book and I will only discuss two here. The first is that of the character Madame de Fermont<sup>91</sup> and her daughter and the second is that of the character Cecily.<sup>92</sup> Sue places these two stories close together in his large novel for a reason. With this in mind, I will argue that these are parallel narratives involving rape stories.

In Part 6, Chapter 5 of *Les Mystères de Paris*, Sue's two characters, the de Fermonts, are two vulnerable women whose wills are violated by the character Robin, a drunken convict. By breaking the threshold of their room, Sue symbolizes a rape. He has the bandit say, "*Je veux entrer, j'entrerai...et je ne sortirai pas que je n'aie allumé ma pipe.*"<sup>93</sup> A forceful entry in order to "light his pipe" is not only against the women's will, but it is a violation of their boundaries.

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<sup>89</sup> Hugo, NDP, p. 263 "The deaf judge, unaware of the accused's deafness, thought he had replied as all accused customarily do and continued in his mechanical, stupid confidence."

<sup>90</sup> See Appendix. Sue, Eugène, *Les Mystères de Paris*, Paris: Robert Laffont, 1989.

<sup>91</sup> Madame de Fermont and her daughter Claire were cheated by the notary Jacques Ferrand. He stole Mme de Fermont's inheritance by murdering her brother and disguising it as a suicide. She could not collect the inheritance because of the suicide. She and her daughter, who were bourgeois, were left with no money and had to sell all they owned. Soon, they had no money left and ended up in the cheapest room they could find. Unfortunately, it was not a respectable place of lodging. Soon, they both became ill, and only the daughter survived, saved in time by do-gooders.

<sup>92</sup> Cécily is a Creole slave from Louisiana. She and her fiancé were abused by their plantation owner who wanted Cécily for himself and violated her. Prince Rodolphe bought her and her fiancé's freedom and brought them to Europe. Once free from horrible conditions, Cécily's nature was released and it was a dark nature. She began to have affairs with other men and became a femme fatale. Rodolphe had locked her up in a castle in Germany in consequence. Later, she is freed by him and used to destroy the evil notary Jacques Ferrand.

<sup>93</sup> Sue, LMP, p. 766 "I want to enter, I will enter...and I will not leave until I've lit my pipe."

Sue's imagery hints at the act of rape: violently breaking into a woman's threshold against her will and using the phrase "light my pipe" conjures up a forced penetration with the male sexual organ or an object. When the character Claire's mother stands in the way of the convict character's intentions towards her daughter, Sue shows that her existence is itself in threat: "...*je vous casse la figure, si vous ne me laissez pas entrer...je vous dis que je verrai la petite dans son lit et que j'allumerai ma pipe...ou bien je démolis tout! Et vous avec !...*"<sup>94</sup> Paula Sommers, discussing a similar situation in the *Heptaméron*, writes that "As an obstacle in the love situation the older woman forfeits her very right to exist."<sup>95</sup> The bandit in Sue's story is ready to destroy Claire's mother because she represents an obstacle to the fulfillment of his pleasure, which is more of a violent pleasure than an erotic pleasure. Sue is portraying the constant threat to women's bodies. Though Madame de Fermont yells for help, and scares the bandit off, the reader is left unsettled by two things. First, the convict promises to return that very night and seize her tongue so that she cannot yell, and second, no one ever comes to their aid. In this way, the reader is left anticipating the return of the threatening male character. Sue, after stating the problem of rape in this story, moves on to state the solution to the rape threat.

In Part 7 Chapter XII Sue sets the character Cecily into action. In order to read Sue's message correctly, we must analyze this particular character. For his solution to the problem of rape, Sue uses a Creole. While thrilling his audience with the exotic, he describes the smoldering rumors surrounding Creole women:

*Tout le monde a entendu parler de ces filles de couleur pour ainsi dire mortelles  
aux Européens, de ces vampires enchanteurs qui, enivrant leur victime de*

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<sup>94</sup>Sue, LMP "...I will break your face if you don't let me enter...I tell you I will see the little one in her bed and that I will light my pipe...or else I will destroy everything! Including you!..."

<sup>95</sup> Sommers, Paula, "Feminine Authority in the "Heptaméron": A Reading of Oysille" MLS, Vol. 13, No 2 (Spring 1983) pp 52-59.

*séductions terribles, pompent jusqu'à sa dernière goutte d'or et de sang, et ne lui laissant, selon l'énergique expression du pays, que ses larmes à boire, que son cœur à ronger. Telle est Cecily.*<sup>96</sup>

Sue introduces a constant threat to men, a threat: “*mortelles aux Européens,*” “*vampires enchanteurs,*” an exotic, beautiful, Creole slave. She is raped by her owner but freed and brought to Europe and changes nature: “*...ses détestables instincts...ne s'étant développés qu'en Europe, la civilisation et l'influence des climats du Nord, en avaient tempéré la violence, modifié l'expression.*”<sup>97</sup> Ironically, the savage Creole learned how to temper and refine her “detestable instincts” from the supposedly more civilized Europeans. Sue replaces the tiger with the serpent (a phallic symbol) because “*Le tigre...inspire moins d'horreur que le serpent...*”<sup>98</sup> So far, Sue compares Cecily to an enchanting vampire and now a snake. Both have deathly fangs. Sue transforms his Creole character into a horrifying predator: one who hides and kills slowly, the perfect punishment for his dangerous rapist character, the notary Jacques Ferrand.

For the reader's memory, Ferrand's first victim in the story is a maid named Louise Morel.<sup>99</sup> The law and society condemned this victim, but Roldolphe, Sue's ideal of justice, did not condemn her, he defended her. Cecily is a willing member of Roldolphe's justice for Louise:

*...Cecily avait promis de jouer son personnage avec amour, ou plutôt avec une haine terrible contre Jacques Ferrand, s'étant sincèrement indigné au récit des*

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<sup>96</sup>Sue, LMP, p. 933 “Everyone has heard talk about these colored girls, deathly to Europeans, of these enchanting vampires who, inebriating their victim with terrible seductions, sucking down to the last drop of gold and blood, and leaving, according to the local harsh expression, only his tears to drink, only his heart to gnaw. Such is Cecily.”

<sup>97</sup>Sue, LMP, p. 933 “Her detestable instincts...not having been developed until in Europe, civilization and the influence of the northern climate, having tempered the violence, modified its expression.”

<sup>98</sup> Sue, LMP, p. 933

<sup>99</sup> The Morels are a very honest, very poor family. Louise Morel, of working age, is sent to work in Jacques Ferrand's household. She is pretty, and she attracts his desire. He violently attacks her and she escapes him. But soon, he devises a solid plan to rape her. He drugs her at dinner, and she blacks out. When she wakes up, he has deflowered her. She cannot leave because she is poor, so she stays and becomes pregnant. Disgusted with her, Ferrand plans her murder and the demise of her family. She is imprisoned but she and her family are quickly saved by Roldolphe.

*violences infâmes qu'il avait exercées contre Louise, récit qu'il fallut faire à la créole pour la mettre en garde contre les hypocrites tentatives de ce monstre.*<sup>100</sup>

Cecily accepts this plan of retributive justice<sup>101</sup> for Ferrand. Like Quasimodo to Esmeralda, Cecily is a stand-in for justice for Louise. The readers know what a monster Ferrand is, and once Cecily becomes a maid in his household, Ferrand begins to stalk his prey:

*"...pendant des heures entières, il plongeait son regard enflammé dans la chambre de la créole endormie."*<sup>102</sup> Sue shows that this character must not be raped by the rapist, but she must appropriate his power. He does not allow her to sleep, *"La créole ne se coucha pas,"*<sup>103</sup> and he makes her carry a poisoned stylus everywhere she goes, *"...elle retira de son corsage...un stylet long de cinq à six pouces..."*<sup>104</sup> Sue also hides her ethnic origin from his rapist character in order to keep his defenses lowered. Though unsuccessful, Ferrand makes his attempts to violate the Creole character, whom he thinks is a German.

The laws against attempted rape are explained by E. Garçon in his annotated Penal Code. As the Code details,

*80. ... en réalité, les tribunaux et le jury ont un pouvoir discrétionnaire et arbitraire et pourraient, sans violer la loi et sans s'exposer à la censure de la Cour de cassation, punir, comme tentative, un simple acte préparatoire...*<sup>105</sup>

*169. ...distinction du viol et de l'attentat à la pudeur... lorsque la tentative de viol n'est pas nettement caractérisée, la qualification d'attentat doit être préférée.*<sup>106</sup>

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<sup>100</sup>Sue, LMP, p. 934 "Cecily had promised to play her character with love, or rather with a terrible hate for Jacques Ferrand, having been sincerely outraged at the story of odious violence he exacted against Louise, a story he had to tell the Creole to make her aware of this monster's hypocritical forays."

<sup>101</sup> Or, "eye for an eye"

<sup>102</sup> Sue, LMP, p. 941 "for hours, he buried his burning eyes into the sleeping Creole's room."

<sup>103</sup> Sue, LMP, p. 937 "The Creole did not sleep."

<sup>104</sup> Sue, LMP, p. 941 "...from her bodice, she pulled out a stylus five to six inches long..."

<sup>105</sup>Garçon, CPA, p. 851 "80...in reality, the court of law and the jury have discretionary and arbitrary power and may, without violating the law and without censure from the Supreme Court, punish a simple preparatory act as attempt."

The rape commences as soon as the perpetrator uses violence against the woman in order to achieve a sexual union, but the acts preceding the rape are not necessarily punishable offences because the intention of the perpetrator still remains uncertain. The jury does have the power of discretion and has the power to decide between attempted rape and assault, but where the issue still remains uncertain, the accused must be charged with assault instead of attempted rape. Sue's two rape stories represent his view on the real effects and serious consequences of the law. Unless one knows the victims, speaks with them, unless one enters the world where the victims and criminals live, how can a wise ruling be made? (especially when the act is not defined). In addition, Sue's rape narratives focus on the impact of the crime on the victim. Following Sue's focus, the Penal Code could examine the impact of rape or attempted rape on the victim, and place this element under the element of intent.

I suggest that Sue uses Ferrand to comment on the crime of abuse of power over two maids, Cecily and Louise, and according to the law at that time, if convicted, Ferrand could pay dearly for that offence. In 1811, the Penal Code Article 333 addresses abuse of authority:

*333. La peine sera celle des travaux forces à perpétuité si les coupables sont de la classe de ceux qui ont autorité sur la personne envers laquelle ils ont commis l'attentat, s'ils sont ses instituteurs ou ses serviteurs à gages, ou s'ils sont fonctionnaires publics, ou ministres d'un culte, ou si le coupable, quel qu'il soit, a été aidé dans son crime par une ou plusieurs personnes.*<sup>107</sup>

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<sup>106</sup> Garçon, CPA, p. 859 "...distinction between rape and indecent assault... where attempted rape is not distinctly characterized, assault qualifies and must be favored."

<sup>107</sup> Garçon, CPA, p. 843 "333. Hard labor will be the punishment if the perpetrators are from the class with authority over the person on whom the attempt was made, if they are teachers or indentured servants, or if they are public servants, or a religious minister, or if the perpetrator, whoever he is, was aided in his crime by one or more persons."

This Article seems to increase the protection of lower-class workers, but Sue shows that the law is still insufficient to protect women, especially working-class women. He represents the futility of these laws by creating female characters who find no protection from the Code. Sue creates a situation where the reader may wonder, if men were under threat of a Cecily, as women and children are under threat of rape, what would happen to the Penal Code then?

To return to the dualities of narratives, there is a threat of rape in both stories. The first story shows Sue's view of the vulnerability of women under the legal system. He establishes the failure of the legal system to protect and enforce itself. The second story shows, like the first, the absence of an effective legal system. However, Sue intervenes and crafts a female who dominates a man. Sue uses the character Cecily to show that women can protect themselves by taking the law into their own hands. He portrays that she is able to protect herself with a poisoned stylus which represents both the corrupt written law, or the pen dipped in poison, and also the physical threat of male dominance (the transfiguration of male sexual organ into a weapon when it is used for domination).

Sue markets his stories well to his predominately female audience, as women were the primary readers of his *feuilleton* (the modern equivalent of the soap opera) in the French newspaper *Journal des Débats* from June 19, 1842 to October 15, 1843.<sup>108</sup> He gives women a stand-in for justice. This stand-in is not a half-man/half-human (recall Hugo's character Quasimodo) but a Creole freed-slave who can sympathize with the victim through her own past. This stand-in has a corrupt nature yet still feels a need for justice for women in Louise's situation. He answers the problem of the threat to women's bodies with a female character who appropriates the power of the rapist. Cecily, more outside the paradigm of power than Hugo's

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<sup>108</sup> Sue, LMP, p. 2

Esmeralda, aware of her position as “savage” Creole, slave, and woman, turns the ontological tables with the poisoned weapon she carries with her. Her non-vulnerability seems to thwart would-be rapists such as Jacques Ferrand, and their relationship shifts. Though she dominates Ferrand, she is subversive and still outside these articles. Cecily does not have to stab Ferrand to dominate him because the stylus’s presence is threat enough. Cecily and her stylus (an ancient writing tool) are threats to the existing laws on rape as well. The fact that she needs a poisoned weapon shows that the law is inefficient to protect her, and points to the need for revisions in the Penal Code for rape.

Sue knows Louise Morel would not receive justice in the courts. Foucault writes on justice in the law,

If the law is supposed to define offenses, if the function of the penal apparatus is to reduce them and if the prison is the instrument of this repression, then failure has to be admitted[...] the prison, and no doubt punishment in general, is not intended to eliminate offenses, but rather to distinguish them, to distribute them, to use them...to assimilate the transgressions of the laws in a general tactics of subjection...penalty [...] provides them with a general ‘economy’. And, if one can speak of justice, it is not only because the law itself or the way of applying it serves the interests of a class, it is also because the differential administration of illegalities through the mediation of penalty forms part of those mechanisms of domination.<sup>109</sup>

Man-made laws do not protect a woman in these characters’ situations so Sue has his character Cecily take the law into her own hands, creating a symbolic order: *men and law v.*

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<sup>109</sup> Foucault, p. 271-272.

woman and poisoned stylus. Now, the man and woman are equal, because the corrupt law is equal to a poisoned weapon/ancient writing instrument according to Sue.

Moving forward in the nineteenth century, Zola tells a more brutal story: that of Louissette's in the 1889 novel *La Bête Humaine*.<sup>110</sup> The readers first learn the story as Zola introduces the victim's mother:

*...sa fille, Louissette, la cadette, placée comme femme de chambre chez Madame Bonnehon, à Doinville, s'était sauvée un soir, affolée, meurtrie, pour aller mourir chez son bon ami Cabuche, dans la maison que celui-ci habitait en pleine forêt. Des histoires avaient couru, qui accusait de violence le président Grandmorin; mais on n'osait pas les répéter tout haut. La mère elle-même, bien que sachant à quoi s'en tenir, n'aimait revenir sur ce sujet...*<sup>111</sup>

This presentation supports the victim's story in two ways. Not only does Zola use an omniscient narrator whom the reader trusts to recount the event, but he places this information into the mother's thoughts. Zola manages to underline the truth in this first version of the story while evoking sympathy from the readers through a mother figure. Zola writes Louissette into the novel as a ghost, and as she is already dead, her story can be nothing more than whispers and

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<sup>110</sup> Louissette's story serves to underline to brutality of a public official named Grandmorin. One of his victims, Séverine, has grown up and married a man named Roubaud, who finds out his wife is "damaged goods". Roubaud beats his wife, and the two decide to kill Grandmorin. Louissette's family is from the town of Doinville, where the Grandmorin estate is found. Louissette is raped and runs away from her rapist, Grandmorin, and seeks her friend Cabuche, who tries to help her, but is too late. She worked in Grandmorin's house in a powerless position, and he took advantage of her lack of power. Grandmorin's sister sides with him against Louissette's rape and murder, but readers see the effect of the hinted-at crime through the victim's family and town gossip. This story could have been used as evidence against the now dead Grandmorin by investigators, but since the victim Louissette perished, she cannot testify to his attack.

<sup>111</sup> Zola, Emile, *La Bête Humaine*, Paris : Editions Gallimard, 2001. p.73“ ...her daughter, Louissette, the baby, working as chambermaid in Madame Bonnehon's home in Doinville, ran away one evening, crazed and bloody, to die at her best friend Cabuche's home, who lived in a house in the middle of the forest. Scandal went around, accusing president Grandmorin of savagery but noone dared repeat them out loud. The mother herself, knowing what took place, did not like to return to this subject.”

gossip. She is the mute victim of the Penal Code: a character who reflects the absence of a definition for rape.

In “On Writing the History of Rape” Edward Shorter compares politics to rape: This is politics: tearing valuable resources away from your adversary in the struggle for dominance. But rape is political in the domain of sexual as well as class politics. Raping a woman humiliates her. Gaining her acquiescence convinces both her and the rapist that she is inferior, that the male deserves to dominate. Both kinds of conflicts make women’s bodies into pawns.<sup>112</sup>

Shorter’s view of politics reflects Zola’s representation in *La Bête Humaine*. After the middle of the nineteenth century, there is tension between the Republicans and the French Worker’s Party (the socialists). Grandmorin is a “*président*” who takes advantage of his party’s dominant position over the Worker’s Party, and destroys those without power- mostly young women who are part of his family’s household. In this way Zola reveals Grandmorin’s attempt to dominate the working class. Zola uses the bodies of Louissette and Séverine as pawns in this act of political dominance, which I will further discuss below.

Zola knows that women raped by prominent figures have no voice and worse, if the attack is so brutal to cause death, then the matter disappears. He uses Louissette to represent this injustice, symbolizing the rape victim in the law: undefined and consequently pushed out of the story line, marginalized and dehumanized. Zola also mirrors reality through the powerful Grandmorin, to show that when political power is threatened, the laws of justice are quickly veiled to protect those in power. He compares the character Grandmorin to the saying “long arm of the law” with a description of him as “*un homme qui a le bras long.*”<sup>113</sup>

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<sup>112</sup> Shorter, Edward, “On Writing the History of Rape,” *Signs*, Vol. 3, No. 2 (Winter, 1977), p.472

<sup>113</sup> Zola, p. 37

In addition, Zola uses Grandmorin's sister's version of Louissette's situation to further convey the dominance of high position over protection of the working class.

*...le bruit de la mort de Louissette courait, avec des détails sur un viol, tenté par mon frère, dans des circonstances si monstrueuses, que l'enfant, affolée, était allée chez Cabuche, disait-on, mourir d'une fièvre cérébrale... Mon Dieu ! je ne dis point que mon frère n'ait pas voulu plaisanter avec elle. Il aimait la jeunesse, il était très gai, sous son apparence rigide. Enfin, mettons qu'il l'ait embrassée... Il l'a embrassée, chatouillée peut-être. Il n'y a pas de crime là-dedans...*<sup>114</sup>

In fact, Madame Bonnehon is wrong. It is a crime to abuse power and molest employees, and the author has used this fact to discredit her testimony.<sup>115</sup> *La Bête Humaine*, published some 50 years after *Les Mystères de Paris* and *Nôtre Dame de Paris*, reflects intervening changes in the legal code. The law of May 13 1863 modified the text in Article 331 to make the jurisprudence on rape more efficient:

1. *Elle a élevé de onze à treize ans l'âge de l'enfant protégé contre l'attentat à la pudeur sans violence.*
2. *Elle a incriminé cet attentat lorsqu'il est commis par un ascendant sur la personne de son descendant mineur de vingt et un ans et non émancipé par le mariage.*<sup>116</sup>

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<sup>114</sup> Zola, p.149 ...rumors circulated about Louissette's death, detailing a rape attempted by my brother in such monstrous circumstances, that the child, crazed, went to Cabuche's home, they say, to die of brain fever... My God! I am not saying that my brother didn't want to play with her. He liked youth, he was very gay, despite his stiff appearance. Well, say that he kissed her... He kissed her, maybe tickled her. There is no crime in that...

<sup>115</sup> Moreover, I suggest though this law exists, if a worker brought his or her employer to court, his or her livelihood would be destroyed. Households prefer a servant or maid who can keep their "dirty laundry" a secret, and not a servant who would threaten their way of life by bringing them to court.

<sup>116</sup> Garçon, CPA, p.848 "1. It raised the age from 11 to 13 years of age of the protected child against the indecent assault without violence. 2. It incriminated this assault when committed by an ascendant of the victim on the person of his descendant, a minor of 21 years of age and not emancipated by marriage."

The law acknowledges the need to protect twelve and thirteen year olds from indecent assault without violence, and broadens its protection to twenty-one year olds in the case of abuses of power. These changes protect more children and young single women against indecent assault without violence, but still do not fully grasp nor define rape and individual rape cases. Progress is slow, and Zola's message through his 1890 novel declares the current rape law unacceptable.

Louisette was fourteen when she was brutally attacked and murdered by her boss, the character Grandmorin. Zola shows the suspicion surrounding this character in his hometown. The working-class townspeople suspect he committed two crimes: rape and murder. But had Louisette not died, and had she been one year younger, Grandmorin would still be guilty of the crime of rape. Zola sweeps her tragic story under the currents of Grandmorin's political power, uncovering and mirroring the strength of politics versus justice in nineteenth-century France. Zola continues the novel with another Grandmorin victim, Séverine. Known as Grandmorin's adopted daughter, this character endured his sexual abuse for years. Representing justice for what Grandmorin did to her and justice for what Grandmorin did to Louisette, Zola has her murder this sexual predator.

Similar to Quasimodo for Esmeralda, and Cecily for Louise, Séverine is a stand-in for justice for the character Louisette. This time, the stand-in is not so much on the margins of society as Hugo and Sue's characters are. This character is a French woman, and raped like Cecily, she can sympathize with the victim. Unlike Hugo and Sue, Zola is not subtle with his justice, graphically describing Grandmorin's murder.<sup>117</sup> Afterwards, Zola turns this character into a cadaver, a "ça," when Jacques discovers the lifeless body, "...*le besoin de voir ça, la soif*

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<sup>117</sup> See Chapter 3 of this thesis

*inextinguible de se rassasier les yeux de cette loque humaine...*<sup>118</sup> In this way, Zola has made Grandmorin nothing more than a thing, echoing his effects on his victim Louissette who becomes nothing more than a rumor after he has allegedly killed her.

A final note on Zola's rape message: neither of Zola's rape victims speaks of her own rape. Though Séverine is alive to talk about her sexual relationship with Grandmorin, and though her husband beats some of the story out of her, never does she describe the acts nor define them as rape. Patricia Cholakian addresses the silent rape victim character: "To speak of rape is to stand accused of having wished for it. Silence is therefore essential..."<sup>119</sup> Zola chooses to portray the characters Louissette and Séverine as victims, and as a result, he must navigate around the victims' silence, placing the descriptions and suspicions on others' thoughts and speech, at times using the narrator's voice. The reader is forced to rely on rumors and thoughts in order to follow Zola's novel because the rape victims are silent and undefined, results of the Penal Code's undefined crime of rape. I suggest that, in order to enact retribution against the rapist, Zola places the rape victims' inability to speak onto Grandmorin by dismissing his body as a "that."

It is no accident that Hugo, Sue and Zola's novels contain political commentary about the legal system. How these skillful authors create events, crimes, heroes, heroines, villains, and victims reveal their messages to readers. Rape is arguably the most intimate violation. As such, it becomes an ideal vehicle used by these authors to convey the danger and vulnerability that an inefficient legal system inflicts upon its people. The rape in these novels is usually a crime against a woman's body and will, and sometimes justice is poorly rendered through the existing system of laws, and sometimes the victim is unavenged. Foucault believed that the body-punishment relation changed in the nineteenth century:

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<sup>118</sup> Zola, p. 94. "that" "...the need to see that, the inextinguishable thirst to fill his eyes with this human wreck.."

<sup>119</sup> Cholakian, Patricia Francis, *Rape and Writing in the Heptaméron of Marguerite De Navarre*, Carbondale: Southern Illinois University Press, 1991.

The body now serves as an instrument or intermediary: if one intervenes upon it to imprison it, or to make it work, it is in order to deprive the individual of a liberty that is regarded both as a right and as a property<sup>120</sup>

These authors permeate their novels with struggles between the dehumanizing concept of women's bodies as pawns, and the humanizing concept of the woman's will and desire. Each author paints his own portrait of the female body and will through his words and stories of rape and attempted rape. Interestingly, the authors avoid the double bind of French vocabulary which hints at the responsibility of the victim, such as "*je me suis fait violée, attaquée, aggressee...*" Because French words for rape and the act of rape point to the victim as the responsible party ("I made myself raped/ abused"), these authors avoid those words in their narratives and in their messages. Instead, they describe the events, facts and actions concerning and surrounding the violation, and in some cases, in Zola for example, third-person accounts tell the story. In this way, the victims are portrayed as victims and the author controls the responsibility for the rape, attack or aggression, as in the case of Hugo's Frolo who unsuccessfully attempts to become the subject in order to violate Esmeralda.

This team of authors succeeded in slowly improving the Penal Code on rape in France, thanks to their frightening storytelling and skillful pens.<sup>121</sup> Hugo shows the injustice of rape by demonstrating that even someone considered as a half-human instinctively knew the right thing to do. He used the characters Esmeralda and Quasimodo to show the deafness and futility of the law. The knife Hugo gives Quasimodo is used to thwart the rape of a powerless woman. In particular, Esmeralda's character was used to show that victims of rape or attempted rape have no voice, especially if they appear to be from a lower class like the gypsies and find themselves

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<sup>120</sup> Foucault, p. 17

<sup>121</sup> The French Penal Code now defines rape in Penal Code Articles 222-223.

attacked by a member of the upper class; and to force the readership to confront their uneasy position witnessing eroticism which carries no consent or pleasure. Hugo represents both the inhumane bigotry of the rape law through its absence, and also the long-reaching, suffocating, rigid power of the state through Esmeralda's body. He also maintains through Esmeralda that she has the choice to be a victim, even if she is dehumanized by the upper class.

Sue shows that the threat of rape is still real even though incidents of violence against women have declined in the nineteenth century. He underlines the failure and absence of the law in both stories. Breaking into the ladies' intimate space symbolizes the continuing dominance of man over woman in nineteenth-century Paris. Robin even says, "...*je veux entrer, j'entrerais...*"<sup>122</sup> Sue represents Cecily's story where the threat of rape is present, but is thwarted by a phallic symbol: a stylus dipped in poison - a "poison pen." Sue's message here is that the law is as corrupt and lethal as a knife dipped in poison. Unlike Hugo, Sue has this knife controlled by a woman.

Zola contrasts with Hugo and Sue in his portrayal of the brutality of rape. Zola uses the power of the omniscient narrator to support his victim's believability, and then humanizes her through her family. Grandmorin's brutal, murderous rape is even more shocking when Zola presents the victim Louissette's character: sweet, kind, childlike and pure. The author is then able to construct a vivid, effective message to his audience about the injustices suffered by the innocent in the name of politics. Zola's use of a knife is not to thwart the threat of rape like Hugo and Sue. He uses the knife for justice against Grandmorin for Louissette. He puts the knife in the hands of another of Grandmorin's victims with her husband and together they serve justice for Louissette's alleged brutalization and murder.

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<sup>122</sup>Sue, LMP, p. 766 "I want to enter, I will enter."

Though rape law was modified two times in the nineteenth century, it still could not adjudicate the government's or society's perversion of justice. While outside the scope of this chapter, researching the readership and response to these authors' controversial messages would add an interesting perspective to this study, as it would reveal the success, or failure of these authors' messages. Hugo, Sue and Zola revealed the reality of abuse, brutality, and even apathy toward rape through their novels spanning from 1833-1890. Each author portrays the consequences of inadequate rape law and puts a face on its victims. Undoubtedly and hopefully, this same society is influenced by the popular authors' messages.

### CHAPTER 3. DISEMBODIMENT/MURDER

-Tu ne sortiras pas d'ici, mon intérêt veut que tu restes...  
-Tu m'empêches d'aller retrouver Cecily, mon intérêt veut que tu meures...  
Polidori poussa un cri...  
-Scélérat! tu m'as frappé au bras...  
-Ta blessure est mortelle...c'est le stylet empoisonné de Cecily qui t'a frappé; je le portais toujours sur moi; attends l'effet du poison...<sup>123</sup>  
Eugène Sue, *Les Mystères de Paris*

As discussed in my first chapter, a loose French translation of the Roman law against theft renders its equivalent Penal Code article ambiguous. In the chapter on rape, we see that the Penal Code does not define the crime of rape or address rape threats. Contrary to the treatment rape receives, French law employs a precision and fastidiousness as regards the crime of murder, listing five types of voluntary homicide. For example, law makers distinguish between assassination, murder, patricide, infanticide, and poisoning. Beginning with Article 295, any element tied to the crime of murder is carefully defined.<sup>124</sup> Punishments for murder are not addressed until Article 302, and Articles 305 to 308 are dedicated to murder threats. This need to classify is rampant in the nineteenth century thanks in part to Karl Linnaeus and Geoffroy St Hilaire, who invented classification for plants and animals. Quite scientifically, nineteenth century legislators classify crime along lines similar to those of zoological classification.

Let's look at the 1837 Penal Code :

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<sup>123</sup> Sue, Eugene, *Les Mystères de Paris*, Paris: Robert Laffont, 1989, p. 1129 ““You will not leave ; my well-being needs you to stay...’ ‘You stop me from going to find Cecily ; my well-being needs you to die...’ Polidori screamed... ‘Villain! you struck me in the arm...’ ‘Your wound is mortal...it is Cecily’s poisoned dagger that struck you. I always carry it on me. Wait for the poison to take effect...’”

<sup>124</sup> Pailliet, J.B.J., *Manuel de Droit Français*, Deuxième Partie, Paris: Imprimerie le Normant, 1837. p. 1415 Article 295. Willful homicide is murder. Article 296. Every murder committed with premeditation or by lying in wait is an assassination. Article 297. Premeditation consists of an aforesaid decision to make a homicidal attack on a certain person or anyone encountered, regardless of any circumstances or conditions on which the act may be dependent. Article 298. Lying in wait consists of waiting for whatever length of time in one or several places for a person either to kill, or to inflict violence upon him. Article 299. The murder of a father or mother, either legitimate, natural or by adoption, or any other legitimate ancestor, is parricide. Article 300. The murder or assassination of a newly born child is an infanticide. Article 301. Any attempt against the life of a person by substances capable of causing death more or less quickly, however the substances are applied or administered, and whatever their effect, is poisoning.

*Article 302. Tout coupable d'assassinat, de parricide et d'empoisonnement sera puni de mort, sans préjudice de la disposition particulière contenue en l'art. 13 relativement au parricide.*<sup>125</sup>

Article 302. Any person guilty of assassination, patricide or poisoning, shall be punished by death, without prejudice according to the specific measure contained in Article 13 relative to patricide.

For such a crime, the Penal Code is willing to dissect and define as much as possible.

In order for the crime to be considered murder, three elements must be met. E. Garçon enumerates the elements of murder :

*2. Les éléments constitutifs du meurtre sont, croyons-nous, au nombre de trois. Il faut : 1. un acte matériel de nature à donner la mort, 2. la personnalité humaine de la victime, 3. l'intention, chez l'auteur de cet acte matériel, de donner la mort.*  
*26 dec 1857*<sup>126</sup>

2. The constitutional elements of murder are, according to us, three in number.

The following are necessary: 1. a material act intended to cause death, 2. the human character of the victim, 3. The intent of the author of this material act to cause death.

The victim's humanity, the murderer's intent to kill his or her victim and the act of killing make up a crime. However, half a century later, the *Droit Pénal* of 1886 expresses concern over these elements:

*Ces circonstances sont-elles uniquement des circonstances aggravantes du crime de meurtre, ou bien sont-elles des circonstances constitutives d'autant de crimes*

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<sup>125</sup> Pailliet, J.B.J., *Manuel de Droit Français*, Deuxième Partie, Paris: Imprimerie le Normant, 1837. p. 1415

<sup>126</sup> Garçon, E., *Code Pénal Annotée*, Paris: Hemmerlé, Petit, 1901-1906. p. 669

*distincts, dans lesquels celui de meurtre viendrait se transformer et s'absorber?*

*C'est ce qu'il s'agit de décider.*<sup>127</sup>

The Penal Code, by separating each element in the crime of murder, transforms those elements into crimes separate from murder. These three factors could also be applied to both theft and rape, so, in essence, it is the courts that must decide how to interpret and apply these elements of murder. With these legal definitions and categorizations in mind, we must address why the law's focus is particularly methodical with regards to this crime as opposed to theft and rape. To answer this question, we will now examine why murder is considered wrong. Philip Devine philosophizes murder:

The prohibition against homicide rests, first, on the fact that the continued existence of an organism is a good for that organism; and second, upon those considerations which lead us to regard the interests of some organisms (roughly speaking, those of our own species) as of compelling moral importance.<sup>128</sup>

It is considered good to sustain individual life, and murder destroys this good. Devine emphasizes individuality here: "If my individuality is a value, it is a value which only *I* can make real. And to make it real, I must continue to live."<sup>129</sup> Murder is taking someone's individuality, stealing property of great value: a person's body and the life it contains. In a broader sense, to take life from a member of humankind is also a moral transgression against humanity. So, in this way, murder and human society are linked. Dwayne Smith and Margaret Zahn summarize homicide with structural sociology: "...theory and research...link homicide and other crime to

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<sup>127</sup> Ortolan, J., *Éléments du Droit Pénal*, Cinquième Édition, Paris: Librairie Plon, 1886. p. 484 Are these circumstances only aggravated circumstances of murder crime, or are they constitutional circumstances of many distinct crimes, in which murder merely transformed and absorbed? This is what must be decided.

<sup>128</sup> Devine, Philip E., "Homicide Revisited" *Philosophy*, Vol. 55, No. 213 (Jul., 1980), Cambridge University Press on behalf of Royal Institute of Philosophy, p. 333

<sup>129</sup> Devine, p. 335

the erosion of *social control*...explanations...attribute homicide to increase in *social strain*.”<sup>130</sup> Industrialization, the constant changes in 19<sup>th</sup>-century French government and economic hardship challenge social control and strain society. Authors Victor Hugo in *Notre Dame de Paris* (1832), Eugène Sue in *Les Mystères de Paris* (1843), and Emile Zola in *La Bête Humaine* (1889) use this stress and strain on society as a setting for murder in their novels.

More specifically, Hugo’s, Sue’s and Zola’s works show distinct overlaps with elements of the legal system in their treatment of murder cases, in three separate ways. Hugo, as a writer who inscribes performances of legal systems and their effects on both criminals and authors, sets up an unobvious commentary on the laws pertaining to murder. Sue comments on several interpretations of the murder articles, and questions the punishments of the Penal Code and its system of justice. Zola uses his novel to comment on one of the elements of murder in the Penal Code, premeditation, and to show that legislators and political figures stand in the way of justice.

Hugo writes a significant murder in *Notre-Dame de Paris* (1831), and this section of my chapter will focus on the victim - the character Frollo - and his murderer - Quasimodo. Throughout the novel, Hugo shows Frollo using the legal system to cover his crimes. Frollo’s first criminal attempt is to kidnap the object of his lust, Esmeralda. He orders Quasimodo to execute this crime, and he fails to take her. Next, Hugo gives Frollo the power to manipulate Esmeralda in a stabbing scene, when Frollo stabs Phoebus with Esmeralda’s own dagger. It is a scene of disembodiment as soon as Esmeralda spots Frollo, “*Tout à coup, au-dessus de la tête de Phoebus, elle vit une autre tête...Près de cette figure il y avait une main qui tenait un poignard.*”<sup>131</sup> Esmeralda does not see a complete person, but only “another head” and “a hand holding a dagger.” Next, Hugo silences her : “*Elle ne put même pousser un cri. Elle vit le*

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<sup>130</sup> Smith, M. Dwayne and Margaret A. Zahn, *Homicide: A sourcebook of Social Research*, SAGE, 1998. p. 28

<sup>131</sup> Hugo, Victor, *Notre Dame de Paris*, France: Editions Gallimard, 2002, p. 386 “Suddenly, above Phoebus’ head, she saw another head... Near this face there was a hand holding a dagger.”

*poignard s'abaisser sur Phoebus et se relever fumant.*"<sup>132</sup> Hugo not only takes away her ability to speak, he takes away her ability to utter any sound at all, and ironically, assigns the action in the scene to the dagger, and not to Frollo. Esmeralda has no volition of her own, she becomes a "*pauvre enfant.*"<sup>133</sup> Frollo's action, or more specifically, his dagger, marginalizes Esmeralda, "*La jeune fille resta immobile, glacée, muette sous l'épouvantable apparition, comme une colombe...*"<sup>134</sup> This is Frollo's attempt to become the subject, to take over the narrative through marginalizing Esmeralda, and like each of his criminal attempts in this novel, he is ultimately unsuccessful. The dagger is the active element, not Frollo, and moreover, Frollo fails to kill Phoebus. Hugo concludes the scene of disembodiment by separating the dagger from the man controlling it, demonstrating Frollo's failure to become the subject.

From then on, the reader watches as Frollo uses the court and its injustice to victimize the innocent Esmeralda because he knows well that she - being gypsy, woman, and poor - is automatically outside of the paradigm of power, and must pay for his crime. The message Hugo sends at the moment Esmeralda's dagger is stolen by her aggressor shows that her protection, now in the hands of a character more powerful than she, has turned on her. In other words, when the law is in the hands of the powerful, it may easily and quickly turn from a system of protection to become a weapon against those it should protect, the most vulnerable of society. Hugo has Esmeralda undergo trial, torture, forced confession and finally a death sentence for the crime Frollo commits. According to Foucault,

If torture was so strongly embedded in legal practice, it was because it revealed truth and showed the operation of power. It assured the articulation of the written on the oral, the secret on the public, the procedure of investigation on the

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<sup>132</sup> Hugo, NDP, p. 387 "She could not even utter a cry. She saw the dagger fall on Phoebus and rise up, piping hot."

<sup>133</sup> Hugo, NDP, p. 383 "a poor child"

<sup>134</sup> Hugo, NDP, p. 387 "the girl was immobile, frozen, mute under the appalling apparition, like a dove..."

operation of the confession; it made it possible to reproduce the crime on the visible body of the criminal; in the same horror, the crime had to be manifested and annulled.<sup>135</sup>

Torture is less about the body than the will. When the legal system applies its power on the individual during the investigation, the objective is for the individual to confess, to admit the “truth.” However, Hugo’s novel reveals the failings of torture. He shows that the law will harm an innocent subject to force her to make a false confession: admitting to practicing sorcery and killing Phoebus. It is not the truth the court wants, but her admission of guilt. In this scene, the court is torturing Esmeralda because she does not confess to killing Phoebus:

*Perrat tourna la poignée du cric, le brodequin se resserra, et la malheureuse poussa un de ces horribles cris qui n’ont d’orthographe dans aucune langue humaine.*

*...Avouez-vous ? dit-il à l’égyptienne.*

*- Tout! Cria la misérable fille. J’avoue! j’avoue! grâce!*

*Elle n’avait pas calculé ses forces en affrontant la question. Pauvre enfant dont la vie jusqu’alors avait été si joyeuse, si suave, si douce, la première douleur l’avait vaincue.*

*- L’humanité m’oblige à vous dire, observa le procureur du roi, qu’en avouant c’est la mort que vous devez attendre.*<sup>136</sup>

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<sup>135</sup> Foucault, Michel, *Discipline and Punish*, New York: Pantheon books, 1977. p. 55.

<sup>136</sup> Hugo, NDP, p. 404 “Perrat turned the handle to the screw, the boot tightened, and the poor girl cried one of the horrible cries that have no spelling in any human language. ‘...Do you confess?’ he said to the Egyptian. ‘To everything!’ cried the poor girl. ‘I confess! I confess! mercy!’ she did not calculate her strength to brave this question. Poor child in whom life till now had been so joyous, so sweet, so gentle, the first hurt defeated her. ‘My humanity obliges me to tell you,’ observed the king’s prosecutor, ‘that by confessing you must expect death.’”

Once Esmeralda's will is bent through torture, and she confesses to their version of the story, Hugo shows the law hiding behind its "humanity" even when applying the death penalty to an innocent girl.

The reader must ask three things (1) why is she being punished for murdering a man who is not dead, (2) how can the law sentence her to death without hearing her story and (3) how can the Priest use the law as a weapon so efficiently? First, she did not voluntarily commit the act of murder; Hugo gives her no memory of the scene. Second, the death penalty is too harsh a punishment for so little evidence and lack of corpse. Hugo shows that her lawyer even reads straight from the law after her confession. Salic law<sup>137</sup> renders her penalty only "*huit mille deniers, qui font deux cents sous d'or.*"<sup>138</sup> Hugo uncovers the true inhumanity of the courts during the sentencing scene. Because it's nearly evening, the court rushes to decide, and they decide to go against this law and give her the death penalty, dismissing Esmeralda's life as an encumbrance to their supper. Lastly, the law's bias against foreigners, women and the lower class leave justice open to abuse. Frollo now has his Esmeralda where he wants her: voiceless, helpless, dependant on him for life. Here, Hugo reiterates the profound conflict within Frollo (as we have discussed in chapter two).

According to Penal Code Article 295, the courts rule that a murderer may not be excused on the pretext that he committed the said act of murder under persuasion of spells or sorcery from the person he killed. This question cannot even be proposed to the jury.<sup>139</sup> I suggest this interpretation shows that in the 1830's, Frollo is truly guilty and that this law is still lacking.

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<sup>137</sup> On Salic Law, in latin *Practus Legis Salicae*, see Drew, Katherine Fischer, *The Laws of the Salian Franks*, translated by Katherine Fischer Drew, Philadelphia: University of Pennsylvania Press, 1991. p. 30: "*Practus Legis Salicae* (the Frankish code) is not a well-organized code, nor is it very comprehensive. Much of its content is devoted to establishing monetary or other penalties for various damaging acts or to setting up rules of legal procedure." Salic law was issued in the years 507-511, but was not written down until the 7<sup>th</sup> century.

<sup>138</sup> Hugo, NDP, p. 408 "eight thousand denars, which makes 200 gold sous "

<sup>139</sup> Pailliet, J.B.J., *Manuel de Droit Français*, Deuxième Partie, Paris: Imprimerie le Normant, 1837. p. 1415

Hugo compares 19<sup>th</sup> century law to 15<sup>th</sup> century law in his novel to shock the reader and to show the slow progress of justice. Hugo questions how the law addresses sorcery and spells through Esmeralda, who is accused of murder and condemned to death mainly because the courts believe she practices witchcraft, not because of facts. Remember, Hugo has the courts give her the death penalty because of the following crimes: “*de sorcellerie, de magie, de luxure et de meurtre sur la personne du sieur Phoebus de Chateaupers*”<sup>140</sup> to show how gypsies are unfairly stereotyped. This accusation strangely omits the need for a corpse because it means Esmeralda is charged with “murder on the person of...” and not with “murder of the person...” (*meurtre sur la personne* and not *meurtre de la personne*). He also creates a tension in the reader’s mind by allowing his audience to know more than the characters in the narrative. Esmeralda practices no sorcery at all, but Frollo actually practices alchemy (which Hugo represents as true magic/sorcery) in the church building, and Phoebus is still alive and cares nothing for Esmeralda’s life. Having created this friction in the reader, Hugo launches a struggle between a character who wants to harm Esmeralda (Frollo) and a character who wants to help her (Quasimodo). Hugo’s daring message is that the Penal Code’s very weakness is a weapon used against its own people. An amendment to Article 304 quickly follows *Notre-Dame de Paris*’s publication, having erased the stipulations on the murder weapon.

In this deficient legal system, justice is served elsewhere. Hugo uses his novel to punish Frollo and plot his death in the chapter titled *Ceci tuera cela/This will kill that*.<sup>141</sup> Hugo philosophizes that books will eventually kill the *édifice*, the building/structure, which is an unmistakable foreshadowing that *this very* book actually plots the murder of this Notre-Dame de Paris priest, who clearly is part of the church structure. As Hugo corrupts the priest more and

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<sup>140</sup>Hugo, NDP. p. 409 “of witchcraft, magic, hedonism and murder on Sir Phoebus de Chateaupers’ person”

<sup>141</sup>Hugo, NDP, p. 237

more, the church as a building revolts, turning on its own priest, becoming the murderer in the novel. The one character who has “*une sorte d’harmonie mystérieuse et préexistante entre cette créature et cet édifice,*”<sup>142</sup> is also the adopted son of Frollo. Quasimodo works as the bell ringer of Notre-Dame de Paris, and Hugo chooses him to represent the church, and kill Frollo.<sup>143</sup> He describes Frollo’s murderer, Quasimodo, in these two terms : “*le moyen âge l’en croyait le démon, il en était l’âme.*”<sup>144</sup> The duality of the sacred role of the priest and his true corruption and the demonic perception of the hunchback and his good soul become inverted. Quasimodo renders justice to Frollo for his misdeeds. Hugo begins the murder scene during Esmeralda’s execution:

*Au moment où c’était le plus effroyable, un rire de démon, un rire qu’on ne peut avoir que lorsqu’on n’est plus homme, éclata sur le visage livide du prêtre. Quasimodo n’entendait pas ce rire, mais il le vit. Le sonneur recula de quelques pas derrière l’archidiacre, et tout à coup, se ruant sur lui avec fureur, de ses deux grosses mains il le poussa par le dos dans l’abîme sur lequel dom Claude était penché.*<sup>145</sup>

Hugo shows that Frollo is already leaning towards the metaphorical abyss of corruption, when Quasimodo pushes him into a literal/spatial abyss from the heights of the cathedral. Frollo does not fall to his death immediately so that Hugo can effectively prove the church guilty of murder. While he hangs on for his life, he loses his ability to speak, and with it, his power as

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<sup>142</sup> Hugo, NDP, p. 204 “a sort of mysterious preexisting harmony between this creature and this building”

<sup>143</sup> Hugo, NDP, p. 205 “*C’est ainsi que peu à peu, se développant toujours dans le sens de la cathédrale, y vivant, y dormant, n’en sortant presque jamais, en subissant à tout heure la pression mystérieuse, il arriva à lui ressembler, à s’y incruster, pour ainsi dire, à en faire partie intégrante... On pourrait Presque dire qu’il en avait pris la forme, comme le colimaçon prend la forme de sa coquille.*”

<sup>144</sup> Hugo, NDP, p. 212 “the middle ages believed him to be its demon, he was its soul”

<sup>145</sup> Hugo, NDP, p. 625 “At the most dreadful moment, a demon’s laugh, a laugh one cannot have unless he is no longer a man, broke out on the Priest’s livid face. Quasimodo did not hear this laugh, but he saw it. The bell ringer stepped a few feet behind the archdeacon and suddenly, rushing him with fury, with his huge hands he pushed him into the abyss where dom Claude was already leaning.”

subject. “*Dans cette situation terrible, l’archidiacre ne dit pas une parole, ne poussa pas un gémissement.*”<sup>146</sup> This is a reversal of what he does to Esmeralda. Quasimodo in turn, does not speak: “*il était immobile et muet comme un homme foudroyé.*”<sup>147</sup> He is silent like Esmeralda was and like a building is, and struck because he, the church’s spirit, is murdering his master, the head structure of the church. While Frolo fights to live, he notices he is at the building’s mercy, “*Il regardait l’une après l’autre les impassibles sculptures de la tour, comme lui suspendues sur le précipice, mais sans terreur pour elles ni pitié pour lui.*”<sup>148</sup> Finally, the church gives under him, and he falls onto the roof of a house, “*Il glissa rapidement sur le toit comme une tuile qui se détache, et alla rebondir sur le pavé. Là, il ne remua plus.*”<sup>149</sup> The building’s very soul kills its priest, at last rendering justice for Frolo’s corruption while also fulfilling Hugo’s prophecy/foreshadowing that *Le livre va tuer l’edifice*.

Similar to Hugo, Eugène Sue writes obsession into his murder narrative. In the 1,400 pages of his 1843 *Les Mystères de Paris*, Sue has ample space to recount numerous murders, but I will discuss only two here. Sue links both of these deaths to the character Cecily. Evidently her revenge is far-reaching because not only does Ferrand slowly die from his encounter with her, but so does his criminal accomplice, the evil doctor Polidori.<sup>150</sup> I will show why Sue links Cecily to these two deaths in this way and how he uses these stories to comment on the Penal Code murder articles.

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<sup>146</sup> Hugo, NDP, p. 624 “In this terrible situation, the archdeacon did not say a word, did not moan”

<sup>147</sup> Hugo, NDP, p. 625 “he was immobile and mute like a devastated man”

<sup>148</sup> Hugo, NDP, p. 626 “He looked at the stone-faced tower sculptures one after the other, suspended on the precipice like him, but without terror for themselves nor pity for him”

<sup>149</sup> Hugo, NDP, p. 627 “He slid quickly onto the roof like a detached tile, and went bouncing onto the cobblestone. There, he stopped moving.”

<sup>150</sup> Polidori, a power-hungry character, steps on many characters in this novel, and Roldolphe is one of the first victims. Polidori will do anything for power or money. He offers false medical advice, poison medications, performs abortions, commits murder, and acts as an accomplice in many evil plots. He works closely with the notary Ferrand and together the two execute their evil schemes.

Cecily manages to escape with Ferrand's little book of secrets, and hands it over to Sue's ideal of justice, the prince Roldolphe. Sue does not stop her vengeance on Ferrand with her absence, however. Ferrand slowly dies of his obsession for her because he cannot overpower her and rape her. Polidori is not surprised by his fever at first because: "...chez Jacques Ferrand la rage de se voir dépossédé de sa fortune, jointe à sa passion ou plutôt à sa frénésie pour Cecily, avait allumé chez ce misérable une fièvre dévorante."<sup>151</sup> Cecily appropriates his power, thereby creating a vacuum of power around him. Sue demonstrates this vacuum of power around this malicious notary through one of his accomplices in crime, Polidori, who is living off Ferrand's disintegrating life because of the punishment rendered by Roldolphe. Why does Sue put a doctor in his text? Lisa Downing writes on Polidori's profession: "...doctors in this period [aspire] to be 'the guardian of morality as well as of public health'"<sup>152</sup> but if this "guardian" is corrupt, then public health and morality are unprotected against the disease of crime. Downing continues, "Crime thus [becomes] a social symptom, the crime-ridden state, a sick body."<sup>153</sup> Sue uses this corrupt guardian of morality, and places Polidori in Ferrand's vacuum of power. In order to save his life from Roldolphe, Polidori tries to pull Ferrand away from his obsessive delirium, away from the object of his fever, Cecily:

*-Tu ne sortiras pas d'ici, mon intérêt veut que tu restes...*

*-Tu m'empêches d'aller retrouver Cecily, mon intérêt veut que tu meures...*

*Polidori poussa un cri...*

*-Scélérat! tu m'as frappé au bras...*

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<sup>151</sup> Sue, Eugene, *Les Mystères de Paris*, Paris: Robert Laffont, 1989, p. 1103 "...inside Jacques Ferrand the rage to see himself dispossessed of his fortune, linked to his passion or rather obsession for Cecily, had lit an all-consuming fever inside this scoundrel."

<sup>152</sup> Downing, Lisa, "Murder in the Feminine: Marie Lafarge and the Sexualization of the Nineteenth-Century Criminal Woman," *Journal of the History of Sexuality*, Vol. 18, No. 1, January 2009, Austin: University of Texas Press, 2009. p. 122

<sup>153</sup> Downing, p. 123

*-Ta blessure est mortelle...c'est le stylet empoisonné de Cecily qui t'a frappé; je le portais toujours sur moi; attends l'effet du poison...*<sup>154</sup>

Ferrand stabs and kills Polidori, killing the “corrupt guardian of morality and public health” with none other than Cecily’s poisoned dagger, the dagger she herself did not use. Note the disembodiment in this scene. Just as Hugo assigns the action in Frolo’s stabbing scene to the dagger, so Sue has assigned the act of stabbing to the poisoned stylus. John Paget remarks on poisoning in the mid-nineteenth century, “Poisoning (the word crawls from one’s pen like a snake) is the prevailing style; it combines the necessities of the time - neatness, despatch, and economy - with the most egregious and unappreciated wickedness.”<sup>155</sup> Polidori’s corruption ends in this way with Cecily’s poison. Moreover, in chapter two of this thesis, we have seen that Sue transforms Cecily’s character from a tiger to the more wicked snake. She is a poisonous, even venomous character. Downing writes that “...a creative female murderer [is] constructed as the most deviant and monstrous of social subjects by her contemporaries.”<sup>156</sup> Sue uses Cecily’s dagger in this scene to demonstrate the creative and far-reaching effect of her system of power. He wants the reader to know she never used the dagger, and that she didn’t have to use it. Somehow she exacted a greater revenge through appropriating Ferrand’s power, abstaining from using her poisoned dagger and then leaving him in a void of power. When Polidori tells Ferrand that his obsession with Cecily will kill him, Ferrand says, “*Ces pensées sont ma vie! Comme ma*

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<sup>154</sup> Sue, LMP, p. 1129 “‘You will not leave ; my interests are that you stay...’ ‘You stop me from going to find Cecily ; my interests are that you die...’ Polidori screams... ‘Villain! you struck me in the arm...’ ‘Your wound is mortal...it is Cecily’s poisoned dagger that struck you. I always carry it on me. Wait for the poison to take effect...’”

<sup>155</sup> Paget, John, “The Philosophy of Murder,” *Tait’s Edinburgh Magazine*, 22 (O.S.) 8 (N.S.) (1851): 171-176, 1851. p. 172

<sup>156</sup> Downing, p. 122

*vie, elles résistent à mes tortures.*”<sup>157</sup> Cecily has invaded Ferrand’s being and prolongs her revenge on him and his accomplice.

Ferrand and Polidori, accomplices in murder and crime, are in the end accomplices in death. Shortly after killing Polidori, Ferrand’s obsession and fever kill him. His last words are frightening, “*Nuit noire!...noire spectre...squelettes d’airain rougi au feu... m’enlacent... leurs doigts brûlants... ma chair fume... ma moelle se calcine... spectre acharné... non! non... Cecily! le feu... Cecily!*”<sup>158</sup> It appears as though demons take Ferrand’s soul while he calls out to Cecily, a “noire spectre,” an “unremitting ghost” - is she the murderer? She is certainly portrayed as a demonic thing.

Did Ferrand commit murder though he was delirious? Is Cecily indirectly responsible - or did she somehow manage to turn his power back on himself? The problem Sue sees with the court’s interpretation of murder is not ignored by E. Garçon: “*Sans doute, la victime ne serait pas morte si elle n’avait pas été blessée, mais la mort n’est pas cependant la conséquence directe et immédiate des coups qui ont été portés.*”<sup>159</sup> So, if a person injures another, and the person does not immediately die from the blows, then in the 19<sup>th</sup>-century legal system, this act is not considered murder. Similar to how Hugo renders justice to Frolo, Sue serves justice to both Ferrand and Polidori using Cecily as justice. Sue plays with this stipulation and creates a situation where one victim dies directly from an injury, together in a narrative with a character who dies days after he is “bewitched.” The presence of Cecily’s dagger reminds the audience of her mysterious power over men. Sue manages to turn Ferrand’s power back on himself as

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<sup>157</sup> Sue, LMP, p. 1125 “These thoughts are my life! Like my life, they hang on to my torments.”

<sup>158</sup> Sue, LMP, p. 1133 “Black night!...black ghost...bronze skulls reddened by fire...wrap themselves around me...their burning fingers...my flesh smokes...my marrow chars...unremitting ghost...no!no!...Cecily! the fire...Cecily!”

<sup>159</sup> Garçon, CPA p. 669 paragraph 8 “No doubt, the victim would not be dead if he had not been hurt, but death is not however the immediate direct consequence from the strikes given.”

retribution for his past crimes using a force just as monstrous as he. It was such a power that it also turned on Polidori. Downing concludes that “The criminal woman thus [takes] her place alongside the pervert at the end of the nineteenth century in its catalog of deviance,”<sup>160</sup> but I suggest that Sue, in 1840, places Cecily and Ferrand on the same deviant level. Comparing Sue’s justice with the Penal Code, it is clear that Sue’s justice is based on the individual’s capacity for wrong. The Penal Code’s punishments are not tailored to individual cases. For example, what happens when the murderer actually wants death and receives it from the Penal Code? Is the criminal really punished? In Ferrand’s case, the people he destroyed would not be sought out and compensated because the law will only address the crime and apply its punishment. To Sue, there is more at stake than the crime itself, there are the victims of the crime. The Penal Code articles for murder say nothing about compensating the many victims; they address only punishment of the guilty.

Like Hugo and Sue, Emile Zola agrees that the law is flawed. In *La Bête Humaine* of 1889, his message is that those who are supposed to uphold the law and protect the people of France prefer instead to preserve their politics. He chooses the ultimate assault on the body, murder, to express his message. Downing writes that, “Murder, as an extreme act, functions as a surprisingly complex social marker, both exaggerating and mitigating gender and class stereotypes in unexpected ways.”<sup>161</sup> Zola demonstrates class politics through each murder, when each murderer, investigator, and judge allows the poor, honest, ex-convict character Cabuche to take the blame for the crime. Zola also uses this novel to comment on one element of murder in the Penal code he disagrees with, premeditation. Philip Devine explains that: “Since the distinction between action and passivity is more visible than that between intention and mere

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<sup>160</sup> Downing, p. 125

<sup>161</sup> Downing, p. 122

foresight, law and conventional morality find it easier to make their distinction in these terms.”<sup>162</sup>

Intention, foresight, premeditation, already difficult to distinguish, may also be covered in denial and lies, as Zola knows and proves in this novel.

The first murder I will discuss is the murder of the character Grandmorin. Zola shows through this murder that the investigators are not willing to arrest the real culprits because they are bourgeois and linked to the current judicial administration: “...*il ne s’agissait plus d’une domestique et d’un repris de justice, que cet employé, marié à cette jolie femme, allait mettre en cause tout un coin de la bourgeoisie et du monde des chemins de fer.*”<sup>163</sup> In consequence, the investigation faces pressure from the media and people of France to find the killer(s). Zola reveals the true system of justice when the character Camy-Lamotte, a Secretary in the French government, and the character Denizet, a judge, weigh the consequences of two possible trials for Grandmorin’s murder: the first, that of an innocent character, Cabuche, and the second, that of two truly guilty characters, Séverine and Roubaud. Camy-Lamotte makes his decision between the two cases here:

*...décidément, l’affaire des Roubaud, des vrais coupables, était plus sale encore.*

*C’était chose résolue, il l’écartait, absolument. A en retenir une, il aurait penché pour que l’on gardât l’affaire de l’innocent Cabuche.*<sup>164</sup>

The courts need to arrest someone, but they are not looking to arrest the actual guilty parties. Justice is out of the equation. To stress political corruption even more, Zola later places the blame even higher up than Camy-Lamotte. The railroad company wants to fire Roubaud because

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<sup>162</sup> Devine, Philip E., “Homicide Revisited” *Philosophy*, Vol. 55, No. 213 (Jul., 1980), Cambridge University Press on behalf of Royal Institute of Philosophy, p. 336

<sup>163</sup> Zola, Emile, *La Bête Humaine*, Paris : Éditions Gallimard, 2001. p. 181 “it was no longer about a maid and a convict. This employee, married to this pretty woman, would blame a whole corner of the bourgeoisie and the railroad world.”

<sup>164</sup> Zola, LBH, p. 181 “...obviously, the Roubaud case, the true culprits, was even more dirty. It was resolved, he ruled it out absolutely. If he must arrest someone, he will incline towards keeping the innocent Cabuche’s case.”

of the bad press he attracts in regards to Grandmorin's murder, but this decision is complicated by politics: "*La secousse allait meme plus haut, gagnait le Ministère, menaçait l'Etat, dans le malaise politique du moment: heure critique, grand corps social dont la moindre fièvre hâtait la decomposition.*"<sup>165</sup> The railroad company cannot even fire Roubaud because of politics. Zola paints a dismal picture of the legal system when it is overlapped by the political system. Ever more blatant than Hugo and Sue, Zola shows that legal decisions are made in Camy-Lamotte's office by political figures, and not by police and judges in the courts.

The two characters who commit this murder, Séverine and Roubaud, use a veil of lies to cover up their crime. Roubaud, who actually stabs Grandmorin, grows fat as he consumes the victim's money which is hidden in a hole in the floor of their apartment. Zola has this character murder Grandmorin to defend his wife's honor. Though Grandmorin treated Séverine as well as his daughter, he also treated her as his mistress from the time of her adolescence. Anne Parrella explains Roubaud's violent reaction:

When individuals do not find lawful methods, whether cooperative or manipulative, of resolving conflict and achieving personal aims, two actions are possible: withdrawing from the relationship and abandoning the project, or, using violence to control others by killing the opposition.<sup>166</sup>

Roubaud is a brutal character already, and he oversteps the law and politics to resolve his conflict by killing his opposition, Grandmorin, by himself. Zola highlights Roubaud's reasoning : "*Pour que je ne crève pas d'aller encore avec toi, vois-tu, il faut avant ça que je*

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<sup>165</sup> Zola, LBH, p. 192 "The tremor went even higher, reaching the Minister, threatening the State during the political unrest of the moment: a critical hour, a big social body in which the least frenzy hastens decomposition."

<sup>166</sup> Parrella, Anne, "Industrialization and Murder: Northern France, 1815-1904" *Journal of Interdisciplinary History*, Vol. 22, No. 4 (Spring, 1992), pp. 627-654, The MIT Press. p. 634

*crève l'autre... Il faut que je le crève, que je le crève !*"<sup>167</sup> Once Roubaud learns Grandmorin took his wife's virginity, he believes his tainted marriage will kill him, unless he kills the man who knowingly cheated him out of a virgin wife. Zola presents Roubaud's intent as survival and self-defense. Séverine, however, does not want to murder. Her instincts are more passive than Roubaud's at this point, and he must force her to be his accomplice. Roubaud plans to assassinate Grandmorin on a train. The narrator describes the murder scene through Jacques Lantier's perspective, who happens to be in a field near the train tracks, suffering from an intense passion to slit his friend's throat:

*Et Jacques, très distinctement, à ce quart précis de seconde, aperçut, par les glaces flambantes d'un coupe, un homme qui en tenait un autre renversé sur la banquette et qui lui plantait un couteau dans la gorge, tandis qu'une masse noire, peut-être une troisième personne, peut-être un écroulement de bagages, pesait de tout son poids sur les jambes convulsives de l'assassiné.*<sup>168</sup>

Zola, who is more interested in crime as a disease, has Jacques witness this scene for a reason. Somehow he catches enough detail inside the passing train to see the murder, but it is such a strange coincidence that he brushes the vision aside. Once Jacques sees that the murder is real, he is drawn to the corpse, and to its murderers. He begins to explore his lust to kill through Séverine and Roubaud.

After the murder, Séverine uses seduction and charm to hide her and her husband Roubaud's culpability from the secretary-general character Camy-Lamotte. Zola reveals that this character is not fooled, but is willing to let her go free because of her connection to his political

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<sup>167</sup> Zola, LBH, p. 55 "So that I do not die from remaining with you, you see, I must kill the other before that...I must kill him, kill him!"

<sup>168</sup> Zola, LBH, p. 90. "and Jacques, very distinctly, at this precise quarter of a second, saw through, the brand new windows all at once, a man holding another over the bench and planting a knife in his throat, while a black mass, maybe a third person, maybe a pile of baggages, bared all its weight on the convulsive legs of the murdered."

party, but warns that her husband should keep out of politics: “...*passse pour républicain, c’est détestable... N’est-ce pas? Qu’il soit sage, ou nous le supprimerons, simplement.*”<sup>169</sup> Keeping the true killers out of the trial and the papers hides the truth that a republican overstepped his bounds and killed a member of the ruling class, and shows that this ruling class will stop the justice system from working in the name of politics.

Both of Zola’s murderers in this novel are not murdering thieves, but both murders have far-reaching effects on society as we have seen with Roubaud, and as we will see with Jacques Lantier. James Donovan researches juries in 19<sup>th</sup>-century France, and shows a hierarchy of social peril in the juries’ decisions in murder cases: “The murdering thief, like all thieves, threatened a social order based on property, while the man who killed to inherit an estate or the man who killed out of passion, anger or vengeance was apparently viewed as a far lesser social peril by the men of property on the juries.”<sup>170</sup> Though murder is the act of taking, arguably stealing, someone else’s life, juries seem to be numb to this violent crime when compared to property theft. Roubaud only steals Grandmorin’s money to hide his crime of passion under the appearance of a theft-murder. It is this very façade that shakes 19<sup>th</sup>-century society as a consequence of its obsession with property. Zola uses this societal disquiet to lay more pressure on Camy-Lamotte and Denizet.

The second murder I will discuss is Séverine’s. Zola knows that the Penal Code deals more harshly with premeditated murders than impulsive murders. Look at the comment by E. Garçon:

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<sup>169</sup> Zola, LBH, p. 193. “...passing for republican, it’s detestable, right? He should behave or we will simply eliminate him.”

<sup>170</sup> Donovan, James M., “Justice Unblind: The Juries and the Criminal Classes in France, 1825-1914,” *Journal of Social History*, Vol. 15, No. 1 (Autumn, 1981), pp 89-107, Peter N. Stearns, 1981.

*Le législateur a pensé que le malfaiteur, qui prend sa résolution après une délibération mûrie, et qui exécute froidement un projet, dont il a pu combiner les moyens et calculer les suites, est plus coupable que celui qui agit brusquement, obéissant à une impulsion immédiate, et sous l'influence irraisonnée de quelque vive passion.*<sup>171</sup>

In contrast to the French Penal Code, Zola's novel would seem to suggest equal culpability, if not more, between a person who kills impulsively and one who premeditates a crime. Zola hints that Lantier, afflicted by homicidal mania, is more of a danger to society than Roubaud, who kills intentionally but only once. Jacques Lantier, who lusts to slit women's throats, is Zola's challenge to this legal hierarchy of murder. Tante Phasie, who has reared Jacques, remembers his fevers, the "*douleur qui [le] trouait le crâne...et ces accès de tristesse qui [le] faisait [se] cacher comme une bête, au fond d'un trou...*"<sup>172</sup> This character constantly feels the urge to kill women in this way; however, when he believes Séverine is a murderer as well, he is finally sexually attracted to her: "*Il y avait, dans sa fièvre, un mépris de lui-même et de l'admiration pour l'autre...*"<sup>173</sup> Zola shows that this attraction is based only on predatory instincts because when Séverine confesses that she actually did not murder Grandmorin, Lantier slits her throat: "*Il fixait sur Séverine ses yeux fous, il n'avait plus que le besoin de la jeter morte sur son dos, ainsi qu'une proie qu'on arrache aux autres...détruire pour posséder davantage.*"<sup>174</sup> Zola shows Jacques' animal need to destroy and possess, as well as his lack of guilt for killing

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<sup>171</sup> Garçon, E., *Code Pénal Annotée*, Paris: Hemmerlé, Petit, 1901-1906. p. 692 "The legislator thought that the culprit, who makes his resolve after a long deliberation, and who coldly executes a project, in which he was able to combine two methods and calculate the results, is more guilty than he who acted briskly, obeying an immediate impulse and under some strong passion's irrational influence."

<sup>172</sup> Zola, LBH, p. 74 "hurt that pierced your head...and these fits of sadness that made you hide like a beast, in a hole."

<sup>173</sup> Zola, LBH, p. 94 "there was in his fever, a disdain for himself and admiration for the other"

<sup>174</sup> Zola, LBH, p. 416 "He fixed his crazy eyes on Séverine, he had nothing but the need to throw her dead on her back, like prey torn from others...destroy to possess more."

his lover, now his prey. Despite his guilt and intent, the courts do not even suspect Jacques of murder. *La bête humaine*, a train called *La Lison*, the very train on which he works, ends his life in a fatal accident.

This brings us to the irony in this narrative: Séverine, in the midst of planning her husband's murder, is herself murdered. The moment she confesses that she did not want to kill Grandmorin, Jacques slits her throat:

*“Pourquoi? mon Dieu! pourquoi?”*

*Et il abattit le point, et le couteau lui cloua la question dans la gorge. En frappant, il avait retourné l'arme, par un effroyable besoin de la main qui se contentait: le même coup que pour le président Grandmorin, à la même place, avec la même rage.*<sup>175</sup>

Once Jacques finds out Séverine is not a cold-blooded murderer, the rage Roubaud has against Grandmorin boils inside of him. As Grandmorin does to Roubaud, Séverine does to Jacques. She cheats Jacques out of his ideal relationship. He wants and needs Séverine to be a murderer. Taking on Roubaud's rage and mimicking the way he saw Roubaud cut Grandmorin's throat, he becomes Roubaud in a way. I suggest that Jacques-as-Roubaud is punishing Séverine for her affair outside marriage. On adultery, sociologist Gillis writes that, “failure to punish adultery on the part of a wife could bring husbands retribution from the community in nineteenth-century France. Thus, there was a cultural tradition in Western Europe sanctioning violence and even death within the family, particularly when the wife was the offender.”<sup>176</sup> I

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<sup>175</sup> Zola, LBH, p. 417 “‘Why? my God! why?’ And he brought down the point, and the knife nailed her question in her throat. In striking, he turned the weapon because of his hand's appalling need to content itself: the same strike for the president Grandmorin, in the same place with the same rage.”

<sup>176</sup> Gillis, A.R., “So Long as They Both Shall Live: Marital Dissolution and the Decline of Domestic Homicide in France, 1852-1909” *The American Journal of Sociology* Vol. 101, No. 5 (Mar., 1996) pp. 1273-1305, The University of Chicago Press.

would suggest that Zola's nineteenth-century audience does not approve of Roubaud's apathy for her affair with Lantier, and considers her death a form of justice.

Lantier's first kill exacts justice for Roubaud, while also satisfying his own lust for blood. Zola attributes the lust to Jacques's hand, "*un effroyable besoin de la main qui se contentait,*"<sup>177</sup> disembodied him, as Hugo does in Frollo's stabbing scene. In contrast to Hugo and Sue, Zola does not assign the action to the knife but to the killer's hand. This disembodiment shows that Jacques is controlled by his hand, and here Zola manages to corral some of the culpability in this bloody scene away from Jacques himself and more towards his disease to kill. As the novel ends, Jacques Lantier is not remorseful and still lusts to kill women, sending Zola's message that because of the inefficient legal system, both society and these diseased individuals are in danger. In a broader sense, if the perpetrator is the author of the crime, then, is Zola himself guilty of character assassination of Grandmorin and Séverine? As previously mentioned, Zola shows lies and politics hiding the truly guilty. Knowing the true killers' intention, foresight, and premeditation, Zola is able to render justice through his novel, outside of the courts.

Social strain cannot be ignored in the 19<sup>th</sup> century. Hugo, Sue and Zola witness one of the many volatile times in French government and cannot overlook the resulting political corruption and its outcomes on the body of France. According to these authors, politics is an obstacle to justice. Each author proves in the novels we discussed that when the law does not seek justice, the people of France are jeopardized.

Hugo's novel plots the murder of Frollo, a corrupt priest who uses the law to cover his crimes. This author shows how harmful the inadequate law is through the innocent Esmeralda, who is tortured and executed for a crime Frollo committed, and through Quasimodo, Frollo's murderer. Sue's large novel is dedicated to the inadequacy of the law, and concerning murder, he

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<sup>177</sup> Zola, LBH, p. 417 "his hand's appalling need to content itself"

reveals that the Penal Code is too general to protect the people of France. Cecily's poisonous revenge is more just and effective than the law in this novel: two evil characters die as a result of her justice. In contrast to Hugo and Sue, Zola's story is bloodiest and compares the culpability of homicidal mania to one-time murders. He ends his novel with both murderers at large, blaming politics for impeding justice. A possible serial killer, Lantier, is on the loose, and receives no help or penalty for his homicidal fevers because the investigators merely want to avoid increasing political unrest. Murder and social strain mixed with the already imperfect Penal Code make for these three remarkable literary messages. Murder is the perfect crime to illustrate the law's effect on the body.

## CONCLUSION

The skillful pen can change the law, albeit slowly. It is more than a coincidence that the Penal Code improved its articles on theft, rape and murder in the nineteenth century. The inconsistent Penal Code treated these three crimes differently. Loose interpretations, carelessness and oversights show the law's problems with translation. Word precision mixed with disregard for children and women distance the law from the people, and harm those it is created to protect. All of these problems point directly to the Penal Code writers. They are blind to these consequences of their writing, but Hugo, Sue and Zola's novels create such vivid narratives of the victims of crime and of the law. Legislators modify codes, and slowly, their eyes open to the harmful consequences of the law. As Hugo says, to interest people and gain their sympathy, tell a criminal's life story. In this way, criminal literature breaches some gender and class barriers, and awakens and opens the mind. Just like law, in the right hands, story-telling is an effective means to help change society. The pen exerts control and power.

Because of the bourgeoisie's obsession with property, theft is a crime that elicits wide interest. In my first chapter, "Author of the Crime: Theft," we see how each author cleverly focuses on this crime. Amidst many characters and subplots in Sue's *Les Mystères de Paris*, we learn that theft is considered the lowest career in the hierarchy of crime. Sue portrays the lives of a family of thieves, and uses François and Amandine to demonstrate this family's criminal indoctrination process that begins in childhood. As a contrast, Germain's situation challenges the nineteenth-century French Penal Code article for theft because his intent is not to steal but to borrow. Like Sue, Hugo writes a story that challenges the Penal Code. Valjean steals bread out of necessity: his intent is hunger and ensuring the survival of his eight family members. Hugo tells such a sympathetic story that he must have touched the humanity of law makers and courts

because they later excuse a woman from Amiens who stole bread out of necessity. Similar to Sue and Hugo, Zola tackles intent, and focuses on a new disease discovered at the end of the 19<sup>th</sup> century, kleptomania. Zola's *Au Bonheur des Dames* is centered around a big department store, full of shoplifters. Madame de Boves, an upper-class woman, has this mania for stealing, and Zola shows that she does not face legal punishment for stealing because nineteenth-century French law excuses kleptomaniacs. As a consequence, those afflicted with this mania to steal do not face consequences for theft, and the department stores form their own system of theft prevention.

Unlike theft, rape is undefined in the nineteenth-century French Penal Code. This crime evokes Hugo, Sue and Zola's sensitivities for those outside the paradigm of power, those vulnerable to intimate violation: silent victims. As we see in the second chapter, *Written on the Body: Rape*, all rape and attempted rape victims do not speak about their violation in Hugo's *Notre-Dame de Paris*, Sue's *Les Mystères de Paris* and Zola's *La Bête Humaine*. Each author only hints or infers the act of rape in these novels, and each author provides a stand-in for justice, Quasimodo, Cecily, and Séverine, for these victims. In addition, each author arms his stand-in for justice with a knife in order to successfully defend the victims against the violators. Hugo portrays the legal system as deaf, as a weapon to the lower classes, foreigners, and women. Sue shows, like Hugo, the law's failure is a weapon, comparing the law to Cecily's poisoned stylus. She is the answer to the threat to women's bodies (she is a snake, vampire, and poisoned knife). Even more than Hugo and Sue, Zola compares rape to politics. He shows the middle and lower classes vulnerable to rape and domination of the ruling class. For retribution, Zola marginalizes the rapist-murderer Grandmorin (a member of the ruling class) when one of his victims kills him. In these novels, nineteenth-century law does not deliver justice for any of the rape victims.

Murder is the ultimate violation against the body, and murderers incite much public curiosity, thrilling nineteenth-century readership. In the third chapter, “Disembodiment/Murder,” we discuss the nineteenth-century French Penal Code’s meticulous treatment of the crime of murder. Turning back to “In Written on the Body: Rape,” each author portrays a complete absence of justice in regards to this most intimate violation, and in this chapter on murder, we see this same void of justice. Hugo’s *Notre-Dame de Paris*, Sue’s *Les Mystères de Paris* and Zola’s *La Bête Humaine* dismiss the legal system of the time as inept and ineffective. These three authors boldly aim criticism at the most thorough criminal laws: the Penal Code’s murder articles. Hugo uses Esmeralda to show that in a weak legal system where justice is absent, the novel itself serves as justice. As the novel plots, Quasimodo and the church building kill the corrupt Frollo for his many crimes: kidnapping, attempted rape, stabbing... Sue, like Hugo does with Quasimodo, uses substitutes in the absence of justice. Cecily and her poison exact retributory justice on Ferrand for his countless crimes. Zola also sees the same lack of justice as Hugo and Sue, and moves all legal decisions out of the law’s spaces. Camy-Lamotte, a political figure, makes binding legal decision in his office. Remembering the pathological side of crime, Zola uses homicidal mania to challenge the French Penal Code’s importance it places on premeditation of murder. Roubaud (a one-time killer) and Lantier (has the mania to kill) are both murderers, and also stand-ins for justice. Neither are arrested by the law for murder, and at the end of the novel, Zola leaves both men at large in public. Though Lantier does not premeditate murders, he is equally if not more dangerous than Roubaud.

Hugo, Sue and Zola, by observing society and using their writing skills, still convey messages relevant to modern-day audiences. Creatively pointing out the nineteenth-century legal system’s failure to perform justice, and combining these criticisms in widely popular criminal

literature, these authors enlighten the people of France in a more effective way than French law. I have suggested that these authors' criminal literature is powerful enough to affect change in the law. With this possible relationship in mind, I began by researching nineteenth-century criminal law, in particular the French Penal Code articles on theft, rape and murder. I compared these articles and modifications to these articles alongside Hugo, Sue and Zola's criminal novels. I found that some modifications to Penal Code articles did occur after these novels' publications, and these modifications match the subject of these authors' criticisms. I propose this temporal and thematic interplay, combined with the popularity of these novels, is more than mere coincidence. As an aside, since the nineteenth century, French law has been modified many times by law makers (who may have read or discussed this literature in their social circles), and each modification mirrors Hugo, Sue and Zola's messages discussed in this thesis. Though out of the scope of this thesis, more research in French law, and nineteenth-century authors such as Honoré de Balzac, Geroge Sand, and Gustave Flaubert may uncover more of criminal literature's incredible influence on French law.

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## APPENDIX: PLOT SUMMARY

Plot summary of Eugène Sue's *Les Mystères de Paris* :

Roldolphe, or Prince Roldolphe de Gerolstein, is the main character in this novel. He is a prince from Germany, and because of some somber episodes in his past, he busies himself helping honest, unfortunate people in the Parisian criminal underworld. In the first scene, he defends Fleur-de-Marie against the Chourineur, and finds that both of these characters are honest people. He finds a good, honest home for Fleur-de-Marie, a street girl with a rare innocence, and he transforms the Chourineur, a convicted murder, when he notices his honorable refusal to steal. Though Roldolphe tries to escape his past, it catches up with him throughout the novel. Sarah MacGregor, intent on marrying a prince, seduced Roldolphe and came between him and his father with the help of Dr. Polidori. In Paris, Sarah and the doctor have become even more corrupt and murderous, and eventually both die as a result of their dangerous lifestyle. Roldolphe has a very skilled surgeon as a member of his household, a slave he freed while in Louisiana. This man, David, married a Creole named Cecily. She was raped and brutalized by her master in Louisiana, and when she came to Europe, her deviant nature sharpened, and she became a femme fatale. She became quite deadly, and Roldolphe had to confine her in a German castle, away from David (whom she truly did love in her way). Eventually, Roldolphe notices that many honest poor people, like the Morels, the deFermonts, Fleur-de-Marie, and Germain are all victims of the same notary, Jacques Ferrand. He also notices that Ferrand has wealthy victims. After he discovers Ferrand extorted, raped, slandered, impregnated, and attempted to kill a Morel daughter, Louise Morel, he decides to stop Ferrand. He calls on the man-eater Cecily to become a maid in Ferrand's house. She is successful, and eventually Ferrand and his accomplice, none

other than Dr. Polidori, have to compensate their victims. Cecily is perhaps too successful because Ferrand kills Polidori in his delirium and then dies from the same fever. Eventually, Roldolphe discovers that Fleur-de-Marie is no longer in her safe home, but had been kidnapped and imprisoned by Ferrand and his other accomplices. After prison, Fleur-de-Marie survives an attempt on her life, and befriends the oldest Martial, the only honest Martial of the family of thieves, and she also befriends his lover, La Louve, whom she met in prison earlier. The oldest Martial just survived an attempt on his life as well, by the same people who tried to kill Fleur-de-Marie—his own family. They hate him because he tries to teach his youngest siblings, François and Amandine, the value of honest labor, and dissuades them from the family career: stealing. However, his corrupt mother, sister, and brother are all arrested in the middle of a murder crime, and Martial, La Louve, François and Amandine are free to live honest lives. Fleur-de-Marie never fully recovers from the attempt on her life, but before she dies, Roldolphe discovers she is his daughter. He spends the end of the novel trying to make good out of their sad situation. She eventually dies in a convent.

## VITA

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