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Rhetorical Engineering of Emotions in the Courtroom: the Case of Lawyers in Modern France

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Abstract

As a way of »performing the law«, courtroom speeches have been a fundamental component of the legal ritual and a basic component of lawyers' identities in many countries with civil law traditions: lawyers have presented themselves and have been culturally perceived as legal experts who make use of emotional strategies in order to achieve their aims in court. Within the courtroom, emotions have been both rhetorical tools and goals, especially in criminal trials where forensic eloquence aimed to create an emotional environment that was favourable to the client. In France, a rich literature on the art of forensic rhetoric was both the result and the basis of a (re-)construction of a tradition that was extremely self-conscious, self-reflective and fundamentally emotional. The present work analyses the role of emotions in lawyers' courtroom performances in the French legal culture from the beginning of the nineteenth century to the present. Its purpose is to identify the main themes related to the use of emotions in the pleading that legal professionals themselves have considered important – albeit with differing opinions – in the past three centuries. More broadly, this study explores reason / dispassion and emotion in legal practice beyond their longstanding dichotomy. Investigating the courtroom speech as a prototypical forensic performance through the perspective of the legal professionals themselves shows how reason and emotion have been continually intertwined and how legal professionals have consciously strategized approaches to the complex interplay between them in the judicial processes.

Keywords: lawyers, courtroom, emotions, rhetoric, eloquence

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Rhetorical Engineering of Emotions in the Courtroom: the Case of Lawyers in Modern France

As a way of »performing the law«, courtroom speeches have been a fundamental component of the legal ritual and a basic component of lawyers' identities in many countries with civil law traditions: lawyers have presented themselves and have been culturally perceived – sometimes with mockery and criticism – as legal experts who make use of emotional strategies in order to achieve their aims in court.

The French case is exemplary of this European tradition. Over the last three centuries, lawyers and legal professionals have shaped their rhetoric into a tradition by actively and constantly reconfiguring different components and principles, some of which were directly taken from Roman philosophical and political thinking. In France, a rich literature on the art of forensic rhetoric was both the result and the basis of (re-)constructing a tradition that was extremely self-conscious, self-reflective and fundamentally emotional. Staging, inducing, spreading and manipulating feelings was fundamental to the *plaidoirie* (the court speech), a verbal and bodily performance that has been perceived and cultivated by French lawyers as the core of their identity.

My present work analyses the role of emotions in lawyers' courtroom performances in French legal culture from the beginning of the 19th century to the present. Its purpose is to identify the main themes related to the use of emotions in the pleading that legal professionals themselves have considered important – albeit with differing opinions – in the past three centuries. More broadly, this study explores reason / dispassion and emotion in legal practice beyond their longstanding dichotomy. Investigating the courtroom speech as a prototypical forensic performance through the perspective of the legal professionals themselves shows how reason and emotion have always been intertwined.

My historiographical enterprise is located in a larger multidisciplinary trend. In fact, in the last two decades the conventional narrative of judicial dispassion – with its social, cultural and professional dimensions and its ideological, political and psychological implications – has been the focus of systematic theoretical and practical research for scholars from diverse fields, and in particular, American legal theorists and professionals.[1] In this debate, the role of emotions in the practices of legal actors is a dynamic area of enquiry in empirical and theoretical research exploring the intersection between law and emotion. In what the American legal scholar Terry Maroney has defined as the »legal actor approach«,[2] the focus has been primarily on decision-making actors, especially jurors and judges,[3] and, to a lesser extent, on those whose role is to actively influence these decisions: lawyers and attorneys.

Legal scholarship, professional literature and studies conducted by psychologists and sociologists have reconstructed, analysed and challenged traditional views of the emotional labour that lawyers can and should perform both inside and outside the courtroom in order to achieve their goals in a trial.[4] Some scholars have gone beyond a simple analysis, advocating a change in legal culture that invalidates the simplistic opposition between reason and emotion for legal professionals.[5] They argue that emotional phenomena are a fundamen-

1 Conway / Stannard (2016); Bandes / Blumenthal (2012); Fortier / Lebel-Grenier (2011); Maroney (2011); Abrams / Keren (2010); Papaux (2009); Maroney (2006); Karstedt (2002); Durand (2011).

2 Maroney (2006).

3 For a critical historical overview of judicial dispassion in judges' decision-making, see the work of Pavel Vasilyev in this issue.

4 For the psychological perspective, see Seligman / Verkuil / Kang (2001). On the methodological and theoretical challenges of sociological research on emotions in the court, see Anleu / Blix / Mack (2015).

5 In the case of the judges, see Maroney / Gross (2014).

tal (and positive) component of the legal practices that must be taken into consideration in order to reduce professional anxiety, depression and burnout.[6] For example, legal scholar Susan Bandes argues that the (American) legal discourse that begins in law school and continues throughout the lives of legal professionals »needs to overcome its current aversion to the emotional aspect of lawyering«. The consequences of this longstanding failure »are great and should not be perpetuated«.[7]

In many European countries, judges, lawyers and attorneys generally go through the same basic legal education. It is in this formative process that the importance of emotional management – strictly intertwined with the normative ideal of judicial objectivity and legal rationality – is traditionally discussed and internalised by future legal professionals.[8] Some studies indicate that the traditional idea that legal professionals' own emotions (could) represent a danger for both lawyers and students, implying that they must be controlled and tamed, is prominently featured in legal education.[9]

The main goal of this multidisciplinary approach that views legal professionals as »emotional creatures« has been to help them manage their own emotions, especially in their relationships with clients and their impact on various aspects of their professional and personal lives. Yet few studies have examined specifically the role of emotions in the performance of contemporary lawyers in the courtroom.[10]

Taking these studies into consideration for their conceptual and analytical value, this article aims to historicise lawyers' professional attitudes toward emotions. Legal institutions themselves, together with their actors, their practices and their norms, have been the object of historical research, especially by social, cultural and legal historians. Scholars in each of these areas have contributed by shedding light on the role of emotions in the lives of historical actors. As pointed out by Laura Kounine, many historians have »in effect, long done the history of emotions without actually calling it that«.[11] Among them it is important to mention two French historians: Arlette Farge, a specialist of early modern history, and Frédéric Chauvaud, a remarkable and prolific expert in the history of justice in the modern period. Some of Chauvaud's numerous works have dealt in great detail with courtroom practices and their social, cultural and emotional dimensions.[12]

During and after this history of emotions *avant la lettre*, in the last decade social historians have developed a specific theoretical framework to demonstrate how emotions have a history and how they have shaped history. And only very recently, the analytical concepts of emotionology, emotional communities, emotional regimes, emotional styles and emotional practices have also been applied to the study of the relationship between law, especially criminal law, and emotions, both in early modern and modern historiography. The contributions to this Focus section are important examples of this very recent trend. Others include the recent works by Mark Seymour, Laura Kounine, Michael Ostling, Marianna Muravyeva, Katie Barclay and Allyson F. Creasman.[13]

Rhetoric, Emotions and Lawyers' Courtroom Performances

In European judicial traditions the connection between rhetoric and law has been historically determined. Having originated in the Greek culture, legal rhetoric established the concept of proof as an »argument«. What became clear through judicial processes, however, was that judicial proof differed from scientific proof in that it did not refer to an evident fact, but instead to the construction of a probability.[14] Ancient Greek and Roman legal

6 Bandes (2006); Volpp (2002); Juergens (2005); Seligman / Verkuil / Kang (2001).
7 Bandes (2006).
8 Flower (2014).
9 Volpp (2002); Flower (2014); Juergens (2005); Posner (1999). See also footnote 9 in Bandes (2006).
10 Flower (2016).
11 Kounine (2017).
12 Chauvaud (2010a); ibid. (2010b); Chauvaud / Prétou (2013); Chauvaud (2015).
13 Seymour (2012); Kounine (2017); Kounine / Ostling (2017); Muravyeva (2017); Barclay (2017); Creasman (2017).
14 Vincenti (2004).

traditions, however, also provided a basis for legal rhetoric. When it acquired an oral dimension in courtroom performance, rhetoric was often equated with eloquence: the action, practice and art of expressing a thought through speech with fluency, force and juridical appropriateness so as to appeal to reason and elicit emotions.[15] Thus, the idea that a good orator should show and elicit particular emotions in the audience originated in the classical tradition of the *ars oratoria*. For French legal professionals in particular, Greek and Roman rhetorical traditions were not simply cultural references by well-educated professionals but practical points of reference for performing an »ancient art«.

As Terry Maroney has pointed out, the production and management of emotions in the courtroom's emotional regime is a professional tool used by lawyers.[16] In European cultures, the management of emotions by lawyers and attorneys in the courtroom seems to be associated with several specific issues. While questions of ethics and objectivity have been common to all legal professions, emotions in lawyers' public performances have been more complex and multifaceted. Lawyers have a richer set of rhetorical tools at their disposal, and their emotional performative scripts appear to be less strict and rigid that those of a judge, whose role traditionally embodied the principles of rational law and dispassionate justice. But lawyers have also had to conform to the emotional regime of the courtroom, which varied according to the legal system. The presence of a jury, the type of case (criminal, civil, administrative or commercial), the level of legal judgements (low or high court, *Cours de Cassation*) and publicity have also affected lawyers' styles of presentation and argument. As philosopher Alain Papaux and legal scholar Richard Posner have indicated, judicial procedures may be regarded as a way of limiting the presence of emotions and their influence on justice. This applies above all when it comes to judges' decisions, and, as a result, these procedures shape the emotional regime of the courtroom to a great extent.[17]

In France, the notion that a lawyer's professional duties were to use emotions strategically in public performances developed primarily in the 19th century, when court hearings became public events whose social, cultural and political dimensions were amplified and influenced by the press.[18] At the same time, the scope and influence of lawyers' eloquence also went far beyond the courtroom. For many decades, lawyers became politicians in the French parliament, representing one fourth of the *députés français* between 1875 and 1920.[19] As already pointed out by Max Weber, their professional skills offered them a potential future in politics. Lawyers were aware of this advantage and certainly made use of it.[20] Their ability to mediate among institutions and various local communities, experiences of different social and cultural milieus, and knowledge of legal matters were decisive factors in their political success.[21] However, their mastery of eloquence, including its power to reinforce and shape (convincing) arguments through emotions, was undoubtedly the skill in which they excelled, and they learned, practiced and refined this skill in the courtroom.[22]

The importance that the legal profession has placed on eloquence in targeting the minds and hearts of an audience is evident in juridical texts from the last 200 years. The instructions given for legal eloquence were also a form of professional (self-)representation. In his *Leçons et modèles d'éloquence judiciaire* (1838), the renowned French law-

15 »eloquence, n.«, OED Online. Oxford University Press, March 2017. Web. 15 April 2017.

16 Maroney (2011).

17 Papaux (2009); Posner (1999).

18 Already in the *ancien régime*, the eloquence of French lawyers was able to attract large public audiences and even the interest of foreign monarchs who were eager to attend a performance of the »éloquence judiciaire à la française«. Royer (1993).

19 Karpik (1995) 199. The same changes also occurred in Italy, where the presence of lawyers in the Chamber of Deputies increased, with some fluctuation, from about 28% in the 1860s to about 41% in the 1910s, and it continued to be an important, though diminishing, presence in both the Fascist period and the first legislatures of the Italian Republic. Meriggi (1994) 316–317; Cammarano / Piretti (1996) 584; Meniconi (2006) 80–81.

20 Weber (1994) 328–329; Cammarano / Piretti (1996) 520–535.

21 Karpik (1995) 196–197.

22 See, for example, the case of the French lawyer and politician Pierre Cot. Jansen (2001).

yer and politician Pierre Antoine Berryer (1790–1868) portrayed the good legal orator as one who could produce reasonable, well-structured and clearly expressed ideas, but also move the passions »at his will«.[23] Both the deputy attorney general in Rouen and the attorney general in Bordeaux (in 1879 and 1956, respectively) spoke along the same lines.[24] From the second half of the 20th century onward, the purpose of legal eloquence continued to be discussed in terms of »persuading« reason as well as the heart.[25] Modern lawyers continued to apply the three principles of Cicero to courtroom performance: *docere* (to inform), *delectare* (to charm) and *movere* (in the sense of stirring emotions).[26] However, the aims of »demonstrating«, »convincing«, »seducing« and »inspiring an emotional reaction« required different strategies and styles. Lawyers were advised to adapt their rhetoric and its emotional aspects to the specifics of the jurisdiction. Over the last 200 years, legal professionals have all noted the specificities of the courtroom's emotional environment, but also acknowledged the peculiarities of the criminal trial.[27] This specificity has in many cases been accentuated by the design, the (external) architectural style and the dimensions of the courtroom. In many cases the courtrooms, a great example of which are the 19th-century courts of assize, where criminal trials usually took place and which were designed to create and amplify theatricality,[28] facilitated bolder and more emotional rhetoric.[29] This theatricality was addressed to the audience at the hearing, whose presence had a great influence on the lawyers' performance.[30]

Lawyer Hippolyte Hallez described the role of legal rhetoric in the criminal court in detail in the 1830s. He argued that legal *éloquence*, which stirred the heart and the passions, was appropriate for criminal trials but not for civil cases. Since these trials concerned misfortunes, pity and the life or death of a human being, eloquence was »a powerful weapon, since everybody is capable of loving and feeling«. In criminal trials, »passion triumphs over those that reason could not subdue«.[31] Debates continued throughout the 19th century. Lawyer M. Thiériet, for example, argued in 1838 that the legitimacy of legal eloquence increased as soon as mitigating circumstances were introduced into criminal codes. This clause offered lawyers opportunities for a larger and more nuanced scale of success than the simple judgement of guilt or innocence.[32] And in the mid-20th century, the mitigating-circumstances clause in criminal trials was considered the particular »domain of sentiment and emotion, of severity or pity«, especially when culprits admitted to the offence they had been charged with, and trial debates no longer hinged on innocence or guilt.[33]

Professional literature and manuals of forensic rhetoric described magistrates and jury members as having different kinds of emotionality when performing their duty, and thus were influenced by lawyers' emotional rhetorical strategies in different ways and to different extents. In France, lawyers portrayed jurors as being more susceptible and led by emotions when forming their opinion and making their final decision.[34] Their thoughts were supposed to be subject to the shock of feelings rather than the shock of ideas.[35] In the American legal context, jurors are still perceived as particularly susceptible to what is perceived as the »distorting effects of emotions«.[36] In contrast, lawyers viewed the link between emotions and the judicial role of the professional magistrates with more nuance. The narrative of an »impartial«, »rationally calm« and »emotionally imperturbable« judge was often intertwined with the notion that judges were emotional beings who could get »carried away« and »seduced« by the emotional strategies of lawyers.[37] This co-presence of two opposing narratives

23 Berryer (1838). His work was also very influential among lawyers on the Italian peninsula. Beneduce (1996) 214–216. See also Thiériet (1838).
24 Neveu-Lemaire (1879) 35; de Robert (1956). See also Kehl (1960); de Moro-Giafferi (1963) 18–19; Lindon (1968) 107–109.
25 de Moro-Giafferi (1963); Damien (1982) 388; Boyer (1990); Entretien avec Henri Leclerc, avocat (2003); Desprez (2009) 242.
26 Soulier (1991) 15.
27 Hallez (1837); London / Floriot (1947) 177–187; Boyer (1990) 26.
28 Jacob / Marchal-Jacob (1992).
29 Cohendy (1944) 8.
30 Vidor (2017).
31 Hallez (1837) 23, 29–30.
32 Thiériet (1838).
33 Lindon (1968) 108.
34 Thiériet (1838) 381. Lindon (1968) 107–108; Desprez (2009) 250–251.
35 de Robert (1956).
36 Posner (1999) 311–312.
37 Thiériet (1838) 377; Mareille (1907) 21.

was not perceived as contradictory. Rather, they captured two different perspectives on the judicial action, both of which have been substantiated with historical research.[38]

The Body of the Lawyer as a Rhetorical Tool

The courtroom's sensorial landscape in which lawyers had to perform is essentially limited to two senses: the visual and auditory. For almost two centuries, legal professionals have been aware of the role that the lawyer's body plays in the physical and symbolic space of the courtroom. Lawyers' performances are marked by a complex interaction of bodily movements and reactions. Depending on the actors participating in a court hearing, these can be simple and ordinary or highly ritualised and formalised, intertwining speech and gestures. Nevertheless, French legal professionals have discussed these two components of pleading separately. Whereas a facial expression or a hand gesture both influences and can be influenced by emotional interaction in the courtroom, bodily gestures and reactions often form a structured repertoire. As the historian Frédéric Chauvaud has pointed out, such gestures »supported the argumentative logic, accompanied the emotions and served the dramaturgical intensity«.[39]

Lawyers can use facial expressions in combination with verbal utterances to illustrate, deny or emphasise a fact; to express, support, reinforce or weaken a concept; and to consciously and strategically trigger a particular emotion, like anger, even when they do not actually feel the emotion. On the one hand, a lawyer can simulate an unfelt emotion or express a felt emotion as a means to emotionally qualify a moral statement, a legal concept or a criminal fact that was communicated verbally. On the other, gestures can embody emotions that are also verbally expressed. By means of the »expression of their gestures«, the »play of their physiognomy« and the »inflexions of their voice«, lawyers become »temporary actors« to achieve their goal, especially in criminal cases.[40] But when gestures are linked to a genuine emotional state (directly or indirectly, consciously or unconsciously), they can be regarded analytically as what Monique Scheer has called »emotional practises«, in the sense that they are forms of »doing emotions« and not just simple expressions of them.[41]

Lawyers also used their entire bodies and its »extensions« – their black robes, their glasses and documents – as powerful rhetorical tools. Unlike judges who sit on an elevated platform in the French courtroom, lawyers stand while talking, making their clothes and bodily movements a subject of debate.[42] In the early 19th century, lawyers whose appearance was described as »less suitable for moving the souls« were advised to ignore this deficiency and to compensate by making good use of their other rhetorical tools.[43] At the same time, lawyers use arms and hands as one of the most important and effective bodily rhetorical tools, as has been captured in drawings, photographs and films, portraying real or fictional characters over the last three centuries. The celebrated 19th-century caricatures of lawyers by Honoré Daumier are good examples of this use, showing to great effect that the theatricality of the gesture was amplified by the movement of the large sleeves of the robe (Fig. 1).

Fig. 1. Honoré Daumier *Le Défenseur*, ca. 1860, © Photo RMN-Grand Palais (Musée d'Orsay), Paris

One recurrent gesture typical of the French lawyers' rhetoric was the outstretched arm, often with a pointing finger or hand. Frequently depicted in Daumier's 19th-century drawings, the gesture

38 Furthermore, as historians have shown, magistrates could get emotional themselves, showing irony, contempt, sadness, anger, etc. See Chauvaud (2015); ibid. (2010a). Weeping Irish judges present an especially interest case, Barclay (2017).

39 Chauvaud (2010a) 175–176.

40 Kehl (1960).

41 Scheer (2012).

42 On the symbolic meaning of the seated and standing positions in the court setting, see Desprez (2009) 192–193.

43 Berryer (1838) 660.

was a mainstay for lawyers well into the 20th century. An eloquent example of this gesture is offered by the courtroom performance of Vincent de Moro-Giafferi (1878–1956). One of the most famous French lawyers in the interwar period,[44] he was photographed during the trial of the famous serial killer Henri Désiré Landru, which took place in Versailles in November 1921 (Fig. 2).[45] While the outstretched arm and pointing finger can be used to draw attention to someone or something

Fig. 2. Vincent de Moro-Giafferi pleading at the trail against Henri Désiré Landru (Agence Roll), 1921, © Bibliothèque nationale de France

present in the room, the gesture could also reinforce the meaning or drama of a narrative. Lawyers often use hands or fingers pointing slightly upward to refer to something or someone not physically present. In this way, lawyers use the liminality of the courtroom where, through the judicial ritual, the connection between past events (criminal deeds) and future events (a penalty or an acquittal) are given potentially alternative and often opposite forms. The 21st-century watercolours painted by the journalist Noëlle Herrenschmidt on the occasion of the 2011 trial against Jacques Chirac, the former Mayor of Paris, showed the richness of the hand gestures and endurance of the pointed finger in the pleading by the lawyer Jean Veil (Fig 3).[46]

Fig. 3. Noëlle Herrenschmidt, *Procès Chirac, les plaidoiries en images*, Le Monde, 23 September 2011

Like the choice of language, gestures are also adapted to the physical space of the courtroom, jurisdiction and the nature of the trial. While exuberant gestures are appropriate for a large audience, they could »create a distortion« in a hearing at the *Chambre du Conseil*, which was restricted to legal professionals. This was the opinion of M. Ezratty, the first President of the Paris Court of Appeals in the 1990s. Lawyers are entitled, she claimed, to show »indignation« or »astonishment«, but the use of theatrical gestures should be moderated.[47]

Whereas the amplitude and theatricality of some gestures were to be modulated, others were simply to be avoided. According to Daniel Soulez Larivière's mentor, who was an experienced Parisian lawyer in the late 1960s, some movements and gestures had to be banned from all lawyers' courtroom performances. In order to illustrate this point during an informal discussion, the mentor mimicked to his younger colleague several »types« of lawyers whose body language was to be avoided: »the waddler who shifts his weight from one foot to the other, the scraper who cannot help rubbing his soles against the floor, the walker who cannot avoid taking three steps to the right, three steps to the left; and then the rooster who pecks his text like grain«.[48]

44 Lanzalavi (2011).
45 Ibid.
46 http://prdchroniques.blog.lemonde.fr/files/2011/09/110923_plaidoirie-MeJ.Veil_1_2.jpg. Last accessed on 15 May 2017.
47 Ezratty (1996).
48 »le dandineur qui passe d'un pied sur l'autre, le racleur qui ne peut s'empêcher de frotter ses semelles contre le parquet, le marcheur qui ne peut éviter de faire trois pas à droite, trois pas à gauche; et puis voici le coq qui picore son texte comme du grain«, Larivière (2010) 9.

Forensic Eloquence

The behaviour of the »rooster«-type lawyer cited above referred to one of the most discussed and complex aspects of lawyers' courtroom performance and its emotional implications and effects: the choice between simply reading out loud, reciting a memorised written text and complete improvisation. Legal professionals of the 19th and 20th centuries considered reading a text out loud – especially in an obvious fashion and for a long time – a catastrophic practice. Relying on a written text obstructed eye contact, which the lawyer was strongly urged to constantly maintain, particularly with judges and jurors.[49] Not only was eye contact essential for holding the attention and interest of the audience members, it also allowed lawyers to guess their thoughts and feelings based on their facial expressions and body language. Only through attentively monitoring the audience could a lawyer adapt his arguments and tune his emotional repertoire when necessary, especially at the courts of assize, where a jury was present.[50] Eye contact supplemented the spoken word by allowing lawyers to maintain the attention of the audience and to monitor its reactions. In addition to reading a written pleading, reciting a memorised text was also thought to diminish the »persuasive force« of the lawyer. Even worse, the lawyer might come across like an actor playing a role »without sincerity«, »ruin[ing] his ability to stir emotions« among his listeners.[51] Reciting only a part of the pleading, however, could be quite effective.[52]

At the same time, complete improvisation was also considered a dangerous choice.[53] With regard to the form of the pleading and not the content, lawyers were advised to improvise only partially and to supplement their improvised speech with »a study« of the dossier, »long consideration« of the different elements of the case and a careful use of written »notes«. A sort of prior »rumination« on the speech allowed a lawyer to give the appearance of delivering a spontaneous »inner message«.[54] When it came to reacting to questions (*le contradictoire*), the statements or attacks of the judge or the lawyers of the opposing party, the writer Vital Mareille suggested that lawyers should appear to be improvising in order to support the »sentimental dimension of the pleading«.[55] Writing in the early 20th century, he esteemed improvisation more highly than later legal professionals and advised lawyers to practice and cultivate what he considered the »dangerous art« of improvisation, which in his opinion meant to »release (…) feelings controlled for a long time« as the result of »much deliberation«.[56] The ability to improvise and adapt both argumentation and emotional repertoire was regarded as particularly important in the courts of assize, where trials were supposed to include unforeseen events, sudden changes and dramatic twists.[57] Whereas a legal or logical argument could be prepared in detail in advance, the recourse to emotional strategies required a degree of »spontaneity«.[58]

Texts on legal eloquence also linked – often implicitly – the rhetorical use of emotions and a certain form of improvisation and concepts of spontaneity and sincerity. When explaining the importance of using emotions when addressing the jurors, attorney general Paul de Robert offered an interesting analysis of this particular link in the mid-1950s. First, de Robert explained that lawyers needed an »accent of sincerity«, which was the »very soul of eloquence«, when pleading a case. For de Robert, emotional sincerity was not as a spontaneous, uncontrolled or authentic state, but rather an »attitude« that could be performed by the speaker. Performing sincerity (or better, *se mettre dans l'attitude de la sincérité*) was an »art« in which some speakers were able to excel.[59] In every legal case, a lawyer could find an element that would allow him to appeal to emotions. Yet for de Robert, eloquence could affect emotions only if »stripped of all vain ornaments«, since the power of emotions (*le pathétique*) in the rhetoric of the best speakers of his time had its roots in simplicity.[60]

Similarly, at the beginning of the 20th century Vital de Mireille emphasised that a lawyer's skilful

49 Neveu-Lemaire (1879) 301–302; Lindon (1968) 110.
50 Mareille (1907) 301; Buteau (1922) 18; Cohendy (1944) 36. London/Floriot (1947) 177–178; Lindon (1968) 154.
51 Mareille (1907) 302–303.
52 Lindon (1968) 118–120.
53 Rome (1905) 494–495, 503.
54 The French lawyer and member of parliament René Viviani was considered a very good at using this technique effectively. Lindon (1968) 121.
55 Mareille (1907) 301–303.
56 Ibid. 301.
57 London/Floriot (1947) 177.
58 Entretien avec Henri Leclerc, avocat (2003) 19.
59 de Robert (1956).
60 Ibid.

use of »sentimental eloquence« required that he share the same feeling.[61] In other words, feigning a non-felt emotion was rhetorically less effective than performing an emotion truly felt. Historian William Reddy described the effect of such speeches as being »emotive«. Such an utterance »arises from the fact that the actor is trying to accomplish an act of self-management or self-exploration by making it«.[62] Some lawyers would go so far as to weep, in order to inspire in the listeners a specific emotion, like compassion. For example, Henry Torrès received the nickname of »our lady of the tearing eye« (*Notre-dame de la larme à l'œil*) for turning to this emotional practice in the 1920s.[63]

In the courtroom's auditory landscape of silences, noises and words, lawyers strategically used other rhetorical tools in order to modify, reinforce and tease out the nuances of concepts or narratives. They were aware of the importance of paralinguistic markers in their speeches, such as the volume of the voice,[64] intonation, clearing the throat, glances, etc. Pauses, exclamations, interrogations and supplications, contributed to what seemed to be another important aspect of a good and effective pleading: its dynamism.[65] In the opinion of lawyer Georges Cohendy (1886–1985), this linguistic dynamism was important since it reflected the movement of life and the vitality of human conflicts. Only providing »a transient impression of life«, the lawyer's speech performance, which Cohendy considered to be »the *trait d'union* between real life and justice«, could captivate and even inflame a judge's own passions.[66]

Professional literature and manuals of forensic rhetoric suggest numerous techniques of emotional engineering. As suggested by Lindon Raymond (1901–1992), to portray a client as a morally sound person, for instance, a lawyer had to provoke a »squeeze of the heart« and a »restrained sob«, like a successful funerary eulogy. But if his client's morality was questionable, a lawyer could be more effective by making his audience laugh with a malicious comment.[67] The texts on forensic rhetoric also offer detailed advice on the emotional effects of sentence structure: every sentence composed of between five and ten words expressing a feeling of »surprise, sadness, indignation« could be a »good key«, ideal for effectively opening a pleading.[68]

Not all lawyers agreed, however. At the very beginning of the 20th century, Vital Mareille argued that a pleading should begin calmly, avoiding any show of excessively strong emotions early in the courtroom performance. In his opinion, a lawyer should first stir emotions in the audience and then only progressively show his emotions in harmony with the audience: »It is only when he has gained sympathies, shaken convictions, when he feels an imperceptible murmur of indignation or pity, that the lawyer throws himself in the crowd, appearing the most moved among those whom he has just irritated or softened up. He no longer gives the impulse, but receives it«.[69] Half a century later, Raymond Lindon (1901–1992) also suggested the use of »emotional vehemence« only when the audience's disposition allowed for an appeal to »the major passions like pity, kindness, vengeance and rage«.[70] For legal professionals, the rhetorical engineering of emotions in the courtroom could be learned, trained and improved through practice and observation. However, those who truly excelled at evincing emotions through courtroom speeches were still seen as having an innate talent.[71]

Conclusion

The study of the role of emotions in the French courtrooms in the past three centuries has shed light on the ways in which legal professionals have consciously strategized approaches to the complex interplay between reason and emotions in the judicial processes. Examining »*éloquence judiciaire*« (forensic eloquence) from the perspective of a history of emotions has demonstrated that lawyers have been aware that emotions make their pleadings more effective. In the courtroom, emotions

61 Mareille (1907) 21.
62 Plamper (2010) 241–242.
63 Chauvaud (2010a) 145.
64 For a historical approach regarding the voice, see Farge (2009).
65 Entretien avec Henri Leclerc, avocat (2003) 19.
66 Cohendy (1944) 42.
67 Lindon (1968) 112.
68 Ibid. 132.
69 »C'est seulement lorsqu'il a gagné les sympathies, ébranlé les convictions, lorsqu'il sent courir un imperceptible murmure d'indignation ou de pitié, que l'avocat se jette comme dans la foule, parait le plus ému des ceux qu'il vient d'irriter ou d'attendrir, ne donne plus l'impulsion, mais la reçoit.« Mareille (1907) 303–304.
70 Lindon (1968) 154.
71 Ibid. 148–151. Cohendy (1944) 11.

have been both rhetorical tools and goals, especially in criminal trials where forensic eloquence aimed to create an emotional environment favourable to the client. Stirring compassion, intensifying indignation, softening rage and neutralising disdain were some of the means to achieve the best outcome in a trial. Lawyers adapted their rhetoric and its emotional dimensions to the specifics of the jurisdiction, the physical space of the courtroom, the nature of the trial and the reactions of the audience (the latter required attentive monitoring), and they considered jurors more susceptible to the influence of emotions. Yet they recognised that even magistrates – who were supposed to personify a purely rational and dispassionate adherence to the letter of the law – were also emotional beings: in the words of Vital Mareille, »although law is indifferent [to emotions], *dura lex*, the judges who applied it cannot be«.[72]

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72 »Si la loi est indifférente, dura lex, les juges qui l'appliquent ne peuvent pas l'être«. Mareille (1907) 357.

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