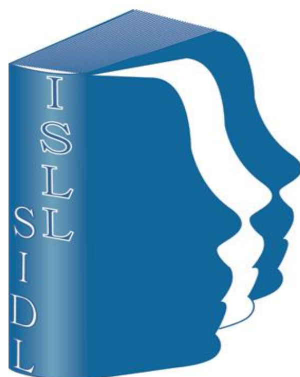

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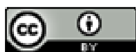

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# European Union Consumer Law through reading a short novel: partisanship and social justice in “D’autres vies que la mienne” by Emmanuel Carrère

Giorgio Leali*

Abstract:

[*European Union Consumer Law Through Reading a Short Novel: Partisanhip and Social Justice in “D’autres vies que la mienne” by Emmanuel Carrère*] The paper adopts the perspective of “law and literature” studies to investigate how the French novel ‘Lives others than my own (*D’autres vies que la mienne*)’ by Emmanuel Carrère addresses the evolutions of European Union law on unfair terms in consumer contracts. By looking at European Union law from the perspective of individual lives, the essay compares the way in which literature and EU law conceive three categories of individuals involved: consumers, moneylenders and judges. Carrère’s novel is taken as an example to challenge the stereotype according to which literature expresses a sympathetic and partisan conception of social reality compared to the one of law.

Key words: European Union law, consumer law, philosophy of law, partisanship, Justice, unfair contract terms, law in literature

## I. Introduction: literature and the perspective of individual lives

> La justice, la paix, la mesure, l’honneur, la raison, le dépassement de la raison, le sacré, la liberté, l’égalité, la fraternité, le respect de l’homme: c’est notre civilisation, la base de notre droit et de notre société [...]. Ils n’appartiennent ni au droit ni à la littérature, mais aux uns et aux autres, parce qu’il y a une unité profonde dans la pensée humaine. Ils ne le disent sans doute pas de la même manière: le droit avec précision et sécheresse, en en faisant une logique de l’action; la littérature avec

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I want to warmly thank professor Loïc Azoulai for suggesting me to look at European Union law from the perspective of individual lives and to read Carrère’s novel under this approach.
All the following quotes will be taken from the original French version of the novel: E. Carrère, *D’autres vies que la mienne*, Paris, P.O.L., 2009.

> élégance, profondeur et séduction, mais souvent avec imprécision. Nous avons besoin les uns des autres, nous ne devons pas, nous ne pouvons pas nous passer les uns des autres.[1]

We are used to think that each segment of reality is better analysed and understood by using the language and the method that usually deal with it. Nevertheless, in many cases, different disciplines share the same objects of study and look at them from different perspectives.[2] The intersection of point of views on a same object is the theoretical precondition to all interdisciplinary study dealing with social phenomena: this is particularly true with regard to the deep relationship between law and literature of which the novel by Emmanuel Carrère is only one of the countless examples. Such a relationship proves to be particularly precious when looking at law from the perspective of individuals such as consumers for two reasons.

The first one has to do with the fact that 'law and literature structure reality through language'.[3] In other words, they share the power to create reality and social categories only by naming them. As Pierre Bourdieu wrote, on one hand 'law is the quintessential form of the symbolic power of naming that creates the thing named and creates social groups in particular'[4] and, on the other hand, art and literature have 'the properly symbolic power of […] revealing in an explicit, objectified way the more or less confused, vague, unformulated even unformulable experiences of the natural world and the social world, and bringing them into existence'.[5] In some cases, law and literature contribute to shape the same social categories but they portrait them in different ways: this essay will measure the distance between the representations of individuals such as consumers, moneylenders and judges in European Union law and the way in which the same categories are portrayed by Emmanuel Carrère's novel.

Another common feature shows that the 'law and literature' perspective offers the best tools to understand the role of individuals in EU law: law and literature often share the same function of conveying values and approving or disapproving behaviours. As Philippe Malaurie pointed out, law and literature are often expressing the same fundamental values in different but complementary styles.[6]

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[1] P. Malaurie, *Droit et littérature. Une Anthologie*, Paris, Éditions Cujas, 1997, p. 13.

[2] In order to make this very general statement clearer and less obvious, let's take a somewhat caricatured example. When looking at a sailing boat in the middle of the sea, a physicist will be interested in the Archimede's principle as a result of which the boat floats while a meteorologist will study the intensity and the direction of the wind pushing it. A sociologist will reflect on the relational dynamics between the members of the crew and on the social status and of the sailing boat owner. At the same time a lawyer will look at the flag in the stern in order to determine which national law will be applicable in case of disputes. The perspective of the novelist and, more generally, of the artist, is more likely to focus on the narrative and aesthetic dimension of reality: the destination of the boat trip, a potential mutiny or love story among the members of the crew, the beauty of a sunset on the sea.

[3] K. Dolin, *A critical introduction to Law and Literature*, Cambridge University Press, 2007, p. 11.

[4] *Ivi*, p. 12. Dolin quotes P. Bourdieu, 'The force of Law: Towards a Sociology of the Juridical Field', *Hasting Law Review* 38 (1987), p. 838.

[5] *Ibid.* Dolin quotes P. Bourdieu, 'The intellectual field: A World Apart', in *Other Words: Essays on a Reflexive Sociology* (Trans. Matthew Adamson), Stanford University Press, 1990, p. 146.

[6] On one hand, law has the difficult task of defining the legal meaning of philosophical values such as justice, freedom or human dignity in a way that needs to be precise and flexible at the same time in order to avoid legal uncertainty and allow evolutions in the interpretation of norms. On the other hand, literature, instead of providing a stable definition of such values, put them on the stage and often reveals their ambiguity and possible contradictions.

A third preliminary remark needs to be done. 'Law and literature' studies are traditionally structured in two main fields: 'law *in* literature' and 'law *as* literature'. In very general terms, the 'law *in* literature' approach explores the way in which legal issues and legal experience are exposed by literature while 'law *as* literature' scholars focus on legal language and on its literary dimension.[7] The novel by Emmanuel Carrère is about the true story of two French judges: therefore, the exercise of looking at European Union consumer law through *D'autres vies que la mienne* falls under the 'law *in* literature' research field. Taking the perspective of literature will be the occasion to push back the idea that lawyers hold a monopoly on the representation of the legal world and to seek the fundamental target of 'law and literature' scholars:

> […] rendre le droit et la justice à la vie et donc les retirer à la seule garde des juristes, qui aimeraient tant en être les usufruitiers.[8]

Nevertheless, this essay will argue that, in the particular case of Carrère's novel, the perspective of literature coincides with the one of law. This will be stressed by showing that the frequently alleged partisanship and subjectivity of novels such as Carrère's one appear to be in conflict with some norms, namely the ones of traditional contract law, but not with the totality of the legal order, that also includes "higher" norms such as the European ones. In other words, in this particular case, the conflict between the values conveyed by literature and the ones protected by law is nothing but an optical illusion that can be solved by applying a legal principle, namely hierarchy of norms. *D'autres vies que la mienne"* can therefore be interpreted as an evidence of the fact that concerns shared by literature and often perceived as opposed to the ones governed by law, are in reality integrated in the legal order and protected by higher norms, in this case European Union consumer law.

## II. EU Consumer Law in Literature: the extent of judge's power in protecting consumers according to CJEU case law

*D'autres vies que la mienne* is the first-hand account of two dramatic stories of which Emmanuel Carrère has been witness over the course of a few months: the first one is the tragedy of 2004 tsunami in the Indian Ocean, the second is the death of Juliette, the sister of Carrère's partner. Juliette used to be a judge at the *tribunal d'instance* of Vienne, a small town in the Isère department in France. After her death, the author meets her colleague and friend Étienne Rigal, who tells him the story of his life and retraces the everyday work of two provincial judges dealing with over-indebtedness procedures. Both Juliette and Étienne have been cancer patients and became crippled: together they ruled against the French *Cour de cassation* case law on a decisive procedural issue in consumer law and gave to the Court of Justice of the European Union the occasion to overrule it.

[7] «Tout autre est l'approche qui considère le droit comme littérature, en analysant la dimension littéraire du texte juridique, point de vue dominant aux Etats-Unis où la common law s'énonce comme un immense récit jurisprudentiel perpétuellement repris, réinterprété et inventé. Il est possible enfin de chercher le droit dans la littérature, en se concentrant sur la façon dont la fiction littéraire réfléchit le monde de la justice et du droit.» A. Garapon, D. Salas (eds.), *Imaginer la loi. Le droit* dans *la littérature*, Paris, Michalon, 2006, p. 8.

[8] *Ivi,* p. 15.

The dialogue between national judges and the European Court of Justice concerned the procedural issue of judges' power to assess unfairness of consumer credit contracts. A Council Directive of 5 April 1993 gives a definition of 'unfair terms' in consumer contracts and provides a non-exhaustive list of examples.[9] According to Article 3(1) of the Directive 'a contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer'. Under Article 6(1) such an unfair contract terms will not have any binding effect on the consumer.

Nevertheless, the effectivity of the Directive in preventing and sanctioning unfair terms in consumer contracts risked to be considerably challenged by procedural provisions identifying the actors entitled to invoke such unfairness and limiting the timeframe during which it can be contested. In fact, before 2008, two French law provisions were likely to negatively affect the enforcement of the Directive.[10] The first one concerned the power of judge to asses on his own motion the unfairness of contract terms. In this respect, the case law of the *Cour de cassation* established that the power to invoke national consumer law against unfair contract terms only belonged to consumers. Consequently, the judge had no power to assess unfairness if he was not asked to do it.[11] The second limitation was stated by Article L.311-37 of French consumer code, according to which actions brought before the *Tribunal d'instance*, the competent judge for consumer contract issues, 'must be raised within two years of the event which gave rise to them and are otherwise time-barred'.

The combination of these two provisions contributed to considerably diminish the chances of succeeding of consumers who had been victims of unfair contract provisions. With regard to the limited power of judge, it has to be observed that consumers often do not have the competences and the legal assistance that are necessary to detect unfair terms on their own. Consequently, if the judge is not allowed to assess them on his own motion, the consumer will continue to fulfil obligations raising from the unfair contract terms. Regarding time-barring, such a rule allowed traders to wait for the expiration of the limitation period and then ask for payment on the basis of unfair contract terms. The negative consequence for consumers was evident: as 'unfair contract clauses usually only gain practical relevance once the trader takes action against the consumer. With a limitation period as the one described, the trader only needs to wait for the two years to be expired in order to be able to enforce an otherwise invalid unfair contract term, thereby depriving the consumer of the protection afforded to him by Directive 93/13/EEC.'[12]

The efforts made by Étienne and Juliette to protect consumers and fight against unfair contract terms were often doomed to failure because of these two procedural limitation until the day in which Étienne, while reading a legal journal in his office, found out that the Court of Justice of European Union ruled against the first of them. In fact,

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[9] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts {1993} OJ L95/29.

[10] As it will be shown later, in 2008, a new article L. 141-4 in the French consumer code adapted French law to the case law of the Court of Justice of the European Union.

[11] See for instance *Cour de cassation, 1ère chamber civile, 15 février 2000, pourvoi n° 98-12.713 PB* according to which: «[…] la méconnaissance des exigences des textes susvisés, même d'ordre public, ne peut être opposée qu'à la demande de la personne que ces dispositions ont pour objet de protéger».

[12] P. Rott, 'Unfair contract terms', in C. Twigg-Flesner (ed.), *Research Handbook on EU Consumer and Contract* Law, Cheltenham/Northampton, Edward Elgar Publishing, 2016, pp. 307-308.

according to the *Océano Grupo* decision, 'national courts do not only have the right but also the duty to assess the unfairness of not individually negotiated contract terms'.[13] This is because such a power constitutes 'a proper means […] of […] preventing and individual consumer from being bound by an unfair terms' and 'may act as a deterrent and contribute to preventing unfair terms in contracts concluded between consumers and sellers or suppliers'.[14] This decision showed the incompatibility of Spanish and French laws with the Directive and encouraged Étienne and Juliette to challenge the second procedural limitation: the two-year time limitation set up by the French Consumer code.

The two provincial judges of Vienne decided to continue the dialogue with the European Court and to catch the first opportunity to refer a question for a preliminary ruling, hoping to set aside the French time limit[15]. They chose a dispute in which a consumer credit contract manifestly lacked legibility: on the front of the offer the words 'Free application for money reserve' were written in large letters but the references to a contractual interest rate of 17,92% and to a penalty clause were printed in small letters on the reverse. The limitation period of two years was expired but, instead of applying Article L. 311-37 of the French consumer code, Étienne and Juliette referred a question for preliminary ruling asking to the European Court of Justice whether such a time limitation was compatible or not with the protection conferred on consumers by the Directive. The European Court of Justice ruled that the French limitation period was contrary to the Directive.[16]

Étienne and Juliette won their battle against the French Consumer code that was later amended. A new Article L.141-4, created by the law n°2008-3 of 3 January 2008, granted to the judge the power to assess unfair terms on his own motion and article L.311-37 on limitation period was been modified:

> C'est moins spectaculaire que, disons, l'abolition de la peine de mort. C'est assez pour se dire qu'on a servi à quelque chose, et même qu'on a été de grands juges.[17]

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[13] *Ivi,* p. 304.

[14] Joined Cases C-240/98 to C-244/98 *Océano Grupo Editorial SA v and Salvat Editores SA*. EU:C:2000:346, para 28.

[15] A passage of *D'autres vies que la mienne* perfectly shows the way in which small disputes are the the starting point of fundamental evolutions in European case law: *« Depuis quelques mois s'empilent sur son bureau des dossiers relatifs à un contrat proposé par notre vieille connaissance la Cofidis et joliment appelé* Libravou. *Ce contrat* Libravou *pourrait être étudié à l'école comme exemple de flirt poussé avec l'arnaque. C'est présenté comme une « demande gratuite de réserve d'argent » avec le mot « gratuite » imprimé en très gros, le taux d'intérêt figure, lui, en tout petits caractères au verso et il est de 17,92% ce qui avec les pénalités est supérieur au taux d'usure. Dans la pile, Étienne choisit au hasard le dossier où encapsuler sa petite bombe : Cofidis SA contre Jean-Louis Fredout. Ce n'est pas une grosse affaire : Cofidis réclame 16310 F, dont 11398 de capital, le reste en intérêts et pénalités. »* E. Carrère, *op. cit.*, p. 235.

[16] '[…] the protection conferred on consumers by the Directive precludes a national provision which, in proceedings brought by a seller or supplier against a consumer on the basis of a contract concluded between them, prohibits the national court, on expiry of a limitation period, from finding, of its own motion or following a plea raised by the consumer, that a term of the contract is unfair.' Case C-473/00, *Cofidis SA v Jean-Louis Fredout* EU:C:2002:705*,* para 38.

[17] E. Carrère, *op. cit.,* p. 243.

## III. The Individual Lives in Consumer Law: the double perspective of law and literature

Carrère's novel retraces the legal dialogue between the *Tribunal d'instance* of Vienne and the CJEU in succinct but clear terms. Nevertheless, as it has been argued in the introduction, literature offers additional point of views and judgments of values on each of the individuals that are part of this story: consumers, moneylenders and judges. Private law, consumer law and literature describe and conceive these social categories in different ways. Interestingly, these different perspectives are embodied by individuals belonging to the same social categories that are described. For instance, the way in which consumers' behaviour is considered by moneylenders significantly differs from the one of judges, in particular the two protagonists of Carrère's novel. It is therefore possible to argue that the rationalist and self-interested perspective is embodied by moneylenders while judges are the spokesmen of consumer law. This section will investigate these different representations making use of some excerpts from Carrère's novel. It will firstly focus on consumers, then on moneylenders and finally and most importantly on judges.

The image of consumer expressed by EU law consists in the benchmark of the 'average consumer' whose rationality is not determined on the basis of statistic elements but through an 'average consumer test'[18]. By contrast, in *D'autres vie que la mienne* the consumer is described from a double point of view. The first one corresponds to the traditional private law perspective according to which the will of parties is free and autonomous. Therefore, consumers' assistance should be reduced to the minimum because individuals are seen as rational agents that deliberately decide to bind themselves with the contract. The second perspective, inspiring the very idea of consumer law, takes into account the concrete informational asymmetry between consumers and moneylenders. The novel shows this dichotomy in the descriptions of consumer, moneylenders and judges but also in the representation of consumer law itself.

In Carrère's novel, the first perspective is embodied, for instance, by a law professor hostile to the very idea of consumer law:

> la seule fois où un de ses professeurs, à l'ENM, avait parlé de droit de la consommation, c'était avec un dédain ironique, comme d'un droit à destination des imbéciles, des gens qui signent des contrats sans les lire et qu'il est démagogique de vouloir assister[19]

The image of the consumer drawn by Étienne's professor at the school for judges is a mix of two negative judgments concerning both consumers, seen as naïve persons getting into debts without worrying about the consequences, and consumer law itself as a demagogical discipline.

The second perspective is conveyed by Étienne, Juliette and the author: it is the point of view of Carrères's novel and of literature in general, often focusing on the social reality in which individuals live. Following this approach, inequality is an indisputable feature of social reality. Consequently, the reason why consumers are sometimes reckless is that they have no choice but to borrow. Two figures of the credit consumers

[18] Cf. P. Cartwright, 'The consumer image within EU law', in C. Twigg-Fesner, *op. cit.,* pp. 199-220.
[19] E. Carrère, *op. cit.*, p. 162.

are outlined depending on whether their need to borrow is dictated by the pressures of consumerism (*surendetté actif*[20]) or by urgent necessity (*surendetté passif*[21]):

> […] de toute manière on signe parce que c'est le seul moyen quand on a besoin, ou d'ailleurs pas toujours besoin mais envie, simplement envie, car même quand on est pauvre on a des envies, c'est ça le drame. [22]

Literature also reveals the double nature of credit establishments whose image, just like consumers' one, can be regarded from two different perspective.

On one hand, moneylenders are rational agents whose task is to offer a loan to people who would not have any chance to obtain one from a bank. Their job does not consist in teaching to consumers a prudent use of credit.

> […] nos clients, ce qu'ils veulent, c'est de l'argent, pas des informations qui les dissuadent d'en emprunter. Et ce qu'on veut, nous, c'est gagner de l'argent en prêtant, pas recueillir des informations qui nous dissuadent de prêter. Nous ne faisons que notre métier, le crédit est une chose qui existe, et ce que vous [les juges] faites, vous, avec votre perpétuel pinaillage sur la forme des contrats, c'est simplement le procès de la publicité.[23]

On the other hand, from Étienne's point of view, moneylenders are seen as stronger parties abusing of credit consumers' state of need to impose them unfair and illegal loan conditions:

> Dites-moi plutôt pourquoi, la connaissant, vous n'appliquez jamais cette règle qui est après tout facile à appliquer. J'ai une idée, moi, de la réponse : c'est simplement parce que ça vous arrange que les contrats ne soient pas lisibles. [24]

The duality of representation for each of the actors of consumer credit disputes also applies to the image of judge, the character on which Carrère's novel focuses the most. What does being a *'grand juge'* mean? As for all previous characters, literature unveils the ambiguity of individuals, it shows the possible conceptions of judge's role and, in doing so, endorses one of them.

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[20] The author takes the dramatic example of the failed collective suicide of a French family enormously indebted: «[…] les Cartier usaient du crédit avec insouciance, et pour vivre au-dessus de leurs moyens. Ils achetaient une télévision et une console de jeux pour chaque enfant, de l'électroménager haut de gamme, ils remplaçaient compulsivement leur voiture, leurs meubles, leur équipement, s'abonnaient à tout et n'importe quoi, bref ils avaient le profil des gens à qui le moins dégourdi des vendeurs sait en poussant la porte de leur pavillon qu'il pourra fourguer ce qu'il voudra.» *Ivi*, p. 166.
Such a description could seem closer to the first perspective according to which the impulsive consumer should not deserve the protection of law. Nevertheless, the fact that credit establishment takes advantage of consumer's compulsive need to spend without warning him about the risks that he is taking makes it possible to consider that the *surendetté actif*, despite his recklessness, deserves protection. In fact: «combien il est facile de persuader les pauvres que, même pauvres, ils peuvent s'acheter une machine à laver, une voiture, une console Nintendo pour les enfants ou simplement de quoi manger, qu'il rembourseront plus tard et que ça ne leur coûtera autant dire rien de plus que s'ils réglaient comptant.» *Ivi,* p. 163.

[21] «À celui-ci, on ne peut pas faire grief de consommer avec excès […] parce qu'il est pauvre, très pauvre et qu'il n'a d'autre choix qu'emprunter pour remplir son caddie de paquets de nouilles.» *Ibid.*

[22] *Ivi,* p. 164.

[23] *Ivi,* p. 187.

[24] *Ivi,* p. 186.

On one hand, the respect of the principle of impartiality provides an image of the judge as guardian of the contract. On the other hand, particularly in consumer law, the judge is seen as the protector of the weaker party. The issue of the problematic coexistence of these two missions appears several times in Carrère's novel and is embodied in particular by Juliette's character:

> Juliette n'aurait pas aimé, disait-il, qu'on dise qu'elle était du côté des démunis : ce serait trop simple, trop romantique, surtout ce ne serait pas juridique et elle restait obstinément juriste. Elle aurait dit qu'elle était du côté du droit […][25]

## III. Literature and Partisanship: overcoming the conflict between positive law and Justice

The fact that the question of judge's role is ever-present in *D'autres vies que la mienne* is not surprising. In fact, the contrast between the impersonality of law and the emotional dimension implied in many legal disputes is one of the main objects of interest of 'law *in* literature' studies. The conflict illustrated by Carrère's novel is nothing but a transposition in the consumer law field of the central conflict studied by philosophy of law and 'law and literature' studies: the one between man-made law and Justice. Such a conflict was firstly put on stage by Sophocles' tragedy *Antigone*, probably the piece of literature that has been studied the most by law and literature scholars.[26] In *D'autres vie que la mienne*, Étienne and Juliette are facing a different type of conflict from Antigone's one: nevertheless, an analogy between the two can be useful to strengthen the argument of this essay. In fact, the two judges from Vienne challenged national case law of the *Cour de cassation* in order to defend what they considered to be just: a more effective protection of consumers. In other words, the classical conflict between positive law and justice is reconfigured in Carrère's novel and in consumer law in the one between the literal meaning of contract on one side and the need to protect the weaker party on the other.[27] The terms of this conflict can be found in several passages where the two protagonists, together with the author, explicitly endorse a vision of society where autonomy of will is nothing but a chimera for the weaker party and according to which the very purpose of law is to stem informational asymmetry.[28] This representation of reality is also

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[25] *Ivi,* p. 104. Another example: «Et que fait-il, le juge d'instance ? En principe, il n'a pas beaucoup de marge. Il voit bien qu'il y a d'un côté un pauvre type étranglé, de l'autre une grosse boîte qui ne fait pas de sentiment, mais ce n'est pas la vocation de la grosse boîte de faire du sentiment et ce n'est pas celle du juge non plus.» Ivi, p. 166.

[26] 'The central and most apparent conflict in Antigone is a conflict of laws, a mutually destructive collision between positive, man-made law and the eternal laws of the gods.' M. S. Howenstein, 'The tragedy of law and the law of tragedy in Sophocles' Antigone', *Legal Studies Forum*, 2000 (Vol. 24), p. 496.

[27] «Étienne n'avait pas eu besoin de huit ans dans le Pas-de-Calais pour apprendre que les hommes ne sont ni libres ni égaux, il n'en restait pas moins attaché, sans quoi il n'aurait pas été juriste, à l'idée que les contrats doivent être respectés.» E. Carrère, *op. cit.*, p. 162.

[28] In order to express such a vision of law as a remedy to social inequalities, Carrère quotes Oswald Baudot, the French judge who founded in 1968 the Syndicat de la magistrature and inspired Étienne's conception of law: «Soyez partiaux. Pour maintenir la balance entre le fort et le faible, entre le riche et le pauvre qui ne pèsent pas le même poids, faites-la pencher plus fort d'un côté. Ayez un préjugé favorable pour la femme contre l'homme, pour le débiteur contre le créancier, pour l'ouvrier contre le patron, pour l'écrasé contre la compagnie d'assurances de l'écraseur, pour le voleur contre la police, pour le plaideur

conveyed by descriptions of consumers as descriptions are the way through which literature implicitly states value judgements. Carrère's portraits of consumers convey the idea that they deserve the protection that Étienne and Juliette try to grant them when the contract does not.[29]

Is it possible to conclude that, unlike the serious but impartial poem of law[30], literature is the expression of a partisan vision of social reality? A general answer to such a question cannot be given because each literary work provides a unique representation of reality in which a plurality of point of views can be present or not.

Nevertheless, in the particular case of this novel, it can be argued that the answer should be negative for a precise reason. In *D'autres vies que la mienne* the conflict differs from the classic one described in most of 'law *in* literature' examples and in particular in *Antigone*. Very often novels oppose the rigid point of view of law to the humanistic sensibility of literature. Such a *topos* does not fit this case as the conflict put on stage by the novel is the one between two different sources of law. Consequently, its solution is necessarily internal to the legal system and can therefore be qualified as endogenous. In other words, unlike Antigone, Juliette and Étienne are not faced with the classical conflict between the rigidity of law and the feeling of Justice transcending it. Instead, they have to deal with a conflict of norms that can be solved by recourse to the hierarchical structure of legal system. Indeed, the question for preliminary ruling addressed to the Court of Justice is the way through which the hierarchy of norms is made effective.

In such a perspective, the image of Justice coincides with the one of European consumer law by virtue of which the negative consequences of social inequalities are mitigated by depriving the contract of part of its strength.[31]

Therefore, it can be argued that Carrère's novel showed that overcoming the conflict between law and justice does not always require to go beyond the legal dimension venturing into the field of philosophy and literature. In some cases, as demonstrated by Étienne and Juliette, the best way to approach the real meaning of justice, whose purest version seems to belong to philosophy and art, consists in climbing Kelsen's pyramid in the belief that:

> plus la norme de droit est élevée, plus elle est généreuse et proche des grands principes qui inspirent le Droit avec un grand d.[32]

contre la justice. La loi s'interprète, elle dira ce que vous voulez qu'elle dise. Entre le voleur et le volé, n'ayez pas peur de punir le volé.» Ivi, p. 183.

[29] An example of such a description: «Quarante-cinq ans, obèse, boudinée dans un jogging vert et mauve, les cheveux courts plaqués sur le front et de grosses lunettes fantaisie à motifs fluo, Mme A. n'en mène visiblement pas large. […] Mme A. gagne 950 euros par mois comme assistante hospitalière, elle a deux enfants de six et de quatre ans à sa charge, elle touche les allocations familiales et l'aide personnalisée au logement, mais comme elle travaille cette aide a baissé et ne couvre désormais qu'un tiers de son loyer. Sa situation est devenue critique quand elle a divorcé, trois ans plus tôt, car toutes les charges se sont multipliées par deux.» *Ivi,* p. 171.

[30] «Il faut donc s'y résigner : droit et littérature vivent dans le regard l'un de l'autre. Parce qu'elle est libre, la littérature doit jouir d'une certaine immunité ; parce qu'il est responsable, l'interprétation du juriste se doit d'être rigoureuse car ses personnages ne son pas des êtres de fiction. Le droit est un poème sérieux.» A. Garapon, D. Salas, *op. cit.*, p. 8.

[31] «[…] le droit est fait aussi pour les imbéciles, pour les ignorants, pour tous les gens qui certes ont signé un contrat mais qu'on a tout de même bien arnaqués.» E. Carrère, cit., p. 178. «La loi, cependant, tient compte de la réalité, et du fait que dans la réalité les parties ne sont pas aussi libres et égales que dans la théorie libérale. L'un possède, l'autre demande, l'un a le choix, l'autre moins […]». *Ivi,* p. 179.

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Nevertheless, it should be noted that Étienne's argument does not have a universal validity. In fact, in many cases, supranational law seems to contradict the feeling of justice of individuals to which literature is usually interested. For instance, European State-aid regulation is a fundamental instrument to preserve concurrence but also a source of negative externalities, such as closing down of factories and dismissals, that in the short run seem in conflict with the idea of social justice and that consequently are more likely to be perceived in a sympathetic way from the perspective of literature. This is why this essay argued that applying the hierarchy of norms can be the solution to the conflict between law and justice only in some cases, such as the one described by Carrère. For all the others, the dramatic lesson of Antigone, constantly investigated by 'law and literature' studies, is still valid and the conflict between positive law and Justice is dramatically intact.

[32] In order to make this argument as clear as possible, this passage deserves to be quoted in full: «Il est toujours jouissif, quand un petit chef vous brime en disant: c'est comme ça, pas autrement, je n'ai des comptes à rendre à personne, de découvrir qu'il y a au-dessus de lui un grand chef, et qu'en plus ce grand chef vous donne raison. Non seulement la CJCE dit le contraire de la Cour de cassation, mais elle a le pas sur elle, le droit communautaire ayant une valeur supérieure au droit national. Étienne ne connaissait rien au droit communautaire, mais le trouvait déjà formidable. Il commençait a développer la théorie qu'il nous a sortie, je m'en souviens, le matin de la mort de Juliette : plus la norme de droit est élevée, plus elle est généreuse et proche des grands principes qui inspirent le Droit avec un grand d. » *Ivi,* p. 233.