

Ghosts in Ancien Régime Law

Caroline CALLARD

ABSTRACT

Ghosts made their way into Ancien Régime law during the Renaissance, as demonstrated by the appearance of scholarly debates regarding the rental of haunted houses, or attempts to have ghosts testify in an effort to reveal unpunished crimes. However, this presence in treatises did not have a major effect in practice; on the contrary, it shows the reluctance of judges to accept ghosts within the court, which was reputed as being a sacred space. The admissibility of supernatural phenomena in law does not only reflect the general “progress” of reason over superstition: it also placed jurists on the path toward a subjectivist conception of law and the definition of a “legal reality” of facts.



In 1503, the soldier from Lucerne, Hans Spiess, was suspected of killing his wife. He protested that he had done nothing, and was brought before the corpse in the presence of judges. He had to swear his innocence while naked, to ensure he was not hiding any amulets, but his guilt was confirmed by his wife's remains, which immediately began to bleed profusely. Chronicle of Diebold

The ability to invoke stories involving ghosts in secular courts appeared for the first time in 1540, when the jurist Arnoul Le Ferron (1513-1563), from Bordeaux, published and commented on the city's customary law. He explored the following case: can one leave a rental house before the end of the lease if it becomes "infested by spirits"?

Reflections on the topic were abstract and remained unresolved until the 1570s, when the "*clause des spectres*" (ghost clause) was finally declared to be admissible, and became a matter of law. In Tours, the presidial (royal court) broke the lease for a haunted inn: the former owner's ghost refused to leave the premises and harassed clients, leading to the ruin of the new manager. The *clause des spectres* was admitted by French courts between 1570 and 1670. It is striking to see its presence in the writings of the most important jurists, as well as the legal texts that brought about a renewal of the law: René Choppin's customary laws of Anjou and Paris (1581 and 1603), Bernard Automne's similar work for Bordeaux (1656), comments on the Digest (compilation of Roman law) by Denis Godefroy (1583) and Claude de Ferrière (1688), collections of judicial rulings from Jean Chenu (1603) to Jean Du Fresne (1646), and doctrinal works on French law by Choppin and Louis Le Caron.

For European jurists, the passionate interest in ghosts on the part of their French counterparts was a matter of national law. That was at any rate the opinion of the Brussels jurist Jean Uffel in 1632. However, the topic slowly contaminated other countries. In a treatise on jurisprudence from 1578, the Spanish bishop Diego Covarrubias mentioned the decision issued by one of the primary royal courts, the chancellery of Grenada, that it would henceforth admit cases involving haunting. Italian jurists also explored this question by establishing a parallel between contagion by the plague and infestation by spirits: fear of ghosts was included among those elements that could legitimately end a lease. In Vincenzo Carocci's treatise on rental law (1592), the trio of "war, plague, [and] evil spirits" stood in for what Roman law considered as natural "sterilities" (floods, storms, epidemics).

The consideration of ghosts by civil law was accompanied and driven by treatises specifically devoted to the subject, such as those by the Swiss theologian Ludwig Lavater (1569), or the French Capucin Noël Taillepied (1588). Among this production, the *Discours des spectres* (Treatise of Spectres) by Pierre Le Loyer (first edition in 1586, considerably enlarged in 1605) stands out for its encyclopedic scope. A counsellor at the presidial court of Angers, he devoted an entire chapter to the legal treatment of ghosts, and notably provided an account of the murder trial for Anne Du Moulin, which took place in Paris in 1572. Facing a lack of evidence in the case, the prosecutor Barnabé Brisson sought to obtain testimony from the victim's ghost, which had appeared to her husband and revealed the identity of her murderer.

In the Christian imaginary of the Ancien Régime, God was loath to let crimes go unpunished on Earth; in order to bring forth His Justice, he could therefore decide to transgress the laws of nature and bring back the spirit of the dead. The legal arsenal could therefore authorize, on an exceptional basis, the use of supernatural evidence. For instance cruentation, or "the ordeal of the bier," was a procedure in which the suspects of a crime were brought before the victim's corpse, which it was hoped would begin to bleed in the presence of its murderer. As part of a trial by ordeal, the miracle of flowing blood manifests God's Justice on Earth, and concretely reveals why he gave humans the capacity to choose between good and evil. The procedure dated back to the Middle Ages, and remained in use in the sixteenth century: Le Loyer attests to seeing it used in Angers, and the Parliament of Brittany applied it well into the seventeenth century. Ghosts became a common, though peculiar, matter of law and were frequently debated in the late seventeenth century. Jurists and judges gradually included it in the development of legal knowledge.

André de Nesmond (1553-1616)—the president of the Parliament of Bordeaux who added ghosts to his court's

jurisdiction in a 1598 ruling—believed there was a parallel between the status of spirits and that of judges. If good and bad demons were no longer allowed to appear, then all “conference and communication between God and humans” would be eliminated. However, as spiritual beings, ghosts serve as intermediaries between humans and God, just as “judges” circulating information between heaven and Earth through their eyes and ears. The ghost represents the judge’s spiritual double, in the same manner as the king is God’s worldly double. The cause of ghosts became that of judges, who were placed by God between the king and his subjects.

The *clause des spectres* nevertheless stopped being part of French law in the late seventeenth century. In 1688, Claude de Ferrière (1639-1715) wrote in his collection of rulings that “the difficulty of proving the return to this world of those who have died always results in the dismissal of these requests; they usually involve visions and ghosts that arise in the minds of those who have hollow brains and disturbed imaginations.” Ghosts were excluded from the register of legal proceedings because they cannot be put to the test.

However, the matter was not closed everywhere in Europe, as in 1700 Andreas Becker of Germany defended a dissertation in Jena on law and ghosts (*Disputatio juridica de jure spectrorum*), in which he raised the issue of purchasing haunted houses, as well as other even more specific points such as whether one can divorce a woman that sees ghosts. In the context of the dawning Enlightenment, ghosts were initially seen as objects of popular belief, a theme that became a debated topic throughout late seventeenth-century Europe. The trial of superstition, which was nothing new when it came to ghosts, gained unprecedented scope. It was led in Europe by the Dutch Protestant minister Balthasar Bekker (1634-1698), whose work sparked, according to Jonathan Israel, the greatest intellectual dispute of the early Enlightenment. The dialogue between the natural world and the beyond, which had occupied sixteenth- and seventeenth century scholars, disappeared with the reconfiguration of knowledge in the eighteenth century. Sciences gradually concentrated solely on nature, and severed their ties with divine power. Learned law followed this movement, excluding ghosts and demons from the domain of human justice.

However, the law was not entirely finished with ghosts: in 1991 a contract of sale was rescinded by the New York Supreme Court and the presiding judge, Israel Rubin, declared that, from the legal point of view, the house was haunted. He proposed extending the notion of “stigmatized property” (valid after a murder or suicide for example) to include haunting. The decision delighted ghost hunters and concerned rational spirits, although the fame of the case rests primarily on its style: over five hundred years after André de Nesmond’s interminable speech before the Parliament of Bordeaux, ghosts can still shine a light on those who invoke them.

BIBLIOGRAPHY

CALLARD, Caroline, *Le temps des fantômes* (Paris: Fayard, 2019).

DAYAN, Colin, *The Law is a White Dog: How Legal Rituals Make and Unmake Persons* (Princeton & Oxford: Princeton University Press, 2011).

ISRAEL, Jonathan, “The Bekker Controversies as a Turning Point in the History of Dutch Culture and Thought,” *Dutch Crossing, Journal of Low Countries Studies* 20 (1996): 5-21.

SCHMITT, Jean-Claude, *Les revenants. Les vivants et les morts dans la société médiévale* (Paris: Gallimard, 1994).

SOMAN, Alfred, *Sorcellerie et justice criminelle : le parlement de Paris (xvi^e-xviii^e siècles)* (Brookfield: Variorum, 1992).

<https://ehne.fr/encyclopedia/themes/european-humanism/parallel-spaces-renaissance/ghosts-in-ancien-régime-law>