

Article

Edmond Picard and the Congo Free State: A Study in Law and Literature

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Abstract: While the law and literature movement has treated a number of important texts, contexts, and figures from both spheres, surprisingly absent is the situation of Leopold II's Congo Free State and the person of Edmond Picard. This article seeks to redress that absence, looking first at Edmond Picard as an important figure who represents both law and literature and analyzing a few texts directly related to colonialism in the Congo: specifically, his legal opinion *Consultation délibérée* and his travel narrative *En Congolie*. Then, we examine a few examples of Anglo-American literary resistance to Leopold's project in the Congo before coming to some conclusions. This study seeks to demonstrate the way in which questions of law and literature are inextricably linked: legal texts pose problems common to literary texts, and vice versa. Interacting with the work of prominent law and literature scholars, such as Richard Posner, Richard Weisberg, and Robin West, we conclude that the two spheres ought not to be abstracted from one another, but rather be examined conjointly, the case of the Congo Free State offering a glimpse into how the two work hand-in-hand with real world consequences for human lives.

Keywords: colonialism; imperialism; justice; law; literature; narrative; narratology; poethics; property rights; sovereignty

1. Introduction

The situation surrounding the Congo Free State (CFS) presents a unique and fertile opportunity for the student of both law and literature.¹ Moreover, to our knowledge, no study has addressed the case of the Congo from the perspective of the law and literature movement.² The present article hopes to make a start at filling such a *lacuna* within scholarship on colonialism and the Congo. We will begin by treating perhaps one of the most interesting (and sadly understudied) examples of law and literature incarnated in a single individual, the Belgian jurist Edmond Picard. We will examine both legal and literary texts by Picard and specifically discuss his connection, from both of these angles, to the Congo Free State, established by King Leopold II of Belgium in one of the most audacious and cruel acts of colonialism. As is well documented, Leopold appropriated enormous quantities of African land as personal property and proceeded to mercilessly exploit both land and people with a staggering death toll.³ Then we will shift to several examples of literary resistance to King Leopold II's colonial project on the Anglo-American side of the equation, texts that also address legal problems with Leopold's actions. In Picard's writings and in those on the Anglo-American side, we shall see examples of both law-as-literature and law-in-literature, to use the categories helpfully set forth by Guyora Binder and Robert Weisberg (Binder and Weisberg 2000). Finally, we will discuss how the data brought out by these texts fits in with and helps illuminate certain currents within the law and literature movement.

2. Edmond Picard at the Intersection of Law and Literature

Arguably, the conjunction of law and literature at work in the colonial situation of the Congo comes to a head in the person of Edmond Picard. Born in Brussels on 15 December



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1836, Picard strikingly represents the merging of these two worlds and demonstrates the impossibility of sealing them off hermetically from each other.

On the one hand, Picard represents the world of law. Bart Coppein claims that ‘in the Belgian legal world, he is no doubt the most brilliant and most omnipresent figure of the second half of the nineteenth century’ (Coppein 2015, p. 225).⁴ Others argue that Picard is ‘the colossus of the Belgian law office’ and the ‘lawyer par excellence’ (Coppein 2015, p. 225).

Picard is also known, however, for his involvement in developing and supporting a burgeoning movement of Belgian writers and artists, founding the literary periodical *L’Art Moderne*.⁵ Picard became influential in arguing against the Belgian Parnassians, who claimed that Art should be done solely for Art’s sake. A committed socialist, he promoted instead the idea of an *art social*, fully engaged in the dominant political and social questions of the day.⁶ On the other hand, he receives little attention for his involvement in the development of the Congo Free State, despite providing significant counsel to Leopold II in order to justify his activity in the Congo on legal grounds.⁷

3. Picard’s Philosophy of Law

Let us then briefly examine Picard’s general philosophy of law, as well as his conception of literature, before moving on to the ways in which he conjoins the two. Although his *Pandectes belges* offer a compendium to aid lawyers in providing them with numerous case studies and topics related to the practice of law, nowhere does Picard’s judicial philosophy appear more clearly than in two works: *Le droit pur* (1900) and *Les constantes du droit* (1921).

What these works reveal is that Picard’s approach to law is one that is profoundly nationalist, socialist, racist, and colonialist. Indeed, Picard himself considered these texts ‘an homage of my patriotic heart to my little native Land and a historical symbol of current Law in a Nation that synthesizes, one might say, the judicial situation of our Aryan Race or more exactly, at the present time, our Europeo-Americano-Australian Race’ (Picard 1921, p. iv).⁸ The nationalist and racist character of his judicial philosophy becomes apparent even in this statement from the preface of *Les constantes*. Law for Picard is something high and lofty, and so he wishes to ‘make the Law appear more lofty, more beautiful’, but also as a committed socialist with social aims in mind he desires it to be seen as ‘more useful, more of a social Force, more of a Force of nature’ (Picard 1921, p. iv).⁹

In *Le droit pur* Picard seeks to purify the Aryan practice of law from any kind of influence that would fall beneath its supreme superiority. The pure Law is conceived as the superior law produced by a superior race, a race that is ‘endlessly progressive, inexhaustibly inventive, irresistibly colonizing, fundamentally idealistic’ and that must fight those inferior races who ‘corrupt, adulterate their Law by using it to practice usury, expropriation, speculation on the Stock Exchange’ (Picard 1900, p. 241).¹⁰ Although here reference is made specifically to the Jewish people (and Picard is particularly known for his virulent antisemitism), the application of this principle could be extended to any race other than the Aryan/Caucasian race of which Picard himself was a member.¹¹

Picard proclaims race to be the ‘dominant factor in human activity’ and the ‘engine’ of social evolution in the realm of law (Picard 1900, p. 303). In many ways, Picard’s usage of terms such as ‘nation’ and ‘ethnicity’ overlap with his conception of race, thus fusing his nationalism and racialism. National, ethnic, and racial identity give us the essence of a people, and their approach to law literally ‘oozes’ from this essence: ‘Pure Law is an ethnic instinct. A nation oozes, sweats its Law, emanates it like a flower its fragrance’ (Picard 1900, p. 152).¹² Again, in *Les constantes du droit*, Picard contests the notion of monogenism (which he also refers to as humanism), the idea of one unified human race with common descent. Although a socialist, Picard is far from evoking any utopian vision of universal human brotherhood. Instead, as a socialist driven by nationalist and racial concerns, Picard favors polygenism. In this view, humanity is divided into ‘racial groups’ that have ‘fundamental physical, but especially cerebral, differences’ (Picard 1921, p. 150). There is, therefore, no possibility for any ultimate human solidarity; life is rather a constant struggle along national, ethnic, and racial lines.

To understand the role law plays in this struggle, we must apprehend what Ringelheim calls Picard's 'judicial ontology' (Ringelheim 1999, p. 99), the law's underlying relationship to Being itself. Picard declares law to be 'ubiquitous, disseminated [. . .] existing in conditions analogous to phenomena that are physical, chemical, religious, moral, artistic, industrial, linguistic, etc.' (Picard 1921, p. 34).¹³ Law is, thus, something primordial, coexisting alongside various other primordial elements of reality and permeating every aspect of human existence.

And yet, although law is also something lofty and noble for Picard, it is not his ultimate, transcendent principle, not the thing that stands over and governs all other phenomena. Rather, for Picard, the character of races and of nations is that which transcends all other considerations. History is controlled by inevitable clashes between those races and nations in their desire to compete for supremacy. This principle governs the course of human affairs. Nevertheless, the conflict is not one given over to the free-will choices of its main actors—Picard's view is finally deterministic, looking to the predestined domination of the Aryan race over the inferior races in an undefined, yet inevitable eschaton. Despite this determinism, Picard's worldview is not essentially rationalist. In fact, he argues that it is 'Instinct' which fundamentally reigns supreme, 'that pitiless magician presiding over the births of ideas and actions' (Picard 1900, p. 10).¹⁴ It is Instinct that drives national and racial conflict and determines their courses. Thus, law and legal reasoning, along with all other fields of human activity, including literature and the arts, must be harnessed together to serve the inevitable movement of this Instinct toward social, national, and racial progress/domination.

4. Picard's Literary Theory

When it comes to Picard's understanding of literature's role, Silverman has discussed his view that law and literature should not be relegated to separate spheres:

In chapter 197 of a major book of 1885, *Le droit pur*, Picard discussed the pathology of relegating art to a separate and autonomous sphere in terms that were culturally unthinkable for the French avant-garde after Charles Baudelaire. Picard criticized what he called the 'sacrilegious dismemberment' that yielded the split realms of 'l'Art pour l'art' or 'Droit pour droit.' The social function and mission of the lawyer, according to Picard, was to embrace 'l'esthétique juridique,' juridical aesthetics, which placed the evocative form and elegance of language on equal footing with the analytic work of legal judgment. (Silverman 2011, p. 726)

Silverman also makes a more general but related observation about Belgian culture at this time, observing that 'cultural activity is so dominated by the lawyers that we might designate Belgian culture a 'juridocracy'—a republic of arts and letters directed by the legal elites, with the law providing a recruitment center for its modern artists' (Silverman 2011, p. 726).¹⁵ Picard, as both a product of and proponent of this general climate, saw his identity as a dual one, that of a 'lawyer-artist'. A writer of 'numerous novels, poems, plays, and art criticism', he saw the work of creating literature as 'neither an avocation nor a distraction from the practical work of the jurist; both art and law were essential, and mutually reinforcing activity' (Silverman 2011, p. 726). Unlike a thinker such as Richard Posner, Picard did not position himself as skeptical of literature's relationship to law, but actively sought to bring the two together in his own practice.

Picard's *Pro arte* (Picard 1886) also expounds his vision of mutually reinforcing spheres. This collection of essays was designed to comment on the state of literature in Belgium and to provide encouragement in the right direction for up-and-coming Belgian poets and novelists. Picard offers something of a personal manifesto on literature's purpose. Contending against the Belgian Parnassians, those 'dreamers' who have 'extolled art for art's sake' (Picard 1886, p. 127), he argues that great literature will inevitably be bound up in society's evolution and progress, suggesting that it will contribute to the bringing forth of a new social order when the lower classes rise up against the dominant ones. Thus, great art and literature serve his socialist vision of progress: 'Literature has its part in that murky

evolution, arriving as fatal as the tide. Our times have writers who are preparing the births of new social orders, most of them without perceiving it' (Picard 1886, p. 131).¹⁶ We have already seen that law is bound up for Picard in service to this societal evolution as well.

Later on, Picard evokes the realist novel's power to portray contemporary life and the working classes, lamenting that Belgian writers have failed to understand 'the real life of beings and things' (Picard 1886, p. 287).¹⁷ Over against those concerned only with form, one must also think about content. One ought to 'show that art, while remaining itself, can aid in the reforms that politics must realize' (Picard 1886, p. 132).¹⁸ Art is a force for social (r)evolution, and here Picard invokes three examples from French literature that demonstrate how art can depict society in the hopes of influencing it for the better: Moliere, Balzac, and Baudelaire (Picard 1886, pp. 141–46). But we see that this social vision of art is connected to Belgian nationalism, with Picard stating that Belgian writers up until this point 'have not understood [. . .] how to be frankly national' (Picard 1886, p. 164).¹⁹ What is the solution?:

To see the Belgian milieu, to think as a Belgian, this is what Belgians need to do. Yes, think as a Belgian! Which does not mean to be incorrect, to do away with flandricisms, but to leave one's mind free to see and to express its own conceptions according to the natural bent of our customs and our race. (Picard 1886, p. 165)²⁰

Klinkenberg has discussed Picard's role in the development of the concept of the *âme belge* (the Belgian soul) and its connection to literature in promoting a Belgian nationalist myth (Bertrand et al. 2003, pp. 48–54).²¹ Literature for Picard should promote the glory of the nation, a glory inextricably linked to the question of race, as we have seen in his legal philosophy. This conjunction of nationalism, socialism, and racialism will all become important as we examine Picard's relationship to the Congo.

5. 'Paradoxe sur l'avocat' ('Paradox of the Lawyer')

Having looked at the general outlines of Picard's legal and literary thought, an examination of the entries in his oeuvre that conjoin these two is in order. In the first of these texts, we have an example of what Eric Achermann and Klaus Stierstorfer refer to as 'constitutivity' in their mapping out of the 'interrelations between law and literature' (Achermann and Stierstorfer 2022, p. 1): in this case, a literary work that seeks to shape the very foundations of one's thinking about the practice of law. This goes somewhat beyond a simple label of law-in-literature, given its overtly didactic nature.

Picard's *Scenes de la vie judiciaire*, a collection of texts each of which accompanied a volume of his *Pandectes belges*, presents a series of literary sketches of the judicial profession, thus exemplifying law-in-literature. In the first sketch, 'Paradoxe sur l'avocat', the narrator/Picard interacts with an older, more experienced lawyer (perhaps an avatar for Picard's mentor LeJeune) who offers him advice on the practice, arguing that law must at once be impartial and passionate. The narrator's interlocuter also raises a problem inherent in the practice of law: "'Well", he said to me, "it is not true that the Lawyer must only defend causes that he believes in soul and in conscience to be just. That is a false maxim, a deplorable maxim because it gives birth to hypocrisy and discouragement"' (Picard 1893, p. 18).²² Because of the falseness of this maxim, there will always be a certain amount of hesitation in the lawyer's soul, and yet, Picard's interlocuter suggests that the lawyer ought always to accept the cases that come his way, since even a criminal deserves a fair trial and defense. The text also displays the literary background of Picard, from the very title of the sketch, which recalls Diderot's 'Paradoxe sur le comédien' ('Paradox of the Actor'), to a host of references to 'canonical' European literature: Picard freely cites Hugo, Molière, Rabelais, Racine, Shakespeare, etc.

In Picard's text, moreover, the lawyer is represented as an actor, an artist, and a prophet, all professions bearing some connection to literature. In this representation, the objectivity or impartiality of the lawyer is not necessarily considered a praiseworthy value:

How ridiculous things would appear and how barren would be the result if each attorney appeared with the preoccupation of giving the cause an impartial opinion in which, forgetting that he is his client's lawyer, he would purport, anticipating the Prosecution, to summarize the litigation and propose the definitive solution. Can you imagine those two lawyers cooling down the cause and sterilizing it by taking away from it that passion for defense that makes everything flow? One might as well do away with the Bar. (Picard 1893, p. 25)²³

The practice of law must engage the passions: 'Without the gift of stirring oneself up in support of a cause [. . .] one is nothing more than a businessman' (Picard 1893, p. 29).²⁴ For the lawyer, 'the notions of calm and unchanging impartiality are not in-season here' (Picard 1893, p. 29).²⁵ Thus, while the parallels with Diderot's essay go beyond the title, Picard also represents a marked difference of position and a twist on the actor's paradox. For Diderot, the actor must not actually experience the emotions they portray, lest they become overwhelmed by them and unable to perform, and so, the lawyer must at times appear to defend with great passion and eloquence a cause or an individual for which they personally have no sympathy. On the other hand, they must be capable of arousing their own passions rather than suppressing them. This is not Diderot's man of reason—Picard's lawyer is something more like a method actor.

Law is also the site of evolution and progress: 'The Law is no more stationary than the other sciences. It is a soft and ductile matter that undergoes uprisings and depressions. Something new emerges constantly in legal debates' (Picard 1893, p. 26).²⁶ This is to be interpreted in light of Picard's more general philosophical positions. Again, the law is not a static object susceptible only to rational examination and study, but something living and moving, pushed forward by the higher principles governing the cosmos, the supremacy of national and racial instinct, which we have already seen in Picard's other writings.

Finally, the lawyer must bring a certain artistry to bear on his work. He must combine 'the impetus of the artist with the perseverance of the domesticated man. The secret of beautiful defense speeches is to have a strong impression and render it with intensity' (p. xxvi).²⁷ Thus, artistry is bound up with the passion and intensity that the attorney must bring to the table. The old lawyer in Picard's text laments that the Belgian Bar has largely forgotten this fact. Thus, even in this first literary sketch of the legal practice, we find Picard's 'lawyer-artist' identity expressed both in form and in content.

6. Consultation Délibérée (Deliberated Consultation)

We must now turn to Picard's writings related specifically to the Congo, these being primarily his *Consultation délibérée*, authored in 1892 with fellow jurist Felix Cattier, and his 1896 travel narrative *En Congolie*. Peter Brooks's notion of legal narratology²⁸ becomes especially helpful in regard to the first text as one notes how Picard places King Leopold's actions within the context of a long narrative looking all the way back to the beginning of the early modern period and the origins of the colonialist enterprise. Picard tells a story intended to place Leopold in the best possible light. Of course, what Greta Olson has referred to as 'The Narrative Turn' in law and literature studies (Olson 2018, p. 20) goes all the way back to Robert Cover's classic articles 'Nomos and narrative' (Cover 1983) and 'Violence and the word' (Cover 1986). Cover sees the triadic relation law-narrative-violence primarily as one in which violence occurs via the use of legal interpretation to stamp out particular cultural narratives: narrative is the victim of violence. However, we shall see that the context of the Congo is one where *nomos* and narrative both conspire to legitimate state violence, for the legal narrative construed by Picard will ultimately occlude and justify the violence perpetrated against human individuals and land in the Congo.

The *Consultation* consists of responses to ten questions submitted by Leopold regarding legal justification of his actions in the Congo. The questions deal primarily with issues of freedom of trade and the problem of *terres vacantes*.²⁹ The text can be seen as an example of law-as-literature, and several questions of a literary character arise during an analysis of it.

The first question posed by Leopold asks about the Congo Free State's ability to exercise property rights: 'Is The Congo Free State the owner of "ownerless properties" comprised in the territory over which it exercises its sovereignty,—and does not that ownership flow naturally from sovereignty itself?' (Picard 1892, p. 69).³⁰ In order to respond to this, Picard places the two terms, 'ownership' and 'sovereignty', within a narrative of historical evolution, contending that they are oft confused but have been progressively distinguished in more recent jurisprudence. For Picard, the two words signify different concepts; the one does not ensue naturally from the other.

Questions 2 and 3 further develop problems arising from the response to Question 1:

2. If the right of the State over 'ownerless properties' is not a logical consequence of sovereignty itself, does not this right result from the property legislation that the Free State has given itself and that attributes that property to the Domain?

3. Do not the real estate that is neither occupied nor farmed by the natives and that which has not been acquired by non-indigenous persons more especially form part of the State's Domain? (Picard 1892, p. 69)³¹

Picard's response here is to say that the State is free to form its own property legislation:

In virtue of its sovereignty, the Free State was able to provide itself with the property legislation that it judged expedient, and notably, to decree the rule admitted in the civil legislation of the civilized peoples, that the vacant and ownerless properties belong to the State. These vacant properties have entered henceforth into the State's Domain. (Picard 1892, p. 69)³²

Again, we find Picard making use of narrative, telling a story about how the Free State was able to bring the land in the Congo into its Domain and justifying those actions. Indeed, it is striking that this narrative seems to contradict Picard's earlier story separating the concepts of 'ownership' and 'sovereignty'. Acknowledging a *de facto* relationship between the two, here Picard declares that the Free State was able to procure properties '[i]n virtue of its sovereignty'. A deconstructionist reading of the text would surely have a great deal more to say about such opposing narratives at the heart of the legal opinion and would be one way of applying the insights of literary studies to such a text.

A close reading of the text brings out some other stylistic devices used by Picard to tell his tale more effectively. In the above paragraph, for example, we find two grammatical subjects: 'the Free State' and 'these vacant properties'. Notably absent is any reference to the indigenous inhabitants of the Congo. In this manner, by removing them from discussion, Picard effectively eliminates their subjectivity and personhood.

Picard continues his narrative by comparing Leopold's actions with those of other nations and with the laws of Belgium itself: The attribution to the State of vacant land [*terres vacantes*] is not, for that matter, an exceptional measure, nor an innovation of the Free State' (Picard 1892, p. 28).³³ There is, however, a problem in the definition of *terres vacantes* and its application to the Congo: 'In whatever way a piece of real estate finds itself currently unowned by a particular person, it becomes and remains the property of the State inasmuch as it is not validly alienated or inasmuch as ownership has not lapsed' (Picard 1892, p. 29).³⁴ However, certain 'land' and 'properties' in the Congo were not considered owned by 'a particular person', but rather by the tribe or community, a type of ownership not recognized under the European system (Marchal 1996, p. 256). The analogy with the Western approach to property legislation breaks down at this point and becomes inapplicable to the case of the Congo Free State. The problematic concept of vacant land, more often referred to by its Latin name as *terra nullius*, frequently appears in postcolonial studies, although discussions are generally of the indigenous peoples of Australia (Ashcroft et al. 2013, pp. 257–59; Banner 2007; Connor 2005; Secher 2007). Yet much of what is said in these discussions could be applied to the case of the Congo. In short, 'the absence of agriculture meant that European consciousness was unable to comprehend the owner's relationship with the land' and thus the notion of vacant land came to include 'any land that was neither fenced nor farmed' (Ashcroft et al. 2013, p. 258).

No longer are we speaking about the rule of a State government composed of other Europeans making laws for a people of the same national and ethnic character as itself. Instead, we are speaking of rule by an absolute monarch over peoples wholly unlike him, of whose time-honored customs and traditions he knows nothing. And once again, the text removes all reference to such peoples. Therefore, while Picard positions himself in this story as an objective narrator of facts, the type of third-person, god-like, omniscient narrator so frequent in nineteenth-century literature, we can only conclude that he is a very one-sided, and thus, unreliable narrator. His narrative speaks for the interests of Leopold and leaves out millions of other key actors affected by Leopold's decisions.

Indeed, the text falls far below the standards of the nineteenth-century European novel, which was often the site of a multiplicity of voices and heterogeneous discourses, as brilliantly analyzed by Bakhtin (Bakhtin [1929] 1984; Bakhtin 1981). Here is a place where Picard could have learned something from his novel-writing contemporaries on the world stage, a place where literature might have influenced law for the better. If, following Spivak, the subaltern cannot speak on their own unproblematically and autonomously (Spivak 1988), then at the very least their marginal voice might have been given a hearing through someone like a Picard. And this too is one answer to what Jorge Luis Roggero calls the 'persistent objection' posed to the law and literature movement 'from Richard Posner's seminal diagnoses to Julie Stone Peters' more recent interdisciplinary critique', namely the question 'what is the use of literature in the legal field?' (Roggero 2022, p. 28). Roggero's own answer is not unrelated to what is being argued here: borrowing from Russian formalism, he contends for *ostranenie*, defamiliarization, the concept that defined 'literariness' for thinkers like Shklovsky (Shklovsky [1917] 2015). Roggero reframes it as 'making the unseen visible' and bringing 'attention to what, for political or ideological reasons, remains invisible, marginalized, silenced in our societies, characterized by capitalism, colonialism and patriarchy' (Picard 1892, p. 28). This is exactly what someone of Picard's literary talents might have done and what the Anglo-American texts we will discuss later actually attempted to do.

Question 4 asks about the ways in which problems of 'ownerless properties' have been solved: 'How, in other new countries, has the question of ownership of ownerless properties, in its relationship to the public domain, been resolved?' (Picard 1892, p. 36).³⁵ Here again, we find Picard as storyteller in response to this question, weaving the narrative of colonization from the medieval period up to the present, placing Leopold's actions within that larger tale. Picard rejects early forms and theories of colonization, which confused property and sovereignty while also trampling upon indigenous peoples. For him, the General Act of the Berlin Conference represents the gold standard of progress: 'It is only since 1885 that the Berlin Act, in its Article 35, has made respect of the rights of particular persons one of the conditions of the acquisition of sovereignty by occupation' (Picard 1892, p. 36).³⁶ The problem noted before arises here again, in that respect for 'rights of particular persons' does not include respect for the rights of the community, the tribe, or the clan considered as a whole, bound as it is to individualistic Western notions of property. The narrative of progress is also inscribed within Picard's understanding of race, applying as it does to the Aryan peoples: 'The current of the general morality of the Aryan nations, at the present time, is indisputably humanitarian' (Picard 1892, p. 37).³⁷

Finally, after drawing on the broad sweep of colonial history, Picard enters into the narratives of individual European nations to demonstrate, against the backdrop of their policies, that Leopold's actions represent something just as, or even more humanitarian. The jurist finishes with a summary statement: 'The historical account that we have just given demonstrates clearly that the principle of attributing vacant land to the State's Domain, subject to the acquisition of rights, far from constituting an anomaly, is, on the contrary, in keeping with the most humanitarian measures that, up until now, have been applied in the appropriation of colonial land' (Picard 1892, p. 46).³⁸ Again, it is important to see Picard here as an unreliable, one-sided narrator who props up the hero of his story, Leopold, as an avatar of human progress, with humanity in fact limited to the Aryan nations, even if other

peoples are given lip-service. He is unable to entertain or imagine competing narratives on this point, nor is he, as Richard Weisberg calls for, in ‘the business of generating *just* words and paragraphs, structured [. . .] to convey and exhibit justice’ (Weisberg 2022, p. 567). Such justice, in the case of the Congo would call for him to expand his narrative to include the excluded voices.

Another question of literary import arises when we come to questions 5 and 6:

5. Is the theory of vacant properties owned by the State contrary to the principle of free trade inscribed in the General Act of Berlin?

6. International easements being constrained in their interpretation, might the principle of free trade infringe upon rights of domain? (Picard 1892, p. 46)³⁹

Here, Picard will interact with a canonical text (the General Act of the Berlin Conference), the standard of international law relative to colonial policy, and will attempt to harmonize the internal laws of the Congo Free State with it. The apparent tension between these two legal sources becomes evident when placing them side-by-side. Picard cites one of the laws included in the *Codes du Congo*, Article 2 of an ordinance dated from 1 July 1885: ‘No one has the right to occupy vacant land without a title, nor to dispossess the indigenous peoples from the land that they occupy; the vacant land must be considered as belonging to the State’ (p. 46).⁴⁰ The crucial statement of the Berlin Act in this case is from Chapter 1, Article 5, cited in its entirety by Picard:

No Power which exercises or shall exercise sovereign rights in the abovementioned regions shall be allowed to grant therein a monopoly or favor of any kind in matters of trade. Foreigners, without distinction, shall enjoy protection of their persons and property, as well as the right of acquiring and transferring movable and immovable possessions; and national rights and treatment in the exercise of their professions. (Picard 1892, p. 46)⁴¹

Picard seeks to bring the two texts together through application of a distinction between commercial and civil realms, arguing that the Berlin Act relates purely to commercial matters while the *Codes du Congo* regulate internal civil affairs. While dealing with statutes and codes might not seem as relevant to questions of law and literature as an analysis of narrative, Thomas McSweeney has helpfully argued for ‘reading legislation as literature’, contending that while ‘statutes and codes [. . .] do not share the narrative form of the judicial opinion and the novel, they do many of the same things that narrative texts do, and use similar techniques to create characters and worlds. In their own, subtle ways, they can tell stories’ (McSweeney 2018, p. 3). In this case, we can think of a ‘world’ created by the narrative told in the Berlin Act, a world that is the pinnacle of human progress and in which there is total unity among the (European) nations (who are its cast of characters), with free trade as one of the marks of that unity and progress. Inasmuch as the Berlin Act functions as the original canonical text for this narrative, the *Codes du Congo*, as secondary literature or as something of a sequel to the Berlin Act, must conform to the canon. Hence the need for Picard to engage in harmonization.

Narrative is again employed in response to Questions 8 and 9:

8. Are not hunting rights inherent to right of ownership? Are they not sovereign rights?

9. Is not the owner of a forest master of the elephants killed on his property and may he not require of a third party that animals not be hunted on his land, especially while the good faith of the third party cannot be established? (Picard 1892, p. 56)⁴²

Picard places these questions within a historical framework, concluding that they have been considered variously over time with no fixed principles. They are a simple matter of policy for each individual administration to oversee as they deem fit, thus granting the Congo Free State autonomy in such matters. After commenting on the particular decree of the King governing this problem, Picard notes:

Is it needful to add that this Decree, made in accordance with the sovereignty of the State, is absolutely legal? One cannot even dream of invoking against it either the principle of free trade established by the Berlin Conference, nor Article 35 of the Treaty, claiming that it infringes upon the vested rights of the indigenous peoples, for it concerns, let us repeat, a simple policy measure. (Picard 1892, p. 56)⁴³

Through the force of the rhetorical question at the beginning of this paragraph, the assertion of the impossibility of any statute against the King's decree, and the repetition of his key phrase ('a simple policy measure') at the end, Picard hopes to silence any opposing narratives on this subject, leaving no room to 'dream' (an act of the imagination) of a world in which Leopold's actions could be construed as exploitative and harmful. As we shall see, it took writers in the Anglo-American tradition to imagine a world in which Leopold could be the villain. Here, the character of Leopold's decree as a 'simple policy measure' signifies for Picard that it does no harm to the rights of the indigenous peoples, thus asserting something that is yet to be proved. Singularly overlooked in his discussion is the economic value and motivations behind such hunting and the possibility that the native inhabitants of the Congo could have some interest in it as well. The text, in its narrativizing, avoids speaking about ivory as a profitable resource and one of the primary financial boons to Leopold in the Congo, preferring to sidestep such questions by speaking of 'hunting rights'. This clever sort of metonymic shift, already present in the form of the original question, moves economic concerns out of the reader's field of vision and foregrounds recreation, explaining away any need for more than 'a simple policy measure'. Here, we can see demonstrated what Angela Condello says about how legal narration can make certain facts eventful or uneventful based on their presentation (Condello 2019). Picard is able to characterize hunting in the Congo as uneventful by his use of language. To use the old expression, he is telling us that there is 'nothing to see here'.

Question 10 seeks to incite a response summarizing what has come before, asking whether any limit might be fixed to the State's right of ownership over vacant land or whether it is not 'the only and singular judge' as to that limit (Picard 1892, p. 58). Picard returns, in this connection, to an examination of Article 5 of the Berlin Act, arguing that 'special historical and political considerations, of the highest order, [. . .] inspired the plenipotentiaries of the powers represented at the Berlin Conference to prohibit every privilege and every monopoly' (Picard 1892, p. 60).⁴⁴ Thus, he raises a key question pertinent to literary theory and interpretation: whether interpretation of the text must be based on the intentions of its authors. Picard answers in the affirmative but acknowledges that those intentions are inevitably bound up in historical and political circumstances. The text is a product of its time—only an explication of those particular circumstances and the intentions of the authors can provide a meaningful understanding of the Berlin Act.

Picard attempts to trace the circumstances, narrating the story of monopolies created in former colonies. These monopolies led to 'rivalries and jealousies that often degenerated into conflicts' (Picard 1892, p. 60).⁴⁵ One of the main goals of the Berlin Conference, according to Picard, was to create a balance of power in order to redress the perceived wrongs created by the monopolies. He argues that these monopolies must be understood as having an international import: '[The Berlin Conference] wanted to prevent monopolies in the international sense of the word [. . .] It is a question of monopolies and privileges from nation to nation' (Picard 1892, p. 62).⁴⁶

Picard's narrative thus seeks to uncover the authorial intent of the writers of the Berlin Act, again framing them as desirous of harmony among nations. We continue to see, however, that any notion of the impact of monopolies or conflicts on the 'uncivilized' peoples of the world has no place in Picard's narrative. Moreover, he contends that whatever monopolies may be granted in the Congo Free State, they cannot be seen as having the kind of international import discussed in the Berlin Act. Nor does the CFS government have the right to become caught up in such international rivalries, were it to do so by granting certain privileges specifically to Belgian nationals: 'At no point [. . .] will the Government of the Free State, or Belgium, if it takes the place of the State's rights

of sovereignty, be able to grant any privilege to its citizens nor establish any monopoly in their favor to the detriment of foreigners' (Picard 1892, p. 63).⁴⁷ In actual fact, however, this is exactly what happened. Concessionary companies were set up, like the *Compagnie du Katanga* and the *Compagnie du Kasai*, specifically under the instigation of Leopold through personal connections with their directors. These companies were composed primarily of Belgian nationals and were, for all intents and purposes, Belgian. Whether Picard at this time was aware of the full scope of this activity is an open question. Nonetheless, unwittingly or no, his narrative serves to obscure the facts on the ground in the Congo. To this end, he concludes his observations with a series of short, concise sentences highlighting the absolute nature of the CFS's autonomy in this matter: 'The Congo Free State is thus free to concede its vacant land as it pleases. Never mind the number and extent of the concessions. It alone is judge in this regard' (Picard 1892, p. 65).⁴⁸

One of the few writers to comment on the *Consultation*, Jules Marchal, goes straight to the core of the problem:

[Picard's] essays fixed no criteria for distinguishing vacant land from non-vacant land. They were silent on non-vacant land, namely that used by the Africans. They ignored the fact that in the inhabited regions of Central Africa there was no ownerless land and that the land there belonged to the community of the clan, the village, or the tribe [. . .] These essays took no account of the fact that the forests, the savannas, the waters were farmed for the needs of the community [. . .] The king did not ask the juriconsults to determine the rights of the Africans on their own soil. He had no desire to know those rights. (Marchal 1996, p. 256)⁴⁹

Thus, ironically, Picard's situating of Leopold within a narrative of historical progress and of humanitarianism belies a lack of concern for the actual rights and customs of the Congo's indigenous peoples, for his concurrent narrative around 'vacant land' excludes any reference to indigenous communities as subjects with some say in the matter. For someone who in his literary writing on the law judged that feeling and sentiment were proper to the legal practitioner, Picard demonstrates a coldness and distance from his subject that is far from the 'empathy' that Jeanne Gakeer has recently argued for in law (Gaakeer 2019, pp. 207–28). Picard's exclusion of indigenous peoples, as already seen, is a problem that plagues his entire dehumanizing discourse and narration. And therefore, as stated earlier, Picard becomes an unreliable narrator by virtue of this exclusion. An investigation into his biography and writings of a more theoretical nature provides us with details that explain this exclusion and disregard for indigenous peoples on the grounds of his philosophy of race. In this way, the questions of authorial intent and of the use of extra-textual sources rear their heads again, demonstrating their relevance in interpreting this judicial opinion. Indeed, a knowledge of the extra-textual sources relative to Picard and to the situation in the Congo is precisely what allows us to see through the rhetorical sleights-of-hand in Picard's narrative and how they occlude the actual facts of the case.

And so, the *Consultation délibérée* represents law-as-literature inasmuch as it raises questions and operates around themes frequently found in the study of literature, most particularly narrative and the stylistic devices inherent to it, but also issues of textual canon, harmonization, and authorial intent. But we have also touched upon what the literary might have added to the legal: what might it have looked like had Picard been more like a novelist in his approach, incorporating a greater plurality of voices in his narrative? Ingo Venzke has discussed the place of counterfactual histories relative to international law, and this would be something to contemplate here (Venzke 2018). How might a different, more expansive judicial story have impacted the situation in the Congo?

7. En Congolie

Now we can move on to a work of a more explicitly literary nature that bears directly upon the situation in the Congo, namely Picard's travel narrative *En Congolie* (Picard 1896). This text is primarily a record of Picard's own experiences while traveling through the Congo, although the narrative actually begins with Picard's voyage along the west coast of

Africa. While studying this text, it is important to note the way in which the same principles guiding Picard's philosophy of law (and indeed, his entire worldview) are present here.

The text, while giving Picard's original, first-hand account of his travel, also engages in a number of tropes common to colonialist writing that have been highlighted by post-colonial studies. One of those directly related to Picard's skill as a literary artist is what David Spurr calls 'visual mastery' (Spurr 1993, p. 17), a process that Mary Louise Pratt outlines in three steps: the 'journalist-explorer' first aestheticizes what he sees, then imbues it with signifying power, and finally describes it 'so as to subordinate it to the power of the speaker' (Pratt 1992, p. 204). The colonialist text thus reads as a sort of Foucauldian Panopticon, in which Western 'knowledge' gathered through observation signifies mastery of the environment and its people (Spurr 1993, p. 16).

From the very beginning, the literary character of this text is evident in a passage such as the following, with its personification of the Congo as seductive and devouring, itself a frequent trope of colonialist literature, along with its use of anaphora and alliteration:

The deck of the ship is swarming! It is a departure for the Congo, for that far-away Congo, seductive and devouring, land of dreams and land of tears, land of hopes and land of disappointments, of enthusiasms and of anathemas, like every Unknown attempted by human audacity and fragility. The bank has amassed a crowd, secretly tormented by the same desires and the same anxieties, attracted by this mystery and distrustful of this mystery. Military music plays indifferent tunes that are neither a stimulus to departure, nor a melancholic consolation; rather a dreamy accompaniment to the deed about to be accomplished, making it sublime by light harmony without destroying its vaporousness, its valor, and its sadness. (Picard 1896, p. 6)⁵⁰

In another very literary passage, with an eloquent effusion of language, Picard employs his talents as a writer to explicitly racist ends, describing a group of Senegalese picked up by the boat while traveling down the coast:

Things aboard are stupefying. In our absence, the boarding of the Senegalese continued without interruption, and it is, at all points along the bridge, a great swarm as if we had been seized by a horde of pirates. How many are there? Four hundred, five hundred, six hundred? 'More than a thousand!' a passenger shouts at me, just as stupefied as myself. Are we then going to be eleven hundred aboard at Leopoldville? Eleven hundred until Matadi, for about two weeks? But yes, however implausible that seems, for truly where is the room for this flock writhing with gesticulations and murmurs, spreading out its braids, seeking lodging, thick and piled up, as tightly packed as an assembly crowd during a fierce election period! In that heap, the barbarous character of these savages in their scramble accentuates the simian parentage of each of these beings: their receding hairlines, their sclerotic eyes injected with bitumen, their carnivorous teeth, incessantly visible and threatening, their lips over everything, their fleshy lips, prominent as a snout, similar to the gastropod organs of snails and large slugs painting vermilion along the paths of our woods after storms, leaving behind them the slimy and silvery trace of their passage. (Picard 1896, p. 29)⁵¹

Comparing them first to pirates, Picard proceeds with a description that animalizes the African individuals he encounters, speaking of a 'flock', 'their simian parentage', their 'carnivorous teeth', etc. Postcolonial theorists, such as Marianna Torgovnick, have shown how such depictions of the 'uncivilized savage', closer to the beasts than to humanity, served to prop up 'the West as norm and define the rest as inferior, different, deviant, subordinate, and sub-ordinateable' (Torgovnick 1991, p. 21). In the law-and-literature context, identification on the side of law also serves to set one apart as the Western man of reason and order, over against the chaotic, instinct-driven non-Western other. Therefore, it is not anodyne that Picard assumes his own character as a lawyer later in the passage, announcing:

[A]nxieties rise before that astonishing spectacle. If the artist feels an intense jubilation, the man, especially the man of Law, ratiocinates. Is such a bulk of emigrants, with no other shelter than hessian cloth, permissible, both for their own sakes and for others? Truly, there formed on board a rare accumulation of factors for the ripening of catastrophe. (Picard 1896, p. 30)⁵²

Here we have an example of law-in-literature. The lawyer in Picard meditates on this ‘spectacle’—Picard is the perpetual observer exercising mastery over the scene—and begins to wonder about its legality (‘is such a bulk of emigrants [. . .] permissible’), thinking about the potential catastrophes that could manifest from such a great mass of individuals aboard. For Picard, that mass has no greater worth than a herd of cattle. He begins to worry, not just about the danger they might present to themselves, but the dangerous outcomes for himself and the other Europeans. The next part of the text reads like a legal document outlining various types of liability:

Explosion: do we not have in the hold seventy pounds of powder and dynamite, without counting the passengers’ ammunition cases? Fire: did I not see yesterday hoisted up from the bridge and gathered together under the same hatch a pile of petrol cans and of matches that needed to be stored for the encampment of the blacks? Shipwreck: is not the sea, with its dangers, always there and is not our ship filled with bursting, ready to sink nicely down? Impossible rescue: we have only six canoes, able to receive one hundred and fifty men in all; what a rush and knife battle with these blacks if one needed to quarrel with them! Epidemic: what will result from that promiscuity of the Miracle Court, of this life in the herd, fatally immobile, of unfortunate people subject to all sorts of uncleanness, to every infection of the good life, whom the doctor has declared himself unable to seriously treat, and whom, in this classic land of deadly fevers, will remain exposed to avalanches and tropical rains, to seasickness and the sea’s blows flooding in? Revolt: what will we become, us whites, if this animality, through hunger’s wrath, bad weather, the regret at having left their native lands, rises up? ‘We will tame them with vapor jets’, an officer said to me. But if they act at night, by surprise, like jackals? (Picard 1896, pp. 30–31)⁵³

Picard ends on a note that continues the theme of animality with regard to the Africans, the fear of their insurgence like ‘jackals’ and the white man’s ability to ‘tame them’. Carrying on in this othering vein after witnessing a dispute among the Senegalese that ends in blows, Picard makes use of certain tropes of medieval and early modern travel literature, referring to their ‘grimaces like cynocephali’ and considering them as ‘carnivores incompletely cured of anthropagy’.⁵⁴ The arm of justice and the law comes upon them in the form of an ‘officer’ able to throw himself between them like a ‘dog-trainer whipping a pack of hounds’ (Picard 1896, p. 44).⁵⁵

Meditations on race abound in this text, in terms similar to those Picard will use later in *Le droit pur* and *Les constantes du droit*, as he argues for the impossibility of raising an inferior race to the same level as a superior one:

For to zoological differences of skin color and traits, superficial ones, correspond psychological differences, the true ones, the cardinal ones, and that is what they must look at who, like children, stubbornly insist on again posing the problem of the assimilation of the Black to the White, through education and time. (Picard 1896, p. 38)⁵⁶

Picard dismisses the notion of any kind of civilizing mission in Africa and also casts a cynical eye on Liberia while passing its shoreline, noting that there ‘the blacks, left to their own devices, have attempted with little success, for three quarters of a century, to govern themselves like an American republic’ (Picard 1896, p. 41).⁵⁷

When he arrives in the Congo, Picard observes judicial proceedings with a jurist’s eye and describes a courtroom scene where ‘two magistrates, having arrived in white hats, [. . .] judge a refractory white man on the regulations surrounding cabaret closing, and

some mercenary black men whose faces seem freshly waxed, as shiny as boots: one had gotten himself royally drunk, another had attempted to break the cash register for which he acted as guard, a third had stolen a leopard's tooth!' (Picard 1896, p. 76)⁵⁸ While 'the inquiry is patient and intelligent', Picard's gaze seems particularly drawn to the guards who stand at attention without shoes: 'A barefoot bailiff, a barefoot Congolese soldier who acts as a police officer, and those deplorably flat, tired, frayed, worn out feet' (Picard 1896, p. 76).⁵⁹

Picard notes quite positively how law functions in this strange context: 'They issue condemnations just as we do, they order immediate arrests just as we do' (Picard 1896, pp. 76–77).⁶⁰ He observes that 'the main punishment is penal servitude, open-air labor' and also remarks that 'Justice, displaying itself in such a rustic and perfunctory atmosphere, not showing, in the courtroom, anything but the work of the intellect involved [. . .] is not displeasing, and one dreams of organisms, perhaps in the future, where only the cerebral components function, great on their own merits, in a kind of monastic simplicity, disdainful of a heavy and ceremonious apparatus' (Picard 1896, p. 77).⁶¹

Yet his next comment reveals that there is not quite so much 'monastic simplicity' as he at first claims, remarking that the 'the audience was suspended for ten minutes to allow the court to take bismuth and laudanum: let not this jeering Congo lose its sovereign rights over the health of the whites' (Picard 1896, p. 77).⁶² What Picard fails to capture in this scene, with all his literary eye for detail, is the irony of 'servitude' being administered as both a criminal penalty and as an obligation foisted upon the innocent for the economic benefit of the State.

That being said, Picard does bear witness to abuses committed in the Congo Free State, in a way that foreshadows documents like the Casement Report and the findings of the Commission of Enquiry, as well as more literary texts like Joseph Conrad's *Heart of Darkness* or André Gide's *Voyage au Congo* (which would describe similar abuses committed in the French Congo) (Conrad [1899] 2014; Gide [1927] 1995). He writes of a 'mutilated forest', of 'the cruel impression of devastation' in places where 'only recently, indigenous villages sheltered themselves, hidden and protected by thick and tall foliage' (Picard 1896, p. 95).⁶³ Most revealingly, he recounts the flight of the natives:

They fled despite reassuring palavers, despite promises of peace and of goodwill. They burned their huts like capsized boats; with large ashen planks marking the spot among abandoned palm trees and broken banana trees. Terrors created by the memory of inhuman pillaging, massacres, rapes, and kidnappings haunt their poor brains, those minds so susceptible to ghosts, and they went seeking, in the folds of the brush hospitable to fugitives, or beyond the border, in Portuguese or French Congo, as yet untroubled by labor and so many rumblings, another retreat, far from the roads through which the whites pass, these gruesome fetishes, and their procession of enigmatic and troubling customs. (Picard 1896, p. 95)⁶⁴

In another scene that bears a striking resemblance to one depicted by Conrad, Picard displays the crushing weight of forced labor among the natives who carry rubber and ivory in tribute to their European overlords:

Incessantly, we meet porters, isolated or in single file, black, black, black, miserable, with every article of clothing encircled by a horribly grimy wrap skirt, with a frizzy, bare head (bearing the weight of a case, a bundle, an ivory tip, a hamper bursting with rubber, a barrel), most of them sickly, buckling under the burden multiplied by fatigue and lack of food (the food that consists of a handful of rice and revolting dried fish), pitiful walking caryatids, beasts of burden with their emaciated monkey shanks, contracted features, eyes round and fixed from the preoccupation with maintaining balance and the stupor of exhaustion. They come and go like this, by the thousands, organized in a human transportation system (requisitioned by the State armed with its irresistible *Force Publique*⁶⁵, given up by the tribal chiefs whose slaves they are and who round up

their wages), scampering around with bowed knees, protruding stomach, one arm raised in support, the other held up by a long alpenstock, powdery and overcooked, insects staggering their processional multitude and their Sisyphean task over peaks and valleys, dying along the way, or, having finished their route, on the verge of dying from overwork in their village. (Picard 1896, p. 97)⁶⁶

Granted the consistently racist and animalizing descriptions of Africans in these two passages, they are also quite revealing and bear witness to the barbarity of colonialism under Leopold. The unbearable and unjustly forced labor brings literary comparison to Picard's mind with the myth of Sisyphus and his daily drudgery of rolling the rock up the hill, only for it to absurdly tumble back down, gaining him no profit for his labors.

It should be noted that such descriptions by Picard are not always so focused on the terrible plight of the Africans. At other times, they seem to serve more as a pretext for a critique of 'village chiefs [. . .] imposing this regulated labor on their serfs that is repulsive to their sedentary and indolent way of life' (Picard 1896, pp. 132–33).⁶⁷ Despite observing that the Europeans are the ones who, with their demands for ivory and rubber, ultimately force the village chiefs into this situation, Picard seems to forget this fact later on and describes a 'new type of conscription, that disguised form of slavery' in terms that characterize it as an affair simply between African chief and villager: 'the meager wages of the unfortunate laborer goes to his master' (Picard 1896, p. 133). At the other times, Picard critiques the type of slavery enforced in the Congo from a socialist point of view as a product of the capitalist system: 'Business, that stupid pursuit, by a few wild animals, a few beasts of prey, of hideous wealth and degrading pleasures!' (Picard 1896, p. 35)⁶⁸ And yet, there is something fundamentally incoherent about such a critique coming from Picard, who is overall sympathetic toward the colonialist project. The link between capitalism and colonialism has been thoroughly brought to light by scholars within postcolonial studies, but Picard is either blind to this link or willing to brush it aside. Given the fact that Picard's racialism undergirds his entire worldview, as seen earlier, and that his support of colonialism ultimately rests on the foundation of his hierarchical view of the races, we can only conclude that this took precedence over any frustration about capitalism. This conclusion is bolstered by the relatively few, passing references to capitalism in the text, demonstrating that it was not an overriding concern.

In spite of this inconsistency of focus, Picard's depictions of injustice come through, with that injustice sometimes linked outright to the legal sphere. Picard notes, for example, the involvement even of magistrates in a type of 'domestic slavery', the taking of multiple women, more as property than as wives, by European men. He even evokes a legal term, mentioning that these women are taken 'with the full authorization of property law, *jus utendi et abutendi* [. . .]' (Picard 1896, p. 170).⁶⁹

He also observes contradictions in judicial practice, judges at the same time taking the role of 'guardians for the blacks' and severely punishing those who would mistreat them but also imposing 'military executions, at times, against the villages who need persuading in order to provide porters, recruits, laborers, rubber, and ivory' (Picard 1896, p. 185).⁷⁰

Harkening back to the *Consultation délibérée*, Questions of Leopold's sovereignty and property rights also arise in the text, with Picard stating that

the Sovereign of the Free State is more of a ruler in Congo than the Emperor of China is in China, and from one day to the next, he can unmake and remake things, at every level, according to his whims. He is the most absolute potentate in all the Earth and, before his omnipotence, whites and blacks have no rights but those that it pleases him to grant. There exists no guarantee and no limits to that omnipotence except in the bundle of modern ideas on the proper manner of government that it is difficult to flout without rousing the opinion of civilized nations. (Picard 1896, p. 152)⁷¹

Picard discusses briefly the notion of 'vacant land', calling it 'all that vague and vain land, namely what the natives did not appropriate for themselves by cultivating it around

their villages' and affirming that it 'has, by virtue of the principles of current International Law, passed to the State, and insomuch as it was not given over to any public service, it formed his [Leopold's] private Domain (Picard 1896, p. 201).⁷² Thus, while Picard seems to describe Leopold's sovereignty with a great deal more irony and cynicism than in the *Consultation délibérée*, he does not ultimately deny the conclusions arrived at in that earlier text. What he does call for, however, is that the government of the CFS disclose its secrets, considering them 'useful perhaps in the beginning, when so much brutality was necessary' (Picard 1896, p. 197),⁷³ but now needing to give way to 'a sincere and complete disclosure supported by the bringing to light of all documents and numbers' (Picard 1896, p. 204).⁷⁴

Picard comes near to concluding his text in a nationalist and racializing vein, contending for the right of the Belgium nation to wrest control of the Congo from Leopold:

[. . .] that retaking would be in the general current of history guiding the nations of the Euro-American race to occupy the entire earth either in the place of or next to populations of the primitive race, whether inferior or average, through colonies for settling, for mining, or for exterminating, because it is a fantasy to believe that each one should do as he pleases in this [. . .] the interest held by a people in its own morality and dignity advises it not to withdraw, to the peril of its honor, faced with the difficulties and burdens of a mission that accords with Fate's destiny for that people's own ethnic group. (Picard 1896, p. 205)⁷⁵

The same principles and kind of racial determinism that we noted in his legal theory hold good here in this discourse. On the journey back up the African coast, Picard describes Free-Town in Sierra Leone as just the kind of ideal colony that could be created in the Congo by the Belgians:

Thousands of blacks live there. And no more than a handful of whites. The city is calm, hard-working, happy! Is this not a vision of what the Congolese cities will be like in the future? For it is predictable that the dream of numerous European emigrants to these torrid and anemic regions will never be realized. The Congo smoldering and sick will never, ever, ever be a settlement colony! Henceforth, will one not see blacks domesticated, the way they are here, to live as disciplined and intelligent assistants in the limited domain open to their intelligence, governed by a white general staff, perhaps one or two for every thousand? (Picard 1896, p. 177)⁷⁶

Picard's vision must fulfill both his desire as a jurist for 'justice' toward the Africans and his desire for racial domination, white supremacist as he is. And thus, in Picard we have a conjunction not only of law and literature, but of diverse aims coming together. Perhaps what *En Congolie* reveals most clearly are the underlying drives, passions, and principles that motivated Picard, things visible in his more theoretical formulations on the legal discipline but that remain largely beneath the surface in his *Consultation délibérée*. Thus, literature gives a privileged look into Picard's thoughts and feelings about a specific situation that he himself, as legal advisor to Leopold, was also instrumental in bringing about. On the other hand, it is also striking to see the way in which Picard's narrative, perhaps more than he would hope, helps prepare us for literary resistance to Leopold's project through its depiction of abuses and atrocities in the Congo Free State.

8. Anglo-American Literary Resistance

Although literary resistance, and even literary testimony, to the situation in the Congo Free State, appears virtually non-existent on the Belgian side,⁷⁷ texts presenting the Anglo-American perspective begin to crop up around the turn of the century. Certainly, the Casement Report stands preeminent for its eyewitness reporting and first-hand testimony to the horrors committed by CFS agents, concessionary companies, and *Force Publique* soldiers. But we will now examine three texts, each of which is composed by a consummate literary artist, a distinguished author in the Anglo-American tradition, and each of which

bears witness in a unique way to the Congo atrocities while also raising questions of law and justice.

9. Heart of Darkness

Our first text is unquestionably the most well-known, Joseph Conrad's *Heart of Darkness* (Conrad [1899] 2014). Conrad wrote this novella based upon his own experience working for a Belgian trading company and sailing a steamer along the Congo River in 1890. The text is suffused with a poetic realism that makes its revelations all the more gripping. The first of these occurs early in the narrative as Marlow, walking toward his company's station, stumbles upon chained workers, forced to build the railway:

A slight clinking behind me made me turn my head. Six black men advanced in a file, toiling up the path. They walked erect and slow, balancing small baskets, full of earth on their heads, and the clink kept time with their footsteps. Black rags were wound round their loins, and the short ends behind wagged to and fro like tails. I could see every rib, the joints of their limbs were like knots in a rope; each had an iron collar on his neck, and all were connected together with a chain whose bights swung between them, rhythmically clinking. Another report from the cliff made me think suddenly of that ship of war I had seen firing into a continent. It was the same kind of ominous voice; but these men could by no stretch of imagination be called enemies. They were called criminals, and the outraged law, like the bursting shells, had come to them, an insoluble mystery from over the sea. (Conrad [1899] 2014, pp. 73–74)

Like Picard's travel narrative, we find here another example of law-in-literature. The irony of calling these forced workers 'criminals' reminds us of the blurred lines between legality and illegality that we remarked in our study of Picard's text. Although Picard fails to mention the fact that innocent Congolese were forced into the same 'servitude' as condemned criminals, Conrad puts this upside-down situation on shocking display, with Marlow even acknowledging his own implication (by virtue of his association with the CFS) in 'the great cause of these high and just proceedings' (Conrad [1899] 2014, p. 74). Moreover, there is clear irony in Marlow's personified description of 'the outraged law'. With the simile 'like the bursting shells', Conrad compares the law's wrath to the guns firing upon the innocent enslaved workers. That law 'had come to them' as 'an insoluble mystery from over the sea', a metaphor that highlights the confused and chaotic nature of Leopold's actions in the Congo as well as the imposed force of law at work there. The law that comes to them is a foreign one, 'from over the sea', with no sympathy for local proceedings and no wish to know them. Instead, it does nothing more than destroy the Congo's inhabitants like exploding shells. But how can a law that attacks innocent human beings, not enemies, for no explicable reason be called just? This is the question that Conrad's literary insights lead his readers to pose. We ought to notice the marked contrast between the critique leveled at the workings of the 'law' in the Congo here and its relatively favorable representation in *En Congolie*, to which *Heart of Darkness*, as a travel narrative, is the closest analog among our Anglo-American texts.

Later, Marlow seems to happen upon a similar group of Africans, this time suffering in an even more dehumanized state. He observes how 'black shapes crouched, lay, sat between the trees, leaning against the trunks, clinging to the earth, half coming out, half effaced within the dim light, in all the attitudes of pain, abandonment, and despair [. . .] The work was going on. The work! And this was the place where some of the helpers had withdrawn to die' (Conrad [1899] 2014, p. 75). Although 'dying slowly', the narrator remarks that 'they were not enemies, they were not criminals, they were . . . nothing but black shadows of disease and starvation [. . .]' (Conrad [1899] 2014, p. 75). They appear to be workers similar to the Senegalese mentioned in Picard's text: 'Brought from all the recesses of the coast in all the legality of time contracts, lost in uncongenial surroundings, fed on unfamiliar food, they sickened, became inefficient, and were then allowed to crawl away and rest' (Conrad [1899] 2014, p. 75). What comes through more clearly here is the

presence of death, in all its injustice and horror. These individuals are caught in a system which is ostensibly 'legal', but which fails to care for them or consider them as human beings with dignity and worth. Treated as criminals and enemies, they are victims of the highest injustice. This vivid imagery powerfully depicts the disjunction between law and justice as conceived by Leopold and his representatives in the Congo and true justice, which, according to Robin West, ought to include care for the sufferings of these human individuals (West 1997).

Farther down the trail, Marlow encounters 'now and then a carrier dead in harness, at rest in the long grass near the path, with an empty water-gourd and his long staff lying by his side', as well as 'the body of a middle-aged negro, with a bullet-hole in the forehead' (Conrad [1899] 2014, p. 81). As he arrives at Kurtz's house, he will glimpse further evidence of atrocities with the shrunken heads on stakes that outline the property. Here we have a mention of 'Mr. Kurtz's methods' that 'had ruined the district'. We are told that 'the heads only showed that Mr. Kurtz lacked restraint in the gratification of his various lusts' (Conrad [1899] 2014, p. 148). Later on, these methods will be called 'unsound'. The narrator will discover Kurtz's report which ends with a call to 'exterminate all the brutes'. All of this serves as a subtle way to push for further examination of the CFS's own methods and of the evidence which might be brought up against it. In another place, Marlow sums up the brutality and extra-legal character of the regime well, describing it as 'just robbery with violence, aggravated murder on a great scale' and characterizing its motives in a way that responds appropriately to Picard's racial prejudice: 'The conquest of the earth, which mostly means the taking it away from those who have a different complexion or slightly flatter noses than ourselves, is not a pretty thing when you look into it too much (Conrad [1899] 2014, p. 57).' Thus, Conrad's text puts the ugliness of the Congo atrocities on full display with great literary skill and in a relatively non-didactic way, while addressing questions of law and justice and functioning as law-in-literature. While Conrad has been (justly) criticized for his stereotyped portrayal of Africans in the text,⁷⁸ he does at the very least try to enlarge the narrative by attempting to portray the plight of the Congo's inhabitants relative to 'law' and 'justice' as practiced by Leopold's forces in the Congo Free State, something absent from Picard's legal and travel narration.

10. 'King Leopold's Soliloquy'

Mark Twain's short pamphlet *King Leopold's Soliloquy* (Twain [1905] 1970) represents a very different literary genre and approach to the same issues. This work figures among Twain's 'anti-imperialist' writings, and all proceeds from it were meant to go toward aid against the Congo atrocities. With typically biting satire and acerbic wit, Twain presents a Leopold both oafish and megalomaniacal. The year this pamphlet was published gives us some insight into its contents, as it follows swiftly on the heels of the Casement Report and the publication of the Commission of Enquiry's findings. We see Leopold leafing through these reports and other pamphlets concerning the same matters, maladroitly attempting to provide a response to their charges. Referring to his accusers as 'miscreants', Leopold laments that 'they are telling *everything!*' (Twain [1905] 1970, p. 5)

Leopold complains about

These meddlesome American missionaries! these frank British consuls! these blabbing, blabbing Belgian-born traitor officials!—those tiresome parrots are always talking, always telling. They have told how for twenty years I have ruled the Congo State not as a trustee of the Powers, an agent, a subordinate, a foreman, but as a sovereign—sovereign over a fruitful domain four times as large as the German Empire—sovereign absolute, irresponsible, above all law; trampling the Berlin-made Congo charter under foot; barring out all foreign traders but myself; restricting commerce to myself, through concessionaires who are my creatures and confederates; seizing and holding the State as my personal property, the whole of its vast revenues as my private 'swag'—mine, solely mine—claiming and holding its millions of people as my private property. (Twain [1905] 1970, p. 7)

In this literary representation of Leopold, we find him an absolute sovereign who is 'irresponsible, above all law' and not countering the claims of his accusers with evidence to the contrary but hurling his own accusations, charging them with the crime of attacking so august a personage as himself, 'a king whose acts cannot be criticized' (Twain [1905] 1970, p. 8). The question of law is addressed head-on with Leopold declaring himself to be 'above all law' according to his status as royalty. Rather than place his actions in the Congo within a narrative framework that finds them in line with international colonial law (the work of harmonization that Picard sought to do), Twain's Leopold openly tramples 'the Berlin-made Congo charter under foot'. This satirical representation of Leopold exposes what Picard's *Consultation délibérée* sought to obscure, including the ultimate inability to separate sovereignty from property ownership in the CFS.

Although Twain's portrait lacks certain nuances regarding Leopold's actual reaction to the Casement report (something that historical documents can now provide us), his text does address the question of ultimate responsibility in a way that had not been done quite so clearly up to this point. The pamphlet's narrative presents Leopold as a bit more directly involved in the day-to-day affairs of the CFS (something of a 'puppet-master', if you will) than he actually was. Nevertheless, Twain reminds us that someone has to appear before the bar of justice and that ultimate causality and responsibility (if not, direct action) lay with the king and his all-consuming ambition.

Twain appends to his pamphlet the text of an interview between the journalist W.T. Stead and an American missionary in the Congo. The article bears the title 'Ought King Leopold to be Hanged?' By accompanying his own text with this one, Twain seems to say outright that Leopold should be held accountable for the Congo atrocities before the bar of international law and justice. Indeed, the interviewer laments that 'at present the Hague Tribunal is not armed with the powers of an international assize court, nor is it qualified to place offenders, crowned or otherwise, in the dock' (p. 54). Were it thus armed, one would not need 'one atom of evidence beyond the report of the Commission to justify the hanging of whoever is responsible for the existence and continuance of such abominations' (Twain [1905] 1970, p. 54).

Here again is law-in-literature, although in much more direct, obviously didactic form than in *Heart of Darkness*, given the difference in genre conventions. While *Heart of Darkness* serves as a literary analog to *En Congolie* in our study, Twain's text could be placed more readily in dialogue with the *Consultation délibérée*. Certainly, in that latter text, we also hear Leopold's voice in the form of his proposed questions. The great irony is that while the non-fictional legal text narrativizes in a manner that hides the reality of what was taking place in the Congo, this fictionalized version of Leopold brings to light that reality. In this way, a study of the two texts disrupts an easy dichotomy between law as straightforward, unmediated representation of the 'real' and literature as mere narrative. It shows the interrelation between the two so as to argue against Posner's thesis that literature has little to do with law.

By the same token, the text problematizes Martin Jay Stone's more recent intervention on separate interpretative approaches between law and literature, claiming that there is 'the constitutive presence in law—and the absence in literature—of an interest in following or applying the text' and that 'the question of application doesn't arise' in literature (Stone 2017, p. 88). Stated another way, 'literature thinks about law [. . .] without having to resolve its applicative questions' (Stone 2017, p. 88). Twain's text clearly calls for application, however. While it is true in one sense that Picard's legal text actually *did* something that Twain's text had no power to do, nevertheless, it was effective literary representations like the ones put forth by Conrad and Twain that helped to change hearts and minds regarding the Congo, which eventually led to actions, even actions in the legal sphere. Application may not be as instantaneous with a literary text, but we cannot disregard its presence altogether. This is perhaps all the more true in our next text.

11. The Crime of the Congo

The Crime of the Congo (Doyle [1909] 2011) was written by Sir Arthur Conan Doyle, of *Sherlock Holmes* fame. Although not as specifically ‘literary’ in its presentation, this work intended to raise awareness of the Congo atrocities among a larger audience and certainly did make use of its author’s considerable literary talents in giving a narrative ‘voice’ to Congolese victims.

Strongly associated with the efforts of the Congo Reform Association, Conan Doyle describes continuing atrocities, despite the Congo having been annexed to the Belgian government in 1908. The very title of the work indicates its relationship to law and the question of criminality regarding Belgium’s actions in the Congo. Conan Doyle argues that ‘responsibility cannot be so easily shaken off’ by the Belgians with the excuse that King Leopold alone is culpable for the horrors perpetrated:

The Congo State was founded by the Belgian King, and exploited by Belgian capital, Belgian soldiers and Belgian concessionaires. It was defended and upheld by successive Belgian Governments, who did all they could to discourage the Reformers. In spite of legal quibbles, it is an insult to common sense to suppose that the responsibility for the Congo has not always rested with Belgium. The Belgian machinery was always ready to help and defend the State, but never to hold it in control and restrain it from crime. (Doyle [1909] 2011, p. 3)

In order to adequately ‘clear the past’, the Belgian government ought to have set up a ‘Judicial Commission for the rigid inspection of the whole matter, with power to punish for all past offences’ (Doyle [1909] 2011, p. 3). This example of law-in-literature seeks to perform that inspection and bring Belgium before the bar of justice, much as Twain sought to do singularly with Leopold.

Proceeding much in the manner of a courtroom lawyer, Conan Doyle begins to pile up evidence against Leopold and the Belgians, using eye-witness testimony and narratives from indigenous peoples (albeit reported second-hand), missionaries, traders, CFS agents, and other actors in this drama. He also employs logical argumentation and refutation based on current international law (including the Berlin Act) in order to build his case. Coming in for particular condemnation by Conan Doyle is the manner in which ‘only subordinates were punished’ for Congo crimes (Doyle [1909] 2011, p. 30), despite guilt and responsibility going all the way up the chain of command: ‘In any other European colony they would have been hanged off-hand, as the villainous murderers that they were. But they do not hang white men in the Congo land, even with the blood of a hundred murders on their hands. The only white man ever hanged there was the Englishman Stokes for the crime of competing in trade’ (Doyle [1909] 2011, p. 30). Here, Conan Doyle does not condemn colonialism *in toto* but sets the case of the Congo over against other examples of European colonies. We have seen that Picard in his *Consultation* found the Congo Free State to compare favorably to the history of colonialism, even perhaps representing a high point in that narrative. We have also seen in *En Congolie* his continued optimism regarding Belgian takeover of the Congo, even as he was becoming increasingly disillusioned with Leopold’s actions. But Conan Doyle dismantles any narrative of optimism or progress, whether in reference to Leopold or to the Belgian government as a whole, finding them both wanting.

Finally, Conan Doyle responds to Belgium’s and Leopold’s objections to the Casement Report, concluding with a hopeful cry for international justice, similar to that issued at the end of Twain’s pamphlet, arguing that ‘there should be some punishment’ for the Belgians in the form of an ‘International Commission, with punitive powers’ (Doyle [1909] 2011, p. 87). As Twain, Conan Doyle appeals to a higher law that would judge and enact justice, for the crime of the Congo is far too great: ‘They have been guilty of the sack of a country, the spoliation of a nation, the greatest crime in all history. [. . .] Surely somehow, somewhere, they will have their reward!’ (Doyle [1909] 2011, p. 87). Conan Doyle’s text, in many ways, functions more clearly than the others as a bridge between law and literature, proceeding as a legal text by logical argument and by the production of evidence to build a case while

also resorting throughout to rhetorical, stylistic flourishes such as enumeration, metaphor, metonymy, anaphora, etc., that constitute a more literary mode. Again, this demonstrates the porous boundaries between law and literature, as well as the ability to harness the strengths of both modes, mutually reinforcing one another, to touch the reader and to effect change.

Along these lines, we can think about the various impacts of these three texts. *Heart of Darkness* functions in a more subtle way than the other two. Its impact is more trained on our affective faculties, offering up a vivid portrait of evil and suffering that weighs on the reader's heart. While it does not make a call to action in the same way that Twain and Conan Doyle do, it does help to lay some groundwork in the popular imagination about the Congo and the very twisted machinations of law at work there. We might think of Conrad as planting a seed that later texts would bring into full flower. Both Twain and Conan Doyle are connected to the Congo Reform Association and its attempts to bring change in the legal sphere, among others. Twain leaves the reader with a curious mixture of bemusement and horrified disgust at his satirical portrait. Conan Doyle provides rigorous argumentation and passionate pleading. Both end with a call for justice whose force derives from all that came before. With their differences in presentation and effect, the three texts demonstrate the great variety of ways in which literary resistance with an eye toward law and justice can manifest itself, reminding us that studies of law-in-literature need not limit themselves to a single genre.

12. The Congo Free State at the Intersection of Law and Literature

How should we synthesize what we have seen in the above texts, those of Picard and those of our Anglo-American authors, in such a way that brings them into conversation with the law and literature movement? Already, we have seen how each of them, in one way or another, represents the intersection of law and literature.

For one thing, these texts display the way in which law and literature can be harnessed to work together. That 'working together' can be directed for ill toward unworthy and ultimately unethical (though still potentially 'legal') aims, as in the case of Picard. We have seen how nationalism and racism shape his worldview, driving his thinking on law and on literature. Although there is a kind of recognition of the rights of the indigenous peoples of the Congo (a certain sense of 'justice'), a fundamental disregard of their full humanity and equality reigns in both his legal and literary texts. Despite the possibility of reading *En Congolie* as shedding light on the Congo atrocities in order to expose them, it appears that ultimately imperialism, a sort of racially-grounded manifest destiny, has the final, dehumanizing word. We have also touched on the ways that literature and greater literary imagination on the part of Picard to enter into other worlds and stories could have contributed to something more just in the Congo.

Moreover, this study has highlighted certain concepts in postcolonial theory that have relevance to this kind of intervention in law and literature. Recent works like Leila Neti's *Colonial Law in India and the Victorian Imagination* (Neti 2021) have been excellent in this vein, making use of key ideas in postcolonial studies while showing how legal and literary texts functioned together to reinforce colonial subjection. A more extensive (book-length) study of this in relation to the Congo, or to colonial Africa more broadly, is certainly called for.

However, this case also shows us how law and literature can collaborate toward loftier ends, as our Anglo-American texts do. The imagination that Picard lacked in this regard was taken up by those in the English-speaking world. It was through the publication of texts such as those written by Conrad and Twain, prior to the Belgian annexation of the Congo, that a spotlight was thrown onto abuses in the Congo, with outcry in the high court of public and international opinion finally pressuring Leopold to give up his absolute monarchy. Although it is not entirely clear what influence Conan Doyle's specific treatise had on the Belgian government, what history does tell us is that through the sway of movements like the Congo Reform Association the most egregious abuses did largely come to an end. We find evidence of this in the fact that the CRA by 1913 found no need to

continue on as an organization. Yes, colonialism did not come to a full stop there, but literary representations of legal issues did help along the way to make small improvements that would have affected the lives of millions residing in the Congo.

Above all, narrative has also come to the foreground as a principal element in this situation. The history of the Congo Free State is the site of competing narratives, those presented by Leopold and the Belgians over against those counter-narratives brought up by Leopold's accusers. Peter Brooks' insights into the concept of 'legal narratology' are useful here. He reminds us that narrative is fundamental to human existence, that we often order our world in terms of narratives (Brooks 2006, p. 24). He also argues that narrative discourse is never innocent, that it is always a particular, situated representation of and perspective on reality (Brooks 2006, p. 28). And as Brooks has noted more recently, we need to be alert to the abuses of storytelling: 'We need to oppose critical and analytical intelligence to narratives that seduce us into the acceptance of dominant ideologies' (Brooks 2022, p. 22). Picard's narratives about the Congo Free State found in both his legal and travel writings are a good case-in-point. We have seen how Picard's use of narrative in a legal context functions at almost every point to shift attention away from the evils actually taking place in the Congo. Here, we very much need Brooks's distinction between facts and stories in the law and ought not to confuse the two as we look at Picard's writing (Brooks 2022, p. 98). On the other hand, Kieran Dolin describes the more positive use of story, that 'of coming to terms with traumatic experience by embodying it in verbal imagery and narrative' (Dolin 2007, p. 207). This is exactly what took place with the production of literary resistance to Leopold's endeavors in the United States and Great Britain.

Thus, the two fields of literature and law interpenetrate one another. This is to be proposed over against the view of someone like Posner who sees them as fundamentally separate fields, useful to each other perhaps in some ways but ultimately very different animals. We have seen how legal texts can raise questions that students of literature frequently treat. We have seen that, while it may be true that 'lawyers' professional concerns are rarely the most interesting subject of a "legal" literary work' (Posner [1989] 2009, p. 545), even 'non-legal' literary works (that is, literary texts whose primary subject is not a legal matter) can deal with legal questions in an interesting and knowledgeable way (as in the case of Picard), or at least broach issues of legal import and possibly effect change through such a move (as in the case of our last three texts). Rather than separating the two fields, perhaps what we need is something like the 'poethics' conceived of by Richard Weisberg, the unity of the aesthetic and ethical realms in a way that can offer hope for social change. We might disagree with some of Weisberg's assertions indicating a one-to-one correlation between good ('literary') writing and good ethics, as in the following formulation: 'no bad judicial opinion can be "well-written"' (Weisberg 1992, p. 251). On the contrary, the particular case of the Congo and Picard's *Consultation délibérée* is uniquely situated to prove the way in which a 'well-written' judicial opinion can be ethically wrong and entail harmful consequences. As Greig Henderson says, 'eloquence is no guarantor of virtue and [. . .] beautifully crafted judgments can be morally vicious' (Henderson 2006, p. 905). But if we disagree with the degree of unity Weisberg perceives between the aesthetic and the ethical, we need not discard the principle itself.

The work of Robin West, in her calls for 'care' to supplement and inform 'justice', can also be helpful in thinking about this case, as she reintroduces the human factor that is overlooked in a view of Law as something overly abstract and machine-like in some of Posner's writing. Opposed to this view, West contends that 'the pursuit of justice, when successful, must also be caring', for 'the zealous pursuit of justice if neglectful of the ethic of care will fail not just as a matter of overall virtue, but more specifically, it will fail as a matter of justice' (West 1997, p. 24). Indeed, it was precisely the preciousness and dignity of individual human Congolese lives that were overlooked when it came to the Congo Free State, with Leopoldian economic interests and nationalist ambitions prioritized. Although West calls for 'care' specifically in connection to the plight of women, I believe her line of thought could equally serve another marginalized group: those on the margins

of ‘civilization’. Although Picard’s approach had the air of legal ‘justice’ about it, what was precisely lacking in the case of the Congo Free State was the kind of care which could take into account the right to life and property of individual Congolese persons. Picard’s approach lacked the kind of care necessary because it failed to view the Congolese in their indelible humanity and failed to take into account any customs or traditions differing from the ‘superior’ Western ones.

In conclusion, the case of the Congo Free State and its surrounding context, with those figures connected to it, provides a rich source of material for the student of law and literature. Although more research still remains, we hope that this study has shed some light on the way in which law and literature functioned conjointly, particularly in the person of Edmond Picard and in the literary texts that resisted colonial abuses in the Congo. The two need not be abstracted from one another in such research, but rather can be effectively examined in unison, mutually elucidating each other, in order to better apprehend their effects on real human lives.

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Notes

- ¹ Helpful studies of the origins and history of the Congo Free State are contained in [Marchal \(1996\)](#); [Ndaywel e Nziem \(1998\)](#); [Stengers \(1989\)](#). For a focus on the atrocities committed under Leopold’s reign, see [Casement \(\[1903\] 2003\)](#); [Ewans \(2002\)](#); [Hochschild \(1998\)](#). For the best biographies of Leopold II, each of which features his role in the Congo quite prominently, see [Ascherson \(1963\)](#); [Dumont \(1990\)](#); [Emerson \(1979\)](#).
- ² Some key texts in this movement, which studies the intersection between legal and literary studies, include [Dolin \(2007\)](#); [Fish \(1989\)](#); [Posner \(\[1989\] 2009\)](#); [Weisberg \(1992\)](#); [White \(1973\)](#).
- ³ With estimates as high as 10 million: see [Hochschild \(1998\)](#), pp. 233, 297–99.
- ⁴ Dans le monde judiciaire belge, il est sans doute le personnage le plus brillant et le plus omniprésent de la deuxième moitié du XIX^e siècle. [All translations are mine unless otherwise noted].
- ⁵ A good discussion of Picard’s role as mentor to this group and their collective relationship to the Congo is found in [Silverman \(2011\)](#), pp. 750–87.
- ⁶ For a fuller discussion of *l’art social*, see [Aron \(1997\)](#); [Bertrand et al. \(2003\)](#), pp. 171–81; and [Herbert \(1961\)](#). For more general explorations of *fin-de-siècle* Belgian literature, see [Berg \(2013\)](#); [Bertrand et al. \(2003\)](#), pp. 107–226; and [Denis and Klinkenberg \(2005\)](#), pp. 91–142.
- ⁷ His name in this connection is mentioned once in [Marchal \(1996\)](#), pp. 255–57) and once in [Silverman \(2011\)](#), pp. 752–53), in which Silverman affirms that ‘Picard’s judicial ruling is rarely if ever discussed’ (p. 753).
- ⁸ [. . .] un hommage de mon coeur patriotique à mon petit Pays natal et symbole historique du Droit actuel chez une Nation qui synthétise, on peut le dire, la situation juridique de notre Race Aryenne ou plus exactement, au temps présent, Européo-américano-australienne.
- ⁹ [. . .] faire voir le Droit plus haut, plus beau [. . .] plus utile, plus Force sociale, plus Force de la nature.
- ¹⁰ [. . .] indéfiniment progressive, inépuisablement inventive, irrésistiblement colonisatrice, foncièrement idéaliste [. . .] corrompt, dénature leur Droit en l’utilisant pour pratiquer l’usure, l’expropriation, la spéculation en Bourse.
- ¹¹ For a fuller discussion of Picard’s racial approach to law, see [Ringelheim \(1999\)](#).
- ¹² Le Droit est un instinct ethnique. Une nation suinte, sue son Droit, l’émane comme une fleur son parfum. Le principal de l’essence du Droit est dans les âmes ou, plus exactement, dans la Biologie humaine.
- ¹³ [. . .] fragment de la Nature sociale [. . .] qui existe en des conditions analogues aux phénomènes physiques, chimiques, religieux, moraux, artistiques, industriels, linguistiques, etc.: comme eux il est partout. Le droit est ubiquitaire, épars.
- ¹⁴ [. . .] cet impitoyable magicien présidant aux naissances des idées et des actes.
- ¹⁵ A possible analogue to this state of affairs seemed to have held sway in sixteenth-century England, as described in [Dolin \(2007\)](#), pp. 77–82).

- 16 La littérature a sa part dans cette évolution obscure, qui arrive fatale comme la marée. Nos temps ont leurs écrivains préparant, la
 plupart sans qu'ils s'en aperçoivent, les enfantements sociaux.
- 17 [...] la vraie vie des êtres et des choses [...]
- 18 [...] montrer ce que l'art, restant lui-même, peut apporter de secours aux réformes que la politique doit réaliser.
- 19 [...] n'ont pas su ... être franchement nationaux.
- 20 Voir le milieu belge, penser en Belge, voilà ce qu'il faut à ces Belges. Oui, penser en Belge! ce qui ne veut pas dire être incorrect,
 évacuer des flandricismes, mais laisser aller son esprit à voir et à exprimer ses conceptions selon la pente naturelle à nos mœurs
 et à notre race.
- 21 For more on the emergence of the romantic *mythe nordique* that characterized Belgian nationalism, along with its connections to
 literary romanticism, see also [Denis and Klinkenberg \(2005\)](#), pp. 104–17).
- 22 Eh bien, me dit-il, il n'est pas vrai que l'Avocat ne doit défendre que les causes' qu'il croit justes en âme et conscience. C'est une
 fausse maxime, une maxime déplorable parce qu'elle enfante l'hypocrisie et le découragement.
- 23 Quel aspect ridicule et quel résultat infécond auraient les affaires si chacun des plaideurs apparaissait avec la préoccupation de
 donner sur la cause un avis impartial dans lequel, oubliant qu'il est l'avocat de son client, il prétendrait, Ministère Public anticipé,
 résumer le litige et proposer la solution définitive. Vous figurez-vous ces deux avocats refroidissant ainsi la cause, et la stérilisant
 en lui enlevant cette passion de défense qui fait tout jaillir? Autant vaudrait supprimer le Barreau.
- 24 Sans le don de s'échauffer au profit d'une cause ... il n'est plus qu'un homme d'affaires.
- 25 [L]es idées de calme et d'impartialité inaltérables sont ici hors de saison.
- 26 Le Droit n'est pas plus immobile que les autres sciences. C'est une matière molle et ductile qui subit des soulèvements et des
 dépressions. Constamment dans les débats judiciaires une nouveauté émerge.
- 27 [...] l'élan de l'artiste à la persévérance de l'homme rangé. Le secret des belles plaidoiries est d'avoir une impression forte et de
 la rendre avec intensité.
- 28 For an exposition of this, see [Brooks \(1996\)](#); [Brooks \(2006\)](#).
- 29 The best discussions of the background behind the concept of *terres vacantes* and its importance for European colonialism are
 contained in [Benton and Straumann \(2010\)](#); [De Courcel \(1988\)](#), pp. 254–57); and [Fitzmaurice \(2014\)](#), pp. 271–306).
- 30 L'État Indépendant du Congo est-il propriétaire des « Biens sans maître » compris dans le territoire sur lequel il exerce sa
 souveraineté,—et cette propriété ne découle-t-elle pas naturellement de la souveraineté même?
- 31 2. Si le droit de l'État sur les « Biens sans maître » n'est pas une conséquence logique de la souveraineté même, ce droit ne
 résulte-t-il pas de la législation foncière que l'État Indépendant s'est donnée et qui attribue ces biens au Domaine?
- 32 En vertu de sa souveraineté, l'État Indépendant a pu se donner la législation foncière qu'il a jugée opportune, et notamment
 décréter la règle admise dans la législation civile des peuples civilisés, que les biens vacants et sans maître appartiennent à l'État.
 Ces biens vacants sont dès lors entrés dans le Domaine de l'État.
- 33 L'attribution à l'État des terres vacantes n'est point, d'ailleurs, une mesure exceptionnelle, ni une innovation de l'État
 Indépendant.
- 34 De quelque manière qu'un immeuble se trouve actuellement n'appartenir point à un particulier, il devient et demeure la propriété
 de l'État tant qu'il n'a pas été valablement aliéné ou que la propriété n'a point été prescrite contre lui..
- 35 4. Comment, dans les autres pays neufs, la question de propriété des biens sans maître, dans ses rapports avec le domaine public,
 a-t-elle été résolue?
- 36 Ce n'est guère que depuis 1885 que l'Acte de Berlin, en son article 35, a fait du respect des droits des particuliers une des
 conditions de l'acquisition de la souveraineté par occupation.
- 37 Le courant de la morale générale des nations aryennes, à l'heure présente, est franchement humanitaire.
- 38 L'exposé historique que nous venons de faire démontre, à toute évidence, que le principe de l'attribution des terres vacantes
 au Domaine de l'État, sous la réserve des droits acquis, bien loin de constituer une anomalie, est, au contraire, conforme aux
 mesures les plus humanitaires qui, jusqu'ici, ont été appliquées dans l'appropriation des terres coloniales.
- 39 5. La théorie des biens vacants propriété de l'État est-elle contraire au principe de liberté commerciale inscrit dans l'Acte général
 de Berlin? 6. Les servitudes internationales étant d'interprétation restrictive, ce principe de liberté commerciale peut-il porter
 atteinte aux droits domaniaux?
- 40 Nul n'a le droit d'occuper sans titres des terres vacantes, ni de déposséder les indigènes des terres qu'ils occupent; les terres
 vacantes doivent être considérées comme appartenant à l'État.
- 41 Toute Puissance qui exerce ou exercera des droits de souveraineté dans les territoires susvisés ne pourra y concéder ni monopole,
 ni privilège d'aucune espèce en matière commerciale. Les étrangers y jouiront indistinctement, pour la protection de leurs
 personnes et de leurs biens, l'acquisition et la transmission de leurs propriétés mobilières et immobilières et pour l'exercice des
 professions, du même traitement et des mêmes droits que les nationaux.

- 42 8. Le droit de chasse est-il un droit inhérent à la propriété? Est-il un droit régalien? 9. Le propriétaire d'une forêt est-il maître des éléphants tués sur sa propriété et peut-il revendiquer entre les mains de tiers les défenses des bêtes pourchassées sur son fonds, alors surtout que la bonne foi du tiers détenteur ne peut être établie?
- 43 Est-il besoin d'ajouter que ce Décret, pris en vertu de la souveraineté de l'État, est d'une absolue légalité? On ne peut même songer à invoquer contre lui ni le principe de la liberté commerciale établie par le Congrès de Berlin, ni l'art. 35 du Traité, en prétendant qu'il porte atteinte aux droits acquis par des indigènes, puisqu'il s'agit, répétons-le, d'une simple mesure de police.
- 44 [D]es considérations spéciales, historiques et politiques, de l'ordre le plus élevé, [. . .] ont inspiré aux plénipotentiaires des puissances, représentés au Congrès de Berlin, la prohibition de tout privilège et de tout monopole.
- 45 [. . .] des rivalités et jalousies qui dégénéraient souvent en conflits.
- 46 On a voulu empêcher les monopoles *dans le sens international du mot* [. . .] Il s'agit de monopoles et privilèges de nation à nation.
- 47 A aucun moment [. . .] le Gouvernement de l'État Indépendant, ou la Belgique si elle se substitue aux droits de souveraineté de l'État, ne pourra accorder aucun privilège à ses nationaux ni établir aucun monopole en leur faveur, au préjudice des étrangers.
- 48 L'État du Congo est donc libre de concéder ses terres vacantes à sa guise. Peu importe le nombre et l'étendue des concessions. Lui seul est juge à cet égard.
- 49 Mais ces mémoires ne fixaient pas de critère pour distinguer les terres vacantes des terres non-vacantes. Ils faisaient silence sur les terres non-vacantes, c'est-à-dire celles utilisées par les Africains. Ils ignoraient le fait que dans les régions habitées de l'Afrique Centrale, il n'y avait pas de terres sans maître, et que les terres y appartenait à la communauté du clan, du village ou de la tribu . . . Ces mémoires ne tenaient pas compte du fait que les forêts, les savanes, les eaux étaient exploitées pour les besoins de la communauté . . . Le roi ne demanda pas aux juriconsultes de déterminer les droits des Africains sur leur sol. Il ne désirait pas connaître ces droits. Il les tenait pour rien du tout. Il raisonna simplement ainsi: les terres vacantes appartiennent à l'état, elles constituent l'habitat des éléphants et des lianes à caoutchouc, donc l'ivoire et le caoutchouc appartiennent à l'état.
- 50 Le pont du navire fourmille! car c'est un départ pour le Congo, pour ce lointain Congo, séducteur et dévorateur, pays de rêves et pays de larmes, pays d'espérances et pays de désillusions, d'enthousiasmes et d'anathèmes, comme tout Inconnu tenté par l'audace et la fragilité humaines. Sur la rive une foule s'est amassée, sourdement tourmentée des mêmes désirs et des mêmes inquiétudes, attirée par ce mystère et défiante devant ce mystère. Une musique militaire joue des airs indifférents qui ne sont ni une excitation à la partance, ni une consolation mélancolique; plutôt un accompagnement rêveur de l'acte qui va s'accomplir, le sublimisant d'une harmonie légère sans rompre son vaporeux, sa vaillance et sa tristesse.
- 51 Il est stupéfiant, le bord. Pendant notre absence l'embarquement des Sénégalais a continué sans interruption, et c'est, à tous les endroits du pont, un fourmillement comme s'il y avait eu prise à l'abordage par une nuée de pirates. Combien sont-ils? Quatre cents, cinq cents, six cents? Plus de mille! me crie un passager aussi ahuri que moi. Nous allons donc être onze cents à bord du Léopoldville? Onze cents jusqu'à Matadi, pendant une quinzaine de jours? Mais oui, quoique cela paraisse vraisemblable, car vraiment où est la place pour ce troupeau qui est là s'agitant en gesticulations et en rumeurs, étendant ses nattes, cherchant gîte, épais et entassé, aussi serré qu'un public de meeting durant une période électorale acharnée! Dans cet entassement, le caractère barbare de la cohue de ces sauvages accentue la parenté simiesque de chacun de ces êtres, les fronts fuyants, les yeux à sclérotique injectée de bitume, les dents carnassières, incessamment visibles et menaçantes, les lèvres sur tout, les lèvres charnues, proéminentes en groin, pareilles aux organes gastéropodes des escargots et des grosses limaces qui vermillonnent, après les orages, sur les sentiers de nos bois en laissant derrière elles la trace visqueuse et argentée de leur passage.
- 52 [D]es inquiétudes viennent devant cet étonnant spectacle. Si l'artiste éprouve une jubilation intense, l'homme, l'homme de Droit surtout, ratiocine. Un pareil encombrement d'émigrants, sans autre abri que des toiles, est-il permis, pour eux-mêmes et pour autrui? Vraiment, il s'est formé à bord une rare accumulation de facteurs pour la maturation d'une catastrophe.
- 53 Explosion: n'avons-nous pas dans les cales soixante-dix mille livres de poudre et de dynamite, sans compter les caisses de cartouches des passagers? Incendie: n'ai-je pas, vu hier enlever du pont et réunir sous la même écouteille un amoncellement de boîtes à pétrole et d'allumettes qu'il a fallu garer pour le campement des nègres? Naufrage: la mer, avec ses hasards, n'est-elle pas toujours là et notre navire n'est-il pas chargé à en crever, prêt pour un bon petit sombrage? Sauvetage impossible: nous n'avons que six canots, pouvant recevoir en tout cent cinquante hommes; quelle ruée et quelle bataille au couteau avec ces moricauds s'il fallait se les disputer! Épidémie: que va-t-il résulter de cette promiscuité de Cour des Miracles, de cette vie en troupeau, fatalement immobile, de malheureux soumis à toutes les malpropretés, à toutes les infections de la belle vie, que le docteur s'est déclaré impuissant à visiter sérieusement, et qui, dans ce pays classique des fièvres homicides, resteront exposés aux avalanches des pluies tropicales, au mal de mer et aux coups de mer inondant? Révolte: que deviendrons-nous, les blancs, si cette animalité, par colère de la faim, des intempéries, du regret d'avoir quitté les terres natales, s'insurge?—Nous les dompterons avec des jets de vapeur, m'a dit un officier.—Mais s'ils agissent la nuit, par surprise, comme des chacals?
- 54 I hope to publish soon on references to the trope of *cynocephali* (or dog-headed people) in Picard and others, making connections to the premodern concept of the 'monstrous races', in a separate article entitled '*Cynocéphales*: Ab(Uses) of a Medieval Trope in Several French Texts of the Modern Era'.
- 55 The entire passage in the original reads as follows: Ils sont dix, vingt, trente à enchevêtrer leurs membres, à se distribuer des claques sonnantes et des coups de poing sourds, à désarticuler en grimaces de pierrots à rebours, à faire mouvoir en miaulements les palettes de leurs langues rouges entre leurs dents blanches de carnivores mal guéris de l'anthropophagie. Pas de danger,

du reste, que ces taloches fassent des noirs ou des bleus sur leur peau d'acajou. Il faut qu'un officier se jette sur eux comme un valet de chiens fouaillant une meute, arrache les matraques brandies et les jette par-dessus bord, ou cadenas aux poignets de quelques-uns les fers de justice.

- 56 Car aux différences zoologiques de peau et de traits, superficielles, correspondent les différences psychiques, les vraies, les cardinales et c'est là que doivent regarder ceux qui, enfantinement, s'obstinent à poser encore le problème de l'assimilation du Noir au Blanc, par l'éducation et le temps.
- 57 [L]es nègres, livrés à eux-mêmes, tentent sans grand succès, depuis trois quarts de siècle, de se gouverner en république à la mode américaine
- 58 [D]eux magistrats, arrivés en casque blanc . . . juge[nt] un blanc réfractaire au règlement sur la fermeture des cabarets, et des mercenaires noirs dont les visages semblent cirés de frais, aussi luisants que des bottes: l'un s'est saoulé royalement, un autre a tenté de fracturer la caisse pour laquelle il faisait sentinelle, un troisième a volé une dent de léopard!
- 59 Pieds nus l'huissier, pieds nus le soldat congolais qui fait le gendarme, et ces pieds déplorablement plats, fatigués, râpés, usés.
- 60 [O]n condamne comme chez nous, on ordonne l'arrestation immédiate comme chez nous.
- 61 La peine principale est la servitude pénale, le travail en plein air [. . .] la Justice, se manifestant en une telle ambiance rustique et sommaire, ne laissant voir, dans le prétoire, que l'intellectualité de l'œuvre . . . ne déplaît pas, et l'on rêve aux organismes, peut-être ceux de l'avenir, où les cérébralités seules fonctionneront, grandes par elles-mêmes, en une simplicité monastique, dédaigneuse des lourds et cérémonieux appareils.
- 62 L'audience a été suspendue dix minutes pour permettre au tribunal de prendre du bismuth et du laudanum: il ne faut pas que ce Congo goguenard perde ses droits régaliens sur la santé des blancs.
- 63 [L]'impression cruelle de la dévastation [. . .] [là où] récemment encore, des villages indigènes s'abritaient, cachés et protégés par d'épaisses et hautes verdure.
- 64 Ils ont fui malgré les palabres rassurantes, malgré les promesses de paix et de bienveillance. Ils ont brûlé leurs cases en bateau renversé; de larges plaques de cendrées en marquent la place au milieu des palmiers délaissés et des bananiers brisés. Des terreurs faites du souvenir des pilleries inhumaines, des massacres, des viols et des rapt, hantent leurs pauvres cervelles ouvertes aux fantômes et ils sont allés chercher dans les plis de la brousse hospitalière aux fuyards, ou derrière la frontière, en Congo portugais ou français, non encore troublés partant de travaux et tant de rumeurs, une autre retraite, loin des routes où passent les blancs, ces fétiches funestes, et leur cortège d'habitudes énigmatiques et inquiétantes.
- 65 Picard here refers to the indigenous Congolese who were conscripted by the Congo Free State into something of a local police force, but whose primary responsibility was to procure laborers and to keep them in line.
- 66 Incessamment nous rencontrons ces porteurs, isolés ou en file indienne, noirs, noirs, noirs, misérables, pour tout vêtement ceinturés d'un pagne horriblement crasseux, tête crépue et nue supportant la charge, caisse, ballot, pointe d'ivoire, manne bourrée de caoutchouc, baril, la plupart chétifs, cédant sous le faix multiplié par la lassitude et l'insuffisance de la nourriture, faite d'une poignée de riz et d'infect poisson sec, pitoyables cariatides ambulantes, bêtes de somme aux grêles jarrets de singes, les traits contractés, les yeux fixes et ronds dans la préoccupation de l'équilibre et l'hébétéude de l'épuisement. Ils vont et reviennent ainsi, par milliers, organisés en un système de transport humain, réquisitionnés par l'Etat armé de sa force publique irrésistible, livrés par les chefs dont ils sont esclaves et qui raflent leur salaire, trottinant les genoux ployés, le ventre en avant, un bras relevé en soutien, l'autre s'appuyant sur un long alpenstock, poudreux et sudorant, insectes échelonnant par les monts et les vaux leur processionnaire multitude et leur besogne de Sisyphe, crevant au long de la route, ou, la route finie, allant crever de surmenage dans leur village.
- 67 [. . .] des chefs de village . . . [qui] imposent à leurs serfs ces travaux réglementés qui répugnent à leurs moeurs indolentes et sédentaires.
- 68 [. . .] le Business/les affaires, la stupide poursuite, par quelques fauves, quelques bêtes de proie, de la richesse hideuse et des jouissances avilissantes!
- 69 [. . .] avec tous les agréments du droit de propriété, *jus utendi et abutendi* [. . .]
- 70 [. . .] exécutions militaires, parfois, contre les villages qui se font prier pour fournir les porteurs, les recrues, les travailleurs, le caoutchouc ou l'ivoire.
- 71 [L]e Souverain de l'Etat Indépendant est plus maître au Congo que l'Empereur de la Chine en Chine, et, du jour au lendemain, peut défaire et refaire, dans tous les ordres de choses, au gré de son caprice. C'est le potentat le plus absolu de la Terre et, devant sa toute-puissance, blancs et noirs n'ont de droits que ceux qu'il lui plaît leur accorder. Il n'existe de garantie et de limites à cette omnipotence que dans ce bagage d'idées modernes sur la manière de gouverner qu'il est difficile de ne pas respecter sans soulever l'opinion des nations civilisées.
- 72 [T]outes les terres vaines et vagues, c'est-à-dire celles que les natifs ne s'étaient pas appropriés en les cultivant autour de leurs villages sont, en vertu des principes du Droit des Gens actuel, passées à l'État, et, en tant qu'il ne leur a pas donné d'application à un service public, ont formé son Domaine privé.
- 73 [. . .] utiles peut-être au début, alors que tant de brutalités furent nécessaires [. . .]
- 74 [. . .] une sincère et complète divulgation appuyée de la mise en lumière de tous les documents et de tous les chiffres [. . .]

- 75 [. . .] cette reprise est dans le courant historique qui entraîne irrésistiblement les nations de race Européo-Américaine à occuper la terre entière soit à la place, soit à côté des populations de race primitive, inférieure ou moyenne, par des colonies de peuplement, d'exploitation ou d'extermination, car c'est un rêve de croire qu'en cela on fait ce qu'on veut . . . elle est conseillée par l'intérêt moral et de dignité qu'a un peuple à ne pas reculer, au risque de son honneur, devant les difficultés et les charges d'une mission en accord avec les destinées fatales du groupe ethnique auquel il appartient.
- 76 Des milliers de noirs y vivent. Et rien qu'une poignée de blancs. La ville est calme, laborieuse, heureuse! N'est-elle pas une vision de ce que seront plus tard les cités congolaises? Car, il est à prévoir que le rêve d'émigrations européennes nombreuses en ces régions torrides et anémiantes ne se réalisera jamais. Le Congo brûlant et malsain ne sera jamais, jamais, jamais une colonie de peuplement! Dès lors, n'y verra-t-on pas, comme ici, les noirs apprivoisés pour vivre en auxiliaires disciplinés et intelligents dans le domaine restreint ouvert à leur intelligence, dirigés par un état-major de blancs, peut-être un ou deux par mille?
- 77 Silverman (2011, pp. 783–86) does call upon a fleeting allusion to *mains coupées* (hands cut off) in a single poem by Verhaeren, which might be seen to evoke one of the most shocking and horrific punishments inflicted on Africans by Belgians in the Congo. The poem, entitled 'La Vieille', was written in 1895, around the time that reports of such brutality began appearing in the press, and uses the image in a comparison with dead leaves fallen on the ground. However, while possibly a reference to the Congo atrocities, it could also be read merely as striking, poetic imagery. This one allusion is far from constituting a great movement of literary resistance to Leopold's project in the Congo.
- 78 Most notably by Chinua Achebe in his article 'An Image of Africa: Racism in Conrad's *Heart of Darkness*' (Conrad [1899] 2014).

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