

# Area 8. Free speech in the arts

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## Rap in French legal proceedings: a law and linguistics analysis perspective

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### Abstract

Rap music was imported into France from the United States in the 1980s and became very popular in the 1990s. Several rap groups, such as Suprême NTM or Ministère AMER, became famous and have achieved impressive commercial success. However, this success story has not been without challenge. Indeed, the reception of this new musical genre has been divided, particularly regarding its violence and its effects on society, and is still controversial thirty years later. Polemics frequently raises the question of its regulation. On the one hand, rap music has been warmly welcomed by those who consider its ability to highlight suburban youth concerns and its necessity as a mode of expression for people from certain parts of society to express themselves. And, on the other hand, rap music has been considered a threat to public order or state security because of its raw and provocative lyrics. It has been regarded as a dangerous incitement to hate and violence and is often regarded as a kind of expression that should be limited. This public debate is not only held in the media; it has been often brought before the court. Indeed, in the three last decades, several rappers have been prosecuted for incitation of hatred or criminal incitement, most of the time against the police. These legal proceedings have a specificity regarding other French legal proceedings about art. Most of these legal proceedings are initiated by the Ministry of Interior or the government. On the contrary, other legal proceedings about art are initiated by associations that defend racial or gender communities or by individuals. In this paper, we would like first to explain the French law system that can limit artists. Secondly, we will present a comprehensive review of rap legal proceedings in France in the last three decades to clarify the legal basis of these proceedings, quantify them, and identify the stakeholders of these prosecutions. Thirdly, we would like to provide five case studies by analysing court decisions and attorney's pleadings. How do judges and attorneys deal with the interpretation of rap lyrics (Ministère Amer, NTM, Sniper, Nick Conrad and Orelsan)? Which grounds do they use to decide if rap lyrics exceed the limits of freedom of speech? These grounds are mostly based on discourse analysis (word meaning, context, polyphony, among others) and sociological considerations (the need for a spokesman to voice minorities' aspiration to be included in society, among others). To that purpose, our original contribution will provide an interdisciplinary dialogue between two specialists of speech: a lawyer specialised in freedom of speech and a linguist specialised in discourse analysis. Are the criteria provided by law relevant? Which criteria, categories and methodological frameworks could be shared by both disciplines to improve the interpretation of contentious statements? Are there misunderstandings between those two perspectives? What could be the value of such a dialogue?

Keywords: freedom of art; rap; French legal proceedings; linguistics; hate speech

## Biodata

Anna Arzoumanov is an Associate Professor in French Linguistics and Discourse Analysis at Sorbonne Université in Paris. She researches in the field of free speech in art in France and Canada and its limits provided by the law: violations of rights relating to the personality, incitement to hate or violence. She published many academic papers on freedom in art and coordinated one collective book (*Le Démon de la catégorie*, 2015) and a special issue in the journal *Contextes (Polémiques autour d'un blasphème: regards croisés autour de l'affaire Golgotha Picnic*, 2019). She is currently writing a book as a single author focusing on Freedom of Art in French legal proceedings in the two last decades (*La Création en procès*), to be published in 2021. She also conducts collective research on Freedom of Speech from an interdisciplinary and international perspective. She is a member of the Canadian project *L'Art en procès* and of the French project *Libex (Liberté de conscience, Liberté d'expression et Liberté de creation)* and coordinates the French project *Librart (Liberté d'expression, Art, Censure)*.

Nathalie Droin is an Associate Professor of Public Law at the University of Bourgogne Franche-Comté and a member of CREDESPO (Centre de recherche en droit et en science politique). An important part of her work is related to the freedom of expression and deals specifically with the press law of July 29, 1881, both in terms of its reforms and its application. She is the author of the book, *Les Limitations à la liberté d'expression dans la loi sur la presse du 29 juillet 1881. Disparition, Permanence and Resurgence of the Crime of Opinion*, published at the Librairie générale de droit et de jurisprudence (LGDJ) in 2010, and coordinated the work entitled, *La Réécriture de la loi sur la presse du 29 juillet 1881: une nécessité?* published in 2017, at the LGDJ in the Grands colloques collection. She took part in the dossier *Polémiques sur un blasphème, CONTEXTES*, January 2020, in the workshop *Analyse du discours et droit de la presse* (May 2019) and contributed to the collective book *Les Droits de l'art* (to be published in 2021).

## Types of stereotypes

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## Abstract

The fight against stereotypes is often presented to combat racist, sexist, xenophobic, and homophobic discrimination and violence. By conflating individuals and groups with specific characteristics, stereotypes can damage their reputation and reduce their chances of success; above all, they constitute the cultural ground from which violent and discriminatory behaviour can emerge. Stereotypes force us to think about the limits of freedom of expression in a new way. In recent decades, most democratic societies have begun to punish hate speech, that is, expressions that denigrate individuals and groups of people based on their sexual, religious or national identity. However, it is difficult to determine whether stereotypes fall within the general category of hate speech. The characteristics of stereotypes can explain this uncertainty: they are disseminated throughout the cultural representations of any society; they are not necessarily negative, violent, or offensive, but can, on the contrary, be positive; they are

not always used intentionally, and stereotypes can be disseminated in a work of art in good faith. Although stereotypes are often at the centre of controversy, they are the missing link in normative thinking (in law and political theory) on the relationship between freedom of expression and hate speech. Some philosophers include stereotypes in hate speech without drawing distinctions among stereotypes (notably Alexander Brown and Bikhu Parekh): their approach is too general and does not allow us to identify the specific harms caused by certain stereotypes in particular. On the other hand, authors belonging to the cultural studies field (especially Stuart Hall) study stereotypes in their formal and historical aspects but are not interested in how the law might deal with them. Therefore, it is necessary to look for consistent criteria for including stereotypes in the sphere of hate speech. To this end, I propose to distinguish between three types of stereotypes, which are typically found in visual media (whether in films, commercials, or film series): Demonising stereotypes consist of equating groups with criminals or vermin that should be locked up, fought, or even exterminated. - Belittling stereotypes, which consist of portraying certain groups as inferior or despicable as a means to justify the social and political oppression they suffer. Assigning stereotypes consists of associating groups with activities and behaviours to which they are allegedly inherently destined. Three observations must be added to this. First, stereotypes can target any minority depending on the historical context. Then, they are cumulative, which means that a minority can be represented by several types of stereotypes - sometimes contradictory - at the same time. Finally, stereotypes may change in nature over time (assigning stereotypes may appear, in retrospect, as demonising stereotypes). This presentation aims to broaden the understanding of the harms caused by stereotypes. Moreover, by deepening the notion of hate speech, it also aims to enrich normative thought on the limits of freedom of expression.

Keywords: Freedom of speech; stereotypes; hate speech; cultural studies; representation

#### Biodata

I am a political science and political theory researcher, and I teach at Sciences Po (Paris). My research focuses on political theory and the history of ideas, and freedom of expression. I obtained my PhD in 2015 after conducting my research in France (Sciences Po) and the United States (Northwestern University). For over ten years, I have been working on the logics and justifications of the legal framework of freedom of expression. I am the author of two books (*La Bave du crapaud*, 2018, and *Images défendues: la liberté d'expression à l'épreuve de la pornographie*, 2019). I have edited a special issue on freedom of speech of the French journal *Raisons Politiques* (2016) and I am the co-editor of the volume *De quoi se moque-t-on? Satire et liberté d'expression* (forthcoming, march 2021, CNRS éditions). I have written several articles on the topic of free expression in public space and the arts.

# **The *Dulac Affair* and the triple game of contemporary art**

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## Abstract

The *Dulac Affair* begins in the spring of 2013. David Dulac is then a third-year student at Laval University's School of Art in Quebec City (Canada) and is submitting a project for a student exhibition scheduled for May 2013. Dulac's proposal is a performance project that evokes a child kidnapping and acts of violence against children. The document goes to the art school director, then to the school's psychological support team, who warns the school's security. The school security believes there is a threat and notifies the police; on March 28, 2013, Dulac appeared in court for 'transmitting or causing threats to cause death or bodily harm to children in the region's elementary schools.' The Crown prosecutor based his case on the escalating seriousness of Dulac's art projects. Following a trial, Dulac was found guilty of death threats. On the recommendation of his lawyer, he appealed to the Superior Court of Quebec, which on March 14, 2014, upheld the trial verdict. Dulac appealed again, arguing that there had been a procedural error in the Superior Court since the analysis of the intentional element of the offence, the *mens rea*, had not been considered. On October 1, 2015, the Court of Appeal of Quebec granted the application, deeming it legitimate, and voided the verdict of July 2013, acquitting Dulac. It is from sociology of art perspective that we have chosen to analyse this case. More precisely, it is an exemplary embodiment of a conflict of norms that we want to highlight. Of course, like many others, this case can be understood as an effect of the autonomisation of art, particularly the autonomisation of its values, definitions of beauty and goodness, concerning common sense, and the legal norm. Nevertheless, it is also a conflict between divergent systems of evaluation within the art field itself. The case begins within an art school, and, in the first place, it pits not artists against non-artists but artists against each other. So two levels of conflict need to be clarified here: a conflict between artistic and non-artistic norms on the one hand and a conflict within the artistic norms themselves on the other. To do this, we will read the 500 pages of transcription of the hearings and draw on the French sociologist of art Nathalie Heinich. First, we will re-read the series of reactions to Dulac's projects in the light of what Heinich calls the triple game of contemporary art and the paradigm of contemporary art. Then we will propose two hypotheses to shed light on the reasons why this otherwise trivial conflict within the artistic field has precisely left the artistic field and become judicialised: the lack of discourse accompanying creation on the one hand, and the contradictory institutional framework that an art school constitutes on the other.

Keywords: performance art; art school; autonomisation; conflicts of norms

## Biodata

Julien Lefort-Favreau is an Assistant Professor in the Department of French Studies/Cultural Studies program at Queen's University (Kingston, Canada). His main publications are: *Henri Deluy, ici et ailleurs* (with Saskia Deluy), *Le Temps des cerises*, 2017; *Politique de l'autobiographie. Engagements et subjectivités* (with Jean-François

Hamel and Barbara Havercroft), *Nota Bene*, 2017; *Pierre Guyotat politique*, Lux éditeur, 2018; *Le luxe de l'indépendance. Réflexions sur le monde du livre*, Lux éditeur, 2021. Since 2012, he has been a member of the editorial board of the journal *Liberté*.