HISTORY OF LAW
AND OTHER HUMANITIES

Edited by
Virginia Amorosi
and
Valerio Massimo Minale
HISTORY OF LAW AND OTHER HUMANITIES
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The Programme "Legal History" of the Figuerola Institute of Social Science History –a part of the Carlos III University of Madrid– is devoted to improve the overall knowledge on the history of law from different points of view –academically, culturally, socially, and institutionally– covering both ancient and modern eras. A number of experts from several countries have participated in the Programme, bringing in their specialized knowledge and dedication to the subject of their expertise.

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HISTORY OF LAW AND OTHER HUMANITIES:
VIEWS OF THE LEGAL WORLD ACROSS THE TIME

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Abstracts
BALZAC AND THE CRITICISM OF THE FRENCH CIVIL CODE
IN THE FIRST HALF OF THE 19th CENTURY

Elisabeth Bruyère
University of Ghent

Our paper will aim to address the reflections on the French civil Code, still recent at the time, which are to be found in the French writer Honoré de Balzac’s works. Law was omnipresent in the realistic writer’s novels, especially in La comédie humaine. Hence it constitutes a window to the implementation of the Code Napoléon of 1804 in the French society, making it a relevant source for legal historiography. In fact, Balzac declared in the foreword of La comédie humaine that his books, describing French society between 1815 and 1848 (Restoration and Monarchy of July) competed with the vital records (État-Civil), i.e. the official register of births, weddings and deaths.

Although the still young Code was considered a masterpiece by some, especially lawyers, others believed it would lead to the destruction of traditional French society and even adversely affect the birth rate. The harmonisation that was so solicited during the Ancien Régime was sometimes criticised after the Revolution. Honoré de Balzac, a leading light of the French realistic literature of the 19th century, was part of this movement. For instance, the abolition of the right of primogeniture was for some, including Balzac, less than opportune as it acted like a «pestle whose perpetual game is splitting up the territory» and «will end up killing France»

But if he had reactionary views regarding property, he was, to the contrary, progressive in his ideas on women’s rights, and above all very critical about the status given by the Code to married women and children born out of wedlock.

This article will on one hand identify the part Balzac played in the different waves of criticism of the French civil code in the first half of the 19th century and on the other hand show how the writer’s works can contribute to a better knowledge of how civil law was actually put into practice at the time.

Honoré de Balzac was born in Tours 1799 and deceased in Paris in 1850, who was mainly known for his literary work. A luminary of the French realistic movement, he inspired authors such as Gustave Flaubert and Marcel

1 Le curé de village (The village priest).
Proust. His greatest work was *La comédie humaine*, in which he tried to draw a faithful portrait of French society during the Restoration and the Monarchy of July by drafting a mosaic of ninety-one novels and stories. This work provided a highly detailed account of daily life for the common man, articulating aspects of reality that had been hitherto neglected due to their ugly or banal nature. Balzac wanted his work to be as close to reality as possible, which makes it an eligible historiographic source. This is particularly relevant because law, be it civil or criminal, is central to the author’s work. Balzac describes a world where money and property are becoming of ever greater importance. Another biographical element makes his books interesting for the study of legal history in particular: Balzac was initially a law student and worked at a solicitor’s office and as the assistant of a notary clerk. He then abandoned his legal studies and started his writing career. He thus had a precise knowledge of law, and civil law in particular, and would have seen first-hand how the new civil code was applied in practice.

Not only did he have a clear-cut perception of French legal society but he actually wrote, at a young age, a few political essays and even thought about engaging in politics by preparing his application for the elections. He therefore had specific political views. Even if his political allegiances changed with time and his various love affairs, which leads people to wonder if he was either a liberal or a legitimist, we can identify certain fixed political themes in his various writings. The interesting thing is that his political visions run through his novels, in particular in *La comédie humaine*.

From reading his political works and private correspondence, we know that Balzac was no partisan of absolutism, which had ended in 1789. However, he had always been in favour of a strong power. Being a fervent monarchist, he was nevertheless sickened by both the Restoration regime and the Monarchy of July. For him, France needed to be a constitutional monarchy, with a strong government over which the parliament, elected by a census suffrage, i.e. a tax-based voting system, had no motion of no confidence. Balzac was opposed to equal suffrage: the right to vote ought to be linked with prop-

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erty. The vast majority of the working class must not take part to political life. In 1848, he demonstrated his opposition to the Revolution and repeated his conviction that a strong power was needed to maintain public order.

Balzac was both intimately familiar with the Civil Code of 1804 and not shy about criticising what he saw as its shortcomings. We can find various example in *La comédie humaine*, and trace the opinions of some characters back to his political works. For him, the civil code ‘urgently needs reform on some points’.

In some respects, Balzac was quite conservative, even reactionary. For instance, in terms of inheritance law, he thought that the civil code was endangering French society. When he was younger he wrote an essay in defence of the right of primogeniture in which he railed against the equal inheritance rights for every child imposed by the *Code civil*. According to Balzac, primogeniture was vital on many levels. From a political point a view, it promoted nobility, which was necessary as a counterbalance to potential abuse of power on the part of the monarchy. Primogeniture was also a means to maintain the aristocratic culture and spirit. Moreover, he saw large land ownership as essential for the prosperity of society. In his novel *The village rector*, the judge states that:

«The root of our evils lies in the section relating to inheritance in the Civil Code, in which the equal division of property among heirs is ordained. That’s the pestle that pounds territory into crumbs, individualizes fortunes, and takes from them their needful stability; decomposing ever and never recomposing, a state of things which must end in the ruin of France. The French Revolution emitted a destructive virus to which the July days have given fresh activity».

In addition to this, Balzac was a strong supporter of paternal authority and deplored its diminution in the Code. For him, society should be underpinned by the idea of family, and the Code’s emphasis on the individual

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9 *Splendeurs et misères des courtisanes* (Scenes from a courtesan’s life).
14 FAILLIE (1968), p. 65.
undermined this\(^{16}\). Without family groupings, not only is society at risk, but fragmentation of ownership precludes effective management of land:

«The code, which is considered Napoleon’s greatest achievement, is the most Draconian work I know of. Territorial subdivision carried out to the uttermost, and its principle confirmed by the equal division of property generally, must result in the degeneracy of the nation and the death of the Arts and Sciences. The land, too much broken up, is cultivated only with cereals and small crops; the forests, and consequently the rivers, are disappearing; oxen and horses are no longer bred. Means are lacking both for attack and for resistance. If we should be invaded, the people must be crushed; it has lost its mainspring, its leaders. This is the history of deserts!»\(^{17}\).

Balzac saw inheritance equality as the key factor driving women to have ever fewer children, so as to avoid leaving their daughters a paltry dowry. The code was thus going to lead to a drop of the birth rate in France, which was at the time a growing argument for the reinstatement of primogeniture\(^{18}\). Hence his female characters complain about the fact that it is becoming ever more difficult for them to get married due to the division of fortunes, because their dowry has become too meagre. They therefore explain how families cheat by drafting false sworn statements demonstrating advance receipt of inheritance for their other children, so as to be able to endow their remaining daughters with bigger amounts. Balzac having worked in a clerk’s office, we can be sure that this technique was actually used by resistant aristocratic families during the first decades following the introduction of the civil code.

«In a similar way, my younger brother, Jean de Maucombe, as soon as he came of age, signed a document stating that he had received from his parents an advance upon the estate equal in amount to one-third of whole. This is the device by which the nobles of Provence elude the infamous Civil Code of M. de Bonaparte, a code which will drive as many girls of good family into convents as it will find husbands for. The French nobility, from the little I have been able to gather, seem to be divided on these matters»\(^{19}\).

In other respects, Balzac comes across as relatively liberal. In *The country doctor*, he seems to feel sorry for the legal status of the children born out of

\(^{16}\) *Disaux* (2012a), p. 51.

\(^{17}\) *Louis Lambert*.

\(^{18}\) *Peytel* (1950), p. 54.

\(^{19}\) *Louis Lambert*. 
wedlock, and deplores their poor position in society\textsuperscript{20}. In \textit{Ursule Mirouët}, he further outlines his grievances with the unfavourable status of bastard children according to inheritance law\textsuperscript{21}.

A recurring theme in Balzac’s work is the social position of women. The author accuses the writers of the Code to have opted for a system that puts women under the guardianship of their husbands. In his view, they intentionally ignored the previous reforms that were introduced under the Germanic legal tradition in favour of the Roman system, which did not attribute women with legal personhood. Balzac considers that there is a contradiction between the Civil Code’s gender inequality and society’s deification of women\textsuperscript{22}.

«The Code, my dear Paul, makes woman a ward; it considers her a child, a minor»\textsuperscript{23}.

However, many of Balzac’s female protagonists manage the shared matrimonial wealth in defiance of the spirit of the Civil Code and take on a much more legally active role than the Code intended\textsuperscript{24}.

Balzac also accuses society of keeping women in a state of ignorance. For him, the ideal spouse should have received a ‘man’s education’\textsuperscript{25}. He does not go as far as recommending that this type of education be extended to all, however\textsuperscript{26}.

«Away with civilization! Away with thought! (...) That is your cry. You ought to hold in horror the education of women for the reason so well realized in Spain, that it is easier to govern a nation of idiots than a nation of scholars»\textsuperscript{27}.

Moreover, Balzac often denounces the intrigues related to dowry and inheritance. The code favours calculations and lead to the venal exploitation of marriage:

«The wife is a piece of property, acquired by contract; she is part of your furniture, for possession is nine-tenths of the law; in fact, the woman is not, to speak correctly, anything

\begin{itemize}
  \item \textcite{20} Peytel (1950), p. 48.
  \item \textcite{21} Macé (2012), p. 345.
  \item \textcite{22} Faillie (1968), p. 21.
  \item \textcite{23} Le contrat de mariage (The marriage contract).
  \item \textcite{24} Faillie (1968), pp. 193-194.
  \item \textcite{25} Faillie (1968), pp. 34-35.
  \item \textcite{26} Faillie (1968), p. 190.
  \item \textcite{27} Physiologie du mariage, II (Physiology of marriage, II).
\end{itemize}
but an adjunct to the man; therefore abridge, cut, file this article as you choose; she is in every sense yours. Take no notice at all of her murmurs, of her cries, of her sufferings; nature has ordained her for your use, that she may bear everything, children, griefs, blows and pains from man.\textsuperscript{28}

The writer suggests through the character Oscar that women should be systematically stripped of their inheritance\textsuperscript{29}, but he was not himself of such a radical opinion, an opinion which if implemented would destroy the existing balance of household financial management. In this instance, he took the financially useful role that the dowry played in the society of day\textsuperscript{30}.

From a historiographical perspective, novels are a useful tool for understanding how the civil code was used or abused. Balzac had indeed declared in the foreword of \textit{La comédie humaine} that he intended, with his novels, to compete with the vital records (État-Civil), i.e. the official register of births, weddings and deaths. Balzac gives us other testimonies of civil law put into practice. Some abuses seemed to have been a regular occurrence, like the exploitation declaring vulnerable adults legally incompetent\textsuperscript{31} as an easy way of accessing their property\textsuperscript{32}.

Although literature can serve as a useful tool for legal historians, it is important to be aware of its limitations. When attempting to discern the author’s true opinion from his fictive works, it is necessary to support the inferred position with other external evidence before asserting that the position held by one of his characters represents his own stance. For example, Macé believes that Balzac was not sincere in his support of the right of primogeniture\textsuperscript{33}. He maintains that whilst Balzac was in favour of large estates, it does not follow that he was against inheritance equality in contrast to all other authors who have written concerning the issue. Lichtlé, by analysing Balzac’s politics, has amply demonstrated his conservative nature. In any case, one thing is certain: Balzac was a complex character whose views were both evolving and frequently contradictory\textsuperscript{34}. In \textit{The Elixir of Life}, he bitterly criticises the whole idea of inheritance, with a similar position to that of Saint Simon’s

\begin{thebibliography}{99}
\bibitem{28} \textit{Physiologie du mariage}, II.
\bibitem{29} Lichtlé (2012), p. 167.
\bibitem{30} Faillie (1968), p. 191.
\bibitem{31} Garcia (2012), p. 155.
\bibitem{32} Saint-Germes (1936), pp. 51-52.
\bibitem{33} Macé (2012), p. 350.
\bibitem{34} Mourier (1996), p. 103.
\end{thebibliography}
followers\textsuperscript{35}. He later rewrote this diatribe after P. J. Proudhon defended the need for familial succession\textsuperscript{36}.

With a heady mix of tragedy and cynicism, Balzac portrays a justice system that often facilitates the triumph of the strong to the detriment of the right\textsuperscript{37}. Balzac, a lawyer disappointed by the law\textsuperscript{38}, is not naïve in his approach; but rather is aware that even if the writing of the Code were to be perfectly executed, it would always have its detractors, and its practical implementation would be far removed from its theoretical ideals\textsuperscript{39}.

\textsuperscript{36} Macé (2012), p. 341.
\textsuperscript{37} Mourier (1996), p. 41.
\textsuperscript{38} Dissaux (2012a), p. 53.
\textsuperscript{39} Lichtlé (2012), p. 173.
ELISABETH BRUYERE

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