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ARTICLES

BALZACIAN LEGALITY: A PROPOSAL FOR NATURAL LAW JURIDICAL STANDARDS OF LEGITIMACY*

Thomas E. Carbonneau†

BALZACIAN LEGAL STUDIES

There's no better way of exercising
the imagination than the study of
law. No poet ever interpreted na-
ture as freely as a lawyer interprets
truth.

J. Giraudoux, Tiger at the Gates

Since its publication in the nineteenth century, Honoré de

* An earlier and substantially shorter version of this article appeared in 32 *RUTGERS L. Rev.* 719 (1979). The present article is an updated and slightly revised version of a manuscript which was accepted as a thesis in partial fulfillment of the requirements for degree of Master of Arts in the Department of French Literature and General Linguistics at the University of Virginia. The author wishes to express his sincere gratitude to Professor Robert Denomé for his encouragement and guidance in the pursuit of this project. This study is dedicated to the author's parent's, Adrien and Lucille Carbonneau.

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Balzac's¹ monumental literary work, entitled *The Human Com-*

1. The work of the French novelist Honoré de Balzac (1799-1850) in many respects parallels that of Charles Dickens. As an adolescent, Balzac was fascinated with philosophy—attracted principally by its systemic approach to reality and its conceptualization of human activities. Balzac's early novels attest explicitly to his need to conceptualize life and to embellish it with a hidden intellectual substratum. Although the later novels are less marked by this tendency, they nonetheless reveal Balzac's ambition to integrate the daily reality he observed into a systemic intellectual structure.

Despite his early penchant for abstract thought, Balzac never became a pure aesthete; unlike some of his contemporaries and later nineteenth-century writers, he did not write exclusively for writing's sake; he refused to establish an uncompromising distance between his artistic creations and the external reality to which they referred. A reading of his novels demonstrates that their author, despite his acerbic remarks upon and satirical portraits of social existence, had an immense and profound love of life and man. His lengthy descriptions of characters and places are suggestive of a "materialistic" poetic bond tying the author and his writing to the society that was the source of his inspiration. The timeless quality of Balzac's literary creation resides perhaps in that single feature of his writings.

Like many novelists, Balzac was influenced by the intellectual currents and schools of thought of his day. He became interested in quasi-scientific and parapsychological speculation—an interest which furnished his work with a mystic and visionary quality. Balzac was forever grasping for the absolute—forever searching for an answer to the hidden mysteries of life, thought and the universe. His scientific readings lent a certain taxonomic quality to his character portrayals and his perspective on society. Moreover, the intrigues in his novels are propelled by invisible forces and laws—much like the immutable laws which govern natural phenomena. There is ever-present in the Balzacian text a form of scientific determinism—a view that man and his community are guided by and unable to transcend the baser instincts. This determinism, however, is always counterbalanced by a vision of man's moral worth—a subjective, admittedly less plausible, and less rigorously defined conception of social reality which the philosopher-turned-writer refuses to abandon.

Money and greed, sex and prostitution are staples in the Balzacian novel; the philosophic inquiry stands side-by-side with an awareness of the base materialism of life. The law—as a technical instrument of regulation—serves as the linch pin of intrigues to acquire wealth and social prestige quickly and dishonestly, usually at the expense of a morally wholesome character. The twin tendencies of Balzac's personality and his preoccupations eventually merged into one overriding concern and goal.

The Human Comedy, the title which Balzac gave to his literary production, consists of some twenty volumes—novels which he wrote essentially during the last twenty years of his life. In a preface to this work, Balzac declares that his ambition is to act as the "secretary" of the sociological and historical reality represented by French society in the nineteenth century. An initial reading of *The Human Comedy* confirms the view that Balzac achieved this design. In his novels he catalogues character types, social categories and *milieux*—all of which are dominated by certain immutable (would-be) scientific rules of social conduct. Characters, like *le père Goriot*, are dominated, if not obsessed, by a particular passion leading ultimately to their demise; prostitutes, in some of his novels the focus of plots and intrigues masterminded by lucid evil characters, have the misfortune of falling in love and are doomed to a tragic end. In the almost zoological cosmology, different human and social types emerge from Paris, *la province*, and *la campagne*. They have different occupations and different degrees of intelligence, and are destined either to social success or ruin. César Birotteau is an excellent example of what befalls a character who changes social *milieu* without the proper insight and preparation. Throughout these novels, Balzac documents the impact of history and its transformations upon the mores of society; the emergence of journalism, for example, is testimony to the changing fabric of society and its hastening demise as a moral entity. Balzac, like Rousseau (although their work is of a very different tone and

edy,² has captured the imagination and gained the admiration of countless literary scholars and lay enthusiasts the world over. Rightly or wrongly from a critical perspective, the Balzacian novel has had special appeal to a readership with a penchant for 'documentary' fiction, *i.e.*, to those readers who assess the worth of a novel by its affinity to an existing external reality.³ Although the view of Balzac as a writer of sociological and historical fiction is by no means the undisputed final statement of his literary work,⁴ Balzac himself lent support to that view when, in the preface to the 1842 edition of *The Human Comedy*, he described his literary task as one of objective and passive observation: "French society was to be the historian, I was to be but the secretary."⁵ However one resolves the apparent conflict between Balzac's realism and the equally evident moral content of his novels, it is undeniable that he incorporated large segments of the social reality of nineteenth-century France—undisturbed—into *The Human Comedy*. The fidelity of Balzac's plots and characters to their external models has been well-documented in a number of areas, including sociol-

quality), extols a bygone age in which social existence was more in harmony with man's fundamental nature. This longing for past happiness explains the conservative quality of Balzac's political views, and his conviction that a form of recognized political authority—such as a revered royalty—was necessary in society and that social distinctions and classes should be maintained and stabilized.

Balzac's self-proclaimed vocation as sociologist and historian of sorts may explain the texture of his work, but fails to account for the real thrust, the basic *raison d'être*, of his literary vocation. Why are Balzacian novels still read today with such enthusiasm? Why does Balzac's work inspire some to engage in artistic pursuits and still others to enjoy his writings as timeless literary creations? The same question can be asked of Shakespeare, Flaubert, Tolstoy and Dickens; as for Balzac, the question deserves a more specific answer. Balzac's genius consists in his attempt to formulate a literary answer to eternal questions about man, his essential nature, and the community in which he lives. His relish for life is combined with a realistic yet positive humanism. Balzac's quasi-scientific categories and speculations have little meaning in the late twentieth century; his vision that man can redeem himself and construct a society befitting the highest potential of his nature is still relevant, and its relevance will continue. Balzac's work should be read as the speculation of a natural law philosopher with unusual and pleasant writing abilities; for Balzac, the essential compromise between the individual's needs and desires, and those of the community in which he lives, can be achieved only through moral reinforcement of man's intellectual gift. In a word, the Balzacian novel reflects Balzac's deeply felt struggle with materiality and abstraction—his quest for the absolute and his awareness that man's transcendence of matter can only be finite.

2. H. DE BALZAC, *LA COMÉDIE HUMAINE* (P.-G. Castex ed. 1977).

3. For an appraisal of Balzac's realism, see, *e.g.*, M. BARDECHE, *BALZAC ROMANCIER* 91 (1945). See generally 1 & 2 R. GUISE, *BALZAC* (1973).

4. See, *e.g.*, Carbonneau, *Balzacian Physics and Metaphysics*, 20 *ROMANCE NOTES* (1980).

5. H. DE BALZAC, *LA COMÉDIE HUMAINE* 7 (1951).

ogy, commerce and finance.⁶ The accuracy of Balzac's social observations, however, also extends to his treatment of the law.

Balzac's personal experience in and intimate acquaintance with the law is somewhat unique—at least in the annals of French literary history. He was one of the few French writers to hold a law degree and to have clerked in a law office.⁷ Even when Balzac's reputation as a literary figure was still in its formative stages, his contemporaries already were noticing the imprint that Balzac's legal studies and training had left upon his imagination and his literary vision. Some years later, Théophile Gautier, a noted French poet of the nineteenth century, remarked that Balzac's association with the law had enabled him "to know the members of the legal community and enabled him to write later on, in a way that astonished the people of the profession, what we could call the litigation [content] of *The Human Comedy*."⁸

The substance of many Balzacian novels corroborates this assertion. The relatively little-known but significant novel entitled *César Birotteau*,⁹ published in 1837, is a good case in point, illustrating not only Balzac's knowledge of technical legal issues, but also his ability to deploy them effectively in a literary context. The novel is the story of the commercial success and financial undoing of a small Paris merchant who comes to the French capital from an isolated region of France in the hope of making his fortune. Although the merchant, the principal protagonist of the story and whose name the novel bears as its title, has little in the way of intellectual aptitude, he personifies an ethic of honesty—his success is due in part to chance, but is built principally upon hard work and a devotion to an honest way of life. His financial down-

6. There are three classical studies in this area. See R. BOUVIER, *BALZAC HOMME D'AFFAIRES* (1930); J.-H. DONNARD, *BALZAC LES RÉALITÉS ÉCONOMIQUES ET SOCIALES DANS LA COMÉDIE HUMAINE* (1961); E. FAILLETAZ, *BALZAC ET LE MONDE DES AFFAIRES* (1932).

7. Balzac first registered in the Faculty of Law in Paris on November 4, 1816, and received his degree, *bachelier en droit*, on January 10, 1819. Thereafter, he worked for Maître Guyonnet de Merville and Maître Passez. See A. PEYTEL, *BALZAC JURISTE ROMANTIQUE* 7-10 (1950).

8. T. GAUTIER, *SOUVENIRS ROMANTIQUES* 105 (1929). Later on in the same work, Gautier compares Balzac's attitude towards the law to that of Stendhal, another prominent nineteenth-century French writer, and states that "Balzac, who had understood money so well, also discovered poems and dramas in the Code. . . ." *Id.* at 133. For a more detailed comparison between the legal ideas of Balzac and Stendhal, see Jansse, *La conception générale du droit chez Stendhal et chez Balzac*, in *STENDHAL AND BALZAC* 42 (V. del Litto ed. 1972).

9. 6 H. DE BALZAC, *LA COMÉDIE HUMAINE—CÉSAR BIROTTEAU* 39 (P.-G. Castex and R. Guise eds. 1977).

fall is the work of du Tillet, a former employee, who mounts an intrigue and subtly manipulates the technicalities of the law to provoke César Birotteau's bankruptcy. César finally rehabilitates himself, but expends so much of his physical energy in doing so that it costs him his life.

In the Balzacian cosmology, the rise and fall of César Birotteau has a multifaceted thematic significance, ranging from an analysis of the mores of the different social and economic groupings within French society to a study of the tacit and insidious rules which govern the operation of the business and political worlds, and ending with an assessment of the implications of the struggle between good and evil for human existence and society. César's death symbolizes the crucifixion of goodness at the hands of evil and leaves the reader with a troubling sense that the sordid character of society leads it to reserve its benefits for the immoral, that the traditional moral values are defunct and practiced only by social outcasts, and that any attempt at moral redemption or spiritual salvation must be achieved outside the social framework.

In elaborating this novel, Balzac, as Gautier pointed out,¹⁰ made use of the law in a remarkably precise and exact way. When one reads the applicable provisions of the French Commercial Code and the legislative history of the enabling statute—the Law of September 22, 1807—there can be no doubt that Balzac knew of and relied heavily upon the substance of these provisions to construct the bankruptcy episode in *César Birotteau*.¹¹ Balzac's description not only contains a thorough assessment of the three principal phases of the actual procedure, but also shows that the substance of the technical legal rules is eminently adaptable to du Tillet's corrupt design. In effect, the novel emerges as an adroit and perspicacious criticism of the substance of the enabling statute—a law review article in fictional form, as it were, on the inequities of the applicable bankruptcy provisions. For example, it becomes readily apparent from Balzac's comments and narrative portrayal that the regulatory provisions are totally inoperative in the reality of society and the judicial process, that the legislators

10. See text at note 8 *supra*.

11. See J.G. LOCRE, *ESPRIT DU CODE DE COMMERCE* (1911). See also Guyon, *Une faillite au début du XIX siècle selon le roman de Balzac "César Birotteau,"* in *ETUDES OFFERTES À ALFRED JAUFFRET* 337 (no date). See generally G. BRULLIARD, *PRÉCIS DE DROIT COMMERCIAL* (1964); S.-D. CASTELLAN, *LE JUGE COMMISSAIRE DANS LA FAILLITE ET LE RÈGLEMENT JUDICIAIRE* 7 (1965).

not only have failed to strike an equitable balance between the respective legal rights of the creditors and debtors, but also have been unable even to curtail the fraudulent activity of the parties involved in these proceedings.¹² What perhaps is most interesting in this story of the interplay between the law and commercial schemes is the analogy that Balzac draws between the bankruptcy procedure and the theatre.¹³

According to Balzac, the legal process is similar to the presentation of a play, offering to the keen observer of social reality a twofold drama. On the one hand, there is the play as it is seen by the audience—in a word, the vision of a contrived reality;¹⁴ on the other hand, there is the behind-the-scenes action—the reality of the play in an unmodified, virgin state.¹⁵ It is Balzac's purpose in writing about social phenomena and the law in particular to unmask their official appearance, to show them in their true light. In describing the contradictions that inhere in and the injustices that result from the legislative attempt to reform commercial practice, Balzac attempts not only to point to the inconsistencies of the law, but also, and more importantly, to provide, in the person of César Birotteau, an example of conduct that more closely approximates the ideal of Justice.¹⁶ Balzac's objective transcends the base purpose of trying to impress his reader with the accuracy and precision of his legal knowledge; rather, he is making a case for the position that laws which do not reflect man's innate capacity for positive moral conduct are not really laws at all—but only another set of empty and valueless rules that are to be manipulated in a game of never-ending connivance and human degradation. Through César Birotteau's example, Balzac expresses his deeply felt conviction that the law should not be a source of ridicule, a target or tool for men of ruse. Rather, the laws and the legal institutions, for the well-being of all and for the happiness of the individual, should be regarded with the same deference and respect that César Birotteau has shown them: at the expense of his health and ultimately his life, Birotteau complied with the law to the very end.

12. See 3 J.G. LOCRE, *supra* note 11, at 1-7, 16-17.

13. See 6 H. DE BALZAC, *supra* note 9, at 272.

14. *Id.*

15. *Id.*

16. See Carbonneau, *Quelques considérations sur le fonctionnement de la dissertation juridique dans "César Birotteau"* (unpublished paper).

In a sense, Théophile Gautier's comment¹⁷ about the astonishing quality of Balzac's legal knowledge was prophetic. At the turn of the century, French attorneys and law professors were writing about their astonishment at the accuracy of Balzac's legal plots and characters. What Gautier failed to predict was their displeasure with what Balzac had had to say about the value of law as a social institution, in the analytical segment of his fictionalized law review article. Once it became apparent that the would-be passive observer of social reality would invest Balzac's realistic Romanesque account of the law with a particular moral significance, with a critical appraisal of its actual operation, the astonishment and enthusiasm abated and were transformed into an acerbic and defensive vituperation of the novelist's subjectivity, his unwarranted intrusion upon the privileged turf of legal reality.

Joseph Blondel,¹⁸ in an address before the Court of Appeals of Douai in 1887, credited Balzac with a "genuine originality"¹⁹ because of "this profound knowledge of civil law, this incessant intervention of procedure in so great a number of his works."²⁰ He, however, criticized Balzac for his audacity in adding a literary man's simplistic and unduly negative commentary to the description of the "exact role of the law":²¹

But sometimes, the novelist goes further [than description]. Not content with applying the law, he comments upon it, criticizes it. . . .²² [H]e accepts the received wisdom, he only refers to the Civil Code, he does not believe in the necessity, in the efficacy of . . . reform.²³

On a more theoretical level, other commentators took violent exception with the philosophy of law that emerged from *The Human Comedy*. For example, in 1906, Fernand Roux,²⁴ in his book on Balzac, mounted an elaborate attack upon Balzac's critical concep-

17. See text at note 8 *supra*.

18. Blondel, *Du droit et de la procédure dans Honoré de Balzac* (audience solennelle de rentrée) (Cour d'appel de Douai, Oct. 17, 1887) (1887). See also Boyer, *La magistrature et le monde judiciaire dans la Comédie humaine de Balzac*, (audience solennelle de rentrée) (Cour d'appel de Nîmes, Oct. 16, 1894) (1894); Bréal, *Le monde judiciaire dans Balzac* (discours prononcé à l'ouverture de la conférence des avocats) (1903).

19. See Blondel, *supra* note 18, at 9.

20. *Id.*

21. *Id.*

22. *Id.* at 10.

23. *Id.* at 38.

24. F. ROUX, *BALZAC JURISCONSULTE ET CRIMINALISTE* (1906). Mr. Roux's book was reviewed by Lefort in *REV. GÉN. DR.* 438 (1907).

tion of the law by attempting to show that the author's literary and idealistic bent rendered his treatment of the law and legal ideas devoid of any "rational or philosophic base."²⁵

These early studies, it is opined, reflect a complete misunderstanding of the literary context in which Balzac's commentary upon the law emerges. By placing Balzac's observations in an unfair negative light, they work a considerable disservice upon the intellectual value of Balzac's novels for the legal community. To dismiss a critique of the law and the legal process on the ground that it emanates from an *homme de lettres*, who should have confined himself to the mechanical activity of fact-reporting, amounts to a denial of the value of intellectual analysis, and certainly rubs against the grain of any modern lawyer's training. It also casts an unjustifiable doubt upon the possible value of investigating the nature and substance of law through interdisciplinary inquiry. Roux, for example, asserts that Balzac's thinking about the law is characterized by "doctrines which imply a false vision of the world,"²⁶ and adds that

If evil is a social fact, good is also one on the same ground. . . . [T]his truth in part escaped Balzac . . . ; [the] virtuous characters . . . remain unexplained exceptions within the work, sickly and sweet flowers, grown amongst hardy and "noxious" plants.²⁷

Such remarks suggest a failure to understand in Balzac the dialectic between good and evil, and the role and thematic significance of the angelic characters. For Balzac, "social order"²⁸ was obtained not "at the price [of an] . . . imperfect justice,"²⁹ but rather through a form of justice which, from a moral and humanistic perspective, was completely inadmissible. Balzac created a Romanesque world in which "men . . . spend their time twisting the prescriptions of the Codes"³⁰ to emphasize the point that the laws, in actual practice, are estranged from the most rudimentary principles of Justice, and to provide examples of inspired alternatives to the reality upon which his imagination worked and which it transposed.

More contemporary French scholars writing on this subject,

25. F. Roux, *supra* note 24, at 53.

26. *Id.* at 64.

27. *Id.*

28. *Id.* at 65.

29. *Id.*

30. *Id.* at 64.

among them Professors Madeleine Saint-Germès³¹ and Adrien Peytel,³² have had the merit of analyzing the legal content of *The Human Comedy* from a more detached historical and descriptive perspective. Their work catalogues the presence, and establishes conclusively the accuracy, precision and verisimilitude of the legal elements in Balzac's novels. The late Professor Peytel, in his book on Balzac, is the most authoritative work in this regard. He writes of Balzac's experience:

[T]he novelist would later depend constantly upon the jurist; the latter brought to the former's imagination solid bases [upon which] to construct the [narrative] intrigues and to allow them to evolve according to the rules of legality.³³ [W]e would be hard pressed to deny that Balzac's juridical sense contributed largely to providing his works with a solid support, since he is legally precise and that his undeniable competence . . . allowed . . . him to construct the most complicated intrigues with the capable and supple mastery of an experienced businessman.³⁴

This scholarship, in effect, constituted the first step towards bridging the gap between, and thus reconciling, the literary and legal aspects of Balzac's fiction. While documenting Balzac's legal accuracy, for example, Professor Peytel also insisted, albeit with perhaps too much enthusiasm and too little explanation, upon Balzac's literary realism.³⁵

The modern studies on the subject of Balzac and the Law have all been the work of students of literature and have focused upon specific themes of *The Human Comedy* or of particular novels. As with the previous efforts, these studies have been published exclusively in French and have been the work of French academics. Much interest has been generated lately in Balzac's attitude to women, as it is manifested in his description of their legal status. For example, Marie-Henriette Faillie,³⁶ in attempting to determine whether Balzac was a proponent of feminism, investigated "the reactions of Balzac's heroines in relation to the *Civil Code* and to the state of quasi-incapacity in which they found them-

31. M. SAINT-GERMÈS, *BALZAC CONSIDÉRÉ COMME HISTORIEN DU DROIT* (1926).

32. A. PEYTEL, note 7 *supra*.

33. *Id.* at 8.

34. *Id.* at 18.

35. See Carbonneau, note 16 *supra*.

36. M.-H. FAILLIE, *LA FEMME ET LE CODE CIVIL DANS LA COMÉDIE HUMAINE D'HONORÉ DE BALZAC* (1968).

selves [legally]."³⁷ Arlette Michel³⁸ also analyzed the theme of women and the law in Balzac, but only in relation to the *Physiology of Marriage* and the *Scenes of Private Life* of 1830. Finally, Pierre Antoine Perrod³⁹ studied Balzac's use and interpretation of the trust and the estate in tail (property attaching to a title and descending with it).

The task of the present article is twofold. First, it represents an attempt to make an original English language contribution to the continuing interdisciplinary inquiry, begun in France, into the presence of law in Balzac's *The Human Comedy*, by focusing upon themes and novels that have not been the subject of previous individual study. Second, it seeks to contribute to an area of growing interest to legal scholars in the United States⁴⁰—the study of law and literature—by providing an example of the insights one French novelist with legal training and experience had into questions that forever perplex and challenge the minds of those who teach and practice law; the relationships among legality, legitimacy, morality and personal and community ethics. The scope of the inquiry centers principally upon one of Balzac's major novels, *Lost Illusions*,⁴¹ and the thematic structure of its third and final part. It is the thesis of this study that this novel contains many of the principal tenets of Balzac's legal thought, and that those facets of his legal thought are brought out more clearly through an analysis and understanding of the novelist's propensity toward idealism (as opposed to his historical realism). This idealistic propensity is to be seen in the personality and status of the angelic characters in the novel.

THE NOVEL AND ITS INTRIGUE

Lost Illusions, as the title suggests, is a story about the confrontation between the purity of ideals and the corrosive immorality of society, a theme that runs through the fabric of many of

37. *Id.* at 11.

38. Michel, *La femme et le Code civil dans la "Physiologie du Mariage" et les "Scènes de la Vie Privée" de 1830*, in *LE RÉEL ET LE TEXTE* 135 (1974).

39. Perrod, *Balzac et les "Majorats,"* [1968] *ANN. BALZAC* 211 (1968).

40. See Gest, *The Law and Lawyers of Honoré de Balzac*, 60 *U. PA. L. REV.* 59 (1911); Suretsky, *Search for a Theory: An Annotated Bibliography of Writings on the Relation of Law to Literature and the Humanities*, 32 *RUTGERS L. REV.* 727 (1979); K. KRUTCHMAN, *LEGAL NOVELS: AN ANNOTATED BIBLIOGRAPHY* (Tarlton Library Legal Bibliography Series, No. 13, 1979).

41. 5 *H. DE BALZAC, LA COMÉDIE HUMAINE-ILLUSIONS PERDUES* 123 (P.-G. Castex & R. Chollet eds. 1977).

Balzac's novels. Lucien, a young man who aspires to poetic fame and social notoriety, eventually migrates to Paris after deciding that the provincial setting proffered by his hometown, Angoulême, is unable to provide him with an atmosphere to promote these ambitions. Although Lucien is capable of inventing dreams of glory and wealth, the weakness of his character prevents him from being able to transpose these fictions into the reality of life. His love affairs and growing indebtedness set the stage for the misfortune that inevitably befalls Ève and David Séchard, his sister and brother-in-law, who have remained in Angoulême to raise their family and to continue the printing business David bought from his miserly father. David and Ève are the angelic characters of the story; despite the obstacles against which they struggle (thanks to Lucien's irresponsible behavior and the greed of David's father), they persevere in their quest to build an honest and decent life for themselves. In fact, David is the true poet-creator of the novel—he tirelessly pursues his research on an idea that will lessen substantially the cost of manufacturing paper and revolutionize the printing industry. During his stay in Paris, however, Lucien contracts debts in his brother-in-law's name from an associate of David's local competitors, the Cointet brothers, who not only want to expand their business to meet the needs of an increasingly industrialized society, but also see David's forthcoming invention as indispensable to that design. It is at this juncture of the story that the law comes to play a part in the struggle between good and evil.

In the third part of the novel, Balzac describes David's financial and legal tribulations, which are the result of Lucien's financially irresponsible conduct in Paris and of the Cointet's desire to lay their hands upon his ideas and invention. The evolution of the plot characteristically is set into a deterministic framework, which the narrator carefully prepares and sets in motion and in which the social facts are accompanied by moral interpretations. In the Balzacian universe, the good and virtuous are always at a disadvantage and, in fact, are doomed to defeat—at least in a materialistic sense. David's kindness leads him to accept Lucien's irresponsibility without protest, and his morally wholesome personality makes him particularly vulnerable to the insidious strategy that the Cointet brothers are preparing. David's absolute devotion to his work as an inventor and the rectitude of his character in effect prevent him from even suspecting that the Cointet brothers are carefully laying a trap for him. Boniface Cointet, a mastermind of commercial intrigue, however, holds all the aces: his

knowledge of human nature and his ruse allow him to mount a scheme built upon the loopholes and technicalities of the commercial law. More importantly, his plan includes the cooperation of Petit-Claud, a local solicitor, whose enormous desire for success is buttressed by an utter insensitivity to the ethics of his profession.

THE DESCRIPTION OF MAÎTRE PIERRE PETIT-CLAUD

The law is good, if a man use it lawfully.

1 TIMOTHY 1:8

The Cointets' Man

In the narration of the first meeting between Boniface Cointet and Maître Petit-Claud, Balzac attempts to describe the essential characteristics of the young lawyer's personality by establishing a relationship between his social and geographic origins, his person, and the values that he espouses. The similarity between the roots and present social station of Petit-Claud and David is not unlike the parallel Balzac draws between du Tillet and César in the novel *César Birotteau*.⁴² As in that work, the distinction between David and Petit-Claud emerges only when it becomes clear what type of moral conduct they choose to pursue as social beings; in a word, whether they decide, or—more precisely—whether they are cast, to play the part of social outcasts or successful participants in the immoral game of society.

Despite his lack of professional experience and modest, practically inexistent, financial resources, Petit-Claud's burning desire to succeed had pushed this "small town tailor's son"⁴³ to buy the business of his former employer. He intended to pay the money he owed by marrying a rich heiress. Petit-Claud's physical appearance was as attractive as his ignoble vision of marriage: "this small skinny lawyer . . . marked by small pox . . . [was] balding . . . [his] forehead and the top of [his] head already were indistinguishable. . . ."⁴⁴ Much like some of Dickens's lawyers, his physiognomy announced an inward personality devoid of any sense of be-

42. See text accompanying notes 9 & 10 *supra*.

43. 5 H. DE BALZAC, *supra* note 41, at 586.

44. *Id.*

nevolence—a sly man with a clever mind but with a malicious nature. His thievish “magpie eye,”⁴⁵ his inflexible demeanor and fastidious attitude were the indicia of his bent for dishonesty and dissimulation:

Pierre Petit-Claud appeared to have a certain amount of venom mixed into his blood. His face had one of these colorations of a dirty and confused tint which is the mark of old illnesses, the nights of misery, and almost always of bad feelings. . . . [O]ne expression can paint this boy in two words: he was curt and angular. His broken voice harmonized itself with the bitterness of his face, with his slender air, and with the indecisive color of his magpie eye.⁴⁶

Despite these drawbacks, Petit-Claud had complete confidence in himself and in his abilities—and justifiably so. During his apprenticeship with his predecessor, Maître Olivet, he had shown an insatiable appetite and an inexhaustible capacity for work. As he himself relates to Boniface Cointet, I was “buried in the office or at court on ordinary workdays; and, on Sundays or holidays, . . . [I worked] . . . to finish . . . my education. . . .”⁴⁷ His principal quality, however, was not his industriousness, but rather his irreducible individualism; to arrive at the summit of his profession, he relied only upon himself: “I expected everything from myself.”⁴⁸ Although Balzac does not make Petit-Claud into a ludicrous character, attributing to him, for example, in spite of his provincial origins “a certain superiority,”⁴⁹ he deemed, in his capacity as the moral commentator of the work, that even Petit-Claud’s positive personal qualities were to be feared: “Petit-Claud relied even more upon himself, since he did not lack a certain superiority, rare in the provinces, but the principle of which was in his hatred.”⁵⁰ Petit-Claud’s abilities gave him the promise of a prestigious career, but within the framework of a society the principal forces of which were rapacity and egotism; his talents would be used against the interests of humanity, as the exclusive instruments of his “corrosive desire to succeed.”⁵¹

During this initial meeting, Boniface Cointet had no difficulty

45. *Id.*

46. *Id.*

47. *Id.* at 585.

48. *Id.*

49. *Id.* at 586.

50. *Id.*

51. *Id.*

in perceiving that Petit-Claud was the man for the job, nor did he have to apply much pressure to convince him to join his ranks. In order to gauge the young lawyer's moral and ethical sensitivity, Boniface first asked him to approach David Séchard in a way that bordered upon a violation of a lawyer's permissible activity in regard to clients and the solicitation of business. Cointet's request did not provoke any undue protest from Petit-Claud, since it was technically permissible:

"You can then go announce your nomination [as a solicitor] to David and offer him your services," said the great Cointet.

"That [simply] is not done," replied the young solicitor.

"There has never been any trial, he has no solicitor, it can be done," replied Cointet who eyed the young solicitor from head to foot from the rim of his glasses.⁵²

In exchange for Petit-Claud's complicity, Cointet promised to arrange for his marriage to Mlle Françoise de La Haye, "the sole heiress of the Cardanet and the Sénonches"⁵³ families—a conjugal union that would provide Petit-Claud not only with the money to pay Maître Olivet, but also with "clients from a large part of the Angoulême aristocracy . . . [and] . . . a magnificent future."⁵⁴ A thirst for success and seduced by its promise, Petit-Claud responded to Cointet's offer unhesitatingly: "What must be done?"⁵⁵ Boniface indicated that he wanted him to engage in an act of professional misconduct: while assuring David Séchard that he would represent his interests in the litigation to be initiated against him by the Cointet brothers and their Paris associate, Métivier, Petit-Claud, would in fact worsen his client's financial position and strengthen that of his adversaries by increasing defense costs through the misuse of the technical rules of judicial procedure:

What must be done, my friend? eh! but the [financial] matters of David Séchard. This poor devil has a thousand pieces of gold in notes to pay us; he will not pay them; you will defend him against the suits in such a way as to accumulate an enormous amount of expenses. . . . Don't worry, go forward, pile up the motions. Doublon, my process-server, who will be charged to bring an action against him, under Cachan's direction, will not go at it mort-

52. *Id.* at 585-86.

53. *Id.* at 588.

54. *Id.* at 588-89.

55. *Id.* at 589.

main. . . . To a good listener, a word suffices. Now, young man?
 . . .⁵⁶

Petit-Claud agreed to violate his professional responsibilities without so much as blinking an eye, without a moment of moral hesitation. Rather than toy with the ethical implications of his complicity, he sought to discover the full import of Cointet's plans and to find any possible flaws in them. Moreover, to dissuade his 'real client' from double-crossing him, Petit-Claud made it clear that in such an eventuality he would retaliate with the full force of the law:

"You therefore want to ruin Séchard?" Petit-Claud asked.

"Not completely; but he must be kept in jail for a time. . . ."

"And for what purpose? . . ."

"Do you think I'm foolish enough to tell you? If you're smart enough to guess it, have enough intelligence to keep quiet about it."

"[Old] father Séchard is wealthy," said Petit-Claud already starting to perceive Boniface's [hidden] ideas and seeing a cause of failure.

"As long as the father lives, he will not give his son a half-farthing, and this former typographer does not yet want to print his death certificate. . . ."

"Agreed [then]!" said Petit-Claud who decided promptly.

"I don't ask any guarantees from you, I am a lawyer; if I am tricked, we will settle the score together."

"The rascal will go a long way," thought Cointet as he bid farewell to Petit-Claud.⁵⁷

According to the narrative of this meeting, it is undeniable that the conception of the solicitor as an officer of the court, an agent in the administration of justice, and the unfailing advocate of the rights and interests of his client is completely inoperative in the Romanesque reality. This commonplace conception of the solicitor is denied categorically by the characters' dealings and negotiations—its inspirational value negated by the *modus vivendi*, the rapacious quest for material wealth and power, of the individualistic society. From the description of his origins and the narrative of the meeting, it is clear that even the most rudimentary principles of personal and professional integrity have had absolutely no impact either upon Petit-Claud's choice of a profession or upon the way he goes about its practice. For him, law was, first and foremost, a means of furthering his own ends: he disregarded even ele-

56. *Id.*

57. *Id.* at 589-90.

mentary legal norms when the promotion of his self-interest required him to do so. Balzac's description of Petit-Claud's loathsome sacrifice of his legal vocation and mission to the god of personal and unscrupulously attained success is, however, but a preface to his treatment of the law and the lawyer's role in this Romanesque society demeaned by its covetousness.

The Provincial Solicitor

Everywhere in Balzac's work, the events that occur and the characters who live in the provinces are of an inferior rank and importance when they are compared with their Parisian analogues. According to Balzac, the most interesting narrative of man's quest for happiness and struggle with misfortune is one based principally upon observations of the Parisian social reality. In *Lost Illusions* Balzac characteristically insists that a Paris solicitor never would have colluded with Boniface Cointet, implying that Petit-Claud's complicity is the product not only of his personal origins and ambition, but also of the way in which law was practiced in the provinces.

In the first place, the Paris solicitor, whom Balzac considers to have the qualities of a true diplomat, takes matters only of the highest importance. Moreover, he is compensated with retainers, the amount of which depends upon the "more or less able handling of the matter."⁵⁸ Finally, the Paris solicitor is a legal specialist who takes only cases that challenge his expert procedural knowledge and training: "the Paris solicitor rarely argues in a court of law."⁵⁹ On the other hand, his provincial counterpart, far removed from the center of the great interests of society, attends to lesser legal problems and needs—to the "bagatelles"⁶⁰ of mediocre men. The cases he handles involve trifling matters the resolution of which are so commonplace that the provincial solicitor's quality as a profes-

58. *Id.* at 587.

59. *Id.* As will become apparent from the discussion that follows, Balzac's view is based upon what happened in actual practice. Until very recently, the French legal system, like the English, was divided into two components: *avoué* (solicitor) and *avocat* (barrister). The French solicitors were concerned exclusively with procedural work (*la postulation*) and did not argue in court—that task was reserved to the French equivalent of a barrister. Balzac's discussions imply that this theoretical distinction was not respected in country law practice but was fairly strictly followed in Paris. Although the basis of Balzac's distinction may have been grounded in an observation of what actually occurred, it does not accord with the systemic principles that governed the French legal system at that time.

60. *Id.*

sional could not possibly have any bearing upon the outcome of the case. As a consequence, he is remunerated according to the number of services which he renders to his client. His professional activity is much less honorable; instead of acting as a great statesman, the provincial solicitor performs the ministerial functions of an unimportant civil servant:

In the provinces . . . the solicitors cultivate what we call in the Parisian law offices the *morass* [of legal technicalities], the multiplicity of small acts which overload the memoranda of costs and use up stamped paper. These trifles occupy the provincial solicitor, he sees costs to be made there where the Paris solicitor only concerns himself with retainers.⁶¹

Should the solicitor of the provinces nonetheless preserve a certain quality of professional distinction despite the lamentable kind of legal work he is called upon to perform, the necessity of pleading his own cases before the courts, of acting as a barrister, would render him a mediocre attorney. Dressing his remark in the garb of historical authenticity, Balzac declares:

[I]n 1822, in the majority of the departments . . . , the solicitors were barristers and pleaded their cases themselves. From this double life, there results twice the tasks that give the solicitor of the provinces the intellectual vices of the barrister, without relieving him of the onerous responsibilities of the solicitor. The solicitor of the provinces becomes garrulous, and loses this lucidity of judgment, so necessary to the [proper] conduct of the cases. By dividing himself in two, a superior man often finds two mediocre men within himself. . . . By talking so much, a man ends up believing what he says. . . .⁶²

To these shafts of satire directed at the country solicitors of his day, Balzac adds a final touch of irony when he summarizes their unfortunate professional station:

A solicitor of the provinces therefore has many reasons for being a mediocre man: he allies himself with petty passions, he conducts small matters, he earns his livelihood by generating costs, he abuses the Code of Procedure, and he pleads before the courts! In a word, he has many infirmities. Also, when one meets a remarkable man among country solicitors, he is really a superior fellow!⁶³

61. *Id.*

62. *Id.* at 587-88.

63. *Id.* at 588.

As a solicitor practicing in the provinces, Maître Pierre Petit-Claud shares the professional imperfections and the paltriness that Balzac imputes to his colleagues. To mount his assault against David Séchard, Boniface Cointet not only plays upon Petit-Claud's sense of ambition, but also seeks to take advantage of his provincial aptitude to create unnecessary litigation costs through the abuse of the law's procedural technicalities. Petit-Claud's collaboration in this sordid affair, then, is the result both of his personality and of his professional predispositions as a country lawyer. However much he may want to condemn Petit-Claud's willingness to conspire with Boniface Cointet, the reader, once he considers the factual determinism that makes up the Romanesque reality, is unable, in objective terms, to find evidence of a sufficient *mens rea* upon which to premise Petit-Claud's culpability. The inevitability of his personal origins and development appears to leave him without the possibility of choosing his own destiny and, as a consequence, frustrates any attempt to establish a clear line of causality between his misdeed and his willful intent to engage in wrongdoing. Moreover, the substance of the underhanded intrigue that he has agreed to advance reflects the tacit laws which govern social success and which alone appear to be the functional rules of conduct in the Romanesque reality of the text. In effect, by casting all moral considerations aside, Petit-Claud demonstrates that he has a superior and lucid insight into the nature of social existence—thereby guaranteeing himself material well-being and a high social and professional position.

Balzac's literary design, however, seems to transcend this pure and simple statement of the pervasive hold of evil upon a fictional world that is supposed to reflect the actual operations of existing society. To the great relief of the reader who is concerned with the moral implications of human activity, a code of human ethics and values accompanies and competes with Balzac's portrait of the corruption of social reality. Despite the ingenuity and perspicacity of the amoral characters, the narrator tries to defend the position that human pursuits which no longer refer to a sense of higher moral principles are devoid of their basic *raison d'être*. Although Balzac accounts for the degeneration of the society that he portrays in terms of the mutation of historical forces, he criticizes the use men have made of the social institutions that they have inherited, and lays blame upon them as individuals for having chosen voluntarily to integrate themselves into a corrupt social structure from which they could always have asserted their independence.

Balzac's intention is to aver the possibility of a more humane social existence—not one having the vitality of Paris (for after all Paris is only the ideal of the narrative taxonomy), but rather a way of life which approximates the essential values of human dignity, as personified by the angelic characters who represent the narrator's ideal conception of humanity. By acquiescing to the forces of historical and social determinism, the individual misuses the freedom he possesses, and becomes responsible for an act of cowardice that offends his dignity and violates the sacred heritage of humanity. Instead of submitting to enslavement, he should use his abilities to mould the inert historical and social forces to have them reflect the basic and most noble qualities of human nature. This idealistic vision of humanity, which implicitly underpins every facet of the text, becomes more apparent when Balzac adumbrates his conception of legality through a description of the technical character of procedural law.

THE LAW AND JUDICIAL COMBAT

Wrong must not win by
technicalities.

Aeschylus, The Eumenides

An Illegitimate Legality

When he begins to describe and analyze the legal action taken against David Séchard, Balzac attempts to point to the inconsistency between the application of the laws and the statement of their purpose in theoretical terms. As in *César Birotteau*, Balzac seeks to unmask the deceptive appearance of things, to give his reader a behind-the-scenes perception of the nature of law and the judicial process.⁶⁴ According to Balzac, although law is the social instrument that governs the daily relationships of men, its rules and purposes are known only to a small minority of interested parties:

Of a hundred readers, ninety would be enticed by the following details [of the litigation] as by the most stimulating novelty. Thus the truth of this axiom once again will be proved:

There is nothing which is less well known than what everyone

64. See text at notes 13-16 *supra*.

should know, THE LAW!⁶⁵

This ignorance of the law is not the result of an intrinsic intellectual incapacity on the part of men; rather, it emerges from the entanglement of legislative provisions and from the befuddling complexity of the legal process. Despite the theoretical protections and safeguards that the technical character of the law may proffer the individual, its substance can be understood only by those initiated to its intricacy—by those who promulgate and administer it and by those whose conduct is the subject of its regulations. It has little relation to the assumptions men commonly hold about justice. Thus does the legal system invite its own subversion by an elitist and stealthy manipulation of technicalities. The laws cease to refer to a higher standard of what is just and become the tools for the self-centered aggrandizement of a privileged few.

To support this appraisal of the law, Balzac cites the example of the banking procedure relating to dishonored returned bills, the *compte de retour*,⁶⁶ which is authorized by law and which allows a creditor bank to begin collection proceedings against a recalcitrant debtor. Balzac describes it as “the mechanism of one of the intricate procedures of the Bank,”⁶⁷ which consists in a series of “proceedings, [which are] perfectly legal, by which, in ten minutes, the Bank adds twenty-four francs of interest to the principal [of a debt] of one thousand francs.”⁶⁸ In other words, rather than establish and promote legitimate relationships in the world of commerce, the law that regulates the *compte de retour* proclaims as legal (that is, in conformity with the established dictates of justice) dealings that are in fact inequitable, unjust and dishonest. Balzac, who may have worked on banking matters during his clerkships,⁶⁹ condemns the advantage that this procedure confers upon the bank vis-à-vis the debtor, and the opportunity it provides the bank to enrich itself without providing any real service. The *compte de retour* is one of these “ingenious pranks . . . that a certain article of the Commercial Code authorizes, and the explanation of which shows . . . how many atrocities are hidden under this terrible word: *legality!*”⁷⁰ In contradistinction to the writer of fiction,

65. 5 H. DE BALZAC, *supra* note 41, at 591.

66. *Id.*

67. *Id.*

68. *Id.* at 593.

69. See text accompanying note 7 *supra*.

70. 5 H. DE BALZAC, *supra* note 41, at 591 (emphasis in the original).

whose work mirrors a quintessential reality, the lawgiver constructs only "implausible . . . tale[s] . . . filled with terrible fictions."⁷¹

This comparison between the creative work of the literary author and of the legislator sheds new light upon Balzac's conception of the law and, more indirectly, upon the distance that separates the values he holds dear from the social scheming that he describes in his novels. To earn the distinction of being called artistic, the literary work must contain a truthful insight into human nature and man's activity as a human being. As he shapes a Romanesque image of reality—as he imposes his personal interpretation upon it—the writer must remain faithful to the essential character of the reality which inspires him but is outside the confines of his work. The plausible reconstitution of reality, however, is only a preliminary stage in the novelist's work. He must arrive at the elaboration of a 'super-reality,' more authentic than the original model, which codifies, as it were, within the framework of a fictional narrative, a perception of the common, fundamental elements that are intrinsic to the human experience, despite the disparity and incongruity of that experience. In other words, the writer starts with unruly concrete data, moulds them into a fictional texture, and, by a sudden shift of rhetorical and esthetic perceptions, penetrates to the quintessential truth that lay hidden beneath the heterogeneous appearance of reality.

Balzac maintains that the legislator's creative labors, however, bring about a totally different result. While his imagination works on the same reality, the legislator envisages it from a sterile perspective, considering only its appearances and interpreting its multifarious characteristics in such a way as to denature rather than embellish them. His efforts result in the fabrication of an artificial reality—a real fiction, a pure sham, devoid of any resemblance to a conception of an ideal Justice. In promulgating statutes, the legislator builds a legal system bereft of any principle of legitimacy, which becomes a framework for the harboring and fostering of ignominious social intrigues. Since they lack any basis of legitimacy, the laws destroy their principal, if not their sole, justification; they exist and operate to maintain and preserve a fundamentally unjust social order.

Despite his intimate awareness of what he conceives to be the

71. *Id.* at 596.

actual operation of law in society, Balzac's perception of the antinomy between the aims of the literary writer and the designs of the legislator shows to what extent he disassociates himself from the social depravity described in his novels. He reveals the abuses sheltered by the turgid prose of statutes only to denounce them more forcefully by making the case for a better, more acceptable form of regulation for human conduct. The dichotomy between the theoretical foundations of the law as a social institution and the uses men make of law is especially evident in his treatment of French procedural law in the Séchard case.

The Battle

Like all things human, French procedure has [its] vices; nevertheless, as does a double-edged weapon, it serves a defensive purpose as well as an offensive one. Moreover, it has an agreeable [feature], in that if two solicitors understand one another . . . , a trial then resembles war. . . . Two generals can prolong the war forever by arriving at nothing decisive and sparing their troops. . . .⁷²

Balzac's observation shows that, as a legal institution, French procedural law has the not inconsiderable merit of being impartial and objective, provided, of course, that the solicitors involved comply with the theoretical rationale of its prescriptions and have their clients' best interest in mind: the procedural rules give the adversaries an equal number of means to defend their respective positions. Since they direct the "game of judicial artillery,"⁷³ and despite their divergent loyalties, the solicitors also are capable of prolonging the evolution of a case by filing a number of motions either to spare their clients useless losses or to avoid taking too hasty an initial position or, in yet other circumstances, to "set [the client's] matters on fire."⁷⁴ Therefore, the corrupt use of the procedural rules of law does not call into question their theoretical bases, but rather the moral quality and professional conscience of the practitioners who make use of the legal process. The ethical application of law therefore depends upon the earnestness with which

72. *Id.* at 608. Balzac's characterization of the French system of litigation as explicitly adversarial does not do justice to the distinction between adversarial and inquisitorial models of adjudication. The French system, in light of the judge's central role, is clearly in the latter category. This qualification does not mean that Balzac's description is *per force* inaccurate, but rather that it tends to underemphasize the traditional distinction. It should be read with this reservation in mind.

73. *Id.* at 612.

74. *Id.*

the solicitors take their responsibility as officers of the court.

According to Boniface Cointet's scheme, Petit-Claud and Maître Cachan, counsel for the opposing party, were to engage in a costly fray the purpose of which was to place David Séchard in a position of being unable "to honor . . . [his outstanding] obligations."⁷⁵

[O]f assets belonging to Séchard and amounting to a value of about four thousand francs, Cachan and Petit-Claud had made it a pretext for seven thousand francs of [legal] costs and fees without counting future [expenses] the flower of which promised [to bear] rather nice fruits. . . .⁷⁶

From the sole perspective of competency in technical legal artisanship, the motions submitted by Petit-Claud to the courts constituted a remarkable, even admirable, piece of work. As Balzac himself remarks: "Most certainly the practitioners . . . would give their esteem . . . to Petit-Claud."⁷⁷ When, however, this legal work is assessed in terms of the motivation that underpins it and according to standards espoused by "people with heart,"⁷⁸ it is seen in its true light as an abuse of legal procedure and of the client's confidence, which causes Ève, David's wife, to cry out in despair: "'My God . . . but isn't the cure worse than the disease?'"⁷⁹ In effect, the legal services and remedies that Petit-Claud affords his client cost David nearly twice as much as the amount of the initial judgment rendered against him, without freeing him from the obligation of paying the principal amount of his debt. All these motions, counterclaims and appeals are simply a tactic to buy time—at the client's expense and without his fully informed consent. This preposterous administration of justice arouses the anger of the narrator, who lets his reader know the full force of his outrage at so patent an injustice, of his disgust that this type of fraud could be perpetrated in the name of legality:

[I]t is necessary for the legislator, if however the legislator has the time to read, to know to what point the abuse of procedure can go. Shouldn't we put a little law together which, in certain cases, would prohibit the solicitors from exceeding in *costs and fees* the amount for which suit is filed? Isn't there something ridiculous in submitting

75. *Id.* at 593.

76. *Id.* at 612.

77. *Id.*

78. *Id.*

79. *Id.* at 614.

a [piece of] property of one centiare to the formalities which govern a piece of land measuring one million! We'll understand, by this account . . . the value of these words: formality, justice, fees. . . .⁸⁰

THE REPERCUSSIONS OF THE LEGAL PROCESS: DAVID AND EVE "RUINED BUT LEFT ALONE"⁸¹

If they are just, they are better
than clever.

Sophocles, Philoctetes

Balzac's description of Petit-Claud and exposition on French procedural law are but the prolegomena necessary to understand the principal parts of the legal episode of the novel. To finish off his client, who is facing possible imprisonment for his financial misfortunes, Petit-Claud sets him at variance with his father, thereby depriving him of all possible financial support and leaving him no other course of action than to become a fugitive, a "voluntary prisoner,"⁸² hunted and, finally, owing to yet another series of adroit secret maneuvers by his attorney, arrested and incarcerated. The unrelenting harassment and moral stigma of imprisonment finally crush David's resistance and produce for his adversaries the intended and inevitable benefit: his consent to sign a partnership agreement with the Cointet brothers. The agreement represents the culmination of the Cointets' avaricious design to lay hold of David's invention. It also bears witness to the fact that the operation of the laws—those promulgated officially as well as those which emanate from the operation of society—place social success within the exclusive province of those men who adopt the Machiavellian attitude that morality is irrelevant to the assessment of man's conduct in society.

Laws and Mores

In describing the various stages of the scheme mounted against David Séchard, Balzac takes up a number of ideas already outlined in *César Biotteau*,⁸³ most notably the idea that the structure of the legal system and the substance of the laws place a

80. *Id.* at 612.

81. *Id.* at 730.

82. *Id.* at 639.

83. See text accompanying notes 9-17 *supra*.

higher importance upon safeguarding the interests of creditors rather than protecting the rights of debtors: "The force of the law . . . definitely belongs to the creditor."⁸⁴ The manipulation of the legal process by David Séchard's adversaries, however, also occasions a new series of observations upon the legal structure and the policies that inform it. For example, Petit-Claud warns David of the imminence of his imprisonment for debt:

Farewell, my dear David, you have been warned, the imprisonment for debt cannot be stopped by an appeal, it is your creditors' final resort, [and] they will make use of it. Therefore, flee! . . .⁸⁵

This physical coercion, to be exercised against the recalcitrant debtor when all other legal remedies have failed, not only is destined to be ineffectual (its principal justification appears to be a retributive rationale since, once deprived of his freedom, the debtor cannot possibly make amends for his financial irresponsibility), but is also, as Balzac underscores, an extreme and unnecessary measure, violative of a basic sense of humanity. Notwithstanding apparent imprecision and confusion in the details of the pages describing the arrest of debtors in the provinces,⁸⁶ Balzac's critical evaluation of the theoretical implications of this procedure upon the operation of the legal system constitutes a sound case for the need for a reform of the legal policy which it represents. By granting creditors an unwarranted power in a situation that often involves bitterness as well as hardship, the law allowing the imprisonment of debtors becomes a tool "of blind passions, or of vengeance."⁸⁷ As such, it threatens to undermine the detachment and impartiality of the legal system. Because of its "absolutely unnecessary cruelty,"⁸⁸ the provincial mores, the intimate communal character of the small town, in fact, hamper its effective application:

In the large cities, there are enough poor wretches, depraved people, with neither faith nor law, to serve as spies; but in the small cities everyone knows each other too well to be able to be the hired hand of a process-server. Whoever, in the lower class, would engage in this

84. 5 H. DE BALZAC, *supra* note 41, at 620.

85. *Id.* at 617.

86. As the editor notes, the passage on the arrest of debtors in the provinces "is confused and, it appears, inaccurate." *Id.* at 1389 (page 621 n.1).

87. *Id.* at 621.

88. *Id.*

form of degradation, would be obliged to leave the city.⁸⁹

The interaction that Balzac establishes between the application of the laws and the mores of the community constitutes only the bare outline of a possible jurisprudential theory. His observations nevertheless appear to modify somewhat the thrust of his conclusions concerning the nature of promulgated statutes and their role within the legal system. By asserting that the mores of a people "often [can] change the laws [even] to the point repealing them,"⁹⁰ Balzac unquestionably makes room in his pessimism for the possibility of eliminating the flaws of unjust or inequitable laws within the confines of the established legal system. Although this purification process takes place only after the laws have been enacted and does not officially alter their original illegitimacy, this statement of the primacy and salutary effect of mores upon the law reveals that the moral anomalies which seem to permeate Balzacian society have not completely extinguished a basic sense of justice within the general population. The practical effect of this reassertion of justice is to establish a balance between the respective positions of the creditor and debtor:

Thus, the arresting of a debtor not being, as in Paris or in the great centers of population, the object of the special work of commercial agents, it becomes an extremely difficult procedural task, a battle of wits between the debtor and the process-server whose tactics sometimes have become interesting . . . [newspaper] . . . accounts.⁹¹

The Prisons

By enticing the unknowing cooperation of Lucien, David's brother-in-law who has returned from Paris without learning to curb his irresponsibility, and by using the treacherous services of Cérizet, one of David's former employees, Petit-Claud manages to locate David and to have him arrested and imprisoned while continuing to hide from his client the true purpose of his legal representation. To reap the fruits of his unethical conduct, Petit-Claud now need only persuade David to go into partnership with the Cointet brothers. According to Balzac, the accomplishment of this last task is facilitated considerably by the inhuman conditions prevalent in the prisons of the time.

89. *Id.* at 621-22.

90. *Id.* at 621.

91. *Id.* at 622.

Balzac's description of the interior physical setting of the prison provides, on its own, ample evidence of the fact that the local prison to which David was sent after his arrest existed to punish criminals rather than provide a framework for their rehabilitation. Society certainly was not concerned with the dignity or human rights of individual prisoners; it already deemed itself generous for providing them with the bare necessities of life. This indifference and scorn were evident especially in the fact that the Angoulême prison still retained, in the nineteenth century, much of its medieval structure and characteristics:

The Angoulême prison dates from the Middle Ages, and has not undergone any more changes than the cathedral. Still called House of Justice, it rests against the old presidial. The entrance gate is classical: it consists of a nail-studded door, solid in appearance, worn, low. . . . A corridor dominates along the frontage at the ground level, and a number of rooms give upon this hallway; their high and well-filled windows draw their light from the courtyard.⁹²

The way in which the prison was administered also attests to the dehumanizing social discredit in which the inmates fell by having broken the law. The jailer, who appeared to be the only person responsible for the prisoners' well-being, held an overwhelming power over them. He took advantage of their misery and helplessness by meting out his own sanctions and demanding payment for his small acts of kindness:

Once imprisoned with the sum provided for by the law for the prisoner's food for a month, David found himself before a big man who, for the captives, has a power greater than that of the King: the turnkey! In the provinces, the skinny jailer is unknown. Firstly, this position is almost a sinecure; also, the jailer is like an inn-keeper who wouldn't have a house to pay for, he feeds himself very well by feeding the prisoners he houses very badly, for whom, moreover, he, like the innkeeper, provides the rooms he has. He knew David by name; because of his father especially, and he had the consideration to have him sleep well for one night, despite the fact that David was penniless.⁹³

Among the "horrors of the prison and the coarseness of its ways,"⁹⁴ the squalor of the inmates' cells was a constant reminder of their transgressions and of the distance that their acts had placed be-

92. *Id.* at 713-14.

93. *Id.* at 713.

94. *Id.* at 714.

tween them and their basic right to human dignity:

The walls of this cell were made of stone and were quite damp. The very high windows had iron bars. The stone flags gave out a freezing coldness. You could hear the regular steps of the guard on sentry duty who was walking in the corridor. This monotonous noise, like that of the tide, provoked this thought in you at any moment: "We are keeping you! You are not free!" . . . David noticed a horrible bed. . . . It was forbidden to give light to the prisoners. . . . David . . . [fell asleep] on the sort of cot with a horrible mattress in vulgar brown material. . . . [T]here was only one wooden chair of the most vile sort . . . [and] a hideous tub placed in the corner. . . .⁹⁵

In addition to attacking the deplorable conditions of the prison, Balzac also inveighs against the fact that David, a would-be insolvent debtor, is treated as a criminal offender. In Balzac's opinion, David's incarceration, in the shadow of "some convicted criminal [who] had just been set free, having done his time,"⁹⁶ and between "the walls strewn with the names . . . [of his] predecessors,"⁹⁷ was totally unjustifiable. It appears from this situation that the mores' salutary effect upon the laws had at least one inconvenience:

For the reasons alluded to above, prison detention for the failure to pay one's debts is a judicial fact so rare in the provinces that, in most cities in France, there is no detention facility. In this case, the debtor is sent to the prison where we jail those who are indicted, those in custody for trial, those accused of a crime, and those who have been convicted.⁹⁸

By transforming the process of imprisonment for debts into "an extremely difficult procedural task,"⁹⁹ the local mores precluded any distinction between the imprisonment of hardened criminals and the detention of debtors, whose misconduct, in all probability, stems from unforeseeable financial changes, bad luck, and personal hardship. Moreover, in a number of places in the text, Balzac underscores the psychological effect of imprisonment, ostensibly for the purpose of pointing out perhaps its only redeeming value: "Prison enormously fosters an examination of conscience. . . ."¹⁰⁰

95. *Id.* at 714-15.

96. *Id.* at 713.

97. *Id.* at 715.

98. *Id.* at 713.

99. *Id.* at 622.

100. *Id.* at 714.

“(The most obscure prisons bring about some illuminating insights).”¹⁰¹ He, however, adds the following qualification to his statement: “All these details, this group of things, have a prodigious effect upon the morale of *honorable people*.”¹⁰² This observation not only emphasizes the alienation from society felt by the moral characters, but also makes apparent the fundamental contradictions and perversity of the social fabric. On the one hand, the rationale for having prisons is to punish individuals who have violated the law; on the other hand, prisons can produce a moral effect only in those persons who are respectable and of good conscience. The imposition of retributive sanctions for the purpose of correcting attitudes and behavior, therefore, is destined to be ineffectual and to work against the interests of justice; to achieve this purpose, they can be applied only against “honorable people,”¹⁰³ who have no need of this incentive to lead exemplary lives. Faced with such inconsistencies and inequities, it is hardly surprising that the narrator reserves his praise for the angelic characters, who, despite their apparent implausibility as models of human behavior and their inability to function and to succeed in the Romanesque society, are the symbols of a preferred and more authentic humanity.

The Partnership Agreement

Remorseful and disheartened by the shame of imprisonment, David is ready to endure the final torment that his adversaries have prepared for him. At this stage of the novel, his sole desire is to be left alone and to gain a permanent respite from the morass of litigation. He, therefore, agrees to form a partnership with the Cointet brothers, hoping that it will put an end to his financial and legal tribulations: Ève “restated to her husband the conditions of the offer that Petit-Claud had supposedly obtained from the Cointets, and which were no sooner accepted by David with visible pleasure.”¹⁰⁴ Forcing David into a partnership and no more, however, would have been only half a victory for the Cointet brothers; to satisfy their avariciousness, they had to negotiate the deal in such a way as to allow them to obtain, in the near future, the full rights to David’s invention. To arrive at this objective, they relied

101. *Id.* at 715.

102. *Id.* at 714 (emphasis added).

103. *Id.*

104. *Id.* at 716.

upon the mystical and mystifying quality of legal prose.

In addition to Petit-Claud's misrepresentation of his interests, David's commitment to intellectual pursuits put him at a disadvantage in the negotiations:

David was waiting for the meeting with the Cointets with a vague sense of worry: neither the discussion of his interests nor that relating to the agreement to be drawn up were the cause of his worry; but the opinion that the manufacturers would have of his work. He found himself in the situation of the author of drama standing before his critics. The inventor's pride and his anxieties at the moment of reaching the goal made any other feeling fade away.¹⁰⁵

To the contrary of what David anticipated, the Cointet brothers did not intend to assess the merit of his creative work; they already were very much aware of its commercial worth, and their strategy was to bring up practical problems in order to discredit the value of his ideas and obtain the rights to them at the least possible cost. These masterful negotiators successfully cast a false appearance upon the real value of their projected investment by insisting upon the potential risks of the venture and by challenging David and his would-be legal counsel to find a means by which to resolve the apparently dichotomous interests of the respective parties to the agreement:

They found themselves firstly blocked by a preliminary difficulty: how to enter into a partnership agreement without knowing the substance of David's techniques? And once David's techniques were revealed, David found himself at the Cointet's mercy.¹⁰⁶

By creating problems of this nature, Boniface Cointet achieved his objective: he had a clause inserted in the partnership agreement which provided that David would be deprived of all his rights to the invention in the event that the conditions of the partnership should fail. He also managed to have the patent put in his name:

One of the clauses of the agreement completely stripped David Séchard of his rights in the event that he failed to accomplish the promises contained in . . . the document carefully prepared by the great Cointet and agreed to by David.

The great Cointet demanded the right to put his name on the patent of invention. He succeeded in advancing the idea that, as long as

105. *Id.* at 719.

106. *Id.*

David's effective rights were perfectly stated in the agreement, it did not matter in which of the partners' name the patent was placed. . . . The lynx therefore triumphed on all the points [of discussion].¹⁰⁷

Once David's experimentation had progressed sufficiently for the purposes of commercialization, and once Boniface had what he needed to make an enormous profit, the Cointet brothers, on the basis of the rights they had reserved for themselves in the terms of the partnership agreement, decided to sue their inventor-partner, requesting that the differences between them be resolved by an arbitral tribunal. In their complaint, they alleged that David had failed to achieve the results he had promised under the terms of the agreement:

The Cointet brothers demanded the restitution of the six thousand francs and the rights to the patent as well as the future shares from its exploitation, as an indemnity for the exorbitant expenses they made without having any results.¹⁰⁸

These formal legal motions and documents, however, did not reflect real grievances, but were rather yet another tactical move to apply still more pressure upon David in the aim of having him yield his interest in the partnership prematurely and at a low cost. As Petit-Claud, who in the meantime had been appointed, in an ironic twist of the story, "the defender of the widow, the tutor of the orphan,"¹⁰⁹ advised his former clients, this time with a candor that would have spared them previously considerable trouble, the legal system did not offer them any remedies that were really acceptable. The law was incapable of unmasking and punishing the Cointets' true intentions:

The Cointets have caused you enough pain; I want to put an end to their pretensions. Listen, today, I am a magistrate, I owe you the truth. You see, the Cointets are playing with you right now; but you are in the palms of their hands. You could win the case that they are building against you, by accepting war. Do you still want to be litigating at the end of ten years? They will request a multiplicity of expert testimony and arbitral meetings, and you will be subject to the hazard of the most contradictory opinions. . . . Listen, a bad settlement is worth more than a good trial. . . .¹¹⁰

107. *Id.* at 723-24.

108. *Id.* at 729.

109. *Id.*

110. *Id.* at 730.

Preferring anything to the entanglements of litigation, David and Ève agreed to accept the "bad settlement"¹¹¹ that Petit-Claud offered to get for them. With the money they would acquire from the settlement, they could live comfortably. In Petit-Claud's words: "With ten thousand francs, you will have another five hundred francs of annuity, and, in your lovely little property, you will live happily!"¹¹² Owing to the subtle manipulation to which the laws lend themselves, in complete contempt of their honesty and generosity, David and Ève Séchard were "ruined, but left alone,"¹¹³ while Boniface Cointet was put well on his way to becoming a prominent figure in the industrialization of the French economy—a wealthy and famous entrepreneur who stole and commercialized someone else's idea.

CONCLUSION: BALZAC'S ADVOCACY OF A JURIDICAL HUMANISM

As in *César Birotteau*, the fate of David and Ève Séchard represents the undisputed triumph of insidious social scheming in the Balzacian novel. Although David and Ève were not reduced to bankruptcy, the law offered them only a "bad settlement,"¹¹⁴ and this after a long, costly and agonizing legal nightmare; the legal process played a key role in their downfall and in their ultimate alienation from society. While the inventor and his wife clung helplessly—perhaps foolishly—to their belief in the sanctity of human relations, their unscrupulous foes, with the help of the legal system, climbed the ladder of social success and notoriety unimpeded. In the last analysis, the substance and conclusion of *Lost Illusions* support the impression of many critics that, "[i]n this society, to read a Balzac novel, was to find the life that one had around oneself every day."¹¹⁵ Moreover, it is equally evident that Balzac's Romanesque transcription of the social reality of his times constitutes a statement of the potential corruptibility and actual corruption of human nature—a statement grounded in a firm and unmistakable sense of what is real. In the Balzacian cosmos, social

111. *Id.*

112. *Id.*

113. *Id.*

114. See text accompanying notes 110-111 *supra*.

115. Sagnes, *Introduction to 3 H. DE BALZAC, LA COMÉDIE HUMAINE—L'INTERDICTION* 405, 410 (P.-G. Castex & G. Sagnes, eds. 1977). See also Bouyssou, *Balzac à la faculté de droit, Thomassy et Popinot*, [1972] *ANN. BALZAC* 363 (1972); Le Yaouanc, *Sur l'Interdiction* 253 (1971).

institutions, such as the law, are put to such degenerate use by men that they come exclusively to foster and epitomize what is most evil in man. Clearly then, within the confines of such a society, goodness is inoperative, and the laws are destined to promote and safeguard a vilified state of human existence.

As suggested previously, however, the pessimism generated and sustained by the realism of the narrative does not adequately account for the breadth of Balzac's literary vision or of his concept of law. Rather than corroborate the sense of moral nihilism in the novels, the omniscient narrator's humanistic commentary and the example of the angelic characters dissipate, perhaps even eliminate the impression of a moral void. In regard to the law, Balzac appears to argue that, despite the outcome of the novels, an ideal standard of Justice does exist and can be ascertained by man and transposed, imperfectly but not unacceptably, into the daily operations of social life. Indeed, he seems to suggest further that the legal process can lay claim to legitimacy only to the extent that it achieves a basic conformity with that ideal standard. While, because of its technical character, the law can be manipulated to launch intricate schemes against unsuspecting victims, and while it can become a springboard to illicit social advancement, the law can also, *if men wish it to*, reflect the intrinsic human capacity to engage in positive moral conduct. Balzac seems, in fact, to state that this is the very *raison d'être* of law.

Although he does not require that the legal system eliminate human disloyalty and maliciousness entirely, Balzac wants it to fulfill a truly creative function within society: not only by establishing a semblance of order among unruly human passions, but also, much like the writer in relation to his work, by instilling a sense of fairness, truth and humanity in human relations—in a word, by grafting onto the operation of society the immutable tenets that are anchored in and emerge from man's essential moral nature. Balzac's advocacy of this natural law juridical humanism perhaps is most explicit in his short novel, *The Interdiction*.¹¹⁶ Although the outcome of the story once again upholds the thesis that society is dominated by corruption,¹¹⁷ the portrayal of Judge Popinot and the Marquis d'Espard reflects the Balzacian conception of a humanly possible juridical ideal. In this sense, the substance of

116. Sagnes, *supra* note 115, at 424.

117. See text at notes 144-147 *infra*.

The Interdiction serves as an appropriate conclusion to Balzac's consideration of the law in *César Birotteau* and *Lost Illusions*.

The Interdiction focuses upon the preliminary stages of a hearing to determine the legal competency of one of the protagonists. The Marquis d'Espard, a nobleman of prominent and well-established lineage, is the object of an action initiated by his estranged wife in which she contends that her husband's mental state has degenerated to such an extent that he is no longer capable of retaining custody of their two young children or of managing the affairs relating to his estate. To substantiate her claim, the Marquise d'Espard alleges, *inter alia*, that her husband has, for no apparent reason, developed an obsessional concern for the welfare of one Madame Jeanrenaud and her son—spending enormous amounts of money to satisfy their whims to the total disregard of the well-being of his two young sons, obliging them, in effect, to live in a manner unbecoming of their aristocratic station and future role in society.¹¹⁸ Upon receipt of the petition, the chief justice assigns the matter to an associate judge, Jean-Jules Popinot, who is required to conduct a preliminary investigation and submit a report to the court.¹¹⁹

As has become commonplace in the Balzacian novels dealing with the law, the official legal position advanced by the characters gives only the appearance of truth. Accordingly, the suspense of *The Interdiction* centers upon two key issues: first, whether Judge Popinot will be able to resist the Marquise d'Espard's efforts to engage him in what will emerge as an illicit cause; and, second, whether the judge will be able to discover the actual motivation for her action and bring it to the surface as the determinative rationale in his official report. Typically, the Marquise is a consummate intrigant;¹²⁰ through the mediation of her suitor, she prevails upon the judge's nephew to invite the judge to her residence to discuss the case.¹²¹ Although Popinot initially refuses to come, citing an article of the code prohibiting magistrates from being entertained in the homes of litigants, he decides, upon further consideration, to accept the invitation, but only to advance his investigation.¹²² Indeed, rather than being seduced by the Marquise's prominence and

118. See 3 H. DE BALZAC, *supra* note 114, at 446.

119. *Id.* at 437.

120. *Id.* at 455, 451-56.

121. *Id.* at 425-29.

122. *Id.* at 442, 450.

influence, the old judge makes her the unwilling victim of his perspicacious and adroit questioning: "The Marquise's tact and her habit of judging men made her understand that Mr. Popinot could not be influenced by any consideration. She had counted upon [having] some ambitious magistrate, she met up with a man of conscience."¹²³ Satisfied that the actual motivation for the Marquise's action is far from clear, the judge leaves before tea is served in order to interview the other parties involved.¹²⁴

It is not surprising that the Marquise's efforts to undermine Judge Popinot's judicial integrity were unavailing; as his nephew warned the Marquise's suitor, Popinot was a "judge like death was death."¹²⁵ Balzac, in fact, portrays Judge Popinot as a truly exemplary human being who possesses an unfailing commitment to truth and justice. In the Balzacian cosmology, the judge, like César Birotteau and David and Ève Séchard, is an angelic character; although he also suffers social alienation because of his moral integrity, unlike them, he possesses the celebrated gift of second vision,¹²⁶ a special insight into the operation of things human which Balzac bestows upon those characters of whom he especially is fond and which prevents them at least from being the unwitting victims of schemes and intrigues:

One feature alone recommended this face to the physiognomist. This man had a mouth upon the lips of which divine goodness breathed. They were good big red lips . . . upon which nature had expressed good feelings; lips which spoke to the heart and announced in this man intelligence, clarity, the gift of second vision, an angelic mind. . . . His life corresponded to his physiognomy; it was full of secret works and hid the virtue of a saint.¹²⁷

Although his refusal to engage in the political machinations of the judiciary had thwarted his rise to the august position merited by the quality of his work and of his intellect, Judge Popinot brought to all his cases an unswerving loyalty to truth and an uncompromising sense of justice.¹²⁸ In deciding disputes, he looked at the facts of the case as much from the perspective of equity as from the standpoint of legal principles themselves; for Balzac,

123. *Id.* at 467.

124. *Id.* at 467-68.

125. *Id.* at 426.

126. *Id.* at 431.

127. *Id.*

128. *Id.* at 432-33.

Popinot's devotion to equitable considerations was one of the signs of his great distinction as a magistrate:

Equity is based upon the facts, law is the application of [legal] principles to the facts. A man can be right according to equity, but wrong in justice, without having the judge called into question. Between conscience and fact, there is a gulf of determinative reasons that are unknown to the judge, and which condemn or legitimize a fact. A judge is not God; his task is to adapt facts to principles, to judge cases which are infinitely diverse, by using a fixed measure. If the judge had the power to read the conscience and to unravel the motives in order to render equitable judgments, each judge would be a great man. France needs about six thousand judges; no generation has six thousand great men at its disposal, all the more reason is it unable to find them for its magistrature.¹²⁹

In a word, Popinot knew how to be both an "inflexible judge"¹³⁰ and a "charitable man;"¹³¹ he could discern the truth in a case without recourse to the usual judicial ploys. Moreover, unknown to any of his colleagues, Judge Popinot, when he was off the bench, would engage in private works aimed at eliminating crime at its very roots; as Balzac states, "the judge was the social side in him; another man [—] greater and less known [—] was to be found within him [in his personal life]."¹³² This "secret apostolate"¹³³ of the judge consisted in providing material assistance and a variety of counseling and employment services to the poor of his neighborhood. Describing Popinot as "the Saint Vincent de Paul"¹³⁴ of his neighborhood, Balzac adds that "he attended to everything, he prevented crime, he gave work to unemployed laborers, he had the crippled placed [in the proper institutions], he distributed his aid with discernment . . . , appointed himself as the counsel for widows, the protector of homeless children, the silent partner of small businesses."¹³⁵

Although the Marquise had dressed her petition in the garb of convincing legal allegations, the judge was alerted nonetheless, by his reading of the complaint and by the experience of his visit, to the fact that her contentions might—and almost surely

129. *Id.*

130. *Id.* at 434.

131. *Id.*

132. *Id.*

133. *Id.* at 435.

134. *Id.* at 434.

135. *Id.* at 435.

did—represent a deliberate falsification of the truth.¹³⁶ Accordingly, during the interview between himself and the Marquis d'Espard, the judge discovered that, despite his exceedingly bizarre conduct toward the Jeanrenauds, the Marquis, with the full knowledge of his wife,¹³⁷ actually was setting about to rid his family history and name of an act of dishonesty¹³⁸ which had remained unknown till then. In the late seventeenth century, following the revocation of the Edict of Nantes,¹³⁹ the Marquis' family had acquired great landed wealth by involving itself in the royal intrigues to dispossess Protestant landowners of their property—in this case one Jeanrenaud. Upon discovering the fact, and not wanting to leave his sons with a soiled coat of arms, the Marquis resolved to find the unfortunate Jeanrenaud's descendants and to make amends for his forebear's wrong-doing. In relation to Judge Popinot, the Marquis, an angelic character in his own right, saw the question of justice in this matter not in terms of legal technicalities, which would have absolved him of any obligation to engage in restitution, but rather in terms of a higher, more binding law—a sense of justice governing his conscience as a man.¹⁴⁰

“In my eyes, sir, the rights of the Jeanrenauds were clear. For the statute of limitations to run, don't the holders [of the property] have to be capable of attack? To what authority would the [Protestant] refugees have addressed themselves? Their court was up above, or rather, sir, the court was here,” the Marquis said striking his heart.¹⁴¹

Having located the Jeanrenauds, who by this time had become nearly destitute,¹⁴² the Marquis reached an agreement with them providing for an equitable restitution price and reasonable repayment schedule. The Marquise d'Espard, however, vehemently opposed any plan to modify her present life style in order to reimburse the Jeanrenauds, preferring, in fact, to be separated from her husband and leave him the custody of and responsibility for their

136. *Id.* at 466, 469-70.

137. *Id.* at 485.

138. *Id.* at 483-85.

139. The Edict of Nantes, signed by Henri IV in 1598, extended official religions toleration to French Protestants. Henri's grandson, Louis XIV, revoked the edict in 1685, abolishing the legal status of Protestants and touching off a variety of responses among Catholics, ranging from the distribution of catechisms to forced conversions by violent means.

140. *Id.*

141. *Id.* at 484.

142. *Id.* at 444.

young children.¹⁴³

Having established that the Marquis' conduct did not represent the ravings of a demented mind, but rather reflected the most noble motives of human behavior, Judge Popinot closed his investigation and was ready to submit his report to the court. On the morning of the appointed day,¹⁴⁴ however, the chief justice asked to see Popinot in his chambers, where he informed him that the Keeper of the Seals had requested that he not continue on the case. The Marquise had let it be known to the relevant judicial authorities that the judge had been at her house for tea during the course of the investigation, and the mere mention of such a situation immediately conjured up rumors of judicial impropriety. Despite Popinot's protests—he asserted, for example, that he had left before tea had been served—the chief justice reassured him that it was not a disciplinary matter, but merely a prudent arrangement for the sake of convenience. He further promised that Popinot's compliance with the request would entitle him to the cross of the *Légion d'honneur*:

"I am persuaded . . . that you have conducted yourself in the strictest independence in this matter. . . . [B]ut it suffices that the Keeper of the Seals has talked about it, that rumors spread on your account. . . . Any conflict with public opinion is always dangerous. . . . In a word, I am asking you to declare yourself incompetent as a personal favor; in return, you will get the cross of the *Légion d'honneur* which has been due you for such a long time, I make it my task."¹⁴⁵

Presented with a *fait accompli*, Popinot had no choice but to remove himself from the case; he was replaced by a recently promoted judge, one Camusot, whose ambition to succeed made him particularly vulnerable to the needs and desires of influential litigants.¹⁴⁶

Despite a similarity in the conclusion—the ultimate frustration of justice, *The Interdiction*, unlike either *César Birotteau* or *Lost Illusions*, goes beyond the narrator's description of and invective against the abuse of law by men. Of the three novels, it alone contains explicit textual examples of Balzac's view, not only of an ideal of natural Justice, but also of the kind of morally acceptable

143. *Id.* at 485.

144. *Id.* at 491-93.

145. *Id.* at 492.

146. *Id.* at 493.

administration of Justice that can be achieved in society. The Marquis d'Espard's self-imposed standard of restitution and Judge Popinot's irreproachable official conduct imply that, in the Balzacian perspective, the law is a neutral instrument; its worth as a social institution is determined by the use men make of it. Like Petit-Claud and Camusot, men can employ the law as a device for social advancement; or, in keeping with the examples set by Judge Popinot and the Marquis d'Espard, they can lessen its importance as a technical tool and emphasize its vitality as an instrument of social and personal justice. The Balzacian vision of the law, then, is closely akin to natural law norms: the legal devices invented by men can serve no legitimizing function in society unless the men who promulgate and administer the laws identify them with an overriding moral sense, unless they instill the legal system and its judicial offices with moral consciousness. For Balzac, the greatest of all follies is to follow the immoral ways of society, for it surely will lead to the destruction of man's most precious gift: his humanity.

