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BALZACIAN LEGALITY

Thomas E. Carbonneau*

I. INTRODUCTION

The very existence of the special issue in which this article appears serves to demonstrate that the study of law and literature is an area of growing interest to legal scholars in the United States.¹ Previous excursions into this area have produced articles dealing with the significance, for lawyers and law students, of the works of such masters as Dostoevski,² Joyce,³ and Dickens.⁴ This interdisciplinary inquiry would be incomplete, however, without reference to the works of the French literary master, Honore de Balzac.⁵

It is undeniable that Balzac incorporated in his work a panoramic view of the social reality of nineteenth century France.⁶ In this context, the fidelity of Balzac's plots and characters to their external models has been well-documented in a number of fields, including sociology, commerce, and finance.⁷ In addition to this penchant for realism, however, Balzac laced his novels with an equally evident moral content. This commitment both to accuracy and to morality extended to Balzac's novelistic treatment of the law and lawyers.⁸

Balzac's intimate acquaintance with the law and its mechanics, and his ability to portray them with exceptional precision, undoubtedly

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1. Indeed an increasing amount of space has been given to topics of this nature in various legal periodicals. See generally, 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).

2. See Axelrod, *Law and the Humanities: Notes from the Underground*, 29 RUTGERS L. REV. 228 (1976).

3. See Cowan, *The Law at Finnegan's Wake*, 29 RUTGERS L. REV. 259 (1976).

4. See Glaser & Roth, *In the Matter of Heep, Jagers, Tulkinghorn & Fogg: An Unjarndyced View of the Dickensian Bar*, 29 RUTGERS L. REV. 278 (1976).

5. See Gest, *The Law And Lawyers of Honore de Balzac*, 60 U. PA. L. REV. 59 (1911).

6. Since its publication in the nineteenth century, Balzac's work, *The Human Comedy*, has gained the admiration of countless readers and literary scholars. *The Human Comedy* has had special appeal to a readership with a penchant for documentary fiction, those who assess a novel by its affinity to an existing external reality. For an appraisal of Balzac's realism, see generally M. BARDECHE, *BALZAC, ROMANCIER LA FORMATION DE L'ART DU ROMAN CHEZ BALZAC JUSQU'À LA PUBLICATION DU "PÈRE GORIOT"* (1820-1835) 91 (1967); 1 & 2 R. GUISE, *BALZAC* (1973).

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

8. A relatively little-known but nonetheless significant novel, *Cesar Birotteau*, corroborates this assertion. See text accompanying notes 15-19 *infra*. See also A. PEYTEL, *BALZAC JURISTE ROMANTIQUE* 7-10 (1950).

stems from his training as a lawyer and his experience clerking in a law office.⁹ The impact of Balzac's legal training on his early writings was recognized by his literary contemporaries, one of whom noted that this association with the law enabled Balzac "to know the members of the legal community and . . . to write later on, in a way that astonished the people of the profession."¹⁰ The astonishment, however, did not result in a uniformly favorable assessment of Balzac's work.¹¹ One legal critic in fact criticized what he perceived as Balzac's audacity in adding a writer's simplistic and unduly negative commentary to the description of the exact role of the law,¹² lamenting that "not content with applying the law, [Balzac] comments upon it, criticizes it . . ."¹³ To dismiss a critique of the law, and the legal process on the ground that it emanates from a literary author, who should have confined himself to the mechanical activity of reporting facts, amounts to a denial of the value of intellectual analysis and an endorsement of the status quo. This should be abhorrent to any modern lawyer who is trained to analyze and criticize as an advocate.

It should be noted, however, that students of literature have provided most of the commentary and study of Balzac, and they have focused on specific themes within the particular novels. Most of this work has been generated by the French academic community and, as a result, has received a relatively small audience.¹⁴ Balzac's work should be of great interest to contemporary lawyers too, since his novels confront the very questions that forever perplex and challenge the minds of teachers, students, and practitioners of law: the relationship between legality, legitimacy, and morality as reflected in per-

9. 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 Maitre Guyonnet de Merville and Maitre Passez. See A. PEYTEL, *supra* note 8.

10. T. GAUTIER, *SOUVENIRS ROMANTIQUES* 105 (1929). Later on in the same work, Gautier compares Balzac's attitude towards the law to Stendhal's, 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 Balzac's and Stendhal's ideas, see Jansse, *La conception generale du droit chez Stendhal et chez Balzac*, in *STENDHAL AND BALZAC* 42 (V. del Litto ed. 1972).

11. See, e.g., Blondel, *Du droit et de la procedure dans Honore de Balzac* (audience solennelle de rentree) (Cr. d'appel de Douai, Oct. 17, 1887). See also Boyer, *La magistrature et le monde judiciaire dans la Comedie humaine de Balzac* (audience solennelle de rentree) (Cr. d'appel de Nimes, Oct. 16, 1894); Breal, *Le monde judiciaire dans Balzac* (discours prononcé a l'ouverture de la conference des avocats) (1903).

12. See Blondel, *supra* note 11, at 9.

13. *Id.*

14. A few French scholars have addressed the specific legal content of Balzac's work. See, e.g., M.-H. FAILLIE, *LA FEMME ET LE CODE CIVIL DANS LA COMEDIE HUMAINE D'HONORE DE BALZAC* (1968) (attempting to determine if Balzac was a proponent of feminism by investigating the reactions of Balzac's heroines in relation to the Civil Code and to the state of quasi-incapacity (legally) in which women found themselves); A. MICHEL, *LE REEL ET LE TEXT* (1974) (analyzing generally the theme of women and the law); P.A. PERROD, *BALZAC ET LES MAJORATS: ANN. BALZAC* 211 (1968) (study of Balzac's use and interpretation of the trust and estate in tail).

sonal and community ethics. This article, therefore, seeks to provide a brief introduction to the work of Balzac by way of a few specific examples of his treatment of the law. In so doing, this author hopes to make an English language contribution to the continuing interdisciplinary inquiry into the nexus of law and literature.

II. CESAR BIROTTEAU

A relatively little known but nonetheless significant novel, *Cesar Birotteau*,¹⁵ illustrates not only Balzac's knowledge of technical legal issues, but also his ability to use that knowledge effectively in a literary context. More importantly for our purposes here, his skill points up the inequities or injustices that might redound to an individual despite what amounts to technical compliance with the letter of the law.

In this work we are given the story of Cesar Birotteau, a minor merchant of Paris, who has come to the capital from an isolated province and achieved financial success in part by chance but principally as the result of hard work and devotion to an honest way of life. It becomes evident quite early that such an "angelic" character cannot long survive in the society which Balzac criticizes. The merchant's downfall is precipitated by a former employee, du Tillet, who manipulates the technicalities of the law to provoke Birotteau's bankruptcy. Although the merchant is able finally to rehabilitate his finances, his energy is so dissipated by the struggle that it costs him his life. The multi-faceted thematic treatment of the rise and fall of this merchant gives us a portrait of the tacit and insidious rules and laws which govern the operation of the business and political worlds.

In writing *Cesar Birotteau*, Balzac made use of the law in a remarkably precise and exact way.¹⁶ An examination of the provisions of the French Commercial Code and the legislative history of its enabling statute¹⁷ shows that Balzac relied heavily upon the substance of these provisions in constructing the bankruptcy episode.¹⁸ Indeed, Balzac not only wrote in depth of the three actual phases of the bankruptcy procedure, but he also demonstrated that the technical legal rules were particularly adaptable to the corrupt design of Birotteau's scheming employee. In effect, the novel emerges as an

15. 6 H. DE BALZAC, *LA COMEDIE HUMAINE—CESAR BIROTTEAU* 39 (P.-C. Castex & R. Guise, eds. Pleiade 1977) (originally published in 1837).

16. For a discussion of these specific uses, see T. GAUTIER, *SOUVENIRS ROMANTIQUES* 105 (1929).

17. Law of September 22, 1807.

18. See J.G. LOCRE, *ESPRIT DU CODE DE COMMERCE* (1911). See also Guyon, *Une faillite au debut du XIX siecle selon le roman de Balzac "Cesar Birotteau,"* in *ETUDES OFFERTES A ALFRED JAUFFRET* 337 (no date). See generally G. BRULLIARD & D. LAROCHE, *PRECIS DE DROIT COMMERCIAL* (1964); S.D. CASTELLAN, *LE JUGE COMMISSAIRE DANS LA FAILLITE ET LE REGLEMENT JUDICIAIRE* 7 (1965).

adroit and perspicacious criticism of the enabling statute as a vehicle which lends itself too readily to promoting inequity. That the statute is subject to such misuse results from the failure of the legislators to strike a fair balance between the legal rights of debtors and creditors, and also their failure to provide safeguards curtailing the fraudulent activity of parties involved in such proceedings.

Balzac's purpose in writing about social phenomena in general and the law in particular seems to be to unmask the official outward appearance and to expose the inner truth. His description of the contradictions and injustices in the legislative attempt to reform commercial practice is more than a demonstration of legal inconsistencies. Balzac's objective, then, should not be interpreted as a mere attempt to impress his reader with the accuracy and precision of his legal knowledge. Instead, the important lesson for the modern lawyer and student of law is Balzac's view, recognizable in *Cesar Birotteau*, that laws not reflecting humanity's capacity for positive moral conduct are not really laws at all but a set of empty rules manipulated in a game of never-ending connivance and human degradation.

To Balzac, the value of the law can be found in its role as a social institution. Society requires a set of laws and legal institutions worthy of being regarded with the deference and respect shown by Birotteau, who adhered to the letter of the law even though it cost him his life. Balzac provides Birotteau as an example of a person whose conduct closely approximates the author's ideal of justice. In Balzac's view, it was impermissible to attempt to achieve social order at the cost of an imperfect justice, a justice that was completely bankrupt from a moral and humanistic perspective.¹⁹ Similarly, the modern legal technician, while recognizing the role of law as a force of social control, should nevertheless approach the law with consciousness of the moral consequences flowing from the application or misapplication of those laws.

III. LOST ILLUSIONS

For our inquiry into the all-important relationship between legality, legitimacy, and morality, *Lost Illusions* provides an excellent focus, particularly in the thematic structure of its third and final part. The principal tenets of Balzac's legal thought are all present in *Lost Illusions*, and the characters in this work serve to facilitate a careful analysis and understanding of the novelist's idealistic propensity and not just his penchant for realism. The major protagonists in this work are David Sechard (a provincial printer who tirelessly pursues research on an idea that will lessen substantially the cost of manufactur-

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

ing paper and revolutionize the printing industry) and the Cointet brothers, Sechard's local competitors, who will go to any lengths to lay their hands on Sechard's idea and invention. Although the technical aspects of the commercial laws and codes are of general interest, it is the role of Petit-Claud, the lawyer enlisted by the Cointets, that should interest modern students and practitioners alike.

In essence, the Cointets plan a scheme built upon the loopholes and technicalities of the commercial law in order to ruin Sechard and thereby gain access to his invention. In so doing, they rely on the cooperation of Petit-Claud, whose enormous desire for success is buttressed by a total insensitivity to the ethics of his profession. The Cointets want Petit-Claud to do what amounts to an unethical solicitation of business, approaching David Sechard and offering his services in the litigation which the Cointets will mount against Sechard. In exchange for this complicity, Petit-Claud is promised a marriage to a wealthy heiress who will provide him with money to pay off his debts and also provide him with access to a wealthy aristocratic clientele. It is evident that Petit-Claud views the law, first and foremost, as a means of furthering his own selfish ends, with total disregard for even elementary legal norms when the promotion of self-interest requires it.

As a result of his ambition, Petit-Claud sets out to abuse the procedural technicalities of the law in order to create unnecessary litigation costs to the detriment of his client's finances. While this conduct is motivated by a desire to benefit his client's adversary, the modern analogue, the greed of attorneys who build up fees and billing costs without regard for the client, seems obvious. The idea that fraud can be perpetrated in the name of legality is particularly offensive to Balzac, as well it should be to all of us. Although many of the procedural manipulations are technically permitted by law, Balzac's purpose seems to be to unmask the deceptive appearance, to look behind the scenes at the nature of law, and the judicial process. According to Balzac, the primary inconsistency exists between law as a social instrument governing the daily relationships of people and law as a maze the rules and purposes of which are known only to a small minority of interested parties. As Balzac himself stated: "There is nothing which is less known than what everyone should know, the LAW!"²⁰ Such a situation inevitably engenders a legal system which invites its own subversion by an elitist and stealthy manipulation of technicalities. This problem is exacerbated because only those who promulgate and administer the law, and those closely regulated by it, are initiated to its intricacies. As a result, there is a legitimate objec-

20. 5 H. DE BALZAC, *LA COMEDIE HUMAINE-ILLUSIONS PERDUES* 123, 591 (P.-C. Castex & R. Chollet, eds. Pleiade 1977).

tion that laws cease to reflect a higher standard of what is just, and instead become the tools for the self-centered aggrandizement of a privileged few. As Balzac observed, "ingenious pranks . . . that a certain article of the commercial code authorizes . . . show how many atrocities are hidden under this terrible word: *legality!*"²¹

Balzac also presents an interesting comparison of the creative works of legislators with those of literary authors. While somewhat understandably lauding the literati, he maintains that a legislator's creative labors bring about totally unacceptable results. Although a legislator must work with the same reality as an author, the legislator's reality is derived from a sterile perspective. The result is the fabrication of an artificial reality, a sham deprived of any resemblance to an ideal justice. By promulgating statutes in this manner, legislators build a legal system devoid of any principle of legitimacy. The law then becomes a framework for harboring and fostering ignominious social intrigues. Since the laws lack any basis of legitimacy, their principal, if not their sole, justification is destroyed by their maintenance of a fundamentally unjust social order. This important dichotomy between the theoretical foundations of the law as a social institution, and the uses that people make of the law, is particularly evident and aptly portrayed in Balzac's treatment of the French procedural law in the Sechard case.

Apart from those laws of questionable vintage, the modern lawyer should reflect on Balzac's message that the corrupt use of the law does not necessarily call its theoretical bases into question. Rather, there are laws whose ignominy stems from the moral quality and professional conscience of those of us who make use of the legal process. The ethical application of the law, therefore, depends upon the integrity of the lawyers and the seriousness with which they take their responsibilities as officers of a court of justice. That Petit-Claud lacked such qualities contributes greatly to the success of the Cointets with their avaricious designs. Thus, in *Lost Illusions*, as in *Cesar Birotteau*, we have a victory for those who adopted the Machiavellian attitude that morality is irrelevant to the assessment of man's conduct in society. Unfortunately, such victories bear witness to the fact that the legal system may reinforce and indeed contribute to the successes of the avaricious at the expense of the more virtuous. In Balzac's universe, then, social institutions like the law are often put to such degenerate use that they come to foster and epitomize what is most evil. Clearly, within such a system, the laws become destined to promote and safeguard a vilified state of human existence.

As a general matter, however, the pessimism generated and sustained by these works does not adequately account for the breadth of

21. *Id.*

Balzac's concept of the law. In this regard, it may be said that Balzac appears to argue, despite the outcome of the novels, that an ideal standard of justice exists and is in fact ascertainable. Indeed, he seems to suggest that the law can lay claim to legitimacy only to the extent that it achieves a basic conformity with that ideal standard. Balzac's advocacy of this natural law juridical humanism is perhaps most explicit in the short novel *L'Interdiction*.

IV. *L'INTERDICTION*

Although this work once again upholds the thesis that society is dominated by corruption, the portrayal of Judge Popinot reflects Balzac's conception of a humanly achievable juridical ideal. Although his failure to engage in the political maneuvering of the judiciary had thwarted his rise to the august position merited by the quality of his work and intellect, Judge Popinot brought to all his cases an unswerving loyalty to truth and an uncompromising sense of justice. 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, Popinot's devotion to equitable considerations was one of the signs of his greatness as a magistrate. Even more importantly, Balzac recounts Popinot's life off the bench, in which he provided material assistance and a variety of counseling and employment services for the poor of his neighborhood. Describing Popinot as "the Saint Vincent de Paul" of his neighborhood, Balzac added that "he attended to everything, he prevented the 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 the small businesses."²² Briefly stated, this exemplary man was not corrupted by position or power but instead retained his humanity and his essence as a charitable man. This message is obviously timeless. Perhaps the modern analogue may be found in the *pro bono publico* work of many large law firms. How the modern legal person manifests humanity is, however, irrelevant; what is critical is that it be manifested in some way. We, the lawyers, students, and academicians of the twentieth century must not forget the lesson of France of a century ago. We can ill afford callous disregard of our fellow man, whether such disregard is within the letter of the law or not.

22. 3 H. DE BALZAC, *LA COMEDIE HUMAINE-L'INTERDICTION* 405, 466, 469-70 (P.-G. Castex & G. Sagnes, eds. Pleiade 1977).

V. CONCLUSION

It is hoped that this brief excursion into a few of the works of Honore de Balzac will serve as a catalyst for more discussion and more realization of the need to incorporate the important lessons of our literary history into the conscience of our next generation of legal minds. What should be stressed is that the interaction that Balzac establishes between the application of the laws and the mores of a community is a foundation, a bare outline of a possible jurisprudential theory.

Despite the ultimate frustration of justice in the novels discussed, it is clear that Balzac did have a view of an ideal of natural justice and a morally acceptable administration of justice that could be achieved. To Balzac, the law's worth as a social institution was determined by those who used it. Like Petit-Claud, one can employ the law as a device for personal advancement, or, as Judge Popinot, one can lessen its importance as a technical tool and emphasize its vitality as an instrument of social and personal justice.

Balzac's vision of the law, then, was closely related to natural law norms: legal devices can serve no legitimate function in society unless those of us who promulgate and administer the laws clothe them with an overriding moral sense, and unless we instill the legal system and judicial offices with the moral consciousness that should inhere in all humanity.