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He Knew More: Balzac and the Law

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Articles

He Knew More: Balzac and the Law

Daniel J. Kornstein*

“You know more than all the lawyers put together”**

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* Partner, Kornstein Veisz & Wexler, LLP, New York City; president, Law and Humanities Institute, New York City (1991-98). Inasmuch as acknowledgments at the start of law review articles have become almost required by custom, I would like to thank novelist Anita Brookner for creating (for me) the inspiring character of Ruth Weiss in a book that originally and intentionally borrowed its title, *A Start in Life*, from one of Balzac’s novels. ANITA BROOKNER, *A START IN LIFE* (1981). This fictional Ruth Weiss believes her life is “ruined by literature” because of, at least in part, her preoccupation with reading and writing about Balzac. I read Brookner’s book, newly titled *The Debut*, while working on this article and now I understand and sympathize with Ruth’s obsession. ANITA BROOKNER, *THE DEBUT* (Vintage Contemporaries ed., 1990) (1981).

I also want to thank Prof. Jan-Melissa Schramm (Cambridge University) for reading and commenting on a draft, and Prof. Jacqueline Lafon (Université de Paris Sud) for helping me with access to French source materials.

** HONORÉ DE BALZAC, *COUSIN PONS* 166 (Herbert J. Hunt trans., Penguin Books 1968) (1847).

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INTRODUCTION: BENEATH THE ROBE

One of the most beautiful spots in that most beautiful city of Paris is the sculpture garden of the Rodin Museum. There, on the Rue de Varenne, on the Left Bank directly across from Napoleon's Tomb on one side and the fashionable restaurant Arpège on another, in a peaceful, park-like, outdoor setting, a lucky visitor can quietly contemplate and admire the best of Auguste Rodin's awesome sculptures. Here is the massive, intricate "Gates of Hell"; there is that huge embodiment of civic devotion, "The Burghers of Calais." A short stroll brings the charmed visitor to the "Victor Hugo" monument and to that sensuous marble tribute to love, "The Kiss." And over there, atop a column, the ever so familiar "Thinker" still famously sits, chin on fist, meditating forever on who knows what.

Perhaps he is thinking about one of the other statues. For prominent among these famous works of Rodin's art is the imposing, eye-catching, mysterious, once highly controversial bronze sculpture of nineteenth-century author Honoré de Balzac, a great figure in French literature and a writer of world interest. Rodin's larger-than-life statue "Balzac" is memorable. A glance at it reveals the sculptor's hope of conveying something of the novelist's immense creative energy and elemental life force. The statue shows a thick, heavysset, self-indulgent, introspective Balzac standing, in a simple but powerful pose, with his legs a little apart and his left arm crossed low, wearing a long, beltless monk's robe, which falls to the floor. The massive robe, modeled on the one Balzac wore while he wrote and which entirely covers Balzac except for his head, draws the viewer's attention.

Pondering that unusual, all-encompassing robe, the somewhat puzzled and intrigued visitor understandably wonders what, if anything, is beneath it. Does it hide something? Did Rodin mean for us to think that the robe serves as the skin of Balzac's living thought and abundant creativity? In fact, Rodin draped the robe in a single piece over a free-standing, daring statue of Balzac nude with one hand clutching his erect penis to symbolize his wondrous fertility of imagination in bringing to life a whole literary world and siring over 2000 fictional characters.¹ To avoid scandal, Rodin supplied the robe, without altering what was underneath. But what lies underneath, below the surface, is important and adds meaning.

Now is a good time, thanks to an unusual confluence of events, to take a hint from Rodin and look underneath the surface of Balzac's reputation. Last year marked the two-hundredth anniversary of Balzac's birth, and this year is both the

1. See FREDERIC V. GRUNFELD, *RODIN: A BIOGRAPHY* 371 (1987); DOMINIQUE JARASSÉ, *RODIN: LA PASSION DU MOUVEMENT* 154-65 (1993). For years I had read and heard about this undraped sculpture before I ever saw it or even a picture of it. People would tell me about it in a whisper, as if they were letting me in on an art-world secret (did you know that . . .?). Then in 1999 I finally saw it at the Brooklyn Museum, appropriately enough the site later that year of the controversial "Sensation" exhibit. Rodin's famous sculpture study of the nude Balzac stops you in your tracks. Apart from, "I don't believe it; there it is," you don't know what to say. After a few moments, however, and once past your natural prudishness, you realize how profound and apt are Rodin's image, conception and symbolism.

one hundred-fiftieth anniversary of his death as well as the one-hundredth anniversary of the Rodin retrospective at the World's Fair in Paris at which his "Balzac" statue was finally acclaimed.² More than once in 1998, Balzac was the measure of comparison for Tom Wolfe, whose novel *A Man in Full* appeared that year.³ Wolfe, it is said (by himself and others), aspires to do in our own time what Balzac did in his.⁴

Henry James, an eminent (perhaps the pre-eminent American) author and critic who did not dispense literary compliments freely, admired Balzac as "the greatest master" of the novel.⁵ Balzac won that title the old fashioned way: he earned it. Born in 1799, Balzac lived only 51 years, but crammed into his relatively short life much personal excess, extravagance and even more creative energy. In that brief but prolific span, filled with many all-night bouts of writing fueled by huge amounts of strong coffee, the constantly debt-ridden Balzac struggled up from obscurity and wrote almost 100 novels about his contem-

2. See GRUNFELD, *supra* note 1, at 407-20; JARASSÉ, *supra* note 1, at 168-69.

3. See Malcolm Jones, *Mr. Wolfe Bites Back*, NEWSWEEK, Dec. 28, 1998, at 82.

4. See, e.g., Tom Wolfe, *Stalking the Billion-Footed Beast*, HARPER'S MAGAZINE, Nov. 1989, at 45, 46, 49, 52; Harold Bloom, *Tom Wolfe, Entertaining Pop Writer, Doesn't Pass the Balzac Acid Test*, N.Y. OBSERVER, Nov. 9, 1998, at 1; Andre Codresou, *The Raw Stuff*, CHICAGO TRIBUNE, Nov 15, 1998, at 3; Jones, *supra* note 3, at 82; John O'Sullivan, *Tom Wolfe a Victim of Literary Politics*, CHICAGO SUN-TIMES, Dec. 7, 1998, at 29; John Walsh, *Immaculate Conceptions*, THE INDEPENDENT - LONDON, June 14, 1999, at 1, 8.

5. Henry James, *The Lesson of Balzac*, ATLANTIC MONTHLY, Aug. 1905, reprinted in 2 HENRY JAMES, LITERARY CRITICISM: EUROPEAN WRITERS & THE PREFACES 115, 119 (1984) [hereinafter James, *The Lesson of Balzac*]. This was not an isolated compliment by James. He, as a fellow novelist, also referred to Balzac as "the master of us all," *id.*, reprinted in 2 HENRY JAMES, LITERARY CRITICISM: EUROPEAN WRITERS & THE PREFACES 115, 138 (1984); "the father of us all," *id.*, reprinted in 2 HENRY JAMES, LITERARY CRITICISM: EUROPEAN WRITERS & THE PREFACES 115, 120 (1984); "the first and foremost member of his craft," Henry James, *Honoré de Balzac, 1902*, in TWO YOUNG BRIDES (1902), reprinted in 2 HENRY JAMES, LITERARY CRITICISM: EUROPEAN WRITERS & THE PREFACES 90 (1984) [hereinafter James, *Honoré de Balzac, 1902*]; "a great genius," Henry James, *Honoré de Balzac*, GALAXY, Dec. 1875, reprinted in 2 HENRY JAMES, LITERARY CRITICISM: EUROPEAN WRITERS & THE PREFACES 31, 35 (1984) [hereinafter James, *Honoré de Balzac*]; in whom the art of the novel "reaches its highest expression." James, *The Lesson of Balzac*, reprinted in 2 HENRY JAMES, LITERARY CRITICISM: EUROPEAN WRITERS & THE PREFACES 115, 122 (1984). James says he learned more about how to write from Balzac than from anyone else. See *id.*, reprinted in 2 HENRY JAMES, LITERARY CRITICISM: EUROPEAN WRITERS & THE PREFACES 115, 121 (1984). Coming from as severe, fastidious and discriminating a literary critic as James, these comments carry weight.

porary society, and he did so with the eye of an astute and close observer.

But quantity alone is not why we remember and still read Balzac. The quantity *and* the quality of his work are, as Henry James gushed, “truly amazing.”⁶ A number of his books are masterpieces, and several others extraordinarily fine. The novels Balzac is best known for in the English-speaking world — *Old Goriot*, *Eugénie Grandet* and *Cousin Bette* — perennially appear on high school and college reading lists in America. Balzac’s total oeuvre and method are unmatched.

A “great genius” in James’s estimation,⁷ Balzac wrote quite unlike anyone else before him and produced enduring work of universal value. He is the father of the modern novel. Balzac’s writing—which he collectively called *The Human Comedy* (in contrast to Dante’s epic poem)—is a prose epic in many parts, a sprawling, multi-volume saga that—like Tom Wolfe’s fiction—zeros in, with a sense of the complexity of the human situation, on the people and the bourgeois society of his own time and place—Paris in the first half of the nineteenth century. Balzac, who saw himself as the “secretary of society,” focused on manners and drew characters driven by some dominant, often unappealing passion—for money, love or social position.⁸ He was a leading hybrid practitioner of both literary Romanticism and Realism and ambitiously tried, in his series of novels, to produce a complete portrait of his civilization.

To commemorate Balzac’s bicentennial, books and articles have appeared. Last year a French writer published two popular books in France, one on Balzac’s appetite and the other on his long romance with Madame Hanska.⁹ This year, American television aired a four-hour French film, starring Gerard

6. James, *Honoré de Balzac*, *supra* note 5, at 37.

7. *Id.* at 35.

8. Herbert J. Hunt, *Introduction to HONORÉ DE BALZAC, LOST ILLUSIONS* x (Herbert J. Hunt trans., 1971) (1837-43).

9. See Bertrand Arbogast, *Gonzague Saint-Bris Signe Ses Ouvrages aujourd’hui*, *L’ECHO*, July 2, 1999 (discussing *GONZAGUE SAINT-BRIS, LE BEL APPÉTIT DE MONSIEUR DE BALZAC* (1999) and *GONZAGUE SAINT-BRIS, JE VOUS AIME, INCONNUE* (1999)).

Depardieu, entitled "Balzac: Man of Passion."¹⁰ Other tributes can be expected.

But perhaps Balzac can and should be reconsidered from a new, unexpected point of view, a point of view that casts Balzac in a fresh light. This is where the metaphor of the robe comes into play. At least one anniversary tribute to the great Balzac should metaphorically try to peek beneath the robe of his reputation. After all, if we wish to truly understand a person, we must search for what lies behind the surface.

If a visitor continues to study closely Rodin's statue of Balzac, something else—something equally significant—might appear. An earthiness marks it. "Balzac" has a non-ethereal quality, as if it rises from the ground, drawing strength and sustenance from the soil. Balzac the writer, like "Balzac" the sculpture, is firmly planted in reality, however much that reality is reshaped by his seething, restless, febrile imagination. Although not knowable merely from looking at Rodin's sculpture, we perhaps are still surprised, if only a little, to discover that at least some of Balzac's reality—raw material for his work, his deep understanding of human nature and motivation, the mundane aspects of human conflict—came from, of all things, the law. The unknown secret beneath the robe of Balzac's literary reputation may well be his legal training.

I. PEGASUS AT THE PLOW

Balzac was trained as a lawyer, and the law almost became his career. But the impact of Balzac's three years of intense legal training on his great literary life has, oddly, never been adequately assessed. The result has been a crucial and inexplicable gap. Many of Balzac's biographers, concentrating on his literary life, have ignored or slighted his legal training.¹¹ If they mention it at all, they do so only in passing, as if they are

10. Julie Salamon, *Oversize Appetite for Life and Letters*, N.Y. TIMES, Oct. 23, 2000, at E5, cols. 4-5 (television review).

11. See, e.g., NOEL B. GERSON, *THE PRODIGAL GENIUS: THE LIFE AND TIMES OF HONORÉ DE BALZAC* 17-26 (1972); ANDRE MAUROIS, *PROMETHEUS: THE LIFE OF BALZAC* 47-54 (Norman Denny trans., 1965); V.S. PRITCHETT, *BALZAC* 33-43 (1973); GRAHAM ROBB, *BALZAC: A BIOGRAPHY* 42-53 (1994); STEFAN ZWEIG, *BALZAC* 21-25 (William & Dorothy Rose trans., Viking Press 1946). *But see infra* note 38.

dealing with a curious but not particularly vital biographical fact, a mere false start without lasting impact or deep meaning.

Yet sweeping Balzac's legal training under the rug or minimizing it is a mistake, a serious error. To ignore or downplay Balzac's apprenticeship at the law is to miss a crucial component in the development of Balzac's literary imagination, sensibility and style. To overlook the role of law in Balzac's life—inner as well as outer—and work is to neglect a vital shaping force on both. In short, one cannot get to the bottom of Balzac, one cannot truly understand or grasp this powerful literary dynamo, without assessing the place of law in his personal and professional growth. But the gap remains.

A. *A Case of Strange Neglect*

This gap is still odder and more paradoxical in light of the impressive growth of Law and Literature as a distinct and self-contained discipline since 1973.¹² Post-1973 discussions of the

12. In 1973, James Boyd White published his pathbreaking book *The Legal Imagination*, which triggered a new interest in Law and Literature that has not abated. See JAMES B. WHITE, *THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT & EXPRESSION* (1973). Since then, lawyers, law professors and judges have debated the pros and cons of Law and Literature. Books, articles, law review symposia, new specialized journals and new organizations have focused on Law and Literature. Law and Literature is considered one of the schools of contemporary jurisprudence, along with critical legal studies, law and economics, critical race theory and feminist legal theory. See GARY MINDA, *POSTMODERN LEGAL MOVEMENTS* 149-66 (1995). There are several leading works of the Law and Literature movement. See generally GUYORA BINDER & ROBERT WEISBERG, *LITERARY CRITICISMS OF LAW* (2000); PETER BROOKS & PAUL GEWIRTZ, *LAW'S STORIES: NARRATIVE AND RHETORIC IN THE LAW* (1996); KIERAN DOLIN, *FICTION AND THE LAW: LEGAL DISCOURSE IN VICTORIAN AND MODERNIST LITERATURE* (1999); Ronald Dworkin, *How Law is Like Literature*, in RONALD DWORKIN, *A MATTER OF PRINCIPLE* (1995); *LAW AND LITERATURE* (Michael Freeman & Andrew Lewis eds., 1999); SANFORD LEVINSON & STEVEN MAILLOUX, *INTERPRETING LAW AND LITERATURE* (1988); MARTHA NUSSBAUM, *POETIC JUSTICE* (1995); RICHARD A. POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATION* (1988); JAN-MELISSA SCHRAMM, *TESTIMONY AND ADVOCACY IN VICTORIAN LAW, LITERATURE, AND THEOLOGY* (2000); BROOK THOMAS, *CROSS-EXAMINATION OF LAW AND LITERATURE* (1987); BROOK THOMAS, *AMERICAN LITERARY REALISM AND THE FAILED PROMISE OF CONTRACT* (1997); IAN WARD, *LAW AND LITERATURE* (1994); RICHARD WEISBERG, *THE FAILURE OF THE WORD: THE PROTAGONIST AS LAWYER IN MODERN FICTION* (1984) [hereinafter WEISBERG, *THE FAILURE OF THE WORD*]; RICHARD WEISBERG, *POETHICS: AND OTHER STRATEGIES OF LAW AND LITERATURE* (1992) [hereinafter WEISBERG, *POETHICS*]; JAMES BOYD WHITE, *HERCULES' BOW* (1985); JAMES BOYD WHITE, *WHEN WORDS LOSE THEIR MEANING* (1984); THEODORE ZIOLKOWSKI, *THE MIRROR OF JUSTICE* (1997); Robert Weisberg, *The Law-Literature Enterprise*, 1 *YALE J. L. & HUMAN.* 1 (1988) [hereinafter Weis-

law and Shakespeare, Dickens, Melville, Dostoevsky, Kafka, Camus and a host of lesser literary lights abound, but almost nothing beyond an occasional passing reference mentions the law and Balzac. Balzac, frankly, has not been given his due. As Henry James noted about Balzac in another context, Balzac has been “strikingly exempted” and taken “less seriously than was to be expected” in the Law and Literature movement.¹³ It is almost as if Balzac, a huge figure in literary history, a prolific writer who constantly wrote about the law, is an unsung hero, a forgotten man, of Law and Literature.

Few commentaries on Balzac and the law exist, written mainly by French scholars, some of Balzac’s contemporaries, and written mostly some time ago.¹⁴ Even fewer have been written in English. Diligent research has uncovered only two articles in American law reviews that focus at all on Balzac, one written in 1911 and the other in 1979.¹⁵ They are helpful but

berg, *Law-Literature Enterprise*]; James Boyd White, *Law and Literature: No Manifesto*, 39 *MERCER L. REV.* 739 (1988); James Boyd White, *What Can a Lawyer Learn from Literature?*, 102 *HARV. L. REV.* 2032 (1989) (book review).

13. In 1875, Henry James complained that Balzac, “one of the greatest” of Frenchmen, was being ignored even by his own countrymen. According to James, Balzac was “strikingly exempted” from the usual commentary on “great men,” that there was no “accumulated commentary” on Balzac, that what existed was “very meager,” “very flimsy” and marked by “striking and inexplicable inadequacy.” James thought the French had taken Balzac “less seriously than was to be expected.” See James, *Honoré de Balzac*, *supra* note 5, at 31.

14. See, e.g., ROUX, *BALZAC JURISCONSULTE ET CRIMINALISTE* (1906); A. PEYTEL, *BALZAC JURISTE ROMANTIQUE* (1950); Janiesse, *La conception generale du droit chez Stendhal et chez Balzac*, in *STENDHAL AND BALZAC* (v. del Lito ed. 1972); Blondel, *Du droit et de la procedure dans Honoré de Balzac* (audience solennelle de rentree) (ct d’appel de Dovar, Oct. 17, 1887); Bover, *La magistrature et le monde judiciaire dans la Comedie humaine de Balzac* (audience solennelle de rentree) (ct d’appel de Nunes, Oct. 16, 1894); Breal, *Le Monde judiciaire dans Balzac* (discours prononce a l’ouverture de la conference des avocats) (1903).

15. See John Marshall Gest, *The Law and Lawyers of Honoré de Balzac*, 60 *U. PA. L. REV.* 59 (1911), reprinted in *THE LAWYER IN LITERATURE* 113-54 (1913); Thomas E. Carbonneau, *Balzacian Legality*, 32 *RUTGERS L. REV.* 719 (1979). Gest’s 1913 book, with its essays on Dickens, Balzac and Scott and an excellent introduction by John Henry Wigmore, belies the often-made claim that Law and Literature came into being only in 1973 with the publication of *The Legal Imagination*. See POSNER, *supra* note 12, at 12-13. One French book, published in 1997, discusses Balzac in the Law and Literature context. PHILIPPE MALAURIE, *DROIT & LITTÉRATURE* 205-18 (1997). But Malaurie’s book is essentially an anthology with little commentary or analysis. See also Jacques-Henri Bauchy, *Balzac Juriste*, *SEMAINE JURIDIQUE* (Ed. Notariale) 381 (1996).

brief and sketchy at best.¹⁶ Well intended as those two articles are, they hardly do justice to a literary-legal writer of Balzac's stature. One wonders why Balzac has been practically ignored by Law and Literature.

This is not the first time Balzac has been mysteriously slighted. A century or so ago, Henry James complained that Balzac was even then not getting enough recognition. The little attention Balzac received struck James as "seldom" and "perfunctory."¹⁷ The only explanation James could come up with was that Balzac's greatness had been taken for granted for many years, so that critics were inclined to say, "let us not talk of him."¹⁸ James found that explanation unsatisfactory.

Equally unsatisfactory are today's explanations. It is easy and tempting, for example, to blame the strange dearth of modern commentary about Balzac and the law — a new form of benign neglect — on the vagaries of fashion: literary fashion, legal academic fashion, intellectual fashion and even political fashion. Balzac, we are told, is not trendy, he is not "hot" right now among the intelligentsia; he is not "existential"; he is not "in"; he is not post-modern; he is not dense, opaque, obscure, vague or inaccessible. He is not the focus of any current pseudo-intellectual fad. While French, his name is not Foucault or Derrida. He is not politically correct. Balzac has been largely disowned by American universities as a Dead White European Male "irrelevant today."¹⁹

16. See Gest, *supra* note 15, at 154 ("This is only the barest sketch of the subject"). The Carbonneau article is a mere eight pages and the Gest article—the text of an address—while longer, has other flaws. It often seems like no more than a random collection of legal references from Balzac's work. It is also marked by errors (contrary to what Gest says, Balzac's father was not a lawyer, the evil lawyer in César Birotteau was not Rogron but Roguin) that raise questions about its reliability.

17. James, *The Lesson of Balzac*, *supra* note 5, at 120.

18. *Id.* at 119. "You look down your nose. You don't care for him. And there you may have some right on your side." Marcel Proust, *Contre Saint-Beuve*, reprinted in *ON ART AND LITERATURE* 157 (Sylvia Townsend Warner trans., Carroll & Graf 1984) (1954). But, while acknowledging Balzac's "vulgarity" of mind and language and his "most groveling ambitions," Proust defends Balzac against Saint Beuve's criticisms. *Id.* at 157-89.

19. William Cash, *Going Broke on \$12m Advance: He Only Goes for Broke*, *THE STRAITS TIMES* (SINGAPORE), Nov. 21, 1998, at L1, L2. See also Peter Brooks, *A Monarchist Marxist Could Love*, *N.Y. TIMES BOOK REV.*, Mar. 23, 1999, at 39 ("Earlier in this century, he was eclipsed by the apotheosis of Stendhal and

Seemingly sharing this view, one influential Law and Literature scholar, Richard Weisberg of Cardozo Law School, also excludes Balzac on grounds of “relevance.” In his important 1984 book *The Failure of the Word*, Weisberg acknowledges Balzac’s large treatment of law in *The Human Comedy*. But then he surprises the reader. In a brief, intriguing and ultimately provocative footnote, Weisberg announces that Balzac’s “*narrative stance*” toward law renders his work “less relevant” than that of Flaubert, Dostoevsky and Camus.²⁰

A few years later, in response to criticism of his general approach to Law and Literature, Weisberg somewhat elaborated his terse footnote. “Our task, of course,” he wrote in 1988, “is to *choose* the texts that proffer (often only covertly) the subversive voice we find representative of the age.”²¹ Then he went on, “[w]e begin our study of the modern law-related novel with Flaubert and Dostoevski rather than with Balzac and Dickens, and we do so because the former integrate narrative ambiguity and non-omniscience with the anti-rationalistic and word-skeptical themes they so brilliantly produce.”²² Apparently Weisberg discerns some dividing line in the development of narrative that puts Balzac (and Dickens!) on the far side of Law and Literature, in an immature, unevolved, early, Pleistocene state, and therefore not worth our time and trouble today.

Whether or not Weisberg is correct (and I for one, amicably but wholeheartedly, disagree), Balzac’s curious exclusion from the last 25 years of Law and Literature scholarship is confusing, puzzling and paradoxical, not to mention—in the apt words

Flaubert.”); Gest, *supra* note 15, at 119 (Balzac was “intensely conservative,” he “did not believe in the ‘rights of man,’ human equality, or the ability of the masses of the people to govern themselves”).

20. WEISBERG, *THE FAILURE OF THE WORD*, *supra* note 12, at 7, 186 n.20. To be fair, Weisberg is not necessarily talking about Balzac being “less relevant” generally but “to this book,” that is, *THE FAILURE OF THE WORD*, his “present study of the relationship between law and literature in the modern novel.” *Id.* And Weisberg does say that he hopes the approach taken in *THE FAILURE OF THE WORD* will “be extended to other great novelists as well.” *Id.* at 177. But his dismissive and patronizing attitude toward Balzac is palpable.

21. Richard Weisberg, *Family Feud: A Response to Robert Weisberg on Law and Literature*, 1 *YALE J.L. & HUMAN.* 69, 74 (1988) [hereinafter Weisberg, *Family Feud*].

22. *Id.* at 74.

of Henry James— “striking and inexplicable.”²³ Balzac deserves better; he deserves to be taken seriously by Law and Literature. Balzac is a giant of Law and Literature; to exclude him from the Law and Literature canon mocks the enterprise and defies common sense.

Balzac should not be ignored or mentioned only perfunctorily by Law and Literature. He can enlarge our understanding of the subject. Balzac is simply one of the greatest and most productive storytellers who ever lived, and he wrote a lot about law. Law and Literature at its best is at least a study of its best practitioners. Balzac was one of them. The conjunction of the two-hundredth anniversary of Balzac’s birth and the one hundred-fiftieth anniversary of his death is an appropriate time to start, finally, to do a proper modern assessment. As James said of literary criticism in 1905, so too now: it is time for Law and Literature to “rekindle excitement” in Balzac.²⁴ It is overdue, especially in an era when Law and Literature is a burgeoning movement. The English-speaking world of Law and Literature should now, at last, be ready to talk about Balzac.

B. *Lawyer in Training*²⁵

One should start by talking about Balzac’s legal training. Balzac’s being a writer was not his parents’ idea. His middle-class parents, obsessed with money and status, wanted—not unlike many parents today or in any era—to make sure their son had a stable, respectable and financially secure livelihood. As a boy, however, Balzac had an undistinguished academic record, saved only by his passion for reading. Nonetheless, when Balzac was 17, almost a year and a half after the Battle of Waterloo, his parents, who lived in Tours, decided that he should become a lawyer and enrolled him in November 1816 at the School of Law at the Sorbonne in Paris. The normal three-year course of study included going to lectures, poring over law books and concentrating on lots of theory.

23. James, *Honoré de Balzac, 1902*, *supra* note 5, at 31.

24. *Id.* at 91.

25. The biographical facts in this section are drawn from ZWEIG, *supra* note 11, at 21-26; MAUROIS, *supra* note 11, at 47-54; ROBB, *supra* note 11, at 42-53; GERSON, *supra* note 11, at 17-26; PRITCHETT, *supra* note 11, at 33-43.

Hectic as this schedule might seem, Balzac the law student filled his time even more. As at any law school, including American law schools today, classes are only part of the learning experience. Talking about law and socializing with fellow students are often at least as important. In addition, Balzac's interests went beyond the law, so he went to many lectures at the Sorbonne on other subjects—particularly philosophy and literature. As if Balzac were not busy enough with this school routine, his parents insisted that he balance the theoretical side of his legal education with practical experience in a law office. Consequently, Balzac became a law clerk while he went to law school.

Thus, at about the same time he started to attend classes, he began as a junior clerk in the chambers of his father's friend Guillonnet-Merville. Merville was a fine advocate and mentor, as well as a cultivated man with a taste for letters, whom Balzac admired and respected, and with whom he had a good relationship.²⁶ Balzac would later show his appreciation to Merville in two ways. Balzac immortalized Merville as the good, competent, reliable, ethical lawyer Derville in his novels. And he fondly dedicated one of his short stories—*An Incident In the Reign of Terror*²⁷ to Merville, his "dear and former patron," stating that it was from Merville that Balzac had learned enough of legal procedure to manage the business of his "little world."²⁸

But a law clerk's life—even when the preceptor was an outstanding lawyer—was less than ideal. Balzac and his fellow clerks lived together, worked from 5 a.m. in a large, dusty, smelly, overheated room, with grimy windows and legal notices all over the place. He copied legal documents and took dictation from the head clerk. He engrossed official papers. It did not appear to be a perfect environment for learning a dignified and useful profession.

In this clerkship, Balzac earned an odd reputation. He was something of a cut-up who sometimes got in the way of the office business, so much so that the head clerk once felt obliged to

26. See MAUROIS, *supra* note 11, at 49.

27. Honoré de Balzac, *An Incident In the Reign of Terror*, in HONORÉ DE BALZAC, *SELECTED SHORT STORIES* 73 (Sylvia Raphael trans., 1977).

28. Gest, *supra* note 15, at 127.

write him: "Monsieur Balzac is requested not to come today because there is a great deal of work to be done."²⁹ Was Balzac happy or sad to receive such a note? What did his parents think? One wonders.

Two years later, in 1818, Balzac finished his clerkship with Merville, and took another one with the Balzac family lawyer, one Passez. There he learned about bankruptcies, sales and contracts. Performing so well, Balzac received an offer of potential partnership and eventual inheritance of Passez's practice. It was an offer that one in Balzac's position could not ordinarily afford to refuse. Balzac's budding legal career seemed to be going well indeed.

The next year—1819—would change all that. The year started out well enough. In January 1819 Balzac passed the first part of his written examinations for his law degree. But six months later, a political crisis caused the government to suspend classes at the University and that interruption triggered something in Balzac. "[T]he flame of revolt," as one of Balzac's biographers colorfully writes, "subdued and smothered all these years, flared up in Balzac's breast."³⁰ He leapt up from his stool at the office and waved goodbye to the dusty files on his desk. Balzac had had enough of the law. He told his preceptor Maître Passez that he was quitting, and then Balzac gave his family the unexpected news that he was leaving the law to become—heaven forbid—a writer, and that as a writer he would achieve greatness and wealth.

Another potentially crucial event for Balzac's psyche happened around this time. In 1818, Balzac's uncle was arrested and charged with murdering a pregnant village girl whom he was alleged to have seduced. The embarrassing legal proceedings dragged on for a year. After a sensational trial, Balzac's uncle was found guilty and, on August 16, 1819, guillotined. All of this went on while Balzac was deciding what to do with his life, whether to be a lawyer or not.

Although frequently dismissed as irrelevant, the impact of this murder trial and execution on Balzac cries out for further study and analysis. How much did he know about the criminal

29. MAUROIS, *supra* note 11, at 49.

30. ZWEIG, *supra* note 11, at 22.

proceeding? Is it mere coincidence that Balzac left the law the same year as he and his family were traumatized by such a searing and unforgettable incident? Did that legal experience with the law, which itself had the makings of a fascinating tale, have some bearing on Balzac's decision to abandon the law? Did it affect his lifelong attitude toward the law? Such questions have not yet even been asked, much less answered.

When the family, already rocked by the uncle's legal tragedy, first heard of Balzac's sudden plan to be a writer instead of a lawyer, they were shocked. His announcement "struck like a thunderbolt in the midst of his unsuspecting family."³¹ It was the first time Balzac had opposed his parents' will. On top of the sheer surprise of Balzac's totally unforeseen announcement, his middle-class parents simply could not understand how or why a young person in his position could even consider giving up an assured career. Children of the rich might dabble in the arts, but not children of the middle class. Balzac's surprise, moreover, could not have come at a worse time. The family's income was reduced and they were counting on Balzac's future earnings and status as a lawyer to help them.

The family's initial attitude, which led to bickering, soon changed to one of support. They acquiesced in his decision to abandon a respectable profession in order to become a writer. They even agreed to subsidize his "experiment" for two years. To avoid the supposed stigma that then attached to those who had blood ties to writers, Balzac's family told him not to go out except at night and told others that he had gone away to live with a cousin. His family's support, however embarrassed, was essential.

Balzac regarded his work at the law at that time as boring, akin to a workhorse endlessly pulling a burden of drudgery. He refused to live his "life at the grindstone, doing the same thing over and over again."³² He did not want the life of a young lawyer, which he then saw (and others sometimes still see) as the life of a "clerk, a machine, a circus horse with prescribed hours for doing my 30 or 40 laps in the ring."³³ Elsewhere, he wrote,

31. *Id.* at 23.

32. PRITCHETT, *supra* note 11, at 42.

33. ZWEIG, *supra* note 11, at 39. Although Balzac left the law because of its drudgery, his first ten years as a writer were, ironically enough, filled to overflow-

referring to his parents' wish that he be a lawyer: "Think of me as dead if they cap me with that extinguisher."³⁴ Balzac must have felt what one commentator later said about him: "You cannot harness Pegasus to a plow."³⁵ Balzac at the law was like Pegasus at a plow. Balzac-Pegasus had to try his wings.³⁶

II. PREVIEW OF LAW IN BALZAC'S WORK

The premise of intellectual biography is that the life illuminates the work, and this is certainly true of Balzac. But this premise is not universally accepted. It is, rather, controversial. One school, including Flaubert, Proust and the New Critics, thinks that biography is irrelevant to interpreting the literary work, which yields its meaning through close reading. In contrast, Sainte-Beuve, the nineteenth-century French critic, famously used a biographical method that did not separate the author from his or her work. Whatever the ultimate merits of this controversy, in the case of Balzac his life (specifically his legal life) does shed light on his work. At least that is the thesis of this essay.

Contrary to what one might think from his choice of life's work, Balzac's three years of intense legal training were not wasted. Walking away from a career in law in no way meant that he avoided lasting effects from his legal training. Even Pegasus remembers the experiences of his youth. Although Balzac did not become a lawyer, those years of listening to law lectures, studying thick legal tomes, perusing the *Code Napoléon*, and working in two busy law offices ultimately bore fruit.

ing with the debilitating drudgery of anonymous Grub Street hack work. In reality, he merely traded one form of drudgery for another.

34. Henry James, *Balzac's Letters*, GALAXY, Feb. 1877, reprinted in *Correspondence de H. de Balzac, 1819-1850*, in 2 HENRY JAMES, LITERARY CRITICISM: EUROPEAN WRITERS & THE PREFACES 68, 72 (1984) [hereinafter James, *Balzac's Letters*].

35. Gest, *supra* note 15, at 124.

36. In the fitting words and beautiful imagery of Baudelaire:

The Poet is like the prince of the clouds,
Haunting the tempest and laughing at the archer;
Exiled on earth amongst the shouting people,
His giant's wings hinder him from walking.

Charles Baudelaire, *The Albatross*, in FLOWERS OF EVIL (1857). Henry James also referred to Balzac's wings. See James, *Honoré de Balzac*, *supra* note 5, at 33.

Balzac's experience in this regard shows once again that legal education is not only for lawyers. Indeed, quite the opposite is true. Others can learn and benefit from legal training as well. Many people who go to law school do not practice law and become extraordinarily successful in other fields, some of them in the creative arts. It is a little known fact, for instance, that even Henry James spent a year at Harvard Law School.³⁷ Throughout history the study of law has often preceded non-legal pursuits.

In Balzac's case, his legal training greatly influenced many of his literary creations. He put his legal knowledge and experience to good and extensive use in his writing. As one recent commentator put it, "[t]he law is omnipresent there and even an essential core."³⁸ The time the young Balzac spent, at a formative stage, as a law student and law clerk gave him a close-up look at many of life's dramas, a front-row seat at what Balzac might later have thought of — and we might today still think of—as the true, non-fiction Human Comedy.

Perhaps his writing would even have benefitted if he had stayed in the law a bit longer. Henry James, for one, thought that Balzac started full-time writing too soon. If Balzac "could have stood for a while in some other relation to the society about him than that of a scribbler" — perhaps as a lawyer? — "it would have been a very great gain," wrote James.³⁹ By that, James (who did not follow his own advice) meant that Balzac might then have had more reality on which to draw for his writing, no small thing for a writer whose supposed love of reality

37. See LEON EDEL, *HENRY JAMES: THE UNTRIED YEARS 1843-1870*, 190-201 (Avon Books 1978) (1953). A study of the effect of that year of law school on James's mind and work has yet to be written. While in Cambridge, James became good friends with a Civil War hero turned law student named Oliver Wendell Holmes, Jr. One recent biographer of both James and Holmes claims that they had a homosexual relationship, James's first. SHELDON NOVICK, *HENRY JAMES: THE YOUNG MASTER* 109-10 (1996). The evidence for this claim is unimpressive and unconvincing.

38. MALAURIE, *supra* note 11, at 206 (my translation). See also PRITCHETT, *supra* note 11, at 41-42 ("In years to come, in novel after novel . . . Balzac would draw upon his young knowledge of the law."); MAUROIS, *supra* note 11, at 49 (Balzac's legal training was "highly fruitful" and "was to have a great influence upon his way of thinking and his approach to life."). The problem is that these commentators go no further than such isolated, intriguing statements.

39. James, *Honoré de Balzac*, *supra* note 5, at 33. See also *id.* at 66-67, 107, 124-27.

was the basis of his great power. Apart from his imagination, Balzac had nothing but his youthful legal training from which to quarry raw material. Balzac's lack of real-life experience therefore made his legal training that much more important: it was all the experience, all the reality he had.

In any event, Balzac never forgot what he saw and heard as a law student and law clerk. Luckily for posterity, what Balzac experienced, he observed and remembered. The little experience he had went a long way. One of Balzac's literary contemporaries concluded that training in 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."⁴⁰

Many of his famous books illustrate the point and show Balzac's "fascination with law."⁴¹ As is also true of the works of Shakespeare and Dickens, Balzac's works teem with lawyers, legal terms and legal situations. Balzac's novels are home for 29 judges and magistrates, 23 barristers, 14 attorneys, 24 notaries, and 28 law clerks, in all 118.⁴² Several of them are central to the main action of the story. A number of Balzac's works treat law and lawyers so extensively that they can fairly be viewed as legal novels. Like one of his characters, Balzac too was a "man of law."⁴³

Balzac's books should rivet the attention of today's lawyers. In 1922, when John Wigmore, of evidence treatise fame and an early champion of Law and Literature, compiled a list of 100 legal novels, he included 11 by Balzac.⁴⁴ More than 50 years later, a revised list added five more Balzac novels.⁴⁵ Balzac led all authors in the total number of books on the combined lists. Although such bare statistics often mean little, Balzac's pre-em-

40. Carbonneau, *supra* note 15, at 720 n.10 (quoting THÉOPHILE GAUTIER, *SOUVENIRS ROMANTIQUES* 116 (1929)).

41. POSNER, *supra* note 12, at 6 n.12.

42. See Gest, *supra* note 15, at 124-25.

43. HONORE DE BALZAC, *COUSIN PONS* 182 (Herbert J. Hunt trans., Penguin Books 1968) (1847) [hereinafter BALZAC, *COUSIN PONS*].

44. See John H. Wigmore, *A List of One Hundred Legal Novels*, 17 *ILL. L. REV.* 26 (1922). For a sampling of Wigmore's enlightened, enthusiastic, cultured and prescient attitude toward Law and Literature, see his short but superb introduction to GEST, *THE LAWYER IN LITERATURE*, *supra* note 15, at vii.

45. See Richard Weisberg & Karen L. Kretschman, *Wigmore's "Legal Novels" Expanded*, 7 *MD. L.F.* 94 (1977), reprinted in 50 *N.Y. ST. B.J.* 122 (1978) (cited in RICHARD WEISBERG, *WHEN LAWYERS WRITE* 305 (1987)).

inent position comes as no surprise. After all, Balzac's novels meet head on the problems that have always vexed and confronted the minds of judges, teachers, students, and practitioners of law: "the relationship between legality, legitimacy, and morality as reflected in personal and community ethics."⁴⁶

Balzac goes at the law from many different angles. He describes the legal profession, the different types of lawyers, their work habits, ethics and social aspirations. He finds the raw material for his plots in lawyers' files. He paints word pictures of how the law works, in all its glory, drudgery, idealism, hypocrisy, quest for justice and disgrace. He depicts the inner operations of law offices. He portrays the life of a law student. He dissects the attorney-client relationship. He often makes plot turn on legal developments.

At several points Balzac treats specific legal subjects. He discusses technical legal fields insofar as they relate to his story. Again and again, Balzac uses bankruptcy law, inheritance, the legal rights of women, marriage contracts and criminal law to move the action along. Often he comments on these specific legal topics with impressive expertise and insight.

So affected by law was Balzac that it shines through in his writing style. He writes like a lawyer, which is not meant as a sarcastic criticism or a harpoon into his midriff. He was, like many lawyers, a human fountain of words. His very productivity — so many books, short stories and plays in such a short life — evidences his verbosity. This wordiness alone, this endless stream of language, this prolix verbalizing, this exuberant volubility is itself a trait often associated with lawyers.⁴⁷ Balzac frequently uses legal metaphors. His writing is infused with law in subtle as well as obvious ways.

Out of all his legal commentary eventually emerges a legal philosophy. From Balzac's books grows a jurisprudence, and it is a jurisprudence worthy of study. It challenges the reader, especially the legal reader, to plumb the depths of his or her own

46. Carbonneau, *supra* note 15, at 720-21.

47. See WEISBERG, *THE FAILURE OF THE WORD*, *supra* note 12, at xi-xiii, 4, 9. Of course, Balzac's verbosity makes it all the more ironic when one of his fictional lawyers interrupts a long-winded client with: "Stop wasting words." BALZAC, *COUSIN PONS*, *supra* note 43, at 272.

sense of law. And it provides a frame of reference for looking at how Balzac acted on the legal realities of his own life.

When we speak of Balzac's views on law, we venture into uncertain territory and must be careful. Caution is necessary lest we automatically and too quickly and easily assume Balzac's views are the same as the views of the characters he created. To avoid confusion, one must always be wary when attempting to impute values to an author from his fictional literature. First one has to ask if Balzac is actually *expressing* or merely *describing* the values or views at issue, just as one must ask whether Shakespeare in *The Merchant of Venice* is advocating anti-Semitism or only depicting it. An author may not be advocating anything; he may not be in favor of this or that legal view. Instead, he may simply be writing great literature.

Indeed, Balzac says as much. In *Lost Illusions*, he explicitly warns against assuming what an author's views are from his writings. "Would you dare take it upon yourself to declare [an author's] true opinion?" an experienced journalist asks a novice. "Which of us could decide between Clarissa and Lovelace or between Hector and Achilles? Who was Homer's true hero? What did Richardson really mean?" The older journalist concludes: "Criticism must examine every work in all its various aspects. In short, we are great relativists."⁴⁸

By the same reasoning, of course, we do not know for sure if this was Balzac's true view either. It is a little like the Cretan Liar Paradox in logic (if a Cretan says "all Cretans are liars," is that true or false?). On the other hand, the odds are at least pretty good that when the same author consistently expresses the same views on a subject, in several different works written over several years, we can reasonably assume it is the author's own view, and that an author sometimes speaks through characters in his books. Such an approach probably does not conflate Balzac's characters with his authorial voice.

But even with that caveat, law is undoubtedly central to Balzac's art. In one sense — subtle, mostly unnoticed but pervasive — Balzac seems to have integrated the legal profession's adversary process into the very tissue and fiber of his writing.

48. HONORE DE BALZAC, *LOST ILLUSIONS* 372-73 (Herbert J. Hunt trans., 1971) (1837-43) [hereinafter BALZAC, *LOST ILLUSIONS*].

Balzac understood that, like a lawyer, a great novelist allows — even cultivates — in his writing a debate of conflicting opinions from both sides. Advocacy, the lawyer's style of argument, chooses which side to argue for, although it also requires the lawyer to be prepared to argue either side. But literature, informed by the adversary nature of the legal process, can rejoice in conflict, in multivalent voices, in paradox, in unanswerable questions, in the play of the mind. And Balzac, as Henry James pointed out long ago, "is so large and various that you find all kinds of contradictory things in him."⁴⁹

This debate of conflicting views embedded in Balzac's writing signifies that to some extent he, in the time-honored phrase, "thinks like a lawyer," that he pleads "equally for either side."⁵⁰ In *Lost Illusions*, Balzac refers to people who "have mettle enough to see everything from two points of view,"⁵¹ which seems to refer to the lawyer's outlook. Without mentioning law explicitly, Balzac continues in the same passage to analogize literature to law's adversary process. "[I]n literature," Balzac says, "every idea has its front and reverse side,"⁵² just as in law's adversary process. Balzac then goes on to generalize. "Everything is bilateral in the domain of thought. Ideas are two-sided."⁵³ Balzac's persistent and explicit stress on the two-sided, adversary nature of issues and ideas, a stress that permeates his writing, may well be a product of his legal training.

49. James, *Honoré de Balzac*, *supra* note 5, at 43. One is reminded of the famous lines of Walt Whitman:

Do I contradict myself?
Very well then I contradict myself,
(I am large, I contain multitudes.)

WALT WHITMAN, *LEAVES OF GRASS*, *Song of Myself* 96 (Signet Classic 1980) (1855).

50. HONORÉ DE BALZAC, *COLONEL CHABERT* 39 (Carol Cosman trans., New Directions 1997) (1832) [hereinafter BALZAC, *COLONEL CHABERT*] ("You lawyers are sometimes fair-minded after all, though you're accused of the opposite, pleading equally for either side.").

51. BALZAC, *LOST ILLUSIONS*, *supra* note 48, at 372.

52. *Id.*

53. *Id.* Balzac's highlighting of opposing views reminds us of Keats' theory of "negative capability," which also emphasized skepticism and uncertainty. LIONEL TRILLING, *The Poet as Hero: Keats in His Letters*, in *THE OPPOSING SELF* 33 (Harvest/HBJ 1979) (1955). Balzac's approach underscores too the postmodern conviction that truth is always relative ("we are great relativists"), knowledge always provisional. BALZAC, *LOST ILLUSIONS*, *supra* note 48.

Balzac's self-proclaimed dual approach, close as it is to a trained lawyer's attitude, becomes a new organizing principle. It supplies a way of considering, it finds a unifying theme for analyzing, Balzac's own comments on law. The suggestion made here is that most if not all of Balzac's comments about law can be looked at afresh from this Balzacian, law-based, two-sided perspective. It may explain some paradoxes and inconsistencies in Balzac's writing about the law. It may demonstrate that Balzac had internalized the legal system's adversary process into the style, the very warp and woof, of his writing. It provides an unobvious, previously hidden vantage point, drawn from Balzac's legal training, from which to examine the obvious and more apparent effects of the law on Balzac's writing.

But Balzac's literal accuracy in describing French laws, lawyers and legal institutions, however interesting from a comparative point of view, is not the most important lesson, nor is it the quest for what the law symbolizes in Balzac. Other, bigger game wait to be discovered on safari in the broad, expansive savannahs of Balzac's books. The more one thinks about it, the more one finds it impossible to ignore or avoid the deep effects of Balzac's legal training on his creative art. Balzac's books then become a sophisticated exposé of the intricate ties between his legal training and imagination that is his greatest strength. Given these legal ties, perhaps a lawyer (this lawyer, I hope) may have something useful to say about Balzac's books.

III. STATESMEN CHARGED WITH PRIVATE BUSINESS

To read Balzac is to find oneself immediately surrounded by representatives of the legal profession. Lawyers live everywhere in Balzac's books. They populate his vast imaginary world in such profusion that the novels provide a running commentary on the general state of the legal profession in early nineteenth-century France, and, by comparison, how it differs from the profession today in France and in the United States. Balzac's *Human Comedy* "reads like a French version of Martindale-Hubbell."⁵⁴

In the course of spinning his tales, Balzac portrays all kinds of lawyers, some very good, some very bad, and several in

54. WEISBERG, THE FAILURE OF THE WORD, *supra* note 12, at 7.

between. The encounters these lawyers have with their clients become vivid and illuminating observations on the attorney-client relationship. Drawing on his own memories, Balzac also describes the life of a law student and law clerk so realistically that we better understand both him and what it was like to learn to be a lawyer. It is, in short, one close, discerning and trained observer's view of the legal profession. The truth of his observations, however, is less important than the reactions and emotions he provokes.⁵⁵

A. *Generally*

Throughout his novels, Balzac scrutinizes lawyers and their role in society. He has so many comments about lawyers that, as Henry James said about Balzac's many character portraits, "it is hard to know what to choose or where to begin."⁵⁶ He explains by example the structure of the legal profession. He describes its status. He explores its nature. He shows us the traits of the members of that profession. And he also discusses access to the profession.

1. *Structure of the Profession*

So many lawyers are characters in *The Human Comedy* that the reader inevitably learns, simply from the stories themselves, how the legal profession was organized in France during the first half of the nineteenth century. This knowledge comes through not by means of didactic lectures from Balzac, but by osmosis. His books describe how the legal profession is made up of four main groups (not counting judges).

The first group consists of advocates or barristers. They are courtroom lawyers. They are the elite. In the second group are attorneys or solicitors, who are office lawyers. The third group of French legal professionals, without any precise American or English equivalent, are called notaries.

Notaries are not to be confused with our American concept of notary public, someone who merely acknowledges signatures on documents.⁵⁷ French notaries are a separate class of busi-

55. Cf. Anthony Julius, *Introduction* to MICHAEL FREEMAN & ANDREW D. E. LEWIS, *supra* note 12, at xvi (banal literalism is not an aim of Law and Literature).

56. James, *Honoré de Balzac*, *supra* note 5, at 53.

57. See, e.g., N.Y. EXEC. LAW § 135 (powers and duties of notaries).

ness lawyers, analogous to general practitioners of the law with whom the middle class is most likely to deal. Notaries handle real estate transactions (deeds and mortgages), marriage contracts, wills and the setting up of corporations. They often have good business sense and good common sense, have close relationships with their clients and are frequently more popular with their clients than attorneys.

Law clerks in Balzac's novels, which comprise the fourth group of the bar, are comparable to associates in American law firms. They are law students or law graduates who often carry out all the tasks of a lawyer, including speaking in court. The title of clerk denotes only that they are employees of another lawyer, whom they assist and whose practice they work on. From Balzac's descriptions, every law graduate in an office was apparently considered a "clerk" except for the proprietor.

The structural picture is incomplete, however, without mentioning two more distinctions. Both differences, stressed by Balzac, flow from the differences between lawyers in Paris and lawyers in the provinces. According to Balzac, provincial lawyers, unlike Parisian lawyers of repute, are prone to be "petty" and to rely on "legal shifts and tricks" of procedure, "pettifoggeries" and "trivialities" to "pile up costs."⁵⁸ Such a cast of mind may explain in part, but only in part, why, "[t]o be the wife of a provincial solicitor would be like dying in a slow fire!"⁵⁹

The other distinction is more functional. Provincial solicitors also plead cases in court, so that they are a hybrid: "solicitor-advocates." Such a blending of tasks is, as far as Balzac is concerned, harmful and has "many shortcomings." Pleading in court, says Balzac, creates "delusions over the case in hand" and compromises that "lucidity of judgment" so indispensable for decision-making.⁶⁰

Balzac's point here—that courtroom advocacy impairs a lawyer's judgment—is debatable. Are trial lawyers, or, more generally, litigators less able to exercise sound and pragmatic judgment on behalf of their clients? Of course the act of advancing an argument, especially with zeal, may color one's views. But no less likely is that a lawyer making an argument knows

58. BALZAC, *LOST ILLUSIONS*, *supra* note 48, at 519.

59. *Id.* at 599.

60. *Id.* at 519-20.

better than anyone else that argument's weaknesses. And yet, for some reason Balzac was alluding to, it is not uncommon today in the United States to have someone other than the trial lawyer handle settlement negotiations. An advocate, as Balzac implied, can become too emotionally involved; he "can talk himself into believing what he says."⁶¹ If the aim of advocacy is persuasion, the first person an advocate may persuade is herself.

A feature of the Balzacian legal world somewhat alien to twenty-first-century Americans is the Tribunal of Commerce. These courts decide business disputes, have considerable power and influence, but are not run by lawyers. The judges who sit on them are not lawyers but experienced businessmen. Sometimes they are self-taught in the law, as César Birotteau was. Roughly similar to what we would recognize as industrial or commercial arbitration panels drawn from merchants and tradesmen, these Tribunals of Commerce operated throughout the French society of Balzac's time and they and their non-lawyer judges frequently appear in Balzac's novels.

2. *Status of the Profession*

When the status of the legal profession is considered, Balzac gives us some of his characteristic two-sided, equivocal, lawyerly approach. In doing so, Balzac's books display the common, traditional ambivalence to the legal profession in most societies, including our own. On one hand, law is a distinguished learned profession requiring years of study and preparation. Embodying the Napoleonic virtue in post-Napoleonic times of a "career open to talent,"⁶² law was an opportunity for anyone with ability and drive, regardless of economic background.

The rise and pervasiveness of the French legal profession coincides with Balzac's adulthood. After the French Revolution and the Age of Napoleon came the triumph of the bourgeoisie. With the old regime buried, law and lawyers were everywhere and necessary for every economic transaction. Anyone could now become a lawyer, and everyone needed a lawyer. Balzac's books reflect this phenomenon.

61. *Id.* at 520.

62. See E.J. HOBBSAWM, *THE AGE OF REVOLUTION 1789-1848* 218-37 (1962).

Lawyers stood high on the social pyramid. Just as Tocqueville thought lawyers formed an aristocracy in America,⁶³ so too Balzac thought France was run by an "aristocracy" of "bar-risters."⁶⁴ A Parisian lawyer was, according to one of Balzac's characters (who later learned better), "always a being to be venerated, and probity incarnate."⁶⁵ This thought at least partially explains the self-important role sarcastically ascribed to law in *Cousin Pons*: "[U]surping the role of Providence, an activity singularly displeasing to the Law, which claims the sole right to act in its stead."⁶⁶

63. See 1 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 272-80 (Henry Reeve, Francis Bowen and Philip Bradley trans., Knopf 1972) (1835). Tocqueville also comments on differences between French and American legal methodology. According to Tocqueville, American lawyers defer to past authority much more than French lawyers. American lawyers "investigate what has been done; the French advocate inquires what should have been done." *Id.* at 276-77. American lawyers produce "precedent" while French lawyers give "reasons." *Id.* "A French observer," notes Tocqueville, "is surprised to hear how often an English or American lawyer quotes the opinions of others, and how little he alludes to his own; while the reverse occurs in France." *Id.* Then Tocqueville delivers a cutting criticism. This "abnegation of his own opinion, and this implicit deference to the opinion of his forefathers, . . . this subjection of thought which he is obligated to profess, necessarily give" an American lawyer "more timid habits and more sluggish inclination" than in France. *Id.* Much as American lawyers may dislike or object to Tocqueville's characterization, the fact remains that advocacy in America even today often reflects a tension between precedent and considerations of contemporary public policy.

Balzac too had some thoughts on legal methodology. He felt that French judges were "unfortunately of a very legalistic, logic-chopping turn of mind." HONORÉ DE BALZAC, *URSULE MIROUËT* 116 (Donald Adamson trans., Penguin Books 1976) (1842) [hereafter BALZAC, *URSULE MIROUËT*]. To help judges find out what a statute "really intends," lawyers "will bring ethics into their submissions, pointing out that the loophole in the law stems from the good nature of the legislators who didn't reckon with that particular contingency, but who have nevertheless laid down a principle." *Id.* We might call this Balzac's canon of statutory construction and consider it his contribution to the never-ending debate, so loud in the last few decades in American constitutional history, over original intent.

64. HONORÉ DE BALZAC, *THE WILD ASS'S SKIN* 57-58 (Herbert J. Hunt trans., Penguin Books 1977) (1831) [hereinafter BALZAC, *WILD ASS'S SKIN*].

65. HONORÉ DE BALZAC, *THE RISE AND FALL OF CÉSAR BIROTTEAU* 100 (Ellen Marriage trans., Crosscup & Sterling 1901) (1837) [hereinafter BALZAC, *CÉSAR BIROTTEAU*]. See also *id.* at 31 (Birotteau "gazed at the notary in admiration"; he "had so much faith in notaries as a class, that he placed himself in Roguin's hands without admitting a doubt of him").

66. BALZAC, *COUSIN PONS*, *supra* note 43, at 248.

On the other hand, lawyers are often disliked. Balzac speaks of the “contumely peculiar to the profession.”⁶⁷ Advocates in Paris are “a sufficiently vilified body.”⁶⁸ Then he demonstrates why such contumely is more than justified for some lawyers. Asked how to get some property by questionable means and keep one’s conscience clear, a Balzacian lawyer says, “that’s just what lawyers are for . . . You don’t know the law: I do . . . With me, you can keep on the windy [i.e., good] side of [the law]. You’ll have peaceful possession as far as your fellow creatures are concerned. As for your conscience, that’s your affair.”⁶⁹

Such professional status itself created barriers of sorts. It could, for example, interfere with romance. Working-class fathers, Balzac warns in *Cousin Bette*, prefer a shopkeeper, jeweler or moneychanger as a son-in-law “after their own heart” rather than a lawyer “whose superior social position is a ground of suspicion.”⁷⁰ Working-class fathers are “afraid of being scorned in the future.”⁷¹

Some “gentlemen” in Balzac, it seems, avoid the law. When a problem develops that might be resolved in the courts, a character in *Cousin Bette* states, “I believe you to be too much a gentleman . . . to have recourse to the law.”⁷² Say that today, in our litigious society, and the listener would probably laugh in your face.

The status of a lawyer can be precarious. He may do things that make his colleagues so angry, envious or upset that they turn on him. “[W]hen a man is marked for destruction” by the legal profession, complains an unethical lawyer, “it doesn’t take long.”⁷³

This dislike takes many forms. When scheming Madame Cibot in *Cousin Pons* asks a neighbor if she needs to see a lawyer, she is told, “A lawyer!. . . You know more than all the law-

67. *Id.* at 182.

68. HONORÉ DE BALZAC, *COUSIN BETTE* 420 (James Waring trans., Everyman’s Library 1991) (1846) [hereinafter BALZAC, *COUSIN BETTE*].

69. BALZAC, *COUSIN PONS*, *supra* note 43, at 198.

70. BALZAC, *COUSIN BETTE*, *supra* note 68, at 154.

71. *Id.*

72. *Id.* at 248.

73. BALZAC, *COUSIN PONS*, *supra* note 43, at 218.

yers put together.”⁷⁴ When informed by her doctor that the law does not permit a physician to accept a legacy from his patient, the same Madame Cibot cries, “How stupid the law is!”⁷⁵ The mind hears La Cibot’s cry and inevitably recalls a similar outburst by another fictional character—Mr. Bumble in Dickens’s *Oliver Twist*—who famously exclaimed: “The law is a ass—a idiot.”⁷⁶ One is struck by the identity of sentiment toward the law in different cultures.

3. *Nature of the Profession*

Balzac’s signature ambivalence extends to the nature of the legal profession. In *Old Goriot*, Balzac uses the hard-bitten, straight-talking Vautrin to make an extended comment on the general nature of the legal profession. This occurs when the escaped convict talks at length with law student Eugène de Rastignac about his prospects after law school. More than anything else, Vautrin stresses the “drudgery” in the lawyer’s life. First, Vautrin discusses Eugène’s becoming a judge. “It’s not amusing, and then it takes a long time. First, two years’ drudgery in Paris, looking at the goodies we’re greedy for but never laying hands on them. . . . Bark after thieves, plead the cause of the rich, [and] send high-spirited folk to the guillotine. Thanks a lot.”⁷⁷

Next, Vautrin considers the prospect of Eugène becoming a prosecutor. Even in the unlikely event that Eugène should achieve a high-status prosecuting job, “we shall have rubbed a certain amount of bloom off our little conscience.”⁷⁸ Once again, Eugène will have to endure drudgery and hidden poverty.

Finally, Vautrin brings up the life of a practicing lawyer. “Does the Baron de Rastignac think of becoming an advocate? Oh, excellent! He must slave for ten years, live at the rate of a thousand francs a month, have a library and chambers, go into society, go down on his knees before a solicitor for briefs, sweep the floor of the Palais de Justice with his tongue Bah!

74. *Id.* at 166.

75. *Id.* at 178.

76. CHARLES DICKENS, *OLIVER TWIST* 399 (Everyman’s Library 1992) (1838).

77. HONORÉ DE BALZAC, *OLD GORIOT* 127 (Marion Ayton Crawford trans., Penguin Books 1951) (1835) [hereinafter *BALZAC, OLD GORIOT*].

78. *Id.* at 128.

Sooner than shrivel my soul like that I would turn pirate.”⁷⁹ Vautrin’s likening of practicing lawyers to pirates is something to remember when considering certain of Balzac’s fictional lawyers.

The speech by Vautrin is highly instructive about Balzac himself. Vautrin is one of Balzac’s most solid characters—indeed, one of the great characters of world literature—and speaks with worldly wisdom and insight. He presumably speaks, at least in this instance, in Balzac’s voice. According to Vautrin, whatever path a young lawyer chooses—the bench, a prosecutor’s office or the bar—brings drudgery, drudgery, drudgery—years of it, without much in the way of compensation. Perhaps this is Balzac’s personal attitude (at least some of the time): Pegasus at the plow.⁸⁰ Balzac, for one, chose literature rather than law because he did not want his soul to shrivel.

But here too Balzac’s internalized adversary process with its two-sided approach asserts itself. Whether a lawyer’s soul shrivels, whether the practice of law is unrelieved drudgery, may depend more than anything else on the particular lawyer’s attitude, on what the lawyer brings to professional tasks. It is all in one’s outlook, the reflection of one’s inner spirit. “If a man has the soul of Sancho Panza,” wrote Oliver Wendell Holmes in 1886 while he was a judge of the Massachusetts Supreme Judicial Court, “the world to him will be Sancho Panza’s world; but if he has the soul of an idealist, he will make—I do not say find—his world ideal.”⁸¹ Although such an observation is timeless, it seems especially appropriate today amid widespread questioning of lawyers ideals or lack of them.⁸²

79. *Id.* In *Cousin Pons*, attorney Fraasier makes a similar point. To become a Paris barrister, “I must have very smart premises,” he complains. “Only those who possess respectable furniture, with a library and so on, can be called to the bar in Paris.” BALZAC, *COUSIN PONS*, *supra* note 43, at 237.

80. In *The Wild Ass’s Skin*, Balzac refers to life in a lawyer’s office “flowing interminably between two dreary river banks.” BALZAC, *WILD ASS’S SKIN*, *supra* note 64, at 179.

81. Oliver Wendell Holmes, *Your Business as Thinkers*, reprinted in *THE MIND AND FAITH OF JUSTICE HOLMES* 31 (Max Lerner ed., Modern Library 1953) (1943). In the same speech, Holmes also said, “the law is not the place for the artist or the poet.” *Id.* One can only speculate how Balzac would have reacted to that comment.

82. See MARY ANN GLENDON, *A NATION UNDER LAWYERS* (1994); ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1993);

Balzac understood the importance of outlook, of attitude. A good lawyer in Paris, writes Balzac in *Lost Illusions*, “has some of the qualities of a diplomat by virtue of the numerous affairs with which he has to deal, the importance of the interests involved and the wide scope of the issues confided to him.”⁸³ In *Colonel Chabert*, Balzac takes an equally lofty but even more quotable attitude toward lawyering. That attitude, which has nothing to do with drudgery and which to some extent rebuts Balzac’s own explanation for giving up the law, can be summed up in the vital rhetorical question he poses: “Are lawyers not, in a way, statesmen charged with private business?”⁸⁴

What a wonderful way of putting it! I really like that phrase: “statesmen charged with private business.”⁸⁵ We lawyers should remember it well. It elevates the lawyer’s responsibilities, ennobles daily work even as it calls to mind a lawyer’s obligations, and succinctly captures the wider professional and societal ramifications of what a lawyer does. It infuses the profession with the public interest and makes the practice of law more fulfilling. Lawyers would greatly benefit in many ways, not least psychologically in terms of self-esteem, by thinking of themselves as statesmen charged with private business. And we have Balzac, himself a fugitive from the legal profession, to thank for the apt phrase.

Balzac’s attitude seems to be gaining new adherents. Perhaps without realizing it, Dean Anthony Kronman of Yale Law School holds Balzac’s banner aloft in his first-rate 1993 book *The Lost Lawyer*. Kronman begins the book by warning that the American legal profession “now stands in danger of losing

SOL LINOWITZ, *THE BETRAYED PROFESSION* (1994); RICHARD ZITRIN & CAROL M. LANGFORD, *THE MORAL COMPASS OF THE AMERICAN LAWYER* (1999), Charles Silver & Frank B. Cross, *What’s Not To Like About Being A Lawyer*, 109 *YALE L.J.* 1443 (2000).

83. BALZAC, *LOST ILLUSIONS*, *supra* note 48, at 519.

84. BALZAC, *COLONEL CHABERT*, *supra* note 50, at 56. Elsewhere, not referring specifically to lawyers, Balzac speaks of “that nobility of ideas and conduct without which nothing is possible in any career.” HONORÉ DE BALZAC, *THE BLACK SHEEP* 304 (Donald Adamson trans., Penguin Books 1970) (1842) [hereinafter BALZAC, *THE BLACK SHEEP*]. Conversely, a practicing lawyer who was also a statesman, like Daniel Webster, was thought of as “a great advocate employed in politics.” HENRY ADAMS, *THE EDUCATION OF HENRY ADAMS* 148 (Modern Library 1931) (1918).

85. BALZAC, *COLONEL CHABERT*, *supra* note 50, at 56.

its soul.”⁸⁶ Right from the start, then, Kronman sounds like Vautrin warning Rastignac about the risk of law practice making his soul shrivel. Kronman describes a spiritual crisis now affecting American lawyers and bemoans how impoverished their ideals have become. This crisis, argues Kronman, “is the product of growing doubts about the capacity of a lawyer’s life to offer fulfillment to the person who takes it up.”⁸⁷ Is this, at least in part, the crisis of “drudgery” foretold by Vautrin?

Kronman continues to repay his unconscious debt to Balzac by attributing the cause of this crisis to the demise of the ideal of the “lawyer-statesman.”⁸⁸ Like Balzac, Kronman tries to render that ideal fresh and appealing. As Kronman goes on to explain this collapsed ideal, it becomes more and more clear that he and Balzac are talking about the same thing. Kronman is not referring to lawyer-statesmen in the narrow sense of lawyers in public life. Rather, he, like Balzac, focuses on a set of values that defines the aspirations of lawyers.

At the center of these values is the belief that “the outstanding lawyer — the one who serves as a model for the rest — is not simply an accomplished technician but a person of prudence or practical wisdom as well.”⁸⁹ Beyond technical proficiency in the law, the lawyer-statesman needs to acquire “a wisdom about human beings and their tangled affairs that anyone who wishes to provide real deliberative counsel must possess.”⁹⁰ Judgment counts more than expertise. According to Kronman, the lawyer-statesman ideal stands for prudence and public-spiritedness and “points to a connection between the virtue of statesmanship, on the one hand, and the ordinary circumstances of law practice, on the other.”⁹¹ Isn’t this what Balzac must have meant when he compared lawyers to “statesmen charged with private business”? Kronman breathes new life into the Balzacian notion of the ideal lawyer.

Just as statesmen can make mistakes or abuse their authority, so can lawyers. “Justice,” proclaims a lawyer in *Cousin*

86. KRONMAN, *supra* note 82, at 1. See also BENJAMIN SELLS, *THE SOUL OF THE LAW* (1994).

87. KRONMAN, *supra* note 82, at 2.

88. *Id.* at 2-7.

89. *Id.* at 2.

90. *Id.*

91. *Id.* at 109.

Pons, “is like the practice of medicine: it has its victims.”⁹² Indeed, Balzac’s novels tend to portray, again and again, the victims of justice. Very few happy legal endings occur in Balzac. His stress on realism in the context of legal disputes means, more often than not, that avarice, power and evil triumph over poverty, weakness and good. In Balzac, full compliance with the law does not guarantee victory. Rather, it might result in injustice and inequity.⁹³

Such upside-down triumphs result from law’s potential for abuse. Balzac worries about law being perverted. He appreciates its intended beneficial role as a regulator of human relationships in society. But the realism in his novels often paints the law as something else—a maze of intricate, technical and inaccessible rules manipulated by an elite profession for its own and its privileged clients’ benefit. The language of the law—what Balzac obliquely criticizes as “law school phrases”⁹⁴ and “law-court jargon”⁹⁵—is itself a barrier. As Balzac complains in *Lost Illusions*, “There is nothing about which people are more ignorant than what they ought to know: the workings of the Law!”⁹⁶ But beyond mere inaccessibility is the worse danger of abuse. “[I]ngenious clowneries . . . authorized by a certain clause in the Commercial Code . . . show how many atrocities are concealed behind the terrible word *legality*.”⁹⁷ Balzac’s stories are full of legal atrocities.

The fault may lie not in law but in lawyers. The law may initially be just and neutral but become unfair and oppressive in the hands of its practitioners. A lawyer is a “skillful player in a game of chess.”⁹⁸ Even if one has a legally correct position, vindicating that position in the courts—Balzac warns in *Lost Illusions*—often involves legal proceedings that “would be inter-

92. BALZAC, *COUSIN PONS*, *supra* note 43, at 197.

93. *See, e.g.*, BALZAC, *CÉSAR BIROTTEAU*, *supra* note 65; BALZAC, *COUSIN PONS*, *supra* note 43.

94. HONORÉ DE BALZAC, *EUGÉNIE GRANDET* 128 (Ellen Marriage trans., Everyman’s Library 1992) (1833) [hereinafter BALZAC, *EUGÉNIE GRANDET*].

95. *Id.* at 189. *See also* BALZAC, *COUSIN PONS*, *supra* note 43, at 244 (“piece of legal jargon”).

96. BALZAC, *LOST ILLUSIONS*, *supra* note 48, at 523.

97. *Id.* at 524.

98. *Id.* at 659.

minable, costly and discreditable.”⁹⁹ Litigation allows for the “play of judicial artillery fire” and the “sputtering of our judicial musketfire” until lawyers and litigants see “how far the abuse of the legal proceedings can go.”¹⁰⁰

Lawyers often complicate matters and drive up their costs, both emotional and financial. Balzac repeats this frequently felt attitude, and counsels in favor of resolving disputes without lawyers and without litigation. When Eve Séchard learns in *Lost Illusions* that the cost of potential litigation will exceed the amount at stake, she, like many a real-life litigant, exclaims: “Isn’t the remedy worse than the disease?”¹⁰¹ A quick resolution “would be rushing things too much for the lawyers: they are battenning on you.”¹⁰² In *Cousin Pons*, one character warns: “He’s as innocent as a babe. You can’t let him be fleeced by money-grubbing lawyers and a pack of thieving relations!”¹⁰³

At various points, Balzac has characters utter nice, timeless comments about the prudence of settlement and the benefit of avoiding a lawsuit by compromise. “Come now, an unsatisfactory settlement is better than even a sound case,” advises a lawyer in *Lost Illusions*.¹⁰⁴ It is a sentiment we have all heard and probably expressed before. A settlement brings peace and freedom from legal wrangles. “You will do a great d-deal b-b-better for yourselves,” the miser Grandet stutteringly advises, “by coming to an arrangement than by l-letting the l-lawyers poke their noses into it.”¹⁰⁵

The risks of litigation are great and ever present. Litigation is full of uncertainty and never a “foregone conclusion,” as Derville reminds us.¹⁰⁶ “War in the courts,” says someone in *Lost Illusions*, “costs as dear as on the battle field.”¹⁰⁷ “A law suit will kill you!” Cousin Pons tells his friend memorably

99. *Id.* at 16. “You might win the suit they’re bringing against you if you decided to fight them. But do you still want to be at law with them ten years hence?” *Id.* at 679.

100. *Id.* at 547, 603.

101. BALZAC, *LOST ILLUSIONS*, *supra* note 48, at 550.

102. *Id.* at 555.

103. BALZAC, *COUSIN PONS*, *supra* note 43, at 157.

104. BALZAC, *LOST ILLUSIONS*, *supra* note 48, at 679.

105. BALZAC, *EUGÉNIE GRANDET*, *supra* note 94, at 121.

106. BALZAC, *CÉSAR BIROTTEAU*, *supra* note 65, at 194.

107. BALZAC, *LOST ILLUSIONS*, *supra* note 48, at 603-04.

named Schmucke. "You don't know what the Law Courts are like. They are the sewers into which all moral infamy is poured. A good soul like you would be so horrified at such turpitude you would give up the struggle."¹⁰⁸ And, besides, one often gets only a poor return on "time wasted in law proceedings."¹⁰⁹

4. *Traits of the Profession*

In the course of Balzac's description of lawyers, he portrays their various personality traits. Some traits he generalizes about, others emerge from the personality of the particular lawyer under scrutiny. Either way, we get a picture of lawyers as fearless, emotionless, at times eloquent, distrustful, with a wide range of ethics and sometimes motivated by money and social ambition.

As a somewhat unexpected generalization, proclaims Balzac, lawyers are unafraid. "One thing worth noting," he observes in *Colonel Chabert*, "is the natural intrepidity of lawyers."¹¹⁰ This admirable quality, which surprised me in a comment by Balzac, allegedly stems from a number of sources. "Whether from the habit of meeting a great many people, the profound feeling of protection granted them by the law, or from the confidence in their ministry, they go everywhere without fear . . ."¹¹¹ Lack of fear among lawyers should mean that lawyers willingly take on unpopular cases, causes and clients. But, of course, that is not always the case.

If fear is an emotion, does its absence signify lack of emotion? The supposed fearlessness of lawyers may be related to the strict control of emotion generally in their professional lives. According to Balzac, "it was not proper for a lawyer to show emotion."¹¹² This we understand. Lawyers down to the present have been said to be emotionally constricted.¹¹³ To do the job properly, a lawyer often must keep his or her emotions in check.

108. BALZAC, *COUSIN PONS*, *supra* note 43, at 245.

109. BALZAC, *CÉSAR BIROTTEAU*, *supra* note 65, at 108.

110. BALZAC, *COLONEL CHABERT*, *supra* note 50, at 19.

111. *Id.*

112. *Id.* at 35.

113. See, e.g., CHARLES DICKENS, *GREAT EXPECTATIONS* 403 (Books, Inc. n.d.) (1868) (lawyer Jaggery's rule: "I'll have no feelings here"). SELLS, *supra* note 86 *passim*; William J. Brennan, *Reason, Passion, and the Progress of the Law*, in 3 *THE BENJAMIN N. CARDOZO MEMORIAL LECTURES* 1435 (1987).

“Staying calm while their adversaries or their clients get carried away is a maneuver familiar to attorneys.”¹¹⁴ Similarly, comparing one of his characters to a lawyer, Balzac describes her as “cold and reserved,” showing “not the slightest emotion.”¹¹⁵ Balzac even points out the “trivial ceremonies in which the law ties up genuine feeling.”¹¹⁶

But lawyers can and should intentionally deploy emotion for professional purposes, such as eloquence. “Lawyers can be quite eloquent when the cause is eloquent itself”¹¹⁷ Or, as the heartless Feodora smilingly tells the lovesick Raphael in *The Wild Ass’s Skin*: “You certainly made quite good use of your time [as a law clerk] in your solicitor’s office. You know how to put passion in your plea.”¹¹⁸ Passionate pleading is a professionally acceptable use of emotion.

But eloquence can, like justice, be perverted. Put to bad use, eloquence can degenerate into “corruptive persuasiveness.”¹¹⁹ An articulate lawyer bent on an improper purpose can speak with “artful and well-nigh irresistible sophistry.”¹²⁰ Eloquence is a skill that can serve different ends. It is not only an attribute of arguments with which we agree.¹²¹

Their professional work, observes Balzac, also makes lawyers skeptical. Their clients’ business breeds “the distrust natural to lawyers.”¹²² This is because lawyers, like doctors, deal

114. BALZAC, COLONEL CHABERT, *supra* note 50, at 64. In CÉSAR BIROTTEAU, the protagonist consults Derville, who appears “staid and self-possessed, as is the wont of men of law, accustomed as they are to the most harrowing disclosures.” BALZAC, CÉSAR BIROTTEAU, *supra* note 65, at 193. See also BALZAC, COUSIN PONS, *supra* note 43, at 312 (“the composure usual to legal practitioners”); KRONMAN, *supra* note 82, at 16 (an outstanding lawyer should show “a certain calmness in his deliberations”).

115. BALZAC, WILD ASS’S SKIN, *supra* note 64, at 132.

116. BALZAC, LOST ILLUSIONS, *supra* note 48, at 146.

117. BALZAC, COLONEL CHABERT, *supra* note 50, at 65.

118. BALZAC, WILD ASS’S SKIN, *supra* note 64, at 170.

119. BALZAC, COUSIN PONS, *supra* note 43, at 281.

120. *Id.* This is not a new thought. See WILLIAM SHAKESPEARE, THE MERCHANT OF VENICE, act 3, sc. 2: “In law, what plea so tainted and corrupt /But being seasoned with a gracious voice, obscures the show of evil.”

121. *But see* WEISBERG, POETHICS, *supra* note 12, at 8 (a judicial “opinion wrong in its outcome may not at the same time be excellent in its craftsmanship”).

122. BALZAC, COLONEL CHABERT, *supra* note 50, at 45. Dickens similarly noted that lawyers “see the worst side of human nature,” which makes them “suspicious, distrustful, and overcautious.” CHARLES DICKENS, THE PICKWICK PAPERS 410 (Books, Inc. n.d.) (1837).

with pathology, with the dark forces of human nature, with lies, crimes, cheating and greedy schemes. Lawyers “see only the diseased or disreputable side of life.”¹²³ Attorneys “alternately believe everything and believe nothing”; they are “used to seeing and hearing everything without showing surprise.”¹²⁴ This skewing has to affect lawyers’ personalities.

Lawyers acquire “deplorable experience. . . from the ghastly untold tragedies they witness.”¹²⁵ A lawyer comes to be “familiar with the depths of the human heart.”¹²⁶ We lawyers, laiments Derville to a younger attorney, “see the same ill feelings repeated again and again, never corrected. Our offices are gutters that cannot be cleansed.”¹²⁷ Lawyers “spend their lives in investigating the basest schemes of self-interest.”¹²⁸ No wonder lawyers are distrustful.

In a powerful but profoundly sad final paragraph in *Colonel Chabert*, lawyer Derville cries out: “I have learned so much practicing my profession!”¹²⁹ Derville’s comment takes on even more meaning when we learn that Balzac got the idea for *Colonel Chabert* from a real case he came across during his legal clerkship.¹³⁰ Derville then provides a bill of particulars, concluding that, “in the end, none of the horrors that novelists believe they’ve invented can compare to the truth.”¹³¹ That “truth” makes lawyers skeptical of human nature.

But skepticism does not necessarily mean pessimism. Lawyers are problem solvers, and successful problem solvers must of necessity be optimistic. They cannot let themselves be paralyzed into inaction. They have to deal with their clients’ predi-

123. BALZAC, *COUSIN PONS*, *supra* note 43, at 176.

124. BALZAC, *URSULE MIROUËT*, *supra* note 63, at 56.

125. BALZAC, *COLONEL CHABERT*, *supra* note 50, at 45.

126. *Id.* at 66. See also BALZAC, *URSULE MIROUËT*, *supra* note 63, at 56 (“fathoming the depths of self-interest in the hearts of men”).

127. BALZAC, *COLONEL CHABERT*, *supra* note 50, at 100.

128. BALZAC, *COUSIN BETTE*, *supra* note 68, at 411. In *The Notary*, Balzac writes that after being trained as a lawyer, “it is difficult for a young man to be pure: he will have seen the oily wheels of every fortune, the hideous wrangling of heirs over corpses not yet cold, the human heart grappling with the Penal Code.” ROBB, *supra* note 11, at 44.

129. BALZAC, *COLONEL CHABERT*, *supra* note 50, at 100.

130. See MAUROIS, *supra* note 11, at 49 (“a colonel under the Empire returning like a ghost from Germany to find that his wife had remarried”).

131. BALZAC, *COLONEL CHABERT*, *supra* note 50, at 100.

cements. Lawyers, says the wily Fraasier in *Cousin Pons*, look for solutions. In this sense, they “see the positive side of things.”¹³²

Sad experience teaches lawyers to look behind outer words and actions. “It is part of the mentality” of lawyers “to pierce through to the innermost thoughts of their clients as well as those of their adversaries: they have to see both back and front of the judicial weft.”¹³³ Likewise, judges have “plenty of time for reflecting on what is happening before our eyes as we sit listening” to lawyers argue.¹³⁴ A shrewd lawyer often has “a kind of second-sight which laid bare the secret motives of others.”¹³⁵

A lawyer’s life is full of worldly experience. For those lawyers open to it and who can learn from it, that experience in “handling of men and affairs” yields “diplomatic tact.”¹³⁶ A lawyer in practice should in the ordinary course acquire “tolerance, knowledge, subtlety, conversational talent and wealth of observation.”¹³⁷ This is, in essence, what Kronman means by the qualities of practical wisdom and pragmatic judgment that he stresses so much as necessary to the lawyer’s life.¹³⁸ Again using almost the same words as Balzac, Kronman speaks of the pressing need for a lawyer to acquire “a wisdom about human beings and their tangled affairs.”¹³⁹

Beyond these generalizations, Balzac allows us to draw our own conclusions based on his particular fictional lawyer-characters. Balzac’s fictional lawyers exhibit as wide a range of characteristics as the human race. They extend from intelligence to stupidity, from honesty to crookedness, from pleasing personalities to grasping ambition, from financial responsibility to financial recklessness.

Eugénie Grandet’s two suitors, for example, are unimpressive lawyers. Cruchot, presiding judge of a local court, puts on phony airs of status and nobility, speaks “sententiously,” is awkward, “somewhat resembling a rusty nail,” and an “idiot”

132. BALZAC, *COUSIN PONS*, *supra* note 43, at 220.

133. BALZAC, *LOST ILLUSIONS*, *supra* note 48, at 534.

134. *Id.* at 556.

135. BALZAC, *CESAR BIROTTEAU*, *supra* note 65, at 247.

136. BALZAC, *COUSIN PONS*, *supra* note 43, at 84.

137. BALZAC, *URSULE MIROUET*, *supra* note 63, at 55.

138. *See* KRONMAN, *supra* note 82, at 2.

139. *Id.*

with a “dark, ill-favored countenance.”¹⁴⁰ He had, moreover, the “wizened look which is frequently seen in men of his profession.”¹⁴¹ When his rival’s mother says something he does not like, he inappropriately threatens her with his judicial power.¹⁴²

In *Cousin Pons*, we meet Camusot de Marville, a stupid, status-seeking, hen-pecked presiding judge on a criminal trial court in Paris. His wife had spent 18 years while he sat on the trial court hoping he would be promoted to an appellate court.¹⁴³ But “his incompetence, well known to the legal confraternity, barred him from this.”¹⁴⁴ To help his daughter find a wealthy husband, Camusot goes so far as to invite to dinner the Minister of Justice, Chief Justice and Attorney General.

5. Access to the Profession

The Human Comedy describes access to the legal profession in two different senses. First, it shows how the law was accessible as a career even to those not born to the upper classes. Second, it discusses how poor clients can have access to the legal profession. In both senses, such access is admirable, one because it allows upward social mobility and the other because it facilitates the administration of justice.

As Balzac demonstrates, both in his life and in his books, one did not have to have money in order to become a lawyer. To be sure, money helped, as it does with most aspects of life. But lack of it was not an insurmountable barrier to pursuing a legal career. Attorneys Fraasier in *Cousin Pons* and Petit-Claud in *Lost Illusions* came from poverty (one’s father was a shoemaker, the other’s a tailor) yet managed to study law and become successful—albeit not by means one should imitate.¹⁴⁵ Law student Rastignac in *Old Goriot*, though born to a noble family, also had little money but eventually won out. Of course, a nice office filled with law books and furniture costs money. But, as Balzac showed in his novels, one could start out in the law with-

140. BALZAC, EUGÉNIE GRANDET, *supra* note 94, at 33-37, 211.

141. *See id.* at 211.

142. *Id.* at 38.

143. *See* BALZAC, COUSIN PONS, *supra* note 43, at 48.

144. *Id.*

145. *See* BALZAC, COUSIN PONS, *supra* note 43 *passim*; BALZAC, LOST ILLUSIONS, *supra* note 48 *passim*.

out much money or social connections and still survive, indeed hope to thrive and flourish, on intelligence, judgment, energy, interpersonal skills, and practical wisdom—just as today.

Balzac also tells us something about availability of legal services for the poor. *Cousin Pons* portrays lawyers in poor neighborhoods of Paris working on small matters. In *Cousin Bette*, we see harbingers of the Legal Aid Society as Balzac notes that Parisian barristers “gratuitously defend the cases of the indigent.”¹⁴⁶ French attitudes in this regard were way ahead of American. Balzac wrote *Cousin Bette* in 1846, while American law did not require counsel for indigent criminal defendants until the 1960s.¹⁴⁷ In contrast, the notaries “have not as yet agreed to charge nothing” for drafting marriage contracts for the poor.¹⁴⁸

B. *The Good Lawyer*

Literature, particularly great literature, depends in large part on character development. What better way to gain some insight into Balzac and the law than by considering the character of his fictional lawyers? Unlike many authors, Balzac—once again, true to his lawyerly, two-sided method—takes a relatively balanced approach, occasionally even speaking well of lawyers in his stories. Shakespeare and Dickens, for instance, almost always portray lawyers in a bad light.¹⁴⁹ Balzac, in contrast, is more evenhanded.

For Balzac, the ideal lawyer was his preceptor Merville’s almost namesake, Derville. In *Colonel Chabert*, for example, Balzac refers to “the full extent” of Derville’s “brilliance,” his “prodigious intellect” and his “exceptionally active” life.¹⁵⁰ Bal-

146. BALZAC, *COUSIN BETTE*, *supra* note 68, at 420.

147. See *Gideon v. Wainwright*, 372 U.S. 335 (1963) (government must provide free counsel to indigent defendant accused of felony); *Argersinger v. Hamlin*, 407 U.S. 25 (1972) (government must provide free counsel to indigent defendant who “may be imprisoned for any offense whether classified as petty, misdemeanor, or felony”).

148. BALZAC, *COUSIN BETTE*, *supra* note 68, at 420.

149. See, e.g., *Julius*, *supra* note 55, at xii, xxiii (1999) (“Shakespeare offers a subversive, critical account of law and legal processes”; “one finds in English literature an hostility to law”).

150. BALZAC, *COLONEL CHABERT*, *supra* note 50, at 16, 56.

zac goes on to show what he means. *Colonel Chabert* is a bar association's dream.

Chabert, an officer in Napoleon's army, is erroneously presumed to be dead. After his young wife is informed of his death, she inherits his large estate and remarries. She was no Penelope, waiting patiently and faithfully for her warrior husband, like Odysseus, to return. When he resurfaces years later, Chabert wants to reclaim what is his, and looks for a lawyer in Paris to represent him. After several lawyers decline, he finds his way to Derville, a young but busy and competent attorney. Unlike the other lawyers, Derville agrees to represent Chabert and even to lend him money. Chabert is overcome with gratitude.

The lawyer proposes a settlement to Chabert's wife, who just happens to be another of Derville's clients.¹⁵¹ The settlement falls apart, but without litigation. As a result of the soldier's pride and sense of honor, the parties go their separate ways, the wife to continue to live in luxury, the officer to live in a poorhouse.

Balzac describes lawyer Derville—the true hero of the book—as a hard-working and sincere model of sensitivity in human relations, skill in lawyering and desire to help his clients prevail. “He doesn't want to lose a single case; he has a real love of his art.”¹⁵² Derville is a lawyer-statesman.

Indeed, the lawyer's kind and optimistic attitude is what lifts the depressed spirits of Chabert. “The young lawyer's words were like a miracle to this man rebuffed for ten years by his wife, by the law, by the whole social world.”¹⁵³ Chabert's visit to the lawyer made him happier, gave him a “ray of hope” and “brought tears to the old man's eyes.”¹⁵⁴

Derville wins Chabert's trust, and Chabert tells Derville, “Do as you like . . . I am entirely in your hands.”¹⁵⁵ Only a lawyer truly understands the awful reciprocal responsibility

151. *See id.* at 20, 66-67.

152. *Id.* at 16.

153. *Id.* at 28.

154. *Id.* at 34-35, 45.

155. BALZAC, COLONEL CHAUBERT, *supra* note 50, at 52-53.

such complete trust calls for.¹⁵⁶ It is a trust that almost creates trustworthiness in its recipient. Nor does the lawyer Derville abuse that trust by stirring up unnecessary litigation. Instead, he uses his professional position to promote compromise.

The lawyer was quite aware, as all practitioners are, of the financial and emotional cost of a lawsuit. He knew how frightened Chabert—always courageous on the battlefield—would be in an unfamiliar legal struggle. As Balzac puts it, Chabert was worried about “entering into a life of litigation; feeding on gall; drinking the dregs of bitterness each day.”¹⁵⁷ Many unfortunate litigants know that feeling only too well.

Even what we might deem to be ethical flaws in Derville are presented by Balzac as virtues. Derville has, to our minds, a flagrant conflict of interest in representing both Chabert and his wife in this matter.¹⁵⁸ Yet despite the obvious problem, but with the apparent, if belated, consent of both clients, Derville, under the most difficult circumstances, hammers out a settlement eminently fair to both sides.

Maître Derville, the lawyer-hero of *Colonel Chabert*, is a legal link to *Old Goriot*, the book many regard as Balzac's supreme achievement.¹⁵⁹ There too he is playing the same professional role. In *Old Goriot*, as in *Colonel Chabert*, Derville is a lawyer who will put things right. The heart of his client does safely trust in him. But even Derville's wide experience, professional skill and high integrity cannot untangle the legal mess created by Balzac in *Old Goriot*.

And what a mess it was. In certain respects, *Goriot* looks like a familiar story, but with a legal undercurrent. As in *King Lear*, a wealthy widower (Goriot) gives away all his property to his daughters (Anastasia and Delphine), who, egged on by their new husbands, turn their back on their generous parent. They

156. See CLARENCE DARROW, *THE STORY OF MY LIFE* 158 (1932) (“No one but a lawyer can understand what a sense of responsibility one may feel to a client.”).

157. BALZAC, *COLONEL CHABERT*, *supra* note 50, at 89.

158. See MODEL CODE OF PROFESSIONAL RESPONSIBILITY, DR 5-105 (1982). (“A lawyer shall decline to represent multiple clients if the exercise of his independent professional judgment. . . will be or is likely to be adversely affected unless it is obvious that he can adequately represent the interest of each and each consents after full disclosure.”).

159. See, e.g., ROBB, *supra* note 11, at 257-58; MAUROIS, *supra* note 11, at 256-64; PRITCHETT, *supra* note 11, at 163.

see him rarely and only in secret, while he, distracted father that he is, continues to help pay for their extravagances, as their husbands dissipate and encumber the wives' dowries.

Derville is Goriot's lawyer. When Goriot learns of the financial misconduct by his sons-in-law, he turns to Derville to help out one of his daughters. Although Derville clarifies the situation, the husband's threat of bankruptcy prevents immediate success. Derville, our obvious legal connection to *Colonel Chabert*, never actually appears in person in *Goriot*. Goriot refers to him only as an offstage presence.¹⁶⁰

An equally favorable portrait of a lawyer can be found in *The Interdiction*. There Balzac describes an ideal judge named Popinot, who brought to his judicial tasks a devotion to truth and justice. As a judge, he applied equity rather than mechanical, wooden legalism. Off the bench, Popinot quietly helped the poor of his neighborhood.¹⁶¹ Uncorrupted by position or power, the exemplary Judge Popinot always retained his integrity and humanity. He reminds the reader of Shakespeare's description of the Lord Chief Justice in *Henry IV*.¹⁶²

More good lawyers show up in *Cousin Pons*. One is Leopold Hannequin, an independent, incorruptible attorney in the grand manner. He is an "honest" lawyer of "high standing, well-to-do, one who will not stoop to the sharp practice to which lawyers are prone."¹⁶³ In the same book, lawyers named Godeschal (who was mentored well by Derville) and Berthier risk their professional relationship with a wealthy client by giving prudent advice that the client would rather not hear. They advise their client that a will adverse to the client is good and incontestable. They counsel against making trouble over the will. They point out that even if the beneficiary's current law-

160. Derville is a benign legal presence in other books as well. He is Birotteau's lawyer. He instills high professional ethics in his law clerks, Godeschal in *Cousin Pons* and Bongrand's son in *Ursule Mirouët*. Anything linked with Derville is professionally correct.

161. HONORÉ DE BALZAC, *THE INTERDICTION* passim (1836).

162. Bongrand, a judge in *Ursule Mirouët*, is similar. A former solicitor, Bongrand is an "honest," worthy judge who had "considerable experience of life," the qualities of "tolerance, knowledge, subtlety, conversational talent and wealth of observation," together with "shrewdness in action." BALZAC, *URSULE MIROUËT*, *supra* note 63, at 55-56.

163. BALZAC, *COUSIN PONS*, *supra* note 43, at 260.

yer “succeeded in hoodwinking him he would be enlightened in the end, if only by one of those advocates who seek to draw attention to themselves by their disinterestedness and scrupulosity.”¹⁶⁴ And they went on to warn their client about an unethical lawyer who had been giving her contrary advice.

Cousin Bette submits for our consideration a good lawyer in the youthful Victorin Hulot. Though young, he is “famous,” “a pleader of note” and “one of the shining lights of the law.”¹⁶⁵ At a time when “the great stars of the law courts were rapidly disappearing,” Victorin was “gifted with a shrewd tongue and strict honesty.”¹⁶⁶ Like Derville, Victorin “studied his cases thoroughly” and, in accordance with later notions of Rule 11 of our Federal Rules of Civil Procedure, “advanced nothing that he could not prove.”¹⁶⁷ He even turned down cases he did not believe in. In short, Victorin was “a credit to the bar.”¹⁶⁸

The old notary Cruchot in *Eugénie Grandet* also occasionally exhibits signs of high professionalism. Uncle Cruchot emerges as a loyal, mostly ethical and fairminded attorney. As miser Grandet got older, he frequently consulted Uncle Cruchot on different matters because Cruchot’s “integrity could be depended upon.”¹⁶⁹ And on at least one occasion, the lawyer’s integrity clashed with his stubborn, strong-willed, money-obsessed client’s lack of it.¹⁷⁰

C. *The Evil Lawyer*

The estimable Derville and the admirable Popinot are only one end—the good end, the statesman-like end—of the professional spectrum. Not all the lawyers created by Balzac are quite so virtuous or come off so well at the author’s hands. On the contrary, they range, as lawyers do in real life, over the

164. *Id.* at 325.

165. BALZAC, *COUSIN BETTE*, *supra* note 68, at 171, 345, 384.

166. *Id.* at 345-46.

167. *Id.* at 346.

168. *Id.* Not everyone thinks Victorin is so good. Crevel, his father-in-law, says Victorin is “too clever by half; he is getting on. The Courts and the Chamber, judicial trickery . . . are making a man of him with a vengeance!” *Id.* at 377. And the hateful Valérie Marneffe, whose judgment on such matters is open to question, refers to Victorin as “the odious legal macaw.” *Id.* at 381. But one should of course always consider the identity of the speaker.

169. BALZAC, *EUGÉNIE GRANDET*, *supra* note 94, at 203.

170. *See id.* at 201.

whole continuum of legal ethics. But five of Balzac's fictional lawyers are so bad they are in a class by themselves.

These five are the polar opposite of lawyer-statesmen. They stand out as the epitome of the worst of the legal profession, the "dregs" in Balzac's own phrase, a true rogues gallery of lawyers.¹⁷¹ Deserving of special mention, they are Delbecq in *Colonel Chabert*, Fraisier in *Cousin Pons*, Petit-Claud in *Lost Illusions*, Roguin in *César Birotteau* and Goupil in *Ursule Mirouët*. Remember their names and their misdeeds.

Balzac's experiences of the nasty side of life in two law offices gave him a deep grasp of the psychology of rogues and rogue lawyers. Like Satan in *Paradise Lost*, the fallen lawyers in Balzac are more interesting, more complex and more memorable than most of the ethical ones. As Somerset Maugham observed, "Like all novelists," Balzac "wrote of the wicked more successfully than of the good."¹⁷² Recall that rather than become a practicing lawyer, Vautrin told Rastignac he would prefer first to become a pirate.¹⁷³ These five become both; they are lawyer-pirates. They embody Vautrin's warped philosophy of "success at any price."¹⁷⁴ Evil fascinates something in the human mind, simultaneously attracting it as well as repelling it, but always riveting it.¹⁷⁵ Every law school should require students to read these five books by Balzac so that law students would see, early on in their studies, unforgettable examples of detestable unprofessional behavior and recoil from such legal piracy forever. That way ethical violations might occur with less frequency.

To understand Balzac's evil lawyers, these legal buccaneers, it is helpful to look at them five different ways. First, we consider their professional misconduct. Second, ponder

171. BALZAC, *COUSIN PONS*, *supra* note 43, at 183.

172. W. SOMERSET MAUGHAM, *TEN NOVELS AND THEIR AUTHORS* 110 (Mandarin 1991) (1954).

173. *See* BALZAC, *OLD GORIOT*, *supra* note 77, at 128.

174. *Id.*

175. *See* MARTHA GRACE DUNCAN, *ROMANTIC OUTLAWS, BELOVED PRISONS: THE UNCONSCIOUS MEANINGS OF CRIME AND PUNISHMENT* 3 (1996) ("paradox of our wondering esteem for those who break the law"); *see also* Ian Buruma, *Wolf in Wolf's Clothing*, *NEW REPUBLIC*, July 14 and 21, 1997, at 40 (book review) ("The exquisite exterior, hiding a heart of darkness: what greater frisson can one desire?"); *cf.* RON ROSENBAUM, *EXPLAINING HITLER* (1998).

their outward ugliness. Third, we think about their distinctive inner deformity. Fourth, we contemplate some good qualities. And fifth and finally, we examine the poetic injustice of what happens to these rotten lawyers. These five different but related perspectives enhance our appreciation of Balzac's attitude, and allow us to imagine what kind of lawyer Balzac himself would have been.

1. *Unprofessional Behavior*

What makes Balzac's evil lawyers evil is their misconduct. They earn their reputations by their deeds, and their deeds are no good. Delbecq, for instance, provides perfect counterpoint to Derville in *Colonel Chabert*. However ethical and trustworthy Derville was, Delbecq was just the opposite: a "terribly clever man admirably acquainted with the resources of chicanery."¹⁷⁶ In other words, Delbecq was a sly crook. When we meet him in *Colonel Chabert*, the evil Delbecq is a confidant of Chabert's wife and manages her financial affairs. His mere presence on her team casts Chabert's wife in a bad light.

Competing for the title of the most evil lawyer in Balzac's vast fictional world is the execrable Fraisier in *Cousin Pons*, whom we meet in a chapter ironically entitled "A Man of Law." Fraisier is dishonest, crooked and treacherous to the core, a lawyer without scruple who will do anything for money or social advancement. Nor is his evil relieved in the slightest by any countervailing virtue or explanation. He is legal evil incarnate.

Aided by an old boyhood physician-friend, Fraisier worms his way into the middle of the machinations over Cousin Pons's estate. On the doctor's recommendation, Pons's concierge—Madame Cibot—consults Fraisier to plot how she can force Pons to name her in his will. Little did Madame Cibot know that Fraisier planned to get as much of that huge inheritance for himself, at the expense of Madam Cibot herself and others. In his first conference with her, he took steps to "tame La Cibot, terrify her, stupefy her, get her in his power," to make of her "a meal served up for this little lawyer's ambition."¹⁷⁷

176. BALZAC, COLONEL CHABERT, *supra* note 50, at 58.

177. BALZAC, COUSIN PONS, *supra* note 43, at 195.

Once retained by Madame Cibot, Fraisier reverts to type and repeats the unethical behavior that originally got him into trouble. In breach of his fiduciary duty to Madame Cibot, Fraisier goes to the family of the only blood heir, tells them of the potential inheritance, and seeks to be retained—an obvious conflict of interest. Then he proceeds to blackmail Madame Cibot into cooperation and silence. He illegally arranges to obtain one will by Pons with the intention of either destroying it or successfully challenging it. Then, when Pons further foils Fraisier's plans by signing a valid will in front of witnesses, Fraisier, on behalf of the one living blood heir, draws a frivolous and sham petition challenging the second will on baseless grounds of undue influence. Knowing the weak personality and frail health of the unhappily but aptly named Schmucke—the sole grief-stricken beneficiary under the second will—Fraisier obtains a huge settlement for a paltry annuity that does not even have to be paid because Schmucke died ten days later.

Cut from the same unethical cloth is “ugly” Petit-Claud,¹⁷⁸ the attorney in *Lost Illusions*. In that book the legal controversy is over intellectual property: a new printing process. Competitors of the inventor hire the shameless Petit-Claud to solicit the inventor to retain him in the litigation brought by the competitors themselves, and then to take the case.¹⁷⁹ In return for functioning as their legal fifth column, Petit-Claud receives an offer from the competitors to marry a wealthy heiress, who will provide money to pay off Petit-Claud's debts and will also provide access to rich aristocratic clients.¹⁸⁰ So bent on success regardless of the means, Petit-Claud accepts his new assignment “with a foot in both camps” and abuses procedural technicalities to create unnecessary litigation costs to hurt his own (ostensible) client and to benefit his (apparent) client's adversary.¹⁸¹ Not content with limiting his bad conduct, Petit-Claud also puts himself in another serious conflict of interest (representing both father and son in a dispute) and blackmails a character who forged a letter.

178. BALZAC, *LOST ILLUSIONS*, *supra* note 48, at 119.

179. *See id.* at 536.

180. *See id.*

181. BALZAC, *COUSIN PONS*, *supra* note 43, at 536.

Petit-Claud's awful scheme in *Lost Illusions* is an obvious embarrassment to the legal profession and one unlikely to be plotted to real life. But, however unrealistic it is, the unethical lawyer's behavior contains a germ of another true and recurring professional problem. That problem goes by several names today: churning, over-litigation, over-billing, hardball tactics, sham, frivolous and vexatious litigation. Change the facts slightly. Assume Petit-Claud has no conflict of interest with another, undisclosed client. His scorched-earth, take-no-prisoners litigation tactics, which some lawyers continue to use, would still be questionable, both in terms of their probability of success and on any cost-benefit analysis. In this sense, Balzac's description of the little-minded Petit-Claud becomes a more genuine and relevant cautionary tale for lawyers of today.

Equally evil as a lawyer but slightly less developed by Balzac as a character is Roguin in *César Birotteau*. Roguin is a reasonably successful Parisian notary without apparent professional blemish until the mature age of 59. At that time, when most lawyers are thinking about protecting what they have accumulated for retirement, Roguin breaks the mold and becomes Bizarro-Roguin. As part of a phony real estate deal designed to destroy his long-time client, the protagonist Birotteau, Roguin embezzles client funds and absconds with hundreds of thousands of francs belonging to Birotteau, throwing him into bankruptcy.¹⁸²

Roguin's gross misconduct is not merely the stuff of fiction. It strikes closer to home—unfortunately. Roguin's theft, according to the characters in *César Birotteau*, was only the second time Parisian lawyers could recall an attorney having run off with a client's money. In New York, sad to say, every lawyer has, since 1982, had to deposit \$300 every two years to a fund to repay clients whose money has been stolen by their lawyers.¹⁸³ The millions in this common fund are never enough to satisfy in full all victims. In the 18 years it has existed, the fund has paid

182. Birotteau retains the honorable and competent Derville to try to bring a lawsuit to undo the phony real estate deal. Derville wins the case but not in time to prevent Birotteau's bankruptcy. See BALZAC, *CESAR BIROTTEAU*, *supra* note 65, at 245, 246.

183. See N.Y. JUDICIARY LAW § 468-a.

out \$80 million to 5000 victims of 600 dishonest attorneys.¹⁸⁴ New York is far from unique in this regard. The ghost of Roguin stalks the American legal profession.¹⁸⁵

Goupil's misconduct toward the orphan Ursule Mirouët is even more outlandish. As part of a conspiracy to buy him off, the hateful Goupil wants to marry the beautiful and delicate Ursule, who is romantically involved with someone else. Turned down but undeterred, and filled with vengeance, Goupil writes her anonymous threatening letters, broadcasts her embarrassing and previously confidential family history, has a musical band wake her and her provincial village in the middle of the night and creates the false impression that a man spent the night in her room. Ursule wilts under Goupil's strain, almost to the point of death. The lawyer was trying, in a word, to kill young Ursule.

After reading about the evil deeds of Balzac's five evil lawyers, we no longer wonder why Shakespeare has a character exclaim: "The first thing we do, let's kill all the lawyers."¹⁸⁶

2. Outer Ugliness

The ugly deeds of Balzac's evil lawyers match those lawyers' ugly outer appearance. Balzac's descriptions of his evil lawyers are so arch, dark and frightening that they alone immediately and irretrievably sway the reader. Fraasier's physical appearance, his "atrocious physiognomy" is itself horrible and repulsive.¹⁸⁷ The "little lawyer" is "a shrivelled and sickly looking man" with a red, pimply face and "scrofulous skin."¹⁸⁸ He is

184. See John Caher, *After 18 years, Client Protection Fund's Chief Advocate Departs*, N.Y.L.J., Jul. 6, 2000, at 1, col. 4 ("They are sad stories from any perspective: alcohol, marital problems, senility, the pressures of keeping up with the Joneses and projecting the image of being a success. With younger lawyers, it is often drug abuse."). One is reminded of Balzac's comment about New York, a city he never saw: "Life in New York" removes all "remaining scruples in matters of morality." BALZAC, *THE BLACK SHEEP*, *supra* note 84, at 62.

185. See David Rhode, *Two Lawyers Accused of Theft from Clients*, N.Y. TIMES, Apr. 8, 2000, at B4, cols. 1-2 (two New York lawyers charged with stealing over \$4.7 million from clients and friends and using the money to pay their salaries, back taxes, country club dues and former wives).

186. WILLIAM SHAKESPEARE, *THE SECOND PART OF KING HENRY THE SIXTH* act 4, sc. 2.

187. BALZAC, *COUSIN PONS*, *supra* note 43, at 189.

188. *Id.* at 186, 214.

bald and has a “sinister-looking brick coloured cranium,” truly “a satanic head,” with “harsh, greenish,” “glittering” eyes.¹⁸⁹ In those scary eyes of Fraasier we see “pent-up resentment and ambition waiting to erupt like smouldering fires ready to burst into flame.”¹⁹⁰ On top of it all, he had a bad, tubercular cough that makes him appear on the brink of death. At his best, Fraasier “looked like a measure of poison in a crystal phial.”¹⁹¹ No wonder Balzac tells the reader that “the egregious Fraasier . . . will make you shudder when you see him at work in his den.”¹⁹²

But Balzac does not stop there. He goes on relentlessly. Based on Fraasier’s physical description, we are hardly surprised to find him called a “viper” with — what else? — a “venomous nature” and hands that feel “as cold as [you guessed it] serpent’s skin.”¹⁹³ His “air was cold and mocking,” an “air of self-complacency” that “cast a chill” while he exuded a “savour of viciousness.”¹⁹⁴ He had a “sinister, challenging” countenance.¹⁹⁵ In addition, he is “ill-natured,” a “terrible collaborator,” “so overbearing, so harsh” that he “gave one the shudders.”¹⁹⁶ Monsieur Fraasier is, in short, “a queer sort of lawyer.”¹⁹⁷

As he did with attorney Fraasier, Balzac uses over-the-top physical description to convey the essence of Petit-Claud. Reminiscent of Fraasier, Petit-Claud is snake-like, resembling a “cold-blooded adder.”¹⁹⁸ He is skinny, “a little shrimp” of a “pock-marked” lawyer, “snappy and prickly,” with “sour looks,” “foul appearance,” a “cracked voice” and dishonest eyes.¹⁹⁹ All of these qualities gave Petit-Claud a “dry little air.”²⁰⁰

Like Balzac’s other evil lawyers, Roguin in *César Birotteau* has a telltale physical appearance. His “pimpled” face was “ig-

189. *Id.* at 186, 247.

190. *Id.*

191. *Id.* at 214.

192. BALZAC, COUSIN PONS, *supra* note 43, at 181.

193. *Id.* at 197, 216.

194. *Id.* at 193, 187, 214.

195. *Id.* at 297.

196. *Id.* at 199, 210, 217.

197. BALZAC, COUSIN PONS, *supra* note 43, at 212.

198. BALZAC, LOST ILLUSIONS, *supra* note 48, at 595.

199. *Id.* at 212.

200. *Id.* at 595.

noble.” It showed “the exhaustion and fatigue of a jaded seeker after pleasure.”²⁰¹ Close observers saw something else, something real but hard to put into words, that put them off. To Birotteau’s wife, for instance, Roguin “has an underhand look that I do not like.”²⁰²

By the time we meet the notary’s clerk Goupil in *Ursule Mirouët*, we know the familiar physical signs. Goupil has a “sinister general appearance.”²⁰³ He has a “blotchy” complexion and a “pale, sour” face that “seemed to belong to a hunchback whose hump was inside his body.”²⁰⁴ His nose is “curved and twisted” and his mouth “always ready to break out into an ironical grimace” that bared “his few black, threatening teeth in a hideously sneering laugh.”²⁰⁵ His hands are “claw-like and hardly ever clean,” his clothes “fit to be thrown into a rubbish heap,” “threadbare and almost greasy with filth,” “pitifully shabby.”²⁰⁶ His eyes were “both lewd and cowardly.”²⁰⁷ He looks like a “toad,” and is, like other evil Balzac lawyers, “venomous,” with “a voice resembling the hissing of a viper cornered in its hole.”²⁰⁸

3. *Invisible Deformity*

Physical appearance can of course often mislead, but not when it comes to Balzac’s fictional lawyers. In their case, outward appearance accurately reflects ugly inner reality; what you see is what you get. On this point, Balzac leaves no room

201. BALZAC, CÉSAR BIROTTEAU, *supra* note 65, at 57.

202. *Id.* at 16.

203. BALZAC, URSULE MIROUËT, *supra* note 63, at 34.

204. *Id.* at 33.

205. *Id.* at 33, 35.

206. *Id.* at 34.

207. *Id.*

208. BALZAC, URSULE MIROUËT, *supra* note 63, at 158, 159, 228. Balzac’s references to snake-like lawyers calls to mind a recent case, *Revson v. Cinque & Cinque*, 221 F.3d 71 (2d Cir. 2000), in which one lawyer was sanctioned for, among other things, calling another lawyer a “snake.” On appeal, the sanctions were lifted. “Although likening an attorney to a member of the animal kingdom may well be opprobrious,” said the court of appeals, “such colorful tropes are not necessarily injudicious discourse.” *Id.* at 82. See also William Glaberson, *The Legal Profession Smells a Rat*, N.Y. TIMES, Oct. 22, 2000, § 4, at 3 (“For at least a few centuries, lawyers have been portrayed in jokes, cartoons and other expressions of popular culture as maggots, vipers, sharks, locusts and other creatures you wouldn’t necessarily ask for a dance.”).

for doubt. Outward ugliness in a Balzac lawyer is a dead giveaway. It reflects similar inner qualities and, as Balzac explains in *Ursule Mirouët* (when describing Goupil), “confirm[s] the existence of an invisible deformity.”²⁰⁹

The same “invisible deformity” mars all of Balzac’s unethical lawyers. Each one was like a “hunchback whose hump was inside his body.”²¹⁰ Delbecq, Fraasier, Petit-Claud, Roguin and Goupil share a certain basic disfiguring character trait. Their common “invisible deformity” is resentment. Balzac offers some explanations of what made them the way they are. Each of the evil five has his own reasons for feeling resentful, some of which overlap.

Resentment arises from different causes. Delbecq, as a result of his financial misconduct, went bankrupt and was disbarred. Such professional disgrace will almost always make one resentful. Roguin got into financial trouble because of a loveless marriage and an expensive mistress. Such personal unhappiness will engender resentment.

For Fraasier, it was at first poverty. Fraasier was a poor shoemaker’s son without any material advantage. Such poverty exposed Fraasier to humiliation and forced on him many struggles, all of which molded, really twisted, his character. Next was unrequited love, when a beautiful, wealthy client disappointed Fraasier by not marrying him. Then came a serious professional black mark.

As a young lawyer, Fraasier had a provincial practice in Mantes that he was forced, under threat of disbarment, to sell for almost nothing. Ever insensitive to conflicts of interest, Fraasier had represented both sides in the same case, which even he admits was “slightly unprofessional.”²¹¹ But, according to Fraasier, he was only the victim of the other, less competent lawyers in Mantes who envied his legal ability and client-getting skills. Like many an unhappy soul, Fraasier never blamed himself for his predicament. It was always someone else’s fault.

In any event, Fraasier, lucky to keep his law license at all, was driven from Mantes in disgrace, harboring enough grudges

209. BALZAC, *URSULE MIROUËT*, *supra* note 63, at 33.

210. *Id.*

211. BALZAC, *COUSIN PONS*, *supra* note 43, at 218.

and resentments to fuel him a lifetime. "The law has already ruined me," he laments, implying that he can take unusual risks because he has nothing left to lose.²¹² He moves to a poor part of Paris and gets by as a "briefless junior barrister" among the dregs of the profession.²¹³ But he burns with obsessive dreams of wealth, marriage and becoming, of all things, a justice of the peace. To realize his dreams, Fraasier will do whatever he has to do. "[H]e felt capable of committing any crime to achieve his ends."²¹⁴ He is Vautrin reincarnated as a lawyer.

Fraasier's blood brother on the inside is Petit-Claud, a "thoroughly shifty, treacherous, two-faced man."²¹⁵ Poor, the son of a tailor, Petit-Claud was shunned by his classmates in school. He became an "embittered soul," nursing deep "resentful feelings" so that "a certain amount of bile seemed to have passed into his blood-stream."²¹⁶ He had had "his fill of disdain, eaten up with a gnawing desire to push himself forward."²¹⁷ He was, Balzac tells us, "not without a certain superiority" though "hatred was the ruling principle behind it."²¹⁸ Then Balzac sums up his curbside diagnosis: "The more a man hates, the greater the efforts he will make."²¹⁹

Goupil has an "extraordinary capacity" and "instinct" for evil.²²⁰ He was filled with "permanent jealousy" and "resentment," always "planning revenge."²²¹ A "horrible fund of ill-will was building up in Goupil's heart at each new wound."²²² What wounds? His employer's distrust of him. So we are not at all surprised to find Goupil compared, on first appearance, to Mephistopheles, called a "rascal," guilty of "almost dissolute behavior," "entirely without self-restraint," and armed with "detestable wit."²²³ He is, in a word, "loathsome."²²⁴

212. *Id.* at 197-98.

213. *Id.* at 175, 221.

214. *Id.* at 224.

215. BALZAC, LOST ILLUSIONS, *supra* note 48, at 615.

216. *Id.* at 518, 535.

217. *Id.* at 518.

218. *Id.* at 518, 519.

219. *Id.* at 519.

220. BALZAC, URSULE MIROUET, *supra* note 63, at 159, 219.

221. *Id.* at 34.

222. *Id.*

223. *Id.* at 33-34.

Poverty, bad looks, professional failure or disgrace, envy, frustrated ambition—all of these play their part. In these baleful common characteristics, Balzac's bad lawyers manifest the resentment identified by one of today's leading Law and Literature commentators as the mark of a lawyer as protagonist in modern fiction.²²⁵ Ironically, that commentator is Richard Weisberg, who regards Balzac as not that "relevant."²²⁶ Although Balzac is intentionally omitted from *The Failure of the Word*, Weisberg's approach in that book still fully applies to Balzac's evil lawyers. It is, indeed, a perfect fit.

According to Weisberg, the lawyer-like protagonists in nineteenth and twentieth-century literature couple the twin themes of *ressentiment* and legalism, which in turn combine to produce the "*legalistic ressentiment*" so central to modern fiction.²²⁷ At the heart of Weisberg's analysis in *The Failure of the Word* lies the concept of *ressentiment*. That concept, which Weisberg attributes to Nietzsche, means "perpetual rancor."²²⁸ *Ressentiment* involves disguised rage taking the form of public "revenge" against the imagined "insult."²²⁹ *Ressentiment* involves individuals have a lingering sense of injury without a firm sense of values.²³⁰ They generally feel a discrepancy between what they consider their own worth to be and the actual worth and position accorded them by others.²³¹

Ressentiment is, for Weisberg, "modern Western culture's own deepest malaise."²³² To understand *ressentiment* and resentient injustice is to understand law and language today, says Weisberg. *Ressentiment* is a "negative force in society and history," and plays a major role in the novels that he interprets.²³³ In each literary work examined by Weisberg in *The Failure of the Word*, *ressentiment* mars the protagonist. And in each such

224. *Id.* at 210.

225. See WEISBERG, *THE FAILURE OF THE WORD*, *supra* note 12, at xii-xiv, 13-23, 27.

226. *Id.* at 7, 186 n.20.

227. *Id.* at xii-xiv, 13-23, 27.

228. *Id.* at 14, xiii.

229. *Id.* at xii-xiii.

230. See WEISBERG, *THE FAILURE OF THE WORD*, *supra* note 12, at 14, 19.

231. See *id.* at 17.

232. *Id.* at xiii.

233. *Id.* at 5.

work of fiction, the protagonist is a lawyer or lawyer-like character.²³⁴

With insight, Weisberg also sees in these ressentient characters a cluster of positive qualities. Weisberg describes the lawyer-like protagonists as, for example, well educated, hard working, insightful individuals, blessed with subtle and careful minds, endowed with superior powers of perception, and destructively articulate at their best.²³⁵ These and other good characteristics also describe Balzac's evil lawyers. Likewise, Weisberg sees the non-Balzacian fictional lawyer-types, at their worst, as avoiding and destroying reality and life, as maladjusted, repressed and violent individuals who adhere to resentful values.²³⁶ They are promoters of injustice, indirect with hidden motives, equivocating and dissembling.

Weisberg would probably not object to describing Balzac's lawyer villains as ressentient. On the contrary, he would very likely agree. He did not omit Balzac from his study because the novelist's evil lawyers failed to fit the analysis, but because of what he saw as a literary dividing line. Nor did Weisberg mean to limit his approach to only those authors he focused on. "I hope," Weisberg wrote in an afterward, that the approach used in *The Failure of the Word* will "be extended to other great novelists as well."²³⁷ This is precisely what we have tried to do here with one such other great novelist, Balzac.

4. *Some Good Qualities*

Despite their evil doings, despite their absolute lack of ethics, despite their contemptible professional behavior, despite their awful personal conduct, Balzac's rotten lawyers surprisingly but definitely have, like the fallen lawyers they are, some positive, even admirable traits. They exhibit the positive qualities referred to by Weisberg. They are endowed by their creator, for example, with superior, cunning and clever minds. They are talented, well educated, articulate, energetic, industrious and ambitious. They have an intuitive understanding of the principles of applied psychology; they grasp human nature, mo-

234. See *id.* at xii.

235. See WEISBERG, *THE FAILURE OF THE WORD*, *supra* note 12 *passim*.

236. See *id.*

237. *Id.* at 177.

tivation, personality, greed, self-interest and fear. Like other evil geniuses—Professor Moriarty, Sherlock Holmes's nemesis, comes to mind—they make dangerous and formidable adversaries.

Part of what makes Balzac's evil lawyers such dangerous and formidable adversaries is their professional legal knowledge. They know the law, they know how to manipulate it, they know its ins and outs, they know its loopholes and limits. Precisely because they are lawyers, Fraasier & Co. are more fearsome than otherwise. Their professional status and knowledge allow them to misuse the awesome power of the law backed up by the even greater power of the state.

But if the law fails to stop those rogue lawyers, an occasional attack of conscience or remorse does—at least momentarily. At one point in *Lost Illusions*, for instance, Petit-Claud becomes so impressed with Eve Séchard's goodness and sincerity that he regrets what he has done to her and her husband. His regret, to be sure, is short-lived, but that he felt any regret at all is a sign that his moral sensitivity had not altogether disappeared. Similarly, by the end of *Ursule Mirouët*, Goupil seems to have been transformed from an evil wretch to a well-meaning, law-abiding citizen without any unscrupulous plans. For his part, Roguin in *César Birotteau* appears to have had a long, unblemished professional career before his fall at about age 60.

These positive traits further illustrate Balzac's lawyer-like, internalized adversary literary process of describing the complex, two-sided nature of reality and of human beings. The positive characteristics cannot be denied. They co-exist in Balzac's rogue lawyers with overshadowing negative characteristics. Balzac gives the same character contradictory qualities. The positive traits are plainly recessive, the negative ones dominant. But their very co-existence is important and reflects Balzac's dual, lawyerly approach to his literary art.

5. *Poetic Injustice*

Perhaps these vestiges of good qualities help explain why Balzac's bad lawyers escape poetic justice. For if poetic justice were enforced, these lawyers would all be punished severely. After all, they did horrible deeds and, under any regime of fair-

ness, deserve appropriate retribution. With many authors, that would in fact be the outcome. But not with Balzac.

Nothing bad happens to these rotten lawyers. None of Balzac's rogue lawyers gets his comeuppance. Not one of these evil attorneys is brought to justice. None of these five lawyers suffers as a result of his misconduct in these books. Not one of them is challenged, let alone punished in any way, for what he did in these novels. All in all, one gets the distinct impression of poetic injustice.

That impression only gets intensified by what actually does happen. Ironically, everything comes up roses for the evil lawyers. Each one of their particular schemes, their legal atrocities, succeeds. As a result of Colonel Chabert's decision to leave his ex-wife alone, Delbecq's plan works: the ex-wife will keep the fortune without further interference. Fraasier obtains his winning settlement. Petit-Claud achieves his objectives and obtains the Séchard printing business for his real clients. Roguin runs off, without being caught, with a fortune in his clients' money, presumably to spend it at his leisure on luxurious living under an assumed name. And Goupil uses his ill-gotten gains to buy a notary's practice.

In addition to their particular schemes working, the rogue lawyers succeed in terms of their overall worldly ambitions. Presumably Delbecq will be awarded an official position in a provincial town, which will enable him to marry a rich heiress and thereby assure his own fortune and political career. In the end, the crooked Fraasier marries up and achieves his life ambition of becoming a justice of the peace. Petit-Claud also marries way above himself and acquires the wherewithal for high professional standing and success. Goupil follows suit: he marries well and, the last we see of him, is happily and comfortably practicing law in the provinces.

As a result, the ultimate lesson to be drawn from Balzac's evil lawyers may be somewhat ambiguous. On one hand, Balzac holds no brief for these despicable lawyers, as the flood of terrible adjectives describing them attests. On the other hand, their serious misbehavior not only goes unpunished but actually seems to get richly rewarded. All is not right in such a world. It is a confusing paradox unless Balzac may be speaking

the uncomfortable, but by now familiar truth that success in this world does not always go to the virtuous.

6. *A Thought Experiment*

Balzac's descriptions of his good and evil fictional lawyers suggest a provocative little thought experiment. It is fun, instructive and stimulating to think about what kind of lawyer Balzac would have been if he had not left the law. Balzac, according to Zweig, was "one of those gifted beings whose genius would have displayed itself in any form they had chosen. . . . [Writing was] only one of the many possible alternatives."²³⁸ Would Balzac the lawyer have ended up at the Derville, statesman-like end of the professional spectrum or the Fraasier, scoundrel end? Would Balzac have turned out to be an ethical lawyer or a legal buccaneer? The only honest and informed answer is unclear.

The problem is Balzac's own contradictory nature. Balzac plainly knew and could ably depict the difference between ethical and unethical behavior by lawyers; he obviously admired high professional ethics in lawyers. But that is not the question. The real question is whether Balzac's higher professional nature and aspirations, his better, ideal professional self would have overcome what Henry James referred to as the "urgency" of Balzac's lifelong "consuming money-hunger."²³⁹ This question is not so easy to answer.

The more one knows about Balzac's life, the more difficult the question becomes to answer. Familiarity with Balzac's biography breeds doubts—or at least grave concerns—about how he would have acted as a lawyer. His continuous and embarrassing financial messes are only one concern. His litigious personality is another. Together, they make one hesitate to give the happy, desirable answer and to assert that Balzac would have been sure to be as upright as another Derville. Many times in Balzac's life he seems desperate and willing to do almost any-

238. ZWEIG, *supra* note 11, at 102. But keep in mind Balzac's law that "one cannot be a master in two fields at once," *id.* at 133, that "a master in one sphere can be a bungler when he ventures into another for which he is not gifted." *Id.* at 129.

239. James, *Balzac's Letters*, *supra* note 34, at 69.

thing for money, but we are unaware of any fraudulent or illegal behavior by Balzac to obtain money.

Balzac's fundamental craving for money, power, fame and success—which resembles that of his evil lawyers—casts a shadow on any prediction of his professional ethics. We simply do not know for sure whether that craving would ever have overpowered the better angels of Balzac's nature. One hopes Balzac would have made the right choice, but one does not, in truth, know for sure. One can only speculate.

But we can be certain of at least one thing. We do know that Balzac would have been tested, and that the internal struggle would have been titanic. Balzac was “an extraordinary tissue of contradictions.”²⁴⁰ Thus Balzac the lawyer—driven by internal conflict between his inordinate desire for money and his genuine aspiration to uphold professional ethics—has the potential to become Balzac's most interesting lawyer character. Alas, tantalizing as it may be, it is only a thought experiment.

D. *The Attorney-Client Relationship*

The nature of the attorney-client relationship also gets Balzac's attention. Old Cruchot constantly advises the miser Grandet on his legal affairs. In a timeless portrayal of a familiar attorney-client conversation, Balzac has the miser act as every client when informed of bad news. “What is to be done?” he demands with a tragic expression on his face. Even after hearing the lawyer's reasonable suggestion, the client feels “too much agitated by what he had just heard.”²⁴¹ Every lawyer knows this conversation.

But the sly client is often one step ahead of his lawyer. Frequently it is the scheming client who plots how to use both the law and the lawyer to the client's advantage. The client feigns ignorance of legalities. “I am quite bewildered,” he says to his lawyer, “with all these head-splitting ideas that you have sprung upon me. Th-this is the f-f-f-first t-time in my l-life that I have had to th-think about such th- . . .”²⁴² Taken in, Cruchot soothingly (and condescendingly) replies, “Yes, yes, you are not

240. James, *Honoré de Balzac*, *supra* note 5, at 67.

241. BALZAC, EUGÉNIE GRANDET, *supra* note 94, at 192-93.

242. *Id.* at 123.

a consulting barrister.”²⁴³ But it is Grandet who dreams up a clever plan—“a more than dubious transaction which, however you looked at it, hardly squared with notions of strict honesty.”²⁴⁴ Even after Cruchot gives Grandet the bad news about his daughter’s inheritance rights, it is Grandet who, once having grasped the situation, goes even further than the lawyer to protect his legal position.

More than once, Balzac hints at tensions inherent in the attorney-client relationship, especially the client causing problems. In *Cousin Bette*, a character says: “A very old friend of mine is an attorney, now retired, who told me that for fifteen years past notaries and lawyers have distrusted their clients quite as much as their adversaries. Your son is a pleader; has he never found himself compromised by the client for whom he held a brief?” “Very often,” answered Victorin (the son), with, significantly and knowingly, “a smile.”²⁴⁵ Likewise, in *Cousin Pons*, a lawyer tells a potential client: “We advocates are well used to being betrayed by our clients.”²⁴⁶ Of course, every experienced practitioner knows the unfortunate truth that every client is a potential adversary, and, if prudent, acts with that unpleasant truth in mind.

Balzac uses *Cousin Pons* to throw more light on the relationship between attorney and client. After Fraasier, hearing everything in advance from his doctor friend, still lets Madame Cibot tell her full story, she asks why he did so. In his own way, Fraasier explains the importance of a personal meeting with a prospective client. “I knew all about your problem,” Fraasier says, “but I knew nothing about Madame Cibot! All my clients have their little peculiarities.”²⁴⁷

But Madame Cibot—for better reasons than she knew—still distrusts Fraasier and does not agree to retain him immediately, wanting time to think it over. “Think it over!” cries Fraasier. “What do you mean?”²⁴⁸ At that moment, Fraasier, faced with the possibility of losing his pigeon, looked at Mad-

243. *Id.*

244. *Id.* at 124.

245. BALZAC, *COUSIN BETTE*, *supra* note 68, at 411.

246. BALZAC, *COUSIN PONS*, *supra* note 43, at 193.

247. *Id.* at 191.

248. *Id.* at 193.

ame Cibot with “all the venom of an adder.”²⁴⁹ Fraasier, more subdued in tone, then asks her, “Look now. Am I or am I not your legal advisor? Let’s get this clear.”²⁵⁰ Poor Madame Cibot, realizing that “she was at the mercy of a tiger,” felt that Fraasier was reading her thoughts and a chill went down her spine.²⁵¹ How often do clients feel manipulated by lawyers in an initial meeting? And vice versa?

Fraasier continues to disingenuously presume on his potential client’s psychological needs. “Trust me completely, I’m entirely on your side. I’m a friend to my clients through thick and thin, once they treat me as a friend. Either a friend or an enemy: that’s how I am.”²⁵² Not surprisingly, Madame Cibot was shocked by her consultation with Fraasier.

At one point in *Cousin Pons*, Fraasier actually invokes his unethical reputation as the very reason for retaining him. He explains the benefits of the Camusots using him rather than their regular, ethical lawyer, “who is probity itself.”²⁵³ That way the clients can blame Fraasier if “dubious measures have to be taken.”²⁵⁴

E. *The Life of a Law Student*

Henry James had definite views about whether Balzac’s books are autobiographical. James thought they are not, that they “are singularly void of personal revelations.”²⁵⁵ He went on to say that Balzac’s books “suggest to us very little about his life,”²⁵⁶ concluding that, “[i]t is hard to imagine a writer less autobiographic.”²⁵⁷ Although one, particularly an amateur from another field, pauses before disagreeing with Henry James about literary criticism, in this case it is necessary.

James is plainly wrong here. Whatever the accuracy of James’s views generally, he seems to have erred at least with regard to what Balzac reveals in his novels about his youthful

249. *Id.*

250. *Id.*

251. BALZAC, *COUSIN PONS*, *supra* note 43, at 193.

252. *Id.* at 199.

253. *Id.* at 252.

254. *Id.*

255. James, *Honoré de Balzac*, *supra* note 5, at 36.

256. *Id.*

257. *Id.*

experiences in the law. In that area, some of Balzac's books appear to be full of personal revelations, suggest to us much about that part of his life, and are quite autobiographical. On this point, all of Balzac's modern biographers agree, and they are buttressed by Balzac's texts themselves.

In *Old Goriot*, *Colonel Chabert*, *The Wild Ass's Skin* and *A Start in Life* Balzac draws deeply on his own experiences as a young law student and law clerk. A main character, perhaps the main character in *Old Goriot*, is a Paris law student from the provinces, as Balzac himself once was. Throughout the book Balzac's description of this law student, Eugène de Rastignac, is detailed, textured and enlightening in so many ways.

Knowing of Balzac's own legal training, a reader cannot help but see in Eugène some of the author's own memories of his student days. Over and over again, Balzac refers to Eugène as simply the "law student."²⁵⁸ Eugène generally wore the old clothes that students put on. Attending lectures at the law school only until 10 a.m., Eugène sometimes studied law all night. But then the mature Balzac remembers: "[o]ut of ten nights dedicated to work by young men, seven are spent in sleep. One has to be older than twenty to stay awake all night."²⁵⁹ At some point, Eugène stopped studying and appeared in class only to answer roll call before leaving. Like "most students," says Balzac, Eugène had seen the wisdom of putting off hitting the books until just before exams.²⁶⁰

This law school schedule of Eugène's was not overly oppressive. It left him "free to see the sights and taste the pleasures of the city."²⁶¹ But Balzac's knowing voice of experience points out that, "[a] student, indeed, has little time to spare if he wants to . . . map the windings of the Parisian labyrinth."²⁶² Adds Balzac, and one gets the feeling Balzac is remembering: "At this stage in his career a student is on fire with enthusiasm for" all sorts of follies which appear "magnificent" to him.²⁶³

258. BALZAC, *OLD GORIOT*, *supra* note 77 *passim*.

259. *Id.* at 62.

260. *Id.* at 110.

261. *Id.* at 55.

262. *Id.*

263. BALZAC, *OLD GORIOT*, *supra* note 77, at 55.

But Eugène had enough time to occasionally be introspective about his life and his future career. "What I should do is sit in a corner," he says to himself in a depressed mood, and soak up law, "and not look to be anything better than a boorish country magistrate."²⁶⁴ Another time he had a vision of a woman "rising magnificent beside a fire of peat, between the Law on one side and Poverty on the other."²⁶⁵ As Balzac comments, "who would not, like Eugène, have thrown an eager glance into the future, and decked it with success?"²⁶⁶

As for the law student's traits, they are, like most people's, mixed. He comes from a poor but noble provincial family; he is alone; he is hardworking; he is observant and curious; he has a keen brain, social skill, personal loyalty and great ambition. But Eugène's ambition, driven in part by his family's dependence on his success, has an unattractive side. Although he wants success based on his own efforts and his own merits, he at times desperately craves success at any cost, no matter what. He is ashamed of his poverty and his shabby clothes, and is determined to succeed financially and socially, with the help of a wealthy woman. "Desire to have the power to make an ostentatious show gnawed like a demon at his heart, greed burned in him like a fever, thirst for gold dried up his throat."²⁶⁷

Eugène hatched a plan. He would strive for "social successes at least as important as the success that was his goal" at law school.²⁶⁸ Eugène "resolved to open two parallel lines of attack on Fortune, to lean on Knowledge and Love, to be a learned doctor of law and a man of the world."²⁶⁹ Then comments Balzac in an acid aside to the reader: "He was still very much a child! Those two lines are asymptotes, and can never meet."²⁷⁰ But we get the message and see the change in Eugène, especially since it is cast in the metaphor of law. Between the blue boudoir of one wealthy woman and the rose-colored dressing room of another, Eugène "had made three years' advance in that *Parisian Law* which is never mentioned, although it consti-

264. *Id.* at 87.

265. *Id.* at 60.

266. *Id.*

267. *Id.* at 93.

268. BALZAC, OLD GORIOT, *supra* note 77, at 57.

269. *Id.* at 106.

270. *Id.*

tutes a higher social jurisprudence which, well learned and carefully practised, is a high road to success.”²⁷¹

Balzac also refers in passing to this higher jurisprudence in *Cousin Bette*. He describes a woman who “loved Hulot as a woman of six-and-thirty loves a handsome law-student — a poor, poetical, ardent boy.”²⁷² From these references in *Old Goriot* and *Cousin Bette*, a reader cannot help but wonder if Balzac himself as a law student had or dreamed of relationships with older women.²⁷³ It is almost enough to make one wish to have studied law in early nineteenth-century Paris rather than twentieth-century America.

As in *Old Goriot*, so too in *Colonel Chabert*, except in *Colonel Chabert* Balzac focuses on what a law student did as a clerk in a law office. The opening chapter of *Colonel Chabert*, describing a lawyer’s office, portrays the daily life of the young law clerks who worked there, as had the youthful Balzac. At the end of this first chapter, Balzac removes his author-narrator’s mask and frankly tells the reader that the description of the workings of the lawyer’s office was done more from memory than from literary invention. “This scene,” Balzac autobiographically confesses, “represents one of a thousand delightful moments that prompt us later, when we look back on our youth, to say, “Those were the good old days!”²⁷⁴

But the old days often seem good only in retrospect and from a safe distance of decades. Contemporary experience—the existential reality actually lived—frequently differs from and is harsher than the mellowness and nostalgia of past recollection. Balzac’s memories of his law student days were not all delightful; they were deeply ambivalent. For it was precisely then that his internal struggle between law and art was as yet both unresolved and most acute. In one of his books, *The Wild Ass’s Skin*, Balzac gives us a glimpse of that struggle.

271. *Id.* at 98.

272. BALZAC, *COUSIN BETTE*, *supra* note 68, at 274.

273. When he was 23, Balzac did have a relationship with a 45-year-old woman, Mme. De Berny. ROBB, *supra* note 11, at 95-115.

274. BALZAC, *COLONEL CHABERT*, *supra* note 50, at 14. For another, similar look at the life of a law clerk, see HONORÉ DE BALZAC, *A START IN LIFE passim* (1842).

The hero of *The Wild Ass's Skin* is, like Balzac, an intellectual, literary young man forced by his strict and overbearing father to study law. Balzac's thinly-veiled fictional stand-in, Raphael de Valentin, was aware of his "excessively restless imagination, the curse of poets" but nonetheless went, just as his creator once did, "to lectures and worked in a solicitor's office simultaneously."²⁷⁵ Balzac-Raphael experienced "moods of despair" and "fits of sombre melancholy."²⁷⁶

Balzac-Raphael describes the tension: "Just think of me as I was: a roving imagination, a most susceptible heart, the tenderest of souls, the most poetic of minds, constantly in the presence of the most flinty, the moodiest and chilliest of temperaments."²⁷⁷ Parallels continue. At about age 21, the protagonist of *The Wild Ass's Skin*, like Balzac, breaks free of the "tyranny exerted by my father."²⁷⁸ Both Balzac and Raphael could honestly say: "I believed that there was in me a thought to express, a philosophical system to establish, a science to expound."²⁷⁹ Balzac-Raphael finds a cheap Paris garret and, in poverty and solitude, starts to write. For both Balzac and Raphael, their first written work was a play severely criticized by friends and never published in their lifetime. In both cases, the second written work was an ambitious book on philosophy.

So much for Henry James's claim that Balzac's books were not autobiographical.

IV. SPECIFIC LEGAL SUBJECTS

In addition to his observations on the legal profession, Balzac offers his readers commentaries on specific legal subjects. Those commentaries are impressive on several counts. They reflect professional knowledge. They range from detailed technical descriptions of legal procedure to philosophical musings on the larger implications of legal doctrine. In some cases, the legal topic serves as the framework or backdrop for the action in Balzac's plots. In all cases, the legal situation enhances the development of Balzac's characters. In particular, Balzac focuses

275. BALZAC, *WILD ASS'S SKIN*, *supra* note 64, at 92, 103.

276. *Id.* at 93.

277. *Id.*

278. *Id.* at 99.

279. *Id.* at 103.

on inheritance, legal rights of women, criminal law, imprisonment for debt, bankruptcy and contracts.

A. *Inheritance*

Nineteenth-century European and American literature often relied heavily upon the legal institution of inheritance. Charles Dickens,²⁸⁰ George Eliot,²⁸¹ Jane Austen,²⁸² Anthony Trollope²⁸³ and Henry James²⁸⁴ are only a few of the nineteenth-century authors who used inheritance to energize some of their most famous plots. No doubt such literary invocation of inheritance says much about the social structure and economic life of Europe and America in the 1800s, especially equality of opportunity and social mobility. If ways of earning money by one's own efforts are scarce or limited because of class barriers, inadequate public education and gender and other forms of discrimination, inherited wealth becomes all the more important as a means for economic security and success.

Only a few decades after some of the more radical French revolutionaries tried to abolish bequeathing property altogether, the topic of inheritance looms large in almost all of Balzac's writings.²⁸⁵ It is a character or force that greatly affects the action. In *Old Goriot*, the Lear-like Goriot gave away all he had to his daughters and lived to regret it. Two of his fellow boarders depended on bequests. Similarly, in *The Wild Ass's Skin* the hero obtains great wealth through inheritance. In *Lost Illusions*, two different fathers avoided accounting to their children for their mothers' fortunes, which would have ordinarily passed to those children. In the same book, a large inheritance from Old Séchard, a miser in life, financially rescues his inven-

280. See, e.g., CHARLES DICKENS, *GREAT EXPECTATIONS* (1861); CHARLES DICKENS, *OLIVER TWIST* (1838); CHARLES DICKENS, *BLEAK HOUSE* (1853).

281. See GEORGE ELIOT, *MIDDLEMARCH* (1872).

282. See JANE AUSTEN, *PRIDE AND PREJUDICE* (1813).

283. "[A]lmost every novel by Anthony Trollope" involved will contests and inheritance law. POSNER, *supra* note 12, at 6.

284. See, e.g., HENRY JAMES, *WASHINGTON SQUARE* (1881); HENRY JAMES, *THE PORTRAIT OF A LADY* (1881) (both of which were written during James's so-called "Balzac period").

285. See Stanley N. Katz, *Republicanism and the Law of Inheritance in the American Revolutionary Era*, 76 MICH.L. REV. 1, 22-23 *passim* (1977-1978).

tor son. In *Colonel Chabert*, a wife inherits the estate of her husband, who is erroneously presumed dead. The list goes on.

However significant the role of inheritance in these books, that institution plays an even larger role in what have come to be known as Balzac's four "inheritance novels."²⁸⁶ Those are *Eugénie Grandet*, *Cousin Pons*, *Ursule Mirouët* and *The Black Sheep*. In those four books inheritance is at the core of the story. In each, the basic action revolves around the inheritance.

The title character in *Eugénie Grandet* is the beautiful daughter of a cunning provincial businessman whose success and greed lead to great wealth. Despite her physical beauty and personal charm, her suitors—two lawyers—want to marry Eugénie only to inherit her money. After her wedding she knew that her husband "was anxious for her death that he might be the sole possessor of the colossal fortune."²⁸⁷

The death of Eugénie's mother triggered an even more poignant brush with the law of inheritance. Eugénie's mother had brought a large sum of money to her marriage to Eugénie's father. "You would have to give an account to Eugénie of her mother's share of your joint estate," an old provincial lawyer named Cruchot tells Monsieur Grandet, Eugénie's father. "[A]nd if she chose, your daughter might demand her mother's fortune, for she, and not you, will succeed to it."²⁸⁸ In other words, Eugénie cannot be disinherited. Although the miser "knew very little law,"²⁸⁹ he now knew enough to feel threatened by his own daughter Eugénie's legal rights of inheritance, which was "like a foretaste of death for him."²⁹⁰

286. Donald Adamson, *Introduction to BALZAC, URSULE MIROUËT*, *supra* note 63, at 11. Co-existing with Balzac's focus on inheritance is an oft-expressed admiration for those energetic characters who achieve success by their own efforts. See, e.g., BALZAC, OLD GORIOT, *supra* note 77, at 56 ("Like all great minds Eugénie wished to owe his success to nothing but his own merit."); BALZAC, COUSIN BETTE, *supra* note 68, at 33 (Bette's determination to make a fortune by improving her skills); *id.* at 67 ("Paris offered so many openings that any man with will and courage might find a living there. A man of spirit need never perish if he had a certain stock of endurance"). Indeed, one could reasonably read Balzac's inheritance novels—just as one could read Shakespeare's *King Lear*—as depicting the destructive impact of inherited wealth. In any event, this is but another example of his lawyerly dual approach.

287. BALZAC, EUGÉNIE GRANDET, *supra* note 94, at 235.

288. *Id.* at 191.

289. *Id.*

290. *Id.* at 198.

This scene in itself underscores a basic difference between French and American law. As Balzac shows in *Eugénie Grandet*, French law prevents a person from disinheriting children but not a spouse. American law, by contrast, takes the opposite approach and bars disinheriting a spouse but not children.²⁹¹ No doubt this difference results from different national and economic histories. Feudalism and its successors left their imprint in terms of the crucial need to pass on property within the family. In America, which trumpeted an ideal of vast economic opportunity and self-made success stories, concern has focused more on protecting the surviving widow.²⁹²

Cruchot comes up with a solution. The lawyer suggests that Eugénie give to her father a life estate in her inheritance. "Mademoiselle," he explains, "your father wants neither to divide nor to sell his property, nor to pay a heavy succession duty upon the ready money he may happen to have just now. So if these complications are to be avoided, there must be no inventory made out, and all the property must remain undivided for the present."²⁹³ Eugénie does not understand but, out of deference to her father's wishes, is willing to sign.

Her father, however, wants more than a life estate; he wants Eugénie to give up her inheritance entirely. He tells her, "I would much rather you simply waived all claim to your poor dear mother's property, little girl."²⁹⁴ Still unnerved by her mother's recent death, the obedient, compliant, trusting Eugénie consents, and the lawyer is horrified. "Mademoiselle," warns the lawyer, "it is my duty to point out to you that you are

291. See, e.g., Ronald Chester, *Should American Children Be Protected Against Disinheritance?*, 32 REAL PROP. PROB. & TR. J. 405 (1997); Ralph C. Brashier, *Protecting the Child from Disinheritance: Must Louisiana Stand Alone?*, 57 LA. L. REV. 1 (1996); Deborah A. Batts, *I Didn't Ask to Be Born: The American Law of Disinheritance and a Proposal For Change To a System of Protected Inheritance*, 41 HASTINGS L.J. 1197 (1990); Ralph C. Brashier, *Children and Inheritance in the Nontraditional Family*, 1996 UTAH L. REV. 93 (1996); Ralph C. Brashier, *Disinheritance and the Modern Family*, 45 CASE W. RES. L. REV. 83 (1994); Paul G. Haskell, *The Power of Disinheritance: Proposal for Reform*, 52 GEO. L.J. 499 (1964).

292. See, e.g., N.Y. EST. POWERS & TRUSTS LAW § 5-1.1-A (right of election by surviving spouse).

293. BALZAC, EUGÉNIE GRANDET, *supra* note 94, at 200.

294. *Id.* at 201.

robbing yourself without guarantee." To which the miser-client snaps, "Do be quiet."²⁹⁵

In *Cousin Pons* inheritance is also at the heart of the plot. The eponymous protagonist, a lifelong bachelor with no children, has a valuable art collection. As he is dying, he decides to leave his entire estate not to his blood relatives (second cousins who have treated him badly) but to his close friend, Schmucke. This decision confounds other hopeful beneficiaries. Controversy over his estate drives the book.

The other would-be beneficiaries are a motley crew. Pons's concierge, Madame Cibot, acts as his nurse and convinces herself that it is only right for Pons to leave her a legacy in his will. Pons's closest relative is a pompous judge named Camusot, who is a second cousin. Judge Camusot's wife cannot stand Pons and ridicules him on a number of occasions, but she is an inveterate schemer who, when made aware of it, yearns to have her family inherit Pons's estate. Then there are the lawyers and others who hope to benefit in some way from Pons's death.

But Pons is no fool. He gamely tries to foil their efforts to thwart his decision—and almost succeeds. When he becomes aware of the schemes, he devises his own counter-scheme involving two wills. First, he himself writes a will—a holographic will—dictated by a lawyer in the presence of witnesses. In this first will, which he expects to be stolen, he leaves all his artwork to the Louvre, to the dismay of all challengers. But then he plans to supersede the first will by dictating a second will—leaving everything to his friend—to a lawyer in the presence of witnesses so as to remove all possible pretext for a will contest. It is a good plan, as far as it went.

In the course of this battle of wits, Balzac offers some legal insights. Evil but hardheaded lawyer Fraasier tells the materialistic judge's wife: "Madame, in cases of inheritance, before going any further, I need to know two things . . . Firstly, is the inheritance large enough to bother about? Secondly, who are the legal heirs?"²⁹⁶ A lawyer today might well ask the same questions. Fraasier goes on to explain that Judge Camusot,

295. *Id.*

296. BALZAC, *COUSIN PONS*, *supra* note 43, at 188. With sensitivity and pain probably born of experience, Balzac notes, "It is hard to imagine how much pester-ing genuine grief has to endure from legal formalities." *Id.* at 285.

Pons's closest living relative, is "only a collateral in the third degree, and this means that Monsieur Pons, as the law goes, can leave his fortune to anyone he wishes."²⁹⁷

With much knowledge of practical affairs, a lawyer-friend of Fraasier tells Pons that a will contest, no matter how properly drawn the will, "is always possible . . . That is one of the drawbacks of human justice."²⁹⁸ In our own litigious culture, that statement is still true, if not more so. Fraasier is initially happy to learn of the holographic will, which he says—before reading it—is wide open to challenge. But when he finds out about Pons's sly bequest to the Louvre, Fraasier quickly reverses himself and bitterly exclaims, "We can't go to law against the State! . . . The will is unassailable . . . We are robbed, ruined, despoiled, done for!"²⁹⁹ Calming down, his fertile though mischievous legal brain latches on to a possible solution: "A will that can't be found can never be proved to have existed."³⁰⁰

But Fraasier's plan to destroy the first will comes to naught because of the second will. He recovers by having Pons's beneficiary, the luckless Schmucke, sign a power of attorney to another lawyer secretly working together with Fraasier. Then Fraasier invokes the law requiring Pons's residence to be sealed off after his death pending litigation over the estate. The sealing off forced Schmucke—who was also Pons's roommate—to move out of the house. Without any basis, Fraasier objects to the second will on grounds of supposed undue influence and achieves a highly favorable settlement. This pattern will be familiar to any modern lawyer in America who has done estate litigation. Disinherited relatives are fond of claiming undue influence, even if the relatives have nothing to do with the decedent.³⁰¹

297. *Id.* at 189.

298. *Id.* at 257.

299. *Id.* at 268.

300. *Id.* at 270.

301. In a recent will contest in which I was representing the executor and sole beneficiary under the will, I was able to refer to *Cousin Pons* in a summary judgment brief:

Life sometimes imitates art, in this case, literature. In *Cousin Pons*, one of Honoré de Balzac's great nineteenth-century novels, the protagonist (who owned a famous collection of valuable paintings) died, leaving a will in favor of his friend. The novel involves the intrigues by which the legatee is wrongfully accused of fraud and undue influence and feels forced by the legal

Lest we think that Fraiser's antics are merely the product of an unrealistic author's overheated imagination, consider the recent disciplinary proceeding against a New York lawyer. In July 1992, the lawyer's father-in-law died intestate leaving his wife and three children as heirs. In representing the interests of his mother-in-law, the lawyer, in March 1993, fabricated a document purporting to be a will executed by his father-in-law ten years earlier, which designated the lawyer's mother-in-law as sole beneficiary. The lawyer forged the signature of the decedent and two purported witnesses and falsely notarized the witnesses' signatures. The lawyer also prepared waivers and consents in the names of the children (other than his wife) to which he affixed and falsely notarized the forged signatures of those heirs. The lawyer submitted the fabricated will for probate, together with the supporting documents he had forged, fabricated and falsely notarized. In April 2000 the lawyer was disbarred.³⁰² Balzac's fictional lawyer has nothing on his real-life counterparts. Sometimes life does imitate art.

In *Ursule Mirouët*, the key conflict is between heirs. Dr. Minoret, a wealthy widower without children, wants to leave part of his large estate to the orphaned 15-year-old Ursule, whom he has raised. The grasping, materialistic blood relatives—cousins, nephews and nieces—are unhappy; they want it all. Overwhelmed by their greed, these relatives frustrate Dr. Minoret's plans, treat Ursule horribly and even steal her inheritance. They rationalize their outrageous behavior on legal grounds. Ursule's father, who was Dr. Minoret's half-brother-in-law, was illegitimate, although Ursule was not. According to the lawyer for the greedy relatives, Ursule's father's illegitimacy bars her from inheriting under the doctor's will.

Apart from the human drama, *Ursule Mirouët* raises the legal issue of distinguishing between "legitimate" and "illegiti-

system to settle with a second cousin for a song and then dies a few days later from the strain. In *Cousin Pons*, Balzac anticipated this case, but this case will have a happier and more just ending if summary judgment is granted to petitioner, as it should be.

Petitioner's Memorandum of Law in Support of Motion for Summary Judgment, Will of Constance Conway, File No. 332/99 (Sur. Ct. Westchester Co. Jan. 28, 2000).

302. See *Matter of William M. Nolan, A Suspended Attorney*, N.Y.L.J., Apr. 21, 2000, at 7, col. 1.

mate" children, although here Ursule is herself "legitimate." Even today, American law adds to the pain of society's shunning by sometimes erecting barriers to the exercise of certain rights by illegitimates. In some states, the law restricts illegitimates' rights to sue for a parent's wrongful death, to inherit property, or to claim insurance benefits. Relying on the equal protection clause of the fourteenth amendment, illegitimates have, over the past 30 years, sued, claiming that discrimination against them is unconstitutional. A number of their cases have even reached the Supreme Court, where that tribunal has charted an uneven course. When dealing with illegitimate-based classifications, the Supreme Court has "properly, if not always consistently or coherently," scrutinized the laws in question with unusual care.³⁰³

In *Levy v. Louisiana*, the Supreme Court in 1968 struck down for the first time a state statute discriminating against illegitimates.³⁰⁴ That state law excluded illegitimates from the class of children entitled to recover for a parent's death. Decisions after *Levy* have zigged and zagged on discrimination against illegitimates. The Supreme Court has upheld some such laws and overturned others. The majority viewpoint of the Court, the result of its tortuous path, says that "the legal status of illegitimacy, however defined, is, like race or national origin, a characteristic determined by causes not within the control of the illegitimate individual," and it "bears no relation to the individual's ability to participate in and contribute to society."³⁰⁵ The illegitimacy cases since *Levy* have involved an effort to expand the suspect classification beyond race and national origin to include illegitimacy as well. If illegitimacy were considered a suspect classification, then laws discriminating against illegitimates would have to satisfy the strict scrutiny test.

To date, this effort of trying to change constitutional law has been only a partial success. Although illegitimacy cases have moved beyond the minimal rational basis test, they have not yet been elevated to the suspect classification, strict scrutiny test. Instead, official discrimination based on illegitimacy

303. LAURENCE TRIBE, *AMERICAN CONSTITUTIONAL LAW* 1553, §§ 16-24 (2d ed. 1988).

304. *Levy v. Louisiana*, 391 U.S. 68 (1968).

305. *Matthews v. Lucas*, 427 U.S. 495, 505 (1976).

is, like gender classification, stuck in the intermediate level of somewhat heightened review. The trend in the Court's decisions has been to evaluate discrimination against illegitimates by examining whether a given statute presents an "insurmountable barrier" to equal treatment,³⁰⁶ and whether there is a significant countervailing social interest at stake.³⁰⁷ Phrased another way, laws discriminating against illegitimates "will survive equal protection scrutiny to the extent they are substantially related to a legitimate state interest."³⁰⁸

It is not hard to imagine how Balzac would have reacted to these legal developments. *Ursule Mirouët* gives his views, which come freighted with his own personal life lessons. Balzac apparently had three illegitimate children.³⁰⁹ No doubt their existence colored the attitude he displayed in *Ursule Mirouët*.

The Black Sheep, the fourth of Balzac's inheritance novels, shows how inherited wealth can bring out the worst in people. The plot turns on the consequences of a wealthy provincial doctor's unfathomable efforts to disinherit his (innocent and good) daughter in favor of his (stupid and dependent) bachelor son. The doctor's bachelor son falls into the clutches of a woman who plans to take all his inherited money and run off with someone else. Enter an attorney—Desroches, "the wiliest and most astute of all Parisian attorneys"³¹⁰—who warns the disinherited, now middle-aged daughter and *her* two sons of the threat to *their* inheritance and advises them to recover what is rightfully theirs. After the mother and her artist son fail in the quest, her other son, Phillippe, a disgraced military adventurer, successfully wrests the fortune back, but only to keep it all for himself and ignore his mother and artist brother. The lawyer Desroches best understands Phillippe's lack of character and predicts his awful behavior.

306. *Labine v. Vincent*, 401 U.S. 532 (1971).

307. *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 104 (1972).

308. *Mills v. Hablvetzel*, 456 U.S. 91, 99 (1982).

309. See ZWEIG, *supra* note 11, at 252; see also ROBB, *supra* note 11, at 246. But see James, *Balzac's Letters*, *supra* note 34, at 73 ("no known illegitimate offspring").

310. BALZAC, *THE BLACK SHEEP*, *supra* note 84, at 122. Attorney Desroches appears in other Balzac novels, including *Lost Illusions*.

B. *Legal Rights of Women*

Any discussion of inheritance in Balzac inevitably spills over into a discussion of the legal rights of women.³¹¹ Women in nineteenth-century France, like their sisters elsewhere, had little economic opportunity. They could not work except at the lowest paying menial jobs. Often they could not own property in their own name. To avoid contract debts, women and their husbands would sometimes invoke what Balzac referred to as that "axiom of ancient jurisprudence: *Women are minors*."³¹² As a result of this gender discrimination, they depended on men—fathers, husbands, brothers, lovers—for financial support. The opportunity to work, particularly in good jobs, was for the most part, closed to women. Given this social situation, the law adapted in special ways.

Dowry was one legal adaptation. To help women marry, their fathers contributed funds as a gift to the marriage. Depending on the size of her dowry, a woman might have many suitors or none; she might even marry up. As in *Eugénie Grandet*, a daughter could not be disinherited, particularly of her mother's dowry. As in *Old Goriot*, a large enough dowry could enable a middle-class woman to marry a wealthier man or even an aristocrat. *Cousin Bette* and *Cousin Pons* frequently touch on parents' needs and desires for an appropriate dowry.

The dowry is really only one part of the so-called "marriage contract," which is the actual title of one of Balzac's novels.³¹³ *Cousin Bette* opens with a scene mistakenly thought by characters in the book to be about negotiations over such a marriage contract. Indeed, *Cousin Bette* tells of no less than three marriage contracts. First is the one, already existing when the story starts, for the marriage of Victorin Hulot and the daughter of the wealthy Crevel. Second is the one erroneously imagined for the marriage of Hortense Hulot, whose family comes on hard times. Finally, to marry the attractive but

311. See, e.g., M.H. FAILLIE, *LA FEMME ET LE CODE CIVIL DANS LA COMÉDIE HUMAINE D'HONORÉ DE BALZAC* (1968) (attempting to determine if Balzac was a feminist by considering the reactions of his heroines to legal restraints); A. MICHEL, *LE RÉEL ET LE TEXT* (1974) (analyzing generally the theme of women and the law).

312. BALZAC, *THE BLACK SHEEP*, *supra* note 84, at 202.

313. HONORÉ DE BALZAC, *THE MARRIAGE CONTRACT* (1835).

scheming Valérie Marneffe, Crevel agrees to a contract whereby he left as much as he could—the law still required him to leave half his estate to his daughter—to his materialistic new wife. Happily for Crevel's daughter and her husband, the marriage contract was annulled after Valérie's quick and horrible death.

In *Eugénie Grandet*, seven years after the novel opens, after both her mother and father have died, after she has inherited a colossal fortune, after her own heartbreak, Eugénie finds herself at age 30 under great pressure to marry, something that she does not want to do. A local priest tells her that unless she marries, "You will be involved in endless litigation."³¹⁴ Young Cruchot, a rising legal luminary, now 40 years old, still wants to marry Eugénie, but only to inherit her money. She agrees to the match on the condition that it be a sexless marriage. Cruchot himself drafted their marriage contract, which provided that the survivor would inherit all property of the other spouse if there were no children.

But fate foiled the lawyer's dream of avarice. He, not Eugénie, died first, shortly after the marriage. In Balzac's words, "God . . . punished him, doubtless, for his presumptuous schemes, and for the lawyer's cunning" with which he had drafted the marriage contract.³¹⁵ Let that be a lesson to the drafter of an overreaching pre-nuptial agreement.

The marriage contract is a motivating factor in *Cousin Pons*.³¹⁶ In that novel, Judge Camusot's daughter is having trouble finding a husband because, at least in part, her dowry is not large enough to overcome her material drawbacks. This need for money bears heavily on her parents' strong desire to obtain, by whatever means, their inheritance from Cousin Pons. Although the judge's daughter did in fact marry a wealthy man before the desired inheritance came through, that large inheritance greatly eased her parents' finances, which had been so strapped by her marriage contract.

In *Cousin Pons*, we find a curious remark by evil attorney Fraisier's concierge. Madame Sauvage speaks of a woman's comments on the law as her "expounding the law as all women

314. BALZAC, EUGÉNIE GRANDET, *supra* note 94, at 225.

315. *Id.* at 234.

316. *See* BALZAC, COUSIN PONS, *supra* note 43, at 93-95.

do, by applying the Code in light of their own whims.”³¹⁷ But of course it may be unfair to attribute this apparently chauvinist attitude to Balzac. After all, men and lawyers—more so than women—have also been known to interpret the law to suit their own purposes. We should not, moreover, confuse the views of Balzac the author with views expressed by one of his characters, with whom he may or may not agree.

C. *Criminal Law*

Criminal law too comes within Balzac’s long literary-legal reach. A strong presence in *Old Goriot* is Vautrin, a fellow boarder at Mme. Vauquier’s, who is an escaped convict, though that fact is not at first known to the other boarders.³¹⁸ He offers to help Eugène by having Victorine’s brother murdered, but the law student refuses. Full of practical experience and honorable to his own peculiar code, Vautrin comments on the criminal law.

Noting inexplicable disparities in punishment for the rich and poor—disparities still with us—he exclaims: “Those are your laws. Not a single provision but lands you in some absurdity.”³¹⁹ Arrested, the escaped convict challenges his law-abiding fellow boarders: “Are you better than we are? The brand upon our shoulders is less shameful than the brand set in your hearts, you flabby members of a society rotten to the core.”³²⁰ Vautrin “lifts up his voice against the colossal fraud of the Social Contract.”³²¹

Disguised as a Spanish priest in *Lost Illusions*, Vautrin espouses the same sentiment. He points out again how rich men’s crimes—fraud and such like, what we today would call white-collar crimes—are primarily crimes of conscience that are sentenced lightly by courts. But poor men’s crimes, in contrast, bring down heavy sentences. “By sentencing the burglar the judges are upholding the barriers between rich and poor,” Vau-

317. *Id.* at 312.

318. See BALZAC, *OLD GORIOT*, *supra* note 77, at 34 *passim*.

319. *Id.*

320. *Id.* at 221.

321. *Id.* at 223.

trin complains. "If these were overthrown, social order would come to an end."³²²

Vautrin, the articulate, philosophical criminal appears as a well-known policeman in *Cousin Bette*, a book full of crimes and the occasion for some philosophizing about crime by Balzac. "Ignorance," Balzac writes in *Cousin Bette*, "is the mother of all sorts of crime."³²³ Immediately after that comment, he makes a one-sentence statement that reveals something deep about criminal law. "A crime," announces Balzac, "is, in the first instance, a defect of the reasoning powers."³²⁴ Using slightly different phrasing, Balzac tells us at one point that only Cousin Bette's "knowledge of the laws and the world . . . enabled her to control the swift instinct with which country folks, like wild men, reduce impulse to action. In this alone, perhaps, lies the difference between natural and civilized man."³²⁵ This may be Balzac's most compact comment on law's civilizing function.

Balzac even gives us a glimpse of the criminal mind. "Genius," he says in *Lost Illusions*, "was accountable only to itself . . . [and is] above the law which was its mission to reshape."³²⁶ This sentence has a familiar ring to it. It reminds us of Roskolnikov's theory, in Dostoevsky's *Crime and Punishment*, that extraordinary men are above the law.³²⁷ In some ways Roskolnikov, the young law student, resembles another of Balzac's characters: Rastignac.³²⁸

The Wild Ass's Skin features a number of comments about crime. More than once, Balzac speaks of meditations by criminals on their way to the guillotine. Smarting from the difference between poverty and wealth, Balzac says: "Contrast was an evil counselor — it is thus that crime is born."³²⁹ At another point, a character wistfully laments: "Ah, there are times when a crime would be the execution of poetic justice!"³³⁰ Then Balzac

322. BALZAC, *LOST ILLUSIONS*, *supra* note 48, at 647.

323. BALZAC, *COUSIN BETTE*, *supra* note 68, at 422.

324. *Id.*

325. *Id.* at 38-39.

326. BALZAC, *LOST ILLUSIONS*, *supra* note 48, at 59-60.

327. See FYODOR DOSTOYEVSKY, *CRIME AND PUNISHMENT* 275-78 (Penguin Classics 1983) (1856-66).

328. See ROBB, *supra* note 11, at 123.

329. BALZAC, *WILD ASS'S SKIN*, *supra* note 64, at 127.

330. *Id.* at 169-70.

makes the crucial and mature distinction between thought and deed: "But though I occasionally feel some relief at the idea of a crime . . . I find myself incapable of committing it in reality."³³¹ It is one thing to feel like killing someone, it is quite another to do it.

D. *Imprisonment for Debt*

In Balzac, as in Dickens, imprisonment for debt—a punishment abandoned long ago—hangs as a serious threat over those who owe money. Dickens's description in *David Copperfield* of Mr. Micawber in debtor's prison is classic and haunting.³³² No less so is the same specter in Balzac, which he employs often. One reason for Balzac's frequent focus on imprisonment for debt is his own personal experience.

Balzac was a spendthrift and was often dogged by creditors. "Balzac was the exact opposite of Midas," writes biographer Stefan Zweig. "Everything he touched turned not to gold, but to debts."³³³ Creditors frequently sued him. On at least one occasion Balzac himself was served with a writ arresting him for debt.³³⁴ Balzac avoided jail only because his mistress of the moment paid his debt. But that kind of searing experience stays in the mind and was refracted in his literary work.³³⁵

Lost Illusions has a whole chapter entitled "Imprisonment for debt in the provinces."³³⁶ There Balzac explains how unusual that remedy is outside of Paris. He also describes some of the procedural difficulties, such as prohibiting arrest for debt while the debtor is actually inside his own home. A debtor is "tracked down like a hare."³³⁷ The author, drawing on his own experience, describes how a debtor must hide to avoid process servers and their arrest warrants.

Caught at last, the debtor is put into jail. Balzac shows the impact of prison in such circumstances. He demonstrates the

331. *Id.* at 171-72.

332. See CHARLES DICKENS, *DAVID COPPERFIELD* chs. XI-XII (1835).

333. ZWEIG, *supra* note 11, at 159.

334. See PRITCHETT, *supra* note 11, at 197.

335. See generally ROBB, *supra* note 11, chapter 6; ZWEIG, *supra* note 11, at 265-67.

336. See generally BALZAC, *LOST ILLUSIONS*, *supra* note 48, at pt. III, chapter XVI.

337. *Id.* at 467.

“prodigious cumulative effect,” the “horrors” and “brutality” of prison on the “morale of honest people.” “Incarcerated people,” writes Balzac, “feel so violently upset during their first night.”³³⁸

Lost Illusions also gives us a look at remedies slightly less drastic than imprisonment for debt. One such remedy is “distrainment” of the debtor’s property, analogous to what we now call the provisional remedy of attachment. It was a remedy that Balzac was, unfortunately and painfully for him, personally familiar with. Creditors occasionally seized his furniture and other possessions. In *Lost Illusions*, the personal property of debtors Lucien Chardin and David Séchard is put under distraint.³³⁹ They cannot freely transfer such distrained property without the proceeds going to the creditors who had taken legal action. The debtor’s effort to transfer property to his wife raises an issue of whether such a transfer was a fraud on creditors.

In *Cousin Bette*, Bette obtains a promissory note from her young Polish friend only to have a legal hold on him. She is advised that foreigners, unlike Frenchmen, are never released from prison in such circumstances. According to a judge at the Chamber of Commerce, the Pole would be “entangled in the toils of commercial procedure.”³⁴⁰ But when Bette learns that one cannot be imprisoned for debt without notice and a chance to pay, she reacts like Madame Cibot and Mr. Bumble and bursts out: “What an idiotic law!” She adds angrily: “Of course the debtor escapes.”³⁴¹

Nor is this all. In *Cousin Pons*, people who fail to pay their debts are threatened with jail at Clichy, the debtors’ prison. Two debtors’ prisons are mentioned in *The Wild Ass’s Skin*. The protagonist’s love interest in *Ursule Mirouët* is imprisoned for debt. And so on.

E. Bankruptcy Law

Balzac’s chronic indebtedness—“that dusky, vaguely outlined, insatiable maw”³⁴²—also made him personally familiar

338. *Id.* at 662.

339. See BALZAC, *LOST ILLUSIONS*, *supra* note 48, at pt. III, ch. XXI.

340. BALZAC, *COUSIN BETTE*, *supra* note 68, at 70.

341. *Id.* at 112.

342. James, *Balzac’s Letters*, *supra* note 34, at 69.

with bankruptcy law. He himself flirted with bankruptcy. He was always on the edge of insolvency.³⁴³ So perhaps it is not surprising that bankruptcy law is a theme in several of Balzac's books. He followed the adage, still current today, to write about what he knew.

Most notably, bankruptcy is at the heart of *César Birotteau*, a novel about the rise and fall of an honest, hard-working, law-abiding merchant. The merchant's bankruptcy is caused by a disgruntled former employee's manipulation of legal technicalities. In the book, Balzac describes in detail the phases of bankruptcy procedure and technical legal rules so easily put to corrupt use by the former employee. In some ways, the novel critiques bankruptcy law, its susceptibility to fraud, and the contradictions and injustices in legislative efforts to reform commercial practices. At one point, Balzac even goes so far as to say that French bankruptcy law "ought to be revised throughout."³⁴⁴ But, more broadly and more positively, Balzac perhaps uses Birotteau, who obeys the letter of the law at the price of his life, to show deference and respect for law.

Eugénie Grandet also gives us a hefty slice of bankruptcy law. Because Grandet's brother's estate is in bankruptcy, Grandet and Judge Cruchot try to stop the proceedings, which play an important part in the story. Balzac describes the whole bankruptcy process, whether voluntary or involuntary, how the Tribunal of Commerce appoints liquidators, how bankruptcy proceedings go on forever and that time can make creditors willing to take less, and simultaneously be held off by suggestions that claims would be paid in full.

F. *Contract law*

As one would expect, Balzac's huge body of work describes many kinds of contracts. After all, a nineteenth-century society and economy depends, as does ours, on legal agreements to function. So we often see in Balzac promissory notes and bills of exchange. But the strangest contract in all of Balzac is the one in *The Wild Ass's Skin*.

343. See Robb, *supra* note 11, at xi, 117, 127, 138.

344. BALZAC, CÉSAR BIROTHEAU, *supra* note 65, at 189.

Raphael de Valentin, the protagonist of *The Wild Ass's Skin*, is a 21-year-old Parisian whom disappointment in love has made suicidal. Before he throws himself into the Seine, he whiles away some time in a curio shop where he finds an interesting animal skin. Surprising the shop dealer, Raphael reads the Sanskrit writing on the skin:

POSSESS ME AND THOU SHALT POSSESS ALL THINGS, BUT THY LIFE IS FORFEIT TO ME. SO HATH GOD WILLED IT. EXPRESS A DESIRE AND THY DESIRE SHALL BE FULFILLED. BUT LET THY WISHES BE MEASURED AGAINST THY LIFE. HERE IT LIES. EVERY WISH WILL DIMINISH ME AND DIMINISH THY DAYS. DOST THOU DESIRE ME? TAKE AND GOD WILL GRANT THY WISH. AMEN.³⁴⁵

This is the bizarre contract involved.

The magic pelt reminds one of something out of *The Arabian Nights*, an Aladdin's lamp with a life-shortening twist. But more than anything else, it is a Faustian bargain. To be sure, Raphael's soul is not the consideration; his life is. Raphael will have his wishes satisfied, but each satisfied wish will bring him closer to death.

What a hypothetical for a course in contracts! Questions abound. Is the contract legally enforceable or is it void as against public policy? Was consideration adequate? Was Raphael, due to his suicidal state of mind, incompetent to make such a contract? Could a French Daniel Webster do for Raphael what a fictional Daniel Webster did for Jabez Stone in a similar case?³⁴⁶ This is the stuff of which seminars are made!³⁴⁷

V. WRITING STYLE

Balzac's substantive comments about law are not the only way in which law invades Balzac's writings. In addition, his writing style had a pronounced legal component. Recall the famous letter to Balzac from Stendhal about the salutary effect of the Civil Code on literary style. In that letter, written in 1840, Stendhal confessed that he read at least three pages of the *Code Napoléon* each evening to put him in the best stylistic frame of

345. BALZAC, WILD ASS'S SKIN, *supra* note 64, at 51.

346. See Stephen Vincent Benét, *The Devil and Daniel Webster*, reprinted in THE BEST SHORT STORIES OF THE MODERN AGE 202 (Douglas Angus ed., 1962).

347. Cf. THEODORE ZIOLKOWSKI, GERMAN ROMANTICISM AND ITS INSTITUTIONS 64 (1990) (referring to Goethe's *Faust*).

mind for writing *The Charterhouse of Parma*.³⁴⁸ Balzac did more.

Again and again, Balzac spices up his writing with legal similes and metaphors. "An oath may be taken by a look and a nod," wrote Balzac in *Cousin Bette*, "more solemnly than in a court of justice."³⁴⁹ Elsewhere in the same book, someone was "gazing at her as an examining judge gazes at the accused."³⁵⁰ A few questions become "this lawyer-like examination."³⁵¹ In *Cousin Pons*, something will occur "eight days from this instant, as the lawyers say!"³⁵² A character had "so many invitations that he was obliged, like a barrister, to keep an engagement-book."³⁵³

The Wild Ass's Skin is no different. There he refers to "virtue . . . the basis of all courts of law."³⁵⁴ A woman "expressed herself with the calm of a solicitor or a notary explaining to clients the procedure in a law-suit or the terms of a contract."³⁵⁵ A particular feeling was like "summoning the whole universe to the bar of one's mind."³⁵⁶ People have a "daze" similar to that of condemned criminals,³⁵⁷ or were "like criminals afraid of breaking down."³⁵⁸

So too in *Eugénie Grandet*. When young Cruchot is not referred to by a whole name, "his face fell; he looked like a judge who is bored by the cause before him."³⁵⁹ Likewise, in *Lost Illusions*, Balzac wrote about a woman's rejecting a man's love as her "not pronouncing a verdict but simply refusing him trial."³⁶⁰ Other people in the same book were as "gloomy as condemned

348. See RICHARD WEISBERG, *WHEN LAWYERS WRITE* 4 (1987).

349. BALZAC, *COUSIN BETTE*, *supra* note 68, at 107.

350. *Id.* at 181.

351. *Id.* at 233.

352. BALZAC, *COUSIN PONS*, *supra* note 43, at 85.

353. *Id.* at 28.

354. BALZAC, *WILD ASS'S SKIN*, *supra* note 64, at 73.

355. *Id.* at 132.

356. *Id.* at 53.

357. *Id.* at 28, 33. See also *id.* at 253 ("He guessed what secret, unforgivable crime he was guilty of in their eyes: that of rising above the jurisdiction of their mediocrity.").

358. *Id.* at 33. See also *id.* at 253 (characters were like "criminals guilty . . . in their eyes," "jurisdiction of their mediocrity," and "assumption of sovereignty").

359. BALZAC, *EUGÉNIE GRANDET*, *supra* note 94, at 127.

360. BALZAC, *LOST ILLUSIONS*, *supra* note 48, at 185.

criminals.”³⁶¹ A character “scrutinized every face as a man in the dock gazes at the faces of the jurymen and magistrates.”³⁶²

More important than figures of speech is something less obvious but no less an integral part of Balzac’s writing. Balzac often uses irony and highlights the complexities of human nature by braiding the good with the bad, the light and the dark strains, in each personality, in each situation. He sees everything from two points of view. As previewed earlier, Balzac subtly weaves the adversary process into literature; he seems to have made his writing style incorporate the adversary process.³⁶³ Balzac’s two-sided, lawyer-like writing style explains a lot about Balzac’s approach.

These Balzacian studies of human nature bespeak a lawyer’s training. His skepticism and distrust of human motives come straight from his legal background. As he points out more than once, lawyers become more familiar than others with the dark and secretive aspects of human nature.³⁶⁴ Lawyer that he was trained to be, Balzac treats his characters as if they were clients, with full knowledge of their weaknesses and self-interest. He takes them as they are, which hardly ever is all good or all bad. They are human beings with foibles large and small.

VI. LEGAL PHILOSOPHY

It is fair to ask if all of Balzac’s many comments on law yield a legal philosophy. In other words, can we deduce from his fiction a Balzacian jurisprudence? Henry James thought that Balzac was aware that he generally “needed a philosophy—a system of ideas.”³⁶⁵ Of course, we always have to keep in mind Balzac’s own warning that Balzac’s fictional characters may not reflect Balzac’s own views and that literature often demands

361. *Id.* at 396.

362. *Id.* at 454. See also BALZAC, *THE BLACK SHEEP*, *supra* note 84, at 63 (“he never did anything without first considering what he ought to as carefully as a wily lawyer thinks up some scoundrelly trick”).

363. See *supra* at 319-20.

364. See, e.g., BALZAC, *COUSIN PONS*, *supra* note 43, at 176; BALZAC, *COLONEL CHABERT*, *supra* note 50, at 45, 66, 100.

365. James, *Honoré de Balzac*, reprinted in JAMES, *LITERARY CRITICISM*, *supra* note 5, at 42. In *The Wild Ass’s Skin*, Balzac-Raphael “believed that there was in me . . . a philosophical system to establish.” BALZAC, *WILD ASS’S SKIN*, *supra* note 64, at 103.

that an author give several views of an issue, particularly an author filled with as many contradictions as Balzac is. Even so, we can perceive the outlines of a philosophy of law in Balzac's writings, whether or not it is truly Balzac's own philosophy.

Balzac many times seems to take an adversarial stance toward law, as if he were sponsoring an anti-jurisprudence.³⁶⁶ His books frequently reveal a disrespect for law and legal processes, a scaling down of law's pretensions. Balzac's work is often subversive, critical of law and scornful of law's language, practices and professional ethic. In many ways, it is a rebuke to law.

That rebuke becomes personified in Balzac's evil lawyers, who epitomize a distinct legal philosophy. The basic element of that legal philosophy is pragmatism. Balzac's evil lawyers, those lawyer-pirates, understand the law from a purely pragmatic perspective. They are not interested in theory, they are interested in practical results. They are not concerned with morals or ethics, they are concerned with the likelihood of getting caught and the severity of punishment.

But even their pragmatic legal philosophy has a place in jurisprudence. It sails not under the Jolly Roger, as we might expect of legal pirates, but, rather, under the more respectable flag of Oliver Wendell Holmes's most famous legal theory. In *The Path of the Law*, his most systematic approach to jurisprudence, Holmes announced his "bad man" theory of the law. Like Holmes's "bad man," Balzac's evil lawyers are concerned only with "what the courts will do in fact," with what "disagreeable consequences by way of imprisonment or compulsory payment of money" will ensue.³⁶⁷

Above all, they ask what they can do without the law stopping them. Then they know what they or their clients can get away with under the law, and that is enough for them. Fraasier, for example, "felt capable of committing any crime to achieve his ends – so long as nothing could be proved against him."³⁶⁸ But it would be too pat to stop there. As elsewhere, Balzac's

366. Cf. Julius, *supra* note 55, at xii (Shakespeare's plays showed an "anti-jurisprudence").

367. Oliver Wendell Holmes, *The Path of the Law*, 10 HARV. L. REV. 457 (1897), reprinted in COLLECTED LEGAL PAPERS 167, 170-73 (1920).

368. BALZAC, COUSIN PONS, *supra* note 43, at 224.

internalized adversary process of weighing both sides also affects his legal philosophy.

Along with his criticisms of law, Balzac has an underlying admiration and abiding respect, perhaps even love, as well. César Birotteau, Balzac's ideal law-abiding character, a stickler for the law, was "always so much impressed by the circumstances of justice."³⁶⁹ As Balzac writes in the same book, "There is something indescribably solemm and imposing in the ceremony of justice for those who take society seriously. An institution is to men as they consider it, and is invested with dignity and grandeur by their thoughts."³⁷⁰ Balzac is not being ironic here. He also refers to the majesty of the courthouse and the effect it has on people. Birotteau saw "Justice as Justice ought to be regarded among men, as the expression of society itself; beneath the forms he saw the sovereign will, the laws by which men have agreed to live."³⁷¹ One cannot ignore this sincere component of Balzac's jurisprudence.

Custom is a key part of Balzac's jurisprudence. Again and again, Balzac expressly refers to the "laws of society" as if they were—for him they are—a rigid set of rules that can be ignored or violated only at one's peril. In novel after novel, Balzac describes the harmful consequences of violating custom, for instance, the "crime of consorting with those beneath" one.³⁷² Society, in Balzac's world, enforces its unwritten customary laws with as much power as the courts.

In giving custom such a large part in determining how people behave, Balzac is not alone jurisprudentially. Certain legal philosophies have long regarded custom as a source of law.³⁷³

369. BALZAC, CÉSAR BIROTTEAU, *supra* note 65, at 316.

370. *Id.* at 315. *Cf.* West Virginia State Board of Education v. Barnette, 319 U.S. 624, 632-33 (1943) ("Symbolism is a primitive but effective way of communicating ideas. . . . A person gets from a symbol the meaning he puts into it."); Oliver Wendell Holmes, Jr., *John Marshall*, in THE MIND AND FAITH OF JUSTICE HOLMES, *supra* note 81, at 385 ("We live by symbols, and what shall be symbolized by any image of the sight depends upon the mind of him who sees it.")

371. BALZAC, CÉSAR BIROTTEAU, *supra* note 65, at 315-16.

372. BALZAC, LOST ILLUSIONS, *supra* note 48, at 62.

373. *See, e.g.*, THEODORE F.T. PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW 307 (5th ed. 1956) (Before legislation, "the principal element in most legal systems was custom."). *See also* Wigglesworth v. Dallesion, 1 Dong. 201, 99 Eng. Rep. 152 (K.B. 1779) (custom is law); W. Jethro Brown, *Customary Law in Modern England*, 5 COLUM. L. REV. 561 (1905) ("custom is unwritten law"); JAMES

Custom might compete with the positive commands of the sovereign, natural law and God's commands, but it was considered a living element of law. For a time in the nineteenth and early twentieth centuries, legal philosophers debated whether custom is or is not law until pronounced by courts or codified by the legislature.³⁷⁴ Law, in Balzac's work, is therefore a social institution entitled to deference.

But such deference is only due when the law acts ethically. Ethics "begin with law," Vautrin tells Lucien in *Lost Illusions*.³⁷⁵ Again and again Balzac strips the law bare and reveals its ethical vanities and emptiness. He demonstrates the law's contradictions, injustices and potential for immorality. In Balzac, justice rarely triumphs. But even Balzac urges: "Let us do justice to the law."³⁷⁶ By that he apparently means that without morality, law on the books and law in action are not really law at all, but only technical rules and traps for the unwary, subject to abuse and manipulation by the rich, the powerful and the technically proficient.³⁷⁷ "Laws," Balzac once wrote, "are like spiders' webs; the big flies get through, while the little ones are caught."³⁷⁸

Balzac's jurisprudence thus contains a strong touch of Legal Realism, that philosophy of law, most popular in America in the 1920s and '30s, stressing the role of economic and political forces in the legal process.³⁷⁹ But what else would we expect

C. CARTER, LAW: ITS ORIGIN, GROWTH AND FUNCTION 120 (1907); READINGS IN JURISPRUDENCE 875-948 (Jerome Hall ed., 1938).

374. Compare JOHN AUSTIN, THE PROVINCE OF LAW DETERMINED (1832) (custom is not law until court or legislature says so) with CARLTON KEMP ALLEN, LAW IN THE MAKING 151 (7th ed. 1964) ("Existing custom is therefore law"), and Amy Vandenbosch, *Customary Law in the Dutch East Indies*, 14 COMPAR. LEG. INT'L L. 30 (1932) (law based on custom is living law).

375. BALZAC, LOST ILLUSIONS, *supra* note 48, at 645.

376. BALZAC, CÉSAR BIROTTEAU, *supra* note 65, at 280.

377. See Carbonneau, *supra* note 15, at 722.

378. Gest, *supra* note 15, at 130. See also BALZAC, LOST ILLUSIONS, *supra* note 48, at 647 (Vautrin says that "by sentencing a burglar the judges are upholding the barriers between rich and poor. If these were overthrown social order would come to an end.").

379. On Legal Realism, see generally NEIL DUXBURY, PATTERNS OF AMERICAN JURISPRUDENCE (1995); AMERICAN LEGAL REALISM (William W. Fisher III et al. eds., 1993); N.E.H. HULL, ROSCOE POUND & KARL LLEWELLYN: SEARCHING FOR AN AMERICAN JURISPRUDENCE (1997); WILLIAM TWINING, KARL LLEWELLYN AND THE REALIST MOVEMENT (1973).

from a trail-blazing Literary Realist? Balzac's realism spills over. He tries to be realistic in his descriptions of law as well as life. After all, law is part of life. Just as he tried to face life squarely in his writing, so too with his descriptions of law. Balzac never shrank from reality in either field.

A fair reading of Balzac leads one to believe that the law-trained novelist conceived of an ideal form of justice as a cornerstone of any system of jurisprudence. That ideal was attainable as when, in *Cesar Birotteau*, "impassive Themis [Divine Justice] had a heart."³⁸⁰ But, unfortunately, the law in practice often falls far short of the ideal. When law does not conform to the ideal standard, it loses some of its legitimacy. Perhaps that is the core of Balzac's legal philosophy.³⁸¹

VII. LEGAL REALITY

Philosophy is one thing, reality another. The abstractness of ideas frequently clashes with the concreteness of life. Up to now, the argument made here has been limited to demonstrating how legal training and experience affected Balzac's writing. We have laid out some of the evidence. The law, however, influenced Balzac in more than one way. It deeply and pervasively colored his literary work, to be sure, and that is this essay's thesis. But that is not the end of analysis.

Quite apart from the direct and indirect impact of law on Balzac's writing, law also played a significant role in the reality of Balzac's life and attitudes. In his life, Balzac had considerable first-hand contact with the law, much of it unpleasant. He personally dealt with the law so much that one could say he never really left the profession. Although Balzac was a writer, his many real-life legal exploits almost rise to the level of an avocation, perhaps a second, occasional career. His legal training gave Balzac the wherewithal to carry on, in effect, a sporadic legal career, often on his own behalf.

A. Creditor vs. Debtor

Frequent lawsuits against Balzac by creditors, annoying and distracting as those were, only begin to tell the story. They

380. BALZAC, *CÉSAR BIROTTEAU*, *supra* note 65, at 320.

381. *See* Carbonneau, *supra* note 15, at 725-26.

taught him what his youthful training in legal theory did not. They gave him practical lessons in how to put off creditors, how to avoid process servers, how to hide his assets beyond the reach of the courts, how to seek bankruptcy protection—in short, how to see the world from a legally pragmatic point of view, that of a debtor. Yet Balzac had several other personal brushes with the law, each of which was important and must have contributed significantly to his outlook.

B. Author vs. Publisher

A number of episodes in Balzac's life involve protecting rights of authors. Balzac, as has been known to happen with writers, was often at odds with his publishers. This frequently occurred because he insisted on being paid in advance and then failed to turn in his manuscripts on time. Usually, these tensions and disagreements led to nothing more than arguments and angry or threatening letters. Sometimes, however, Balzac or his publisher raised the ante by invoking the law.

In 1832, for instance, he fell behind in the writing of *The Country Doctor*. When, his contract unfulfilled, Balzac wrote articles for other journals, the would-be publisher of *The Country Doctor* hailed Balzac before the Tribunal of Commerce. Balzac lost, and was ordered to deliver the manuscript. He appealed and, in a fit of anger, went to the printer and did what many losing litigants would only dream of doing in such circumstances: he destroyed the typesetting of the manuscript.³⁸² For Balzac it was not a happy legal experience.

Four years later, Balzac had another, similar run-in with a publisher. In 1836, Madame Béchet, who had paid advances on books that had not yet been delivered, obtained an injunction requiring Balzac to deliver two books within 20 days or else pay a penalty of 50 francs for each day's delay. Faced with disaster, Balzac triumphed. Incredibly, Balzac wrote at white heat and finished Part I of *Lost Illusions* by the deadline, and it satisfied the publisher because it filled two volumes. Even more amaz-

382. See MAUROIS, *supra* note 11, at 225-26; see also Robb, *supra* note 11, at 239.

ing, the 20-day wonder of a book was one of the best ever written by Balzac.³⁸³

Also in 1836, Balzac became enmeshed in his most controversial litigation. An angry Balzac sued François Buloz, one of the most powerful publishers in France, for selling, without Balzac's knowledge or consent, the uncorrected first proofs of one of his books — *Lily of the Valley* — to a St. Petersburg magazine. More than recovering any lost money, Balzac sought to vindicate his artistic integrity. For Balzac always revised heavily and many times on galley proofs, viewing them as mere first drafts. When he received a copy of the Russian magazine with the rough draft of the early chapters of his new book, Balzac — his artistic conscience violated — boiled over with rage.

Balzac's case against the rich and influential Buloz quickly became a highly publicized literary-legal controversy. Buloz, who ran the two most important literary journals in France, counterclaimed for breach of contract, alleging that Balzac had not met agreed-upon deadlines. Given who and what was involved, the legal controversy found its way into the press. Buloz used his power, influence and publications to attack Balzac viciously. Alexandre Dumas and other writers — fearful of the publisher's power — lined up with Buloz, Victor Hugo and George Sand with Balzac. For his part, Balzac published a bitter account of the trial in a Paris journal, which he republished as a long preface to the novel. (Balzac may have started a trend for books involved in legal controversy. We are reminded of the Random House paperback version of James Joyce's *Ulysses* that printed as a preface the 1933 court opinion finding it not obscene.)

In the end, the court ruled for Balzac. The court, in a decision pleasing to every author, held that Buloz had violated Balzac's rights in using proofs of his book without his permission. On the counterclaim, the court ruled an author could not be compelled to indemnify a publisher or editor if he was unable to deliver a promised book because he lacked either the inclination or the capacity to complete it. Balzac was ordered merely to

383. See MAUROIS, *supra* note 11, at 286. *Lost Illusions* is also one of my own personal favorites.

repay the advances he had received from Buloz. It was a legal, moral and artistic victory.³⁸⁴

C. *Copyright Law*

Even without litigation, Balzac could strike powerful legal blows for authors in the realm of copyright law. During the 1830s, French authors were being unfairly deprived of money due them. Belgian publishers were pirating their works and dumping them cheaply throughout Europe without paying royalties to the authors. Nor did authors receive compensation when their books were converted into theatrical productions. To redress this nasty situation, Balzac put his eloquent pen to work.

In 1834, Balzac published a famous "Letter to the French Writers of the Nineteenth Century," in which he forcefully made the case for the moral right of authors to their own works. He declared: "The Law safeguards the land; it safeguards the house of the proletarian who sweated for it; it confiscates the work of the poet, who thinks"³⁸⁵ Balzac argued that a writer's work should constitute property like any other (at the time literary copyright lasted for 10 years after the author's death). He demanded that literary property should be protected against theft abroad and that the author should retain control over his work so that it could not be adopted or in any way altered without his consent.

Today Balzac's proposals seem fair and reasonable enough, but they were not the law in France in 1834. Balzac tried to organize his fellow writers for joint action. In 1838, he joined, invigorated and inspired a newly formed Society of Men of Letters comparable to our Authors Guild or PEN, to stand up for authors' rights. He drafted *A Literary Code* for the Society, of which he was elected chairman. These efforts by Balzac, although unsuccessful in the short run, were of immense long term importance and formed the basis of future copyright law.

384. The story of this case is told in ZWEIG, *supra* note 11, at 233-35; MAUROIS, *supra* note 11, at 291, 297, 298; ROBB, *supra* note 11, at 273.

385. MAUROIS, *supra* note 11, at 396. For the facts of Balzac's efforts on behalf of French authors, see generally *id.* at 396-97; ROBB, *supra* note 11, at 238-39; ZWEIG, *supra* note 11, at 295-96.

(It was the grateful Society that, years later, commissioned Rodin to do a statue of Balzac.)

D. *The Peytel Case*

Trying to influence the law another way, Balzac once attempted to file what we today would think of as an unauthorized amicus brief in a controversial murder case. It was, according to one biographer, the “culmination” of Balzac’s “sporadic legal career” and he “rose to the occasion.”³⁸⁶ Balzac vigorously championed someone he perceived to be an innocent victim of the criminal law in a case that may have reminded Balzac of his uncle’s murder trial when Balzac was studying law. He raised haunting questions about the quality of French justice.

In 1838, a lawyer named Sébastien Peytel, whom Balzac had known in Paris years before, was accused of murdering his wealthy wife in their provincial village.³⁸⁷ Protesting his innocence unconvincingly, Peytel claimed his wife was shot by his servant, whom Peytel conveniently killed on the spot with a miner’s pick. Peytel failed to disclose that his wife was having an affair with the servant, which would have made the double murder a crime of passion and thereby reduced the punishment. In the event, Peytel was tried, convicted and sentenced to death.

At this point, when the case was on appeal, Balzac got interested. He interviewed Peytel and became persuaded that Peytel acted in self-defense, shooting his wife by accident in the darkness. Even though he was not officially a practicing lawyer, much less Peytel’s lawyer, Balzac wrote a legal memorandum for the appellate court, in the form of a public letter, arguing for reversal of Peytel’s conviction. Balzac published this famous *Letter on the Peytel Case* in three national newspapers.

This unusual, unofficial amicus brief submitted by Balzac, which Zweig calls a “masterpiece of judicial acumen and forensic logic,” contains several resourceful arguments.³⁸⁸ Balzac

386. ROBB, *supra* note 11, at 324.

387. The *Peytel* case and Balzac’s involvement with it are described in *id.* at 322-26; MAUROIS, *supra* note 11, at 371-73; ZWEIG, *supra* note 11, at 296-97.

388. ZWEIG, *supra* note 11, at 297.

sketches Peytel's character, concluding that, with all his flaws, he is "essentially good."³⁸⁹ He argues that the trial judge was biased, admitting only evidence harmful to Peytel and making unsupportable inferences in favor of the prosecution. Balzac discusses his own visit to the crime scene and contends that no murderer would have chosen it. Then Balzac, expanding on views expressed in his novels, portrays provincial prejudice against Peytel, the lawyer from Paris. Behind these focused points were more general policy themes: the individual against the State, fair trial versus free press, irrelevance of past misconduct, quality of forensic examination, destruction of evidence, and the threat to justice by habitual thinking.³⁹⁰

Cunning, comprehensive and eloquent as it was, Balzac's argument to the appeal court fell short. The appellate court, not surprisingly, refused to consider Balzac's memorandum because it was so irregular. Balzac was, after all, not Peytel's lawyer, let alone a practicing lawyer. Instead, it considered and rejected the arguments made by Peytel's regular defense counsel, and Peytel was executed.

In taking on Peytel's case, Balzac became part of a noble French literary tradition: the French writer as the champion of the rights of the citizen, the defender of the innocently accused. Voltaire had established the tradition. And Émile Zola would later continue that tradition with his famous efforts on behalf of Dreyfus.³⁹¹ Although Balzac obviously could not have known about Zola's efforts 60 years ahead of time, he would definitely have been aware of Voltaire's defense work. He could well have wanted to have the public compare himself to Voltaire and otherwise cover himself with glory.

E. *A Week in Jail*

Balzac even learned from personal experience what the inside of a jail was like—sort of. In 1836, when in his mid-30s, he spent eight days in the equivalent of a jail for the equivalent of

389. ROBB, *supra* note 11, 324.

390. *Id.* at 324-25.

391. See JEAN-DENIS BREDIN, *THE AFFAIR: THE CASE OF ALFRED DREYFUS* 245-57 (Jeffrey Mehlman trans., 1986); Susan Rubin Suleiman, *The Literary Significance of the Dreyfus Affair*, in *THE DREYFUS AFFAIR: ART, TRUTH, AND JUSTICE* 117-39 (Norman L. Kleeblatt ed. 1987).

draft-dodging. He had spurned his duty to report for service in the National Guard. Greatly annoyed at the interference with his writing projects, Balzac was unceremoniously taken to a makeshift house of detention in Paris.³⁹² But after a few days, he began to put into practice the poetic lines about stone walls not making a prison. He corrected proofs, ate pleasant meals sent by restaurants, entertained visitors, and received flowers from female admirers. Even if his so-called confinement was limited in duration and less than harsh, Balzac still had had his liberty involuntarily taken away, an irritation to anyone but especially to a sensitive writer.

These various personal experiences with the law are highly significant in our analyses of Balzac. He had a close relationship with his own lawyer, Gavault, who was, à la Derville, a model lawyer, devoted and "like a mother" to him.³⁹³ Law was a large part of Balzac's life. His legal training must have helped him in each of these legal encounters.³⁹⁴ With his legal education, he could better cope with the harassment by his creditors and publishers, he could knowingly assert his rights and he could employ litigation or legislation to further his ends.

Thus, Balzac, professionally trained and temperamentally suited, could and did use the law. He had a somewhat litigious nature, made only more so by his financial problems. In his fiction, he could accurately and memorably describe from his own knowledge what it was like to deal with adversaries, lawyers and courts. Balzac's writing incorporates his legal reality. In the contest between life and literature, it has been said that "life wins every time."³⁹⁵ Balzac is one instance where they fought to a draw.

CONCLUSION: AN IDEAL INTERSECTION

This brief look of Balzac's work, while by no means exhaustive or comprehensive, starts to lift the robe of his reputation

392. Balzac's short tenure as a prisoner is recounted in MAUROIS, *supra* note 11, at 296-97; ROBB, *supra* note 11, at 273; ZWEIG, *supra* note 11, at 240-41.

393. ROBB, *supra* note 11, at 343.

394. He had others. In 1839, Balzac sued a Paris newspaper for printing an unflattering drawing of himself. *Id.* at 176.

395. ANATOLE BROYARD, *KAFKA WAS THE RAGE* 33 (Vintage Books 1997) (1993).

and see what has been hidden underneath.³⁹⁶ Taking a page from Balzac the novelist, we have tried to scrape away the facade of our subject—Balzac himself—in order to get to his essence. The secret below the surface of his reputation is the law. The law is an important key to understanding Balzac and his work. Even our less than complete study reveals the tremendous impact of law on Balzac's life and writing.

This revelation puts Balzac in good company. Balzac should be grouped together with Shakespeare and Dickens in a small, unique, exclusive class of the world's greatest writers of imaginative fiction whose prolific creative works display not only the largest number of memorable characters in Western literature,³⁹⁷ but also a startling profusion of law and legal references. Shakespeare, Dickens and Balzac each created vast literary universes in which law and lawyers are important factors. It is simply impossible to read these Big Three without noticing their frequent and prominent legal references. Like the best literary works, including those of Shakespeare and Dickens, Balzac's go beyond their narrow subject to invite reflection on the deeper pattern of human behavior. In the case of Balzac—whose work rivals Shakespeare's and Dickens's in depth, power and complexity—the legal issues serve as a springboard to other, psychological issues.

Long before John Grisham, Scott Turow and their legions of wannabes, Balzac sensed the human drama buried among legal details and lawyers' maneuvering, courtroom disputes and lawyer-client relations. That human drama is, of course, what can make the practice of law endlessly fascinating. (It does for me.) Balzac's legal training provided an inexhaustible source of literary material. Case files suggested plots for his novels. In them he would tell some of the "ghastly untold tragedies"³⁹⁸ that occur in real-life legal battles. The law made him familiar with

396. Much can be said in favor of not being encyclopedic. "It is arguable that the desire to be exhaustive, comprehensive, and monumental has destroyed more virtue than it has brought to birth." Virginia Woolf, *Coleridge as Critic*, *TIMES LITERARY SUPPLEMENT*, Feb. 7, 1918, reprinted in 2 *THE ESSAYS OF VIRGINIA WOOLF 1912-1918* 223 (Andrew McNeillie ed., 1981).

397. See ROBB, *supra* note 11, at xii. According to Henry James, Dickens and Balzac "have much in common" and "they had no rivals but each other and Shakespeare." James, *Balzac's Letters*, *supra* note 34, at 88-89.

398. BALZAC, COLONEL CHABERT, *supra* note 50, at 45.

the “depths of the human heart”³⁹⁹ and the “basest schemes of self-interest,”⁴⁰⁰ which he described in his books. Like Derville, Balzac “learned so much” about human nature from working in the law.⁴⁰¹ When Balzac has Derville moan that “none of the horrors that novelists believe they’ve invented can compare to the truth,”⁴⁰² Balzac is paying tribute to the source of his material. The “truth” that Balzac wrote about had its origins in law offices in which he worked.

In addition to an inexhaustible source of material, legal training gave him technical expertise. His years of study and clerking made him knowledgeable of technical legal issues. He learned his law the way lawyers do: in law school and in law offices. Of course, it is theoretically possible that someone without such training could have made the precise legal references and created the legal themes in Balzac. But that is unlikely. It is hard to imagine a non-lawyer doing so.⁴⁰³ Without Balzac’s legal training, his novels would just not be the same.

Law frequently appears in Balzac’s books, but we have to be careful about saying Balzac is writing “about” the law. As Richard Posner wisely warns us, “law figures in literature more often as a metaphor than as an object of interest in itself.”⁴⁰⁴ Great writers aim to reveal something deep and timeless about human nature. Literature is primarily about character development, plot, conflict, and the human condition. Novelists tend to use law or legal themes not so much as ends in themselves but to help bring out their literary points.

As applied to Balzac, this admonition changes little we have said here. Even if it is true that law is not Balzac’s subject—and such a proposition is at times debatable—that does not reduce the number of his legal references or themes. Even if it is true that Balzac was no more than an aesthetic opportunist

399. *Id.* at 66.

400. BALZAC, *COUSIN PONS*, *supra* note 43, at 412. *See also* BALZAC, *URSULE MIROUET*, *supra* note 57, at 56.

401. BALZAC, *COLONEL CHABERT*, *supra* note 50, at 100

402. *Id.*

403. *Cf.* Mark Twain, *Is Shakespeare Dead?* in *THE COMPLETE ESSAYS OF MARK TWAIN* 407-54 (Charles Neider ed., 1963) (arguing that Shakespeare must have been a lawyer because the plays contain so many legal references, technicalities and expressions).

404. POSNER, *supra* note 12, at 71.

who used law as a mere framework for his development of character, that does not minimize the role of law in his work. Even if it is true that Balzac relied on legal disputes as only literary devices to highlight conflict and resolution, that does not lessen how much law meant to his writing. Even if we remember Balzac's books because of their plots and characters, that does not mean the law failed to dramatize those literary creations. Thus even if Balzac was not writing "about" law, law figured prominently in his writing.

That being said, however, it is also true that Balzac does use the law an extraordinary amount in his books. Inevitably, his descriptions of lawyers, judges, clients and the legal process become running commentaries on the law. Such commentaries take the form of compliments and criticisms and calls for reform. Even if Balzac's literary greatness does not inhere in his writing "about" the law, to separate his writing from its legal themes is like saying Alexandre Dumas *père* did not write about the times of Louis XIII and Louis XIV. In that sense, Balzac's legal training greatly affected his writing.

Balzac's writing bears the imprint of the law in other ways too. Legal references and legal metaphors mark his books. Below these superficial signs, his writing style itself is legal. It internalizes the adversary process so that personality and character in Balzac are complex and often inconsistent, as if Balzac is presenting the pro and con of each character and issue. He is skeptical and distrustful of people's motives, which is a lawyerly attitude. This two-sided, lawyerly approach characterizes much of Balzac's writing.

With his legal background, Balzac vividly illustrates an important characteristic of French writers. The French novel, according to the late English writer V.S. Pritchett, is dominated "by a sense of law."⁴⁰⁵ Pritchett goes on: "The French novelists are the lawyers of the passions"⁴⁰⁶ As a biographer of Balzac, Pritchett was well aware of Balzac's training in the law, but it is unclear if Pritchett is referring to Balzac's legal experience when he says, with a noteworthy choice of words, that French novelists are "[s]ubtle and litigious in tactic, they conclude that

405. V.S. Pritchett, *Poor Relations*, in COMPLETE COLLECTED ESSAYS 294, 299 (1991).

406. *Id.*

human experience, however bizarre, however affecting, can never escape the deep inscription of the category or evade the ordinance of some general idea."⁴⁰⁷

Beyond these palpable effects may lie something less apparent but ultimately more important, more intriguing and more far-reaching. Balzac is only one of many law-trained creative artists. Several other great writers,⁴⁰⁸ poets,⁴⁰⁹ composers⁴¹⁰ and painters⁴¹¹ studied to become lawyers. Is there a pattern here, and if so how do we explain it? Is there a link between legal thinking and artistic creativity? Is investigation of that possible link a new category of Law and Literature?⁴¹²

Whatever the ultimate answers to those provocative questions, we can in the meantime be certain of at least one thing. Balzac is a perfect subject of study for Law and Literature. The Law and Literature movement embraces both the study of legal themes in imaginative literature—law *in* literature—and the use of the methods of literary criticism in understanding laws, legal institutions and legal processes—law *as* literature. This essay is part of the former endeavor—law *in* literature. But it goes beyond the banal literalism of seeking merely to determine how accurate is Balzac's literary account of law. It also tries to avoid the twin trap of fanciful symbol-mongering by not only

407. *Id.* at 300.

408. *E.g.*, Geoffrey Chaucer, Henry Fielding, Richard Sheridan, Charles Dickens, William Thackeray, Walter Scott, Wilkie Collins, Marcel Proust, Gustave Flaubert, Victor Hugo, Alexandre Dumas *père*, Goethe, Henry James, James Fenimore Cooper, Franz Kafka, Robert Louis Stevenson, Pierre Corneille, Molière, Edmond Rostand and Leo Tolstoy.

409. *E.g.*, Ovid, Virgil, Petrarch, Wallace Stevens, Edgar Lee Masters, Archibald Macleish and Lawrence Joseph.

410. *E.g.*, Robert Schumann, Peter Tchaikovsky, Igor Stravinsky, Jean Sibelius, George Friedrich Handel, Cole Porter, Hoagy Carmichael, and William S. Gilbert.

411. *E.g.*, Henri Matisse, Paul Cézanne, Wassily Kandinsky, Edward Degas, and Gustave Caillebotte

412. Law and Literature is generally said to consist of four categories: (1) law of literature, (2) law as literature, (3) legal and literary interpretation and (4) law in literature. See Julius, *supra* note 55, at xiii. Should a fifth category be: law and artistic creativity? For a tentative effort to explore this new category, see Daniel J. Kornstein, *The Double Life of Wallace Stevens: Is Law Ever the "Necessary Angel" of Creative Art?*, 41 N.Y.L. SCH. L. REV. 1187 (1997). See also Thane Rosenbaum, *The Writer's Story and the Lawyer's Craft*, N.Y. TIMES BOOK REV., Aug. 20, 2000, at 27.

focusing on what law stands for or what larger subject it represents in Balzac.

Balzac's life and work present an ideal intersection of Law and Literature. By viewing Balzac's fiction from a legal vantage point, we understand his novels better. By contemplating his legal references, we understand law and lawyers better. By doing both, we even understand Balzac better. Reading great literature addressing legal problems can, among other things, expand and enhance the moral sensibility with which we approach questions of justice. Balzac's criticisms of the legal system of his time and place morph into stubborn, disturbing criticisms of *our* legal system. And if we also get an idea of what the life of the law was like in early nineteenth-century France, so much the better.

Given what the study of Balzac has to contribute to Law and Literature, excluding him from the Law and Literature canon would be a serious error and raise unsettling questions about the direction of the Law and Literature movement. Balzac and other writers like him have much of interest to say about Law and Literature. They should not be written off, especially for political or ideological reasons. (Balzac was sometimes considered a royalist and a reactionary in politics.)⁴¹³ Law and Literature is not—or at least should not be—a political program, conservative or liberal. Law and Literature is too rich, too secure and too full of wonderful and as yet still-untapped potential for that.

Of course, a lawyer or scholar may invoke a particular piece of literature to support a particular point of view. In that sense, literature is just one more piece of authority to be used. Scholars, like lawyers, are advocates who marshal all available evidence to support a thesis. But, like judicial activism, literature can be used for conservative or liberal purposes. Another great Law and Literature text reminds us that, "The devil can cite Scripture to his purpose."⁴¹⁴ As Judge Posner points out, the

413. See ROBB, *supra* note 11, at 189-93; Brooks, *supra* note 19, at 39 ("Balzac was a self-proclaimed reactionary, a monarchist who wanted to restore all the hereditary rights of the aristocracy").

414. WILLIAM SHAKESPEARE, *THE MERCHANT OF VENICE* act 1, sc. 3.

“occupational hazard” of lawyer-critics is “putting literature to tendentious use.”⁴¹⁵

Nor should Balzac be excluded from Law and Literature because his work is in some sense irrelevant.⁴¹⁶ The word “relevant” is a strange, ambiguous criterion, as capable of announcing a conclusion more than a rationale, as of masking an agenda. In legal parlance, relevancy is not an inherent characteristic of any item of evidence but exists only as a relation between an item of evidence and a matter properly provable in a case.⁴¹⁷ Thus, relevance in a legal sense depends on what one is trying to prove. If one is attempting to “prove” or show links between law and literature, how can Balzac be irrelevant?

Anyone who lived through the 1960s and '70s, however, smiles at the word “relevant.” In those heady days, relevant meant fashionable, often politically fashionable. With that in mind, let us return to and examine more closely Professor Richard Weisberg’s explanation, which justifiably provokes an attitude of skepticism. In elaborating on why Balzac is supposedly “less relevant,” Weisberg says: “Our task, of course is to *choose* the texts that proffer (often only covertly) the subversive voice we find representative of the age.”⁴¹⁸ Why? Who defined the “task” of Law and Literature that way? The “of course” makes it seem as if the point is obvious and taken for granted, which is just not so. And the word “subversive” strongly suggests a political attitude. Weisberg’s major premise here is at least open to doubt.

His minor premise is no less questionable. How is it possible to seriously assert that Balzac (or Dickens, for that matter) is not “relevant” because he does not write in a “subversive voice”? Regardless of his own political views (Balzac was apparently a monarchist of sorts), Balzac’s writing highlighted the contradictions and injustices of society. His works run counter to the dominant ideology of his culture; they “radically subvert” and “vehemently spurn the principal bourgeois values.”⁴¹⁹ His social insights, ironic class portraits and acute analysis of the

415. POSNER, *supra* note 12, at 175.

416. See WEISBERG, *THE FAILURE OF THE WORD*, *supra* note 12, at 186 n.20.

417. See Fed. R. Evid. 401 advisory committee’s notes.

418. Weisberg, *Family Feud*, *supra* note 21, at 74.

419. ROBERT ALTER, *THE PLEASURE OF READING* 31 (1989).

bourgeois society of his day made him a favorite author of none other than Karl Marx and Friedrich Engels, who practically define the word subversive.

The two authors of *The Communist Manifesto* went out of their way to acknowledge Balzac. Marx praised Balzac in *Capital* for his "profound grasp of real conditions."⁴²⁰ He even planned a full-length study of Balzac. As for Engels, he wrote: "I have learnt more from Balzac than from all the professional historians, economists and statisticians put together."⁴²¹ As Marx and Engels realized, Balzac's fictional voice is almost invariably subversive. Thus, despite his reactionary views, Balzac has always been "a monarchist Marxists could love."⁴²²

Moreover, much of what Balzac wrote most memorably about the law in particular was subversive and critical and is highly relevant today. Balzac often adopted an adversarial stance toward law and assailed the law's pretensions. Weisberg himself makes a passing reference to Balzac's "harsh assessment of lawyers."⁴²³ Balzac's haunting descriptions of evil lawyers and perversions of justice, like Dickens's descriptions of Chancery Court in *Bleak House*, linger longer in a reader's mind than his word portraits of the law working correctly as it should. Balzac is as subversive and as relevant as a writer can be toward the law.

Law and Literature scholars, no less than anyone else, are of course entitled to their subjective, individual aesthetic and intellectual preferences. Weisberg says we should begin the study of the "modern law-related novel" with Flaubert and Dostoevsky rather than Balzac and Dickens, and he has a right to his opinion.⁴²⁴ But then he justifies his choice because Flaubert and Dostoevsky, unlike Balzac and Dickens, "integrate narrative ambiguity and non-omniscience with the anti-rationalistic

420. 3 KARL MARX, CAPITAL 130 (D. Fernbach trans., Penguin Books 1991) (1894). See also ISAIAH BERLIN, KARL MARX 205 (Oxford University Press 1978) (1939); FRANK E. MANUEL, REQUIEM FOR KARL MARX 22, 124, 223-24 (1995); DAVID MCLELLAN, MARXISM AFTER MARX 266 (1979).

421. MAUROIS, *supra* note 11, at 400.

422. Brooks, *supra* note 19, at 39.

423. WEISBERG, POETHICS, *supra* note 12, at 85.

424. Weisberg, *Family Feud*, *supra* note 21, at 74.

and word-skeptical schemes they so brilliantly produce.”⁴²⁵ I am not even sure I understand what that means exactly, but, putting that aside, I suppose it is a lit-crit jargon way of Weisberg saying he sees more in Flaubert and Dostoevsky than he does in Balzac and Dickens as far as law and the modern novel is concerned. That may well be.

But one’s personal likes or dislikes should not straitjacket the Law and Literature movement, which is still a relatively young field of inquiry. If Richard Weisberg does not like Balzac or finds Balzac less interesting, relevant or subversive than other writers, that is fine. But this should not limit the range of topics for an intellectual movement intended to reach people of different backgrounds, diverse literary tastes and varying social, political and cultural attitudes, who are brought together by a shared interest in a capacious interdisciplinary subject like Law and Literature. A Law and Literature movement that intentionally ignores Balzac makes no sense and is not worth the name.

Perhaps I am overreacting. Professor Weisberg is a founder and champion of the modern Law and Literature movement.⁴²⁶ We are friends and have been colleagues for years at the Law and Humanities Institute, of which he is co-chair. I admire his work, which has greatly stimulated me and many others. My limited, reluctant, respectful and friendly disagreement with him here only reflects the good health, strength and vibrancy of an intellectual movement that, composed as it is of judges, lawyers and law professors, thrives on debate and discussion.

Maybe I am misreading Weisberg. I am pretty sure that Weisberg, who has a Ph.D. in French literature, likes Balzac. So perhaps Weisberg was not putting Balzac off limits generally but only for the limited purpose of studying the “modern law-related novel.” Perhaps his hope that his methodology would be “extended to other great novelists” includes Balzac. But I am not sure. Even Homer occasionally nodded.

Too much time has already gone by without Law and Literature seriously looking into Balzac. And when a person of Weis-

425. *Id.* See also WEISBERG, *THE FAILURE OF THE WORD*, *supra* note 12, at 186 n.20.

426. See, e.g., WEISBERG, *POETHICS*, *supra* note 12.

berg's stature, one of the most influential pioneering leaders of Law and Literature — which Weisberg certainly is — writes off an author as “less relevant,” that opinion may unintentionally contribute heavily to that author's neglect by the movement, which may not draw the fine distinctions intended by Weisberg. To paraphrase a once-popular commercial for a large stock brokerage firm: when Richard Weisberg speaks, Law and Literature people listen. If the author deemed irrelevant is as important as Balzac, concern is justified. I hope I am wrong.

I am also concerned that the lack of commentary on Balzac is emblematic of the greatest failure so far of the modern Law and Literature movement. Although Law and Literature has achieved much of great value in the past 25 years, it has not yet touched the lives of most practicing lawyers, *i.e.*, the overwhelming bulk of the profession. Law and Literature writing, conferences and other events are almost entirely academic products, often concerned with obscure, narrow, eristic points expressed in difficult, abstruse, hard-to-read and hard-to-understand language of literary or cultural theory that alienates the shirtsleeve lawyer.⁴²⁷ Law and Literature is almost always written by academics for academics, and this is a danger — a danger of academic aristocracy.⁴²⁸ To reach its full potential, to

427. See, e.g., Terry Threadgold, *Book Review*, 23 MELBOURNE U.L. REV. 30, 835 (1999) (“What Posner ignores here [in the second edition of his book LAW AND LITERATURE], or simply does not know, is so huge as to be impossible to summarize. Structuralist understandings of literature as institution, of literature as poly-system, deconstructive understandings of the textuality which allows texts to be constantly recontextualized and resemanticised, feminist and postcolonial understandings of the very cultural specificity of literature, of its uses by and for governmentality, understandings of how education institutions work *through* power to constitute *as* knowledge that which the publishing industry will then produce for profit, the influence of very specific kinds of theory in shaping and forming what will become curriculum and what will be excluded. All of these things lie beyond the ken of these chapters.”). Beyond my ken too. Phew! For recent trenchant criticism of such writing, see ALTER, *supra* note 419, at 9-22; Tom Wolfe, *In the Land of the Rococo Marxists*, HARPER'S MAGAZINE, June 2000, at 73, 79.

428. Tocqueville long ago saw the “natural perils” of a literary aristocracy, which are also the dangers of an academic aristocracy in Law and Literature. “It will sometimes happen,” he wrote, “that the members of the literary class, always living among themselves, and writing for themselves alone, will entirely lose sight of the rest of the world, which will infect them with a forced and labored style.” Their attitudes “will insensibly lead them to deviate from common sense” and “[b]y dint of striving after a mode of parlance different from the vulgar, they will arrive at a sort of aristocratic jargon.”² TOCQUEVILLE, *supra* note 63, at 58. “Every aris-

accomplish its goal of changing the way people think and feel about law, Law and Literature must reach out more broadly to a much larger audience, to the hundreds of thousands of legal practitioners who are its natural constituency. Such an effort would not ignore a popular, prolific legal writer like Balzac—whom some consider the greatest storyteller of his age and the greatest writer of the nineteenth century—but would instead put him at the center of Law and Literature discussion, where he belongs, together with Shakespeare and Dickens.

In a real sense, then, Balzac is a patriarch of Law and Literature. We need to start by recognizing this crucial fact and have another look, a close look, at Balzac. Like Henry James's contemporaries, we have taken Balzac's greatness for granted and have not talked of his contribution to Law and Literature except rarely and perfunctorily. We have ignored an important part of our Law and Literature heritage. As James said of interest in Balzac generally, so too we can say that the Law and Literature movement can "recover its wasted heritage, and pull itself together for another chance, on condition only of shutting itself up, for an hour of wholesome heart-searching with the image" of Balzac.⁴²⁹ Let us begin.

Let us also begin to look at Balzac through the lens of Law and Literature for pleasure as well as instruction. As with all literature of the first rank, it is the exploration of human emotions that were the same in Balzac's day as they are in ours. In Balzac's characters—in their pleasures and humiliations, their triumphs and failures, their ludicrous moments and their heroic ones—we feel the vibrations of our own lives, and we come to cherish them as we do our friends and colleagues. It is always agreeable to read and think about great literature, especially as a welcome interlude between cases for a practicing lawyer.

Balzac more than meets this standard. In 1835, Balzac's contemporary Tocqueville wrote that America "is perhaps in our days the civilized country in which literature is least attended

ocracy which keeps itself entirely aloof from the people becomes impotent, — a fact which is as true in literature [and Law and Literature] as it is in politics." *Id.*

429. James, *The Lesson of Balzac*, *supra* note 5, at 120. See also Brooks, *supra* note 19, at 39 ("the sensibility of post-modernism now allows us to appreciate him [i.e., Balzac] anew").

to.”⁴³⁰ But, he added, “still a large number of persons there take an interest in the productions of the mind, and make them, if not the study of their lives, at least the charm of their leisure hours.”⁴³¹ Those persons include practicing lawyers who use their leisure hours to read and think about literature and its relationship to law. Balzac appeals to such lawyers who have what Benjamin Cardozo once called “so amiable a weakness” as a “love of arts and letters.”⁴³² Study of Balzac suggests that we should indulge that amiable weakness, if weakness it be, and hope it spreads.

430. 2 TOCQUEVILLE, *supra* note 63, at 55.

431. *Id.*

432. BENJAMIN N. CARDOZO, LAW AND LITERATURE (1931), *reprinted in* SELECTED WRITINGS OF BENJAMIN NATHAN CARDOZO 339 (Margaret E. Hall ed., 1975).