



# HISTORY OF LAW AND OTHER HUMANITIES

Edited by  
VIRGINIA AMOROSI  
and  
VALERIO MASSIMO MINALE



## HISTORY OF LAW AND OTHER HUMANITIES

The Figuerola Institute  
Programme: Legal History

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

To give a better visibility of its activities, the Programme has published in its Book Series a number of monographs on the different aspects of its academic discipline.

Publisher:  
Carlos III University of Madrid

Book Series:  
Legal History

Editorial Committee:  
Manuel Ángel Bermejo Castrillo, *Universidad Carlos III de Madrid*  
Catherine Fillon, *Université Jean Moulin Lyon 3*  
Manuel Martínez Neira, *Universidad Carlos III de Madrid*  
Carlos Petit, *Universidad de Huelva*  
Cristina Vano, *Università degli studi di Napoli Federico II*

More information at [www.uc3m.es/legal\\_history](http://www.uc3m.es/legal_history)

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

*Edited by*  
Virginia Amorosi  
*and*  
Valerio Massimo Minale

DYKINSON  
2019

Historia del derecho, 73  
ISSN: 2255-5137

© 2019 Autores

Motivo de cubirta:

Carlo Coppola, Il Tribunale della Vicaria

XVII secolo, olio su tela, Napoli, Museo di San Martino

Per gentile concessione del Ministero per i beni e le attività culturali

Polo Museale della Campania

Editorial Dykinson

c/ Meléndez Valdés, 61 – 28015 Madrid

Tlf. (+34) 91 544 28 46

E-mail: [info@dykinson.com](mailto:info@dykinson.com)

<http://www.dykinson.com>

Preimpresión: TALLERONCE

ISBN: 978-84-1324-239-2

Depósito Legal: M-21371-2019

Versión electrónica disponible en e-Archivo

<http://hdl.handle.net/10016/28459>



Licencia Creative Commons Atribución-NoComercial-SinDerivadas 3.0 España

## INDEX

Preface	13
<i>New Perspectives on 'Law and Humanities' together with a 'Musical' Approach to the History of Legal Problems: Looking Through the Mirror of Opera</i> Valerio Massimo Minale	15
<i>(History of) Law and Other Humanities: When, Why, How</i> Luigi Lacchè	25
Chapter I Iconography of Law	
<i>A Legal Study of Medieval Cities from the 11th to 14th Century: The Example of Sigillography in France</i> Romain Broussais	47
<i>Typographic Art and Roman Law: A Renaissance Image of the Lex XII tabularum</i> Fabiana Tuccillo	69
Chapter II Representation of Justice in Music Culture	
<i>«Oh, the Law is Ruination, and Attorneys are Vexation ...» Law and Lawyers in the Opera and Operetta</i> Krzysztof Bokwa	83

<i>The Boyars, the Poet and the Composer. The Portrayal of the Boyar Duma in Puškin's and Mussorgsky's Boris Godunov</i> Nina Kršljanin, Filip Milinković	97
<i>The Dreyfus Affair in Music.</i> L'Hymne à la Justice of Albéric Magnard Mario Riberi	123
Chapter III Architecture and Politics of Justice	
<i>Scientia iuris and architectura. A Focus on Buildings for Shows</i> Paola Pasquino	141
<i>Optimus princeps and the Triumphal Arch in Benevento</i> Alessio Guasco	157
<i>Law, Justice and Architecture in Modern Venice: The Rectors' Palaces and the Government of the Mainland</i> Claudia Passarella	167
<i>Milan's Courthouse: A View of the Roman Legal Culture across Fascist Ideology</i> Virginia Maria De Capitani	181
Chapter IV Philosophy, Methodology and the Construction of the Law	
<i>Cicero's Thinking on the Essence of Legal Reasoning</i> Valentina Cvetković-Dordević	195
<i>Interpreting the Antiheretical Edict of Wieluń. Between Literal Meaning and Philosophical Approach</i> Paweł Dziwiński	205
<i>Law and Humanities in Giambattista Vico's Thought. A First Understanding</i> Alessia Farano	221



<i>The National Codification of Civil Law in Poland at the Beginning of the 19th Century. Sources and Inspirations</i> Piotr Pomianowski	235
Chapter V	
Legal Culture in Poetry, Drama and Novel	
<i>The Frogs by Aristophanes: When Comedy Meets Legal History</i> Athanasios Delios	249
<i>Medicus between Perception and Reality as Portrayed in Some Non-legal Sources</i> Nikol Žiha	265
<i>Military Law, Justice and Discipline in the Early Modern Owlglass Literature from Central Europe</i> Przemysław Gawron, Jan Jerzy Sowa	287
<i>Pamphlet Literature Reflecting Parliamentary Opposition at the Time of the French Fronde: The Example of the Mazarinades (1648-1649)</i> Juan Manuel Hernández Vélez	299
<i>The Methods for the Legitimation of the Succession of James II in Aphra Behn's Poem for Coronation</i> Balázs Rigó	315
<i>Balzac and the Criticisms of the French Civil Code in the First Half of the 19th Century</i> Elisabeth Bruyère	329
Chapter VI	
Literary Environments for Criminal Law	
<i>The Medieval Legal Practice of Exculpatory Oath and Trial by Fire in the Legend of Queen Isolde</i> Alicja Bańczyk	339

## INDEX

<i>Between Law and Literature.</i> <i>Violations of the Legal Rule in the Decameron</i> Daniela Buccomino	349
<i>Institutions and Criminal Procedure of the Magdeburg Law in Poland according to Judas' Sack by Sebastian Fabian Klonowic</i> Lukasz Golaszewski	377
<i>A Letter from Detention: The Edition of Letters of Livonian Humanistic Lawyer David Hilchen as an Interdisciplinary Challenge</i> Hesi Siimets-Gross	391
<i>The Case of Eszter Solymosi from Tiszaeszlár:</i> <i>The Notorious Blood Libel Trial through the Eyes of Gyula Krúdy</i> Imre Kepessy	407
<i>Reading a Travel Journal.</i> <i>The Melancholia of Gina Lombroso in Latin America</i> Francesco Rotondo	419
Chapter VII	
Stories of Law and Cinema	
<i>History of Rome, History of Roman Law and Cinema</i> Carlo De Cristofaro	433
<i>You Can Only Write Once –</i> <i>Rights to Authorship, Inspiration and Transformation</i> <i>in the Chosen Judgements of U.S. Courts Involving the Copyrights</i> <i>on the James Bond Character</i> Wojciech Bańczyk	443
Chapter VIII	
Popular Culture and Legal Culture in Contemporary Age	
<i>Advertising and the Rule of Law. Law in Representations of Insurance in Late 19th Century Netherlands</i> Christina Reimann	457

<i>Newspapers and the Making of Popular Legal Culture. The Example of the Death Penalty in France (20th century)</i> Nicolas Picard	471
<i>Secularism versus Religion-based Legal Pluralism: The Diverse Views on These Concepts in Modern Muslim Discourse and Culture between 19th and 21st Century</i> Rafal Kaczmarczyk	483
Chapter IX Law and Political Practice	
<i>Legal Organization of Medieval Serbian Mining Communities</i> Andreja Katančević	497
<i>The Structure of the Government and the Press</i> Gábor Bathó	513
<i>The Influence of Political Factors on the Adjudicating on Petty Offences in the People's Republic of Poland</i> Marcin Lysko	527
Chapter X History of Law, History and Law: Perspectives for Methodology and Teaching	
<i>History and Legal History in Latin America. Reflections on a Necessary Dialogue with Special Attention to Cuban Experience</i> Fabricio Mulet Martínez	539
<i>Teaching a Historical Context in a First-Year 'Introduction to Private Law' Course. The Effects of Teaching Approaches and a Learning Environment on Students' Learning</i> Emanuel G. D. van Dongen, Irma Meijerman	551
Abstracts	571

## BALZAC AND THE CRITICISM OF THE FRENCH CIVIL CODE IN THE FIRST HALF OF THE 19<sup>th</sup> CENTURY

ELISABETH BRUYÈRE  
*University of Ghent*

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

Although the still young Code was considered a masterpiece by some, especially lawyers, others believed it would lead to the destruction of traditional French society and even adversely affect the birth rate. The harmonisation that was so solicited during the Ancien Régime was sometimes criticised after the Revolution. Honoré de Balzac, a leading light of the French realistic literature of the 19<sup>th</sup> century, was part of this movement. For instance, the abolition of the right of primogeniture was for some, including Balzac, less than opportune as it acted like a «pestle whose perpetual game is splitting up the territory» and «will end up killing France»<sup>1</sup>.

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

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

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

---

1 *Le curé de village* (The village priest).

Proust. His greatest work was *La comédie humaine*, in which he tried to draw a faithful portrait of French society during the Restoration and the Monarchy of July by drafting a mosaic of ninety-one novels and stories. This work provided a highly detailed account of daily life for the common man, articulating aspects of reality that had been hitherto neglected due to their ugly or banal nature. Balzac wanted his work to be as close to reality as possible, which makes it an eligible historiographic source. This is particularly relevant because law, be it civil or criminal, is central to the author's work. Balzac describes a world where money and property are becoming of ever greater importance<sup>2</sup>. Another biographical element makes his books interesting for the study of legal history in particular: Balzac was initially a law student and worked at a solicitor's office and as the assistant of a notary clerk. He then abandoned his legal studies and started his writing career. He thus had a precise knowledge of law, and civil law in particular, and would have seen first-hand how the new civil code was applied in practice.

Not only did he have a clear-cut perception of French legal society but he actually wrote, at a young age, a few political essays and even thought about engaging in politics by preparing his application for the elections. He therefore had specific political views. Even if his political allegiances changed with time and his various love affairs, which leads people to wonder if he was either a liberal or a legitimist, we can identify certain fixed political themes in his various writings<sup>3</sup>. The interesting thing is that his political visions run through his novels, in particular in *La comédie humaine*.

From reading his political works and private correspondence, we know that Balzac was no partisan of absolutism, which had ended in 1789<sup>4</sup>. However, he had always been in favour of a strong power. Being a fervent monarchist<sup>5</sup>, he was nevertheless sickened by both the Restoration regime and the Monarchy of July<sup>6</sup>. For him, France needed to be a constitutional monarchy<sup>7</sup>, with a strong government over which the parliament, elected by a census suffrage, i.e. a tax-based voting system, had no motion of no confidence. Balzac was opposed to equal suffrage: the right to vote ought to be linked with prop-

---

2 MOURIER (1996), p. 115.

3 LICHTLÉ (2007), p. 295.

4 *Ibidem*.

5 MOURIER, (1969), pp. 95-96.

6 LICHTLÉ, (2007), p. 315.

7 LICHTLÉ (2007), p. 318.

erty. The vast majority of the working class must not take part to political life. In 1848, he demonstrated his opposition to the Revolution and repeated his conviction that a strong power was needed to maintain public order<sup>8</sup>.

Balzac was both intimately familiar with the Civil Code of 1804 and not shy about criticising what he saw as its shortcomings. We can find various example in *La comédie humaine*, and trace the opinions of some characters back to his political works. For him, the civil code ‘urgently needs reform on some points’<sup>9</sup>.

In some respects, Balzac was quite conservative, even reactionary. For instance, in terms of inheritance law, he thought that the civil code was endangering French society. When he was younger he wrote an essay in defence of the right of primogeniture in which he railed against the equal inheritance rights for every child imposed by the *Code civil*. According to Balzac, primogeniture was vital on many levels. From a political point a view, it promoted nobility, which was necessary as a counterbalance to potential abuse of power on the part of the monarchy<sup>10</sup>. Primogeniture was also a means to maintain the aristocratic culture and spirit<sup>11</sup>. Moreover, he saw large land ownership as essential for the prosperity of society<sup>12</sup>. In his novel *The village rector*, the judge states that:

«The root of our evils lies in the section relating to inheritance in the Civil Code, in which the equal division of property among heirs is ordained. That’s the pestle that pounds territory into crumbs, individualizes fortunes, and takes from them their needful stability; decomposing ever and never recomposing, a state of things which must end in the ruin of France. The French Revolution emitted a destructive virus to which the July days have given fresh activity»<sup>13</sup>.

In addition to this, Balzac was a strong supporter of paternal authority<sup>14</sup> and deplored its diminution in the Code<sup>15</sup>. For him, society should be underpinned by the idea of family, and the Code’s emphasis on the individual

---

8 MOURIER (1969), p. 90.

9 *Splendeurs et misères des courtisanes* (Scenes from a courtesan’s life).

10 LICHTLÉ (2007), p. 304.

11 LICHTLÉ (2012), p. 168.

12 LICHTLÉ (2012), p. 170.

13 *Le curé de village*, Paris, pp. 223-224.

14 FAILLIE (1968), p. 65.

15 DISSAUX (2012a), p. 50.

undermined this<sup>16</sup>. Without family groupings, not only is society at risk, but fragmentation of ownership precludes effective management of land:

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

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

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

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

---

16 DISSAUX (2012a), p. 51.

17 *Louis Lambert*.

18 PEYTEL (1950), p. 54.

19 *Louis Lambert*.



wedlock, and deplores their poor position in society<sup>20</sup>. In *Ursule Mirouët*, he further outlines his grievances with the unfavourable status of bastard children according to inheritance law<sup>21</sup>.

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

«The Code, my dear Paul, makes woman a ward; it considers her a child, a minor»<sup>23</sup>.

However, many of Balzac's female protagonists manage the shared matrimonial wealth in defiance of the spirit of the Civil Code and take on a much more legally active role than the Code intended<sup>24</sup>.

Balzac also accuses society of keeping women in a state of ignorance. For him, the ideal spouse should have received a 'man's education'<sup>25</sup>. He does not go as far as recommending that this type of education be extended to all, however<sup>26</sup>.

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

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

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

---

20 PEYTEL (1950), p. 48.

21 MACÉ (2012), p. 345.

22 FAILLIE (1968), p. 21.

23 *Le contrat de mariage* (The marriage contract).

24 FAILLIE (1968), pp. 193-194.

25 FAILLIE (1968), pp. 34-35.

26 FAILLIE (1968), p. 190.

27 *Physiologie du mariage*, II (Physiology of marriage, II).



but an adjunct to the man; therefore abridge, cut, file this article as you choose; she is in every sense yours. Take no notice at all of her murmurs, of her cries, of her sufferings; nature has ordained her for your use, that she may bear everything, children, griefs, blows and pains from man»<sup>28</sup>.

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

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

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

---

28 *Physiologie du mariage*, II.

29 LICHTLÉ (2012), p. 167.

30 FAILLIE (1968), p. 191.

31 GARCIA (2012), p. 155.

32 SAINT-GERMES (1936), pp. 51-52.

33 MACÉ (2012), p. 350.

34 MOURIER (1996), p. 103.

followers<sup>35</sup>. He later rewrote this diatribe after P. J. Proudhon defended the need for familial succession<sup>36</sup>.

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

---

35 MACÉ (2012), p. 340.

36 MACÉ (2012), p. 341.

37 MOURIER (1996), p. 41.

38 DISSAUX (2012a), p. 53.

39 LICHTLÉ (2012), p. 173.

## Bibliography

- DISSAUX, N. (2012a): “Balzac et le droit: ce que la littérature peut apporter au droit”, in DISSAUX (2012b) (ed.), pp. 39-57;
- DISSAUX, N. (ed.) (2012b): *Balzac, romancier du droit. Actes de la journée d'études, juin 2011, Maison de Balzac*, Paris, LexisNexis;
- FAILLIE, M.-H. (1968): *La femme et le Code Civil dans la comédie humaine d'Honoré de Balzac*, Paris, Didier;
- GARCIA, F. (2012): “Les incapables”, in DISSAUX (2012), pp. 147-157;
- LICHTLÉ, M. (2007): “Balzac et la notion de gouvernement moderne. Essai sur la formation de la pensée politique de Balzac jusqu'en 1832”, *L'Année balzacienne*, 1/8, pp. 291-343;
- LICHTLÉ, M. (2012): *Balzac, le texte et la loi*, Paris, Presses de l'Université Paris-Sorbonne;
- MACÉ, M. (2012): “Le droit des successions”, in DISSAUX (2012b), pp. 339-353;
- MOURIER, P.-F. (1996): *Balzac: l'injustice de la loi*, Paris, Michalon;
- PEYTEL, A. (1950): *Balzac, juriste romantique*, Paris, Ponsot;
- SAINT-GERMES, M. (1936): *Balzac considéré comme historien du droit*, Besançon, Impr. de l'Est.