

Dead Hands, or, How the French Stopped the Dead Seizing the Living

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Abstract. The French Revolution's severe restriction of the right of bequest reflected and consolidated a longstanding French legal skepticism about the ability of the dead to control property and, through property, the living. This article argues that this "resistance" to the power of the dead, and its legal enactment by the Revolution, had significant consequences not only for the legal but also for the literary cultures of post-Revolutionary France. The most straightforward of these was the relative absence of inheritance plots, and especially plots involving wills, in nineteenth-century French fiction, compared to their abundance in Victorian fiction. But through a reading of Honoré de Balzac's "The Elixir of Life" and *Colonel Chabert*, the article suggests that this resistance was itself sometimes thematized, and allowed for a reflection on the difficult relationship of modern France to its Revolutionary and pre-Revolutionary past, as well as on the all-powerful status of the law.

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The customary law of pre-Revolutionary France counted among its maxims a phrase that seems to invite flights of fancy: *le mort saisit le vif*. Few laypeople hearing this tag for the first time will fail to imagine a zombielike cadaver—*le mort*—reaching out a bony hand to seize some poor living victim—*le vif*. In truth of course, the phrase, though certainly ancient, is not quite so gothic. Its meaning depends on the special legal use of the verb *saisir*, which in ordinary language does indeed mean “to seize,” but in certain legal contexts has the sense of “to put [someone] in possession [of something]”—*saisir quelqu’un de quelque chose*. Historically, the maxim counted among the doctrines governing succession to the French crown, but the phrase itself is rooted in the law of inheritance, where it indicated that those called upon to succeed to an estate—heirs at customary law—entered into possession of their new property immediately, by sole virtue of the death of the previous owner, without the need for seigneurial approval.¹ Like much of the French customary law, this principle was not so much abrogated by, as silently absorbed into the fabric of the unified, national Civil Code of 1804 that closed the great Revolutionary remolding of the Nation’s legal framework. As Jacques Krynen notes, article 724 of the Code (“Legitimate heirs enter into full possession [*sont saisis de plein droit*] of the goods [...] of the deceased”) is its direct descendant.² No zombies, then, but that is not to say that the phrase *le mort saisit le vif* is entirely *unsupernatural*—for it grants the deceased a certain agency, enough at least to put the living into possession of what he once owned. Many modern glosses of the phrase therefore “correct” it—consciously or not—to *la mort saisit le vif*, making it Death itself who does the seizing; while the Civil Code’s adoption of the passive voice (“sont saisis”) leaves the point ambiguous, as if the transfer just “happened.” In a sense, however, these modern rewritings of the medieval phraseology enact at the level of expression what was already implicit in the maxim itself—that rights in property can only be held by the living, and never by the dead.

This article is about a “French resistance”: the resistance to the notion that the dead might possess rights, or exert control over the living. To be sure, that resistance has a long history, in which the medieval tag *le mort saisit le vif* has a place. But the moment of its fullest expression was, as we shall see, the Revolution, for it was then that the rejection of the inherited past—in general and very specifically through the reinvention of successional law—reached its apogee. While this resistance is important in its own right, it is of interest to me primarily because of its *literary* consequences in the fiction of the century or so following the Revolution, consequences that can be grasped by means of a broad comparison with British fiction during the same period. I have suggested elsewhere that one of the most striking differences between the nineteenth-century British and French novel is the absence in the latter of what is to be found everywhere in the former: namely, plots that turn on inheritance law, meaning especially the last will and testament and the practice of entail.³ Such plots are too numerous to mention in the fiction of the Victorian period (and before), but perhaps the most illustrative is the section of George Eliot’s *Middlemarch* (1872) entitled “The Dead Hand.” In this section, the protagonist Dorothea must confront the fact that her late husband Casaubon, shortly before he died at the end of the previous section, had added a codicil to his will in which Dorothea’s right to inherit his estate is made conditional on her never marrying Will Ladislaw—a man with whom Dorothea’s relations have been entirely proper, but whom Casaubon rightly suspects she loves. While Dorothea resists Casaubon insofar as she refuses the inheritance, she does not, crucially, question his power to impose this choice—his will, or her Will—upon her. In Eliot’s plot, then, the will appears to effect a sort of legal reanimation: as the section title suggests, the “undead” testator reaches out from beyond the grave, jealously refusing to relinquish his grasp on the living.

Here, one is tempted to say, *le mort saisit le vif*—in the gothic sense. And yet by that same token, Eliot’s plot twist represents precisely the *opposite* of what is meant by that phrase

in its French legal usage. For by this codicil, the dead Casaubon means to retain certain future rights over what he appears to regard as indefinitely “his” property, meaning that Dorothea will possess only conditional rights, and that she is therefore only partially *saisie*. (In this sense, the codicil is a sort of entail.) Such a situation is abhorrent to the pre-Revolutionary customary maxim, which envisages a complete and instantaneous transfer of rights; and, as I hope to show in this article, everything in *post*-Revolutionary French culture, from the detail of inheritance law to the broadest disposition of *mentalités*, militated against such a plot. It is well known that the Revolutionary and Napoleonic eras virtually abolished entail and significantly restricted the right of bequest. But these reforms, as I suggest in the first part of this article, were embedded in a sweeping re-evaluation of the very concept of inheritance, a re-evaluation that might be characterized as positivist, naturalist, and demystifying in character. It was thus hostile to the sort of magical thinking that attributed any sacrosanct status, or worse, any self-executing efficacy to the will of the dead, asserting instead that it is the law that lends the will whatever power it might have. In the second part of the article, I consider the implications of this revolutionary re-evaluation of inheritance for nineteenth-century French fiction. Of course, the primary implication of this legal-cultural shift is the straightforward absence in French fiction of certain types of inheritance plot that legal reforms had made implausible or impossible. But I suggest that in the work of France’s most prominent author of legal fiction, Honoré de Balzac, we find a sort of symbolic enactment of the French skepticism about the will of the dead. In Balzac’s vision, as we shall see, the dead stretch out their hand in vain—while the living are only too eager to seize what is theirs.

Part 1: The Politics of Seizure

On 2 April 1791, a dead man addressed the French National Assembly. Earlier that day, Honoré-Gabriel Riqueti, comte de Mirabeau, had died at his home in the rue de la Chaussée

d'Antin. The day before, he had been visited on his deathbed by an equally distinguished statesman, Charles-Maurice de Talleyrand-Périgord, who had found Mirabeau as preoccupied as ever by the public good. As Talleyrand put it:

M. de Mirabeau was, even at that moment, still a statesman [*homme public*]; and in this sense one may regard as a precious residue [*débris*] the last few words that were wrenched from the lips of the great prey that death has just seized.⁴

The precious residue Mirabeau left behind was a speech, handed by him to Talleyrand, in the hope that the latter would deliver it to the Assembly—which he duly did, as the published version of the speech assures us on its title page, “one hour after his [Mirabeau’s] death” the following day, 2 April. This scene of civic devotion *in extremis* was sufficiently inspiring to have been immortalized in a contemporary print [fig. 1], in which the bedbound Mirabeau clutches the text of his speech in his left hand, while Talleyrand stretches out his right hand to take it. In this scene of transmission at once *inter vivos* and *mortis causa*, once again, *le mort saisit le vif*—handing over a remainder while demanding a last service before he is himself “seized,” in Talleyrand’s image, by death.

The piquancy of this historical episode lies, however, in the subject matter of Mirabeau’s posthumous harangue. The speech was his contribution to the Assembly’s long debates on inheritance, and specifically on the adoption of a uniform legislation to govern *ab intestat* successions. Mirabeau’s intervention argued for mandatory partibility between direct descendants as the only rule consonant with the Revolution’s commitment to equality, and this view did indeed carry the day in laws promulgated that same month. Mirabeau’s speech did not limit itself to the immediate question of intestacy law, however, but additionally took aim at the right of bequest itself. The philosophical foundation of this so-called right, the dead Mirabeau maintained, was delusional:

It seems to me, sirs, that there is no less a difference between the right to dispose of one's fortune during one's life, and the right to dispose of it after one's death, than between life and death themselves. The chasm that nature opens beneath a man's feet, swallows up his rights as surely as himself; such that in this respect, to be dead, and never to have existed, are the same thing.

When death finally destroys us, how can the relations that depend on our existence survive us? To suppose it were a mere illusion; it would be to grant nothingness [*néant*] the qualities of real existence.⁵

The irony of the speech's posthumous delivery only underscores the radical nature of these claims. While recognizing rhetorically that "men have always professed a sacred respect for the will of the dead," Mirabeau notes that this is a matter of "religion" and "morality," and thus essentially of conscience, to which he insists there are "natural limits": "a man's rights, where property is concerned, cannot extend beyond the term of his existence."⁶ The will, in purporting to effect just such an impossible extension, is a sort of "testamentary despotism," in that it infringes the natural rights of others (the deceased's heirs).⁷ Like all forms of despotism, it must be suppressed.

Mirabeau's attack on the metaphysical foundation of the right of bequest is merely one example of a more general French resistance to attempts by dead people to give orders to the living. During the Revolution, this aversion was to be directed at three distinct practices that became closely associated and were critiqued in similar terms: these were the right of bequest; the practice of entail, referred to in French as *substitutions fidéicommissaires*; and the mode of property tenure known as *main-morte*. While it took the radicalism of the Revolution to call the right of bequest into question, *substitutions* and *main-morte* had been controversial for some time, as I shall briefly show. In all three cases, the conceptual core of this aversion was

an imagined scene of property changing hands, or failing to change hands—what we might call a scene of *seizure*.

The practice of *substitution fidéicommissaire* was the mainstay of French aristocratic inheritance strategies under the *Ancien Régime*. Much like the English practice of strict settlement, its function was to preserve large estates intact throughout the generations; the creator of a *substitution* would dictate an order of future succession, invariably running through the male line and favoring firstborn sons, in which case the practice was also called *majorat*. Those who inherited estates under a *substitution* had only limited rights in whatever real property the estate included, and were notably unable to sell, divide, mortgage, or devise it, since the *substitution* already dictated its future transmission; such an heir was thus referred to as *grevé*, “burdened.”⁸ This partial transfer of rights was then, as one Revolutionary commentator noted, “at odds with that legal axiom: *le mort saisit le vif*,” which notionally obtained throughout the kingdom, notwithstanding considerable variation in the detail of inheritance customs from region to region.⁹ *Substitutions* were thus always in some sense exceptions to the law of the land, part of the regime of legal and economic particularism, or *privilège*, enjoyed by the *Ancien Régime* nobility.

At its origin, the feudal term *main-morte* concerned seigneurial rights over the property of deceased serfs.¹⁰ By the eighteenth century, however, it more commonly designated the form of ownership exercised by certain bodies corporate, evocatively referred to as *gens de main-morte*—“dead-handed people.” These fictional legal persons, in fact permanent communities of people, were imagined as undying, even undead, and their “dead hands” could thus hold onto whatever property they acquired without its ever being deemed to have “changed hands” as the real individuals making up the corporation came and went over time. This meant that such property would never be returned into circulation and was permanently exempt from death duty and many other taxes—not least because the term was by 1789 virtually synonymous with

the tax-exempt ecclesiastical communities who accounted for the majority of such bodies.¹¹ It is also significant that, in the writings of *Ancien Régime* jurists and revolutionary commentators alike, the acquisition of property by *gens de main-morte* was invariably imagined as occurring through bequest.

Given the close alignment of these institutions with the interests of the First and Second Estates (that is, the Church and the nobility), it is perhaps unsurprising that both should have come under attack after 1789. What is less obvious is how they should have come to be so frequently discussed together or in similar terms. No doubt this assimilation of *substitutions* and *main-morte* was rooted in the fact that both had been the objects of royal edicts authored by Louis XV's modernizing chancellor Henri-François d'Aguesseau a century earlier, in 1747 (*substitutions*) and 1749 (*main-morte*).¹² Both of these edicts aimed to regulate and significantly limit the practices concerned, at least in part on the basis that they stymied the circulation of real estate that was necessary in a modern economy. Land held in "dead hands"—by *gens de main-morte* or in the grip of a testator whose *substitution* binds the hands of future generations—will never change hands; it is effectively sequestered, "taken off the market." Both edicts imagined parties with some moral claim to a property, whose seizure of that property is thwarted by one or the other institution. In the case of *substitutions*, quite apart from the *grevé* who is by definition imperfectly *saisi*, this meant hapless creditors who might lend against a property only to discover at the moment of the borrower's death or bankruptcy that "his" estate is in fact the object of a *substitution* and therefore—as the phrase went—*insaisissable*. "The impossibility of seizure" of such property was, Élie Haddad explains, a primary motive force behind the edict.¹³ The preamble to the edict on *main-morte*, meanwhile, makes explicit that bequests to *gens de main-morte* are often made at the expense of customary heirs, referred to in the edict as "Families," in whose behalf *Ancien Régime* courts frequently reduced or voided bequests to *gens de main-morte*.¹⁴ In short, or so the argument went, both

institutions allowed the dead, or those who were never really alive, to cling to property at the expense of the living.

The renewed attack on *substitutions* and *mainmorte* from 1789 reflected at least three complimentary Revolutionary preoccupations. Economically, as in d'Aguesseau's edicts, they were held to stand in the way of a modern, circulatory economy. Politically, they appeared suspect as part of the regime of *privilège* that had ensured the dominance of the clergy and the nobility at the expense of the rest of the Nation—the Third Estate. And symbolically or philosophically, they were key examples of those attitudes of deference and submission to tradition, hierarchy, and arbitrary power that the Revolution promised to sweep aside. All three preoccupations similarly played a role in the Revolutionary overhaul of inheritance law more broadly. Revolutionary orators attacked primogeniture, *substitutions* and *main-morte* with an extravagant rhetoric of barbarism, unnaturalness, and monstrosity; I have discussed elsewhere the ubiquity of the terms *dénaturé* and *barbare* in Revolutionary discussions of primogeniture.¹⁵ *Main-morte* was similarly “reproved by nature,” as one commentator put it shortly before the Revolution in 1785;¹⁶ while *substitutions* were “palpably opposed to the will of nature,” in the words of one report to the Assemblée Nationale in 1790, which continued excitably that the practice was “the murderous sword of hatred and vengeance,” used by “the great” to “feed the feudal monster.”¹⁷

But alongside such rhetorical excesses was a soberer (though still polemical) reflection on the power of the dead—a reflection that often proceeded by pointing out rather literally that the dead were, in fact, utterly powerless. A 1791 memorandum by the lawyer and future Napoleonic legislator Edme-Hilaire Garnier-Deschênes noted that the transmission of property is a matter in which “the dead cannot participate”:

He who designates in a will someone to succeed him, deprives himself of nothing, is not properly speaking disposing of what is his; he is merely expressing a wish that what

is currently his should pass to another, at a time when it will no longer be his; he is effectively not giving it to anyone [...] and is never at hand [*à portée*] to cause this mere wish to be executed.¹⁸

Garnier's treatise was published by another moderate Revolutionary legislator, Pierre-Samuel Du Pont de Nemours, who the previous year had also authored a text on the right of bequest that made similar observations. Two living men, Du Pont observed, had good reasons to respect each other's property rights:

But between a dead man and a living one, where is the right of the dead man?

Of what benefit do we deprive him, in taking possession of what used to be his?

What can he do to stop us?

What reprisals can he carry out?

It is absurd to think that a dead man can shackle a living man, or that a dead man can hold rights of property to the exclusion of a living man, who has the strength to take possession of the property, and the reason to administer it.¹⁹

The suggestion that the living may seize what belonged to the dead because the dead cannot physically stop them may be analyzed in two ways, both of which will matter in the following section. In narrowly legal terms, Du Pont and Garnier are making a specific and fundamental point: that it is the law that grants the will whatever efficacy it has, that the law may withdraw that efficacy at any time, and that the choice is a matter of social policy—in other words, a political one—that will be made *by the living*. In terms of broad symbolism, their very literalism echoes Mirabeau's speech in demystifying the institution of inheritance: we need not fear the dead, all three suggest, for they can do nothing to us; the era of submission to the wishes of ghosts is a nightmare from which the French can awaken, if they care to. This demystification closely parallels what Lynn Hunt identifies as the radical Revolution's tendency to identify itself symbolically with the Nation's sons seeking liberation from retrograde father-figures; if

the Revolution itself was a transfer of power between generations, an inheritance of sorts, it was one that occurred not by virtue the will of the older generation, but by virtue of that generation's symbolic death.²⁰ Put differently, these forceful interventions in the Revolutionary legal debates reminded the French of the early 1790s that the power to shape their world was theirs—that they were always already *saisis*. That realization had an important influence on the literature of the following century.

Part 2: The Literary Legacy

The above thumbnail sketch cannot tell the whole story of these legal institutions. Importantly, limited space means I can do little more than gesture toward the Napoleonic regime's partial reinstatement of the right of bequest in a law of 1799 and through the Civil Code of 1804; or Napoleon's reintroduction of the *majorat* in 1808 as a means of favoring his newly created nobility, a form in which it persisted until finally abolished following the 1848 Revolution.²¹ But as Xavier Martin notes, the father of the Napoleonic legal settlement was a political function, an unambiguous product of the law;²² such changes, far from re-establishing the traditional authority of the dead, appeared instead as political decisions reflecting the preferences and purposes of the new regime. They were moreover at least to some extent contrary to the spirit of the age: the Revolution's egalitarian ideal of partibility between direct descendants became the dominant cultural understanding of inheritance in nineteenth-century France, regardless of the existence of a limited right of bequest; while the magical thinking that would have made of the will the self-enacting expression of a sacrosanct command from beyond the grave was well and truly dead.

We have seen how Revolutionary inheritance reforms made certain recurrent plot devices of the Victorian novel less relevant, less plausible, or even impossible in nineteenth-century French fictions. We can now note that the consequences of the Revolutionary legal

upheaval are to be felt in the attitude of nineteenth-century French fiction towards law more broadly. Victorian novelists often seem drawn to an image of law as existing outside historicity, or as belonging to a different, more-than-human order of historicity. One thinks of the case of Jarndyce and Jarndyce in Charles Dickens's *Bleak House* (1853): "Innumerable children have been born into the cause; innumerable young people have married into it; innumerable old people have died out of it."²³ No doubt it would be possible to associate this vision of law as timeless with the Common Law's tendency to root its legitimacy in its *immemoriality*, in the mists of the ages, in ancient customary rights and practices. Such a vision of law would have been absurd in nineteenth-century France, whose entire legal system had been forged during the period 1789-1810. For the French, "law" appeared not as some gothic edifice, but as a system—*une législation*—made of up individual laws—*les lois*, typically in the plural—which were the work of an identifiable temporal body—*le législateur*. The law's malleability, its intimate involvement with the requirements and beliefs of the moment, was obvious to all. As one novelist put it in 1829, if the Past is the business of History, and the Future the preserve of Religion, "the Present is configured by the Law."²⁴

That novelist was Honoré de Balzac, arguably the only nineteenth-century French novelist who might compete with the great Victorian realists in his engagement with legal themes and problems.²⁵ In the remainder of this article I consider two short works drawn from Balzac's monumental collection of interlinked fictions, *La Comédie humaine*, for what they reveal about the legal imaginary in post-revolutionary France, and about that longstanding French resistance to the dominion of the dead. Both of the texts I analyze here deal with an attempted "resurrection." In "The Elixir of Life" ["L'Élixir de longue vie"] (1830), from which I have just quoted, this means a literal resurrection through supernatural means; in the more famous novella *Colonel Chabert* [*Le Colonel Chabert*] (1832, then 1846 for the final version), the plot involves an attempt by a living man pronounced *legally* dead to reclaim his identity.

In both, an important symbolic detail recurs: the play of hands, especially those of the “dead,” which touch, grasp, and attempt to cling to life, to the living, and, of course, to property—but which ultimately fail to seize what they desire.

The Laying on of Hands: “The Elixir of Life”

In the early short story “The Elixir of Life,” we find Balzac in the ironic and fantastic mode he favored at the beginning of his career. The plot, which opens in Renaissance Ferrara, unfolds in two tableaux. In the first, a young Don Juan breaks off his revels to wait on his dying father, an indulgent gentleman who dotes on his dissolute son. Sensing himself *in extremis*, old Don Bartholoméo entrusts his son with a secret and—for the first time—issues him a solemn order: in a hidden drawer in the death chamber is a vial containing a magical salve; as soon as he, Bartholoméo, is dead, Don Juan must slather his father’s entire body with the same, whereupon Bartholoméo will be brought back to life. Hearing his son’s less than enthusiastic response—”There’s not much left”—Bartholoméo sees the young man clearly for the first time, despairs, and promptly dies (480). What will Don Juan do now?

Balzac’s fantastic stories, Tim Farrant argues, always offer some manner of allegorical social critique, and “The Elixir of Life” is no exception.²⁶ As Olivier Besuchet notes, the story is adapted from a long intertextual history of similar tales, all of which comment on the difficulty of intergenerational relations.²⁷ And while Balzac’s version contains no explicit legal plotline, Balzac helpfully orients us in this direction in a foreword addressed “To the Reader” and placed here late in the tale’s genesis, in 1846.²⁸ In judging Don Juan’s conduct, Balzac warns us, we should ask ourselves what most “respectable people” [*honnêtes gens*] of the nineteenth century would do if, say, they were given the ability to restore the life of an old lady to whom they were obliged to pay an annuity. Would they resurrect her? The foreword then broaches the subject of inheritance law, albeit allusively, as the narrator pessimistically

imagines that all those who know they stand to benefit from the death of another—sons first among them—cannot but fantasize about that person’s eventual demise. All of European society, he admits, “rests on HEREDITY,” but surely there must be some way to “perfect this essential mechanism” (474)? What Balzac is getting at here, as indeed was made much more explicit in earlier versions of the text, is the question of testamentary liberty: his point (a mainstay of conservative critiques of inheritance law throughout the century) is that such “parricides [...] by thought” (474) might be avoided if sons were not *guaranteed* the lion’s share of their father’s estate by the Civil Code, but had instead to earn and retain his favor.²⁹ (That sons might do this and *still* wish the old man dead seems not to occur to Balzac.)

In narrative terms, this foreword clarifies what follows, and we know precisely what Don Juan will do when confronted with his dead father’s instruction—though his curiosity will get the better of him first. “Parsimoniously” applying a small amount of the salve to a rag (483), he gingerly smears it on his father’s right eye—which springs open, “full of life, a child’s eye” (483). Don Juan is horrified. After some panicked deliberation, the young man commits his strange parricide: taking up the rag, he crushes the eye. His father lies dead once more. This much we were expecting—but what does the foreword tell us about the *meaning* of this scene? To be sure, Bartholoméo’s death, by the principle that *le mort saisit le vif*, has made Don Juan a rich man; one of the young man’s fellow carousers observes that ‘He’s now [*le voilà*] immensely wealthy,” as if to underscore the immediacy and necessity of that father-to-son, dead-to-living transmission. Don Juan is not keen to see this transmission reversed, hence the parricide. But it is far from clear what testamentary freedom would change in this situation—and indeed, this part of the tale reads more like an allegorical critique of the very notion of the last will and testament. After all, Don Bartholoméo’s instructions to his son dictate that he should take certain actions following Bartholoméo’s death, the effect of which will be to resurrect him and thus, *inter alia*, to perpetuate his control of his property. The miraculous salve

by means of which this is to be achieved encapsulates in one neat symbol both the mysticism of the will, *and* its demystification. For while Bartholoméo boasts to his son that “I am God,” and insists that “I have discovered a means of coming back to life” (480), his is a mere delusion of omnipotence: the salve, however magical, must be applied post mortem, and therefore requires the participation of the living. Batholoméo’s partial resurrection through the reanimation of his eye in the end only underscores the powerlessness of the dead: unable to resurrect himself or enforce his will posthumously, the dead man needs his son to lend a hand if he is to live on. Don Juan’s use of a hygienic rag for both his partial compliance with his father’s wishes and his ultimate act of parricide distances the pair, and marks the son’s reluctance to be bound in this way.

The second tableau offers an ironic reversal of this scenario. Grown old himself, settled in Spain, and father to a son in his turn, Don Juan has retained the precious salve for his own use once the time comes. He has raised his son in quite a different spirit from that of his own father: emotionally and financially withholding, he has converted his entire fortune into life annuities, meaning the son’s wealth is dependent on the father’s continued existence. We are given to understand that this policy has somehow made of young Don Philippe a model child: pious, respectful, and utterly submissive to his father’s will. In dictating what Philippe must do with the salve after his death, then, Don Juan has no doubt that the young man will follow his instructions to the letter—though he is circumspect enough not to explain what precisely the salve does. In a scene of physical passing on “*in articulo mortis*” (490) reminiscent of that between Mirabeau and Talleyrand, Don Juan hands over the flagon with a warning whose very banality—“Hold the vial tight” (491)—indicates its importance, and dies. Now destitute (since his father’s income came only from annuities), Philippe wastes no time in disinterestedly executing his father’s last wishes, anointing the body in a darkened chamber as instructed. As he does so, the patriarchal fantasy of the last will seems to come to pass: “Once he had

moistened the right arm, he felt himself firmly grasped [*étreindre*] about the neck by a young, vigorous arm—his father’s arm!” (492). Onlookers summoned by Philippe’s alarmed cry witness “Philippe unconscious, but held up by the powerful arm of his father, tight about his neck.” *Le mort saisit le vif*, literally: the disinherited son remains in the clutches of his father, who has managed to defer the moment of transmission by another lifetime—or thinks he has. For in his shock, Philippe has dropped the vial, and the spilled salve has evaporated, leaving Don Juan only partially resurrected: his right arm and his head are alive, while the rest of him is rotting matter.

Thus the father’s plan to live after his death is again thwarted by the failure of the living, yet this time, it is the son’s very submission to his father’s will that foretells that failure: a man so readily manipulated, it seems, lacks the steady hand necessary to fulfil his task. In the story’s comic and hallucinatory conclusion, the notoriously atheist Don Juan, one-third alive, two-thirds cadaver, will find himself recognized as a miracle and a saint, blaspheming furiously as he is worshipped by credulous peasants, before his head—now detached—bites a priest to death. So despite the patriarchal foreword, the allegorical sense of the story seems much more in tune with Mirabeau’s posthumous speech: the “resurrection” of the father brought about through the execution of his will is only a resurrection in the domain of collective delusion and credulity. In this sort of intergenerational struggle, the living have all the power.

“Legal Resuscitation”: Colonel Chabert

One of Balzac’s best-known works, *Colonel Chabert* tells the story of a soldier in the Napoleonic Grande Armée who, gravely wounded and left for dead in a mass grave during the 1807 Battle of Eylau, finally makes his way back to France after nine years abroad wasted in illness, amnesia, and wrongful imprisonment. Returning to Paris, he finds that he has long ago been declared dead. His wife, having inherited his fortune, has remarried and has two children

with her new husband; Chabert's letters to her, sent during his convalescence in Germany, have been met with silence. Displaced from his private role as husband, Chabert also lacks a social role: an ex-officer of the Grande Armée under the Bourbon Restoration, which regarded Napoleon's supporters with open suspicion and contempt, he finds "a society he feels estranged from and which rejects him."³⁰ With neither relations nor resources, he must seek the help of the upstanding lawyer Derville, who believes his tale and offers to help the old veteran recover his identity.

This, then, is a tale of an attempted "legal resuscitation," as Cathy Caruth puts it in an extremely influential reading of the novel.³¹ It is also a tale of attempted recovery or restitution, and these were vexed questions in postrevolutionary France. Among the most divisive social topics prior to 1830 was the Revolution's very substantial redistribution of property, and in particular the fate of the *biens nationaux*, ecclesiastical or aristocratic property that had been forcibly nationalized and sold off. Balzac tips us off to the relevance of this context in the opening scene of the novella, in Derville's legal offices, prior to the arrival of the bedraggled old man we do not yet know is the eponymous colonel. The clerks in the outer office are working on a brief for an aristocratic client, the vicomtesse de Grandlieu, seeking restitution of property forfeited during the Revolution, pursuant—we learn from the head clerk's pedantic dictation—to an edict of Louis XVIII of July 1814, allowing for such restitution where the property remains in the possession of the state. (The respondent, we subsequently learn, is the Order of the Legion of Honor, arguably a state body, though also significantly a Napoleonic institution.) While this demand for restitution clearly prefigures Chabert's own, what we are supposed to notice is the restrictiveness of the legal rationale here: the edict allows for the restitution of "unsold goods."³² As any contemporary reader of Balzac would have understood, this provision was merely the negative of the much broader article 9 of the Restoration's Constitutional Charter, which made the sale of all properties, "including those called

‘national,’” final and unappealable.³³ The restitution to émigrés of confiscated property that might since have been sold, re-sold, inherited, developed, divided, mortgaged, and so on, was deemed from the outset too politically and socially destabilizing to be conceivable, even under the Restoration whose natural supporters stood to gain from such a policy. On the contrary, the Restoration was in this respect at least more a regime of the status quo than of the status quo ante, and its legal attitude to the Revolutionary upset was officially one of forgetting, in which present stability trumped the demands of the past.³⁴

If “the Present is configured by the Law,” then, the law is also configured to ratify the present, and Chabert finds himself caught in this bind. The power of the law to create reality is ironically captured by the narrator’s frequent references to Chabert as “the dead man” (e.g. 323); while the mere fact of his actual existence, as Derville explains in the course of their initial consultation, is from the strictly legal point of view not necessarily good reason for reopening an estate that was liquidated years ago, especially when there are powerful interests vested in the present state of affairs. As Chabert himself programmatically puts it: “I was buried under the dead, now I am buried under the living, under certificates, under established facts, under the whole of society, which wants to drive me back beneath the earth!” (328). Chabert, then, is a victim of the law, an example of a recurrent figure as much in nineteenth-century British as in nineteenth-century French fiction, and there is even a note of Victorian sentimentalism in Balzac’s insistence on the unfortunate colonel’s simplicity of manner, frankness of speech, and naivety as to the ways of the world. Chabert’s story, we are told, “touched [Derville] deeply,” which is surely our cue to be touched as well (328); while, in an intriguing phrase blending affective and juridical registers that are usually kept separate, Chabert exclaims that ‘the sense [*sentiment*] of my rights is killing me” (327). Yet in nineteenth-century British fiction, the sentimental victim of law is typically the precarious present-day possessor of some property, invariably a woman, whose perceived moral right to

that property is defeated by some long-forgotten legal claim expressed in the patriarchal languages of entail or primogeniture (consider Jane Austen's *Sense and Sensibility* (1811), Anthony Trollope's *Orley Farm* (1861), or Wilkie Collins's *No Name* (1862)). That Balzac can coherently give the same typological treatment to a male character—a soldier, no less—who represents precisely that forgotten prior claim, while the callous “usurper” is the current possessor, and is embodied by a woman and her children, gives something of the measure of the radically altered moral economy of the post-Revolutionary French novel—as well as, to be sure, Balzac's reactionary cultural politics. Faced with this compelling moral right, Derville agrees to help.

Like the two fathers in “The Elixir of Life,” then, Chabert has returned from beyond the grave to take back what was once his. And like Don Juan, his apparent ability to do so is suggested by the strength of his arm—the extraordinary physical fortitude manifested at the moment of his resurrection. Coming to in a mass grave at Eylau, the colonel explains, he had to fight his way out to avoid suffocation, which he did using the grisly tool nearest to hand—“an arm that wasn't connected to anything, a real Hercules's arm”—along with his own arms, of course, such that “You'd have said I had three arms!” (325). Yet as with Don Juan, this initial display of vigor is misleading. Despite an early moment when the narrator draws our attention to posters announcing “property seizures” adorning the walls of Derville's law offices, Chabert will struggle to translate his physical grasp into the legal re-seizure of his property, and the play of hands in the narrative swiftly migrates into the register of the pathetic, as if to underscore the colonel's vulnerability and thus foreshadow the failure of his claim. At a pause in Chabert's relation, Derville prompts him, “Sir, please do continue,” provoking an emotional response:

“Please...,” the old unfortunate exclaimed, taking the young man's hand; “That's the first polite word I've heard since...”

The colonel wept. Gratitude choked his voice. (328)

This sentimental incident initiates a series of moments in which the movement of Chabert's hands symbolize the difficulty of conciliating the demands of the past and those of the present. To be sure, Derville's decency gives Chabert, if not the reader, hope, and their collaboration is sealed by a ceremonial handshake (334). But moments involving Chabert's wife, now the comtesse Ferraud, tell a different story. Brought before her former husband in Derville's office, the lady flatly denies that he is who he claims; "We'll go to court," he exclaims, 'with one hand tucked inside his waistcoat and the other stretched towards the floor' (357). In this gesture, the colonel attempts to appear once more as a vengeful and powerful figure of the past: this is Napoleon Bonaparte's characteristic pose. But outside the office, these power relations are reversed; Mme Ferraud has hung behind to wait for him, and, "taking his arm with a gesture that recalled those he used to know" (358), draws him to her carriage. She takes him to her country house where, through appeals to his residual love for her and canny emotional blackmail, she hopes to persuade him to accept a quiet settlement and disappear. The scheme is a success, as another moment of ceremonial contact confirms: "'My dear,'" said the colonel, seizing his wife's hands, "I have resolved to sacrifice myself entirely to your happiness" (363). Mme Ferraud is delighted with this outcome, but insists, much to the colonel's chagrin, that he formally renounce his claimed identity; the colonel's reluctance only increases when he reads the exact terms of the document, drawn up by Mme Ferraud's personal lawyer, which effectively brand him a fraudster. Finally, he overhears a conversation between Mme Ferraud and the lawyer, in which the tenderness she has shown him is revealed as a pretense: if he does not sign, she is heard to say, they will see to it that he is imprisoned as a lunatic. Appearing before his "widow" one final time, the colonel expresses his contempt for her: she may rest assured that he will never trouble her again, for he wishes nothing more to do with her, nor with his former identity as her husband. The countess is apparently ashamed:

The countess threw herself at the colonel's feet, and attempted to prevent him from leaving by taking his hands. But he pushed her away in disgust, saying:

“Don't touch me.” (367)

In the inverted moral universe of post-Revolutionary France, the figure of the noble past actively shuns contact with the unworthy present. No longer does *le mort saisit le vif*; the dead, utterly disinherited by the rapacity of the living, shrink from their touch with a haughty *noli me tangere*. Chabert vanishes to live as a beggar and a vagabond. The final tableau finds him destitute and senile, unaware of his identity, in a poorhouse for the elderly, where Derville happens to spot and recognize him. Oblivious, the old man stretches out his hand... for alms (372).

There can be no doubt that *Colonel Chabert* is a literary critique of the law. If, as Caruth puts it, “what is at stake in Balzac's novel is a legal claim that turns the law itself into the place par excellence of historical memory,”³⁵ the failure of Derville's quest to resurrect his client's legal identity suggests that the legal apparatus of Restoration France works more consistently to *disavow* that memory, to deny the claims of the past. And it is in this respect that the novella also reflects Balzac's disquiet about France's reformed inheritance law. The fact that Chabert is really alive is, as the story repeatedly makes clear, irrelevant. Balzac's point is that, where the law of inheritance as traditionally conceived makes the dead seem to be alive (giving a different meaning to Caruth's idea of “legal resuscitation”), the law of post-Revolutionary France would be more inclined to *make the living seem dead* if this seemed politically or financially expedient, such is its devotion to the maintenance of present interests, and such is the refusal of the culture it serves to acknowledge the awkward claims of the past. In a reflective moment before discovering his wife's treachery, Chabert asks her: “Are the dead wrong to come back, then?” (360). “No, no!”, his wife disingenuously insists. But from Balzac's point of view, at least, the only possible response in nineteenth-century France is: yes.

Conclusion

Let us return to the print of Mirabeau and Talleyrand I discussed earlier. I have called it a scene of transmission, and the episode it illustrates was certainly celebrated as such. But perhaps what makes the image so emblematic of the French attitude to inheritance is, paradoxically, that what we see occurring there is *not* a transmission at all. How easy it would have been to depict the two statesmen both touching Mirabeau's manuscript, thereby evoking an act of simultaneous giving and acceptance. Instead, the artist shows Mirabeau alone clutching his text, the tightness of his grasp suggested by the pinching of the bedsheets beneath—as if the approach of the inevitable moment when he *must* relinquish what is his has made him cling to it ever more fiercely in the time he has left. When Talleyrand finally takes the document, the image seems to suggest, it will be from a dead hand.

For the citizens of post-Revolutionary France, sure enough, inheritance is never truly a gift, still less a sort of contact: what the dead “give” has only ever really been taken from them, by death itself, and is then reallocated by the all-powerful hand of the law. While I noted earlier that article 724 of the Civil Code, in recasting the medieval tag *le mort saisit le vif* as *les héritiers légitimes sont saisis de plein droit*, had deprived the dead of their illusory agency while leaving the true agent of transmission *mortis causa* ambiguous, the reader will already have grasped that this is only superficially the case. This article, like all of the Code's provisions, is in truth a perlocutionary utterance that is merely expressed as a constative: in stating that something *is* the case, the Code *causes* it to be the case. Many of Balzac's works illustrate or allegorize this process in spectacular, often hyperbolic style. But perhaps the most paradigmatic episode of inheritance in nineteenth-century French literature—because the dullest—is in Gustave Flaubert's *Sentimental Education* (1869). Towards the end of the first part of the novel, the protagonist Frédéric Moreau and his hard-up mother have hosted

Frédéric's wealthy, elderly uncle, in the hope of securing Frédéric a place in the childless old man's will. The visit does not go well, and Frédéric abandons all hope in this direction. But fortune has a surprise in store:

One day, the 12 December 1845, towards nine in the morning, the cook brought a letter to his room. The address was written in large characters in an unknown hand, and Frédéric, half asleep, did not hurry to open it. When he finally did:

“Justice of the Peace, 3rd *arrondissement*, Le Havre:

Sir, M. Moreau, your uncle, having died intestate...”

He was inheriting!³⁶

The large, unknown hand that brings this news, and to which the narrator draws our attention, is not that of the deceased, communicating quasi-supernaturally through a holographic will, but rather the bland, administrative script of a legal intermediary, speaking a language dictated by the Civil Code. Frédéric inherits not because his uncle wills it thus—in either sense—but because the Code declares that it should be so. In loosening the grip of the dead, then—fathers, uncles, the past itself—the Revolution placed the French even more squarely in the hands of the Law.

¹ For a history of the doctrine, see Jacques Krynen, ““Le Mort saisit le vif”: genèse médiévale du principe d’instantanéité de la succession royale française,” *Journal des savants* (1984): 187-221.

² Krynen, “Le Mort saisit le vif,” 192. See *Code civil des Français: édition originale et seule officielle* (Paris: Imprimerie de la République, 1804), art. 724. This and all subsequent translations are my own.

³ See Andrew J. Counter, *Inheritance in Nineteenth-Century French Culture: Wealth, Knowledge, and the Family* (Oxford: Legenda, 2010), 79-81.

⁴ *Discours de M. de Mirabeau l'aîné, sur l'égalité des partages dans les successions en ligne directe [etc]* (Paris: Imprimerie nationale, 1791), 3.

⁵ *Discours de M. de Mirabeau*, 9.

⁶ *Discours de M. de Mirabeau*, 9.

⁷ *Discours de M. de Mirabeau*, 14.

⁸ For an exhaustive account of the practice, see Élie Haddad, "Les Substitutions fidéicommissaires dans la France d'Ancien Régime," *Mélanges de l'École française de Rome—Italie et Méditerranée modernes et contemporaines*, 124.2 (2012) (online).

⁹ Charles-Georges-Thomas Garnier, *Mémoire présenté à l'Assemblée nationale [...] sur l'ordre des successions, le mode des partages [...] et encore sur les substitutions et donations* (Paris: Imprimerie nationale, 1791), 11. On these regional variations, see Counter, *Inheritance*, 2-8.

¹⁰ See Thierry Bressan, "La Critique de la condition mainmorteable en France à la veille de la Révolution," *Annales historiques de la Révolution française* 307 (1997): 75-91.

¹¹ See Jean Imbert, "Les "Gens de main-morte" avant l'édit de 1749," *Cahier des Annales de Normandie*, 24 (1992): 337-46; and François-Régis Ducros, "L'Aliénation des biens ecclésiastiques sous l'Ancien Régime," *Hypothèses*, 13 (2010): 201-09. Note that a one-time duty, the *droit d'amortissement*, was levied on property acquired by *gens de main-morte*.

¹² Edicts (*ordonnances*) of August 1747 and August 1749. On d'Aguesseau, see Isabelle Storez, "La Philosophie politique du chancelier d'Aguesseau," *Revue historique*, 540 (1981): 381-400.

¹³ Haddad, "Les Substitutions fidéicommissaires," 6. The edict required the public registration of entailed properties, in order to protect potential lenders.

¹⁴ See Imbert, "Les "Gens de main-morte"", 345.

¹⁵ See Counter, *Inheritance*, 4.

¹⁶ Pierre-François Clerget, *Coup d'œil philosophique et politique sur la main-morte* (London: n. pub., 1785), 37.

¹⁷ Garnier, *Mémoire*, 9.

¹⁸ Edme-Hilaire Garnier-Deschênes, *Observations sur la faculté de tester* (Paris: imprimerie de Du Pont, 1791), 19, 21.

¹⁹ Pierre-Samuel Du Pont de Nemours, *De l'étendue et des bornes naturelles du droit de tester* (Paris: Baudouin, 1790), 8.

²⁰ See Lynn Hunt, *The Family Romance of the French Revolution* (Berkeley: University of California Press, 1992), 64-71.

²¹ See Counter, *Inheritance*, 7-8, on these later developments.

²² See Xavier Martin, "The Paternal Role and the Napoleonic Code," trans. Trista Selous, in *Paternity and Fatherhood: Myths and Realities*, ed. by Lieve Spaas (Macmillan, 1998), pp. 27-39 (p. 31).

²³ Charles Dickens, *Bleak House*, ed. by Nicola Bradbury (London: Penguin, 1996), 16 (I: 1).

²⁴ Honoré de Balzac, "L'Elixir de longue vie" (1830), in *La Comédie humaine*, ed. by Pierre-Georges Castex, 12 vols (Paris: Gallimard Pléiade, 1976-81), XI (1980), 485. Subsequent page references are given in the text.

²⁵ There exists a large critical literature on Balzac and the law, of which the following are some highlights: Adrien Peytel, *Balzac, juriste romantique* (Paris: Ponsot, 1950); Marie-Henriette Faillie, *La Femme et le Code civil dans "La Comédie humaine" de Balzac* (Paris: Didier, 1968); Tim J. Farrant, "Le Rôle des modèles judiciaires dans l'élaboration du discours balzacien," *Cahiers de l'association internationale des études françaises*, 44 (1992): 177-89; Pierre-François Mourier, *Balzac: l'injustice de la loi* (Paris: Michalon, 1996); and Michel Lichtlé, *Balzac, le texte et la loi* (Paris: Presses de l'Université Paris-Sorbonne, 2012).

²⁶ Tim Farrant, *Balzac's Shorter Fictions: Genesis and Genre* (Oxford: Oxford University Press, 2002), 86-7.

²⁷ Olivier Besuchet, “‘Rien de nouveau sous le soleil’? L’Indice intertextuel dans *L’Élixir de longue vie* de Balzac,” *A Contrario*, 20.1 (2014): 113-27.

²⁸ See Farrant, *Balzac’s Shorter Fictions*, 87.

²⁹ This allusion to testamentary freedom represents a shift from Balzac’s earlier support of the reinstatement of primogeniture, which he called for in a pamphlet of 1826.

³⁰ Jean-Marie Roulin, “The Return of the Undead: The Body Politic in *Le Colonel Chabert*,” *South Central Review*, 29.3 (210): 20-25 (21).

³¹ Cathy Caruth, *Unclaimed Experience: Trauma, Narrative and History* (Baltimore: Johns Hopkins University Press, 1996), 128.

³² Honoré de Balzac, *Le Colonel Chabert* (1846), in *La Comédie humaine*, III (1976), 312. Subsequent page references are given in the text.

³³ *Charte constitutionnelle du 4 juin 1814*, in *Les Constitutions de la France depuis 1789*, ed. by Jacques Godechot (Paris: Flammarion, 2006), 219 (art. 9).

³⁴ Cf. *Charte constitutionnelle*, art. 11; on forgetting, see also Caruth, *Unclaimed Experience*, 121-3. Note that Caruth mistakenly suggests that the Restoration was eager to “return property to the aristocrats” (122), where in fact the regime’s Charter forbade this in most cases.

³⁵ Caruth, *Unclaimed Experience*, 119.

³⁶ Gustave Flaubert, *L’Éducation sentimentale*, in *Œuvres*, ed. by Alain Thibaudet and René Dumesnil, 2 vols (Paris: Gallimard, 1951-52), II, 129.