

The Claims of the Dead: History, Haunted Property, and the Law

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Balzac's novel, *Colonel Chabert*, first published in 1832, opens with a peculiar scene: a soldier who is known to have died in battle most improbably and unexpectedly returns to the office of a lawyer to reclaim his property. Disfigured and unrecognizable, the stranger insists that he is actually the famous colonel and asks the lawyer to help him to obtain a form of legal recognition that will restore to him his lawful identity, his property, and his wife. In this strange reincarnation of his own dead self, the character appealing to the lawyer hopes to become legally, and therefore humanly, alive. Unfolding from this haunting encounter, Balzac's story dramatizes the attempt by a man who is legally dead to come alive before the law and the capacity and limits of the law to respond to this attempt at legal resuscitation.

Set in post-Revolutionary France during the Restoration, this ghostly return of a Napoleonic soldier clearly echoes the historic repetitions that were taking place during this period: the return to the pre-Revolutionary past during the Restoration, itself ruptured by the return of Napoleon during the 100 Days; the protracted waves of revolutionary socio-economic shocks to France in the wake of the French Revolution. What is remarkable in Balzac's text is the singular perception that this haunted repetition, this return, takes place not simply in the realm of history, politics, or war, but rather and specifically on the site of the law. What is at stake in Balzac's novel is a legal claim that turns the law itself into the

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place par excellence of historical memory. This appeal to memory and history through law emerges in Balzac, moreover, not simply through the return of a living revolutionary hero, but, far more unexpectedly and enigmatically, through a return of the dead. What does it mean, Balzac's text seems to ask, for the dead to speak—and to speak before the law? And what does it mean, moreover, for the law to listen to this claim coming, as it were, from the dead? It is through these unsettling questions, I will argue, that Balzac reflects on the complexity of the relationship that, in the wake of the French Revolution, emerges as an entanglement and as an indissoluble bond between the law and history.

It is not by chance, I will suggest, that this literary story takes place as a scene of haunted memory. I will argue that in giving center stage to the return of the dead and to the singular encounter between the survivor and the law, Balzac's text grasps the core of a past and of a future legal haunting and identifies as central to historical development a question of death and of survival. This question will indeed return to haunt the twentieth century, not simply in the central role of Holocaust survivors in the postwar war crime trials, but, even more uncannily, in the current legal claims made by individual survivors for restitution of their past property, and, more fundamentally, for restitution of their property rights. Through its strange tale of a ghostly claim to property, Balzac's text thus prophetically tells, I would propose, what it means for the law to grapple with its own traumatic past.

The text of *Colonel Chabert* is in effect the story of a young lawyer's attempt to recognize and to respond to this peculiar claim to restitution of property. Chabert tells the lawyer how he died in war without quite dying: how he was wounded and buried alive in battle; how he was mistakenly declared dead; and how he managed to struggle out of the mass grave, only to find a society that denies his existence and a wife, now remarried and with children, who refuses to acknowledge his letters. Astonished by the appearance of Chabert but willing to believe his story, the lawyer Derville suggests a compromise between Chabert and his wife, a settlement that will provide an equitable compromise on the property. In the story of the compromise and of its failure—through which the text stages the drama of the legal struggle to come alive before the law—Bal-

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zac describes the very struggle of the survivor of catastrophe to reclaim life: to claim existence and identity. But it is also, quite precisely, through the peculiar legal struggle over the claim to property that Balzac shows, I will argue, how the law, in this tale, at the same time comes to recognize, and fails fully to comprehend, the legacy of a traumatic history.

Haunted property

1

The problem of recognition is indeed central to the opening scene of the text. In the very first lines of the story, a clerk at a lawyer's office notes the strange appearance of a figure that keeps returning to their door:

"Look! There's that old greatcoat again!" . . .

"Simonnin, stop playing stupid tricks on people. . . . No matter how poor a client is, he's still a man, damn it!" said the head clerk. . . .

"If he's a *man*, why'd you call him *old greatcoat*?" asked Simonnin.¹

Appearing only as a ghostly "greatcoat," the stranger's first encounter with the law is marked by a misrecognition, an inability of the law office to decide whether the figure should be considered fully human. Haunting the office in his not fully recognizable form, this figure of a *man without property* situates the question of property at the very heart and at the jurisprudential center of the law.

The scene that the stranger interrupts in fact represents the performance of the law at a very specific historical moment, a moment that is named by the clerk who is improvising a long and "prolix" appeal:

"But in his noble and benevolent wisdom, His Majesty, Louis the Eighteenth . . . [deemed to] repair the damages caused by the terrible and sorry disasters of our revolutionary times by restoring to his loyal and numerous adherents . . . all their unsold property . . . rendered on . . . June 1814." [CC, pp. 2–4]²

1. Honoré de Balzac, *Le Colonel Chabert*, ed. Pierre Citron (Paris, 1961); trans. Carol Cosman, under the title *Colonel Chabert* (New York, 1997), pp. 1–2; hereafter abbreviated CC. The text of *Le Colonel Chabert* underwent a number of revisions and appeared over the course of its writing under several different titles. I quote from the critical edition of the novel, which is based on the 1832 text with a few later modifications.

2. Pierre Gascar notes in his preface to his critical edition of the novel that the date of the decree that returns property to the aristocrats is somewhat later (December 1814) than the date of the Charter (June 1814). Balzac had given the proper date for the decree in

The lawyer's appeal refers, specifically, to the period of the Restoration, the time of the return of the Bourbon monarchy to the throne after the abdication of Napoleon and, more precisely, to the Charter of 1814 by which the new king, Louis XVIII, took power. In its political significance, this moment was an attempt at a kind of historical return: France's attempt to return to a form of rule that preexisted the Revolution and to create a bridge over the rupture constituted by the radical events of 1789 and their consequences during the Napoleonic Empire. But this moment was in fact as the lawyer's appeal indicates, a legal one as well; for the Charter of 1814 was the reiteration and modification, in particular, of the legal legacy of the Revolution: of the astounding legal breakthrough of the *Declaration of the Rights of Man and Citizen of 1789* and its codification during the Napoleonic Empire in the Civil Code. The Restoration's legal and political attempt to return to the past, Balzac suggests, thus takes place through the execution and the institution of another kind of return: the return of property to the aristocrats from whom it had been taken during the Revolution. The return of property in the legal act of the Restoration is thus a political attempt to return to the pre-Revolutionary past.

The primary interest in Balzac's text is not, however, in this story of restoration *per se* but in the way in which it becomes bound up with a far stranger kind of return: the peculiar manner in which the return of property becomes entangled, strangely, with the insistent and uncanny return of the dead. The appearance of the stranger at the door of the office indeed represents, not simply a man who is poor, but, more enigmatically, a man who cannot be recognized, precisely, as alive:

“Monsieur,” Boucard said to him, “would you be good enough to give us your name, so that our Master may know . . .”

“Chabert.”

“Isn't that the colonel who died at Eylau?” . . .

“The same, Monsieur,” answered the good man with old-fashioned simplicity. [CC, pp. 10–11]

It is indeed as a man who is dead that Chabert first introduces himself into the scene of the law: “My death,” he will later reassert to his lawyer, “is a matter of historical record.” Coming nonetheless to make a claim for his property, he appears as a peculiar inversion of the historical attempt to return to the past effected by the Restoration. At the point that the Restoration would return property to the aristocrats, here a figure of the

another text; it is possible that he wished, here, to emphasize the link between the spirit of the Charter and the later decree concerning property. See Pierre Gascar, preface to *Le Colonel Chabert* suivi de trois nouvelles, ed. Patrick Berthier, 2d ed. (Paris, 1974), pp. 7–18.

Revolution comes to demand that his own property be returned to him. In the very act of making this claim in the name of a dead man, however, Chabert also points toward a past that cannot be spoken in the simple terms of the living. If property here functions, from within the Restoration, as the place par excellence of return, it is also, in this story, the uncanny site of a haunting.

If we step back for a moment, we can see how Balzac's narrative about a dead man coming before the law addresses a larger question of law and historical memory, specifically as they became intertwined after the French Revolution. For the introduction of the Charter of 1814 in the opening scene of Balzac's story inscribes this legal document in the literary text not only in relation to the Charter's use of law to return aristocratic property, but also and more profoundly, I would suggest, in the Charter's peculiar function as a decree of historical forgetting. Indeed, quite remarkably, when Louis XVIII proclaimed his kingship after the abdication of Napoleon, he placed in the Charter an article that, in François Furet's words, "put forgetfulness under the law's protection, as if it were the most precious of national virtues: 'All research into opinions and votes issued up to the Restoration is prohibited. Courts and citizens are equally commanded to forget.'"³ Decreeing forgetting within the very Charter that reiterates the Civil Code as the regime's basic legal principles, the King makes of forgetting itself a legal function. Appearing against the background of this operation of the Charter, Chabert's return before the law can thus be understood as the return of memory against the very action of the legal attempt to forget. The claim to property, in other words, is the site of a memory: the memory of a revolutionary history paradoxically repressed within the very extension of the Revolution's own legal legacy.⁴

But such a claim is not made in the light of day. It is significant that Chabert's story and his claim literally emerge not in the outer offices of the clerks who work during the day but in the inner office of the "master" lawyer, Derville, who works, we are told, "only at night." Not available to the law's consciousness, the story of Chabert is narrated to the lawyer in the darkness of the night, as the return of an ungrasped death that insists

3. Quoted in François Furet, *Revolutionary France 1770–1880*, trans. Antonia Nevill (Oxford, 1995), p. 271. Article 11 of the Charter reads in French, "Toutes les recherches des opinions et votes émis jusqu' à la Restauration sont interdites. Le même oubli est commandé aux tribunaux et aux citoyens" (*Charter of 1814*, in J. P. T. Bury, *France 1814–1940* [New York, 1989], pp. 301–2). The importance of forgetting is emphasized in the opening scene of the novel by the fact that the clerk, parodied in this scene, is repeatedly unable to remember the date of the Charter.

4. The legal legacy of the Revolution is understood to include, here, both the explicit attempts at codification of the law and the formalization of governmental and political organization contained in constitutions and charters; both of these dimensions of legal history were an ongoing and central concern in the postrevolutionary decades.

on legal recognition. Indeed, Derville's nighttime labor seems to represent a place of unconscious wakefulness at the very heart of the law. The claim to property profoundly and symbolically becomes, thus, the unconscious site on which the law confronts the nightmare of a historical trauma.

2

The story that Chabert comes to tell is indeed tied up with a crucial moment in the record of French history: Chabert is a colonel in Napoleon's army who was involved in the famous battle of Eylau and who was instrumental in Murat's charge—an actual military event that has been called the “greatest charge of the Napoleonic wars.”⁵ To the extent that his name is recognizable, then, Chabert represents the greatness of the Napoleonic period, the spreading of the principles of the Revolution throughout Europe and the greatness of military glory so central to French identity. Indeed, it is in setting up Murat's charge, apparently, that Chabert is wounded, falls off his horse and is subsequently trampled under the charging soldiers. His recognizable historical identity, he suggests, is based, then, purely on the mistakes of medics and more importantly on a mistaken legal declaration:

Those damned medics, who had just seen me trampled beneath the horses' hooves of two regiments, no doubt dispensed with checking my pulse and declared that I was quite dead. My death certificate was then probably made out in accordance with the rules of military jurisprudence. [CC, p. 20]

While he is truly a Napoleonic colonel, Chabert's official historical status as a hero of the wars—and in particular of its “victories and conquests”—is associated with the finality and tragic romance of his death, a death that is, as it turns out, a legal fiction. In this error of death, then, the law of certificates and declarations has paradoxically helped to write a heroic history that eliminates the reality of war—a reality of horror, of atrocity, and of confusion in which death is carried on into life and which Chabert, in contrast, is precisely struggling to articulate and to narrate.

5. The Battle of Eylau was considered to have lost more officers than any other Napoleonic battle. The text Chabert refers to is an actual document that records the battle in detail. See Charles Theodore Beauvais de Preau, *Victoires, conquêtes, désastres, revers, et guerres civiles des Français de 1792 à 1815*, ed. Jacques Philippe Voïart and Ambroise Tardieu, 27 vols. (Paris, 1817–22), vol. 17. The name Chabert does not appear to refer to an actual Chabert involved in this battle but may be based on a number of different figures from this period. See the critical editions of Citron and Gascard for speculation concerning the possible sources of this name.

The reality of which Chabert speaks is indeed a far more gruesome one than the romantic story of his death, associated with the greatness of French victory. The death in this tale is of an entirely different order:

When I woke up, Monsieur, I was in a position and a setting which I couldn't convey to you if I talked till dawn. The little air I was breathing was foul. I wanted to move but had no room. Opening my eyes, I saw nothing. . . . I heard, or thought I heard—though I can't swear to it—groans coming from the pile of corpses I was lying in. Even though the memory of these moments is murky, and despite the fact I must have endured even greater suffering, there are nights when I still think I hear those muffled moans! But there was something more awful: a silence that I have never experienced anywhere else, the perfect silence of the grave. [CC, pp. 21–22]

What Chabert truly comes to know is not the glorious death of war and conquest but the horror of being buried alive under the dead. The story he has to tell is indeed the story of the dead, the sounds of the dead in the very act of dying, and the “silence of the grave” itself, a silence far more horrible, he suggests, than the loud and noisy heroism of the death named on the historian's page. Likewise, the triumph he also achieves in this horrible situation—the victory over death he will accomplish—is itself not the victory of war as recorded in history but an underground story horrible in its gruesome detail:

Scrabbling around me at once, for there was no time to lose, I felt a huge, detached arm. I owe my rescue to that bone. Without it I would have perished! But with a fury I'm sure you can imagine, I plowed my way through the corpses separating me from the surface. A layer of earth had no doubt been thrown over us—I say ‘us’ as if the others were still alive! I still do not know how I could have dug through all that flesh. It formed a barrier between me and life. But I went at it, Monsieur, and here I am. [CC, pp. 22–23]

Chabert's story of his return to life is not a glorious tale of conquest but the horrid account of tearing human limbs and of climbing on human bodies in a desperate attempt to save himself and to struggle out of the grave. Indeed his final emergence from the grave itself conveys a certain disrespect, a paradoxical act of desecration of the dead rather than their simple veneration and glorification: “I pushed myself up with my feet standing on the solid backs of dead men. This was no time to respect the dead” (CC, p. 23).

In words uncomfortably anticipatory of twentieth-century horrors—one thinks, for example, of the stories of people in the gas chambers stepping on each other in an attempt to resist choking and get air—Cha-

bert describes a kind of struggle for survival that cannot be assimilated to heroic notions of greatness or triumph.⁶ Not being really dead, Chabert in fact serves as a witness to a death—and a survival—far more disturbing and far less comprehensible than the deaths and victories recorded in history. What comes back, thus, through the “realism” of Balzac’s description of Chabert’s experience in the mass grave is in this sense truly a traumatic return: a history of death that insists on returning precisely to the extent that it is not fully understood.

What the literary text suggests surprisingly, however, is that, if history is to be understood as a traumatic history, its insistent return should be located not simply, as one might expect, in the psychic suffering of Chabert but, oddly and problematically, within the very inscription of this suffering in the realm of the law. Chabert himself suggests, repeatedly, that it is not his physical suffering that is of interest. Indeed, just as the lawyer Derville gets caught up in the physical and actual horrors of Chabert’s story, Chabert insists that its import lies somewhere else:

“Monsieur,” said the attorney, “you are confusing me. I feel like I’ve been dreaming. Just hold on a moment.”

“You are the only person,” said the Colonel with a sorrowful look, “who has had the patience to listen to me. I haven’t found a lawyer willing to advance me ten napoleons to send to Germany for the necessary documents to begin my lawsuit . . .”

“What lawsuit?” said the attorney, who had forgotten his client’s present painful position while listening to his past sufferings.

“Monsieur, the Countess Ferraud is my wife! She possesses 30,000 pounds a year that belong to me, and she won’t give me a sou. When I tell these things to lawyers, to men of good sense; when I propose that I, a beggar, should sue a count and countess; when I, a dead man, rise up against a death certificate, marriage licenses, and birth certificates, they show me the door. . . . I’ve been buried beneath the dead, but now I’m buried beneath the living; beneath certificates, facts—the whole society would rather have me buried underground!” [CC, pp. 26–27]

6. Gascar presents this view clearly in his preface to the novel:

The realism with which the war is presented here, a realism unprecedented in the history of literature, does not result simply from the sensibility of the writer who paints a picture of it. It is imposed on him by the novel aspect of armed confrontations. With Napoleon, that is to say with the utilization, thanks to conscription, of veritable human masses, with the progress of armaments . . . battles turn easily into carnage. Ten thousand Frenchmen fall at the battle of Eylau, in which Colonel Chabert takes part, and which led Napoleon to say, with crocodile tears, “This spectacle is made to inspire in princes the love of peace and the horror of war” [Gascar, preface, pp. 9–10]

On the profound effect of the outcome of the Battle of Eylau on Napoleon, see Jean-Paul Kauffmann, *The Black Room at Longwood: Napoleon’s Exile on Saint Helena*, trans. Patricia Clancy (New York, 1999).

If Derville is first moved by the story of Chabert's physical and mental sufferings—his remarkable story of being buried alive—what Chabert is troubled by is another form of burial, the burial beneath the living. If the war trauma can be said to repeat itself, indeed, it repeats itself, not in Chabert's physical or mental suffering, but in his suffering before the law: in his inability, having revived himself physically, to revive himself legally. The trauma returns, that is, not in a vision of his remembered near-suffocation in the grave but in his present and repeated suffocation by the death certificates and by the legal papers that bury him alive in a more pernicious and more permanent way. The repetition of the trauma, therefore, takes the form, not of a physical or mental, but of a social and a legal death.⁷ As such the horror of the traumatic history is contained, in this story, in the enigmatic and complex problem of a legal trauma.

3

Chabert's ghostly reappearance before Derville, indeed, is represented, not as an anomaly coming to the law from outside it, but as a problem that haunts it, as it were, from within. The dead colonel's mistaken burial had first occurred in a battle that was part of an attempt to spread, precisely, the very principles of Revolution in the form of the Civil Code—the law that, in 1807 (the very year of the Battle of Eylau) was named after Napoleon and was considered by him to be one of his greatest achievements.⁸ Chabert returns from this battle, however, not as a conqueror spreading the law in its glory, but as the war's victim, as the man mutilated and barely recognizable as human precisely because of a war meant to disseminate the notion of rights. Indeed, if revolutionary

7. On the notion of social death, see Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge, Mass., 1982). One of the fundamental concerns in the novel is the relation between the social and the legal spheres as they became intertwined after the Revolution; property appears to be a point of linkage between the two realms and for this reason also links the formalities of the law to a realm not controlled by it. I am grateful to Michal Shaked for her insights into the legal significance of the right of property.

8. Napoleon's name was officially and legally attached to the Code in 1807 and removed twice later by the Charters of 1814 and 1830; in 1852 it was finally reinstated "to pay homage to historical truth" (Jean Carbonnier, "Le Code civil," in *Les Lieux de mémoire*, ed. Pierre Nora, 3 vols. in 7 [Paris, 1986], 2:2:296; see also Joseph Goy, "Civil Code," in *Revolution*, trans. Arthur Goldhammer, ed. Furet and Mona Ozouf [Cambridge, Mass., 1989], pp. 437–48). Napoleon's own sense of identification with the Code is expressed clearly in his proud words, "I have sown liberty lavishly wherever I have implanted my civil Code" (quoted in Carbonnier, "Le Code civil," 2:2:299) and in his moving comment from St. Helena, "My true glory is not to have won forty battles; Waterloo will efface the memory of any number of victories. What nothing will efface, what will live eternally, is my Civil Code" (quoted in Goy, "Civil Code," p. 442). The history of war during the Napoleonic period is thus inextricable from the history of law, a perplexing entanglement of law and violent conquest that Napoleon himself attempts to idealize in his monumentalization of the Code after his political exile.

law in a certain sense redefined the human around the notion of rights, Chabert emerges from among the literally dehumanized, the disarticulated limbs and unrecognizable faces of those upon whom and through whom these rights were imposed. Chabert's return thus haunts the law with an aspect of its own history that remains unrecognizable to it, a figure of inhumanity that the law cannot contain within its own memory.

Chabert does not return, indeed, precisely as a human being claiming his rights but as a cry for humanity emanating from someone not yet recognized as human. Chabert must claim, first, his very existence, his very recognizability as a living human being who has the right to claim. Describing to Derville his attempts to contact his wife, Chabert displays the depth of his dilemma caused by this radical refusal of recognition:

“Well,” said the Colonel, with a gesture of concentrated rage, “when I called under an assumed name I was not received, and the day I used my own I was pushed out the door. . . . My gaze would plunge inside that carriage, which passed by with lightning speed, and barely catch a glimpse of the woman who is my wife and yet no longer mine. Oh, since that day I have lived for vengeance!” [CC, p. 33]

The desire for rebirth before the law, as Chabert first speaks of it, emerges as a cry of revenge that will force recognition through an act of retribution: an act of forcefully reclaiming the life that he no longer owns. In claiming his property, then, Chabert does not claim something to which he has the right but rather that to which he precisely can no longer rightfully lay claim, a self, a love, and a life of which he has been radically dispossessed.

A Place of Memory

4

From one perspective, the entire narrative of Balzac's novel—the legal drama that grows out of the encounter between Chabert and Derville—can be understood as revealing the law's capacity to hear this claim and to perform the rebirth of the dead man, his legal resuscitation, through its capability of translating the traumatic story into recognizable legal terms. Derville could indeed be said to discover in the claim more than the negotiation of an already existing link between the legally unrecognizable figure and the human world he wishes to enter. The claim to self and to life, made as a claim to property—as a claim that is always made in relation to another—becomes, in Derville's creative manipulation of it, the very possibility for Chabert to achieve a recognizable identity.

Indeed, if Derville is shown to be a capable listener, this legal listening is made possible, in part, not because he speaks in the same language as Chabert, but because he integrates the story—and the claim—into a recognizable legal and human framework. As it turns out, Derville is also the lawyer for Chabert's (now remarried) wife, and it is by bringing Chabert into relation to her, by proposing a form of mutual legal recognition, that Derville first responds to Chabert's cry:

"This is a serious matter," [Derville] said at last, somewhat mechanically. . . . "I need to think about this case with a clear head; it is quite unusual."

"Well," the Colonel answered coldly, raising his head proudly, "if I lose, I may die, but not alone." Suddenly the old man disappeared, and the eyes of a young soldier ignited with the fires of desire and vengeance.

"We might have to compromise," said the lawyer.

"Compromise?" repeated Colonel Chabert. "Am I dead or am I alive?"

"Monsieur," continued the lawyer, "I hope you will follow my advice. Your cause is mine." [CC, p. 34]

While Chabert's claim is a cry for retribution, Derville's response translates this symmetry of destruction into the reciprocal recognition of a settlement.⁹ He recognizes in the cry the claim, that is, the claim for rights, which thus permits him to accord the unrecognizable figure before him the recognition of a human being. Explaining calmly to Chabert that his wife is remarried, has children, and has manipulated the inheritance in a way that makes it untraceable to Chabert, the lawyer offers a solution that will not return Chabert to the past he once lived but will allow some recompense for its loss.

Indeed, as the lawyer makes clear, the need for a negotiation of a legal solution imposes itself precisely because Chabert's claim to survival comes into direct confrontation with that of his wife. Upon hearing the news of her husband's death on the battlefield, Mme. Chabert had, we are told, remarried an aristocratic count, the Count Ferraud, whose name she proceeded to take as her own and with whom she had two children. Working with her pension from Chabert's death and with her inheritance, she had made use of the monetary swings of the early Restoration to manipulate this sum into a small fortune, thus providing a place for herself in Restoration society as a wealthy and aristocratic countess. But her husband, the count, now has ambitions of his own and, she senses, has been looking for an excuse to divorce her so as to marry into the

9. On the exemplary status of compromise as a legal principle, see Martin Shapiro, "Compromise and Litigation," in *Compromise in Ethics, Law, and Politics*, ed. J. Roland Pennock and John W. Chapman (New York, 1979), pp. 163–75.

royal family and have a chance at becoming a peer of France, an excuse that Chabert's return and her unwitting bigamy would provide. If Chabert feels he cannot quite come alive, then, if he suffers a social death through what constitutes his wife's survival, Mme. Ferraud is horrified that he cannot quite die, that his survival means likewise a social death for her. The lawyer's offer of compromise thus mediates between two opposing claims to survival.

The conflict and the compromise, moreover, take place as a negotiation about, and through, property; it is through property (his name, marriage, and money) that Chabert makes a claim for his identity, and it is through property (her wealth and marriage) that the wife resists. But it is also because this property is ultimately negotiable that the claim can become a settlement and be recognized on both sides.¹⁰ Derville thus sug-

10. The definition of property in the Code would appear to determine this negotiability in terms of the possessibility of property. The full definition reads: "Property is the right of enjoying and disposing of things in the most absolute manner, provided they are not used in a way prohibited by the laws or statutes" (*The Code Napoleon; or, The French Civil Code*, trans. barrister of the Inner Temple [New York, 1841]). This definition has led to many interpretations of the Code's mechanistic qualities, which are associated with Napoleon's dictatorial aims or the nature of imperial bourgeois society. See, for example, Jean-Louis Halperin, *Histoire du droit privé français depuis 1804* (Paris, 1996); see also Elisabeth Sledziewski, *Révolutions du sujet* (Paris, 1989), and Xavier Martin, "Nature humaine et Code Napoléon," *Droits*, no. 2 (1985): 177–228.

However, the Code is also interpreted by some scholars as a compromise between competing notions of property that inscribes in it a history of the complexity and enigma of this notion. See for example Jacques Poumerade, "De la difficulté de penser la propriété (1789–1793)," in *Propriété et Révolution*, ed. Geneviève Koubi (Paris, 1990), 27–42. Koubi analyses what she calls the "ideological breach" in the notion of property at the heart of the *Declaration*, a breach signaled by the use of the singular term "property" and the plural term "properties" in articles 2 and 17, respectively. These two terms are associated, in her analysis, with notions of liberty, on the one hand, and power on the other. See her "De l'article 2 à l'article 17 de la *Déclaration* de 1789: La 'Brèche' dans le discours révolutionnaire," in *Propriété et révolution*, pp. 65–84. Balzac's story indeed appears to center in part around the plurality of notions of property contained in the legal use of the word. Chabert's apparent identification of selfhood and property might perhaps be seen in terms of what Etienne Balibar calls the "juridical" (as opposed to economic) notion of property, the right to property that is very closely tied to a right to one's person and the right to oneself and one's labor, or what Margaret Jane Radin refers to as nonfungible property. See Etienne Balibar, "What Is a Politics of the Rights of Man?" *Masses, Classes, Ideas: Studies on Politics and Philosophy Before and After Marx*, trans. James Swenson (New York, 1994), pp. 205–25, hereafter abbreviated "W"; and Margaret Jane Radin "Property and Personhood," *Stanford Law Review* 34 (May 1982): 957–1015.

For an analysis of the movement from earlier to later meanings of property in postrevolutionary law, see Sledziewski, *Révolutions du sujet*, who provides a remarkable analysis of what she calls the "slippage" in the notion of property from the *Declaration* to the Civil Code, which also accounts for the more reduced economic model in the Code. In her analysis, the slippage occurs because of the inherent tension between the subject as giver and receiver of the law arising in the self-declaration of 1789; this played itself out, historically, in the varying interpretations of property in the 1790's, during the repeated formulation of declarations and constitutions up until the Civil Code (and passed on, then, presumably, to the

gests that Chabert give up his claim to the marriage (by annulling the marriage contract) if Mme. Ferraud agrees to grant Chabert his identity (by annulling the death certificate). Derville convinces Chabert to negotiate, in addition, because he cannot afford a lawsuit and will ultimately lose his name, while Derville convinces the wife to negotiate, so that she can avoid the consequences of a lawsuit that would expose her bigamy to her husband. Chabert's identity as a living Colonel Chabert (through the annulment of the death certificate) and the wife's identity as Mme. Ferraud (through the annulment of the previous marriage contract to Chabert) are thus established and brought into relation to each other as reciprocal acts of annulment that treat the establishment of identity as a kind of exchange of properties. The right to property, by establishing an analogy between the asymmetrical needs and claims of Chabert and his wife—between the man who has as yet no property and the woman who is at risk of losing hers—thus becomes the mediating term by which the law brings the two parties together and whose principle governs the very form of the compromise. In this sense the claim to property—in its powers not only to recognize, but to constitute, a recognizable symmetry of identities—becomes the epitome of the right to claim that is also the necessity of the mutual recognition of one another's rights.¹¹

5

The legal remedy of compromise is also represented, in the story, as an act of remembering. In effecting Chabert's legal rebirth through the compromise—by associating and recognizing his life with a legal form—Derville could be said to reenact Chabert's rebirth from the pit as the memory of an earlier, legal birth, the birth of man as a subject of rights in the legal act of foundation constituted by the Revolution. The law, in resuscitating Chabert, thus remembers through him the legal foundation of the subject created by the *Declaration*, as a "juridical person" recogniz-

Restoration). On the complexity of the problem of codification in this period, see also Jean-Louis Halpérin, *L'impossible code civil* (Paris, 1992). Several critics analyze the problem of property in terms of debates concerning Lockean and Rousseauist interpretations as they played themselves out over time. See Florence Gauthier, "L'Idée générale de propriété dans la philosophie du droit naturel et la contradiction entre liberté politique et liberté économique 1789–1795," in *La Révolution et l'ordre juridique privé: Rationalité ou scandale?* 2 vols. (Paris, 1988), 1:161–71, and Chantal Gaillard, *La Révolution de 1789 et la propriété: La Propriété attaquée et sacralisée* (Paris, 1991).

11. The relation between the two characters that Derville attempts to establish, when he treats them as if they were two equal human beings before the law, thus harbors within it another kind of nonsymmetrical relation between someone not yet a person (Chabert) and someone already established as human (Mme. Ferraud). It is the difficulty of articulating the latter asymmetry with the need of the law for the symmetrical recognition between two parties that could be said to determine, in part, the development of the the plot as it proceeds from this point.

able through his very right to claim and, specifically, the right to claim his property. Against the background of the reduced notion of property as mere possession, Derville thus resuscitates, with Chabert, the sense in which the *Declaration of the Rights of Man and Citizen*, rather than recognizing the human through his property, precisely constituted the subject as proprietor, as the one who is recognized through his very right to claim.¹²

This act of resurrecting the original legal meaning of the revolutionary subject is thus also represented in Balzac's text as the possibility of re-creating a smooth succession between past and present and incorporating the legal history of the Revolution and postrevolutionary periods (the extended history of the Revolution as the foundation of modern law) into the continuity of a nontraumatic history. Moving between Chabert (who is trying to live like a Napoleonic colonel) and his wife (who is trying to live the life of a Restoration countess), Derville ultimately convinces both of them to come to his office to negotiate the settlement, which he stages in a highly theatrical gesture by directing Chabert, dressed in the uniform of the Imperial Guard, and his wife, dressed in her most glorious Restoration garb, to sit in separate rooms while he moves between them, reading the settlement.¹³ In this scene, Derville symbolically crosses the gap between Empire and Restoration—the end of the Napoleonic Empire represented by the moment of Chabert's so-called death—and turns it into the legal memory of the Revolution, not as the “endless abyss” that cannot be bridged, but as a beginning with an end, a moment in the past that gives meaning and sense to the history that it created. He also, in this sense, restores Napoleon in history, not as the conqueror who spread the Code through catastrophic wars, but as the ruler responsible for creating a place of memory in the Code.¹⁴ The legal settlement of property, the

12. In Sledziewski's words, the *Declaration* finds the “citizen-man” as “a juridical figure of individuality”: “The individual as the locus of right, that is to say, as the place where the law finds itself in right, and where subjective aspiration becomes right, requires the law: that is indeed the invention of the Revolution” (Sledziewski, *Révolutions du sujet*, p. 27). Balibar further notes that this is associated specifically with the “imprescriptible” right to property, which thus defines this subject “in its essential characteristics” and thus constitutes it precisely as proprietor (“W,” p. 217). On the mutual “witnessing” permitted by the “auto-declaration” of rights, see Claude Lefort, *Democracy and Political Theory*, trans. David Macey (Minneapolis, 1988).

13. Balzac would appear, in this scene, to put on stage not only the two characters but precisely the highly theatrical language used by historians of the period to describe the Revolution; it is not only the artifice of the literary text but the language of historians that Derville thus imitates.

14. Carbonnier writes beautifully of the Code as a place of memory in “Le Code Civil.” (For a broader discussion of “lieux de mémoire,” see Nora, “Between Memory and History: *Les Lieux de mémoire*,” *Representations*, no. 26 [Spring 1989]: 7–25.) On the relation between the founding act of declaration and the difficulties for a codified system to reflect the performative dimension of such an act, see Keith Michael Baker, “Fixing the French Revolution,” *Inventing the French Revolution: Essays on French Political Culture in the Eighteenth Century* (Cambridge, 1990), pp. 253–54, who writes illuminatingly on the double notion of constitu-

remedy to historical trauma proposed by Derville, thus situates the legal Code as a place of memory, the memory of the Revolution as the beginning of a continuous and comprehensible history and the recognition of the human as, precisely, the reflection and embodiment of the Code.

The Enactment of Witness

6

Yet if, on the one hand, Derville's listening acts as a kind of legal memory of the history of the law, it also comes to enact something within that history that it still fails to comprehend.

This incomprehension occurs, moreover, around the very problem of property. While Derville seems able to appreciate what it means for Chabert not to have property, he appears to misunderstand what it means for his wife to cling so desperately to it. Indeed, while Chabert tells Derville directly what he refers to as "the secret of my situation" (CC, p. 19), that is, of his burial and return from underneath the corpses, the wife does not fully reveal to Derville what the narrator calls the "secrets of her conduct deep in her heart" (CC, p. 59), another burial and another story that is not possessed by the wife any more than Chabert's story is possessed by him. Mme. Ferraud's exchange of husbands and manipulation of her inheritance from Chabert is in fact an attempt, we are told, to hide her own past life in a brothel, the place from which Chabert had originally taken her and which she is still trying to forget in her marriage to Count Ferraud and in her attempt to become a "proper lady." But Count Ferraud is himself trying to escape another past: the history of his own father, who lost his property during the Terror, a loss of status that Count Ferraud himself is desperately attempting to repair in his ambitions to become a peer of France. In the negotiation of the settlement, then, the problem of property, even while it brings Chabert and Mme. Ferraud in relation to each other, also represents an abyss of history that cannot be fully grasped by the legal Code.¹⁵ For them, indeed, the law represents

tion as both "institution" and "order" that operated in post-Revolutionary discussions. See also Jacques Derrida, "Declarations of Independence," trans. Tom Keenan and Tom Pepper, *New Political Science* 15 (Summer 1986): 7–15, and Keenan, *Fables of Responsibility: Aberrations and Predicaments in Ethics and Politics* (Stanford, Calif., 1997), esp. chap. 1, "Left to Our Own Devices: On the Impossibility of Justice," pp. 7–42.

15. Balzac uses the phrase "*abyss of the Revolution*" in reference to the words of Louis XVI, in the course of describing Monsieur Ferraud's personal history and his own relation to the revolutionary past (CC, p. 58). It is notable that the language describing the Revolution in French historiography also will at times describe the Revolution as an "enigma" (Lefort, *Democracy and Political Theory*, p. 37) or rupture or as an event not in time; see for example Furet and Ozouf, preface, *A Critical Dictionary of the French Revolution*, pp. xiii–xxii.

not what brings them into history but what keeps them out of it. The relation to one another is determined, thus, not through their established identities and histories but through what, in each history, neither can fully possess.

Indeed, Mme. Ferraud is no more a Restoration countess than Chabert can be said to be, properly speaking, a colonel of the Empire. Her desperate attempts to hide her past indicate, in fact, the ways in which she has not quite managed to achieve the period role that she wishes to portray. And this is linked, moreover, to the way in which the law has harmed not only Chabert but her as well; for the Civil Code in fact restricted the rights of women over spousal property in the rules of inheritance.¹⁶ What Chabert and Mme. Ferraud truly share, indeed, is the way in which neither is quite situated within the period he or she wishes to represent; Chabert is too late to be, any longer, a colonel of the Empire, and Mme. Ferraud has not yet achieved the full status of a countess of the Restoration.¹⁷ In this sense, their communication with each other, in the negotiation, takes place across their secrets, from one abyss to another, a story that is carried on beneath the negotiation Derville is so valiantly attempting to maneuver.¹⁸

Property is, in other words, not only the rational principle by which the negotiation becomes possible, but also, in the story, the one thing that escapes all rational principles and hence causes the compromise ultimately to fail.

16. The restriction of women's rights in the Code, a regression from Revolutionary principles, is generally associated with Napoleon's own views of women. It is clear that Mme. Ferraud's manipulation of the inheritance and of her husband's holdings is not only a matter of greed but an exercise of rights that had in fact been limited by imperial law; in this sense she too, like Chabert, is attempting to create herself and survive as a subject. Interestingly, Napoleon also said there was no place for "bastards" in society and restricted their inheritance rights; given Chabert's orphaned status, this places him, as well as Mme. Ferraud, in a marginal position in the world of the Civil Code. On these matters see Halpérin, *Histoire du droit privé français depuis 1804*.

17. Colonel Chabert and Mme. Ferraud are frequently read in the critical literature as allegorical figures representing the Empire and the Restoration, respectively, and are likewise subjected to value judgements (Chabert's positive, Mme. Ferraud's negative). The peculiar inbetween status of these characters and the way in which history, in this text, appears to take place in the interstices between actual periods is not recognized. See for example Graham Good, "Le Colonel Chabert: A Masquerade with Documents," *The French Review* 42 (May 1969): 846–56, and Eileen B. Sivert, "Who's Who: Non-Characters in *Le Colonel Chabert*," *French Forum* 13 (May 1988): 217–28.

18. Indeed, in the scene in which Derville first convinces Mme. Ferraud to agree to a compromise, she asks if Chabert still loves her; this question, the narrator tells us, appears to indicate the seeds of a plan to use the meeting at the lawyer's office to manipulate Chabert. In this sense the theatrical gesture of Derville is already overtaken by the theatrical gesture of Mme. Ferraud. But behind this theatrical gesture, too—or under the costume that she wears—Mme. Ferraud, like Chabert, operates from an abyssal past.

Indeed, the story of the settlement—which is the story of the capacity of the law to recognize and to remember history as the history of the legal subject—ultimately turns into the story of its failure: of the reenactment of another aspect of the law's own history that the language and memory of the Code does not fully comprehend. It is, moreover, precisely around the monetary terms of the property settlement that the failure of the compromise takes place. Sitting in separate rooms as Derville walks between them and reads the paper, Chabert and his wife listen quietly until the matter of the property settlement is broached:

“But that is much too much!” said the Countess. . . .

“What do you want, Madame?”

“I want . . .”

“. . . him to remain dead,” Derville broke in quickly. . . .

“Monsieur,” said the Countess, “if it is a matter of 24,000 francs a year, then we will go to court . . .”

“Yes, we will go to court,” cried the muffled voice of the Colonel, who opened the door and suddenly appeared before his wife, one hand in his waistcoat and the other hanging by his side, a gesture given terrible significance by the memory of his adventure.

“It's him,” said the countess to herself.

“Too much?” repeated the old soldier. “I gave you nearly a million and you are haggling over my misery. We hold our property in common, our marriage is not dissolved . . .”

“But Monsieur is not Colonel Chabert!” cried the Countess, feigning surprise. [CC, pp. 73–74]

Refusing the terms of the property settlement, the countess is suddenly confronted by the figure of Chabert in person, a direct confrontation that, rather than producing the recognition arranged by the legal papers, precisely produces the refusal of recognition that the settlement was supposed to correct. This encounter and this refusal of recognition indeed break the theatrical staging of memory that should bring Chabert to life and reenacts, once more, his death: a death that, it appears, could never quite be grasped within the Code's legal forms.

This return of death in the wife's refusal also brings back the return of Chabert's cry for vengeance:

“Well, Colonel,” [said Derville,] “I was right, wasn't I, to urge you not to come in? . . . You have lost our suit; your wife knows that you are unrecognizable.

“I will shoot her!”

“Madness! You will be caught and executed.” [CC, pp. 74–75]

Rather than remembering (and correcting) the past of Chabert's life, the law becomes the very site of the reenactment of his death, of the original blow to his head that began the incomprehensible story of Chabert's death: "The poor Colonel . . . walked slowly down the steps of the dark staircase, lost in somber thoughts, perhaps overcome by the blow he had just suffered—so cruelly and deeply did it penetrate his heart" (CC, p. 75). In the reenactment of the death, the law becomes the scene, not simply of the memory of its own revolutionary past, but of a secret buried at the heart of this history, the inextricability of law and history that constitutes the foundation of the human as the legal subject and that enigmatically also constitutes history, precisely, as the history of a trauma.

It is then not only in the capacity of the law to remember but in the failure of memory within the law, Balzac suggests, that another truth of the revolutionary past begins to emerge. The nonfulfillment of the compromise, therefore, does not simply represent a failure of the law to understand or witness history; rather, it shows history as emerging (and being borne witness to) precisely through the law's failures. The scene of failed settlement thus reproduces the figure of the survivor at the moment of the intended compromise and recognition (the figure of the "nonproprietor," "devoid of property," or dispossessed" that, in Etienne Balibar's words, would be, precisely, a "contradiction in terms" within the framework of Revolutionary law ["W," p. 217]). If the Code remembers the truth of revolutionary history as the right to claim—as a right recognizable through the very claim to property—the Code also inscribes *within it* the haunting figure of the survivor attending upon this very act, not as the one who speaks his rights but as the unspeakable, the mute survivor, attending upon and yet not recognized within the framework of revolutionary law.¹⁹ Between the possibility of compromise and its failure, then, the law serves, here, as a double site of witness: the witness of the human as a claim and the witness of the one who cannot be recognized as human. The law is at the same time a witness to the human grounded in the legal act of speech and a witness to the survivor appearing only as a muteness at the heart of the law.

19. In this sense, Balzac's text appears to suggest a way in which the history of the Code remains in excess of the Code: it is an aspect of the Code's own foundation and unfolding that is not available to it in its civil function as a form of memory. This is not a history, in other words, that could be captured by the Code's implicit representation of its past. It might be appropriate, in this context, to think of Hannah Arendt's analysis of the "rightless"—those who emerge, after the institution of civil law, not simply as individuals whose rights have not been adequately respected, but as a group who lie entirely outside the realm of rights—which is a phenomenon that only emerges, she says, in a world dominated by civil government. See Hannah Arendt, *The Origins of Totalitarianism* (New York, 1951). On the muteness of those excluded from the law as a place of speech, see Jean-François Lyotard, "The Other's Rights," trans. Chris Miller and Robert Smith, in *On Human Rights: The Oxford Amnesty Lectures 1993*, ed. Stephen Shute and Susan Hurley (New York, 1994), pp. 135–47.

The scene of failure thus also marks a peculiar doubling at the heart of revolutionary history: an entanglement of two histories founded precisely in the impossibility of their analogy and their negotiation. The failure of the compromise, indeed, represents not only the denial of Chabert's identity but also the denial of the divorce, a legal collapse that, paradoxically, binds the two parties around a gap, and resituates revolutionary history in the splitting and binding of these two incommensurable pasts.

Another Freedom

8

It might appear that this failure establishes a relation between law and history in a kind of death drive that condemns the law to participate in the repetitions of an incomprehensible catastrophe.²⁰ Indeed, many critics have read the end of the story simply as a confirmation of the failure of Chabert to attain his identity in a corrupt Restoration society.²¹ In the last section of the tale, Chabert, after leaving Derville's office, is seduced by his wife to go to her country estate, where she produces an-

20. The story in many ways appears to anticipate the structure of repetition (or more precisely, repetition compulsion) as Freud formulated it in *Beyond the Pleasure Principle* 100 years after these events and after another catastrophic war. See Sigmund Freud, *Beyond the Pleasure Principle*, in *The Standard Edition of the Complete Psychological Works of Sigmund Freud*, trans. and ed. James Strachey, 24 vols. (London, 1953–74), 18:7–64. Chabert's repeated "deaths" in his attempt to come before the law, in particular the scene in Derville's office, could be understood as the repetition of an ungrasped historical event much like the repeated event of a missed death described by Freud. In many ways, Balzac's story could be said to anticipate Freud's work, not so much in its psychological as in its historical dimensions; *Beyond the Pleasure Principle* would indeed be rethought in historical terms in *Moses and Monotheism*, but one might also read Freud's postwar work, in light of this French literary history, as a larger cultural reflection on a revolutionary history still reverberating throughout Europe. See Freud, *Moses and Monotheism*, in *The Standard Edition of the Complete Psychological Works of Sigmund Freud*, 23:3–137. Interestingly, shortly before the end of Balzac's novel, Chabert is compared to the women at the Salpêtrière; the Salpêtrière was, of course, the French hospital in which Freud first encountered the study of hysterical women and then proceeded, in the following years, to develop his early theory of trauma.

21. An exception to the readings in which Chabert is associated with the good old days of the Empire is the fine analysis by Peter Brooks, who reads the encounter between Chabert and Derville on the model of a psychoanalytic encounter. In this interpretation the function of Derville is to allow Chabert to work through his loss of the past in order to enter and move forward in the present. This reading has the virtue of recognizing the impossibility of Chabert's claim, an impossibility connected with the absoluteness and irreversibility of events. However, Brooks proceeds, on the basis of this interpretation of the story, to read the final part of the novel as a kind of failure, which he associates with the dangers of narrative; he does not consider the legal and philosophical (or human) significance of the structural position of the final scenes of the book and of the final verbal acts of Chabert. See Peter Brooks, "Narrative Transaction and Transference (Unburying *Le Colonel Chabert*)," *Novel* 15 (Winter 1982): 101–10.

other theatrical setting, a setting in which she appears with her children before Chabert and convinces him that her own survival and the unity of her family depend upon his willingness to sign another legal paper in which he would give up his name and profess himself a fraud in exchange for a small pension. In an act of love, Chabert is about to agree to sign when he accidentally overhears his wife suggesting that he be locked up in a madhouse. At this moment Chabert steps before his wife, refuses to sign the paper, and promises never to reclaim his name, ultimately going off to live in a beggar's prison and, in the final scenes of the novel, in an almshouse.

This hardly makes for a happy ending. But it is in this last part of the story, in the lingering afterlife of the relationship between Chabert and his wife and in the persistent survivals of Chabert past his repeated experiences of failure and death that, I would propose, the true potential of the compromise, as a beginning of a different form of historical witness, comes to be articulated. In Chabert's refusal of his wife's offer, I would argue—and in the manner it repeats and reclaims the catastrophe of the first scene of refusal—the story opens the possibility for Chabert to name himself anew, through the very failure to achieve his former identity.²² This new act creates a possibility that is born from, but not contained by, the law's previous attempt and failure to turn the past into an identity and a possession.

This possibility will appear in the moment of the second scene of signing, in which Chabert refuses to sign his wife's paper written up by the corrupt lawyer Delbecq. The scene is, in fact, a repetition of the scene of failure in Derville's office but in a form that reverses its effects. In this second scene, Chabert truly gives up vengeance for the first time and does so, moreover, as the making of a promise:

“Madame,” he said after staring at her a moment and forcing her to blush, “Madame, I do not curse you; I despise you. I thank fate for severing our ties. I do not even feel a desire for vengeance, I no longer love you. I want nothing from you. Live peacefully on the honor of my word; it is worth more than the scribblings of all the notaries in Paris. I will never lay claim to the name I may have made

22. Insofar as this scene repeats the earlier scene of failure, which is itself a repetition of earlier “deaths,” one might understand it as anticipating the kind of movement that, in *Beyond the Pleasure Principle*, occurs between the repetition compulsion of the death drive and the peculiar, originary, and originating repetition that emerges from it. While we would not want to make too close an analogy between the structure in Balzac and the structure of repeated repetitions in Freud, there is nonetheless a principle of opening that is shared by both and is crucial, I believe, to their historical significance. See my “Parting Words: Trauma, Silence, and Survival,” *Cultural Values* 5 (Fall 2001): 7–26; rpt. in *Between the Psyche and the Polis: Refiguring History in Literature and Theory*, ed. Michael Rossington and Anne Whitehead (Aldershot, 2001), pp. 77–96.

illustrious. I am nothing but a poor devil named Hyacinthe, who asks only for a good spot to sit in the sun. Farewell." [CC, pp. 89–90]

The act of refusal to sign the paper, here, is an act of renunciation. The giving up of vengeance, indeed, as the refusal to sign the legal agreement precisely repeats the legal failure of the previous scene, but does so not in the form of passive repetition but rather as a new kind of action: as a promise not to reclaim the name that was refused him in the first scene of signing. The self that emerges, here, is indeed not the self of the past—the “Chabert” that is no longer fully possible—but rather “Hyacinthe,” Chabert’s given name, which emerges in the promise never to reclaim—that is, to refrain from repeatedly and compulsively returning to claim—the name Chabert.²³ This is not a triumphant reassertion of identity but, instead, the peculiar capacity to name, precisely, his very survival in the form of an ultimate loss: “Not Chabert! Not Chabert!” he says when he is addressed by his old name, “My name is Hyacinthe. . . . I am no longer a man, I am number 164, room 7” (CC, p. 98).

We could say, then, that in the act of renunciation and promise, Chabert reclaims the failure of the law as the very condition of his freedom.²⁴ In giving up the claim, Chabert could perhaps be said, in Lévinas’s words, to retain a different kind of claim, the “claim to judge history—that is to say, to remain free with regard to events, whatever the internal logic binding them.”²⁵ Chabert will retain, in the final scenes, an ongoing

23. Much of the difficulty with historical movement is played out, in the novel, on the level of names. Thus Mme. Ferraud’s peculiar temporal position is reflected in the split between her two names, Mme. Chabert and Mme. Ferraud; Colonel Chabert emerges as Hyacinthe; and, as noted above, the Civil Code itself reflected a split between its legal and historical dimensions in its being referred to as both the Civil Code and the Napoleonic Code. The relation between names and property would be important to examine in this light; Chabert’s act of renaming himself as Hyacinthe is no longer associated, as was his attempt to reclaim the name Chabert, with the claiming of possessions.

24. On the act of renunciation (and promise), see Hannah Arendt, *The Human Condition*, 2d ed. (1958; Chicago, 1998), sec. 5, “Action,” pp. 175–247. Although one would not want to give too much contextual weight to the promise in the scene, it does, perhaps, allow for a link between Chabert’s new act and the old legal one he is, in a sense, giving up. In addition to recalling the centrality of the promise in the *Social Contract*, generally considered to be one of the philosophical sources of the Revolution, Chabert’s act draws on the power of the speech act constituted by the 1789 *Declaration*. On the significance of such an originary linguistic gesture, see Derrida, “Declarations of Independence” and Keenan, *Fables of Responsibility*. Christine Fauré also discusses the centrality of the performative utterance to the *Declaration* in her preface to her edition of *Les Déclarations des droits de l’homme de 1789*, ed. Christine Fauré (Paris, 1988), pp. 15–37. Lefort, in *Democracy and Political Theory*, notes the “enigma” that the *Declaration* makes of “both humanity and right” by reducing the source of right to an utterance of right (p. 37).

25. Emmanuel Lévinas, *Difficult Freedom: Essays on Judaism*, trans. Seán Hand (Baltimore, 1990), p. 199. What Lévinas describes here and what Chabert appears to enact might be thought of as a relation to history that is not subject to what Balibar calls “the principle

link to his military past—he continues to speak of Napoleon and addresses some passing Prussians with disdain—but he no longer appears to consider this past as a matter of his own possession. It constitutes, rather, a memory and a relation to history that, if they are Chabert's only remaining property, are no longer a property that could simply be possessed.

9

It is thus in this peculiar way in which Chabert lives on beyond his own name that his survival—and the traumatic history to which he bears witness—first becomes truly legible. No longer “a man,” as he says—that is, a subject defined entirely in the law's own terms—Chabert is nonetheless still recognizable as he appears again before the eyes of the lawyer. Precisely because he has failed; because he has survived beyond the name Chabert, can this figure and his history emerge to be read and witnessed in another way. In this act, indeed, Chabert is once again seen by the law, no longer recognized through the compromise but encountered in a scene of witnessing that also appears as Derville's own form of giving up.²⁶

In the final lines of the story, thus, Derville, with the young lawyer Godeschal whom he has mentored, happen to pass Chabert as they are on the way to a town outside Paris. Chabert, covered in poor clothing and sitting outside an almshouse, is not recognizable to Godeschal but is immediately recognized by Derville. Standing in front of the man who now names himself by a number, Derville remarks on the fate of Chabert and ends with an impassioned speech to the young lawyer who was once his student:

“I have learned so much practicing my profession! . . . I have seen wills burned. I have seen mothers rob their children. . . . I cannot tell you everything I have seen because I have seen crimes that justice is powerless to rectify. In the end, none of the horrors that novelists believe they've invented can compare to the truth. You'll soon be-

of total possession,” the assumption according to which all property, he argues, has previously been understood (“W,” p. 219).

26. Chabert is first seen by Derville in a beggar's prison, then once again, accidentally, on the road, as he is passing by the almshouse, and finally when Derville returns to the almshouse with Godeschal (all of which sightings occur, interestingly, *after* the novel states, “Chabert, in fact, disappeared” (CC, p. 91)—a sentence that could be read in terms of the name Chabert. The surprising recognition of Chabert's face recalls the earliest scenes of surprise—in Balzac's text, the description of Chabert's face in the first encounter with Derville involves an extended and lengthy development—but with the difference that Chabert's face is now described as noble, rather than ghastly and ghostly. The emphasis on Chabert's disfigured face, in this story, has intriguing implications for the relations among property, identity, and the body as well as for the ethical dimension implicit in the address of the unrecognizable other.

come acquainted with such charming things yourself; as for me, I am moving to the country with my wife. I am sick of Paris.”

“I have seen plenty already,” Godeschal replied. [CC, pp. 100–101]

This scene, I would propose, is an ultimate scene of legal witnessing, not as the memory Derville had hoped to accomplish with the compromise, but as the seeing of something he cannot completely tell: “I cannot tell you everything I have seen,” he says, “because I have seen crimes that justice is powerless to rectify.” In this scene, then, the lawyer appears, peculiarly, as witness to what cannot be told simply in legal terms. Seeing Chabert before him, the lawyer Derville comes to recognize, and to articulate, the law’s own limits. In the face of his own failure, he speaks in a language that, like the novelist he invokes, can only approach but never fully capture the sight of the figure before him. The law bears witness, in this way, to what remains outside it. As such, this witness is not so much offered as a reflection on the past, but as a scene of teaching, as the words passed on to a student, and to a reader, who will learn from them only in the future.²⁷

27. On the future-oriented, prophetic element of Balzac’s writing see Walter Benjamin, *The Arcades Project*, trans. Howard Eiland and Kevin McLaughlin (Cambridge, Mass., 1999). Balzac’s inscription of an allusion to the novelist in Derville’s final comments, in this scene of teaching, may also reflect on his own passage from his training as law clerk to that of literary writer, and what was passed on in the movement from one mode of writing to the other.