Moreau, Dumas, and the Authority to Interpret a Civil Code

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This Article explores a nineteenth-century legal publication—Félix Moreau's Le Code civil et le théâtre contemporain*. This 300-page volume is a detailed catalogue of every reference to the Civil Code in the plays of Alexandre Dumas* fils*. Moreau itemizes each time one of Dumas's characters makes a statement about the law that does not accord with the text of the Civil Code. To explain such an unusual piece of scholarship, I argue that Dumas's active support for the passage of the 1884 law reestablishing divorce in France inspired Moreau to write his book. The Article then discusses some implications of Moreau's preferred mode of exegetical interpretation of the Civil Code for legal education and on the identification of those with the authority to interpret and critique the Civil Code.*

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I. INTRODUCTION

In 1887, a young law professor named Félix Moreau published *Le Code civil et le théâtre contemporain*,[1] a 300-page volume devoted exclusively to the treatment of the law in the plays of a single playwright—Alexandre Dumas *fils*.[2] Legal topics often appear in Dumas's plays. This fact is unsurprising given that his plays are proto-realistic dramas with a contemporary Parisian setting and that Dumas himself had a vision of dramatists as "*législateurs*" [legislators] who, by provoking consideration of unjust laws through dramatization of their effects, could encourage their repeal or modification.[3]

Moreau chose to respond to a very specific provocation—Dumas doing what he promised and using his influence to aid the passage of the 1884 law reestablishing divorce in France—not by criticizing Dumas's political engagement directly, but rather by itemizing each time that his plays misstate a provision of the Civil Code.[4] Moreau's strident defense of the Code is even more unusual as his scholarly interests lay in constitutional and administrative law, not in private law. The result is as mystifying as if a new assistant professor at an American law school researching commercial law were to publish a monograph laying out all the errors of criminal law and procedure found in *Law and Order*.[5] The question "Why?" immediately springs to mind.

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1. FÉLIX MOREAU, LE CODE CIVIL ET LE THÉÂTRE CONTEMPORAIN [The Civil Code and Contemporary Theatre] (1887), https://www.google.com/books/edition/Le_code_civil_et_le_théâtre_contempora/fcBJAQAAIAAJ.For the convenience of the reader, translations are placed in square brackets following the French original. Unless otherwise noted, all translations are my own.

2. Alexandre Dumas *fils* is so called to distinguish him from his father, Alexandre Dumas *père*. Taken from the words for son (*fils*) and father (*père*), the appellations operate similarly to the English-language "Jr." and "Sr." Consistent with French practice, when speaking of only one of the two men, I use "Dumas" to refer to Alexandre Dumas *fils* except where necessary to avoid confusion.

3. ALEXANDRE DUMAS FILS, *Préface* to LE FILS NATUREL *in* THÉÂTRE COMPLET AVEC PREFACES INÉDITES 5, 29 (Calmann Lévy ed., 1899) (1868), https://gallica.bnf.fr/ark:/12148/bpt6k208014f; *see also* OSCAR G. BROCKETT & FRANKLIN J. HILDY, HISTORY OF THE THEATRE 380 (8th ed. 1999).

4. Although Moreau draws the majority of his examples from the Civil Code, he occasionally discusses Dumas's misstatements of law found within the Commercial Code and the Codes of Civil and Criminal Procedure. *See* MOREAU, *supra* note 1, at 29 (Code of Civil Procedure), 72 (Codes of Civil Procedure and Commerce), 27, 48 (Code of Criminal Procedure).

5. *Law and Order* (NBC television broadcasts 1990-present). *Law and Order* is an American episodic television series in which each episode consists of a crime investigated by the

While no definitive proof can be ascertained from the available sources,[6] the positivist methodology Moreau employs when attacking Dumas suggests a possible answer—authority. According to Moreau, Dumas's plays contain numerous "*hérésies juridiques*" [legal heresies][7] that "*ruine[] l'autorité du Code civil*" [destroy the authority of the Civil Code].[8] In Dumas's hands, "*le texte du Code n'est pas un peu détourné, mais denaturé, falsifié*" [the text of the Code has not been merely warped, it has been denatured, falsified].[9] Moreau's concern is not to preserve the substance of any particular law, but rather to secure the unquestioned authority of the text of the French Civil Code and to identify the narrow range of individuals with the requisite knowledge, skill, and respect for the codified text that they may be allowed to critique it. This ideological position has distinct consequences for legal education and the evolution of the law. When the Civil Code is treated as sacred, as Moreau does, that idolatry disconnects the evaluation of laws both from the circumstances of their enactment and the consequences of their implementation. His work thus illustrates a potential danger in certain tropes found in the teaching and practice of law in civilian jurisdictions governed by a written code.

Part II of this Article introduces the two protagonists, Dumas and Moreau, while Part III examines *Le Code civil et le théâtre contemporain* in more detail. In that Part, I first review the book's structure and contents and then explore Moreau's legal philosophy as evident in the methods of interpretation and analysis he champions and uses to attack Dumas's "errors." In Part IV, I provide additional context surrounding the reestablishment of divorce and Dumas's role in that process in light of his articulated commitment to a social aim for his literary output. Finally, Part V explores some implications of Moreau's attitude toward the Code. First, I argue that a legal education of the type that Moreau seems to feel is essential for a person to speak of the Code or advocate its change may

police followed by the prosecution of the criminals. The initial premise of the series was that each episode would be a fictionalized account of a crime "ripped from the headlines," although this device became less common over the length of the show's run and that of its spin-offs.

6. While Moreau's papers might provide some insight into the question of his motivation, to date I have been unable to determine if they have been archived and preserved.

7. MOREAU, *supra* note 1, at 171.

8. *Id.* at 270; *see also* Michel Troper, *The French Tradition of Legal Positivism*, *in* CAMBRIDGE COMPANION TO LEGAL POSITIVISM 133, 141 (Toben Spaak & Patricia Mindus eds., 2021) (arguing of law professors in Moreau's mode that "[t]hey do accept the idea that . . . that there is no room for interpretation, but this mostly because the code is so perfect that any other operation would *ruin* it" (emphasis added)).

9. MOREAU, *supra* note 1, at 172.

be poor training for future attorneys. Second, I argue that Moreau's ideology, which is itself bound up with the idea of the supremacy of codified law, has the potential to undermine one of the goals of codification; by restricting the right to interpret the Code to a class of jurisconsults, Moreau may keep the Code from being "ruined," but only at the cost of a loss of the transparency that was one of the motivations for the 1804 codification of French private law.

II. THE PROTAGONISTS

Although renowned in his lifetime and relatively well regarded as a dramatist for some time afterward, Dumas, with the exception of his most famous work,[10] has since become a bit player in the history of French literature. Moreau, though a legal scholar of some significance in his time, is even more obscure. Therefore, an introduction to their lives and work is a necessary preamble.

A. Félix Moreau

Born in Bordeaux in 1859, Moreau obtained his law license in 1879 and earned his doctorate in law four years later.[11] He then decamped to the University of Aix, where he spent the remainder of his career, first becoming an *agrégé* in 1885.[12] He was appointed a professor in 1886, and he finished his career as the *doyen* of the law faculty at the University of Aix-Marseilles.[13] He retired in 1930 and died four years later.[14]

10. That work is *La Dame aux camélias* in both its novel form and later dramatization. *See* ALEXANDRE DUMAS FILS, LA DAME AUX CAMÉLIAS (1848), https://gallica.bnf.fr/ark:/12148/bpt6k851253k; 1 ALEXANDRE DUMAS FILS, LA DAME AUX CAMÉLIAS, *in* THÉÂTRE COMPLET AVEC PREFACES INÉDITES 53 (Calmann Lévy ed., 1899) (1852), https://gallica.bnf.fr/ark:/12148/bpt6k208012p.

11. *Moreau, Félix (1859-1934; juriste)*, IDENTIFIANTS ET RÉFÉRENTIELS POUR L'ENSEIGNMENT SUPÉRIEUR ET LA RECHERCHE, https://www.idref.fr/074137441 (last updated Mar. 12, 2021).

12. *Id.*; *Agrégation*, 1 A CYCLOPEDIA OF EDUCATION 57 (Paul Monroe ed., 1919); *see also Agrégé*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/agr%C3%A9g%C3%A9 (last visited Oct. 8, 2022) ("an academic rank conferred by a French university on one who has passed a rigidly competitive examination and who is therefore entitled to appointment to the highest teaching post in a lycée or in one of the faculties of a university"). An individual becomes an *agrégé* after obtaining at least a masters degree and then succeeding in a competitive examination process. It is a requirement for teaching at the university level.

13. *Moreau, Félix*, *supra* note 11. The faculties located in Aix-en-Provence and in Marseilles were reorganized in 1896 as a single university. *Aix-Marseilles, University of*, 1 A CYCLOPEDIA OF EDUCATION 70, 70-71 (Paul Monroe ed., 1919).

14. *Moreau, Félix*, *supra* note 11.

Le Code civil et le théâtre contemporain occupies a somewhat unusual place within Moreau's scholarship. Rather than the private law that is the subject of the Civil Code, Moreau's interests lay in public law.[15] Indeed, his only other major work on private law was the publication in monograph form of his dissertation concerning French courts' treatment of the judgments of foreign courts on private civil matters.[16] That work, with its transnational concern, is closer in spirit to his mature scholarship on constitutional and administrative law.

In politics, Moreau was a moderately conservative republican, particularly devoted to *le régime parlementaire*.[17] Intriguingly, he was a staunch advocate for compulsory voting, believing that to those granted suffrage, voting was a duty the citizen owed to the nation.[18] An emphasis on duties over rights had been a characteristic of conservative

15. *Id.*

16. FÉLIX MOREAU, EFFETS INTERNATIONAUX DES JUGEMENTS EN MATIÈRE CIVILE [International Effects of Judgments in Civil Matters] (1884).

17. *See* Henk te Velde, *Parliamentary Obstruction and the "Crisis" of European Parliamentary Politics Around 1900*, 16 REDESCRIPTIONS 125, 126 (2005); *see also* FÉLIX MOREAU, POUR LE RÉGIME PARLEMENTAIRE [On the Parliamentary System] 15 (1903), https://gallica.bnf.fr/ark:/12148/bpt6k373656z/f22.item ("Le régime parlementaire est une forme du système représentatif caractérisée par la responsabilité politique des ministres devant les Chambres. Cette forme est supérieure à toutes les autres, parce qu'elle est la plus naturelle, la plus commode, la plus prudente. Les deux derniers caractères démontrent directement sa supériorité; le premier montre en outre ses intimes rapports avec le principe représentatif, et atteste que les autres formes sont ou des moments transitoires ou des pis-aller."). [The parliamentary system is a form of representative government characterized by ministers that are answerable politically to the legislature. This form is superior to all others because it is the most natural, the most practical, the most prudent. The last two characteristics denote its superiority. The first reflects its intimate rapport with the principle of representative government and reveals that other forms are either transition stages or stopgap solutions.].

18. *See* Anthoula Malkopoulou, Democracy's Duty: The History of Political Debates on Compulsory Voting (2011) (Ph.D. dissertation, University of Jyväskylä), https://jyx.jyu.fi/bitstream/handle/123456789/37907/1/978-951-39-4759-0.pdf (discussing Moreau's views on compulsory voting).

republicanism in France since the Directory[19, 20] and was generally viewed as a bulwark against destabilizing popular enthusiasm. Although directed at a different area of law, the same perceived danger of instability informs Moreau's presentation of the Civil Code and his critique of Dumas.

B. Alexandre Dumas fils

In 1824, Alexandre Dumas *fils* was fathered out of wedlock by Alexandre Dumas *père*, who would go on to become a highly successful author of Romantic plays and novels including *The Three Musketeers* and *The Count of Monte Cristo*.[21] Legally recognized by his father in 1831, Dumas was taken from his mother and then promptly sent off to boarding school.[22] The unhappiness resulting from this enforced separation from his mother marked Dumas for the remainder of his life. Indeed, his play

19. The Directory was the fourth major period of the French Revolution. The first was the period of the Constituent Assembly from 1789 to 1791, during which the initial revolutionary reforms were undertaken. This was followed by the Legislative Assembly from October 1791 to September 1792, which witnessed the failure of France's first attempt at a constitutional monarchy. Following the overthrow of the monarchy in August 1792, an election was held for a second constitutional assembly. This assembly, known as the Convention, governed through the radical phase of the Revolution (until the fall of Robespierre and the Committee of Public Safety in July 1794) and the period of reaction that followed. The Convention finally came to end with the 1795 establishment of the Directory, which, though still republican, was deliberately conservative in orientation. The periodicity of the French Revolution has been the subject of extensive historiographic debate almost from the moment the historical events took place. The above presentation is the most common version in the English-speaking world. *See generally* WILLIAM DOYLE, THE OXFORD HISTORY OF THE FRENCH REVOLUTION (1989).

20. While the first two constitutions (of 1791 and 1793) had been prefaced with a "Declaration of the Rights of Man and Citizen," the Constitution of 1795 opened with a "Declaration of the Rights *and Duties* of Man and Citizen." *Id.* at 318-19; *see generally* Marcel Guachet, *Rights of Man*, *in* CRITICAL DICTIONARY OF THE FRENCH REVOLUTION 818 (François Furet & Mona Ozouf eds., Arthur Goldhammer trans., 1989) (1988). For a feminist critique and extension of the notion of the "Rights of *Man*," see MARY WOLLSTONECRAFT, A VINDICATION OF THE RIGHTS OF WOMAN, *in* THE VINDICATIONS 99-344 (D.L. McDonald & Kathleen Scherf eds., Broadview 1997) (1792).

21. WILLIAM A. NITZE & E. PRESTON DARGAN, A HISTORY OF FRENCH LITERATURE 559-60, 570-71 (1922).

22. *See id.* at 597; Sharon Le Christman, Ideas of Dumas fils for a More Perfect Society As Reflected in His Seventeen Major Plays and Their Prefaces (1967) (M.A. thesis, University of Montana), https://scholarworks.umt.edu/cgi/viewcontent.cgi?article=3649&context=etd ("After this official recognizance of paternity—March 17, 1[8]31—Dumas obtained custody of his son, but Catherine, who had acknowledged her son only a month later, appealed the custody. The boy was eventually taken away from both parents and placed in a boarding school by the police commissioner as a ward of the state. Dumas père finally regained custody but soon sent the boy to Prosper Goubaux's Saint-Victor boarding school because the child rebelled against living with his father and Belle Krelsamer. While at school, he was miserable because the wealthy and noble mocked him for his illegitimacy.").

Le Fils naturel[23] offered the thesis that a man who fathers a child out of wedlock has an obligation to legitimize the child through marriage to the mother.[24]

As a young adult, Dumas moved for a time in his father's louche social circles; he also met and became the lover of the famous courtesan, Marie Duplessis.[25] After her death at the age of twenty-three, she became the inspiration for Dumas's novel and later play, *La Dame aux camélias*, generally anglicized as *Camille*.[26] Dumas's tale of a courtesan who sacrifices her own wealth and happiness to protect her lover's family and reputation before dying tragically of tuberculosis in the final scene is the origin of the literary trope of the "prostitute with a heart of gold."[27]

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23. *See* 3 ALEXANDRE DUMAS FILS, LE FILS NATUREL, *in* THÉÂTRE COMPLET AVEC PREFACES INÉDITES 1 (Calmann Lévy ed., 1899) (1858).

Fils naturel, or "natural son," was the polite term used for a son born to unmarried parents (in contrast with the more vulgar *bâtard* or "bastard"). Dumas's play should not be confused with Denis Diderot's 1757 play of the same title, which also addressed the issue of children born to unmarried parents, though with the more sentimental treatment characteristic of the eighteenth-century *drame*. *See* DENIS DIDEROT, LE FILS NATUREL, OU LES EPREVUES DE LA VERTU (1757), https://gallica.bnf.fr/ark:/12148/bpt6k65540550/f5.item.texteImage; *see also* BROCKETT & HILDY, *supra* note 3, at 276-77 (discussing Diderot and the *drame*); MARVIN CARLSON, THEORIES OF THE THEATRE: A HISTORICAL AND CRITICAL SURVEY FROM THE GREEKS TO THE PRESENT 149-57 (expanded ed. 1993) (same).

24. *See* DUMAS, LE FILS NATUREL, *supra* note 23, at 54 ("[I]l faut que ton enfant ait un sort, il faut surtout qu'il ait le nom de son père." [Your child must have a future, above all, he must have his father's name.]; *id.* ("[Q]uand un homme n'a à reprocher à la mère de son fils que de ne pas avoir cent mille livres de rente, son devoir est de l'épouser comme si elle les avait." [When a man can only reproach the mother of his son with not having a hundred thousand livres a year, his duty is to marry her as if she did.].

25. NITZE & DARGAN, *supra* note 21, at 597-98; VIRGINIA ROUNDING, GRANDES HORIZONTALES: THE LIVES AND LEGENDS OF FOUR NINETEENTH-CENTURY COURTESANS 58-59 (2003).

For a more extended discussion of Duplessis and her afterlife as Dumas's heroine, *see* ROUNDING, *supra*, at 31-74.

26. In the original French and in English translation, the play was a favorite vehicle of actresses throughout the latter half the nineteenth century and the early decades of the twentieth. *See*, *e.g.*, Anne Tremblay, *From Garbo's 'Camille' to a Lighthearted Adolescent*, N.Y. TIMES (Oct. 14, 2014), https://timesmachine.nytimes.com/timesmachine/1984/10/14/issue.html; *Helena Modjeska in the role of Camille in a Production of the Play CAMILLE*, UNIV. OF WASH., https://digitalcollections.lib.washington.edu/digital/collection/19thcenturyactors/id/451 (last visited Oct. 8, 2022). The apotheosis of this trend is almost certainly Greta Garbo's famed performance in MGM's 1936 film. CAMILLE (MGM 1936). *La Dame aux camélias* also provided the source material for Giuseppe Verdi's opera, *La Traviata*, which remains a mainstay of the operatic repertory.

27. Although Dumas's play is less frequently performed today as its nineteenth-century Romantic attitudes and stage conventions can seem somewhat stale, the work remains influential. For instance, English playwright Pam Gems translated and adapted Dumas's play in 1984, "sift[ing it] through 20th-Century feminist consciousness." Robert Koehler, *'Camille' With an*

La Dame aux camélias is Dumas's most famous work and, outside of academic circles, is his only play remembered or performed today.[28] Nevertheless, its Romantic idealization of the fallen woman and the potential for redemption outside the confines of society is inconsistent in tone and technique from the remainder of his dramatic output. His subsequent plays "virtually create[d]" the genre of the *pièce à thèse* [thesis play], a "problem-play with a dogmatic solution."[29] Although generally realistic in setting and characterization, Dumas's plays were nevertheless meticulously constructed in the manner of the well-made play,[30] which provided him the opportunity to use the resolution of the plot as well as the speeches of the *raisonneur* to articulate his vision for society.[31]

Attitude, L.A. TIMES (Jan. 21, 1993), https://www.latimes.com/archives/la-xpm-1993-01-21-ca-1877-story.html. Nevertheless, elements of the Camille trope continue to influence popular culture, perhaps most notably in Baz Luhrman's film and subsequent Broadway musical, *Moulin Rouge*, in which the courtesan heroine again sacrifices herself to save her lover and again dies of tuberculosis in the final scene. *See* MOULIN ROUGE (20th Century Fox 2001).

28. *See*, *e.g.*, Cameron Kelsall, *A Wilted Tragedy: Quintessence Theare Group Presents Alexandre Dumas* fils*'s* Camille, BROAD ST. REV. (June 10, 2022), https://www.broadstreetreview.com/reviews/quintessence-theatre-group-presents-alexandre-dumas-filss-camille (reviewing a recent production of the play in a nineteenth-century English translation).

29. NITZE & DARGAN, *supra note* 21, at 598.

30. BROCKETT & HILDY, *supra* note 3, at 379-80 ("'[W]ell-made play can perhaps best be understood as a combination and perfection of dramatic devices common since the time of Aeschylus: careful exposition and preparation, cause-to-effect arrangement of incidents, building scenes to a climax, and the skillful manipulation of withheld information, startling reversals, and suspense."). Nevertheless, the well-made play, particularly the works of its most famous practitioner, Eugène Scribe, was often derided for its shallow characterization and lack of thought in the Aristotelian sense. However, the form was very influential on dramatists in the late nineteenth century who adopted, extended, and subverted it to achieve more sophisticated effects. Such dramatists include Dumas and Henrik Ibsen, author of *A Doll's House*.

31. BROCKETT & HILDY, *supra* note 3, at 380; *see also* CARLSON, *supra* note 23, at 273 (explaining that for Dumas "[t]he ideal drama must excel in both technique and observation: 'The dramatist who knows *man* as Balzac did and the *theatre* as Scribe did will be the greatest dramatist who ever lived.'" (quoting ALEXANDRE DUMAS FILS, 3 THÉÂTRE COMPLET 219 (1890-98))).

As a theatrical type, the *raisonneur* was an invention of Molière, the great seventeenth century French comic dramatist. *See* Francis L. Lawrence, *The Raisonneur in Molière*, 6 L'ESPRIT CRÉATEUR 156, 157 (1966). In Molière's comedies featuring this character, the main character possesses a comic flaw, some sort of obsession that renders him or her ridiculous. The function of the *raisonneur* is to point this out. "In the *raisonneur*, Molière holds up to his main character a mirror from which he cannot turn away, a critic whom he cannot silence with a simple disciplinary blow, an independent man of some dignity proposing arguments laced with irony." *Id.* In French dramatic criticism, the term now generally refers to any character whose function is to comment on the action (often ironically) and point out behaviors that are either desirable or undesirable from the author's perspective.

The plays are filled with unsympathetic and even outright unpleasant characters, leading to the frequent accusation that he was a pessimist.[32] While (*Camille* excepted) Dumas's vision of humanity is not idealized, his orientation was fundamentally optimistic in the sense that he believed in the possibility of social change, though perhaps not human perfectibility.[33] Indeed, for Dumas, this was a calling:

> [I]f I can exercise some influence over society . . . if I can find some means to force people to discuss the problem, and the lawmaker to revise the law, I shall have done more than my duty as a writer, I shall have done my duty as a man.[34]

Speaking to his fellow dramatists, Dumas thus called them to social engagement: "*nous faire plus que moralistes, nous faire législateurs. Pourquoi pas, puisque nous avons charge d'âmes?*" [We must be more than moralists, we must become legislators. And why not, since we are the shepherds of our flocks?].[35] Accordingly, Dumas's advocacy did not end with his dramas or even with the lengthy prefaces in which he addressed a variety of social problems with an emphasis on the position of women and the nature of the family.[36] As he grew in fame and stature, particularly after his election to the Académie Française in 1874, he used his position as a public intellectual to urge specific reforms. Indeed, it has been claimed that the 1884 law reestablishing divorce in France "was passed largely through Dumas'[s] influence."[37]

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32. *See*, *e.g.*, KAREN OFFEN, DEBATING THE WOMAN QUESTION IN THE FRENCH THIRD REPUBLIC, 1870-1920, at 23 (2017) ("His insights into male and female psychology are at times excruciatingly pessimistic."); NITZE & DARGAN, *supra* note 21, at 599 ("The fact is that neither Dumas' men nor his women are of the heroic mold; the women are usually viewed either as seductive perils or as empty-headed playthings; the men are weak, selfish and voluptuous.").

33. *See*, *e.g.*, Le Christman, *supra* note 21, at 1 (arguing that Dumas was an optimist who "believed his ideas could ameliorate some of the conditions he saw about him and, if extended to other levels of society, could aid in their improvement as well").

34. BROCKETT & HILDY, *supra* note 3, at 380 (emphasis added) (translating from an open letter from Dumas to Francisque Sarcey).

35. DUMAS, *Préface*, *supra* note 3, at 29. Here, Dumas uses a vaguely ecclesiastical expression describing those whose task is to lead others spiritually.

36. CARLSON, *supra* note 23, at 273-74. Most of these prefaces were written in 1868 to accompany the publication of Dumas's collected works to that time.

37. NITZE & DARGAN, *supra* note 21, at 598. The legalization of divorce after it had been abolished in 1816 is discussed more fully in Part IV. It provides one foundation for understanding Moreau's extremely critical attitude toward Dumas.

III. LE CODE CIVIL ET LE THÉÂTRE CONTEMPORAIN

A. Structure and Style

Moreau's thesis is perhaps best summed up by Ferdinand Brunetière, author of a contemporary book review: "*un volume, de près de trois cents pages, sur l'*Ignorance de la loi dans le théâtre de M. Dumas *fils*" [a nearly three-hundred-page volume on *The Ignorance of the Law in the Plays of Dumas* fils].[38] Judging Dumas as if he were a jurisconsult,[39] Moreau unsurprisingly finds him wanting, mainly because Dumas's characters make inaccurate statements about the law. In so doing, Moreau focuses expressly on the words spoken by the characters and disclaims any evaluation of the dramaturgical function of Dumas's use of the law:

> Je songe uniquement à rechercher quel emploi M. Dumas a fait de nos Codes, ou plus exactement de notre Code civil, et s'il n'a pas commis d'erreurs juridiques. Il ne m'appartient pas de dire si, au point de vue de l'art dramatique, cet emploi, erroné ou judicieux, a été heureux; si telle pièce pouvait ou ne pouvait pas être faite sur la donnée plus ou moins légale qui en était le point de départ; si telle erreur juridique était indispensable pour tel dénouement.[40]
>
> [I think only of investigating the use that Dumas has made of our Codes or, more precisely, of our Civil Code, and whether or not he had committed juridical errors. It does not fall to me to say if, from the perspective of dramatic art, whether this use, erroneous or accurate, was successful; if the play could or could not have been constructed without (or with less) use of the law as a point of departure; or if the juridical error was indispensable to the resolution of the plot.]

Oddly, in light of his interest in Dumas's legal analysis (or lack thereof), Moreau does not engage with the question of whether Dumas has made errors in his prefaces and other expository writings that discuss legal concepts without the veil of dialogue and chacterization.[41] When

38. Ferdinand Brunetière, *Le Code civil et le théâtre*, 84 REVUE DES DEUX MONDES 214, 214 (1887), https://fr.wikisource.org/wiki/Revue_littéraire_-_Le_code_civil_et_le_théâtre (reviewing FÉLIX MOREAU, LE CODE CIVIL ET LE THÉÂTRE CONTEMPORAIN (1887)).

39. MOREAU, *supra* note 1, at 11 ("*En un mot, je juge M. Alexandre Dumas comme jurisconsulte*.") [In a word, I judge M. Alexandre Dumas as a jurisconsult.].

40. *Id.*

41. *Id.* at 11-12 ("*Je me suis strictement limité au théâtre, quelque grande que pût être la tentation de citer des brochures retentissantes*.") [I have confined myself to the plays, despite the strong temptation to cite his celebrated pamphlets.].

Moreau does quote from these texts, he uses them as evidence of Dumas's insufficiently respectful attitude towards the integrity of the Civil Code and the mastery needed in order to criticize it rather than as a bank of specific misstatements that Moreau can then criticize.

Le Code civil et le théâtre contemporain opens with several introductory chapters on Dumas's general use of the law. Moreau looks first at expressions that reference law metaphorically or that allude to the law in general terms.[42] This is followed by a unique chapter that evaluates Dumas's presentation of lawyers and notaries as dramatic characters.[43] Although Brunetière understandably considers these chapters to be "*les meilleurs et les plus amusans*" [the best and most appealing],[44] they do not reflect the tenor of the main body of Moreau's work nor are they particularly illuminating of the question at hand: why write 300 pages just to show that a playwright isn't a trained lawyer?

Consistent with his plan to "*rechercher quelle emploi M. Dumas a fait . . . de notre Code civil*" [investigate what use Dumas has made . . . of our Civil Code],[45] Moreau then walks through the Civil Code topic by topic in chapters that read like the titles of the Code:

> V. L'interdiction
> VI. La propriété
> VII. Les obligations
> VIII. Les contrats
> IX. La donation
> X. Le testament
> . . . .
> XII. Le marriage
> XIII. Le contrat du marriage
> XIV. La puissance paternelle
> XV. La succession
> XVI. Le nom
> XVII. La filiation naturelle
> XVIII. La tutelle
>
> [V. Interdiction
> VI. Property
> VII. Obligations
> VIII. Contracts
> IX. Donations
> X. Wills

42. *Id.* at 13-40.
43. *Id.* at 41-65.
44. Brunetière, *supra* note 38, at 215.
45. MOREAU, *supra* note 1, at 11.

. . . .
XII. Marriage
XIII. The Marriage Contract
XIV. Paternal Authority
XV. Successions
XVI. The Family Name
XVII. Filiation of Nonmarital Children
XVIII. Tutorship]

Because Dumas's primary interest lies in family law, there are far more examples of misstatements of the law of persons and of matrimonial regimes for Moreau to criticize. Accordingly, Moreau devotes roughly half his book to those topics.

That criticism takes a typical form. Moreau plucks a line or a section of dialogue from a play out of context, identifies the Code article or articles applicable to the situation, and shows how what Dumas's characters say does not match what is in the Code. Occasionally, he does this in reverse, beginning with a Code article or legal principle and then proceeding to the illustration. In either case, Moreau often concludes with a generally unfounded speculation about why Dumas made that particular error.

As an example of Moreau's technique, consider his discussion of a proposed marital separation in *Francillon*.[46] At this point in the play, Lucien falsely believes that his wife Francine has been unfaithful. He calls for his notary, and Moreau interjects:

> Je me demande ce que le notaire va bien venir faire. Le marquis et Francine se sont contentés de cette belle réponse: le notaire va établir l'état des deux fortunes qui sont égales d'ailleurs; le mari restituera à la femme tout son bien. Lucien ajoute en guise d'explication: "Séparation de biens d'abord, séparation de corps ensuite." En sorte que, si j'ai bien compris, le notaire va déclarer la séparation de biens, après quoi le tribunal prononcera la séparation de corps.
>
> Ceci n'a rien de légal. L'intervention du notaire est inutile pour le moment, il n'aura à paraître que lorsque le tribunal aura prononcé la séparation de corps, laquelle entraîne de plein droit la séparation de

46. 7 ALEXANDRE DUMAS FILS, FRANCILLON, *in* THÉÂTRE COMPLET AVEC PREFACES INÉDITES 257, 345 (Calmann Lévy ed., 1899) (1887), https://gallica.bnf.fr/ark:/12148/bpt6k20 8018z.

For a detailed English-language plot synopsis published by the managers of Eleanora Duse, who performed the title role in Italian on her U.S. tour, see [ALEXANDRE] DUMAS (FILS), FRANCILLON (1893), https://www.google.com/books/edition/Francillon/D4NJAQAAMAAJ?hl =en&gbpv=1.

> biens.[47] Celle-ci est la conséquence de celle-là; il est faux de dire: séparation de biens d'abord, séparation de corps ensuite; c'est le contraire qui est vrai, ou plutôt la première découle nécessairement de la seconde. C'est donc seulement après le procès en séparation de corps, que les notaires interviendront pour procéder au règlement pécuniaire entre les époux, et, si besoin en est, au partage. Avant, ils n'ont rien à faire.
>
> [I ask myself what the notary is going to be able to do. The marquis and Francine console themselves with this lovely answer: the notary is going to establish two equal fortunes; the husband will return all her property to the wife. Lucien adds by way of explanation: "Separation of property first, separation of the person after." In this manner, as I understand it, the notary will declare the separation of property, after which the court will pronounce the separation of persons.
>
> That is absolutely unlawful. The notary's intervention is useless at that time; he only has a role once the court has pronounced the separation of persons, from which follows the separation of property. In consequence, it is incorrect to say 'separation of property first, separation of persons after.' In fact, the contrary is true, or rather, the former is the necessary result of the latter. Thus, it is only after the separation of persons that a notary will draw up a monetary settlement between the spouses or, if necessary, a partition. Before that, there is nothing for a notary to do.]

While Moreau is correct about the order of operations, nothing is gained by pointing it out. Ultimately, Francine admits that she did not betray her husband, and the couple reconcile.[48] Thus, whether Lucien accurately describes the manner of dividing the community is simply irrelevant. In fact, the only dramatic purpose served by calling the notary is so that the notary's clerk, with whom Francine had pretended to have

47. MOREAU, *supra* note 1, at 201; *see* Code Civil (C. CIV.) [Civil Code] art. 311 (Fr.) (1816) ("*La separation de corps emportera toujours separation de biens*."); *see* THE CODE NAPOLEON; OR, THE FRENCH CIVIL CODE (1827), https://files.libertyfund.org/files/2353/Civil Code_1566_Bk.pdfhttps://files.libertyfund.org/files/2353/CivilCode_1566_Bk.pdf ["Every voluntary separation [of property] is null. The separation of person shall import in every case the separation of property."].

For an invaluable resource for comparing historical versions of the French Civil Code, see *Code civil*, CRIMINO CORPUS, https://criminocorpus.org/fr/legislation/civil/civil/ (last visited Feb. 7, 2023).

48. DUMAS, FRANCILLON, *supra* note 46.

had the dalliance, could arrive in the following act. However, as the clerk never actually conducts any legal business while onstage, his identity as a member of the legal profession carries no real dramatic significance.[49]

Thus, Moreau has only succeeded in painstakingly pointing out that a fictional character, incensed over his wife's supposed betrayal, has failed to accurately state that a court order is required before spouses can separate their conjoined wealth. Each of the code-based chapters of *Le Code civil et le théâtre contemporain* contains numerous similar examples. The pattern is repetitive: a situation or line from Dumas; a Code article or legal principle; a mismatch between them that is of no dramaturgical consequence; and the conclusion that Dumas misstated the law.[50]

Moreau's work shares many characteristics with other forms of nineteenth-century scholarship that tended towards the exhaustive itemizing of every conceivable detail about a particular subject. The difference is that in those other works, the examples do not all reiterate the same exact point. The effect of Moreau's tiresome repetition of Dumas's failings as a legal analyst is reminiscent of that of the stock figure of the pedant, which early modern French drama inherited from the Italian *commedia dell'arte*: "A savant [who] has spent his whole life learning everything without understanding anything."[51]

Moreau's seeming insistence that a dramatist should be punctiliously exact when having his characters make statements about the law can be clearly seen in one of the rare cases in which Moreau does not attack Dumas. In *Monsieur Alphonse*, Dumas has a notary read aloud the whole of the text of the act by which a father is going to legally recognize his nonmarital daughter.[52] After quoting the entire document,[53] Moreau then observes that it is nearly identical to a model used to train notaries in

49. This is consistent with Moreau's disclaimer that he will not discuss the dramatic function of Dumas's use of the law. *See supra* note 41, and accompanying text. Moreau does briefly discuss this character in his chapter on legal professionals as characters but does not connect the notary as a character to Dumas's "error." *See* MOREAU, *supra* note 1, at 64-65.

50. *See generally* MOREAU, *supra* note 1.

51. PIERRE LOUIS DUCHARTE, THE ITALIAN COMEDY: THE IMPROVISION SCENARIOS, LIVES, ATTRIBUTES, PORTRAITS, AND MASKS OF THE ILLUSTRIOUS CHARACTERS OF THE COMMEDIA DELL' ARTE 196 (Randolph T. Weaver trans., Dover Books 1966) (1929).

52. MOREAU, *supra* note 1, at 252-53; *see* 6 ALEXANDRE DUMAS FILS, MONSIEUR ALPHONSE, *in* THÉÂTRE COMPLET AVEC PREFACES INÉDITES 1, 146-49 (Calmann Lévy ed., 1899) (1873), https://gallica.bnf.fr/ark:/12148/bpt6k208017k.

53. Interestingly, Moreau's quotation removes various bits of dialogue by the notary and other characters that interrupt the reading of the act. *Compare* MOREAU, *supra* note 1, at 252-53, *with* DUMAS, MONSIEUR ALPHONSE, *supra* note 52, at 146-49.

Paris and that he "*constate avec plaisir que M. Dumas a emprunté à un notaire de profession le texte qu'il nous donne*" [notes with pleasure that Dumas borrowed his text from a professional notary].[54] Moreau's pleasure at Dumas's choice to have a staged reading of an entire legal document is evident: "*Je m'incline devant cette exactitude et cette conscience* . . ." [I tip my hat to this conscientious accuracy . . .].[55]

Nevertheless, and despite his best efforts to the contrary in *Le Code civil et le théâtre contemporain*, Moreau is not a pedant; he is a scholar.[56] Because he is and because the style and substance is quite different from Moreau's other scholarly work, I conclude that he does not actually mean that dramatists should invariably quote legal formulas or have characters recite the entire texts of the juridical acts they sign onstage. Thus, the meaning of Moreau's attacks and of his rare praise must lie elsewhere. To discover where, I now turn to Moreau's legal philosophy and methods of interpreting the law.

B. Moreau's "Science" of Law[57]

1. A Positivist *avant la lettre*?

Although Moreau does not expressly declare any particular philosophical position on the law (he is too busy bemoaning Dumas's many "errors"), his orientation is essentially positivist.[58] Although the precise definition of legal positivism is contested and much of its theoretical development in France occurred after Moreau wrote *Le Code civil et le théâtre contemporain*,[59] his approach certainly exemplifies the general positivist principle that "law is a system of rules posited by the state, that court decisions are mere application of pre-existing rules, [and] that interpretation is a description of the true meaning of a legal text."[60]

54. MOREAU, *supra* note 1, at 254.

55. *Id.*

56. MOREAU, RÉGIME PARLEMENTAIRE, *supra* note 17, at 1 ("*Au risque de passer pour pedant, il est indispensable de commencer par des definitions*.") [At the risk of sounding like a pedant, it is indispensable to begin with defining our terms.].

57. MOREAU, *supra* note 1, at 291.

58. The term "legal positivism" is perhaps somewhat anachronistic when applied to Moreau. As a representative of the exegetical school, he is positivist "only in a very broad sense and mostly because [he] describe[s] or pretend[s] just to be describing positive law and define[s] positive law as the law set out in the code." Troper, *supra* note 8, at 141; 8 *see also id.* at 140-50 (tracing the evolution of various "schools" of legal positivism in France).

59. *See id.* at 140-50. For a discussion of the evolution of the concept of legal positivism in the twentieth century, *see Legal Positivism*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (2019) https://plato.stanford.edu/entries/legal-positivism/.

60. Troper, *supra* note 8, at 133.

In the nineteenth-century French context, positivist legal philosophy was animated by the existence of legislation in the form of the five codes (Civil Law, Commerce, Criminal Law, Civil Procedure, and Criminal Procedure).[61] Hence, what distinguishes the approach in which Moreau was schooled from, for instance, that of an eighteenth-century lawyer, is

> the new legal framework moulded by codification, and today often referred to as the legislative state . . . . What distinguishes the legislative state from previous particularistic or *ius commune* systems lies in its formal doctrine of legal sources . . . . In France, it was established that the only source should be general legislation, namely, Napoleonic codification itself.[62]

As a result, it is probably more accurate to say that Moreau is less concerned with the fact that a law has been posited than with the fact that it has been posited *in a civil code*. Indeed, Moreau stakes out this position in the very title of his book. Its objective is to critique Dumas not in terms of "justice" or "the law" or even "the civil law," but in terms of "the Civil Code."[63]

When describing the Exegetical School of legal interpretation of which Moreau's work on Dumas is a prime example, Michel Troper writes:

> After the publication of the civil code, lawyers in a quasi-religious awe before the *code Napoléon* considered that the only appropriate method, as for the Bible, was the exegesis, that is, explaining the provisions of the code, interpreting them literally and following the order of the sacred text.[64]

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61. *See id.* at 140; Wencelas J. Wagner, *Codification of Law in Europe and the Codification Movement in the Middle of the Nineteenth Century in the United States*, 2 SAINT LOUIS UNIV. L. J. 335, 342-43 (1953).

62. Mauro Barberis, *Introduction: Legal Positivism in the 20th Century*, *in* 12 LEGAL PHILOSOPHY IN THE TWENTIETH CENTURY: THE CIVIL LAW WORLD 181, 181-82 (Enrico Pattaro & Corrado Roversi eds., 2016).

63. *See generally* MOREAU, *supra* note 1; *see also* Troper, *supra* note 8, at 140 (stating of the exegetical school of French law professors that "[t]he books they wrote were entitled not *Droit civil* but *Cours de code civil* and one of these authors once famously said, 'I do not teach civil law, but the *code Napoléon*'").

64. Troper, *supra* note 8, at 140; *see also id.* at 141 (citing M. Xifaras, *L'École de l'Exégèse était-elle historique? Le cas de Raymond-Théodore Troplong (1796-1869), lecteur de Friedrich Carl von Savigny*, *in* INFLUENCES ET RÉCEPTIONS MUTUELLES DU DROIT ET DE LA PHILOSOPHIE EN FRANCE ET EN ALLEMAGNE 177 (2001)) [Was the Exegetical School Historical?] [Influences and Mutual Receptions of Law and Philosophy in France and Germany] ("Even their religion of the code is different from what Bobbio called positivism as an ideology, because the

Because the text itself is sufficient, this school "suggested a mechanical adjudication that required neither judicial nor doctrinal creativity."[65] Recent scholarship suggests that the procedures advocated by this school are responsible for "creating the *myth* that the Code was self-sufficient,"[66] but Moreau (at least in *Le Code civil et le théâtre contemporain*) endorsed this view, and the myth has not necessarily been completely debunked.

Thus, Moreau is a positivist because of his "commitment to the code, that is, to statutory law."[67] While some positivists would accede to the proposition that "positive law is just, by the mere fact of being positive, that is, of having been posited by the will of a political authority, and therefore that it ought to be obeyed, whatever its content,"[68] Moreau's work, although rather obsessed with the idea of authority, does not truly argue that laws should be obeyed merely because they are contained within a code.[69] Rather, his attack focuses on Dumas's failures to accurately describe those laws. While it is implicit in Moreau's criticism that an inaccurately described law might give Dumas's audience the wrong idea as to the content of the law, Moreau never proceeds to assess any consequences that might flow from that state of affairs.

2. Exegetical Methods in *Le Code civil et le théâtre contemporain*

For Moreau, legal analysis should describe a factual scenario, identify the words of the Code applicable to that situation, and apply them literally to reach the single inevitable conclusion. Doing otherwise not merely leads to an incorrect answer, but also does violence to the integrity of the Code. This section looks at several examples of Moreau's

reason why they praised the code was not so much that it had been issued by the state and was a product of the will but, rather, that the code had captured the true principles of natural laws.").

65. Aniceto Masferrer, *French Codification and "Codiphobia" in Common Law Traditions*, 34 TUL. EUR. & CIV. F. 1, 2 (2019). Masferrer then contrasts this with the attitude endorsed by Portalis. *See id.*; *see infra* notes 101, 129.

66. Masferrer, *supra* note 65, at 21 (citing James Gordley, *Myths of the French Civil Code*, 42 AM. J. COMP. L. 459, 490-92 (1994)).

67. Troper, *supra* note 8, at 140. Indeed, Moreau's positivist leanings may also account for the relative dearth of doctrine that he cites, despite the historical and theoretical importance of doctrine in civilian systems. Beyond a handful of citations to Pothier and Aubrey and Rau that are not meaningfully explicated in the text, *see* MOREAU, *supra* note 1, at 112, 101, 133, 249, 255, 257-59, Moreau eschews reliance on doctrine to emphasize methods of interpreting the ostensibly transparent language of the Code itself, *see* Troper, *supra* note 8, at 138-39 (suggesting that *la doctrine* did not play a significant role for practitioners of this school).

68. Troper, *supra* note 8, at 134.

69. *See id.* at 141 ("[T]he reason why they praised the code was not so much that it had been issued by the state and was a product of the will but, rather, that the code had captured the true principles of natural laws.").

methodology, many of which would be familiar to students of the civil law today.[70]

For example, Moreau criticizes Dumas for failing to appreciate that the separation of legal principles into distinct articles or groups of articles dictates their appropriate application. This can be as simple as pointing out the language of the Code. In *Le Fils naturel*, the characters spend a great deal of time seemingly wondering who has the authority to authorize the orphaned heroine to marry: her grandmother, her tutor, or a family council.[71] Although it is perfectly reasonable for laypersons in this situation to be somewhat confused as to their authority, Moreau elects to criticize Dumas for failing to recognize that Article 150 provided a straightforward answer: "*Si le père et la mère sont morts, ou s'ils sont dans l'impossibilité de manifester leur volonté, les aïeuls et les aïeules les replacent* . . ." [If the father and mother are dead, or if they are under an incapacity of manifesting their will, the grandfathers and grandmothers shall supply their places . . .].[72] As Moreau correctly points out, Article 150 vests the orphaned heroine's grandmother with the authority to consent to the marriage.[73] Moreau speculates that Dumas

> a péché pour avoir à la fois trop connu et trop ignoré le Code civil. S'il l'avait moins connu, il n'aurait pas été tenté d'utiliser l'article 160 qui, – pour une autre hypothèse, – parle du conseil de famille.[74] S'il l'avait moins ignoré, ou plutôt s'il avait été familiarisé avec les

70. *See* Alain L. Levasseur, *The Louisiana Civil Code: A* Vademecum, 82 LA. L. REV. 1110, 1118 (2022) ("[T]he first and primary responsibility incumbent upon a judge is to identify the legislation, statutes, or Code articles that is or are the most likely to apply to the facts of the case under consideration. In this process, the judge will be called upon to give a proper and single legal characterization to the facts."). Levasseur does allow, in a manner that would not necessarily accord with Moreau's approach, that "in some instances, a Louisiana judge will have to 'examine the spirit of the law when the letter kills' . . . ." *Id.* (quoting M. Shael Herman's translation of Portalis's *Preliminary Discourse* found in Alain Levasseur, *Code Napoleon or Code Portalis?*, 43 TUL. L. REV. 762 (1969)).

71. MOREAU, *supra* note 1, at 119-27. For an English translation, see ALEXANDRE DUMAS, LE FILS NATUREL (T. Louis Oxley trans., 1879).

72. Moreau , *supra* note 1, at 125 (quoting Code Civil (C. CIV.) [Civil Code] art. 150 (Fr.)); *see* THE CODE NAPOLEON, *supra* note 47, at 44.

73. MOREAU, *supra* note 1, at 126.

74. *Id.*; *see* Code Civil (C. CIV.) [Civil Code] art. 150 (Fr.) ("*S'il n'y a ni père ni mère, ni aïeuls ni aïeules, ou s'ils se trouvent tous dans l'impossibilité de manifester leur volonté, les filles mineurs de vingt-un ans ne peuvent contracter mariage sans le consentement du conseil de famille.*"); *see* THE CODE NAPOLEON, *supra* note 47, at 4 ["If there is neither father nor mother, neither grandfathers nor grandmothers, or if they are all found to be under an incapacity of manifesting their will, male or female children under the age of twenty-one years cannot contract marriage without the consent of a family council."].

> procédés d'interprétation, il aurait vu quelle différence sépare l'article 150 et l'article 160 et assure à chacun de ces textes une sphère d'application distincte. Et voilà comment, pour répéter un mot célèbre, – un peu de science nous éloigne de la vérité, un peu de science nous y ramène, y aurait ramené M. Alexandre Dumas.[75]
>
> [gets hung up by having at once both too much and not enough knowledge of the Civil Code. If he had known it less, he would not have been tempted to use Article 160, which—for a different situation—speaks of the family council. If he had been less ignorant of it, or rather, if he had been familiarized with the methods of interpretation, he would have seen the clear distinction between Article 150 and Article 160 and would have confined each of them to their separate spheres. And this is why, to invoke a well-known phrase, a bit of science leads us away from the truth, a bit more leads us back (and would have so led Alexandre Dumas).]

The science in question is simply the identification of the Code article that applies to the specific factual scenario at issue. And while Moreau bemoans that it is impossible to explain how Dumas "*n'ait pas connu et exposé clairement une théorie aussi simple*" [didn't recognize and clearly present such a simple theory],[76] it is altogether unclear why Moreau thinks that Dumas needed to do so—at least if the consideration is merely his role as a dramatist. Nevertheless, what Moreau's discussion does make clear is that for him, the application of the appropriate interpretative procedures to the authoritative text of the Civil Code is a prerequisite for speaking of the situations addressed by the Code at all.

These procedures are inextricably bound up with the text. In another example, two articles are found within the same chapter concerning the loss of civil rights, but the chapter is subdivided into two parts.[77] Dumas's character makes the mistake of applying an article from the second part to a factual scenario addressed by the first despite the fact that this is, per Moreau, "*impossible*."[78] The nature of a code as a list of discrete articles necessarily requires some mechanism for determining which articles operate in tandem. Here, Moreau suggests that simple attention to the section headings, a feature of the Code of 1804, can provide the necessary guidance.[79] Thus, rather than asking whether a particular result should or

75. MOREAU, *supra* note 1, at 126-27.
76. *Id.* at 126.
77. *Id.* at 170.
78. *Id.*
79. *See id.*

should not follow from a certain factual scenario, a student of the law should, according to Moreau, merely look to the words on the page and their arrangement in textual space to determine the one result that is "possible."

Another of Moreau's particular obsessions is the correct application of terms of art. In the finale of *Héloïse Paranquet*,[80] the villain exploits his marriage to Héloïse to block her child's marriage. Disaster is averted when he is discovered to have once accepted a position in the Russian army to fight in Crimea and, therefore, against France.[81] At that point, the family lawyer draws a copy of the Civil Code from his pocket and announces that because of the penalty of "civil death" prescribed for those that take up arms against France, the villain's marriage is null, thereby rendering him unable to exercise paternal authority over Héloïse's daughter.[82] Apparently believing that his ambitions have been frustrated, he leaves the stage in disgrace.[83] In point of fact, unauthorized foreign service, while causing a loss of civil rights, did not affect the validity of a marriage;[84] effects on marriage arose only when civil death resulted from of a court judgment.[85] And so, the lawyer has incorrectly described the

80. For a plot description, see *Some New Paris Plays: Notes on "Rotten Row" and "Heloise* Paranquet, N.Y. TIMES (Oct. 20, 1882), https://timesmachine.nytimes.com/timesmachine/1882/10/20/103424164.html?pageNumber=2. Although Dumas co-wrote this play with Armand Durantin, the evidence suggests that the scene with the lawyer and the plot device revolving around civil death was part of Dumas's contribution. *See id.*; *see also* ARMAND DURANTIN [& ALEXANDRE DUMAS FILS], HÉLOÏSE PARANQUET (1866), https://www.google.com/books/edition/H%C3%A9lo%C3%AFse_Paranquet_pi%C3%A8ce_en_quatre_act/PqNXAAAAcAAJ.

81. MOREAU, *supra* note 1, at 166-67.

82. *Id.* at 167.

83. *Id.*

84. Code Civil (C. CIV.) [Civil Code] art. 21 (Fr.) (1816) ("*Le Français qui, sans autorisation du Roi, prendrait du service militaire chez l'étranger, ou s'affilierait à une corporation militaire étrangère, perdra sa qualité de Français*."); *see* THE CODE NAPOLEON, *supra* note 47, at 6-7 ["The Frenchman who, without authorization from the [king], shall engage in military service with a foreign power, or shall enroll himself in any foreign military association, shall lose his quality of Frenchman."].

85. A person who loses his civil rights as a result of a court judgment cannot contract marriage (meaning any purported marriage would be null). Code Civil (C. CIV.) [Civil Code] art. 25 (Fr.) (1804) ("*Il est incapable de contracter un mariage qui produise aucun effet civil*."); *see* THE CODE NAPOLEON, *supra* note 47, at 8 ["He is incapable of contacting a marriage attended by any civil consequences."]. If that person is married at the time of his civil death, his marriage is dissolved. Code Civil (C. CIV.) [Civil Code] art. 25 (Fr.) (1804) ("*Le mariage qu'il avait contracté précédemment, est dissous, quant à tous ses effets civils*."); *see* THE CODE NAPOLEON, *supra* note 47, at 8 ["If he have previously contracted marriage, it is dissolved, as respects all civil effects."].

matrimonial effect of civil death from taking foreign service.[86] In theory, this means that the villain has not been defeated, which would frustrate a happy denouement.[87] However, consistent with his practice of ignoring the dramaturgical implications of Dumas's errors, Moreau does not explore this point. [88]

Instead, he complains that Dumas's lawyer states that the marriage is "*nul*" [null] but then quotes a Code article declaring that a marriage of a person who loses his civil rights "*est dessous*" [is dissolved].[89] Moreau quite correctly points out the difference between nullification and dissolution—"*distinction essentielle!*" [essential distinction!][90] And so it is. Yet Moreau's reasoning is utterly disconnected from the mistake Dumas made.[91] To demonstrate the significance of the distinction between nullification and dissolution of a marriage, Moreau points to the effects on children. Because of the effect of nullity is to treat the marriage as if it never happened, children born of a null marriage are considered illegitimate; those born of a marriage later dissolved are not.[92] While true, this fact has no bearing on Dumas's play because Héloïse and the villain did not have children during their marriage. Once again, Moreau's concern is not for the effect of the mistakes with the dramatic world of

86. The lawyer is also incorrect in that civil death was abolished on May 31, 1854. MOREAU, *supra* note 1, at 169. On that basis, Moreau identifies yet another mistake. Although the 1866 edition of the play indicated that the action was contemporary, DURANTIN [& DUMAS], *supra* note 80, at 4 ("*La scene se passe de nos jours*.") [The action takes place in the present.], when reporting on this issue in a review of an 1882 revival of the play, the New York Times Parisian correspondent wrote: "Somebody observed to Dumas that 'civil death' was abolished in France in 1855. 'I am aware of that,' answered the playwright, 'and therefore have fixed 1854 as the date of my plot.' After this there is nothing to say." *See Some New Paris Plays*, *supra* note 80. In any event, Dumas was aware of the issue of the repeal of civil death and had ostensibly "corrected" the issue before Moreau wrote *Le Code civil et le théâtre contemporain*.

87. *See Some New Paris Plays*, *supra* note 80 ("[T]he dénoument is calculated to please the public, and the public never complains when a dénoument does please it.").

88. *See* DUMAS, *Préface*, *supra* note 3. It is also possible that Dumas did not, in fact, misunderstand the law. The lawyer may know that he is applying the law incorrectly but does so anyway in order to drive the villain away in the mistaken belief that the law has frustrated his ambitions. The text would support this acting choice.

89. MOREAU, *supra* note 1, at 167.

90. *Id.* at 169.

91. If the provisions arising from civil death due to a judgment did apply to civil death as a result of foreign service, then the marriage between the villain and Héloïse would in fact have been null because the villain never had his civil rights restored. *See* Code Civil (C. CIV.) [Civil Code] art. 25 (Fr.) (1804) ("*Il est incapable de contracter un mariage qui produise aucun effet civil*."); THE CODE NAPOLEON, *supra* note 47, at 8 ["He is incapable of contacting a marriage attended by any civil consequences."]. So, in that sense, the lawyer would have stated the correct result, but then have quoted the wrong portion of Article 25.

92. MOREAU, *supra* note 1, at 169-70.

Dumas's plays or even on his audience, but rather for the mere fact that mistakes were made.

Like any good civilian operating within a codified regime, Moreau begins with first principles and then works through the Code systematically until the specific article most applicable to the situation at hand is reached.[93] This is made abundantly clear when he discusses Dumas's treatment of the law of successions—a common topic in plays set in upper-class societies where inheritance is the primary vehicle of wealth acquisition for those with pretentions to live "gently" (i.e., without working for a living). Moreau opens his chapter by griping that, in Dumas's plays, "*La théorie des successions est en effet plutôt indiquée et rappelée qu'appliquée*" [The theory of successions is rather indicated and recalled than applied].[94] Moreau shows what he means by "application" later in the same paragraph, where he bemoans, "*C'est à peine si l'ordre de devolution et le rang des hériteurs sont brièvement mentionées*" [The order of devolution and the classes of heirs are but briefly mentioned].[95] It is true that one way to avoid making a mistake in applying codified law is to begin by laying out the applicable scheme of law as a whole and then working through the permutations thus laid out one by one until the correct result is reached. Such a procedure is particularly useful when analyzing a succession as the potential heirs are grouped into classes that prime one another. What is less clear is why Moreau critiques Dumas's failure to walk through the classes of heirs as if Dumas were writing a bar-exam essay rather than a play. As with the other techniques of analysis that Moreau endorses, it does not seem to be the case that Moreau honestly believes that Dumas should have written his plays differently.

93. *See*, *e.g.*, Levasseur, *The Louisiana Civil Code*, *supra* note 70, at 1121-22 ("For example, before focusing on what may appear to be a matrimonial regime of separation of property and writing an opinion exclusively based on the sub-institution of a matrimonial regime, the judge should look into the higher and encompassing institution of contract or conventional obligation to make sure that the requirements for a valid contract have been met; only then should the judge look into the specific requirements for the formation of a matrimonial contract of separation of property. Before siding almost instinctively with a plaintiff who argues that the thing he bought has a redhibitory defect and that therefore, that the plaintiff is entitled to an action in redhibition, a sub-institution of the contract of sale, the judge should first place the contract of sale into the even broader institution of contract to determine whether or not the 'buyer's rights are governed by the general rules of conventional obligations.' In other words, there could have been an error regarding the 'ordinary fitness of the thing' in the formation of the broader institution of contract that would justify the nullity of the contract. Since the general legal regime of a contract includes the lesser institution of the nominate contract, such as a sale, the failure of a contract to exist carries with it the impossibility of having a contract of sale.").

94. MOREAU, *supra* note 1, at 224.

95. *Id.* at 225.

Rather, Moreau believes that the fact that the plays were not written differently (i.e., filled with correct and exhaustive legal analysis whenever a legal topic is broached) is evidence of Dumas's incapacity to criticize a legal regime.

A final example encapsulates much of Moreau's feeling about the Civil Code. According to Moreau, Dumas "*et ses personnages croient fermement que celui que tue un homme en duel ne peut pas épouser la veuve de son adversaire*" [and his characters firmly believe that one who kills a man in a duel cannot marry his opponent's widow].[96] There was no such law, though, as Moreau points out, practical and social obstacles to such marriages would likely prevent them in any event.[97] If Moreau acknowledges that a duelist is not going to be able to marry his deceased opponent's widow, why should it matter whether that state of affairs is the result of law, social practices, or moral sentiments?

For Moreau, it matters because presenting a requirement as the result of the law "*adjoute aux prescriptions du Code civil*" [adds to the rules of the Civil Code].[98] The object that Moreau believes is impacted by Dumas's mistake is not "the law" in the abstract, but rather, the "Civil Code." In the nineteenth-century age of codification, a primary goal was to present the law necessary to regulate private relationships within a single volume containing an internally consistent system.[99] If a provision that is part of the private law is not present in the Civil Code (and so

96. *Id.* at 130.

97. *Id.* at 130-31.

98. *Id.* at 130; *see also id.* at 133 ("*Cette erreur, qui ajoute une condition à celles qu'exige le Code civil, est étrange*." [This error, which adds a condition to those that already exist in the Civil Code, is strange.]).

99. *See* Wagner, *supra* note 61, at 336 ("Civil lawyers consider the legal system as one coherent and logical whole; the different branches of law are interrelated, consequently, their principles cannot be applied properly if taken separately."). When discussing an American proponent of codifying the common law, Wagner notes that he "was convinced that this common law should be thoroughly revised and codified, so as to constitute a coherent and logical whole." *Id.* at 349; *see also* Masferrer, *supra* note 65, at 13 ("There is as much reason why the American people should have their laws in four or five pocket-volumes as there is why the French people should have theirs." (quoting David D. Field, *Reasons for the Adoption of the Codes*, *in* 1 SPEECHES, ARGUMENTS, AND MISCELLANEOUS PAPERS 358 (1884)). While scholars have identified different concepts of codification, whether understood as a process of collecting existing positive law or as a process of establishing a new system of positive law, in either case, the intention is a coherent and applicable system of laws. *See id.* at 7 (contending that there are "different kinds of codification."); Jean Louis Bergel, *Principal Features and Methods of Codification*, 48 LA. L. REV. 1073, 1073 (1988) ("A code is then characterized by two fundamental functions: it gathers together written rules of law and it regulates different fields of law. As a result, codification is both the action which consists of putting together legal dispositions, whether statutory or regulatory, into one organized system and the by-product of that same action.").

capable of being "added"), then the structural integrity of the Code is called into question.[100] Indeed, although Moreau speaks of Dumas's fault as "adding" to the Code, Dumas's sin is actually positing that there is a supplement that can exist outside of the totalizing framework of the codified law.[101]

Thus, Dumas's implicit challenge to Moreau's positivist orthodoxy is what sends the latter into his fits of pique. It is to defend this orthodoxy (and its corollary, the restricted authority to criticize and amend the Civil Code) that Moreau painstakingly details the "correct" methodologies to analyze a civil code to avoid "errors" such as those committed by Dumas. Armed with this understanding, I now turn to what inspired Moreau to write *Le Code civil et le théâtre contemporain*.

IV. DUMAS AND DIVORCE

In Moreau's hyperbolic telling, Dumas is "*l'adversaire implacable de nos lois civiles*" [the implacable opponent of our civil laws],[102] irreconcilably opposed to the whole of French civil law. And yet, there are large swaths of law with which Dumas was generally unconcerned. Even in those areas in which he took a particular interest, Dumas rarely advocated for the sorts of dramatic revisions of the laws governing social

100. France did have a separate *Code de Commerce* for commercial law. Wagner, *supra* note 61, at 342-43. However, in all but one footnote, Moreau confined his attention to substantive provisions of private law that were addressed in the Civil Code only.

101. According to Michel Troper, the exegetical school believed the Civil Code "to be coherent and complete and to provide solutions for every possible problem." Troper, *supra* note 8, at 141. It should be acknowledged that the French Civil Code of 1804 was not designed (and indeed could not be) a self-contained answer to every question:

> A code, however complete it may seem, is hardly finished before thousand unexpected issues come to face the judge. For laws, once drafted, remain as they were written. Men, on the contrary, are never at rest; they are constantly active, and their unceasing activities, the effects of which are modified in many ways by circumstances, produce at each instant some new combination, some new fact, some new result.
>
> A host of things is thus necessarily left to the province of custom, the discussion of learned men, and the decision of judges.
>
> The role of legislation is to set, by taking a broad approach. The general propositions of the law, to establish principles which will be fertile in application, and not to get down to the details of questions which may arise in particular instances.
>
> It is for the judge and the jurist, imbued with the general spirit of the laws, to direct their application.

See Levasseur, *Code Napoleon*, *supra* note 70, at 769 (quoting Jean-Étienne-Marie Portalis, *Preliminary Discourse* (M. Shael Herman trans., 1969) (1800)).

102. MOREAU, *supra* note 1, at 169.

relationships as seen in, for instance, the utopian socialists of the early-to-mid nineteenth century.[103] And so, in what sense is Dumas an enemy of "our civil laws?"

Moreau is unconcerned with the social effects of any particular rule of private law. The analytic methodologies he uses to criticize Dumas demonstrate this. Once the words have been fixed, the only remaining task is interpretation via a standardized set of analytical moves. Dumas could hardly be more different. Despite being a man making his living by crafting words for others to speak, Dumas is far less interested in what the law says than it what it does.

Because for Dumas law is action rather than words, the many inaccuracies that Moreau itemizes ultimately cease to matter to Dumas's larger project, which is to demonstrate the effects of particular social dynamics (and, as an adjunct, the legal regime that structures and reinforces those dynamics). So long as the same result would follow in social terms under either the correct or incorrect version of the law, the technical accuracy of the presentation is irrelevant to Dumas's purpose.

Moreau recognizes as much. In *Denise*, a brother presents his sister with a choice "*entre l'obéissance et le couvent*" [between obedience and the convent].[104] According to Moreau, "*cela n'est pas juridiquement exact, mais je ne pense que les chose se passent autrement en pratique*" [while this is not precisely correct as an expression of the law, I doubt that things actually work out any differently in practice].[105] Whether or not a particular family member could lawfully force a young woman who refused the match approved by her family to take the veil thus has no bearing on Dumas's purposes because familial authority did, in fact, operate in that way.

Affected by his unhappy childhood, Dumas was committed to changing the law when it did not respond to contemporary social needs: "*De la loi qui m'avait opprimé, je passai à celles qui opprimaient les autres. Né d'un erreur, j'avais les erreurs à combattre*" [From the law that oppressed me, I passed to those that have continued to oppress others. Born of an error, I have errors to combat].[106] Indeed, he claimed an affirmative right to engage in that discourse:

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103. For a general discussion of French socialist projects in this period, *see* GORDON WRIGHT, FRANCE IN MODERN TIMES 177-79 (5th ed. 1995).

104. MOREAU, *supra* note 1, at 221.

105. *Id.*

106. 5 ALEXANDRE DUMAS FILS, *Lettre à M. Cuvillier-Fleury*, *in* THÉÂTRE COMPLET AVEC PREFACES INÉDITES 167, 181 (Calmann Lévy ed., 1898) (1873), https://gallica.bnf.fr/ark:/12148/bpt6k2080166. The letter served as a preface to Dumas's play, *La Femme de Claude*.

> Cependant, cette loi qui n'a été faite ni par vous ni par moi, elle a été faite. Par qui? Par d'autres évidemment. Quels sont ces autres? Des hommes. Que sont ces hommes? Des créatures faillibles comme moi, et vous peut-être. Ce qui a été fait par des êtres faillibles a chance d'être incomplet. De là mon droit, à moi, comme à tout autre, de discuter, d'essayer d'éclairer, de modifier, de battre en brèche, de détruire cette loi, si elle est véritablement mauvaise.[107]
>
> [Though this law has not been made by either you or me, it has been made. By whom? By others apparently. Who are these others? Men. Who are these men? Fallible creatures like me and perhaps even you. What is made by fallible beings may happen to be incomplete. Thus, my right, for myself as for all others, to discuss, to seek to illuminate, to modify, to tear down, to destroy this law, if it is truly bad].

His direct advocacy, as opposed to advocacy through plays designed (at least according to his prefaces) to provoke thought and discussion,[108] is most apparent in his advocacy for the liberalization of divorce.

In *ancien régime* France, there was no separation between the state and the Catholic Church; marriage was a sacrament, and divorce was illegal.[109] Marriage was declared a civil contract in the Constitution of 1791, paving the way for further reforms.[110] In one of the last acts of the Legislative Assembly, divorce was made legal on grounds of incompatibility, for other specified reasons (such as adultery), and by mutual consent.[111] In alignment with the conservative retrenchment under Napoleon, the Civil Code of 1804 restricted divorce to fault-based grounds; divorce was then abolished in 1816 during the reactionary

107. *Id.* at 172.

108. *See*, *e.g.*, BROCKETT & HILDY, *supra* note 3, at 380; *see also* CARLSON, *supra* note 23, at 273-74 ("His didacticism, which is increasingly obvious in his later dramas, marks the prefaces as well; they often contain extended discussions of such matters as prostitution, motherhood, and preservation of the family. Both plays and prefaces become tribunals . . . .").

109. *See* Rachel Mesch & Masha Belenky, *State of the Union: Marriage in Nineteenth Century France*, 11 J. SOC'Y DIX-NUEVIÈMISTES 1 (2008).

110. SUZANNE DESAN, THE FAMILY ON TRIAL IN REVOLUTIONARY FRANCE 49 (2004).

111. *See id.* at 93; Beatriz Curti-Contessoto, Isabelle Oliveira, & Ieda Maria Alves, *The Semantic and Lexical Evolution of "Divorce" Throughout the History of French Legislation*, 9 INT'L J. LANG. & L. 48, 53 (2020).

Bourbon Restoration.[112] For the next seventy years, legal separation and annulment were available, but divorce was not.[113]

In 1884, after several unsuccessful attempts, Senator Alfred Naquet secured passage of his signature piece of legislation, which reestablished fault-based divorce.[114] Although initially somewhat ambivalent on the question of divorce, Dumas became a public advocate in the 1880s.[115] This primarily took the form of his publication in 1880 of *La Question du Divorce*, a direct response to Abbé Vidieu's anti-divorce treatise, *Famille et Divorce*.[116] Whether or not is in fact true that "[t]he Naquet divorce bill (1884) was passed largely through Dumas's influence,"[117] he certainly played a significant role in the public debate over the question.

Although Moreau cites to three of Dumas's lengthy prefaces that suggest the desirability of divorce as a legal reform,[118] he does not

112. Curti-Contessoto, et al., *supra* note 111, at 54-56; DESAN, *supra* note 110, at 137. Divorce was also allowed during this period with parental consent provided the couple had been married between two and twenty years, the husband was over twenty-five and the wife was between twenty-one and forty-five years old. *Id.*; *see* Code Civil (C. CIV.) [Civil Code] art. 275-278 (Fr.) (1804); THE CODE NAPOLEON, *supra* note 47, at 76.

113. Curti-Contessoto, et al., *supra* note 111, at 54--56.

114. Loi qui rétablit le Divorce, No. 14,485, 859 Bulletin des lois de la République Française 85 (1884); Michèle Plott, *Divorce and Women in France*, ENCYCLOPEDIA OF REVOLUTIONS OF 1848, https://www.ohio.edu/chastain/dh/divorce.htm (last rev. Feb. 20, 1999).

115. *See* OFFEN, *supra* note 32, at 23 ("In the 1880s Alexandre Dumas *fils* would come out as a proponent of civil divorce and a supporter of the vote for French women and in 1890 as a reluctant supporter of recherche de la paternité."). Even as he was willing to publicly advocate for divorce, Dumas retained a suspicion of leftist politicians and strove to separate himself from them even when they agreed on particular issues. An analysis of Dumas's politics is beyond the scope of this article, but an interesting insight into his political posture at this time can be found in his open letter to Naquet. ALEXANDRE DUMAS FILS, LETTRE À M. NAQUET (3d. ed. 1882).

116. ALEXANDRE DUMAS FILS, LA QUESTION DU DIVORCE 1 (6th ed. 1880). A full consideration of Dumas's complicated attitudes toward divorce is beyond the scope of this article.

117. NITZE & DARGAN, *supra* note 21, at 598.

118. MOREAU, *supra* note 1, at 164. In an apostrophe to women "*en pleine passion*" who wish to leave their marriages, Moreau writes:

> M. Dumas—qui est votre père intellectuel—et qui a pris, s'il ne lui appartenait pas, le droit de dire leur fait aux lois et de tracer leur devoir aux législateurs, M. Dumas . . . réclame le divorce, l'abrogation de cette loi 'absurde, injuste, dangereuse et sauvage du mariage indissoluble,' ceci est d'un penseur et d'un moraliste.
>
> [Dumas, who is your intellectual father and who has taken it upon himself to lecture legislators on the laws and their duties, . . . demands the right to divorce, the abrogation of the "absurd, unjust, dangerous, and savage" law of indissoluble marriage. But here he acts not as a good father, but as a thinker and moralist.].

Id. Even here, Moreau does not actually make a claim about the substantive correctness of laws limiting or expanding divorce. His focus remains on the question of the promotion of innovation in the law writ large.

specifically mention any of Dumas's more directly polemical publications or Dumas's support (albeit ambivalent) of Naquet's proposals.[119] Nevertheless, the timing as well as the tone of Moreau's criticism suggest that Dumas's involvement in a significant revision to the Civil Code directly inspired Moreau to take up his pen. Naquet's bill was passed in July 1884.[120] Given the length of time required to research and write a 300-page book (even if the sources were primarily limited to the Civil Code and Dumas's dramas) while also launching his academic career as well as the delays attendant to publication, it is reasonable to conclude that Dumas's involvement with Naquet led Moreau to write *Le Code civil et le théâtre contemporain*.

This conclusion is reinforced by the particular manner in which Moreau describes the change in the law of divorce. Unlike social or religious conservatives opposed to the legalization of divorce on substantive grounds,[121] Moreau gives no indication that he has any particular opinion about the desirability of divorce in itself.[122] At no point does Moreau even say that divorce should not have been made more widely available. Instead, his motivation is a concern over what the ability of a non-lawyer such as Dumas to influence the legislature to change the text of the Civil Code suggests about the sacred text and its authorized interpreters. Thus, what Moreau has written is not a work of dramatic criticism but a defense of the authority of the Civil Code and of those with the right to critique it.[123]

119. *See id.*

120. DUMAS, LETTRE À NAQUET, *supra* note 115.

121. *See* LOUIS-GEORGE TIN, THE INVENTION OF HETEROSEXUAL CULTURE 103 (Michaël Roy trans., 2012) (2008) ("Many Catholic commentators nevertheless continued to regard theater as a major contributory factor to the moral degeneration of France and, more particularly, to the articulation and enactment into law of the 1884 act, inasmuch as the theater had effectively preconditioned audiences to adopt attitudes to divorce that would subsequently be rubber-stamped and legitimized by parliamentary decree.").

122. In part this is likely due to the fact that nearly all of Dumas's plays were written before 1884 and so divorce was not available as a mechanism of resolving marital conflict. As it is not present in the plays, Moreau has relatively little reason to discuss it.

123. If I were to engage in Moreau's practice and speculate as to his state of mind, I might suggest that his intense desire to limit the authority to propose changes to the Civil Code to experienced jurisconsults (i.e., law professors) reflects not only a self-interest in the authority he will be able to claim for himself in the future, but also, as a junior faculty member, perhaps an intention to flatter his superiors.

V. IMPLICATIONS

Having examined the legal analysis Moreau promotes, the particular conception of the Code that he endorses, and the legal change (and its sponsorship) that led to *Le Code civil et le théâtre contemporain*, I now turn to the implications of Moreau's and Dumas's contrasting visions of the law and the authority to interpret or critique it. First, Moreau's analysis has particular consequences for legal education and points towards a way in which an education that treats the Civil Code as if it were holy scripture may weaken a lawyer's practical reason. Second, Moreau effectively collapses the distinction between law and those authorized to interpret it, with consequences for understanding some of the tensions within the civilian codification project.

A. Legal Pedagogy

For Moreau, legal education is a necessary precondition for speaking about the law. He repeatedly insists that education and training are essential to avoiding the errors that Dumas commits.[124] No matter how well applied, logic may fail to grasp the intricacies of the Code: "*Trop logique, c'est-à-dire pas assez, car sa logique—trop profane—ne pouvait tenir compte d'arguments qu'un jurisconsulte seul peut connaître*" [Too much logic, which is to say not enough logic, because his logic—too profane—cannot take into account arguments known only to the jurisconsults].[125]

Despite their necessity, even education and training are insufficient before what Brunetière aptly described as "*[l]e Code, ce monument auquel on n'oserait toucher que d'une main pieuse et tremblante*" [the Code, this monument that one dare only touch with a pious and trembling hand].[126] Although Moreau would take issue with the implication that such a reverent attitude is problematic, he clearly embodies it. In fact, it rises to a level of self-flagellation when he calls himself an "*obscure auteur . . . qui ne compte guère que douze années d'études juridiques*" [obscure author . . ., who has barely a dozen years of legal studies] before disclaiming any right to critique the substance of the Civil Code.[127] This attitude is consistent with Moreau's methodology throughout *Le Code civil et le théâtre contemporain* of simply comparing Dumas's dialogue

124. *See generally* MOREAU, *supra* note 1.
125. *Id.* at 209.
126. Brunetière, *supra* note 38, at 222-23.
127. MOREAU, *supra* note 1, at 291.

to the Code's text (as properly explicated) and showing that they do not match.

In his conclusion, Moreau envisions vengeance being wreaked upon Dumas for his presumption to dare criticize the Civil Code. The furies of his imagination are

> des maîtres de la science du droit, qui, après une vie tout entière consacrée à ce labeur sans fin, après une carrière marquée par tous les succès et couronnée par tous les lauriers, constatent modestement leur ignorance et n'osent qu'à peine, à regret, for muler des critiques, proposer des réformes, que d'autres formulent et proposent avec la belle ardeur de l'ignorance qui ose tout, parce qu'elle ne sait rien.[128]
>
> [masters of the science of the law, who, after a whole life devoted to this endless labor, after a career marked by every success and crowned with every laurel, modestly acknowledge their ignorance, and dare only scarcely and reluctantly to formulate criticisms and proposed reforms that others formulate and propose with the enthusiasm of an ignorance that dares everything because it knows nothing.]

One result of the worshipful attitude Moreau endorses is stasis in the development of the law.[129] However, it is not necessarily the result itself

128. *Id.* at 291-92.

129. This a feature that can be traced back to Portalis, the primary drafter of the 1804 Civil Code:

> caution about novelty in legislative matters is necessary because, while it is possible in a new undertaking to calculate the advantages a theory offers, it is impossible to anticipate all the drawbacks that practice alone can reveal; that one must leave what is good alone if one is in doubt about what is better; that in correcting an abuse, the dangers inherent in the correction itself must be reckoned with; that it would be absurd to surrender oneself to a belief in absolute perfection in matters susceptible of only relative goodness; that instead of changing the laws, it is almost always more useful to give the citizens new grounds for liking them; that history offers us the promulgation of scarcely more than two or three good laws in the space of several centuries; that finally, *it is proper to propose changes only to those whose destiny it is to grasp, by a stroke of genius and a kind of sudden insight, the whole organization of a state*.

Lavasseur, *Code Napoleon*, *supra* note 70, at 767-68 (quoting Portalis, *supra* note 101); *see also* Bergel, *supra* note 99, at 1078 ("Any codification aims at vesting a certain durability to the system thus created."). *But see* Wagner, *supra* note 61, at 336 (arguing that in a civil law system, "[t]he law should be *quickly adjusted* by legislation operating prospectively to any change in society." (emphasis added)). Although Bergel argues that the fact of codification does not inevitably lead to "stagnation," he also admits that the French Civil Code "was hardly modified until the end of the nineteenth century," which tends to undermine his position. *Id.* at 1079. Similarly, he acknowledges that "the undeniable advantages of codification, as long as it is recent, run the risk, with time, of turning into disadvantages." *Id.* at 1086-87 (emphasis added). However, his example

that is the most problematic (as stasis can be obtained even without turning a civil code into an idol). Rather, as Brunetière points out, it is that Moreau's ideological position forecloses any outcome other than the static one:

> Formalistes qu'ils sont, par étude et par profession, on ne saurait trop rappeler aux jurisconsultes que les formes n'existent pas en elles-mêmes ni pour elles-mêmes, mais seulement, et à la manière des cérémonies ou des observances du culte, comme conservatoires du fond.[130]
>
> [Formalists that they are, both by education and by practice, one no longer knows how to tell such jurisconsults that forms do not exist in and for themselves but only, as in ceremonial rites, as vessels of a deeper truth.]

Because lawyers such as Moreau come to their attitude via their education ("*par étude*"), Brunetière's observation raises questions concerning the appropriate way to teach the Civil Code to law students.

It appears that the pedagogical practices that gave rise to Moreau's attitude may be with us still. According to Michel Troper, in French law schools,

> summa divisio priority is given to private law and professors of private law because, as one very influential professor put it, 'it is the calling of civil law that it should serve as a model for other branches of law.' Therefore, the course General Introduction to the Law, mandatory for all first-year law students, is almost always taught by a professor of civil law and the introduction is only general by name; it definitely contributes to the formation and perpetuation of the legal culture of French lawyers.[131]

And this mode of teaching is not limited to France. Several years ago, I was told of a professor at a Louisiana law school who regularly taught first-year law students that the Louisiana Civil Code was their "Bible."

While the words of any codified law are important in legal analysis, treating a code as if it is holy writ may ill serve future lawyers, as Moreau himself unwittingly demonstrates. In *Le Fils naturel*, in the course of

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of how to avoid this risk is the French recodification of family law in the second half of the twentieth century. *Id.* at 1087. Because at times society changes very rapidly, an approach to law that allows a century to pass with only minor revisions may risk rendering law out of step with society, a situation of which Dumas was acutely conscious.

130. Brunetière, *supra* note 38, at 221.

131. Troper, *supra* note 8, at 136.

debating a proposed *inter vivos* acknowledgment of a nonmarital child, one of the characters notes, "*La reconnaissance peut être contestée par tous ceux qui y ont intérêt . . .* " [Acknowledgment can be contested by those who have an interest in it].[132] A few lines later, the same character asks another man, who also wants to acknowledge the child, "*Avez-vous une mère, un père, un fils naturel, légitime ou légitimé, une femme qui puisse s'opposer à la reconnaissance?*" [Do you have a mother, a father, a son (nonmarital, legitimate, or legitimated), a wife who can stand in opposition to the acknowledgment?].[133] Moreau takes this opportunity to instruct the reader on the distinction between *opposer* and *contester*.[134] Persons given the former right must consent for an act to be valid; the latter gives persons the right to bring an action after the fact to nullify the act.[135] However, the relevant article of the Civil Code provides: "*Toute reconnaissance . . . pourra être contestée par tous ceux qui y auront intérêt*" [Every acknowledgment . . . may be contested by all those who have an interest therein].[136] Thus, Moreau distinguishes the two and concludes triumphantly that Dumas has made an error because the text of the Code does not require the consent of anyone to make an acknowledgment valid.[137] Notably, however, Moreau does not address the intervening dialogue:

ARISTIDE: Avez-vous encore des parents?

STERNAY: J'ai ma mère.

ARISTIDE: Contestera[138]-t-elle? Un silence. Répondez.

STERNAY: Oui.

ARISTIDE: Plaiderez-vous contre elle?

STERNAY: Je plaiderai.[139]

[ARISTIDE: Are your parents living?

STERNAY: My mother is.

ARISTIDE: Will she contest the recognition? Silence. Answer.

132. DUMAS, LE FILS NATUREL, *supra* note 3, at 167.

133. *Id.* at 168.

134. Moreau, *supra* note 1, at 260-261.

135. *Id.*

136. *Id.* at 260; *see* Code Civil (C. CIV.) [Civil Code] art. 339 (Fr.) (1804); THE CODE NAPOLEON, *supra* note 47, at 94.

137. MOREAU, *supra* note 1, at 261.

138. It is worth noting that in this portion of the dialogue Aristide identifies the correct right (i.e., that of contestation).

139. DUMAS, LE FILS NATUREL, *supra* note 3, at 167-68.

STERNAY: Yes.

ARISTIDE: Will you defend the recognition against her challenge in court?

STERNAY: I will.]

Moreau is satisfied to have identified the correct legal regime and pointed out Dumas's error. Dumas, by contrast, has Aristide engage in a bit of legal advice.

A potential danger of focusing on the distinction between *contester* and *opposer* is to efface the realities of legal practice. When a client is about to engage in a course of action that might result in litigation, a responsible attorney will ask about the client's readiness to participate actively in that litigation; indeed, that is what Aristide does. Moreover, most clients, particularly in estate matters, want to avoid litigation, not start it. So, although the Civil Code only grants affected individuals the right to challenge the acknowledgment after the fact, the distinction may matter little in terms of a client's (and thus an attorney's) goals. If an individual is likely to challenge the acknowledgment, then it may be a wise course of action to obtain that person's consent or otherwise neutralize their opposition before executing the acknowledgment. This aspect of practice and the importance of thinking through the consequences of particular courses of action is utterly foreign to Moreau, but not to Dumas.

None of this is to suggest that the words of the Civil Code are unimportant or that an attorney should not be able to accurately identify the rights possessed by those who might challenge a legal act. Words are the beginning of any competent legal analysis within a codified system, and accurate advice certainly requires accurate interpretation of those words. But an exegetical approach such as Moreau's, one that has no time for anything other than identifying the one applicable law, operates like blinders on a horse. It makes the path to the desired result more certain because potential distractions have been eliminated, but it cannot aid in the more subtle questions of how the correct law should guide a client's decision-making. By excluding such considerations, Moreau suggests that they are irrelevant to the practice of law. When applied by students entering practice, such an approach can lead, if not to a breach of duty, then at least to an unsatisfactory attorney-client relationship.

B. Interpretive Authority

After cataloguing a series of Dumas's errors and claiming that he cannot decide which is worse, Moreau offers: "*voilà de qui ruiner la reputation de M. Alexandre Dumas comme jurisconsulte, et atténuer singulierèment la valuer des critiques qu'il adresse á la loi*" [this is what ruins Dumas's reputation as a jurisconsult and singularly attenuates the value of his criticisms of the law].[140] The figure of the jurisconsult looms large in Moreau's work: "*En un mot, je juge M. Alexandre Dumas comme jurisconsulte*" [In a word, I judge Dumas as a jurisconsult.][141] Dumas, of course, is found wanting in this regard in contrast with the experienced jurisconsults who have earned the right to approach the Civil Code in a spirit of careful and limited reform.[142]

Moreau limits himself to critiquing Dumas "*comme jurisconsulte*" [as a jurisconsult] because Moreau has "*trop d'admiration pour l'auteur dramatique pour faire autre chose que l'admirer*" [too much respect for the playwright to do anything else but admire him].[143] Nevertheless, Moreau never actually explains why the jurisconsult frame is an appropriate one within which to "judge" Dumas. Dumas certainly never claimed to be a master of the civil law. All Dumas did was write dialogue where characters talk about the law and publish expository writings suggesting some deficiencies in the current law. It is this that appears to be the key for Moreau, who implicitly posits that Dumas must be claiming to be a jurisconsult because Dumas regularly speaks about and criticizes the law; it is therefore appropriate to critique his performance in that mode.

As a consequence of Moreau's positivist orientation, the law and its authorized interpreter form a dyad. Law is that which is only appropriately interpreted by jurisconsults, and jurisconsults are those who appropriately interpret the law.[144] Obviously, only a select few have access to the training and resources to become jurisconsults. Thus, the number of interpreters (and critics) is necessarily limited, which has the practical

140. MOREAU, *supra* note 1, at 171.

141. *Id.* at 11.

142. *Id.* at 291-92.

143. *Id.* at 11.

144. Interestingly, Moreau is silent on the question of the authority to make law initially. The contents of the Civil Code are accepted as a fact without need for further investigation into their origin. Although Moreau presumably recognizes that laws are "*ne descendant plus aujourd'hui du ciel*" [no longer being handed down from heaven], his attitude is not inconsistent with that belief. Brunetière, *supra* note 38, at 224.

effect of retarding change in the law.[145] If one believes that the characteristic of law is its "*immutabilité 'sans lequel la loi ne serait pas tout à fait loi'*" [immutability, without which law could absolutely not be law],[146] then the nature of the law leads to the interpretive practice of the jurisconsults just as the restriction of interpretation to the jurisconsults leads to immutability in the law. The law and its interpreters are thus mutually reinforcing components of a closed system.

Within that system, Dumas is an interloper:

> Il a pris le droit qu'il n'avait pas de parler de tout, de batter en brèche la loi, et pourquoi? Il nous l'a dit: d'abord, parce qu'il avait eu à souffrir des lois, ce qui lui donnait un intérêt dans les questions de réforme, mais non le droit d'en traiter, ensuite parce qu'il en avait reçu l'ordre de sa conscience, qui n'était pas, hélas! la science.
>
> De là, ses erreurs.[147]
>
> [He took hold of a right he did not possess—to speak of everything, to demolish the law, and why? He has told us: first, because he was made to suffer by some laws, which gave him an interest in questions of reform (but not the right to discuss them), and second, because his conscience (but not science) commanded him to do so.
>
> From hence, his errors.]

Thus, for Moreau, merely being subject to the law is insufficient justification for critiquing it. Only those with the education and training necessary to apply the appropriate interpretive principles have that right. Thus, Dumas's "errors" are not the reason why he should not be heeded when he proposed reforms. Rather, they are merely the consequence of the actual reason why he should not be heeded: because he is not a jurisconsult. In Moreau's view, it is because Dumas is not a jurisconsult that he makes the mistakes that he does.[148]

Consistent with his other scholarship in which he displays comfort with notions such as limited suffrage and indirect representation, Moreau

145. Although Moreau is in many ways more restrictive in his view of interpretation than Portalis, on this point, they are consistent. *See* Lavasseur, *Code Napoleon*, *supra* note 70, at 767-68 (quoting Portalis, *supra* note 101). Thus, limiting the prospects for innovation is a feature of the codification project.

146. Brunetière, *supra* note 38, at 224.

147. MOREAU, *supra* note 1, at 293.

148. *See*, *e.g.*, *id.* at 168 ("*M. Dumas a préféré sa rédaction; le procédé est inusité chez les jurisconsultes*.") [Dumas prefers his rendition of the Code article, but his process has little place among jurisconsults.].

sees no contradiction in denying individuals with an "interest" in a law any "right" to participate in the making of that law. This view is not disconnected from the interpretive techniques Moreau advocates and accuses Dumas of failing to apply. It is embedded within them. For Moreau, the ultimate goal of legal analysis is to say what the law is. What the law should be is a normative question in which he appears to have little interest. And so, for Moreau, it makes sense to spend hundreds of pages pointing out each time Dumas misstates the law because the misstatement constitutes a wrong greater than the one that arises from the application of an unjust law. In that sense, Moreau's analytic technique is fundamentally myopic. As Brunetière explains,

> Par-delà la question juridique, dont ses contradicteurs s'occupent seule, il y a une question sociale, et il y a une question d'humanité. Dans la question d'humanité, tout le monde peut-être est plus compétent qu'un vieux juge ou qu'un jurisconsulte.[149]
>
> [Beyond the juridical question, which alone occupies Dumas's critics' time, there is a social question, and there is a question of humanity. In the question of humanity, people of the world are perhaps more competent than an old judge or a jurisconsult.]

It is in the nature of Moreau's interpretive techniques (and the exclusivity of the means of acquiring mastery of them) to direct focus away from the social consequences of the law towards codified law as the only object of analysis; that is why exegesis is an appropriate label for his methods. The consequence is a conservative tendency towards the preservation of the legal regime as it exists.

Self-perpetuation of a legal regime through structural conservatism is hardly unique to the French Civil Code or to the civil law. Nevertheless, Moreau's elitist gatekeeping reveals a tension at the heart of the nineteenth-century codification project. While not democratic (the 1804 Code was, after all, a Napoleonic project), one goal of the codification was to laicize the law by replacing a patchwork of customary law as interpreted through doctrine and captured in judicial decisions with a transparent volume in "simple, straightforward language."[150] From this perspective, the aim was accessibility of the law to laypersons who could use the Code to guide their conduct.[151]

149. Brunetière, *supra* note 38, at 222.

150. Peter G. Stein, *Judge and Jurist in the Civil Law: A Historical Interpretation*, 46 LA. L. REV. 241, 252 (1985).

151. *Id.*

Similarly, clear rules integrated into a system were intended by proponents of codification to reduce or eliminate the necessity for doctrine to synthesize the law so that it could be applied by judges.[152] Removing the thicket of doctrine that, to the suspicious (such as Napoleon and his Revolutionary forebearers), allowed judges free rein to rule according to whims disguised as doctrinally informed decisions was intended to reduce the power of judges and, accordingly, render legal decisions more predictable.[153] In large part, this was an outgrowth of the French Revolution's declaration of the supremacy of statutory law, which, by virtue of being enacted by a legislature expressing the general will, was understood to be a codification of natural law.[154] Although the Revolutionary prohibition on judges interpreting the law did not survive the creation of the Civil Code,[155] the practices of Moreau and the exegetical school clearly indicate a continued mistrust of any interpretation of the law that extends beyond its text.

As has been widely noted, this was not the intention of the drafters of the Civil Code.[156] Nevertheless, because the drafters crafted the language of the Code at a relatively high level of abstraction, judges were forced of necessity to turn to jurists, who formerly had "guided [them] when there was too much law" and would now be their guides "when there was too little."[157] Although Moreau seemingly believed (or at least asserted in *Le Code civil et le théâtre contemporain*) that the Code itself contains all the answers, he was equally adamant that a code requires jurisconsults in order to find them.[158] After all, he made it clear that an educated man such as Dumas can make numerous mistakes about the law. But if a code requires jurisconsults, then a code has failed in at least one of its objectives. So long as jurisconsults are required, the tendency of the law will be towards the conservation of "*le dépôt de la tradition*" [the storehouse of tradition].[159] Thus, the question may fairly be asked of scholars of the exegetical school: does a code serve any purpose other than preservation of the *status quo* at the time of its enactment?

There is, of course, an alternative: "*les lois positives ou même les coutumes sont ou doivent être censées avoir l'équité naturelle pour base,*

152. *Id.* (noting that the Napoleon greeted Touiller's commentary on the Civil Code with "surprised irritation").

153. *See id.*

154. Troper, *supra* note 8, at 137.

155. *Id.*

156. *See*, *e.g.*, Masferrer, *supra* note 65, at 4.

157. Stein, *supra* note 150, at 253.

158. MOREAU, *supra* note 1.

159. Brunetière, *supra* note 38, at 224.

pour mesure, et pour justification" [positive law and even custom have or ought to be seen as having natural equity as their foundation, their rule, and their justification].[160] Because that is ostensibly what the Civil Code of 1804 was trying to do,[161] the dispute boils down to a question of interpretation. Dumas advocates an interpretive approach that examines the underlying justifications for a law and then asks whether the law continues to serve those justifications. Because that analysis can produce a result at odds with the structure of the Civil Code, it is *a priori* incorrect for Moreau. This explains his painstaking display of the "correct" interpretive methods.

At the same time as it is a question of interpretation, it is also a question of interpreters. Jurisconsults are those who can consistently and correctly apply Moreau's brand of legal reasoning, which tends to emphasize logical correctness over practical reason and stasis over the relationship between law and a changing society. When that type of legal analysis is used to mold the minds of young attorneys, it has the potential to limit the evolution of law itself. In effect, it transforms attorneys-to-be into disciples of the "Cult of the Supreme Code,"[162] content to dispense with questions of justice in favor of the correctness of rational and "scientific" interpretations of the law as it is.

VI. CONCLUSION

The foregoing suggests one possible answer to the question of why Moreau would bother to write *Le Code civil et le théâtre contemporain*. Simply put, he was coming to the defense of the honor of his profession and of the Civil Code itself, informed by his worshipful attitude to the text and the interpretive methods required by that attitude. Because remnants of Moreau's attitude linger, he offers a cautionary tale to lawyers, jurists, and law professors to take care in how the Code is treated and taught, lest it become an unyielding monolith.

160. *Id.* at 222.

161. *See* Bergel, *supra* note 99, at 1074 ("Thus, the Napoleonic Code was the answer to the general aspirations of jurists of the European continent. Based on the postulate of the school of natural law according to which there existed 'a legal system of permanent and universal value, founded on human reason and whose principles' were to be proclaimed by the legislator, the civil code represented an essential legislative monument which was to have a great influence in the world.").

162. My allusion to the Revolutionary Cult of the Supreme Being is deliberate. *See* Mona Ozouf, *Revolutionary Religion*, A CRITICAL DICTIONARY OF THE FRENCH REVOLUTION 560, 564-67 (François Furet & Mona Ozouf eds., Arthur Goldhammer trans., 1989) (1988).