

Abstracts

Arnaud Le Pillouër, *Le dualisme de l'Exécutif sous la Révolution française / Dualism of the Executive under the French Revolution*

Peu d'analyses sont consacrées à la structure des organes exécutifs. L'une des façons les plus communes de décrire leur organisation interne est d'opposer les exécutifs dualistes et les exécutifs monistes. Néanmoins, afin de mieux comprendre les enjeux d'une telle distinction (qui ne va pas de soi), il convient, comme souvent, de se tourner vers la Révolution française. Or, l'examen des différentes constitutions adoptées durant cette période montre que si le dualisme relevait d'une sorte de nécessité institutionnelle en 1791 (en raison du caractère monarchique de la Constitution), il a résulté d'un véritable choix en l'an I comme en l'an III. Il est possible d'en saisir les ressorts en analysant les raisons et les modalités de l'institution du Comité de salut public par la Convention nationale en avril 1793.

There are few analyses about the structure of executive bodies. One of most common way to describe their internal organisation is by opposing dualist executive powers against monist ones. However, in order to better understand what is at stake in this distinction – for it is not obvious – we need to examine, as it is often the case, the French Revolution. By examining the different constitutions adopted during this period, we see that, if dualism of the executive in 1791 was an institutional necessity, because of the monarchic constitution, it was a really deliberate choice in An I and An III constitutions. It is possible to grasp the meaning and function of it by analysing why and how the National Convention created the Public Safety Committee in April 1793.

Mots-clés / Keywords: dualisme; Convention nationale; Comité de Salut Public; gouvernement; administration / dualism; National Convention; Public Safety Committee; Government; Administration.

Jean-Charles Bédague, *L'accès aux archives des présidents de la République française : retour sur quelques idées reçues... / Access to the Archives of the Presidents of the French Republic: Truth and Tales*

Les archives des présidents de la République française sont sans doute celles qui suscitent aujourd'hui le plus de fantasmes dans l'opinion publique. Le mythe est tenace qui veut que ces papiers soient inaccessibles, soit parce que de longs délais retardent leur libre communicabilité, soit parce qu'elles n'ont jamais rejoint les Archives nationales, emportées ou détruites par les collaborateurs du président. Il est vrai que la complexité juridique qui entoure ces archives n'aide pas chasser les aprioris qui les entourent. Cette contribution entend d'abord rappeler les règles qui organisent la communicabilité à tout citoyen des papiers présidentiels, le changement majeur datant de l'invention du « protocole », qui, à la fin des années 1970, a contribué à donner aux archives du chef de l'État le statut qui leur manquait jusqu'à présent.

Archives of the Presidents of the French Republic are probably those which attract nowadays most fantasies amongst public opinion. There is a persistent myth about these papers as being inaccessible either because their availability to the public has long delays, or because they were never transferred to the National Archives, having been removed or destroyed by members of the staff of the President. The legal complexity around these records certainly makes destroying these preconceptions difficult. This paper intends to first recall the rules that organise the communicability of presidential files to every citizen, the major change being the invention of the "protocol", which, at the end of the 1970s, gave the archives of the head of State a status which they lacked till then.

Mots-clés / Keywords: secret; démocratie; accès; transparence; archivage / secret; democracy; access; transparency; recording.

Vivien Richard, *Le dualisme de l'Exécutif ou les archives du chef du Gouvernement / Dualism of the Executive or Archives of the Prime Minister*

Les archives des services du Premier ministre donnent à constater, tout particulièrement pour la période de la Ve République, à quel point Matignon assure l'articulation entre décision politique et mise en œuvre administrative, assumant ainsi le dualisme natif de l'Exécutif, d'une part, mais aussi la complémentarité des deux têtes de l'Exécutif que sont le Premier ministre et le président de la République.

The archives of the Prime Minister office allow us to see, especially for the period of the Fifth Republic in France, how much Matignon connects political decision and administrative execution. Here we can see the heritage of native dualism of the Executive Power and, in another way, the complementarity of both heads of the Executive, that is, the Prime Minister and the President of the Republic.

Mots-clés / Keywords: Premier ministre; Secrétariat général du Gouvernement; conseil des ministres; circuit de la loi / Prime Minister; General Secretary of Government; council of ministers; legislative process.

Marcel Morabito, *La responsabilité du chef de l'État / The French President's Responsibility*

Après 1969, aucun des successeurs du général de Gaulle ne s'est senti en mesure de mettre en jeu sa responsabilité. Ce divorce entre autorité et responsabilité constitue sans nul doute le fait majeur de l'histoire politique de la Ve République. Il soulève une question cruciale : l'irresponsabilité présidentielle est-elle conforme aux principes républicains ? Le débat de juillet 1991 apporte à cette question une réponse éclairante.

Since 1969, none of the general de Gaulle's successors felt able to bring their responsibility into play. This divorce between authority and responsibility undoubtedly constitutes the major fact of the Fifth Republic political history. It raises a crucial question : is the presidential irresponsibility in accordance with the republican principles ? The July 1991 debate sheds some light onto this question.

Mots-clés / Keywords: responsabilité; irresponsabilité; inviolabilité; confiance; autorité / responsibility; irresponsibility; inviolability; trust; authority.

Guillaume Glénard, *L'émergence du pouvoir réglementaire / The birth of Regulatory Power*

Il est usuel de considérer qu'en France le pouvoir réglementaire apparaît véritablement avec la Constitution de l'an III. S'il est vrai que le premier texte constitutionnel reconnaissant expressément à l'exécutif un pouvoir de réglementer pour l'exécution des lois est la Constitution de l'an III, c'est en revanche sous la Constituante, plus encore sous la Législative, qu'apparaît le pouvoir réglementaire. À l'origine, le règlement n'est rien d'autre qu'une loi précisant une loi antérieure plus générale adoptée conformément à la procédure législative ordinaire. Cependant, l'idéal révolutionnaire d'un exécutif dépourvu de volonté se heurta rapidement aux nécessités pratiques : l'Assemblée ne pouvait tout faire. Aussi, les Constituants, bientôt imités par la Législative, déléguèrent ponctuellement au Roi une part de la fonction réglementaire. Sur la base de ces habilitations, l'exécutif va réglementer de manière de plus en plus autonome, au point que le législateur acceptera de borner son intervention à un simple contrôle de conformité du règlement à la loi. Ainsi, peu à peu, le règlement va être dissocié de sa gangue législative pour devenir un acte de l'exécutif.

It is usual to consider that in France the Regulatory Power is born with the Constitution of the «An III». If it is true that this Constitution recognises for the first time that the Executive power is allowed to issue rules for the execution of the Law, however, the Regulatory Power really appears under the Constituante, and more so under the Legislative. At the start, the rule is nothing more than a law precisising a forerunner law, which is more general and has been issued following the ordinary legislative process. However, the revolutionary ideal of the Executive power, with no proper will, was soon clashing with practical reality: the national Assembly couldn't do everything. That is why the Constituants, as well as the Legislative afterward, during short periods delegated part of the regulatory function to the King. These empowerments permitted the Executive to give rules with a growing autonomy, so much that the Legislative power accepted to limit its intervention to a mere control that aimed at checking that rules complied with the law. In this way the rule was dissociated from its legislative origin, to become an act of the Executive power.

Mots-clés / Keywords: pouvoir réglementaire; règlement; loi; procédure législative; proclamation / Regulatory Power; rule; law; legislative process; proclamation.

Martine Sin Blima-Barru, *Exécutif et pouvoir réglementaire. La collection authentique des lois et décrets conservée aux Archives nationales, lieu caché d'un pouvoir réglementaire du roi? / Executive Power and Regulatory Power. Authentic collection of laws and decrees preserved in the National Archives, a hidden regulatory power of the king?*

Il est généralement admis que le pouvoir réglementaire apparaît au terme d'un processus long du fait du changement institutionnel de la Révolution française. Acte de second ordre, sa position hiérarchiquement inférieure à la loi n'est pas le seul facteur de cette longue et difficile gestation. Acte du pouvoir exécutif par excellence, la difficulté de le définir renvoie autant à la complexe création d'un équilibre à créer sous la Constituante entre l'Assemblée nationale et l'Exécutif qu'à la persistance d'actes pris par le roi dans ses anciennes juridictions. Le chevauchement institutionnel qui accompagne la régénération promise par les députés à la nation crée des confusions du droit. Pourtant, en parcourant tant les débats parlementaires que la collection des lois conservées aux Archives nationales, le droit réglementaire de l'Exécutif apparaît progressivement, en acquérant une place propre et tout à fait originale dans l'arsenal législatif.

It is generally accepted that the regulatory power appears at the end of a long process during the French Revolution because of institutional change. Act positioned below the law at the second level in the hierarchy of legal norms, its subordinated position is not the only factor in this long and difficult gestation. Executive act par excellence, the difficulty of defining it refers as much to the creation under the Constituent of a complex balance between the National Assembly and the Executive, as to the persistence of acts of the King within his old jurisdictions. Institutional overlap which goes together with the regeneration promised by the deputies of the nation creates confusions of law. Yet browsing both parliamentary debates and the collection of laws and decrees kept at the National Archives, the regulatory right of the Executive appears to gradually acquire an absolutely original place of its own in the legislative arsenal.

Mots-clés / Keywords: Pouvoir réglementaire; Assemblée nationale; Exécutif; lois; archives / Regulatory power; National Assembly; Executive Power; Laws; Archives.

Virginie Martin, *Les relations extérieures, « domaine réservé » du pouvoir exécutif? / External Relations, "reserved Domain" of the Executive Power?*

Les prérogatives extérieures du pouvoir exécutif ne datent pas de la Constitution de la V^e République : elles sont un héritage de la décennie révolutionnaire. En effet, sous la Révolution, les députés n'ont pas tant cherché à confisquer qu'à contrôler les compétences diplomatiques et militaires qui ont toujours incombé, en droit, à l'Exécutif. A ce titre, le champ des relations extérieures a constitué un domaine « réservé », sans pour autant être exclusif, de l'Exécutif. Cet article se propose d'analyser en quoi ces attributions extérieures, dévolues et exercées par le pouvoir exécutif, ont d'abord contribué à alimenter les conflits chroniques avec le pouvoir législatif (entre 1790 et 1793) avant d'initier une collaboration inédite entre les deux pouvoirs (entre 1793 et 1795), à l'origine de l'émergence d'une « fonction gouvernementale ».

The external prerogatives of the executive power do not date back to the Constitution of the Fifth Republic: they are a legacy of the revolutionary era. Indeed, during the Revolution lawmakers tried not as much to confiscate as to control the military and diplomatic authority that have always pre-

vailed, by right, upon the Executive. In light of this, the area of external relations represented a "reserved" domain, without actually being exclusive to the Executive. This article seeks to analyze how these external attributions, devolved to and exercised by the executive power, first contributed to feed chronic conflicts with the legislative power (between 1790 and 1793) and then inspired an unprecedented collaboration between the two powers (between 1793 and 1795), which produced the emergence of a "governmental function".

Mots-clés / Keywords: relations extérieures; ministère des Affaires étrangères; Comité de salut public; Conseil exécutif; domaine réservé / external relations; ministry of Foreign Affairs; Committee of Public Safety; Executive Council; Exclusive Domain.

Martine Sin Blima-Barru, *Les relations extérieures, domaine réservé du pouvoir exécutif ? La réponse des contemporains face aux enjeux de la documentation administrative et des archives diplomatiques du Comité diplomatique et du Comité de salut public / External relations, reserved Domain of the Executive Power? Answer of contemporaries compared with administrative documentation and diplomatic archives of the Diplomatic Committee and Committee of Public Safety*

L'Assemblée nationale ne légifère pas dans le domaine diplomatique, lieu par excellence de l'exercice de l'autorité de l'Exécutif, pour autant elle manifeste un très fort intérêt à cet endroit. Ne disposant pas des moyens institutionnels qui lui permettraient de surveiller l'action du gouvernement royal, la Constituante va, à défaut, bâtir par l'intermédiaire de son Comité diplomatique un savoir administratif. Il s'appuie aussi bien sur la constitution d'une véritable bibliothèque administrative comptant les ouvrages de référence de l'époque en matière de recueils de traités et d'alliances parus au XVII^e et au XVIII^e s., que sur un transfert en masse, dans ses bureaux, de manuscrits, de diplômes directement issus du dépôt des archives du ministère des Affaires étrangères. La mise en place de la I^{ère} République et des nouveaux moyens d'administration de la diplomatie entre le Comité de salut public et l'Exécutif rendent obsolète la pratique du Comité diplomatique. La politique des relations extérieures, concertée entre les deux instances, produit elle-même des archives, preuves de ces compétences. Au début du Directoire exécutif, le transfert tant des archives des Comité diplomatique et Comité de salut public que de leurs bibliothèques permet de requalifier l'action des comités. L'intégration de leurs corpus au sein du Directoire et des ministères crée une continuité fonctionnelle qui légitime *a posteriori* le Comité diplomatique et le Comité de salut public en tant qu'organes de gouvernement dans le domaine diplomatique au même titre que l'Exécutif.

The National Assembly does not legislate in the diplomatic field, sector par excellence for the exercise of the authority of the Executive. However it demonstrates a strong interest for this area. Not having the institutional capacity that enables it to monitor the action of the royal government, the Constituent Assembly will build an administrative knowledge by way of its Diplomatic Committee. It also relies on the establishment of a genuine administrative library containing reference books of the time concerning collections of treaties and alliances appeared in the seventeenth and eighteenth centuries, as well as on a bulk transfer to its offices of manuscripts and diplomas coming directly from the Archive repository of the Ministry of Foreign Affairs. The establishment of the First Republic and of the new means of diplomacy administration between the Committee of Public Safety and the Executive made the practice of the Diplomatic Committee obsolete. The same politics of external relations, agreed between the two bodies, produced archives, which represent these competencies.

At the beginning of the Executive Directory, the transfer both of the archives of the Diplomatic Committee and of the Committee of Public Safety and of their libraries, allows us to redefine the action of the committees. The integration of their bodies within the Directory and Ministries creates a functional continuity that *a posteriori* legitimises the Diplomatic Committee and the Committee of Public Safety as organs of the government in the diplomatic field as well as the Executive.

Mots-clés / Keywords: Comités; archives; bibliothèques; diplomatie; Exécutif / Committees; Archives; Libraries; Foreign Affairs; Executive.

François Saint-Bonnet, *L'article 16 et les antagonismes constitutionnels issus de la Révolution / The 16th Article and constitutional antagonisms since the Revolution*

L'article 16 de la constitution de 1958 tourne le dos à la tradition révolutionnaire et républicaine de défiance envers le pouvoir exécutif, lequel est suspecté de vouloir utiliser des pouvoirs de crise pour transformer durablement les institutions dans un sens autoritaire. Cette suspicion, entretenue par la gauche, s'est atténuée depuis les deux septennats de François Mitterrand qui s'est fort bien accommodé de la présence de cet article. Le contrôle de la durée de l'application des pouvoirs spéciaux au profit du Conseil constitutionnel introduit en 2008 ne devrait guère rassurer ceux qui estiment que les garanties sont insuffisantes.

Article 16 of the 1958 French Constitution is in contradiction with the revolutionary and republican tradition of distrust towards the executive power, which is suspected of wanting to use emergency powers for a lasting change of the institutions in an authoritarian way. This suspicion which is maintained by the Left has weakened since the two consecutive mandates of François Mitterrand who has been able to take advantage of the presence of this article. The control of the emergency power's period of application in favour of the Constitutional Council, introduced in 2008, should not reassure those who consider that the guarantees are inadequate.

Mots-clés / Keywords: président de la République; article 16; état d'exception; décisionnisme; Conseil constitutionnel / President of the French Republic; article 16; state of exception; decisionism; Constitutional Council.

Jean-Louis Halpérin, *Le pouvoir exécutif et la Justice en France, l'échec du Pouvoir judiciaire sous la Révolution / The Executive Power and the Justice in France, the failure of the Judiciary Power under the Revolution*

En consacrant l'existence d'un «Pouvoir judiciaire», les révolutionnaires français ont voulu écarter le Pouvoir Exécutif (le roi de 1789 à 1792) de la désignation des juges comme du fonctionnement des tribunaux. Pourtant tous les liens n'ont pas été rompus entre l'Exécutif et le Judiciaire, comme en témoigne le maintien d'un ministère de la Justice et d'agents du ministère public nommés par l'Exécutif. L'évolution sous la Révolution a conduit à multiplier les pressions sur les juges et les tribunaux venant des comités de la Convention puis du Directoire Exécutif. Comment interpréter cet échec du Pouvoir judiciaire et le maintien, jusqu'à nos jours, de relations entre l'Exécutif et les juges en France?

By claiming the existence of a « Judiciary Power », French Revolutionary People wanted to prevent the Executive Power (i.e. the King between 1789 and 1792) from appointing the Judges and managing the Courts. However, the relations between Executive and Judiciary Power were not abolished, as it is proved by the survival of a Ministry of Justice and of assistants of the public prosecutor appointed by the Executive. During the Revolution, the pressure grows on the judges and courts from the Committees of the Convention, then from those of the Executive Directoire. How to interpret this failure of the Judiciary Power and the permanent link, from then to nowadays, between the Executive Power and the judges in France?

Mots-clés / Keywords: juge; tribunal; pouvoir exécutif; pouvoir judiciaire; indépendance de la Justice / Judge; Court; Executive Power; Judiciary Power ; independence of Justice.

Cyprien Henry, *Entre Exécutif et Judiciaire: quelques mots sur les archives du ministère de la Justice / Between Executive and Judiciary Powers: few words about the Records of the French Ministry of Justice*

L'indépendance de la Justice en France est régulièrement mise en cause par la cour européenne des Droits de l'homme. Cette situation est largement due aux liens étroits entre les juges et le Pouvoir exécutif, qui les nomme, d'une part, entre les cours et le ministère de la Justice qui est chargé du suivi et de la mise en œuvre de l'action publique, d'autre part. Enfin, le président de la République conserve en France le droit de grâce, qui revient à suspendre l'application d'une décision de justice.

The independence of Justice in France is often contested by the European Court of Human Rights. This situation is principally due to narrow links on the one hand between Judges and Executive Power, which appoints them, on the other between the courts and the Ministry of Justice, which is in charge of following and managing public prosecution. Finally, the President of Republic in France keeps the right of grace, that means suspending the execution of a court decision.

Mots-clés / Keywords: autorité judiciaire; indépendance; Garde des Sceaux; Juges; Conseil supérieur de la magistrature / judicial authority; independence; Attorney General; Judges; Superior Council of magistrature.

Michel Troper, *Démocratie et Pouvoir exécutif dans les constitutions révolutionnaires. Du pouvoir exécutif au gouvernement / Democracy and Executive Power in Revolutionary Constitutions. From the Executive Power to the Government*

Au début de la Révolution, la fonction exécutive est conçue non comme un véritable pouvoir mais comme une fonction subordonnée et elle ne saurait être exercée de façon démocratique, soit parce que, comme en 1791, on n'a pas voulu de la démocratie, soit parce que le régime, c'est-à-dire, selon les idées de l'époque, le pouvoir législatif, est démocratique et qu'il importe de préserver la séparation des pouvoirs. Cependant, la structure dualiste du pouvoir exécutif conduit à distinguer au sein de la fonction une fonction exécutive *stricto sensu*, consistant dans la stricte exécution des lois et confiée aux ministres et une fonction exécutive *lato sensu*, ou fonction gouvernementale, confiée à

une autorité supérieure, conseil exécutif ou directoire, et consistant dans la direction de l'action des ministres et la conduite des relations internationales.

At the beginning of the French Revolution, the executive function is defined not like a true power but like a subordinate function, and it could not be exercised in a democratic way, both because Democracy is not aimed at, like in 1791, and because the regime, that is, according to conceptions of the time, the Legislative Power, is democratic and it is important to preserve the separation of powers. However, the dualist structure of the executive power brings us to distinguish, within this function, an executive function *stricto sensu*, consisting in the strict execution of the Laws, trusted into the hands of the ministers, and an executive function *lato sensu*, or government function, trusted into the hands of a higher authority, that is the Executive Council or Directory, consisting in directing ministers' action and in managing international relations.

Mots-clés / Keywords: gouvernement; démocratie; Rousseau; Montesquieu; convention; pouvoir réglementaire; relations extérieures; ministres; responsabilité; dualisme / Government; Democracy; Rousseau; Montesquieu; Convention; regulatory power; foreign affairs; ministers; responsibility; dualism.

Pierangelo Schiera, *A proposito di cameralismo e polizia: da Federico il Grande ai giorni nostri / On cameralism and police: from Frederick the Great to nowadays*

Partendo dal commento critico di un recente libro di A. Wakefield sul cameralismo tedesco (2009) l'autore analizza, dall'angolo inconsueto della storia del pensiero politico, la figura di Federico II di Prussia. Contro la manifesta ostilità di Wakefield verso le pretese accademico-scientifiche vantate dai cameralisti accademici, Schiera riprende la vecchia lettura di Albion W. Small che, a Chicago nel 1909, studiava *The Cameralists* come "pionieri della politica sociale tedesca", verificandola alla luce di Federico il Grande. La conclusione è che, nella sua azione concreta, quest'ultimo ha saputo rendere più solida la base politico-amministrativa del suo Stato, attrezzandolo per i nuovi compiti che avrebbe svolto dopo la salita della Prussia al rango di potenza europea: fra il re-soldato e il re-filosofo, c'era insomma spazio anche per il re-amministratore. Schiera trae da ciò indicazioni anche per i problemi "globali" di oggi.

Beginning with a critical review of a recent book (2009) by A. Wakefield about German Cameralism, the author tries to interpret the historical figure of Frederick II of Prussia from the unusual point of view of the history of political ideas. Against Wakefield's open animosity toward the academic-scientific claims laid by the academic cameralists, Schiera goes back to the old interpretation given by Albion W. Small who in Chicago in 1909 studied "*The Cameralists*" as "pioneers of the German social polity", comparing this interpretation with Frederick the Great's thought and action. The conclusion consists in the fact that, in his concrete political action, Frederick the Great was able to make the political-administrative base of his State more solid, providing it with what was necessary for the new duties which it would have carried on after Prussia would have become an European power: between the soldier-king and the philosopher-king, there was therefore space as well for the administrator-king. Schiera draws inspiration from it to understand also nowadays "global" issues.

Parole chiave / Keywords: Cameralismo; Federico il Grande; pubblica amministrazione; global polity / Cameralism; Frederick the Great; public administration; global polity.

Anna Gianna Manca, *I diritti dei prussiani tra costituzione, legislazione e amministrazione (1850-1870) / The Rights of the Prussians between Constitution, Law and Government (1850-1870)*

Prendendo le mosse, dopo una breve introduzione, da una ricognizione delle misure a tutela dei diritti individuali di libertà e di uguaglianza giuridica adottate nel biennio rivoluzionario prussiano (1848-49) per tradurre subito in pratica i principi di libertà e di uguaglianza giuridica che avevano messo in moto lo stesso processo rivoluzionario (2.), l'autore procede ad un'esposizione per quanto possibile esaustiva dei termini in cui quei principi e i loro corollari fecero ingresso nella carta costituzionale del 1850 (3.). Un'analisi di come e in che direzione furono sciolte legislativamente e attuate le promesse di legge relative ai diritti dei prussiani nel decennio postrivoluzionario dal governo e dall'amministrazione dei reazionari anni Cinquanta (4.), lascia emergere l'intento sostanzialmente anticostituzionale del governo degli anni Cinquanta nell'affrontare le problematiche che quei Diritti rimbalzavano alle forze politiche con la loro sola presenza. Nella parte del saggio sugli anni Sessanta dell'Ottocento 5), infine, si toccherà con mano come alcuni dei più importanti diritti dei Prussiani (diritto all'uguaglianza di fronte alla legge, alla libertà di stampa, alla libertà di associazione, alla libertà religiosa) furono riguardati in modo assai diverso sotto il governo liberale della Nuova Era prima e sotto il governo bismarckiano a partire dal 1862. Particolare attenzione è prestata nel saggio alle discriminazioni in materia di diritti di libertà e uguaglianza riservate agli ebrei prima del varo, nel nuovo contesto della Confederazione della Germania del Nord, della legge del 1869 che finalmente li parificò, dal punto di vista giuridico-formale, agli altri cittadini prussiani.

After a thematic introduction, the author focussed on the civil and human rights introduced in Prussia (Germany) during the revolution of 1848-1849. Many of these freedoms and equality rights were secured by the first constitution of Prussia (31.1.1850), but this was naturally not enough to make the Prussian State a modern liberal and constitutional State. During the Fifties the reaction was successful in striking some of these rights off the constitutional text or in reshaping / neutralising their impact on politics and society through new legislation or the practical work of government and administration. Only the advent of the so-called old-liberal New Era (1858-1862) marked a moment of political reverse, which was soon interrupted by the sudden burst of the so-called constitutional conflict (1862-1866). The legislation of the Northern German Confederation seems to have recovered many of the individual Rights secured by the Prussian constitution. A special attention is paid to the discriminations in matter of freedoms and equality rights which concerned the Jews until the promulgation of the act of July, 3rd 1869, which legally / formally equalized the Jews to the other Prussian citizens.

Parole chiave / Keywords: Diritti (dell'uomo e del cittadino); costituzione; legislazione; amministrazione ; Prussia (Germania); XIX secolo / (Civil and Human) Rights; Constitution; Legislation; Administration; Prussia (Germany); Nineteenth Century.

Aldo Mazzacane, *Diritto e romanzo nel secolo della borghesia. Le Colonel Chabert di Honoré de Balzac / Law and novel in the bourgeoisie century. Le Colonel Chabert by Honoré de Balzac*

Il saggio esamina il ruolo che Balzac riconobbe al diritto nella vita individuale e collettiva della Francia della Restaurazione, prendendo ad esempio la celebre novella *Le Colonel Chabert*: storia di un eroico comandante di cavalleria della *Grande Armée*, dato per morto sul campo di battaglia di Eylau,

ma salvatosi miracolosamente e ritornato a Parigi dopo dieci anni. Chabert si propone di muovere causa alla moglie, risposatasi nel frattempo, per fare annullare il suo secondo matrimonio e per rientrare in possesso dei propri beni, ma il suo avvocato gli consiglia una transazione. La storia si sviluppa intorno a un groviglio giuridico inestricabile. Il saggio si propone di sottolineare l'importanza che il diritto svolse nella vita e nell'opera di Balzac, della quale costituì un tema ricorrente e fondamentale.

This essay analyses the role recognised by Balzac to the law in individual and collective life in post-Napoleonic France. The selected example is the famous novel *Le Colonel Chabert*, that tells the story of an heroic commanding officer of cavalry, who was declared dead on the battlefield at Eylau, but who miraculously survived and returned in Paris after ten years. Chabert wants to sue his wife, remarried in the meantime, in order to obtain the annulment of her second marriage and recover his property. However his lawyer recommends him a legal agreement (*transaction*). The story develops around an irresolvable legal mess. The essay has the aim of underlying the importance that law had in Balzac's life and work in which it represented a recurrent and fundamental theme.

Parole chiave / Keywords: Honoré de Balzac; *Le Colonel Chabert*; romanzo; XIX secolo; Diritto e Letteratura / Honoré de Balzac; *Le Colonel Chabert*; novel; Nineteenth Century; Law and Literature.