

# Robert Macaire and the Code Civil: The Political Economy of French Theatre after Bonaparte

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In 1823, under the restored regime of the Bourbons in France, Frédéric Lemaître played the leading role in *L'Auberge des Adrets*, a melodrama written by Benjamin Antier, Saint-Amant and Polyanthe.<sup>1</sup> The premiere took place at the *Ambigu-Comique*, a typical *théâtre secondaire* (unlike the “primary,” official theatres), a commercial venue at the *Boulevard du Temple*, the main Parisian entertainment quarter. It took some pains to have it accepted by the censors, but the play answered perfectly to the stereotypes of the genre: “Le vice y était puni au dénouement et la vertu récompensée. La mère reconnaissait son fils, le fils reconnaissait sa mère, qui reconnaissait son mari, lequel reconnaissait sa femme et était reconnu de tout le monde.”<sup>2</sup> But the liberties Lemaître took, in adapting the character of Robert Macaire – cynical thief, crook and assassin – to his taste, resulted after 96 performances in an interdiction by the ministry of interior.<sup>3</sup> For Lemaître, this performance would mean the start of an incredible career: he became the most famous and iconic actor of his generation, a true celebrity. His morally ambiguous characterization of Robert Macaire transcended the stereotypes of melodrama and became the touchstone for the heroes of “romantic realist” drama, as written by Victor Hugo, Gérard de Nerval and others. According to his own account, Lemaître had sculpted his character after an encounter with a vagabond, dressed in the worn-out clothes of an outdated prince -- the perfect theatricality of the arrogant imposter, and very clownish.<sup>4</sup> As a result, the character of Macaire was duplicated. Robert Macaire, the actual character in the play, developed into the stereotype of the “bohemian” crook, and the *persona* of star-actor “Frédéric Lemaître” became almost as fictional as the role he played on stage. Macaire-Lemaître became the symbol of the political turmoil of the next two decades, not the least by the controversial criticism of “classical reactionary” Jules Janin, from one side, or playwright-politician Félix Pyat, from the other.<sup>5</sup> With the revival of *L'Auberge des Adrets* in 1832, the reputation of Robert Macaire as the ultimate caricature of bourgeois cynicism was confirmed. Jules Janin was fascinated but even more worried about the histrionic plasticity Lemaître demonstrated: “Ne jouez pas avec le théâtre des peuples, non plus qu’avec ses lois. En bonne morale publique, le théâtre c’est bien plus que la loi. La loi ne s’impose qu’à la raison des hommes; le théâtre parle à toutes les passions en les flattant.”<sup>6</sup> In 1835,

Antier and Saint-Amant, this time with the active cooperation of Lemaître himself as a third author, wrote a sequel to *L'Auberge des Adrets*, called *Robert Macaire*.<sup>7</sup> The play, no longer a generic melodrama transformed the character of Macaire from a vagabond-thief into a modern crook, well acquainted with financial fraud. Macaire sold insurances – a trade forbidden by early Revolutionary law and by the *Code Napoléon*, until 1815.<sup>8</sup> After this, the career Macaire-Lemaître largely exceeded the stage of the theatre, he would become for decades an icon of “liberal decadence” in nineteenth-century France, through the caricatures and *physiologies* of Honoré Daumier, draughtsman, and Charles Philippon, copywriter.

The dramatic character of Robert Macaire, together with the reputation of Frédérick Lemaître, is arguably of central importance for any narrative about the fundamental transformation of French society after Bonaparte. In this shift the theatre – both as an artistic practice and as an institution where this art was produced (an institutional regime) – functioned as a microcosm and as a laboratory for larger societal changes. This particular intertwining of role and actor – Macaire-Lemaître – might equally be considered as symptomatic for the esthetic emancipation from the written dramatic text, and thus as an incentive for a (relative) artistic autonomy of the performance and the performers, the actors. “Macaire-Lemaître” was an icon, a cluster of very diverse cultural meanings: the glamour of crime, the “fraud” of acting, the vanity of the star, the hierarchy in the theatre enterprise (and larger society), etcetera. In this respect, it constitutes a vantage point for a more far-reaching analysis. Firstly, Macaire’s popularity coincides with the installation of a liberal theatrical regime, focused on entrepreneurship and organized as a competition between official institutions (the *Comédie-Française*) and the *théâtres secondaires*. Secondly, he points, in his disrespect for both material and intellectual property, at the deeper impact of the legal-ideological framework which has marked French 19<sup>th</sup> century society: the unification of law in the *Code Civil* or *Code Napoléon* of 1804. The conjunction Macaire-Lemaître and the simultaneous shift from melodrama to romantic (or “romantic realist”) drama, could confirm, symbolically, the hegemonic role of liberalism, as an economic system rooted in (absolute) private property by legally equal citizens, in a political society. But it can also be interpreted as the exposition of its contradictions and even as the subversion of the pretended stability of the “great transformation”, in Karl Polanyi’s expression. Polanyi describes the shift from market capitalism as an instrument for other social ends, to the free market as a comprehensive societal paradigm, as an end in itself, with the dominance of the *homo economicus* as a result<sup>9</sup>: Robert Macaire as the perverted *homo economicus*, while Lemaître exploits this popular image to the limit. In this last postulate, the notion of *propriété*, ownership as defined by the famous article 544 of the *Code Civil*, is crucial: “La propriété est le droit de jouir et disposer des choses de la manière la plus absolue, pourvu qu'on n'en fasse pas un usage prohibé par les lois ou par les réglemens (*sic*).”<sup>10</sup> This article sketches some elements of the connections between liberalism, as exemplified in the theatrical regime during the July Monarchy and the 1848 revolution, and the foundations of the *Code Napoléon* of 1804, especially its legal consolidation of ownership. The position of the (professional) actor and his role – and the aforementioned connection between both – might serve as a conceptual tool, especially in the exceptional figure of Frédérick Lemaître/ Robert Macaire, as we will see. The scope of this hypothesis is of course too wide to treat it exhaustively, I will confine myself to some basic remarks.

## **The Emancipation of the Performance**

*Les Enfants du Paradis*, the 1945 film directed by Marcel Carné and written by Jacques Prévert, has the double transformation of French theatre life in the (post-)Napoleonic era as its background. The *boulevard du Temple*, the popular Parisian theatre quarter, showed, in the context of a (not too) sentimental love story, the rise of two completely different genres and stars: pantomime, in the character of Baptiste Debureau and romantic melodrama, with Frédérick Lemaître.<sup>11</sup> The film deals, in an idealizing way, with the impact of artistic excellence on human relations in bourgeois society, but also with the resilience of “true artists” against complete commodification of their art and the reactionary paternalism of theatre directors. Prévert manages to catch the dynamic of the post-revolutionary generation of actors who, since the celebrity (and political volatility) of Talma – Bonaparte’s favorite actor –, communicated directly with the audience, by creating characters close to their own desires of freedom. Carné’s representation of early nineteenth-century theatre culture is of course in the first place a subtle counterpoison to the depression in occupied France, but it uses a relevant undercurrent of that historical cultural and social context, at least for my argument. The character, the actor, the citizen, they all were longing for liberation and emancipation, as promised since 1789. This attitude was also an economic necessity, since audiences had to be convinced to stay and, eventually, to return, in the context of a very competitive market. The cultural conflict between the “civilized” classic repertory, as embodied in the *Comédie-Française*, and the popular vaudeville and melodrama of the *boulevard du Temple*, is connected indeed to this particular market. The same went for the privileged position of the *sociétaires*, the tenured actors of the *Comédie-Française*, with their decisive power over repertory past and present, challenged by “barbarians”: it changed the art of theatre itself. The epitome of this development was Frédérick Lemaître’s popularity, and his histrionic liberties were perceived by the authorities as a political threat, notably by the minister of interior Adolphe Thiers – doomed to become infamous as the slaughterer of the Paris *Commune* in 1871. Thiers commanded the director of the *Porte Saint-Martin* in 1834, still before the reintroduction of censorship: “Je vous engage à donner des ordres pour que désormais les acteurs se bornent à dire leurs rôles tels qu’ils ont écrits.”<sup>12</sup> Lemaître was not only claiming author’s rights as a consequence of his histrionic adaptations and inventions, he also succeeded in creating the ultimate stereotype of the imposter as a scapegoat, most eloquently in Victor Hugo’s *Ruy Blas*, freed from the buffoonish specificity of Macaire.<sup>13</sup> Lemaître *macairises* Hugo’s character, creating a naïve imposter who challenged a decadent and corrupt royal court by imitating their mannerisms in such a way that the theatre audience understood his design all too well, and consequently identified with Ruy Blas’ fatal desire.<sup>14</sup> In his preface to *Ruy Blas*, Hugo sublimated this connection between actor and hero: “Le peuple, valet des grands seigneurs, et amoureux, dans sa misère et dans son abjection, de la seule figure qui, au milieu de cette société écroulée, représente pour lui, dans un divin rayonnement, l’autorité, la charité et la fécondité. Le peuple, ce serait Ruy Blas.”<sup>15</sup>

Florence Dupont sees in the melodrama an evasion of the tyranny of text and fable, a dramatic genre that cohabitates with other, non-dramatic, popular entertainment. The story, in its Manichean simplicity, was only a canvas, a whiteboard for theatrical enjoyment and excess: grandiose dialogues, outrageous gestures, spectacular stage machinery, musical interventions. In fact, Lemaître did not construct a character, i.e. he did not represent, in his acting, a specific person on stage, but he created a role, he shows a certain combination of social functions. This role is repetitious, is available to others – actors and citizens – to be used in different circumstances, in different shows or pageants. In *L’Auberge des Adrets* Macaire and his companion Bertrand sang their dubious songs frontstage, as if

detached from the action: the influence of vaudeville. It was indeed the ubiquity of music which freed them from the yoke of dramaturgical unity and *vraisemblance*: an emancipatory movement, one is tempted to say.<sup>16</sup> However, the father of French melodrama himself, René-Charles Guilbert de Pixérécourt, deplored, in 1843, what he saw as the decline of the genre, when passion got the upper hand, and not morality: “Pourquoi donc les auteurs d’aujourd’hui ne font-ils pas comme moi? [...] C’est qu’il n’ont ni mon cœur, ni ma sensibilité, ni ma conscience.”<sup>17</sup>

## **The Theatre of Liberalism**

How did this emancipation of the actor as a performer take shape and how did it relate to the evolution of the theatrical regime? What kind of contradictions become apparent in the medium term? In the early years after the French Revolution, influential politicians were particularly eager to deal with the theatre. As early as December 1789, the *Assemblée* granted civil rights to actors – together with hangmen and Jews.<sup>18</sup> This didn’t happen without discussion, since the acting profession was seen by many as well-trained and deliberate deceit, an attitude which was not restricted to reactionaries – Robespierre himself would become very suspicious about the theatre.<sup>19</sup> But in January 1791, Isaac Le Chapelier, member of the *Assemblée*, published a reply to the petitions for liberty of the theatre, and he wrote a decree, abolishing censorship, which would be voted only a few days later. The first article said: “Tout citoyen pourra élever un théâtre public & y faire représenter des pièces de tout genre, en faisant, préalablement à l’établissement, la déclaration à la Municipalité.”<sup>20</sup> This was the start of a radical new regime for the theatre, even when in the next years this liberty would be amended, if not suspended. But, as Stéphanie Loncle remarks, in her monumental study on liberalism and theatre during the July Monarchy, the decree of Le Chapelier – who would become (in)famous for his legal repression of collective action, only a few months later – focused on the freedom of entrepreneurship.<sup>21</sup> A fundamentally collective activity, the creation of theatrical performances, would thus, rather paradoxically, be legally based upon the individual right to establish a theatre. Le Chapelier’s decree conceived the theatre as a corporate entity, as a legal person – i.e. a legal fiction –, put on equal footing with a physical person, but detached from human existence.<sup>22</sup> This concept was primordially a reaction against the status of the *sociétaires* of the *Comédie-Française*, perceived by revolutionaries as a reactionary guild, as they had demonstrated in 1789, suspending Talma’s “activist” performance in Marie-Joseph Chéniers *Charles IX*.<sup>23</sup> Loncle observes that, even with the re-imposition of a system of “privileges” to new theatres under Bonaparte’s Consulate, the authorities used the multifaceted, if not chaotic, developments in the Parisian theatrical landscape, as a laboratory for a liberal theatre regime. The early revolutionaries did effectively the same, dealing with the microcosm of the theatres as an implicit societal model.

One revelatory example is the *Gymnase-Dramatique*, admired by the July Monarchy as an entrepreneurial model. Vaudeville made there a successful transition to proto-romantic drama, with Eugène Scribe as the most important playwright. Scribe not only succeeded in this literary shift, he also played hard in claiming his rights as an author, understanding himself and his colleagues as a decisive factor for economic success. A serious conflict with the direction of the *Gymnase* followed, and a subsequent polarization. Theatre directors created a syndicate of their own, the *Société des théâtres unis*, as a counter-power to *Société des Auteurs Dramatiques* (SACD), led by Scribe. But with the increasing entrepreneurial authority and the modest emancipation of the author, the status of

the actor deteriorated dramatically, thus subverting his precarious emancipation from the start. The *Gymnase* established itself, concerning the actors, as a theatre school. Actors were paid, but they fell, in a certain way, under the ownership of the theatre. If the development of their talents could be conceived as the creation of surplus value, their economic value was pure exchange value, and their artistic use value was completely neglected, as market logic required.<sup>24</sup>

However, the *Gymnase-Dramatique* was not the only private theatre where liberal experiments occurred. From 1830 on, the *Porte-Saint-Martin* tried to establish itself as the unofficial *second Théâtre-Français* for romantic repertoire, but it went bankrupt. A few years later, it flourished again, this time with ‘social melodrama’. A performance of *Le Chiffonnier de Paris*, the play of Félix Pyat<sup>25</sup> – playwright and leftist politician, later to be involved in the *Commune* of 1871 – had reputedly ignited the revolt against king Louis-Philippe in February 1848. After the departure of the *roi citoyen*, the citizen-king, Frédérick Lemaître played the title role in a benefit performance of *Le Chiffonnier*, in which the ragman wore the abandoned crown. In 1838, the *Renaissance* tried to take over the role of the *Porte-Saint-Martin* as a beacon of romantic drama. Two famous authors, Victor Hugo and Alexandre Dumas, acted as artistic co-directors, with the same authority as the managing director: a rare configuration. Hugo considered his position as that of an outsider, the manager and the actors being the insiders. The latter had to deal with daily matters of business and performance, but the author – preferably also the owner of the theatre, both venue and troupe – was the real master. But political authorities were most of all interested in the liberal logic behind this experiment: the creation of an entertainment market, where the audience finally determined the success, but warranting the same classic aesthetic excellence as the *Comédie-Française* once did. With the meaningful difference, that the government, royal or republican, didn’t set the standards anymore, but that the market did – under the aegis of respected authors such as Hugo and Dumas. Put another way: instead of creating privileges, the cultural mission of the theatre could be accomplished, if only the theatres behaved as sound commercial enterprises.<sup>26</sup>

Insofar as the theatre regime of the July Monarchy functioned as a laboratory for political economy in general, it revealed, claims Loncle, a fundamental ambiguity of liberal ideology and practice. With the establishment of normative institutions, by means of privileges and commercial management, the new financial bourgeoisie, the backbone of this government, applied a dirigiste policy and imposed a normative, culturally valid, idea of surplus value. Such a policy was theoretically incompatible with the invisible hand of the market. But, most importantly, it revealed the difficulty in defining the exchange value of cultural production. It seems to be impossible to commodify anything else than material production in its more tangible sense of agricultural produce and industrial products.<sup>27</sup> In 1848, with the February revolt, this strategy came out in the open. The reorganization of the theatre was, perhaps surprisingly in our perception, a priority for the new administration, and an official commission was charged to write theatre legislation. The actors however were excluded from these negotiations, they were considered as collaborators of the institutions, and their position was purely based upon a contractual relationship. The argument was extremely blunt: “Ces directeurs pourraient difficilement exposer en toute franchise leur situation dans le sein d’une commission dont les artistes seraient membres.”<sup>28</sup> The fact that actors had, over the years, organized themselves in *mutualités*, in mutual societies, and that they were solicited by authors, such as Lamartine and also Hugo, as an influential electorate, didn’t result in a stronger social position: the rhetoric of liberalism qualifies the actor as an *ouvrier*, a worker – reduced to his supposed

exchange value, or eulogized as a sentimental victim.<sup>29</sup> In a certain way, the *persona* of Macaire subverts this position, if not materially, at least symbolically, as we will see later. However, the disappearance of the actor from any place but the stage also reveals another crucial aspect of liberalism as an ideology, which is also a keystone of Polanyi's thesis about the "great transformation" of society into market: the impasse of the labor market paradigm itself. According to Polanyi, once labor is defined as a (marketable) commodity, the *laissez-faire* economy performs an act of vivisection on society and its members, only mitigated by (ideologically counterintuitive) massive legal protection.<sup>30</sup> How can the productivity of an actor be defined, how can the product of his "craftmanship in illusionism" be treated: as a commerce, creating exchange value, or as an industry, creating use value? Is he a trader or a maker? In legal terms, this distinction has material consequences: a "right *in personam*" (like obligations, only enforceable against contractual parties) versus a "right *in rem*" (like ownership, enforceable against everybody), as we will see below. This implies a considerable difference, most obviously in terms of power, of autonomy, of negotiable leverage with the theatre director, since it amends his own exchange value as a commodity on the labor market. But, it also creates a different connection with the audience, on a symbolic level. This last connection is exactly what Frédérick Lemaître would exploit with the creation of the *persona* of Robert Macaire.

### **Natural Law, Ownership and the *Code Napoléon***

The ideological accommodation of the theatre regime was clearly a major concern of the emancipated, dynamic bourgeoisie after Bonaparte's coup d'état of the 18 Brumaire, year VIII. And this policy cannot be reduced to the consolidating definition of ownership in the famous article 544 of the *Code Napoléon*, that would look like historical-materialist juggling. But the symbolic and normative signification of this postulate remains attractive. Before analyzing, briefly, the politico-ideological undercurrent of the *Code Civil*, it is useful to refer to a previous fundamental debate about ownership between John Locke and David Hume, both proto-liberal thinkers. Éléonore Le Jallé argues that Locke founded his definition of ownership, as appropriation by labor<sup>31</sup>, on a theological argument. Locke went back to Adam's title to dominion – clearly a theological claim, against the patriarchal monarchist Robert Filmer – to explain God's entitlement of mankind as an obligation. The (undisputed) divine ownership transformed into human ownership – Adam's entitlement – and, subsequently, common ownership transformed into private ownership. To explain this last shift, Locke had to define human desire for self-preservation as a natural right, which could only be warranted by God: self-preservation became a duty. This duty is conceived as exclusive, and so it follows that the efforts to preserve oneself – by labor, actually – are exclusive as well.<sup>32</sup> But Hume didn't see the relationship between man and his property as based upon natural law: it is a moral relationship, the result of a conscious reflection of man about his identity and how to materialize it. Hume said about actions to occupy and to restore possessions: "These actions are properly what we call justice; and consequently 'tis on that virtue that the nature of property depends, and not the virtue on the property."<sup>33</sup> When Hume called property (ownership) a 'moral relationship', it could also be qualified, considering the role his and Locke's concept play in the modernization of law, as an imaginary relationship with legal consequences.<sup>34</sup>

François Ewald argues, in his introduction to the *travaux préparatoires* of the *Code Civil* in 1804, that this codex was much more than a systematic collection of private law rules, it was a framework that implied a clear plan about society, about the connection between cellular household and political constitution, about the permanent tension between the letter of the law and the body of “natural law” it pretended to articulate. The sovereign lawgiver created a civil realm he dispossessed himself from, a society with a relative autonomy. In other words, the *Code Civil* was less a mode of production for legal rules, than it was a mode of enunciation for an idea of law based upon general (and wise) maxims.<sup>35</sup> This framework was institutional, it was based upon historical structures of communities – families to begin with – and not on the individualist principles of the *Déclaration des Droits de L’Homme et du Citoyen* or to the Rousseauist or Lockean visions that might have inspired it. In his famous *discours préliminaire*, the introductory speech Jean-Étienne-Marie Portalis, the chief editor of the proposed *Code Civil*, gave before the *Conseil d’État*, he clearly formulated this institutional, if not overtly political – authoritarian? – mission: “Les vertus privées peuvent seules garantir les vertus publiques; et c’est par la petite patrie, qui est la famille, que l’on s’attache à la grande.”<sup>36</sup> In Portalis’ logic, ownership (art. 544) and autonomy of the will (art. 1134), cornerstones of the *Code*, are social institutions derived from the primordial one, the family. Interpreted this way, the *Code Civil* adhered indeed to Hume’s constructivist notion of property/ownership rather than to Locke’s theological naturalism. It is ironic, however, that Locke used the idealized, almost egalitarian, marriage of Adam and Eve as a model for a conjugal society,<sup>37</sup> exactly against bible based patriarchic absolutism: the *Code Civil*, in contrast, consecrated paternalism as a necessary condition for political authority.<sup>38</sup> The *Code Civil* functioned as an autopoietic device, or – referring to Louis Althusser’s concept – as an ideological apparatus, an enforceable discourse meant to consolidate, in practice, a relationship between classes, and between capital and labor.<sup>39</sup> It might also confirm implicitly the conclusion of Tocqueville, about the cohabitation of state despotism and individualist egalitarianism<sup>40</sup>: “Il permettait volontiers que quelques principes populaires régissent les biens, et gouvernassent les familles, pourvu qu’on ne prétendît pas les introduire dans la direction de l’État. Tandis que le torrent démocratique déborderait sur les lois civiles, il espérait se tenir aisément à l’abri derrière les lois politiques.”<sup>41</sup>

To the extent that the *Code Civil* was first and foremost a political project of Bonaparte, the definition of ownership as being absolute was a cornerstone indeed. A compromise between the first Consul’s Machiavellism and a modest consolidation of some ideals of the Revolution, this legislative construction finished (and finished with – *achever* in French) the Revolution by adhering to the “cult of law,” so dear to the pioneers of 1789, in the form of an elaborated *liberté civile*, civil liberty.<sup>42</sup> The question of family – with absolute paternalism – versus (absolute) property as vantage point then looks somewhat like “the chicken or the egg issue”, but the novelty of this compromise, reached after three failed attempts by Jean-Jacques Régis de Cambacérès in the 1790s, was situated on a different, more important level: that of legal subjectivity. The individual right of exclusive ownership had, since William of Ockham in the Middle Ages, always been a *potestas*, a power derived from God, and continued to be so in Locke’s aforementioned rationalization. But only after the Revolution, when validated by positive law, it became an attribute of the individual, himself, who could henceforth be defined (and act) as a “legal subject.”<sup>43</sup> Earlier legal scholars had defined ownership as *dominium*, mastery, according to Roman legal doctrine – as, again, Locke had continued to do. It was indeed a “right *in rem*,” closely connected to the object, to the property, and not a “right *in personam*” on a

contractual, more contingent basis. For Roman law, the concept of *dominium* did not need a notion of legal subjectivity. As Robert Esposito explains, Roman law was essential “patrimonialistic” and lacks a theory of subjective entitlement: not the legal title defines ownership of a good, but its effective possession<sup>44</sup>. The “biopolitical” identity between human being and legal owner was indeed a modern, post-Revolutionary achievement.<sup>45</sup> Without legal subjectivity, the absoluteness of the right of ownership, as it appears in art. 544, is tautological, or even contradictory: how could a legal right, established by law, be absolute, if the same lawgiver could limit or suspend it: “pourvu qu'on n'en fasse pas un usage prohibé par les lois ou par les réglemens.” The recognition of the citizen as a lawgiver by himself, in the private realm – the “autonomy of the will” in art. 1134 could be considered as his emancipation –, strengthened him as a “legal subject” and overcame this contradiction: the restriction of his absolute ownership was only possible by positive law, by default (supplemental) law in the absence of contractual obligations, and only exceptionally by mandatory law. That is at least the ideological tenor of this legal confirmation of comprehensive ownership. In other words: the *locus* of power and dominion shifted from the divine subject to the secular subject, and this shift was enshrined in the *Code Civil*. From that moment this legal subject had absolute – and no longer delegated – power over any object of rightful possession: a moral relationship, in Hume’s terms. The difficulties of implementing this theoretical position in a new practical regime of ownership, including the role of a state based upon popular sovereignty, were however immense, as Rafe Blaufarb demonstrates in his study on post-Revolutionary property.<sup>46</sup>

But in what way did this liberal-ideological “juridification” concern the cultural policy, more specifically, the position of the actor in the theatrical regime that results from it? And, apart from these social and political-economic issues, how did this lead to the creation of the ambiguous character of the clownish entrepreneur-crook, as exemplified in Robert Macaire? Another detour might explain it. According to Karl Marx, ownership, as defined by the *Code Civil* – “the right to enjoy and dispose of things,” *ius utendi et ius abutendi* – revealed two major things: the complete independence of ownership from the community, and the illusion that ownership itself is based on pure individual will. A juridical notion of ownership is clearly different from material possession, even with a title, since *ius utendi* depends upon the availability of capital: the landowner needs a seed stock to become a farmer, a producer.<sup>47</sup> “Autonomy of the will” is an abstraction, totally dependent upon another purely juridical concept, namely the category of the legal subject. To escape from this cross-referential deadlock, bourgeois society defines this subject as a person who is able to purchase and to sell, as a subject on a given market. This definition relies of course on the intentions of the lawgiver, and it is this lawgiver who decides arbitrarily on the substance of this subjectivity. Which means that the notion of “legal subjectivity” might not be so solid as said before, or, more precisely, the concept does not completely succeed in masking its ideological origins.<sup>48</sup> Bernard Edelman, in an attempt to translate Marxian tenets to contemporary issues of ‘immaterial’ ownership (e.g. copyright or portrait rights), observes that the technology of reproduction has problematized the ownership of photographic or cinematic productions. A photographer, by making pictures in public, appropriates, or better, he re-appropriates common property. The result – the photo, the film – obtains, in the logic of a market economy, a surplus value, and so it becomes the property of the artist. To make transactions possible, the legal discourse forces its legal subjects to redefine themselves and the recorded fruits of their observation in terms of legal subjectivity, conceived as the capacity to purchase and to sell. So the artist has to deal with the material (industrial) residue as a commodity,



and not with the artistic vision, with the “surplus value in meaning” that made him do what he did.<sup>49</sup> The expansion of the film industry, Edelman observes, resulted in large apparatuses – the “seed stock” the filmmaker needed it to exercise his *ius utendi*, just as the farmer-landowner – which, paradoxically, continued to undermine constantly a comprehensive commodification of the art, notwithstanding draconic contractual obligations for most collaborators, stars not excepted.<sup>50</sup> The fiction of corporate entity as a “legal person” meets its limits here, due to the specific use value the artists produce: the more complex their production, the more “polysemic” their narrative, the more difficult it is to re-define roles and functions in the individual terms of the legal subject. So it might be said that in Hollywood exactly the same happened as in the theatre regime of the July Monarchy and the Second French Republic: a liberal (entrepreneurial) regime is, to a certain extent at least, deadlocked, because of the complexity, even impossibility, to define the (plus-)value of its commodities, its “stars”. The new theatrical regime after 1830, so dear to Thiers and his allies of the *Société des théâtre unis*, forced the actor into the straitjacket of the legal subject. The theatre enterprises served indeed as his capital, his “seed stock”, while he was enabled, as a subject-proprietor in his own right, to appropriate common property, i.e. the human behavior he professionally observes and, subsequently, turns into “commodifiable” theatrical gestures. But this appropriation by the actor could cross the intellectual property rights of the author, an evolution not applauded by the same Adolphe Thiers. Ironically, the economic emancipation of the (dramatic) author himself happened to be an achievement of the Revolution, with the decree of January 13, 1791, *relative aux théâtres et au droit de représentation et d'exécution des œuvres dramatiques et musicales*, a legislative success crowning the efforts of the SACD, founded by Beaumarchais in 1777.<sup>51</sup> Did Robert Macaire/Frédéric Lemaître really puncture this regime, or was his buffoonery a mere outlet for a market liberalism in search of consolidation?

### **Back to *L'Auberge des Adrets***

It is quite paradoxical that a theatrical regime, which served as a pilot plant (or as an allegory) for a comprehensive liberal political regime, produces a character, Robert Macaire, that potentially subverts the political-economical premises it tries to implement. The main premise consist of the commodification of any produced value, thus warranting the continuity of growth and the permanence of class hierarchies. Robert Macaire embodied the many contradictions of the new secular powers – the “founding fathers” of capitalism-by-law, one might say – in his theatrical appearance as a thief, a fraud, a dandy, an outlaw, a father, a clown. The liberation of the theatres, an achieved of the early Revolution, cleared the path for this cultural-materialist paradox: the freedom of dramatic expression was achieved, in spite of occasional censorship, but the economic status of the professional actor was effectively undermined. A cultural and “discursive” victory, perhaps, but a clear social defeat.

The mixture of genres in the (liberalized) theatre under the July Monarchy, was not really a novelty for Western European theatre: we can think of Shakespeare, of course, or of the bourgeois *Trauerspiel* as developed by Lessing and others in 18th century Germany. But the system of privileges in France, reinstated by Bonaparte, in spite of Le Chapelier’s decree, maintained the assumption that the separation of genres was necessary to uphold the established order of society, even when liberty was henceforth defined in egalitarian terms. Melodrama merged linguistic codes

and even social classes, but at the end of the day, the balance between “right” or “wrong” was restored, especially in the moralistic melodrama of Pixérécourt. The romanticist version of melodrama and tragedy, the variety of drama between *L’Auberge des Adrets* and *Ruy Blas*, didn’t accept this moralism anymore, as Florence Naugrette explains: this theatre represented the frustration about a volatile revolutionary era and it concentrated on what could be called the “return of the repressed”: the violence, subconscious or not, of any regime since 1789, hidden or masked by contradictory principles of liberty, equality and fraternity.<sup>52</sup>

So it might be interesting to interpret the dramatic and performative universes of Robert Macaire and *Ruy Blas* – although they are each other’s opposite: French countryside versus Spanish court etiquette – from the vantage point of “legal subjectivity,” as a politically strong but socially and existentially precarious concept. Apart from the crucial fact that Frédérick Lemaître played the leading roles in all three of them, the plots of the Robert Macaire-diptych and of Hugo’s *Ruy Blas* share a game of false identities, played by their main characters. In a literal sense – false names – but also in a substantial sense: their (anti)heroes hide their ambitions and their social backgrounds. In the case of Robert Macaire, this false identity is a strategy to lead a life as a thief and a crook, and, indirectly, to escape his responsibilities as a husband and a father. The world he confronts is one of petty bourgeois correctness, prudent entrepreneurship – the tavern – and sentimental conviviality. This culture is subverted by Macaire’s irruption, creating a situation in which the state – embodied by the ‘gendarmerie’ – has to unveil itself as a violent warrant for ownership. Remarkably (or not), the threat to ownership of commodities is the threat to loss of identity: the status of Charles, the adoptive son of the good Dumont, who will later be revealed as Macaire’s native son, is framed as a traumatic secret, in the first scene. In the play *Robert Macaire*, the sequel of *L’Auberge des Adrets*, the same trauma befalls on Macaire himself, and the revelation is triggered by documents proving his civil status, provided by the police. The Macaire-character thus shows that uncertainty about ancestry and status coincides and eventually collides with uncertainty about ownership: the *Code Civil* connects them all too closely. In *Ruy Blas* the opposition between dramatic microcosm and leading characters is of the opposite kind. An ambitious but immaculate valet at the profoundly corrupt and decadent Spanish court of the last Habsburgs, gets through to the lonesome, frustrated queen. Her romantic interest and ensuing protection, allows Ruy Blas – disguised as a *grande* – to speak out his mind, but the fundamental, interiorized uncertainty about his status leaves too much room for the schemers. It all ends dramatically: he is killed by a dubious courtier, actually his sponsor. *Ruy Blas* could be read as a *Hamlet*-like drama of failing subjectivity, but the melancholy of the title character is much more determined by an unbridgeable class difference – the valet posing as a *grande* – and the climate of suspicion and complex intrigues, indeed comparable to *Hamlet*, is more ‘objectified’ than in Shakespeare’s tragedy. Hamlet owned everything – when he dies, Horatio secures his symbolic legacy – but Ruy Blas never owned anything by himself. Although both are said to have popular support, Ruy Blas’ death is terribly unjust, no room is left for moral relief. Macaire’s end in the eponymous sequel is hilarious: he and his accomplice Bertrand fly away with a *montgolfière*. Reading the play, it is hard to imagine how Lemaître would have *macairisé* Ruy Blas, although even the latter character could allow some buffoonery with costume changes and other masquerading devices. But the crucial thing is the representation of a legal subject as a civil status, defined by ownership – ownership of one’s physical identity and subsequent perception to begin with: for both characters, this kind of identity is made impossible. But since Diderot rejected empathy as a histrionic

quality, this impossibility is, ironically, the very challenge for any actor. In this sense, *macairisation* means: the joyful recognition of the limits of the legal subject as an owner, who produces and/or sells things. The genius of the actor, with Frédérick Lemaître or any other ambiguous ‘star’, is the capacity to turn affection – laughter, for instance – into subversion. This is the voluntary abdication of ownership of the subject: this capacity is inalienable, and thus uncommodifiable. But further research is required.

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## Endnotes

- <sup>1</sup> Benjamin Antier, Saint-Amant and Polyanthe. *L'Auberge des Adrets. Drame en trois actes, à spectacle* (Paris, 1823/1832). Accessed at : <http://www.xn--thre-documentation-cvb0m.com/content/l%E2%80%99auberge-des-adrets-benjamin-antier-saint-amand-polyanthe>
- <sup>2</sup> Jean-Marie Thomasseau, *Mélodramatiques* (Saint-Denis: Presses Universitaires de Vincennes, 2009), 119.
- <sup>3</sup> Thomasseau, *Mélodramatiques*, 121.
- <sup>4</sup> Jean-Marie Thomasseau, *Le mélodrame* (Paris: Presses Universitaires de France, 1984), 52.
- <sup>5</sup> Marion Lemaire, *Robert Macaire: la construction d'un mythe. Du personnage théâtral au type social 1823-1848* (Paris: Honoré Champion, 2018), 64.
- <sup>6</sup> Lemaire, *Robert Macaire*, 299.
- <sup>7</sup> Benjamin Antier, Saint-Amant, and Frédérick Lemaître. *Robert Macaire. Pièce en quatre actes et en six tableaux* (Paris, 1834/1835). Accessed at : <http://www.théâtre-documentation/content/robert-macaire-benjamin-antier-frédéric-lemaitre-saint-amand#PDF>
- <sup>8</sup> Claire Bellenger, *Histoire de l'assurance de dommages en France* (Paris: Université Panthéon-Assas, 2011), 107-154
- <sup>9</sup> Karl Polanyi, *The Great Transformation. The Political and Economic Origins of Our Time* (Boston: Beacon Press, 1957)
- <sup>10</sup> *Code Napoléon, édition originale et seule officielle* (Paris, 1807), art. 544. Accessed at : <https://gallica.bnf.fr/ark:/12148/bpt6k9629078k?rk=21459;2>
- <sup>11</sup> Marcel Carné (dir.), Jacques Prévert (sc.), Arletty, Jean-Louis Barrault and Pierre Brasseur (perf.), *Les enfants du paradis*, 1945.
- <sup>12</sup> Olivier Bara, “Le rire subversif de Frédérick Lemaître/Robert Macaire, ou la force comique d'un théâtre d'acteur” *Insignis. Revue d'études littéraires et transdisciplinaires sur le 19ième siècle*, no. 1 (May 2010): 14.
- <sup>13</sup> Lemaire, *Robert Macaire*, 2018, 304.
- <sup>14</sup> Jean Duvignaud, *L'acteur* (Paris: Écriture, 1993), 170-175.
- <sup>15</sup> Hugo, Victor, *Ruy Blas* (Paris: Le Livre de Poche, 1838/1987), 17.
- <sup>16</sup> Florence Dupont, *Aristote, ou le vampire du théâtre occidental* (Paris: Flammarion, 2007), 134-135.
- <sup>17</sup> Thomasseau, *Le mélodrame*, 53.
- <sup>18</sup> Paul Friedland, *Political Actors. Representative Bodies and Theatricality in the Age of the French Revolution* (Ithaca (NY)/London: Cornell University Press, 2002), 3
- <sup>19</sup> Klaas Tindemans, “Représentation théâtrale et représentation démocratique. Notes sur la Révolution française, la théâtralité et la souveraineté populaire” in Francine Maier-Schaeffer, Christiane Page and Cécile Vaissie (eds.) *La Révolution mise en scène* (Rennes: Presses Universitaires de Rennes, 2012).
- <sup>20</sup> Isaac-René-Guy Le Chapelier, *Rapport au nom du Comité de Constitution sur la Pétition des Auteurs dramatiques*. (Paris, 1791), 26. Accessed at: <https://gallica.bnf.fr/ark:/12148/bpt6k48171h>
- <sup>21</sup> Friedland, *Political Actors*, 270-274.
- <sup>22</sup> Stéphanie Loncle. *Théâtre et libéralisme (Paris, 1830-1848)* (Paris: Classiques Garnier, 2017), 45.
- <sup>23</sup> Marvin Carlson, *The Theatre of the French Revolution*. (Ithaca (NY): Cornell University Press, 1966), 7-33.
- <sup>24</sup> Loncle, *Théâtre et libéralisme*, 106-111.
- <sup>25</sup> Félix Pyat, *Le chiffonnier de Paris. Drame en cinq actes et un prologue* (Bielefeld, 1861). Accessed at : <https://play.google.com/books/reader?id=-hs6AAAACAAJ&hl=nl&printsec=frontcover&pg=GBS.PP2>
- <sup>26</sup> Loncle, *Théâtre et libéralisme*, 200-213.

- <sup>27</sup> Ibid, 243-244.
- <sup>28</sup> Ibid, 443.
- <sup>29</sup> Ibid, 477.
- <sup>30</sup> Polanyi, *The Great Transformation*, 75, 132.
- <sup>31</sup> John Locke, *Two Treatises of Government*, ed. Mark Goldie (London: J.M. Dent, 1690/1993), 127-134.
- <sup>32</sup> Éléonore Le Jallé, “La propriété comme ‘relation morale’: Hume critique de Locke.” in Blaise Bachofen (ed.) *Le libéralisme au miroir du droit. L’État, la personne, la propriété* (Paris: ENS Éditions, 2008), 79-82.
- <sup>33</sup> David Hume, *A Treatise of Human Nature*, ed. David Fate Norton and Mary J. Norton (Oxford: Clarendon Press, 1740/2007), 338.
- <sup>34</sup> Le Jallé, “La propriété comme ‘relation morale,’” 93-94.
- <sup>35</sup> François Ewald and Pierre-Antoine Fenet, *Naissance du Code Civil. La raison du législateur* (Paris: Flammarion, 2004), XXVI-XXXIII.
- <sup>36</sup> Ewald and Fenet, *Naissance du Code Civil*, 90.
- <sup>37</sup> Locke, *Two Treatises of Government*, 153-162.
- <sup>38</sup> Julia Reinhard Lupton, *Citizen-Saints. Shakespeare and Political Theology* (Chicago, The University of Chicago Press, 2005), 147-148.
- <sup>39</sup> Louis Althusser, *Idéologie et appareils idéologiques d’État*, ed. Jean-Marie Tremblay (Chicoutimi: Bibliothèque Paul-Émile-Boulet de l’Université du Québec à Chicoutimi, 1970).
- <sup>40</sup> Jean-Louis Halpérin. “L’histoire de la fabrication du Code. Le Code: Napoléon?” *Pouvoirs* 107, no. 4 (2003), 17.
- <sup>41</sup> Alexis de Tocqueville, *De la démocratie en Amérique*. (Paris, 1835-1840), 521. Accessed at : <https://www.institutcoppet.org/tocqueville-de-la-democratie-en-amerique-1835/>
- <sup>42</sup> Jean-Louis Halpérin, *L’impossible Code Civil* (Paris: Presses Universitaires de France, 1992), 263-264.
- <sup>43</sup> Arnaud, André-Jean, *Les origines doctrinales du Code Civil français* (Paris: L.G.D.J., 1969), 180.
- <sup>44</sup> Roberto Esposito, *Persons and Things. From the Body’s Point of View* (Cambridge, UK: Polity Press, 2015), 23.
- <sup>45</sup> Arnaud, *Les origines doctrinales du Code Civil français*, 187.
- <sup>46</sup> Rafe Blaufarb, *The Great Demarcation. The French Revolution and the Invention of Modern Property* (Oxford: Oxford University Press, 2016).
- <sup>47</sup> Karl Marx and Friedrich Engels, *Die deutsche Ideologie* (Brussels, 1846), Accessed at : <http://www.ebbemunk.dk/misc/marx.pdf> , 39.
- <sup>48</sup> Bernard Edelman, *Le droit saisi par la photographie* (Paris: Flammarion, 1973/2001), 26-28.
- <sup>49</sup> Edelman, *Le droit saisi par la photographie*, 34-44.
- <sup>50</sup> Edelman, *Le droit saisi par la photographie*, 55-59.
- <sup>51</sup> Sean McMeekin, “From Beaumarchais to Chénier: the droits d’auteur and the fall of the Comédie-Française”, in Claude Jaëcklé-Plunian and Sean McMeekin, *À propos des écrits sur le théâtre au dix-huitième siècle / From Beaumarchais to Chénier: the droits d’auteur and the fall of the Comédie-Française* (Oxford : Voltaire Foundation, 1999).
- <sup>52</sup> Naugrette, Florence. “Le mélange des genres dans le théâtre romantique français: une dramaturgie du désordre historique.” *Revue internationale de philosophie*, no. 1 (2011): 27-41.