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DE GRUYTER

# LAW AND THE HUMANITIES: CULTURAL PERSPECTIVES



*Edited by Chiara Battisti and Sidia Fiorato*

LAW & LITERATURE

## **Law and the Humanities: Cultural Perspectives**

# Law & Literature

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Edited by  
Daniela Carpi and Klaus Stierstorfer

## Volume 17

# Law and the Humanities: Cultural Perspectives



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Chiara Battisti and Sidia Fiorato

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# Foreword

After the “theory wars” of the 1980s and 1990s, the field of literary and cultural studies has appeared in a more shifting, searching and, perhaps, hesitant mode. Theories in this new century have been more studied and taught than practiced and fought for, at least not with the same vitriol and rancour. While highly theorized approaches to literature and culture are still very much on the academic agenda, the comparative serenity along less pronounced battle lines has provided the opportunity for new reflection, reappraisals and further developments of earlier concepts which seemed quite forgotten (the method of close reading is, perhaps, a good example here). The new mood has also given more time to less polarized, more sustained and integrative scholarship that had been developing outside and beyond the stark focus of narrowly theoretical lenses. Beyond overarching conceptualizations, literary scholarship has shown renewed interest in interdisciplinary exchange in select and often highly productive fields of shared interest. This is how I, for one, read the volume presented here, both in the setup of the essays it includes and, even more so, in the scholarly personage that holds them together, that of Professor Daniela Carpi of the Università degli Studi di Verona. During the last two decades or so, Daniela Carpi has systematically explored the connections, interstices and fault lines in the borderland between literary and cultural studies on the one hand and highly productive issues and concepts in a variety of disciplines on the other hand. Most prominent among those are the studies in the field of law and literature, where Professor Carpi’s impact has been the most widely felt: She is clearly one of the galleon figures in the attempt to put Europe (back) on the map in the field of law and literature studies, which had been very much a primarily American project in the 1980s and 1990s. By both taking up the impetus of the American law and literature movement and by rallying European scholars of law, literature and culture behind her banner, Professor Carpi has significantly shaped and inspired European research in the field. She has been a major influence behind the development that more wide-ranging, Europe-specific answers to central issues in society, politics and culture from a law and literature-perspective have been forthcoming. By asking new questions and pointing the way to some answers, however, contingent, this volume will constitute a major contribution to this shared effort by a range of scholars, most of whom will be happy to confess to a Veronese vein in their multifarious law and literature profiles.

Münster, Autumn 2019

Klaus Stierstorfer



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# Editors' Introduction

The project of a Festschrift in honor of Daniela Carpi was welcomed with joy by many of her friends and colleagues. The idea of taking inspiration from her hermeneutical perspectives has led to the completion of a richly multilayered volume which develops through both converging and intersecting lines which radiate in ever new combinations. Such dynamic structure underlines Daniela Carpi's creative inspiration, as well as her peculiar way of engaging the density and multiplicity of the fictional domain in a rigorous, if playful, exploration of aesthetic and theoretical issues.

The essays' topics reveal the wide range of her interests which have led her to a comprehensive and original interpretation of the literary expression as "a sounding board of human anxieties and desires". This may be the expression that best summarizes her critical approach and which has guided her research throughout her career.

Daniela Carpi, with the unrivalled human and scientific abilities which distinguished her at the university of Bologna and Verona, has been able to transmit her overwhelming enthusiasm as a scholar and cultural innovator to many people. Thanks to her interdisciplinary approach, she has managed to create fruitful occasions of encounter between different disciplines: from literature to science, from the visual arts to the posthuman, from the postmodern novel's experimentation to the legal interpretation of the literary text. All this in a wide diachronic perspective: from the sixteenth century until the latest developments of the contemporary period.

Such huge activity is testified by Daniela Carpi's impressive bibliography and by her achievements in the international publishing field with the journal *Pólemos. A Journal of Law, Literature and Culture* and the series *Law and Literature*, which she founded together with, respectively, Prof. Pier Giuseppe Monateri and Prof. Klaus Stierstorfer in close collaboration with De Gruyter publishing house. Both editorial projects very soon enjoyed an increasing interest in the international academic world. To this we would like to add the organization of the yearly Conference of the Association AIDEL (which she founded and directs together with Prof. Pier Giuseppe Monateri), a welcome and expected occasion of encounter for renowned international scholars, many of whom have become dear friends over time.

The editors have arranged the essays in such a way as to highlight the main tenet of Daniela Carpi's critical writing, namely, the cognitive potential as well as the potency of literature – which remains intact even in literary and philosophical eras in which both the subject and the object are questioned – as she has

<https://doi.org/10.1515/9783110670226-001>

shown in her analysis of texts which span from the Renaissance to the contemporary period, with their shared cultural unrest.

We, the editors of this volume and authors of this short introduction, have very strong personal connections with Daniela, who has played an intense role as our mentor, first as her PhD students, then as young Researchers and finally as Professors, and has preciousy guided us into the academic world. Aspects of our personalities and life goals were enhanced, fostered and nurtured by the remarkable experiences we have had as Daniela's "team" in our formative years. The volume, therefore, intends to be an affectionate homage to a scholar who has always chosen and managed to conjugate intellectual cleverness and generosity. The authors of the essays span three continents and thereby represent a further testimony to Daniela Carpi's international standing. Many colleagues, former students and friends wished to participate to the volume; their names appear in the *tabula gratulatoria* in saluting Daniela Carpi for her important scholarly contribution to English Literary studies.

Last but not least, our thanks are due to Dr. Manuela Gerlof, Mag. Stella Die-drich and Dr. Lydia White from De Gruyter and to Prof. Klaus Stierstorfer for their kind assistance in the preparation of this book.

*Ad multos annos, Prof!*

Verona, Autumn 2019

Chiara Battisti and Sidia Fiorato



# Elizabethan Times



John Drakakis

# Shakespeare, Tragedy, Post-truth: *Hamlet*, *Othello* and *Antony and Cleopatra*

## 1 The era of post-truth

According to *The Guardian* for 16 November 2016, the international word of the year was “post-truth.” The president of the *Oxford Dictionaries*, Casper Grathwohl attributed “the rise in use of post-truth” to “the Brexit vote and Donald Trump securing the Republican presidential nomination,” and forecasted that “post-truth” is likely to become “one of the defining words of our time.” He went on:

It’s not surprising that our choice reflects a year dominated by highly charged political and social discourse. Fuelled by the rise of social media as a new source and a growing distrust of facts offered up by the establishment, post-truth as a concept has been finding its linguistic footing for some time.<sup>1</sup>

The following day, Jonathan Freedland insisted that the “the simpler word” for “post-truth” is “lies,” stating that “Trump and those like him not only lie: they imply that the truth doesn’t matter, showing a blithe indifference to whether what they say is grounded in reality or evidence.”<sup>2</sup> Another word gathering momentum as we drift into 2018, and a month in which we are led to believe that “Brexit means Brexit,” is “populism”; from one (perhaps naïve) perspective, assumed to be a democratic urge by a disgruntled political underclass simply to be heard. The term is coupled with “post-truth” recently defined by the *Oxford Dictionaries* as:

relating to or denoting circumstances in which objective facts are less influential in shaping public opinion than appeals to emotion and personal belief.

In contrast, “Truth,” according to the same august authority, involves fidelity to a recognizable state of affairs in the world, “conformity with fact; agreement with reality; accuracy, correctness” and being true to one’s word. We know that ‘facts’

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1 Alison Flood, “Trump and Brexit herald a brave new word: post-truth,” *The Guardian*, 16.11.16

2 Jonathan Freedland, “Don’t call it post-truth. There’s a simpler word: lies,” *The Guardian*, 17.12.16



change as we accumulate knowledge, and things are not always what they seem, but in our post-modern world where performativity as a viable concept used to define an identity politics, the term has been hi-jacked by politicians whose performative statements they know can never be transformed into action however much they repeat them. Like “post-truth” that is an anodyne synonym for “lies,” so “populism” – that shares a common semantic field in its appeal to, and its manipulation of, “emotion,” is an anodyne synonym for crypto-fascism.

It is a commonplace that language both shapes and reflects the world that we live in, and it registers changes in our perceptions of that world and our place within it. The crisis in western culture (notwithstanding local and geographical differences) emanates from dramatic changes in technologies that result in a dislocation of what classical Marxism used to define as the forces and the relations of production. In the case to which I have just referred, the reality is obscured by a systematic flattery of electorates by those vested interests that have most to gain by manipulating them. In short, the ethical questions of sincerity and truthfulness are involved. In his book on *Truth and Truthfulness: An Essay in Genealogy* (2002), the philosopher Bernard Williams defined ‘sincerity’ as “a disposition to make sure that one’s assertion expresses what one actually believes.”<sup>3</sup> And he amplified it with the suggestion that “sincerity is trustworthiness in speech.”<sup>4</sup> He continued, “We want people to have a disposition of Sincerity which is centered on sustaining and developing relations with others that involve different kinds and degrees of trust.” And he concluded with this important observation:

Reflecting on that disposition, they will think about the kinds of trust that are implicit in different relations, and how abusing them may resemble other, perhaps more dramatic forms of manipulation and domination, inasmuch as it imposes the agent’s will in place of reality – the reality which all parties equally have to live within.<sup>5</sup>

Williams is concerned with the pragmatic exploration of human linguistic behavior in fictional and everyday narratives. The Italian philosopher Giorgio Agamben, in his book *The Sacrament of Language* (2010) augments this account by placing specific emphasis on assertory and promissory language, although he identifies a radical ambivalence that resides at the root of language itself:

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<sup>3</sup> Bernard Williams, *Truth and Truthfulness: An Essay in Genealogy* (Princeton and Oxford: Princeton University Press, 2002), 96.

<sup>4</sup> Williams, *Truth and Truthfulness*, 97.

<sup>5</sup> Williams, *Truth and Truthfulness*, 121.

Every naming is, in fact, double: it is a blessing or a curse. A blessing, if the word is full, if there is a correspondence between the signifier and the signified, between words and things; a curse if the word is empty, if there remains, between the semiotic and the semantic a gap. Oath and perjury, bene-diction and male-diction correspond to this double possibility inscribed in the *logos*, in the experience by means of which the living being has been constituted as speaking being.<sup>6</sup>

We might do well to recall that theatrical representation, indeed, *all* fiction, plays fast and loose with the ‘fulness’ and ‘emptiness’ of language, from Plato to Philip Sydney and beyond.

## 2 A spoonful of poetry

Our current debates about language and politics are, therefore, not as novel as they now seem. Issues of ‘truth’, ‘lies’ and the protocols for establishing categories of knowledge, are present in Sir Philip Sidney’s *Apology for Poetry* (c.1583; 1595), and his comments on the strategy for encouraging an interest in poetry present a medically responsible alternative to Julie Andrews claim that “a spoonful of sugar makes the medicine go down”:

he [the poet] cometh to you with words set in delightful proportion, either accompanied with, or prepared for, the well enchanting skill of music; and with a tale foresooth he cometh unto you, with a tale, which holdeth children from play and old men from the chimney corner. And, pretending no more, doth intend the winning of the mind from wickedness to virtue – even as the child is often brought to take most wholesome things by hiding them in such other as have a pleasant taste, which, if one should begin to tell them the nature of *aloes* or *rhubarbarum* they should receive, would sooner take their physic at their ears from their mouths.<sup>7</sup>

Sidney’s commitment to a humanistic education is fundamentally at odds with the reductively prosaic modern strategy of dividing society into mutually antagonistic groupings in thrall to the “mass hypnosis”<sup>8</sup> of demagogues, and for whom questions of ‘virtue’ and ‘sincerity’, let alone ‘truthfulness’, are barely recognized as anything more than empty rhetoric. Indeed, Sidney’s “spoonful of po-

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<sup>6</sup> Giorgio Agamben, *The Sacrament of Language*, trans. Adam Kotsko (Cambridge: Polity Press, 2010), 69–70.

<sup>7</sup> Sir Philip Sidney’s *Apology for Poetry*, in *Renaissance Literature: An Anthology*, eds. Michael Payne and John Hunter, (Oxford: Wiley, 2003), 511

<sup>8</sup> I borrow this phrase from Alex Ross’s “The Frankfurt School Knew that Trump Was Coming,” *The New Yorker*, 5.12.2016, 3

etry” unlike Julie Andrews’ “spoonful of sugar” (the sucrose content of grapes notwithstanding) directs us to a series of Shakespearean dramatic narratives that, within a particular historical context, play out in the form of tragedy the issues that, *mutatis mutandis*, now confront us. The cultural dilemma that accelerated the crisis in Elizabethan and early Jacobean England was the technology of printing and the spread of literacy, that, not unlike modern Information technology, exerted deep pressure on ways of life that, unlike our own, were not easily compartmentalized. Religion, economics, politics, domestic life, even language, all of which the modern world continues to conveniently separate as distinct fields of social and intellectual activity, were, for the late sixteenth century, deeply interconnected. And it was these interconnections, as well as the language in and through which they were articulated, that were under threat. If I say that the issue was “truth,” this is not to reduce a complex series of problems to one overarching abstraction. It is, rather to open up a whole series of related socially and psychologically integral concepts such as “truthfulness,” “integrity,” “honesty,” and “virtue” to critical examination; these changes in religion, economics and “information technology” are registered in the language and action of Shakespearean tragedy.

I want to concentrate on three of Shakespeare’s tragedies: *Hamlet*, *Othello* and *Antony and Cleopatra* that, demonstrate very different facets of this complex problem, although, I will refer in passing to *Troilus and Cressida* and *Macbeth* where these motifs are amplified. Some of them have recently been brought together in John Kerrigan’s encyclopedic account, *Shakespeare’s Binding Language* (2016) in which he argues that:

During Shakespeare’s lifetime the cluster of words around *bind*, *bound*, and *bond* was used of so many kinds of connection-bonds of kin, allegiance to a monarch, material threads and cords, being bound by goodwill or service, not to mention the power of the clergy (for some) to bind and loose from sin – that usage was coloured with implications that allow binding as act and description to draw fields of meaning together.<sup>9</sup>

Kerrigan’s concern is not just with promissory or assertatory language (including ‘swearing’ at both the extremes of the juridical and the profane), but ultimately with the ways in which these kinds of language are represented in Shakespeare’s plays and his poetry, as indices of a crisis within the culture of the period. One of the examples that Kerrigan’s impressively thorough analysis does not take advantage of occurs in *Hamlet*.

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<sup>9</sup> John Kerrigan, *Shakespeare’s Binding Language*, (Oxford: Oxford University Press, 2016), 10–11

The encounter with the Gravedigger takes place immediately on Hamlet's return from England and it lays bare a context-specific respect for particular meanings that change as the situation changes. Hamlet's question: "Whose grave is this, sirrah?" initiates the following exchange:

GRAVEDIGGER Mine sir.

[Sings.]

O, a pit of clay for to be made –

HAMLET I think it be thine, indeed, for thou liest in't.

GRAVEDIGGER You lie out on't, sir, and therefore 'tis

Not yours. For my part I do not lie in't, yet it is mine.

HAMLET Thou dost lie in't, to be in't and say it is thine.

'Tis for the dead, not for the quick. Therefore thou liest.

GRAVEDIGGER 'Tis a quick lie, sir, 'twill away again from

Me to you.

HAMLET What man dost thou dig it for?

GRAVEDIGGER For no man, sir

HAMLET What woman then?

GRAVEDIGGER For none, neither.

HAMLET Who is to be buried in't?

GRAVEDIGGER One that was a woman, sir, but rest her

Soul she's dead.

HAMLET [to Horatio] How absolute this knave is! We must

speak by the card or equivocation will undo us. By the

Lord, Horatio, this three years I have took note of it, the

age is grown so picked that the toe of the peasant

comes so near the heel of the courtier he galls his kibe. (5.1.110–133)<sup>10</sup>

At the root of this exchange is an opposition between 'truth' and 'lies', and the question is: to what extent the Gravedigger *possesses* the grave he has been digging *and* the extent to which Hamlet himself is laid open to the accusation of 'lying'. If this were a serious exchange – say, the confrontation between Bolingbroke and Mowbray at the beginning of *The Tragedy of Richard II* – it would provoke a bellicose response. Instead the Gravedigger's nimble wit elicits from Hamlet an imperative to speak even more precisely than the "absolute" interlocutor whose oral dexterity will allow him to exploit meanings accurately that are themselves *bound* by the specific *contexts* in which they are deployed. In this exchange Hamlet has the last word, but he does so only by invoking his superior status, while at the same time lamenting the collapse of the social hierarchy. In

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<sup>10</sup> William Shakespeare, *Hamlet*, eds., Ann Thompson & Neil Taylor, Arden 3 series, (London: Bloomsbury, 2006), pp.418–19. All references to *Hamlet* are from this text unless otherwise stated.

the context of Shakespeare's play populism is anything but a demagogic manipulation of proletarian emotion; indeed, it is a political challenge to an order in which the "courtier" is shown to be at a clear linguistic disadvantage. Hamlet's "card" is both a "ship's compass" and a "book"<sup>11</sup> whereas the Gravedigger's language derives its force from the immediacy of his situation and his lived experience. This, in miniature, encapsulates the crisis of language that the play (and Hamlet in particular) wrestles with, and it is one of a number of examples in the play where different *types* of language, and the rhetorical force that they are capable of producing, are on display.

### 3 *Hamlet*

*Hamlet* begins in uncertainty. A Ghostly father appears from the past, a Catholic past, Purgatory, weaponized (as we might say) and also armed with an assertory language that describes both his 'history' and his present predicament, to a son who has just returned from the Protestant Wittenberg. The Ghost gives his eponymous son a repeated conditional command:

HAMLET Speak, I am bound to hear.

GHOST So art thou to revenge, when thou shalt hear (1.5.6–7)

and

If thou didst ever thy dear father love –

HAMLET O God!

GHOST – Revenge his foul and most unnatural murder! (1.5.22–25)

The murder is "strange and unnatural" (1.28) a violation of the bonds of kinship, and later, filial attachment,<sup>12</sup> reinforced in his further appeal: "If thou hast nature in thee bear it not" (81).<sup>13</sup> The Ghost 'binds' Hamlet at the same time as it hedges the commitment it elicits from him in conditional terms. Hamlet is not required to swear a binding oath, although the Ghost's compressed negative

<sup>11</sup> See Thompson and Taylor, *Hamlet*, 418–19 for glosses.

<sup>12</sup> The phrase is glossed in Thompson and Taylor, as "all murders are bad (but mine was especially bad)," but Harold Jenkins ed. *Hamlet*, Arden 2 series (1982), 217 fn.28 glosses it much more carefully as "the violation of the natural tie between kin."

Glossed simply as "natural feeling" in Arden 3 (217, fn.81), but amplified in Arden 2 to: "natural feeling. Cf...2 H4 IV.v.37–40 'Thy due from me/ Is tears and heavy sorrows of the blood / Which nature, love, and filial tenderness, / Shall, O dear father, pay thee.'" (Arden 2, 220, fn.81).

“Let not the royal bed of Denmark be / A couch for luxury and damned incest” (1.5.82–83), has the effect of provoking him to seek to alter what has already become the *status quo* in Denmark. At the heart of the problem is the erosion of ‘memory’, the air-brushing out of history of the distinctive performative ethos of Old Hamlet, where there existed “a correspondence between the signifier and the signified” (Agamben) but who, like the psychologically repressed, returns, to *advise*, rather than unconditionally bind or instruct, the revenger: “But howsoever thou pursues this act / Taint not thy mind nor let thy soul contrive / Against thy mother aught”; (1.5.84–86). The Ghost’s exhortation to revenge is understood by Hamlet in assertory terms as the exhortation to ‘remember’: “Now to my word. / It is adieu, adieu, remember me.’ / I have sworn’t.” (1.5.109–11).

From the outset, speed is of the essence for Hamlet and the variation between the Folio reading of the line: “Hast, hast me to know it / That I with wings as swift,” and Q2’s “Haste me to know’t that I with wings as swift” (1.5.29), suggests that in addition to the possibility that the division in the Folio line may have been a compositorial attempt to remain within the measure of the composing stick, the repetition (Hast, Hast) also adds increasing urgency to Hamlet’s task. But even though Hamlet judges that this is “an honest Ghost” (1.5.37) its origin in Purgatory and the injunction to “remember,” in a kingdom where the “vow” of marriage is no longer sacred, will give Hamlet pause for thought. Also the secret nature of Claudius’ crime serves to extend the trajectory of revenge as an action to which the revenger has recourse *only* when the legitimate avenues of justice have been exhausted. Put another way, it is only when, in the criminal’s *language*, “words, things and actions” (Agamben) are finally exposed to public view, that revenge can have meaning in the play. To this extent, Hamlet’s revenge is, ultimately, not a violation of a moral or an ethical code (“bene-diction”), but an attempt to re-establish morality and ethics in a world in which “male-diction” now holds sway. This is not to say that there are not occasions when Hamlet’s desires, or his actions do not stray into the amoral world shaped by Claudius, but it goes some way to explaining the hesitations and the self-conscious examination of motives, feelings and actions that act to frustrate the completion of Hamlet’s task. Indeed, at one point in the play, even the Ghost becomes impatient.

From the very outset the ethos of Old Hamlet is set up against that of Claudius. Horatio’s speculations about the origins of the Ghost in Act 1 scene 1 are important insofar as they introduce us to a king and his chivalric adversary, Old Norway, whose words, actions and legal agreements reinforce each other. Were it not for the fact that this Ghost comes from Purgatory, we might conclude that Old Hamlet is present to himself; in short, he is his word. This image of the

dead king is in contrast to that of Claudius, and it is one of many that the play sets up. The new king's first appearance, and his deployment of an uncomfortably persuasive rhetoric, raises some questions. The series of conditional statements ('Though', 'Yet') and the conclusive 'Therefore' coupled with the demagogic enlistment of the support of his Court, seek to establish a logic that is designed to explain Claudius' behavior. The image that he uses of "an auspicious and a dropping eye" (1.2.11) is visually implausible, but it is emotionally and rhetorically powerful. Both the Arden 2 and Arden 3 editors regard the speech as an example of 'spin' but it is surely more than that. Is Claudius simply 'bluffing' or is he telling 'lies'? As the North American Philosopher Harry Frankfurt once noted in a famous essay, "Lying and bluffing are both modes of misrepresentation or deception." He goes on:

The concept most central to the distinctive nature of a lie is that of falsity: the liar is essentially someone who deliberately promulgates a falsehood. Bluffing too is typically devoted to conveying something false. Unlike plain lying, however, it is more especially a matter not of falsity but of fakery. This is what accounts for its nearness to bullshit. For the essence of bullshit is not that it is *false* but that it is *phoney*. In order to appreciate this distinction, one must recognize that a fake or phoney need not be in any respect (apart from authenticity itself) inferior to the real thing.<sup>14</sup>

In Claudius's case 'lying' and 'bluffing' go together, but he occasionally (and privately) recognizes "the truth" since, as the play develops, he admits that his entire position is 'false'. What distinguishes him as a 'liar' and a 'phoney' is his private anxiety that drives his particular commitment to represent reality in the way that he does. He is careless with 'fact' as in his claim that "death of fathers" is a feature of "nature" "who still hath cried / From the first corpse till he that died today / 'This must be so'." (1.2.104–106). He sends ambassadors (Cornelius and Voltmand) to deal with the Norwegians, but limits their scope of action; later he will use Polonius (with fatal consequences) and he will consent to the use of Ophelia, then Rosencrantz and Guildenstern and finally Laertes as intermediaries. In all these cases death is the result, but only in the case of Laertes does his guilt finally come into the public domain. The conduct of his emissaries is circumscribed by writing, and he frequently separates his own inner feeling from his outward behavior. In addition he engineers 'forgetfulness' even as Hamlet strives to 'remember'. Where in the case of Old Hamlet writing supplements living language and is validated in action, Claudius's is a product of literacy,

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14 Harry Frankfurt, "On Bullshit," *Raritan Quarterly Review*, 6.2 (1986): 81–100, 93.

who can separate ‘word’, ‘thought’ and ‘action’ from each other and who can distinguish between the ‘inner’ man and the public image.

The conflict between ‘inner’ and ‘outer’ surfaces on two notable occasions. The first is prompted by the feckless Polonius’s justification of deception as he prepares his daughter for a meeting with Hamlet: “Tis too much proved that with devotion’s visage / And pious action do we sugar o’er / The devil himself” (3.1.46–48). The King’s aside offers us a glimpse of his divided psyche:

How smart a lash that speech doth give my conscience!  
The harlot’s cheek beautied with plastering art  
Is not more ugly to the thing that helps it  
Than is my deed to my most painted word.  
O heavy burden! (3.1.49–53)

The division between ‘deed’ and representation is precisely a consequence of literacy, and the issue is pressed home again after another scheme involving Polonius produces a much more involved soliloquy. What was ‘natural’ in the public world of Denmark is now, in the privacy of Claudius’s closet a “rank” offence that “hath the eldest curse upon’t” (3.3.37). The issue here is exactly how can Claudius communicate directly with God (through prayer) when in the human world the desire to continue to possess material acquisitions blocks the channels of communication:

May one be pardoned and retain th’offence?  
In the corrupted currents of this world  
Offence’s gilded hand may shove by justice,  
And oft ‘tis seen the wicked prize itself  
Buys out the law; but ‘tis not so above:  
There is no shuffling, there the action lies  
In his true nature, and we ourselves compelled  
Even to the teeth and forehead of our faults  
To give in evidence. What then? What rests? (3.3.56–64)

There is no way out of this dilemma, but Claudius plans nonetheless to go through the motions of prayer, even though he wants to hang on to his commitment to venality (‘justice’ in the human world can be ‘bought’). When he enters Hamlet *sees* the gesture but does not hear what Claudius says, and he proceeds to offer a stereotypical gloss on the act ‘revenge’. Left alone, the divided subject that is Claudius confirms that for the ‘stock’ revenger completion of the act would have been opportune:



My words fly up, my thoughts remain below.  
 Words without thoughts never to heaven go. (3.3.97–98)

The gap between ‘thought’, ‘deed’ and ‘word’ could not be clearer, and this represents the prevailing ethos in Denmark that Hamlet has to confront before he can make sense of the task, that he has been given. It is only when Claudius is *publicly* exposed at the end of the play, where his guilt is openly revealed, that Hamlet can complete his task, but not before, tragically, he ingests the deadly poison prepared by the King and that will always lurk under the surface of ‘untruth’.

The issue of the play’s two different ‘languages’ – requiring Hamlet to be proficient in both in order to survive – is raised in the following scene when he confronts his mother. In a piece of brilliant plotting, the accidental (and retrospectively ‘providential’) killing of Polonius sets up the confrontation between Hamlet and Laertes, the one a revenger acting under certain constraints, and the other, a ‘stock’ revenger who throws over all constraint. At this stage, however, the issue becomes the status of language itself, and the matter of Gertrude’s participation in

Such an act  
 That blurs the grace and blush of modesty,  
 Calls virtue hypocrite, takes off the rose  
 From the fair forehead of an innocent love  
 And sets a blister there, makes marriage vows  
 As false as dicers’ oaths – O, such a deed  
 As from the body of contraction plucks  
 The very soul, and sweet religion makes  
 A rhapsody of words. (3.4.38–46)

The diminution of “marriage vows” to “dicers’ oaths” is one that exposes the negativity that according to Agamben resides at the constitutive heart of language itself, and it is exposed only when there occurs a crisis in representation. We remember that Old Hamlet was poisoned through the ear, and Hamlet represents the murderer as “a mildewed ear / Blasting his wholesome brother” (3.4.62–63). We saw earlier how in an essentially oral culture, the Gravedigger’s ‘ear’ is finely attuned to the changes of meaning that accompany each shift of context. And this is something to which Hamlet as playwright is attuned as he writes for performance, *not* as a substitute for action, but in order to bring into the public domain a crime that remains hidden from view until the end of the play. The danger inherent in a what we might call Claudian language is that it fragments subjectivity and produces a drunken chaos. Indeed, in Hamlet’s

interview with his mother, it is she who is accused of “madness,” of an “apoplexed” sense: “for madness would not err / Nor sense to ecstasy was ne’er so thrilled / But it reserved some quantity of choice / To serve in such a difference” (71–74). And he goes on:

What devil was’t  
That thus hath cozened you at hoodman-blind?  
Eyes without feeling, feeling without sight,  
Ears without hands or eyes, smelling sans all,  
Or but a sickly part of the one true sense  
Could not do mope. (3.4.74–79)

Hamlet’s misogyny is clear here, and it is interesting that the play deflects “madness” onto the female characters: first Gertrude and then Ophelia. Indeed, after the appearance of the Ghost to Hamlet, he rejects outright Gertrude’s claim that he is “mad”:

Mother, for the love of grace  
Lay not that flattering unction to your soul  
That not your trespass but my madness speaks.  
It will but skin and film the ulcerous place  
Whiles rank corruption mining all within  
Infects unseen. (3.4.142–147).

Of course, the very virtues and values, not to mention ‘vows’ that Hamlet seeks to uphold in this scene, Laertes will dismiss in a rebellious gesture whose entry and significance the Messenger makes clear:

The rabble call him lord  
And, as the world were now but to begin,  
Antiquity forgot, custom not known,  
The ratifiers and props of every word,  
They cry. ‘Choose we: Laertes shall be king!’ – (4.5.102–106)

Claudius’s engineered forgetfulness, enacted here by Laertes, returns us to Plato’s *Phaedrus* and to the myth of writing offered there as an aide memoire, but rejected as an instrument of forgetfulness. In the play political chaos is a kind of forgetfulness, and what should be a substantive justification for monarchical order becomes a series of empty platitudes as the threatened king exposes the narrative of “divine right” as an ideology rather than as a true description of his God-given authority. It is at moments such as this that the play wrestles with ‘truth’ and with the consequence of what we have come to recognize as ‘post-truth’ – that dislocation of past and present and the forgetfulness that en-

courages a fragmentation of subjectivity in a chaos of discontinuity. The play ends with Hamlet ‘scourging’ and ‘ministering’ to Denmark at a cost to his own life and with a provisional reinstatement of the faculty of ‘memory’ in Fortinbras’s claim: “I have some rights of memory in this kingdom / Which now to claim my vantage doth invite me” (5.2.373–374). But, of course, the ‘memory’ that is the play, and Horatio’s promise to re-articulate its details leaves the audience with a tragic irresolution of the conflict between “bene-diction” and “male-diction.” Performance will nor *resolve* the matter. Indeed, it will resurrect it in an endlessly repetitive Purgatory on earth.

## 4 *Othello*

*Othello* moves the problem into another register. Whereas Hamlet builds and innovates on the tradition of the revenge play, *Othello* is concerned with the intimacies and the problems of marriage and follows on innovatively from Shakespeare’s earlier Venetian play, *The Merchant of Venice*. There the marriage between a Christian and a Jew (Lorenzo and Jessica), is transformed into the miscegenous relationship between a Venetian and a Moor – the very relationship that Portia rejects when she dismisses the unsuccessful Morocco. The action in *Othello* does not involve a crime; rather it is built around different levels of jealousy and envy that leads to ‘revenge’ based on a perversion of what Steven Mullaney has called “affective cognition.”<sup>15</sup> What in *Hamlet* can be interpreted as involving opposing kinds of language and the political, social and psychological conflicts that their confrontation produces, in *Othello* is shared between the audience and the protagonist who is a ‘black’ man with a ‘white’ heart. More than that, if Othello is not what he seems, then neither is the villain Iago, a disaffected Venetian soldier who holds the rank of “ancient” or “ensign,” one who shows “out a flag and sign of love, / Which is indeed but sign.” (1.1.154–155)<sup>16</sup>

In the earlier play, *The Tragedy of Richard III* (1595) the hero / villain Richard, directs onstage and offstage audience sympathies, frequently *against* their better judgments. In *Othello* Iago sustains this practice right until the end of the play, and the double perspective, that he fabricates and represents, intensifies the play’s tragic irony. Some 60 years ago William Empson identified a rad-

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<sup>15</sup> Steven Mullaney, *The Reformation of Emotions in the Age of Shakespeare* (Chicago and London: The University of Chicago Press, 2015), 75.

<sup>16</sup> William Shakespeare, *Othello*, ed. E.A.J. Honigmann, revised by Ayanna Thompson, Arden 3 series (London 2016), 130. All quotations from the play are from this edition unless otherwise stated.

ical instability at the heart of the play's language. His essay "Honest in Othello" (1951) starts from the claim that "[b]oth Iago and Othello oppose honesty to mere truth-telling,"<sup>17</sup> and later, that the word "seems to have rather minor connections with truth-telling."<sup>18</sup> But Empson's claim that "the word was in the middle of a rather complicated process of change and that what emerged from it was a sort of jovial cult of independence,"<sup>19</sup> suggests something much more radical. Othello's dependency, that begins with Desdemona: "Excellent wretch! Perdition catch my soul / But I do love thee! And when I love thee not / Chaos is come again." (3.3.90–92) derives from a general commitment to deductive reasoning into which "honesty" is subsumed:

And for I know thou'rt full of love and honesty  
 And weigh'st thy words before thou giv'st them breath.  
 Therefore these stops of thine fright me the more.  
 For such things in a false disloyal knave  
 Are tricks of custom, but in a man that's just  
 They're close delations, [denotements Q] working from the heart,  
 That passion cannot rule. (3.3.120–127)

Iago's selectively empirical approach, by contrast, begins with the poisoning of Brabantio's mind, is extended by his destruction of Cassio and culminates in his engineering of the downfall of Othello, while from the outset, the theatre audience is drawn into the process, with the word 'honest' acting as a crucial symptom of the play's radical loosening of the binding language of asseveration. What Mullaney has identified as the early modern theatre audience's "auditory and spectatorial literacies"<sup>20</sup> are tested to the limit in *Othello* where both protagonist and villain can appeal to truths that their own mimetic inconsistencies persistently undermine: Othello is not what he is, and neither is Iago. Or to put the matter more formally, signifier and signified are separated from each other. In the domestic world of Venice, driven by money and a claimed practice of welcoming 'strangers', and in its policing of its political borders, what is under attack is an entire ethos of representation. Throughout the play, integrity, sincerity, indeed, face-to-face communication, is systematically undermined, and the result is a level of fragmentation that challenges the very efficacy of all empirically derived 'truths'. From the very outset, Iago's defense against Roderigo's accusa-

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17 William Empson, "Honest in Othello," Shakespeare, *Othello*, New Casebook series, ed. John Wain (Basingstoke: Macmillan, 1971): 96–119, 102.

18 Empson, "Honest in Othello," 112

19 Empson, "Honest in Othello," 98–99

20 Empson, "Honest in Othello," 76

tion of financial impropriety is underwritten with a fulsome oath: “Sblood, but you’ll not hear me. If ever I did dream / Of such a matter, abhor me.” (1.1.4–5). If he were telling the truth, then this oath would underwrite his assertion, but if not, then he is guilty of undermining the very foundations of signification. However, so confident is Iago of the solidity of his own case, that he can be candid with Roderigo about it:

Were I the Moor, I would not be Iago.  
 In following him I follow but myself:  
 Heaven is my judge, not I for love and duty  
 But seeming so for my peculiar end,  
 For when my outward action doth demonstrate  
 The native act and figure of my heart  
 In complement extern, ‘tis not long after  
 But I will wear my heart upon my sleeve  
 For daws to peck at: I am not what I am. (1.2.56–64)

Like his avatar, the pathologically incoherent Donald Trump, Iago can inhabit different personae at different times. He is an empty signifier, what in grammar is called a shifter whose assumption of language in each “concrete act of discourse” (to use Giorgio Agamben’s phraseology) prevents us from identifying clearly the ethos within which each utterance might determine “the extraordinary implication of the subject in his word.” What Agamben seeks to locate in a more philosophical sense, is an “ethical relation” that will lead to a determination of what he calls “the sacrament of language.” Iago’s constant self-justifications serve, in Agamben’s philosophical language, to “put himself at stake in his speech [and] he can, for this reason, bless and curse, swear and perjure.”<sup>21</sup> It is not just language that is the problem here, in fact, the whole of reality and the human capacity to represent it are rendered unstable, and that will produce a fantasy in which the protagonist *imagines* his wife’s infidelity and proceeds to murder her in the interests of a “cause” that he cannot “name.” (5.2.1–2). As in the later play *Macbeth* in which ‘equivocation’ is shown to be *like* truth, but is, in fact, lies, an action that cannot be represented in language points to horror.

In a play in which the radically shifting ethos of ‘post-truth’ and nefarious ‘honesty’ reign, considerable care is taken to establish the processes whereby ‘truth’ can be verified. Brabantio’s wholly manipulated summary judgment of his daughter’s elopement based on a flimsy ocular ‘proof’, is followed two scenes later by a more calculated (and accurate) speculation by the Duke of the destination of the Turkish fleet. As the play develops ‘ocular’ proof is

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21 Agamben, *The Sacrament of Language*, 71.

shown to be the subject of manipulation creating a gulf in cognition between the dramatic characters and the audience. In short, because of the ineffectuality of ‘face-to-face communication, we do not know who to believe, and yet, as omniscient audience we know where the ‘truth’ lies. If Iago can lay bare a plethora of ‘myths’ about human behavior, it is left to Aemilia to identify their source in the patriarchal unconscious desire of Venice:

What is it that they [men] do  
 When they change us for others? Is it sport?  
 I think it is. And doth affection breed it?  
 I think it doth. Is't frailty that thus errs?  
 It is so too. And have we not affections?  
 Desires for sport? And frailty, as men have?  
 Then let them use us well: else let them know,  
 The ills we do, their ills instruct us so. (4.3.95–102)

Women’s ‘frailty’, it seems, *imitates* that of men. But Brabantio’s ‘dream’ fleshed out by the suggestions of Iago and Roderigo, exposes a hideous fear that belies Venice’s vaunted claim to be hospitable to ‘strangers’. Indeed, the republic itself is not what it seems.

There is one moment in the play when the tragic protagonist is what he seems, and it is Aemilia who makes the point. It is an uncomfortable moment that recent ‘populist’ politics have augmented. Desdemona takes upon herself the responsibility for her own death, but Aemilia identifies an empirical truth in answer to Othello’s claim: “OTHELLO: You heard her say herself it was not I. / AEMILIA: She said so; I must report the truth.” (5.2.125–126). Othello then retracts, using Desdemona’s dying words as evidence that “She’s like liar gone to burning hell: / ‘Twas I that killed her.” We might ponder the motive for Desdemona’s final words, but Aemilia is clear that in her death she is an “angel” and Othello, “the blacker evil!” (5.2.128–129) Desdemona is, in death, finally what she seems, and her murder makes Othello the devil he appears to be. But if this were the conclusion then the ‘ill-fated’ Desdemona would be the protagonist whose tragic error was not to divulge the whereabouts of her lost handkerchief, and Othello would be the villain. However, at the end of the play there are two Othellos: the “noble Moor” and the “blacker devil.” But, for Othello, this consistency is temporary, as the narrative that immediately precedes his unusual death indicates:

Set you down this,  
 And say besides that in Aleppo once,  
 Where a malignant and a turbaned Turk  
 Beat a Venetian and traduced the state,

I took by the throat the circumcised dog  
And smote him – thus! (5.2.349–354)

What is ‘in fact’ a suicide is represented as an act of justice carried out by an agent of Venice who “has done the state some service” (5.2.337), against a ‘dog’. There is much more at stake here than Othello “cheering himself up,” as T.S. Eliot once thought. Indeed, what begins in the first person singular: “Speak of me as I am” (340) proceeds to identify a ‘Turk’ and then a ‘Venetian’ and ends by isolating ‘the Turk’ as a criminal, a ‘circumcised dog’ that can then be executed. Is this what Jacques Derrida would call a “feint,” i.e., the strategic activity of the animal who is, here, cornered? Or is this an indication of what the animal cannot do, “to testify to ... the trickery of speech in the order of the signifier and of Truth.”<sup>22</sup> It is difficult in this speech to sort out ‘truth’ from ‘lies’; indeed, is this a final manifestation of the alleged trickery and ‘witchcraft’ (1.3.61–65) of which Brabantio had earlier accused Othello in seducing his daughter? It is a different order of ‘trickery’ than, say Iago’s, which is “lying insofar as it comprises, in promising the truth, the supplementary possibility of speaking the truth in order to mislead the other, to make the other believe something other than the truth,” to borrow a Derridean formulation.<sup>23</sup> Derrida continues by identifying:

The reflexive and abyssal concept of a *feigned feint*. It is via the power to feign the feint that one accedes to Speech, to the order of Truth, to the symbolic order, in short to the human order. And thereby to sovereignty in general, as to the order of the political.<sup>24</sup>

This is also what Agamben would describe as the representative utterance of man, “the living being whose language places his life in question.”<sup>25</sup> What the play’s tragic ending promises is a qualified return to an expressive language that binds together “in an ethical and political connection words, things and actions.”<sup>26</sup> And yet, with the promise of “torture,” the loosening of the villain’s tongue threatens to return to the beginning and to re-problematize “the connection that unites language and the world.”<sup>27</sup>

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<sup>22</sup> Jacques Derrida, *The Beast and the Sovereign*, trans. Geoffrey Bennington, 2 vols., (Chicago and London: The University of Chicago Press, 2009), I, 121.

<sup>23</sup> Derrida, *The Beast and the Sovereign*.

<sup>24</sup> Derrida, *The Beast and the Sovereign*, 126

<sup>25</sup> Agamben, *The Sacrament of Language*, 69

<sup>26</sup> Agamben, *The Sacrament of Language*

<sup>27</sup> Agamben, *The Sacrament of Language*, 42

## 5 *Antony and Cleopatra*

In the earlier play, *Troilus and Cressida* (c. 1602), the questions of self-division and value, are played out to the point where the gulf between observation and ‘truth’, between promissory language and action is so wide that every ethical category that the play sets up is demolished. Troilus observes Cressida’s infidelity far more directly and conclusively than in the scenario engineered by Iago for Othello, and the consequent emptying of language is crystallized in Troilus’ despairing confusion:

O, madness of discourse,  
That cause sets up with and against itself!  
Bifold authority, where reason can revolt  
Without perdition, and loss assume all reason  
Without revolt! This is and is not Cressid. (5.2.149–153)<sup>28</sup>

But of course, the play that pushes this linguistic instability to its tragic limits is *Macbeth* where it is “th’ equivocation of the fiend, / That lies like truth” (5.5.42–43). *Antony and Cleopatra* (c. 1607–1608), a play that follows closely on the heels of *Macbeth*, extends and considerably sophisticates some of the theatrical substance of *Troilus and Cressida* and the theatrical techniques of *Othello*. In the excellent introduction to his edition of the play, Michael Neill identifies a characteristically Shakespearean ‘dialectic’ that he describes as a “characteristic rhetorical posture of a play always arguing with itself, in which no single argumentative position, however passionately presented, is allowed to go unquestioned or unqualified.”<sup>29</sup> Neill goes on to suggest that

there are two distinct uses of paradox in the play which correspond to the rival perceptions of reason and imagination. In one, which we might loosely call ‘Roman’, it expresses only self-devouring contradiction; in the other, more typically ‘Egyptian’ use, it figures the inalienable doubleness of things, by which opposites flourish in mysterious complementarity.<sup>30</sup>

The play switches cinematically between ‘Rome’ and ‘Egypt’ but each is politically implicated in the world of the other. But there are so many narratives that jostle with each other in Shakespeare’s play and that, in part, recall *Othello*. In the

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<sup>28</sup> William Shakespeare, *Troilus and Cressida*, ed. David Bevington (Walton-on-Thames: The Arden Shakespeare, 1998). All citations to the play are from this text, unless otherwise stated.

<sup>29</sup> William Shakespeare, *Antony and Cleopatra*, ed. Michael Neill (Oxford: Oxford University Press, 2008), 101.

<sup>30</sup> Shakespeare, *Antony and Cleopatra*, 102



latter there is a version of the Mars-Venus-Vulcan drama that is recounted in Golding's translation of Ovid's *Metamorphoses* book 4, and an attenuated version of this narrative (along with others) reappears in *Antony and Cleopatra*. Jonathan Bate has observed that "[t]he love of Antony and Cleopatra is symbolic of cosmic harmony, as that of Venus and Mars was sometimes interpreted to be, but it is also undignified to the point of risibility."<sup>31</sup> In *Othello* "the net / That shall enmesh them all" (2.3.336–337) is not that of Vulcan, but of Iago, and in the later play, it is Cleopatra.<sup>32</sup> In *Antony and Cleopatra*, however, the tone shifts with the geographic location of the action. From the Roman perspective the two lovers are 'risible', but that perspective is never allowed to predominate. Indeed, whenever Rome comes into Egypt the logical, reasonable language of Empire is undermined by a fecund poetic language that protects Egypt against the predations of an uncomprehending but vulnerable Roman imperialism. Shakespeare's own innovative adaptation of an Ovidian myth is deployed here to show both the binding and the unbinding of language amid the ebb and flow of political contingency. Egypt has the capacity to see through and unmake 'vows' made in Rome, as the percipient Cleopatra recognizes when Rome encroaches upon her domain. Antony's recall to Rome is to deal with the political situation that his dead wife Fulvia has caused, but Cleopatra sees this as a betrayal by Antony of trust:

Why should I think you can be mine and true –  
 Though you in swearing shake the throned gods –  
 Who have been false to Fulvia? Riotous madness,  
 To be entangled with those mouth-made vows  
 Which break themselves in swearing! (1.3.28–32)

She augments this with a description of the emotional intensity generated by Antony's justification for remaining in Egypt; *either* his assertory language retains his power. "Eternity was in our lips and eyes, / Bliss in our brows' bent; none our parts so poor / But was a race of heaven." (1.3.36–38) or "the greatest soldier of the world, / Art turned the greatest liar" (1.3.39–40). As the political situation changes, so the veridical content of language loses its force. Antony vacillates between an identity that derives its force from a Roman self-presence and an Egypt in which that identity dissolves. This is no simple either / or; rather it is a consequence of the threat that a radically feminized 'other' poses to the Roman world of military action and political alliance. The masculine, command-

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<sup>31</sup> Jonathan Bate, *Shakespeare and Ovid* (Oxford: Clarendon Press, 1993), 204.

<sup>32</sup> Cfr. Bate, *Shakespeare and Ovid*, 214

ing a-sexual Fulvia: “Can Fulvia die?” is later replaced by the biddable Octavia whose ‘love’ will become the agency to stifle future political conflict:

By this marriage  
 All little jealousies which now seem great,  
 And all great fears which now import their dangers  
 Would then be nothing. Truths would be tales,  
 Where now half-tales be truths. Her love to both  
 Would each to other, and all loves to both  
 Draw after her. (2.2.138–144)

In masculine Rome the value of love is measured in its effects, and it renders retrospectively ironical Cleopatra’s question to Antony at the beginning of the play, that follows Philo’s categorization of her as a “strumpet,” and Antony her “fool”: “If it be love indeed, tell me how much” (1.1.14). This of course is the Lear question, but Antony passes the test: “There’s beggary in the love that can be reckoned.” (1.1.15) To this extent Egypt is Rome’s *excess*, its ‘other’ and it is Enobarbus’s periodical accounts of feasting and his poetically charged descriptions that sometimes point to linguistic inadequacy. His descriptions gather veridical force from his characteristic Roman militaristic candor, and they serve to reinforce a constitutive difference between Rome and Egypt.

Unlike in *Othello* where no matter how deceived the dramatic characters are, the theatre audience is permitted to distinguish between ‘truth’ and ‘falsehood’, even though both intersect with each other, in *Antony and Cleopatra* there are the contingent political *and* poetic ‘truths’ of Egypt, and there are the contingent political ‘truths’ of Rome. But even that does not quite explain the difference. At Actium Cleopatra contributes to Antonio’s defeat, and again at Alexandria, in a much more balanced confrontation, the same happens again, leading Antony to suspect that “she, Eros, has / Pack’d cards with Caesar, and false-played my glory / Unto an enemy’s triumph.” (4.14.18–20) Antony’s claim that “She has robb’d me of my sword” (4.14.23), recalls “She made proud Caesar lay his sword to bed; / He plough’d her and she cropped.” (2.2.237–238), and also the carnivalesque narrative of cross-dressing: “Then put my tires and mantles in him, whilst / I wore his sword Philippan.” (2.5.22–23)

Throughout the play minor characters constantly seek verification for the stories they have heard about Cleopatra and about the Egyptian revels. Also, characters such as the gruff Enobarbus, can wax poetic when recalling Cleopatra. Similarly, Cleopatra can unravel the Roman world, and she can undermine Antony’s authority, and, beyond that, the tragic ethos of the Roman world; for example, the heroic Antony is no match for the Machiavellian Octavius, and what should be a characteristically Roman death is botched. Cleopatra on the

other hand can outguess the political strategy of representing her on the Roman stage, and her death transforms even as it eroticized a stereotyped ‘tragic’ death. Her language, her gestures, indeed, her political deployment of stereotyped feminine foibles, is utterly in excess, even at the same time as it is engaged with the ‘politics’ imposed upon it by Rome. ‘Truth’ and ‘honesty’ are frequently relativized; and where ‘fact’ appears, certainty is open to question; for example, Menas’s “We look not for Mark Antony here: pray you, is he married to Cleopatra?” (2.6.109–110) is ostensibly corrected by Enobarbus, but the ‘fact’, and the promise that it entails, dissolves in the complexity of Antony’s known involvement with Cleopatra:

ENOBARBUS Caesar’s sister is called Octavia.  
 MENAS True, sir, she was the wife of Caius Marcellus.  
 ENOBARBUS But she is now the wife of Marcus Antonius-  
 MENAS Pray ye, sir?  
 ENOBARBUS ‘Tis true-  
 MENAS Then is Caesar and he for ever knit together.  
 ENOBARBUS If I were bound to divine of this unity.  
 I would not prophesy so. (2.6.111.119)

We are here in the world of ‘post-truth’ and ‘post-fact’ where language changes even as the geographical and political landscape change. Thus Octavia’s “holy, cold and still conversation” (2.6.120–121) is counterbalanced by Cleopatra’s incessant eroticized movement that is anything but ‘holy’ and ‘still’. But part of what the Roman world perceives as the indefinability of Egypt, is also its capacity to elevate, bewitch even and fantasize. But Roman rationality also perceives Antony’s dilemma. After Enobarbus’s defection and Antony’s own suicide Maecenas pinpoints what is at root a tragic struggle: “His taints and honours / Waged equal with him” (5.1.30–31).

What the play offers us is a fading Roman world where the values of military heroism are fragile and conditional and are always capable of being dismantled. The persistent instability of language, the failures of representation, its dependency on the inadequacies of stereotyping, is suddenly and finally supplanted by ‘dream’. Cleopatra’s ‘dream’; “I dreamt there was an emperor Antony” (5.2.75) is a feat of Egyptian poetic imagination. Although, her idealized characterization of Antony, while it earns the respect of the interlocutor Dolabella, does not entirely outstrip his skepticism. Even so, his denial of her ‘dream’ is met with a vehement riposte:

You lie up to the hearing of the gods!  
 But if there be or ever were one such,  
 It’s past the size of dreaming. Nature wants stuff

To vie strange forms with fancy; yet t' imagine  
 An Antony were nature's piece 'gainst fancy,  
 Condemning shadows quite. (5.2.94–99)

Shakespeare returned to this logic a few years later in *The Winter's Tale* and there again, in Florizel's speech to Perdita on grafting, a distinction is made between the overarching organizing power of 'Nature' and the human capacity to approach it through the imagination. And yet, no matter how Cleopatra may embellish the image of Antony, both the contrived erotic nature of her suicide and Octavius's final pronouncement on the dead lovers pull them back to earth. Octavius's "No grave upon the earth, shall clip it in / A pair so famous." (5.2.358–359) anticipates Andrew Marvell's poem *To His Coy Mistress* where the point is made clearly: "The grave's a fine and private place, / But none I think do there embrace." Unlike Sydney's disguising the bitter morality of poetry (alloes) in a pleasing medicine, in these three plays we are left with irreconcilable division, and provisional conclusion, the marks of tragedy, but also indicators of crisis. That crisis represents itself in the irreducible instabilities of language, in a process of unbinding of what John Kerrigan has called 'binding language' but that extends far beyond particular words to incorporate the technologies of representation themselves. Indeed, what corrupts public discourse is two kinds of 'lies': "the lie that is intended to deceive is easy to understand, but the lie that is intended to be recognized as a lie is much more dangerous, because it carries an unambiguous message about power."<sup>33</sup> So to understand the poisonous implications of the world of 'post-truth' and 'post-fact' that now confronts us, we do not need more scientists, or more disseminators of information (a.k.a. spin doctors). What we need is a greater public exposure to the literature and drama that prefigure and comment critically upon the crises that they have historically generated. In short, we need to go back to Shakespeare.

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33 "Public lies can only be vanquished by public truth," *Guardian* 30.01.2017, 24.



Cristina Costantini

# Transfixing Shakespearean Worldliness: How Literary Texts Haunt Law and Politics

*A shape within the wat'ry gleam appear'd  
Bending to look on me, I started back,  
It started back, but pleas'd I soon return'd,  
Pleas'd it return'd as soon with answering looks  
Of sympathy and love*  
John Milton, *The Paradise Lost*, IV 461–465.

## Prelude

A controversial jointure lies and acts on the stage of this work: it is the physical suture between the Somatic and the Normative; kingship and wealth; gift and debt. Articulations and dissociations, continuities and ruptures, preservation and metamorphosis inspire the tones and rhythms of this “scientific play.” On the background, the fading voice of a revenant past marks the time to part with the contrastive and reiterated invite to remember.<sup>1</sup>

Once again, Shakespeare’s genial atemporality reads human affairs and conditions, detecting in advance the powerful philosophical shift which dominates the contemporary discourse. The epistemological reorientation and motion that marks the present debate is here reinterpreted as a new kind of “cultural turn,” specifically as a “turn to flesh.” Shakespeare’s theatre comes to be paradigmatic insofar as it dramatizes the tentative resistance of the carnality of flesh

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To Daniela Carpi, one of my best guides and wisest advisers. She is and will be a constant and influential presence along my scientific and human journey. I have chosen two issues that lie at the center of Carpi’s work: the appraisal of Shakespearean imagination and the critical rethinking of secularization – which my latest researches have addressed – for the reassessment of the theological remains and their dislocated re-appropriation.

1 In the proper sense of ‘to reconstitute,’ ‘to assign new members to something.’ The verb is here used in the main meaning we can find in Shakespearean verses, where the ‘remembering’ acquires a specific performativity with respect to the ghost, to the phantasmatic creature. In this regard, Marjorie Garber comments: “a ghost is an embodiment of the disembodied, a re-membering of the dismembered, an articulation of the disarticulated and inarticulate”; Marjorie Garber, *Shakespeare’s Ghost Writers: Literature as Uncanny Causality* (Routledge: New York, 2010), 19.

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against the dissolution of an immaterial, glorious stuff. At the center of the scene, the decomposition of the King's multiple bodies performs the dissolving crisis of his sovereignty. A rich Shakespearean palimpsest enacts a process of dispersion and transmutation and implements a troubled shift of representational regimes. A human and political excess is liberated, opening out a state of suspension or disbelief, which persists until the next material absorption and figurative objectification.

Shakespeare is the shaker of the old order: the immutable and incontestable is altered and disputed; the faith, divested of its religious clothes, is captured in its bare nature, which coincides with the potency of individual imagination and theatrical illusion; the time is out of joint. An invisible spear anatomizes and dissects the Law of all the laws, perpetrating a progressive and unremitting act of deformation and reformation.

In this perspective, the title of the essay is evocatively molded on the use of the word "transfix," whose compound nature is apt to express the liminal threshold between movement and stasis, flow and rest. The "passing through," kept by the meaning of the verb, coagulates the force of the original impulse into a point of moment; it introduces to the revolutionary instantaneity of a secular miracle. In a Woolfian mood, the aim is here to inspect and catch every turn in the wheel of Shakespearean thoughts and performative imagination.

Within this theoretical framework – a sort of a "theory of figuration" –, it could be possible to 'transfix' three main transitions:

- a transition of paradigms: from a paradigm of political theology to a paradigm of political economy;
- a transition of ontological and symbolical elements: from blood to flesh and in turn;
- a transition of foundations: from gift to debt.

The following discourse is articulated as a kind of a "counter-play," inspired by two main motives.

Firstly, it unearths the specters of Shakespeare, the impalpable incorporations which are living across verses and lines. They are ultimately considered the metonymic forms of their own Author, who, by himself, exercises a haunting influence on Western culture.

Moreover, in an original perspective, this intellectual composition presents Shakespeare's mundane embeddedness, his "worldliness" as a clue of the pervasive nexus between Shakespeare and secularization.

On the one side, Shakespeare's theatre can be viewed as an agency of mondanization: it provokes a general crisis of sense together with a disruptive plural-

ization of beliefs,<sup>2</sup> and consequently it performs, within the mutable assessment of the scenic space, a reoccupation of the ‘positions that had become vacant and whose corresponding questions could not be eliminated.’<sup>3</sup> The evacuation of the traditional world views, promoted by tragedies and comedies, creates also a new subjectivity, stimulating different strategies of self-fashioning.

On the other side, critical thought has repeatedly assumed Shakespearean texts, characters and images to justify the complex bulk of the theories of secularization and commodification, at the intersection of post-Marxism and political theology.<sup>4</sup>

Shakespeare turns to be a canon point of reference at the crossroads of competing visions on secularism, whose legacies are here inspected and scrutinized. His plays can be selected and mingled together in the subsequent dramatical moments of a new master narrative, which dramatizes the osmotic pressure between transcendence and immanence.

## Act I: Decomposing Sovereignty: The King’s Superbody Fragmented

*Enter Richard II, King of England; Henry Bolingbroke; Henry Percy, Earl of Northumberland; the Bishop of Carlisle*

The first Act of this *scientific play* is occupied by the shocking, even scandalous tragedy already staged by Shakespeare: the tragedy of the King’s Two Bodies.<sup>5</sup>

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<sup>2</sup> This is one of the possible lectures of Shakespearean worldliness. It recalls Charles Taylor’s paradigm; Charles Taylor, *A Secular Age* (Harvard University Press: Harvard, 2007), 3. On ‘Shakespeare’s possible secularism,’ Stephen Greenblatt, *Shakespearean Negotiations: The Circulation of Social Energy in Renaissance*, (Berkeley: University of California Press, 1988) 20. Louis Montrose has clarified how Elizabethan theatre could function as a surrogate after the suppression of most of ritual practices and religious festivities of late medieval Catholic culture; Louis Montrose, *The Purpose of Playing: Shakespeare and the Cultural Politics of the Elizabethan Theatre* (University of Chicago Press: Chicago, 1996), 30.

<sup>3</sup> According to Hans Blumenberg’s paradigm; Hans Blumenberg, *The Legitimacy of the Modern Age* (MIT Press: Cambridge, 1983), 96.

<sup>4</sup> Peter E. Gordon, *Secularization, Dialectics and Critique*, in *The Weigh of All Flesh On the Subject-Matter of Political Economy*, ed. Eric Santner (Oxford: Oxford University Press, 2016): 183–291, 183.

<sup>5</sup> Shakespeare’s production becomes central in Kantorowicz’s thought about the ontological and juridical consistency of Kingship; Ernst Kantorowicz, *The King’s Two Bodies: A Study in Medieval Political Theology* (Princeton: Princeton University Press, 1957), 26.



The mystical talk about royal kingship and prerogatives is disemplotted; the perfect union of a royal flesh with a glorious body is fractured; the encounter of carnality and power is requalified.

The story begins with Richard II, the king who is “un-kinging” himself,<sup>6</sup> who is subject to a physical metamorphosis and to a correlated deprivation of the symbols of his dignity. The cascade is ineluctable and progressive: it involves body, appearance and memory. In a spectacular crescendo, Richard II is splitting, decomposing, paling, slumbering, forgetting: the Monarch blessed by a godly Sun is transformed in a mockery King of snow, melting himself away in water drops. The name is lost;<sup>7</sup> the man is bare.

The onto-metaphysical disintegration is juridically performed on the stage of a legal trial which counts a story of continuous betrayals up to the inner one: at the end, it is the natural body of the man which turns against the mystical body of the King.<sup>8</sup>

The process of deformation and disintegration is read through the lens of a truthful mirror: no longer recognizing the old face looking down, the glass is splintered in a hundred shivers.<sup>9</sup>

“Give me that glass, and therein will I read,”<sup>10</sup> Richard commands, in a desperate attempt to see reflected a trace of the pristine, incarnated majesty, but what he feels in reply are spectral coils of treason lurking under a piece of cold glass. Returning miserable and mortal, the ancient King is, therefore, attracted in a whirlpool of questions. The looking glass has lost its property of magic mirror and simply tells the breaking of any possible duality. The Sovereign has deprived of his counterface, identified now as the anointed Vicar of God, now as the undying Sun, now as a diverted Fool.<sup>11</sup> The transcendental Union of a perfect duality is anatomized.

In theo-political terms, the earthly Richard inverts Christ’s normative inversion and retains only the terrain humiliation of a human, irredemptive Passion: transfixed to his unsalvific cross, the King that never dies has been replaced by the King that always dies. In the introductory scene of the Act that will martyrize

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**6** To use the same and potent adjectival form chosen by Shakespeare; *Richard II*, Act IV, i, 219; Act V, iv, 36–38.

**7** Shakespeare, *Richard II*, Act IV, i, 254–256.

**8** Shakespeare, *Richard II*, Act IV, i, 243–251.

**9** The mirror scene is a masterpiece of iconic symbolism. It returns in Kantorowicz’s analysis; Kantorowicz, *The King’s Two Bodies*, 39–40.

**10** Shakespeare, *Richard II*, Act IV, i, 275.

**11** As Richard seems to be in the Flint scene, Act III, iii, 170–171 and as Northumberland seems to perceive him, talking about Richard as a frantic man (Act III, iii, 184–186).

the godly investiture of kingship before the Parliament, the Bishop of Carlisle presents himself on the stage to announce, with the intact force of the chrism of his anointment, a secular, English Golgotha.<sup>12</sup> Richard stays among Judas and Pilates.<sup>13</sup>

In this dreadful framework, made of gruesome transformations and reverse gestures, the King cannot do anything else but undoing himself, bit by bit and piece by piece, becoming the miserable Master of an agonizing ceremony, the lonely Minister of an inverted rite<sup>14</sup> apt to withdraw the effects of consecration.

At the end of the First Act of this scientific play, this is what remains of the Royal: the derided son of man; a perishable flesh, exposed to contempt and derision, to pity and mockery. The other numinous substance is made invisible; it has been dissolved.

## Act II: The Numinous Ghostliness of Revenance and Revenge: The dispersion of the glorious stuff

*Enter Hamlet; the Ghost; Claudius King of Denmark*

At the beginning of the Second Act, the disfigured body of Sovereignty reappears in the thin materiality of the Hamletian ghost, in the unknown consistence of a specter, ‘neither soul nor body and both one and the other’.<sup>15</sup> The Majesty returns in its uncanniness, in its questionable shape<sup>16</sup>, after having been doomed to walk the night, confined to fast in fires.

The Majesty is rising again after a death without consolation and religious comfort, deprived even of that Extreme Unction which could have become the ultimate and valid alternative to the already desecrated rite of anointment at the coronation. His mysterious provenance puts at the center of a secularizing stage the remains of the ancient theological dispute over the afterlife of body and soul: the struggle between Catholic faith and Reformed creed has disrupted

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<sup>12</sup> Shakespeare, *Richard II*, Act IV, i, 144.

<sup>13</sup> Shakespeare, *Richard II*, Act IV, i, 236–241.

<sup>14</sup> Walter Pater, *Shakespeare’s English Kings*, in *The Works of Walter Pater* (Cambridge: Cambridge University Press, 1901), 198.

<sup>15</sup> Jacques Derrida, *Specters of Marx: The State of the Debt, the Work of Mourning and the New International* (New York: Routledge, 1994), 5.

<sup>16</sup> Stephen Greenblatt, *Hamlet in Purgatory* (Princeton: Princeton University Press, 2001), 208.

the fixed spatiality of the Underworld, liberating spirits and lemures from their pristine collocation.<sup>17</sup>

So, the specter comes back and claims to be revenged: the incarnated King has been killed and the sovereign power has been transferred onto the body of the carnal brother. In this case, the process of gemination, responsible of the production of the two natures of Royalty (human and divine nature),<sup>18</sup> is transmuted. On an ontological level, the ghost is a new geminated copy of the earthly body of the dead King,<sup>19</sup> nominally identical, but numinously different from the already unavailable original.<sup>20</sup> In legal terms, the murder of the old Hamlet enacts a second form of gemination which follows the way of a natural inheritance, acting the concrete possibility of the double existing at birth: not a fictional duplication of subjective essence, but, on the contrary, a violent suppression of one body to make the other full of power.

The specter speaks, as a dead King's prosopopeia, and in his words performs a desire of vindictive reincarnation. The last plea "Remember me, remember me,"<sup>21</sup> before disappearing, is a haunting imperative addressed to Hamlet in order to reconstitute the old form, in the fullness of the body's potentialities.

The act of remembering is, therefore and at the same time, a substantive conversion and a political restoration: the line of succession, already dishonored and interrupted, can be restored; the 'time out of joint' can be reordered and reassessed. An overwhelming act of resurrection seems to be begun: a new form of

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**17** The critical debate on the literary consequences of the theological struggle between Catholicism and Protestantism is nurtured. According to one opinion, theatre could welcome those specters who remained without a land and without a piteous comfort after the suppression of Purgatory proclaimed by Protestant Reformers. A new, imaginal space could take the place of the former transcendental Reign; Greenblatt, *Hamlet in Purgatory*, 3; Elizabeth Mazzola, *The Pathology of the English Renaissance: Sacred Remains and Holy Ghosts* (Leiden: Brill, 1998), 37–38.

**18** One of the terms preferred by Kantorowicz to name the issue of 'royal bicorporalism,' the process of doubling and self-supplementing apt to create a body beyond the body, bringing to earth a sublime and quasi-angelic substance; Kantorowicz, *The King's Two Bodies*, 49.

**19** The ghost is an agent of repetition; Garber, *Shakespeare's Ghost Writers*, 173.

**20** Garber, *Shakespeare's Ghost Writers*, 20.

**21** "Adieu, adieu adieu. Remember me"; Act I, v, 91. The word remember implies something that is different from the mere recalling or reminding: it stands for a call for resurrection, it asks for the reincarnation of the disembodied soul. But this new flesh can be obtained only by a revenge, killing the man who has betrayed and murdered the King, as if the body of the usurper, once deprived of life, could give back the flesh of the murdered. The remembrancer becomes a demiurge and transforms vengeance in no more than memory continued by other means; in this sense, Michael Neill, *Issues of Death: Mortality and Identity in English Renaissance* (Oxford: Clarendon Press, 1997), 247.

life is coming together with a new form of history; a redemptive apocalypse is advancing against an epoch of violation and profanation.

At the end of the dialogue between the Ghost and his declared son, the textual codification of a wordly remembrance in Hamlet's table externalizes the internal imperative and concretely transfixes the restitution both of the material flesh and of the immaterial Majesty.

The Son, in his final and desperate cry, is ready to delete every other traces of memory to leave a blank space for the captivating vow. In a literary crescendo, the metaphoric table of memory is transmuted into the real table book, on whose pages the iterative claim can be impressed and conserved. A material object, sealed with an ink of blood, becomes a precipitate of the immaterial consistence of the ghost, a kind of excarnated objective correlative, a device of presence, which testifies the permanent existence of a surplus that cannot be completely erased. It is an unprecedented commodity equipped with a super-value: it safes and guards the words of an immemorial pact of love and revenge, in which the utterances of the phantom are doubled by the voice of the man.

Hamlet dramatizes the tentative effort to resist against the dissolution of the ancient incarnation of sovereignty: the sublime body that never dies seems to be replaced by the dreadful material immateriality of the ghost, who is fighting against the death. The logic of the double, as a device of preservation against extinction, claims for a conclusive act of re-membrance. The two Hamlets are living on the stage, tied to their bond of excedence: what the armature of the resurrected Father is not able to keep is mirrored by the ambiguous and unresolved spirit of the Prince of Denmark, who, unlike the former Sovereign, no longer knows what (and how) to decide.

## Act III, Who's there?<sup>22</sup>: A condensed pound of value-flesh

*Enter the Duke of Venice; Portia; Bassanio; Antonio; Shylock*

Once again, in a series of continuous reversions, at the beginning of the Third Act, we have to cope with the Duke of *The Merchant of Venice*; we are transposed in a new faded context, metaphysically evacuated. The past is in memory: it is reminded, not remembered.

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<sup>22</sup> Shakespeare, *Hamlet*, Act I, i, 1.

The voice of Portia seems to retell the story of the old, enthroned Monarch and dwells upon the symbols of his double force, political and theological: on the one side, the crown and the scepter, the paraphernalia of his Regality; on the other, the throne of mercy, the mark of God. In the trial scene, the celebrated ‘mercy speech,’ pronounced by Portia *qua* Doctor of Laws, is construed using words and images which recall the attributes of Sovereignty, as mediievally conceived, and figuratively measure the reciprocal assessment of power, mercy and justice.

The concreteness of the scene, conversely, presents a Duke initially invested within the void left by the departure of the specter of Sovereignty, which has pronounced its adieu. The Duke is merely a Duke, not a sovereign: he cannot decide; he is not inside and outside the Law, he is properly under the Law.

This is repeated by Antonio<sup>23</sup> and Portia,<sup>24</sup> so that the body of the Duke is kept separated from a quasi-autonomous *corpus iuris*, whose limits have to be respected.<sup>25</sup>

The normative paradigm is theatrically subverted within the legal space of the trial, that ultimately comes to ascertain this *secular meta-conversion*. The actual sequel of Richard’s interior struggle is externalized on the stage: the carnal has betrayed the glorious. The old reign has been *disenchanted*<sup>26</sup> and it has been replaced by a bio-political and administrative governmentality. A complicated bulk of knots merges together money and life, making recourse to a vorticose spiral of contracts, covenants and oaths. The figure of the Sovereign is not only *decomposed*, after losing its former duality; it is also *excarinated*. The nebulous texture of the pristine specter is condensed in a pound of flesh. It is not a reduction, but an *onto-political dislocation*, a kind of *secular transition of the excess*, which has not been absorbed or nullified, but rests, displaced from *sublime* to *immanence*.

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23 Shakespeare, *The Merchant of Venice*, Act III, iii, 26–31.

24 Shakespeare, *The Merchant of Venice*, Act IV, i, 216–217.

25 Eric Heinze, *The Concept of Injustice*, (New York: Routledge, 2013), 115–116, according to whom the play would enact a new form of Law’s representation in a context of a growing proto-liberal modernity.

26 The word notoriously used by Max Weber (Max Weber, *Wissenschaft als Beruf* (Berlin: Duncker & Humbolt, 1919). For a critical reflection, Jonathan Sheehan, *When was Disenchantment? History and the Secular Age*, in *Varieties of Secularism in a Secular Age*, ed. M. Warner and others (Cambridge: Harvard University Press, 2010): 217–242; Jane Bennett, *The Enchantment of Modern Life: Attachments, Crossings, and Ethics* (Princeton: Princeton University Press, 2001), 84.

As Eric Santner has clearly demonstrated,<sup>27</sup> it is a *transubstantiation* which commutes the stuff of *political theology* into the new matter of *political economy*.<sup>28</sup>

Something remains, even if transformed. What is dominating the center of the scene is a new investiture of human body not with a royal office and a majestic title, but with an economic value. The city of Venice seems to have proclaimed money as its new, absolute Lord; the ancient *nomos* has been disrupted and replaced by a fiercely competitive atmosphere. Human beings of different statuses and inclinations are levelled in a destiny of common concerns: making and spending money has become a pervading obsession, enough to project a new understanding of human life in monetary terms. Even the reciprocal bounds among men, both in private and in public sphere, are made of coins: marriage is inspired by a promise of wealth; selling, buying and loaning produce all covenants and deeds at the basis of the social contract in Modern Age.

Portia appears to the eyes of Bassanio as the perfect way for salvation and redemption from his financial loss. The words pronounced in confidence in the dialogue with the friend Antonio are verbal evidences of Bassanio's premeditated plan (he speaks, in fact, of 'plots and purposes'): Portia's wondrous virtues represent the objectified device apt to *solve* Bassanio's debt and to *resolve* his personal problems. Love is tainted with money: wealth is more attractive than beauty; the admission to the 'lovely competition,' engaged to select Portia's conqueror and future husband, is measured in monetary terms. From the first forlorn confession, Bassanio's mind is imaginatively opened up towards a new perspective of personal renaissance. The rhythms and tones of the verses are moulded on the basis of this interior shift, from the 'chief care' to the best omens.

Like a fortune-hunter, Bassanio foreshadows a possible *thrift*, that is a real profit, a gain or an actual earned interest. He is not so different (Shakespeare seems to tell us under the lines) from the spiteful Shylock, proud of his well-won thrift, that only in Christians' opinion could assume a devilish consistency.

Bassanio's purpose comes true and the private pact with Portia is sealed by an agreed conveyance of goods and substances, a kind of majestic deposition of the pristine state. Richard II's dreadful "unkinging" finds its counterface in a do-

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<sup>27</sup> This clivage from one paradigm to another is discussed in Santner's second monograph; Eric Santner, *The Weight of All Flesh: On the Subject-Matter of Political Economy* (Oxford: Oxford University Press, 2016).

<sup>28</sup> Making use of Giorgio Agamben's theorization; Giorgio Agamben, *The Kingdom and the Glory: For a Theological Genealogy of Economy and Government* (Stanford: Stanford University Press, 2011).

mestic and a conscious deprivation of the emblems of a privileged status. Fulfilling the obligations imposed by the lottery of her destiny,<sup>29</sup> as if she has to give execution to an existential contract for the price of life, Portia pronounces the words which ritually perform her dispossession, her secular conversion.<sup>30</sup>

The same self-description, that anticipates Portia's final act of devolution, revolves around the plural meaning of the central word *sum*, which recurs as an anaphoric refrain. If, in English language, the term stands for the arithmetical operation used to reach a total amount, in Latin it expresses the first person of the verb 'to be,' so that Portia's discourse is astonishingly haunted by a subtle ambiguity, by a continuous overlapping of worth and being.<sup>31</sup>

In this framework, the 'contract-union' between Bassanio and Portia is concluded and perfected: Bassanio has come by note, to give and to receive and has stood waiting for the final confirmation and ratification;<sup>32</sup> Portia promises her love since she has bought Bassanio dearly.<sup>33</sup>

In a corresponding way, Jessica seems to bind love and money, human and economic value. The casket is the powerful objective correlative that keeps inside the real substance of the two correlated relationships, both between Portia and Bassanio and between Jessica and Lorenzo. Before consigning her body and her soul to her lover, Jessica steals some ducats and jewels from her father's house, offering them as the corresponding measure of her value, as the due dowry to the man who has already won the bride. The iconic image evoked by Jessica im-

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29 Using Portia's own words: "In terms of choice I am not solely led / By nice direction of a maiden's eyes / Besides, the lott'ry of my destiny / Bars me the right of voluntary choosing"; Shakespeare, *The Merchant of Venice*, Act II, I, 13–16.

30 Shakespeare, *The Merchant of Venice*, Act III, ii, 163–174. The mutation is emphasized by the same term used by Portia (Myself and what is mine to you and to yours is now *converted*). Portia renounces to all domestic dignities she had in the past, which are transferred upon Bassanio's person: if, before the ritual act, Portia was the *Lord* of the mansion, *master* of her servants, *queen* of herself, after the performative cession she is *committed* to Bassanio *to be directed*, and, in turn, *Bassanio becomes her Lord, her governor, her king*.

31 The climax is reached when Portia affirms: "The full sum of me is sum of something." Shakespeare, *The Merchant of Venice*, Act III, ii, 157–158. Playing with the Latin and English significance of the word 'sum' (in Latin, 'I am'), it could be said that, beyond the literal sense, another meaning can be revealed. It is almost like Portia is saying that 'her whole being is a being of something.' Even the word 'something' could be thought and spelt as the compound nexus between 'sum' and 'thing.'

32 Shakespeare, *The Merchant of Venice*, Act III, ii, 139–140; 146–147: "[...] Fair lady, by your leave, / I come by note, to give and receive"; "So, thrice-fair lady, stand I even so, / As doubtful whether what I see be true, / Until confirmed, signed, ratified by you."

33 Shakespeare, *The Merchant of Venice*, Act III, ii, 313: "Since you are dear bought, I will love you dear."

plies a form of secularization of thoughts and sentiments; the same Jessica can be considered as the secular version of the biblical figure of Rachel, the Jacob's daughter, who steals her father's *teraphim* (household gods, idols), leaving the house with her husband.<sup>34</sup>

The power of money and the force of transactions decide the fate not only of the individual relationships, but also of the entire community, distributing the lines of reciprocal commitments: the strangers could have their commodity in Venice, since the general commonwealth (the profit of the city) derives from all the nations;<sup>35</sup> the potential effects of a religious conversion are valued in commercial terms, since to provoke the passing from Jewish to Christian creed means to raise the price of pork, as Shylock suggests.<sup>36</sup> Even the appreciation of the internal virtues is measured and pondered on the basis of the capital adequacy of each one: one could be said to be a good man if he is able to fulfill his obligations, if he is solvent, reliable.<sup>37</sup>

A pervasive plot of commercial and mercantile isotopies marks the textures of the dialogues, making equal or corresponding what could be said in different tones or ways according to different statuses and social belongings. Nobles, gentiles, merchants, servants, fools, usurers are all attracted by the common logic of 'measure for measure'.

Venice is the concrete stage on which men and women are giving their flesh for the constitution of the new order and for the functioning of a new model of governance. The fierce maritime republic is chosen for its capacity to represent Elizabethan London's prototype,<sup>38</sup> a sort of geographical and spatial transposition of the modern centre of a growing Empire. At this regard, with his usual efficacy, Carl Schmitt reads Shakespearean theatre as the best expression of that secular revolution which transformed England: a phenomenal departure from a terrestrial to a maritime existence consigned the noble Isle to a mercantile economy.<sup>39</sup>

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34 Gen. 31: 19.

35 Shakespeare, *The Merchant of Venice*, Act III, iii, 27–31.

36 Shakespeare, *The Merchant of Venice*, Act III, v, 35.

37 SHYLOCK: "Antonio is a good man." BASSANIO: "Have you heard any imputation to the contrary?" SHYLOCK: "Ho no, no, no, no! My meaning in saying he is a good man is to have you understand me that he is sufficient": Act I, iii, 13–17.

38 Cesar Lombardi Barber, *Shakespeare's Festive Comedy: A Study of Dramatic Form and Its Relation to Social Custom* (Princeton: University of Princeton Press, 2012, first edition 1959), 189.

39 Carl Schmitt, *Hamlet or Hecuba: The Irruption of Time into Play*, ed. and trans. Simona Draghici, (Corvallis: Plutarch Press, 2006): 55–56.



The spatial conversion has triggered a significant change in the paradigm of governmentality: if the *Hamlet* is haunted by the tragic perception of this catastrophic turn and continuously refers to the excess liberated from the defeat of the ancient *nomos*, *The Merchant of Venice* reads and interprets the ambiguities of the new epoch and explores the inner contradictions that the modern treatment of the dark lump, inherited from the past, has exposed.

Value informs the entire plot of the play, being the ‘master property’ of all the agents, objects, individuals, vows<sup>40</sup> and informing the practices of a new common language, that seals the financial deeds at the heart of a growing community.<sup>41</sup>

Commodification spreads out as a general infection and enacts a scenic contraposition of ontological metonymies: the partial object of political theology, *the immaterial surplus*, which makes Sovereign the human body of a king, is transformed, through a complex chain of metamorphoses, into the partial object of political economy, into *the surplus value*, substantially conceived as the invisible excess which adds that something for which a being or a body can be weighed in balance.

On this basis, the intellectual and aesthetic background of Marx’s philosophy is astonishingly revealed. As it has been accurately pointed out, if Shakespeare may or may not have been a proleptic Marxist, it can be readily argued that Marx was certainly a Shakespearean.<sup>42</sup> In particular, it is possible to deeply understand, grasp and appreciate the essential transcendence kept at the very heart of commodities’ existence: there is a non-sensuous, ghostly trace that

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**40** For a critical reflection on the ‘economic’ character of *The Merchant of Venice* see Mark Netzloff, “The Lead Casket: Capital, Mercantilism, and The Merchant of Venice,” in *Money and the Age of Shakespeare*, ed. Linda Woodbridge (New York: Palgrave, 2003): 159–176; Walter Cohen, “The Merchant of Venice and the Possibilities of Historical Criticism,” *ELH* 49 (1982): 765–789.

**41** Peter Grav, *Shakespeare and the Economic Imperative: “What’s aught but as ‘tis valued?”* (New York: Routledge, 2008), 84. For a critical understanding of these arguments, Grav quotes John Gillies, *Shakespeare and the Geography of Difference* (Cambridge: Cambridge University Press, 1994), 133, and Thomas Moisan, “Which is the Merchant Here? and Which the Jew?: Subversion and Recuperation,” in *Shakespeare Reproduced: The Text in History and Ideology*, eds. Jean E. Howard, Marion F. O’Connor, (London: Methuen, 1987), 203.

**42** This notation is due to Peter Grav, paraphrasing Kenneth Muir’s statement; Peter F. Grav, *Shakespeare and the Economic Imperative*, 6; Kenneth Muir, *The Singularity of Shakespeare and Other Essays*, (Liverpool: Liverpool University Press, 1977), 57. In the same perspective, Jacques Derrida has philosophically construed the genealogical and figurative link of derivation between Shakespeare and Marx with respect to the idea of an exceeding spectrality; Jacques Derrida, *Specters of Marx*, 5.

dramatizes the ontology of an apparent trivial thing.<sup>43</sup> This is what remains of the pristine Excess, formerly liberated from the liquidation of Sovereignty: the immaterial stuff of political theology has been converted into the spectral materiality of political economy; the mystical reverence towards an earthly God has been transmuted into a new form of economic theology.<sup>44</sup> The order of salvation ruled by a Christly king has given way to a transmuted *oikonomia* of the Living,<sup>45</sup> governed by the device of a neoliturgical action producing value.

In the same lineage of thought, the arguments discussed give good reasons to explain and support the hamletification of Marx's philosophy proposed by Jacques Derrida and put into a specific vision of European history, whose mark is an irredeemable act of haunting and whose course is driven by the diverse dislocations and displacements of an enduring spectral substance.<sup>46</sup>

Within this interpretative framework, the trial becomes literally the iconic mediation of a process of transmutations and representational torsions, the privileged site where mirroring characters can perform an embodied crossing of ideas and categories. Antonio meets Shylock, the merchant is in front of the Jew, in a physical trespass of religious and economic identities;<sup>47</sup> Portia, already

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**43** Marx himself, introducing commodities, notes: "A commodity appears, at first sight, a very trivial thing, and easily understood. Its analysis shows that it is, in reality, a very queer thing, abounding in metaphysical subtleties and theological niceties": Karl Marx, *The Capital*, Vol. I, Ch. I, Sec. IV. The mystical character that allows a thing to be a commodity is not derived from the transformation impressed to the natural elements by the work of the men. The mysterious nature of the commodity derives from the subtle association of the value of use and the value of exchange and, in particular, from that dissimulated process through which the social character of labor appears to be an objective character of the products themselves. In this sense, Marx can talk of "commodities' fetishism," insofar as it inaugurates a kind of perverse exchange which produces material relations between persons and things. For an interesting perspective, Sami Khatib, "Sensuous Supra-Sensuous: The Aesthetics of Real Abstraction," in *Aesthetic Marx*, eds. Samir Gandesha, Johan F. Hartle (Oxford: Bloomsbury, 2017): 49–72, 64.

**44** According to Walter Benjamin's thought; Walter Benjamin, "Fragment 74: Capitalism as Religion," in *Religion as Critique: the Frankfurt School's Critique of Religion*, ed. Eduardo Mendieta (New York: Routledge, 2005): 259–262. The expression "capitalism as religion" can also be found in Ernest Bloch's book, appeared in the same year, Ernst Bloch, *Thomas Münzer: Theology of Revolution* [1921] (Frankfurt am Main: Suhrkamp, 1968). For a critical understanding, see William E. Connolly, *Capitalism and Christianity, American Style* (Durham: Duke University Press, 2008).

**45** The expression is shaped on the basis of Elettra Stimilli's original arguments; Elettra Stimilli, *The Debt of the Living: Ascesis and Capitalism*, trans. A. Bove (New York: Suny Press, 2017).

**46** Jacques Derrida, *Specters of Marx*, 4.

**47** In this regard, Richard Halpern's lines are brilliant. Moving from Portia's question "Which is the merchant here? and which is the Jew?" (III, i, 174), Halpern underlines how Portia "mixes religious and economic identities, for she distinguishes not between Christian and Jew, or be-

objective correlative of a personal sacrifice,<sup>48</sup> is permuted into the pair-Minister of the judgment over Shylock, with that unparalleled dramatic intensity that transfixes the personages in their complementary ‘standing;’<sup>49</sup> the pound of flesh converts its function of use and value and, in so doing, is juxtaposed to the fate of blood that should not be shed.

Secularization paves the way now to profanation, now to the consumption of the absolutely unprofanable.<sup>50</sup>

The flesh returns to the center of the scene, in its proper consistence and in its precise weight: a pound of carnal substance due to that inhuman wretch, empty from any dram of mercy.<sup>51</sup> The trial is the metaphorization of a miraculous exception embedded into the physicality of the real world: it takes flesh outside the pristine order of human affairs (that can be denoted in terms of political theology) to recapture it within the frame of the emerging paradigm of human government (that can be qualified in terms of political economy).<sup>52</sup> At the same time, the suit stages the crisis of legitimacy of the ancient Sovereignty, whose decision seems to inaugurate a new form of sovereign power: the passing is from the command of the Monarch to the rule of commodities and money.

In order to deeply understand this conceptual movement, it should be noted that the pound of flesh makes its first appearance as the object of the contractual penalty in the long dialogue between Shylock and Antonio that occupies the third Scene of the First Act. Here it is qualified as the “forfeiture” deliberately chosen by the potential creditor, Shylock, giving expression to an act of generous kindness. In fact, “what should it be gained by the exaction of this forfeiture?:”<sup>53</sup>

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tween merchant and usurer but between merchant and Jew”; Robert Halpern, *Shakespeare among the Moderns* (Ithaca: Cornell University Press, 1997), 184.

48 As she herself declares: “I stand for sacrifice” (Act III, ii, 57).

49 Note the strong correlation designed by Shakespeare: if Portia said “I stand for sacrifice,” (Act III, ii, 57), in the new scene Shylock says “I stand for judgment” (Act IV, I, 103).

50 Making use of Agamben’s distinction between secularization and profanation. The first concept (secularization) is interpreted as a signature, that moves ideas and forces from one domain to another (and especially from the theological to the political one); the second (profanation) indicates the act of bringing what has been separated and removed from the sphere of the human law back to the common use; Giorgio Agamben, “In praise of Profanation,” in Id., *Profanations* (New York: Zone Books, 2007): 73–92.

51 As the Duke initially proclaims; Act IV, I, 3–6.

52 Moving from the etymological meaning of the word exception, from the latin *ex – capere*, that is “taking something out, outside from somewhere.” The text is framed on the basis of Agamben’s reinterpretation of the word; Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1998), Id., *State of Exception* trans. Kevin Attell trans. (Chicago: University of Chicago, 2005).

53 Shakespeare, *The Merchant of Venice*, Act I, iii, 161–162.

“a pound of man’s flesh, taken from a man / is not so estimable, profitable neither, as flesh of muttons, beefs, or goats.”<sup>54</sup> These are the words pronounced by Shylock to prove his benevolent disposition: the Jew seems to renounce his stereotyped image of shameful usurer, insofar as he is not requiring any ‘doit of usance for his money’;<sup>55</sup> he is merely claiming for a substance void of potential profit. At this stage, the goods are commensured to their use value, that is in relation to their physical properties that make them able to satisfy specific needs and desires. On the one side, Antonio’s flesh comes to feed, to give nourishment to Shylock’s cannibalistic impulse towards the Christians.<sup>56</sup> On the other side, the pound is the internal measure of a personal agreement that has been closed in violation of fiscal reasons as a token of a new friendship, to buy the counterpart’s favour,<sup>57</sup> to supply the other’s wants.<sup>58</sup> For these reasons Shylock finally qualifies the bond as merry,<sup>59</sup> while Antonio sardonically anticipates the final (but really forced) conversion of the Jew, who will turn Christian, growing kind.<sup>60</sup> These images create a ‘foretaste’: edibility is the material ancestor of a growing social consumism.

In the following scene of the trial, the pound of flesh acquires even an exchange value, being the equivalent of an amount of money, of the precise sum of 3000 ducats. The same Shylock comes to this conclusion, when he firmly asserts: “The pound of flesh which I demand of him / Is dearly bought,”<sup>61</sup> echoing Portia’s voice that has already monetized the cipher of her love.

Once again, the trial is performing the substantial conversion of the consistency of carnality: the pound of flesh is the final precipitate that results from a series of metamorphoses and dislocations.

In this sense, the conceptual link, that emplots *Richard II*, *Hamlet* and *The Merchant of Venice* as the three main acts of this scientific play, marks the stages of the changing nature of the flesh: now theological, now phenomenological, now economic. If in the First Act (*Richard II*) the divine consistence of Sovereign’s body has transformed his human tissues in a glorious stuff; in the Second Act (*Hamlet*), the fleshly ghostification, claiming for an act of remembering, becomes an intercorporeal medium apt to connect father and son in a common

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54 Shakespeare, *The Merchant of Venice*, Act I, iii, 163–165.

55 Shakespeare, *The Merchant of Venice*, Act I, iii, 138–139.

56 Shakespeare, *The Merchant of Venice*, Act II, v, 11; 14–15.

57 Shylock says: “I say / To buy his favour, I extend this friendship” (Act I, iii, 165–166).

58 Shakespeare, *The Merchant of Venice*, Act I, iii, 138.

59 Shakespeare, *The Merchant of Venice*, Act I, iii, 171.

60 “Hie thee, gentle Jew. / The Hebrew will turn Christian, he grows kind.” (Act I, iii, 175–176).

61 Shakespeare, *The Merchant of Venice*, Act IV, i, 99–100.

plan of revenge;<sup>62</sup> in the Third Act (*The Merchant of Venice*) the flesh is carved: a pound is *extracted* and its material tangibility is *abstracted* in an economic value.<sup>63</sup> The stage is prepared to represent the complex and even invisible nature of flesh in a world governed by capitalist relations. This Shakespearean passage has been explored as a piece of dramatic tension useful to explain the ontology of Marxian commodities and, in turn, Marx's phenomenological understanding of the money-form has been employed as an inspiring thread that sheds light on Shylock's role within the social dilemmas opened by *The Merchant of Venice*.

In this critical mood of thought the arguments here discussed intend to connect Eric Santner's reflection on the Royal remains with Richard Halpern's vision about the astonishing fungibility between the representational role of the Jew (with respect to bourgeois cultural values) and that of the money (with respect to economic value). The crux of the plot, the pound of flesh, is, therefore, the metonymical symbol that explains how and why Derrida could have transformed Shakespeare's ontology in a proper hauntology, and, in turn, it becomes the hauntological nexus that, in Derrida's thought, supports the interrelation between Shakespeare and Marx.

From the First to the Third Act of this play a regicide has been evoked, now metaphorical, by way of a treacherous deposition; now physical, by way of an unredeemed murder; finally, economic, by way of an earthly transferring of sovereignty. The curtain has fallen over and has broken into pieces the monolithic construction erected by the encounter of the reasons of Politics with the argumentative paraphernalia of Theology. This fragmentation has unbound substances and senses, disposing the remains of the ancient unity to the open possibility of a multiple signification. Within the context of this new scene, Eric Santner has captured not the dissolution, but the dislocation of the immaterial stuff that composed the immortal Body politic of the King, void of natural defects and im-

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**62** This is an original transposition of Merleau-Ponty's concept of flesh within the plot of Shakespeare's *Hamlet*. In phenomenological terms, in fact, Merleau-Ponty is addressing the flesh, neither matter, nor mind, as the structural reason of mutual transitivity from one body to another, as the vibrant and intercorporeal webbing that intertwines the Self and the Other, inside and outside. Moving from this particular vision, it is possible to appreciate a relational character of the flesh, that justifies both the strange phenomenological ontology of the Hamletian ghost and the pervasive hold that the apparition exercises over the son in all his determinations. For Merleau-Ponty's thought, see Maurice Merleau-Ponty, *Phenomenology of Perception*, trans. Colin Smith (New York: Humanities Press, 1962); Maurice Merleau-Ponty, *The Visible and Invisible* (Evanston: Northwestern University Press, 1968).

**63** On the subtle ambiguities of the nature of flesh, Sarah Travis, Amelia M. Kraeche, Emily J. Hood, Tyson E. Lewis (eds.), *Pedagogies in the Flesh: Case Studies on the Embodiment of Socio-cultural Differences in Education* (Cham: Palgrave Macmillan, 2018).

becilities: the liberation of an excess, caused by the passing over of the ancient Sovereignty, claims for a new inscription.<sup>64</sup> The surplus body of the King is transformed into the surplus value of commodities. The sublime matter persists and comes to haunt a new topology: the theological glorification has given place to an economic valorization.

This transposition could be considered – in a further development of Santner’s thought – as the latter step of that process of migration of the immaterial part of kingship already preconized by Ernst Kantorowicz himself.<sup>65</sup> If in the past it was the demise of the king that enacted the transfer of the body politic from one body natural, now dead, to another, in order to make a king the King, now it is the dissection of the super-body, in its compounded nature, to promote the release of something beyond nature, that keeps and conveys in itself a source of permanence. If the relocation in the past triggered a baroque incarnation of a body into a flesh, now the continuous movement of displacement promotes the incorporation of something human into an objectified entity. In fact, the secret of commodity, revealed through Marx’s analysis, is to retain not only a use-value, depending on the concrete properties which are able to satisfy needs and desires, but also an exchange-value, that is the social labor needed to produce it. While the first is directly visible, the second is not immediately perceptible, but nonetheless substantially constitutive. To dismantle the ideological views, Marx makes clear what has been obscured and clarifies that the exchange value is the form of appearance of value, that is the visible manifestation of the invisible content of value.

The same arguments have been anticipated by Richard Halpern, who, discussing the problematic relation between the Jew and the Money-Form, comes to the strong and unequivocal statement according to which: “The commodity, like the king in medieval political theory, possess two bodies: a visible body of use and an invisible body of value.”<sup>66</sup> The theory of gemination receives, therefore, a new thingly location. The same figure of Antonio, the man who finds himself in the same situation as a commodity, could be interpreted as a kind of a perfect literary anticipation of the following equation between men and commodity explicitly posed by Marx.<sup>67</sup> In the same manner, Halpern notes, “[f]or Marx, there is no commodity whose production has not exacted a pound of the producer’s flesh.”<sup>68</sup> The sort of theological performativism that,

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64 Santner, *The Weigh of all Flesh*, quoted.

65 Kantorowicz, *The Two Bodies of the King*, 13.

66 Halpern, *Shakespeare among the Moderns*, quoted, 187.

67 The reference, at the center of Halpern’s analysis, is to Marx, *The Capital*, Vol. I, 144.

68 Halpern, *Shakespeare among the Moderns*, 204.

in the past, had miraculously metamorphosed the perishable flesh of a man into the body of an immortal King has resurrected through a secular conversion and it has been whirled into the magical force of fetishism that wipes away from commodity the knowledgeability of a part of their real consistence.

Putting the knife on Antonio's skin to procure a violent incision stands for piercing all the mystery kept and concealed by the body made of flesh. In this way, the circumcision of the body is symbolically anticipated by the act of opening Portia's three caskets in order to solve the enigma of her love. The new thematic bond created between Flesh and Love highlights how Shylock's knife is also preparing to cut and open the distance between two stories and orders: between the letter of the Law, condensed onto the excarnated pages of the Old Testament, and the merciful spirit of the New Testament incarnated into the *corpus verum*.

The trail is also the site where flesh is requalified in relation to blood. In this perspective, in a powerful play of transpositions, the economic scapegoat of the new world, impersonated by Shylock, is confronted with the present reminder of the ancient *agnus Dei*, typified by Antonio in his Christ-like passion mood. Within the economy of Venice's society, blood becomes the allegorical but also the metonymical representation of the relentless flux of the capital: it is the melting agent that moves and converts all in a productive circulation, the seminal fluid that nurtures and grows by himself.<sup>69</sup> In front of this overwhelming fluidification, Antonio's drop of blood, that cannot be spilled, seems to engage the final resistance against the wide distribution of the liquefied substance intended to be the disruptive liquidation (even if associated to a modifying regeneration) of the ancient theologies. The separation of Antonio's flesh – which can be weighed and exchanged – from Antonio's blood – which cannot be shed –, in its proper act of capturing and enclosing the vital liquor in a reserved sphere, seems to remind the sacral dimension of what cannot be dispersed, having been already sacrificed. The (real and metaphoric) blood of the Jew is weighed

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<sup>69</sup> This perspective permeates Gil Anidjar's analysis on the permanent significance of blood as element in Western culture; Gil Anidjar, *Blood: A Critique of Christianity* (New York: Columbia University Press, 2014). An entire chapter is devoted to explain how blood can be considered as the metonymical expression of the process of secular transubstantiation culminated with the growing of a new model of 'economic theology.' In the midst of the analysis, a specific place is dedicated to Shakespeare's drama and to that 'immense allegory' represented by *The Merchant of Venice*, recognizing that "Shakespeare knew that this transformation, this liquefaction, which announced the opening of world banks as blood banks and foreshadowed the main trademarks of modernity, had everything to do with religion, with theology and with its secularization"; *ivi*, 146.

against the blood of the Christian: circulation is interrupted by the immunity of Christian blood.<sup>70</sup>

All the elements previously considered show a significant transition with respect not only to the economy of governmentality, but also to the ‘whatness’ of the community’s foundation. In particular, as it has been evidenced, *The Merchant of Venice* transfixes the passage from a partaking community to a collective bundle of obligational relationships. This dramatically prefigures the possible confutation of Mauss’ model, according to which the total social fact is produced by a munificent exchange, by a gift, not by a debt bond. The etymological root of the word community, which retains the term *munus*, could be superseded by the paradigm of an original obligation, of a relational indebtedness, where the value measures the subjective identification of the creditor and of the debtor. In this perspective, the transition from a political theology to a political economy paradigm is also nurtured by the concurring and reiterated shifts from Antonio, the man of generosity, to Shylock, who is not affected by the joy and gratitude procured by the act of gifting, and finally, again and in turn, to Antonio as the bearer of a constitutive debt. During the phases of the trial, if Shylock experiments with a spiritual usury, that connects the gift of life and mercy to a forced conversion,<sup>71</sup> Antonio inscribes into his flesh the memory of the original price paid by Christ for human redemption. The economic translation of something that formerly was different in nature was anticipated by the revolution enacted by the same Christian faith. Antonio is the melancholy agent chosen to remember this haunting announce. Christ’s sacrifice has radically modified the ancient consideration of sin and guilt: after His death and resurrection, the juridical configuration of transgression has been replaced by the economic administration of life, insofar as sin and guilt have been turned into a debt.<sup>72</sup> It is in this framework

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**70** Anidjar, *Blood*, quoted, 152–153.

**71** Ronald A. Sharp, “Gift Exchange and the Economies of Spirit in *The Merchant of Venice*,” *Modern Philology* 83.3 (1986): 250–265, 260.

**72** Here the paradigm explored by Elettra Stimilli in her work *The debt of the Living* is applied. The line of research followed puts at the center of the debate Agamben’s new insights on the theological genealogy of economy and government. As Stimilli clearly notes, enhancing Agamben’s results, “the vocabulary that describes the experience of Christian life is eminently economic” (53). This is at the basis of the conclusive assertion, according to which the Christian vocabulary can be defined as an economic translation of the Judaic vocabulary it originates from. (55). According to Stimilli’s view, the conventional accounts on secularism are reductive and univocal. On this ground an entire paragraph is devoted to explore the new relation between norm and transgression in Christian theology as the experience of a debt. The radical revolution from the past to the new conception is due to the fact that the Law of Christ comes to inhabit the threshold between Law and sin. In this regard, Stimilli notes: “Christian life deeply transforms



that still another meaning of mercy (different from the conventional one, appreciated by the prevalent literature) can be dug up. Mercy is the last fulfillment of the theological grace; it is another residue of the liberated excess: mercy, like grace, deactivates the logic of obligation and does not require compensation. It entails an economic dislocation both of the management of gift, which is unbound from the need of an exchange or of a counter-gift, and from the juridical administration of justice, insofar as mercy names that form of justice which lies apart from the law, or, remembering Paulin words, it recalls the spirit of a *χωρίς νόμου δικαιοσύνη*.<sup>73</sup>

The curtain fell and the lights went down.

In the backstage the Shadow of a newly profanated Excess is rising up, out of the pits of an unconsumed flesh.

It lurks and feeds the obsessive mourning ‘Remember me, remember me!’

One more time...

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the juridical configuration of transgression expressed in the Torah and man, defective at origin, here experiences a “debt” that, through the *gift* of grace, does not need to be filled, but to be simply administered as an investment” (Stimilli, 57; see also the arguments at page 58).

73 Paul, *Letter to the Romans*, 3.19–20.

Paul Raffield

# Substitution, the Counterfeit Angel and the Imprint of Law

## 1 Phonies, frauds and counterfeits

The phoney, fraud or counterfeit is a familiar antagonist in the plays of Shakespeare, both in comic and tragic form. *Measure for Measure* is neither tragedy nor conventional comedy, for years it was regarded by critics as a “problem” play.<sup>1</sup> In the character of Angelo, it contains one of the most impenetrable examples of a counterfeit in the Shakespearean canon. It is at least arguable that the psychological complexity of Angelo matches that of Shakespeare’s most multiplex, tragic counterfeits; but Angelo is distinguishable from most of these by the quotidian, human scale of his deceit. Unlike Macbeth, he lacks “Vaulting ambition” (*Macbeth*, 1.7.27) and murderous intent.<sup>2</sup> Although deputising for Vincentio, Angelo expresses no interest in usurping the Dukedom of Vienna. Unlike Richard III, he is no Machiavel, and nor is he “determined to prove a villain” (*Richard III*, 1.1.30). Unlike Iago, he does not consciously “play the villain” (*Othello*, 2.3.300) in order to destroy the protagonist; nor for all his considerable faults is he a “demi-devil” (*Othello*, 5.2.339), this despite the fact that Isabella describes him (understandably, given her experience at his hands) to the Duke both as “the devil” (5.1.38) and “an arch-villain” (5.1.57).<sup>3</sup>

His reprehensible conduct as a person and a magistrate is not so much an indication of demoniacal or satanic possession as it is of human nature. He acknowledges to himself the hypocrisy of a judge who abuses his office, admitting that “Thieves for their robbery have authority / When judges steal themselves.”

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1 The Victorian literary critic Frederick S. Boas described *Measure for Measure*, *All’s Well That Ends Well*, *Troilus and Cressida*, and *Hamlet* as “problem plays”: Frederick S. Boas, *Shakespeare and His Predecessors* (London: Murray, 1896), 345. With notable understatement, Bawcutt remarks that “much in the play is hardly comic in any conventional sense”: William Shakespeare, *Measure for Measure*, ed. N.W. Bawcutt (Oxford: Oxford University Press, 1991), Introduction, 42.

2 Whilst the eponymous usurper is self-evidently the protagonist of *Macbeth*, insofar as he is the adversary of divinely ordained kingship, it is fair to describe him as an antagonist, even though he lacks “the icy or stony inhumanity of Iago or Goneril”: Andrew C. Bradley, *Shakespearean Tragedy: Lectures on Hamlet, Othello, King Lear, Macbeth* (Basingstoke: Palgrave Macmillan, 2007), 252.

3 Quotations are from William Shakespeare, *Measure for Measure*, ed. Brian Gibbons (Cambridge: Cambridge University Press, 2006).

(2.2.180–181) He refers again to his hypocrisy when he uses heraldic imagery to describe his falsehood: “Let’s write ‘Good Angel’ on the devil’s horn, / ’Tis not the devil’s crest.” (2.4.16–17)<sup>4</sup> Although he makes a self-dramatising connection between himself and the devil, he recognizes the carnality of his behavior when he announces immediately before these lines, “Blood, thou art blood” (2.4.15): his conduct towards Isabella is opprobrious and deserving of punishment, but his failing is of mortal rather than supernatural origin. There can be no doubt that he is genuinely alarmed to discover his own fallibility: “What’s this? What’s this? Is this her fault or mine?” (2.2.167), he exclaims, honestly acknowledging his unexpected sexual attraction towards Isabella after their first encounter. His exclamation in the form of soliloquy is a spontaneous occurrence, as much to expose his feelings to himself as it is to reveal these to the audience. The flaws manifested by Angelo are recognisably human: he succumbs to the susceptibility of lust. Despite his genuine submission to and conformity with the pattern of human frailty, Angelo remains a counterfeit. Given his role as deputed supreme magistrate, the issue of his personal falsehood engenders obvious juridical complications, which it is the purpose of this essay to investigate.

## 2 Substitution “and measure still for measure”

As the title of the play suggests,<sup>5</sup> *Measure for Measure* thematises the issue of substitution: throughout the play, and with astonishing frequency, one measure is substituted for another.<sup>6</sup> The play begins with a formal, juridical substitution:

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<sup>4</sup> The “devil’s crest” is one of several instances in the play in which a metaphor is drawn from heraldry. In the course of this essay, I consider the theme of the image as the trace or representation of an original. Goodrich notes that “The originary is invariably hieroglyphic, it exists only in the trace or vestige, the ruin of a present form”: Peter Goodrich, “Eating Law: Commons, Common Land, Common Law,” *The Journal of Legal History* 12 (1991), 246–67, 247.

<sup>5</sup> The title is the only of Shakespeare’s plays to derive from the Bible: “Judge not, that ye be not judged. For with what judgment ye judge, ye shall be judged: and with what measure ye mete, it shall be measured to you again. And why beholdest thou the mote that is in thy brother’s eye, but considerest not the beam that is in thine own eye?” (*Matthew* 7.1–3). The “measure for measure” passage recurs in *Luke* 6.38; this is followed by the parable of the “mote” and “beam” blinding the hypocrite to his own faults (*Luke* 6.41–42). All quotations from *The Bible* are from the *Authorised King James Version*. See Paul Raffield, *Shakespeare’s Imaginary Constitution: Late Elizabethan Politics and the Theatre of Law* (Oxford: Hart Publishing, 2010), 197.

<sup>6</sup> Rutter characterises *Measure for Measure* as “a play that thematizes the stand-in, that makes standing in its core theatrical activity”: Carol Chillington Rutter, “Talking Heads” in *Shakespeare and the Making of Theatre*, eds. Stuart Hampton-Reeves and Bridget Escolme (Basingstoke: Palgrave Macmillan, 2012): 102–27, 122.

during his absence from Vienna, the Duke has “given his [Angelo’s] deputation all the organs / Of our own power.” (1.1.20–21)<sup>7</sup> Having deputed all his official power to Angelo, the Duke substitutes the persona of a friar for his own, in order (he claims) “to observe his [Angelo’s] sway” (1.3.44).<sup>8</sup> In the following scene, Isabella substitutes the persona of a novice in “the votarists of Saint Clare” (1.4.5) for her own: the twin images of the friar and the nun lending strong visual emphasis to the theme of religion that permeates the play. Isabella acts as a substitute for Claudio, pleading for her brother’s life at his request: “Implore her, in my voice, that she makes friends / To the strict deputy” (1.2.161–62); Angelo attempts unsuccessfully to persuade Isabella that her virginity should be the substitute for the life of Claudio: “redeem thy brother / By yielding up thy body to my will” (2.4.164–65); and in arguably the most theatrical of substitutions, Angelo’s ex-fiancée Mariana is substituted for Isabella in the “bed trick.” The theme of substitution is rendered grimly comic when the decapitated head of “a most notorious pirate” (4.3.62) Ragozine (who conveniently died of natural causes earlier that morning) is substituted for the head of the drunken prisoner Barnadine, whose head was intended by the Duke to be substituted for Claudio’s and “borne to Angelo” (4.2.151).<sup>9</sup> The bawd Pompey joins in the black comedy of substitution by deputising as assistant to the hangman Abhorson because the “common executioner ... lacks a helper.” (4.2.7–8)

In the momentous fifth act, the Duke passes death sentences on Angelo and the fantastical, slanderous Lucio. He thereby substitutes himself for Angelo, in whom he had vested “My absolute power and place here in Vienna” (1.3.14). In exercise of that power, Angelo passed sentence of death on Claudio. This being a comedy, albeit of an unconventional type, the death sentences are all commuted: Barnardine is forgiven his “earthly faults” (5.1.476); Angelo is ordered to love his wife Mariana; Lucio is ordered to marry the prostitute Kate Keepdown, “Whom he begot with child” (5.1.504); and Claudio is told to “restore” (5.1.517) his wife Juliet. In the last speech of the play, the Duke enjoins his erstwhile deputy: “Forgive him, Angelo, that brought you home / The head of Ragozine for Claudio’s” (5.1.524–25). The injunction to forgiveness recalls the Biblical source of the play’s title. The verse immediately preceding the warning in *The Gospel Accord-*

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7 The Provost assures Vincentio (disguised as the friar) that he has sworn allegiance to the Duke “and to his substitutes.” (4.2.161) The Duke describes Angelo to Isabella as “this substitute” (3.1.182).

8 “Persona” is used here in its original Latin sense: as a mask, character, or part.

9 Rutter refers to the substitution of heads in the play as “gruesome slapstick” and notes that “*Measure for Measure* makes a joke of execution – and the power of the state to regulate human appetite”: Rutter, “Talking Heads,” 123.

ing to *St. Luke* that “with the same measure that ye mete withal it shall be measured to you again” includes the following directive: “Judge not, and ye shall not be judged: condemn not, and ye shall not be condemned: forgive, and ye shall be forgiven” (*Luke* 6.37).<sup>10</sup> The Christian message of forgiveness lies at the heart of *Measure for Measure*, and throughout the play (especially in the serial pardons of the final act) the audience is reminded of the ultimate substitute: Jesus Christ, who gave His life for the sins of mankind.<sup>11</sup>

In the context of *Measure for Measure*, reference to a Christian message and to Christ himself necessarily involves discussion of the role of the Duke. For whom, if anyone, is he a substitute (apart from in the final act, where he passes sentence of death and so puts himself “in Angelo’s shoes”)?<sup>12</sup> His chosen disguise as “a true friar” (1.3.49) is a strong indication of interest in spiritual affairs. He uses the priestly disguise not only to conceal his true identity, but also to obtain access to the innermost thoughts of his subjects, including their moral opinions and religious beliefs. In his first scene with the pregnant Juliet he manipulates their meeting so that it resembles the Sacrament of Confession. He asks her whether she repents “of the sin you carry” (2.3.19) and offers to “teach you how you shall arraign your conscience / And try your penitence” (2.3.21–22). In his first encounter with Claudio he provides a sermon on the subject of death – “Be absolute for death” (3.1.5) – and offers a paraphrase of *Genesis* in the course of his exegesis: “For thou exists on many a thousand grains / That issue out of dust.” (3.1.20–21).<sup>13</sup> At the end of this scene he informs Claudio that he is “confessor to Angelo” (3.1.164) and entreats him to “prepare yourself to death.” (3.1.165) Of course, that the Duke’s impression of a friar should be convincing is crucial if his plan to save the life of Claudio and to entrap Angelo is to succeed (although it is important to state that in his first meetings with Juliet and Claudio he seems not to have such objectives in mind); but the Duke appears to perceive

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**10** See n. 5, above. “In both Matthew and Luke, however, the text is not isolated, but forms an integral part of a short passage which in Luke immediately follows – and is linked with – Christ’s great pronouncement on Christian forgiveness”: Elizabeth M. Pope, “The Renaissance Background of *Measure for Measure*,” in *Shakespeare Survey* 2, ed. Allardyce Nicoll (Cambridge: Cambridge University Press, 1949), 66–82, 66.

**11** Nuttall remarks of *Measure for Measure* that “It is the idea of substitution that finally carries us into the realm of theology. Central to Christianity is the doctrine of the atonement. This is, precisely, an act of substitution. When Christ died on the cross, he gave himself as a substitute for humankind”: Anthony D. Nuttall, *Shakespeare the Thinker* (New Haven: Yale University Press, 2007), 268.

**12** Rutter, “Talking Heads,” 125.

**13** “In the sweat of thy face shalt thou eat bread, till thou return unto the ground; for out of it wast thou taken: for dust thou art, and unto dust shalt thou return” (*Genesis* 3.19).

himself as God's anointed deputy, a divinely appointed lawgiver: "He who the sword of heaven will bear / Should be as holy, as severe: Pattern to himself to know, / Grace to stand, and virtue go" (3.2.223–26).<sup>14</sup> The claim to divine authority made by the Duke falls far short of the strident assertion of James I, that "Kings are not onely GODS Lieutenants upon earth, and sit upon GODS throne, but even by GOD himselfe they are called Gods,"<sup>15</sup> but there is an intimation in the Duke's words (here and elsewhere) of the inviolability of providential kingship.<sup>16</sup>

The sword is a symbol of law and of lawful authority, but to the early modern mind, the dread power of secular law embodied in the king implied also the possibility of divine mercy: hence only the king may legitimately bear "the sword of heaven." See for example, the book of emblems entitled *Minerva Britanna* by Henry Peacham (the Younger), in which the Sword of Heaven is depicted on a rocky foreshore. Beneath the point of the sword are tied two bottles.

The symbolism is explained in the accompanying verse:

This Sword, a Symbole of the Law, doth threate  
Perpetuall death, to all of *Adams* race:  
But yet th' Almightye, of his mercie greate,  
Sendes, after sentence, pardon of his grace:  
For when he found us, maimed on the ground,  
With wine, and oile of grace, he heald the wound.<sup>17</sup>

Peacham thereby emphasises the correlation between human punishment and divine redemption. The Duke in *Measure for Measure* is far from unique among early modern rulers, jurists and commentators in expounding the purported indivisibility of law and religion. For example, the Elizabethan lawyer

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**14** Pope is accurate in her assessment that "Any Renaissance audience would have taken it for granted that the Duke did indeed 'stand for' God, but only as any good ruler 'stood for' Him": Pope, "The Renaissance Background," 71.

**15** James I, "A Speach To The Lords And Commons Of The Parliament At White-Hall, On Wednesday The XXI. Of March. Anno 1609" (1610) in *King James VI and I: Political Writings*, ed. Johann P. Sommerville (Cambridge: Cambridge University Press, 1994), 181. On the Biblical sources to which James appealed for legitimisation of his claims to absolute authority, see Raffield, *Shakespeare's Imaginary Constitution*, 191–94.

**16** Shuger notes that the language of divine right "could serve different ends," and the claim "that authority existed by divine right could simply mean that it was legitimate": Debora K. Shuger, *Political Theologies in Shakespeare's England: The Sacred and the State in "Measure for Measure"* (Basingstoke: Palgrave, 2001), 58.

**17** Henry Peacham, *Minerva Britanna Or A Garden of Heroical Devises* (London: Wa. Dight, 1612), 83.

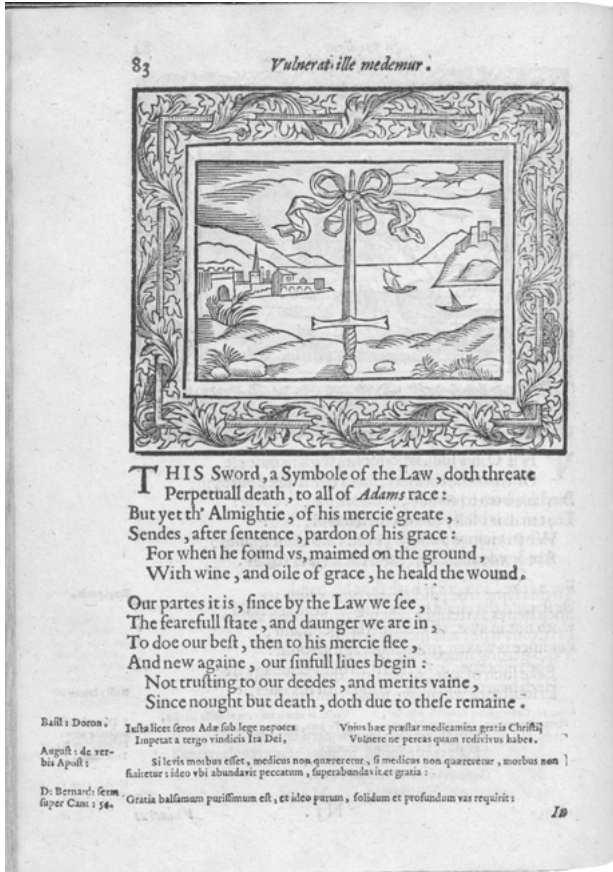


Fig. 1: Sword of Law (Reproduced with permission of the Folger Shakespeare Library)

and jurist William Fulbecke argued (in a book published in 1600, intended for prospective students of common law) that “though the charge and calling be secular, yet it must be religiously handled. For God is the author of the Law, and the revenger of the abuse thereof”; and later, that “where God is not, there is no truth, there is no light, there is no lawe.”<sup>18</sup>

<sup>18</sup> William Fulbecke, *A Direction or Preparative to the Study of the Lawe: Wherein is shewed what things ought to be observed and used of them that are addicted to the study of the Law, and what on the contrary part ought to be eschued and avoided* (London: Thomas Wight, 1600), sigs. B2v, C2r.

The connection between God, truth, light and law is of particular significance to *Measure for Measure*, in which the contrast between light and darkness is carried almost to allegorical levels.<sup>19</sup> Much of the action takes place in darkness, either during the night or in the shadow of the prison: the contrast with the stark daylight of the fifth act, which takes place at the gates of the city, is striking. The names of Angelo and Lucio both allude to light: in the case of Angelo (the fallen angel), to light and subsequent darkness;<sup>20</sup> while the name Lucio plays on the meaning of “light”: a reflection both of his levity and his lasciviousness.<sup>21</sup> Lucio describes the Duke as “the old fantastical Duke of dark corners” (4.3.147–48): an apt description of the figure who scurries furtively through the shadows of Vienna, encountering darkness of a literal and metaphorical kind at every turn.<sup>22</sup> At the start of the play, the Duke describes virtue (ironically, to Angelo) as a form of torchlight, that others may be enlightened: “Heaven doth with us as we with torches do, / Not light them for ourselves” (1.1.32–33).<sup>23</sup> In Act Four, the light changes rapidly and dramatically: from dusk, when “The vaporous night approaches” (4.1.54) to “dead midnight” (4.2.51), before a messenger announces that “it is almost day” (4.2.92). In the last line of the scene the Duke notices that “it is almost clear dawn” (4.2.183);<sup>24</sup> but only a few lines before this he

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19 Pope notes that the character of the Duke “has such curiously allegorical overtones, yet never quite slips over the edge into actual allegory”: Pope, “The Renaissance Background,” 71; Diehl argues that in *Measure for Measure*, Shakespeare was attempting “to write not an allegory but a play about living in an allegorised world”: Huston Diehl, “‘Infinite Space’: Representation and Reformation in *Measure for Measure*,” *Shakespeare Quarterly* 49 (1998), 393–410, 398. On the allegorisation of justice in the realm over which James I governed, see Raffield, *Shakespeare’s Imaginary Constitution*, 200.

20 “Lucifer” translates from Latin either as a noun, meaning “morning star,” or as an adjective, meaning “light-bringing.”

21 “The word ‘light’ was frequently used at this time to mean ‘wanton’ or ‘promiscuous,’ but almost always with reference to women, as when Lucio in *Measure for Measure* comments cynically that ‘women are light at midnight’ (5.1.279–80)”: Ann Thompson and John O. Thompson, “Meaning, ‘Seeing,’ Printing” in *Printing and Parenting in Early Modern England*, ed. Douglas A. Brooks (Aldershot: Ashgate, 2005), 59–86, 80.

22 “He remains in the city, a shadowy figure – ‘the old fantastical Duke of dark corners’”: Nuttall, *Shakespeare the Thinker*, 268.

23 The sentiment was expressed in more prosaic terms by the Protestant pamphleteer Phillip Stubbes in the 1595 edition of *The Anatomie of Abuses*: “And common reason teacheth us, that we are not borne for our selves onelie”: Phillip Stubbs, *The Anatomie of Abuses* (London: Richard Iohnes, 1595), 5.

24 At the open-air Globe Playhouse, where (given the absence of stage lighting) performances took place only during daylight hours, textual references to variations in light and darkness were essential. At the indoor Blackfriars Playhouse, lighting effects were made possible by the use of candlelight. On the playhouses of Elizabethan and Jacobean London, and the staging of plays,



draws attention to his propensity for religious allusion: “Look, th’unfolding star calls up the shepherd.” (4.2.177–78) Of course, he may be making a literal observation there about the typical working day of a Viennese shepherd, but as Elizabeth Pope noted of this line: “one wonders if he may not be thinking of himself and his office.”<sup>25</sup> Indeed, the contrast between light and darkness, in Act Four especially, renders the play at one level the theatrical equivalent of chiaroscuro, in which tonal contrasts between light and dark colours were used by pictorial artists to create dramatic, three-dimensional forms. The use of chiaroscuro by early modern painters was especially effective in the depiction of Biblical characters and scenarios, where the light of God illuminated the darkness of the world.<sup>26</sup>

The symbolism of light, in its Biblical sense, recalls the opening chapter of *The Gospel According to St. John*. Verse 1 emphasises the primacy and eternal truth of the Word of God, the divine law, as revealed by Christ: “In the beginning was the Word, and the Word was with God, and the Word was God” (*John* 1.1). In his *Exposition of all the books of the Old and New Testament*, the Presbyterian minister Matthew Henry asserted (with authority from numerous Biblical sources) that Christ was the Word: “God made the World by a *Word*, Psal. 33.6. and Christ was *that Word*: By him, not as a subordinate Instrument, but as a co-ordinate Agent, God made *the World*.”<sup>27</sup> The theme of substitution, in the form of “a co-ordinate Agent” is thereby introduced. In *John* 1.4, the metaphor of light and darkness is introduced (between Verses 4 and 9, “light” is mentioned seven times and “darkness” twice): “In him was life; and the life was the light of men. And the light shineth in darkness; and the darkness comprehended it not”

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see Andrew Gurr, *The Shakespearean Stage 1574–1642* (Cambridge: Cambridge University Press, 1992), 115–211. The first recorded performance of *Measure for Measure* was for the royal court, on St. Stephen’s Night 1604: “By his Matis plaiers: On St Stivens night Mister Shaxberd ... A play Caled Mesur for Mesur,” PRO AO3/908/13; see Bawcutt (ed.), *Measure for Measure*, Introduction, 1–2.

<sup>25</sup> Pope, “The Renaissance Background,” 71.

<sup>26</sup> For example, in *Nativity at Night* (c. 1490), by Geertgen tot Sint Jans, the background is in almost total darkness. Illumination is provided by the infant Christ, the Virgin Mary (Joseph stands in deep shadow behind Mary), the five angels who attend the birth, the fire on the hillside, and the solitary angel hovering over the shepherds (The National Gallery, London: inventory number, NG4081). For analysis of the painting, see Lorne Campbell, *The Fifteenth Century Netherlandish Paintings* (National Gallery Catalogues) (London: National Gallery Publications, 1998), 232–38.

<sup>27</sup> “An Exposition of the Historical Books of the New Testament” in *An Exposition of all the books of the Old and New Testament*, ed. Matthew Henry, (London: J. Clarke and R. Hett, et al., 1725), Vol. 5, 430.

(*John* 1.4–5). It is this allegorised world that Shakespeare dramatises in *Measure for Measure*, at least partly through the continual contrast between light and darkness. As Patrick Collinson noted of the inhabitants of sixteenth-century England: “These people were living, in a sense, in the pages of the Bible.”<sup>28</sup>

In *John* 1.6, the Evangelist reinforces the theme of substitution:

There was a man sent from God, whose name was John. The same came for a witness, to bear witness of the Light, that all *men* through him might believe. He was not that Light, but *was sent* to bear witness of that Light. *That* was the true Light, which lighteth every *man* that cometh into the world. (*John* 1.6–9)

In the words of Henry, “spiritual and eternal Life and Light, are the two great Things that fallen Man, who lies so much under the Power of *Death* and *Darkness*, has need of.”<sup>29</sup> That need was fulfilled by the “man sent from God” to whom the Evangelist refers above: John the Baptist.<sup>30</sup> He served the function of substitute, minister, or deputy anointed by the Lord,<sup>31</sup> a role envisaged for the Apostles in *The Gospel According to St. Luke*: “Even as they delivered them unto us, which from the beginning were eye-witnesses, and ministers of the word” (*Luke* 1.2). The word “minister,” in the sense of an agent or deputy of

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**28** Patrick Collinson, *The Birthpangs of Protestant England: Religious and Cultural Change in the Sixteenth and Seventeenth Centuries* (Basingstoke: Macmillan, 1988), 108.

**29** Henry, “An Exposition of the Historical Books,” 430.

**30** Further to the discussion above of the use of chiaroscuro by early modern artists, it is noteworthy that Caravaggio painted three versions of the beheading of St. John the Baptist: *Salome with the Head of John the Baptist* (c. 1607), The National Gallery, London; *The Beheading of Saint John the Baptist* (1608), St. John’s Co-Cathedral, Valletta; and *Salome with the Head of John the Baptist* (c. 1609), Palacio Real, Madrid. Rutter suggests that the last scene of *Measure for Measure* “plays out like a rewrite of the gospels, Salome performing before Herod and demanding the head of John the Baptist on a plate.” The substitutes for Salome and John the Baptist (Rutter argues) are Isabella and Angelo: “She could demand ‘Measure for Measure,’ Angelo’s head on a platter. But she does not”: Rutter, “Talking Heads,” 124, 125.

**31** The imagery of providential kingship is a major trope in *Richard II*, where not only does Richard refer to a king as “The deputy elected by the Lord” (3.2.57), but John of Gaunt describes Richard as both “God’s substitute, / His deputy anointed in His sight” (1.2.37–38) and “His minister.” (1.2.41) In *Richard II*, the theme of substitution is limited to Richard as God’s deputy on earth, and to Bolingbroke as his replacement; while in *Measure for Measure* the theme pervades the entire play. The language of divine substitution was a notable aspect of Elizabethan, juristic discourse on kingship. See for example, William Lambarde, who stated that “the Prince of this Realme is the immediate minister of Iustice under God’ and further, that “hee is within his owne Kingdome the Vice-roy of God, (the supreme Iudge of the World)”: William Lambarde, *Archeion, Or, A Discourse Upon the High Courts of Iustice in England* (1591) (London: Henry Seile, 1635), 68, 97; see Raffield, *Shakespeare’s Imaginary Constitution*, 200–201.

God revealing His Word to the populace, was not confined to the Apostles and Evangelists; nor indeed, in medieval and early modern England, was it confined to the priesthood. In his seminal treatise on English law, *De Laudibus Legum Angliae*, the fifteenth-century Lord Chief Justice (and Lord Chancellor-in-exile to King Henry VI) Sir John Fortescue referred to judges of the common law both as ministers and priests: “Whence we, who are the Ministerial Officers, who sit and preside in the Courts of Justice, are therefore not improperly called, *Sacerdotes* (Priests): The Import of the Latin Word (*Sacerdos*) being one who gives or teaches Holy Things.” Citing *The Epistle of Paul the Apostle to the Romans* as authority, Fortescue argues that although laws are “made by Men,” secular laws “may also be affirmed to be made by GOD” because all power emanates from God. It follows from this argument that to study the common law “is in effect to study the Laws of GOD.”<sup>32</sup>

In the sixteenth century, the heraldic writer (and member of the Inner Temple) Gerard Legh reinforced the symbolic link between ministers of law and ministers of religion by comparing members of the Inns of Court to the Angelic Choirs: “Herein I might compare your state (but yt you are men) unto the heavenly Ierarches, for that you have all the three things that Ierarches have, that is, Order, cunningg, and working.”<sup>33</sup> It is noteworthy that Legh should have attributed to angels the above rational qualities, which were more usually associated with common law and common lawyers. As the Anglican cleric and theologian Richard Hooker argued in a sermon on the theme of pride, the will of man should be “framed by reason; reason directed by the law of God and nature.”<sup>34</sup>

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**32** Sir John Fortescue, *De Laudibus Legum Angliae*, ed. John Selden (London: R. Gosling, 1737), 4–5, c. III: “Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God” (*Romans* 13.1). On the ecclesiastical foundations of the English legal profession, see Paul Brand, *The Origins of the English Legal Profession* (Oxford: Blackwell, 1992); also, Paul Raffield, *Images and Cultures of Law in Early Modern England: Justice and Political Power, 1558–1660* (Cambridge: Cambridge University Press, 2004), 9–42.

**33** Gerard Legh, *The Accedens of Armory* (London: Richard Tottill, 1562), fo. 232r. On Legh’s visit to the Inner Temple during the Candlemas revels of 1561, at which he witnessed the transformation of honorable members into “heavenly Ierarches,” see Paul Raffield, “The Inner Temple Revels (1561–62) and the Elizabethan Rhetoric of Signs: Legal Iconography at the Early Modern Inns of Court,” *The Intellectual and Cultural World of the Early Modern Inns of Court*, eds. Jayne Elisabeth Archer, Elizabeth Goldring and Sarah Knight (Manchester: Manchester University Press, 2011), 32–50; also Paul Raffield, “The Monarchical Republic, Constitutionality, and the Legal Profession,” *The Oxford Handbook of English Law and Literature 1500–1700*, ed. Lorna Hutson, (Oxford: Oxford University Press, 2017), 163–79.

**34** Richard Hooker, *A Learned Sermon of the Nature of Pride* (London, John Barnes, 1612), sig. B1v. There are parallels between the above argument and the thesis of Sir Edward Coke that common law was “the absolute perfection of reason”: Sir Edward Coke, *The Second Part of the In-*

The role of angels as benevolent intermediaries between God and mankind, or deputed ministers of divine will, was emphasised by Hooker in his monumental work, *Of the Laws of Ecclesiastical Polity*. For Hooker, the only distinction between humans and angels was the omniscience of the latter: “Angels already have full and complete knowledge in the highest degree that can be imparted unto them.”<sup>35</sup>

The indivisibility of secular and divine law is a major thematic problem in *Measure for Measure*, especially with regard to Angelo. The case of Claudio is different: although convicted of fornication (an offence in England only under ecclesiastical law),<sup>36</sup> in the fictional realm of Shakespeare’s Vienna he was charged with a statutory offence for which the mandatory sentence is death and convicted by due process of law. Where Angelo is concerned, although he has committed the crime of misconduct in public office (an offence under common law, traceable to the thirteenth century), he has not committed the offence of “violation / Of sacred chastity” (5.1.397–98) with which he is charged by the Duke in Act Five. Angelo did not have sex with Isabella, although he wanted to: he had sex with Mariana, who consented to intercourse and to whom he had been affianced.<sup>37</sup> In terms of criminal liability, as far as Isabella is concerned, Angelo possessed the requisite *mens rea* for the offence of rape, but the requisite *actus reus* was absent. In response to Mariana’s entreaty that she should plead for Angelo’s life, Isabella convincingly presents a sound legal argument:

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*stitutes Of the Lawes of England* (London: E. Dawson, R. Meighen, W. Lee & D. Pakeham, 1642), 179. Schoeck argues that Hooker’s writing fuses “Erasmian humanism and Christian theology,” Richard J. Schoeck, “From Erasmus to Hooker: An Overview,” *Richard Hooker and the Construction of Christian Community*, ed. Arthur Stephen McGrade (Binghampton, Medieval & Renaissance Texts & Studies, 1997), 61.

<sup>35</sup> Richard Hooker, *Of the Lawes of Ecclesiastical Politie* (London: William Stansbye, 1622), 12, Bk I.VI. McGrade notes of Book I of *Of the Laws* that it “is thus an especially promising text for reading Hooker as an Anglican angelic doctor, serenely above the controversies of his day”: Arthur S. McGrade, *Of the Laws of Ecclesiastical Polity* (Cambridge: Cambridge University Press, 1989), Introduction, xx.

<sup>36</sup> On Claudio’s claim that he was betrothed “Upon a true contract” (1.2.126), and the legal niceties of *sponsalia per verba de praesenti* and *sponsalia per verba de futuro*, see Raffield, *Shakespeare’s Imaginary Constitution*, 204–207.

<sup>37</sup> Prior to the execution of the bed-trick, the Duke reminds Mariana that “He is your husband on a pre-contract” (4.1.69); before this, the Duke informs Isabella that Mariana “should this Angelo have married – was affianced to her oath, and the nuptial appointed” (3.1.204–205). Regarding the fact that Angelo thinks that he has had sexual intercourse with Isabella rather than Mariana, Schanzer notes that “*error personae*, i.e. marriage contracted with a person mistaken for someone else, was one of the recognised grounds for annulment,” Ernest Schanzer, “The Marriage-Contracts in *Measure for Measure*,” *Shakespeare Survey* 13 (1960), 81–89, 89, n. 21.

“His act did not o’ertake his bad intent, / And must be buried but as an intent / That perished by the way. Thoughts are no subjects, / Intents but merely thoughts.” (5.1.444–47) Here, Shakespeare was dramatising contemporaneous public debate regarding the juridical status of adulterous thoughts. In 1583, only two decades before *Measure for Measure* was written, Phillip Stubbes had published his diatribe against contemporary cultural and sexual mores, *The Anatomie of Abuses*. In a chapter entitled “The horryble vice of Whordome in Ailgna,” Stubbes asserted that “who so lusteth after a woman in his hart, hath committed the fact alreedy, and therfore is guiltie of death for the same.”<sup>38</sup> This is the “crime” of which Angelo was charged and convicted by the Duke. Isabella’s clever legal distinction between act and intent serves not to reverse his guilt in the eyes of the law (as spoken by the Duke in his capacity as *lex loquens*), but has the effect only of reducing the sentence, from death to marriage with Mariana.

### 3 The imprint of law

In 1589, Thomas Nashe responded to the puritanical invective of *The Anatomie of Abuses* with an explicit attack on the hypocrisy and inherent corruption of writers such as Stubbes, referring to “the mucke of their mellancholicke imaginations, pretending forsooth to anatomise abuses, and stubbe up sin by the rootes.”<sup>39</sup> The hypocrite was disguised by “the cloake of zeale ... a pretence of puritie ... a glose of godlines.” Reference by Nashe to the gloss of godliness returns us to Angelo: “This outward-sainted deputy” (3.1.88); but so too does the prescient warning that the “ignorant zeal” of Stubbes and other writers (whose knowledge of theology, Nashe claimed, was derived solely from “twopennie Catechismes”) “wyll presumptuously presse into the Presse, enquiring most curiouslie into every corner of the Common Wealth, correcting that sinne in others, wherewith they are corrupted themselves.”<sup>40</sup> Here, Nashe refers to the printing press and implicitly raises the issue of contemporaneous technological advances, which enabled inexpensive, mass publication of treatises such as *The Anat-*

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**38** Phillip Stubbes, “The horryble vice of Whordome in Ailgna,” *The Anatomie of Abuses* (London: Richard Iones, 1583), sig. H2r. Stubbes adapted the following passage from the Sermon on the Mount: “But I say unto you, That whosoever looketh on a woman to lust after her hath committed adultery with her already in his heart” (*Matthew* 5.28). Emphasis on the draconian aspect of the Sermon on the Mount ignores completely Christ’s conciliatory injunction a few lines later, to “Judge not, that ye be not judged” (*Matthew* 7.1).

**39** Thomas Nashe, *The Anatomie of Absurditie* (London: Thomas Hacker, 1589), sig. Biiir.

**40** Nashe, *The Anatomie of Absurditie*, sig. Biiir.

omie of Abuses.<sup>41</sup> But he also uses the word “press” as a verb, meaning to exert pressure or to mould a soft or pliable material. The image of the press (as used respectively for printing, coinage and sealing) and the pressing of a hard object into a malleable substance is used throughout *Measure for Measure* to interrogate ideas surrounding authenticity and fidelity to an original form. Hence, in the opening scene of the play, when the Duke instructs Angelo to take up his commission as deputy, he replies: “Let there be some more test made of my metal / Before so noble and so great a figure / Be stamped upon it.” (1.1.48–50) Pursuant to this image, Angelo is not only the fallen Angel, plummeting like Lucifer from light to darkness; he is also the false Angel or counterfeit currency, the Angel-Noble being a coin of the realm.<sup>42</sup> The image of a rigid instrument pressing into a pliable and warm body has obvious sexual connotations.<sup>43</sup> The trope has not been lost on scholars: Cyndia Susan Clegg describes the Jacobethan printing press as “the pen’s phallic twin”;<sup>44</sup> while Margreta de Grazia refers to the “copulating parts” of the printing press – the form (or “forme,” used in manual typesetting) was “smeared with viscous oil-based ink” and imprinted “the absorbent and retentive page.”<sup>45</sup> The lexicon of printing technology is replete with words suggestive both of bodily functions and the act of penetration: “bleed” (and “full bleed”), “composing stick,” “punchcutter,” “bullet casting,” “flat-bed printing press,” and “hellbox,” to name only a few. The imagery of imprint technology (of coins, seals and the written word) permeates *Measure for Measure*, in which the potential that the printing process provides for forgery is a primary referent: for Isabella, women are “credulous to false prints” (2.4.130) – Angelo being the

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41 On developments in printing during this period, see Elizabeth L. Eisenstein, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early-Modern Europe*, 2 vols. (Cambridge: Cambridge University Press, 1980); also, Lucien Febvre and Henri-Jean Martin, *The Coming of the Book: The Impact of Printing 1450–1800*, (trans.) David Gerrard (London: Verso, 1998). Specifically, on printing in the sixteenth century, see Peter W.M. Blayney, *The Stationers’ Company and the Printers of London*, 2 vols. (Cambridge: Cambridge University Press, 2013).

42 See Gibbons (ed.), *Measure for Measure*, 91, note to lines 49–50. The angel-noble coin was commissioned in 1465 by King Edward IV: the name derives from the depiction on the obverse of St. Michael slaying a dragon; see Richard Lobel, *Coincraft’s Standard Catalogue English & UK Coins 1066 to Date* (London: Standard Catalogue Publishers, 1999).

43 “In coining, the impression is made on molten metal, like wax and paper a surface capable of receiving graphic and sexual imprints”: Margreta de Grazia, “Imprints: Shakespeare, Gutenberg, and Descartes,” *Printing and Parenting*, ed. Douglas A. Brooks (Burlington: Ashgate, 2005), 29–58, 38.

44 Cyndia Susan Clegg, “Checking the Father: Anxious Paternity and Jacobean Press Censorship,” *Printing and Parenting*, ed. Douglas A. Brooks (Burlington: Ashgate, 2005), 291–301, 291.

45 De Grazia, “Imprints,” 43–44.

“false prince” (on whose *ex officio* title she unintentionally [?] puns),<sup>46</sup> whose “mettle/metal” was not tested by the Duke before he stamped his noble figure upon it.

Under English law, the criminal offence of false coinage was considered heinous. According to *The Statute of Treasons, 1352 (25 Ed. III st. 5, cap. 2)*, along with compassing or imagining “the death of our lord the king” (and members of the royal family), it was an act of treason “if anyone counterfeits the king’s great or privy seals, or his money.”<sup>47</sup> With reference to *Measure for Measure*, it is noteworthy that in early modern England the crime of false coinage was synonymous with transgressive sex. In *Minerva Britanna*, an emblem entitled *Crimina gravissima* depicts Ganymede (cup-bearer to Jupiter), naked astride a cockerel.

The accompanying verse explains the nature of his crime:

Upon a Cock, heere *Ganimede* doth sit,  
 Who erst rode mounted on *IOVES* Eagles back,  
 One hand holdes *Circes* wand, and ioind with it,  
 A cup top-fil’d with poison, deadly black:  
 The other Meddals, of base mettals wrought,  
 With sundry moneyes, counterfeit and nought.

These be those crimes, abhorr’d of God and man,  
 Which Iustice should correct, with lawes severe,  
 In \* *Ganimed*, the foule Sodomitan:  
 Within the Cock, vile incest doth appeare:  
 Witchcraft, and murder, by that cup and wand,  
 And by the rest, false coine you understand.<sup>48</sup>

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**46** Claudio refers to him as “The prenzie Angelo” (3.1.93); three lines later, Isabella refers to “prenzie guards” (3.1.96). There has been much scholarly conjecture over the meaning of “prenzie.” Modern editors have emended it to “precise,” but as Bawcutt notes, the word “precise” is used “three times earlier in the play in its normal spelling”: Bawcutt (ed.), *Measure for Measure*, 234–35, *Appendix A*. More likely is the explanation of Gibbons, that “‘prenzie’ is Shakespeare’s coinage” of the Italian for “prince”: *prenze*, Gibbons (ed.), *Measure for Measure*, 141, note to lines 93, 96. For the unlikely thesis that “prenzie” may have been a misprint of “phrenzie” or “frenzie,” see Karl P. Wentersdorf, “On the ‘Prenzie’ Crux in *Measure for Measure*,” *Studia Neophilologica* 81 (2009), 33–35, 33.

**47** “... and if anyone kills the chancellor or treasurer or the justice of our lord the king of one bench or the other, justice on eyre or of assize, and all other justices assigned to hear and determine, being in their places in the performance of their duties”: *The Statute of Treasons, 1352* in Michael Evans and R. Ian Jack, *Sources of English Legal and Constitutional History* (Melbourne: Butterworths, 1984), 183.

**48** Peacham, *Minerva Britanna*, 48.

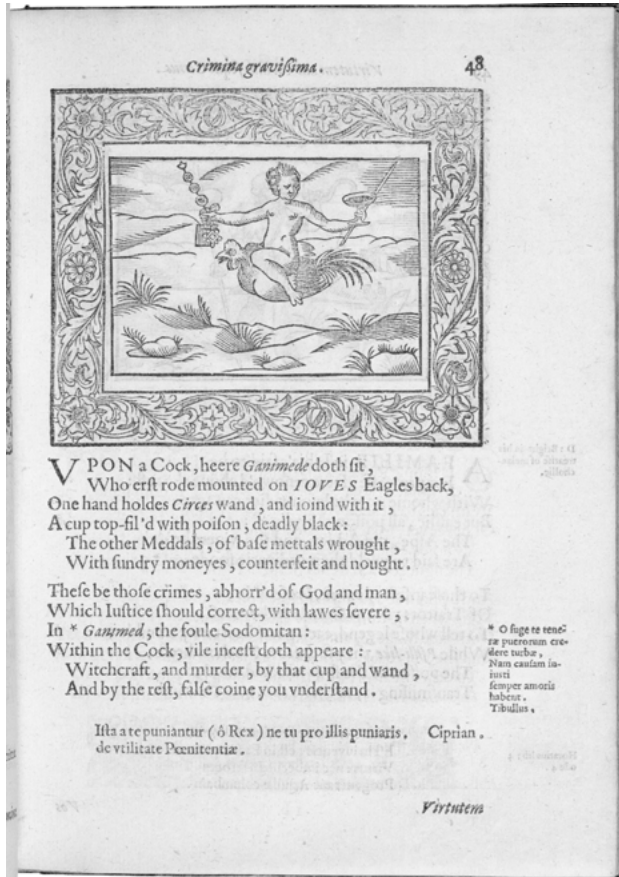


Fig. 2: Ganymede (Reproduced with permission of the Folger Shakespeare Library)

Ganymede is sitting on a cock. To be absolutely certain that his readers get the euphemistic message, Peacham spells it out: Ganymede is a foul sodomite. The crime of sodomy is twinned with that of counterfeiting coinage: in his right hand, Ganymede carries “sundry moneyes, counterfeit and nought.”<sup>49</sup>

<sup>49</sup> De Grazia remarks that “Counterfeit coining ... is frequently associated with sodomitic sex. Imprints can be made on both sides of the body, *verso* as well as *recto*, just as they can on both sides of a page or a coin”: de Grazia, “Imprints,” 38. On the same page, de Grazia puns on the word “page,” noting in connection with *Minerva Britannia* that Ganymede is “another page” ... a servant to Jupiter, *ibid.*; whether or not Peacham intended the pun is unclear. On the linguistic correlation between counterfeit coinage and sodomy in early modern England, see Sandra K.



Both of these crimes were abhorrent to God and nature: the offence against nature is implicit in the reference to the Homeric sorceress Circe, whose conjurations transformed Ulysses' crew into swine.<sup>50</sup> The strident injunction to severe justice, in the form of "correction" (a euphemism for execution), is a notable aspect of the verse and its accompanying marginal quotations: "Ista a te puniantur (ô Rex)" ("The defendant will be punished by you (O King)") reads one, from the writings of Cyprian (Bishop of Carthage, 249–258 A.D.). On the right of the page is a (presumably deliberate) misquotation of Book IV.9–10 of the *Elegiae* of Tibullus. The correct quotation is: "O fuge te tenerae puerorum credere turbae, / Nam causam iusti semper amoris habent."<sup>51</sup> ("Oh beware of trusting the mob of tender boys, / Since they always possess a just pretext for love.") Peacham has inserted "in-" before "iusti; so that the meaning is inverted: "they always possess an unjust pretext for love."

Whilst James VI advocated to his son Prince Henry that he should, when King himself, "after all the daies of your life mixe Iustice with Mercie";<sup>52</sup> there were specific crimes which he would be "bound in conscience never to forgive: such as Witchcraft, wilfull murther, Incest, (especially within the degrees of consanguinitie) Sodomie, poisoning, and false coine."<sup>53</sup> Peacham had all of these covered in his poetic indictment of Jupiter's page, Ganymede. Sir Edward Coke recorded that "the detestable sin of buggary with mankind or beast. &c. it is felony": this was enacted in *25 H. VIII cap. 6* and in *5 Eliz. cap. 7*. So serious was the crime of buggery regarded by the legal institution that the felon "shall lose his

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Fischer, *Econolingua: A Glossary of Coins and Economic Language in Renaissance Drama* (Newark: University of Delaware Press, 1985), 95.

50 Homer, *The Odyssey*, Bk X; the Inner Temple hosted the masque of *Circe and Ulysses*, by William Browne, in 1615: see Paul Raffield, *The Art of Law in Shakespeare* (Oxford: Hart/Bloomsbury, 2017), 133.

51 In *Elegiae*, these lines (IV.9–10) are spoken by Priapus (god of rustic fertility), in reply to the question: "Quae tua formosos cepit sollertia?" ("What skill of yours captivates lovely lads?") (IV.III). The compiler of the *Dictionary of Classical Mythology* notes that "The infant Priapus was endowed with enormous genitals": Pierre Grimal, *Dictionary of Classical Mythology*, trans. A.R. Maxwell-Hyslop, ed. Stephen Kershaw (London: Penguin Books, 1991), 373.

52 "Basilicon Doron," *King James VI and I: Political Writings*, 22.

53 *King James VI and I: Political Writings*, 23. King James completed a manuscript of *Basilikon Doron* in 1598, as James VI of Scotland. It was intended as an instruction on kingship for the heir presumptive, Prince Henry (d. 1612). Upon its publication in England, following his accession to the English throne as James I, it bore the following affectionate dedication: "Ad Henricum Charissimum Filium Meum, Et Successorem proximum," James I, *Basilikon Doron* (London: Iohannes Norton, 1604), "Epistola," sig. A2r. On the original publication of *Basilikon Doron* and *The Trew Law of Free Monarchies*, see Raffield, *Shakespeare's Imaginary Constitution*, 183.

clergy”:<sup>54</sup> death was the inevitable consequence of conviction.<sup>55</sup> Given the reference by Peacham to Ganymede and Circe, through which he connected transgressive sex with witchcraft, it is noteworthy that Coke should have made a similar correlation between sodomy and the supernatural. Quoting from an ancient juristic source (*Britton cap. 9*), he states that “sorcerers, sodomers, and heretics’ shall be burnt.”<sup>56</sup> Association of sodomites with the alien or other is compounded by the inference, which Coke undoubtedly intended the reader to draw, that the crime (and sin) of buggery was not indigenous to the English race:

Bugeria is an Italian word, and signifies so much, as is before described, Pæderastes or Paderastes is a Greek word, Amator puerorum, which is but a Species of Buggery, and it was complained of in Parliament, that the Lumbards had brought into the Realm the shameful sin of Sodomy...<sup>57</sup>

Whilst I have concentrated above on the correlation between the crime of buggery and false coinage, it should be emphasised that (as Will Fisher notes) “the language of false coining was also used to describe other types of unauthorized sexual commerce,”<sup>58</sup> a fact that *Measure for Measure* amply demonstrates. Indeed, where Angelo is concerned, the metaphor of counterfeit printing extends beyond “unauthorized sexual commerce” to opprobrious judicial misconduct. The audience encounters Angelo in the courtroom not at the trial of Claudio, but as presiding magistrate (Escalus is the other judge) of a tribunal that has been convened to investigate allegations of unspecified, lewd offences. The charges are made by Elbow (“a simple constable”) against Pompey (a tapster

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<sup>54</sup> *Corone, Buggary* in Part 12 (1656) of *The Reports of Sir Edward Coke, Knt. In English*, ed. George Wilson, 7 vols. (London: Rivington, 1777), 7, 36. On “benefit of clergy” during this period, see J.G. Bellamy, *Criminal Law and Society in Late Medieval and Tudor England* (Gloucester: Alan Sutton, 1984), 115–72.

<sup>55</sup> In Jacobean England, the sentence for buggery was death by hanging; Coke notes that centuries before, “Sodomites and Miscreants shall be burnt”: Sir Edward Coke, “Of Buggery, or Sodomy” in *The Third Part of the Institutes of the Laws of England* (London: W. Lee and D. Pake-man, 1644), 58, c. X. Regarding “false coine,” Dugdale records that a “Charter of Confirmation” in the reign of Henry I included a clause to the effect “that Counterfeiters of money should have their Eyes pulled out, be gelt, and lose their right hands”: Sir William Dugdale, *Origines Juridicales or Historical Memorials of the English Laws* (London: F. and T. Warren, 1666), 7–8.

<sup>56</sup> Coke, *Corone, Buggary*, 12 *Reports*, 7: 36.

<sup>57</sup> Coke, “Of Buggery,” 58, c. X.

<sup>58</sup> Will Fisher, “Queer Money,” *English Literary History* 66 (1999), 1–23, 18, n. 13. Fisher notes that although the word “queer” is “generally understood to refer to homosexuals, it has been used in phrases referring to counterfeiting and counterfeit money since at least the seventeenth century,” *ibid.*, 1.

and “parcel bawd” at Mistress Overdone’s brothel) and Froth (a regular customer at the brothel, described in the list of characters as “a foolish gentleman”), concerning “what was done to Elbow’s wife” (2.1.103–104). The scene is intrinsically comic, and makes the most of Elbow’s extraordinary propensity for malapropism: Pompey and Froth are “two notorious benefactors” (2.1.47) and “precise villains ... void of all profanation in the world that good Christians ought to have.” (2.1.51–52) The scene may be described as a parody of quotidian lawlessness and legal procedure, but insofar as the characters and action represent a feasible juridical scenario, it is realistic. In *The Duties of Constables* (published in 1582 and revised in 1602), William Lambard recorded that “any of these Officers aforesaide may take (or arrest) suspected persons, which walke in the night, & sleepe in the day: or which do haunt any house, where is suspicion of baudrie: and they may carry them before a Iustice of the Peace, to finde sureties of their good behavior.”<sup>59</sup>

In his defence of Froth against all charges of impropriety, Pompey adopts a satirical role, imitating the prolix and pompous language of law: “you are therein in the right – but to the point” (2.1.87–88), he pronounces, before launching into a digressive examination-in-chief of his “client” Froth that is anything but to the point, regarding an item of evidence, the “stewed prunes” (2.1.82).<sup>60</sup> Angelo quickly tires of this travesty of juridical procedure, declaring that “This will last out a night in Russia / When nights are longest there” (2.1.119–20) before taking his leave of the court. In so doing, he reveals a flaw in his professional conduct as a judge, long before his corruption is revealed. In *The Holy State*, the cleric and historian Thomas Fuller wrote that the good judge:

hearkens to the witnesses, though tedious. He may give a waking testimony who hath but a dreaming utterance; and many countrey people must be impertinent, before they can be pertinent, and cannot give evidence about an hen, but first they must begin with it in the egge. All which our judge is contented to hearken to ...<sup>61</sup>

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<sup>59</sup> William Lambard, *The Duties of Constables, Borsholders, Tythingmen, and such other lowe and Lay Ministers of the Peace* (London: Thomas Wight, 1602), 12. The decision by Escalus to remove Elbow from the office of constable, replacing him with “the most sufficient of your parish” (2.1.232–33), also reflects due process: justices of the peace “have authoritie to remooove insufficient Constables and Borsholders, and to substitute able persons in their place,” Lambard, *Duties of Constables*, 19; see also, William Lambard, *Eirenarcha: or of The office of the Iustices of Peace in England, 1558–1640: A Later Eirenarcha* (Oxford: Clarendon, 1969).

<sup>60</sup> On Pompey and Costard (in *Love’s Labour’s Lost*) as satirists of the legal institution, see Raffield, *Art of Law*, 51–52.

<sup>61</sup> Thomas Fuller, *The Holy State* (Cambridge: John Williams, 1642), 270.

In other words, it is the professional duty of the judge to listen to all the evidence, however tedious and dilatory it may be. The metaphor of precious metal is employed by Fuller to describe the good judge: “And surely Integrity is the proper portion of a Judge. Men have a touch-stone whereby to try gold, but gold is the touch-stone whereby to trie men.”<sup>62</sup> This returns us to the issue of the Angel-Noble as an authentic image of the king. That the judge was the legitimate deputy of the monarch is not in dispute. In the absence of the physical presence of the king, the judge was his authorized substitute in *curia regis*. For James I, although judges were his “subordinate Magistrates,” yet they were “deputed for easier questions” (he traced this tradition to Moses, who retained for himself the “more profound” questions).<sup>63</sup> He declared to the judges in Star Chamber that although when they sat with him in that court they were subordinate to him, yet they were “my Substitutes in the Circuits, where you are Iudges Itinerant to doe Iustice to my people.”<sup>64</sup>

In actual and symbolic terms, the artefact that identified the absolute authority of the king *in absentia* was the Great Seal of England, of which the custodian was the pre-eminent substitute of the king in his judicial capacity, the Lord Chancellor. The Jacobean Lord Chancellor, Lord Ellesmere, noted of the Great Seal that “the print whereof is directed by the pleasure of the Prince, the validity thereof I dare not to dispute”:<sup>65</sup> it was a sacred object, conveying incontrovertible legitimacy on its keeper.<sup>66</sup> In *Measure for Measure*, the only sign that can persuade the Provost of original, but absent, magisterial authority is “the hand and seal of the Duke.” (4.3.168) Given the sanctity of the Great Seal, and its indivisible link with the person of the king, to counterfeit it was an act of treason, equal in abomination to compassing or imagining the death of a king.<sup>67</sup> Whilst Angelo may be a false prince (“false prints”), the authority conferred on him by the Duke was genuine. The seal that bestowed authority was authentic, but the object onto which the imprint is made was false.

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<sup>62</sup> Fuller, *The Holy State*, 271.

<sup>63</sup> James I, “A Speech In The Starre-Chamber, *The XX. Of June. Anno 1616*,” *King James VI and I*, ed. Sommerville, 205.

<sup>64</sup> James I, “A Speech In The Starre-Chamber,” 219. The claim of James I that he had lawful capacity to give judgment in the courts of common law was rejected by Coke, who conceded “that the King may sit in the Star-chamber; but this was to consult with the Justices, upon certain questions proposed to them, and not *in iudicio*”: Coke, *Prohibitions del Roy*, 12 *Reports*, 7: 63, 64.

<sup>65</sup> Lord Ellesmere, *Certaine Observations Concerning the Office of the Lord Chancellor* (London: Henry Twyford and John Place, 1651), 33.

<sup>66</sup> “Lord Keeper of the Great Seal of England” was the title of the officer of state charged with physical custody of the Great Seal in the absence of the Lord Chancellor.

<sup>67</sup> See text to n. 47, above.

In Part 12 of *The Reports*, Coke recorded an actual instance of the above scenario,<sup>68</sup> in which a fraudulent court official misappropriated the Great Seal for his own criminal purpose. The case illustrates the ease with which a corrupt official was able to make a false impression upon a malleable surface. Further, it shows how a counterfeit image could be readily authenticated by attachment of the Great Seal. George Leak was a “Clerk in Chancery,” possessed (according to Coke’s report) of considerable creative and entrepreneurial skills. In early 1607, Leak devised and enacted a plan: fraudulently to confer “a grant of the King of certain lands” by the relatively simple expedient of forging the grant on parchment to which the (genuine) Great Seal was attached. His method was ingenious, as Coke’s relation of the facts attests:

George Leak joined two blank parchments fit for letters patent, so close together with mouth glue as they were taken for one, and did put one label through them both; then upon the uppermost he writ a true patent and got the great seal put to the label, so the label and seal were annexed to both the parchments, the one written, and the other blank, then he cut off the glewed skirts round about, and took off the uppermost thin parchment (which was written, and was a perfect patent) from the label which with the great seal did still hang to the blank parchment; and then he writ another patent within the blank parchment, and did publish it as a good patent ...<sup>69</sup>

As Coke was at pains to point out, the Great Seal “remains now annexed as it did before” and therefore Leak’s fraudulent action (while undoubtedly criminal) could not “be adjudged a counterfeiting of the great seal.”<sup>70</sup> Therefore, in Coke’s opinion (one not shared by the Chief Justice of the King’s Bench, Sir John Popham),<sup>71</sup> “this act was neither high treason nor petit treason, because it is not within either of the branches of the said statute of 25 Ed. 3.” George Leak was a criminal, but he was no traitor: “it is a very great misprision; and

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**68** Coke, *George Leak’s Case*, 12 Reports, 7: 15.

**69** Coke, *George Leak’s Case*, 12 Reports, 17.

**70** Coke, *George Leak’s Case*, 12 Reports, 16. It is relevant to the deceit perpetrated by Leak that “‘seal’ comes to mean the method of keeping things closed, or the activity of securing them, as when we seal letters, or rooms”: Thompson and Thompson, “Meaning, ‘Seeing,’ Printing,” 75.

**71** Popham died later the same year, and was replaced as Chief Justice of the King’s Bench by Sir Thomas Fleming. Anecdotal reportage suggested that Popham himself had a criminal past, prior to entry into the legal profession. Aubrey records that Popham “for several [years] addicted himself but little to the study of the laws, but [to] profligate company, and was wont to take a purse with them”: John Aubrey, *Brief Lives* (London: The Folio Society, 1975), 255; see Raffield, *Shakespeare’s Imaginary Constitution*, 174–75.

the party delinquent liveth at this day.”<sup>72</sup> Coke did not record whether Leak was subsequently executed for the common law offence of misconduct in public office or for the statutory offence of forging evidence in regard to land.<sup>73</sup> Lack of certainty over the fate of Leak notwithstanding, the symbolism of the blank parchment is worthy of further consideration. Association of the Great Seal with the inviolable, sacred authority of kingship tends to distract the reader of *George Leak’s Case* from the inherent symbolism of the blank parchment: it was susceptible to impression and impregnation, and therefore to forgery. As Peter Goodrich has noted of the use of “blank spaces, unmarked pages, and empty frames” in portraiture associated with the Reformation: “Blank space here marks a potentiality, a space of becoming upon which the sovereign subject will inscribe their fictions, their credit, or their laws.”<sup>74</sup>

## 4 Legitimacy and the image

The illegitimate impression of the original, following the act of fornication, is a metaphor that is employed extensively throughout *Measure for Measure*, implying infidelity to God, to His earthly deputy the Duke, and to the law itself. In compliance with the law (but also, in a breathtaking display of hypocrisy), Angelo rejects the plea of Isabella to pardon her brother, refusing “to remit / Their saucy sweetness, that do coin heaven’s image / In stamps that are forbid. ’Tis all as easy / Falsely to take away a life true made / As to put metal in restrained means / To make a false one.” (2.4.42–48)<sup>75</sup> The authenticity of the imprinted image was of fundamental importance in an age when counterfeiting was rife.

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<sup>72</sup> Coke, *George Leak’s Case*, 17.

<sup>73</sup> 5 *Eliz. cap. 14* “stipulated that forgers of evidences in regard to land or those who offered such forgeries in court, if they committed such a crime a second time, should be held as felons and be deprived of advantage of their clergy”: Bellamy, *Criminal Law*, 155.

<sup>74</sup> Peter Goodrich, “The Iconography of Nothing: Blank Spaces and the Representation of Law in *Edward VI and the Pope*,” *Law and the Image: The Authority of Art and the Aesthetics of Law*, eds. Costas Douzinas and Linda Nead (Chicago: The University of Chicago Press, 1999), 89–114, 89. Goodrich refers specifically to the four blank panels in the portrait of *Edward VI and the Pope* (c. 1575, unknown artist. National Portrait Gallery, London, NG4165).

<sup>75</sup> It is noteworthy that, in the First Folio, “metal” is spelt “mettle” in both “As to put mettle in restrained meanes,” and “Let there be some more test, made of my mettle”: “Measure, For Measure,” *Mr. William Shakespeares Comedies, Histories, & Tragedies* (London: Isaac Haggard and Ed. Blount, 1623), 69, 61. Bawcutt notes that “In the 16th c. ‘mettle’ and ‘metal’ were interchangeable spellings of the same word, which could mean ‘temperament or disposition’ as well as ‘metal’”: *Measure for Measure*, ed. Bawcutt: 89–90, note to line 49.

In semiotic terms, what is at stake here is the truth of the image: is it iconic or idolatrous? While the icon or true “image is the trace of an absent presence,”<sup>76</sup> the idol is the embodiment of falsehood, a tangible lie. “Heaven’s image” refers obviously to God, but in the context of the reference made by Angelo to coinage, it refers also to the king as *imago dei*. As Louis Marin stated, “The king is only truly king, that is, monarch, in images. They are his *real presence*.”<sup>77</sup> The authenticity of the monarchic image is crucial if the law (which is enforced in the name of the king) is to “capture” the subject and “bind” him to the legal institution.<sup>78</sup>

It is appropriate that the last words of an essay (any essay) should concern the accuracy of the printed word. The great Elizabethan law reporter Edmund Plowden records in his preface to the 1578 edition of *Les Commentaries, ou Reportes* that he was the victim of a kind of forgery. Plowden informs the reader that he had started to write reports of cases solely for his own personal use as a barrister, “not trusting slipper memorie, which often deceiveth his master.” He showed the manuscript to “some of the judges and others of great learning,” whereupon “great request was made to me to publishe it in printe.” Plowden was reluctant to publish, believing that law reporters then extant fulfilled this role more than adequately. But he lent the manuscript to some barrister friends, and their “clearkes and others knowinge thereof, gotten the booke into their hands.” The enterprising clerks realized that they were onto something, and passed the manuscript to “some printers who mē[an]t (as I was informed) to set them forth for gaine.” The resultant “copies were very corrupt”: they were a false transcription of the manuscript. To cut a long story short, Plowden was so unhappy with the printed version of his manuscript that he resolved “to put this booke in print my selfe.” And so, the esteemed law publisher Richard Tottell came to produce the authorized version of Plowden’s *Commentaries, ou Reportes*. The title page bore the prescribed inscription, *Cum Privilegio*, an abbreviation of the phrase asserting copyright in the publication: *Cum Privilegio ad Imprimendum Solum* (“With the Exclusive Right to Print”).<sup>79</sup> Tottell may have had

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76 Pierre Legendre, *Law and the Unconscious: a Legendre Reader*, ed. Peter Goodrich, trans. Peter Goodrich, with Alain Pottage and Anton Schütz (Basingstoke: Macmillan, 1997), 214.

77 Louis Marin, *Portrait of the King*, trans. Martha M. Houle (Minneapolis: University of Minnesota Press, 1988), Introduction, 8.

78 On “the manipulation of subjective attachment through the play of images” and “the capture of the subject by the institution” see Legendre, *Law and the Unconscious*, 258. Goodrich refers to “the theatre of attachment, an issue of the mask or role or identity that will bind the individual to law”: Peter Goodrich, *Languages of Law: From Logics of Memory to Nomadic Masks* (London: Weidenfeld and Nicolson, 1990), 263.

79 In *The Taming of the Shrew* the innuendo inherent in the Latin phrase is employed by Biondello, when he urges his master Lucentio to marry Bianca: “Take you assurance of her, *cum priv-*

the exclusive right to print Plowden's *Reports*, but after the law reporter's death in 1585, his words were misrepresented and published in a form that the author would barely have recognized as his own. The impassioned admonition of Plowden "to accept as mine, and as thought worthie by me to be set forth as myne, none other arguments or Reportes of other men, made before thending of the printing of this booke, but only those here printed" was ignored in subsequent versions of *The Commentaries, or Reports*, in which his genuine humility was supplanted by an impression of obsequiousness and insincerity that was singularly lacking in the original. For example, the honest self-effacement of "And in my simple mind passeth in suerty of lawe any former booke of Reports"<sup>80</sup> was replaced (in the 1792 edition) by the covert boast: "And (in my humble apprehension) these reports excel any former book of reports in point of credit and authority."<sup>81</sup> The equivalent in pictorial terms is a print of the original in which the subtle tones of chiaroscuro have been clumsily replaced by the unyielding certainty of black and white. The effect is to alter meaning, intention, and interpretation. In law, this can mean the difference between innocence and guilt, between liberty and imprisonment, between life and death itself.

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*ilegio ad imprimendum solum*. To th' church!" (4.4.88–89) Thompson and Thompson note that "Bianca's subsidiary role in the business is emphasized ten lines later when Biondello refers to her as 'your appendix': Ann Thompson and John Thompson, "Meaning, 'Seeing,' Printing," 72.

<sup>80</sup> Edmund Plowden, William Fleetwood, Sir Robert Brooke, *Les Commentaries, ou Reportes de Edmund Plowden un apprentice de le comen ley* (London: Richardi Tottelli, 1578), "The Prologe of the Auctor."

<sup>81</sup> *The Commentaries, or Reports of Edmund Plowden*, 2 vols. (Dublin: H. Watts, 1792), 1: "The Preface," xi.





Heinz Antor

# Race, Ethnicity and Alterity in William Shakespeare's *Titus Andronicus*

Shakespeare's first tragedy, *Titus Andronicus* (1594), counted among his most popular plays during his lifetime, only to suffer neglect during the centuries that followed. It underwent a remarkable transformation from the best-loved to the most maligned work of the Bard,<sup>1</sup> mainly because of the excess of brutality and cruelty it was often accused of.<sup>2</sup> Only recently has the play been taken more seriously again by the critics, and indeed, this early work of Shakespeare's speaks to our own time through its intense engagement with issues of alterity in a plural world of conflict between different races and ethnicities.

Shakespeare's contemporaries, just like twenty-first century audiences, lived in a period in which encounters with the cultural, ethnic, or racial other were the order of the day and sparked a lot of interest, but also created fears and uncertainty. The play was first performed in 1594, only six years after the defeat of the Spanish Armada,<sup>3</sup> with England on the brink of becoming a new imperial world power, conquering other regions of the planet and vying for predominance with other rivalling nations.<sup>4</sup> The play's late imperial context, with its reference to the conflicts between Romans and Goths as well as its engagement with the relations between victors and vanquished, appealed to contemporary audiences in early imperial England through its negotiation of intercultural encounters.<sup>5</sup> Moreover,

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1 Thomas S. Eliot called *Titus Andronicus* "one of the stupidest and most uninspired plays ever written"; quoted in Heather James, "Cultural disintegration in *Titus Andronicus*: Mutilating Titus, Vergil, and Rome," in *Violence in Drama*, ed. James Redmond (Cambridge: Cambridge University Press, 1991): 123–140, 124, 137.

2 Drakakis calls *Titus Andronicus* "arguably Shakespeare's bloodiest play," John Drakakis, "Violence in Venice," in *The Aesthetics and Pragmatics of Violence*, eds. Michael Hensen and Annette Pankratz (Passau: Verlag Karl Stutz, 2001): 19–42, 19.

3 On the Armada as a relevant context to the play cf. Dympna Callaghan and Chris R. Kyle, "The Wilde Side of Justice in Early Modern England and *Titus Andronicus*," in *The Law in Shakespeare*, eds. Constance Jordan and Karen Cunningham (London: Palgrave Macmillan, 2007): 38–57, 46, 49.

4 Fitzpatrick makes the point that "Shakespeare [...] is exploring the consequences of a country's expansionist policy which incorporates the means of its own destruction and thus provokes the violence directed against itself" (Joan Fitzpatrick, "Foreign Appetites and Alterity: Is there an Irish Context for *Titus Andronicus*?", *Connotations* 11.2–3 (2001/2002): 127–145, 138).

5 Moreover, as Ania Loomba has pointed out, "countries such as England looked towards Rome to establish their own genealogy as imperial nations." Ania Loomba, "Shakespeare and the Ra-

both England's experience with its colonizing enterprise in Ireland<sup>6</sup> as well as its discovery, exploration and incipient settlement of the New World<sup>7</sup> across the Atlantic raised questions of how to deal with the alterity of different peoples from hitherto unknown parts of the world that were addressed directly and indirectly in *Titus Andronicus*. In addition, the presence of black people in England had been on the increase for a number of years ever since 1555, a development that spawned considerable uneasiness among parts of the population and ultimately led to the deportation of so-called "blackamoors" by the Queen, Elizabeth I, in 1596.<sup>8</sup> The presence on stage of a black character such as Aaron thus further contributed to the appeal of Shakespeare's play to an audience concerned with issues of race. Internally, post-Reformation England was confronted with conflicts between Protestants and Catholics, who were the newly formed internal other ever since Henry VIII had broken away from Rome and founded the Anglican Church of England.<sup>9</sup> In what is to follow, therefore, we will look at how Shakespeare constructs otherness in the form of race and ethnicity in his first tragedy in one of his first critical engagements with alterity in intercultural contexts.

The play starts with the presentation of a pivotal moment in an imagined third-century Rome<sup>10</sup> in which a new emperor has to be found after the demise of the previous ruler and in which Titus Andronicus returns victorious from his campaign against the Goths, Rome's northern rivals and enemies. There are internal as well as external conflicts and tensions, and several borderlines separating self and other are negotiated in the first scene. Rome seems to be internally riven because there are several candidates vying for the imperial throne, with the brothers Saturninus and Bassianus claiming primogeniture, the right of the

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cial Question," in *Where Are We Now in Shakespeare Studies? III*, eds. Graham Bradshaw et al. (Aldershot: Ashgate, 2003): 34–58, 46.

**6** For the Irish contexts of the play cf. Joan Fitzpatrick, "Foreign Appetites and Alterity," *passim*.

**7** On *Titus Andronicus* and the New World cf. Gilberta Golinelli, "In Dialogue with the New: Theorizations on the New World in *Titus Andronicus*," in *Identity, Otherness and Empire in Shakespeare's Rome*, ed. Maria del Sapio Garbero (Farnham: Ashgate, 2009): 131–144.

**8** For the historical background concerning the presence of black people in Elizabethan England cf. Ian Smith, "*Titus Andronicus*: A Time for Race and Revenge," in *A Companion to Shakespeare's Works. Volume I: The Tragedies*, eds. Richard Dutton and Jean E. Howard (Malden, MA: Blackwell, 2006): 284–302, 298; and Peter Fryer, *Staying Power: A History of Black People in Britain* (London: Pluto Press, 1984), 10.

**9** For links between the play and contemporary religious struggles cf. Callaghan/Kyle, "The Wilde Side of Justice," 47 ff.

**10** For the dating of the plot cf. Nicholas Birns, *Barbarian Memory: The Legacy of Early Medieval History in Early Modern Literature* (London: Palgrave Macmillan, 2013), 60, 62.

“first-born son” (1.1.5),<sup>11</sup> and merit or “desert” (1.1.16) respectively as arguments in favor of their claims to power. This rivalry between the dead emperor’s two sons with their conflicting interpretations of a rightful and just succession is complicated by the nomination by Marcus Andronicus, a Tribune of the People, of his brother Titus. The reasons given by the tribune draw our attention away from the internal dissension between Saturninus and Bassianus by constructing a new line of conflict, one that separates the Romans from an inimical other, i. e. the Goths. Marcus’ argument in favor of Titus Andronicus as the new emperor is also based on the idea of merit, but unlike Bassianus he gives very concrete examples of why Titus should be the most deserving candidate:

He [i. e. Titus, *H.A.*] by the senate is accited home  
 From weary wars against the barbarous Goths,  
 That with his sons, a terror to our foes,  
 Hath yoked a nation strong, trained up in arms.  
 Ten years are spent since first he undertook  
 This cause of Rome and chastised with arms  
 Our enemies’ pride; five times he hath returned  
 Bleeding to Rome, bearing his valiant sons  
 In coffins from the field (and at this day  
 To the monument of the Andronici  
 Done sacrifice of expiation,  
 And slain the noblest prisoner of the Goths). (1.1.27–38)

The internally divided Romans of the first few lines “that strive by factions and by friends / Ambitiously for rule and empery” (1.1.18–19), in Marcus’ words, are here indirectly constructed as a unified civilized nation confronted with and jeopardized from outside by a non-civilized other, as simply Rome with a single cause, namely that of defending itself against and defeating the enemy, i. e. the Goths. The latter, however, are depicted as an ethnic other defined by their lack of culture, which is why they are referred to as “barbarous.” A binary structure here creates the impression of a clear demarcation between self and other and of Titus Andronicus rightfully and valiantly overcoming the adversary by sacrificing even his own flesh and blood.<sup>12</sup> Marcus also refers to his brother as “Andronicus, surnamed Pius” (1.1.23), thus turning him into a representative of Roman culture

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**11** All quotations from the play are taken from the following edition: William Shakespeare, *Titus Andronicus*, ed. Jonathan Bate. The Arden Shakespeare. Third Series (London: Routledge, 2000).

**12** As Pearson points out, “[t]he first act of *Titus Andronicus* seems to establish at once the central opposition between civilization and savagery”; Jacqueline Pearson, “Romans and Barbarians: The Structure of Irony in Shakespeare’s Roman tragedies,” in *Shakespearean Tragedy*, ed. Malcolm Bradbury and David Palmer (London: Edward Arnold, 1984): 158–182, 169.

because he underlines the fact that Titus bears the same name as Vergil's "Pius Aeneas," i.e. Rome's mythical founder. 'Pius' here signals strict observance of the customs and rules of Rome, so that Titus is constructed as a champion of Roman culture and opposed to the by implication uncivilized Goths, which strengthens the binary structure presented here.

In his first speech, Titus himself once more appears as somebody who is 'pius' indeed in as far as he not only lauds his own country but seeks to act in strict accordance with its cultural patterns when he wants to bury his fallen sons as quickly as possible in order not to force them to linger on the banks of Styx but instead allow them to find peace among the dead. We are confronted with a man who is completely at home in the epistemic universe of Rome. This is also true of his son Lucius who asks Titus to

Give us the proudest prisoner of the Goths,  
That we may hew his limbs and on a pile  
*Ad manes fratrum* sacrifice his flesh  
Before this earthly prison of their bones,  
That so the shadows be not unappeased,  
Nor we disturbed with prodigies on earth. (1.1.99–104)

It is not mere personal animosity that is to be gratified here. What Lucius demands is an act of revenge as resulting from the cultural traditions of the Romans according to which, in Lucius' understanding at least, only the sacrifice of an enemy can prevent the slain sons of Titus from having to roam and haunt the world as ghosts. Titus' and Lucius' words can thus be understood as culturally embedded in the epistemic context that has bred them and that strictly distinguishes between Rome and its others.

This logic is interrupted, however, when Titus decides to sacrifice Alarbus, the eldest son of Tamora, Queen of the Goths, and the latter kneels in front of the Roman general in order to beg for her son's life:

Stay, Roman brethren, gracious conqueror,  
Victorious Titus, rue the tears I shed,  
A mother's tears in passion for her son!  
And, if thy sons were ever dear to thee,  
O, think my son to be as dear to me.  
Sufficeth not that we are brought to Rome  
To beautify thy triumphs, and return  
Captive to thee and thy Roman yoke?  
But must my sons be slaughtered in the streets  
For valiant doings in their country's cause?  
O, if to fight for king and commonweal  
Were piety in thine, it is in these.

Andronicus, stain not thy tomb with blood.  
 Wilt thou draw near the nature of the gods?  
 Draw near them then in being merciful.  
 Sweet mercy is nobility's true badge:  
 Thrice noble Titus, spare my first-born son. (1.1.107–123)

Tamora here tries to force Titus out of his purely Romano-centric thinking by coming up with a transcultural argument of common humanity which stresses not the differences and the animosity between Romans and Goths but what they have in common. When she refers to herself as a mother, she ignores her culturally specific position as a queen and a Goth and instead refers to the transcultural universal feelings of love parents have towards their children. Tamora thus claims that she as a mother shares identical parental emotions with Titus who is a father. When she asks whether it is not sufficient for her and her people to be paraded through the streets of Rome she claims by implication that the envisaged killing of Alarbus would be inequitable in as far as it would exceed the requirements defining that which would be adequate and appropriate. Yet again, she underpins her argument by referring to a commonality between herself and Titus, and in doing so she also challenges the Roman general to take up a position of cultural relativism by arguing that her sons, in fighting against Titus and the Romans, did exactly what he was doing, i. e. defend their country. This is described by her to be an act of piety both in her own and in Roman society. Tamora thus, in an echo of Marcus' description of Titus, claims the very same quality for her sons as that attributed to "Andronicus, surnamed Pius." The strictly binary structure of cultural difference and political animosity conjured up in the Romans' speeches is thus juxtaposed to a different logic which transcends the thinking in irreducible and insurmountable alterity and sees difference as the outcome of sameness, with Tamora and Titus showing the same parental love to very different children who fought the same patriotic battles for very different peoples.

Such a transcendence of cultural difference and alterity proves to be beyond Titus, who turns out to be caught up in his culturally specific thinking. He counters Tamora's argument by referring to his dead sons and claiming that "religiously they ask a sacrifice" (1.1.127). Titus Andronicus tries to live up to his surname Pius here by stating that killing Alarbus is an act of piety towards his slain sons, but, as Jonathan Bate has pointed out in his annotation of this passage in the Arden edition of the play, "Rome prided itself on not allowing human sacrifice; this is the first sign that the city is becoming barbaric in its practices" (135, n. 127). Not only is Titus unable to transcend his own specific horizon of understanding, but he also misinterprets Roman norms of what is required and al-

lowed. His refusal to heed Tamora's plea is a symptom of his denial of a humanity shared beyond the narrow borderlines that people construct to separate themselves from human others. He refuses to acknowledge the essential sameness of human beings in a rhetorical manoeuvre of cultural retrenchment that is extremely dubious in view of the fact that according to Pliny the Elder, human sacrifice had already been abolished by senatorial decree in 97 BC.<sup>13</sup> After Titus' decision to have Alarbus killed in spite of Tamora's pleas, Lucius gives the order to do so in telling words:

Away with him, and make a fire straight,  
And with our swords upon a pile of wood  
Let's hew his limbs till they be clean consumed. (1.1.130–132)

Obviously, the other is not only to be punished, but completely annihilated. The alterity of the 'barbarian' Alarbus is seen to be something that needs to be "clean consumed" by fire, with overtones of the impure having to be destroyed in order to guarantee the predominance of 'unspoilt' Roman culture.

Tamora's reaction is telling. She exclaims "O cruel, irreligious piety!" (1.1.133), thus deconstructing Titus' surname of 'Pius' through her use of an oxymoronic phrase. We are thus made to doubt Titus' status as a paragon of Roman culture and civilization, and this is even reinforced by the reactions of Tamora's sons:

CHIRON:  
Was never Scythia half so barbarous!  
DEMETRIUS:  
Oppose not Scythia to ambitious Rome. (1.1.134–135)

Scythia, in Shakespeare's day, was the apotheosis of barbarity in the contemporary audience's imagination, with the cruel and inhuman Tamburlaine beginning his career as a Scythian shepherd in Marlowe's play. Chiron now describes Rome as at least twice as barbarous as Scythia, and Demetrius also points out that in its imperial presumption Rome surpasses Scythia by far. The binary logic inherent in the earlier speeches of the Romans, then, is questioned here, and civilized Rome now is constructed as its very opposite, i.e. an example of extreme barbarism. Civilized self and primitive other turn out not to be as clearly separable as previously claimed.

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**13** Pliny, *Natural History. Volume VIII: Books 28–32* (Cambridge, MNA/London: Harvard University Press, 1963), 30.3.12.

It is Titus' inhumane ignoring of Tamora's pleas and his refusal to see the common humanity between himself and his defeated enemy that triggers the revenge plot of the play. It is no coincidence that the word is first mentioned by Demetrius in the very same speech in which he refers to Rome as incomparably worse than Scythia when he tells Tamora that she should hope for "opportunity of sharp revenge" (1.1.140). Gone now is Tamora's transcultural idea of a common humanity between Rome and its Gothic other, and instead binary thinking is reintroduced in terms of irreconcilable and murderous opposition, the result being that both sides prove to be barbaric in what follows. Each side insists on its position, and the audience is left in doubt as to whether there can be a clear borderline between civilization and barbarism. Thus, when Lucius returns and informs his father Titus of Alarbus' death by telling him that "we have performed / Our Roman rites" (1.1.145–146), this has a dubious ring to it because it questions Roman *humanitas*.

What follows is devoted to the succession to the imperial throne, and it takes up again the internal rifts within Rome's society referred to right at the beginning. The Romans are divided among themselves, and rather than a unified self, Rome displays various factions vying for power. Titus' decision in favor of Saturninus is based unthinkingly on the merely formal considerations of primogeniture, and when the latter announces that he intends to marry Lavinia even though she is already married to Bassianus, Titus does not contradict. He even takes Saturninus' side and kills his own son Mutius who opposes the new emperor's and his father's position. Once again, Titus acts in a barbarous way and puts a formalist 'piety' above more humane considerations. In killing his own son, Titus once more questions the validity of the distinction between civilized Roman and barbaric other. The accompanying differentiation between inside and outside, with order and civilization to be found within the walls of Rome and the primitive outside the borders of the empire, is further questioned when Saturninus, confronted with opposition to his plans to marry Lavinia, decides to marry Tamora instead. He feels attracted to her because, as he stated earlier, she is

A goodly Lady, trust me, of the hue  
That I would choose were I to choose anew.  
[to Tamora]  
Clear up, fair queen, that cloudy countenance (1.1.265–267)



It is Tamora's whiteness Saturninus is attracted to,<sup>14</sup> and for the first time in the play skin color is mentioned here, which prepares for the role of race in the depiction of Aaron later on. In view of the previous marriage of Lavinia turning into an obstacle to his initial marriage plans, Saturninus proposes to Tamora in telling words:

And therefore, lovely Tamora, Queen of Goths,  
That like the stately Phoebe 'mongst her nymphs  
Dost overshadow the gallant'st dames of Rome,  
If thou be pleased with this my sudden choice,  
Behold, I choose thee, Tamora, for my bride,  
And will create thee Empress of Rome. (1.1.320 – 325)

All borderlines have collapsed now and the supposedly barbaric Gothic other has not only breached the walls of Rome but, in an ironic twist of events, conquered the imperial throne. Within just over 300 lines, at the beginning of this play, a seemingly stable binary structure with clear-cut categories has become hybridized and turned into a complex situation in which culture and civilization can no longer be so clearly demarcated from barbarism and self and other are no longer so easy to distinguish.

Titus Andronicus fails to give up his thinking in black and white terms, however, and refuses to have his son Mutius buried in the family tomb. Significantly, it is only when Marcus admonishes his brother by saying "Thou art a Roman, be not barbarous" (1.1.383) that Titus relents and allows Mutius to be buried after all. The incident further blurs the borderline that excludes the barbaric from within the walls of Rome.

It is only after the problem of the changing and tenuous character of the unstable borderlines defining alterities has been dealt with over 500 lines that another main character of the play, Aaron 'the Moor,' raises his voice for the first time. He is characterized by his multiple alterity. He is a member of the group of the Goths, but even there, he has a special outsider status in as far as he is a slave and a black man.<sup>15</sup> However, he has also been Tamora's lover for quite some time, and thus, when he presents himself in his first speech, he declares

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**14** Royster considers her to be "hyperwhite." Francesca T. Royster, "White-limed Walls: Whiteness and Gothic Extremism in Shakespeare's *Titus Andronicus*," *Shakespeare Quarterly* 51 (2000): 432–455, 432.

**15** Aebischer therefore talks about "the play's multiplicity of racial positions – its 'Othering' not only of the Moor but also of the Nordic Goths." Pascale Aebischer, *Shakespeare's Violated Bodies: Stage and Screen Performance* (Cambridge: Cambridge University Press, 2004), 112.

that he will use his mistress's rise to the throne of Rome to overcome his status as an outsider.

Then, Aaron, arm thy heart and fit thy thoughts  
 To mount aloft with thy imperial mistress,  
 And round her pitch whom thou in triumph long  
 Hast prisoner held, fettered in amorous chains  
 And faster bound to Aaron's charming eyes  
 Than is Prometheus tied to Caucasus.  
 Away with slavish weeds and servile thoughts!  
 I will be bright, and shine in pearl and gold  
 To wait upon this new-made empress.  
 To wait, said I? – to wanton with this queen,  
 This goddess, this Semiramis, this nymph,  
 This siren that will charm Rome's Saturnine  
 And see his shipwreck and his commonweal's. (1.1.511–523)

The social and categorical system with supposedly clear-cut lines of distinction between different classes and races not only is about to be openly changed in this speech, but it has also never been quite what it seemed, with the queen constructed as a prisoner in chains and the slave being her gaoler. Not only is the distinction between inside and outside questioned, but also the difference between above and below. The demarcation lines constructed by human beings to create an other in order to position themselves are shown to be precarious, ephemeral and subject to change. Aaron uses the old categories of distinction while at the same time destabilizing them. For example, in comparing Tamora to the beautiful but cruel Assyrian queen Semiramis, he conjures up associations both of an early civilization and of the barbarous methods used by this queen. Like Tamora, Aaron advocates the use of equivocation, predicting the downfall of Rome as the result of the animosity the Goths still harbor behind the peaceful façade they produce in order to deceive the Romans.

Titus Andronicus may have behaved in a way that can be described as barbarous and that challenges the stereotype of Rome as the epitome of civilization, but at least Aaron seems to live up to stereotypical conceptualizations of black negative others when he incites Tamora's sons Chiron and Demetrius to murder Bassianus and rape Lavinia. He describes himself as "cunning" and full of "villainy" (2.2.6–7) and significantly, when he discloses his plans to Tamora, he includes a reference to hair and thus, indirectly, to his race in his self-characterization:

What signifies my deadly standing eye,  
 My silence and my cloudy melancholy,

My fleece of woolly hair that now uncurls  
 Even as an adder when she doeth unroll  
 To do some fatal execution?  
 [...]  
 Vengeance is in my heart, death in my hand,  
 Blood and revenge are hammering in my head. (2.2.32–39)

When Tamora reacts with delight to this speech, she also addresses Aaron with a racial epithet and calls him “my sweet Moor, sweeter to me than life” (2.2.51). Between them, Tamora and Aaron here confirm conventional negative conceptualizations of the racial and ethnic other. When they are confronted by Bassianus and Lavinia in the forest, the two Romans reiterate the xenophobic and racist stereotypes of their own culture. Lavinia quite correctly accuses Tamora of intending to commit adultery with Aaron, but she does so by disparagingly addressing them as “your Moor and you,” thus foregrounding Aaron’s blackness and by implication establishing a causal link between race and sexual incontinence. Bassianus becomes even more explicit in this respect:

Believe me, queen, your swart Cimmerian  
 Doth make your honour of his body’s hue,  
 Spotted, detested and abominable.  
 Why are you sequestered from all your train,  
 Dismounted from your snow-white goodly steed,  
 And wandered hither to an obscure plot,  
 Accompanied but with a barbarous Moor,  
 If foul desire had not conducted you? (2.2.72–79)

Interestingly, Tamora as a white queen here is constructed into the position of a woman whose purity is threatened by pollution from the racial other. Her own ethnic alterity is ignored in view of the seemingly stronger claims of the need to protect whiteness. Even Tamora’s horse is described as white, and her dismounting from it is likened to a descent into darkness in terms both of morals and of civilization, with Aaron being depicted as a barbarian.<sup>16</sup> Lavinia adds insult to injury when she disparagingly tells her husband that they should leave and “let her joy her raven-colored love” (2.2.83). Tamora reacts full of indignation, and it is not without good cause that she complains to her sons about how the Roman couple has treated her:

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**16** Sale also cites Bassianus’ speech and observes that “it imputes racism to the Romans.” Carolyn Sale, “Black Aeneas: Race, English Literary History, and the ‘Barbarous’ Poetics of *Titus Andronicus*,” *Shakespeare Quarterly* 62.1 (Spring 2011): 25–52, 28.

And then they call me foul adulteress,  
 Lascivious Goth, and all the bitterest terms  
 That ever you did hear to such effect.  
 [...]
   
 Revenge it as you love your mother's life,  
 Or be ye not henceforth called my children. (2.2.109–115)

Understandable as her frustration at the racist slurs she has been submitted to may be, Tamora's reaction, with her inciting her children to take revenge for her, is problematic in as far as it will produce a further turn of the spiral of brutality that is so characteristic of the play, and it is a further pointer in the direction of barbarism. Chiron and Demetrius immediately react to their mother's speech, and they stab Bassianus. Unsurprisingly, Lavinia produces a barrage of negative epithets depicting Tamora as the apotheosis of primitivism:

Ay, come, Semiramis, nay, barbarous Tamora,  
 For no name fits thy nature but thy own. (2.2.118–119)

In what follows, Tamora, Chiron and Demetrius behave in a barbarous way indeed. The sons prevent the mother from stabbing Lavinia only in order to be able to rape her. In a second scene of pleading, Lavinia now tries to persuade Tamora to stop her sons:

Lavinia: O Tamora, thou bearest a woman's face –  
 Tamora: I will not hear her speak; away with her! (2.2.136–137)

Lavinia's argumentative strategy here is exactly the same as that used by Tamora when she pleaded for the life of her eldest son Alarbus. Lavinia refers to what she has in common with Tamora beyond all their differences, namely, in this case, their status as women. Lavinia thus hopes to be able to trigger an empathetic reaction in Tamora, with the latter putting herself in Lavinia's place and consequently saving her from the rape intended by her sons. Lavinia tries to place herself with Tamora on one side of a borderline that separates the two women from a male other while for Tamora, another line of demarcation is more important, namely that between herself and her family on the one hand and the Andronici on the other, which is why, like Titus before her when she was doing the pleading, she will not listen and remains adamant. Significantly, the other is deprived here by the queen of an effective voice and is all but annihilated. In a last attempt, Lavinia tries to persuade Tamora by an appeal to compassion:

O be to me, though thy hard heart say no,  
Nothing so kind, but something pitiful. (2.2.155–156)

Yet again, Lavinia here argues just like Tamora in her plea to Titus, in which she appealed to the Roman general's mercy, but this attempt is just as unsuccessful here as in the earlier scene, and Tamora explicitly refers to Titus' unrelenting attitude to justify her own. Tamora is only satisfied once Lavinia has been taken away and announces that "now will I hence to seek my lovely Moor" (2.2.190). For the time being, then, while stereotypes about the primitivism and barbarism of the racial and ethnic other seem to have been confirmed, our confidence in the superiority of white Roman civilization has also been shaken.

Aaron himself is only allowed another four lines in the second act in which he announces his intention of making Titus Andronicus' sons Quintus and Martius appear to be the murderers of Bassianus (2.2.206–208), a devilish plan which works out perfectly when Aaron, in apparent corroboration of the suspicions raised against the two brothers, finds the money-bag he has previously hidden himself (2.2.280). It is the very sparseness of the black man's appearances and speeches on stage, the indirect proportionality in this phase of the play between Aaron's important and decisive agency and the negligible presence of his voice, which is almost an absence, that contributes to the creation of an impression of ominous threat in connection with the racial other.

However, the internal divisions among the Romans are not neglected either. For example, when he tries to rescue his two brothers from being wrongfully put to death for the murder of Bassianus, Lucius is banned for life from Rome. As Titus Andronicus' reaction shows when he hears about this, the conventional constructions of Rome as the place of order and civilization become more and more doubtful:

Why, foolish Lucius, dost thou not perceive  
That Rome is but a wilderness of tigers?  
Tigers must prey, and Rome affords no prey  
But me and mine. How happy art thou then  
From these devourers to be banished. (3.1.53–57)

The wilderness now is to be found right inside the walls of Rome so that once again inside and outside, civilized self and primitive other have become indistinguishable and the borderlines on which the basic categories of such binary thinking are founded have become blurred even more.

Meanwhile, Aaron's and Tamora's campaign against the Andronici continues, and the black man's negative characterization is based on his use of lies and equivocation, such as when he deceives Titus by telling him that his two

sons' lives might be spared in exchange for the general's chopped-off hand. When Titus joyfully accepts this supposed offer, his choice of words is significant because, in the imagery used, it clearly links Aaron's deceitful behavior to this skin color:

O gracious emperor, O gentle Aaron!  
Did ever raven sing so like a lark  
That gives sweet tidings of the sun's surprise? (3.1.158–160)

The juxtaposition of the raven to the lark and the concomitant opposition between blackness and light, it is hinted here, might be dissolved, but Titus will be cruelly disenchanted when his hand is brought back to him together with his two sons' heads. Conventional white racist stereotypes that associate blackness with evil are corroborated here, then. Interestingly, though, Aaron literally glories in his evil deed and, in an obstinate gesture of negative self-affirmation, turns it into a Manichaean element of racial identity constitution:

O, how this villainy  
Doth fat me with the very thoughts of it.  
Let fools do good and fair men call for grace,  
Aaron will have his soul black like his face. (3.1.203–206)

The negative stereotyping of black people here has turned into a self-fulfilling prophecy, with Aaron not only reiterating the conceptual link between blackness and evil, but positively affirming it. Elizabethan audiences may have read this as proof of the accuracy of racial stereotypes, but this might also rather be seen as a strategy of self-liberation from the fetters created by the very prejudices white people harbor against blacks, as a means of escape from the mechanisms that construct the non-white subject into a subaltern position.<sup>17</sup> After all, it is through his affirmation of evil and the throwing overboard of moral considerations that the slave here gains considerable agency and becomes the director of a campaign of revenge directed against the conqueror.

While at the beginning of the play, victorious Titus Andronicus returned to Rome to parade the vanquished enemies in the streets of the imperial center, now, due to internal divisions in Rome, one of the general's sons threatens to

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17 White makes a similar point when she argues that, "[r]endered ethically and morally unsound because of his hue, Aaron is free to wage war against Roman society, since he has none of the familial and communal ties of those around him. That he wishes to avenge himself on a society that considers him little more than an animal is not surprising." Jeannette S. White, "Shakespeare's *Titus Andronicus*," *Explicator* 54.4 (1996): 207–209, 208.

make common cause with the Goths in order to attack the city and thus solve its inner conflicts in his favor. The lines of distinction between friend and foe, self and other become ever more difficult to discern.

To a twenty-first century audience, it is in situations in which Aaron falls victim to racist discrimination that this black character, who most of the time is depicted as an arch-villain, takes on human traits, and this is also true here where we can feel him smarting under white Rome's racism. The great majority of Shakespeare's audience most probably gleefully enjoyed the racist attacks on black people in the play, but even they must have been jolted out of the automatism of racist thinking by the scene in which the nurse announces the birth of Tamora's and Aaron's son. The nurse enters "with a blackamoor child," as the stage direction has it, and immediately refers to it as "our empress' shame and stately Rome's disgrace" (4.2.61), "[a] devil" (4.2.66), and she describes it to Aaron as

A joyless, dismal, Black and sorrowful issue.  
Here is the babe, as loathsome as a toad  
Amongst the fair-faced breeders of our clime.  
The Empress sends it thee, thy stamp, thy seal,  
And bids thee christen it with thy dagger's point. (4.2.68–72)

The baby here, due to its skin color, is seen only as the outward manifestation of Tamora's infidelity and adultery, and it is obviously considered to be a product of miscegenation. Interestingly, the nurse does not call the baby loathsome *per se*, but only within a specific context, namely a white one. The baby's supposed loathsomeness, then, is not an essential and inherent quality, but a relative one. Only if perceived from a limited and specifically white position can its otherness be constructed into a negative quality. It is the white mother Tamora who reacts in an unnatural and inhuman way by having the nurse ask Aaron to kill the baby, and it is the black man who, in this situation, is the only character on stage who preserves his humanity, as can be seen in his reaction to the nurse's words:

Zounds, ye whore, is black so base a hue?  
[to the baby]  
Sweet blowze, you are a beauteous blossom, sure. (4.2.73–73)

For a brief moment, we catch a glance of a doting father behind the façade of the black villain, and when he defends his child against Demetrius' attempt at killing it, this turns into a spirited celebration of blackness and a taunting challenge

to Tamora's sons who are disparagingly constructing Aaron into a position of racial inferiority:

Ye white-limed walls, ye alehouse painted signs!  
Coal-black is better than another hue;  
For all the water in the ocean  
Can never turn the swan's black legs to white,  
Although she lave them hourly in the flood. (4.2.99–105)

What happens here is a remarkable toppling of the foundations of white racist discourse in which whiteness is essentialized and considered to be the natural color of human beings and thus the norm, with non-white people constituting an aberration. In Aaron's speech here, however, Tamora's sons are compared to walls and alehouse signs that are not white to begin with, but need to be painted in order to become so, and while paint can always be washed off, Aaron claims, blackness can't. He has turned the conceptual tables on the white racists in the play, de-essentialized whiteness and claimed blackness as the authentic color of human beings.

When Chiron worries about the scandal his mother's black baby will create, fearing that "Rome will despise her for this foul escape" (4.2.115) and claiming that "I blush to think upon this ignomy" (4.2.117), Aaron once again pits blackness against whiteness and makes the latter come out the worse for it:

Why, there's the privilege your beauty bears.  
Fie, treacherous hue, that will betray with blushing  
The close enacts and counsels of thy heart.  
Here's a young lad framed of another leer:  
Look how the black slave smiles upon the father,  
As who should say, 'Old lad, I am thine own.'  
[...]  
Nay, he is your brother by the surer side,  
Although my seal be stamped in his face. (4.2.118–123, 128–129)

Aaron here privileges blackness over whiteness. He argues that black people clearly advertise their identity while being more inscrutable than white people because it is more difficult to discern when they blush, which in certain situations can give them an advantage over others. Indeed, when he refers to his son as a "black slave," this can only be understood as an ironic remark, signaling the baby shall not end up in a subaltern position.

In this scene, we are allowed a glimpse of a different Aaron, who preserves his humanity when confronted with his baby and defends it against the murderous intentions of all the others. In his proud affirmation of his skin color and his



offensive revaluation of the hierarchies of white racism, he grows in stature and acquires a certain dignity. Shakespeare enables us to go beyond conventional stereotypes and put ourselves in the position of people normally constructed as negative others. However, we are only allowed a fleeting moment in which we can see this different, altogether more positive side of the other. Having almost managed to make us see him with different eyes, Aaron reverts into more stereotypical barbaric behavior when he kills the nurse in order to get rid of a witness to Tamora's giving birth to a black child. Nevertheless, together with the earlier problematization of the clear-cut binary dichotomy between civilized Rome and its barbaric others, this scene further contributes to a differentiation of conventional frameworks that obviously simplify a reality that is much more complex than the concepts we devise for it can be. Just as we have been shown barbaric elements in the behavior of Titus Andronicus, the champion and defender of civilized white Rome, so are we confronted here with humane elements in Aaron, the alleged barbarian.

When Aaron devises a plan to save his baby by exchanging it for another mixed couple's white child and using the latter as a substitute heir to the throne, this has serious consequences for the perception of racial alterity:

Not far one Muly lives, my countryman:  
 His wife but yesternight was brought to bed;  
 This child is like to her, fair as you are.  
 Go pack with him and give the mother gold,  
 And tell them both the circumstance of all,  
 And how by this their child shall be advanced  
 And be received for the emperor's heir,  
 And substituted in the place of mine,  
 To calm this tempest whirling in the court;  
 And let the Emperor dandle him for his own. (4.2.154–163)

The notion of a seemingly white child having a black father problematizes the recognizability and identifiability of the racial other and it opens up the disconcerting possibility of the black other on the throne of white Rome. The threat of the usurpation of the supposed center of civilization by the barbaric other is a serious option here. Aaron's defense of his son now takes on the characteristics of a rebellion motivated by anti-racist sentiment, such as when he addresses his son in the following words:

Come on, you thick-lipped slave, I'll bear you hence,  
 [...] and bring you up  
 To be a warrior and command a camp. (4.2.177–182)

The fact that Aaron here describes his child through the combination of a derogatory adjective and a noun referring to the subaltern position of blacks clearly marks this as an obstinate war-cry answered by one of the victims of racism determined to effect a change.

The latter part of the play is again devoted to the internal divisions of the Romans, the question of how they deal with the othernesses within their own society. Saturninus, for example, tries to counter Titus' complaint about the lack of justice with a legalistic argument:

Buzz in the people's ears, there nought hath passed  
 But even with law against the wilful sons  
 Of old Andronicus. [...]  
 [...]  
 As who would say, in Rome no justice were. (4.4.7–9, 20)

The new emperor here uses the same formalistic approach as Titus did in act 1, when he recommended the people should give their vote to Saturninus rather than to Bassianus, but the fact that no good has come from this decision and that Rome is in greater turmoil than ever before in the play does not bode well, nor does the fact that the spiral of killing and brutality continues, such as when the unfortunate clown acting as a messenger for Titus Andronicus and bringing a letter from him to Saturninus is apprehended and hanged by the latter. Almost simultaneously, it is announced that Lucius has returned from banishment as “warlike general of the Goths” (4.4.68), so that at the end of act 4, things seem to be coming to a head and the various conflicts of the play are about to finally explode.

The last act of the play begins with a scene set in the camp of Lucius and his Goths and yet again demonstrates the shiftiness of borderlines between friend and foe when one of the Goths addresses Lucius as “[b]rave slip sprung from the great Andronicus / [w]hose name was once our terror, now our comfort” (5.1.9–10). The only demarcation line that always seems to hold fast in the minds of the characters in this play is the racist one that distinguishes white from black and constructs the latter into an inferior position. This becomes clear when the second Goth appears and presents Aaron whom he discovered and arrested because he could hear the crying of the moor's baby. Ironically, it is his child, the only being that has been able to bring out the humane side in him, that unwittingly betrays Aaron. The usual barrage of invective and racist abuse is poured down on the black man by the white Goths and Lucius. Aaron is vilified as “the incarnate devil” (5.1.40) with a “fiend-like face” (5.1.45), but when Lucius threatens to have him and his baby hanged, he once again shows his paternal feelings and offers to tell the whole truth in exchange for the life of his

child. Like his mistress Tamora, he has many barbaric characteristics, but when it comes to their children, these two become selfless and relentless defenders of their offspring, unlike Titus Andronicus who, although he is supposed to be a civilized Roman, has killed his son Mutius because the latter dared to contradict him. Nevertheless, Aaron never manages to escape the negative labelling as a barbarian, even in his more humane moments.

When Aaron tells Lucius the truth about Lavinia's rape and discloses the names of the perpetrators the young Roman exclaims, "O barbarous, beastly villains, like thyself!" (5.1.97) and asks the black man how he can "say all this and never blush?" (5.1.121), upon which Aaron answers: "Ay, like a black dog, as the saying is" (5.1.122), thus ironically establishing a link with the color of his skin himself. When Lucius asks him whether he is "not sorry for these heinous deeds" (5.1.123), Aaron launches into a defiant glorification of evil, gleefully revelling in an enumeration of all the various kinds of crimes he has committed, only to finish with the regret that "nothing grieves me heartily indeed / But that I cannot do ten thousand more" (5.1.143–144). The scene can of course be read as further evidence of Aaron's barbarity, but it can just as well be understood in terms of a constantly othered man, and one in a desperate situation to boot, defiantly trying to make his peace with the realm of alterity to which he seems to be inescapably banned.

Significantly, the other is silenced as Aaron is gagged and, like Lavinia before him, deprived of a voice. This is repeated in a later scene, in which Titus has Tamora's sons Chiron and Demetrius arrested and tells Publius to "stop their mouths if they begin to cry." (5.2.161). In this revenge tragedy, which is also an example of the theater of cruelty, the spiral of brutality has almost reached its greatest spin. At this moment it is characterized by the speechlessness that rules between the warring factions, with the respective other no longer being granted the right to express its own positionality. Thus, when he is about to kill Chiron and Demetrius, Titus Andronicus enters together with Lavinia, and almost his first words are, "Sirs, stop their mouths; let them not speak to me" (5.2.167). He then, in one of his longest speeches in the play, gleefully and in great detail describes to Tamora's sons how he will turn them into human pastry and feed them to their own mother. The distribution of words here does not only tell us something about the distribution of power, but, first and foremost, it becomes an indicator of how alterity is negotiated.

What follows is the infamous scene of the cannibalistic banquet during which Titus feeds Tamora her own sons, kills first Lavinia and then Tamora before being killed himself by Saturninus who in turn is killed by Lucius. By now, it seems, the only way of coping with the other is through its complete annihilation. Cannibalism is an extreme example of this because it entails the ingestion

of the other which is completely destroyed in the process, ceases to be an other and instead becomes part of the consuming self. Cannibalism has always been a taboo, one of the strongest signs of inhuman and depraved barbarism, but the clear attribution of this epithet to any one of the characters on stage here becomes problematic. It is of course Tamora who commits the act of cannibalism, but she does not know that that is what she is doing. Instead, Titus does know, and it is he who has engineered the whole process. The woman who has been branded as a barbarian here is made to unknowingly perform a barbarian deed, but from an ethical point of view, this does not at all confirm her presumed status as a primitive, but rather marks Titus Andronicus, the master-mind behind this perverse dinner, as the real barbarian. Once again, conventional conceptual borderlines have to be redrawn here.

After the mass murder of the cannibalistic banquet, general chaos rules and Rome is in dire need of the re-establishment of order. The social fragments of its various factions have to be put together again if Rome is not to disintegrate into a jumble of irreconcilable alterities. This comes out in Marcus' immediate reaction to the slaughter and carnage:

You sad-faced men, people and Sons of Rome,  
By uproars seven, as a flight of fowl  
Scattered by winds and high tempestuous gusts,  
O let me teach you how to knit again  
This scattered corn into one mutual sheaf,  
These broken limbs again into one body. (5.3.66–71)

When these words are uttered, the stage is strewn with real bodies and the body politic is in greatest danger. A Roman Lord asks how all this could have come about, and Lucius clears everything up in an attempt to re-establish order and tells his fellow Romans about the misdeeds of Chiron, Demetrius and their accomplices. He then constructs himself into the position of the healer and unifier of Rome able to establish peace both within and without. Despite the injustice of his banishment, Lucius argues, he has always remained loyal to his native Rome, and, what is more, he has even managed to turn its enemies into friends, to bridge the faultlines of hostilities between Romans and Goths. Significantly, he argues that it was the authenticity of his tears that mellowed the former enemies (5.3.103–111). He thus tells a tale in which awareness of a common humanity beyond the divisions of ethnic otherness is acknowledged and enables compassion, which in turn becomes the basis of a future peace. In Lucius' version of events, then, it is exactly what failed between Titus and Tamora as well as between Tamora and Lavinia that worked in the case of his encounter

with the Goths, viz. the recognition of a shared condition as human beings that can unite people, be they ever so different.

However, Lucius here speaks as a politician who wants to become the new emperor. He produces nothing but political rhetoric, and the glimpse we get here of a utopia in which all differences are overcome is nothing but an idealized version of events, which is underlined when Marcus tries to support his nephew and begins to speak. He shows them Aaron's baby, "[t]he issue of an irreligious Moor," (5.3.120) and depicts himself and Lucius as the innocent victims of the black man's devious stratagems, upon which Emillius hails Lucius as the new emperor of Rome. Marcus cleverly presents the Romans with a bodily representation of racial otherness and links this with a tale of deceit and villainy. While Lucius talks about himself as someone who overcomes ethnic borderlines and unites people, his uncle makes it clear that some borderlines, particularly racial ones, need to be upheld in order to safeguard Rome against the irreconcilable evil and otherness of people like Aaron. Peace with the Goths may be possible after all because they are white, but peace with the Moors, never. We are caught up again in the fetters of racist thinking.

Lucius now is the new emperor, and as such he needs to define his new identity. This happens with reference to the negative racial other. His uncle Marcus greets him as the new imperial ruler and in telling words links this immediately with a scathing reference to Aaron:

Lucius, all hail, Rome's royal Emperor!  
 [to others] Go, go into old Titus' sorrowful house  
 And hither hale that misbelieving Moor  
 To be adjudged some direful slaughtering death  
 As punishment for his most wicked life. (5.3.140–144)

The negative energies and sentiments created in the course of the play need to be canalized and drained, and Aaron is a welcome receptacle for them. He came to Rome as a prisoner of war, and although he undoubtedly is the instigator of some of the most heinous crimes committed in the play, he is loyal to his queen and lover and to her followers and he heroically defends his baby. His deeds can be regarded as an act of resistance against a racist conqueror. He may be a perpetrator, but he is also a victim of racist propaganda. Titus promises to re-establish internal harmony. At the same time, however, he makes a spectacle out of the negative other, the outsider Aaron, by condemning him to die a terrible death. In a last act of defiance, the latter reaffirms his will to do evil, only regretting that he will now no longer be able to do so. What many an Elizabethan playgoer will have understood as a final confirmation of the

blackness of the black man's soul, however, can also be seen as an ultimate act of anti-imperialist as well as anti-racist rebellion.

As far as Tamora is concerned, just as in the case of Aaron, the other is to be totally annihilated. The play ends with a short speech by Lucius, in which the new emperor posthumously condemns the queen of the Goths by depriving her of a proper burial:

As for that ravenous tiger, Tamora,  
 No funeral rite, nor man in mourning weed,  
 No mournful bell shall ring her burial,  
 But throw her forth to beasts and birds to prey:  
 Her life was beastly and devoid of pity,  
 And being dead, let birds on her take pity. (5.3.194–199)

Tamora here is banished into the realm of utter alterity. She is treated like carrion. The other here is deprived of the status of a human subject and is treated like an object instead. The last word of the play is “pity,” and Tamora's lack of pity is used by Lucius as a justification of the posthumous punishment he is meting out. But this last speech of the play clearly suffers from the one-sidedness of an imperialist logic, which privileges the perspective of the conqueror and, in the manner of the victor, ignores the point of view of the vanquished victim. Lucius does not mention at all that when Tamora asked his own father to have pity on her son Alarbus, Titus showed no mercy either.

The audience in Shakespeare's theater, however, is aware of this so that the ending of the play is a problematic one in as far as outwardly order seems to have been restored, but it nevertheless appears to be nothing but a tenuous peace based on contradictions and on blind spots. None of the characters in the play has managed to acquire the art of coping with alterity, and this – despite the new succession to the throne – does not bode well for the future. *Titus Andronicus* thus manages not only to entertain its audience, but, in view of the multifarious political contexts of alterity in the 1590s, also critically engages with vital questions of how to negotiate otherness in an imperial world of widening and ever more complex horizons.



Pier Giuseppe Monateri

# The Reversal of Modernity: From Justinian in Paradise to Royal Occultism

## 1 Imperial messianism: The corporate eagle

In the West, the theory of the parallel between God and the emperor reached its ideological and poetic peak in the works of Dante, and in particular, in his *Comedy* (1308–1321).

Dante, as a political thinker, received renewed attention by Agamben,<sup>1</sup> but his theory of the universal monarchy also formed the object of the first book by the young Kelsen,<sup>2</sup> a champion of legal formalism and orthodoxy. As we know, Kelsen conceived his *pure theory of law* to depict the legal order as a mere *nexus* of valid norms whose content is substantially indifferent; a world of pure validity indifferent to any meaning. In this sense, Schmitt became his major opponent. For Kelsen, the *Grundnorm* – the fundamental norm from which all other norms derive their validity – is a pure logical postulate. On the contrary, Schmitt maintained the conception of the constitution as a concrete order based on a material apprehension and division of spaces and resources. While Kelsen was indifferent to any actual location of the legal order, and to any possible transcendent background of it, Schmitt emphasized spatial considerations and political theology. It is, then, of particular interest that the young Kelsen devoted his research to Dante, whose book *On Monarchy* (around 1310) contemplates an ideal universal world government based on the exquisite theological parallel with the cosmic rule of the Lord.

Kelsen's appraisal is as simple as it is anachronistic, but it can give us an insight on the way in which the most orthodox of twentieth century jurists could reformulate Dante's conceptions. For him, Dante represented the last voice of the dying breed of believers in a world empire, destined to be superseded in the Renaissance by Machiavelli and Bodin as the modern thinkers on sovereignty and the state. Dante imagines God's own monarchy as encompassing the whole universe<sup>3</sup> of which the earthly empire is just a copy or an imitation.<sup>4</sup>

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1 Giorgio Agamben, *Pilate and Jesus*, trans. Adam Kotsko (Stanford: Stanford University Press, 2015), 39.

2 Hans Kelsen, *Die Staatslehre des Dante* (Wien: Franz Deuticke, 1905).

3 Dante Alighieri, *Monarchy*, ed. Prue Shaw (Cambridge: Cambridge University Press, 1996) I, ch. 6–7.



It is certainly not difficult to trace this model back to the imperial ideology that could be based on the Digest and the imitation of Byzantine models. Dante's universe, as we know, is strongly rooted in a sort of theological geography, as it is based on the depiction of a void earth at whose center is located Satan, the prince of evil *and of gravity*, sitting at the end of an immense cone constituting his proper kingdom, hell. Above this huge void, in the midst of the ocean, is the Mount of Redemption – almost a mound on Satan's grave – which is pointing towards the skies. At its peak we find the Purgatory which souls must ascend to eventually reach heaven. At the opposite side of the earth, we find Jerusalem laying at the very center of the emerged lands.<sup>5</sup>

The notion of *Dominus Mundi* and its associated ideology is easily illustrated by Dante's cosmography. The Master of the World is an earthly copy of God, reigning on a block of land. The conquest of Jerusalem is geopolitically relevant as the conquest of the very center of this land. The proper habitat of human society is, then, a thin slice between the heavens above and the hell below attracting bodies as gravity does.

In these terms, there is no doubt that Dante believed in a universal legitimate lordship as the best possible government:

The whole of mankind in its ideal state depends on the unity which is men's wills. But this cannot be unless there is one will which controls and directs all the others towards one goal, since the wills of mortals require guidance on the account of the seductive pleaser of youth, as Aristotle teaches at the end of the Ethics. Nor can such a single will exist, unless there is one ruler who rules over everybody, whose will can control and guide all the other wills.<sup>6</sup>

In the second part of *Monarchy*, Dante offers a historical demonstration of how in the past it was Rome that ruled the world rightfully for this purpose so that a “perfect monarchy” was set up “under the immortal Augustus”<sup>7</sup>, with the German emperor representing Rome's legacy.<sup>8</sup>

Nevertheless, what we are mainly interested in is the peculiar theological role assigned by Dante to the emperor Justinian, both as *Dominus Mundi* and

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4 Alighieri, *Monarchy*, III, ch. 16.

5 Dante Alighieri, *The Divine Comedy*, eds. Ernest Wilkins and Thomas Goddard Bergin (Cambridge: Harvard University Press, 1965), Hell XXXIV, vv. 106–126.

6 Alighieri, *Monarchy*, I, ch. 25, sub-s 27.

7 Alighieri, *Monarchy*, I, ch. 26, sub-s 28. See also Martti Koskenniemi, “International Community from Dante to Vattel,” *Vattel's International Law from a XXIst Century Perspective*, ed. Vincent Chetail (Leiden: Nijhoff, 2011): 49–76.

8 Alighieri, *Monarchy*, IV, ch 9, sub-ss 69–80.

as the great codifier of Roman law. Notwithstanding his dubious moral character, Dante depicts him in *Paradise* as one inspired by God to undertake the “high task,” since it was through God’s inspiration that Justinian created the *Codex*.<sup>9</sup>

The most intriguing visual image Dante used in relation to Justinian is an intricate description of the imperial eagle. Justinian’s speech occupies the entire 6<sup>th</sup> *Canto* of *Paradise*, starting from showing the eagle, the sacred emblem of the empire (‘*sacratissimo segno*,’ or the most sacred of signs), as it races through the ages.<sup>10</sup>

Dante introduces this *segno* as a personified subject with the effect of making it an actor, by means of conceits and intricate scholastic discussions on the relationship between the signifier and the signified, as well as long theological inquiries on the meaning of Christ’s death at the peak of Roman imperial strength. We encounter this eagle again in the 18<sup>th</sup> *Canto* when we learn that its body is composed of souls represented by bundles of lights:

With each light settled quietly into place,  
I saw that the array of fire had shaped  
the image of an eagle’s head and neck.  
He who paints there has no one as His guide: He guides Himself; in Him we recognize  
the shaping force the flows from nest to nest.<sup>11</sup>

And in the 20<sup>th</sup> *Canto* the eagle introduces the six souls that make up its eye, probably intended as the all-seeing eye of the law.<sup>12</sup>

The image of the eagle is highly complex, but one thing is certain and it is that the empire of the *Dominus* is represented as a corporate body of souls. This main feature has been marvelously illustrated in an illumination – as displayed in Fig. 1<sup>13</sup> – created during the first half of the fifteenth century and attributed to Giovanni di Paolo di Grazia.

The ‘corporate’ body of the empire is perfectly portrayed here as a composite body assuming the shape of the imperial eagle. The eagle in turn became identified with Justinian himself as “the” emperor *par excellence*, in the sense that he gave the world its rational law, as derived from the providential Roman historical evolution. The Roman people acted as God’s instrument in establishing the im-

<sup>9</sup> Alighieri, *The Divine Comedy*, Paradise, VI, vv 23–24.

<sup>10</sup> Alighieri, *The Divine Comedy*, Paradise, VI, v 32.

<sup>11</sup> Alighieri, *The Divine Comedy*, Paradise, XVIII, vv 106–111.

<sup>12</sup> Alighieri, *The Divine Comedy*, Paradise, XX.

<sup>13</sup> Giovanni di Paolo di Grazia, “The Eagle of Justice,” (Italy, Tuscany), in *British Library Catalogue of Illuminated Manuscripts*. Image available at: <http://www.bl.uk/catalogues/illuminatedmanuscripts/ILLUMIN.ASP?Size=mid&IllID=56969>.



Fig. 1: “Dante’s eagle,” Giovanni di Paolo di Grazia

perial office, which existed by God’s authority and the people’s ministry. The image of the eagle conveys both the idea of a providential political salvation and that of the Roman people as a whole forming the body of the Empire reunited in the *persona* of the *Dominus Mundi*. The people of Rome, as a corporation, conferred all the powers to the emperor *through the Lex Regia* (Dig 1.2.1) – as we have seen already portrayed in the pedestal of Antoninus’ column – to the point of forming its own composite body.

These are ideas that can easily be traced back in the literature to the civilians of the thirteenth and fourteenth centuries. For Baldus, the *lex regia* was the form of the event which gave meaning to the empire, the papacy, the rule of kings and city regimes,<sup>14</sup> and that, consequently, could be interpreted through the other concepts available in the *Corpus juris*. For him, the *lex regia* could stand as a model for the origins of monarchical and other political powers. But what is more important for us is the conception that Baldus had of the *populus* as a corporate legal person, as he applied the corporation theory to all citizen-bodies. In his works, terms such as *civitas*, *communitas*, *corpus* and even *universitas* are often used interchangeably and can refer to the *populus* when it constitutes the unified body of the citizens.<sup>15</sup>

14 See Baldus [Feud 1.5]; Canning, *The Political Thought of Baldus de Ubaldis* 62, 185–7.

15 See Baldus [Cod 7.53.5]; Canning, *The Political Thought of Baldus de Ubaldis*, 141.

Dante's image, then, clearly represents the ontological and visual reality attributed to the sovereign as a *corporate body* constituted by the bodies of his subjects. This image must be kept in mind in relation to Baldus's depiction of the *Dominus Mundi* as a *corporal god*, and we can legitimately consider whether it was a source of the famous frontispiece of Hobbes. Can this well-known frontispiece simply be an illustration of Baldus's and other civilians' passages? Can it be imagined as an unexpected and dramatic *inversion* of the imperial corporate eagle? For Dante, the corporate body of the *Dominus Mundi* is represented by the image of a dignified eagle wandering in the heavenly skies, but for Hobbes it will become a creeping serpent slithering over a mountain. Can this change in imagery mark a dramatic as well as a *demonological turn* of the concept of earthly sovereignty and its consequent apparatus? What were the hidden streams of political consciousness that led to this change?

## 2 James and the path toward heterodoxy

A very different synthesis of ancient political theology, with direct reference to Eusebius of Caesarea (265–340), can be found in the works of the intellectual King James I (1566–1625), who composed *The True Law of Free Monarchies* and circulated it as an anonymous work in 1598.<sup>16</sup> Identifying the two targets of James as King of Scotland is rather simple. On one side, he would hit John Knox (1505–1572) and the Presbyterians for their theory that the king was bound in his actions by an original covenant with the people. On the other side, he would combat the Catholics submitting the sovereign to the direct or indirect control of the Roman pontiff.<sup>17</sup>

As King of England, he endeavored to fight against the Puritans and the *common lawyers*. This last point must be strictly scrutinized, since the common lawyers, in contrast to the Catholics, the Presbyterians and the Puritans, were *not* a sect or a religious group, but their tenets were, rather obviously, the most dangerous of all for a monarch of his kind. Indeed, the definition of English law as the “law of the land,” which today goes practically unnoticed, implies that it is not the king's law.

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<sup>16</sup> King James I was the author of works such as *Daemonologie* (1597), *The True Law of Free Monarchies* (1598) and *Basilikon Doron* (1599). See *The Political Works of James I*, ed. Charles H. McIlwain (Cambridge: Harvard University Press, 1918).

<sup>17</sup> Francis C. Oakley, *The Watershed of Modern Politics. Law, Virtue, Kingship and Consent (1300–1650)* (New Haven: Yale University Press, 2015), 254.

In his cited book as well as in his speech in Parliament of March 21, 1609, James I designed a sketch of a royal sovereignty of supernatural origin, otherwise known as the divine right of kings. He described it as a form of perfect government because it was the closest to the divine archetype that could not be limited by any other earthly power.<sup>18</sup> Three are the pillars of this royal authority: divine revelation, the laws of nature and the laws of the *realm*.

The first pillar is based on Ps. 82.6 *ego dixi dii estis* (I say that you are gods), where according to His Majesty's interpretation, God is affirming that the kings are divine and that, as in Luther, they can respond only to Him for their actions. The king's duty is that of administering justice (Ps. 101) and to give just laws to the people (2 Kings 18 and 22–23; 2 Chor. 29 and 34–35), to keep the peace (Ps. 72) and to be a good shepherd procuring abundance to his realm (1 Sam. 8; Ger. 29). As a minister, he is a servant of God for the good of all the righteous (Rm. 13, 1–7).

The second pillar is legal and historical and pertains particularly to the origins of the Scottish monarchy. In theory, we could imagine that the flock of the feeble convened to entrust their protection to the strongest under certain specified conditions. Until then the law would have preceded the institution of the monarchy. But story has it that King Fergus left Ireland to conquer a Scotland inhabited by barbarians to whom, after their defeat and submission, he gave his laws. It follows that it is the king who precedes the law and not vice versa, and that is why he has precedence over all other classes, the parliament and its laws. As a necessary consequence, the kings make the laws, and it is not the laws that make the kings.<sup>19</sup> A sovereign will always try to remain faithful to his laws, but in no way is he bound by them. He can act as he wishes without being questioned by any jurisdiction.

A third argument advanced in the name of the law of nature is as follows: a king is like a father to his people, or like a head to the body; in both cases he is leading the subordinate parts of the whole. Just as a father can punish a son for the sake of the family, so can the head cut an arm off for the salvation of the whole body. It is understood that the body could not reciprocally cut the head off, even if sick, for it would immediately perish.<sup>20</sup>

His conclusion is almost apparent. Obedience is always due to a sovereign king as he has been enthroned by God. He is also owed guardianship of the

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**18** James I, "Basilikon Doron," in *The Political Works of James I*, ed. Charles H. McIlwain (Cambridge: Harvard University Press, 1918): 1–52.

**19** James I, "The True Law of Free Monarchies," in *The Political Works of James I*, ed. Charles H. McIlwain (Cambridge: Harvard University Press, 1918): 53–70.

**20** James I, "The True Law of Free Monarchies," 64–66.

faith in accord with the Act of Supremacy of Henry VIII (1534). He is the rightful and legitimate head of the Church of England and has full power to reprise, punish, reform, rule, correct and amend all the mistakes, heresies and abuses for the glory of the Christian religion and for the keeping of the union and peace of the realm.

As has been noted, the political theology of James I seems to be based on two apparently inconsistent premises.<sup>21</sup> On one hand, the king is clearly bound to realize the good of the kingdom, and he is responsible for it. Then there would be a divine order establishing what is right or wrong on earth and would sanction every deviation, even those of a king. Right and wrong, good and evil have been laid down by God, *before* the institution of civil governments and the elevation of monarchs so that justice does not depend on the king's will. An arbitrary monarch becomes a tyrant and an enemy of God's justice. We could well say that for James a monarch is free because 'he does not recognize any other power on earth above himself' (Job 41:25). No one on earth has jurisdiction over him. This contradiction leads to an inescapable conclusion: the sovereign must obey God's laws, but on earth, his laws are God's laws. There is no *residue* left from the heavenly order to the worldly political one. The latter is perfectly mirroring the former, and the former is completely transfused in the latter. The world order is a hierarchy of jurisdictions and obedience designed by God. There is no disjuncture, nor discontinuity between the temporal and the spiritual. Only the king knows what is good and evil and when and how to act. The only duty of the subjects is to obey.

At this point, we can certainly trace an important parallel with the work of Jean Bodin (1530 – 1596), and especially his reception in Germany, even if we may find in these matters an obviously much more complex and baroque evolution toward the metaphysics of metaphors applied to political theory.<sup>22</sup> The world political order described by these authors becomes indeed a *representation* of the divine order of the universe. This point is rather important from an ontological perspective. The Roman Emperor *was* the Lord of the World. The Byzantine Emperor was the *ikon*, the true image of God on earth, participating in His essence. German emperors became *figures* of the Christ or the Anti-Christ. Now the world could start to be seen as a theater, the physical space of a representation of invisible characters and forces. The king re-presents God, making Him present again.

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<sup>21</sup> Merio Scattola, *Teologia politica* (Bologna: Il Mulino, 2007), 82.

<sup>22</sup> Michael Stolleis, "La reception de Bodin en Allemagne," *Quaderni fiorentini* 24 (1995): 141–156, 141.

As Walter Benjamin has noted, there is an ontological side in a metaphor as a metaphor is an experience.<sup>23</sup> We can read the original passage on the *Dominus Mundi* in the Digest either in the sense that the Roman emperor is the master of the world or in the sense that he is like the Lord of it. But what does it really mean that he is a *representation* of the Lord?

Here we touch upon the existence of invisible entities that become visible even if they are not *incarnated* by someone. A king is not an incarnation of some invisible entity; rather, he is a representation, no less than parliaments are representations of the people. We turn toward a world theater that is essentially an aesthetic world, where aesthetics is to be thought of as the dimension in which something invisible becomes visible. The matter is then, as we think James likely understood, that of the *residue* that can separate that which is represented and that which is representing. For his theory of sovereignty, it was essential that no residue could be left in the king's performance of God's role on earth. Any possible residue would operate politically and legally in the very possibility of a jurisdiction over the king's acts, if not finally in the possibility of his execution for high treason.

James's theological reflections can be seen in the context of strongly alternative and competing political and constitutional theories. This is especially so against the background of those murky discussions which have characterized the definition of emergency powers and of the king's different *personae*. This debate bypasses the problem of the Stuarts' presumed despotism<sup>24</sup> and must be fully appreciated in relation to the revival of the imperial mysticism grounded upon the notion of *dominium mundi*.

From our perspective, the judgment delivered in 1606 by Chief Baron Fleming in the *Bate's Case* is of critical importance.<sup>25</sup> At its heart lies the crucial remark that Fleming made about the "absolute" and "ordinary" powers of the king, and we will give this remark the close scrutiny it deserves.

From this case, it emerges that the king's power is double, both ordinary and absolute, and that these two powers have several and different laws and ends. Ordinary powers are possessed for the *particular* profit of the *subjects*, the exe-

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**23** Walter Benjamin, *The Origin of German Tragic Drama* [1928], trans. John Osborne (London: Verso, 2009). See also Bainard Cowan, "Benjamin's Theory of Allegory," *New German Critique* 22 (1981): 109–122, 109.

**24** Geoffrey Elton, *England under the Tudors* (London: Routledge, 1960), 403; Francis Oakley, "Jacobean Political Theology: The Absolute and Ordinary Powers of the King," *Journal of the History of Ideas* 29 (1968): 323–346.

**25** *Bate's Case or Case of Impositions* [1606] 2 State Trial 371; see also John William Allen, *English Political Thought, 1603–1660* (London: Methuen & Co, 1938), 8.

cution of civil justice in ordinary courts and are nominated by the civilians under the rubric of the *jus privatum*. In England, these powers belong to the realm of the common law.<sup>26</sup> These laws cannot be changed without a parliamentary vote, yet they can never really be changed in substance, as they seem to express rather universal and immutable principles of justice.

On the contrary, the *absolute* power of the King is that which is applied for the *general* benefit of the *people*, for the *salus populi*: as the people are the body, and the king is the head.<sup>27</sup> It follows that this power is most properly named “Policy and Government.” As the constitution of the body of the people varies with time, so too does this “absolute law” vary according to the wisdom of the king and for the common good.

There is then an absolute and a common law, as there are ordinary and absolute powers, a distinction that already appeared in the Year Book for 1469 under the Latin names of *potentia ordinata* and *absoluta*.<sup>28</sup>

Of course, here we face a distinction destined to have great impact. It was Dr. James Cowell, Professor of Civil Law at Cambridge, who in 1607 described the king as *supra legem* because of his absolute powers, reigning beyond the ordinary course of the common law.<sup>29</sup>

In the words of Davies, Attorney General for Ireland, the king exercises a double power, namely, an absolute power, or *merum Imperium*, when he ‘doth use Prerogatives only, which is not bound by positive law’<sup>30</sup>, and an ordinary power of jurisdiction. Moreover, as we know, following James, Blackstone paralleled these prerogatives with the *mysteries* of the *bona dea*, ranking them among the *arcana imperii*. In particular, Blackstone reaches the point of speaking of a necessary “initiation” into the mysteries of the royal prerogatives.<sup>31</sup>

Through this distinction between *potestas ordinata* and *potestas absoluta*, we can conceive of the king as *having a large and indefinite reserve of power*,

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**26** Oakley, “Jacobean Political Theology,” 327.

**27** *Money Case* [1637], *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors from the Earliest Period to the Year 1783, with Notes and Other Illustrations*, ed. Thomas B. Howell (London: Longman, Hurst, Rees, Orme and Brown, 1816), 389.

**28** Year Book 9, Edward IV, Trinity 9; Oakley, “Jacobean Political Theology,” 324.

**29** Francis Oakley, *Kingship: the Politics of Enchantment* (Malden: Blackwell Publishing, 2006), 129.

**30** John Davies, *The Question Concerning Impositions, Tonnage, Poundage ... Fully Stated and Argued from Reason, Law and Policy* (London: H. Twyford, 1656): 30–31; see Oakley, “Jacobean Political Theology,” 325.

**31** William Blackstone, *Commentaries on the Laws of England, Volume 1: A Facsimile of the First Edition of 1765–1769* (Chicago: The University of Chicago Press, 1979) book 1, ch. 7, 231.



which he could *on occasion* use for the benefit of the state.<sup>32</sup> Significantly, the existence of that reserve of power goes beyond definition, constitution and words, as awe and charisma, as a *sublime* political power to deal with matters of state. As hidden powers, they are *mysteries*. This hidden and unspeakable *residue* constitutes the essence of the political sublime. This is the most important point.

The shift toward an *occultism* of royal prerogatives was widespread. It goes far beyond the neutralizing concept of *absolutism* by which we normally try to capture this form of monarchy. Absolutism is, rather, a royal occultism. As we know, Baldus<sup>33</sup> spoke of the prince as being capable of derogating from the ordinary right by his absolute power, *though* not from the laws of “God and of nature,” in this sense using the same words as Spinoza and his devastating formula of *Deus sive Natura*, whose implications are still to be fully apprehended. It is not just a matter of emphasis on Roman law, or the revival of forms used by Cynus of Pistoia or Bartolus.<sup>34</sup> As Oakley reports, Baldus also had introduced the terms absolute and ordinary in his gloss on the *Lex Digna* (Cod 1.14.4) in an attempt to clarify that the prince was bound to live according to the laws out of his benevolence, not out of necessity. The point – for us – is rather the sovereign possessing an occult dimension that supersedes orthodox political theologies.

All of this is lost in the standard accounts of Romanists for the good reason that, to a large extent, it was the *canon* law that deeply influenced conceptions of modern sovereignty. The insertion of canonist principles into the body of Roman law led to a kind of *double modality* in the exercise of sovereign powers: a modality – to use the words of Oakley – running in accordance with the common law, or the common course of nature; and an exercise of the *plenitudo potestatis*, or of the *special* providence of the Lord. We could say that, according to these speculations, in God and in the pope resides a plenitude of power, a residue of an undefinable power to act.

This residue is the one that Schmitt tried to capture in his analogies between the state of exception and miracles. God can act outside the laws of nature and perform a miracle, just as when He did when He enabled Shadrach, Meshach and Abednego to emerge unscathed from the flames of Nebuchadnezzar’s fiery

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<sup>32</sup> Charles H. McIlwain, *Constitutionalism Ancient and Modern* (London: The Lawbook Exchange, 2005), 94.

<sup>33</sup> Baldus [Cod 1.14.4].

<sup>34</sup> Bartolus, *Commentaria in primam Codicis partem* (Venetiis: Baptista de Tortis, 1493) fol 36; Cynus of Pistoia, *Lectura super aurea volumine Codicis* (Venetiis: Andrea de Thoresanis de Asula, 1493) fol b 8 v; see Oakley, “Jacobean Political Theology,” 330.

furnace.<sup>35</sup> In the same way, the pope can perform a papal miracle<sup>36</sup> by an exercise of his absolute power. But can a king perform miracles? It is hard not to see here a strong heterodox normative inversion where that which is unorthodox becomes political.

Of course, we may find several references<sup>37</sup> to the omnipotence of God in St. Jerome (347–420), through Gratian (359–383) and St. Peter Damian (1007–1073), in Hugo of Saint Victor (1096–1141), Peter Abelard (1079–1142) and Peter Lombard (1096–1160). Albert the Great (1200–1280) was, perhaps, the first scholastic to have used the precise distinction between *potentia absoluta* and *potentia ordinata*<sup>38</sup>. Given this theoretical background and the revival of theological concepts in the twentieth century, what distinguishes Schmitt's conception of political theology from the medieval discourse is his neutralization of the pure political dimension of modern sovereignty. For us, his theory is a conscious *cover up* of the change in values that occurred after the Reformation. Its real purpose is to reactivate Roman Catholicism and its philosophical-historical tradition against the heterodox political forces that prevailed in modernity.

If we place the sovereign as the *locus* of exception, his position lies on the threshold where the *Dominus*, the guardian of order, merges with Belial, the angel of anomy (2 Corinthians 6:15). We could say that the angel of anomy operates in a state of exception, in an extraordinary state of affairs. In his *Speech of the Star Chamber* in 1616 on his prerogatives, James placed a particular emphasis on the “extraordinary.”<sup>39</sup>

There are multiple examples from this age. In 1528, Henry VIII asked for a dispensation to proceed with a second marriage, something that the pope could not do using his ordinary power, but that, the king claimed, he could dispense out of his *mere* and *absolute* power above the law.<sup>40</sup> But, we insist, it is one thing to ask the pope to act in a miraculous way; it is another to take possession

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35 Daniel 3: 20ff.

36 See Oakley, “Jacobean Political Theology,” 333, with reference to Aegidius Romanus, *De ecclesiastica potestate*, ed. Richard Scholz, (Weimar: Hermann Bohlhaus Nachfolger, 1929), 158, 192.

37 For all references see Oakley, “Jacobean Political Theology,” 334.

38 Francis Oakley, *Politics and Eternity: Studies in the History of Medieval and Early Modern Political Thought* (Leiden: Brill, 1999), 261.

39 James I, “Speech of the Star Chamber” [1616], in *The Political Works of James I*, ed. Charles H. McIlwain (Cambridge: Harvard University Press, 1918), 333; and see Blackstone, *Commentaries on the Laws of England*, Vol. 1, 231.

40 Henry VIII, “Instructions to Sir Francis Bryan and Peter Vannes, Rome,” in *Letters and Papers, Foreign and Domestic of the Reign of Henry VIII*, ed. John S. Brewer, vol. 4 (London: Royal Commission for State Papers, 1870) part 2, n 4977, 2158.

of the extraordinary and locate it at the center of political sovereignty as the power to act *praeter legem vel contra eam* (beyond and against law).<sup>41</sup>

As we have already seen, Bartolus elaborated on this dichotomy in his representation of the figure of the *Dominus Mundi*. Nevertheless, as long as we speak of the exceptional powers of the pope, we remain in the realm of orthodoxy. When we start to speak of the circumstances by which the king can do things *de facto* which he cannot do *de jure*, and especially when we clearly speak of a reserve of power possessed by the king for extraordinary cases<sup>42</sup> (or as Charleton put it in 1652, a royal “reserved power”<sup>43</sup>), we get out of the pure economy of salvation. We face an explicit normative inversion, either in relation to the pope, or in relation to the emperor. It is in this perspective that we can really appreciate the work of Bloch as an antithesis to Schmitt’s efforts to bridge the disjuncture between prior theological concepts and those of the modern theory of law and the state.

Certainly, royal prerogatives derive from the consideration that God Himself has created a general law of nature, but he has made no law for miracles. There is no logically necessary connection between this premise and the conclusion that the prerogatives of the king, like those of God, clearly transcend the ordinary. Indeed, there is a gap, a *Kluft*, between the two propositions, which is bridged over by an usurpation, legitimated by the fact that the sovereign must act *pro bono publico*. This is something that could be justified long before Christianity ever entered the stage of history. A political *refoulé* reemerges in the heterodoxy of modernity, not in orthodoxy. This heterodoxy was denied by political theology and the parallel created between earthly institutions and divine power. It was Schmitt who established a link between miracles and exception so stringent as to appear logical. The kings never had a government of exorcism or the miraculous. They had *magic* powers in Bloch’s reconstruction, and this magic of the royals was transmuted into a theory of their power backed by theological prerogatives. The path from magic to theology is not a logical necessity, as magic is independent from theology. The disconnection between magic and theology could be bridged by the large and indefinite reserve of power that could be triggered by the exception, *ratione status*. This term, here, is not meant in the derived sense of

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41 Oakley, “Jacobean Political Theology,” 334, commenting G Ockham, ‘Quodlibeta VI,’ in J Wey (ed), *Opera theologica* (New York: St. Bonaventure, 1980) qu 1, fol 91r.

42 James I, “A Speech to the Lords and Commons of the Parliament at White-Hall” [1609], in *The Political Works of James I*, ed. Charles Howard McIlwain, 309–310.

43 Walter Charleton, *The Darkness of Atheism Dispelled by the Light of Nature: a Physico-Theological Treatise* [1652] (Bristol: Thoemmes, 2002), 329.

*State reason*, but in the original sense of the necessary measures to be taken *in reason of the state of things*.

In this way, the exception is then located within the mysterious residue of indefinite power residing in the prerogatives of the Sovereign. That sublime and terrific reserve of power that can end up reversing the legal order.

### 3 James and royal occultism

From our standpoint, there is a still more occult side in James's thought that must be apprehended here. It has to do with the general framework of James's idea of order and the argument by correspondence between kings and God on which James leaned so heavily in his political writings,<sup>44</sup> and that can ultimately be deemed if not "blasphemy" certainly "heterodox."

This theory of the parallel, or theory of correspondence, between God as *Dominus* in heaven and the monarch as *Dominus* on earth reached its ideological peak in the works of Dante where it was mingled with the imagery of the Roman people as the 'flesh' of the composite corporate body of the empire. According to us, this parallel took a rather heterodox turn starting with James, especially concerning the abyss of tacit powers.

The matter of royal prerogatives is echoed in both James's Star Chamber Speech in 1616 and earlier in 1609 in his important address to Parliament, which is central to understanding his particular political theory.<sup>45</sup> In the Star Chamber Speech, James clearly developed a mystical view of his powers:

The mysteries of the Kings power is not lawfully to be disputed...

It would amount to take away to mystical reverence that belongs unto them that sit in the Throne of God.<sup>46</sup>

This is a peculiarly heterodox position. Not even Frederick I could admit to sitting on the Throne of God, even if he proclaimed himself to be the Lord of the World and conceived his mission in messianic terms. Only the Son of Man

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<sup>44</sup> William H. Greenleaf, "James the I and the Divine Right of King," *Political Studies* 5.1 (1957): 36–48, 36.

<sup>45</sup> Oakley, "Jacobean Political Theology," 337; William H. Greenleaf, *Order, Empiricism and Politics: Two Traditions of English Political Thought: 1500–1700* (Oxford: Oxford University Press, 1964), 58 ff.

<sup>46</sup> James I, "Speech of the Star Chamber," 333.

(Mark 14:62; Daniel 7:13; Psalm 110:1) could have been elevated to the point of sitting in heaven with God on his *left*.

Once he established this heterodox correspondence, James considerably elaborated his ideas by the introduction of a further analogy between on the one hand, the absolute and ordinary powers of God, and, on the other, the absolute and ordinary, or regulated, powers of the king.

I desire you to give much more right in my private Prerogative, that you give to any Subject; and therein will I be acquiescent: As to the absolute Prerogative of the Crowne, that is no Subject for the tongue of a lawyer, nor is lawful to be disputed.

As it is Atheisme and blasphemy to dispute what God can doe: good Christians content themselves with his will revealed in his word. So, it is presumption and high contempt in a Subject to dispute what a King can doe; but rest in that which is the Kings revealed will in his Law.<sup>47</sup>

Here the distinction between the private prerogatives of the person of the monarch and the absolute prerogatives of the Crown is strikingly clear. James's argument relies on a metonymy where the king is represented by the *objective* nature of kingship, which is the crown, and not the person of the king. In this sense, kingship is elevated beyond the holder. We can also stress the value of the term "*absolute*" from its meaning of a power being beyond laws and regulations, to the very idea that this prerogative is *beyond words and language*.

In substance, for James it would have been blasphemy to try to ontologize royal mysteries through the use of language, even if done by a lawyer, because not even a lawyer, an oracle of the law, or a *sacerdos* (in this view a priest of royal cult) can articulate those mysteries. Such absolute powers are ineffable. We are certainly shifting toward the aesthetic of the political sublime of modern royal authority in a way that we think would have been completely alien to previous medieval conceptions of the prince.

We would also highlight the distinction between the terms absolute and ordinary, something that offers a different perspective to the term absolute monarchy: if absolute is contrary to ordinary, it is because it is exceptional. Just as in the case of Innocent IV against Frederick II, the mystic of absolute power lies in the fact that it is simultaneously beyond law, beyond language and beyond the ordinary. It is the terrific unspeakable power that can manifest itself in a state of exception, or, if you prefer, in the midst of the storm as in the Book of Job. This power is so unfathomable that indeed, it does not belong and cannot belong to an ordinary man and consequently, it is rhetorically transferred to the crown.

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<sup>47</sup> James I, "Speech of the Star Chamber," 333–34.

It is in this light that James's address to Parliament in 1609 must be understood, with all its surrounding hints of paganism: "Kings are justly called Gods, for that they exercise a manner or resemblance of Divine power upon earth."<sup>48</sup>

If kings are justly called gods, can they command the spirits? Can they perform an exorcism? Do they also have jurisdiction over the fairy world? Given James's attitude toward witchcraft revealed in his *Demonologie*, these questions are not unfounded.

Oakley argued that the distinction between the absolute and ordinary powers of the king was in effect a piece of political theology, generated by the cognate distinction between absolute and ordinary powers of God that emerged in the scholastic theology of the twelfth century and subsequently survived as a commonplace.<sup>49</sup> Later he suggested considering that sixteenth and seventeenth century lawyers were thinking not in terms of two coordinate or parallel powers each confined by law to its proper sphere, but rather of two powers. One power (the absolute) was in essence superior to the other (the ordinary) and "in times of necessity" or for "reason of state" the former could transcend the latter, and, by reaching "above the ordinary course of the law," encroach upon its domain. This implied that there could have been the perception of a strong difference between the nature of one power and that of the other.

If we emphasize the distinction made by James, as we did, one power is mysterious, unlimited and "not lawful to be disputed," whereas the other is clearly fit for discussion, for it is "the Kings' revealed will in his law." In sum, we confront a *revealed* power and an *occult* power of the kings – the same distinction meaning, on one side, the "hidden" will of God, and on the other side, God's "revealed" will.

Here, we face a concealed, secret or hidden will of God and/or of the Sovereign, and a revealed will of God/Sovereign, that is revealed in the word of God contained in the Holy Scriptures, just as the will of the sovereign is revealed in his laws. This is along the same lines as an unorthodox Gnostic revelation of the existence of a hidden, or occult divine beyond the revealed truth of the scriptures. Even the laws have a visible revealed side but also a hidden occult side pertaining to the sublime of the legal. There is always occult excess, an unfathomable and unexhausted reserve of sense in political action and in the law. There is also something in the juridical-political domain which exceeds it, bypassing and superseding our capacities of verbalization, and which redirects

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<sup>48</sup> James I, "A Speech to the Lords and Commons," 307.

<sup>49</sup> Francis Oakley, "The 'Hidden' and 'Revealed' Wills of James I: More Political Theology," *Studia Gratiana* 15 (1972): 365–375, 367, 368.

us toward the excessive nature of the title of the *Dominus Mundi*. The occultism of the political and of hegemony goes far beyond its tentative capture in irenic notions of soft-power.<sup>50</sup>

The distinction between the absolute and ordinary powers had enjoyed a much longer history than the parallel distinction between the *potentia Dei absoluta* and *ordinata* with which it was linked. The intent of this distinction was to stress the retention in the hands of God or of the king of an absolute, unlimited power whereby the ordinary dispositions of the law could be transcended.

What we want to stress here is the connection with occultism, emphasized by the insistence on the dark side of law and politics, which was reserved for those who were initiated in its mysteries. After all, this was also at the root of the counterargument used by Coke (1552–1634) to deny the king in court: he was not initiated into the mysteries of the temple.<sup>51</sup> The mysteries cannot be deduced by reason, even we cannot know if the occult god has any resemblance to the revealed one. We call this device of a political occultism the too-muchness device, as it is rooted both in Gramscian theory of hegemony as well as in other philosophical theories of the last century.

From certain passages of James's works we could derive Oakley's conclusion that:

...the vital thing for man is to eschew futile speculation about the dispositions of God's hidden will, and to acquaint himself, instead, with that revealed will whereby God makes known to man the divine *modus operandi* in the moral sphere and in the economy of salvation<sup>52</sup> [...]

...but also in the political sphere. James's conception that his subjects could not even discuss the royal prerogatives seems like the political equivalent of the philosophical statement that "What we cannot speak about we must pass over in silence."<sup>53</sup> This was particularly true here because for James to indulge in futile speculations about royal prerogatives were also a crime of treason: "As it is blasphemy... it is treason..."

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<sup>50</sup> Joseph S. Nye, *Soft Power: The Means to Success in Foreign Politics* (New York: Public Affairs, 2009).

<sup>51</sup> William Holdsworth, "Sir Edward Coke," *The Cambridge Law Journal* 5 (1935): 332–346, 332.

<sup>52</sup> Oakley, "The 'Hidden' and 'Revealed' Wills of James I," 373.

<sup>53</sup> Ludwig Wittgenstein, *Tractatus Logicus-Philosophicus* (London: Kegan Paul, 1922), proposition 7.

We must literarily pass over in silence what is unlawful to speak about, and that is the essence of *legitimate* power. Legitimacy is surrounded by its unfathomable occult nature.





Gary Watt

## Do Shylock and Rumpelstiltskin win on appeal? The Justice of *Silas Marner*

“Mr Macey paused; he always gave his narrative in instalments, expecting to be questioned according to precedent.”

– *Silas Marner*, chapter six.<sup>1</sup>

The legal theorist Ronald Dworkin proposed that through legal precedents judges develop a narrative of justice from case-to-case as if they were working collectively in the process of writing a chain-novel.<sup>2</sup> Reversing the analogy, we might conjecture that a case of injustice in one novel or other non-judicial work of fiction might be overturned in a later work through the judicial intervention of its author. Culturally embedded wrongs might in this way be corrected through a sort of appeal process conducted over the long span of literary history. To be specific, I see in George Eliot’s short novel *Silas Marner: The Weaver of Raveloe*, first published in 1861, a reworking of a long literary tradition that goes back at least as far as Shakespeare’s play *The Merchant of Venice* and the fairy tale of *Rumpelstiltskin*. As the plots of the earlier works present the unjust disposal of the social (and quasi-legal) claims of the outsiders Shylock and Rumpelstiltskin, so Eliot’s *Silas Marner* presents a complex and nuanced response to a similar claim. As Shylock and Rumpelstiltskin suffered through their reliance on law or legal right, so Silas Marner succeeds because he learns to trust, not to law, but to love and to the serendipity of life. Silas triumphs when he comes to see that life is endowed with a benign, perhaps divine, Providence. He succeeds when he realizes that he is fortunate despite his loss of financial fortune and that he has justice despite his being a victim of social and legal wrongs. Happenstance is the natural ally of the creative literary plotter, and Eliot enlists this ally to supply Silas with all the treasures of familial love and fair treatment that were denied to Shylock and Rumpelstiltskin.

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<sup>1</sup> All quotes are taken from George Eliot, *Silas Marner* [1861] (London: Penguin Classics, 1996). Throughout the text parenthetical references are to the chapter in which the quotation appears. This chapter is dedicated in friendship and gratitude to Professor Daniela Carpi, with whom it has been my great fortune to journey in a love of Shakespeare, *The Merchant of Venice*, fairy tale, equity and epigraphs.

<sup>2</sup> Ronald Dworkin, *Law’s Empire* (Cambridge, MA: Harvard University Press, 1986), ch. 7.

Whether, in writing *Silas Marner*, George Eliot has supplied a just remedy for wrongs committed in earlier fictional works remains an open question. She writes not as a judge so much as an advocate for a range of points of view. I certainly do not suggest that she was conscious of any connection between her novel and *The Merchant of Venice* and *Rumpelstiltskin*. *Silas Marner* is not a sequel to any of the several works with which it has been associated. We can nevertheless see sufficient similarities in factual matter and thematic concern to suggest that *The Merchant of Venice* and *Rumpelstiltskin* might have exerted subconscious influence on Eliot in the writing of *Silas Marner*. Eliot acknowledged in a letter to her publisher John Blackwood that the story of Silas came to her at “first of all quite suddenly, as a sort of legendary tale” (24 February 1861). She wrote that the tale had been “suggested by my recollection of having once, in early childhood, seen a linen-weaver with a bag on his back.” That is a slight seed indeed, like the proverbial acorn that gave rise to a great oak. It must be the case that the folktale of Eliot’s weaver was deeply nourished by a thick cultural and literary compost. Somewhere in the rich cultural soil that gave rise to *Silas Marner*, we can certainly see, for example, a leaf from Wordsworth’s pastoral poem *Michael*, which supplied the epigraph to *Silas Marner*: “a child, more than all other gifts / That earth can offer to declining man, / Brings hope with it, and forward-looking thoughts.” As the main action of *Silas Marner* is located at his home near the stone pits, so “a struggling heap of unhewn stones” is the object at the heart of *Michael* – a tale of the eponymous shepherd, his wife (with her two spinning wheels) and their son (whom the father, unable to pay his debts, releases to pursue a merchant apprenticeship in the city). We might also discern in *Silas Marner* a leaf or two from Charles Dickens’s *A Tale of Two Cities*, published in 1859, just two years before Eliot’s novel. In her introduction to the 1944 penguin edition of *Silas Marner*, Q. D. Leavis, points out the striking resemblance between certain features in the life of Dickens’s Dr Manette and the life of Silas Marner. The similarity in their names is one obvious point of correspondence, but more striking is the fact that Dr Manette was incarcerated for eighteen years in the Bastille for a crime he did not commit before being returned to life when he is discovered by his golden-haired daughter Lucie. Dr Manette occupied himself with making shoes during his confinement and continued in this compulsion for some time after his release. Silas Marner, correspondingly, is an obsessive weaver who, as a result of a crime he did not commit, resorts to a socially isolated existence. He lived for fifteen years in his cottage near the stone pits before being returned to life when he is discovered by Eppie, a golden-haired baby girl. Furthermore, Dr Manette suffers from psychologically-induced memory loss which has some loose equivalence in Marner’s

curious (and for Leavis unconvincing) cataleptic episodes. Leavis opines that the parallels between Manette and Marner are “too close to be accidental.”

If Dickens’s Dr Manette was an unacknowledged literary influence on the character of Eliot’s *Silas Marner*, might other fictional characters have exerted a secret or subconscious influence? The writer of Eliot’s first full biography, Mathilde Blind, notes a number of intense similarities between *Silas Marner* and “Jermola the Potter” published in 1857 by the celebrated Polish novelist J. I. Kraszewski; the main similarity being the discovery of an abandoned child and its redemptive affect upon the potter’s insular existence.<sup>3</sup> Another Eliot biographer, Marghanita Laski, agrees that “there are resemblances more striking than...could have derived from any brief and casual account of the Polish novel’s plot.”<sup>4</sup> Closer to home, Ebenezer Scrooge of Charles Dickens’s *A Christmas Carol* (1843) has a small claim to have contributed, for *Silas Marner* is a tale of a miser’s redemption that is set in significant part against the backdrop of Christmas. To “keep a jolly Christmas” (SM, 1) gets express mention, as does “a Christmas carril.” (SM, 10) Where Eliot writes that “Nobody in this world but himself knew that he was the same Silas Marner who had once loved his fellow with tender love, and trusted in an unseen goodness,” (SM, 10) the name Ebenezer Scrooge could seamlessly replace that of Silas Marner. When we are told “that it was New Year’s Eve, and that he must sit up and hear the old year rung out and the new rung in,” (SM, 12) the resonance is strong with Dickens’s second Christmas book, *The Chimes: A Goblin Story of Some Bells that Rang an Old Year Out and a New Year In* (1844). To this list of possible influences, we can add Rumpelstiltskin and Shylock as two fictional characters with strong claims to have inspired Eliot’s invention of Silas. In the following paragraphs, I will outline some substantial connections between this trio of characters, but more superficially we can note that if there is a sound echo of “Manette” in “Marner” there might equally be a sound echo of “Shyl-ock” in “Sil-as” and even a resonance between the two prefixes “Rumpel-” and “Ravel-.”

Gillian Beer’s rebuke rings in my ears, where she writes in relation to *Silas Marner* that “these allusions (Midas, Rumpelstiltskin, the Norns) are all there to be lost and obliterated. They are part of the system of expectation and allusion which we must respond to, and dispel, if we are to reach the human directness of the work.”<sup>5</sup> Nevertheless, my hope (however vain) is to discern a sense of the

<sup>3</sup> Mathilde Blind, *George Eliot* (London: W. H. Allen & Co, 1883).

<sup>4</sup> Marghanita Laski, *George Eliot and her World* (London: Thames and Hudson, 1973), 79.

<sup>5</sup> Gillian Beer, *George Eliot* (Bloomington: Indiana University Press, 1986), 126. John Lyon resists critics’ denial of Eliot’s literary influences, seeing in *Silas* a significant and deliberate effacing of the extent to which Eliot was influenced by Shakespeare’s *The Winter’s Tale*. (“Shakespearean

ways in which diverse threads, which may have no conscious causal connection in a writer's mind, might nevertheless be woven together by the work of a writer's hands to produce significant patterns. According to Marghanita Laski, *Silas Marner* is "the only one of George Eliot's English-set novels in which real-life resemblances have not been traced."<sup>6</sup> This is perhaps one reason why strands of fictional resemblances so readily present themselves in the text. Keats might object that to tease apart those strands is to "Unweave the rainbow," but in response I would argue that, as we pull apart the strands that Eliot has woven from sources imagined and remembered (perhaps those very words of Keats' supplied Eliot with the name Rainbow for Raveloe's pub), we find ourselves participating in a supreme artist's creative process of remembering and imagining. Our privilege is to join her in working something new.

## 1 Rumpelstiltskin

Eliot's youthful sighting of the weaver must have directly inspired the opening lines of the novel: "In the days when the spinning-wheels hummed busily in the farmhouses...there might be seen in districts far away among the lanes, or deep in the bosom of the hills, certain pallid undersized men," but even here we can surely detect an echo of Rumpelstiltskin, the expert at the spinning wheel whom the Brothers Grimm describe as a "little man" or "manikin" coming from "a high mountain at the end of the forest." Where Rumpelstiltskin is "quite a ridiculous little man," Silas is regarded by the villagers as "comical-looking" (SM, 2) (which phrase Eliot places in quotes). This, and the fact that he comes "from unknown parts," makes "all clear" the mystery of his magical powers (SM, 2). Eliot writes that "No one knew where wandering men had their homes or their origin," (SM, 1) but her avowed purpose in writing the novel is to fill out the biography of one such wanderer. In this way, she gives fuller form to a figure who would otherwise have been a mere fragment in a personal memory or in the folk memory of fairy tale. She writes that sometimes a weaver might be "a settler...from distant parts" (SM, 1) and we learn early on that Silas came from "an unknown region called "North'ard" (SM, 1). (Following the mechanisation of spinning, there was good work for cottage weavers in the industrial north.) We also learn that his home is now in a village "nestled in a snug well-

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Margins in George Eliot's 'working-day world', in P. Holland (Ed.) *Shakespeare Survey: An Annual Survey of Shakespeare Studies and Production* Vol 53 (Cambridge: Cambridge University Press, 2000), 114–126.

<sup>6</sup> Laski, *Eliot*, 79.

wooded hollow, quite an hour's journey on horseback from any turnpike" (SM, 1). An hour by horse is isolated indeed, but he is close enough to the village to warrant his being styled the weaver "of Raveloe." To associate him with the village is no doubt part of Eliot's generous plot to populate the life of Silas with those rich and diverse social associations from which he has become estranged. The fire inside Silas's cottage plays a crucial role in the plot when its light entices little Eppie to toddle in. How reminiscent this is of Rumpelstiltskin's "little house, and before the house a fire...burning." The closest connection between the two works is certainly that in *Rumpelstiltskin* a bargain is struck to exchange gold for a child and in *Silas Marner* gold is actually (or symbolically)<sup>7</sup> exchanged for a child. When the golden haired Eppie is found on the hearth of Silas (precisely above the place where his gold had been hidden), we are told that "he could only have said that the child was come instead of the gold – that the gold had turned into the child." (SM, 14)

Rumpelstiltskin's most distinctive quality was his ability to work magic to assist the Miller's daughter by spinning straw into gold, but Eliot's weaver could work wonders on a smaller scale. The locals gossiped that "Silas Marner could cure folks' rheumatism," (SM, 1) and this they attribute to supernatural power: "when a weaver, who came from nobody knew where, worked wonders with a bottle of brown waters, the occult character of the process was evident." (SM, 2) Using metaphor to align text and textile, Eliot writes that "he worked far on into the night to finish the tale of Mrs. Osgood's table-linen," and when "at last Mrs. Osgood's table-linen was finished...Silas was paid in gold." (SM, 2) By attributing to Silas something like the work of weaving a tale, Eliot is working meta-textually, for this is the very work out of which she has formed him. Traditionally, spinners and weavers were women. "Spinster" is an archaic term for an unmarried woman and the English surname Webster indicates a woman who weaves. In Norse myth, the female Norns sit at the foot of Yggdrasil, the world tree, spinning the threads of fate. The three Fates (*Moirai*) of Greek myth, were women who spun out, measured and cut the threads of destiny. Another Greek myth depicts Arachne as a weaver who became a spider. The Navajo of the North American southwest have their own myth of the Spider Woman. Thus, Silas Marner is a man earning his living from traditionally female work (who, in addition, does the traditionally female work of bringing up a young child) and Rumpelstiltskin similarly usurps the work of spinning that was allotted to the Miller's daughter. Was Eliot's choice to focus her novel upon an outcast weaver in this respect self-referential? The female novelist was, after all, the so-

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7 Ralph Stewart, "Eliot's *Silas Marner*" *The Explicator* 56.2 (1998): 76–78, 77.

cially eccentric Mary Anne Evans whose work of weaving texts had been usurped by the man “George Eliot.” Usurpation may have been in name only, but the eliding of the female name (by marriage or other modes) is significant. In the case of Mary Anne Evans (in addition to her *nom de plume*, her private stylings included Marianne Evans, Marian Evans and Marian Evans Lewes) the fluid adaptability of her name reflects a life-long resistance to social formalism. The mystery of name is, of course, central to *Rumpelstiltskin* (in which the manikin is the only named character) and present also in *Silas Marner* (who are Eppie’s parents?) and can even be inferred into the anonymous title of *The Merchant of Venice*. Portia, speaking in male disguise as the lawyer Balthazar, asks in the climactic trial scene “which is the merchant here, and which the Jew?” (4.1.170)

Rumpelstiltskin worked the spinning wheel “until the morning, when all the straw was spun, and all the reels were full of gold,” and night-by-night the piles of gold grow exponentially. Marner also works through the night – not spinning, but weaving – and his gold grows exponentially as a symbol of his greed and growing desire. He “wanted the heaps of ten to grow into a square, and then into a larger square.” (SM, 2) There are, though, some notable differences between the two tales which strike especially at the contractual dimension. First, whereas Rumpelstiltskin fixed the payment for his work from the outset, Silas laboured “without contemplating beforehand the money [Mrs. Osgood] would put into his hand.” (SM, 2) Second, and more significant, whereas Rumpelstiltskin supplied gold under a legal form of bargain or exchange, the gold of Silas was stolen from him by Dunstan “Dunsey” Cass. His brother, Godfrey Cass, had asked “How can I get the money?” (SM, 3) which is the same problem posed by the Miller’s daughter in the fairy tale: “I have to spin straw into gold, and I do not know how to do it.” The connection between Silas and Rumpelstiltskin is perhaps most tangible when Silas handled his piles of gold and “thought fondly of the guineas that were only half-earned by the work in his loom, as if they had been unborn children.” (SM, 2) At this point, Eliot expresses the moral warning that productivity in work should not be allowed to isolate us from wider social life: “The same sort of process has perhaps been undergone by wiser men, when they have been cut off from faith and love – only, instead of a loom and a heap of guineas, they have had some erudite research, some ingenious project, or some well-knit theory.” (SM, 2) If this was the author’s rebuke to herself, it is equally a warning that every academic writer cannot help but feel.

Ulrich Flemming, an emeritus professor of architecture at Carnegie Mellon University, is the host of a blog in which he makes the fascinating observation that the Grimm brothers’ published version of *Rumpelstiltskin* (KHM 55: *Rumpelstilzchen*) bears little resemblance to the unpublished original version (*Rumpenstünzchen*) which appears in a manuscript (the *Ölenberger Handschrift*) that they

gave to their friend Clemens Brentano and which was discovered amongst Brentano's papers when he died.<sup>8</sup> In the original version, the girl suffers from the Midas-like affliction of being unable to spin flax without it turning into gold. This is quite opposite to the challenge facing the Miller's daughter in the published version. Professor Flemming conjectures that numerous features of the Grimms' updated version of the fairy tale may have been inspired by Shakespeare's *The Merchant of Venice*. That is plausible enough given Shakespeare's immense popularity with Goethe and the German romantics. Shakespeare's complete works were first published in German around three decades before the Grimms' tales appeared in print in 1812. The tale of *Rumpelstiltskin* is of an ancient type concerning "The Name of the Supernatural Helper" (ATU 500),<sup>9</sup> but some significant Shylock-like elements of *Rumpelstiltskin* are indeed missing from the original version (*Rumpenstünzchen*). Those elements include the oppressive presence of a father's will for his daughter (Portia suffers under this in *The Merchant of Venice*), and the narrator's wilful punishment of Rumpelstiltskin who, when he is cheated out of his bargain for the baby, "in his anger... plunged his right foot so deep into the earth that his whole leg went in, and then in rage he pulled at his left leg so hard with both hands that he tore himself in two." This is paralleled in Shylock's enraged response to being cheated of his daughter. He puts his foot down ("I stand here for law" (4.1.141)) and when he loses his case his estate is divided in two by the Ducal court at Portia's urging:

If it be proved against an alien  
That by direct, or indirect, attempts  
He seek the life of any citizen,  
The party 'gainst the which he doth contrive  
Shall seize one-half his goods. The other half  
Comes to the privy coffer of the state (4.1.345–250)

This is precisely the fate that Silas is spared. When Eppie's biological father Godfrey Cass manoeuvres to take her from Silas, the weaver objects "You'd cut us i' two." (SM, 19) Silas would not exchange Eppie for all the gold he has lost:

"At first, I'd a sort o' feeling come across me now and then," he was saying in a subdued tone, "as if you might be changed into the gold again...and I thought I should be glad if I could feel it, and find it was come back. But that didn't last long." (SM, 19)

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<sup>8</sup> "Rumpenstünzchen" in *Grimms Märchen in ursprünglicher Gestalt. Nach der Ötenberger Handschrift von 1810* (Grimms' Fairy Tales in their Original Form. After the Ötenberg Manuscript of 1810) Insel-Bücherei Nr. 837 (1964).

<sup>9</sup> AUT indicates the Aarne-Thompson-Uther folktale classification index.



Shylock similarly (and contrary to the popular myth) seems to set more store on family than on wealth. Hearing a report that his daughter Jessica has stolen his engagement ring and exchanged it for a monkey, Shylock laments that he “would not have given it for a wilderness of monkeys” (3.1.111).

We can say, then, that *Silas Marner* bears in several salient respects a striking resemblance to the Grimms’ published version of the tale of *Rumpelstiltskin*, complete with elements that appear to have been borrowed from Shakespeare’s *The Merchant of Venice*. The question addressed in the next section is whether, quite apart from the possibility that it exerted indirect influence on *Silas Marner* via the Grimms’ rendition of *Rumpelstiltskin*, Shakespeare’s *The Merchant of Venice* might have influenced *Silas Marner* directly.

## 2 Merchant of Venice

Leaving aside the superficial correspondence, already alluded to, between the name “Silas” and “Shylock” – and the more tenuous resonance between the words “Marner” and “Merchant” – there are a number of substantial thematic connections that directly connect *Silas Marner* to Shakespeare’s play. The main one is that the hard-working outsider loses his store of gold to an idle member of the richest social class. That higher class is represented in *Silas Marner* by the family of Squire Cass, and the idle thief is the Squire’s second son, Dunstan Cass. Silas was a man of habit: “at night he closed his shutters, and made fast his doors, and drew forth his gold,” which he kept now in “two thick leather bags.” (SM, 2) The language echoes the scene in which Shylock leaves his gold and his daughter for the last time. As he parts, he confesses a prescient fear: “I did dream of money-bags tonight” (2.5.18). He warns Jessica to “shut doors after you: / ‘Fast bind, fast find’.” (2.5.51–52). In the aftermath of his loss, Silas “ran swiftly” to the local pub; the centre of village society. (SM, 5) Shylock, in a similar distraught state is reported to have made to the centre of Venetian commercial life, and, running up and down the Rialto, to have clamoured for his ducats and for his daughter who disappeared with them. Shylock’s daughter Jessica steals from him a “casket” (2.6.34) of treasure and this is followed by the judicial confiscation of his remaining wealth. In response to the latter loss, Shylock laments:

You take my house when you do take the prop  
That doth sustain my house. You take my life  
When you do take the means whereby I live. (4.1.371–373)

The bereft Silas is described by Eliot in uncannily similar terms, for we are told that “Formerly, his heart had been as a locked casket with its treasure inside; but now the casket was empty, and the lock was broken. Left groping in darkness, with his prop utterly gone.” (SM, 10) The curious reference to “prop” following “casket” and “lock” evokes Shylock and his lost casket and his specific use of the word “prop” to denote the material foundation of his wellbeing. The sentiment is amplified when Silas fears the loss of Eppie, whom he imagines came to him in mysterious substitution for his lost gold. Addressing Godfrey Cass, who wishes to adopt Eppie, Silas complains “you might as well take the heart out o’ my body?” (SM, 19) No doubt Shylock felt something like this when the Venetian gentiles took his daughter from him and doubtless this motivated him to take in revenge “A pound of flesh, to be by him cut off / Nearest the merchant’s heart.” (4.1.228–229) The bargain to take that pound of flesh might have been at first (before the loss of his daughter) precisely what Shylock claimed it to have been – nothing but “a merry sport.” (1.3.141)

### 3 Jewishness

The question inevitably arises whether the character of Silas Marner is in any respect an inheritor of Shylock’s Jewishness. The question hardly presents itself on the face of the novel (in her 2009 book *The Jewish Odyssey of George Eliot*, Gertrude Himmelfarb makes no reference to the possibility of Jewish allusion in *Silas Marner*),<sup>10</sup> but George Eliot’s uncommon fascination with Judaism begs the question. Her fascination is nowhere more evident than in *Daniel Deronda*, Eliot’s last complete novel (1876). The title character grows up unaware of his own Jewish origins, but on becoming aware commits himself to the establishment of a Jewish State and at the end of the novel emigrates from Britain to Palestine with his Jewish wife Mirah whom he has just married. *Daniel Deronda* thus makes a case for Zionism two decades before Theodor Herzl set out the argument in *Der Judenstaat*, his defining treatise of 1896. We cannot conclude from this that Eliot was philo-Semitic. The idea that Jews should only marry Jews and should inhabit separate geographical territory from non-Jews might (however much some Jews might be in agreement with it) as easily arise from an anti-Semitic sentiment as from a philo-Semitic one. We can conclude, however, that the

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<sup>10</sup> Gertrude Himmelfarb, *The Jewish Odyssey of George Eliot* (New York: Encounter Books, 2009). Himmelfarb’s only reference to *Silas Marner* is where she quotes G K Chesterton’s preference for *Silas Marner* over what he called the “analysed dust-heaps of *Daniel Deronda*” (Himmelfarb, 132).

“otherly” nature of Jewish culture intrigued Eliot. Mordecai Cohen, Daniel Deronda’s mentor who dies of consumption when he was about to emigrate with the newlyweds, was largely based on Emanuel Deutsch, a celebrated Talmudic scholar who died of cancer in 1873. Eliot, who habitually draws upon persons she had encountered in her own life, was friendly with Deutsch and his death seems to have urged her to deepen her research into Judaism and to produce *Daniel Deronda*. Marghanita Laski reports that as *Daniel Deronda* began to appear in published parts throughout 1876, “Jewish readers were especially delighted with the book, and several claimed to recognize themselves or their friends in Daniel,” adding that “The author received an appreciative letter from the Ashkenazi Chief Rabbi, Dr Hermann Adler.”<sup>11</sup>

If we look again at *Silas Marner* with a view to possible Jewish allusion, the racial dimensions of Eliot’s description emerge strongly, even in the opening lines:

In the days when the spinning-wheels hummed busily in the farmhouses...there might be seen in districts far away among the lanes... certain pallid undersized men, who, by the side of the brawny country-folk, looked like the remnants of a disinherited race. The shepherd’s dog barked fiercely when one of these alien-looking men appeared...No one knew where wandering men had their homes or their origin; and how was a man to be explained unless you at least knew somebody who knew his father and mother? To the peasants of old times... a settler, if he came from distant parts, hardly ever ceased to be viewed with a remnant of distrust...especially if he had any reputation for knowledge, or showed any skill in handicraft. All cleverness, whether in the rapid use of that difficult instrument the tongue, or in some other art unfamiliar to villagers, was in itself suspicious...In this way it came to pass that those scattered linen-weavers – emigrants from the town into the country – were to the last regarded as aliens by their rustic neighbours...

We might think nothing of the fact that weavers are physically “under”-sized (in the literal sense, physically “inferior”) compared to farming folk, but “country-folk” might imply people of “our” country. This would fit with the observation that weavers are “alien-looking” members of “a disinherited race,” “wandering men,” “aliens” and “emigrants.” Add to this the fact that Eliot’s weavers have a “reputation for knowledge” and work wonders with words as well as with wool (they show “cleverness” in the use of the tongue) and we have, at the very opening of the novel, a depiction of the suspect outsider that looks very much like a depiction, and in several respects an anti-Semitic depiction, of immigrant, wandering Jews. If George Eliot wishes her readers to sense an anti-Semitic strand to the villagers’ suspicions, the next question is whether she also wishes us to work

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<sup>11</sup> Laski, *Eliot*, 104.

up, through her sympathetic depiction of Silas, a sympathy for the Jewish outsider. If she does, she might then be regarded as continuing a project begun by her Warwickshire fellow William Shakespeare who, in an anti-Semitic society and in the context of his formally anti-Semitic play (nobody doubted at the time that *The Merchant of Venice* was a “comedy”),<sup>12</sup> humanized Shylock by portraying him with the full range of humors and the play’s only fully-developed sense of humor.

Chapter 2 of *Silas Marner* begins in sympathetic mode by prompting the reader to “imagine what was the effect on a simple weaver like Silas Marner, when he left his own country and people and came to settle in Raveloe,” but whereas Shakespeare invites engagement with Shylock as a Jew, Eliot expressly distances Silas from his implied Jewish associations. She explains that Silas had been “incorporated in a narrow religious sect” (SM, 1), but we are in no doubt that his sect was a Christian one. By his own account Silas never attended church, but did frequent a “chapel”; there, although infant baptism was strange to him, he had “seen the baptism of grown-up men and women.” (SM, 14) Yet even within the fellowship of the non-conformist chapel, a strand of Jewish allusion appears. Silas and his closest friend William Dane were known to the brethren as “David and Jonathan” (SM, 1), two of Israel’s ancient heroes. William, being the elder, was Jonathan to Silas’ David. The relationship between David and Jonathan has long been held in Rabbinic tradition to epitomize selfless love, but William betrayed Silas by stealing money and putting the blame on Silas. Silas accuses William to his face of having “woven a plot to lay the sin at my door.” (SM, 1) The reference to weaving here is clearly a meta-textual allusion to Silas’s future life and to Eliot’s part in plotting it. To add insult to injury, William subsequently usurps Silas in the affections of his fiancée Sarah. In the story of Silas’ origin, Hebrew name follows upon Hebrew name. The youthful social and religious character of Silas is woven with Jewish words to produce a Jewish texture, even if the word “Jew” nowhere appears expressly in the text. Except that isn’t quite true. The word “jew” appears once in the word “jewellery” and once in the word “jewel.” If Eliot has consciously or subconsciously concealed a sense of “Jewishness” in the novel, we might expect – if we indulge a rather amateur notion of the psychological process – that the presence of “jew” within these words might reveal something by their context about Eliot’s attitude to Jewishness, at least so far as it lies within the mesh of the novel.

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<sup>12</sup> Even allowing that “comedy” in the renaissance sense meant much more than humorous amusement. See E. K. Chambers, “The Merchant of Venice” in *Shakespeare: A Survey* (1925) (1964, Penguin, Harmondsworth): 86–94, 87–88.

The word “jewel” appears in chapter 3. Dunstan Cass is goading his elder brother, Godfrey, with talk of selling Godfrey’s horse. Irked, Godfrey responds:

“It’s just like you,” Godfrey burst out, in a bitter tone, “to talk about my selling Wildfire in that cool way – the last thing I’ve got to call my own, and the best bit of horse-flesh I ever had in my life. And if you’d got a spark of pride in you, you’d be ashamed to see the stables emptied, and everybody sneering about it. But it’s my belief you’d sell yourself, if it was only for the pleasure of making somebody feel he’d got a bad bargain.”

“Ay, ay,” said Dunstan, very placably, “you do me justice, I see. You know I’m a jewel for “ticing people into bargains.” (SM, 3)

There are two, and I would suggest *only* two, highly unusual phrases in that passage. The first is the description of Wildfire as “horse-flesh.” The second is Dunstan’s phrase “I am a jewel.” Thus Eliot has Dunstan actually say “I am a jew...” without actually saying it. In the context of the unusual reference to “flesh” and to “justice” and to the incitement of “bad bargains,” the passage is richly textured with elements of the flesh bond in *The Merchant of Venice*. This same Dunstan Cass is the thief who steals Silas’s money. Immediately after the theft, he slips into a water-filled stone pit where he lies submerged until the end of the novel. (It seems appropriate that a novel so finely woven with notions of weaving should conclude with such a neat tying up of loose ends.) Of course, it is easy to read too much into subconscious associations, but the reference to “jewellery” confirms the association of “jew” with the person who stole the gold from Silas. The context in which we find the word “jewellery” concerns the pedlar (real or imagined) who emerged out of the villagers’ prejudice as being prime suspect in the theft: “an inquiry was set on foot concerning a pedlar, name unknown, with curly black hair and a foreign complexion, carrying a box of cutlery and jewellery, and wearing large rings in his ears.” (SM, 10)

Here we have a classic depiction of the itinerant Jew working in his traditional trade of pedlar. We might hope that Eliot is mocking the villagers’ prejudice against the outsider and directing us to the irony that the actual thief is one – and one of the most privileged – of their own, but we are still left with the uncomfortable fact that Eliot has the real thief, Dunstan, say “I’m a jew,” and the fact that the person who wronged Silas in his youth was Jonathan to his David. On the one hand, Eliot presents Silas as a sort of wandering Jew, but with the other hand she strips away his Jewishness and in a subtle (etymologically, “sub-textile”) way secretly or subconsciously casts it upon the enemies of Silas. Silas is repeatedly and expressly identified as Christian and yet Silas grew up from the David of his youth. There is therefore a parallel in microcosm to the fact that Jesus arose from the line of David and that Christianity arose from

Judaism. Thus, if Silas is Shylock, he appears to be the Shylock who by ducal command was converted to Christianity by the same rite of adult baptism that Silas had witnessed in North'ard.

It will be recalled that the Duke had decreed that half of Shylock's estate should go to Antonio and half to the State, but that Antonio had requested instead that he should be permitted to hold half the estate "in use" (today we would say "on trust") to render it on Shylock's death to Lorenzo, whom Antonio describes in frank terms as the man that lately "stole" Shylock's daughter. In return for this "favor," the Duke had accepted Antonio's suggestion that Shylock should "presently become a Christian" and that on Shylock's death his estate should pass to his daughter Jessica and her lover Lorenzo (4.1.379, 382, 383, 386). This was the nature of the judicial disposal of Shylock's case, and this raises the question whether better justice is done to Silas and, if it was, whether Shylock and other Jews have any share in it. Marghanita Laski notes that as a young woman, Eliot (Mary Anne Evans) was "conventionally anti-Semitic," but that by the time of *Daniel Deronda* this had "long since passed away."<sup>13</sup> It may be a question whether it had passed away completely by the time she wrote *Silas Marner*.

## 4 Law, justice and equity

The Silas who first came to Raveloe, and who passed fifteen years in isolation before the discovery of Eppie, was a man deeply cynical about the presence of earthly justice. He avers that "there is no just God that governs the earth righteously." (SM, 1) This cynicism may be an expression of Eliot's own agnosticism and her rejection of the strict Christianity in which she was raised, but within the world of the novel it clearly arises from the fact that Silas was wrongly suspected by the chapel brethren of the theft committed by William Dane. In response to that suspicion, Silas had submitted to a procedure of "praying and drawing lots" which for the brethren of the chapel was their preferred means of ascertaining truth. "Any resort to legal measures for ascertaining the culprit" being forbidden by their creed. By this process, "The lots declared that Silas Marner was guilty." (SM, 1) Eliot conjectures that "a man in Marner's position should have begun to question the validity of an appeal to the divine judgment by drawing lots" (SM, 1), and yet Eliot herself acts almost as a divine agent in the life of Silas, spinning threads of fictional fate into a text with which to cover him and protect him from what Shakespeare calls the "windy side of the law" (Twelfth

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<sup>13</sup> Laski, *Eliot*, 103.

Night 3.4.123). When Silas takes his case to the court of public opinion that convenes nightly in the Rainbow public house, we find there an equable and equivocating judge in the form of the landlord. His practice is to mediate a solution to every dispute, no doubt because he did not want to lose customers on any side. The dispute underway prior to the arrival of Silas was the matter of the butcher's cow and the question of its origin.

Dispute about a cow is a *locus classicus* of literary litigation. It is an example that Jonathan Swift resorts to in *Gulliver's Travels*<sup>14</sup> and it is the subject of a famous lithograph called *The law suit, or, the fight for the Hampshire cow*, published by Duncan Campbell Dallas in 1871, which shows opposing litigants pulling at opposite ends of the cow while the lawyer sits in the middle milking it. The landlord of the Rainbow urges his clientele, as they dispute the question of the butcher's cow, to "let the cow alone," for "The truth lies atween you: you're both right and both wrong, as I allays say." (SM, 6) The landlord opines that "there's two opinions; and if mine was asked, I should say they're both right. Tooky's right and Winthrop's right, and they've only got to split the difference and make themselves even." (SM, 6) The landlord is also equitable in his judgment of others. When Silas, in his first flush of loss casts suspicions in the direction of the local poacher Jem Rodney, the landlord rebuffs him gently: "You mustn't be a-casting your eye at poor Jem. There may be a bit of a reckoning against Jem for the matter of a hare or so, if anybody was bound to keep their eyes staring open, and niver to wink." (SM, 7) It is a delightful coincidence that the landlord's name is Mr Snell, for Edmund Henry Turner Snell (1841–1869) was a barrister whose text on the English equity jurisdiction for students and practitioners was first published in 1868 and is still in print today as the respected *Snell's Equity*. Edmund Snell was just 20 years old when *Silas Marner* first appeared in print, so it is not plausible to think that Eliot knew of him. The landlord's image of the person "bound to keep their eyes staring open, and niver to wink" is an elegant and efficient metaphor for the impracticality of strict law and the fact that for practical justice every strict rule must be moderated by equitable exceptions. Indeed, Eliot depicts the whole of Raveloe as being imbued with the equitable common sense to disdain rigorous enforcement of rules. We are told, for instance, that "The inhabitants of Raveloe were not severely regular in their church-going." (SM, 10) By this time, neither was their author.

At first Silas insists, Shylock-like, upon his right to keep Eppie. When Shylock is wronged his response is to "stand here for law" (4.1.141) and to "crave

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<sup>14</sup> Jonathan Swift, *Gulliver's Travels* (1726) pt. IV "A Voyage to The Country of The Houyhnhnms" ch. 5 (London: Penguin Popular Classics, 1994), 276.

the law” (4.1.202). At his first stage of resistance, Silas refers to the toddler as an “it,” as if she were a thing like gold and he talks of his rights to her as if she were property: “No – no – I can’t part with it, I can’t let it go,” said Silas, abruptly. “It’s come to me – I’ve a right to keep it.” (SM, 13) Dolly Winthrop, the kindly wife of the local wheelwright, begins an equitable moderation of Silas’s attitude by agreeing with him whilst pointing to the possibility of other opinions: “I think you’re in the right on it to keep the little un, Master Marner, seeing as it’s been sent to you, though there’s folks as thinks different.” (SM, 14) Dolly is a conduit for a common sense of justice that is felt instinctively rather than spelled out logically: “I feel somehow as sure as I do when I’ve laid something up though I can’t justly put my hand on it, as there was a rights in what happened to you, if one could but make it out...for sometimes things come into my head when I’m leeching or poulticing, or such, as I could never think on when I was sitting still.” (SM, 16) There is here a sense of justice being handled and appreciated by feel before it is calculated by the brain. Dolly works up her home-spun wisdom into what seems to be Eliot’s sermon. Eliot, in the letter to her publisher referred to earlier, wrote of *Silas*: “it sets – or is intended to set – in a strong light the remedial influences of pure, natural human relations.” In another letter, she reflects on the writing of George Sand in a similar way to the way that we might reflect on George Eliot’s own writing:

I should never dream of going to her writings as a moral code or text-book. I don’t care whether I agree with her about marriage or not – whether I think the design of her plot correct, or that she had no precise design at all, but began – I write as the spirit moved her, and trusted to Providence for the catastrophe, which I think the more probable case.<sup>15</sup>

Dolly’s, or Eliot’s, sermon is on the plotting powers of fortune and the connections that providentially occur in the course of connected lives:

there’s trouble i’ this world, and there’s things as we can niver make out the rights on. And all as we’ve got to do is to trusten, Master Marner – to do the right thing as fur as we know, and to trusten. For if us as knows so little can see a bit o’ good and rights, we may be sure as there’s a good and a rights bigger nor what we can know – I feel it i’ my own inside as it must be so. And if you could but ha’ gone on trustening, Master Marner, you wouldn’t ha’ run away from your fellow-creatur and been so lone. (SM, 16)

Silas is converted:

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<sup>15</sup> Letter to Miss Sara Hennell, 9th Feb. 1849.



you're i' the right, Mrs. Winthrop – you're i the right. There's good i this world – I've a feeling o' that now...That drawing o' the lots is dark; but the child was sent to me: there's dealings with us – there's dealings. (SM, 16)

And one cannot help but sense that the faith to which he is converted is the faith of his creator – George Eliot – which is the faith of all literary plotters as they preside god-like over their created worlds. It is faith to believe that happenstance looms over us; it is faith in a great loom of life that weaves fabrics as strange as fictions.

In contrast to the earthy, equitable justice of George Eliot – who was no formal beauty – there stands “pretty Nancy Lammeter” (SM, 17). Where the villagers of Raveloe – especially Mr Snell and Dolly Winthrop – exhibit an instinct for nuanced, equitable justice, pretty Nancy Lammeter, who becomes the wife of Godfrey Cass, is depicted as one excessively committed to code. There are numerous fine indications of this throughout the novel, as for example where Nancy endeavours to stick to the script even when a passion has been roused to defend her husband. She is reading the Bible when we are informed of the “first wandering of her thought from the text, which she still attempted dutifully to follow with her eyes and silent lips.” (SM, 17) Eliot associates Nancy’s rigorous habits with every aspect of her life, including her habits of dress. We are told that:

pretty Nancy Lammeter, by the time she was three-and-twenty, had her unalterable little code, and had formed every one of her habits in strict accordance with that code. She carried these decided judgments within her in the most unobtrusive way: they rooted themselves in her mind, and grew there as quietly as grass. Years ago, we know, she insisted on dressing like Priscilla, because “it was right for sisters to dress alike,” and because “she would do what was right if she wore a gown dyed with cheese-colouring.” That was a trivial but typical instance of the mode in which Nancy’s life was regulated. (SM, 17)

Not so “trivial” in fact, for (as I have argued elsewhere) the association of dress and law has a long cultural, including literary, pedigree; and it acquires new nuance in this novel about a weaver of cloth. And yet, despite her faith in code, Nancy shares the common faith in Providence and on this ground she is initially resistant to her husband’s plan to adopt Eppie:

To adopt a child, because children of your own had been denied you, was to try and choose your lot in spite of Providence: the adopted child, she was convinced, would never turn out well, and would be a curse to those who had wilfully and rebelliously sought what it was clear that, for some high reason, they were better without. (SM, 17)

The difference between Nancy and Dolly lies not in their faith in Providence, but in their attitude of trust. Where Dolly senses a mystery that must be trusted

to, Nancy sees a rule that must be obeyed. In Nancy's view, Providence casts a binding lot of the sort that blighted Silas. That which she supposes is not meant to be is turned into a matter of fact which must not be. Her husband has a similar attitude, but just happens to have a different interpretation of the code. We are told that "he was possessed with all-important feelings, that were to lead to a predetermined course of action which he had fixed on as the right." (SM, 19). The right in question being Godfrey's right, as Eppie's biological father, to adopt the child out of Silas's hands. Nancy comes round to her husband's view and in this way the conspiracy against Silas is complete. "She felt that it was a very hard trial for the poor weaver, but her code allowed no question that a father by blood must have a claim above that of any foster-father." (SM, 19) I may be alone in feeling that Nancy's part in the conspiracy against Silas resembles Portia's part in the conspiracy against Shylock. The privileged and pretty young wife seems at first to interpret the code strictly in favor of the outsider, only to re-interpret the code with greater rigor (and confirmed with blood) against the outsider. Portia's "It must not be: there is no power in Venice / Can alter a decree established" (4.1.214–215) becomes in short measure "Take then thy bond: take thou thy pound of flesh; / But in the cutting it, if thou dost shed / One drop of Christian blood, thy lands and goods / Are by the laws of Venice confiscate / Unto the state of Venice." (4.1.304–308) Between those lines, the merchant Antonio consoles Bassanio with the thought that by killing him before old age and penury "herein Fortune shows herself more kind / Than is her custom." (4.1.263–264) This is not the first time in the play that Fortune is expressly personified as a woman, and it is notable that in *Silas Marner*, Eliot employs women to portray contrasting attitudes to fortune. Nancy weaves one way, Dolly another. Godfrey recognizes the will of God at work in the events of his life, but insists on wresting control back to his own will. God-free indeed:

Everything comes to light, Nancy, sooner or later. When God Almighty wills it, our secrets are found out. I've lived with a secret on my mind, but I'll keep it from you no longer. I wouldn't have you know it by somebody else, and not by me – I wouldn't have you find it out after I'm dead. I'll tell you now. It's been "I will" and "I won't" with me all my life – I'll make sure of myself now. (SM, 18)

Nancy likewise imposes her will upon the nature of things. Dolly, in contrast, surrenders to a greater will:

It's the will o' Them above as a many things should be dark to us...You were hard done by that once, Master Marner, and it seems as you'll never know the rights of it; but that doesn't hinder there being a rights, Master Marner, for all it's dark to you and me. (SM, 21)

## 5 Trust

The novel begins with mistrust. Marner left his home of North'ard “with that despair in his soul – that shaken trust in God and man, which is little short of madness to a loving nature” and arriving in Raveloe he was one of those settlers who “if he came from distant parts, hardly ever ceased to be viewed with a remnant of distrust.” (SM, 1) That much is clear, but when Eliot writes the passage set out next, what does she mean?

It seemed to him that the Power he had vainly trusted in among the streets and at the prayer-meetings, was very far away from this land in which he had taken refuge, where men lived in careless abundance, knowing and needing nothing of that trust, which, for him, had been turned to bitterness. (SM, 2)

The author is alluding, perhaps, to the way in which self-sufficiency in the meeting of material needs tends to reduce reliance upon wider social networks of mutual sustenance, as well as reducing faithful acceptance of fate or divine provision. If so, this is perhaps why Godfrey Cass, with the sword of Damocles looming over him, is depicted (if I may mix the literary allusion) eating, drinking and being merry even though tomorrow his secret marriage to Molly Farren might be disclosed and with that his social reputation might die. While there is still everything to lose, but as yet nothing lost, he carries on and trusts to fate:

he would rather trust to casualties than to his own resolve – rather go on sitting at the feast, and sipping the wine he loved, though with the sword hanging over him and terror in his heart, than rush away into the cold darkness where there was no pleasure left. (SM, 3)

Only later, when his secret must come out, does he try to wrestle events to his will by adopting Eppie out of the hands of Silas; hands into which Providence has placed her. His error early on in the story had not been his trust to fortune, but to trust his fortune (in the form of his horse) to his untrustworthy brother Dunstan. Looking back in regret to the even earlier error of trusting his brother with cash to pay a debt, he “felt that in letting Dunstan have the money, he had already been guilty of a breach of trust hardly less culpable than that of spending the money directly for his own behoof.” (SM, 8) This little lecture to himself precedes one of Eliot’s longest sermons. In contrast to her earlier sermon on the open-handed virtue of trusting to the providence of a higher authorial will, her latest sermon preaches against Godfrey’s superstitious trusting to luck, in which vice she thinks him not alone: “Chance, I fancy, is the god of all men who follow their own devices instead of obeying a law they believe in.” (SM, 9)

It is not altogether easy to reconcile Eliot's critique here with her earlier (apparently positive) appreciation of Dolly's simple acceptance of the work of Providence and of Silas's former self who "had once loved his fellow with tender love, and trusted in an unseen goodness." (SM, 10) The difference is seemingly the ethical one between the open hand that trusts to Providence and the grasping hand that grabs at every chance. Related to this is the contrast Eliot presents between the closed nature that attends gripping gold and the open, trusting nature that attends Silas's foster daughter Eppie:

Unlike the gold which needed nothing, and must be worshipped in close-locked solitude... Eppie was a creature of endless claims and ever-growing desires...making trial of everything, with trust in new joy (SM, 14)

Finally, Silas attributes a plotting agency to the fateful events that have come to pass: "If you hadn't been sent to save me, I should ha' gone to the grave in my misery." (SM, 19) And at last his trust in humanity is restored. Silas's conclusion takes the form of a rhyming couplet:

"No," said Silas, "no; that doesn't hinder. Since the time the child was sent to me and I've come to love her as myself, I've had light enough to trusten by; and now she says she'll never leave me, I think I shall trusten till I die." (SM, 20)

In the letter to her publisher mentioned earlier, Eliot confessed that she had "felt all through as if the story would have lent itself best to metrical rather than to prose fiction."<sup>16</sup> We may beg to differ, but as a gesture to what might have been, I will conclude with a rhyming couplet of my own. It expresses a moral, and that of course, is how all fables should end.

*MORAL:*

*When a golden She lights upon your heart  
Judge fortune's lot with equitable art*

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16 Letter to John Blackwood, 24th Feb. 1861.



François Ost

# *I crave the law* : De quelques passions juridiques

## Introduction

«*I crave the law*», la formule est de Shylock, le prêteur juif du *Marchand de Venise*, qui réclame son dû, l'application de la loi, le respect de son titre, et donc aussi la livre de chair de son débiteur.<sup>1</sup> François Victor Hugo traduit «je réclame la loi», Jean-Michel Déprats «j'exige la loi». Mais *to crave* a un sens plus radical encore : une envie très forte, un désir d'absolu, un attachement extrême. Dans ce «*I crave the law*», une oreille francophone entend l'accent de la passion : «je REClame justice à CORps et à CRis», «je m'aCCRoche à mon titre», «je me CRamponne à mon droit», «je CRie vengeance au ciel». Plus profondément encore : «la loi, j'en CRève» – j'en crève d'envie, dussé-je en crever vraiment, après avoir planté mes CROcs (les Crocs de la loi) dans le cœur de mon débiteur. Cette loi, je la CRains (au sens juif de où l'on respecte la loi et on craint le châtement de Dieu), et j'en CRève de désir, quitte à me rendre CRiminel. Finalement c'est toute la gamme des passions, avec leurs ambivalences (amour/haine, désir/crainte) et leur inscription à même le corps de jouissance et de souffrance qui se laisse entendre dans ce *I crave the law* qui surgit des entrailles et éclate comme le CRi du CœuR du CRéancier. Ce sont ces passions que je voudrais offrir, comme un bouquet, à Daniela Carpi, qui, mieux que toute autre, aura su les faire parler au creux des textes littéraires.

Les passions *juridiques* sont l'objet de cette étude. Car, oui, aussi curieux que cela paraisse au premier regard, il existe bien des passions *juridiques*. La difficulté, bien entendu, consistera à les identifier, en ne les confondant pas avec les objets extérieurs sur lesquels elles portent en apparence : l'argent, le pouvoir, le sexe. On n'étudiera donc pas ici l'avarice d'Harpagon, la jalousie de Médée, l'amour de Roméo, l'ambition de Macbeth, la colère d'Achille. Ce qui est vrai cependant, c'est que les passions juridiques s'accompagnent souvent de signes extérieurs comme l'argent, le sexe, ou la réussite, qui sont comme la monnaie dont on les prise, le crédit qu'on leur accorde dans le commerce social. Il faudra

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<sup>1</sup> «*My deeds upon my head ! I crave the law. The penalty and forfeit of my bond*», William Shakespeare, «The Merchant of Venice», in *The Plays and Poems of William Shakespeare*, ed. Samuel Johnson, George Steevens, Isaac Reed and Edmond Malone (Leipzig : Ernest Fleischer, 1833) : 4.1. 202–203.

donc progressivement affiner le regard et s'aviser bientôt que l'objet extérieur s'estompe au profit d'un affect plus profond : un désir ou une répulsion de droit. Découverte étonnante : le droit pour le droit. Le droit devenant l'objet, l'enjeu et la fin de la passion, et pas seulement son instrument. On entre alors dans le domaine étonnant des passions *juridiques*.

Cette étude ne se ramène pas au simple *portrait de caractères*, à la nomenclature ordinaire de *types juridiques*. Plutôt que de paisible peinture de «types», il sera question, dans les extraits littéraires ici mobilisés, de crises violentes qui éclairent les limites et même l'envers du droit, ses confins ultimes où il se retourne en son contraire. Ce qui est vrai cependant, c'est qu'entre le «type» ordinaire, normal et raisonnable, et la figure passionnelle et pathologique, existe un dégradé, toute une variété de postures intermédiaires non moins instructives. Ainsi le retournement passionnel par passage à la limite s'avère-t-il éclairant quant aux dérives qui guettent juristes et sujets de droit ordinaires.

D'autant que les passions ici étudiées, si elles s'incarnent dans des personnages littéraires d'exception, sont également susceptibles de devenir des passions sociales collectives. S'agrégeant à la mesure de la société entière et se renforçant en conséquence, ces passions, qui deviennent alors politiques (relatives à la cité, *polis, civitas*), jettent une forte et sombre lumière sur les fondements anthropologiques de la cité. Ceux-là mêmes que Sophocle visait dans le premier *stasimon* de l'*Antigone*, lorsqu'il faisait dire au chœur : «ce sont les passions qui gouvernent les cités» (*astunomous orgas*)<sup>2</sup>. Et le chœur d'ajouter : «ces passions, les hommes se les sont apprises à eux-mêmes» – apprises, le plus souvent à leurs dépens, ajouterai-je à mon tour. Comment faire le départ entre passions civiles, celles qui nouent durablement le lien social, et passions inciviles, celles qui nourrissent les guerres du même nom ? Telle est alors la question cruciale (on verra qu'elle inquiétait Zeus au point d'envoyer aux hommes les remèdes qu'on dira).

C'est que les passions ne manquent pas d'être ambivalentes, comme du reste les réactions que leur oppose la raison – l'histoire, sans cesse recommencée, de leurs relations tumultueuses en témoigne à suffisance. De chaque passion juridique, qu'il s'agisse de chérir le droit ou de s'en défier, il existe un usage normal et souhaitable tout comme des abus pathologiques et dommageables. Dans un Etat de droit et une cité pacifiée, il est bienvenu de faire confiance au droit, voire d'en appeler à lui comme à un instrument efficace de changement social – c'était Ihering et sa valorisation du «combat pour le droit», Voltaire et ses pamphlets,

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<sup>2</sup> Sophocle, «Antigone», in *Sophoclis Fabulae*, ed. H Lloyd-Jones, (Oxford : Clarendon Press, 1990), v. 355.

ou les dossiers montés aujourd'hui par les *cause lawyers*. Mais J. Carbonnier nous prévient : l'excès en tout peut nuire, et même l'amour du droit se doit d'être modéré ; «il y aurait», écrivait-il, «un article zéro à inscrire en tête du titre préliminaire du Code civil : l'amour du droit est réductible en cas d'excès». <sup>3</sup> Au-delà d'un certain point, le retournement menace : *summum ius, summa iniuria*, – preuve en est la folie judiciaire, législative ou réglementaire qui anime tant de ces «fous du droit» que nous rencontrerons.

De même, il est normal, et souhaitable jusqu'à un certain point, que le droit, en tout cas ses sanctions, se fassent craindre pour être respectés – c'était le principe qu'Athéna recommandait à Athènes au moment même où elle délivrait les Athéniens de la menace des Erinyes vengeresses. En revanche, l'angoisse suscitée par le droit, son absence, son incertitude, son inaccessibilité ou son caractère énigmatique peut, dans certains cas, devenir franchement pathologique, comme en témoignent tant de personnages de Kafka, tous ses avatars signalés par la lettre K. Ou alors, variante perverse, la défiance à l'égard du droit et de ses institutions se mue en haine radicale et rejet total au profit d'une loi qu'on se donne à soi-même et impose aux autres, de préférence en l'inscrivant à même leur propre corps, comme chez Sade.

Ainsi commence-t-on à deviner la formule par laquelle se signale l'excès passionnel, sa démesure, la fameuse *ubris* grecque : une activité, un intérêt qui se prenant lui-même pour fin ultime, finit par s'aliéner et se détruire par renversement en son contraire. C'est la terrible prémonition de Macbeth hésitant encore à commettre son forfait : «l'ambition voltigeante, et dépassant son propre but, qui verse de l'autre côté» (*Macbeth*, I, 8, 27–28). Il y a trop dans cette surchauffe passionnelle : un excès mortifère ; c'est tantôt «la loi, à mort», tantôt «à mort la loi» – dans les deux cas, un attachement outré, outrancier, qui mène «outré» la limite invisible du danger mortel. S'il est vrai que le droit est mesure, ce renversement passionnel signe sa dénaturation ; *ubris* s'oppose à *dikè*, qui est équilibre, proportion, mesure. <sup>4</sup> Quand le droit se décline sur un mode unilatéral et absolutiste, oubliant la recherche d'équilibre qui le caractérise (*audi et altera pars*), le basculement menace. Il est vrai cependant que l'histoire ne progresse qu'à la faveur de la transgression des limites, de la dialectique constante de mesure et démesure – c'est sur fond de chaos et de violence que se fait entendre

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<sup>3</sup> Jean Carbonnier, «Boissonnade et la réception du droit français au Japon», *Revue internationale de droit comparé*, 2, (avril-juin 1992), 204.

<sup>4</sup> Sur le couple *ubris/dikè*, cf. Peggy Larriéu, *Mythes grecs et droit* (Laval : Presses de l'Université de Laval, 2017), 71 ; cf. aussi Jean-François Mattei, *Le sens de la démesure* (Cabris : Sulliver, 2009), 27.



la voix de *dikè*, de sorte qu'ignorer le débordement passionnel, ce serait s'exposer bientôt à de graves déconvenues.

Au bénéfice de ces remarques préliminaires, nous sommes maintenant en mesure d'aborder les passions juridiques. Je me contenterai, dans cette courte étude, de parler des passions qui tiennent « au trop de droit » : l'amour excessif du droit, de ses procédures, de ses actes que lui manifeste une grande variété de « fous de droit », réservant pour une autre occasion les passions qui relèvent du « trop peu de droit », comme la haine que lui vouent Dom Juan et Sade, ou l'angoisse que ressent Kafka, confronté à son énigmatique présence/absence.

« L'expression » trop de droit « demande à être précisée, car, bien entendu, il existe quantité de dispositions favorables au droit qui peuvent parfois confiner à l'intensité passionnelle, sans pour autant relever de notre objet d'étude : les passions pathologiques qui se signalent par un retournement stérile sur elles-mêmes. Ainsi, il n'est que trop clair qu'une société bien organisée et pacifiée suppose que les citoyens adhèrent dans une large mesure aux lois qui y prévalent. Il y va d'une passion raisonnable (motivée, raisonnée) et partagée ; » si vous voulez qu'on obéisse aux lois, faites qu'on les aime », avait écrit Rousseau dans son *Discours sur l'économie politique*. Plus qu'une prétendue connaissance des lois, très peu crédible, c'est plutôt de confiance générale dans le régime qu'il y va – un minimum d'attachement civique.<sup>5</sup>

S'il fallait creuser cet amour raisonnable des lois, on s'apercevrait que ses fondements relèvent d'un composé de valeurs éthiques et citoyennes, comme le révèle Platon dans un passage important de son *Protagoras*. Alerté par les guerres civiles incessantes qui menaçaient la survie des cités, Zeus envoie son fidèle Hermès apporter aux hommes le remède susceptible de restaurer la paix et l'harmonie. Non pas une constitution ou un code *ready made*, mais, bien plus important : les affects susceptibles d'assurer l'attachement aux lois : *aidos* et *dikè*. *Aidos*, ou le respect (de soi-même, des autres, des institutions et des lois), et *dikè*, le sens de la mesure, l'attachement à la justice<sup>6</sup>. Peu importe le détail des lois, voire même la nature du régime, ce sont ces inclinations sociales, ces passions douces susceptibles de nouer le lien qui fait les cités pacifiées.

Certains iront plus loin, postuleront une intensité supérieure d'attachement passionnel et parleront d'identification au législateur, d'amour sacré de la patrie,

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5 Cf. notamment : *L'amour des lois*, sous la dir. de Josiane Boulad-Ayoub (Laval : Presses de l'université de Laval, 1996) ; *L'amour selon la loi*, sous la dir. de Catherine Puigelier et François Terré (Paris : Mare et Martin, 2014).

6 Platon, *Protagoras*, trad. par E. Chambry (Paris : Garnier-Flammarion, 1967), 54.

d'*amour du censeur*<sup>7</sup> – on glisse alors insensiblement vers le registre passionnel et son dangereux point de basculement.

On peut aussi observer que cette forme d'attachement raisonnable et lucide au droit, parfois une confiance aussi déterminée que sans illusion, motive le combat d'individus ou de groupes qui « luttent pour le droit » selon l'invitation de Ihering qui exhortait ses contemporains à ne jamais brader leur propre dignité en laissant violer un de leurs droits. Défendre ses droits, expliquait-il, c'est défendre la cause du droit tout entier – et de prendre pour exemple la figure de M. Kohlhaas dont il sera bientôt question<sup>8</sup>.

C'est une telle passion, lucide et résolue, qui animait Voltaire et tous les écrivains, nombreux, qui ont, à l'aide de leur plume, passionnément défendu une conception plus juste de la loi. « Animés par une même *passion*, Voltaire et Hugo furent des contre-pouvoirs à eux seuls », écrit D. Salas<sup>9</sup>. Après le célèbre *J'accuse* de Zola, le relais sera pris, au XXe siècle, par A. France, A. Gide, F. Mauriac, A. Camus, et tant d'autres – pour m'en tenir aux seuls écrivains français.

Les acteurs juridiques eux-mêmes ne demeurent pas en reste ; qu'il suffise d'évoquer aujourd'hui l'action de ceux que les américains nomment les *cause lawyers* qui montent des dossiers juridiques, dans des *causes significatives*, en vue de procès symboliques, se servant ainsi du droit comme d'un instrument de changement social dans des matières sensibles comme la protection des minorités ou de l'environnement par exemple.

Mais tout cela relève du versant positif de la passion juridique : soit ses degrés minimaux, soit sa mobilisation héroïque en vue de causes sociales externes (la liberté, l'harmonie sociale). Ce qu'il nous faut aborder maintenant ce sont ses formes exacerbées et sa concentration fétichiste sur elle-même, annonciateurs de son retournement en son contraire. Ce sont non moins de six variétés d'entre elles que je me propose d'examiner.

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7 Pierre Legendre, *L'amour du censeur* (Paris : Seuil, 1974), 10 : « le grand œuvre du Pouvoir consiste à se faire aimer ».

8 Rudolph von Ihering, *Le combat pour le droit*, traduction par F. Meydiou (1875), (Paris : Hachette, BNF, 2012).

9 Denis Salas, « Voltaire ou le tribunal de la raison », in *La plume et le prétoire. Quand les écrivains racontent la justice*, sous la direction de D. Salas (Paris : La Documentation française, 2014), 92.

## 1 Juger et plaider à la folie

C'est sans doute un paradoxe que le procès, qui fait descendre le droit sur terre et, en principe, concrétise le besoin de justice, ait, de tous temps été tenu en suspicion, comme un événement pénible, générateur de toutes sortes de maux et de folies : on s'y ruinerait, on n'en connaîtrait jamais la fin, et il développerait l'agressivité des plaideurs<sup>10</sup>. Tourner juges et plaideurs en dérision, est de tous les lieux communs du courant « droit et littérature », assurément le plus commun.

L'affaire commence avec *Les guêpes* d'Aristophane (422 avant J.-C.) qui met en scène un juge, Philocléon, atteint de la folie de juger, au point que son fils finit par l'enfermer à son domicile, non sans lui fournir des causes à juger, tel le chien de la maison, accusé du vol d'un fromage de Sicile. Ses proches décrivent les symptômes de cette « tribunalite aiguë » : « juger est sa passion, et il gémit s'il ne siège pas sur le banc des juges ; » et encore : « malheureuse manie de sortir dès le point du jour après les délations et les procès ». Le fils en perçoit bien le retournement paradoxal : « ne sens-tu pas que tu es le jouet de ces hommes (les plaignants) auxquels tu rends presque un culte (...) sans t'en douter, tu n'es qu'un esclave ».

Vingt siècles plus tard, Racine s'inspirera de cette comédie antique pour écrire *Les plaideurs* (1668) qui met en scène une belle collection de monomanes du procès. Et d'abord le juge Dandin, digne héritier de Philocléon, « qui veut tous nous juger, les uns après les autres » (I, 1, 30). Retenu séquestré à son domicile, il s'enfuit par les gouttières (« vous verrez, il va juger les chats », II, 8, 518), ou par les soupiraux, de sorte qu'on finit par lui promettre de lui adresser les causes en son hôtel (« vous pourrez tous les jours tenir deux audiences/ tout vous sera chez vous matière de sentences », II, 13, 611–612).

Face à lui, deux plaideurs enragés : le bien nommé Chicaneau (« après quinze ou vingt ans, il me reste un refuge, la requête civile est ouverte pour moi », I, 7, 234–235) affronte la Comtesse de Pimbesche, engagée depuis trente ans dans des procès, de préférence à l'encontre de sa propre famille. Chacun témoignant des dérives de la passion absolutisée : le plaisir détourné (« vivre sans plaider, est-ce contentement ? », I, 7, 250), l'exclusivisme et l'absolutisme (« j'y vendrai ma chemise, et je veux rien ou tout », I, 7, 258).

Au-delà de ces portraits individuels poussant la passion de juger ou de plaider à un paroxysme pathologique, il faut observer, sur un plan collectif cette fois, que certaines époques sont, plus que d'autres, guettées par cette dérive

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<sup>10</sup> Jean Carbonnier, *Flexible droit* (Paris : LGDJ, 1971), 247.

contentieuse. Ainsi en allait-il de la Grèce du temps d'Aristophane, de la France au siècle de Racine et de Furetière, et de l'époque contemporaine certainement. C'est un ancien président de la Cour constitutionnelle de Belgique, Paul Martens, qui souligne ce danger d'«*ubris* judiciaire» qui menace par exemple lorsque, «*poussant jusqu'à l'absurde la logique de l'imprescriptibilité, on prétend faire le procès de Christophe Colomb pour tenter de lui imputer la responsabilité de la traite des noirs et de l'esclavage*»<sup>11</sup>.

## 2 Passion justicière

Le justicier doit être distingué du juge officiel aussi bien que du vengeur ordinaire ; il en va de même des passions correspondantes, en dépit de la proximité qui les rapproche. Lorsque le 1er mai 2011 le président Obama déclare à la télévision américaine : «*justice as been done*», à propos de l'exécution du terroriste Ben Laden par un commando hélicoptère, il n'évoque ni une sentence officielle d'un tribunal américain, ni une simple vengeance privée des victimes des attentats du 11 septembre ; il se situe très précisément dans le registre de la logique *justicière*. Celle-ci fait l'économie des procédures instituées, mais se réclame cependant de principes juridiques supérieurs.

Deux romans populaires très célèbres, *Le Comte de Monte-Cristo* d'Alexandre Dumas (1845), et *Mathias Sandorf* de Jules Verne (1885) ont pu être analysés comme le récit du passage de la vengeance ordinaire à la justice justicière, elle-même nourrie par la colère, qu'Aristote qualifiait de «*passion naturelle*». Sans dissimuler pour autant la fragilité de cette position : «*(dans le Comte de Monte-Cristo), la tension se noue sur la ligne de crête toujours vacillante occupée par le héros, au bord, à chaque instant – et même parfois au-delà – de faire basculer sa vengeance rationalisée du côté du déchaînement irrationnel*».<sup>12</sup>

Parce qu'elle se produit le plus souvent dans des contextes de crise profonde où la conscience indignée s'oppose à l'injustice, et aussi parce qu'elle engage presque toujours la vie même des protagonistes, la logique justicière s'expose particulièrement aux dérives passionnelles ; un des exemples les plus connus dans la littérature mondiale est fourni par la figure paradoxale de Michaël Ko-

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<sup>11</sup> Paul Martens, *Théories du droit et pensée juridique contemporaine* (Bruxelles : Larcier, 2003), 104 – 105.

<sup>12</sup> Boris Bernabe, «*De la vengeance à la justice dans le Comte de Monte-Christo et Mathias Sandorf*», in *La plume et le prétoire. Quand les écrivains racontent la justice*, sous la direction de D. Salas (Paris : La documentation française, 2014), 103.

hlhaas, dessinée par H. von Kleist entre 1805 et 1808<sup>13</sup>. L'histoire se passe au XVI<sup>e</sup> siècle en Allemagne ; elle a pour héros un marchand de chevaux, Michaël Kohlhaas, un homme d'excellente réputation et d'une intégrité à toute épreuve. von Kleist précise, dès le premier paragraphe, « force eût été au monde d'honorer sa mémoire s'il n'avait passé les bornes d'une vertu : le sentiment de la justice en fit un brigand et un meurtrier ».

C'est un événement somme toute mineur qui déclenche le drame : alors que le maquignon était allé vendre des chevaux à une foire qui se tenait dans l'État de Saxe, voisin de son Brandebourg, un seigneur local, Wenzel von Tronka, lui réclame un laissez-passer en vertu d'une récente ordonnance (qui s'avérera inventée pour la cause). Incapable de fournir ce document, Kohlhaas est contraint de laisser deux de ses chevaux en gage. Revenu plus tard les récupérer, il apprend que son valet a été roué de coups, tandis qu'il retrouve les deux chevaux à demi-morts, épuisés par les travaux auxquels on les a astreints. Furieux, mais très respectueux du droit, Kohlhaas introduit une plainte devant le tribunal de Dresde : qu'on lui rende ses chevaux dans leur *pristin* état et que réparation lui soit accordée pour le dommage encouru. Bénéficiant de diverses protections, le seigneur von Tronka parvient à faire étouffer l'affaire. Devant les juridictions de son propre État, Kohlhaas n'aura pas plus de succès : ici encore, on conseille à ce « chicaneur importun » de récupérer ses bêtes et d'abandonner les poursuites.<sup>4</sup>

La passion justicière commence alors à gagner Kohlhaas : il a tôt fait de vendre tous ses biens, convaincu qu'il n'y a pas lieu de rester dans un pays où l'on n'est pas disposé à protéger ses droits : « plutôt être un chien qu'un être humain, si je dois être foulé aux pieds », s'exclame-t-il<sup>14</sup>. Après l'échec d'une ultime médiation, qui coûtera la vie à sa femme, Kohlhaas franchit le Rubicon : désormais il n'aura plus qu'une seule pensée : assouvir sa vengeance à l'égard du seigneur von Tronka et, de façon plus générale, faire justice d'un pays qui ne garantit plus ses droits – « il se sentait appelé à de grandes choses dont on entendrait parler sous peu ». À la tête d'une petite troupe de hors-la-loi, qui ira grandissant au fil de ses faits d'armes, le voilà qui sème la désolation dans toute la Saxe : pillages, meurtres, incendies se succèdent. En vertu du pouvoir « naturel » dont il se croit investi, notre homme prononce des arrêts de justice, dont ses expéditions punitives constituent l'exécution ; le voilà même qui rédige des « mandements kohlhaasiens » enjoignant la population, sous peine de mort, à lui livrer le seigneur von Tronka. Déniant sa « particularité » (ici, le fait d'être lui-

<sup>13</sup> Heinrich von Kleist, *Récits (Œuvres complètes, t. II)*, trad. par P. Deshusses, (Paris : Gallimard, 2000) 17 et s.

<sup>14</sup> Heinrich von Kleist, *Michaël Kohlhaas*, in *Récits*, 38.

même une partie au procès), il s'installe dans la position absolue et sans partage du tiers justicier.

Finalement, il faudra l'intervention de Martin Luther lui-même pour le ramener à la raison, littéralement : faire revenir sur terre celui qui, pour reprendre la terminologie de Binswanger, « s'était égaré en montant ». Contre la promesse d'une amnistie générale, il consent à déposer les armes, pour autant cependant que son procès initial reprenne enfin son cours.<sup>15</sup>

Le génie de von Kleist est d'imaginer alors une double issue à l'histoire : un double procès, aux verdicts contrastés, en écho aux motivations complexes de Kohlhaas. D'une part, le rebelle est déféré à la Cour impériale de Berlin pour violation de la paix civile. L'accusation est menée par le procureur impérial qui n'était en aucune façon lié par l'amnistie accordée à l'accusé. Très logiquement, Kohlhaas est condamné à mort par cette Cour. Mais, parallèlement, le premier procès, de nature civile, a enfin trouvé son terme : sur ce terrain, le maquignon obtient complète satisfaction : ses chevaux lui sont rendus en parfaite santé et le seigneur von Tronka condamné à réparation intégrale. Aussi bien, c'est « plein de joie » que Kohlhaas montera sur l'échafaud : « son vœu le plus cher sur terre » était enfin exaucé.<sup>15</sup>

Curieux personnage que ce Kohlhaas : assurément, l'homme « le plus intègre et le plus effroyable de son temps ».<sup>16</sup> Comment peut-on à la fois être si rigoureusement attaché au droit et déchaîner une vengeance aussi sanguinaire ? Les exactions criminelles dont il se rend coupable, ainsi que le fanatisme religieux dont il témoigne interdisent de voir dans sa révolte une objection de conscience dans le style de celle d'Antigone. Mais, à l'inverse, son attachement passionné au droit et son acceptation sereine de la peine capitale différencient Kohlhaas d'un vengeur ordinaire. En réalité, une partie du mystère se dissipe si l'on comprend que c'est seulement à défaut d'avoir obtenu justice par les voies officielles, que le maquignon se résout à se faire justice à lui-même. Et si, dès ce moment, sa résolution ne connaît plus de bornes, le conduisant aux pires excès, c'est qu'il a senti l'ordre du monde s'écrouler sous ses pas : littéralement, l'État ne lui paraissait plus habitable dès lors que protection n'était plus assurée à ses biens et à ses proches. Rejeté comme un fauve au désert – c'est ainsi qu'il se présente à Luther – il est rendu à l'état de nature et délié de toute convention sociale : c'est au nom d'un pouvoir « naturel » qu'il prétend agir désormais. Mais à aucun moment il ne cessera d'en appeler à la restauration de l'ordre et de la justice ; et aussi paradoxal que cela puisse paraître, c'est heureux et rasséréné

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<sup>15</sup> Von Kleist, *Récits*, 118.

<sup>16</sup> Von Kleist, *Récits*, 17.

qu'il acceptera de payer de sa vie sa réintégration dans un univers enfin ordonné. On comprend alors que s'il s'était mis hors-la-loi, c'était la seule manière pour lui de signifier que l'État tout entier avait cessé de s'identifier à la loi. Et la double condamnation qui le frappe, lui et le seigneur von Tronka, signe à cet égard le retour tant attendu de l'ordre et de la paix sociale. La passion justicière, après avoir produit les pires désordres, finit par s'apaiser en même temps que se restaure l'ordre du droit.

La littérature abonde de ces figures de justiciers, tantôt égarés, tantôt dangereusement enragés. Pourfendeur halluciné de moulins, Don Quichotte est aussi le modèle du redresseur de torts égaré. Ainsi lorsqu'il s'en prend à un fermier qui fouette son valet pour n'avoir pas à lui payer ses gages. Surpris, l'homme se radoucit et fait mine de s'amender, mais, bien entendu, il reprendra son manège dès que le *Chevalier à la triste figure* se sera éloigné... Les réalités prosaïques de l'exécution de la justice n'intéressent pas le justicier égaré, seul compte la beauté de l'exploit.

Au rayon des justiciers enragés – dont l'histoire réelle ne manque pas, hélas– on peut ranger le héros des *Dieux ont soif*, le grand roman historique d'Anatole France : Evariste Gamelin, juré du tribunal révolutionnaire établi en 1793 par Robespierre en vue «de connaître de toute entreprise contre-révolutionnaire». Aussi vertueux et incorruptible que son mentor, ce juré avait fait sien son mot d'ordre : «l'indulgence est parricide... que la guillotine sauve la patrie !»<sup>17</sup>. Chemin faisant et l'habitude aidant «Gamelin commençait à se faire du châtement une idée religieuse et mystique».<sup>18</sup> Et lorsque finalement il sera emporté lui-même par la tourmente et conduit à l'échafaud, il se condamne lui-même dans des termes qui anticipent étrangement sur ceux des procès staliniens des années trente : «Je meurs justement. Il est juste que nous recevions ces outrages jetés à la République et dont nous aurions dû la défendre. Nous avons été faibles ; nous nous sommes rendus coupables d'indulgence (...). Robespierre lui-même, le pur, le saint, a péché par douceur ; ses fautes sont effacées par son martyre».<sup>19</sup>

Gamelin et les Inquisiteurs étaient sans doute des personnages fanatiques et paranoïaques, mais la présence des foules, compactes, qui se pressaient aux aveux publics de l'Inquisition (*autodafés*) et aux exécutions sur les places publiques devrait nous persuader de ce que, en certaines circonstances, la folie

<sup>17</sup> Anatole France, *Les dieux ont soif* (Paris : Calmann-Lévy, 1912), 55.

<sup>18</sup> France, *Les dieux ont soif*, 133.

<sup>19</sup> France, *Les dieux ont soif*, 237.

justicière gagne les masses elles-mêmes<sup>20</sup>. Et que dire des manifestations contemporaines d'indignation, pourvoyeuses d'une justice émotionnelle fonctionnant aux scandales et à la délation, une justice de l'immédiateté, sommée de choisir son camp entre l'un qui se campe en victime, absolument innocente, et l'autre absolu, dépeint et craint comme un monstre ? La justice, qui est retenue et mesure, distance et argumentation, se concilie mal avec la montée aux extrêmes de la passion.

### 3 Passion vengeresse

Avec la passion vengeresse, on régresse encore d'un cran en direction des couches les plus archaïques du pré-droit : non seulement on se fait justice à soi-même, se passant du juge officiel, mais on ne se réclame d'aucun principe juridique, sinon d'un sens primitif de l'honneur et d'une loi intemporelle du talion. Archaïque, mais toujours très répandue, depuis la cour de récréation enfantine jusqu'aux relations internationales, la passion vengeresse est sans doute la plus virulente de toutes les passions juridiques. Parmi les innombrables illustrations littéraires de la vengeance, je choisis celle de Shylock qu'immortalise Shakespeare dans le *Marchand de Venise*.

La pièce est si connue qu'on se dispense d'en rappeler longuement l'argument.<sup>21</sup> Qu'il suffise de dire que, désireux de secourir un ami, Antonio, le riche armateur de Venise, qui se trouve actuellement à découvert (il a risqué toute sa fortune dans diverses expéditions maritimes), se tourne vers Shylock, l'usurier juif de la place, son ennemi juré. Trop heureux d'obliger son rival, Shylock lui consent un prêt de 3000 ducats, assorti cependant d'une curieuse clause pénale : en cas de défaut de paiement, le créancier sera en droit de prélever sur le corps du débiteur une livre de chair à l'endroit qui lui plaira. On apprend bientôt que les six navires d'Antonio se sont abîmés en mer, de sorte que l'armateur est incapable d'honorer sa dette. L'affaire est immédiatement portée en justice, et Shylock, accroché à la lettre de son billet, aiguise déjà son couteau. Tout Venise se mobilise cependant pour en appeler à la miséricorde (*mercy*) de l'usurier : ainsi par exemple Portia, dans le rôle de l'*amicus curiae*. Mais, le jeu est faussé car cette Portia n'est autre que l'épouse de l'ami qui a bénéficié des largesses d'Antonio ; finalement l'affaire tourne à la confusion de l'infortuné Shylock,

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<sup>20</sup> France, *Les dieux ont soif*, 142 : « Une foule énorme et joyeuse de curieux se pressait autour de l'échafaud, attendant les charrettes pleines. »

<sup>21</sup> Pour de plus amples développements, cf. François Ost, *Shakespeare. La comédie de la loi* (Paris : Editions Michalon, 2012), 65–124.



piégé par l'argumentation littéraliste de Portia : il sera condamné à une conversion forcée et à la perte de la gestion de tous ses biens.

Il faudrait se demander ce que révèle le couple infernal Antonio/Shylock ; quelles sont leurs motivations respectives, poussant l'un à risquer son va-tout, et l'autre, à consentir un prêt sans intérêt – deux comportements aux antipodes de la raison et de leurs habitudes. On s'apercevrait alors que les deux protagonistes sont animés par des passions – le jeu suicidaire pour le premier (bien dans la ligne du casino vénitien), le ressentiment vengeur pour le second –, des passions dont le droit n'est pas seulement l'instrument, mais l'enjeu même. S'affrontent ici de façon paroxystique deux versions de ce qu'on pourrait appeler une « jouissance à mort de la loi. » D'un côté, le glorieux armateur vénitien, blasé de tout, qui s'offre un dernier défi, susceptible enfin, par sa radicalité même, de lui restituer le frisson du jeu et donc l'appétit de vivre (et aussi de triompher de ce prêteur juif qui lui fait de l'ombre) ; l'engagement de son corps même dans la clause folle le met totalement à découvert. Mais cette partie est truquée : il devine que, même formellement engagé, il imposera sa propre loi perverse contre la rigueur du droit cambiaire et la régularité des procédures judiciaires. C'est à une formidable partie de « qui perd gagne » qu'il convie le malheureux Shylock.

Quant à lui, Shylock, la folie apparente de son adversaire lui offre, croit-il, une occasion unique de se venger des décennies d'avaries que lui a fait subir le « clan des Vénitiens ». Encore faut-il mesurer le degré de radicalité – une radicalité juridique – de l'opération à laquelle il souscrit. Ce prêt sans intérêt, assorti de la clause que l'on sait, n'est pas seulement une manière d'étrangler financièrement un rival en affaires, ni même l'occasion de s'en débarrasser physiquement. Pour le réprouvé qu'il est, l'anticipation de la reconnaissance judiciaire de son bon droit et l'exécution de son titre (le fameux billet qu'il brandit à toutes les lignes) est la preuve, « ontologique » pourrait-on dire, qu'il a enfin le droit de son côté. « *I stand here for the law* », s'écrie-t-il, « je me revendique du droit, je suis porte-parole du droit » – mieux encore : « *I crave the law* », « je désire la loi, je la désire à mort, j'en crève pour la loi ». Le voilà enfin autorisé à se venger *par* le droit ; mieux : le voilà enfin sujet de droit et non plus hors-la-loi ; le voilà enfin *en droit* – en droit de se plaindre, en droit de gagner sa cause. Quitter le désert du *ghetto* (le mot est vénitien précisément), atteindre la terre promise du droit. Etre enfin reconnu, reconnu par la Loi.

Mais, il comprendra bientôt que tout cela n'était qu'un jeu mené à ses dépens, et qu'à la loterie vénitienne, un juif ne gagne jamais. Comme les grandes banques d'aujourd'hui, Antonio est « *to big to fail* ». Et si lui, le paria, attend de la loi une reconnaissance qui l'intronise « sujet de droit », à l'inverse, le pervers Antonio s'offre cette jouissance suprême de jouer de la loi positive vénitienne

(on passe le contrat devant notaire, on en discute l'exécution devant un tribunal) pour la « déjouer » finalement et se payer le luxe aristocratique de demeurer à l'abri de ses coups, en flamboyant « hors-la-loi » qu'il a toujours été.

Dans nos ordres juridiques modernes, où prévalent l'Etat de droit et l'interdiction de se faire justice à soi-même, la vengeance privée a sans doute reculé. Mais elle ne désarme jamais pour autant ; ce serait un vaste chantier de recherche d'étudier son action autour et alentour du droit institué, et même d'en mesurer la part active au fondement de la justice pénale classique <sup>22</sup>.

## 4 Passion légiférante

À certains moments de l'histoire, les peuples, et à leur tête des esprits inspirés, sont saisis d'une fièvre législative. Non la banale pulsion du commandement qui a des accents caporalistes et qui s'épuise dans la jouissance ordinaire d'être obéi ; bien plutôt la sublime volupté de l'universel qui s'adresse au genre humain entier, ou, à tout le moins à la nation, et qui se flatte de modifier jusqu'à la nature humaine elle-même. En ces moments d'accélération de l'histoire, on ne s'accommode plus des changements lents de l'usage et de la jurisprudence ; on veut une transformation immédiate et profonde ; on vise une rationalisation des mœurs, une standardisation des comportements, on rêve d'unité et même d'universalité. Ce sont alors des moments de tentation révolutionnaire, – on se veut alors pédagogue, « instituteur » du peuple qui « se sent en état de changer la nature humaine », avec le danger des dérives totalitaires que l'on connaît.

Jean-Jacques Rousseau dresse le portrait idéal de ce législateur inspiré, sorte de demi-dieu, figure extraordinaire dans l'Etat : « Pour découvrir les meilleures règles de société qui conviennent aux nations, il faudrait une intelligence supérieure, qui vît toutes les *passions* des hommes et qui n'en éprouvât aucune... qui se ménageant une gloire éloignée, pût travailler dans un siècle et jouir dans un autre ... Il faudrait des dieux pour donner des lois aux hommes ». <sup>23</sup> Par ce déni de passion, Rousseau révélait l'action de la dévorante passion qui l'animait lui-même : l'ambition souveraine de donner des lois aux hommes, – lui qui ne dédaignât pas l'emploi, et se crût en mesure d'offrir une Constitution à la Corse, et une autre à la Pologne.

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<sup>22</sup> François Ost, « La justice, ses alternatives et ses symboles. Venger, pardonner ou juger ? Variations littéraires, » in *Les figures du procès au-delà des frontières*, sous la direction de Wanda Pastor et Lionel Miniato (Paris : Dalloz, 2013) : 137–155.

<sup>23</sup> Jean-Jacques Rousseau, *Du contrat social. Ou principes du droit politique* (Paris : Bordas, 1972), 107.

En matière de folie législative, la réalité semble dépasser la fiction. C'est que si les fictions littéraires sont rares, en revanche les législateurs romanesques atteints de cette curieuse manie ne manquent pas. Ainsi de Maximilien Ier (1832–1867), éphémère empereur du Mexique. Dans les trois années où il exerça un semblant de pouvoir (1864–1867), il composa non moins de sept volumes de textes législatifs, dans l'indifférence totale à l'égard de leur effectivité possible, se complaisant même à la rédaction d'une législation sur la marine en un temps où le Mexique ne possédait pas le moindre navire de guerre. Animé de l'irrépressible besoin de faire des lois, Maximilien n'était certes pas un despote vulgaire à la manière d'un Ubu-Roi ; c'est la « jouissance dans des siècles éloignés » qu'il recherchait, se payant dans l'immédiat de la satisfaction abstraite d'une mise au pas générations futures sous l'empire d'une législation abstraite et universelle de sa composition.

Mais la passion des lois est, le plus souvent, affaire sérieuse et collective. Certaines nations semblent en être atteintes plus que d'autres. C'est un Français qui l'écrit, doué de la lucidité de l'anthropologue : « les Français aiment la loi pour elle-même ; ils y voient un principe fondateur, voire salvateur »<sup>24</sup>.

Et c'est un autre Français, Jean Carbonnier, juriste doublé d'un sociologue secrètement attiré par le non-droit (à tout le moins les pauses de droit qui en sont comme la respiration), qui formule ce diagnostic sévère à l'égard des premières années de la Ve République : « si la Ve République a globalement péché, c'est par trop de droit et par la passion d'y ajouter »<sup>25</sup>.

## 5 Passion réglementaire, la tyrannie de la lettre

Les passions légiférantes sont aussi rares que sublimes ; en revanche, la passion du règlement, pragmatique et terre-à-terre, sourcilleuse et tatillonne, aussi bornée qu'affairée, cruelle souvent sous une apparence d'impartialité, paraît une manie infiniment plus répandue : qui dira les satisfactions secrètes du fonctionnaire frustré accroché au règlement, les joies perverses du contrôleur zélé, les mille stratagèmes des petits chefs compensant leur propre insignifiance par la magnification du Texte ?

Dans *Mesure pour mesure*, Shakespeare jette un éclairage troublant sur les motivations profondes d'un de ces exécutants empressés, *Angelo*, le mal-nom-

<sup>24</sup> Norbert Rouland, *Du droit aux passions*, 98.

<sup>25</sup> Jean Carbonnier, *Droit et passion du droit sous la Ve République*, 272.

mé, qui croyait que la vocation de la loi pénale était de s'appliquer intégralement, et sans mesure, précisément.

Dans une Vienne imaginaire, une certaine licence s'est installée. Le Duc, qui y exerce un pouvoir plutôt débonnaire, décide de faire un pas de côté et de céder provisoirement la régence à Angelo, personnage d'une sévère droiture.

Aussitôt en charge, ce dernier s'empresse de remettre en vigueur une législation pénale laissée en sommeil, qui punissait de mort les relations sexuelles extraconjugales. Il ordonne également la fermeture des maisons de passe de la ville et fait arrêter, puis condamner à mort, un infortuné gentilhomme, Claudio, dont le seul tort avait été de mettre enceinte sa fiancée Juliette.

Les amis de Claudio se mobilisent ; Lucio, qui joue ici le rôle de bouffon dévoyé, sollicite Isabelle, la sœur du malheureux. Isabelle, farouche novice qui s'apprête à rejoindre l'ordre des Clarisses, est priée d'obtenir la grâce de Claudio auprès de l'inflexible Angelo. Bien entendu, Isabelle ne parvient pas à fléchir le régent... jusqu'au moment où celui-ci, pris d'une soudaine et coupable passion pour son innocente candeur, en vient à lui proposer une « odieuse rançon » : sa virginité contre la tête de Claudio. Comme de juste, Isabelle se rebiffe, indignée. Même les prières de son frère ne pourront l'amener au sacrifice de sa vertu.

C'est en ce point du drame que le Duc, qui n'avait qu'apparemment disparu, rentre en scène et s'installe désormais aux commandes de l'intrigue. La suite de l'histoire, dirigée en coulisses par le Duc, conduira à déjouer les plans d'Angelo et bientôt à sa confusion finale.

Au plan juridique, la question que pose la pièce est de savoir si Angelo était bien avisé – était-il seulement autorisé – à tirer de sa relative désuétude une législation répressive au demeurant exagérément sévère ? Angelo en est bien convaincu :

Nous ne devons pas faire de la loi un épouvantail  
Que l'on dresse pour effrayer les oiseaux de proie,  
Et qu'on laisse là jusqu'à ce que l'habitude en fasse  
Leur perchoir, et non plus leur terreur. (acte II, scène 1)

Ne pourrait-on toutefois – c'est toute l'argumentation d'Isabelle – réserver certains cas, dûment motivés ? La rigueur pénale de principe ne pourrait-elle jamais s'accommoder d'une équité de détail ? Ne pourrait-on pas « condamner la faute (seulement) et non son auteur » ? – Angelo balaie la question d'un revers de main : « la faute est condamnée avant d'être commise » (acte II, scène 2).

Shakespeare doit en être persuadé : la pulsion sexuelle est aussi naturelle qu'universelle ; on peut sans doute tenter de la canaliser, mais la contenir est pure folie ; le sage prévôt le rappelle : « toutes les classes, tous les âges ont

saveur de ce vice» (acte II, scène 2). Angelo aussi en est bien convaincu ; aussi déploie-t-il, pour combattre ce qu'il tient pour une manifestation diabolique, une énergie proportionnelle à la force de mal. Mais on devine bientôt que ce zèle lui-même n'est pas aussi innocent qu'il le donne à croire, anticipant ainsi les propos de Voltaire et de Pascal. Voltaire : « Qui veut détruire les passions au lieu de les régler veut faire l'ange » – comme Angelo, précisément ; mais Voltaire devait avoir à l'esprit le mot de Pascal : « Qui fait l'ange fait la bête ». Voilà la vérité d'Angelo : derrière le saint incorruptible, le singe lubrique.

Le génie de Shakespeare est de camper des personnages extraordinaires pour camper des situations ordinaires. Mais, ramenée à une échelle plus quotidienne, la leçon vise bien le caractère déraisonnable d'une prétention à l'application intégrale de la loi. Cette mesure est une démesure qui, à nouveau, révèle le point de retournement passionnel du zèle exécutif : loin de mettre la loi au service des hommes, il prétend inféoder ceux-ci à sa rigueur absurde. Sur le mode toujours efficace du « tel est pris qui croyait prendre » (ou du « qui n'a jamais péché lance la première pierre »), Shakespeare administre ici la démonstration de la pertinence de l'adage *summum ius, summa iniuria*.

Les personnages atteints de la folie exécutive abondent dans la littérature. Mais une mention spéciale doit être faite à Javert, le mémorable inspecteur de police lancé à la poursuite de Jean Valjean dans *Les misérables* – l'homme nous intéresse parce que Hugo saura le saisir au moment exact où il prendra conscience de sa folie, ce qui le conduira au suicide. Javert faisait corps avec le droit et l'ordre : « il personnifiait, lui Javert, la justice, la lumière et la vérité dans leur fonction céleste d'écrasement du mal » – « le fonctionnaire ne peut se tromper, telle était sa devise ». <sup>26</sup> Et pourtant, lorsqu'il aura mis la main sur Valjean, et qu'il réalisera que ce dernier lui avait sauvé la vie, Javert se suicide ; l'ordre ne peut absorber la justice, la justice déborde la loi et parfois s'y oppose, voilà ce que découvre Javert. Soudain il réalise que, toute sa vie, il a lâché la proie pour l'ombre ; c'est vainement qu'il s'est épuisé à traquer Jean Valjean, et cette découverte le plonge dans un abîme d'incertitude. « Être obligé de s'avouer ceci : l'infaillibilité n'est pas infaillible, il peut y avoir de l'erreur dans le dogme, tout n'est pas dit quand un code a parlé ... les juges sont des hommes, la loi peut se tromper, les tribunaux peuvent se méprendre ! ». « Il se faisait en lui une révélation sentimentale entièrement distincte de l'affirmation légale, son unique mesure jusqu'alors » – le contenu de cette révélation ? « la possibilité d'une larme dans l'œil de la loi ». <sup>27</sup>

<sup>26</sup> Victor Hugo, *Les misérables* (Paris : NRF, Bibliothèque de la Pleiade, 1951), 304.

<sup>27</sup> Victor Hugo, *Les misérables*, 1347.

« Une larme dans l'œil de la loi », la formule est admirable. On aurait tort de la réduire au sentimentalisme romantique, car elle ouvre la voie au doute qui est, pour le juriste, à la fois une culture, un devoir et une méthode. Mais pour Javert, l'intégriste de la règle, la révélation est trop brutale, la chute hors de la passion trop vertigineuse, et la mort est au bout du chemin.

D'une certaine façon, le triomphe de l'Etat de droit, du régime de *Rule of law*, et du principe de légalité consacre le vœu secret du normativisme : une application universelle, générale et abstraite de la loi. Max Weber en a célébré les vertus sous les traits du régime de domination « légale-rationnelle » dont le fonctionnaire est le héros et l'administration le bras armé. Mais, ici encore, la dérive passionnelle menace : la névrose bureaucratique ne tarde pas à s'installer lorsque l'administration en vient à poursuivre des objectifs qui lui sont propres plutôt que de se mettre au service de l'utilisateur des services publics ou de l'administré.<sup>28</sup>

## 6 S'enrichir et s'élever par le droit : « espérances » et machinations juridiques

Les passions jusqu'ici étudiées, mises à part la manie de plaider, la fièvre justicière et le désir de vengeance, concernent toutes des autorités juridiques, des personnages officiels investis des fonctions de juger, de légiférer, de régler ou de faire appliquer la loi. Mais les passions juridiques n'épargnent pas pour autant les particuliers.

Il y a d'abord ceux qui, sujets de droit, vivent cette condition comme celle d'un obsédant assujettissement et n'ont de cesse que de se libérer de toute obligation, se décharger de toute dette, comme si celles-ci pesaient d'un poids insupportable sur leurs épaules.

La passion d'avouer, nourrie de culpabilité obsédante, relève de ce registre. Dostoïevski en a donné un modèle admirable avec son Raskolnikov, l'étudiant meurtrier de *Crime et châtiment* qui, taraudé de remords, ne retrouve la paix que dans l'aveu puis la condamnation. Avant lui, saint Augustin avait inauguré le genre des *Confessions*, dans le but de retrouver la sérénité par l'aveu de ses

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<sup>28</sup> Sans parler de la possibilité de pratiques corruptives comme celles qu'évoque, à propos de la Sicile du siècle dernier, Andrea Camilleri, *La concession du téléphone*, traduit par D. Vittoz (Paris : Fayard, 1999).

turpitudes et le rejet de toute espèce de circonstances atténuantes,<sup>29</sup> et Petrarque lui emboîte le pas dans son *Secretum*, long jugement intérieur dans lequel Augustin occupe la position de «médecin de ces passions qu'il a lui-même éprouvées».<sup>30</sup> Alors que, dans *La chute*, Camus déroule le long plaidoyer auto-accusateur de l'avocat Clamence, se posant en juge-pénitent, L. Althusser, meurtrier réel de sa femme, mais ayant bénéficié d'un «non-lieu» en raison d'un état de démence, éprouve le besoin de revenir sur son crime, cinq ans plus tard, dans un livre-confession : *L'avenir dure longtemps*.<sup>31</sup> À ce «non-lieu» qui le prive de la possibilité de faire entendre sa voix, il entend substituer un «livre qui est la réponse à laquelle j'aurais été astreint. Tout ce que je demande, c'est qu'on me l'accorde».<sup>32</sup> Comme si, en effaçant la responsabilité, le non-lieu effaçait la personne également, la laissant sans recours face à l'obsédante culpabilité. Assigné sans relâche devant ce tribunal intérieur (*l'avenir dure longtemps...*), le sujet s'y débat entre innocence et culpabilité, oscillant entre le réquisitoire et le plaidoyer en défense.

Mais ces proies du remords existent aussi en droit civil. Même si la prison pour dettes a aujourd'hui disparu, tout se passe comme si certains débiteurs ne recommençaient à respirer que le jour où enfin ils s'«acquittent», se «libèrent» de la dette qui les poursuit comme une idée fixe. Balzac dresse le portrait d'un débiteur de ce genre dans son *César Birotteau*, le plus célèbre failli de la littérature. Parfumeur parisien bien connu, ce César Birotteau, finalement rattrapé par des revers de fortune, ne comprenait pas que l'institution de la faillite servait précisément à ne pas payer ses dettes. Martyr de la probité commerciale, il ne cessera, jusqu'à son dernier jour, de tenter de remonter la pente, de «se refaire» en vue d'honorer ses engagements et désintéresser ses créanciers, se condamnant lui-même, ainsi que sa femme et sa fille, à la misère la plus noire. Telle était sa passion du droit, son *intégrisme* de l'«obligation» qu'il finissait par en poursuivre la réalisation intégrale, alors même que le droit se contentait d'en attribuer le «dividende» aux créanciers.

À l'inverse, il n'est pas rare de rencontrer des justiciables, accidentés du travail ou de la route par exemple, qui, obsédées par l'idée de leur dédommagement, sombrent dans ce qu'on a pu appeler «un certain délire raisonné fondé sur l'idée fixe de réparation».<sup>33</sup> La «sinistrose» qui les frappe finit alors par se

29 Gisèle Mathieu-Castellani, «Le tribunal imaginaire», in *Imaginer la loi* (Paris : Editions Michalon, 2008), 203.

30 Gisèle Mathieu-Castellani, «Le tribunal imaginaire», 204.

31 Louis Althusser, *L'avenir dure longtemps* (Paris : Stock-Imec, 1992).

32 Louis Althusser, *L'avenir dure longtemps*, 92.

33 Jean Carbonnier, *Flexible droit*, 232.

concentrer sur un montant chiffré, dûment sacralisé par une décision de justice, le titre officiel qui enfin leur ouvre droit à réparation. Plus que la somme obtenue, qui, du reste laisse généralement les victimes dans un état de délabrement physique et psychique irréparable, c'est le titre juridique, parfois arraché au terme d'années de procédure, qui focalise finalement l'attention passionnée des assurés.

Plus fréquentes que ces passions morbides (se délivrer d'une dette infinie ou obtenir un dédommagement de toute façon impossible), ce sont souvent des passions gourmandes et conquérantes qui animent les sujets de droit. L'œuvre de Balzac toute entière, la monumentale *Comédie humaine*, écrite au lendemain du Code civil qui ouvrait aux appétits juridiques une carrière impressionnante, constitue un répertoire inépuisable de ces « espérances juridiques » nourries par toutes sortes de personnages sans scrupules prêts à tout pour arriver à leurs fins.<sup>34</sup> Mais, pour rester dans notre sujet, il faut bien rappeler que, pour Balzac, le droit n'est pas seulement l'instrument de ces passions, il en devient finalement l'objet et l'enjeu : le « prêt à tout » dont il s'agit finit presque toujours par se concentrer sur le droit lui-même, comme si la machination juridique finissait par emporter le machiniste lui-même.

Dans cette société de la Restauration et de la Monarchie de juillet qui est la sienne, où chacun est mû par la recherche effrénée de ses intérêts personnels, les personnages balzaciens semblent hantés par un au moins des quatre objectifs suivants : accumuler un capital (appât du gain), monter en grade (ascension sociale), devenir député ou conseiller municipal (pouvoir politique), obtenir une distinction (la Légion d'honneur ou tout autre bien symbolique). Mais, tout se passe, chez Balzac, comme si la soif (d'argent, d'amour, de promotion sociale), passant par de tortueux montages juridiques, finissait par se fixer sur ce montage lui-même. Comme si la passion engagée dans l'opération se cristallisait sur la règle, l'acte ou le jugement, au terme d'un déplacement métonymique du désir. En résulte cette manière d'obsession du droit, voire de fétichisme juridique, qui tourmente tant de personnages de Balzac, aussi bien du reste les flamboyants hors la loi, que les névrosés des règlements. Qu'il s'agisse de les contourner ou de les appliquer scrupuleusement, la loi, le contrat, le testament semblent devenir pour beaucoup l'obscur objet du désir, et non simplement leur médium. Encore une fois, Carbonnier voit juste lorsqu'il écrit : « Balzac a senti les institutions juridiques comme des phénomènes vivants – le

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34 Cf. François Ost, « De l'inhumaine comédie au Code incivil », in *Balzac romancier du droit*, sous la direction de N. Dissaux (Paris : Lexisnexis, 2012), 359 – 373.



contrat de mariage, l'héritage, la faillite, ces institutions établies pour servir les hommes et qui finissent par les dominer». <sup>35</sup>

On peut approfondir cette hypothèse en soutenant que, chez Balzac, le lien social lui-même (et son intensification sous forme de passion) est de nature contractuelle. Toutes les variétés d'intersubjectivité, y compris les plus désintéressées en apparence, prennent la forme d'un calcul dont chacun des deux partenaires veille en permanence à se garantir l'équivalence, ou la commutativité, subjective. De ces « bons comptes qui font les bons amis » (au sens radical : c'est l'équivalence qui *fait* l'amitié), le droit est à la fois la forme et le garant. Bien entendu, la plupart s'imaginant leurs mérites supérieurs à ceux des autres, la stricte équivalence est presque toujours abandonnée au profit d'exigences personnelles supérieures. Voilà le message désenchanté – porteur d' « illusions perdues » – que répète Balzac ; mais la société, on le sait, se nourrit d'illusions, comme le père Goriot et Lucien, de sorte que Balzac n'aura pas assez de cent romans pour soulever le tabou.

Les sentiments les plus intimes et les relations amoureuses elles-mêmes n'échappent pas aux passions juridiques spéculatives ; ici encore, ici surtout, la fièvre de posséder prend la voie de calculs (baptisés « espérances »), de complots et de machinations juridiques. Ainsi des rapports de filiation ; qu'il suffise d'évoquer l'ingratitude des filles du Père Goriot, ou encore le *votum mortis* qui anime tous les enfants, virtuellement héritiers de leurs parents (*Ursule Mirouet*, *Le Cousin Pons*, *L'élixir de longue vie*) : <sup>36</sup> « cette foule d'êtres amenés par nos lois, par nos mœurs, par les usages, à penser sans cesse à la mort des leurs, à la convoiter ». Ici encore la mise en œuvre de règles techniques de dévolution successorale donne à Balzac l'occasion d'une peinture féroce d'un comportement social particulier : celui du successeur. De cette envie, la règle de droit n'est plus seulement l'outil technique, elle en devient l'objet et l'enjeu même : il s'agit d'hériter pour hériter, et si possible mieux et plus que les autres.

Le but de l'homme est donc de faire fortune, le plus rapidement possible. Il importe de souligner que, chez Balzac, cette finalité est au-delà du bien ou du mal, ou, plutôt, est étrangère à ces catégories éthiques. Le registre est plutôt celui de la physique sociale qui mesure l'énergie des passions engagées ; et tout se passe comme si le droit opérait à la manière d'un catalyseur, précipitant l'ampleur des réactions en cours.

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<sup>35</sup> Jean Carbonnier, *Sociologie juridique* (Paris : PUF, 1978), 181.

<sup>36</sup> Cf. Mickaël Mace, « Le droit des successions et la Comédie humaine », in *Balzac, romancier du droit*, 340.

Peut-on généraliser ? On ne se tromperait pas beaucoup en soutenant que Balzac est le Machiavel de l'ordre bourgeois. Ce que les Médicis réalisaient en grand, à l'échelle de la République de Venise, Madame Evangélista, Rastignac et tant d'autres le réaliseront à l'échelle de la sphère particulière : affaires domestiques et transactions commerciales. Mais il faut toujours ajouter ce corollaire, sous peine de manquer l'essentiel : la plupart de ces vilénies sont légales, elles s'opèrent sous le couvert de la légalité ou à la faveur des lacunes et insuffisances du code. Plus que tout autre, dans sa vie comme dans son œuvre, Balzac aura été le peintre des passions juridiques privées.

## 7 Conclusions

Au terme de ce bref parcours littéraire une conclusion s'impose : oui, il existe bien des passions *juridiques*, des passions qui prennent le droit pour objet. Le parcours s'est même avéré plus diversifié que prévu, accumulant les variétés d'affects individuels ou collectifs, réels ou imaginaires, parfois les deux en même temps. Dans chaque cas, le seuil de l'excès passionnel se signalait par le point de basculement où l'affect positif changeait de signe et se muait en son contraire, selon l'adage *summum ius, summa iniuria*.

Finalement, la question la plus urgente que devrait affronter une théorie des passions juridiques est celle du traitement qu'il convient de leur réserver dans une cité pacifiée. Comme souvent, les Grecs nous indiquent la voie. Eschyle nous prévenait : la victoire des Athéniens sur les sanguinaires Erinyes, symboles des passions vengeresses les plus archaïques, n'entraînait pas leur bannissement ; au contraire, un temple leur était dressé, au cœur de la cité, et un culte rendu, afin que «le respect et la crainte gardent les citoyens, la nuit comme le jour, de commettre des crimes» (*Les Euménides*, v. 690–692). Tel est le message des Grecs : puisque les passions sont inhérentes à la nature humaine, c'est folie que de les nier ; la sagesse recommande au contraire de les reconnaître, d'en raconter et représenter les hauts faits (ou méfaits) de leur ménager un exécutoire modéré (le temple des Euménides, les fêtes vouées au culte de Dionysos,...).

Comme le note avec raison René Girard, «si les hommes ne peuvent vivre dans la violence, ils ne peuvent pas vivre longtemps, non plus, dans l'oubli de cette violence ;»<sup>37</sup> pour survivre, les cités doivent parvenir à intégrer leur «part maudite» (Bataille), ou leur «part d'ombre» (Jung). Il convient donc de ne jamais perdre de vue les «passions qui fondent les cités» (Sophocle) et même de

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37 René Girard, *La violence et le sacré* (Paris : Grasset, 1972), 438.

s'en inoculer régulièrement une certaine dose en vue d'éviter d'être finalement débordés par elles. Cette « stratégie vaccinatoire » prend notamment la forme de l'écriture de fiction et de la mise en spectacle de la démesure toujours possible de ces passions ; dans les meilleurs des cas, une telle mise en scène ritualisée de leur violence provoquera un effet cathartique de « purgation des passions ».<sup>38</sup>

C'est l'enjeu essentiel du courant « droit et littérature » de rappeler cette vérité un peu oubliée que les émotions et l'imagination (l'imagination qui nous permet d'anticiper la dérive passionnelle que connaissent parfois les émotions), loin de s'opposer à la rationalité, sont des éléments essentiels du débat public. Du moins pour ceux qui pensent, comme le juge Olivier Wendell Holmes, que « la vie ressemble à un tableau à peindre, pas à une addition à poser ».<sup>39</sup> Daniela Carpi aura beaucoup contribué à faire progresser cette prise de conscience.

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**38** Selon Michel Maffesoli, la théâtralisation de l'excès, du désordre et de la violence est la meilleure manière d'amadouer la « part du diable » : *La part du diable* (Paris : Flammarion, 2002), 65.

**39** Oliver W. Holmes, *Lettre à Lewis Einstein*, in *The Essential Holmes*, ed. Richard Posner (Cambridge : Harvard University Press, 1991).

Sidia Fiorato

# Shakespeare's "Complex" Dance Imaginary from Text to Stage: A *Midsummer Night's Dream* and Frederick Ashton's *The Dream*

In the Elizabethan period, "dance" represented a recurrent symbol of order and harmony in the wider cultural sphere. The Elizabethan world's idea of order was based on the image of the great chain of beings, of music and on the related concept of the cosmic dance, i. e., the harmonic movement of all things in relation to one another which dated back to classical times<sup>1</sup> and which kept the universe at balance. In a subtle process of mirroring, dance became a fundamental technique to insert human beings within a cosmic but also a political and cultural order, in the harmonic composition of the political and social body.

Between the sixteenth and the seventeenth century, dance became a discursive practice "that presupposed human control over space and time, and the performance of social difference"<sup>2</sup>; it negotiated power relations and offered a visible and kinetic representation of the social body. As a matter of fact, dance importantly figured in the curriculum of studies of the Inns of Court, where the ritualized performance of the Christmas revels contributed to the creation of an elitist political conscience through the symbols, the forms of appearance and representation of the law in the public sphere.<sup>3</sup> Moreover, Sir Thomas Elyot in *The Book Named The Governor* (1531), the earliest English book devoted to the education of the governing class, underlines how nobility assumed a performative dimension in courtly dancing through the mastery of a codified bodily movement. The upright figure of the dancing courtier constituted a metonym of hierarchy, while his body – crafted by dancing – expressed the "classical" values of symmetry, containment and control of actions and passions. The body formed

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1 See Eustace M.W. Tillyard, *The Elizabethan World Picture* (London: Pelican, 1976), 101ff.

2 Skiles Howard, *The Politics of Courtly Dancing, in Early Modern England* (Amherst: University of Massachusetts Press, 1998), 14.

3 Six manuscripts of Inns of Court students contain the most complete dancing instructions in English known before the publication of John Playford's *Dancing Master* in 1651 (the first printed collection of English dances) and testify to a continuing tradition of ritualized performance at the Inns. (See Paul Raffield, *Images and Cultures of Law in Early Modern England: Justice and Political Power* (Cambridge: Cambridge University Press, 2004) and Sidia Fiorato, "Mise en scène and Subversion of Political Power through Dance: Sir Kenneth MacMillan's *Romeo and Juliet*," in *Law and the Image*, ed. Leif Dahlberg (Berlin and Boston: Degruyter, 2012): 74–91).

by the social dance is a body “finished, symmetrical, closed, its actions controlled and its dangerous passions contained”<sup>4</sup>. Moreover, dance fostered a gendered and patriarchal kind of hierarchy. Masculine performative precedence, conjoined with female containment and subordination in the dance movements, created a balance of opposites which symbolized concord: gender balance led to social harmony.<sup>5</sup>

In its elite codification, dancing increasingly evolved into a means of self-fashioning, becoming an instrument for the acquisition, the confirmation and the exercise of social power, and developed complex ritual forms. However, dance is a discourse written on the body, but at the same time through the body, which possesses a kinetic force in virtue of its mere presence: in this way, dance could become also a site for the contestation of the same hierarchical order it was meant to represent, thus putting into discussion its underlying political paradigm. This applies in particular to the possibility for a female autonomous self-fashioning, despite strict gendered performative codes<sup>6</sup>, but not exclusively.

Shakespeare’s use of dance in his works responds to this worldview and it becomes both a vehicle and a metaphor for his portrayal of specific aspects of Renaissance society. Ever attentive to the cultural atmosphere of his own time, he was capable of grasping and exploiting the performative energy of dance upon the theatrical stage. The stage thus characterizes itself as “an important site of cultural transformation – a place where cultural change [is] not simply reflected but also rehearsed and enacted.”<sup>7</sup> It questions the repetitiveness of the embodied practices, thereby questioning a culture’s consensual view of reality and delves into its fissures.

## 1 Dance in *A Midsummer Night’s Dream*

As Brissenden observes, Shakespeare made more use of dance in his works than any of his contemporaries: it could provide the imagery for the speech of the characters (for example, in the history plays), mirror the dramatic structure of the dialogues through specific sequences of dance steps (for example, in *Much*

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<sup>4</sup> Howard, *The Politics of Courtly Dancing*, 49.

<sup>5</sup> See Howard, *The Politics of Courtly Dancing*, 33.

<sup>6</sup> See Claire McManus, *Women on the Renaissance Stage* (Manchester: Manchester University Press, 2002), 11.

<sup>7</sup> Phyllis Rackin, “Androgyny, Mimesis, and the Marriage of the Boy Heroine on the English Renaissance Stage,” *PMLA* 102 (1987): 29–41, 29.

*Ado About Nothing*) or form part of the action (for example the ball at the Capulet's house in *Romeo and Juliet*, or the dance of the fairies in *A Midsummer Night's Dream*). In particular, *A Midsummer Night's Dream* "is the only work in the canon in which the well-being of the cosmos, and of the society that subsists within it, is predicated on [...] dance."<sup>8</sup>

Brissenden's assumption on the use of dance at the end of Shakespeare's plays as the sanctioning of the possible restoration of order in a fractured world<sup>9</sup> has recently started to be questioned in favour of a role of dance as a metaphor for questioning the age's tenets of hierarchy and government; the Elizabethan world picture seems to be countered by another picture, the kinaesthetic one of dance. The dominant rhetoric of bodily demeanour was undermined by the symbolic value of the body, which proved capable of creating new discursive values and could become instrumental for the assertion of individuality within a macrocosmic context. Hansen's recent analysis of Shakespeare's use of dance in *A Midsummer Night's Dream*<sup>10</sup> through the interpretive lens of complexity theory complements this perspective and will be taken as a reference for the present essay.

Complex systems focus on the relationships between their parts, not on the parts themselves; these relationships are characteristically unpredictable, that is, not determined by any supervising agent and/ or principle, as well as dynamic, because the elements forming a complex system exert mutual influences and exchanges which alter the system and enable it to continue developing. Complex systems can pass from stable to increasingly disordered phases called "bounded instability" or "the edge of chaos"<sup>11</sup>: "At such points, a system is far more likely to produce new, creative phenomena and behaviours that may drastically change the system or parts of it. The chaotic state thus generates new forms of order."<sup>12</sup>

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**8** Rodney Stenning Edgecombe, "Shakespeare, Ballet and Dance," in *The Edinburgh Companion to Shakespeare and the Arts*, eds. Mark Thornton Burnett, Adrian Streete, Ramona Wray (Edinburgh: Edinburgh University Press, 2011): 200–218, 203.

**9** See Alan Brissenden, *Shakespeare and the Dance* (London, Macmillan, 1981), 2 and also Howard, *The Politics of Courtly Dancing*, 69: "Shakespeare's comedies often end with a dance [...] because they move from confusion to order, from misfortune to prosperity, and dancing is an image of concord that celebrates this festive resolution. Certainly, in the comedies, the patriarchal social order is disrupted and apparently restored [...] and] celebrated with dancing," which becomes its visual image.

**10** See Claire Gwendoline Hansen, *Shakespeare and Complexity Theory* (London and New York: Routledge, 2017), in particular Introduction, Chapter 1 and 2.

**11** See also Ralph D. Stacey, *Complexity and Creativity in Organization* (San Francisco: Berrett-Koehler Publishers, 1996), 95, quoted in Hansen, *Shakespeare and Complexity Theory*, 4.

**12** Hansen, *Shakespeare and Complexity Theory*, 8.

The system's interactions feed back into the system, creating interaction loops: a positive feedback fosters change while a negative one fosters the status quo.

A complex system comprises multiple levels which are mutually dependent; in particular, it allows a macrocosmic and a microcosmic perspective, with lower-level interactions producing the macrocosmic behavioural patterns which feed back into the system. According to Hansen, the cosmic dance motif creates a complex system through the dynamic relationship between the microcosmic and macrocosmic level of the early modern vision. Dance becomes a means of transformation through interaction, which produces changes in the dancers and their wider (social) systems.<sup>13</sup> Within this perspective, the dances in *A Midsummer Night's Dream* create, or respond to, moments of bounded instability, thus enabling the transformation of the (social) system in which they take place. We can say that this theory transforms Greenblatt's circulation of social energy, into kinetic energy which enacts social negotiations. This assumption aptly applies to the work if we consider that the fairy king and queen act as doubles of Theseus and Hyppolita and that the dream can also be conceived to be Hyppolita's dream of independence against her constriction within matrimonial obligation with Theseus.<sup>14</sup>

The first dance in *A Midsummer Night's Dream* is referred to retrospectively, it is narrated and not performed, and it expresses a natural and social unbalance. Titania addresses Oberon, cross over her custody of the Indian boy, in the following terms:

[...] never since the middle summer's spring  
Met we on hill, in dale, forest, or mead,  
By paved fountain or by rushy brook,  
Or in the beached margin of the sea  
To dance our ringlets to the whistling wind,  
But with thy brawls thou hast disturbed our sport.  
Therefore the winds, piping to us in vain,  
As in revenge have sucked up from the sea  
Contagious fogs which, falling in the land,  
Hath every pelting river made so proud  
That they have overborne their continents. (2.1.81–92)<sup>15</sup>

**13** See Hansen, *Shakespeare and Complexity Theory*, 50.

**14** See Nicholas Grene, *Shakespeare, Jonson, Molière: The Comic Contract* (Houndmills: Macmillan, 1980), 48, and also Paul Olson, "A *Midsummer Night's Dream* and the Meaning of Court Marriage," *ELH* 24 (1957): 95–119.

**15** William Shakespeare, *A Midsummer Night's Dream*, ed. Pier Carlo Ponzini (Milano: Garzanti, [1977] 1988). All quotations in the text will be taken from this edition.

Titania's description of her dance underlines the balance of natural elements, while Oberon's intrusion alters natural balance, provoking an inversion of the seasons and floods "as in revenge." At a deeper level, we may assert that nature is encountered and shaped through dance which here acquires a political function, as it traces and shapes Titania's body politic, in counterposition to Oberon, who vies with her for sovereignty over the fairy (that is, natural) world. Actually they vie for supremacy in places which are symbolical of three natural elements – the fourth being air, the medium through which they both move: "and now they never meet in grove, or green,/ By fountain clear, or spangled starlight sheen, / But they do square" (1.1, 28–30). This is in line with Tylliard's contention that "the cosmic dance [was] reproduced in the body politic, thus completing the series of dances in macrocosm body politic and microcosm"<sup>16</sup>. Actually, it seems that Titania's dances trace the extension of her dominion in the fairy land, in a lucid geopolitical<sup>17</sup> plan; she exerts her political assertion through her power over human and material resources, but also by inscribing her dominion over the geographical context through her bodily performance. Elizabethan dance, in particular in the masques, posited its geometrics of movements as a mirror of the power relationships of the court according to a shared cultural knowledge.<sup>18</sup> The superimposition of movements of the queen and the king of fairies destabilizes the kingdom and represents an upsurge against patriarchal authority which mirrors the one taking place in Athens's microcosm implicitly in Hyppolita's attitude, and explicitly in the actions of the young lovers. The equilibrium of the elements (air, water, earth and fire/light) is disrupted by the violent intromission of Oberon which prevents the definition/creation of Titania's sphere of influence; their danced bodily movements trace the space of their power in a magical natural body politic. Shakespeare therefore cleverly uses dance as "a means to embody, explore, and negotiate the effects of local turbulence upon the play's broader social, political, and environmental systems."<sup>19</sup> For this reason, we may share Edgecombe's observation that Oberon resembles a vexed dancing master trying repeatedly to untangle the crossed lines and collisions, restore

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16 Tylliard, *The Elizabethan World Picture*, 106

17 See Colin S. Gray, Geoffrey Sloan, "Introduction" to *Geopolitics, Geography and Strategy*, eds. Gray, Sloan (New York: Routledge, 2013): 1–11, 2. At the beginning of the comedy, the fairy tells puck that she serves her Fairy Queen "Over hill, over dale, / Thorough bush, thorough briar, / Over park, over pale, /Thorough flood, thorough fire [...]," thus comprising the four natural elements, and contributing to the creation and maintenance of her kingdom. (1.1. 2–5)

18 See Mark Franco, *Dance as Text. Ideologies of the Baroque Body* (Cambridge: Cambridge University Press, 1993), 15.

19 Hansen, *Shakespeare and Complexity Theory*, 57.



and preserve the tracing of the cosmic dance, whose discontinuance might otherwise alter the established order.<sup>20</sup> He may also represent the king in whose honour the spectacle was performed and who through his gaze set it in motion and in a way authorised it.<sup>21</sup> The king watched the performance and at the same time became part of it, as an embodiment of the represented power/body politic. In this case, Oberon tries to reconduct Titania's autonomous power performance to such honorary logic patriarchally centered upon himself.

In the terms of complex theory, this is a situation of bounded instability which alters the system. Titania's dances are ringlets, that is, circular, while Oberon's brawl (which also signifies "quarrel") includes a shifting of weight from one foot to the other and sideways – not forward – moves<sup>22</sup>. Therefore, as Hansen remarks, we can imagine "Oberon's 'brawl' as intruding upon Titania's ringlest by entering the circle sideways, placing weighted feet down to break up the [...design of the] dancers."<sup>23</sup> This was also a sexually charged kind of dance, which therefore enacts a gendered and cultural assault on Titania.<sup>24</sup> Oberon's action in the play creates instability and a negative feedback which promotes change both in the fairies' relationship and in their underlying natural and social system.

Titania invites Oberon to join them, "If you will patiently dance in our round,/ and see our moonlight revels, go with us: / If not, shun me, and I will spare your haunts." (2.1.140–142) The dance she invites him to take part in is a popular dance, in this case a feminine dance ("our round") with her own court, which she appears to try and see acknowledged by seemingly proposing a division of powers once again in geopolitical terms ("I will spare your haunts"). Through her invitation to dance we see the articulation of the gendered relationship in the marriage between the king and queen of the fairies. Titania engages in a real contest for power, as she underlines her voluntary rejection of Oberon's social and sexual power: as she tells her fairies in Oberon's presence, "I have foresworn his bed and company," and to his attempt at the reassertion of his status "Am I not thy Lord?" she ironically responds "Then I must be thy Lady" (2.1.64,65), thus reverting the terms of the relationship and instituting an equality of perspective. Titania is powerful and does not seem to need external paraphernalia or investitures; she will not surrender the boy for Oberon's fairy Kingdom

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**20** Edgecombe, "Shakespeare, Ballet and Dance," 204

**21** See Stephen Orgel, *The Illusion of Power* (Berkeley: University of California Press, 1975), 42 and 38.

**22** With regard to this, see Brissenden, *Shakespeare and the Dance*, 112.

**23** Hansen, *Shakespeare and Complexity Theory*, 53.

**24** Howard, *The Politics of Courtly Dancing*, 333.

as she seems intent on building her own. We can define her power as a performative power, in particular, the free performative expression of her autonomous personality. She initially expresses this power through dance, by creating a female community performing "our ringlets." This demonstrates how women's expressive force in dance could lead to the assertion of a feminine voice and the expression of a female identity instead of celebrating the social order and a subjection to masculine preeminence. The language of the body – expressive of sex, gender, marriage, the body politic – and of conscience, exits the private dimension and morphs into a scripted public dimension. In this way, the heart of the performance is reached, where "the solid stuff of the stage world connects to the intangible stuff of the will."<sup>25</sup>

Oberon dances with Titania only in act 4, after the enchantment through which he has finally obtained her surrendering of the Indian boy. He invites her to a couple dance, an epitome of gendered codification, in which the man leads and the woman follows, thus reestablishing his dominance: "Come, my queen, take hands with me" (4.1.84). This dance has traditionally been seen as a symbol of marital and natural reconciliation, however it actually expresses the conditions of gendered subordination underlying such apparent concord, as well as a subordination of popular dance to elite dances, as Howard observes.

This is the description of the scene in the Shakespearean text:

Come, my queen, take hands with me,  
And rock the ground whereon these sleepers be.

*Oberon and Titania dance*

Now thou and I are new in amity,  
And will tomorrow midnight solemnly  
Dance in Duke Theseus' house, triumphantly,  
And bless it to all fair prosperity.  
There shall the pairs of faithful lovers be  
Wedded with Theseus, all in jollity. (4.1.84–91) [...]

Apparently, the scene seems to point to a reconciliation and harmonization both in the natural world of the fairies and in Athens, which the dance itself binds in a reciprocal relationship. This newly recreated pattern of order posits upon female compliance for the celebration and reconstitution of the gendered couple: husband and wife, king and queen. Actually, Titania is not yet fully aware of what has happened and asks Oberon twice to inform her, before the dance:

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<sup>25</sup> Gary Watt, *Shakespeare's Acts of Will. Law, Testament and Properties of Performance* (London: Bloomsbury, 2016), 167.

“My Oberon! What vision I have seen! /Methought I was enamoured of an ass. [...] How came these things to pass?” (4.1.75–76, 77) and after its conclusion: “Come my lord, and in our flight, /Tell me how it came this night / That I sleeping here was found / With these mortals on the ground.” (4.1.98–101) Oberon therefore performs his control of the situation through dance, more than rendering dance a proof of it, and this could imply moments of future discord. Oberon has restored his order by depriving Titania of her independence, thus positing her in a condition of bounded instability according to Hansen<sup>26</sup>, and reversing the initial condition of Titania’s harmony which was instead a moment of bounded instability for Oberon, in an ongoing process of negotiation and transformation: “Through their interactions the dances negotiate moments of crisis and reshape the relationships of the system parts.”<sup>27</sup> This applies to the fairy couple but also to the wider Athenian social system: “Shakespeare’s renewal of the fairy couple affects the individuals taking part in the dance directly (the network of relations within the dance), as well as other dancers and system parts related to them, from the fairies to the mortals (the greater context or whole).”<sup>28</sup>

This is, however, not the last dance of the fairies; after this performance of masculine power, Oberon reminds Titania that they “will to-morrow midnight solemnly / Dance in Duke Theseus’ house triumphantly” (4.1.86/87). This dance, performed to celebrate marriage, that is, the main patriarchal institution of Elizabethan society, seems to disrupt its own codification and resolve itself into a round. A popular dance, therefore, celebrates the supposedly restored harmony at the same time assuming upon itself the characteristics of the cosmic dance of courtly performance.<sup>29</sup> In this way, the apparent restoration of order is undermined and originates a moment of bounded instability in the fusion/confusion between elite and popular practices.

After Theseus announces the necessary retirement of the guests due to the approaching “fairy time” (5.1.362), Puck introduces the forthcoming dance in dark terms which, as Hansen observes, recall a *danse macabre*.<sup>30</sup> By bringing the candles to illuminate the house, they seem to perform a magic ritual, protecting it from the dangers of darkness, actually transforming it into a dream: “we fairies/ [...] Following darkness like a dream/ Now are frolic” (5.1.381–384). The dream becomes the unconscious of Elizabethan society’s patriarchal structure and the site for the performance of alternative contexts. As Ward observes,

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26 See Hansen, *Shakespeare and Complexity Theory*, 60–61.

27 Hansen, *Shakespeare and Complexity Theory*, 60.

28 Hansen, *Shakespeare and Complexity Theory*, 63.

29 See Howard, *The Politics of Courtly Dancing*, 76 ff.

30 Hansen, *Shakespeare and Complexity Theory*, 63.

the pursued order exists only in virtue of a specific rhetoric of the imagination<sup>31</sup>, a self-fashioning which seems however to remain unresolved, even in the fairy land, as we may observe.

William Blake's illustration of this final scene is emblematic in this sense. As Matthews observes, the image seems to refer to the lines "Hand in hand with fairy grace / Will we sing and bless this place" (5.1.97–98). Here the fairies are the same size as the king and queen, suggesting the absence of the hierarchical relationships. Matthews observes that "feminine power is also conspicuously absent, as the queen twines her hands seductively round the upright body of her husband. While she watches Puck and the dancing fairies, her body melts into that of her husband."<sup>32</sup> However, we may also observe how she seems to grab Oberon's sceptre, in an attitude of apparent submission which could be interpreted as instead a moment of bounded instability. For Blake, Shakespeare's work "was visionary in that his reading of the world was imaginative and transformational."<sup>33</sup>

The play ends with Puck's address to the audience and what Howard defines a sleight of hand. After the renowned lines

If we shadows have offended,  
Think but this, and all is mended,  
That you have but slumb'rd here  
While these visions did appear.  
And this weak and idle theme,  
No more yielding but a dream,  
Gentles, do not reprehend.  
If you pardon, we will mend. (Epilogue, 422–429)

He exhorts the audience to: "Give me your hands, if we be friends: / And Robin shall restore amends." (Epilogue, 436–437) However, this is not a taking in, as it was typical of the masque tradition, in which the audience was invited to participate to the cosmic dance to contribute to its creation and perpetuation by their presence. Here Puck is asking the audience to applaud the performance and thus end the dream. I would disagree with Howard when she asserts that by so doing Puck keeps the distinction between the stage and the audience. Actually he performs a final trick and renders the audience all Bottoms: "I have had a dream – past the wit of man to say what dream it was. [...] I will get Peter

<sup>31</sup> See Ian Ward, *Shakespeare and the Legal Imagination* (London: Butterworths, 1999), 210.

<sup>32</sup> Susan Matthews, *Blake, Sexuality and Bourgeois Politeness* (Cambridge: Cambridge University Press, 2011), 40.

<sup>33</sup> Nick Rawlinson, *William Blake's Comic Vision* (Basingstoke: Palgrave Macmillan, 2002), 48.

Quince to write a ballad of this dream” (4.1.204–205, 214–215). In this way, he sets the system in motion and the narrative will start again, continually performing states of bounded instability at various and interconnected levels. The work’s aura affects the audience’s experience and determinates the circulation of social energy. The audience is exhorted to think about the ideas underlying the staged events and “it is not the answer but the question that subverts.”<sup>34</sup>

## 2 *A Midsummer Night’s Dream* in dance: Sir Frederick Ashton’s *The Dream*

As Julie Sanders observes, “when ballet did feature in stagings of Shakespeare’s dream, the dance sequences tended to be located in the fairy realm and to attach to the non-mortal characters. Dance in this context [became] a means of communicating the other-wordliness of the forest inhabitants.”<sup>35</sup> In the case of a ballet, dance becomes the interpretative language of the narrative and pertains to mortals as well. The two most renowned versions of *A Midsummer Night’s Dream* are the ones by Balanchine (1962) and Ashton (1964), both based on Mendelssohn’s music, but with a different rendition. I would say that Ashton’s version manages to go beyond the Shakespearean text itself and actually amplify it by visualizing its most covered meaning, chief amongst all the disruption of gender codes through the medium of the body, the carrier *par excellence* of the same.

The adaptation of literary works in dance creates an intermedial encounter. It actualizes the act of reading as “an imaginative procedure”<sup>36</sup> and brings to visual expression the reciprocal interaction between text and reader/choreographer, the mental images produced in the act of readerly visualization. The choreographer becomes the new author and expresses his own poetics and aesthetics in his rendition of the Shakespearean imaginary. I consider ballets not merely as adaptations, but as mutual illuminations and dialogues between different artistic expressions which come to new original syntheses; what takes place is a

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**34** Margot Heinemann, “Political Drama,” in *The Cambridge Companion to English Renaissance Drama*, eds. Albert R. Braunmueller, Michael Hattaway (Cambridge: Cambridge University Press, 2003), 161–205, 177.

**35** Julie Sanders, *Shakespeare and Music: Afterlives and Borrowings* (Cambridge: Polity Press, 2007), 63.

**36** Christopher Collins, *The Poetics of the Mind’s Eye: Literature and the Psychology of Imagination* (Philadelphia: University of Pennsylvania Press, 1991), ix, quoted in Guido Isekenmeier, “Literary Visuality: Visibility – Visualization – Description,” in *Handbook of Intermediality*, ed. Gabriele Rippl, (Berlin/Boston: De Gruyter, 2015): 325–342, 329.

transmedial storytelling, that is, following Henry Jenkins' definition, the integrated use of different media in order to expand the scope and meaning of a narrative and allow new insights into the fictional story world.<sup>37</sup>

Both literature and dance have the ability to tell a story; the former's verbal language (monomedial) interacts with the latter's kinetic forms and musical accompaniment (multimedial)<sup>38</sup>, thus originating a third space which "adds to the (inter)medial polyvalence of literary creation" and contains as well an "interplay of kinetic and cultural allusions."<sup>39</sup>

From a linguistic aesthetics we shift onto a visual one by foregrounding the two media of representation:

Between rhetorical and iconological tradition, the characters of the cultural imaginary inhabit an intermedial space in which the manifold transformations which participate of both media take place, [...] crossings between word and image [...] mutually inscribe each other in the narrative.<sup>40</sup>

*The Dream* was created in 1964 for the Royal Ballett in occasion of the 400th anniversary of Shakespeare's birth; it represents a personal reinterpretation of classical ballett as well as an original and creative adaptation of the Shakespearean work in a new artistic medium. Ashton proved able to grasp the visual and kinetic discourse of dance for the perpetuation of social norms and values but at the same time as an expressive medium that fostered the circulation of social energy.

The Elizabethan dancing body was trained to visualize a cultural norm; the balance of all its parts mirrored the balance of the qualities of the individual and its posture carried and symbolized social hierarchy. In the elite context of court masques and courtly dances we can say that "the dancing body, both as a kinetically expressive and sexualized entity, is formed by a/the 'Symbolic Order'"<sup>41</sup> and becomes a "docile body" in the Foucaultian sense, that is, a body that

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**37** See Barbara Straumann, "Adaptation – Remediation – Transmediality," in *The Handbook of Intermediality*, ed. Gabriele Rippl, cit., 256–257.

**38** See Maria Marcsek-Fuchs, "Literature and Dance: Intermedial Encounters," in *Handbook of Intermediality*, ed. Gabriele Rippl, cit., :562–583, 562.

**39** Marcsek-Fuchs, "Literature and Dance: Intermedial Encounters," 579.

**40** Giovanna Silvani, Diego Saglia, "Introduzione" a *Narrare, Rappresentare. Incroci di segni fra immagine e parola*, eds. Silvani, Saglia (Clueb, Bologna 2003): 7–9, 7 (My translation).

**41** Maria Marcsek-Fuchs, *Dance and British Literature: An Intermedial Encounter (Theory – Typology – Case Studies)* (Leiden/Boston: Brill Rodopi, 2015), 54.

“may be subjected, used, transformed and improved”<sup>42</sup>. Docility is achieved through various “disciplines,” which regulate the postures, movements and gestures of the body.<sup>43</sup> By the enactment and re-enactment of specific bodily practices, the docile body serves the prevailing relations of dominance and subordination. Within this network of power relations, the gendered dancing body is constructed in its supposed but actually codified naturalness: “Dancing is an embodiment and enactment of these ‘stylized repetitions of acts’ that lead to the illusion of stable gendered identity. Dance and the dancing body are platforms where the constituting power structures are publicly presented, represented, as well as concealed.”<sup>44</sup>

This applies in particular to Ashton’s balletic rendition of *A Midsummer Night’s Dream*, which focusses on the quarrel between Oberon and Titania, the explicitation of the initial contrast between Theseus and Hyppolita, likewise based on political reasons: Theseus has defeated Hyppolita, who had thus to relinquish her power and independence as Queen of the Amazons and subject herself to the patriarchal institution of marriage. Within this balletic – and textual – context, Titania’s performance of, or refusal to perform, the steps of the classical tradition becomes her way to claim the right to her own voice within a patriarchal context, to refuse its gendered codification and to create her corporeal Leitmotif. She thus resists the dominant microphysics of power, which affects the body at the level of gestures as well as behaviour.<sup>45</sup>

The ballet starts *in medias res*, in the wood near Athens as the directions at the beginning of Act 2 indicate: “The palace wood, a league from Athens. A mossy sketch of broken ground, cleared of trees by wood-cutters and surrounded by thickets. Moonlight.” (2.1) The clearing seems to create the space of the stage for the theatrical representation. Here the fairies enter the scene, literally invading the stage to the sound of Mendelssohn’s violins which dictate the sustained rhythm of their movements; they have been described as “flitting intricately round about the stage”<sup>46</sup>, therefore they seem to introduce an effect of controlled chaos, a moment of bounded instability. Their movements are quick and light,

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42 Michel Foucault, *Discipline and Punish. The Birth of the Prison* (New York: Vintage Books, [1977] 2012), 136.

43 See Foucault, *Discipline and Punish*, 137–138.

44 Marcsek-Fuchs, *Dance and British Literature*, 54.

45 See Margaret A. McLaren, *Feminism, Foucault and Embodied Subjectivity*, (Albany: State University of New York Press, 2012), 87.

46 Julie Kavanagh, *Secret Muses. The Life of Frederick Ashton* (London: Faber & Faber, 2004), 481.

they do not walk, but proceed through little hops and jetés<sup>47</sup> which render their lightness and create the impression that they do not touch the ground while the little wings on their backs move in a delicate natural but liminal effect. Actually, fairies will enter the literary imaginary with their Shakespearean characterization of insect wings and they are here presented as creatures of the night.<sup>48</sup>

In the Elizabethan period, dance was the characterizing activity of fairies, and in 2.1.1 they are actually invited by Titania to perform “a roundel and a fairy song”; within this context, Oberon's interruption of their dances represents an important aspect of the quarrel, which Ashton magisterially grasps and brings to visual expression. In his ballet, the fairies of Titania's court are freed from the framing role of the traditional corps de ballet, epitomized by the nineteenth-century Sylphs, which traditionally expressed a general sense of harmony. Here, instead, on the one hand, they amplify the queen's mood, as they reproduce her movements in unison as if to give more power to her assertiveness, or they satirize them, as when they reproduce *en ensemble* Titania's angry walk when she leaves the stage after the quarrel with Oberon. Here we may see them as embodying the queen's body politic. On the other hand, they seem to offer a commentary to what is taking place during the action; for example, when Titania courts Bottom, some fairies block themselves on the stage in mock-amazement, and at a certain point one of the fairies remains alone on stage, not having noticed that the group with which she was dancing has already exited; when she realizes her mistake, she hurriedly interrupts the choreography and exits as well. Here we may see them still as the body politic, but commenting upon the erring behaviour of the queen's body natural.

The opening of the ballet also introduces Ashton's characteristic of interrupting the narration with a moment of abstract contemplation. The fairies' groups suddenly arrest themselves on the musical score, in a pose typical of the dancers of the Romantic tradition, or gazing backwards, in a listening attitude. This freeze-frame effect in the first case confirms the abstract nature of the choreography through pictorial references to the iconography of the Romantic ballet when the individual dancers take up poses from lithographs of Marie Taglioni, and when four fairies reproduce the 1845 lithograph *The Pas de Quatre*<sup>49</sup>. In this way Ashton stages the fusion between dance and painting and a continuous

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<sup>47</sup> See William Shakespeare, *A Midsummer Night's Dream*, (II, i, 6–7): at the opening of Act 2, Puck meets a fairy in the wood: Puck calls her “spirit” and asks her: “whither wander you?.” The fairy answers: “I do wander everywhere, swifter than the moon's sphere.”

<sup>48</sup> See Harold F. Brooks, “Introduction” to William Shakespeare, *A Midsummer Night's Dream* (London: Methuen, [1979] 2007), lxxi and Edgecombe, “Shakespeare, Ballet and Dance,” 208.

<sup>49</sup> David Vaughan, *Frederick Ashton and his Ballets* (London: Dance Books, 1999), 340, 341.



dialogue with tradition at the same time as he overcomes it. In the second case, if on the one hand the listening attitude stops the sequence and the continuity of the action, on the other it extends the narrative moment itself, by creating a highly emotional moment (the characters stop in order to listen the possible arrival of other characters on stage) and focusses upon it the attention of the audience. In this way, Ashton unites in a complementary way narration and abstraction<sup>50</sup> and thereby effects the symbolical taking in of the audience in the universe of his ballet. This brief moment prepares for Titania and Oberon's *pas de deux*, the climax of this introductory action.

Titania and Oberon antagonize each other over the Indian boy the first time they share the stage. Oberon tries to take the boy away from her but she fiercely resists and asserts her will. In the Shakespearean text, Oberon is defined as "passing fell and wrath" (2.1.20), "jealous" (2.1.24), while Titania "perforce" (2.1.27) withholds the boy. Oberon calls her "proud" (2.1.59) and Titania calls him "jealous" (2.1.61) and, as it has been underlined above, openly states her grudge against him: "I have forsworn his bed and company" (2.1.62). He tries to engage her in a *pas de deux* which would signal his dominance but she resists; their movements are invasive of their reciprocal space and not harmonized and therefore signify their counterposed positions. Titania seems to prevail, so much so that, she leaves the stage with the boy and her fairies, while Oberon remains on the scene in all his anger. Titania seems to possess her separate court, therefore she acts as a very powerful queen consort; it is significant that only after her exit, when she no longer has the possibility to answer back, he threatens her with following words: "Thou shalt not from this grove, / Till I torment thee for this injury" (2.1.145–146). When she comes back and her fairies dance and sing her to sleep, Oberon observes the scene from above in a threatening attitude.

As Harold Bloom points out<sup>51</sup>, the quarrel between Oberon and Titania is not provoked by love reasons (as is the case for the mortal couples that will later enter the woods); they are used to reciprocal unfaithfulness/betrayal.<sup>52</sup> Titania's refusal to surrender the boy is a statement of sovereignty, a challenge to masculine authority. She takes the decision to keep the boy among the immortal fairies, and Oberon's exclusion represents an offense which he feels he has to take revenge upon. The quarrel therefore concerns sovereignty in marriage. In the Eliz-

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<sup>50</sup> See James Neufeld, "The Expanded Moment," in *Following Sir Fred Steps. Ashton's Legacy*, eds. Stephanie Jordan, Andrée Grau (London: Dance Books, 2005), 22–28.

<sup>51</sup> Harold Bloom, *Shakespeare. The Invention of the Human* (New York: Riverhead Books, 1998), 148 ff.

<sup>52</sup> See William Shakespeare, *A Midsummer Night's Dream*, 2.1.65, ff..

abethan period the woman renounced her independence with marriage, when the couple became one person in law. Female disobedience or rebellion threatened the patriarchal social order: here Titania is required to renounce the boy, who symbolizes female friendship and a female bond, for Oberon, thus letting a patriarchal form of power prevail over a matriarchal one.<sup>53</sup> In the Shakespearean text, actually, at the beginning Titania seems to predominate as she offers Oberon the condition for peace, that is, the performance of her dance, the implicit acceptance of her codification of power: "If you will patiently dance in our round, /and see our moonlight revels, go with us" (II, i, 140) and when he refuses she exits the scene in anger.<sup>54</sup>

The presence of such a powerful female character as Titania highlights the conflicts within the Elizabethan and Jacobean codified vision of unity and brings to the surface issues of social and legal unrest.<sup>55</sup> In the scene of their final reconciliation, Ashton transcends his source and adds a sublime *pas de deux* to the plot. As Vaughn asserts, "In Balanchine there is no *pas de deux* for Oberon and Titania (who has to be content with a 'Cavalier' with no other function – the male dancer relegated once again to the role of a mere porteur), whereas in Ashton the Nocturne crowns the whole work, [and renders it] one of Ashton's most profound statements on the nature of love"<sup>56</sup>, "the most skilfully crafted and dramatically resonant duet in the Ashton canon."<sup>57</sup> Oberon, mostly "a commanding but static presence" in the Shakespearean text very dynamically comes to the forefront in the ballet and his role is amplified in the *pas de deux*.<sup>58</sup>

The final *pas de deux* encapsulates a whole relationship: the stormy conflict of wills, "the astonishment of sensual discovery"<sup>59</sup>, a final perfect union on equal terms. Oberon enters the scene alone, seemingly aiming at celebrating his triumph. Titania appears from above and observes him, in the same position

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53 See Douglas Freake, "A Comic Version of the Theseus Myth," in *A Midsummer Night's Dream. Critical Essays*, ed. Dorothea Kehler (New York and London: Garland Publishing Inc., 1998): 259–274, 267.

54 See Marisa Sestito, "The Most Lamentable Comedy of *A Midsummer Night's Dream*," in *A Midsummer Night's Dream. Dal testo alla scena*, ed. Mariangela Tempera (Bologna: Clueb, 1991), 41–59, 50.

55 See Stephen Greenblatt, *Shakespearean Negotiations* (Berkeley: University of California Press, 1988), 2, and Daniela Carpi, "Renaissance into Postmodernism: Anticipations of Legal Unrest," in *Liminal Discourses. Subliminal Tensions in Law and Literature*, eds. Daniela Carpi, Jeanne Gaakeer (Berlin/Boston: De Gruyter, 2013): 177–189, 186.

56 Vaughn, *Frederick Ashton and His Ballets*, 341.

57 Kavanagh, *Secret Muses*, 483.

58 See *Ibidem*, 483.

59 See Vaughn, *Frederick Ashton and His Ballets*, 341.

Oberon had assumed at the beginning of the ballet, but then she, differently from him, enters the scene. Oberon sees her appearing suddenly, goes towards her and invites her to dance. Therefore Oberon's solo is interrupted by Titania's one: she suddenly exits the codified steps through which Oberon aims to guide her and follows her instinct, her own will through a series of quick steps which symbolize her rebel character. Subsequently, she seems to dance for him, then with him, as if she aimed at fascinating him, thus regaining a dominant position, in a subtle and conscious seduction game. More specifically, "as he leads her boureeing forward, she instinctively strains away, but then is folded in two by him in an extraordinary promenade in which she jack-knives under her leg and re-emerges the other side"<sup>60</sup> or she bends her torso down as she turns in towards him. After this sequence, which has been defined an "imperious [and taming] manipulation" of Titania, a "danced conversation" follows, in which "Oberon's series of looping, pike-like leaps is interrupted by Titania's idiosyncratic solo – all shimming shoulders and quirky little dives [accompanied by] a sensuous yielding of the arms, head and upper torso."<sup>61</sup> They finally once again dance in unison. However, their mirror image is once again shattered by Titania's recalcitrance which manifests itself in "her quick, darting tugs away" until "Oberon only just catches her as she flings herself through the air" seemingly willing to fly away from him but finally swooning in his arms and "a final embrace concludes the duet in a sort of post-coital diminuendo."<sup>62</sup> In the words of her first interpreter, Antoinette Sibley, the scene "allows Titania [...] to give herself 'her way'. She's as great as he is in her own right, and she's not going to let him win anything off her until she finds that he is winning, and then she has to completely wilt for him and mesmerize him again."<sup>63</sup>

Differently from Oberon, who had not accepted to dance with Titania, the queen accepts to dance the nocturne, a *pas de deux* that follows elite codification and therefore imposes a clear hierarchy, with the man leading and the woman following, that he aims at exploiting to impose on her her role of wife.<sup>64</sup> It is precisely from within this codified dance that Titania manages to pre-

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<sup>60</sup> Kavanagh, *Secret Muses*, 483. See also Vaughan, 340.

<sup>61</sup> Kavanagh, *Secret Muses*, 482.

<sup>62</sup> See Kavanagh, *Secret Muses*, 483–484.

<sup>63</sup> Kavanagh, *Secret Muses*, 483, emphasis of the original. See Kavanagh, *Secret Muses*, 481–482: Ashton chose Antoinette Sybley for Titania's role for her "farouche quality: a wilful, subversive streak, not dissimilar to Titania's, which brought out the sensuality of the role."

<sup>64</sup> See Howard, *The Politics of Courtly Dancing in Early Modern England*, 74.

vail and assert her individuality; she manages to transform the mechanisms of patriarchal control into a means for her self expression.<sup>65</sup>

When the fairies reenter the scene, something unexpected takes place; unlikely the Shakespearean original<sup>66</sup>, Oberon dances with Titania among the fairies and with the fairies. Therefore he seems to have accepted the initial invitation of the queen, renouncing to his elitist isolation. Finally the king and the queen exit together, they fall asleep in each other's arms in a seemingly paritetical harmony. In fact, Oberon is admitted in Titania's retreat and enclosed in the space that most symbolizes her identity and power.

In order to add to Titania's independence we can further comment that in the ballet Titania gives Oberon the Indian boy after the flower spell has been broken, not before as in the Shakespearean text. Then they depart together on the notes of Mendelssohn's bridal march as if sanctioning their restored union. As many scholars have underlined, at the beginning of the text the fairy king and queen have equal powers<sup>67</sup> and this seems to be restored at the end of the ballet. We may say that Titania has achieved her aim of establishing equality with her spouse.

It has to be mentioned that the Shakespearean text starts with a situation of order in Theseus's Athens, then passes to a phase of disorder represented by the free expression of passion in the forest and concludes with a restored order in both settings.<sup>68</sup> In the ballet, Ashton chose to start directly in the wood, with the quarrel between the fairy sovereigns: the work opens with disorder and casts a final ambiguity to the restoration of order at the end of the *pas de deux*.

As a matter of fact, Titania's infatuation with Bottom can be considered a moment of bounded instability – provoked by Oberon – which inserts a new kind of order. When he is transformed into an ass, Ashton puts the character on pointe<sup>69</sup>, his black shoes both signalling his passage into the fantastic dimension and rendering his new physical attributes, as they symbolize the donkey's hooves. As a consequence, the gendered balletic conventions of the *pas de deux*

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65 See Claire McManus, *Women on the Renaissance Stage*.

66 See William Shakespeare, *A Midsummer Night's Dream*, 5.1: "Oberon leads and all the fairies sing in chorus; as they sing, they take ends asnd dance about the hall."

67 See for example Shirley Nelson Garner, "Jack shall have Jill; /Nought shall go ill," in *A Midsummer Night's Dream. Critical Essays*, ed. Kehler: 127–144, 130 and Ulrich Weisstein, "'Wahn, Wahn, Überall Wahn' Varieties of Illusion and Delusion in *A Midsummer Night's Dream*, Fuseli's Illustrations, and the Masters of Nuremberg," in *Shakespeare and the Visual Arts*, eds. Holger Michael Klein, James L. Harner (Lewinston: The Edwin Mellen Press, 2000): 308–335, 324.

68 See Antony Price (ed.), *Shakespeare: A Midsummer Night's Dream. A Casebook* (London: Macmillan, 1983), 78.

69 Vaughan, *Frederick Ashton and His Ballets*, 343.

are disrupted and offer a counterpoint with the ones Oberon tried to impose on Titania. As Sanders observes, “Bottom cannot perform the powerful lifts or high jumps which usually characterize a lead male dancer on the stage [...]; in this way this particular grammar of dance achieves an instructive equivalence with Shakespeare’s own verse-prose distinction between his elite characters and the ‘hempen homespuns’ (3.1.77).”<sup>70</sup> Anyway, Titania finds new ways to enter into dialogue with him, seemingly creating a new enclosed and enchanted realm. Her new articulation of the *pas de deux* allows for moments of harmonious specularly which lack the codified rigidity of imposed gendered roles, even transgressing its boundaries to include movements of popular dance (which identifies Bottom and the mechanicals). She even hops on Bottom’s back and allows herself to be carried on stage through a hint of the bergomask code. She thus creates a new dimension through the inclusion of what could be defined in complex theory/dance terms non-linear elements which affect the whole in a moment of bounded instability.

We can therefore observe that the episode with Bottom, far from asserting Oberon’s masculine power, allows once again the expression of Titania’s claims for power and, in the wider scheme, in connection with Athens’s microcosm, renders her the symbol of a “threatening sexuality and female power [...] situated in the space of the unknown... the obscure female space of the forest.”<sup>71</sup> This becomes a further enclosed moment of instability, within the locus par excellence of instability (and disruption of the social and moral codes) that is the forest. Such change in attitude will be experienced by all female characters who look for a dissolution of the social bonds in the forest and experience the excess of their wish through the mismatching of the couples through Puck’s erroneous use of the magic flower.

### 3 Conclusions

Ashton’s *The Dream* demonstrates the iconological power of dance as an artistic medium that “holds the transformational power to move us beyond self and beyond the ordinary”<sup>72</sup>; as a cultural expression, it fosters the encounter with the Shakespearean imaginary in a spatial and temporal dialogue with its model.

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<sup>70</sup> Sanders, *Shakespeare and Music*, 64.

<sup>71</sup> Sanders, *Shakespeare and Music*, 47.

<sup>72</sup> Sondra Horton Fraleigh, *Dance and the Lived Body: A Descriptive Aesthetics* (Pittsburgh: University of Pittsburgh Press, 1995), 140.

We can say that Ashton becomes like Shakespeare as is proves capable to incorporate the comic by varying the canonical ballet style (through his Bottom) and comments upon the whole human Shakespearean world by apparently reinstating order and the status quo. In this way he creates a new *energeia* and circulation of cultural energy in his postmodern rewriting of the Bard's masterpiece.



Andrew Majeske

# Shakespeare's *As You Like It* and The Problems of Relativity

O, wonder!  
How many goodly creatures are there here!  
How beauteous mankind is! O brave new world,  
That has such people in't!<sup>1</sup>

The first two parts of this essay will not seem to fit neatly together, at least prospectively; however, this appearance is relative and was intentionally created. Viewed retrospectively, it should be evident that this essay shows that what Shakespeare is accomplishing in Act 3, Scene 2 of *As You Like It*, the subject of the second part of this paper, is the starting point for locating a solution to a profound and troubling problem the West faces today, a problem that is the subject matter of the first and concluding parts of this paper.

## 1 The perils of moral and cultural relativism

Among the liberally-educated Western elite, an exclusive club to which the vast majority of the readers of this essay belong, a certain prevailing view – a core belief if you will – has held sway for at least several generations. This belief can be characterized as a confidence that there are no absolute – no objective moral truths. Our confidence derives from what is commonly called ‘moral relativism’, which can be defined as “a metaethical thesis that the truth or justification for moral judgments is not absolute, but relative to the moral standard of some person or group of persons.”<sup>2</sup>

As a result, there is little that we feel comfortable stating definitively from a normative perspective, except our advocacy for and belief in what we consider to be the arch and perhaps only real virtue: tolerance. We feel equally strongly that the commensurate arch vice is intolerance; this is one of the reasons many of us feel rather depressed at this particular moment in history.<sup>3</sup> As with

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1 William Shakespeare, *The Tempest* (New York: Oxford University Press, 1987), 5.1.183–185. (Miranda is speaking).

2 *Stanford Encyclopedia of Philosophy*, “Moral Relativism,” 1.

3 The talk from which this essay derives was given on the morning of Wednesday November 9, 2016 at the AIDEL Conference in Verona, Italy. At about 5 a.m. Verona time, it became evident



all core beliefs, whether held by our group or any other, our belief in moral relativism, and its accompanying virtue and vice, rigorously resists being questioned, even though it might ultimately prove to be questionable.

In direct and substantial tension with this core belief are certain moral values which, while they are not described by us in terms of absolute moral truths, they are nonetheless accepted and promoted as if they were such. These moral values all derive more or less directly from the late eighteenth century recognition of human rights and dignities, the precise extent of which has gradually become clearer in the wake of the Second World War.

This tension between our core belief in moral relativism and our moral values inadvertently highlights a deeply disturbing jurisprudential problem. Two examples will illustrate this problem. The first is drawn from Justice Jackson's remarks at the outset of the Nuremberg Trials. In his 'Opening Statement', Justice Jackson remarkably failed to take a firm moral stand against the atrocities perpetrated by the Nazi defendants. Rather than assert that the Nazi defendants needed to be punished because, from a normative perspective, their atrocities were absolutely wrong, Justice Jackson instead laid as the ultimate moral foundation for their prosecution, the notion that "civilization cannot tolerate [the crimes perpetrated by the Nazis against the peace of the world] because they cannot survive their being repeated."<sup>4</sup> Implicit in this reasoning, of course, is the analogous proposition that if civilization could in some way afford a repeat of these atrocities, then such an extraordinary prosecution might be unwarranted.

The second example involves the torturing of detainees committed by the United States, or by others with its tacit approval, in the wake of the September 11, 2001 attacks in the United States. Rather than forthrightly condemning the torture committed in normative terms as absolutely wrong and indefensible, Senate Majority Leader Diane Feinstein's "takeaway" from what is commonly known as the 'Senate Torture Report' – her public reaction upon its release, was that torture did not work.<sup>5</sup> This was also substantially the position adopted by Hillary Clinton during the 2016 Presidential campaign.<sup>6</sup> During that campaign, now

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that Donald Trump had won the United States presidential election. A portion of the first half of this essay had to be quickly revised that morning to reflect these events.

<sup>4</sup> These remarks were made on the 2<sup>nd</sup> day of the Trials, November 11, 1945. The full text of the Opening Statement is widely available on line, including at [www.roberthjackson.org](http://www.roberthjackson.org). The quote is from the first paragraph of the statement.

<sup>5</sup> Judy Woodruff, "Torture Doesn't Work is Big Takeaway of CIA Report for Sen. Feinstein," *PBS Newshour* (December 9, 2014). Available at: [pbs.org](http://pbs.org).

<sup>6</sup> C. Eugene Emery Jr., "Evidence backs Hillary Clinton claim that torture is counterproductive for counterterrorism," *Politifact* (March 30, 2016). Available at: <https://www.politifact.com/truth->

President Donald Trump took a somewhat different position – for him, whether torture works or not was not the issue; then candidate Trump promoted torture as something the US should vigorously employ: “I would bring back waterboarding. And I would bring back a hell of a lot worse than waterboarding.”<sup>7</sup> President-Elect Trump seemed to affirm this view; it is unclear whether now President Trump has changed his position since his inauguration.

Former President Obama, while not adopting Feinstein’s and Clinton’s utilitarian position, only approached the normative question of torture indirectly in a reference to an article he had read about Winston Churchill.

I was struck by an article that I was reading the other day talking about the fact that the British during World War II, when London was being bombed to smithereens, had 200 or so detainees. And Churchill said, ‘We don’t torture,’ when the entire British – all of the British people – were being subjected to unimaginable risk and threat....the reason was that Churchill understood – you start taking shortcuts, over time, that corrodes what’s best in a people. It corrodes the character of a country.<sup>8</sup>

Notice that Obama’s indirect approach falls short of directly addressing the problem of whether torture is morally wrong; this is not entirely surprising in this context, since Churchill almost certainly knew and probably authorized (behind the scenes, or tacitly) the torture committed by the British on prisoners of war and others during WWII.<sup>9</sup>

The problem in each of these examples, Justice Jackson at Nuremberg and the public statements of high United States’ Officials on torture, is the complete inability to take an explicit and absolute moral position, in spite of what seems to be in both situations a widely-held underlying sentiment that something absolutely wrong has occurred and needs to be addressed in some fashion. Perhaps most distressing is the possibility that is left open in both examples: what is the

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o-meter/statements/2016/mar/30/hillary-clinton/evidence-backs-hillary-clinton-claim-torture-count/.

7 Carol Dando, “Donald Trump claims torture ‘works’ – but what does the science say?,” (London) *The Daily Mail* (December 15, 2016). This story is available at: [dailymail.co.uk](http://dailymail.co.uk). I suggest that the position taken by candidate, and then President-Elect Donald Trump, is like saying that torture is tantamount to a positive good, if it is used to further the security interests of the United States. For Donald Trump, whether torture works, is really beside the point.

8 This is quoted from a speech that President Obama delivered on April 29, 2009. See Kate Phillips, “A Post-Script on Churchill, Obama and Torture,” (New York) *The New York Times* (May 5, 2009). This story is available at: [nytimes.com](http://nytimes.com).

9 Johann Hari, “Not his finest hour: The dark side of Winston Churchill,” (London) *Independent* (October 27, 2010). This story is available at: <https://www.independent.co.uk/news/uk/politics/not-his-finest-hour-the-dark-side-of-winston-churchill-2118317.html>.

moral situation if civilization could survive the repetition of the Nazi atrocities, or if torture could be proven effective at producing actionable intelligence?

The idea of moral relativism has very ancient roots, as evidenced by the idea's treatment in the texts of Plato; but its current Western manifestation developed upon a specific foundation that dates roughly to the end of the eighteenth century. This foundation consists of a 'historicism' that can be roughly described as the rise of an awareness of the historical process and an identification of this process as progressive. This historical consciousness distinguished all prior thought (except possibly previously discovered 'scientific' truths), by considering this prior thought to be intrinsically limited to the times and circumstances of its creation. Consequently, in some profound way this prior thought was considered to be fundamentally inaccessible to those approaching it from later eras. In much of the West, certainly among our liberally-minded tribe, this need to historicize is accepted almost as an article of faith.<sup>10</sup>

Risking a charge of impiety, I hazard to suggest that there are at least two fundamental problems with historicism's structural soundness as a foundation for what passes for contemporary moral principles. The first problem is that authors who wrote before the rise of the historical consciousness did not themselves consider their own thought to be limited in the way we have subsequently imposed upon them. In fact, the more philosophical among them seemed to consider that they were engaging in an ongoing trans-historical conversation addressing enduring problems and issues, including the political problems and issues that are coterminous with humans living in societies.<sup>11</sup>

The second fundamental problem is that historicism, for it to be logically consistent and persuasive, must apply its own standards to itself. That is, we must wonder whether the sort of historicism for which the rise of the historical consciousness is so significant, is not itself a product of a particular time and particular circumstances, and therefore limited in the same way as the preceding thought to which it is applied; does it also need to be viewed as trapped in its own moment and circumstances? Viewed in this light, historicism constitutes at best a foundation that deteriorates quickly with the passage of time, and at

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**10** See generally: Thomas Pangle, *Leo Strauss: An Introduction to His Thought and Intellectual Legacy* (Johns Hopkins University Press: Baltimore, 2006) (especially Ch. 1, "Relativism: The Crux of Our Liberal Culture"); Arthur Melzer, *Philosophy Between the Lines: The Lost History of Esoteric Writing* (The University of Chicago Press: Chicago, 2014), 200–201, 336–338, 340–343.

**11** Melzer, *Philosophy*, 200–201, 332–334, 340–343, 355–366, 403n3.

worst, no foundation at all. Either way our continued virtually unquestioning belief in it is deeply troubling.<sup>12</sup>

There is no time on this occasion to spell out all of the full implications of this line of thinking. I will mention just two. First, many things worthy of preserving have been produced in the wake of the rise of historicism and the moral relativism it supports. These include especially the identification and advancement of the various human rights and dignities and the improvement and spread of various kinds of human equality. Obviously it would be highly desirable if these advances could continue to develop further.

The second observation I will make is that the very thing that makes moral relativism so attractive and useful for our purposes – its incredible flexibility, also makes it incredibly dangerous. This flexibility makes it possible and indeed likely that moral relativism supports and advances not only the agenda of the educated liberal Western elites, the agenda of equality, human rights and dignities and democratic government, but also other opposing agendas, a fact that is not sufficiently appreciated. This is evident in the following quotation from a book published by Benito Mussolini in 1924:

In Italy relativism is simply a fact... Everything I have said and done in these last years is relativism by intuition... If relativism signifies contempt for fixed categories and for men who claim to be the bearers of an objective immortal truth...then there is nothing more relativistic than Fascist attitudes and activity... From the fact that all ideologies are of equal value, that all ideologies are mere fictions, the modern relativist infers that everybody has the right to create for himself his own ideology and to attempt to enforce it with all of the energy of which he is capable.<sup>13</sup>

Let me reaffirm my whole-hearted support for the many admirable things that have been produced pursuant to or based upon a belief in moral relativism. But this belief must not blind us to moral relativism's perhaps equal capacity for producing quite the opposite sorts of things, as we saw in the mid twentieth

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<sup>12</sup> Leo Strauss, *An Introduction to Political Philosophy* (Wayne State University Press: Detroit, 1989), 114–115 (in an essay entitled “Natural Right and the Historical Approach.”)

<sup>13</sup> Benito Mussolini, *Diuturna* (Alpes – Imperia: Milan, 1924). How this quotation bears upon things like the Claremont Institute's elevation of President Donald Trump to “Great Man” status, is worth pursuing. The following quotation is excerpted from Charles Kesler's biographical blurb on the Claremont Institute's website. “*Compared with other right-leaning scholars, the Claremont thinkers are far warmer to the idea of a flag-waving Great Man (like Trump) restoring the nation to its rightful historical primacy.*” (italics in the original). This quotation is available at <https://www.claremont.org>.

century, especially in the rise of German and Italian fascism, and as we see again today, in the rise in popularity and strength of the far right throughout the West.

The seemingly herculean task before us is, for better and worse, relatively clear: we must identify an alternative foundation more solid than moral relativism onto which we can transfer the good things we have managed to produce because of it. Otherwise we risk losing all of these things, as the agendas of the left and right gradually, or not so gradually, cancel each other out.

A fellow law and literature scholar, Robin West, struggled mightily to envision a potential solution to this problem a generation ago, an effort that regrettably did not gain much traction:

It may be possible to formulate an ideal conception of human nature [and an evolving account of the good life]...and to use such a conception as a basis against which to evaluate particular cultural practices, beliefs, traditions, and commitments. ...[T]hat there are or may be failed attempts does not imply that the project is intrinsically undoable...only ... that the project is very difficult. ... It may be that there are basic human needs which should be met, and human potentialities which ought to be furthered, and human interests which should be satisfied, if any human being is going to live a good life. It may also be that it is extremely difficult to specify what those needs, interests, and potentialities might be without imposing to some degree one's own – or those of one's gender, class, or culture – more particular needs, interests, or potentialities, and it may well be that the gender, class, race, or culture thereby prioritized is the dominant one. But it is not inevitably so...We should not infer that the objectivist project is wrongheaded because particular attempts to carry it to fruition often fail.<sup>14</sup>

This essay will briefly revisit in its closing pages this noble attempt by Robin West to breathe some life into what she characterizes as “the objectivist project.”

## 2 Relativity in Shakespeare's *As You Like It*

“And now for something completely different,” to borrow a well-used, but nonetheless brilliant transitional move.<sup>15</sup> Before turning to the passages in Act 3, Scene 2 of *As You Like It* that this essay concentrates upon, the scene needs to be set. Rosalind, the play's heroine and daughter of the deposed Duke Senior, remains at court as the companion of her cousin Celia, the usurping Duke Freder-

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<sup>14</sup> Robin West, “Relativism, Objectivity, and Law,” *The Yale Law Journal* 99 (1990): 1473–1502 (at 1485–1487).

<sup>15</sup> This phrase is borrowed from the *Monty Python* British television show, which used it as transitional move between their comedic skits.

ick's daughter and arguably also as a hostage ensuring Duke Senior's good behavior while in exile. Duke Frederick, of course, is Duke Senior's younger brother.

From our first glimpse of Rosalind in Act 1, Scene 2, expectations are set that she will one day inherit the rule of the dukedom, whether directly through her father, or indirectly through her cousin. Celia tells her there: "You know my father hath no child but I, nor none is like to have; and truly, when he dies, thou shalt be his heir, for what he hath taken away from thy father perforce, I will render thee again in affection." (1.2.16–20)

That Rosalind is "fit to rule a kingdom," a phrase borrowed from Machiavelli's *Mandragola*,<sup>16</sup> we witness in her masterful handling of Duke Frederick, following his announcement of her banishment. Her daring assertion to him that "her father was no traitor," makes clear to those who would see that Duke Frederick is the real traitor for having deposed Duke Senior. (1.3.66)

Consequently, it is not unreasonable to expect that when Rosalind set her affections on Orlando, just a bit earlier, she was fully conscious of the ruling role he might play in the dukedom at some future point. That she habitually thinks expansively, and for the long-term is quite clear from very early in the play. She only takes a romantic interest in Orlando *after* she discovers the identity of his father – a man who had been loyal to her father, Duke Senior; soon thereafter Rosalind characterizes her lovesick disposition to Celia as being distracted by thoughts of "my child's father." (1.2.232; 1.3.11). Rosalind's is truly a three-generational perspective, something we could certainly use in our rulers today.

It can also reasonably be concluded that Rosalind considers Orlando to be in need of instruction, if as seems likely, he is to assume a ruling role as her husband. Orlando's inability to vocalize a reply to Rosalind's kind words, or even to say thank you for her gift after the wrestling match, testify to his shortcomings at this point. And the examples of Orlando's poetry Rosalind will encounter early in Act 3, scene 2, before she speaks with Orlando, also reflect Orlando's need for instruction, although they do indicate improvement – he has gained a voice, and it is becoming more expressive and orderly. So, as we approach the re-meeting of Rosalind and Orlando in Arden forest, we can reasonably anticipate that Rosalind understands an immediate task to be to educate Orlando – to groom him for a future ruling role in the dukedom.

Before speaking with Orlando in Act 3, Scene 2, Rosalind has the distinct advantage of first spying on Orlando's interaction with Jacques – she witnesses him in verbal combat there, in contrast to the physical combat she had seen him in

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16 Nicolò Machiavelli, *Mandragola* [1524] (Long Grove: Waveland Press, 1981), 1.3: 17. (Ligurio describing Lucrezia).

earlier at the wrestling match. Moreover, the two examples of his poetry she has encountered also help to set her syllabus of instruction. Based on this information, Rosalind, in her thin disguise as the ambiguously male Ganymede, finally confronts Orlando.

There is indeed much that is instructive in this interchange, but it is not at all clear that Orlando is in need of Rosalind's tutelage now that he has found his voice. Rosalind rather than Orlando appears to be the one who learns something – namely that Orlando's condition is much better than she had assumed based on the two poems and his banter with Jacques. The play's audience has a distinct advantage over Rosalind in assessing Orlando's true level of sophistication, since as will be shown, it has evidence that Orlando has improved himself to a much higher degree than Rosalind realizes prior to her confrontation with him in Arden forest.

When Rosalind finally confronts Orlando, the 'lesson' she begins to impart to him in a playful manner, relates to relativity; Rosalind's riddle seems to have been designed to teach that the experience of time is relative to each person's experiences and perceptions. Rosalind chooses to frame the riddle in terms of the relativity of time experience in relation to varying speeds of motion. One might be tempted to conclude, and many commentators have indeed done so, that Rosalind's point relates to something like Einsteinian 'relativity'.<sup>17</sup> Such a conclusion is not quite as far-fetched as it might at first appear. After all, when Shakespeare was writing this play, Galileo was already working towards what has come to be called "Galilean relativity" – which includes the idea that there is no absolute and well-defined state of rest; that is, in the physical world, there is no privileged frame of reference.<sup>18</sup>

But Rosalind clearly enters this interaction assuming herself to be in a superior position in relation to Orlando, not just a different one; she believes she 'knows,' and that Orlando needs to learn what she knows. Her belief is quite reasonable based on what she has observed. However, Rosalind quickly discovers in the lead-up-to, and during the course of the riddle exchange, to her own great discomfiture, that her own position relative to Orlando's is not nearly as privileged as she thought.

By the time Rosalind realizes that she has underestimated Orlando, it is too late to extricate herself gracefully from the riddle exchange – she is compelled to muddle through. Rosalind initially baited Orlando with a puzzle involving the

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<sup>17</sup> See for instance Adam Max Cohen, *Shakespeare and Technology* (Palgrave Macmillan: New York, 2006), 146 ff.

<sup>18</sup> See on "galilean relativity," for example, Bernard F. Schutz, *A First Course in General Relativity* (Cambridge University Press: London, 1985), 26 (Sec. 1.11).

apparent relativity of the experience of time passage for the young lover; for the young lover, when his beloved is absent, time passes more slowly than it ordinarily would (“the lazy foot of time” 3.2.309). Rosalind’s strategy makes sense based on the evidence she has available; she knows that Orlando has been experiencing the “lazy foot of time,” and that he has been partaking of the timeless occupation of such a lover – he has been composing bad love poetry.

But Orlando’s immediate response reveals that he is no longer in the condition of the lethargic lover, whose beloved is absent, and for whom time drags languorously on and on. It is not just that Orlando’s poetry has improved remarkably, as will be shown. Orlando’s immediate response to Rosalind, “And why not the swift foot of time,” strongly implies that he is acutely aware of the inverse position to the lethargic lover’s; that is, time passes all too quickly for the lover while in the presence of his beloved (3.2.311–312). Implied in all of this is that there is a norm, an ordinary rate of experiencing time passage, one that escapes the ‘relativity’ trap. This is not the ‘physical’ world of Galileo and Einstein and their relativities; consequently, one thing that is strongly implied here is that there is an objective point of view – a master perspective that can make sense of the situation.<sup>19</sup>

Orlando’s response of “And why not the swift foot of time,” might well mean that his own experience of time has changed, precisely because he is now in the presence of his beloved, and what is more, he is aware of it. That is, it is highly probable that he has seen through Rosalind’s disguise – perhaps at the very moment she begins to speak to him, or possibly even as soon as he sees her – there are several indications in the play that her outward disguise is not very convincing.<sup>20</sup> Certainly we know that Orlando is not a cooperative partner in this exchange and immediately after it Orlando suddenly changes the subject and comments that he has noticed that Ganymede seems out of place, not least because her accent does not fit the character she is playing.

By this interpretation, what Rosalind knows right away is that all is not going according to plan – Orlando’s response of “why not the swift foot of time” has thrown her. She quickly changes her strategy, seeking to regain the initiative by speeding ahead of Orlando’s slow/fast binary opposition in favor of a four-speed riddle: “By no means, sir: Time travels in divers paces with divers persons. I’ll tell you who Time ambles withal, who Time trots withal, who Time gallops withal and who he stands still withal.” (3.2.313–116)

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<sup>19</sup> Implicit in the idea of such a master perspective may be the possibility of a poetic solution to the problems Robin West identified as associated with “the objectivist project.”

<sup>20</sup> Compare 3.2.340 with 3.2.346–347, 3.4.33–35, 3.5.120–133 (Phoebe), 4.1.1–2 (Jacques), 4.3.89–92 (Orlando’s description relayed by Oliver) and 5.4.27–30 (Duke Senior & Orland).



The conventional ordering of the four-speed riddle would be from slowest to fastest: 1) standing still, 2) amble, 3) trot, 4) gallop, but that of course is not Rosalind's ordering. Rosalind complicated things exponentially when she proposed a four speed riddle in follow up to the "lazy foot" – "swift foot" opening binary. She further complicates things by presenting the riddle out of the expected speed and time sequence; she literally "ex temporizes," by starting the sequence with a middle term, "amble," rather than the customary "standing still."

But Orlando is not thrown off by this and immediately imposes upon Rosalind still a third starting point; Orlando jumps ahead – he speeds things up and requires Rosalind to begin her riddle with the third position in terms of speed, "trot." Presumably, Rosalind already has been busy mentally adjusting her riddle answers to somehow reflect a speed ordering that begins with 'amble.' This in itself is no easy task because it requires her to separate and reattach the four riddle answers (and perhaps revise them) so that in some way they match her unusual speed sequence. Her efforts are confounded by Orlando's unexpected jump to "trot" as the starting point, two positions off of a conventional ordering sequence and one ahead of the revised ordering she is already grappling with; Orlando has made her job totally unmanageable.

That Rosalind has been outmaneuvered is quickly evident in the riddle answer she provides for the speed 'trot'; she proposes that "trot" fits the condition of 'a maid during troth plight.' However, the more fitting answer for this would be that time stands still for 'a maid during troth plight', if we take seriously the customary poetic depiction of this condition. Rosalind's adversary is far more formidable than she expected, and she is the one playing 'catch-up', none too successfully.

Orlando continues to press Rosalind, reversing course and slowing things down to 'amble' for the second position, in his revised ordering of the riddle. Rosalind's answer to "amble" is also far from convincing, which is hardly surprising. Orlando, far from falling into Rosalind's riddle trap, has turned the tables and is testing Rosalind. By this point, Orlando seems to have found out what he needs to know, the level of sophistication of his adversary, and when he sees she cannot keep up, he gently returns to her initial ordering, finishing with the final two elements as Rosalind proposed them, "gallop," and "stand still." In this exchange Orlando has proven to Rosalind, and to himself, that he is every bit her match, in many ways.

We should notice that by the end of the riddle exchange, rather than praising Rosalind's ingenious wit, which at this point would be a bit disingenuous, Orlando instead abruptly asks Ganymede both where 'she' lives and about 'her' strange accent. If Rosalind's aim had been to maintain her disguise and to educate Orlando, she has failed on both counts; by this reading Orlando

sees through her disguise at least from the point she begins to talk to him, and by that point he is no longer in need of her education.

### 3 “The objectivist project” and the problems of relativity

This concluding section of this essay will attempt to connect the first two parts. Part one pointed out some profoundly troubling problems for the contemporary West both with moral relativism and the historicism upon which this moral relativism rests or from which it derives. That section ended with a quote from the work of Robin West in which she tentatively points in the direction of an objectivist solution to the problem of moral relativism; West seems to sense that something objective – some firm footing is needed to solve our moral dilemma, while acknowledging (and perhaps succumbing to) the immense difficulties that beset any such solution.

The key problem that prevents Robin West from being a more forceful advocate is that she does not address the historicist foundation of moral relativism. Therefore, she does not even consider as a solution the possibility of a return to the great thinkers of the past, especially those that preceded the rise of the historical consciousness. These great thinkers spent their lives and genius considering the enduring political and other problems that humans living in society always face<sup>21</sup> and contributing to the ongoing conversation with their counterparts from other eras.<sup>22</sup> It is to these great thinkers that we need to return; we need to obtain their guidance about the benefits and dangers *both* of moral relativism *and* objectivism; we need their help to re-discover how these things translate into the political crises of our time; and we need generally a better appreciation of the proper relation of theory to practice, the nature of which has been radical-

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21 In the version of this essay I delivered at the AIDEL conference on November 9, 2016, I added the following at this point: “like the ones we saw play out in the United States this morning.”

22 See generally, Melzer, *Philosophy*, chapters 3, 4 and 10. The basic idea here is that the problems faced by mankind, especially the political issues of people living in society, do not change fundamentally. Therefore, in theory it should be possible to have a ‘conversation’ or dialogue about these issues with the people of other eras who thought deeply about them and left us texts through which we can learn what they thought. But there are (and always have been) compelling reasons not to express the most profound thoughts about such matters directly, as for instance, in the form of a treatise. We owe a great debt of gratitude to Leo Strauss and Arthur Melzer for showing us that these authors from other eras wrote in a guarded way, and showing us how we can begin to read and interpret texts written in such a way.

ly obscured since at least the time of Machiavelli. We should consult not only the political philosophers, but also the poets – the original and now almost sole remaining moralists. One of the greatest of these, and one who may well have the most to teach us in the West, is, of course, William Shakespeare.<sup>23</sup>

What can Shakespeare teach us? A useful way of thinking about this is to consider the education Rosalind seems to be trying to impart upon Orlando – an education appropriate for someone being groomed to rule, as we know from another great thinker in the Western tradition, Plato, who famously wrestled at remarkable length with this very problem. In his *Laws*, Plato has his Athenian Stranger, who leads the dialogue, suggest that the most important piece of the education of those who are to partake in the “political regime,” is “the study of numbers,” and of the ordering of things.<sup>24</sup>

What this education will accomplish is to awaken those like Orlando who (at least initially) appear to be “sleepy and unlearned”; in Orlando’s case, the ‘ordering’ and ‘numbers’ required to become a good poet served as his political self-education. Such an education, the Athenian Stranger asserts, gives the student “ease of learning, memory and sharpness.”<sup>25</sup> The Athenian Stranger adds that such things are more effectively taught if they are delivered as Rosalind delivers her abortive lesson, and Orlando delivers his counter-lesson, in the manner of ‘play.’<sup>26</sup>

Shakespeare is playing a similar game with his audience. He is educating attentive members of the audience in, among many other things, the art of numbers and the proper ordering of things. Shakespeare’s teaching, however, can be considered to be a very advanced lesson – one that both encompasses and supersedes what we witnessed in the riddle exchange. Even accessing this master lesson is immensely challenging; perhaps it is a kind of test, since it only comes to light in hindsight, after one has struggled to puzzle out the intricacies of the riddle exchange and realized that the mysteries of the the riddle ordering

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**23** Those interested in pursuing this idea should consult George Anastaplo, *The Constitution of 1787: A Commentary* (The Johns Hopkins University Press: Baltimore, 1989) (chapter 7 is entitled “Anglo American Constitutionalism” and deals with Shakespeare’s influence on American education); Harry Jaffa, “The Unity of Tragedy, Comedy & History: An Interpretation of The Shakespearean Universe,” *Shakespeare as a Political Thinker*, eds. John E. Alvis and Thomas G. West (ISI Books: Wilmington DE, 2000).

**24** Plato, *Laws*, ed. and trans. Thomas L. Pangle (University of Chicago Press: Chicago, 1988), 135, (Book 5, 747b).

**25** Plato, *Laws*.

**26** Plato, *Laws*, 212. (Book 7, 820d).

are related in some fashion to other orderings, the most obvious of which comes to light only when we pan our focus out to the level of the entire scene.

At this level, it is possible to discover another four-step sequence that precedes and anticipates the riddle exchange, an ordering that bears the imprint of Shakespeare himself and cannot be attributed to his characters. Moreover, it is an ordering which does not bear directly on the action of the play, or obviously affect its characters, though it can and should affect the audience's impressions and estimations of the characters and the action. It is an ordering which Shakespeare *intends* solely for the benefit of the few in his audience attentive enough to notice it.

This earlier four-step sequence consists of the four poems we hear recited in this scene. The first poem that we encounter, the one that opens the scene, is Orlando's most accomplished poem:

Hang there, my verse, in witness of my love.  
 And thou, thrice-crowned Queen of Night, survey  
 With thy chaste eye, from thy pale sphere above,  
 Thy huntress' name that my full life doth sway.  
 O Rosalind! these trees shall be my books,  
 And in their barks my thoughts I'll character,  
 That every eye which in this forest looks  
 Shall see thy virtue witness'd every where.  
 Run, run, Orlando; carve on every tree,  
 The fair, the chaste, and unexpressive she. (3.1.1ff)

The poems found by Rosalind and Celia are Orlando's earlier efforts, and Touchstone's parody of Orlando's most primitive effort (the poem read by Rosalind) constitutes the fourth poem of this ordering.<sup>27</sup>

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<sup>27</sup> Touchstone's entertaining parody of Orlando's first poem reads as follows:

If a hart do lack a hind,  
 Let him seek out Rosalinde.  
 If the cat will after kind,  
 So be sure will Rosalinde.  
 Winter garments must be lin'd,  
 So must slender Rosalinde.  
 They that reap must sheaf and bind,  
 Then to cart with Rosalinde.  
 Sweetest nut hath sourest rind,  
 Such a nut is Rosalinde.  
 He that sweetest rose will find  
 Must find love's prick and Rosalinde. (3.2.101ff)

When we listen to this most recent and best of Orlando's poems, the audience potentially learns something of which Rosalind is unaware. Before she speaks with Orlando in this scene, Rosalind only knows of Orlando's pathetic first poetic effort, his doggerel poem that begins, "From the east to western Inde / No jewel is like Rosalinde,"<sup>28</sup> and the more sophisticated but still mediocre poem read by Celia that begins "Why should this a desert be?"<sup>29</sup> But Orlan-

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**28** The full poem, Orlando's first, reads as follows:

From the east to western Inde,  
 No jewel is like Rosalinde.  
 Her worth, being mounted on the wind,  
 Through all the world bears Rosalinde.  
 All the pictures fairest lin'd  
 Are but black to Rosalinde.  
 Let no face be kept in mind  
 But the fair of Rosalinde. (3.2.86ff)

**29** The full poem, Orlando's second, reads as follows:

Why should this a desert be?  
 For it is unpeopled? No;  
 Tongues I'll hang on every tree  
 That shall civil sayings show.  
 Some, how brief the life of man  
 Runs his erring pilgrimage,  
 That the stretching of a span  
 Buckles in his sum of age;  
 Some, of violated vows  
 'Twixt the souls of friend and friend;  
 But upon the fairest boughs,  
 Or at every sentence end,  
 Will I Rosalinda write,  
 Teaching all that read to know  
 The quintessence of every sprite  
 Heaven would in little show.  
 Therefore heaven Nature charg'd  
 That one body should be fill'd  
 With all graces wide-enlarg'd.  
 Nature presently distill'd  
 Helen's cheek, but not her heart,  
 Cleopatra's majesty,  
 Atalanta's better part,  
 Sad Lucretia's modesty.  
 Thus Rosalinde of many parts  
 By heavenly synod was devis'd,  
 Of many faces, eyes, and hearts,  
 To have the touches dearest priz'd.

do's best and most recent poetic effort Shakespeare reserves exclusively for his audience – it is delivered in a soliloquy; as Orlando reads it, we hear a pseudo-sonnet that employs smooth iambic pentameter, with an abab/cdcd/ee rhyme scheme; the poem also contains sophisticated content far surpassing Orlando's earlier two efforts. In fact, Orlando's poem lacks only the third quatrain to qualify as a standard Shakespearean sonnet, a poem worthy of Shakespeare himself at the top of his game.

Exploring the full implications of the ordering of the poems must await another occasion. For now, it is sufficient to notice that the ordering of the poetry seems designed to put the attentive reader on alert as they approach the encounter between Rosalind and Orlando and their riddle game. Among the insights our privileged perspective provides as we reflect on the implications of the 'ordering' of the riddle game is how early in the scene Orlando pierced Rosalind's disguise, how long it takes for Rosalind to discover this and at what point Orlando realizes she knows he pierced it. These discoveries align closely with a crowning lesson the rulers need to learn, this time according to Socrates, that most unreliable narrator of Plato's *Republic*, speaking of the guardians who will rule the good city being created in speech; they must learn how to recognize deception and also how to employ it.<sup>30</sup> Who better to teach us such a lesson than Shakespeare, as we revel in the spectacle of his characters learning the same thing.

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Heaven would that she these gifts should have,  
And I to live and die her slave. (3.2.127 ff )

**30** Plato, *Republic*, Basic Books (Harper Collins: New York, 1968), 92–94. (Book 3, 413c-415c); See also, Arendt, Hannah, *Between Past and Future: Eight Exercises in Political Thought*, Penquin Books (New York: 1977), 227, where, in an essay entitled "Truth and Politics, she says: "No one has ever doubted that truth and politics are on rather bad terms with each other, and no one, as far as I know, has ever counted truthfulness among the political virtues. Lies have always been regarded as necessary and justifiable tools not only of the politician's or the demagogue's but also of the statesman's trade."



Carla Dente

## ***Hybrid Identities: Joan of Arc Between History, Drama and the Law***

The not too systematic reflections that follow on the historical character in reality and representation were fostered by what is contained on the digital platform [www.dislocazioni-transnazionali.it](http://www.dislocazioni-transnazionali.it). On this site there is a search tab among those relating to exemplary cases of transnational literature, with information commented by Dott. Anita Simonini, regarding a part of the substantial bibliography of historiographic and non-historiographic works relating to the famous and controversial figure of Joan of Arc, at the intersection between English and French history, which has crossed many centuries, each time represented in texts inserted in very different cultural and formal contexts, to the point of causing the critics to speak of an authentic literary myth.

The characteristics of Joan of Arc's profile capable of fascinating successive contingents of readers, as Goy-Blanquet points out,<sup>1</sup> depend on precise biographical factors, which can be generalized in different times and cultures: she is an attractive figure because in the end she lost her war, she died young and she fought against powerful external forces, some of which, in the end, betrayed her. I would add that, beyond her impact as a character and that of her actions for the history of France, for the whole of Europe Joan of Arc personified courage in every circumstance. This is what we want to read into the past, perhaps by eliminating objectively controversial elements in the documents handed down to us by history.

In the case of Shaw, the opportunity for reflection on the nature of the texts that spread the narration of the events, as well as on the opportunities offered by their use, was provided by the then recent canonization of the character. Not without controversy, Shaw studied the records of Joan's various trials, and this study spawned a play written and performed in New York on 28 December 1923, performed and then published in England in 1924 by Constable & Co. Ltd with the title *Saint Joan*. This text was preceded by a detailed discussion on the character and the events of her life in the space of barely a hundred pages, which anyway configured a literary contextualization that was not common in a dramatic text, even for an author who used to write long essay-like in-

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<sup>1</sup> Dominique Goy-Blanquet, "Giovanna Crossing: French and English Versions of Joan of Arc," in *Journeys through Changing Landscapes*, eds. Carla Dente and Francesca Fedi (Pisa: Pisa University Press, 2017): 87–103.



roductions to his plays, who did not write tragedies in an era when the tragedy was already dead, but who, in Holroyd's definition,<sup>2</sup> this time composed a tragedy without *villains*.

Again on the context. By studying the bibliographical material recorded by Simonini on the digital platform, authoritatively commentated from various points of view by, among others, Dominique Goy-Blanquet in some of her publications,<sup>3</sup> it is possible to arrive at the conclusion that Joan's identity was hybrid and contradictory in the historiographic texts contemporary to her lifetime and were if possible even more hybrid for the diachronic reader acquainted with European literature.

## 1 The myth

When we speak of Joan of Arc we do so with the awareness of dealing with a myth halfway between history and literature. The myth is a history *per se*, a narration of something which is felt to be significant and which, to be so, necessarily has a difficult relationship with reality. The words of a literary narration do not denote reality, but rather express its significance. From the Greeks to the present day the origin of the myth, its function, its subject, its persistence in time and its geographical dissemination have been wondered about. To date it has seemed right to inquire into which form is imposed on reality when it becomes a mythical story, using the narrative conventions at the disposal of literature, which constructs possible worlds, alienating the reader from what is familiar to him, in a spirit of more or less bland subversion.

One can agree with Mircea Eliade<sup>4</sup> that if in the classical period the gods exercised a certain 'trade' with natural phenomena (the sea, fire, lightning, etc.), the heroes of the culture that the myth crowns today carry out their 'trade' with social phenomena. Proof of this is the fact that in France the myth of Joan of Arc is still today being appropriated by politics, while less recently the myth as regeneration was rooted in religion.

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<sup>2</sup> Michael Holroyd, "A Tragedy without Villains," (London) *The Guardian* (July 14, 2007), available at: <https://www.theguardian.com/books/2007/jul/14/theatre.stage> (last access November 7, 2017). Holroyd was the author of a prize-winning biography of Shaw in 4 volumes, later revised and republished with the title *Bernard Shaw*, (London: Chatto & Windus, 1997).

<sup>3</sup> See the many texts in Dominique Goy-Blanquet's bibliography, in particular: Goy-Blanquet, "Giovanna Crossing: French and English Versions of Joan of Arc".

<sup>4</sup> Mircea Eliade, *Myth and Reality*, trans. Willard R. Trask (New York: Harvest Books, 1963).

The myth becomes literature when it separates itself from ritual and becomes the symbolic comment of personal attitudes and concepts that possess recognizable expectations on the state of things, expectations that suffer an initial infringement, actually the driving force of the narration. Through the myth shared histories create a community of interpretation that constitutes a basis of communal cultural cohesion.

In the case of Joan of Arc what spring to mind are the words of René Girard,<sup>5</sup> which conceive the subject of the myth as a scapegoat, a being that must be killed or exiled for having brought upon the community the problems that afflict it. In the first phase of the story, in fact, the process of transformation concerns an innocent victim who becomes a criminal; who therefore in the end deserves to die. If the protagonist dies for the community disinterestedly, there is the transformation of the guilty party into a hero through a sacrifice of ritualistic character. If the death is inflicted for the guilt of the protagonist, it is evident that the collective reading will point towards interpreting it as an attempt at socio-political subversion.

Over time, the diachronic reader has been led in opposite directions in the delineation of Joan's profile, following the manipulations performed by the texts. It would seem correct to analyse primarily the typologies of the writings employed to hand down the many-voiced profile of Joan's story.

## 2.1 Historiographic writing

The most direct way in which the present can relate to the past is through a written form, necessarily a narration, which is a specific typology of discourse. The relationship between reality and representation underlies the historical text, as it does the literary one, and it cannot be said to be a matter resolved once and for all. *Fact and fiction* in English criticism stand for an oppositional dichotomy which has deserved many discussions, of which it is impossible to give a complete account here.

The textual typology immediately connected with the insuppressible reality of the event, which thus becomes a fact, is the historiographic writing which, despite the textual intention of being in accordance with the truth, as controversially stated by historians in open opposition to the literary community, makes recourse to rhetorical procedures necessarily derived from fictional texts. The affiliation of historiography to the literary field is in fact a proposition that

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5 René Girard, *Violence and the Sacred* (Baltimore: Johns Hopkins University Press, 1977).

comes from the philosophy of history in consideration of the anthropological necessity of the recounting of the past and its forms. Hayden White, starting with his text<sup>6</sup> of 1975, is perhaps its most famous exponent. For a critical examination of the nature of historical writing refer to the excellent volumes of Emanuella Scarano<sup>7</sup> et al. (1986 and 1990) which identify its distinctive textual data and the features that constitute motivation for writing.

Narration as such is a universal activity that therefore also covers cases of historiographic writing. Barthes defines it as “international, trans-historical, transcultural” narration<sup>8</sup> and this case seems the most appropriate to confirm it.

However, the historical text may describe a situation, or it may analyze an historical process or it may simply recount an event. All of them different modulations of historical texts that contain variable rates of narrativity, with a different functionalization, they correspond to different textual intentionalities. The maximum narrativity is to be found in the recounting of an event, there is less of it in the description of an event, and there is a greater space for the interpretation of facts in the analysis of the historical process.

The narration of the content will necessarily be narration of the real, narration of ‘objects’ found, rather than of constructs created, as occurs in literature. From a methodological point of view, Hayden White stresses that in the history that he recounts, the historian investigates the documents to establish what is true, or at least plausible, and why.<sup>9</sup> However, this is what literary people are also sometimes called on to do when they re-propose stories of the past that limit their creativity.

In an ideal world, the narrative discourse of the historian adds nothing to the content of the represented facts. It is therefore a simulacrum of the event itself;<sup>10</sup> in other words, the discourse of the historical text is mimetic of the reality, and if the imitation is accurate then it is a truthful account of it.<sup>11</sup>

With further articulation of positions, other scholars of the Philosophy of History distinguish between:

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**6** See: Hayden White, *Metahistory: The historical Imagination in Nineteenth-Century Europe* (Baltimore: Johns Hopkins University Press, 1975); Hayden White, “The Question of Narrative in Contemporary Historical Theory,” in *History and Theory* 23.1 (1984): 1–33.

**7** Emanuella Scarano (ed.), *Il Romanzo della Storia* (Pisa: Nistri-Lischi, 1986). Emanuella Scarano e Donatella Diamanti (Eds.), *La Scrittura della Storia* (Pisa: Tipografia Editrice Pisana, 1990).

**8** Roland Barthes, “Introduction to the Structural Analysis of Narrative,” in *Image, Music, Text*, transl. Stephen Heath, (New York: Hill and Wang, 1977), 79.

**9** White, “The Question of Narrative in Contemporary Historical Theory.”

**10** White, “The Question of Narrative in Contemporary Historical Theory.”

**11** White, “The Question of Narrative in Contemporary Historical Theory,” 3.

- the epistemic statute of narrativity considered as a sort of explanation of events and historical processes (certain Anglo-American philosophers – from Walsh to Mink);
- the historiographic narrative as a strategy of ideological representation that distances the discourse of History from every desired scientificity. A position of the French annalists (including Le Goff) that is more polemical than analytical.
- the historical discourse as one of the multiple discursive modalities contemplated by the theory of discourse, a modality that may not even be appropriate for the representation of reality, in that it is a result of the specific pragmatic purpose of the speaker (as maintained by semiotically-oriented theoreticians like Barthes, Foucault, Derrida, Kristeva, Genette, Eco). The critic who most radically questioned the nature of the historical discourse (truthful) as opposed to that of the fictional discourse (fictitious) was Barthes, who put the question:

Does the narration of past events, which, in our culture from the time of the Greeks onwards, has generally been subject to the sanction of historical ‘science,’ bound to the underlying standard of the ‘real,’ and justified by the principles of rational exposition – does this form of narration really differ, in some specific trait, in some indubitably distinctive feature, from imaginary narration, as we find it in the epic, the novel, and the drama? <sup>12</sup>

- the philosophers with a hermeneutic orientation (Gadamer, Ricoeur) found instead in narration the discursive manifestation of historical studies as a practical sign of structural awareness of the time dimension.

Hayden White added a fifth category, the one formed by those who ‘make’ or ‘practise history,’ characterized by a traditional, eclectic and non-theoretical attitude.

One may conclude temporarily by observing that if the primary purpose of the historiographic text is the transmission of the message, then the communicative function of the event is prevalent, and therefore the evaluation of the text will be expressed in terms of expository clarity and value of truth with respect to the topic. If, on the other hand, the message is an opportunity to express the position of the author on a historical-political matter or to provoke a response in terms of political action, then the evaluation will relate to the illocutionary and effective force of the text.

Bearing all this in mind one may feel capable of evaluating, I believe, any divergence from the objectivity of a historiographic source when one knows

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12 Roland Barthes, “Introduction to the Structural Analysis of Narrative,” 79.

for certain that it constitutes the basis on which a literary version of history is founded. Detailed work in this direction, with greater or lesser general critical awareness, has already been done by the source studies.

## 2.2 Judicial writing

A writer who confronts a rewriting of the myth of Joan of Arc as a dramatic text, a textual typology that although fictional seeks effects of truth, can, as George Bernard Shaw did, form his own point of view on the history of Joan also from the judicial texts of the reports and documents of her many trials. Generally, the judicial text is credited by the reader as being reliable and neutral as it is anchored in a state of cultural cohesion, when the truth is, technically, that the judicial text is the written representation of biased positions in conflict with each other and therefore controversial. Its merit is based on the observation of procedures that satisfy criteria of justice.

Joan underwent four trials,<sup>13</sup> each time resulting in different appropriations of her image, motivated by biased interests and each time with the production of material to be carefully evaluated. In the Common Law system, to evaluate the fairness of a juridical interpretation the only parameter is ‘tradition based on precedent.’

In 1431, in the jurisdiction of Common Law to which Joan was finally entrusted for civil judgment, the testimonies heard in court could have value of proof, and thus be admitted at the hearing, only after being transcribed, sworn to, summarized and declared truthful by an institutional figure. This figure had the function of clerk of the court and affixed a seal (this asserted that the testimony was ‘clean and without perjury’). Only after this, was the witness admitted to appear in court. The oath was therefore a means of proof, admissible in court in the form of opinions or conclusions of an inferential type, based on the perceptions of the witness who thus made his testimony assessable for the others. There were additional problems regarding transcription. The testimonies were habitually given in the vernacular, but translation and transcription in the official Latin language was authorized by the officer appointed to produce an act that was *instrumentum sententiae*. In this specific case it should be noted that the testimony was tran-

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**13** The first at Poitiers in 1429, which acknowledged the truth of her gifts as a prophetess, the second at Rouen in which she was condemned as a heretic, the third in 1456, which cleared her name, the fourth in 1920 which proclaimed her a saint. The latter began in 1874 (which made her Venerable) and then declared her Blessed in 1909, all necessary steps towards her canonization.

scribed in 1435, when it had been given on 3 March 1431. The trial was declared null and void only 25 years later, and not for this reason.

Moreover, the language of the law in England, from 1066 onwards, was the so-called Law French, at one time the language spoken at the court of the Norman invaders, who were far more cultured than the indigenous population. In the fourteenth and fifteenth centuries Law French was only a written language, almost artificial. It remained in use for 'Readings' – formal lectures by grand jurists to a specialized audience in the 'third university' – and for 'moots' –, staged juridical debates on controversial points, not explicitly contemplated in the Statutes, which were held in the Inns of Court as an integral part of the instruction and practice of young lawyers. With the Republic and Cromwell, however, these two different activities fell into disuse. In 1628, Sir Edward Coke, one of the greatest English jurists, acknowledged in the preface to his *First Part of the Institutes of the Law of England* that the Law French, almost extinct as a spoken language, was used only in *case-reports* and textbooks for the legal profession.

In the case in question the transcription of the testimonies of Joan was done by Thomas Courcelles, who worked in William Manchon's office, for the judge Pierre Chauchon. It seems that only Manchon was truly conscientious, while the former was so biased that he asked for Joan to be tortured while she was still only undergoing preliminary questioning. Since trials for heresy configured a crime of opinion, the accused could refuse to answer, and Joan exercised this right, despite the presence of 116 sworn testimonies against her. The right to object to self-incrimination in the trials of the Inquisition actually appealed to Canon Law,<sup>14</sup> which also required that a defendant be formally contested on the charges before being subjected to judgment and before being asked to make any declarations (the principle of the 'Habeas Corpus'). It will be remembered that a few years ago (2002) this was one of the most controversial points in the case of the trials for suspected terrorism of the prisoners in Guantanamo Bay.

Politically, Joan's trial was destined to discredit King Charles VII. Joan swore that she would always tell the truth, but she refused to answer about her relationship with the king, invoking the defendant's right to silence if precise charges had not yet been formulated. Joan also refused to swear that she would not escape, reserving this as her right. At every preventive interrogation the requirement of oaths was reiterated. Of the 70 charges, eventually reduced to 12, the most serious concerned her claim to consider her words as the word of God,

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14 Richard H. Helmholz, "Origins of the Privilege Against Self-incrimination: The Role of the European *Ius Commune*," *New York University Law Review* 65 (1990) 962–990. See also the discussion in H. Ansgar Kelly, "The Right to Remain Silent: Before and After Joan of Arc," *Speculum* 68/4 (1993): 992–1026.

her dressing in male clothes and that of her not obeying the commands of the Church.

One of the most relevant points in the matter regarding Joan was therefore her declaring herself a prophetess, and prophesy was very close to conspiracy because it called into question two important elements in the structure of medieval society and even more so of *early modern* society. This corresponded to the moment when the myth of Joan started to be written about. The two points were the social structure of society for the unusual relationship between the Maid and the king of France on one hand and the national church (English and reformed) on the other.

Joan, captured in the diocese of the bishop of Beauvais on May 23<sup>rd</sup> 1431, had to answer to him both for a transgression of an identity type – cross dressing – and of a serious crime of opinion configurable as heresy because she presented herself as a prophetess. Her identity was disturbing for the contemporary culture because it presented ambiguities: an ambiguity of *gender*, because of her dressing in male clothes and uniforms of war, against every Biblical indication and social tradition; and a moral ambiguity, which allowed the drawing of both the profile of a saint and the profile of a sinner. She claimed to be a virgin and therefore conventionally appropriate to be sent by God to serve His cause in the role of prophetess; but after being sentenced she declared that she was pregnant in order to escape the death penalty, apparently proving right those who said she was promiscuous and even a witch. Then, given the inefficacy of this move, she retracted it, in order to meet her death rather than face segregation in prison. Her position was also politically ambiguous: in the French quadrant divided between supporters of the Valois and the Borgognoni then, between the nationalist right (of Marine Le Pen) and the left, today. Equally ambiguous was her religious dimension: between concepts of Catholic saintliness and Protestant martyrology. The reference to her declared divine assignment to act which, by eliminating the official mediation of the Church between God and man, poses the problem of the nature of the ‘voices’ that guided her and for which she made the supreme sacrifice.

It is interesting that at the end of the thirteenth century the Church still had to face the backlash of what was perhaps only a legend, that of Papeess Joan (!) raised to the Papal Throne with the name of John VIII, who it is said gave birth during a procession. The first mention of a female pope was in the Chronicle of 1250 by Jean de Mailly (*Chronica Universalis Mettensis*), while other more popular and influential versions appeared later (Martin de Opava, *Chronicon Pontificum et Imperatorum*, 1278) and elsewhere in Europe. A German version of the legend said that a woman managed to enter a monastery with the name of John Anglicus of Mainz, was pope for little more than two years and that her death was fol-

lowed by a period of vacancy in the seat of the papacy. The reality of the myth of a woman on the papal throne was called into question only after 1500. It is curious that among the objects belonging to the Visconti-Sforza family there is a deck of tarot cards dating to about 1450 with a card that is ‘the Papess.’ I can only consider this as evidence of the popular diffusion of a story intended to emphasize the despicable nature of the Catholics.

In England there were many testimonies regarding women who dressed “in male attire,” and who led “a sternly independent life”<sup>15</sup> and Stubbes, in his *Anatomy of Abuses* (1583), had already reported some cases. The *roaring girls*<sup>16</sup> were examples of the reversal of behavioral norms that could not but be sanctioned. This as a testimony to a hybridism that could not be approved of in the conception of an ordered world, though it exercised a fascination in the early modern imagination to judge from the quantity of late sixteenth- and seventeenth-century texts that have come down to us, many of which are based on characters taken from real life. ‘Roaring boy’ was the term used to indicate a rowdy and perhaps quarrelsome young man; with the noun ‘girl’ the indication went in the direction of a young woman who behaved like a bad boy. Even with a touch of heroic spirit to characterize a masculinized femininity, more characteristic of a combative man not anchored in a stable and recognizable context. Dressing like a man was the striking aspect, which usually led to being widely gossiped about for its ‘monstrum’ and all this gives us an indication of the probable reception in that period, and therefore also of the authorial intention in drawing in Shakespeare’s time a character like his Joan of Arc in *Henry VI*. The picture was completed by strong and robust language often addressed to various forms of authority, even paternal authority, against which the character rebelled out of natural indignation, with a touch of ribaldry and Robin Hood-like spirit. If the civil and military authorities had no hold over this typology of character it is probable that neither would the religious authorities, and all these traits seem in fact to characterize the Shakespearian Joan of Arc. In the context of a comedy such characters demonstrate their popularity, while in the context of an historical tragedy

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15 Paul Salzman, *English Prose Fiction 1558–1700, A Critical History* (Oxford: Clarendon, 1985), 213.

16 Middleton and Dekker staged a play with the title *The Roaring Girl* around the end of the first decade of the seventeenth century, then published in 1611. The story referred to the life of the famous Mary Frith, known as “Moll Cutpurse,” a woman with a bad reputation because she challenged the behavioral codes of the time, dressing as a man and smoking in public, a character who in the same years was the subject of other literary texts in prose (John Day e Nathaniel Field). See also Simon Shepherd, *Amazons and Warrior Women. Variety of Feminism in Seventeenth-century Drama* (New York: St. Martin’s Press, 1981), 67–68.



moral judgment gains the upper hand over the more playful spirit of the knight errant.

To return to Joan of Arc in a perspective linked to the judicial context, the trial, which had taken place without the assistance of a defense lawyer – further evidence of its political purpose – ended with:

- a) a sermon in which Charles VII was severely attacked;
- b) a request from Joan, ignored by the bishop, that the trial papers be sent to Rome, to the Pope in his quality as appellate judge;
- c) the presentation of the text of a formal recantation that Joan signed with some hesitation.

She was also ordered to dress as a woman for the duration of her life sentence. When the judge returned to her cell after two days, he found her again *in male attire* and Joan apparently stated that ‘the voices’ had reproached her for her recantation. At this point she was left to the secular arm of English law, which could send her to the stake more easily than the French Canon law, with a judicial story that obviously had a narrative structure, an antagonistic spirit and the persuasive finality open to the suspect to be the consequence of the will of fulfilling an aim, though it was presented as founded on the legitimacy of the entire legal system.

In the twentieth century, in the resumption, modification and dissemination of the myth of Joan of Arc striking moments were those of the Catholic religious canonization of the historical character that led to her sainthood in 1920, on the one hand, but also her political canonization of a nationalistic cast by the political right in France (still celebrated annually) the return of the Maid on the English scene after her initial denigration by Shakespeare (1592) in *1 Henry VI*.<sup>17</sup> Thus, she ended up in G.B. Shaw’s reading, which made her a singular icon of martyrdom by murderers, albeit innocent ones. All this in the paradigm of a complicated equilibrium between tradition and innovation that characterizes the symbolic world of culture in the specific aspect that concerns the dissemination of a myth.

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<sup>17</sup> William Shakespeare [1592], *The Oxford Shakespeare: Henry VI Part One*, ed. Michael Taylor (Oxford: Oxford University Press, 2003).

### 3 A case of cultural mediation between England and Italy

I recently discovered by chance the first Italian translation of Shaw's *Saint Joan* in a bookshop (Fig 1). In the history of the dissemination of the text in Europe, of some interest is the fact that in Italy in 1925 – the early fascist period – the publisher Mondadori had *Saint Joan* translated by Antonio Agresti, a Tuscan writer, translator and publicist (Florence 1866 – Rome 1927) who had already made a foray into the texts of G.B.Shaw.<sup>18</sup> A true cultural mediator between the Italy of his time and Anglo-American culture, in the direction of a bilateral exchange.

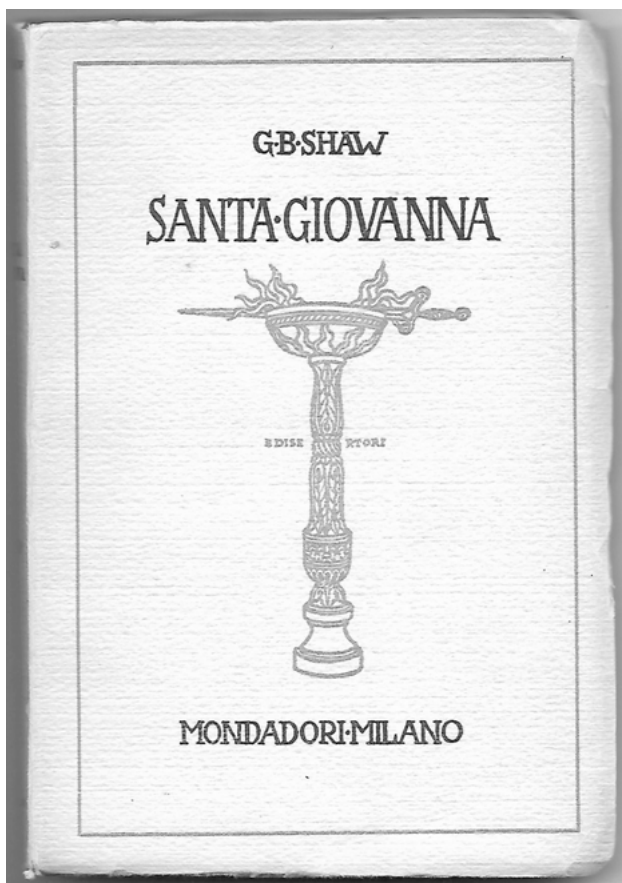
**Editions.** In this context, tendentially not very receptive to English literary culture, even considering the event of the canonization of Saint Joan 5 years earlier, this apparently incongruous move can be explained by the incentive to the publishing venture on the part of Mondadori constituted by the awarding of the Nobel Prize for Literature to Shaw that same 1925, “for his works made of idealism and humanity and his satire often infused with singular poetic beauty.” This confirms the enthusiastic comment by Pirandello who, present at the worldwide first night in of *Saint Joan* at the Garrick Theater in Manhattan, New York, in 1923, stressed the sensation of finding himself in the presence of a true ‘poet.’ The first night, usually dated as 28 December, is instead indicated in the Mondadori edition, as having taken place on 29 December.

The following image (Fig 2) is that of the green bibliographical information sheet contained in the volume, considered indispensable for an informed reading of the text, which contains a box with the data for the volume, format, weight and price. The sheet shows signs of aging that make reading it difficult, but it provides details on the date of birth of the author, whose name has been Italianized in accordance with the political directives of the time, on his texts translated and published up to that moment (4), and the volumes in the process of being published (9) containing 21 plays and, separately, the essay “La quintessenza dell’ibsenismo” (“The Quintessence of Ibsenism”).

In the informative note on the text a second mistake, worse than the previous one, is to be noted: the attribution of the dramatic source to the “pseudo-Shakespearian trilogy of Henry IV” [sic]. Moreover, the difference between

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<sup>18</sup> Of Shaw Agresti also translated for Mondadori *Androcles and the Lion* (1928, published posthumously), *Unpleasant Plays* (1923), *Major Barbara* (1926), *Man and Superman* (1926), *Pygmalion* (1928).



**Fig 1:** G.B. Shaw, “Santa Giovanna,” first Italian edition (1925).

Shaw’s version and the foreign ones known in Italy are commented on, with that of Schiller being defined as sentimental, that of Voltaire as burlesque and that of Anatole France as anti-clerical.

The graphic aspect of the covers of the two first editions of the play, the English one by Ricketts and the Italian one drawn by Benvenuto Disertori, is interesting: one can see definite art nouveau influences in the former and a more marked swerving away from art nouveau towards the fascist aesthetic taste in the Italian one, which substitutes the human figure with a series of objects with a marked symbolic value arranged in such a way as to form a Christological figure.

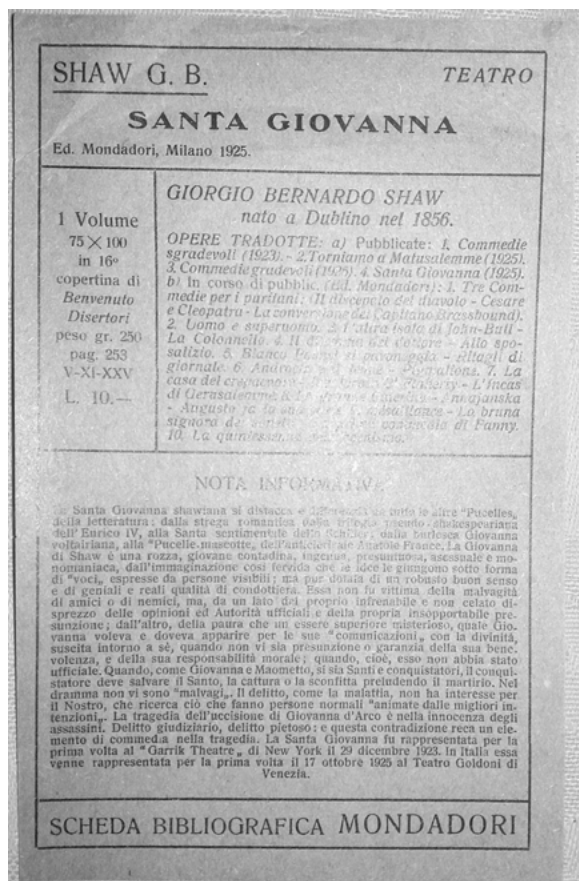


Fig 2: Bibliographical information sheet

Both the English cover, with its suggestion of an elongated female figure, with armor, sword and tunic with the fleur-de-lis of France, with arms spread as though nailed to a cross and therefore on the point of sacrificing herself to the flames which seem to refuse to lick her feet, and the Italian one, with the image of a chalice-shaped brazier, a transverse sword that suggests a cross and therefore sacrifice, explicitly 'quoting' the episode of the English soldier who at the moment of Joan's torment at the stake is said to have brought her, in the name of the common people of England, two sticks in the form of a cross.

Much less interesting figuratively speaking is the cover of the American edition, albeit published first (fig. 4).

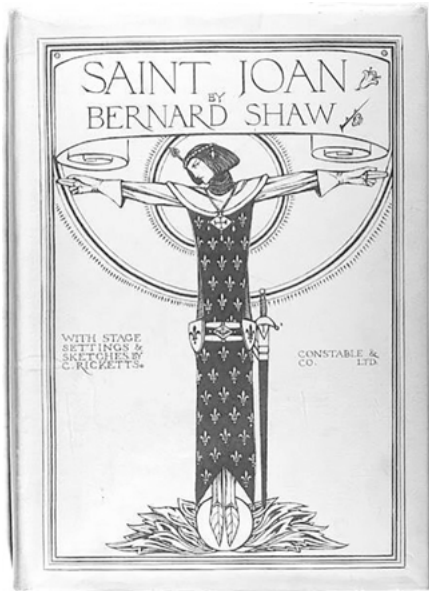


Fig 3: G.B. Shaw, “Saint Joan.”

Brentano’s was an old chain of bookshops (there were 28 scattered throughout many American cities), with the capability of autonomous text publication. The enterprise had started in 1853 as a kiosk for the sale of newspapers, and over time the most famous bookshop in this chain had become the one in New York (Fifth Avenue), arranged on several floors. In 1982 Brentano’s went bankrupt due to aggressive competition by other companies in the sector.

The dissemination of the text *Saint Joan* by Shaw in Europe essentially took place through the diffusion of the English edition, on which the only authorized Italian translator drew, in view of Shaw’s worldwide copyright on the English text. Antonio Agresti was not a common type of cultural mediator at the beginning of the twentieth century in Italy, France and England as he was published as an author in Italy and America, as a translator of foreign literature in his home country, and as a publicist he wrote in magazines in Italy and abroad. Not much is known about his private life, but it can be deduced that he was certainly a prolific author (see Appendix).

It is worth pointing out that in Italy Shaw’s *Santa Giovanna* has known a long publishing history of several decades with Mondadori, after its first appearance in translation by Agresti. In 1957 it had published (without the name of the translator on the frontispiece) a version and even before that, in 1924 and in 1930, it had been represented in the translation by Agresti. The version by Paola Ojetti was published in 1964 and again in 1980, this time with an introduc-

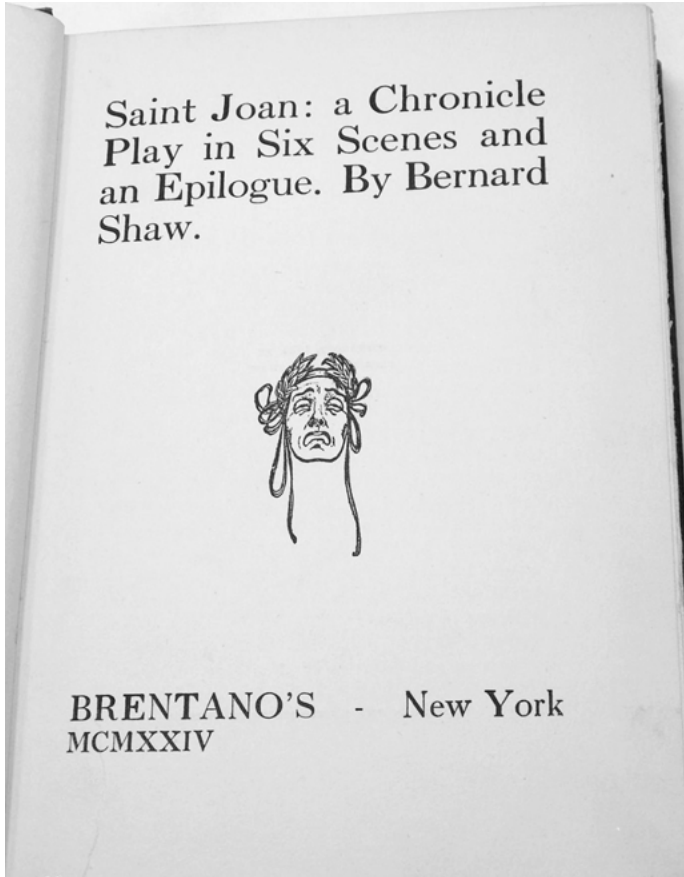


Fig 4: G.B. Shaw, "Saint Joan," American edition.

tion by Paolo Bertinetti. The Club degli Editori brought out its own edition in 1966 without mentioning the name of the translator on the frontispiece, but all the evidence seems to point to it having been the text by Ojetti. In 2016, in a lecture at the Salone del Libro in Turin, Paolo Bertinetti, while discussing the theme of the more rapid aging of a translation than the text of its original work, a theme previously taken up in the context of the English theater by the authoritative positions of Agostino Lombardo and Sandro Serpieri, confirmed several times over the years, he gave the example of Shaw's scant fortune on the Italian scene. According to him this is not to be due to the nature of the text, but rather could be the consequence of the age of the translations by Agresti and Ojetti which no longer did justice to Shaw's original texts because of their

lack of adaptation to the dynamic thrusts of the Italian language in at least the previous forty years, an effect made even more striking as the language unravels in the form of a dialogue.

**Sources.** In the first place Shaw had received his information on Joan of Arc from Shakespeare, who in *Henry VI* wrote the first version of the story for the English theater. Shakespeare was not tender with the protagonist: he presented her as a ‘puzzel,’ which stands for ‘whore’ (I, 5: 85) by playing with various assonances like Joan’s nickname, the ‘Maid,’ while Talbot calls her *witch* and *sorceress*, thus attributing to the character all the typologies of witchcraft and promiscuity known and shared in early modern popular culture, then taken up in her sentencing. The idea of the game that was established by both Shakespeare and John Foxe, who in his *Actes and Monuments* of 1563 had tried to make of the Protestant Reformation an essentially English event to promote the emerging spirit of nationality, was evocative. Shakespeare, equally committed to the promotion of the spirit of nationality, in his historical dramaturgy introduced a ‘foreign’ identity, ‘other,’ destabilizing, opposed to and contrasting with the native one and with the profile-model of Elizabeth, idolized as the virgin queen, symbol of the state. That there is some irony in this would seem to be confirmed by the episode of the plot by Essex, with the vague, possible implication of Shakespeare, author of that *Richard II* constructed around a dethroned king, staged on commission of the plotters the evening before the event.

The prophetic quality of Joan’s actions and words challenge the interpretive capability of the readers/audience, actually divided between the source of the prophecies, professedly divine, and the negative social consideration of a hybrid profile like Joan’s, which communicates them. This distance provokes an uncertainty of interpretation, even a conflict between the possibility of a radical reading of the relationship between God and man, and the common feeling, an uncertainty that remains the stable condition of the receiver balanced between a traditional interpretation of the relationship between Church and State and an interpretation of the relationship as a conspiracy against the Church and the State.<sup>19</sup>

In the prospect of time that we now enjoy one can anyway see to what extent Joan’s *otherness* contributed to the drawing of the cultural construction of the foreigner for the whole of the Elizabethan period, a foreigner whose profile

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<sup>19</sup> See some shareable observations by Giuliana Iannaccaro, “Prophecy as Conspiracy in Revolutionary England,” in *Prophecy and Conspiracy in Early Modern England*, eds. Giuliana Iannaccaro and Massimiliano Morini, electronic publication (The British Institute of Florence, 2017): 75–89.

was, at best, hybrid. It should be said immediately that the hybrid identity, in the context of the reception of the contemporary spectator/reader is perceived as the result of a cultural comparison in a context of fundamental identity displacement. And the first to occupy an essentially off-axis position, 'displaced,' was the Irish G.B. Shaw, now a stable resident in London.

Shaw's research into the history of the character who he selected as protagonist and about whom he wanted to write his play, neglected the historical chronicles to concentrate instead on the judicial texts. These provided the profile of a woman judged to be guilty who, faced with death, retracted to save herself and invoked a privilege that English law allowed, the so-called 'privilege of belly' on the basis of which a woman, condemned for a serious crime (*felony*), by declaring herself to be pregnant, at the discretion of the judge could obtain a suspension of the punishment, and sometimes even a pardon. On this occasion York and Warwick refused to listen to the defendant.

'Pleading pregnancy' to avoid execution was quite a common practice in Elizabethan England and Scotland and the judicial reports of the time present various cases. Cases of pregnant women burnt at the stake were instead very uncommon and the theater audience had precise knowledge of all this due to the fact that executions in England were always public.

The verification of the condition of a woman 'pleading pregnancy' was necessarily entrusted to a group of matrons, and when they decided in favor of a pardon or suspension of the death penalty so as not to kill an innocent human together with its mother, I think one can say that the borders between the law and compassion became fluid.

It was not easy for a woman to cheat on the 'benefit of belly,' while it was easier for a man to avail himself of the parallel 'benefit of clergy,' another medieval privilege, established for *clerics*, "intellectuals" who were required to know the law and how to write and were well acquainted with the Bible and the Psalms. This way they avoided being judged by the royal courts and were instead entrusted to the ecclesiastical courts. In 1350 this privilege, originally intended for clergymen, had already been extended to educated men. It was sufficient to be able to read and recite the Psalms. It is clear that, given a good memory, it was not difficult for a man to cheat any court. In 1547 a noble could invoke it in the case of a first offence, from 1692 onwards women could also take advantage of it, and only in 1705 was the obligation of reading eliminated.

The Elizabethan audience, with the elements provided by Shakespeare, could not but construct a transgressive identity for the character of Joan, [*cross-dresser*, prophetess – therefore in contact with obscure forces-, known by a nickname that in English alluded to an immoral identity]. So a transgressive and hybrid identity, in some ways dangerously close, to be subversive, to the pro-



file of the virgin queen Elizabeth, she too at the head of an army like a man and sometimes surrounded by favorites and pretenders, sometimes of Catholic faith, which rendered ambiguous her being the championess of the Protestant faith. The hybridity of Joan's profile is confirmed by the fact that the female warrior was also an emblem of the political and social order, as it was incorporated in the iconography of Elizabeth I: the didactic literature shows a plethora of 'exemplary lives' that went in this direction in the early modern period.

In 1450 Charles VII ordered an inquest into Joan of Arc's trial and in 1457 the Apostolic Legate carried out a second much more complete one. Callixtus III in 1455–1456 installed a commission which revoked and annulled the decision of 1431 against the Maid.

So not even the nature of the trial records can guarantee an unequivocal reading of the past, in line with our idea of justice (political influences or of other kinds, the defendant the victim of an essentially unfair procedure for the lack of a legal defense, interrogations carried out 'under duress'). Nor does either a careful consideration of the miracles that were later attributed to Joan to sanctify her can make us so sure of an uncontroversial interpretation of her character. Rather her heroic strength shown in tolerating the bullying in her trial – with the only exception towards the end, an episode that makes her very human –, the unwavering certainty of the rightness of her cause sustained by faith, make her a symbol of national conscience and courage not only for the French but for all Europeans. It is with an awareness gained through an examination of the texts that every author has before him/her that it will be possible to discuss and evaluate Shaw's long essay and his play *Saint Joan*, which are editorially presented by G.B.S as a single move, ideologically integrated, with the claim of truthful interpretation.

This brings us with greater certainty to our specific myth because Joan of Arc is also an historical character who challenges the constant conflict between the truthfulness of the historical recounting, that of the judicial reports, the statute of the literary recounting and the collective cultural perception.

National identity is not some naturally given or metaphysically sanctioned racial or territorial essence that only needs to be conceptualised or spelt out in discursive texts; it emerges from, takes shape in, and is constantly defined and redefined in individual and collective performances [...] National identity is not an essence one is born with but something acquired in and through performances.<sup>20</sup>

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**20** Manfred Pfister, "Performing National Identity," in *Performing National Identity*, eds. Manfred Pfister and Ralf Helter (Leiden: Brill, 2008): 9–28, 9.

Identity is negotiated in public and after all the narration of identity is a public activity like the criticism that that same identity could provoke. The criticism would pin itself to the perspective that every verbalized activity like narration assumes. Identity has a fundamentally relational character, its hybridity seems to lend an air of harmony to a subject that cannot but be dialectical, conflictual and disarticulated, with the overpowering need to come to terms with other conflictual narrations. A hybridization, when it is not the product of movements of people, indicates a cultural displacement that necessarily involves an individual loss of cultural connection with the environment and a sizeable dose of *performance*. As Pfister goes on to observe, the intercultural transactions that were explored in a post-colonial dimension, but one which is relevant to seize “in joint performances of difference across cultural borders,”<sup>21</sup> acquire a greater significance. Another way of saying something that Joan makes us discover with clarity: the construction of the other is determined by the construction of the self and vice versa. And this is true in the constancy of time and the variability of space, but it is also true, conversely, when the past and present are compared.

Today, the reception of an identity is not in line with the past; with our acute cultural sensitivity to the articulation of the positions of the subject, it makes us more aware of the processes that are produced in the articulation of cultural differences. The borders between private and public, between high and low, between belonging to one nation or another, are called into question. The crucial crisis point is the understanding of the difference, the product of a minority identity, in the act of comparing itself and articulating itself in a collective body. Joan's story shows us in the past something that has significance and consequences also in our post-modern state: that the process of the redefinition of the concept of homogeneous national culture, the transmission of shared historical traditions, processes that manifest the sense of unease of a society now in relation to a transnational character, then in a phase of the redefinition of a collective identity.

As George Bernard Shaw observed in his introduction, Joan was not a coarse woman,

né una scostumata, né una strega, né una bestemmiaatrice; che essa non fu idolatra più che non lo fosse il Papa in persona; che la sua condotta fu incensurabile sotto tutti i rapporti, eccezion fatta della sua vita soldatesca, del suo vestir da uomo e della sua audacia.<sup>22</sup>

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<sup>21</sup> Pfister, “Performing National Identity.”

<sup>22</sup> George Bernard Shaw, «Santa Giovanna. Cronaca drammatizzata in quattro atti e un epilogo,» transl. Antonio Agresti, (Milano: Mondadori, 1925), 15.

The observation was that Joan certainly could not fight in a skirt, and today this would not be considered a symptom of madness. In *1 Henry VI* “albeit a tinkering owing to Shakespeare, in the final scenes it coarsely slandered her in homage to the patriotic stalls.”<sup>23</sup> The syntax of the whole discourse sounds strange, perhaps *faulty*, but Shaw’s thinking is still clear; the decision to condemn Joan was “absolutely legal,” England made it a speculation against “Catholicism” and the Inquisition, what lost it for her were “the voices” and the visions, twice exploited in the story, to condemn her as a heretic first, and paradoxically to then sanctify her. Her transgressive profile as a prophetess, in contact with obscure but not necessarily malign forces, was openly contested by Shaw.

L’opportunità di quell’idea [venuta dall’esterno come ispirazione] dimostra invece che la sua mente era sanissima; [...] Anche la sua politica era sanissima: nessuno mette in dubbio che liberare Orleans, incoronare il Delfino a Reims per controbattere il sospetto che correva sulla legittimità della sua nascita e quindi del suo titolo, fossero, politicamente l’uno e militarmente l’altro, due colpi magistrali che salvarono la Francia.<sup>24</sup>

Shaw compared Joan to Socrates, on the moral side and to Napoleon on the strategic side and saw all three ending their lives badly without any help for their merits. That Joan was innocent for Shaw was demonstrated, with some hesitation, by the second trial, that of rehabilitation, whose verdict contradicted that of twenty-five years earlier. However, Shaw looked negatively on the Protestant ideological exploitation that was carried out against Catholicism and the Inquisition, which to achieve the purpose of demonizing them raised Joan up in an unrealistic way. Her visions did great harm to her reputation, helping to define her as mad, a witch, or a liar. Shaw, asking for help from Socrates, Luther, but especially from Swedenborg and Blake argued in favor of inspirations, intuitions of a visionary imagination, rather than of reasoned conclusions on historical-political matters in which Joan valued logic.<sup>25</sup> Sane, therefore, despite the voices, victim of medieval priests, instigated by a bishop, corrupt because political. Joan’s masculinity and militarism did not scandalize Shaw, who saw traces of it in many suffragettes of his time (Rosa Bonheur, George Sand), though he was aware that these abnormalities of hers led her to her death. All this anyway on the road to a demystification of the figure of Joan placed on the altars.

Shakespeare sketched her in an ambiguous way, positively in the first act, then ever worse, as if he had decided to conform to the context in which he

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<sup>23</sup> Quotation in George Bernard Shaw (Agresti) “Santa Giovanna” 1925, 16.

<sup>24</sup> George Bernard Shaw, «Santa Giovanna,» 25.

<sup>25</sup> George Bernard Shaw, “Santa Giovanna,” 23.

lived. Voltaire wanted to bury her in ridicule and wrote a poem-libel that Shaw saw as obscene (he even made her the daughter of a priest). Schiller's *Jungfrau*, on the other hand, for Shaw had no connection with the historical and psychological reality of Joan.<sup>26</sup> Mark Twain followed Quicherat and made her an idol, immediately contradicted by Anatole France who attributed her ability as a warrior to others, to then be contradicted himself by Andreas Lang. In all this it is clear that the literature uses and boosts the myth of her figure. The misunderstandings that Shaw stressed are attributed to an erroneous decodification of the medieval historical context and the feudal system. Joan's trial was relatively fair, devoid of political charges, and the Church could not renounce its function as mediator between God and man. But if Joan's condemnation was an error then the Church must widen its horizons to understand Joan and along with Joan a large part of the world (Giordano Bruno, Galileo) through tolerance, which has changeable criteria over time.

The epilogue is a very interesting structural element of the play because it is set in the present, in 1920, when Joan is about to be canonized, but the Catholic Church is not ready to truly accept her. In *The Brothers Karamazov* (1879) by Dostoevsky there is a critical discussion of the temporal power of the Church in the chapter dedicated to the 'legend of the Grand Inquisitor.' The writer sees in the Church, but perhaps especially in the Catholic one, the will to appropriate power and manage it through miracles, mysteries and definitely through authority, thus depriving the faithful of true freedom. In one of his essays, the jurist Gustavo Zagrebelsky does not see the inquisitor's behavior as motivated by reasons of state, or of faith; rather, the inquisitor seems to believe, pessimistically, that it is the nature of man to be prone to enslavement to authority, and the nature of earthly authority not to make itself a divinity but to exclude it from life.<sup>27</sup> Here there is an unexpected convergence between the Irish playwright and the Russian novelist, confirmed by the kiss of Christ the Inquisitor.

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**26** Francesco Rossi, "Friedrich Schiller's *Die Jungfrau von Orleans* a Tragedy in Movement," in *Journeys through Changing Landscapes*, eds. Carla Dente and Francesca Fedi (Pisa: Pisa University Press, 2017): 147–167.

**27** Gustavo Zagrebelsky, *Liberi servi: il grande inquisitore e l'enigma del potere* (Torino: Einaudi, 2015).

## Appendix

### Agresti, as a cultural mediator

Agresti was born in Florence in 1866, but then moved to Rome, where he participated in the cultural life of the city with dense literary activity, with lectures on English and American literary cultural themes and with the translation of texts for the theater. His work is remarkable also because his action in favor of Anglo-Saxon literatures developed in a period when the Fascist politics of culture was against it. He died in Rome in 1927.

He wrote novels, *L'idea che uccide* (Turin, Società, Tip. ED Nazionale 1907); *Suggestione* (Città di Castello, S. Lapi 1900); a collection of short stories, *La Guerra di Anagni* (Milan, Fratelli Treves 1920), and essays of a monographic character like *Abramo Lincoln*, (Genoa, A.F. Formiggini 1913 as an information sheet for Nuova Antologia and then reworked as a text published in Rome in 1927), the latter being a biographical-type work. Here he also inserted a translation of 1912 of the poem “O Captain! My Captain” by Walt Whitman. He then wrote a monograph with the title *La Kelmscott Press*; one entitled *Il misticismo letterario* (1904); *L'internazionale verde, ossia l'Istituto internazionale di agricoltura proposta da David Lubin e iniziato dal re d'Italia* (Florence, Barbera 1905, with preface by D. Lubin); *Alfredo Tennyson* (1909?); *I Preraffaelliti: contributo alla Storia dell'arte* (Turin, Società Tipografico-Editrice Nazionale 1908; then re-published Rome, C.A. Bontempelli 1913); *In Memoriam* (Tipografia Del Lauro, Teramo 1914); *Il concetto della giustizia e dell'impero nel Medioevo e in Dante Alighieri* (1916?); *David Lubin*, this too in the form of an information sheet for Nuova Antologia and then expanded and published as a monograph in Rome, Direzione della Nuova Antologia 1919. He also wrote *Dante Alighieri. La vita nuova illustrata dei quadri di Dante Gabriel Rossetti, pref. di Antonio Agresti decorazioni del Prof. R. Carlucci*, Turin Sten 1911 [then 1918 and 1921]; *La filosofia nella letteratura moderna*, published in Turin, F.lli Bocca 1904; translated by Alfredo Stead (ed.) *Il Giappone descritto dai giapponesi*, Milan, Pallestrini e Co. 1905 and Philip Hamilton Gibbs, *Sapere è potere*. Announced as “Translated and adapted for the Italians,” also for Milan, Pallestrini e Co. 1905. He was co-author with Helen Zimmern of a monograph *New Italy*, published in New York by Harcourt, Brace and Howe in 1920. The most substantial part of his bibliography is anyway made up of translations of English literature and the texts of G.B. Shaw in particular, which were all collected in the Mondadori edition of the complete theatrical works of G.B. Shaw in 1926, although he also made forays into translating other texts, especially Victorian poetic texts. He did lectures, like the one at the Università Popolare di Roma on 25 March in 1912 with the title “Le odi all'Italia di

Algernon Charles Swinburne” (“Odes to Italy by Algernon Charles Swinburne”). Nuova Antologia had published information sheets on Morris and Crane as decorators, on the social thought of Browning, on Abraham Lincoln for the first centenary of the death of the president in 1909.

His translations of Shaw are *Androclo e il leone: un prologo e due atti, Caterina la Grande: quattro atti*, Milan, Mondadori 1928; the *Commedie sgradevoli* (Milan, Mondadori 1923), *Commedie gradevoli*, Milan, Mondadori 1925, *Il dilemma del dottore: cinque atti*, Milan, Mondadori 1926, *Il maggiore Barbara: tre atti* Milan Mondadori printed 1926, copyright 1927, *Oh, il matrimonio ! : commedia*, Milan, Mondadori 1929, *Pigmalione* (1914), *L'uomo del destino*, Milan, Libreria editrice milanese 1915, *Uomo e superuomo: commedia e filosofia*, Milan, Mondadori [1926], *La conversione del capitano Brassbound: three acts*, Milan, Mondadori 1926 (translated with Cesare Castelli), *Tre commedie per i Puritani*, Milan, Mondadori 1927, *Cesare e Cleopatra*, Milan, Mondadori 1927, *La prima commedia di Fanny: comedy in three act, prologue and epilogue* Milan, Mondadori 1928, *Atti unici*, Milan, Mondadori 1929 and, of course, *Santa Giovanna, cronaca drammatizzata in quattro atti e un epilogo di Giorgio Bernardo Shaw* later inserted by Mondadori into the edition of the *Teatro completo di Shaw* (Milan, Mondadori printed 1926, copyright 1927) being the only authorized translation. Another of his translations was *Poesie di Dante Gabriel Rossetti. Con uno studio sulla pittura inglese e sull'opera pittorica e la vita dell'autore* (Florence, Barbera 1899). In 1915 he translated *Il discepolo del diavolo: commedia in 3 atti ed epilogo* staged at the Teatro Argentina by the Compagnia drammatica italiana directed by Gioacchino Grassi, a text that did not appear in print on its own but was included in the edition of the *Teatro completo*. He then translated *L'anima dell'uomo & Sebastiano Melmoth* by Oscar Wilde, Lanciano (Ch), Carabba 1912 and *Le avventure di un mozzo*, by George Alfred Henty, Rome, Nuova Libreria Nazionale 1920.



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## **From the Eighteenth to the Nineteenth Century**





Yvonne Bezrucka

# Johnathan Swift's *Gulliver's Travels* and 'The Cow Trial': Law, Power, Justice and Eristics

*In the trial of persons accused for crimes against the state, the method is much more short and commendable: the judge first sends to sound the disposition of those in power, after which he can easily hang or save the criminal, strictly preserving all due forms of Law.*

*Whoever could make two ears of corn or two blades of grass to grow upon a spot of ground where only one grew before would deserve better of mankind and do more essential service to his country than the whole race of politicians put together.*

Jonathan Swift, *Gulliver's Travels*

Many of Jonathan Swift's works address the 'law' in its relation to an ethics of justice, as my above quotation exemplifies. This is a result both of Swift's dry and caustic nature, his hatred of all abuse of power in general, but also of his exemplary higher motivation for a humanitarian ethics of rights, evident in the ironic, sharp, corrosive and mordant style in *Gulliver's Travels* (1726).<sup>1</sup> The same attitude also appears in his story *A Tale of a Tub* (1696), letters (*Drapier's Letters*, 1724) and in his various sermons "Doing Good," "False Witness," "Mutual Subjection," "Testimony of Conscience," and other writings, such as his tract "*A Discourse of the Contests and Dissensions Between the Nobles and the Commons in Athens and Rome: With the Consequences they Had upon Both those States*" (published anonymously in 1701), all works which were devoted to topical issues pertaining to his age. This age was marked by the antagonism between Whig and Tory parties, while the topics addressed by Swift include religion (*A Tale of a Tub*, 1696) and to some extent private issues (*Journal to Estella*), not to forget his searing critique of the colonial attitude of Great Britain in relation to Ireland, in *A Modest Proposal* (1729) and *Gulliver's Travels* (1726).

Swift's interest in the ethics of the law – an endemic core at the heart of law, as I would express it – is partly also due to the fact that Swift was a priest of the Anglican Church, who had strong ideas and who pursued them, interpreting the Catholic religion as the stronghold of Papist absolutism, an attitude which recurs in later literary works such as in Robert Browning's nineteenth-century long poem *The Ring and the Book*, a critique of the executors of the unjust, canon

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1 Jonathan Swift, *Gulliver's Travels* [1726] (London: Penguin, 1985), hereafter referred to in the text as GT: and page no.

law.<sup>2</sup> In general terms, we may affirm, with E.R. Hammond, that in Swift, “reason is intimately linked with the virtue of justice, and the institutional injustice of contemporary society is pointedly satirized through comparison with the impressive (if not perfect) justice of an imaginary, rational society.”<sup>3</sup>

Further, Swift is particularly aware of how eristics (Gr. *eristiké téchne*), is used by lawyers as to win an argument. This is the art of the linguistic manipulation of language with the demagogic aim, *per fas et nefas*, of persuading people that one is right, regardless of the truth of the case, as the ‘Cow Trial’ will prove. It is the capacity for mere rhetorical disputation, as the philosopher Arthur Schopenhauer reminds us in his work *The Art of Being Right: 38 Ways to Win an Argument*.<sup>4</sup> The interest of the law for the persuasiveness of eristics is thus to be considered an adjunct to the classical rhetorical techniques (cf. Aristotle’s *Laws*) which lawyers had to practice in the law schools of the past. This implies a consciousness of the metalanguage of the law and its manipulative discourse which has recently regained attention as a consequence of the law-as-literature turn, which has determined a renewed attention to the literary, interpretative techniques now applied to legal documents and used “to examine the linguistic assumptions underlying the law,”<sup>5</sup> a field of studies which Daniela Carpi has greatly contributed to establish in Italy.

*Gulliver’s Travels* represents a case in point, in this field, in that Swift presents us a work in the utopian genre which provides him the opportunity to compare and discuss different forms of government and their respective laws. By concentrating his attention on the ethical aspect of laws, i. e. measuring jurisprudence via its results, he privileges a pragmatic viewpoint based on the allegorical, spatial transposition of issues into an imaginary inexistent distant literary geography. This imaginary displacement of home problems would have been familiar to readers from similar strategies in Shakespeare’s plays.<sup>6</sup> This ruse pro-

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2 See Yvonne Bezrucka, “Representation and Truth: Law and Equity in Robert Browning’s ‘The Ring and the Book,’” *Polemos* 1 (2008): 21–34.

3 Jonathan Swift, *A Discourse of the Contests and Dissensions Between the Nobles and the Commons in Athens and Rome: With the Consequences They Had Upon Both Those States* [1701] (Miami: Hard Press, 2017).

4 Arthur Schopenhauer, *The Art of Being Right: 38 Ways to Win an Argument* [1830] (orig: *Die Kunst, Recht zu Behalten*) (USA: Createspace Independent Publishing Platform, 2018).

5 Cf. Martin A. Kayman, “Law—and—Literature: Theory and the Turn to Ethics,” in *Shakespeare and the Law*, ed. Daniela Carpi (Ravenna: Longo, 2003): 47–58, 51.

6 Cf. Yvonne Bezrucka, “Forme del potere in *Measure for Measure*. Corpo pubblico/corpo privato: autorità/libertà e desiderio,” eds. Daniela Carpi, Pier Giuseppe Monateri, Alessandro Somma, *Polemos* 2 (2010): 99–116; Yvonne Bezrucka, “Otello e la retorica visuale del Moro di Venezia,” *Studi Culturali* 3 (2008): 375–406.

vides Swift with the opportunity to discuss hot and topical matters under cover, as it were, and safe from censorship, a successful stratagem, given that even nowadays the book is often read as a children's story.

The power of the law is thus examined in its phenomenology, via the consequences it has for the people, and the trick Swift relies on is often that of having authority concentrated in the hands of Judges who, as in the quotation I gave as epigraph to this chapter, are simply emissaries of a King, an Emperor, or a ruling group, who exercise the Law by 'adjusting' it to 'various' necessities, stigmatizing corruption.

This is the case of the absolute sovereign of Lilliput, the land of the 6-inch-high people, (often referred to by critics as midgets), a land which stands as an allegory of Great Britain, where two parties confront each other on trifling issues like the Big-Endians, who want to force everyone to break the tops of their eggs at the bigger end, and the Little-Endians, who insist doing it on the contrary side. The Big-Endians (at home: the Roman Catholics and Non-conformists or Dissenters, largely Presbyterians, who did not comply with the 1662 Act of Uniformity, which prescribed the Anglican Book of Prayer and the submission to the Church of England as state-Church, whom the King forbade entering into public offices both in government and in the Church), are also hated by the emperor of Lilliput. Recusants are therefore, in extreme cases, punished with death, or with exile (Lemuel Gulliver will have to flee in order to preserve his eyesight), or through work impairments: "the books of the Big-Endians have been long forbidden, and the whole party rendered incapable by law of holding employments." (GT: 85). All this happens, notwithstanding the fact that in their "Alcoran," the Blunderdecal, it is said "*That all true believers break their eggs at the convenient end: seems, in my humble opinion to be left to every man's conscience, or at least in the power of the chief magistrate to determine*" (GT: 85), a situation which creates prospective expatriates who find shelter in "Blefuscu's Court" (GT: 85) and a clear hint at the exile of James II in France.

Back at home, in Great Britain, the laws of the emperor of Lilliput, meant basically the same: prison or exile for recusants (the Old Pretender), or disabilities in civic and ecclesiastical office. This is a direct reference to the Act of Uniformity of 1662 and to the Test Acts of 1673, a series of penal laws, which denied Dissenters (Protestants and Catholics alike) public office and university degrees unless they conformed to the Anglican Church that Henry VIII had initiated in 1534 with the Act of Supremacy. Henry VIII's self-appointment as Supreme Head of Church and State had, as a consequence, produced the Schism from Rome. This was a kingly *non serviam* towards the authority of the Catholic Church, an act which Elizabeth only slightly mitigated in becoming Supreme 'Governor' of the Church of England (1599).

The self-elected emperor of Lilliput, well-represented by his bombastic self-aggrandizing name – Golbasto Momarem Evlame Gurdilo Shefin Mully Ullly Gue – chooses his Ministers (first minister, officials, a high admiral, a high treasurer, a general, a chamberlain and a grand ‘justiciary’ [judge]) as high court officials and supporters of his decisions rather than as experts to call on for advice. Furthermore, High-heels represent respectively the royalist and often (proto-) Catholic Tories, and their religious preference for the more ritualistic, traditional liturgy of mass and its metalanguage of hierarchies, such as those of the High Church of England; whereas Low-heels represented the parliamentarian, predominantly, Protestant Whigs, and their preference for the pragmatic, less ritualistic “low church” forms of worship and government. Probably it was this complex and dangerous religious situation which prompted Swift to declare: “Every man, as a member of the commonwealth, ought to be content with the possession of his own opinion in private.”<sup>7</sup> In *Gulliver’s Travels*, these controversies on religious issues, it is being said, have already caused six internal (religious) revolts: “These civil commotions were constantly fomented by the monarchs of Blefuscu; and when they were quelled, the exiles always fled for refuge to that empire” (GT: 85). Indeed, in order to assert himself on an international level, Golbasto has chosen this nation as his near-by enemy, a nation he plans to diminish and belittle as a mere ‘province’ of his state, a project, as we know, that has gone totally wrong.

Hierarchies are thus clearly delineated, internal opposition is kept under control, but, revolts continue, enemies are not given liberty of expression and are eliminated without effort by starvation: justice is disattended, the emperor being in reality a dictator. Nevertheless, the power he believes he has, rests only on his executive power, a power being threatened, as seen, both from within and from without.

William Godwin, the father of British anarchism, in contrast to other critics, recognized Swift’s “more profound insight into the true principles of political justice than in any preceding or contemporary author,”<sup>8</sup> an interpretation to which I subscribe. It is exactly following these lines that we shall now measure and weigh up what Swift considers to be a good ruler and what the best laws of a nation consist in, by considering the voyages he undertakes towards ‘remote na-

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<sup>7</sup> Jonathan Swift, “Thoughts on Religion,” in *The Works of Jonathan Swift* (Edinburgh: Churnside and Wilson, 1778) vol. 11: 261–264, 264.

<sup>8</sup> C.f. Michel Foot’s “Introduction” to *Gulliver’s Travels* (London: Penguin, 1985): 7–29, and his overview of the controversial criticism being produced on Gulliver, being mainly due to the fact that it was based on biographical criticism, severely and justly criticized by T.S. Eliot, being the result of working on an uncritical and oversimplified conflation of book and man, cf. 17.

tions' where different conceptions of jurisprudence produce different laws, a result of their relative philosophy of justice. For sure, we know that Swift argued about the Tory doctrine of 'passive obedience,' saying clearly "that subjects owed their obedience not to the monarch personally but to the supreme legislative power, the compound entity sometimes called the crown-in-parliament" (*Examiner* No. 33, March 22, 1711),<sup>9</sup> i. e. the democratic majority.

The extent to which a higher form of justice can be seen as the hidden aim of the book is made clear in Capt. Lemuel Gulliver's letter to his Cousin Sympson. Set as a sort of paratextual preface to the book, it is, *de facto*, a first charge against the injustices of the laws of the (European and English, in particular) Yahoos in his travel-book, but it registers also Swift's final disappointment and disenchantment with the law.<sup>10</sup> Capt. Lemuel Gulliver says:

I desired you would let me know, by a letter, when party and faction were extinguished; judges learned and upright; pleaders honest and modest, with some tincture of common sense, and Smithfield blazing with pyramids of law books (...) courts and levees of great ministers thoroughly weeded and swept; wit, merit, and learning rewarded (...). These, and a thousand other reformatations, I firmly counted upon by your encouragement; as indeed they were plainly deducible from the precepts delivered in my book (...) to correct every vice and folly to which Yahoos are subject, if their natures had been capable of the least disposition to virtue or wisdom: yet so far have you been from answering mine expectation in any of your letters (...) [that] I have now done with all such visionary schemes for ever. (GT: 38–40)<sup>11</sup>

In order to analyse how he comes to this final stance about justice and law, let us start with the first voyage to Lilliput. If in this imaginary society treason is punished as in England, there are also correctives for perjury or false witness if informers' charges cannot be proven:

There are some laws and customs in this empire very peculiar (...). The first I shall mention, relates to informers. All crimes against the state, are punished here with the utmost severity; but, if the person accused makes his innocence plainly to appear upon his trial, the ac-

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<sup>9</sup> Tim Harris, *Politics Under the Later Stuarts: Party Conflict in a Divided Society 1660–1715* (London and New York: Longman, 1993), where Harris argues "Stuart Tories were not primarily royalist and potentially absolutist." They were, rather, authoritarian "conservative legal-constitutionalists, deeply committed to the rule of law and the Anglican Church," 119.

<sup>10</sup> Smithfield is an area of central London where executions of state traitors, religious dissenters, heretics and rebels took place, at "The Elms," before the gallows were transferred to the Tyburn area.

<sup>11</sup> "The Letter from Lemuel Gulliver to his cousin Simson" that stands as a sort of prefatory note to the actual text, dated 1727, appeared in reality only in Faulkner's edition of 1735, GT: 347, note 1.

cuser is immediately put to an ignominious death; and out of his goods or lands the innocent person is quadruply recompensed for the loss of his time, for the danger he underwent, for the hardship of his imprisonment, and for all the charges he has been at in making his defence (...). (GT: 94)

This is a direct reference to the post Glorious Revolution (1688) and the Act of Settlement (1701) which established the Hanoverian succession, a time when the Jacobite Risings were underway; following the death of Queen Anne (1714), Tory ministers were ousted from office by the new dynasty and the Whig government was taking over. As Jeanne Clegg has demonstrated, this had an impact on Swift who left for Ireland in a hurry, for fear that he (a member of the Scriblerus Club) might be affected by the persecution of the Tories and to escape the general climate of suspicion when spies and informants could easily file a false witness and be believed. This also led Swift to write his Sermon “On False Witness,” discussing this type of perjury as a last recourse which sometimes represented the only escape from personal death.<sup>12</sup>

The dire situation is clearly hinted at in the articles set out in the impeachment against “Quinbus Flestri (the Man-Mountain),” *alias* Gulliver (GT: 104), in reality a reminder of the Indictment of High Treason set out against Henry St John, 1<sup>st</sup> Viscount Bolingbroke, who had to flee from England to France in 1715 after the unsuccessful attempt of the Old Pretender, James Francis Edward Stuart, to regain the throne of England, which was now in the hands of the Hanoverian King George, a revolt which, with the successive one led by the young Pretender, Charles Edward Stuart, Bonnie Prince Charlie (Culloden Battle, 1746), ended unsuccessfully for the Stuart Kings. Here is how this indictment is presented in the book:

Articles of Impeachment against QUINBUS FLESTRIN, (the Man-Mountain.)

Article I.

“Whereas, by a statute made in the reign of his imperial majesty Calin Deffar Plune, it is enacted, that, whoever shall make water within the precincts of the royal palace, shall be liable to the pains and penalties of **high-treason**; (...) Quinbus Flestrin (...) under colour of extinguishing the fire kindled in the apartment of his majesty’s most dear imperial consort, did (...) by discharge of his urine, put out the said fire kindled (...) against the statute in that case provided (...), etc.”

Article II.

“That the said Quinbus Flestrin, having brought the imperial fleet of Blefuscu into the royal port, and being afterwards commanded by his imperial majesty to seize all the other ships (...) and reduce that empire to a province, (...) and to destroy and put to death, not only all

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<sup>12</sup> See Jeanne Clegg, “Swift on False Witness,” *Studies in English Literature, 1500–1900* 44.3 (2004), ‘Restoration and Eighteenth Century’: 461–485.

the Big-endian exiles (...) he, the said Flestrin, like a **false traitor** against his most auspicious, serene, imperial majesty, did petition to be excused from the said service (...)."

Article III.

"That, whereas certain ambassadors arrived from the Court of Blefuscu, to sue for peace in his majesty's court, he, the said Flestrin, did, like a **false traitor**, aid, abet, comfort, and divert, the said ambassadors (...)."

Article IV.

"That the said Quinbus Flestrin, contrary to the duty of a faithful subject, is now preparing to make a voyage to the court and empire of Blefuscu, for which he has received only verbal license (...) **traitorously intend[s]** to take the said voyage (...)." (GT: 104–106)

The charges correspond nearly *verbatim* to those of "The Treason Act" (1351), the Act which required citizens not to conspire against the Monarch, his nearest family or the Chancellor or other Justices (otherwise a death sentence would be passed and the traitor would be hanged, drawn into pieces and quartered, their pieces would then be sent to the various corners of the State as a deterrent and omen for all citizens), and Swift's readers would have understood.<sup>13</sup> Gulliver has thus to flee from Lilliput, to avoid the highest penalty, given that in Lilliput even fraud attracts a death penalty, being considered a greater crime than theft, with "breach of trust" being its most extreme aggravation.

Nevertheless, it is important to note that as a retaliation for false accusation, a counter-death-penalty for the "informers" sets in, and the defendant is compensated with the property of the false accuser (GT: 94). Compliance to the law is also rewarded and every person who can prove that they have observed the law for "seventy-three moons [approximately 6 years]" can claim "to certain privileges (...) [a] sum of money out of a fund appropriated for that use" and, likewise, for "the title of *Snilpall*, or Legal, which is added to his name, *but does not descend to his posterity*" (GT: 95 my emphasis). Rewards are thus envisaged for the honest people: "It is upon this account that the image of justice, in their courts of judicature, is formed with six eyes, two before, as many behind, and on each side one, to signify circumspection; with a bag of gold open in her right hand and a sword sheathed in her left, to show she is more disposed to reward than to punish." (GT: 95). Kantorowitz's book on the two bodies of the

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<sup>13</sup> Cf. William Blackstone, *Commentaries on the Laws of England* [1765] (Gutenberg: eBook #30802, 2009). See also Karen Cunningham, *Imaginary Betrayals: Subjectivity and the Discourses of Treason in Early Modern England* (Philadelphia: University of Pennsylvania Press, 2002), who focuses on the fact of how "extending treason to 'imaginings,'" under Edward III, augmented the number of indictments because proofs seemed no longer necessary.



King<sup>14</sup> comes clearly to our mind, because in Lilliput politics and religion coincide: “the disbelief of a Divine Providence renders a man incapable of holding any public station; for, since kings avow themselves to be the deputies of Providence, the Lilliputians think nothing can be more absurd than for a prince to employ such men as disown the authority under which he acts” (GT: 96), exactly as during Swift’s times and up to and beyond the Act of Settlement (1701). Religion, nevertheless, like politics, divides mankind into sects, as, later, the king of the Brobdingnags, will underline: “He said, ‘he knew no reason why those, who entertain opinions prejudicial to the public, should be obliged to change, or should not be obliged to conceal them. And as it was tyranny in any government to require the first, so it was weakness not to enforce the second: for a man may be allowed to keep poisons in his closet, but not to vend them about for cordials.’” (GT:171).

As David Oakleaf notes, in *The History of the Four Last Years of the Queen*, Swift had dismissed “with real exasperation Louis XIV’s “absurd Notion ... of a Divine Right annexed to the Proximity of Blood, not to be controuled by any humane Law” (Fox: 37), but he respected the politically established function of the Church of England, and of Ireland in particular, with the corrections implemented in 1701.

Ministers, in Lilliput, are trained in the art of “rope-danc[ing]” (GT:73) and present the dexterous capacity of remaining in office despite negative conditions, often by creating false enemies: as Flimnap, the High Treasurer (at home, Walpole), and Bolgolam, the Admiral (probably The Earl of Nottingham, a Tory who supported the Whigs) fear the admiration Gulliver attracts and prepare the already seen Act of Impeachment, suggesting to the King that Gulliver is a Big-endian at heart (GT: 104, 107). Gulliver flees thus to Blefuscu in view of the fact that “state-trials, (...) ever (...) terminate as the judges thought fit to direct” (GT:109). He loses thus his title of *Nardar* “the highest title of honor” (GT: 89) and is declared a traitor (GT: 113). Through various sea adventures he returns to England.

The second voyage takes him to Brobdingnag, the land of giants: here, via a contrary *mise en abyme*, Gulliver experiences a reversal of his previous state and becomes a midget himself and thus an attraction for the giants. The Queen chooses him as her favorite dwarf, her freak of nature, like those the English public, back at home, enjoyed visiting in Bedlam. Being with the Queen he has the opportu-

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14 Ernst H. Kantorowitz, *The King’s Two Bodies. A Study in Medieval Political Theology* (Princeton: Princeton U.P., 1957).

nity to exchange opinions with the King of the Brobdingnags, who wants to know about the Laws of England, and being given answers about trade, the schism of religion, weapons etc., disparages Gulliver's common sense notion of his "noble country (...) mistress of arts and arms, the scourge of France, the arbitress of Europe, the seat of virtue, piety, honor and truth, the pride and envy of the world" (GT:146) planting new doubts in his mind. Nevertheless, Brobdingnag is not a model of justice either, Gulliver having to witness the slaughters authorized by his penal system in the form of an execution, like those atrocious ones, as he says, he had witnessed at home, at Tyburn (GT: 158 – 159). Being asked upon a detailed account of the government of England, Gulliver illustrates the high social rank of the people sitting in the Houses (Peers and Commons): "to whom, in conjunction with the prince, the whole legislature is committed. I then descended to the courts of justice; over which the judges, those venerable sages and interpreters of the law, presided, for determining the disputed rights and properties of men, as well as for the punishment of vice and protection of innocence. (GT: see 167–168, here 168). When the King cleverly asks Gulliver according to what qualifications new Lords are elected, or whether choice for Lords simply relies on the "humor" of the Prince, or on their money, in-group favoritism, hidden motivations, etc., Gulliver mentions only Brobdingnag's "numberless enquiries and objections, which I think is not prudent to repeat" (GT: 169–170). Coming to talk about the Courts of Justice, Gulliver thinks he is "better able" to answer "having been formerly almost ruined by a long suit in Chancery"<sup>15</sup> (GT: 170). These are the ethical questions the King poses, touching on the soft spots of the Law, topical question then and even today:

What time was usually spent in determining between right and wrong, and what degree of expense? Whether advocates and orators had liberty to plead in causes manifestly known to be unjust, vexatious, or oppressive? Whether party, in religion or politics, were observed to be of any weight in the scale of justice? Whether those pleading orators were persons educated in the general knowledge of equity, or only in provincial, national, and other local customs? Whether they or their judges had any part in penning those laws, which they assumed the liberty of interpreting, and glossing upon at their pleasure? Whether they had ever, at different times, pleaded for and against the same cause, and cited precedents to prove contrary opinions? Whether they were a rich or a poor corporation? Whether they received any pecuniary reward for pleading, or delivering their opinions? And particularly, whether they were ever admitted as members in the lower senate? (GT: 170)

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<sup>15</sup> On the issue of the Court of Chancery in the nineteenth century cf. Yvonne Bezrucka, "A Tale of Two Cities: Charles Dickens's Political Examination of Law, Legalized Violence, Authority, and Retributive Justice," in *Practicing Equity, Addressing Law: Equity in Law and Literature*, ed. Daniela Carpi, (Heidelberg: Winter, 2008): 317–333.

Asked about the Treasury being ruined by constant war, Gulliver cannot but confirm the critiques of the King via proofs that come directly from the history of the Kingdom, so that the King, astonished, sums it all up by saying that “it was only a heap of conspiracies, rebellions, murders, massacres, revolutions, banishments” (TG: 172) concluding with an indictment against the law: “You have clearly proven that ignorance, idleness, and vice, are the proper ingredients for qualifying a legislator; that laws are best explained, interpreted, and applied, by those whose interest and abilities lie in perverting, confounding, and eluding them.” (TG: 172)

Gulliver, knowing the King is quite right, can only try to disparage him to his readers as prejudiced and narrow and of “a confined education” (GT: 174). Boasting about European inventiveness, Gulliver tells him about gunpowder, which the King denounces immediately as the product of an “evil genius” (GT: 175). Gulliver tries to repeat opinions heard at home by suggesting to the King, who is prevented from accepting his advice by a “*nice unnecessary scruple* whereof in Europe we can have no conception,” that this invention would make him “absolute master of the lives of his people” (GT: 175). At this point the King confirms his happy ignorance of the miserable truth that in Europe a reduction of “politics [the indirect result of Jurisprudence translated into the principles of government] to science [an emotionless Machiavellian choice of using all means to pursue a given end]” is occurring, and as a result affirms that he prefers “conf[ini]ng the knowledge of governing within very *narrow bounds*; to common sense<sup>16</sup> and reason, to justice and lenity, to the speedy determination of civil and criminal causes” (GT: 176), i.e. the just effectiveness of a humanely-tailored Law that people would most certainly trust and respect. This is probably the most scorching philosophical and ethical accusation of the United Kingdom’s politics and government in *Gulliver’s Travels*. All the three powers of government, legislative, executive and the judiciary, are here attacked for their hidden secondary ends, this done via a mere undisputable ethical rationality concerned with practical results, a discussion nobody can object to.

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**16** “Common Sense” was a revered notion that Lord Shaftesbury thought to be a universal answer to problems and which he had brought into the philosophical panorama as the way out of any conundrum. On common-sense notions, Locke comments: “It is not easy for the mind to put off those confused notions and prejudices it has imbibed from custom, inadvertency, and common conversation.” Cf. John Locke, *An Essay Concerning Human Understanding* (London: Penguin (1997 [1690]) cf. Bk. 2, Ch. XIII, § 27, 174; cf. also Michael Ben-Chaim, “Locke’s Ideology of ‘Common Sense’,” *Studies in History and Philosophy of Science Part A* 31.3 (2000): 473–501, and Yvonne Bezrucka, *The Invention of Northern Aesthetics in 18<sup>th</sup>-Century English Literature* (Newcastle: Cambridge Scholars Press, 2017), ch. 1, 1–25.

In his further voyages to Laputa, Balnibarbi, Luggnagg, Glubbudbrib and Japan, issues like that of colonialism (the running of “plantations”) are taken into consideration. Satirising a panegyric of British colonialism, Swift as usual reverses the argument and gives us these lands’ perspective of what colonialism really means: “those countries which I have described do not appear to have any desire of being conquered and enslaved, murdered or driven out by colonies, nor abound either in gold, silver, sugar, or tobacco, I did humbly conceive, they were by no means proper objects of our zeal, our valor, or our interest.” (GT: 344).<sup>17</sup>

Laputa (‘whore’ in Spanish), is the name of the flying island (the United Kingdom), linked by alliteration and assonance to *Lilliput*, which expresses visually the colonial principles, in stealing, through a magnetic system, the sun and rain from the underneath island of Balnibarbi (Ireland) infringing its right to development.<sup>18</sup> Swift, himself born in Ireland, lost his position as Secretary to William Temple after the death of his patron (1699), after the government change in 1714 he had to return to Ireland after a long period of time spent in London. In Dublin he became Dean of the St. Patrick and member of the Anglican Church of Ireland. From various hints we may quite safely state that he was more of a Christian skeptic of formalities but also a Christian moralist who accepted just institutions taken as a substitute for an unreliable human reason<sup>19</sup>, trusting, like Lord Shaftesbury the 3<sup>rd</sup>, on a *prima facie* theory of “Common Sense.”

In Laputa Gulliver visits the metropolis of the island, Lagado, where the Projectors Academy is based. From above he can see the island below, Balnibarbi, and Lindalino<sup>20</sup> (Dublin, note the ‘double’ *lin*, in Lindalino),<sup>21</sup> its capital. In this

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17 His indictment of colonialism is a far-sighted assessment of what ‘civilization’ really meant for these peoples, suggesting that perversely distributed justice only provoked inequalities (cf. GT: 343–344), this prompting him (cf. GT: 344) to defend the rights of the plantation-peoples.

18 Many of Swift’s works are indictments of the colonialist and exploitive British politics in relation to Ireland that a work like *A Modest Proposal for Preventing the Children of Poor People From being a Burthen to Their Parents or Country, and for Making them Beneficial to the Publick* (1729) Gutenberg [eBook #1080] testifies to his critical attitude against Great Britain and the poor condition of the island where he had been born in 1667.

19 Cf. Marcus Walsh, “Swift and Religion” (Fox: 161–174, here 169). For what regards his distrust in the bodies of society, Swift said: “I have ever hated all Nations professions and Communities, and all my love is towards individuals; for instance, I hate the tribe of Lawyers, but I love Councillor such a one, Judge such a one” (cf. Harold Williams, *The Correspondence of Jonathan Swift, Vol 3: 1724–1731*(5 vols)(Oxford: Oxford University Press, 1963–1965), 103.

20 Reference to Lindalino, “the second city in the Kingdom” (Dublin) appears only in later editions, and for this part, and the revolt of Lindalino, I have referred to the 1998 Oxford edition of *Gulliver's Travels*, ed. Paul Turner, 162, the interpolated part on Lindalino’s revolt appears at pp. 170–171, hereafter recalled as Turner: and page number.

21 See Paul Odell Clark, “A Gulliver Dictionary,” *Philology Studies* I (1953): 592–624.

part of the book covert reference is made to Lindalino's successful revolt against the introduction of a new copper-coin by the mint maker William Wood, which Swift strongly and successfully opposed via his *Drapier's Letters* (1725–1726), a personal victory over the prime minister Robert Walpole. This section of *Gulliver's Travels* appears neither in the first nor the second edition of the book (ed. Motte, 1726, ed. Ford 1734), but only in some later editions (Turner: 170–71). In Laputa Gulliver is given the honor of visiting the Grand Academy, a parody of the Royal Academy (founded 1660), where engineers, scientists and linguists are totally free from any law and thus adopt whatever experimental attitude they choose in trying to extract sunbeams from cucumbers, or studying how to convert marble cushions into soft ones, or in trying to propagate a new breed of naked sheep, projects promoted by the Universal Artist, concerned with the improvement of human life. At the Academy there are also philosophers who adopt the paradoxical practice of carrying the things they want to talk about (GT: 230) as their solution for the implementation of a universal language, a hint for an escape from William of Ockham's nominalism and the problem whether universals exist in real things (*in re*), or in the mind of God (*ante rem*) or just as surrogate signs in our mind (*post rem*), opting ludicrously, as seen, for the most unpractical solution.<sup>22</sup> In the school of political projectors, "visionary" dreamers try to propose schemes for teaching princes and monarchs to pursue their interests by assuming those of their people, or by choosing for employment qualified persons (GT: 232). Doctors try convincing people sitting in senates to act out of accord with their humors (GT: 232–233), the solution sometimes being to behead representatives of opposite parties and exchange their respective heads. Gulliver suggests introducing a new system of taxation, levying tax on vices and follies. (GT: 233). Conversely honor, justice, wisdom and learning, should not be taxed at all, "because they are qualifications of so singular a kind, that no man will either allow them in his neighbor or value them in himself" (GT: 234); employments at court should be settled by raffle (GT: 234), in order for hope and expectations to be kept alive (GT: 234) given that adversaries are usually eliminated by accusing them of plotting against the king (GT: 234–235). Disconcerted, Gulliver goes to Maldonada. Here he comes to Glubbudubdrib and is received by the Governor, a necromancer, who can evoke dead spirits who dismantle Gulliver's belief in history books which are shown to be the results of a written eristics, a *historiography*, that does not always correspond to the historical facts, truth

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22 Cf. Umberto Eco, *Segno* [1973] (Milano: Mondadori, 1985), 107. On this chapter of the book, and on the Academy of Lagado, cf. Clive T. Probyn, "Swift and Linguistics: The Context behind Lagado and around the Fourth Voyage," *Neophilologus* 58 (1974): 425–439.

being “misled by prostitute writers” (GT: 244). He understands that honor and positions are “a scene of infamy” so that his sense of veneration for people in high rank totally abates and he starts to acquire his characteristic and final misanthropic mood considering human beings untrustworthy (GT: 245).

In Lagnagg he meets the King, who pays him the honor of letting him lick the dust before his footstool, and he comes across the immortal Struldbruggs who never die but live as demented people, so once they reach the age of eighty they are considered dead by the law. Gulliver, testifying to his rationality, finds this wise, otherwise, in time, they would become the only proprietors of the nation. He arrives in Japan and after a voyage on a Dutch ship he returns to England, from where after five months he starts his last voyage but is abandoned by the crew on *terra firma* but in an unknown region.

The unknown region is the place where the rational animals, the Houyhnhnms (the perfect and sage horses) live with another species of nearly brutes, the Yahoos. Gulliver is supposed by the Houyhnhnms to be a wonderful and perfect Yahoo. Houyhnhnms do not possess words to express notions like “power, government, war, law, punishment, and a thousand other things” (GT: 291) because these things do not exist in their society. The horse teacher asks Gulliver to explain his country and its institutions. Coming to talk of the Law, the Horse does not understand why Law should be a necessity, there being sufficient guide in reason “in showing us what [one] ought to do, and what to avoid” (GT: 295). At this point a most interesting verbal trial scene, let's call it “The Cow Trial,” starts, with Gulliver acting as lawyer, defendant and plaintiff. Gulliver explains through this allegorical trial the impediments to obtain justice.

Let us therefore follow the scenarios that Gulliver creates and comments upon. Gulliver explains: “I assured his Honor, that the law was a science in which I had not much conversed, further than by employing advocates, in vain, upon some injustices that had been done me: however, I would give him all the satisfaction I was able.” (GT: 295) He continues: “I said, there was a society of men among us, bred up from their youth in the art of proving, by words multiplied for the purpose, that white is black, and black is white, according as they are paid. To this society all the rest of the people are slaves.” (GT: 295) Gulliver is talking of the lawyers and of their education being based on acquiring the ability to distort facts, via *eristics* and their micro-jargon. “For example, if my neighbor has a mind to my cow, he has a lawyer to prove that he ought to have my cow from me.” (GT: 295) Gulliver explains to his master how a trial may start without a real reason for strife between people but, paradoxically, by a mere intention of appropriating other people's possessions or rights. “I must then hire another to defend my right, it being against all rules of law that any man should be allowed to speak for himself.” (GT: 295) Gulliver laments the fact that people

cannot defend themselves personally but need to engage and pay a lawyer to defend them even from a simple false accusation.

Now, in this case, I, who am the right owner, lie under two great disadvantages: first, my lawyer, being practised almost from his cradle in defending falsehood, is quite out of his element when he would be an advocate for justice, which is an unnatural office he always attempts with great awkwardness, if not with ill-will. (GT: 295–296)

Gulliver underlines that lawyers are not taught to become advocates of justice, which paradoxically impairs the rightful owner, since lawyers are not trained in defending the truth, but rather in defending the lies of their clients. “The second disadvantage is, that my lawyer must proceed with great caution, or else he will be reprimanded by the judges, and abhorred by his brethren, as one that would lessen the practice of the law.” (GT: 296) Gulliver explains that lawyers form a vengeful caste that has to defend its own interest and ‘professionalism’ i.e. performing a successful trial regardless of the guilt or innocence of their client: this is done, if necessary, by telling lies and using equivocation. The flouting of this unwritten law would be chastised by the caste if some upstart crow wanted to become a defender (even a martyr) of bare truth, thus diminishing, rather than advancing – according to the caste – the first principle of the law which is not that of pursuing justice, but that of winning a cause. “And therefore, I have but two methods to preserve my cow. The first is, to gain over my adversary’s lawyer with a double fee, who will then betray his client by insinuating that he hath justice on his side.” (GT: 296) Gulliver explains that at this point, even being in one’s right, only two alternatives are left open in order not to lose one’s rights and property: either solution one, corrupting the adversary’s lawyer, which would be greatly appreciated and admired by the Judge if done in an undetected, and thus perfectly lawful way, the judge perfectly knowing what has been going on behind the curtains. “The second way is for my lawyer to make my cause appear as unjust as he can, by allowing the cow to belong to my adversary: and this, if it be skillfully done, will certainly bespeak the favor of the Bench.” (GT: 296) Gulliver explains that even the alternative solution two, of having the liar buy the lawyer of the victim of the crime, would be admired by the Judge if done in a perfectly lawful way, the judge again perfectly knowing what lay behind it, but remaining uncaring as before, even in this case, about the appeal for justice that the victim has made to the Court. The fact that either sentence would do, signifies that Judges do not care at all for the rights of the people, the purpose in either case only being to preserve their privileged positions as untouchable members of the caste.

Now your honour is to know, that these judges are persons appointed to decide all controversies of property, as well as for the trial of criminals, and picked out from the most dexterous lawyers, who are grown old or lazy; and having been biassed all their lives against truth and equity, lie under such a fatal necessity of favouring fraud, perjury, and oppression, that I have known some of them refuse a large bribe from the side where justice lay, rather than injure the *Faculty*, by doing anything unbecoming their nature or their office. (GT: 296)

Gulliver explains that for Law and Justice there is no possibility of success in England: since the judges have despised truth and equity all their lives, they will not even accept a bribe for a just verdict, because their special hobby horse, in Laurence Sterne's terms, would thus be over and diminish their very special 'professionalism,' which consists in making win who they want, without caring for right or for wrong.

It is a maxim among these lawyers that whatever has been done before, may legally be done again: and therefore, they take special care to record all the decisions formerly made against common justice, and the general reason of mankind. These, under the name of *precedents*, they produce as authorities to justify the most iniquitous opinions; and the judges never fail of directing accordingly. (GT: 296)

Gulliver explains how Lawyers and Judges have corrupted the principle of the Aristotelian *eipikeia*, which is at the root of the Common Law and the Equity tradition, being a stronghold of its pliability,<sup>23</sup> in contrast with the fixed Letter of the Law, the only principle, back then, of the European Law. Equity represented for legislators a possibility to emend the Law complying to situations that the first framer had not foreseen, *de facto* introducing the necessity of a hermeneutics of law pliable to changed conditions, to protect its 'equitability,' assuring a noble and ethical principle of justice which could not always have been envisaged beforehand. Gulliver's lawyers, on the contrary, use the precedent-codification typical of the Common Law only to pervert its noble function, using precedents, probably invented by themselves, to support unjust and iniquitous sentences.

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<sup>23</sup> See Yvonne Bezrucka, "Law vs. Equity: Jarndyce vs. Jarndyce in Charles Dickens's *Bleak House*," in *The Concept of Equity. An Interdisciplinary Assessment*, ed. Daniela Carpi (Heidelberg: Winter, 2007): 269–278, and Yvonne Bezrucka, "A Tale of Two Cities: Charles Dickens's Political Examination of Law, Legalized Violence, Authority, and Retributive Justice," in *Practicing Equity, Addressing Law: Equity in Law and Literature*, ed. Daniela Carpi (Heidelberg: Winter, 2008): 317–333.



In pleading, they studiously avoid entering into the merits of the cause; but are loud, violent, and tedious, in dwelling upon all circumstances which are not to the purpose. For instance, in the case already mentioned; they never desire to know what claim or title my adversary has to my cow; but whether the said cow were red or black; her horns long or short; whether the field I graze her in be round or square; whether she was milked at home or abroad; what diseases she is subject to, and the like; after which they consult precedents, adjourn the cause from time to time, and in ten, twenty, or thirty years, come to an issue. (GT: 296–297)

Gulliver expresses here all his disappointment and frustration at the Law – presenting an anticipation of the Dickensian circumlocution office<sup>24</sup> – which neglects pragmatism and evidence, depriving thus the honest people of England of a humane form of justice.

It is likewise to be observed, that this society has a peculiar cant and jargon of their own, that no other mortal can understand, and wherein all their laws are written, which they take special care to multiply; whereby they have wholly confounded the very essence of truth and falsehood, of right and wrong; so that it will take thirty years to decide, whether the field left me by my ancestors for six generations belongs to me, or to a stranger three hundred miles off. (GT: 297)

Gulliver perfectly knows how this works through a cryptic micro-language which has lost adherence to reality and which stands in need of pragmatic redress, without having to resort to bringing the cow itself into court as the nominalists would do, by simply using reason to determine rights and justice.

In the trial of persons accused for crimes against the state, the method is much shorter and more commendable: the judge first sends to sound the disposition of those in power, after which he can easily hang or save a criminal, strictly preserving all due forms of law. (GT: 297)

Gulliver extends the charge, passing from objects to people, where issues are expedited without trial, simply by relying on the capricious decision of those in power who decide according to their ‘personal’ necessities and needs, often for the worst and most dictatorial solution possible.

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<sup>24</sup> Cf. Chapter 10 of Charles Dickens’s *Little Dorrit* [1857] (London: Penguin, 1985): 145–165, cf. Yvonne Bezrucka, “Material Culture as Society Informant: Prisons in Charles Dickens’s *Little Dorrit*,” *Victorianweb* (2007), ed. George P. Landow, open-access available at: <https://uicvr.academia.edu/YvonneBezrucka> <http://www.victorianweb.org/authors/dickens/ld/bezrucka1.html>.

Here my master interposing, said, "it was a pity, that creatures endowed with such prodigious abilities of mind, as these lawyers, by the description I gave of them, must certainly be, were not rather encouraged to be instructors of others in wisdom and knowledge." In answer to which I assured his honour, "that in all points out of their own trade, they were usually the most ignorant and stupid generation among us, the most despicable in common conversation, avowed enemies to all knowledge and learning, and equally disposed to pervert the general reason of mankind in every other subject of discourse as in that of their own profession." (GT: 297)

This solution, Gulliver explains to the sage horse, has been used in his country where millions of lives have also been sacrificed in the worst wars possible, wars fought over Ecclesiastical dogmata, but quiddities if seen from the point of view of their life-death toll, in order to decide about the Eucharist: "whether flesh be bread, or bread be flesh; whether the juice of a certain berry be blood or wine." (GT: 292)

Lastly, Gulliver comments on the Prime Ministers of England, who, he says, are all characterized by "no other passion but a violent desire of wealth, power and titles" (GT: 302), with "a subaltern court paid to them by persons of the best rank" (GT: 303) preparing to become their successors. These Ministers preserve their power by "bribing the majority of a senate or great council, and at last, by an expedient called an Act of Indemnity"<sup>25</sup> (GT: 303) issued by Parliament to indemnify penalties for unlawful acts '*innocently*' committed whilst in office.

Swift makes it here clear that if the Law has to create a precedent in foreseeing its own prerogatives of a non-enforcement, then "our reason" which "alone is sufficient to govern a *rational* creature" (GT: 306) has thoroughly failed.

In a letter to Alexander Pope, Swift wrote: "I have got Materials Towards a Treatise proving the falsity of that Definition *animal rationale* [a rational animal]; and to show it should be only *rationalis capax* [definition of man as capable of reason]. Upon this great foundation of Misanthropy (though not Timons manner)<sup>26</sup> the

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<sup>25</sup> Composed by the various versions of *The Act General Pardon and Oblivion* (1652, 1659, 1660, 1690, 1703, 1717 1747, 1767).

<sup>26</sup> Timon of Athens is mentioned in Plutarch, Aristophanes, and Lucian, as later in Shakespeare. In Swift's letter to Pope, in quoting Timon, Swift acknowledges his *chagrin* in seeing how people behave, not out of ranting misanthropy like that of Shakespeare and Lucian's Timon, but just out of disillusion, anger and compassion, which are the distinguishing emotions that can be detected in Swift's letter to his cousin Sympson in *Gulliver's Travels*, as noted. For an opposite interpretation of Swift's intentions see William Pencak, "Swift Justice: 'Gulliver's Travels' as a Critique of Legal Institutions," in *Law and Literature Perspectives*, ed. Bruce L. Rock-

whole building of my Travells is erected.”<sup>27</sup> Thus, if reason is not used, the Houyhnhnms and Gulliver would say that “the thing which was not” (285), i.e. lies, would prevail over truth and ethics. If these founding concepts of jurisprudence – which it is the duty of lawyers (and of politicians) to protect – are forsaken, irrationality, as Gulliver has shown us, ensues. Consequently, the Law – which Gulliver, as a ‘rationis capax’ human being, respects – also fails. In those circumstances, in a sad inversion of expectations, Yahoos would prevail and Houyhnhnms be extinguished.

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wood, *Critic of Institutions* 9 (New York: Peter Lang, 1996): 255–267. On the complexity of Swift’s emotional and rational personality see Claude Rawson, *Swift’s Angers* (Cambridge: Cambridge U.P. 2014), in particular pp. 1–18.

<sup>27</sup> Cf. Paul Turner, *Gulliver’s Travels* (Oxford: Oxford University Press, 1998), XXV, who quotes Williams, ed. of vol IV of *The Correspondence of Jonathan Swift*, (Frankfurt: Peter Lang, 1999), p. 103.

Ian Ward

# A Painted Ship and a Painted Ocean: *Gregson v Gilbert* revisited

One of the proudest claims of “law and humanities” scholarship is a capacity to contextualise legal issues, sometimes particular statutes or cases, sometimes texts, arguments and discourses. The art tends to make them real. A merest glance at some of the many essays and articles written by Daniela Carpi over the previous four decades evinces the truth of this assertion. In this essay I want to take another look at a famous case in English commercial law. It was judged narrowly and never fully decided. The narrowness and the indecision are both, in their ways, suggestive. But most of all I want to contextualise the case, for it touched on an issue which went to the very heart of the pretence of Enlightenment. It would, in due course, inspire one of the greatest paintings in English romanticism, and very possibly one of the greatest poems. The affinities are contended; which makes them all the more alluring. We will start with the case and then move onto the context, the painting and the poem. And as we progress we might like to think of ourselves on something of a journey; apposite perhaps given the nature of the particular case in question.

## 1 The case

The case is *Gregson v Gilbert*. And our story starts in Liverpool, in a lawyer’s office, where Mr Gregson, who headed a syndicate of Liverpool ship-owners, purchased an insurance contract. It was not an especially unusual contact; in fact, quite the opposite. Liverpool was a busy port catering for a variety of mercantile interests. Amongst the most lucrative of these was the trade in slaves. William Gregson was a slave-trader. The slave-trade operated across the mid-Atlantic, what was termed the “middle passage.” Ships would leave British ports, most commonly Liverpool and Bristol, bound for West Africa. There it would pick up a “live cargo” of slaves, sometimes captured, usually sold by their chieftains. They would then be transported to the West Indies where they would be sold again. The ships would stock up for the return journey with importable luxuries, commonly sugar-based. There were profits to be made. But there were also risks. The weather could be rotten, the “cargo” variously diseased or mutinous. Our case involved some very bad weather and some thoroughly miserable slaves. It also involved an incompetent, quite possibly mendacious, captain and a famous

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Lord Chief Justice faced with a very tricky decision; or at least a decision which to him seemed to be tricky.

## All at sea

We take up our story four and a half thousand miles to the west of Liverpool. It is November 1781, somewhere in the Caribbean. We cannot be any more precise; and that is the problem. The captain of *The Zong*, a “slaver” owed by Mr Gregson and his syndicate, got himself and his ship lost. He had been hoping to come to port in Jamaica, where he intended to sell his “live cargo” of slaves, before stocking up with sugar and rum and returning to England. But *The Zong* had sailed on past Jamaica. It was later suggested that the captain, a former ships-surgeon named Luke Collingwood, had mistaken it for Sainte Domingue, at the time held by France; and France was one of the many countries with which Britain was, at the time, at war. So on he sailed, on and on. And water began to run out, and the winds stopped blowing. Meanwhile down below the “live cargo” was ravaged with dysentery and losing value daily. Captain Collingwood was himself dying; probably from the dysentery. As a consequence of this latter fact it was never entirely clear who, if anyone, was actually in charge of *The Zong* as it drifted around the Caribbean that fateful November. And it was undoubtedly a fated voyage; but not unusually so. Slave cargo was rarely happy and healthy; despite what some of the defenders of the trade liked to protest. It was lucrative trade, but also a risky trade, requiring a gambler’s instinct and willingness to make a serious stake. Putting a slaver to sea could cost anything in the region of £10–12,000 per voyage.<sup>1</sup> Which is why it made sense to spread the risk a bit. Syndicates were common, insurance contracts essential.

We might briefly pause to consider the history of insurance contracts. Historians commonly trace the origins of modern insurance to the mid-seventeenth century, and more particularly insurance against fire. But the real impetus was provided by maritime venture during the first part of the eighteenth century. And by statute law. The Bubble Act of 1720 established two marine insurance companies, the Royal Exchange and the London Assurance; both granted Charters in return for paying off £300,000 of Crown debt. By mid-century various other Assurance companies had joined the fray. It was an active market for the simple reason that there was a lot of trade, the navigation could be dodgy,

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<sup>1</sup> Jane Webster, “*The Zong* in the Context of the Eighteenth Century Slave Trade,” *Journal of Legal History* 8 (2007): 285–298, 287.

and the weather was invariably unpredictable. As a consequence, ships were always getting lost, running into storms and sinking; which is, again, the reason why ship-owners needed insurance. And provided the actuaries got their sums right there was enough money to be made to persuade insurance companies to sell their contracts. It has been estimated that around £100,000,000 of shipping was underwritten during the second part of the eighteenth century.<sup>2</sup>

It was one of these contracts that the syndicate-owners of *The Zong* bought. It would have been a standard-form contract, with a customarily high premium; probably around twenty-one percent of value. The premium reflected the risk. Such contracts listed the various kinds of “perils, losses and misfortunes” that might be assured and those that might not. The vagueness of terminology left plenty of room for litigation.<sup>3</sup> And the cases started to put flesh on the statutory bones. In his *Commentaries on the Laws of England*, Sir William Blackstone took note:

The learning relating to marine insurance hath of late years been greatly improved by a series of judicial decisions, which have now established the law in a variety of cases, that (if well and judiciously collected) they would form a very complete title in a code of commercial jurisprudence. But, being founded on equitable principles, which chiefly result from the special circumstances of the case, it is not easy to reduce them to any general heads in mere elementary institutes.<sup>4</sup>

Blackstone was never keen on change, and he was clearly discomforted by the emergent law of maritime insurance; too many “equitable principles,” too few “general heads.” He did not though doubt the need, nor the importance.

And he knew full well who was responsible for shaping this emergent jurisprudence; William Murray, 1<sup>st</sup> Earl of Mansfield and Lord Chief Justice of England from 1756 to 1788.<sup>5</sup> Unlike Blackstone, Mansfield had no qualms in regard to importing equitable principles into commercial law. It was Mansfield who would in

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<sup>2</sup> Jeremy Krikler, “*The Zong* and the Lord Chief Justice,” *History Journal Workshop* 64 (2007): 29–47, 32; and Michael Lobban, “Slavery, Insurance and the Law,” *Journal of Legal History* 28 (2007): 319–328, 322.

<sup>3</sup> It would be later suggested, by Sir Douglas Owen in his 1914 treatise on *Ocean Trade and Shipping*, that “if such a contract were to drawn up for the first time today, it would be put down as the work of a lunatic endowed with a private sense of humour.” See James Oldham, *English Common Law in the Age of Mansfield* (Chapel Hill: University of North Carolina Press, 2007), 301.

<sup>4</sup> William Blackstone, *Commentaries on the Laws of England* (Oxford: Oxford University Press, 2016), volume 2, 461.

<sup>5</sup> James Allen Park would dedicate his 1786 treatise *The System of the Law of Marine Insurances* to Lord Mansfield, whose endeavours in the field had made him “immortal” in the history of English law. See Krikler, “Lord Chief Justice,” 33.

due course hear the case of *Gregson v Gilbert*. By this time, as Blackstone intimating, Mansfield had already developed a number of familiar principles in maritime insurance law; mixing together established “customs and usages” of maritime practice with a judicious leavening of equity. He had, for example, refined customary principle of the “general average.” It addressed the matter of proximity of loss and suggested that, by reason of “necessity,” some material might be sacrificed to preserve more. This principle would be accepted without demur when *Gregson v Gilbert* came to court; though the fact of necessity would be. Another issue, which arose in the case of *The Zong* was variance of passage. Attentive to possibly fraudulent claims Mansfield was suspicious of any voyage which had not followed the customary sea-route. Commonly he would invite navigational experts into court to advise him as to where ships might have been expected to go and where not.

Another key principle was the need for the claimant to show that losses were the “direct and immediate consequence of the peril insured.” This principle would be reaffirmed in another slave case a few years later in 1785, *Jones v Schmoll*. Here the dispute moved around the terms of a contract for insurance which included incidents of mutiny. The court held that the ship-owner was entitled to claim on the value of those killed by the crew in the course of suppressing the mutiny; but not those who had chosen to kill themselves either by jumping off the ship, or starving themselves in “chagrin at their disappointment.” These were “natural” deaths, distinguished in terms of remoteness of “consequence”; a rather distasteful way to reinforce what would become one of the defining principles of English insurance law.<sup>6</sup> There was then a considerable body of insurance law to which Lord Mansfield could seek recourse when the case of *Gregson v Gilbert* arrived at the Guildhall in March 1783.

But before we take a closer look at the disputed course of litigation, we should first return to the disputed course of *The Zong* as it drifted about in the Caribbean. For whilst the incident of a disputed insurance contract was far from “uncommon,” the facts of *Gregson v Gilbert* most certainly were; as Lord Mansfield was keen to keep on reminding the court. For, at some point, most probably 29<sup>th</sup> November 1781, Captain Collingwood held council with his officers. And they reached a dreadful decision. Later that day, so court record confirms, fifty-four women and children were, to use maritime parlance, “jettisoned.” Three days later, forty-two men met the same fate. And then a couple of days after that, a final batch of thirty-six were thrown over. The total number was a hundred and thirty-two. It was recorded that one had managed to clamber

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<sup>6</sup> Krikler, “Lord Chief Justice,” 34–35, and Oldham, *Common Law*, 303–304, 309–310.

back on board. It was also reported that another ten had thrown themselves overboard in an apparent act of defiance. The reason why Collingwood and his officers had taken this decision would be contested in court. For when the ship finally made it back to Britain, Gregson and his fellow investors decided to claim on the insurance.

## In court

The contract purchased by Gregson valued each slave at £30. So the total claim amounted to £3960. It was a considerable sum; so considerable that the insurance company decided to litigate. The case arrived before Lord Mansfield at the Guildhall in March 1783, and the syndicate secured judgement in their favour. But the insurers made motion for a retrial at King's Bench, intending to contest the "necessity" of the captain's actions. And they started casting some aspersions. The fate of *The Zong*, they supposed, was no mere failure of "common care" on the part of Captain Collingwood, but the consequence of "blunder" and gross negligence; something not covered by a standard maritime insurance contract. Insinuations of negligence were further raised in regard to the stocking of *The Zong*; the slave-ton ratio over double the normal practice. This imported a question of adequate provisioning, which in turn insinuated the possibility that the slave-deaths might have been predictable and "natural" and thus exempted from the claim of "unavoidable accident."

The evidence as to "necessity" was contestable too. The claimants needed to establish immediate "peril" in order to base a claim on the "general average" principle. It was alleged that shortage of water created "an absolute Necessity of throwing over the Negroes." The evidence of a Mr Stubbs, who had been a passenger on the ship, confirmed that Captain Collingwood had done "what was right." But the ship's log had disappeared, rather mysteriously, for which reason the insurers had also begun parallel proceedings in Chancery for the discovery of documents. This had elicited some rather different, and useful, evidence from the first mate, James Kelsall. Objecting to the "horrid brutality" of the proposal Kelsall claimed that he had done some calculations and informed the captain that if properly rationed there would be enough water for at least a few more days.<sup>7</sup> How true this might be remains a matter of conjecture. Kelsall was

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7 Krikler, "Lord Chief Justice," 36; Webster, "Slave Trade," 290–291; and Simon Schama, *Rough Crossings: Britain, the Slaves and the American Revolution* (London: BBC Books, 2006), 188–189.



above all keen to exonerate himself; as indeed was Stubbs. But it was enough to raise questions.

And then there were meteorological uncertainties; when had the storm arrived, and how hard had it rained? Even if it had arrived after most of the slaves had been jettisoned, it had certainly passed over by the time that the final group had been cast overboard on or around the 4<sup>th</sup> December. By then, so the recently “discovered” documents confirmed, rainwater was plentiful. Ironically when *The Zong* finally made port, its deck barrels were brimming with 420 gallons of fresh water. It was evidence, Mansfield confirmed, that he had not been previously “apprized of.” Counsel for the insurers took the hint and started making a still darker aspersion; that in the heat of the moment Captain Collingwood had looked at the condition of his diseased and emaciated cargo and made the coldest of calculations.

The motion for retrial was granted and, sensing that the Lord Chief Justice had begun to smell a fraud, the ship-owners withdrew from the action. Granville Sharp, who had attended proceedings and whose account is the only contemporary source, claimed another victory for the abolitionist cause. In truth Mansfield had simply warned off a questionable insurance claim. He had acknowledged the horrible circumstance, but did not demur from the argument presented by Gregson’s counsel; whether the treatment was morally “right or wrong we have nothing to do with it.” “Tho’ it shocks one very much,” Mansfield observed, “the Case of Slaves was the same as if Horses had been thrown over board.” It was thus simply a question of “Necessity,” to be determined by principles of insurance law and the custom of the sea.<sup>8</sup> Counsel for the insurers had appealed to “the Honour of Humanity.” The “life of one Man is like the life of another Man whatever the Complexion is, whatever this colour.” Prompted by Sharp they also intimated that the Lord Chief Justice might consider remitting a murder charge to “another place.” Sharp sent his account of the case to the Admiralty Commissioners to the same purpose. Anticipating the strategy, Gregson’s counsel had pre-emptively argued that it would be “rashness to the degree of madness” to contemplate doing so. “Blacks,” it was contested, “are goods and property” for which reason the case was the “same as if wood had been thrown overboard.”<sup>9</sup>

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<sup>8</sup> Krikler, “Lord Chief Justice,” 36.

<sup>9</sup> Schama, *Rough Crossings*, 199; Anita Rupprecht, “A Very Uncommon Case: Representations of *The Zong* and the Campaign to Abolish the Slave Trade,” *Journal of Legal History* 28 (2007): 329–346, 336–337; and T.T. Arvind, “Though it Shocks One Very Much: Formalism and Pragmatism in *The Zong* and *Bancoult*,” *Oxford Journal of Legal Studies* 32 (2012): 12–13.

But murder was not anyway on Mansfield's mind; and neither, it seemed, was any remembrance of his rather grander declamation, a decade earlier, in *Somerset's Case*. There may be no slaves in England; but that did not mean that there could be no slave-traders. What was on the mind of the Lord Chief Justice was the integrity of the insurance contract and the prospective consequence for the slave-trade if he was to suggest that slaves were something other than mere chattels. A slave who was not a mere chattel would not have been insurable; at least not on the same terms. The idea that traders would have purchased hundreds of individual life assurance policies, even if actuaries would have underwritten them, was not credible. Mansfield knew that if he reached any other decision in the case of *The Zong* a vital part of late eighteenth-century English trade would collapse instantly.<sup>10</sup> And the ramifications could have gone further still. Plantations without slaves would not have grown much, for which there would have been little to do in any of the sugar refineries dotted around the edges of the Bristol and Liverpool docks. As the debate regarding the possible abolition of the slave trade began to heat up during the final decades of the eighteenth century all kinds of apocalyptic numbers were bandied about. Francis Norris supposed that abolition of the trade would cost the Empire in the region of £70 million. No-one really knew of course, except that it would be a lot; and that was certainly enough for Lord Mansfield.

Sharp was no fool, and he knew that the strategy was incremental. But a marginal victory was still a victory; and the case of *The Zong* would resonate, not least in the pages of the various journals to which he proceeded to send his letters of protest and account. The "avenging hand of God," he thundered, was upon all those who condoned "wilful murder," including the Solicitor-General who had led for the ship-owners. It would "destroy the destroyers of the earth."<sup>11</sup> Away in Cambridge, the Vice-Chancellor Dr Peckard was much moved by what he had read about *The Zong* and decided to set, as the next year's Latin essay for senior benchers, the question as to whether a man might be lawfully made a slave against his will. The winner, who suggested firmly to the contrary, was a divinity student named Thomas Clarkson. Clarkson would make abolition his life's work. We will contemplate the consequence of his 1788 treatise on the *Impolicy of the African Slave Trade* shortly. We will do the same in regard to his 1808 *History of the Rise, Progress and Accomplishment of the Abolition of the*

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**10** It has been estimated that between 1660 and 1807 British ships transported around three and a half million slaves from Africa to the Caribbean. See Monirul Islam, "Coleridge and Slavery's Spectres," *International Journal of Language and Linguistics* 1.2 (2014): 18–28, 18.

**11** Schama, *Rough Crossings*, 200.

*African Slave Trade*. In the latter Clarkson supposed that the story of the *Zong*, if not quite Lord Mansfield's judgement, had played a significant role in securing the passage the Slave Trade Act the year before.<sup>12</sup> He had reason. Leading abolitionists, including both William Wilberforce and Stephen Lushington, had cited the case during parliamentary readings. The case of *The Zong* would not be forgotten.

## 2 Text and context

The campaign to abolish the slave trade was not of course conducted solely in court, or indeed in Parliament; though, as Sharp appreciated, there would need to be legal and parliamentary successes in the end. It was also a battle of hearts and minds, and it was here that the opinion-shapers mattered, the essayists and lecturers, poets and painters. In this part of the essay we are going to revisit a couple of renowned expressions of romantic art, and here again we might like to think of ourselves on a journey, part literal, part figurative. We will first alight on the West Country of England, more immediately in Bristol. It was here that a young Samuel Taylor Coleridge chose to go early in 1795 in order to declaim the trade in slaves. He went in part because he needed the money, but also because he believed passionately that the slave-trade was wrong. From Bristol we will move a short distance to Alfoxden in Somerset, a quiet village in the Quantock hills that was momentarily inhabited, in winter 1795, by a notorious gang of "violent democrats." Finally, we will move forward half a century and pay a visit to the rather more austere and thoroughly respectable surroundings of the Royal Academy in Trafalgar Square in London. There we will encounter one of the most remarkable paintings ever painted by a British artist.

### An evening in Bristol

Bristol was the other great slave-trading port, along with Liverpool. Coleridge arrived in January 1795 to embark on an extended series of lectures, most of which railed against various aspects of William Pitt's administration, and more particularly the continued war against France. The last lecture though was entitled *On the Slave Trade*. Drawing heavily on Clarkson's 1788 treatise, Coleridge fiercely

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<sup>12</sup> Rupprecht, "Uncommon Case," 330–331.

denounced a trade that not only dehumanized slaves, but also diminished slavers and all those who supported their industry. Slavery is the “absolute subversion of all morality,” and those who trade in slaves were sure to feel the “Hand of vengeance.”<sup>13</sup> As would those who ate all the sugar and drank all the rum. Nothing cultivated on West Indian plantations was either “necessary” or “useful,” and contrary to what all the market economists might be saying, God did not much smile on addictive consumerism.<sup>14</sup> Coleridge borrowed a stark image, famously deployed by the abolitionist William Fox; next time a Bristol merchant and his wife sat down to enjoy a nice hot beverage they might like to imagine themselves drinking instead from a cup filled with the “blood of our fellow creatures.” The image was all the starker for the fact that Coleridge gave his final lecture in the famous Assembly Coffee-house on Bristol quay.

Some might doubt the excess of passion, certainly the radicalism of the politics; but few could question the courage of the young Samuel Taylor Coleridge. Having charged his audience a shilling for the pleasure of being shouted at, Coleridge closed his lecture by reminding the assembled patrons that they were possessed of a “false and bastard sensibility,” and that they must purge themselves of their addiction to “pestilent luxuries.”<sup>15</sup> Most immediately they should stop taking sugar in their coffee and tea; and under no circumstances should they drink any more rum. There had been sugar “boycotts” before. Coleridge urged another.<sup>16</sup> Cruikshank and Gillray printed cartoons of “saccharites” and “anti-saccharites” doing battle in the coffee-houses and tea-rooms of England. But it was a deadly serious matter, literally. Meanwhile the East India Company,

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**13** Debbie Lee, “Yellow Fever and the Slave Trade: Coleridge’s *The Rime of the Ancient Mariner*” *ELH* 65 (1998): 675–700, 683–684; and Rosemary Ashton, *The Life of Samuel Taylor Coleridge* (Hoboken: Blackwell, 1997), 67–68.

**14** Lee, “Yellow Fever,” 687, and Islam, “Coleridge,” 22.

**15** J. R. Ebbatson, “Coleridge’s Mariner and the Rights of Man,” *Studies in Romanticism* 11 (1972): 171–206, 191–194; Patrick J. Keane, *Coleridge’s Submerged Politics: The Ancient Mariner and Robinson Crusoe* (Columbia: University of Missouri Press, 1994), 126; and Clare Midgley, “Slave Sugar Boycotts, Female Activism and the Domestic Base of British Anti-Slavery Culture,” *Slavery and Abolition* 17 (1996): 137–162, 145.

**16** Which pretty much amounted to a boycott of coffee too. Few Englishmen or women took coffee without sugar. The average per capita consumption of sugar reached a level of between 16 and 24 pounds per annum by the late eighteenth century. Sugar cane is, of course, a primary ingredient of rum too. One and half million gallons of rum were imported each year, most of it through either Bristol or Liverpool. There had been previous sugar boycotts, most successfully in 1791–1792. Clarkson later estimated that around 300,000 joined the boycott; a figure which more or less chimes with that of 390,000 signatories to the 1792 anti-slavery petitions.

spotting a prospective gap in the market, began advertising “free” Bengali sugar.<sup>17</sup> And Coleridge started receiving death threats.

Life was certainly not dull. A few months later that summer he fell in love, and a few months after that was married. He also met William Wordsworth for the first time. They started a correspondence. Coleridge would continue to pen his furious letters and essays excoriating the collective tyrannies of Pitt and his government. But circumstances were changing. The Coleridges moved to the country, first to Nether Stowey and then to join the Wordsworths at Alfoxden in the Quantock Hills, where they famously aroused the suspicion of their new neighbours. On receiving information that some foreigners had arrived in the village, the Home Secretary, the Duke of Portland, despatched an agent, who reported back that there was indeed a “violent sett of democrats” in residence, one of whom liked to style himself a “phylosopher,” and they talked much about a certain “spy Nozy.” And they did have strange accents, at least to West Country ears; though he could not be absolutely sure they were French.<sup>18</sup> In a sense Coleridge and Wordsworth were indeed plotting revolution. But it was a different sense. They were plotting a revolution in literature; to be ignited by publication of a collection of poems in 1798, entitled the *Lyrical Ballads*.

Coleridge famously only contributed four of these poems. But amongst these four was a masterpiece. He had commenced writing *The Rime of the Ancient Mariner* in November 1797, following an inevitably long coastal walk with Wordsworth. The setting of the poem is of course defining. Coleridge would later confirm that he had gone to sea, imaginatively at least, “unpiloted and unprovisioned,” in order to explore the very darkest secrets of human nature.<sup>19</sup> He had always been fascinated by the sea and by accounts of maritime ventures. Captain Cook’s *Voyage to the Pacific* was an especial favourite. So was Crantz’s *History of Greenland*; all the frozen seas and trapped ships and weird sea-monsters. The *Rime* of course added a distinctively Gothic tone to these already excitable chronicles of maritime venture. It was a “ghastly tale,” related by a man in “agony,” populated by ghostly seamen, spectral ships, representations of death and disease and very peculiar weather.<sup>20</sup>

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17 Midgley, “Boycotts,” 143–144, 147–148.

18 Ashton, *Coleridge*, 110–111.

19 The “most marvellous” sea journey that “any navigator has ever taken,” according to EM Forster. In Ashton, *Coleridge*, 1. Coleridge had never, of course, been to sea himself. For his commentary on the inspiration see also Richard Holmes, *Coleridge: Darker Reflections* (New York: Harper Collins, 1998), 137, 171.

20 It certainly terrified a young Mary Godwin, who visited Coleridge in 1806 and was treated to a reading of the poem, apparently as she cowered behind the sofa. Ten years later, the newly mar-

The *Rime* starts with the mariner and his ship leaving port. All is well. But before long a “Storm-Blast came” and the ship was driven south into a land “wondrous cold” (41, 52).<sup>21</sup> Trapped in an icy field, the seamen await their fate. An albatross arrives, taken to be a good omen, “hailed” in “God’s name.” But the mariner, of course, shoots the albatross. It is the pivotal moment in the poem. Critics have commonly supposed that this act of unreasoned brutality represents a cataclysmic failure of benevolence. But it is possible to conceive a still closer meaning; that the “hellish thing” alludes to the more particular brutality of the slave-trade. Coleridge had versified his hatred of the trade before. In 1792 he had won the Brown Gold Medal at Cambridge for his Greek ode on *On the Wretched Lot of the Slaves in the Isles of Western India*; a poem which was again hugely influenced by his encounter with Clarkson’s treatise. And recurring poetic reference could also be found elsewhere; to “Afric’s wrongs/ Stage, horrible, and foul!” in *Departing Year*, in the “groan of accusation” which “pierces Heaven” in *Fears in Solitude*.<sup>22</sup>

An interpretation of the *Rime* which imports a closer critique of the slave-trade certainly helps to make sense of what next befalls the mariner and his shipmates. Consumed by an existential despair, they drift into a sea “aflame.”<sup>23</sup> The wind drops and the sailors are trapped once more, surrounded by the “silence of the sea.” The “bloody Sun” beats down. And they are “stuck, nor breath, nor motion/ As idle as a painted ship/ Upon a painted ocean” (110, 112, 116–118). The sea is full of “slimy things” that “did crawl with legs.” The water runs out, and “every tongue, through utter drought,/ Was withered to the root” (125, 135–136). It is now that the “spectre-bark” approaches in the distance. It brings “Life-in-Death,” and a different pathology. It is not just lack of water which kills the seamen. There is also disease, too many insects and too much sex. The skin of “Life-in-Death” is “white as leprosy”; a disease which many supposed to be syphilitic. Elsewhere Coleridge would allude to a trade “blotched all over” with the “leprosy of evil.”<sup>24</sup> An affinity between colonialism and disease was commonly invoked in abolitionist literature. It could be found in William Ro-

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ried Mary Shelley, having just completed a reading of the *Rime*’s companion piece, *Christabel*, conceived of writing a terrifying story herself, of a Dr Frankenstein and a monster he creates. See Ashton, *Coleridge*, 58–59, 126–129; and also Michelle Levy, “Discovery and Domestic Affections in Coleridge and Shelley,” *Studies in English Literature* 44 (2004): 693–713, 693, 702–706.

<sup>21</sup> All quotations, cited in the text, and given by line, are from: Samuel Taylor Coleridge, *Complete Poetical Works* (Oxford: Oxford University Press, 1969).

<sup>22</sup> In Coleridge, *Works*, at lines 88–89 and 44 respectively.

<sup>23</sup> See Keane, *Submerged Politics*, 130–131, 144–145; and Levy, “Discovery,” 696–697.

<sup>24</sup> See Ebbatson, “Rights of Man,” 201; and Lee, “Yellow Fever,” 686–687.

scoe's poem *The Wrongs of Africa* and also Hannah More's *Slavery*, wherein the voice of English liberty is "convulsed" by infection: "She raves for mercy, while she deals out death."<sup>25</sup> It is hardly surprising then that Coleridge should deploy the same imagery in his *Rime*. It has been suggested that the symptoms depicted, the pulsing eyes, the "cold sweat," bear a more particular resemblance to those of yellow fever (253). Three out of every four Europeans to die in the Caribbean during the later eighteenth and early nineteenth centuries had been attacked by aggressive fever pathogens; and by far the most were victims of yellow fever.

The context aligns with the composition. The imagery is compelling; the "spectre-bark" traversing a "hellish" sea with its cargo of the dead and deadly.<sup>26</sup> As the "spectre-bark" passes on, the mariner's shipmates "dropped down" dead "one by one," leaving him "alone, all, all alone" on a "rotting sea" (219, 232, 240). But then, in this Lear-like state of existential desperation, there is redemption. The mariner is struck by the "beauty" of the "water-snakes" who swim about the ship, and at this moment the carcass of the albatross hung around his neck "fell off" (283, 289–90).<sup>27</sup> The rains come, the deck-buckets are filled once more, the crew is raised from the dead, a fresh-wind blows. The "penance" is "done" (408). The ship comes home. As for the mariner, he is destined for an apostolic role, to "pass like night from land to land," gate-crashing weddings and berating guests, and warning the consequence of failing to see the "beauty" in those with whom life is shared: "But this I tell/ To thee, thou Wedding-Guest! He prayeth best, who loveth best/All things both great and small;/ For the dear God who loveth us,/ He made and loveth all" (611, 614–617).

The *Rime*, as Coleridge averred, was a product of the "imagination." It could hardly be other. But it was written in context, and it is difficult to argue against the surmise that Coleridge's abhorrence of the slave-trade was a substantial part of this context. We will never know for certain if there were more particular incidents which came into his mind as he sat at his desk in Alfoxden House writing up his tale of the "bright-eyed" mariner. We do not even know for sure if Coleridge had heard of the case of *The Zong*. But there is every reason to suppose that he might have done; not least his admiration for the writing of both Sharp and Clarkson which he read and re-read avidly. And if Coleridge had heard of *The Zong* it is hardly a stretch to suppose that it was there, tossing about in this

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<sup>25</sup> See Lee, "Yellow Fever," 677. Rather later of course it would find spectacular expression in the figure of Bertha Mason in Charlotte Brontë's *Jane Eyre*.

<sup>26</sup> William Empson, "The Ancient Mariner: an Answer to Warren," *The Kenyon Review* 15 (1993): 155–177, 167; and Peter Kitson, "Coleridge, the French Revolution and the Ancient Mariner: a re-assessment," *The Coleridge Bulletin* 7 (2005): 30–48, 42–46.

<sup>27</sup> Ebbatson, "Rights of Man," 172–173, 180.

same fevered and febrile “imagination,” as he charted the course of the terrible “spectre-bark” and its cargo of death.<sup>28</sup>

## A painted ship

We know for sure that it was in the mind of the artist James William Mallord Turner, both in 1812 and in 1840. In 1812, having just re-read Clarkson’s account of the case in his *History and Abolition of the Slave-Trade*, a younger Turner had penned these lines:

Aloft all hands, strike the top-mast and belay;  
Yon angry setting sun and fierce-edged clouds  
Declare the Typhon’s coming.  
Before it sweeps your decks, throw overboard  
The dead and dying – ne-er heed their chains  
Hope, Hope, fallacious Hope!  
Where is thy market now?

And then, twenty-eight years later, he translated the sentiment onto canvass. *Slavers Throwing Overboard the Dead and Dying – Typhoon Coming On* was first exhibited at the Royal Academy in London in 1840.<sup>29</sup> It caused a sensation. Turner liked painting seascapes; particularly dramatic storms and ships getting wrecked. In his *Modern Painters*, published three years later in 1843, the art critic John Ruskin concluded that Turner was the first British painter to paint the sea anything other than “badly.” In Ruskin’s opinion it was Turner’s “truth to nature” which made him the most brilliant artist of his age and quite possibly the greatest ever English artist. As to the *Slave-Ship*, as the painting became more popularly known, Ruskin was in awe. It was Turner’s “noblest sea” and the painting upon which the “immortality” of its creator might “rest.”<sup>30</sup> He was so impressed that he decided to buy the painting, or at least get his dad to buy it for him.<sup>31</sup>

We should take a closer look, at both the painting and Ruskin’s commentary. Both in their own way are brilliant, and in the opinion of many art critics, taken

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<sup>28</sup> See Keane, *Submerged Politics*, 148–149.

<sup>29</sup> At the time housed, temporarily, in a wing of the recently completed National Gallery, off Trafalgar Square. It would move to its present, larger, premises in Burlington House in Piccadilly in 1868.

<sup>30</sup> John Ruskin, *Modern Painters* (London: Andre Deutsch, 1987), 160.

<sup>31</sup> Ruskin’s father purchased a number of Turner’s paintings, many of which ended up with Ruskin.



together more brilliant still. In regard to Ruskin's commentary, we should note two things; the account of colour and the inference of tone. Ruskin sets the scene: "It is sunset on the Atlantic after a prolonged storm; but the storm is partially lulled, and the torn and streaming rain-clouds are moving in scarlet lines to lose themselves in the hollow of the night."<sup>32</sup> The lulling and the losing is intriguing, of course; for reasons we have already discussed. Turner is placing his painted ship at a particular moment in the contended sequence of events; after the main storm has passed, but the slaves only recently thrown overboard. Ruskin then continues:

The whole surface of sea included in the picture is divided into two ridges of enormous swell, not high, not local, but a low-broad heaving of the whole ocean, like the lifting of its bosom by deep-drawn breath after the torture of the storm. Between these two ridges the fire of the sunset falls along the trough of the sea, dyeing it with an awful but glorious light, the intense and lurid splendour which burns like gold, the bathes like blood. Along this fiery path and valley, the tossing waves by which the swell of the sea is restlessly divided, lift themselves in dark, indefinite, fantastic forms, each casting a faint and ghastly shadow behind it along the illuminated foam.<sup>33</sup>

As Ruskin progresses the scriptural imagery gathers. The ship ventures ever forward beneath the "burning clouds":

Purple and blue, the lurid shadows of the hollow breakers are cast upon the mist of night, which gathers cold and low, advancing like the shadow of death upon the guilty ship as it labours amidst the lightning of the sea, its thin masts written upon the sky in lines of blood, girded with condemnation in that fearful hue which signs the sky with horror, and mixes its flaming flood with sunlight, – and cast far long the desolate heave of the sepulchral waves, incarnadines the multitudinous sea.<sup>34</sup>

Ruskin's account of colour is indeed remarkable; and justly so. Another of the painting's many contemporary admirers, the novelist William Makepeace Thackeray, declared it to be the most "tremendous piece of colour that was ever seen." But it is not, of course, just the invocation of colour. It is also the critical tone; the scriptural referents and Gothic inferences. It is a painting of aesthetic sublimities and emotional extremities, of something "awful" and "ghastly" and "fearful," soaked in "blood" and "guilt." Ruskin is not just describing a ship struggling to survive a violent storm; a common enough theme in romantic art and in Turner especially. Rather he is describing a scene of horror and damnation, a pain-

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<sup>32</sup> Ruskin, *Painters*, 159.

<sup>33</sup> Ruskin, *Painters*, 159.

<sup>34</sup> Ruskin, *Painters*, 160.

terly equivalent, it might be ventured, of Coleridge's *Rime*.<sup>35</sup> Never has a "painted ship" and a "painted ocean" been more brilliantly painted or brilliantly described; or more dreadfully.

The eye is drawn of course to the ship that heaves between the "ridges of enormous swell." But the greater horror lies in the foreground. Here, in a stunningly cool footnote, Ruskin simply confirms that "She is a slaver, throwing her slaves overboard. The near sea is encumbered with corpses." But Turner has not painted anything nearly so simple. What we see are scattered limbs and manacles and various curious looking sea-monsters; of the kind indeed that haunted Coleridge's fevered imagination half a century earlier. Ruskin might have sought to add some interpretive clarity in his brief footnote; but Turner has painted dismemberment and incoherence and horror. To the uninitiated it might well have seemed incomprehensible; as incomprehensible perhaps as the *Rime*. But to those few who knew something of maritime insurance law, or the rather more who had read Clarkson's *History and Abolition of the Slave Trade*, it would have made rather more sense. For the "spectre-bark" that Turner has painted is of course *The Zong*, and the "corpses" to which Ruskin alludes so crisply are those of its "jettisoned" slaves. And Turner wants them to look horrific and disturbing. It was after all a horrific and deeply disturbing incident; one which cut to the very heart of the sentimental pretence of Enlightenment.

Of course much had changed by 1840; but much had not. The 1807 Slave Trade Act had made the carrying of slaves in British ships unlawful. The 1811 Slave Trade Felony Act had extended the proscription across the Empire. But slavery itself was only rendered unlawful under the terms of the Abolition of Slavery Act, which passed through Parliament in 1833. Even then there was an exemption for "the territories in the possession of the East India Company"; all the more ironic, given its earlier pretence to supply the saccharine-addicts of late eighteenth century England sugar untainted by slavery. The East India exemptions were only removed a decade later. And, of course, the slave trade would remain active across much of the rest of the globe right through the nineteenth century. Indeed, Turner had exhibited his *Slave-Ship* to complement an international conference being hosted in London by Prince Albert to promote universal abolition. The Prince had viewed Turner's painting and declared himself much moved.

Eighty-six years later the League of Nations enacted a Convention to Suppress the Slave-Trade and Slavery. It has been signed and ratified by ninety-nine nations. The intent is pleasing; the practice less so. The latest global slavery

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35 Keane, *Submerged Politics*, 148–151.

indexes suggest that around 45 million continue to live in a state of slavery across the globe. Over a million live in Europe. It is reasonable to assume that Turner and Coleridge would be appalled. And perhaps Ruskin too. It would be nice to think the same in regard to Lord Mansfield. Here though we can only surmise.

Mara Logaldo, Matteo Nicolini

# New Provinces of Writing and Legal Education: Law, Language and Society in Blackstone's *Commentaries*

## 1 “A constitutive story that has yet to be written”: Blackstone and the invention of legal textual genres

Blackstone's *Commentaries on the Laws of England* enjoy an outstanding position in English legal literature.<sup>1</sup> Not only are they authentic books of authority, but they also set the canon of “authors, to whom great veneration and respect is paid” by common lawyers, and “whose treatises are cited as authority” in the courts of justice (*CLE*, I.72).<sup>2</sup>

Blackstone's influence goes beyond the limits established by English legal literature. The *Commentaries* gained prominence throughout the common law legal tradition.<sup>3</sup> Their author was “much admired” by the Americans: according to Justice Joseph Story, he “was one of those great men raised up by Providence,” who prompted “a salutary revolution” in common law.<sup>4</sup> As Baker argues, “Blackstone conveyed to a wide readership on both sides of the Atlantic Ocean the es-

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Although this paper was conceived and written together, sections 1–5 are by Matteo Nicolini, whereas sections 6–9 by Mara Logaldo.

1 William Blackstone, *Commentaries on the Laws of England*, Vol. I-IV (1765–1769), ed. Wilfrid Prest (Oxford: Oxford University Press, 2016). Further references in the text, abbreviated as *CLE*. On how Blackstone listed his predecessors see Alan Watson, “The Structure of Blackstone's Commentaries,” *Yale Law Journal* 97 (1987–1988): 795–821.

2 On the “books for authority” see Boris M. Komar, “Text-Books as Authority in Anglo-American Law,” *California Law Review* 11 (1923): 397–422, 405, 409 ff.

3 Albert W. Alschuler, “Rediscovering Blackstone,” *University of Pennsylvania Law Review* 154.1 (1996): 1–55, 2.

4 *Diary and Autobiography of John Adams*, ed. L. H. Butterfield (Cambridge, MA: Harvard University Press, 1961), III.275; Joseph Story, *The Miscellaneous Writings of Joseph Story*, ed. William W. Story (Boston: Little Brown, 1852), 114.

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sential and beauty [...] of a system of law; [it] was at once a final survey of the old common law and the first textbook of a new legal era.”<sup>5</sup>

There is something intriguing in Baker’s statement. The *Commentaries* are certainly a milestone in common-law legal literature; but Baker raises new issues, which are directly likened to the changes that impinged on legal education in eighteenth-century England.

With the inauguration of the Vinerian Chair of Law at Oxford (1758), English common law was eventually admitted into the academic curriculum – and Blackstone, who had already started lecturing in 1753, would hold the Chair until 1766.<sup>6</sup> These changes did not directly affect the legal profession: common lawyers were still trained in the Inns of Courts and attended Westminster Hall to learn the law.<sup>7</sup> This means that Blackstone’s lectures fulfilled a different purpose: they were not addressed to prospective common lawyers, but to a different type of students; among them, university graduates, “country gentlemen and clergymen who needed an outline knowledge of the legal system.”<sup>8</sup>

This new form of legal education had an impact on both the audience and the reading public of the *Commentaries*. Similar transformations characterized English literature and society: the industrial revolution and the advent of a capitalist economy shaped eighteenth-century public opinion; and the novel is considered “an experimental inquiry into the ethical implications of contemporary social change.”<sup>9</sup> As the lawyer and novelist Henry Fielding argued in *An Enquiry into the Causes of the Late Increase of Robbers* (1751), “the Introduction of Trade” triggered a flaw in the English legal-cultural Constitution.<sup>10</sup> This explains why it

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5 John H. Baker, *An Introduction to English Legal History* 5<sup>th</sup> edn, (Oxford: Oxford University Press, 2019): 201. For Blackstone’s influence on U.S. common law see, among others, Dennis R. Nolan, “Sir William Blackstone and the New American Republic: A Study of Intellectual Impact,” *New York University Law Review* 51 (1976): 731–768; Albert S. Miles, David L. Dagley and Christina H. Yau, “Blackstone and His American Legacy,” *Australia & New Zealand Journal of Law & Education* 5.2 (2000): 46–59; Robert D. Stacey, *Sir William Blackstone and the Common Law: Blackstone’s Legacy to America* (Eugene, OR: ACW Press, 2003).

6 Wilfrid Prest, *William Blackstone. Law and Letters in the Eighteenth Century* (Oxford: Oxford University Press, 2000), 119 ff.

7 See William S. Holdsworth, “Blackstone,” *North Carolina Law Review* 17.3 (1939): 233–241, 234.

8 Baker, *An Introduction*, 191.

9 Michael McKeon, *The Origins of the English Novel, 1600–1740* (Baltimore and London: The Johns Hopkins University Press, 2002), xxiii. On the reading public see Ian Watt, *The Rise of the Novel. Studies in Defoe, Richardson and Fielding* (London: The Bodley Head, 2015), 35 ff.

10 Henry Fielding, *An Enquiry Into the Causes of the Late Increase of Robbers, and Related Writings*, ed. Malvin R. Zirker, (Oxford: Oxford University Press and Wesleyan University Press, 1988), 64. See Martin A. Kayman, “The ‘New Sort of Specialty’ and the ‘New Province of Writing’: Bank Notes, Fiction and the Law in ‘Tom Jones,’” *ELH* 68.3 (2001): 633–653.

is impossible to keep Blackstone's *Commentaries* separate from its social, literary and cultural context; and why an equation may be drawn between the rise of the novel and the *Commentaries*.

Just like Fielding's "comic epic poem in prose,"<sup>11</sup> the *Commentaries* can be considered as "the prose epic of the common law," which rendered to the English law the same "unparalleled service"<sup>12</sup> that the novel rendered to literature, with transformative effect on the *contents*, *form* and *language* of common-law legal literature.

By *contents* we do not intend here the institutes examined in the *Commentaries*. Rather, we understand the process of their digestion introduced by both the lectures and the *Commentaries*. This is not to deny that both packed common law: Bentham, who attended Blackstone's lectures, considered him a "bigoted or corrupt defender of the works of power"; for his "blind complacency about the state of the law," he was labeled "the great supporter [of] a plan of systemic despotism."<sup>13</sup> However, Blackstone's digestion of the common law earned more admirers than detractors: "We have a high Character of a Professor at Oxford, who they say has brought that Mysterious Business," which is common law, "to some System"; and the Vinerian Professor is said to have collected his lectures in a "rational," "stylish," and "readable" way.<sup>14</sup>

*Contents*, *form* and *language* are thus interwoven in Blackstone's *Commentaries*. Apart from Harper Lee,<sup>15</sup> only legal scholars have praised the "power and elegance of his prose," and acknowledged that Blackstone invented a new legal textual genre: the *primer* for law students. This means that there is still room left for a multidisciplinary assessment. The *Commentaries* are a crossroads, which facilitates the contacts between English legal narratives and the social,

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11 See Henry Fielding, *Tom Jones* [1749], ed. John Bender and Simon Stern (Oxford: Oxford University Press, 2008), 132, 181, 425. Further references in the text, abbreviated as *TM*.

12 Julian S. Waterman, "Mansfield and Blackstone' Commentaries," *The University of Chicago Law Review* 1.4 (1934): 549–571, 549.

13 See, respectively, Jeremy Bentham, *A Fragment of Government* [1766], ed. F. C. Montague (Oxford: Clarendon Press, 1891), 94, 100; Baker, *An Introduction*, 201; James Wilson, "Of the General Principles of Law and Obligation," in *The Works of James Wilson*, ed. Robert G. McCloskey (Cambridge, MA: Harvard University Press, 1967): 55–106, 105. On Blackstone's critics see Howard L. Lubert, "Sovereignty and Liberty in William Blackstone's 'Commentaries on the Laws of England'," *The Review of Politics* 72.2 (2010): 271–297.

14 Baker, *An Introduction*, 201; *Letter Book of John Watts: Merchant and Councillor of New York, January 1, 1762–December 22, 1765*, ed. Dorothy C. Barck (New York: Printed for the Society, 1928), 13.

15 According to Calpurnia, "Mr Blackstone wrote fine English," in Nelle Harper Lee, *To Kill a Mocking Bird* (New York: Lippincot, 1960), 142.

linguistic and literary context which is eighteenth-century England. The multidisciplinary “constitutive story”<sup>16</sup> of the *Commentaries* has yet to be written – and it is the duty of both the comparative legal scholar and the linguist to participate in such assessment.

## 2 Lecturing common law; or, politics, society and the effects of the *Ab Ovo* doctrine on legal education

Whereas the legal perspective aims to explore Blackstone’s influence over the evolution of common-law institutes and legal literature, the *Commentaries*’ multidisciplinary “constitutive story” studies Blackstone within the eighteenth-century English context. Thus, they cease to be “a mere dry legal text”; and this kind of reading allows us to value Blackstone’s “modest, pragmatic and humanistic approach to the conceptualization of society and social relations.”<sup>17</sup>

The *Commentaries* reflect such an approach. They are a general introduction to English law, which describes “the actual laws of [English] society,” and how they worked in eighteenth-century England.<sup>18</sup> This is apparent in the final chapter of the *Commentaries*: Book IV, Chapter 33 (“Of the Rise, Progress and Gradual Improvements, of the Laws of England”) is entirely devoted to the epic of “English law liberties,” which reached “the perfection they now enjoy” in the eighteenth-century (*CLE*, IV.435). There are “flashes of patriotic colouring” in these lines, as well as hints of poetic inspiration: “the protection of the liberty of Britain is a duty which [English people] owe to themselves, who enjoy it.” (*CLM*, IV.436).<sup>19</sup> “Epic analogy” also characterized the rise of the novel. Confrontation with epic was a crucial feature in Defoe’s and Richardson’s works: “Defoe’s general attitude to epic was one of casual depreciation”; and “a similar hostility to

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**16** Rogers M. Smith, *Stories of Peoplehood: The Politics and Morals of Political Membership* (Cambridge: Cambridge University Press, 2003), 72ff.

**17** Wilfrid Priest, “General Editor’s Introduction,” *Commentaries on the Laws of England, Of the Rights of Persons* Vol. 1 (Oxford: Oxford University Press, 2016): vii–xv, xv.

**18** Richard Posner, “Blackstone and Bentham,” *The Journal of Law & Economics* 19.3 (1976): 569–606, 572. See also Priest, “General Editor’s Introduction,” vii.

**19** Ruth Paley, “Editor’s Introduction to Book IV,” *Commentaries on the Laws of England, Of Public Wrongs*, Vol. IV, ed. Ruth Paley (Oxford: Oxford University Press, 2016): vii–xxix, x. See also David Lemmings, “Editor’s Introduction to Book IV,” *Commentaries on the Laws of England, Of the Rights of Persons*, Vol. I, ed. David Lemmings (Oxford: Oxford University Press, 2016): xvii–xl, xxv.

the epic can be discerned in [Richardson's] novels and letters."<sup>20</sup> The epic style was highly influential in both Henry Fielding's *Tom Jones* and Laurence Sterne's *Tristram Shandy*, which allows both authors to engage in a vivid representation of English society.<sup>21</sup>

Although both novelists used epic for different purposes it did not deserve any form of celebration. Fielding "was steeped in the classical tradition" but "he was by no means a slavish supporter of the Rules." Although he resorted to it in order to satirize society and social conventions, "he felt strongly that the growing anarchy of literary taste called for dramatic measures."<sup>22</sup>

For this our determination we do not hold ourselves strictly bound to assign any reason; it being abundantly sufficient that we have laid it down as a rule necessary to be observed in all prosai-comi-epic writing. [...] the world seems to have embraced a maxim of our law, viz., *cuicumque in arte sua perito credendum est*: for it seems perhaps difficult to conceive that any one should have had enough of impudence to lay down dogmatical rules in any art or science without the least foundation. In such cases, therefore, we are apt to conclude there are sound and good reasons at the bottom, though we are unfortunately not able to see so far (*TJ*, 181).

By contrast, Sterne exhibited a huge, anti-epic attitude:

Horace, I know, does not recommend this fashion altogether: But that gentleman is speaking only of an epic poem or a tragedy; – (I forget which) – besides, if it was not so, I should beg Mr. Horace's pardon; – for in writing what I have set about, I shall confine myself neither to his rules, nor to any man's rules that ever lived (*TS*, 8).

Blackstone's hints of poetic inspiration allowed him to participate in an intensive dialogue about English legal institutions: he had to offer educated English people an insight into the legal implications of England's economic prosperity, trade ascendancy, as well as British institutions. Thus, the *Commentaries* explore the interrelations between English legal culture and society. Although the *Commentaries* still refer to some cases in which judges may hold a statute void (*CLM* 1.90 – 91), Blackstone upholds Parliamentary supremacy, thus narrowing judicial authority to uphold common law over statute law.<sup>23</sup> He then expounds the *dem-*

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<sup>20</sup> Watt, *The Rise*, 240 and 243.

<sup>21</sup> Fielding was indebted with the epic style: see *TJ*, 132, 181, 425. Further references in the text, abbreviated as *TM*. See also Laurence Sterne, *The Life and Opinions of Tristram Shandy, Gentleman*, ed. Ian Campbell Ross (Oxford: Oxford University Press, 2009), further references in the text, abbreviated as *TS*.

<sup>22</sup> Watt, *The Rise*, 248.

<sup>23</sup> See Lubert, "Sovereignty and Liberty," 281ff.



*ocratic progress* of English representative institutions: it is a relevant topic for his reading public, as this exerted “predominant influence in national affairs”<sup>24</sup> through the system of borough and country representation (*CLE* 1.172–174).

Blackstone’s social engagement is also patent in how he examines the “liberties of Englishmen” – which reflect Adam Smith’s conception of a free society (*CLE*, I.144)–,<sup>25</sup> in the determination of the law applicable to trade and colonies (*CLE*, I.242) and in the scope of the Privy Council’s jurisdiction (*CLE*, I.231)<sup>26</sup>. The *Commentaries* also challenge slavery: “the spirit of liberty is so deeply implanted in our constitution, and rooted even in our very soil, that a slave [...], the moment he lands in England [...] becomes *eo instanti* a freeman” (*CLM* I.123). Blackstone thus confronts Lord Mansfield (i. e., his Patron), whose judgment rendered in *R. v. Knowles, ex parte Somerset* declared slavery odious, albeit not unlawful.<sup>27</sup> There is also room left for questioning Locke’s narrative of rightful resistance to political authority. One may contend that Blackstone himself acknowledged that Englishmen had been “depressed by overbearing and tyrannical princes” (*CLM*, I.123). It should be argued that the *Commentaries* challenge Locke’s narrative because this defies England’s epic and therefore endorses the resistance to legitimate civil authority in American colonies.<sup>28</sup>

There is something even more intriguing in the origins of the *Commentaries*, i. e., its connections with politics. We are not referring to Blackstone’s election as a Member of Parliament (1761–1768), nor to his appointment as puisne justice of King’s Bench and of Common Pleas by virtue of political preferment (1770). Rather, we consider how politics affected Blackstone’s career as a lecturer and how politics could actually have subverted the very course of common-law legal education.

We have been traditionally told that Blackstone started expounding the law of the land – thus becoming an Oxford don – because he had previously been an unsuccessful barrister. We have also been taught that such failure in practice, and “the grossly inadequate state of English legal education” caused him to engage in such cultural project. It was a very lucrative one, indeed: as a member

24 Sir David Lindsay Keir, *The Constitutional History of Modern Britain 1485–1951*, 5<sup>th</sup> ed., revised (London: Adam and Charles Black, 1957), 330.

25 Richard Posner, “Blackstone and Bentham,” 569; Priest, *William Blackstone*, 41.

26 See William Holdsworth, *A History of English Law*, vol XI (London: Methuen & Co., 1938).

27 *R. v. Knowles, ex parte Somerset* (1771–72) 20 State Tr. 1; Lofft 1. Norman S. Poser, *Lord Mansfield. Justice in an Age of Reason* (Montreal et al.: McGill–Queen’s University Press, 2013), 292ff.

28 See Lubert, “Sovereignty and Liberty,” 281ff.

the board of Oxford's University printing house, Blackstone had good knowledge of the book trade.<sup>29</sup>

He had certainly an inclination to academic studies;<sup>30</sup> but such inclination could have led to a different ending by virtue of political patronage. What we are contending here is that there had been contingencies related to politics that dramatically altered the course of Blackstone's career. As is known, his Patron Lord Mansfield recommended him to Thomas Pelham-Holles, Duke of Newcastle, who controlled the academic preferment. But Blackstone's hopes of becoming Regius Professor of Civil Law were frustrated by the Duke: "when Blackstone declined to become Newcastle's political toady, merely saying that he would fulfil his lecturing duties as well as he could, Newcastle turned him down."<sup>31</sup> Such denial changed the courses of the events; Lord Mansfield "advised Blackstone to proceed with a project which he had already considered": giving lectures on English law.<sup>32</sup>

However anecdotal this may appear, these turns in the course of Blackstone's real life are also common in novels. Fielding warns us "not too hastily to condemn any of the incident in this [...] history as impertinent and foreign," because we do not "immediately conceive in what manner such incident may conduce to that design" (*HF*, 453). Laurence Sterne does the same in *Tristram Shandy* by turning the "anecdote" (*TS*, 7) of Shandy's birth into a real *Ab ovo* doctrine (*TS*, 8):

I wish either my father or my mother, or indeed both of them, [...] had minded what they were about when they begot me; had they duly consider'd how much depended upon what they were then doing [...] – I am very persuaded I should have made a quite different figure in the world, from that, in which the reader is likely to see me (*TS*, 5).<sup>33</sup>

**29** Richard Posner, "Blackstone and Bentham," *The Journal of Law & Economics* 19.3 (1976): 569–606, 572. See also Priest, "General Editor's Introduction," vii.

**30** Priest, *William Blackstone*, 58.

**31** Poser, *Lord Mansfield*, 201; William B. Odger, "Sir William Blackstone," *The Yale Law Journal* 27.2 (1918): 599–618, 603–604; William S. Holdsworth, "Some Aspects of Blackstone and His Commentaries," *The Cambridge Law Journal* 4.3 (1932): 261–285, 262; Waterman, "Mansfield and Blackstone' Commentaries," 550; Prest, *William Blackstone*, 108–109.

**32** Holdsworth, "Some Aspects," 262.

**33** See Andrew Wright, "The Artifice of Failure in 'Tristram Shandy'," *NOVEL: A Forum on Fiction* 2.3 (1969): 212–220.

Anecdotes may then be misleading – as misleading as is the reference made by Sterne to Horace when forging the *Ab ovo* doctrine.<sup>34</sup> However, the course of common law would have been completely different if Blackstone had taught civil law, and therefore not started his fee-paying course on English law in 1753. The latter course attracted so many non-would-be lawyers, and this prompted Blackstone to change the contents, form and language of legal education.

### 3 An “educational innovation” triggering a new province of writing: the *Commentaries* as a new textual genre

Blackstone’s inclination to academic studies, the application of the *Ab ovo* doctrine to legal education, and the needs of both a new audience and a new reading public cohered in the *Commentaries*, which is the most important eighteenth-century “educational innovation” in legal studies.<sup>35</sup> There are two additional arguments associated with the *Ab ovo* doctrine – and neither has been examined with accuracy by both legal scholars and linguists.

The first argument refers to the publication of the *Commentaries*. We have already noticed that Blackstone became a Delegate of the University Press in 1755. He had profound knowledge of the academic book market:<sup>36</sup> he sold “his copyright in 1772 to a consortium of booksellers-publishers,” for £2,000: “[t]his brought his proceeds from the *Commentaries* to a then truly stupendous, total of £ 14,488, the equivalent of at least £ 1.3 million in twenty-first century money values.”<sup>37</sup> But his direct financial interests had been relevant even before the publication of the 1772 edition of the *Commentaries*. The *Ab ovo* doctrine discloses that he published them because students took notes of his lectures: “cop-

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34 “Tristram misleadingly refers” to Horace’s *Ars Poetica*: “Horace, in fact, commends Homer for *not* starting his tale of the Trojan War *ab ovo* – that is, from the birth of Helen from Leda’s egg”: Ian Campbell Ross, “Explanatory notes,” to *The Life and Opinions of Tristram Shandy, Gentleman*, 542.

35 David Lieberman, “Blackstone’s Science of Legislation,” *Law & Justice* 60 (1988): 60–74, 62.

36 Matthew Kilburn, “The Blackstone Reforms 1755–1780,” in *The History of Oxford University Press*, Volume I, *Beginnings to 1780*, ed. Ian Gadd (Oxford: Oxford University Press, 2013): 139–157.

37 Prest, “General Introduction,” ix.

ies have been multiplied [...] some of which have fallen into mercenary hands and become the object of clandestine sale.” (*CLE*, Preface).<sup>38</sup>

Yet, financial interests were also present in another marketplace, i.e., that of the novel. On the one hand, Laurence Sterne published *Tristram Shandy's* first two books at his own expense – the Londoner bookseller James Dodsley bought the copyright of the volumes after the novel had gained success.<sup>39</sup> On the other hand, Henry Fielding took part in the eighteenth-century legal and cultural debate “over literary property” as a “peculiar property.” This type of property raised issues related to its “substance”: the rise of trade with its individualistic values and proprietary narrative made it possible “that ideas and the imagination were becoming commercially valuable.”<sup>40</sup> Making imagination negotiable and rendering it a type of property was not an easy task, as *Millar v. Taylor* (1769) and *Donaldson v. Becket* (1774) show.<sup>41</sup> But literary property had to fit the system; otherwise common law, which assigns “to every-thing capable of ownership a legal and determinate owner,” would be disturbed (*CLE* 2.15).

Further equations can be drawn between the novel and the *Commentaries*. There is indeed the change in the reading public – both the primer and the novel address an “unlearned” reader. There is a link between knowledge, these textual genres and book sale proceeds: the more the reader purchases, the more he reads, the more he accrues his knowledge – and the author’s proceeds. As Sterne puts it,

Read, read, read, read, my unlearned reader! read [...] I tell you before-hand, you had better throw down the book at once; for without *much reading*, by which your reverence knows, I mean much knowledge, you will no more be able to penetrate the moral of the next marble page [...] than the world with all its sagacity (*TS*, 180).

This also explains the address to Learning in *Tom Jones*: “And thou, o Learning, (for without thy assistance nothing pure, nothing correct, can genius produce) do thou guide my pen.” (*TJ*, 601) Learning therefore assists the author in writing

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<sup>38</sup> Holdsworth, “Some Aspects,” 269.

<sup>39</sup> Ian Campbell Ross, “Introduction,” to *The Life and Opinions of Tristram Shandy, Gentleman*, x, xii–xiii.

<sup>40</sup> Kayman, “The ‘New Sort of Specialty’,” 639, 649. On individualism, trade, and the novel see Watt, *The Rise*, 60 ff.

<sup>41</sup> *Millar v Taylor* (1769) 4 Burr. 2303, 98 ER 201; *Donaldson v Becket* (1774) 2 Brown’s Parl. Cases (2d ed.) 129, 1 Eng. Rep. 837; 4 Burr. 2408, 98 Eng. Rep. 257; 17 Cobbett’s Parl. Hist. 953 (1813). From footnote 21 of Book II, Chapter 26 we infer the he won the litigation, and also that the House of Lords subsequently overruled Millar, reducing the term of protection. See *Donaldson v. Becket* (1774) 4 Burr. 2408, 98 ER 257.

a book with its negotiable copyright – and the book is virtually capable of reaching a wide reading public; or, as Henry James says, “critics”: “By this word here, and in most other parts of our work, we mean every reader in the world.” (*TJ*, 346).

The second argument related to the *Ab Ovo* doctrine is the rise of the primer as a textual genre in legal education.<sup>42</sup> Like the novel, the legal primer has indeed “a strong cultural component which can be uncovered by historical examination”; both genres were created “under the aegis of commercial, social and cultural institutions that mark the period’s turn toward modernity and that link its concerns to ours today.”<sup>43</sup> Both Blackstone and Fielding were lawyers – and both explored different literary genres during their career.<sup>44</sup>

The novelty of both textual genres is assessed by scholars: Ian Watt considers the novel “a break with the current literary tradition”; McKeon refers to *Tristram Shandy* as the “formal breakthrough” in literature.<sup>45</sup> Akin phrases may be found in legal handbooks and essays: Baker considers that Blackstone’s “success in breaking new ground is attributable partly to the discipline of trying to explain the law to educated gentlemen”; Liberman terms the *Commentaries* a “methodological novelty”; and Milsom, consistently with the *Ab Ovo* doctrine, assumes that “important consequences for the law followed because Blackstone was addressing laymen and not lawyers.”<sup>46</sup>

Fielding himself was conscious of such textual innovation:

My reader then is not to be surprized, if, in the course of this work, he shall find some chapters very short, and others altogether as long [...] in a word, if my history sometimes seems to stand still, and sometimes to fly. For all which I shall not look on myself as accountable to any court of critical jurisdiction whatever: for as I am, in reality, the founder of a new province of writing, so I am at liberty to make what laws I please therein. (*TJ*, 68).

Blackstone does the same in the Preface to the *Commentaries*: he points out “the novelty of such an attempt in this age and country” comprised in “the following

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<sup>42</sup> On Nation State, teaching of national laws, and textbooks see John W. Cairns, “Blackstone, an English Institutist: Legal Literature and the Rise of the Nation State,” *Oxford Journal of Legal Studies* 4.3 (1984): 318–360, 324.

<sup>43</sup> Watson, “The Structure,” 795; John Bender, “Introduction,” to *Tom Jones*, ix–xxxiv, xvii.

<sup>44</sup> John Bender, “Introduction,” xi–xii; Prest, *William Blackstone*, 24, 43 ff.

<sup>45</sup> Watt, *The Rise*, 25; McKeon, *The Origins*, 419.

<sup>46</sup> Baker, *An Introduction*, 201; Lieberman, “Blackstone’s Science of Legislation,” 63; Stroud F. C. Milsom, “The Nature of Blackstone’s Achievement,” *Oxford Journal of Legal Studies* 1.1 (1981): 1–12, 5.

sheets [that] contain the substance of a course of lectures on the laws of England.” (*CLE*, Preface, i).

## 4 Continuity and discontinuity in the “New Species of Writing”

When examining the novel and the primer, we also have to consider a further argument, which describes English history in accordance with the narratives of *continuity* and *discontinuity*. We are not denying the new features introduced by both textual genres. Both reflect the needs and aspirations of English society; and, at the same time, demonstrate how law and literature “operated to achieve [its] economic, political and other goals.”<sup>47</sup>

The narrative of discontinuity, we contend, must necessarily complement that of continuity. Not only did the process of literary and legal digestion lack of precedents in point; but the authors also had to engage themselves with a rich literary and legal tradition, with which they engaged in an intense dialogue. Bearing in mind Baker’s statement, Blackstone “was at once a final survey of the old common law and the first textbook of a new legal era.”<sup>48</sup>

This is also apparent as far as the novel is concerned. In *An Essay on the New Species of Writing* – published anonymously in 1751 –, the author praised “the New Species of Writing lately introduc’d by Mr. Fielding,” acknowledging that Fielding had a “Design of Reformation noble and public-spirited.”<sup>49</sup> And yet, discontinuity is unavoidably likened to previous literary experiences:

Sometime before this new Species of Writing appear’d, the World had been pester’d with Volumes, commonly known by the Name of Romances, or Novels, Tales, &c. fill’d with any thing which the wildest Imagination could suggest.<sup>50</sup>

Fielding actually introduced the literary category of “realism,” which involved “a break with the old-fashioned romances,” and, as the *Essay* states, “a lively Representative of real life.” This is even more obvious in *Tristram Shandy*: “Sterne

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<sup>47</sup> Posner, “Blackstone and Bentham,” 571–572.

<sup>48</sup> Baker, *An Introduction*, 201.

<sup>49</sup> *An essay on the new species of writing founded by Mr. Fielding: with a word or two upon the modern state of criticism* (London: printed for W. Owen, near Temple-Bar, MDCCLI. [1751], 1, 13, 17. On the identity of the essayist see William B. Warner, “Definitions of the novels,” in *The Encyclopaedia of the Novel*, ed. Peter M. Logan, vol I (Chichester: Blackwell, 2011): 224–228

<sup>50</sup> *An essay*, 13.

[reconciled] Richardson’s realism of presentation with Fielding’s realism of assessment,” and therefore “showed that there was no necessary antagonism between their respective [...] approaches to character.”<sup>51</sup>

Blackstone himself advocated both *continuity* and *discontinuity* in the *Commentaries*. We are not refuting the existence of law-books before the advent of Blackstone. When framing the four-book *Commentaries*, he heavily relied on Justinian’s *Institutes*, thus accommodating “the structure of his treatise” to a “source external to the common law.”<sup>52</sup> But he was also in continuity with the common-law legal tradition,<sup>53</sup> as the “Preface” to his *An analysis of the laws of England* upholds.<sup>54</sup> He had had to “adopt a Method, in many respects totally new”; but discontinuity was part of a historical lineage, which stretched back through the centuries to Glanvill, Littleton, Bracton, Fitzherbert, Coke and Hale – whose textbooks, abridgements and treatises are part of the canon embedded in the *Commentaries*. Furthermore, he suggested them as further reading.<sup>55</sup> There is at least continuity with Henry Finch’s *Law, or a Discourse thereof*, Thomas Wood’s *Institutes of the Laws of England* and Matthew Hale’s *Analysis of the Law*. Other references to law books can be found throughout the *Commentaries*, as in the case of Sir Geoffrey Gilbert, Chief Baron of the Exchequer (1675–1726). Blackstone quotes his “excellent treatise on evidence; a work which it is impossible to abstract or abridge, without losing some beauty and destroy the chain of the whole.” (*CLE* III.367)<sup>56</sup>

But textbooks “had not existed for Blackstone to summarize. [...] In trying to give laymen a view from above the procedural technicalities, he had given lawyers a new vision of the law.”<sup>57</sup> The same holds true as for the novel: indeed, “Mr. Fielding ordain’d, that these Histories should be divided into Books, and these subdivided into Chapters; and also that the first Chapter of every Book was not to continue the Narration, but should consist of any Thing the Author chose to entertain his Readers with.”<sup>58</sup>

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51 Watt, *The Rise*, 290.

52 Watson, “The Structure,” 796.

53 William Blackstone, *An analysis of the laws of England* (Dublin: Printed for E. Watts 1766).

54 Blackstone, *An analysis*, iv–vi.

55 Holdsworth, “Some Aspects,” 272. See also *supra* para 1.

56 Michael Macnair, “Sir Jeffrey Gilbert and his treatises,” *The Journal of Legal History*, 15.3 (1994): 252–268.

57 Milsom, “The Nature,” 10.

58 *An essay*, 18–19.

And these interrelations between law and literature explain why the *Commentaries* are the “only law book that can be classed as literature.”<sup>59</sup>

## 5 A new province of legal language? Digesting the “arcane” common law in a “clear, concise and intelligible form”

We will now consider Blackstone’s last educational innovation, i. e., the renovation of legal language. To this extent, we will not delve into how the *Commentaries* were praised or criticized: suffice it here to say that Bentham’s *Comment on the Commentaries* and *Fragment on Government* proved to be influential when it comes to considering the afterlife of the *Commentaries* in England: they caused the decline of Blackstone’s influence in England.<sup>60</sup>

By contrast, in the United States the *Commentaries* became “the standard beginner’s introduction to legal studies” and were soon Americanized.<sup>61</sup> As Edmund Burke remarked, “nearly as many copies of the *Commentaries* had been sold on the American as on the English side of the Atlantic”; the same Chief Justice Marshall, “by the time he turned twenty-seven [...] had read the *Commentaries* four times.”<sup>62</sup>

But Bentham – who had fiercely attacked the *Commentaries* for their contents, inaccuracy and obscurity – praised Blackstone’s style and language. According to him, “He it is who first of all institutional writers has taught jurisprudence to speak the language of the scholar and the gentleman, put a polish upon that rugged science, cleansed her from the dust and cobwebs of the office.”<sup>63</sup> Comparable positive assessments were also formulated by his contemporaries: the *Annual Register* considered them written “in a clear, concise, and intelligible form”<sup>64</sup>; and Thomas Jefferson and Lord Mansfield did the same.<sup>65</sup> Positive as-

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59 Holdsworth, “Blackstone,” 237.

60 Holdsworth, “Blackstone,” 238.

61 Alschuler, “Rediscovering Blackstone,” 5.

62 See Nolan, “Sir William Blackstone,” 757. See also Wilfrid Prest (ed.), *Re-Interpreting Blackstone’s Commentaries* (Oxford: Oxford University Press, 2014). See Edmund Burke, “Speech on Moving his Resolutions for Conciliation with the Colonies (Mar. 22, 1775),” in *The Works of the Right Hon. Edmund Burke* (Boston: Little Brown, 1865), 99, 125.

63 Bentham, *A Fragment of Government*, 116.

64 *Annual Register* 1767, 4th ed., second pagination (London 1786), 287.

65 See W. H. Bryson, “English Ideas on Legal Education in Virginia,” in *Learning the Law: Teaching and the Transmission of English Law, 1150–1900*, ed. Jonathan Bush and Alain A. Wijff-



sessments can also be found among the successive generations of legal scholars: for example, Albert Venn Dicey stated that “The *Commentaries* live by their style”;<sup>66</sup> and Holdsworth admired Blackstone’s genius, his work and the “excellence of the *Commentaries*.”<sup>67</sup>

It was, however, the change in the audience and in the public reading that prompted the most dramatic change in legal language. Such a change was partly triggered by the decline of traditional forms of legal education,<sup>68</sup> and partly by the inaccessibility of traditional legal English language to the public: Law Latin, Law French and the arcane jargon used in common-law courts were “a Character, and Language, unknown to any, but the learned in the Law.”<sup>69</sup> As Milsom argued, “If he wanted to explain the law to laymen, to give as it were a consumers’ view of the law, then of course as far as possible he must expound the substantive rules without reference to the procedural framework in which they existed for law.”<sup>70</sup>

Blackstone did not intend to pursue a reform by legislation. This was already occurring with literary property: “legislation was [indeed] used to regulate modern properties which the traditions of the Common Law could not absorb.”<sup>71</sup> By contrast, Blackstone aimed to challenge the “elitism” which characterized a legal jargon “increasingly remote from the mainstream of English society.”<sup>72</sup>

His transformative project was pursued by education.<sup>73</sup> The scarcity of textbooks and the decline in the traditional legal training favored this. After describing how the “raw and unexperienced youth, in the most dangerous season of life, [...] is expected to sequester himself from the world, and by a tedious lonely process to extract the theory of law from a mass of undigested learning,” he proposes to make “academical education a previous step to the profession of the common law, and at the same time [to make] the rudiments of the law a part of academical education.” (*CLE*, I.31, 33)

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fels (London and Rio Grande: Humbledon Press, 1999): 329–352, 346. For a comprehensive assessment of the topic see David Lemmings, “Blackstone and Law Reform by Education: Preparation for the Bar and Lawyerly Culture in Eighteenth-century England,” *Law and History Review* 16.2 (1998): 211–255, 243.

<sup>66</sup> Albert Venn Dicey, “Blackstone’s *Commentaries*,” *Cambridge law Journal* 1 (1932): 286–294.

<sup>67</sup> Holdsworth, “Some Aspects,” 267–268

<sup>68</sup> On the decline of legal education see Lemmings, “Blackstone and Law Reform by Education,” 216, 335.

<sup>69</sup> *Commons Journal* 21: 622–624.

<sup>70</sup> Milsom, “The Nature,” 6.

<sup>71</sup> Kayman, “The ‘New Sort of Specialty,’” 645.

<sup>72</sup> Lemmings, “Blackstone and Law Reform by Education,” 217.

<sup>73</sup> Lemmings, “Blackstone and Law Reform by Education,” 216.

To this extent, reform by education and his lectures to prospective generations of students probably reflect the trends in eighteenth-century English society, which “started to privilege the written over the spoken word.”<sup>74</sup> His strong commitment in the establishment of a new legal and linguistic literary genre probably reflects his discussion of the conveyance of property by deed – to put it differently Blackstone was encouraged by the audience to “put [the lectures] in writing”:<sup>75</sup>

The deed must be written, or I presume *printed*; for it may be in any character or any language; but it must upon paper, or parchment. [...] writing on paper or parchment unites in itself, more perfectly than any other way, both those desirable qualities; for there is nothing else so durable, and at the same time so little liable to alteration; nothing so secure from alternation, that is at the same time so durable (*CLE*, 2.297).

The new provinces of both legal writing and language are the most successful of Blackstone’s achievements. Indeed, they have ensured “durability” and “security” to the most relevant genre in legal education: the primer for the “unlearned,” as his contemporaries Fielding and Sterne would have defined prospective Law School students. Or, as we would say in our globalized society, “every reader in the world.” (*TJ*, 346)

## 6 From orality to textuality negotiating old and new forms of freedom

Despite Blackstone’s claim that the way of articulating the law – be it “*viva voce* [...], by writing, printing, or the like” (*CLE*, I.43) – was a matter of great indifference as long as legal procedures were conveyed through outer signs, as a written form of discourse the *Commentaries* unquestionably challenged the traditional distinction between “the *lex non scripta*, the unwritten, or common law; and the *lex scripta*, the written, or statute law.” (*CLE*, I.63) The book marked a chasm, which was both ideological and discursive.

From a social and cultural perspective, in the context of the common law the shift from orality to literacy put an end to the Medieval vision of a corporate society<sup>76</sup> in which tradition was universally shared and people felt equally bound

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<sup>74</sup> Michael Hancher, “*Littera Scripta Manet*: Blackstone and Electronic Text,” in *Studies in Bibliography* 54 (2001): 115–132, 119.

<sup>75</sup> Hancher, “*Littera Scripta Manet*,” 120.

<sup>76</sup> Patrizia Nerozzi, *Alle origini della letteratura moderna* (Mondadori: Milano, 1997): 9.

to the social compact, as if this had been “written by the finger of the law in their hearts.” (*CLE*, I.357) It can be argued that, just like modern journalism arose when it emancipated from the fabulatory power of news ballads,<sup>77</sup> so legal thinking within the English framework could turn into a proper textual genre only when the sacred halo of the common law, which mixed legal knowledge with Druidical customs entrusted to memory, could be replaced by the law of nature as an expression of the will of the Maker.<sup>78</sup> Not even the records of the sages frequently mentioned by Blackstone, which had “preserved and handed down to us” legal customs “from the times of highest antiquity,” (*CLE*, I.64) could achieve the degree of factuality of a written, systematic work.

On the other hand, the transition from oral transmission and records that still retained the viva-voce component to textual genre also made the “internal evidence of freedom” (*CLE*, I.64) associated by Blackstone with the common law more explicit. Besides being actualized as social engagement (§ 2), that inherent form of freedom was replaced by other forms of liberty:<sup>79</sup> freedom of speech, in the first place, which allowed the English people to tackle any subject, including the monarchy;<sup>80</sup> but also, given the rapidly developing publishing industry, freedom of the press. This latter issue is explicitly discussed by Blackstone in Book IV, where he claims that the liberty of the press is “indeed essential to the nature of a free state,” although he later warns against those magazines that published “blasphemous, immoral, treasonable, schismatical, seditious, or scandalous libels.” (*CLE*, IV.151) Indeed, as argued in § 3, in the eighteenth century the appearance of new factual genres was inseparable from the institution of regulations regarding printed material.<sup>81</sup>

The word “commentaries” used in the title stressed another, important form of freedom: freedom of interpretation. The English gentlemen, to whom the book

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77 Lennard Davis, *Factual Fictions. The Origins of the English Novel*, (Philadelphia, University of Pennsylvania Press, 1996).

78 “This will of his maker is called the law of nature. For as God, when he created matter, and endued it with a principle of mobility, established certain rules for the perpetual direction of that motion; so, when he created man, and endued him with freewill to conduct himself in all parts of life, he laid down certain immutable laws of human nature, whereby that freewill is in some degree regulated and restrained, and gave him also the faculty of reason to discover the purport of those laws.” (*CLE*, I.39).

79 Significantly, only in Book I the terms “free/freedom” and “liberty” occur, respectively, 115 and 101 times.

80 “There cannot be a stronger proof of that genuine freedom, which is the boast of this age and country, than the power of discussing and examining, with decency and respect, the limits of the king’s prerogative.” (*CLE*, I.230)

81 See Lennard Davis, *Factual Fictions: The Origins of the English Novel*, 86 and ff.

is destined, are “the guardians of the English constitution; the makers, repealers and *interpreters* of the English laws. [...] what kind of *interpretation* can he [a gentleman] be enabled to give, who is a stranger to the text upon which he *comments!*” (*CLE*, I.9)<sup>82</sup> Hence, Blackstone’s *Commentaries* well illustrate the thesis according to which, in the age of modernity, learning turns into a process that legitimizes the past by reconstructing it as orderly textuality. As pointed out by Avitabile, the scientific method followed in legal treatises to organize units of discourse endows them with a meaning that goes beyond the merely syntactic organization of the text. Since jurisprudence started to shift focus from legal procedures to textual grammar, jurists have turned into “technicians of the text,” constantly engaged in a functional process of *explicatio litterae*. “The text immediately raises questions about writing because the text itself condenses the visible and the invisible, the written word and oral transmission, syntactic grammar and thought considered as the object of interpretation.”<sup>83</sup> This modern awareness can clearly be discerned throughout the *Commentaries*.

I have now gone through the definition laid down of a municipal law; and have shewn that it is “a rule – of civil conduct – prescribed – by the supreme power in a state – commanding what is right, and prohibiting what is wrong”: in the explication of which I have endeavoured to interweave a few useful principles, concerning the nature of civil government, and the obligation of human laws. Before I conclude this section, it may not be amiss to add a few observations concerning the *interpretation* of laws. (*CLE*, I.58)

It is important to underline that Blackstone refers to interpretation not merely as a process aimed at mitigating the letter of the law, as embodied by the institution of equity, but as an eminently textual practice, which can either be bad, as shown by the endless *rescripts* of Roman legislators (*CLE*, I.38–39) or good. In the civil-law legal tradition, interpretation, dogmatism and arguments drawn a priori had been acquired since ancient times, to the point that in the same years in Italy Beccaria was warning against judges who interpreted the laws rather than simply assessing whether an action was “conformable to the written law.”<sup>84</sup> However, in the uncodified tradition of the common law, prospective lawyers still needed to be given the tools for interpretation; for interpretation to be possible the law had to be written down:

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**82** Our italics.

**83** Luisa Avitabile, *Modernità e pensiero giuridico: persona, sistema, testo* (Giappichelli: Torino, 2013): 90, our translation.

**84** Cesare Beccaria, *An Essay on Crimes and Punishments* (Philadelphia: Nicklin, 1819): 24–25.

If practice be the whole he [a lawyer] is taught, practice must also be the whole he will ever know: if he be uninstructed in the elements and first principles upon which the rule of practice is founded, the least variation from established precedents will totally distract and bewilder him: *ita lex scripta est* is the utmost his knowledge will arrive at; he must never aspire to form, and seldom expect to comprehend, any arguments drawn *a priori*, from the spirit of the laws and the natural foundations of justice. (*CLE*, I.31)

Only the “materiality of the written word”<sup>85</sup> could entail freedom of interpretation. Blackstone’s work is by no means a code. It is a book consisting of commentaries on a missing code and, as such, it incorporates the modern idea of interpretation, which is inseparable from textuality. In this explicit acknowledgment – as Bentham’s criticism proves – lay both its strength and its weakness.

## 7 The *Commentaries* and the pragmatic turn

Like many eighteenth-century novelists, Blackstone aimed at instructing the reader in a pleasant way, often by resorting to figurative language. Talking about the ubiquity of the King in courts, for example, he argues that his majesty’s “judges are the mirror by which the king’s image is reflected” although he is not physically present. (*CLE*, I.269), Even Bentham praised Blackstone on account of his having enlivened jurisprudence “with metaphors and allusions, and sent her abroad in some measure to instruct, and in still greater measure to entertain, the most miscellaneous and even the most fastidious societies.”<sup>86</sup> Blackstone not only seems to be aware of the power of metaphors to convey complex meaning, but also draws attention to their discursive function. Talking about national debt due to warfare expenses, for instance, he writes that the system for “borrowing immense sums for the current service of the state, and to lay no more taxes upon the subject” was first introduced by Florentine bankers who called it “metaphorically a *mount* or *bank*.” (*CLE*, I.327)

Yet, as a man of letters of the Enlightenment, Blackstone played on clarity and explicitness of expression against obscurity and allusiveness. In the perspective of his age, “the letter of the law” was supposed to be exact and therefore exempted from the vagueness of ordinary language. In the “wording of last wills and testaments,” for instance, Blackstone mentions

<sup>85</sup> Luisa Avitabile, *Modernità e pensiero giuridico: persona, sistema, testo*, 114.

<sup>86</sup> Jeremy Bentham, *A Fragment on Government* (1776).

the difficulties that arise in discerning the true meaning of the testator, or sometimes in discovering any meaning at all: so that in the end his estate may often be vested quite contrary to these his enigmatical intentions, because perhaps he has omitted one or two formal words, which are necessary to ascertain the sense with indisputable legal precision. (*CLE*, I.7)

However, while opposing the ambiguity of ordinary language to the exactness of legal language, in other parts of the *Commentaries* he also recognizes that any kind of language, including legal language, routinely necessitates inferential strategies to make sense:

[T]he fairest and most rational method to interpret the will of the legislator, is by exploring his intentions at the time when the law was made, by *signs* the most natural and probable. And these signs are either the words, the context, the subject matter, the effects and consequence, or the spirit and reason of the law. (*CLE*, I.59)

By focusing on the importance of communicative intentions and contextual variables in detecting the operative meaning of words and sentences “whenever they are ambiguous, equivocal, or intricate” (*CLE*, I.59), Blackstone surprisingly foreshadowed modern theories of pragmatics. Pragmatic rules regulate any discursive practice as such, including legal genres. Even the *Commentaries* had to come to terms with plurality of interpretations and, for this reason, the author adopted an all-pervasive metadiscursive stance. The presence of terms in italics, the emphasis placed on etymology and the frequent use of reformulations introduced by metadiscourse markers (specifically *code glosses* such as “namely” or “in other words”) are clearly meant to help “readers grasp the significance of particular information in the way the writer intends.”<sup>87</sup> Of course Blackstone recognizes the boundaries of legal genres, whose pedagogic scope, however revolutionary (as pointed out in § 1), ultimately leaves the law unchanged. Yet, articulation of the law into discourse undeniably affects the vision of the law itself. From this perspective, Blackstone prefigured the “pragmatic turn,” the idea that in the modern world “legal work is work within texts and language.”<sup>88</sup>

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**87** Ken Hyland, *Metadiscourse: Exploring Interaction in Writing* (London and New York: Continuum, 2005): 76.

**88** On this topic, see Janet Giltrow and Dieter Stein (eds.), *The Pragmatic Turn in Law: Inference and Interpretation in Legal Discourse* (Berlin: De Gruyter, 2017): 288.

## 8 The accessibility of legal discourse

Blackstone has been defined as “the man who wrote the first accessible, authoritative and comprehensive guide to the common law’s complexities.”<sup>89</sup> Starting from the assumption that laws are inseparable from some form of conveyance, Blackstone underlines the necessity that accessibility should be a general prerequisite, even more important than the different ways of articulating the law.

It is requisite that this resolution be notified to the people who are to obey it. [...] Yet, whatever way is made use of, it is incumbent on the promulgators to do it in the most public and perspicuous manner; not like Caligula, who (according to Dio Cassius) wrote his laws in a very small character, and hung them up upon high pillars, the more effectually to ensnare the people. (*CLE*, I.46)

As seen in § 5, to pursue this objective Blackstone avows to have drawn inspiration from Justinian’s *Digest*: “The Roman pandects will furnish us with a piece of history not unapplicable to our present purpose.” (*CLE*, I.11)

With this caveat, the devices he adopts for disseminating legal knowledge are diverse. The most apparent one is simplification of syntax, with a preference for paratactic structure and paraphrasing. This, according to Bhatia, goes against the general tendency in “normal legal practice” to include maximum information in a single sentence.<sup>90</sup> The result is that the text gains in explicitness what it loses in conciseness. We also notice ample use of devices aimed at enhancing text cohesion, such as repetition, antonymy, synonymy, parallelism and enumeration. Graphic devices, for instance the use of italics, are effectively used to emphasize key-concepts, thus increasing the explicitness of the text.<sup>91</sup>

Another strategy used in the *Commentaries* to pursue accessibility is exemplification.<sup>92</sup> It could be argued that the frequent examples reflect the influence of the *juxta exempla Romanorum*. However, from a strict linguistic perspective, examples were primarily aimed at disseminating jurisprudential knowledge through concrete instances. Exemplification goes so far as to verge on the anecdotal. Storytelling is widely used in the *Commentaries* and, as in *Tristram Shan-*

<sup>89</sup> Wilfrid Prest, 1.

<sup>90</sup> Vijay Bhatia, “Simplification v. Easification – The Case of Legal Texts,” in *Applied Linguistics* 4.1 (1983): 42–54, 44.

<sup>91</sup> See, for instance, *CLE*, I.44.

<sup>92</sup> “Simplification of form [...] includes not only the simplification of syntax and a clarification of prepositional development by restoring the missing cohesive links, but also a facilitation of comprehension by providing exemplification and explanation wherever needed.” (Vijay Bhatia, “Simplification v. Easification – The Case of Legal Texts”: 42).

dy, produces digressions from the main storyline. However, these digressions are also progressive, in the sense that they convey meaning more effectively and make what is basically an expository text, the lecture or the reference work aimed at instructing the reader, a livelier kind of experience. As Sterne's narrator claims: "Digressions, incontestably, are the sunshine, the life, the soul of reading. Take them out and one, cold eternal winter would reign in every page." (TS, I.22) If we transfer this quotation from literature into the universities in which Blackstone's lectures were attended and the *Commentaries* read, then we understand the efficacy of including narrative patterns in legal discourse. As Fludernik has recently illustrated, narration "plays a central role in legal discourse and permits law to be communicated, adjudicative acts to be justified, and their principles to be explained."<sup>93</sup> We wrote "revolutionary" but, as seen in § 4, Blackstone's genius actually resided in his capacity to reconcile past and present, the traditional reporting of legal cases in the common law and the narrative patterns of contemporary novelists.

The following 'incident', for instance, is reported to explain the fixing of a permanent site for the court of common pleas, "the grand tribunal for disputes of property." (CLE, I.22) Notice the use of direct speech and the free code-switching from English to Latin and Law-French, which seems to combine legal oratory with the polyphonic effect frequently searched for in contemporary novels:

[T]his remarkably appeared in the case of the abbot of Torun, *M. 22 E. 3. 24.* who had caused a certain prior to be summoned to answer at Avignon for erecting an oratory *contra inhibitionem novi operis*; by which words Mr Selden, (*in Flet. 8. 5.*) very justly understands to be meant the title *de novi operis nuntiatione* both in the civil and canon laws, (*Ff. 39. 1. C. 8. 11.* and *Decretal. not Extrav. 5. 32.*) whereby the erection of any new buildings in prejudice of more antient ones was prohibited. But Skipwith the king's serjeant, and afterwards chief baron of the exchequer, declares them to be flat nonsense; "*in ceux parolx, contra inhibitionem novi operis, ny ad pas entendment*": and justice Schardelow mends the matter but little by informing him, that they signify a restitution *in their law*; for which reason he very sagely resolves to pay no sort of regard to them. "*Ceo n'est que un restitution en lour ley, pur que a ceo n'avomus regard, &c.*" (CLE, I.22)

The code-switching is also meant to make the jargon of the law, often consisting of expressions in Law-Latin and Law-French, more accessible to the reader. Blackstone is aware of the functional use of language in legal discourse, which he appears already to conceive of as a special language. His remarks

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<sup>93</sup> Monika Fludernik, "Erzählung aus narratologischer Sicht," ed. Balz Engler, *Erzählen in den Wissenschaften: Positionen, Probleme, Perspektiven* (Fribourg: Academic Press Fribourg, 2010): 5–22.



about the use of Latin are part of this general reflection upon legal jargon, which must inevitably be preserved yet explained. Although in the introduction to Section the First (“On the Study of the Law”) he warns that in universities lectures on the laws of England must be delivered in English,<sup>94</sup> Latin is by no means considered incompatible with the general aim of making the law accessible to any learned gentleman, provided that it is accompanied by some kind of adaptation.<sup>95</sup> Thus, although attempts are sometimes made to translate Law-Latin into English, Blackstone prefers to switch codes for the sake of effective communication as well as for aesthetic purposes: “[S]ometimes in Latin, sometimes in English, the maxim always helped reduce a chaos of particular examples to the simple order of a terse and obvious rule. It served the purpose for the student of the law that the heroic couplet served for the writer of poetry. Both showed the materials cast in sharp simplicity.”<sup>96</sup>

This functional use of Latin and English, along with the wavering between legal jargon and more colloquial expressions, pervades the *Commentaries*. Indeed, Blackstone declares that his style will be appropriate and correct, but also fit for the neophyte to understand. He will try to be simple and explain technical terms. In the Introduction, he claims that his “ardent endeavour, though by no means [...] promise to accomplish” will be to “fill up and finish that outline with propriety and correctness, and to render the whole intelligible to the unin-

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**94** “That such professor (by himself, or by deputy to be previously approved by convocation) do read one solemn public lecture on the laws of England, and in the English language, in every academical term, at certain stated times previous to the commencement of the common law term; [...] or, if permanent, both the cause and the deputy to be annually approved by convocation) do yearly read one complete course of lectures on the laws of England, and in the English language [...]” (*CLE*, I.28)

**95** In Book III, for instance, like d’Alembert in his “Preliminary Discourse” to the *Encyclopédie*, he praises law-Latin as a concise, universal and eternal language which, far from being a way “of locking up the law in a strange and unknown language” is “particularly accommodated and moulded to answer all purposes of the lawyers with a peculiar exactness and precision.” (*CLE*, III.138) Latin is also praised as the ideal language of pleading. “The truth is, what is generally denominated law-Latin, is in reality a mere technical language, calculated for eternal duration, and easy to be apprehended both in present and future times; and on those accounts best suited to preserve those memorials which are intended for perpetual rules of action.” He recognizes that “the many terms of art, with which the law abounds, are sufficiently harsh when Latinized (yet no more so than those of other sciences)” but considers the new coinage of technical terms in this ancient tongue unavoidable to express “things of modern use, of which the Romans had no idea” such as, for example, the term “murder” as “a killing with malice aforethought.” (*CLE*, III.321)

**96** Daniel J. Boorstin, *The Mysterious Science of the Law: An Essay on Blackstone’s Commentaries* (Chicago and London: University of Chicago Press, 1996): 96.

formed minds of beginners (whom we are too apt to suppose acquainted with terms and ideas, which they never had opportunity to learn).” (*CLE*, I.34)

As Clitherow remarks, Blackstone even resorted to occasional jokes to put across his meaning.<sup>97</sup> Arguing about how little appealing the profession of the barrister could be for a gentleman, for instance, he adds in brackets, that “few persons of birth, or fortune, or even of scholastic education, will submit to the drudgery of servitude and the manual labor of copying the trash of an office.” (*CLE*, I.32) This does not surprise us, since he was a skilled correspondent who, following in the steps of Samuel Johnson’s “Debates of the Senate of Magna Lilliputia,” regularly reported the cases of the courts of Westminster Hall to the *Gentleman’s Magazine* between 1746 until his fatal illness in 1779.<sup>98</sup> It cannot be excluded that in writing the *Commentaries* Blackstone had that kind of reader in mind.<sup>99</sup> This point is upheld by the constant addresses to his reader as a “gentleman.” Undeniably, he also knew how to put that reader in the frame.<sup>100</sup> The ingenious use of pronouns is clearly meant to involve him in the discussion, inviting him to participate in the hermeneutic process.

But in relation to those laws which enjoin only *positive duties*, and forbid only such things as are not *mala in se* but *mala prohibita* merely, annexing a penalty to noncompliance, here I apprehend conscience is no farther concerned, than by directing a submission to the penalty, in case of our breach of those laws: for otherwise the multitude of penal laws in a state would not only be looked upon as an impolitic, but would also be a very wicked thing; if every such law were a snare for the conscience of the subject. (*CLE*, I.58)

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<sup>97</sup> Clitherow, *The Works of Jeremy Bentham*, ed. John Bowring, Edinburgh, 1843, I, 45; cited in Wilfrid Prest, *William Blackstone: Law and Letters in the Eighteenth Century*, 114.

<sup>98</sup> *The Gentleman’s Magazine, and Historical Chronicles*, vol. 51, 371. On the subject, see Wendell Bird, *Press and Speech under Assault: The Early Supreme Court Justices* (New York: Oxford University Press, 2016): 31–32.

<sup>99</sup> Still in 1818 *The Gentleman’s Magazine* devoted a long article in its “Review of New publications” session to Burn and Williams, East and Hawkins, Addington, Const and Nolan, *A Collection of the several Points of Sessions’ Law, alphabetically arranged, designed to assist Magistrates to refer to these several Authorities; to supply the Clergy with professional Information, and to enable Vestries*, a book that, according to the reviewers, epitomized Blackstone’s ideas: “We had not examined a great part of this compilation before we concluded that its Editor had prefixed to it an incompetent title since it also judiciously arranged and collated all the learning of Blackstone” (*The Gentleman’s Magazine*, vol. 123, February 1818, 146).

<sup>100</sup> As Bhatia argues on this subject “simplification procedures invariably attempt to control linguistic input to bring it within the experience of the reader in order to facilitate comprehension of that particular text” (Bhatia, “Simplification v. Easification – The Case of Legal Texts,” 45).

It can therefore be observed that, like in Fielding's and Sterne's novels, also in the *Commentaries* the interpretive game involves both the author and the reader. To explain the difference between moral laws and rules of action, for instance, Blackstone uses the imperative mode not only to reproduce the grammar of legal obligations, but also to address the reader thus producing – as the reference to “every man” suggests – a process of identification: “[B]ut in these cases the alternative is offered to every man; ‘either abstain from this, or submit to such a penalty.’” (*CLE*, I.58) Even rhetorical questions have a more modern communicative purpose in the *Commentaries* than in ancient legal texts. Blackstone does not simply re-propose the maieutic method of ancient rhetoric, which rather implies omniscience on behalf of the mentor, but a more genuine dialogic form.

It is a branch of the royal prerogative, that no parliament can be convened by its own authority, or by the authority of any, except the king alone. And this prerogative is founded upon very good reason. For, supposing it had a right to meet spontaneously, without being called together, it is impossible to conceive that all the members, and each of the houses, would agree unanimously upon the proper time and place of meeting: and if half of the members met, and half absented themselves, who shall determine which is really the legislative body, the part assembled, or that which stays away? (*CLE*, I.149)

This interlocutory mode is also stressed by the way he introduces himself as the author of the treatise. Blackstone actually opens his lecture referring to himself in the third person, using the pronoun ‘I’ as a parenthetical element or, being the lecture originally delivered orally, as a theatrical aside:

[T]he general expectation of so numerous and respectable an audience, the novelty, and (I may add) the importance of the duty required from this chair, must unavoidably be productive of great diffidence and apprehensions in him who has the honour to be placed in it. (*CLE*, I.3)

It is true that, after the first part of the lecture, he suddenly shifts to the first person, and he does so to vehemently reject allegations of wanting to exclude the civil law from the students' syllabus: “Far be it from me to derogate from the study of the civil law, considered (apart from any binding authority) as a collection of written reason.” (*CLE*, I.5) But more generally, the use of the pronoun ‘I’ is followed by verbs of perception (“I apprehend,” “I think,” “I presume”) which give to his discourse a tentative twist. The affirmation and disclaim of intentions continues throughout the *Commentaries*, often through an innovative use of classic rhetorical devices such as paralipsis, hedging and *captatio benevolentiae*.

In conclusion, Blackstone also knew how to put *himself* into the frame, although he did so in an interlocutory way, thus sharing the responsibility of

the text with the reader. This was part of his pedagogic intent: by suggesting a limited point of view, Blackstone reduced the cultural distance between author and reader, providing “a cogent and conveniently readable survey of the English common law.”<sup>101</sup>

## 9 Looking ahead: concluding remarks on prefaces

Blackstone’s four-volume achievement introduced a new genre, that of the primer or reference work. As seen in § 4, the author’s list of authoritative predecessors certainly acknowledged the legacy of those jurists’ attempts to systematize the common law without diminishing the scope of the work as an innovative form of writing.

When they were aware of pioneering a new genre, eighteenth-century writers would open their works with prefaces that articulated statements of purpose, defined stylistic intentions, and functionally instructed the reader about the best fruition of the work.<sup>102</sup> The *Commentaries*, made no exception. In the Introduction to Book I, we read: “[...] it may perhaps be expected, that I lay before you a short and general account of the method I propose to follow, in endeavoring to execute the trust you have been pleased to repose in my hands.” (*CLE*, I.34) For this reason, Blackstone’s introduction should by no means be considered as “ornamental, a mere concession to the stylistic or pedagogical conventions of the age, and without substantial intrinsic relation to the structure or content of the *Commentaries*” but rather as evidence of his concern with method, which he found “in many respects totally new.”<sup>103</sup>

As discussed in §3, Blackstone acknowledged the novelty of his attempt and the delicacy required by a branch of study that was still in its infancy. This responsibility – he underlined – invested both content and style. Implicitly following Cicero’s triad *Docere, delectare, movere*, also mentioned by eighteenth-century novelists, Blackstone could not “but reflect that, if either his plan of instruction be crude and injudicious, or the execution of it lame and superficial” it would “cast a damp upon the farther progress of this most useful and most

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**101** Daniel J. Boorstin, *The Mysterious Science of the Law: An Essay on Blackstone’s Commentaries*.

**102** Patrizia Nerozzi, *Alle origini della letteratura moderna*, 9 and ff.

**103** John M. Finnis, “Blackstone’s Theoretical Intentions; Note,” in *Natural Law Forum* I.1 (1967): 164.

rational branch of learning.” (CLE, I.3) The “graceful and sometimes eloquent style” adopted by Blackstone in the *Commentaries* reflects in its “simplicity” and “symmetry” the aesthetic principles of the time, namely those regarding Reason and Nature. Indeed, a close analysis of the text shows that the idea of the common law as a closed logical system finds its stylistic counterpart in a pattern based on parallelism, enumeration, and binary oppositions.<sup>104</sup> The beauty of the common law seems to reflect the beauty of the laws of nature and both, driven by reason “whose office it is to discover [...] what the law of nature directs in every circumstance of life,” (CLE, I.41) are articulated in a vigorous and consistent language.

Along with this concern, the lecture held at Oxford and used as an introduction to Section the First raises questions about authorship: to whom should we attribute the responsibility of the text? As pointed out in § 8, Blackstone prefers to share this responsibility with the reader. In this he is very close to the narrators created by eighteenth-century novelists, who, though in different ways, felt the need to define their relationship with the recipients of their works, starting a conversation or a journey in which authors and readers were equal companions.

To conclude, the mutual influence of eighteenth-century genres created a world of cross-references, involving content, style, author-reader relationship, aesthetic principles. English literature and common-law jurisprudence seemed to start from opposite positions: the former from an excess of prescriptivity – set down in ancient rhetoric and revived by contemporary pamphlets and treatises – the latter from a lack of codified, organic provisions. But on the ground of their shared experimentalism we may finally find an unexpected kinship. Both the *Commentaries* and the eighteenth-century novel imported themes, forms and languages from the classical tradition which, through a deep process of re-appropriation within the English heritage, they used for the definition of new canons. Both looked to the future.

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**104** This is reflected by the titles of the sections: “Of Master and Servant,” “Of Husband and Wife,” “Of Parent and Child,” “Of Guardian and Ward.” For the emphasis on patterns in Blackstone’s *Commentaries*, see Daniel J. Boorstin, *The Mysterious Science of the Law*, 93.

Steven Howe

# Law, Clemency and the Politics of Emotion in Heinrich von Kleist's *The Prince of Homburg*

“To war! To war! To battle! And victory! In the dust with every enemy of Brandenburg!”<sup>1</sup> These martial cries mark the close of Heinrich von Kleist's last drama, *The Prince of Homburg*, written in the final years of the author's life prior to his premature death in 1811. They signal, it seems, a moment of reconciliation: the Prince of the play's title, having previously been sentenced to death for disobeying military orders, has been pardoned by the Elector of Brandenburg and apparently reintegrated into the political community of the state. The putative happy-ending is, however, tinged with a note of uncertainty: overcome by his reprieve, the Prince first faints and then, on awakening, asks whether this is all a dream, to which a fellow soldier, Kottwitz, replies “A dream – what else?”<sup>2</sup> For all its outward clarity, the scene thus retains a lingering ambiguity.

Unsurprisingly, critical verdicts on the meaning of the play's close vary.<sup>3</sup> For some, the dream-like aura bespeaks an ironic attitude that subverts any stable moral, philosophical or political reading. For others, the final scenes succeed in delivering a genuine resolution to the drama's core conflicts. Even among this latter group, however, opinion diverges widely as to the precise nature of the outcome. Does the text ultimately celebrate the subjugation of the individual to absolute state authority, as Bertolt Brecht famously suggests?<sup>4</sup> Is the Prince absorbed into the military's machinery as a partisan of total war? Does he resist any realignment and remain fundamentally unchanged from first to last? Or does the

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1 Heinrich von Kleist, “The Prince of Homburg,” in *Heinrich von Kleist: Selected Writings*, trans. by David Constantine (Indianapolis: Hackett, 2004): 135–206, 206.

2 Kleist, “The Prince of Homburg,” 206.

3 The body of critical literature on *The Prince of Homburg* is too vast to cite, even representatively, here. For a brief overview in English, see Steven Howe, *Heinrich von Kleist and Jean-Jacques Rousseau: Violence, Identity, Nation* (Rochester: Camden House, 2012): 162–165. The present contribution draws on and develops ideas first outlined in the above study and in a subsequent chapter in Ricarda Schmidt, Seán Allan and Steven Howe, *Unverhoffte Wirkungen: Erziehung und Gewalt im Werk Heinrich von Kleists* (Würzburg: Königshausen & Neumann, 2014): 129–159.

4 See Bertolt Brecht, “Über Kleists Stück *Prinz Friedrich von Homburg*,” in *The Collected Poems of Bertolt Brecht*, eds. Tom Kuhn and David Constantine (New York: Norton & Company, 2018). The final lines of the sonnet read: “His sword still lies next to him: in pieces. / He is not dead, yet lies on his back, / With all enemies of Brandenburg in dust.” Translation by the author.

dramatic conclusion evoke an idealized synthesis of the competing claims of state and individual, of law and feeling?

Pinning down the political valences of the text is, clearly, no easy task. The play operates on multiple levels, with many layers of meaning. Kleist's own intellectual attitudes are, moreover, too elusive to offer secure orientation. One of the few points on which there is a measure of consensus, however, is that the text reflects – and reflects upon – principles of law, justice, sovereignty and statehood. Central to this is the act of clemency granted by the Elector to the Prince for his earlier insubordination. The staging of the act represents a variation on what has recently been identified as a distinct concern in Kleist's work – namely, the question of the relation between codified law and its application.<sup>5</sup> The theme recurs, with different shades and emphases, across a number of both better- and lesser-known texts within the author's *oeuvre*.<sup>6</sup> In the case of *Homburg*, the exercise of clemency – as at once both a manifestation of sovereign power and an expression of mercy – engages the essential jurisprudential tension between rigid adherence to the letter of the law and an alternative that allows greater flexibility in the dispensation of justice.<sup>7</sup> Thus we might,

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5 See the two distinct but complementary contributions from Christian Moser, "Anomie im Recht. Zum Zusammenhang von Billigkeit, Gewalt und Gesetzeskraft bei Heinrich von Kleist," in *Heinrich von Kleist. Konstruktive und destruktive Funktionen von Gewalt*, ed. by Ricarda Schmidt, Seán Allan and Steven Howe (Würzburg: Königshausen & Neumann, 2012): 57–80 and Ricarda Schmidt, "Literarische Rechtsfälle und politische Legitimität: Zur Bedeutung der Diskrepanz zwischen dem Gesetz und seiner Anwendung bei Heinrich von Kleist und E. T. A. Hoffmann für die Konstituierung von nationaler Identität," *Heilbronner Kleist-Blätter* 28 (2016): 158–178.

6 In the novella *Michael Kohlhaas*, for instance, the refusal of a corrupt judiciary to implement the law as it is prompts the title-figure's violent rebellion against the state (see Schmidt, "Literarische Rechtsfälle und politische Legitimität"). The short anecdote "The Embarrassed Magistrate," published in 1810 in Kleist's own journal *Die Berliner Abendblätter*, recounts an incident in which a soldier, having been issued a fine for taking unauthorised leave of his post, refuses to pay and insists on being put to death – a punishment that, while effectively no longer in operation, remains officially on the books. Unable to convince the soldier to budge on his position – and unwilling to spill blood over such a trifling matter – the magistrate is, at the close, left with no choice but to waive the initial penalty. In a further sketch, usually translated as "French Justice" but which refers more precisely to the German concept of "Billigkeit" or equity, we encounter the historical figure of Pierre-Augustin Hulin, a prominent general under Napoleon and alleged participant in the storming of the Bastille in 1789, who, coming face-to-face with a Prussian collaborator, suspends a law of war in a manner which, while seemingly generous, is in fact intended only to facilitate harsher treatment (see Moser, "Anomie im Recht," 74–78).

7 On the relations between law, equity and ethics, particularly as framed in and through literature, see Daniela Carpi (ed.), *The Concept of Equity: An Interdisciplinary Assessment* (Heidelberg: Winter, 2007) and Daniela Carpi (ed.), *Practising Equity, Addressing Law: Equity in Law*

on a general level, position Kleist's play in proximity to now-canonical 'law-and-literature' texts that enact the frictions between law and equity, between rules and discretion.<sup>8</sup> The particular terms of the discussion only become properly intelligible, however, when set in the context of contemporary politics and the Prussian struggle against Napoleon: insofar as the play acts out a "Schauspiel" or spectacle of sovereignty, it does so as part of a broader interest in putting on stage a new vision of patriotic community.<sup>9</sup> The economies of law and mercy bound up in the Elector's offer of clemency are, so the leading claim here, indicative of a revised state ethos that commands a new emotional commitment to the nation. In order to develop and illustrate this argument, the present reading will attempt to show how the play's political stakes relate to, and are informed by, a set of circulating discourses that frame contemporary debates concerning the relations between law, sovereignty and patriotic identity.

To begin with, though, let us briefly expand upon a few key aspects of the plot. The play opens in the garden of the castle at Fehrbellin, the Elector's residence. The Prince of Homburg, seated under an oak tree, "half awake, half asleep,"<sup>10</sup> plaits himself a laurel wreath in anticipation of military glory in the pending battle against the Swedes. The Elector, upon entering the garden with his retinue – including his niece, Princess Natalie – alights on the idea of a prank: drawing the wreath from the Prince, he winds around it his own chain of office and passes both to Natalie. Still dreaming, Homburg makes a grasp at the wreath but succeeds only in catching a glove from Natalie's hand. The following day, he attends the briefing for the imminent military encounter but, pre-occupied with thoughts of his dream and the strange glove in his possession, fails to take proper note of the instructions delivered by the Field Marshall. As

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*and Literature* (Heidelberg: Winter, 2008). The topic of the present contribution is intended as a modest tribute to Daniela's pioneering work in this area.

**8** It is interesting to note at this juncture that Shakespeare's *Measure for Measure* has frequently been cited as a probable source of inspiration for Kleist's play. See for instance Hanna Hellmann, "Kleists *Prinz von Homburg* und Shakespeares *Maß für Maß*," *Germanisch-Romanische Monatsschrift* 11 (1923): 288–296, Lawrence Ryan, "'Ein Traum, was sonst?' Kleist's *Prinz Friedrich von Homburg*," in *Heinrich von Kleist Studies*, ed. Alexej Ugrinsky (New York: AMS Press, 1980): 41–46, and Ritchie Robertson, "The Rediscovery of Machiavelli in Napoleon's Germany: Heinrich von Kleist and his Contemporaries," *Etica & Politica / Ethics & Politics* 17.3 (2015): 95–110. On Kleist's relationship to Shakespeare more generally see Meta Corssen, *Kleist und Shakespeare* (Weimar: Duncker, 1930) and Susanne Kaul, *Poetik der Gerechtigkeit: Shakespeare – Kleist* (Munich: Fink, 2008), as well as the contributions to the 2017 edition of the *Kleist-Jahrbuch*.

**9** See Galili Shahar, "The Confusion of Emotions – Violence, Desire and the Political Body in Heinrich von Kleist," *Tel Aviver Jahrbuch für deutsche Geschichte* 38 (2010): 151–168, 157.

**10** Kleist, "The Prince of Homburg," 136.



the battle unfolds, the Prince enters the fray prematurely, enabling his cavalry to rout the right flank of the Swedish army, but jeopardizing the prospect of complete victory. Returning to Berlin, he is, much to his surprise and chagrin, arrested at the Elector's behest and sentenced to death by a military court. Initially confident of a swift pardon and release, the Prince gradually comes to realize the seriousness of the situation and, fearing for his life, begs for mercy. Swayed by this, and by Natalie's intercessions, the Elector agrees to revoke the sentence – but only if the Prince openly pronounces it unjust. He pens a note to that effect, challenging Homburg to deny the fairness of the verdict. This, of course, the Prince is unwilling to do and instead he endorses the death sentence. Thus, and despite the protests of Natalie and several officers, the Elector presses on with judicial proceedings, and Homburg is taken, blindfolded, to the place of execution. Once there, however, his blindfold is suddenly removed and, in a symbolic reenactment of the opening scene, he is crowned with a victor's wreath and united with Natalie – which in turn leads to the loss of consciousness and, subsequently, the patriotic rallying call with which we started.

So bald a summary conveys little of the complexity of what is a deeply nuanced play. It suffices, however, to give a sense at least of two key elements that shape the text's political substance and which are of central relevance to the discussion here. The first concerns the representation of the Prince as an ego-centric character, driven, over and above all else, by a desire for fame and recognition. This image is introduced in the opening scene, in which his somnambulist reverie is used to quite brilliant effect as a means of laying bare his innermost thoughts and ambitions. That these are focused on the prospect of the laurel wreath is suggestive of how, in preparing for battle, Homburg is less concerned with the fate of the fatherland and more with the prospect of personal glory and the status that victory might afford him. This impression is confirmed throughout the early part of the play, not least via his actions in the field. For it is a desire to live out the images of fame imagined in the dream – coupled with a lack of precise knowledge as to his orders – that prompts the Prince's reckless entry into battle. Even when reminded of the Elector's instructions by his friends, Kottwitz and Hohenzollern, he still refuses to pay heed, and his insouciance towards the demands of military discipline is affirmed in an ironically coded exchange with a young officer whom he upbraids for failing to respect the "Ten Commandments" of the Prussian martial code – commandments that he evidently does not believe apply to himself and with which he is in the very process of breaking.<sup>11</sup> Whether, in putting the Swedes to flight, Homburg makes a decisive

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<sup>11</sup> See Kleist, "The Prince of Homburg," 155.

contribution to the Prussian military victory may be a point upon which the play remains open; what is clear, however, is that the decision to charge is born not of strategic foresight, but rather personal ambition and self-aggrandisement.<sup>12</sup> No less apparent is the Prince's "factual guilt":<sup>13</sup> his infraction doubtless amounts to military insubordination, and thus to an offence worthy of court martial and the death sentence.

The second vital aspect lies with the Elector's offer of pardon and, in particular, its educational premise and promise. If, as Derrida maintains, we ought to distinguish between the "unconditional, gracious, infinite, aneconomic" pardon, accorded to the guilty "precisely as guilty, without counterpart," and a "conditional" pardon, "proportionate to the recognition of the fault, to repentance, [and] to the transformation of the sinner,"<sup>14</sup> then the example we encounter in Kleist's play is a clear manifestation of the latter – it is, precisely, by acknowledging his guilt that Homburg shows himself genuinely worthy of clemency. That the Elector intends the offer of pardon as a pedagogical measure is, moreover, plain from the conditions he sets: in calling on the Prince to adjudicate the situation himself, he purposely offers an opportunity for rehabilitation. In this respect, the text thematises a significant strand of contemporary discourse on the right to pardon. While Kant, for instance, was famously skeptical due to the latitude such a right bestows on the sovereign to commit injustice,<sup>15</sup> other Enlightenment

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**12** On this point, I agree with the early verdict of John C. Blankenagel: "[I]n spite of assumptions by various critics that an unforeseen turn in the tactical situation justified Homburg's unauthorized attack, there is nothing in the second scene of the second act to indicate that a changed situation prompts the hasty charge. Upon general shouts of triumph and victory, Homburg impetuously orders the attack without reference to any change in developments. His conduct is clearly disobedience in the face of the enemy rather than exercise of initiative left to him by the Elector." John C. Blankenagel, "Prinz Friedrich von Homburg and Freedom of Initiative," *Modern Language Notes* 52.5 (1937): 339–341, 341.

**13** Richard Samuel, "Introduction," in *Heinrich von Kleist: Prinz Friedrich von Homburg*, ed. Richard Samuel (London: Harrap, 1957), 40. The Prince concedes as much, remarking to Hohenzollern: "The verdict of the court had to be death. / The law says so, by which it makes it judgments" (Kleist, "The Prince of Homburg," 170). At this point, however, he is still convinced that the death sentence is a mere formality, and that the Elector does not intend to have it carried out.

**14** Jacques Derrida, *On Cosmopolitanism and Forgiveness* (London and New York: Routledge, 2001): 34–35.

**15** In the *Metaphysical Elements of Justice*, Kant writes: "The right to pardon a criminal, either by mitigating or by entirely remitting the punishment, is certainly the most slippery of all the rights of the sovereign. By exercising it he can demonstrate the splendor of his majesty and yet thereby wreak injustice to a high degree" (Immanuel Kant, *The Metaphysical Elements of Justice*, trans. by John Ladd (Indianapolis: Hackett, 1999), 144.) Beccaria similarly argues against

thinkers wrote more positively of its potential as a source of moral and political instruction: Locke, in his *Second Treatise of Government*, for example, defends the right of the ruler to “act according to discretion for the public good, without the prescription of law and sometimes even against it,”<sup>16</sup> while Rousseau, in *The Social Contract*, similarly maintains that the state has no right to put to death anyone whom it can leave alive without danger and who might be turned to some good – opening the way for the granting of clemency as a measure towards patriotic re-education.<sup>17</sup> In Kleist’s drama, the act of clemency straddles this fault line. On the one hand, the exercise of the sovereign prerogative risks introducing instability and arbitrariness into the fabric of the legal-political order. The Elector, for his part, is clearly sensitive to this danger and to the possibility of charges of despotism or tyrant-like rule.<sup>18</sup> On the other hand, however, he recognizes, and is eventually willing to put to use, the potential of the pardon as a means to advance patriotic education and inspire new modes of political identification – both at the level of the individual and the collective.

Noting the connection between clemency and education in the play, particularly as it relates to an attempt by the Elector to steer Homburg to a revised understanding of duty and law, is not novel. On the contrary, it was, for a long time, very much the convention to read the text as a kind of dramatic *Bildungsroman* in which the Prince progresses, under the guidance of the Elector, from irresponsibility and self-absorption to disciplined statesmanship. Since the middle of the twentieth century, however, this interpretation has been frequently challenged, with a number of commentators rejecting outright the notion of any positive character development on the part of the Prince. The reasons cited vary considerably; one common objection though is that Homburg’s decision to accept the death sentence is driven not by moral considerations, but rather his ongoing – and unchanging – desire for fame and (personal) glory. Support for such claims is often gleaned from the wording of the Elector’s letter to the Prince, which reads as follows:

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the use of pardon on the grounds that it breaks down the juridical economy of crime and punishment and introduces arbitrariness and uncertainty into the law.

**16** John Locke, *Political Writings*, ed. by David Wootton (Indianapolis: Hackett, 1993), 344.

**17** See Jean-Jacques Rousseau, “The Social Contract,” in *The Collected Writings of Rousseau*, ed. by Roger D. Masters and Christopher Kelly, 13 volumes (Hanover: University Press of New England, 1991–2010), vol. 4, 150–151.

**18** See, for instance, his response to Natalie’s plea for a commutation of Homburg’s sentence: “My sweet child, see, were I a tyrant / Your words, I feel it keenly, would have thawed / The heart already in my iron breast. / But I ask you yourself: Am I allowed / To quash the verdict that the court has given? / What then, do you think, would be the consequences?” Kleist, “The Prince of Homburg,” 179.

Prince Friedrich, when I had you arrested  
 Because of the charge you led, too early,  
 I thought all I was doing was my duty  
 And counted on you to approve it.  
 If you believe yourself unjustly done by  
 I beg you, say so in a word or two –  
 And I will send you back your sword at once.<sup>19</sup>

The offer of pardon is unmistakably framed as a call to principles of honor and virtue. That the Prince interprets it as such is likewise apparent from his response – urged by Natalie to give the word that would secure his release, he replies:

I will not, since he faces me so fitly,  
 Confront him in an unfit way.  
 Guilt, more than a little, weighs on me  
 As I acknowledge. If he can  
 Forgive me only if I dispute it with him  
 Then I will do without his mercy.<sup>20</sup>

These lines register the Prince's understanding of the dilemma into which the Elector's appeal to his own judgment has thrust him. If he chooses life, he must do so at the cost of appearing weak and unprincipled. This his sense of honor will not allow – hence his refusal to accept the offer of pardon. By submitting to execution, Homburg no doubt wishes to secure a hero's death, not least in the hope of upstaging the Elector in his own game of political brinksmanship. In this sense, critics are quite right to insist that the Prince's pride remains intact throughout – by resisting the temptation of the Elector's offer, he is able to assert his confession of guilt as a mark of honor and nobility that appeals to his heroic nature. Yet to place this on the same level as his initial self-interest and to adduce from it a resolute fixity of character, is to overlook a couple of vital considerations. A first is how, over the course of the action, the Prince does come to acknowledge his offence against the law and the state – in Act V, Scene 7, he openly declares it his wish, “having transgressed it in the view of all the army,” to now glorify “by a willing death, the holy law of war.”<sup>21</sup> He continues:

What does the victory, comrades, matter to you,  
 One poor one more, that I perhaps

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**19** Kleist, “The Prince of Homburg,” 185.

**20** Kleist, “The Prince of Homburg,” 188.

**21** Kleist, “The Prince of Homburg,” 201.

Might wrest from Wrangel, set beside  
 The triumph over the worst of enemies  
 In us, self-will and hubris,  
 Gloriously won tomorrow? <sup>22</sup>

As Hilda Brown shrewdly observes, these lines provide an explicit summary on the distinction that runs throughout the work between the striving for fame and glory on the battlefield and an inner struggle against the self. They speak, moreover, to a shift in Homburg's own view of heroism over the course of the latter half of the play. It is here, I would suggest, that we can observe the essential development in the Prince's character, as his desire for personal fame and glory is reoriented towards the interests of the state. The terms of the offer of pardon, meanwhile – and this is our second consideration here – suggest this to be the precise ambition of the Elector's plan. At no stage does he make an aim of eliminating Homburg's passionate nature – on the contrary, the challenge he sets is designed, it seems, to deliberately engage and animate the subjective drives of honor and pride. By linking this to a necessary concession to law, order and the demands of the community, his objective is, in effect, to channel the Prince's self-interest towards a new patriotic spirit and sentiment. Thus inasmuch as Homburg's triumph over "self-will and hubris" might be read in Kantian terms as a development towards the recognition of moral duty and the Enlightenment ideal of 'maturity', it can also be plotted in terms of a revised moral affect that provides the emotional foundation for a genuine 'Vaterlandsliebe' or love of country.

As I have tried to show elsewhere, this movement lends itself to being read as a creative reworking of Rousseau's philosophical theories.<sup>23</sup> For though in *Emile* Rousseau may state that good institutions are those that know how best to "denature" man,<sup>24</sup> his own prescriptions for political community do not advance an exclusion of individual will and interests. Quite the contrary, in fact – recognizing self-interest, or *amour-propre*, to be an inescapable aspect of the human condition, Rousseau proposes an ideal of patriotism that constructively engages the ambiguous potential of man's passion for primacy and esteem by redirecting it from the individual to the collective. As Stanley Hoffmann puts it, Rousseau wanted a polis established "in which the irreversible consequences of man's entry into civil society – the development of passions and desires, the

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<sup>22</sup> Kleist, "The Prince of Homburg," 201.

<sup>23</sup> Howe, *Heinrich von Kleist and Jean-Jacques Rousseau*, 169–176.

<sup>24</sup> Jean-Jacques Rousseau, "Emile, or on Education," in *The Collected Writings of Rousseau*, vol. 13, 164.

urge to look at one's reflection in other people's eyes [...] – could be channeled to good, i.e. moral uses."<sup>25</sup> The aim of patriotic education is thus to “make the seeds of human vanity sprout into flowers of legitimate collective pride.”<sup>26</sup> This model provides, I believe, an especially useful compass to the development of Homburg's character as he passes from self-interest to collective interest, from *amour-propre* to *amour de la patrie*. In exploring the tensions between ‘duty’ and ‘inclination’ in the context of state- and nationhood, Kleist here experiments with a resolution in terms of a revised self-interest that both supports a new sense of patriotic virtue and supplies the necessary affective adhesive for political unity. This finds apt expression, moreover, in and through the play's structural pattern – it is no coincidence that the drama closes with a reprisal of the earlier garden scene in which Homburg accesses a broader projection of his subjective aspirations.

Insofar as these strains can be approached in this way via the lens of Rousseau, they also reflect and illuminate the immediate political concerns of Kleist's time. The two contexts are by no means unrelated – both Rousseau's theories and Prussian anti-Napoleonic politics might be situated as part of a wider revival of interest, over the course of the eighteenth and early-nineteenth centuries, in the cultural politics of emotion and identity. On a general level, the age of Enlightenment was marked, perhaps contrary to common assumption, by a keen appreciation of the role of the emotions in guaranteeing human existence. This manifests itself in a new vocabulary of feeling, exemplified by Herder's reformulation of the famous Cartesian statement into *sentio ergo sum* (“I feel, therefore I am”),<sup>27</sup> and in the burgeoning ‘cult of sensibility’ that formed part of what Panajotis Kondylis identifies as a Europe-wide “rehabilitation of the senses.”<sup>28</sup> It brings forth, moreover, a new educational ideal of the ‘homme sensible’ who marries sensible intuition and reflection, and decisively shapes the development of the German concept of ‘Bildung’ as a paradigm for human growth that aspires to transcend one-sided reason.<sup>29</sup> Significantly for us here,

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**25** Stanley Hoffmann, “Rousseau on War and Peace,” *American Political Science Review* 57.2 (1963): 317–333, 322.

**26** Stanley Hoffmann, “Rousseau on War and Peace,” 322.

**27** Johann Gottfried Herder, “Vom Erkennen und Empfinden der menschlichen Seele,” in J. G. Herder, *Werke in 10 Bänden*, ed. by Martin Bollacher et al. (Frankfurt/Main: Deutscher Klassiker Verlag, 1989), vol. 4, 233.

**28** Panajotis Kondylis, *Die Aufklärung im Rahmen des neuzeitlichen Rationalismus* (Stuttgart: Klett-Cotta, 1981), 19. Translation by the author.

**29** See Lars-Thade Ulrichs, “Sind wir noch immer Barbaren? Ästhetische Bildungskonzepte bei Schiller, Fichte und Nietzsche,” in *Bildung als Kunst: Fichte, Schiller, Humboldt, Nietzsche*, ed. by Jürgen Stolzenberg and Lars-Thade Ulrichs (Berlin: de Gruyter, 2010): 127–148.

we also observe this (re)valorization of emotion in the political discourse of the period. A resurgence of republican theorizing, for instance, encouraged a positive reevaluation of ‘sensibilité’ as both the “mother of humanity”<sup>30</sup> (as the entry in Diderot and d’Alembert’s *Encyclopaedia* puts it) and an essential requirement for patriotic solidarity. The French Revolution, meanwhile, not only released a widely-felt “affective energy,”<sup>31</sup> but also introduced an emphatic concept of ‘fraternité’ founded on emotional-political commitments. This, in turn, contributed to the thinking of the leaders of the Prussian reform movement who, following the occupation of Berlin and the dissolution of the Holy Roman Empire in 1806, initiated a series of measures intended to lay the affective foundation for this kind of patriotic motivation, in the hope of mobilizing national energies for a popular war against Napoleon.

That Kleist brings into view the politics of the reformers has long been established in the literature on the play. There is, indeed, a substantial body of scholarship that discusses *Homburg* as a response to reform efforts to reorganize the Prussian army along national lines.<sup>32</sup> Of particular concern here, however, is how the text registers a shift in conceptions of military honor that passes hand-in-hand with a reform of the articles of war. In the era of Frederick the Great, the Prussian soldier was accorded no individual honor, merely the collective honor of belonging to the military caste. The success of the French revolutionary and Napoleonic armies, however, produced a new appreciation of the sentiments of personal pride and honor as powerful motives for military zeal – Prince August of Prussia even went so far as to claim that “in nearly all contemporary wars, love of honor and ambition have been a greater influence [than], and have often replaced, patriotism and enthusiasm.”<sup>33</sup> One of the chief aims of the amendments made to the articles of war during the reform period was thus to activate each individual’s sense of personal honor – in a report from 26 May 1808, Auditor-General Johann Friedrich von Koenen, the initial drafter

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**30** Chevalier de Jaucourt, “Sensibilité,” in *Encyclopédie, ou dictionnaire raisonné des sciences, des arts et des métiers*, ed. by Denis Diderot and Jean Le Rond d’Alembert (Paris: Briasson, 1751–1777), vol. 15, 51–52. Translation by the author.

**31** Lynn Hunt and Margaret Jacob, “The Affective Revolution in 1790s Britain,” *Eighteenth-Century Studies* 34.4 (2001): 491–521, 497.

**32** See for instance Wolf Kittler, *Die Geburt des Partisanen aus dem Geist der Poesie. Heinrich von Kleist und die Strategie der Befreiungskriege* (Freiburg: Rombach, 1987) and Peter Paret, *Clausewitz in His Time: Essays in the Cultural and Intellectual History of Thinking About War* (New York: Berghahn, 2015).

**33** Prince August of Prussia, “Vorschläge zur Verbesserung der preussischen Militär-Verfassung” (13 June 1807), cited in Peter Paret, *Yorck and the Era of Prussian Reform, 1807–1815* (Princeton: Princeton University Press, 1966), 126–127.

of the revised disciplinary code, speaks of his ambition to awaken the soldier's "sense of honor," and to induce all members of the military to recognize their service as a "holy and inviolable duty" to their rulers and fellow citizens, as well as to the nation.<sup>34</sup> In order to rouse this new patriotic spirit, it was necessary, according to Koenen, to abandon out-of-date threats of draconian corporal punishment, such as the stocks or running the gauntlet, in favor of more humane disciplinary practices designed to 'educate' wrongdoers to the error of their conduct, and so to effect moral improvement. The revisions made to the military justice system thus entail and promote a twin aspect that is characteristic of the Enlightened nationalism of the reformers, and which hinges on two distinct educational principles.<sup>35</sup> The first is the classic Enlightenment precept that the individual is capable of instruction through reason rather than via force and coercion alone. The second, meanwhile, is the political maxim, learnt from the French, that a revised sense of military honor can be a potent force for marshaling a national army, fired by patriotic energies, to the cause of war.

This political backdrop provides an alternative optic for understanding the educational intent of the Elector's offer of pardon. That he initially means to have Homburg executed is apparent – readings that construe the passing of the death sentence as a mere pedagogical ploy do not cohere with the textual representation of events as they unfold. In the immediate aftermath of the battle, the Elector openly declares:

Whoever it was who led the cavalry  
In battle and before, by Colonel Hennings,  
The enemy's bridges could be destroyed,  
Advanced, himself deciding to,  
Before I gave the order, forcing them to flee,  
His offence is capital, I state that now,  
And summon him before a court martial.  
– The Prince of Homburg did not lead them?<sup>36</sup>

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<sup>34</sup> Report of 26 May 1808. Reprinted in *Die Reorganisation des preussischen Staates unter Stein und Hardenberg: Das preussische Heer vom Tilsiter Frieden bis zur Befreiung 1807–1814*, vol. 1, ed. by Rudolf Vaupel (Osnabrück: Hirzel, 1968): 409–437. Translation by the author.

<sup>35</sup> Matthew Levinger, *Enlightened Nationalism: The Transformation of Prussian Political Culture, 1806–1848* (New York: Oxford University Press, 2000).

<sup>36</sup> Kleist, "The Prince of Homburg," 164. Several critics suggest that, in first announcing the death sentence, then ordering the court martial, the Elector partakes here of a despotic act. As Hans-Jürgen Schlütter points out, however, the Elector does not condemn Homburg as judge but rather indicts him on the charge of insubordination and states the commonly



The final line betrays his suspicion – understandable given the Prince’s track-record (this is, we are told, his third transgression) – that it may indeed have been Homburg who was responsible for leading the charge. A few lines later, however, he restates his verdict so as to make clear that the punishment would be the same irrespective of the identity of the culprit:

I have more battles than this last to fight  
 And I will have the law obeyed.  
 Whoever it was who led them into battle,  
 I say it again, he has forfeited his head  
 And herewith I courtmartial him.<sup>37</sup>

When Natalie subsequently comes to plead for Homburg’s life, the Elector still remains unmoved and continues to stress the importance of a strict application of the law for the well-being of the state. Only when he hears, “in extreme astonishment,” of the Prince’s psychological collapse does he change his mind and, “confused,” agree to extend the offer of pardon.<sup>38</sup> It is at this point that the Elector sets in motion his scheme for educating Homburg – in a manner consistent with the fundamental tenets of the reform of Prussian military criminal law. By placing judgment in the Prince’s own hands, he deliberately seeks to mobilize the latter’s sense of self-action – the offer of pardon encapsulates a move towards a new politics of crime and punishment that relies less on fear and the threat of violence to secure obedience to the law and more on the individual’s reasoned understanding of its meaning and necessity. At the same time, the appeal to pride and honor evinces an attempt to mold the “feeling citizen” who, as Susan Maslan phrases it, “feel[s] his ties and obligations of citizenship as part of his interiority.”<sup>39</sup> Viewed in this light, we might recognize how the text subtly references the reformist ‘pedagogisation’ of military criminal law and its twofold purpose both to replace blind obedience to authority with rational self-rule and to cultivate a new vision of national identity based on the patriotic emotions of the people.

Of further vital significance to the political substance of the play is the manner in which the encounter between the Elector and the Prince plays out not in private, but rather on a public stage. This comes to the fore especially clearly to

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known capital nature of the offence. See Hans-Jürgen Schlütter, “Fünf Thesen zu *Prinz Friedrich von Homburg*,” in *Heinrich von Kleist Studies*: 47–58, 51.

<sup>37</sup> Kleist, “The Prince of Homburg,” 164.

<sup>38</sup> Kleist, “The Prince of Homburg,” 180.

<sup>39</sup> Susan Maslan, “The Dream of the Feeling Citizen: Law and Emotion in Corneille and Montesquieu,” *SubStance* 35 (1) (2006): 69–84, 75.

wards the close in the dramatic delivery of Homburg's reprieve in front of the assembled soldiery. Yet as David Pan suggests, concerns with a public politics of representation appear to be already at work in the Elector's initial offer of pardon.<sup>40</sup> Paradoxically, or seemingly so at least, the offer is issued at a point at which Homburg has shown himself particularly unworthy of clemency as he loses all courage and descends into an abject fear of death. The timing of the decision might be explained, however, by an awareness on the Elector's part of the importance of not only political principles, but also their performance and enactment. For if the planned execution is intended to make an example of Homburg as a means to reinforce the claims of military obedience, the latter's cowardice, as Pan puts it, "provides [the Elector] with an even better chance to publicly demonstrate the importance of maintaining the law."<sup>41</sup> More than this, it also offers the prospect of an effective display of political power and sovereignty. The granting of clemency, that "most dramatic example of an act of mercy,"<sup>42</sup> is, as Schmitt, Agamben and Derrida all note, a quintessential sovereign act that embodies the power to decide on the exception to the law. What counts in the "absolute exception" of the right of pardon is, Derrida states:

that the exception *from* the law, the exception *to* the law, is situated at the summit or at the foundation of the juridico-political. In the body of the sovereign, it incarnates what founds or supports or establishes, at the top, with the unity of the nation, the guarantee of the constitution, the conditions and exercise of law.<sup>43</sup>

The logic of clemency points, unavoidably, to the disregard of positive law. Yet as Derrida remarks, the right to pardon functions by inscribing a power "above the law" within the field of legality – it is a kind of "lawful lawlessness."<sup>44</sup> The exception marked by the act of clemency does not, moreover, undermine but rather supports the basic validity of the rule itself – the effect of the pardon is not to pronounce innocence, but rather to forgive one identified as guilty, and thus

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**40** See David Pan, "Representing the Nation in Kleist's *Prinz Friedrich von Homburg*," in *Heinrich von Kleist and Modernity*, ed. by Bernd Fischer and Tim Mehigan (Rochester: Camden House, 2011): 93–112, 100.

**41** Pan, "Representing the Nation," 100.

**42** Robert Weisberg, "Apology, Legislation, and Mercy," *North Carolina Law Review* 82 (2004): 1415–1440, 1421.

**43** Derrida, *On Cosmopolitanism and Forgiveness*, 46.

**44** Austin Sarat and Nasser Hussain, "On Lawful Lawlessness: George Ryan, Executive Clemency and the Rhetoric of Sparing Life," *Stanford Law Review* 56 (5) (2004), 1307–1344. Emphasis added.

to confirm the transgression of the law.<sup>45</sup> In Kleist's play, the Elector carefully orchestrates the delivery of the pardon in such a way as to dramatically endorse military law and reaffirm his own sovereign power. His task is complicated by the threat of insurrection – unsure as to her uncle's true intentions towards Homburg, Natalie first summons her own regiment to Fehrbellin, then audaciously invents an order for Kottwitz to mobilize his troops. This situation raises the stakes considerably – the challenge for the Elector is not just to assert the authority of law in the case against Homburg, but to also regain control of the army and stave off the risk of rebellion. This he achieves via a masterful demonstration of statecraft. In a first move, he draws the Prince into a public statement of guilt that serves to confirm the sanctity of law to the illicitly gathered troops. The individual lesson learnt by Homburg – of the need for military obedience and duty to the state – is here transferred to the collective, and the threat of rebellion is effectively quelled. With the arguments against his actions openly refuted, the Elector then, in a second move, enacts the pardon, safe in the knowledge that he can do so without imperiling either his own authority or the public order. Through this striking and carefully timed display of mercy, he succeeds, moreover, in eliciting an emotional response that reenergizes patriotic commitment to the fatherland, as evidenced by the succession of war cries at the close. In these final scenes, the play thus stages a scenario of politics that affirms, and apparently actualizes, the 'revolutionary-conservative'<sup>46</sup> aim of the reformers to achieve the bonds of affective patriotic citizenship, but to leave intact the structures of the monarchical state.

All of this might encourage the view of an unconditional triumph on the part of the Elector. Yet the level of ascendancy he acquires in the final act ought not to blind us to a shift in his own outlook – a shift that, while much less dramatic than Homburg's, is no less significant. In his initial stance, the Elector aligns with an Enlightenment or Kantian-style commitment to equality before the law – for most of the play, he insists upon the point that he, as sovereign, is bound by legal constraint, hence why he cannot simply confer the widely expect-

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<sup>45</sup> According to Agamben, the exception does not "subtract itself from the rule; rather the rule, suspending itself, gives rise to the exception and, maintaining itself in relation to the exception, first constitutes itself as a rule." Giorgio Agamben, *The Omnibus Homo Sacer* (Stanford: Stanford University Press, 2017), 19.

<sup>46</sup> I borrow the term "revolutionary conservatism" here from Dieter Sturma, who uses it in his discussion of the politics of the late Romantics. See Dieter Sturma, "Politics and the New Mythology: The Turn to Late Romanticism," in *The Cambridge Companion to Idealism*, ed. by Karl Ameriks (Cambridge: Cambridge University Press, 2000): 219–238.

ed pardon.<sup>47</sup> This position is, however, repeatedly challenged by a discourse of emotions that, couched in the metaphor of the 'heart', appeals for a model of rule that leaves space for love, mercy and grace. A first iteration of this comes in the Prince's own speech immediately following his arrest in Act 2, Scene 9:

My cousin Friedrich wants to play the part of Brutus  
 And sees himself already done in chalk  
 On canvas seated on the consul's chair  
 The Swedish standards in the foreground  
 And on a table our articles of war.  
 By God, in me he will not find the son  
 Who under the axe will still admire him.  
 My heart is German in the old way,  
 Accustomed to generosity and love  
 And if he comes at me in this time now  
 In all the stiffness of antiquity  
 So much the worse for him. I pity him.<sup>48</sup>

The opposition Homburg sets up here is that between strict adherence to the letter and form of the law – as exemplified by the iconic figure of Lucius Junius Brutus – and a more humane, 'Germanic' alternative based on love and generosity. Natalie, in her exchange with the Elector, speaks in a similar register when she argues for the necessity of the emotions as a supplement to state law ("The laws of war, I do know that, must govern / But so too must the feelings of the heart"),<sup>49</sup> while the old patriot Kottwitz does likewise when he asserts that the "highest, chiefest" law is not the "letter of your [the Elector's] will" but rather the fatherland, which should "be the mover in your generals' hearts."<sup>50</sup> Such examples speak to how, in its second half, the play evolves into a dramatic disquisition on principles of law and the respective merits of rigidity and flexibility in their application.

Given how the action unfolds, it is perhaps unsurprising that a number of critics see in the text a vindication of legal discipline and rigor. Dirk Grathoff, for instance, reads the allusion to Brutus as a reference to the austere republi-

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<sup>47</sup> It should be noted here that this is the Elector's position in his argumentation. A number of commentators have – rightly – pointed to apparent inconsistencies in his practice, as evidenced, for instance, by his previous leniency towards Homburg for his earlier indiscretions. See Elystan Griffiths, *Political Change and Human Emancipation in the Works of Heinrich von Kleist* (Rochester: Camden House, 2005), 115.

<sup>48</sup> Kleist, "The Prince of Homburg," 166–167.

<sup>49</sup> Kleist, "The Prince of Homburg," 179.

<sup>50</sup> Kleist, "The Prince of Homburg," 196.

canism of the French Revolution,<sup>51</sup> which is, he avers, held up as a model to follow. The political message of the play is, Grathoff suggests, that in order to stand any chance of combatting the French, the Prussians must go the way of adopting the “inhuman” legal rigor of the revolutionaries – this is, he maintains, the essence of the lesson imparted to the Prince.<sup>52</sup> In taking the Brutus imagery as a coded reference to revolutionary politics, Grathoff is, in my view, quite correct. Yet I disagree with the direction of his reading, not least as it fails, I believe, to take adequate account of the point that the pardon *is* ultimately granted. On the one hand, the act of clemency is, as we have seen, part of a power play performed by the Elector to shore up his authority and that of the legal order. On the other, however, the very fact that the law is not strictly enforced carries its own political significance, particularly when considered in reference to the legal politics of the Revolution. For the right to pardon was one of those institutions effectively swept away by the democratic zeal of the revolutionaries<sup>53</sup> – a casualty of the collapsing of moral rigor into a severe legality that barred all exceptions and closed off any space between the text of law and its prosecution.<sup>54</sup> In *Homburg*, by way of contrast, what happens towards the end is that a gap opens up between law and application. The conferral of the pardon, inasmuch as it may be staged in such a way as to reiterate the primary patriotic values of the play, nonetheless subverts the strictest rigors of republican justice – unlike in the case of Brutus, emotional ties are not here sacrificed in the name of absolute fidelity to the law. Considered in this light, the exercise of clemency appears suggestive of a new state ethos that, in line with Natalie’s credos, combines “the laws of war” with the “feelings of the heart.” Her pleas for a more flexible and humane state politics do not, it seems, fall

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51 The revolutionaries famously idolised Brutus’s sacrifice of his sons as an exemplar of patriotic virtue.

52 See Dirk Grathoff, “Heinrich von Kleist und Napoleon Bonaparte, der Furor Teutonicus und die ferne Revolution,” in *Heinrich von Kleist: Kriegsfall – Rechtsfall – Sündenfall*, ed. by Gerhard Neumann (Freiburg: Rombach, 1994): 43–68, 56.

53 As Kathleen Dean Moore remarks, “For ten turbulent years, all pardons and commutations, all acts which, in the words of the Penal Code of 1791, tended to ‘impede or suspend the exercise of criminal justice’, were abolished.” Kathleen Dean Moore, *Pardons: Justice, Mercy and the Public Interest* (New York: Oxford University Press, 1999), 24.

54 Witness, for instance, Robespierre’s remarks before the National Assembly on 18 November 1790: “[T]he word *jurisprudence*, as it was understood under the ancien régime, has no place under the new order; it should be struck from our language. In a state possessing a constitution and a legislature, jurisprudence means nothing more than the *law*.” Cited in: Mauro Bussani and Francesca Fiorentini, “The Many Faces of Equity. A Comparative Survey of the European Civil Law Traditions,” in *The Concept of Equity*: 101–134, 114.

on deaf ears – rather, they help the Elector to the insight that he risks overstraining his commitment to formal legal justice. Over the course of the drama, he too thus undergoes a development, evolving into a prototype for a new form of rule that is just but merciful and which demonstrates greater attentiveness to patriotic emotions and the wishes of the people. At the close, the quality of clemency is upheld both as an attribute of the wise legislator and a vital grounding for a model of statehood that takes shape against, rather than in emulation of, the strict legalism of the Revolution. By preserving space for the sovereign's prerogative of mercy, the political vision that emerges from the play recalls earlier principles of monarchical authority.<sup>55</sup> What is crucial, however, is how the action ties the will of the sovereign to a communal ethos founded on traditional mores and morals – on those laws of custom that are, as Rousseau puts it, “engraved [...] in the hearts of the citizens,” and which form “the genuine constitution of the state.”<sup>56</sup> Thus inasmuch as the text might be seen to endorse mercy as a device for ‘seasoning’ justice, the prime focus is on its value as a political virtue that works to promote the kind of positive affective relationship to community that makes the citizens “love the fatherland and its laws.”<sup>57</sup>

This, then, returns us to our point of departure and the question of the overriding outlook provided by the play's denouement. My reading is that the resolution offered in the final scenes projects a conception of political identity that seeks to balance duty to the law with patriotic feeling – in this, I align fairly closely with an established, if perhaps unfashionable, critical tradition that interprets the drama as progressing towards an idealised synthesis of reason and emotion, obedience and freedom. Vital to this understanding is the apparent

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55 Blackstone, for instance, remarks in his *Commentaries*: “This is indeed one of the great advantages of monarchy in general, above any other form of government; that there is a magistrate, who has it in his power to extend mercy, wherever he thinks it is deserved: holding a court of equity in his own breast, to soften the rigor of the general law, in such criminal cases as merit an exception from punishment. [...] [I]n monarchies the king acts in a superior sphere; and though he regulates the whole government as the first mover, yet he does not appear in any of the disagreeable or invidious parts of it. Whenever the nation see him personally engaged, it is only in works of legislature, magnificence, or compassion. To him therefore the people look up as the fountain of nothing but bounty and grace; and these repeated acts of goodness, coming from his own hand, endear the sovereign to his subjects, and contribute more than any thing to root in their hearts that filial affection, and personal loyalty, which are the sure establishment of a prince.” William Blackstone, *Commentaries on the Laws of England* (New York: William E. Dean, 1853), 314.

56 Rousseau, “The Social Contract,” 77.

57 Rousseau, “Considerations on the Government of Poland,” in *The Collected Writings of Rousseau*, vol. 11, 227.

double movement of both the Elector and the Prince: as the latter develops a new willingness to subordinate individual interest to the greater good of the state, so the former arrives at a revised understanding of the qualities of the 'heart' as a decisive supplement to legal rigor.<sup>58</sup> The closing ceremony in the garden does, clearly, imply circularity and traditional structures of power remain intact at the end. Yet this neither authorizes the old Prussian order, nor provides a necessarily ironic or parodic slant on the processes of change that have occurred over the course of the action. In fact, the repetition of the initial scene as success rather than mere trick can be taken to reinforce both the broadening of Homburg's subjective gaze and the Elector's newfound awareness of the needs of the individual. The dream-like aspect that characterizes the episode may well refuse the reader absolute closure and certainty, but it does not invalidate all that has gone before – as Benjamin Bennett succinctly puts it, “in the very act of denying us the tragic or cathartic confirmation of our idea, the play still expresses the idea symbolically.”<sup>59</sup> The happy-ending thus stands as such, and the play's final moments can be read as a literary utopia – one that gestures towards a new ideal of political community as a possible model for a reformed Prussian state. As is usual in Kleist, however, it is an ideal that remains fragile, subject to the instability of human affairs, and hence tentatively poised between the world of illusion ('dream') and that of reality.

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**58** Galili Shahar reaches a similar verdict, albeit via a different route, when he writes: “The scene in the palace garden hints at the triumph of the law. However, it is not only that Homburg now ‘internalizes’ the law and the language of the sovereign and becomes a faithful, disciplined officer. The concept of sovereignty also ‘internalizes’ the prince – the ‘heart’ – the body of political libido” (Shahar, “The Confusion of Emotions,” 161–162). For a contrastive reading, see Seán Allan, *The Plays of Heinrich von Kleist: Ideals and Illusions* (Cambridge: Cambridge University Press, 1996): “As the final scene unfolds, it becomes increasingly obvious that what we are witnessing is little more than a public relations exercise, stage managed by the Elector, to prop up the hollow structures on which his authority rests. [...] The ending of the play shows that the reasonable balance of discipline and initiative has not been achieved; the old, rigid order is still firmly in place” (256–257).

**59** Benjamin Bennett, *Modern Drama and German Classicism: Renaissance from Lessing to Brecht* (Ithaca: Cornell University of Press, 1979), 52.

Anna Enrichetta Soccio

# Fairy Tales and the Representation of Female Education in Elizabeth Gaskell's *Wives and Daughters*

Elizabeth Gaskell is acknowledged as one of the most representative and versatile voices of the Victorian age. Her “Condition-of-England novels” were immediately successful in that they responded to the need to talk about that precise moment in English history dominated by growing industrialisation and by its effects on society and on individuals. This led to deep reflection concerning the phenomenon of change. *Mary Barton* (1848), *Ruth* (1853) and *North and South* (1855) in a very characteristic way represent a world in which the social and epistemic dynamics are changing so fast that they undermine the certainties on which the Victorian identity is based. These “industrial” novels highlight the complexity of the relationships between the workers and the captains of industry, between opposite political visions and between the relentlessness of evolution and the fear of revolution. Nonetheless, Gaskell still respects the founding values of Englishness and the Unitarian community.

Gaskell, however, did not only write about the turbulent England of the 1840's, since her interests went much further than that. Charles Dickens understood this. Thus, in 1850, when he started his publishing enterprise, *Household Words*, he invited Gaskell to contribute to the magazine:

I do not know what your literary vows of temperance or abstinence may be, but as I *do* honestly know that there is no living English writer whose aid I would desire to enlist, in preference to the authoress of *Mary Barton* (a book that most profoundly affected and impressed me) I venture to ask you whether you can give me any hope that you will write a *short* tale, or any number of tales, for the projected pages.<sup>1</sup>

Gaskell's collaboration with Dickens began with the very first issue of that same year, with a story called “Lizzie Leigh” that followed the opening article, written by Dickens himself (“A Preliminary Word”) and continued for some years with stories, novels in instalments and articles. Dickens had perceived the great potential and attraction of Gaskell's writing, to the extent that he even considered some of its characteristics as almost “magical” and destined to last: “My Dear

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1 Charles Dickens, “Letter to Mrs. Gaskell” [January 31st, 1850], in *The Selected Letters of Charles Dickens*, ed. Jenny Hartley (Oxford: Oxford University Press, 2012), 210.



Scheherazade – for I am sure your powers of narrative can never be exhausted in a single night, but must be good for at least a thousand nights and one.”<sup>2</sup> Dickens’ choice of a nickname – Scheherazade – intends to emphasize Gaskell’s abilities, going far beyond the pleasure of the plot or social commitment, for which her work was included in the literary canons of the nineteenth century. Gaskell had a natural inclination for story-telling, which had its roots in her Unitarian upbringing, in her particular awareness of the role of women in society and even more so in her strong sensitivity for the language of narration. Hence her use of a series of registers and styles, by which she can dramatize the social contrasts, the cultural clashes and the interior experiences of her characters, all in the tradition of realist writing.

Over the last fifty years, Gaskell’s work has been re-examined in the light of a series of particular characteristics including her domestic and female vision of the historical change England was going through, her tendency to record the details of everyday life, her firmness in reporting social issues, the use of comedy and parody in her description of contemporary society, as well as her use of ballads, fairy tales, fantasy and gothic stories in exploring the various aspects of the human soul and the interactions between individuals<sup>3</sup>. The fairy tale<sup>4</sup> in particular, connotes Gaskell’s last novel *Wives and Daughters*, which was published in monthly instalments in the *Cornhill Magazine* from August 1864 to January 1866. This novel was underestimated for a long time, partly because it was incomplete (Gaskell died in November 1865) and partly because the tone was too feminine and too “simply” domestic.<sup>5</sup>

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2 Charles Dickens, “Letter to Mrs Gaskell” [25 November 1851], in *The Pilgrim Edition of the Letters of Charles Dickens*, ed. Graham Storey and Kathleen Tillotson (London: Clarendon, 1988), 6: 545.

3 The biography published by Arthur Pollard and the letters edited by J.V.C. Chapple and Arthur Pollard have been fundamental to the re-evaluation of Gaskell’s work: Arthur Pollard, *Mrs. Gaskell: Novelist and Biographer* (Manchester: Manchester University Press, 1965); J.V.C. Chapple and Arthur Pollard, *The Letters of Mrs. Gaskell* (Manchester: Manchester University Press, 1966); J.V.C. Chapple, *Elizabeth Gaskell: A Portrait in Letters* (Manchester: Manchester University Press, 1980). To these, some influential critical works have followed: Enid L. Duthie, *Elizabeth Gaskell* (London, Routledge, 1979); Patsy Stoneman, *Elizabeth Gaskell* (New York: Harvester Press, 1986); Francesco Marroni, *La Fabbrica nella Valle. Saggio sulla Narrativa di Elizabeth Gaskell* (Bari: Adriatica, 1987); Jenny Ublow, *Elizabeth Gaskell. A Habit of Stories* (London: Faber, 1993); Anna Unsworth, *Elizabeth Gaskell: An Independent Woman* (London: Minerva Press, 1996).

4 See Daniela Carpi’s illuminating introduction to the genre in *Fables of the Law: Fairy Tales in a Legal Context*, eds. Daniela Carpi and Marett Leiboff (Berlin: De Greyuter, 2017): 4–21.

5 To such a prejudice the words of Henry James and David Cecil may have influenced later criticism. Henry James, unsigned review of *Wives and Daughters* in *Elizabeth Gaskell: The Critical Heritage*, ed. Angus Easson (London: Routledge, 1991), 463–467; David Cecil, *Early Victorian*

Yet, *Wives and Daughters* is the only one of its kind of Gaskell's work, since it is based on a vision of reality that is conditioned by Darwinian evolutionism but filtered by the dimension of the fairy tale. That is to say that the domestic realm implied by the sub-title ("An everyday story") is expressed through narrative models pertaining to the fairy tale in order to create an effect of friction that questions the Victorian social and narrative conventions. Still, from the very beginning, Gaskell's critics stressed how the novel concentrates on the accurate reproduction of realistic details defending the masculine values of science, rationality and common sense, in contrast with feminine frivolity, irrationality and inconsistency. According to this interpretation, the fairy tale is used as an element of contrast in the male/female, child/adult opposites and Gaskell, who intended to illustrate "everyday story," uses different tones and registers to show the social and psychological growth of the main character, Molly Gibson.

The fairy tale genre offers the author a framework for her plot, a universal structure that manages to convey meanings that are immediately recognisable and transversal to the various social classes and age groups. The fairy tale therefore becomes a narrative strategy, which on the one hand works as a *captatio benevolentiae* with respect to the readers and on the other hand shows, as Jack Zipes claims, "the process of writing as part of a social process, as a kind of intervention in a continuous discourse, debate and conflict about power and social relations."<sup>6</sup> In *Wives and Daughters* the rhetoric of the fairy tale is clearly related to the power relationships within a community. The main character's growth is guided by the cornerstones of bourgeois power (masculine, rational, scientific), in a context that only acknowledges pre-established dynamics. For a woman of the nineteenth century, to follow a different path from the one already traced by the conventions of the patriarchal system would be unthinkable.

*Wives and Daughters* offers an extraordinary variety of family and social relationships animated by women who, despite the fact that they epitomise the types of women already codified in the Victorian canons, become key elements

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*Novelists* (London: Constable, 1934). See Jill L. Matus, "Introduction," in *The Cambridge Companion to Elizabeth Gaskell*, ed. Jill L. Matus (Cambridge: Cambridge University Press, 2009), 1–9, and Patsy Stoneman, "Gaskell, Gender, and the Family," in *The Cambridge Companion to Elizabeth Gaskell*: 131–137.

<sup>6</sup> Here Jack Zipes discusses Friedrich Jameson's idea of the literary work as a symbolic act "which is grasped as the imaginary resolution of real contradiction" as explained in *The Political Unconscious: Narrative as a Socially Symbolic Act* (New York and Oxford: Routledge, 1983). See also Jack Zipes, *Fairy Tales and the Art of Subversion* (New York and Oxford: Routledge, 2006), 2. Zipes has widely contributed to the establishment of fairytale studies, providing an interdisciplinary model of socio-historical and cultural analysis that explains the fairy tale throughout history.

in decoding a “modernity” that is interpreted in various ways, depending on how close they are to the threshold that separates them from the area of intellectual escape. These characters do not manifest revolutionary ambitions: the title of the novel itself refers to very specific roles that relate to and depend on men (*wives*, in that they are women who have a husband, *daughters*, in that they are women who have a father), thus suggesting a reinforcement of male authority. Here, however, it should be pointed out that Gaskell never challenged the patriarchal system or the roles it assigned – as Tennyson would say, “man to command, women to obey.”<sup>7</sup> The author unconditionally accepted the values that were socially endorsed; yet, she was sensitive to the contractions and cultural changes of her time, so she was constantly looking for strategies that could express the difficulties for women in terms of growing up as individuals. Molly Gibson in *Wives and Daughters*, as the last of Gaskell’s heroines, has the task of expressing a femininity that represents a healthy compromise between domestic virtue and intellectual ambitions. Bypassing a path characterised by the structure and language of the fairy tale, Molly achieves her place in her private life and in her public life and finally represents the model of a woman that Gaskell worked on her whole life.

The main effect of the decision to turn to the fairy tale in order to tell a story about “everyday life” is that of confusing the reader. If the title and the sub-title lead one to have clear and well defined expectations – it is a realistic novel about events in everyday life – the beginning looks like a deviation from the coordinates of a novel:

To begin with the old rigmarole of childhood. In a country there was a shire, and in that shire there was a town, and in that town there was a house, and in that house there was a room, and in that room there was a bed, and in that bed there lay a little girl; wide awake and longing to get up, but not daring to do so for fear of the unseen power in the next room – a certain Betty, whose slumbers must not be disturbed until six o’clock struck, when she wakened of herself “as sure as clockwork,” and left the household very little peace afterwards. It was a June morning, and early as it was, the room was full of sunny warmth and light.<sup>8</sup>

As one can see, the way the narrative is organised, the language and the tone can be attributed to the folklore tradition of the fairy tale. The repetition, the lack of a specified place and time, the presence of a little girl and the reference to childhood are very incongruous with the title and they also establish a universality so

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<sup>7</sup> Alfred Tennyson, *The Princess* [1847], (CreateSpace Independent Publishing Platform, 2017).

<sup>8</sup> Elizabeth Gaskell, *Wives and Daughters* [1864], with an Introduction by Pam Morris (London: Penguin, 1996), 5.

all the readers can relate to the story, regardless of their social class or age. The expression “old rigmarole” immediately reminds one of a shared cultural experience<sup>9</sup> and at the same time, of women and of the social role of women, in that they have an imagination: the same imagination that plays an essential role in children’s social growth.

It is to be said, as Carrie Wasinger rightly mentions, that between the eighteenth and the nineteenth century, “fantasy was a heavily contested arena, particularly among educators.”<sup>10</sup> At that time, pedagogic debates were animated by two different points of view: one considered that using one’s imagination interfered with useful knowledge, whereas the other supported a positive influence of the imagination on children’s growth. The fairy tales told by the Grimm brothers and by Hans Andersen, which were translated into English in 1823 and 1846 respectively and the *Arabian Nights*, translated in 1704, 1721 and 1838–40, even though they were bowdlerized and the most explicit parts had been omitted, proved to be a useful approach and educational method in the mid-Victorian society. They were perceived as imaginative stories that provided an “escape through a diametric fantastic reversal, so that the narrative world actually explores the underside of our conscious world.”<sup>11</sup> They became so popular that they were reported as an integral part of England’s mission to make the world civilised. Dickens, for example, in *Hard Times* (1854), brilliantly illustrates the risks of an education that involves neither the use of the imagination nor the habit of reading stories that are not related to the exact sciences.<sup>12</sup>

In the second half of the nineteenth century, “fantasy” was being used more often than not, albeit with different aims and methods, which shows how popular it was: its authors included Dickens, who has already been mentioned, Charles Kingsley, Edward Lear, Lewis Carroll, George MacDonald, Edith Nesbit and Rudyard Kipling.<sup>13</sup> Then since children’s education was entrusted to women (mothers or governesses), the fairy tales ended up representing one aspect of socialising processes and therefore a part of the knowledge of educated

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9 See Pam Morris, “Introduction to Gaskell,” in *Wives and Daughters*, xii.

10 Carri Wasinger, “That ‘Old Rigmarole of Childhood:’ Fairytales and Socialization in Elizabeth Gaskell’s *Wives and Daughters*,” *Studies in the Novel* 30.3 (2008): 268–284, 271.

11 Carpi, *Fables of the Law*, 7.

12 In a famous speech delivered in Manchester in December 1858, Dickens maintained: “Do not let us [...], in the laudable pursuit of the facts that surround us, neglect fancy and imagination [...] Let the child have its fables.” *The Speeches of Charles Dickens*, ed. K. J. Fielding (Hemel Hempsted: Harvester-Wheatsheaf, 1988), 284.

13 On this topic see the interesting study by Stephen Prickett, *Victorian Fantasy* (Waco, TX: Baylor University Press, 2005).

adults. It is therefore surprising that when reminding the governess, Miss Eyre – this name is a clear tribute by Gaskell to her friend Charlotte Brontë – of her teaching duties with respect to her daughter Molly, Mr Gibson should say:

“Now, Miss Eyre,” said he, summing up his instructions the day before she entered upon her office, “[...] Don’t teach Molly too much: she must sew, and read, and write, and do her sums; but I want to keep her a child, and if I find more learning desirable for her, I’ll see about giving it to her myself. After all, I’m not sure that reading or writing is necessary. Many a good woman gets married with only a cross instead of her name; it’s rather a diluting of mother-wit, to my fancy; but, however, we must yield to the prejudices of society, Miss Eyre, and so you may teach the child to read.”<sup>14</sup>

Very little is considered in Molly’s education: not the exact sciences, which were only for boys and not even fantasy, almost as though the girl was to be kept in a permanent state of childish innocence. This description is in stark contrast with what can be seen in the letters from Gaskell, who as part of the Unitarian community and the mother of four daughters, considered the education of her girls as a fundamental part of their and her life<sup>15</sup>. In fact, even before sending them to the boarding schools she chose for them, Gaskell made sure her daughters learnt to write, learnt mathematics, music, dance, drawing and French with the help of governesses and teachers, as well as history and natural history with the help of her husband William, and grammar and literature under her own supervision<sup>16</sup>. Molly, however, has to fight for her right to become part of the adult society and she struggles to learn what she needs to know in order to become the “heroine” of the story:

It was only by *fighting and struggling hard*, that bit by bit Molly persuaded her father to let her have French and drawing lessons. He was always afraid of her becoming too much educated, though he need not have been alarmed; the masters who visited such small country towns as Hollingford forty years ago, were no such great proficients in their arts. Once a week she joined a dancing class in the assembly-room at the principal inn in the town: the “George”; and, being daunted by her father in every intellectual attempt, *she read every book that came in her way, almost with as much delight as if it had been forbidden*.<sup>17</sup>

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14 Gaskell, *Wives and Daughters*, 34.

15 On the primacy of education in Unitarian thinking, see Louise Henson, “‘Half Believing, Half Incredulous:’ Elizabeth Gaskell, Superstition and the Victorian Mind,” *Nineteenth-Century Contexts*, 24:3 (2005): 251–69.

16 Elizabeth Gaskell, “Letter to Fanny Holland” [1847], in *Elizabeth Gaskell: A Portrait in Letters*, ed. J. A. V. Chapple (Manchester: Manchester University Press, 1980), 58. See, moreover, Pauline Nestor, “‘A conscientious and well-informed Victorian mother:’ Elizabeth Gaskell’s Letters to her Daughters,” *Women’s History Review* 24:4, 2005, 591–602.

17 Gaskell, *Wives and Daughters*, 34 (italics added).

The narrating voice highlights the contrasting positions of the father and the daughter in the absence of the mother. Like in the most famous fairy tales, the main character does not have a mother and has to make her own way in a hostile community. Not only that: Mr Gibson, a country doctor who is widowed while still a young man, marries again unexpectedly, which creates the actantial narrative scheme typical of this genre. When Molly's stepmother, Mrs Kirkpatrick and her half-sister Cynthia arrive on the scene, she takes on the role of Cinderella and her future is continuously threatened by forces that she cannot control. Her story seems to have already been written but Molly resists and becomes the spokeswoman of a conscious femininity that is built around her self-taught education that undermines the social model of the separate male and female spheres.

Her first form of resistance takes place early on, in Chapter 2, when Lord Cumnor, the owner of The Towers, the estate Molly lived on, talks to her in a childish voice about fairy tales like "The Three Bears," Sleeping Beauty" and "The Seven Sleepers," that Molly openly disassociates herself from.<sup>18</sup> Moreover, when she is sad about her father remarrying, and Roger Hamley tries to console her by telling her a similar story that has a happy ending, Molly doubts that life could be compared to a fairy tale and shows no interest in it<sup>19</sup>. Hence the main character's search for a personal space in which she can do what is no longer considered just the pleasure of reading but rather real learning. And in that search Molly ends up isolating herself in symbolic places, like the Hamley Hall library, "her favourite retreat,"<sup>20</sup> where she becomes estranged from her surrounding reality, or near windows where she can look at nature and have an empirical experience rather than have to use her imagination:

[Molly] sitting at the pleasant open window, and losing herself in dreamy out-looks into the garden and the woods, quivering in the noontide heat. The house was so still, in its silence it might have been the 'moated grange'; the booming buzz of the blue flies, in the great staircase window, seemed the loudest noise in-doors.<sup>21</sup>

It is clear that the main character's *bildung* does not involve fairy tales. In spite of their presence in Gaskell's work, from the point of view of the structure as well as from a narratological angle, her stories do not represent an appropriate context for constructing a feminine identity. Unexpectedly, Molly makes the masculine

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<sup>18</sup> Gaskell, *Wives and Daughters*, 22–23.

<sup>19</sup> Wasinger, "That 'Old Rigmarole of Childhood,'" 278.

<sup>20</sup> Gaskell, *Wives and Daughters*, 88.

<sup>21</sup> Gaskell, *Wives and Daughters*, 83.

questions of science and empiricism hers in order to become that paradigm of a modern woman that Gaskell had aspired to since her first attempts at writing. By acting this way, the main character disassociates herself from the female community of gossip and fantasy in order to move into the masculine community. The girl's attitude is underlined by her stepmother who emphasizes how "untypical" Molly is, in order to glorify Cynthia's "feminine qualities:"

"Ah, Mr Gibson, I have found out before now that you have no soul for poetry; and Molly there is your own child. She reads such *deep* books – all about facts and figures: she'll be quite a *blue-stocking* by-and-by."

"Mamma," said Molly, reddening, "you think it was a deep book because there were the *shapes of the different cells of bees* in it! but it was not at all deep. It was very *interesting*."<sup>22</sup>

Apart from the evident irony produced by the lexeme "blue-stocking," one should also notice the negative connotation attributed to the adjective "deep," which is obviously in contrast with the superficiality required from a woman. Molly counters this with the adjective "interesting," referring to a book on entomology, explaining that "shapes of the different cells of bees" are not simple facts and figures: they are part of very a precise cataloguing and classifying system in the natural kingdom. As Foucault argues, natural history "constitutes a whole domain of empiricity as at the same time *describable* and *orderable*" that is "situated both before and after language; it decomposes the language of everyday life, but in order to recompose it and discover what has made possible through the blind resemblances of imagination; it criticizes language, but in order to reveal its foundation."<sup>23</sup> Molly has fully understood that lesson by the natural historian and can aspire to her personal victory in her "struggle for [social] existence."

In *Wives and Daughters*, Darwin's scientific reasoning becomes increasingly important the further Molly moves away from fairy tales. Science is represented by a coalition of male power, the expression of the mid-late Victorian culture that was already governing society according to social Darwinism: Mr Gibson, the holder of medical knowledge; Lord Hollingford, a politician and amateur scientist who supports Roger Hamley's expeditions to Africa; and finally Roger Hamley himself, who had studied at Cambridge and is inspired by the figure of

<sup>22</sup> Gaskell, *Wives and Daughter*, 267.

<sup>23</sup> Michel Foucault, *The Order of Things: An Archaeology of the Human Sciences* (London and New York: Routledge, 2002): 172, 176.

Charles Darwin.<sup>24</sup> In refusing to belong to the “emotional” sphere of fantasy, Molly has access to knowledge that is prohibited to women and reverses the roles, claiming for herself the field of “male” knowledge. In this sense, the scene of the ball in which Lord Hollingford recognizes that Molly belongs to the “animal kingdom,” since she is able to understand scientific reasoning, is significant:

Lord Hollingford saw Molly in the distance, and interrupted himself to say, “What a charming little lady that daughter of yours is! Most girls of her age are so difficult to talk to; but *she is intelligent and full of interest in all sorts of sensible things*; well read, too – she was up in *Le Règne Animal* – and very pretty!”

Mr. Gibson bowed, much pleased at such a compliment from such a man, were he lord or not. It is very likely that if Molly had been a stupid listener, Lord Hollingford would not have discovered her beauty; or the converse might be asserted – if she had not been young and pretty, he would not have exerted himself *to talk on scientific subjects in a manner which she could understand*. But in whatever way *Molly had won his approbation and admiration*, there was no doubt that she had earned it somehow.<sup>25</sup>

The reference to a fundamental text for the history of zoology and palaeontology – *Le Règne Animal* (1817) by George Cuvier (1769–1832) – is an implicit acknowledgment by the scientific community of Molly’s intellectual capacities and knowledge. However, this acceptance admits a reversal of the Victorian educational and social practices, that is, that a woman can achieve fulfilment through the channels traditionally destined for men.

With Molly, Gaskell connects the Darwinian teaching to the question of the role of women. Although Gaskell is not a “feminist,” she strongly criticizes the convention that deprives women of the chance to express themselves freely and contribute to society. In her Unitarian vision, the question of social justice and equality of the sexes, at least from an educational perspective, becomes crucial for the representation of the reality of that time. In Gaskell’s view, women can become regenerating cultural forces of Victorian values along the path indicated by Darwinism. This is how the probable end of the novel is to be understood. Molly manages to find her way into Roger’s heart and he sees that

[s]ometimes her remarks had probed into his mind and excited him to the deep thought in which he delighted; at other times he had felt himself of real help to her in her hours of

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<sup>24</sup> As Mrs. Ellis H. Chadwick reported, Darwin himself was concerned to “find himself portrayed in [Gaskell’s] last and best novel,” *Mrs. Gaskell: Haunts, Homes, and Stories* (London: Sir Isaac Pitman and Sons, 1910), 14.

<sup>25</sup> Gaskell, *Wives and Daughters*, 297 (italics added).



need, and in making her take an interest in books, which treated of higher things than the continual fiction and poetry which she had hitherto read.<sup>26</sup>

There is the beginning of a reciprocity that breaks through the stereotype images of the separate spheres and suggests that, only by claiming the instruments of power, can women propose themselves as agents of change. So *Wives and Daughters* may be regarded as a combination of the fairy tale and the realist novel, in which the former is a cultural subtext for the latter that tells the story of the future of England, a future consisting of compromises between classes, genders, ideologies and languages.

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26 Gaskell, *Wives and Daughters*, 147.

Klaus Stierstorfer

# Female Forensics: The Woman Reader in Court in Charles Reade's *Griffith Gaunt* (1866)

## 1 Introduction: Law and the “rise of the novel”

The novel has been the most important literary genre in the discussions of the relationship between law and literature. One of the reasons for this generic preference is a long-standing argument in literary studies that the novel's origins are intertwined with the law. Thematically, the novel's traditionally close connection with the law is legal satire<sup>1</sup> which the eighteenth-century novel had shared with other genres, notably drama, but also lyrical poetry. Indeed, many of the early themes of the novel were drawn from legal contexts. Thus, the criminal biography, available in the seventeenth and eighteenth centuries in countless pamphlets and later in anthologies, showing the lives of the most notorious rogues and criminals of England, was in itself not only one of the most popular prose genres at the time; it had a significant impact on the early novelists. Daniel Defoe not only wrote criminal biographies himself, but also drew from and imitated these wide-spread narratives in his crime novels, such as *Captain Singleton*, *Colonel Jack*, *Moll Flanders*, or *Roxana*.<sup>2</sup>

Beyond such questions of mere content, however, several generically constitutive elements of the novel at this time, it has been maintained, derive from legal precedent and practice. The main reason for this “fundamental homology”<sup>3</sup> between law and the novel is regularly attributed to the genre's realist ambitions. By building up romance as their straw man and fantastic foil, the early novelists set out to produce a reality effect by mainly two intertextual strategies. First, they associated themselves with historiography, often calling their novels “history” in their titles, such as Defoe's *The Fortunate Mistress: Or, A History of the Life and*

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1 Cf. for instance Edward F. J. Tucker, *Intruder into Eden: Representations of the Common Lawyer in English Literature 1350–1750* (Columbia: Camden House, 1984), chapter 5.

2 Lincoln B. Faller, *Crime and Defoe: A New Kind of Writing* (Cambridge: CUP, 1993, pbk. 2008); see also Lincoln B. Faller, *Turned to Account. The Forms and Functions of Criminal Biography in Late Seventeenth- and Early Eighteenth-Century England* (Cambridge: CUP, 1987).

3 Kieran Dolin, *Fiction and the Law. Legal Discourse in Victorian and Modernist Literature* (Cambridge: CUP, 1999), 8.

*Vast Variety of Fortunes of Mademoiselle de Beleau, Afterwards Called the Countess de Wintelsheim, in Germany, Being the Person known by the Name of the Lady Roxana, in the Time of King Charles II,*<sup>4</sup> or Fielding's *The History of Tom Jones, a Foundling*. Second, and most importantly here, they drew on legal forms and patterns. Ian Watt's approach in his classic *The Rise of the Novel* has been seminal for subsequent research in this direction:

The novel's mode of imitating reality may therefore be equally well summarized in terms of the procedures of another group of specialists in epistemology, the jury in a court of law. Their expectations and those of the novel reader coincide in many ways: both want to know "all the particulars" of a given case [...]; and they also expect the witnesses to tell the story "in their own words."<sup>5</sup>

What Watt called "formal realism"<sup>6</sup> for presenting "a circumstantial view of life," what Baker had already referred to as "circumstantial realism"<sup>7</sup> or what Tom Keymer even called "forensic realism,"<sup>8</sup> is one of the hallmarks running through the history of the English novel in the eighteenth and nineteenth centuries. Watt writes: "Formal realism is, of course, like the rules of evidence, only a convention";<sup>9</sup> but such conventionality links the novel with legal discourse from the start.

In sum, the novel's generic beginnings in the seventeenth and eighteenth centuries are intimately interwoven with the law on various counts, notably thematic interest,<sup>10</sup> intertextual references and adaptation of sources, narrative strategies and emplotment. However, this generic proximity to the law during that period mainly meant mutual cross-fertilization along the lines set out by Kieran Dolin's important study on *Fiction and the Law* (1999)<sup>11</sup>. While Dolin's de-

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4 Faller, *Crime and Defoe*, 84–86, 89–90, where Defoe distinguishes between romance and history.

5 Ian Watt, *The Rise of the Novel. Studies in Defoe, Richardson and Fielding* [1957] (London: Hogarth Press, 1987), 31.

6 Watt, *Rise*, esp. 31–34 and *passim*.

7 Ernest A. Baker, *The History of the Novel*, vol. 3: *The Later Romances and the Establishment of Realism* (New York: Barnes & Noble, 1923), 137, had already described "circumstantial realism" in Defoe as follows: "[Defoe] inserts all those tiny irrelevant particulars that are so potent in lulling suspicion and convincing us of the artless veracity of a witness."

8 E.g. Tom Keymer, *Richardson's Clarissa and the Eighteenth-Century Reader* (Cambridge: CUP, 2004), ch. 4, 241.

9 Watt, *Rise*, 32.

10 David Punter: "Eighteenth-century fiction is obsessed with the law," quoted in Dolin, *Fiction*, 6.

11 Dolin, *Fiction and the Law*, 3.

scription of such “points of convergence”<sup>12</sup> is accurate for this earlier period, it does not account for the dramatically heightened claims put in by British novelists and their commentators and critics from the early nineteenth century onwards.

The change to be observed at this time is in one sense quantitative. While the proximity of some novelists to the legal profession has been observed for earlier periods, this phenomenon now shows a significant increase. In an empirical survey John Sutherland has found that, from a sample of 481 Victorian novelists, 110 were lawyers, followed by journalists with 82 instances, not even counting lawyer fathers or, for women, lawyer husbands.<sup>13</sup> The fact that most of the lawyers Sutherland identifies were failed barristers has of course one explanation in the fact that the training to become a lawyer was a mainstream, wide-spread career move for male middle-class offspring at the time, while literary authorship was only slowly becoming established as a professional occupation. Still, the fact that the converse model of failed authors training as lawyers is practically non-existent seems to underline the general trajectory as leading away from the law and towards literature in overall cultural signification and validation.

Next to such quantitative observations, novelists’ self-reflexive assurance about the advantages to be gained from their art is arguable on a different, qualitative scale. The search for examples of Victorian novelists who actively engaged with questions of the law in their literary practice immediately brings to mind such famous examples as Charles Dickens, Anthony Trollope or Wilkie Collins. Thus, Collins, himself a trained lawyer, has his widely-read novel *The Woman in White* (1859) introduced by a narrator called Walter Hartright, obviously a failed barrister himself since he is announced as “of Clement’s Inn,<sup>14</sup> Teacher of Drawing”:

If the machinery of the Law could be depended on to fathom every case of suspicion and to conduct every process of inquiry, with moderate assistance only from the lubricating influences of oil of gold, the events which fill these pages might have claimed their share of the public attention in a Court of Justice.

But the Law is still, in certain inevitable cases, the pre-engaged servant of the long purse; and the story is left to be told, for the first time, in this place. As the Judge might once have heard it, so the Reader shall hear it now. No circumstance of importance, from the beginning to the end of the disclosure, shall be related on hearsay evidence. [...]

[T]he story here presented will be told by more than one pen, as the story of an offence

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<sup>12</sup> Dolin, *Fiction and the Law*, 5.

<sup>13</sup> John Sutherland, *Victorian Fiction: Writers, Publishers, Readers* (Basingstoke: Macmillan, 1995), 162.

<sup>14</sup> A minor Inn of Chancery.

against the laws is told in Court by more than one witness – with the same object, in both cases, to present the truth always in its most direct and most intelligible aspect [.]<sup>15</sup>

What Collins' narrator clearly points out here is, first, the perceived deficiency of the judiciary at the time and, second, the compensatory intent of the narration that follows. His argument for the remedial efficacy of his narrative is based on the stipulation of a homology between legal and literary proceeding, established here in shared narrative structures; and it is in this way that the *raison d'être* of the novel is located in a deficiency of the law which the novel itself sets out to remedy.

This trope of the novel's generic potential as efficacious legal remedy and support received one of its most explicit, sophisticated and paradigmatic explorations in Charles Reade's novel *Griffith Gaunt: Or Jealousy*, published seven years later in 1866. Reade's point, still underdeveloped by commentators so far, is not only remarkable because of his direct engagement with an ongoing legal debate about criminal court procedure and, at that, of women's position in it. Reade's *Griffith Gaunt* is so important because the character of his legal intervention is self-reflexively literary, and for the very literary quality of his proposed intervention in the law had a significant afterlife, not only in law, but most of all, in the history of the novel. The following considerations are a first attempt to highlight the main lines of this complex argument.

## 2 Charles Reade's legal background and *Griffith Gaunt* (1866)

Born to an Oxfordshire Tory squire, Charles Reade (1814–1884)<sup>16</sup> became a student at Magdalen College, Oxford, urged on by his evangelically-minded mother who (unsuccessfully) hoped he would enter the Church. He received his B.A. and a Vinerian scholarship in 1835. In 1836, he became a fellow of Magdalen College, a position he held for the rest of his life, although he much complained that College regulations stipulated that fellows remain unmarried. The Vinerian scholarship and the College fellowship put him on the track to study law and he entered

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<sup>15</sup> Wilkie Collins, *The Woman in White* [1860], ed. John Sutherland (Oxford, New York: OUP, 1996, reissue 2008), 3.

<sup>16</sup> The biographical information about Charles Reade in the following is, unless stated otherwise, taken from the *Oxford Dictionary of National Biography*, online edition available at: <https://doi.org/10.1093/ref:odnb/23224> (2004).

Lincoln's Inn in 1835, received his M.A. in 1838 and was called to the bar in 1842. He went on to receive a DCL (Doctor of Civil Law) in 1847. Although he never practiced law himself, he put his knowledge of the law to extensive use in an exceedingly litigious turn on the one hand; there was hardly a time when Reade, quick to take offence, was not in court proceedings about one grievance or another, mainly against his publishers and literary critics. On the other hand, his legal training gave him the understanding and keen awareness of the contemporary dispute about legal issues in Britain which he could put to good use in his novels and plays. He did so with particular focus in *Griffith Gaunt*, as the following analysis will show.

Reade may have been inspired to turn to literature by his fellow law student, Samuel Warren (1807–77), with whom he shared chambers in Lincoln's Inn from 1835–37 and whose resounding success with the novel *Ten Thousand a Year* (1839) Reade much admired. Reade himself started out as a playwright. His first attempt, the comedy *The Ladies' Battle*, was staged at the Olympic Theatre in 1851, followed by the highly successful collaboration with Tom Taylor, *Masks and Faces*, first performed at the Haymarket Theatre in 1852. Reade turned the latter into a novel, *Peg Woffington*, which appeared in December of the same year. As a novelist, however, Reade only reached wider acclaim with the publication of *It Is Never Too Late to Mend* in 1856.

The claims Reade made about his fiction, in subtitles and occasional statements, as well as in his writerly practice, bear out the realist, documentary attitude of Collins's narrator quoted above: "No circumstance of importance [...] shall be related on hearsay evidence." Reade called his approach the "Baconian" method and, harking back to Francis Bacon's empiricism and his elaborate demand for "certainty" in law<sup>17</sup>, he wrote in 1853: "I propose never to guess where I can know."<sup>18</sup> As an author of fiction, he applied this principle by gathering voluminous material in the form of newspaper clippings and notes from history books or biographies and, in fact, any source he could lay his hands on with the aim to be as correct as possible about the 'facts' his fiction was based on: two of his major novels, *It is Never Too Late To Mend* and *Hard Cash* (and

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17 Francis Bacon, "Example of a Treatise on Universal Justice or The Fountains of Equity, by Aphorisms" in *De Augmentis Scientiarum*, Book VIII, 613–630, 614. Aphorism 8: "Certainty is so essential to law, that law cannot even be just without it." / Liber VIII "Idea Justitiae Universalis sive de Fontibus Juris," Aphorismus 8: "Legis tantum interest ut certa sit, ut absque hoc nec Justa esse possit."

18 Wayne Burns, *Charles Reade. A Study in Victorian Authorship* (New York: Bookman Associates, 1961), 132.

some of his shorter fictions) carry the subtitle “A Matter-of-Fact Romance,” as he elaborated in 1868 in the Preface to *Hard Cash*:

“HARD CASH,” like “The Cloister and the Hearth,” is a matter-of-fact Romance – that is, a fiction built on truths; and these truths have been gathered by long, severe, systematic labour, from a multitude of volumes, pamphlets, journals, reports, blue-books, manuscript narratives, letters, and living people, whom I have sought out, examined, and cross-examined, to get at the truth on each main topic I have striven to handle. [...]”<sup>19</sup>

Reade’s approach to acquiring information from ‘living people’ is patently forensic: he had, as he puts it, “examined, and cross-examined” them, as defendants or witnesses would be examined and cross-examined in court. “If facts equalled truth,” as Wayne Burns succinctly summarized Reade’s method, “then, the more facts the better, and the way to achieve ultimate truth, in literature as in other matters, was through a systematic application of the Baconian method.”<sup>20</sup>

How well Reade actually lived up to this and other claims he made is, of course, another matter. In his fiction, the method certainly did not lead to an exclusion of romanticism or sensationalism in his work, and Reade remains to be considered one of the prime exponents of the sensational novel, much more so than of a promoter of new lines in a realist tradition.<sup>21</sup> For William Dean Howells, Reade “stood at the parting of the ways between realism and romanticism,” but at the same time still “remained content to use the materials of realism and produce the effect of romanticism.”<sup>22</sup> Seeing Reade as an exponent of the “novel with a cause,” this double take could be divided into a realist focus of what he saw as an actual social grievance at the time in order to go on and use the full scope of sensational, romantic and melodramatic means of fiction to make the point and show ways of improvement.

### 3 *Griffith Gaunt*, gender and the reading process

The novel tells the story of Griffith Gaunt’s wooing of and marriage to Catherine Peyton, his jealousy of a priest whom his Catholic wife confides in and the con-

<sup>19</sup> Charles Reade, *Hard Cash. A Matter-of-Fact Romance* [1863] (London: New Edition London, 1868), online in Project Gutenberg available at: [http://www.gutenberg.org/files/3067/3067-h/3067-h.htm#link2H\\_PREF](http://www.gutenberg.org/files/3067/3067-h/3067-h.htm#link2H_PREF) (last access January 17, 2018).

<sup>20</sup> Burns, *Charles Reade*, 133.

<sup>21</sup> See Andrew Radford, *Victorian Sensation Fiction. A Reader’s Guide to Essential Criticism* (New York: Palgrave Macmillan, 2009), *passim*.

<sup>22</sup> William Dean Howells, *My Literary Passions* (New York: Harper, 1895), 144.

sequences of this jealousy, which lead him into bigamy and his wife into prison and trial for the supposed murder of her husband who had disappeared under suspicious circumstances. Reade's direct inspiration seems to have been "Brother Griffith's Story of a Plot in Private Life," contained in Wilkie Collins' short story collection *The Queen of Hearts* (1859), which in turn is based on the story of "The Frenchman of Two Wives," published in Dickens' *Household Words* (6 Dec 1856).<sup>23</sup> There, the main plot elements of the wife's adultery with a priest, bigamy, violence and the murder trial are already present. Reade's novel was serialised in *Argosy* from January to November 1866 in Britain and, in the US, in the *Atlantic Monthly* (1865–1866). At the end of the same year, it was published in three volumes by Chapman and Hall in London and (in one volume) by Ticknor and Fields in Boston.

Reade further developed Collins' story to his own preferences and with his own emphases. This becomes particularly evident in Reade's shaping of the character of the supposedly adulterous wife, Catherine Gaunt in the novel, and that again stands out most starkly in the trial scenes as they are developed in the novel in comparison to Collins' short story. There is no space here to do justice to the otherwise complex layering of this novel, as the two main points of interest, on which however much of the novel's merits hinge today, are that of the law, put in opposition to literature, and that of gender, contrasting male and female traits, again in law and literature.

First of all, this is a novel with high and explicit gender awareness. In the scene where Griffith Gaunt is under the spell of and succumbs to the machinations of a deceitful servant who stokes his jealousy against his wife's Catholic confessor, the narrator displays his realization of different reactions from male and female readers. The vicious maid servant is getting the better of her master by tricks supposedly reserved for the female armoury: "The simple Squire did not see that this artful creature was playing the stale game of her sex: stimulating his curiosity under pretence of putting him off." (GG 197).<sup>24</sup> Griffith Gaunt's reaction also follows the assumed male protocol: "Griffith turned sick at heart: and the strong man literally staggered at this envenomed thrust of a weak woman's tongue" (GG 198). The narrator is apologetic:

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<sup>23</sup> See Arthur Pollard, "Griffith Gaunt: Paradox of Victorian Melodrama," *Critical Quarterly* 17 (1975): 221–227, 222.

<sup>24</sup> All further references to Charles Reade, *Griffith Gaunt; Or, Jealousy* (London: Bradbury, Evans, & Co., 1869) are abbreviated as 'GG' in the text (edition available online at: <https://archive.org/details/griffithgauntor02readgoog>).



My female readers will sneer at this temptation: my male readers know that scarcely one man out of a dozen, sick, sore, and hating her he loved, would have turned away from the illicit consolation thus offered to him [...]. (GG 203)

Further references to what are cast as typical male or female attitudes and characteristics abound. Frequently, these are again linked to the narrative process, as in remarks such as: “That belongs to the male branch of my story” (GG 66). Similarly, reading is a gendered process, most explicitly when the narrator avers at one point: “men can’t read men, but any woman can read a woman” (GG 201). Mrs Gaunt appears a particularly apt reader, demonstrated on receiving a letter from her husband: “After the first agitation, she read it again, and weighed every syllable. There was one book she had studied more than most of us – the Heart. And she soon read Griffith’s in this letter.”(GG 240–241)

Reading here appears both as a literal, textual activity and as a metaphoric process, the text leading to the hidden inside character of a person. Such insight can be gained through expert readers of texts, but the metaphoric reading process can also happen ‘in real life’ where intimations of real motives lodged in a person’s ‘heart’ are inferred or “read” from outward appearances or actions, as here: “Tom could not decipher his own name in print or manuscript; and these are the fellows that beat us all at reading countenances: he saw in a moment that some great calamity had fallen on Griffith’s head [...]”(GG 209)

Thus, the faculty of ‘reading’ is primarily founded in a moral character and not directly dependent on literacy. Conversely, it will appear, however, that literacy and the practice of reading can have a positive influence on character, especially in those cases where the natural faculty is not well developed. And again, there is the gender differentiation, as women generally prove to be the better readers. In the novel, this is highlighted in the contrast between Mr and Mrs Gaunt:

Neither the intellectual nor the moral character of any person stands stock-still: a man improves, or he declines. Mrs. Gaunt had a great taste for reading; Mr. Gaunt had not: what was the consequence? at the end of seven years the lady’s understanding had made great strides; the gentleman’s had, apparently, retrograded.

Now we all need a little excitement, and we all seek it, and get it by hook or by crook. [...] Mrs. Gaunt could enjoy company, but was never dull with a good book. Mr. Gaunt was a pleasant companion, but dull out of company. So, rather than not have it, he would go to the parlour of the “Red Lion,” and chat and sing with the yeomen and rollicking young squires that resorted thither: and this was matter of grief and astonishment to Mrs. Gaunt. (GG 127–128)

Having evolved in her formation as a reader, Catherine Gaunt has also matured in character over the years of marriage while her husband has not; years which

the narrator does not further expand on, as he does not find anything worth relating in them, but which he describes as a time span of such germination: “In the absence of striking incidents, it may be well to notice the progress of character, and note the tiny seeds of events to come.” (GG 127)

Catherine Gaunt’s self-education as reader of texts and hearts, latently progressive over the quiet years of her early marriage, are put to the test in the crisis at the center of Reade’s novel. Spurred on by a scheming servant maid, her husband has become jealous of his wife’s young Catholic confessor, goes off and eventually enters a bigamist marriage under a false identity. He is seen back at his house where he returns to pick up some papers and subsequently disappears. When a gruesomely disfigured corpse is found in the manor’s pond, the inference is that this is Griffith Gaunt’s body and the allegation, based on the nefarious servant maid’s testimony, is that he has been killed by his wife. Catherine Gaunt is charged with murder. The ensuing court scenes prismatically display the forensic uses of Catherine Gaunt’s expertise as a female reader. At the same time, they constitute a strong endorsement of legal reform in criminal evidence. The commitment to reform is pursued by literary means, not only because the convincing case for urgent need for reform is made out by the use of fiction and the literary conventions of ‘forensic realism’ coupled with features of the sensation novel. It is also the nature of the legal reform advocated here that bears a distinctively literary stamp, and a primarily female literary stamp at that. This thesis needs some further elaboration.

## 4 *Griffith Gaunt*, criminal council and evidence

There is very little geographic color in the novel, except that most of it is set in various estates in Cumberland, and hardly any historical context. The story is narrated in the past, but it is only through interspersed remarks that it becomes clear that the period the story is set in is the late eighteenth century<sup>25</sup>. For the legal understanding of the trial scenes, however, the removal of the story to that earlier period is highly relevant, in so far as felony defendants only were

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<sup>25</sup> See e.g. GG 289: “Such was the power of Ale – in the last century,” or, such distancing remarks as “in that day, the law of England was so far respected” (GG 320); it is only during the trial scene and in Ryder’s disposition that the reader can infer that the year in which the trial takes place must be 1797 (GG 356).

given the formal right to counsel in the Prisoners' Counsel Act of 1836. David Bentley describes the situation around 1800 as follows:<sup>26</sup>

In misdemeanour, he [the prisoner] had a right to counsel by common law. In felony, however, the position was more complicated. In strict law the accused had no right to counsel but the prohibition had in practice been much eroded. It had since as early as the fifteenth century been customary in capital cases to allow prisoners to have counsel to argue law. In the course of the eighteenth century a further exception had been added: judges began to permit prisoners in felony cases to examine and cross-examine witnesses. This left the felony prisoner subject to only one (albeit important) handicap: he could not have counsel to address the jury on his behalf.

While felony defendants thus were granted the right to council in 1836, they were still not admitted as witnesses in their own cause. Lord Denman's Act of 1844 (6&7 Vict. C.85), the County Court Act of 1846 (9&10 Vict. C. 95) and Lord Brougham's Act of 1851 (14&15 Vict. C.99) had gradually ensured that, as Harry Bodkin Poland explained in 1898, "parties to suits were made competent witnesses in the Superior Courts, and [...] husbands and wives of the parties were declared to be admissible witnesses," but Poland also observed that these Acts "did not apply to *criminal* proceedings."<sup>27</sup> In mid-Victorian times, the discussion went on to extend the right to testify to felony defendants as well. The worries of the opponents of this change in fact concerned possible disadvantages for the defendant, as they foresaw cross-examination of the defendant as witness by the prosecution, as Poland reports that "one member of the House of Commons spoke of this right to give evidence as 'a trap for the unwary prisoner'"<sup>28</sup>. Thus, the conservative line of argument against the reform of the defendant's representation in trials of felony was aimed at keeping the defendant passive, silent and hence an object in the combined efforts of prosecution, judge and jury to find out the truth about his or her guilt.

Precisely this kind of defendant is presented in Wilkie Collins' version of the story, where the appearance of the accused wife (the model of Catherine Gaunt) in all its pity is described by her faithful servant:<sup>29</sup>

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**26** David Bentley, *English Criminal Justice in the Nineteenth Century* (London: Hambledon Press, 1998), 105.

**27** Harry Bodkin Poland, "Short History of the Act," in *The Criminal Evidence Act* (61&62 Vict. C.36), with Notes by Wilfred Baugh Allen and a Short History of the Act by Harry Bodkin Poland (London: Butterworth & Co, and Shaw & Sons, 1898), viii-ix (italics in the original).

**28** Poland, "Short History of the Act," xxii.

**29** Wilkie Collins, "Brother Griffith's Story of a Plot in Private Life," in *The Queen of Hearts*, ed. Wilkie Collins (London: Hurst and Blacket, 1859): III, 1–146, 110.

On this occasion, when I once more appeared before the justice, my mistress appeared with me. The first sight of her absolutely startled me, she was so sadly altered. Her face looked so pinched and thin that it was like the face of an old woman. The dull, vacant resignation of her expression was something shocking to see. It changed a little when her eyes first turned heavily toward me; and she whispered, with a faint smile, "I am sorry for *you*, William: I am very, very sorry for *you*." But as soon as she had said those words the blank look returned, and she sat with her head drooping forward, quiet and inattentive and hopeless – so changed a being that her oldest friends would hardly have known her.

The wife's only defence, here, is (female) passivity and utmost dejection, engendering sympathy in the reader and, legal argumentation assumed, in the judge and jury. Her defence, in Collins' story as in the conservative view opposing the Prisoners' Council Act, lay in her very defencelessness, just as David Bentley reports one view in the discussions about felony defendants' council that "juries would [...] acquit out of sympathy excited by the prisoner's inability to defend himself."<sup>30</sup> This, at least, is how the accused wife is presented by Collins: a passive, submissive female in a court scenario whose all-male agents (judge, prosecution) were morally challenged to come to her chivalric defence.

When Reade reworked the story, he kept the gendered contrast between defendant and the court, with the latter clearly assigned to the male domain, as Catherine Gaunt views it after the happy conclusion of her trial: "Member of a sex that could never have invented a court of justice, she had found something to revere and bless in that other sex, to which her erring husband belonged." (GG 392)

What he radically altered, however, was the 'feminine' part of the defendant. It is intimately associated with the field of literature and the skills and values associated with it, and that despite the novel's male authorship. This already starts on the rhetorical and stylistic juxtaposition of legal with literary language, as when the narrator apologetically announces the inclusion of an attorney's narrative: "[H]e [i.e. the attorney] elaborated the matter more than I should have done: he articulated his topics; marked each salient fact by a long pause. In short, he told his story like an attorney, and not like a Romancist." (GG 45)

What is more, Catherine Gaunt as defendant is not at all passive. She is given a voice in court and allowed to speak for herself. Reade here enters the lists in the legal dispute about whether felony defendants (as well as their spouses) could testify as witnesses in their own cause. In his description of this perceived

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<sup>30</sup> David Bentley, *English Criminal Law in the Nineteenth Century* (London: Bloomsbury Publishing, 1998), 108.

defect, Lord Bowen wrote about the situation at the beginning of the reign of Queen Victoria:<sup>31</sup>

Perhaps the most serious blemish of all consisted in the established law of evidence, which excluded from giving testimony all witnesses who had even the minutest interest in the result, and, as a crowning paradox, even the parties to the suit themselves. 'The evidence of interested witnesses', it was said, 'can never induce any rational belief.' [...] If a farmer in his gig ran over a foot passenger in the road, the two persons whom the law singled out to prohibit from becoming witnesses were the farmer and the foot passenger.

When Reade was writing, evidence law had been changed for all cases except felony, and the dispute in and out of court, and in and out of Parliament about this issue was to continue until its final settlement in the Criminal Evidence Act (61&62 Vict. c.36) of 1898 which ruled: "Every person charged with an offence [...] shall be a competent witness for the defence at every stage of the proceedings."<sup>32</sup> Reade's literary intervention clearly pointed towards this resolution which was to take another three decades to come, when he shaped Catherine Gaunt's role in her trial. By setting the novel before the Prisoners' Council Act of 1836, however, the dramatic effect of Catherine Gaunt's appearance in court was further heightened. The narrator's reflection about her night in prison before the trial had set the dramatic tone: "she was to be tried for her life; tried, not by the All-wise Judge, but by fallible men, and under a system most unfavourable to the accused." (GG 336) When the trial actually starts, however, nothing could be further from Reade's presentation of the defendant than Collins' portrait of the broken and depressed woman above: Catherine Gaunt pleads 'not guilty' and staggers the court by asking to be allowed counsel, arguing: "I know this is not usual; but it is just; and I am informed it has sometimes been granted in trials of life and death, and that your Lordship hath the *power*, if you have the *will* to do me so much justice." (GG 339; italics in the original)

At this, prosecution emphasizes the impossibility of her demand; further arguments are exchanged, until the judge decides:

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**31** Charles Bowen, "The Administration of Justice during the Victorian Period" in *The Reign of Queen Victoria. A Survey of Fifty Years of Progress*, ed. Thomas H. Ward (London: Smith & Elder, 1887): 281–329, 287.

**32** *The Criminal Evidence Act, 1898* (61&62 Vict. C. 36), with Notes by Wilfred Baugh Allen and a Short History of the Act by Harry Bodkin Poland (London: Butterworth & Co, and Shaw & Sons, 1898), 1.

[...] the law is clear [...]: there is no precedent for what you ask, and the contrary practice stares us in the face for centuries. What seems to you a partial practice, and, to be frank, some learned persons are of your mind, must be set against this, that in capital cases the burden of proof lies on the crown and not on the accused. Also it is my duty to give you all the assistance I can, and that I shall do. Thus then it is: you can be allowed counsel to examine your own witnesses, and cross-examine the witnesses for the Crown, and speak to points of law, to be started by yourself, – but no further. (GG 340)

Asked who she then wished to be assigned for her counsel, the defendant surprises the court: “Half justice is injustice, and I will lend it no colour. [...] Counsel, on terms so partial, I will have none.” (GG 340) After the prosecution has had their say and the witnesses have been heard, Catherine Gaunt takes up her own defence, at first by cross-examining the witnesses, and doing so with great success: “In cross-examining these witnesses Mrs. Gaunt took a line that agreeably surprised the court. It was not for nothing she had studied a hundred trials with a woman’s observation and patient docility.” (GG 347)

She then attacks the entire argument brought against her by the prosecution, describing herself as “the victim, not of man’s injustice, but of deceitful appearances, and of honest, but hasty and loose conjectures” (GG 360). These conjectures she now brings down one by one, suggesting about the body retrieved from the pond: “they find a dead body, with no marks of violence whatever, and labor to prove by circumstantial evidence alone that this mere dead body is a murdered body. This, I am advised, is bad in law, and contrary to general precedents” (GG 361). Next she disproves the conjecture that a cry for help that was heard was from the assumed victim in the pond, summarizing: “so this disconnects the cry for help and the dead body. Another broken link!” (GG 365) After some further fortunate turns for the defendant, the judge finally concludes: “The case for the Crown is a mere tissue of conjectures, on which no jury could safely convict, even if there was no defence at all.” (GG 387)

Catherine Gaunt thus appears as a figure in historical fiction who had claimed the right to counsel, and then taking on that role herself, four decades before it became a statutory right in 1836, thus appearing as a champion for that trajectory of legal reform. In the historical context of the appearance of the novel in the 1860s, she becomes a champion for further reform for the rights of criminal defendants in the trajectory towards the Criminal Evidence Act of 1898, which Reade did not live to see but clearly promoted in the figure of Catherine Gaunt. In this novel, Reade endorsed the move to give the criminal defendant a voice. The fact that he chose a female defendant in the predominantly male context of the court widens the scope of the legal argument towards a social agenda of women’s claims for their voices to be heard. The claims are based, in Reade’s logic, on the superior expertise gained by women’s partiality to read-

ing, and in particular, to reading the kind of novel he presented, based on “circumstantial realism” to root out wrong conjectures.

## 5 Conclusion

In conclusion, Charles Reade’s novel *Griffith Gaunt* has emerged as a multi-layered contribution to ongoing literary, legal and social transformations at the time. Thus, in the area of legal issues, Catherine Gaunt takes up her own cause as defendant and becomes a mouthpiece for the improvement of criminal defendants’ rights in two historical dimensions: in the historical situation in which the novel is set (the late eighteenth century) and in the ongoing contemporary dispute during which the novel was written (mid-Victorian times). With this novel, Reade clearly contributed to the legal negotiations leading up to the Criminal Evidence Act of 1898. In taking up her own defence, Catherine Gaunt was able to dismantle wrong conjectures based on circumstantial evidence by her expertise in the very “circumstantial realism” trained by and acquired in her continual reading and love of books. Precisely because of the noted homology between realist novels and salient features of court procedures, where, as Ian Watt put it in the quotation above, “both [jury and novel readers] want to know ‘all the particulars’ of a given case [...]; and they also expect the witnesses to tell the story ‘in their own words’,” literary expertise also becomes a training for the law, as Catherine Gaunt showed by her superior deportment in her own defence in court.

The trial scenes in *Griffith Gaunt* with their underlying dispute about criminal representation and evidence in court are in sum and primarily about the question who is allowed to speak and with what authority. The question is generated by Reade on several levels; first by the contrast of the emblematically male institution of the law court where the traditional role of the defendant, independent of his or her sex, carries central traits subsumed under concepts of femininity at the time: as passive, silent and without a public or legal voice of authority, appealing to protection and sympathy. Second, by Reade giving Catherine Gaunt a voice as female defendant. He thus fills the traditionally female imaginary of that role with a distinctive, self-conscious voice which successfully holds up in the male-connoted court context, but which emphatically retains the virtues which have been identified as female in the novel, notably that of the patient and perceptive reader of novels and hearts. Catherine Gaunt thus provides a role model which transcends gender roles and holds the promise of fuller justice in and out of court. The novel’s effectiveness in this way is not only of a general kind, but can be shown to take very concrete shape in its recep-

tion history, most importantly in the Beecher-Tilton trial of 1874/5, one of America's most widely publicized trials of the nineteenth century. Laura Haft Korobkin, who has convincingly illustrated the importance of Reade's novel in the course of this trial, writes:<sup>33</sup>

Because Elizabeth Tilton's letter accorded Reade's novel the power to interpret the text of her own life, the novel itself became central to the trial's project of determining whether or not she had committed adultery with the nation's foremost preacher, Henry Ward Beecher.

By emphasizing the educational relevance of novels in law as in life in general, Reade also advertised the particular relevance of his own style of writing; or, in other words, he is self-reflexively marketing his own product. On the literary side, Reade thus promoted the line of development leading straight to the fastidious observation and epistemological acumen with which Henry James famously developed his sophisticated prose, and it is therefore not surprising that Henry James himself became an early admirer, maintaining in an essay on George Eliot in 1866 that "the stories of Mr. Charles Reade (the much-abused "Griffith Gaunt" included), make him, to our mind, the most readable of living English novelists, and prove him a distant cousin of Shakespeare."<sup>34</sup>

In his highly original style, Reade thus productively brings together the feminine connotations of defendant on the one hand with the male role of counsel, prosecution and judge on the other; of the female reader and the male lawyer; within the literary sphere of the traditionally male concept of forensic, circumstantial realism with the traditionally female connotations of romance and sensationalism, i. e. of novel and romance in the catchphrase of a 'matter-of-fact romance' and thus, in a way, reality and fiction by creating a new, heightened realism. Reade was thus, as Andrew Radford summarizes, "positing a much closer relationship between the genres, exploring the ways in which sensation both emerged from and reconfigured realist narrative." Reade was thus one of "the sensationalists" who, "in literary terms, [...] were picking at the apparent seamlessness of the mainstream realist novel as well as that of the Victorian society it purported to exhibit."<sup>35</sup>

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**33** Laura Hanft Korobkin, "Silent Woman, Speaking Fiction. Charles Reade's *Griffith Gaunt* (1866) at the Adultery Trial of Henry Ward Beecher," in *The New Nineteenth Century. Feminist Readings of Underread Victorian Fiction*, eds. Barbara Leah Harman and Susan Meyer (New York and London: Garland Publishing, 1996): 45–62, 46.

**34** Henry James, "Felix Holt the Radical," in *Notes and Reviews* (Cambridge, MA: Dunstere, 1921), 207.

**35** Radford, *Victorian Sensation Fiction*, 35 und 76.



Reade's *Griffith Gaunt* is symptomatic for a general line of legal critique in the nineteenth century which is strongly based on narrative and finds its best expression in the aesthetic conventions of the novel. It privileges the novel as a discursive instrument which is much more sophisticated to produce justice than the institutional and discursive regulations of a court of justice appear to be. And the sophistication in Reade's case is clearly that of the female reader.

John Casey Gooch

# Revulsion, Paradigmatic Shifts and Legal Philosophy: Oliver Wendell Holmes's *The Path of the Law* and its Impact on American Legal Thought

A moment occurred during Oliver Wendell Holmes's *The Path of the Law* speech in which he, with a most acerbic tone, eviscerated those who study law for essentially making their enterprise a study of history. "Revolting" was the term he used to characterize this long and ongoing trend, describing it as "revolting" to embrace the rule of law simply because "it was laid down in the time of Henry IV." He even went so far as to argue that the rule of law would cease to exist if it "simply persists from blind imitation of the past." In his view, such "blind imitations" were even "still more *revolting*."

This essay will focus its attention on Holmes's words and his critique of the dominant legal thinking of his day, but in short, I argue that his 1897 address to Harvard law graduates represents a seminal moment in the evolution of American jurisprudence. Simply put, *The Path of the Law* (or henceforth, *The Path*) embodied a new legal philosophy that would guide twentieth century – and arguably, twenty-first century – American jurisprudence.

*The Path* has received little attention in more recent years, aside from a 2000 anthology in which several legal scholars, most of whom represented law school faculty, considered its enduring influence. But scholars, although they have seen it as a significant piece of legal *literature*, have yet to examine *The Path* for its *literary* value and, moreover, from a rhetorical perspective, a perspective that seeks to analyze and illuminate Holmes's language and argument. In doing so, such a perspective and approach reveals the impact of *The Path* and also helps one understand its lasting and enduring influence.

## 1 *The Path* in context: American legal thought ca. 1900

Late-nineteenth and early-twentieth century U.S. Supreme Court decisions necessarily expanded federal power while, at the same time, also established economic well-being as the driving force in the rule of law – a point this essay will more fully explore in latter passages. Lawrence Friedman explains that a 1905 U.S. Su-

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preme Court decision struck down a New York state law that regulated working conditions in bakeries.<sup>1</sup> In *Lochner v. New York*, the majority opinion stated that the law violated the U.S. Constitution because it “interfered” with the freedom of workers and employers to form their own working arrangements thereby infringing upon liberty.<sup>2</sup> Morton Horwitz, however, notes that the court was attempting to determine whether or not a “law limiting bakers to a sixty-hour work week fell within the legitimate province of the legislature to protect the health of workers.”<sup>3</sup> Despite evidence supporting that the long workweek negatively affected employees’ health, the court maintained that striking down the law allowed for any law to find “shelter under such assumptions” and that similar laws were often passed for other motives, aside from the purpose of protecting public health or welfare.<sup>4</sup>

Friedman and Horwitz recognize *Lochner v. New York* as a landmark decision, but they differ slightly on the reasons for its importance. Friedman claims that the *Lochner* decision contributed to imposing “a national standard on the states, however negative and retrograde.”<sup>5</sup> The decision, in other words, expanded federal power over the states as related to labor relations. Horwitz, however, expands upon this argument, contending that *Lochner* ushered in a concerted and widespread Progressive attack on the underlying premises of contractual freedom.<sup>6</sup> He also states the decision brought “Progressive Legal Thought into being” because Progressive legal thinkers began criticizing whether or not the courts could continue characterizing contract law as a “neutral and voluntary system in which the judge simply carried out the will of the contracting parties.”<sup>7</sup>

By citing the *Lochner* decision as evidence, they concur that court decisions in the early part of the twentieth century necessarily favored the interests of management over the interests of employees. Horwitz devotes the most substantive discussion to the rise of corporate power during this time. Much of his discussion, however, focuses on the developments of the late-nineteenth century, especially as related to court’s 1886 decision in *Santa Clara v. Southern Pacific*

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1 Lawrence M. Friedman, *A History of American Law* (New York: Touchstone, 2005), 270. Friedman explains that the law established that bakeries must be ventilated and that no animals were permitted in any room where flour was stored. The law also stipulated a maximum number of work hours (i.e., 60 hours per week) for bakery employees.

2 Friedman, *A History of American Law*, 506.

3 Morton J. Horwitz, *The Transformation of American Law, 1870–1960* (New York: Oxford University Press, 1992), 29.

4 Horwitz, *The Transformation of American Law*, 29.

5 Friedman, *A History of American Law*, 506.

6 Horwitz, *The Transformation of American Law*, 31.

7 Horwitz, *The Transformation of American Law*, 33, 35.

*Railroad*. In *Santa Clara*, the Supreme Court held that a corporation was a person under the Fourteenth Amendment and therefore entitled to comparable protections under the law.<sup>8</sup> Horwitz argues that the case set an important precedent in American constitutional history because it “is usually thought to express a new theory of the corporation or, as it soon became fashionable to call it, of ‘corporate personality.’ The *Santa Clara* case is thus asserted to be a dramatic example of judicial personification of the corporation, which, it is argued, radically enhanced the position of the business corporation in American law.”<sup>9</sup> The court considered the question as to whether or not the State of California, or any state, could tax corporate property differently from individual property.<sup>10</sup> Horwitz gives significant attention to the transformation of legal status for corporations; however, much of this discussion, particularly as related to the twentieth century, only pertains to one case, *Hale v. Henkel* (1905). Like *Santa Clara*, the majority decision in *Hale* extended constitutional rights to corporations as individuals by granting corporations Fourth Amendment protections.<sup>11</sup> He points out, though, that the court, in this same case, refused to extend corporations Fifth Amendment protection against self-incrimination.<sup>12</sup>

Friedman relates a detailed account of the law of corporations in the section of his book addressing the nineteenth century, but he does not explore any major legal developments taking place in the twentieth century that resulted in greater corporate power and influence. David P. Currie, on the other hand, explores Supreme Court decisions concerning admiralty, commerce and workmen’s compensation law. Two such cases, *Southern Pacific Co. v. Jensen* (1917) and *Knickerbocker Ice Co. v. Stewart* (1920), illustrate the power of corporations over employees, with both decisions supporting the interests of big business.<sup>13</sup> Akhil Amar remains silent on the topic of twentieth-century corporate law, although he does explore events leading to the federal adoption of a progressive income tax in 1916.<sup>14</sup> These scholars, however, fail to speak directly to major developments in the twentieth century leading to a further legal reconceptualization of the corporation as individual and/or the rise of corporations as powerful legal entities,

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8 Horwitz, *The Transformation of American Law*, 66–67.

9 Horwitz, *The Transformation of American Law*, 67.

10 Horwitz, *The Transformation of American Law*, 67.

11 Horwitz, *The Transformation of American Law*, 73.

12 Horwitz, *The Transformation of American Law*, 73.

13 David P. Currie, “The Constitution in the Supreme Court: 1910–1921,” *Duke Law Review* (1985): 1111–1162, 1145–1146.

14 Akhil Reed Amar, *America’s Constitution: A Biography* (New York: Random House, 2005), 405–409.

although, granted, these authors give ample attention to relevant nineteenth-century events and other decisions with favorable implications for businesses.

## 2 The legal philosophy of Oliver Wendell Holmes

Oliver Wendell Holmes, Jr. stands as a figure seminal to these kinds of changes in legal philosophy – changes that led to greater power for those already with economic power, but his contributions to legal thought and his judicial opinions, as historians and legal scholars have argued, necessarily paint a complicated picture of his ideological leanings. Legal historians depict his contributions to legal philosophy in a number of sometimes parallel, yet also diverging, ways while consistently identifying him as the “father of the later legal realist movement.”<sup>15</sup> Stephen Diamond, for example, offers a precise description of Holmes’s philosophy that provides a basis for considering him in an early-twentieth century intellectual milieu. Diamond explains that Holmes (or Holmes’s philosophy) can best be understood as a “contrast” between late-nineteenth century conceptualism and twentieth-century realism, which he describes as a “shift from a focus on ‘words’ to a focus on ‘things.’”<sup>16</sup> Conceptualism, sometimes referred to as formalism, is, according to Diamond, “a jurisprudence of the progressive articulation of mutually exclusive and logically related legal categories that, when linked together into a system, comprehend the entire universe of human relations.”<sup>17</sup> In short, any legal question or problem has a preexisting and definitive answer in a preexisting rule.<sup>18</sup> Nineteenth-century jurists had approached law essentially as a formula in which a ready-made answer always existed in legal doctrines.

Diamond explains that Holmes “is credited with destroying this jurisprudence – simply by announcing that it was wrong.”<sup>19</sup> Holmes proposed an “instrumental and consequentialist jurisprudence” or one that sought to “achieve particular results in particular circumstances” as opposed to carrying out the

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15 Morton J. Horwitz, “The Place of Justice Holmes in American Legal Thought,” in *The Legacy of Oliver Wendell Holmes, Jr.*, ed. Robert W. Gordon (Stanford: Stanford University Press, 1992): 31–71, 31.

16 Stephen Diamond, “Citizenship, Civilization, and Coercion: Justice Holmes on the Tax Power,” in *The Legacy of Oliver Wendell Holmes, Jr.*, ed. Robert W. Gordon (Stanford: Stanford University Press, 1992): 115–154, 115.

17 Diamond, “Citizenship, Civilization, and Coercion,” 115.

18 Diamond, “Citizenship, Civilization, and Coercion,” 115.

19 Diamond, “Citizenship, Civilization, and Coercion,” 115.

“logical dictates of abstract principles.”<sup>20</sup> Considerations of policy and convenience, for instance, already influenced judicial behavior whether judges realized it or not.<sup>21</sup> More to the point, “considerations of ‘social advantage’ were to be found in the initial creation of those rules that formalist judges professed to follow.”<sup>22</sup> Furthermore, Holmes’s legal realism assumed that federal, state and local bureaucracies made, rather than found, the law.<sup>23</sup>

Others, however, argue that it becomes difficult to place Holmes in the intellectual history of his time.<sup>24</sup> J.W. Burrow, for example, rejects an assessment from Grant Gilmore, a fellow legal scholar, in which Gilmore argued that Holmes “was savage, harsh and cruel, a bitter and life-long pessimist” and one who saw human existence as nothing more than a “continuing struggle in which the rich and powerful impose their will on the poor and weak.”<sup>25</sup> Burrow, however, says that Gilmore’s characterization oversimplified Holmes by overemphasizing his perceived mental state or personality traits while neglecting to situate Holmes in his historical and social context. Burrow contends that Gilmore also failed to account for the Social Darwinism that informed his legal thought.<sup>26</sup>

Burrow describes the power of economic institutions and the underlying economic forces that provided the underpinnings for Holmes’s philosophy. In general, Holmes believed that judicial decisions should support the dominant power structures of society because those with economic power, for example, could best determine the most beneficial direction for it. Burrow alludes to Holmes’s position on judicial activism, and he affirms Diamond’s statement that for Holmes, “judges make rather than find law.”<sup>27</sup> Burrow’s interest, however, lies in exploring Holmes’s philosophy as it pertains to matters of economics and economic struggle. He places Holmes among a group of intellectuals including John Dewey, Thorstein Veblen, Charles Beard and James Harvey Robinson, all of whom shared similar outlooks and concern for vibrant social life. This emphasis on social life coincided with a number of “analogous intellectual positions” such as pragmatism, behaviorism, legal realism, and economic determin-

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20 Diamond, “Citizenship, Civilization, and Coercion,” 115.

21 Diamond, “Citizenship, Civilization, and Coercion,” 115.

22 Diamond, “Citizenship, Civilization, and Coercion,” 116.

23 Diamond, “Citizenship, Civilization, and Coercion,” 116.

24 John W. Burrow, “Holmes in His Intellectual Milieu,” in *The Legacy of Oliver Wendell Holmes, Jr.*, ed. Robert W. Gordon (Stanford: Stanford University Press, 1992): 17–30, 21.

25 Burrow, “Holmes in His Intellectual Milieu,” 21.

26 Burrow, “Holmes in His Intellectual Milieu,” 21.

27 Burrow, “Holmes in His Intellectual Milieu,” 21.

ism.<sup>28</sup> In explicating Morton White's *Social Thought in America: The Revolt Against Formalism* (1949), Burrow argues that Holmes's position regarding the role of judges in making law existed within a net of '-isms' and juxtaposed with, for example, Dewey's instrumentalism and Beard's concern with the underlying economic forces in history and politics.<sup>29</sup>

Burrow, however, complicates the notion of Holmes as Social Darwinist. The question for Burrow, simply put, is what kind of Social Darwinist was Holmes? The author classifies Holmes as both "individualist" and "collectivist," with the qualification that he does not mean "collectivist" or "socialist" related to state policies.<sup>30</sup> Holmes believed that competition among groups instead of individuals represented a crucial aspect of societal evolution; in this sense, he was "collectivist," according to Burrow.<sup>31</sup> As an "individualist," however, Burrow argues that Holmes "accepted individualist assumptions of economic orthodoxy" but "did not bring his evolutionism and his individualism together."<sup>32</sup> The author then notes two cases, *Vegeahn v. Gunter* and *Plant v. Woods*, in which Holmes ruled in favor of organized labor because it had played a major role in the "struggle" that he perceived as so critically important for society. Burrow indicates that Holmes saw "economics as economics" and a "branch of the rational discussion about policy."<sup>33</sup> His statement contradicts an analysis of Holmes that suggests he supported the idea that dominant power makes law and, more often than not, judicial decisions should support the interest of those with economic influence. Burrow's probing of this dichotomy in Holmes's thinking, however, does not illuminate more fully how his opinion in these two cases fits with the judge's guiding philosophy in general.

Burrow's analysis of Holmes's Social Darwinism becomes a unique take on his philosophy. Other legal and intellectual historians, however, have focused more on Holmes's views on morality in relation to making law. Horwitz, for one, describes Holmes as "fighting a two-front war."<sup>34</sup> As Diamond, Burrow and others argue, Holmes "challenged orthodox legal theory for its moralism and individualism" because he thought that the tenets of these 'isms failed to take into account the legitimate regulatory functions of law.<sup>35</sup> On the other

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28 Burrow, "Holmes in His Intellectual Milieu," 21.

29 Burrow, "Holmes in His Intellectual Milieu," 21.

30 Burrow, "Holmes in His Intellectual Milieu," 29.

31 Burrow, "Holmes in His Intellectual Milieu," 29.

32 Burrow, "Holmes in His Intellectual Milieu," 29.

33 Burrow, "Holmes in His Intellectual Milieu," 29.

34 Horwitz, "The Place of Justice Holmes in American Legal Thought," 35.

35 Horwitz, "The Place of Justice Holmes in American Legal Thought," 35.

hand, Horwitz explains that Holmes resisted a view that allowed for liability without personal blameworthiness and that he very much wanted to create law devoid of moral consideration, even in matters of criminal law.<sup>36</sup> Furthermore, Horwitz claims that Holmes sought to do away with any view of law that permitted, on utilitarian grounds, the redistribution of wealth in the interest of general welfare.<sup>37</sup>

With regard to Holmes's rejection of utilitarianism, H.L. Pohlman argues that the judge refused to accept such a system of "objective" and "scientifically-measured" morality.<sup>38</sup> Pohlman's work, *Justice Oliver Wendell Holmes & Utilitarian Jurisprudence*, explains that Holmes viewed moral principles as ultimately arbitrary even if "fervently held."<sup>39</sup> He believed that morality "was contingent upon the desire of men to live in society" while utilitarians held moral principles as obligatory regardless of individual desires.<sup>40</sup> Utilitarians never called into question the greatest good for the greatest number, but Holmes contended that "the obligatory character of utility" became dependent upon a person's more primal urges or instincts. As such, morality should not serve to subdue human inclinations; rather, it should function to satisfy urges in an acceptable or attractive way.<sup>41</sup> According to Pohlman, Holmes held that morality's relation to an ideal legal system never became more than "a matter of contingent fact" or that moral concerns existed but did not represent the guiding principles for making law.<sup>42</sup> While utilitarians viewed all legal infractions as immoral acts or omissions, for Holmes, morality pertained to an individual's state of mind while law addressed external acts.<sup>43</sup>

Gary J. Aichele also captures this conflict between Holmes and his opponents over the role of morality in law; however, unlike Horwitz or Pohlman, he tends to paint the picture with broader brush strokes. Aichele explains that Holmes received criticism from different groups for his ethical relativism and his position that values represented a matter of taste.<sup>44</sup> He was also criticized for his acceptance of the dominant power in the community as the force for mak-

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36 Horwitz, "The Place of Justice Holmes in American Legal Thought," 35, 38.

37 Horwitz, "The Place of Justice Holmes in American Legal Thought," 35.

38 H.L. Pohlman, *Justice Oliver Wendell Holmes & Utilitarian Jurisprudence* (Cambridge: Harvard University Press, 1984), 13.

39 Pohlman, *Holmes & Utilitarian Jurisprudence*, 13.

40 Pohlman, *Holmes & Utilitarian Jurisprudence*, 13.

41 Pohlman, *Holmes & Utilitarian Jurisprudence*, 14.

42 Pohlman, *Holmes & Utilitarian Jurisprudence*, 14.

43 Pohlman, *Holmes & Utilitarian Jurisprudence*, 14.

44 Gary J. Aichele, *Oliver Wendell Holmes, Jr.: Soldier, Scholar, Judge* (Boston: Twayne Publishers, 1989), 163.



ing law or that judges should usually rule in favor of that dominant power.<sup>45</sup> Aichele, to his credit, focuses on Holmes's legacy, arguing that he encouraged a "new kind of judicial activism in the late 1930s and early 1940s [in the U.S.]" and even after he died.<sup>46</sup> Holmes's longtime friend and contemporary, Felix Frankfurter, for example, continued Holmes's legacy, especially as it pertained to using legislative power for reorganizing society.<sup>47</sup> Aichele's analysis, however, challenges Burrow who poses that Holmes did not always side with dominant power and at times supported organized labor over corporate or industrial interests. This difference between the two scholars' positions suggests that Aichele has possibly failed to characterize more fully the complexity and nuance of Holmes's philosophy.

Although perhaps self-evident, these analyses of Holmes's philosophy reflect a complex and arguably paradoxical perspective of jurisprudence and also the relationship between American law and American society. Burrow, Horwitz, Pohlman, Diamond, and, to perhaps a lesser extent, Aichele show that Holmes, as the father of legal realism, wed himself to certain beliefs about society and how law should further society on the whole. His outlook stood in direct contraction to moral absolutists and utilitarians as well as those jurists who remained committed to legal formalism or conceptualism. But these scholars do not devote much attention to how Holmes's philosophy (or philosophies) plays out in particular U.S. Supreme Court cases. They remain very rooted in the more theoretical constructs of his judicial philosophy and also how his perspective paralleled the outlook of other intellectuals of his time.

Another important facet of Justice Holmes's philosophy, however, lies in his positions on judicial activism and restraint. Frederic Kellogg's poignant contribution, titled *Oliver Wendell Holmes, Jr., Legal Theory, and Judicial Restraint*, shows that Holmes prioritized certainty as an important principle of the law and simply believed that lack of judicial intervention would result in uncertainty in the law.<sup>48</sup> According to Kellogg, Holmes thought that, at the appropriate point, judges should exercise what he termed "the sovereign prerogative of choice" that would force "future actors" to determine the limits of legal liability.<sup>49</sup>

Ironically, though, despite his views on judicial activism, Holmes dissented from majority opinion in some cases that necessarily asked him to support his

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45 Aichele, *Holmes: Soldier, Scholar, Judge*, 163.

46 Aichele, *Holmes: Soldier, Scholar, Judge*, 162.

47 Aichele, *Holmes: Soldier, Scholar, Judge*, 161–162.

48 Frederic R. Kellogg, *Oliver Wendell Holmes, Jr., Legal Theory, and Judicial Restraint* (Cambridge: Cambridge University Press, 2007), 33.

49 Kellogg, *Holmes, Legal Theory, and Judicial Restraint*, 33.

beliefs on this issue. Kellogg cites *Vegeahn v. Gunter* (1896) as a notable example in which Holmes, then a justice on the Supreme Judicial Court of Massachusetts, dissented in a case involving the worker's right to strike. The majority of justices held picketing as an "unlawful interference with the rights both of the employer and of employed."<sup>50</sup> Holmes, however, argued that whether or not workers could picket represented a question of public policy and therefore a legislative concern. In other words, the judicial branch possessed no constitutional authority to make such determinations. Regardless, the Massachusetts court overruled Holmes on the grounds that strikers had violated the constitutionally protected right of free contract between employer and employee.<sup>51</sup> Kellogg suggests that Holmes's dissent in *Vegeahn* became important because he embraced the same principles in his dissents in such cases as *Lochner v. New York*, a landmark case on labor disputes during the early twentieth century.

### 3 *The Path of the Law* as legal realism treatise

Undoubtedly, *The Path of the Law* represents an embodiment and a codification of Holmes's thinking, but it also serves as a guide for American jurists in the early twentieth century. *The Path of the Law* was first given as a public address in 1897 at a dedication for Boston University's new law-school building and a short time later published in the *Harvard Law Review*.<sup>52</sup> While legal scholars and historians have given the address significant attention as seminal both in Holmes's particular philosophy as well as in signaling a paradigm shift in legal thought, they have not applied the methodological approach of rhetorical analysis for looking more critically at arguments, evidence, verbal images and metaphors Holmes employed in making his case.

A noteworthy example, however, of scholarly work on *The Path* comes from a Cambridge University Press anthology published in 2000 titled *The Path of the Law and Its Influences: The Legacy of Oliver Wendell Holmes, Jr.* The volume contains 14 essays, all of which consider, from various angles, the philosophical underpinnings of *The Path* and, as the title indicates, its influence on legal thinking. None of these 14 authors, however, uses rhetorical analysis for studying this treatise as a legal argument, and moreover, these essays do not show the influ-

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50 Kellogg, *Holmes, Legal Theory, and Judicial Restraint*, 127.

51 Kellogg, *Holmes, Legal Theory, and Judicial Restraint*, 129.

52 Steven J. Burton, "Introduction," in *The Path of the Law and Its Influence: The Legacy of Oliver Wendell Holmes, Jr.*, ed. Steven J. Burton (Cambridge: Cambridge University Press, 2000): 1–6, 5.

ence of *The Path of the Law* on U.S. Supreme Court majority and dissenting opinions. In other words, these essays capture *The Path* and its place in American intellectual history and its relationship to parallel or competing philosophies without showing its impact on actual legal practice. Rhetorical analysis – and, more precisely, a close textual analysis of Holmes’s language – provides a unique method for uncovering meaning, both subtle and not-so-subtle, in the text and thus useful for peeling back the layers of Holmes’s philosophical position on the law and its function in society.

From the very beginning of *The Path*, Holmes makes strong claims related to his philosophy of the law, the heart of which lies in separating morality and legality.<sup>53</sup> He invokes a metaphor that pejoratively (and sarcastically) identifies sources of law (e.g., reports, treatises, statutes) as the “oracles of law” and by labeling these sources “prophesies” that create “confusion between legal and moral ideas.”<sup>54</sup> These verbal images portray the quasi-religious sentiment with which jurists have almost worshipped such sources. By employing the terms “oracles” and “prophesies,” Holmes seeks to undermine the entrenched conceptualism or formalism that had guided jurists for the previous hundred or more years. Furthermore, he even goes so far as to label the conflation of morality and legality as “evil” because effectually, “that theory is apt to get the cart before the horse, and consider the right or the duty as something existing apart from the independent of the consequences of its breach, to which certain sanctions are added afterward” (*PL*, 4). Holmes explains “legal duty” as a “prediction” because if someone engages in certain actions, then the judgment of the court will make that person suffer in a certain way (*PL*, 4). In other words, legal duty results from a belief in morality and also in positive and negative consequences for a person’s actions (i.e., in actuality, moral duty, not legal duty), and only when the legal system begins to separate law and morality can one gain a complete understanding of what legitimately constitutes “legal duty.” Establishing this claim as a basic premise for the treatise enables Holmes to define “a right study and mastery of the law,” and he describes law as a “business with well understood limits, a body of dogma enclosed within definite limits” (*PL*, 6). In short, conflating morality and law not only confuses the meaning of legal duty but, in a general sense, also takes away from the law as an intellectual and voca-

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<sup>53</sup> As previously discussed, several scholars (e.g., Horwitz, Pohlman) have written about Holmes’s agenda to separate morality from the law. This separation reflects an integral part of Holmes’s judicial and legal philosophies.

<sup>54</sup> Oliver Wendell Holmes, Jr., *The Path of the Law* [1897], ed. American Classics Library (American Classics Library, 2012), 3.

tional pursuit. For Holmes, the law is the law, and as such, attorneys and judges, not ethicists, should practice it.

As a major illustration of *The Path*, Holmes uses contract law as an example of the necessity of separating morality and legality by asserting that “nowhere is the confusion between legal and moral ideas more manifest than in the law of contract” (PL, 9). Holmes explains that common law holds that one pays damages if the person does not intend to keep something he or she damaged, destroyed, or harmed in some way (PL, 9). He argues that a legal treatment of contract under tort law assumes, however, that a person becomes liable for paying a compensatory sum while contract law stipulates that one must pay a compensatory sum “unless the promised event has come to pass” (PL, 9).

Here, Holmes once again engages in skillful use of language in arguing against those who disagree with his conception of contract law. He says this way of thinking about contract law “stinks in the nostrils of those who it advantageous to get as much ethics into the law as they can” (PL, 9). This statement shows Holmes countering previous perspectives on law that take too much into account “intent” as opposed to the actual language of contract. He contends that no one can comprehend a “true theory of contract” until one understands the formality of contracts and “that the making of a contract depends *not* [emphasis added] on the agreement of two minds in one intention, but on the same agreement of two sets of external signs” (PL, 11). Holmes clarifies that establishing a contractual agreement does depend upon the two parties having said the same thing, not having meant the same thing (PL, 11). His argument suggests that he sees society moving toward trusting written codification while abandoning custom and ritual – and associated ‘intent’ – in establishing contracts. The custom and ritual, for Holmes, brings the baggage of morality that interferes with contractual legitimacy. Simply put, lawyers and judges must consider only the contractual language in enforcing contractual limitations or determining liability in instances of contractual breach.

In a second major section of *The Path of the Law*, Holmes relates his opinion regarding “social advantage.” In one example, Holmes challenges the idea that employers, as “certain classes of persons,” must always ensure the safety of their workers and that failing to do so should make them legally liable (PL, 14). He explains that many businesses had paid extensive damages for injuries to persons or property and that railroads and factories, for example, had shouldered a serious financial burden in paying those costs. Holmes sees the impact as being upon the public, not the business, because they ultimately pay for these damages when businesses pass along these costs to consumers. In addition, he asserts that the actual question of liability becomes whether or not the public

views it as desirable that they should “insure the safety of one whose work it uses” (*PL*, 15).

Holmes then reveals his primary motivation for using this illustration of businesses paying high costs for damages to person or property. He accuses judges of failing to recognize fully “their duty of weighing considerations of social advantage,” suggesting that judges should take a more active role in determining societal best interest (*PL*, 15). That best interest, however, may indeed result from judges siding with the interests of corporations over the interests of, in many instances, the workers. Holmes sees this “duty” as “inevitable” and that despite “judicial aversion” to face such considerations, judges do take sides on “debatable and often burning questions” (*PL*, 15–16). His argument in this section is that judges do not sit on benches as passive agents; rather, their decisions take stances by ruling in favor of one side or the other. In the examples Holmes uses, though, he suggests strongly that judges should lean toward supporting those with economic power because doing so strengthens society. Moreover, Holmes continues to use repeatedly the term “duty” in this context so that he might continue to define “legal duty” as separate from “moral duty.” Simply put, judges make the law; they do not decide it.

Holmes, however, shifts focus slightly in the third section of the address. Here, his purpose lies in setting a new agenda for the study of law as an academic discipline. Holmes complains about the current study of law as basically a study of history, although he acknowledges history as a component of legal study because “without it we cannot know the precise scope of rules which it is our business to know” (*PL*, 17–18). Once again, though, Holmes employs vivid verbal imagery to achieve his purpose. Referring to emphasizing law as a focal point of study, Holmes likens the study of the law “to getting the dragon out of his cave” and “on to the plain and in the daylight” (*PL*, 18). He continues on with this metaphor of the law as dragon by saying that one “can count his teeth and claws, and see just what is his strength” (*PL*, 18). The use of verbal imagery and metaphor paint a picture in the mind of the audience and one that furthers law as a unique endeavor.

His use of metaphor and verbal images, however, helps him advance a new paradigm for legal theory and practice. Continuing with his law as dragon comparison, Holmes states that “to get him out is only the first step. The next is either to kill him, or to tame him and make him a useful animal” (*PL*, 18). With these words, Holmes not only distinguishes a study of law from a study of history, but he articulates a new vision for the law. His dragon in the cave image suggests that legal practitioners have yet to harness the law’s full potential; they remain focused on a study of history and adherence to precedent without recognizing the law’s propensity to positively affect society. Society must decide

what to do with the dragon – yes, according to Holmes, we can decide to kill the dragon, but it is in our best interest to keep him alive and harness his enormous power and potential. Immediately following this description, Holmes argues that the “blackletter man may be the man of the present, but the man of the future is the man of statistics and the master of economics” (*PL*, 18). This statement follows his dragon metaphor with no explanation connecting the two. His audience, however, infers that the way to “tame the dragon” lies in seeing the law in relationship to economic advantage.

This section sees Holmes repeat several words and descriptors to make his point. He repeats the word “revolting,” for example, to characterize society basing an understanding of law on history and impress upon his audience that the legal profession should move in a new direction. Holmes describes it as “revolting” to embrace the rule of law simply because “it was laid down in the time of Henry IV” (*PL*, 18). His contempt for treating the basis for rule of law as grounded in history continues with his criticism that rule of law ceases to exist if it “simply persists from blind imitation of the past” (*PL*, 18). Holmes labels such a condition “still more revolting” (*PL*, 18).

In lambasting jurists’ tendency to rely solely on history for interpreting and applying law, he points to examples that he characterizes as “merely historical.” Specifically, Holmes claims that the law of contract “is full of history” in that society has based obligations for payment on tradition. The “classification,” as he puts it, for “certain obligations to pay money” is, once again, “merely historical” (*PL*, 21). Holmes also mentions, albeit briefly, that the doctrine of consideration “is merely historical” (*PL*, 21). Holmes, however, makes a point important to his case for separating history and tradition from rule of law when he asks why any “merely historical distinction be allowed to affect the rights and obligations of business men” (*PL*, 22). This statement reflects the use of the passive voice (i.e., “be allowed”), which becomes curious in the context of this speech. Holmes, in indicting the legal establishment for basing law on history, never directly accuses the court or judges of making decisions in a misguided way. Either he, as in this instance, uses passive constructions that omit the actor or agent or he refers to the pursuit of law in its most abstract sense. Furthermore, Holmes defends his indictment by stating that one can criticize what one holds dear (law, in this case) so that society might advance the “ideal of its future” (*PL*, 23). He cautions against the “pitfall of antiquarianism,” and by using the term “antiquarianism” he highlights the antiquated (and likely provincial, in Holmes’s mind) assumptions guiding the legal enterprise as it enters into the twentieth century; Holmes stresses that “for our purposes our only interest in the past is for the light it throws upon the present” (*PL*, 23). Holmes also envisions a “time when the part played by history in the explanation of dogma shall be

very small” and that “we shall spend our energy on a study of the ends sought to be attained and the reasons for desiring them” (*PL*, 23).

This aforementioned remark serves as a transition into the last section of his address – a section that actually serves a twofold purpose. First, it affirms his stance on legal decisions supporting the best interest of society. Second, he advances his agenda for the study of law as its own intellectual pursuit or discipline; in other words, he explains what the study of law should legitimately be from his point of view. In affirming his stance on legal decision-making validating the economic well-being of society, a perspective that necessarily means that jurists should side with those in positions of power, Holmes laments the “divorce,” as he terms it, between schools of political economy and schools of law while contending that the split suggests that “much progress in the philosophical study [of law] still remains to be made” (*PL*, 24). He admits, however, that by considering law in relationship to political economy, the legal establishment still considers history on a “larger scale”; however, political economy encourages jurists to think about and “weigh the ends of legislation, the means of attaining them, and the cost” (*PL*, 24). Holmes’s argument first suggests that the study of economics supplants the study of history as a basis for rule of law by implying that economic considerations pull the law into the realm of pressing *status quo* circumstances and issues. His arguments, however, also seek to persuade the legal establishment to consider the best interests of society, interests necessarily embedded within actions affecting a robust economy.

Yet Holmes also sets an agenda for the study and practice of jurisprudence. He characterizes jurisprudence as “undervalued,” and then defines jurisprudence as “simply law in its most generalized part” (*PL*, 24). Jurisprudence, in other words, represents the mother discipline of law and, moreover, separate from a study of history. He then chooses to address his audience of law students and faculty directly by telling them to “discern the true basis for prophecy” (*PL*, 25). By using the word “prophecy,” Holmes shifts the focus of law from the past (study of history) to the present and the future. He beseeches the student of law and the aspiring attorney to develop an “accurate notion of what you mean by law, by a right, by a duty, by malice, intent, and negligence, by ownership, by possession, and so forth” (*PL*, 25). Holmes’s listing of these legal terms pushes members of the profession to conceive of their enterprise as a unique discipline with its own conceptual frameworks. In this basic sense, Holmes asks his audience to operationalize definitions of these terms thereby allowing for further dissolution of law and history as inextricably intertwined.

Holmes then takes the opportunity to once again admonish those who would pursue law as history by (perhaps boldly) contending that “the advice of elders to young men is very apt to be as unreal as a list of the hundred

best books” (PL, 25). His critique does not end there, though. Holmes proceeds to quash the study of probably the most recognized legal system in the western tradition. He says studying Roman law results in an exercise “high among the unrealities” because to do so means “to study it as a working system” (PL, 25). Holmes argues that pursuing Roman law means “mastering a set of technicalities more difficult and less understood than our own,” but more importantly, it implies studying history, not law, as well as considering the ends the Roman legal system served at the time the Roman Empire existed (PL, 25). A better approach, Holmes argues, lies in studying the subject itself (i.e., the law).

Although Holmes refutes the historical approach to law several times in this address, he presents the Roman law example at this particular juncture of the speech for a more precise reason. His Roman law illustration shows how the law can move away from a basis in history and become set apart as its own pursuit. Holmes claims that “we have too little theory in law rather than too much, especially on this final branch of study [jurisprudence]” (PL, 26). Here, Holmes’s social scientific perspective, or belief in an empirical approach, manifests into a coherent ideological position on the law. His closing remarks stress the importance of ideas and that “theory is the most important part of dogma of the law, as the architect is the most important man who takes part in the building of a house” (PL, 28). Holmes goes on to note that the “most far-reaching form of power is not money, it is the command of ideas” (PL, 28–29).

*The Path of the Law* espouses an agenda for the study and practice of law, seeks to demolish the notion of making a study of jurisprudence the study of history and encourages present and future legal practitioners to design, like the architect designs a house, a legal system according to its own exclusive theoretical and ideological underpinnings. As his remarks about the “command of ideas” suggest, legitimate power lies in good ideas, not necessarily in the form of money itself. Holmes, perhaps paradoxically, suggests that the ideological dimensions of the law should embrace those with the power to advance the economic wellbeing of society. In other words, legal decisions should necessarily serve the interests of economic powerbrokers. His statements expressing regret over the separation of “political economy” from a study of law support this point. In short, *The Path of the Law* helps create legal realism as a new paradigm for legal theory and practice.

*Santa Clara v. Southern Pacific Railroad* and *Lochner v. New York* represented significant and landmark Supreme Court cases because both helped set precedent for treating corporations as individuals worthy of constitutional protections. *Lochner v. New York*, in particular, advanced a new perspective on the theory of contract. *The Path of the Law*, however, articulated a new paradigm for legal thought that had guided the court in *Santa Clara* and then once again helped



shape its majority decision in *Lochner*. While the irony remains that Holmes dissented in *Lochner*, his words from *The Path* permeate and manifest in both of these cases that necessarily meant greater power for corporations and business owners and necessarily less power for laborers and government entities overseeing the activities of capitalist enterprises. While several legal scholars have argued over the significance of *Santa Clara* and *Lochner*, it becomes critically important to realize that a legal realist ideology was taking shape in the late nineteenth and early twentieth centuries that informed, and to no small degree, the actions of the U.S. Supreme Court. *The Path of the Law* became an important and seminal treatise for a guiding legal philosophy in the twentieth century.

Raffaella Bertazzoli

# Il mostruoso e divino incanto: le sirene e un caso di *ekphrasis*

I have heard the mermaids singing, each to each.

I do not think that they will sing to me.

T.S. Eliot, *The Love Song of J. Alfred Prufrock*

## 1 Una storia lunga e controversa

Se è vero che l'episodio più noto delle Sirene appartiene al testo omerico (*Od.*, XII, vv. 39–54), il mito delle fanciulle incantatrici ha avuto, durante i secoli, diramazioni molteplici. Le complesse significazioni, che i mitografi ci hanno tramandato, sono state interpretate secondo parametri culturali, sociali, storici, facendo di questa *fabula* uno dei racconti più ricchi di potenziali riscritture.<sup>1</sup>

Molti sono i campi semantici attribuiti alle Sirene e alla loro complessa genealogia: di volta in volta creature dai poteri nefasti, esseri ibridi e teriomorfi. Sono vergini punite per essersi sottratte al potere di Afrodite, simboli di un eros perverso. Nell'iconografia antica sono rappresentate metà donne e metà uccelli, condizione dovuta alla punizione inflitta dalle Muse, vincitrici in una gara di canto. Si tramanda che in una successiva trasformazione, le Sirene assumano la fessità della pietra, diventando degli scogli.

Una lettura antropologica del mito riconosce alle Sirene un'identità sessuale, ma non un ruolo sociale; per questa condizione liminare sono raffigurate a presiedere ai passaggi e a sovrintendere a ritualità funebri.

Esperte del canto e dell'incanto, nelle rappresentazioni iconografiche le Sirene suonano il doppio flauto e la lira. Il loro è un canto non apollineo; è una melodia che supera la misura, avvincente e insieme nefasta. Promettendo di svelare verità assolute, attirano i naviganti verso il campo fiorito, che è una grande distesa di scheletri.

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<sup>1</sup> Laura Mancini, *Il rovinoso incanto. Storie di Sirene antiche* (Bologna: Il Mulino, 2006); Maurizio Bettini, Luigi Spina, *Il mito delle sirene. Immagini e racconti dalla Grecia a oggi* (Torino: Einaudi, 2007); Agnese Grieco, *Atlante delle Sirene* (Milano: Il Saggiatore, 2017); Harry Vredenveld, «Deaf as Ulysses to the Syren's Song: the Story of a Forgotten Topos,» *Renaissance Quarterly*, LIV (2001), 846–882.

Nel primo viaggio per mare che ci è stato tramandato dal mito (*Le argo-nautiche*), le Sirene inducono con il canto i marinai a fermarsi, annientando la loro volontà e impedendo il *nostos*:

E stando sempre in agguato al di sopra del porto,  
tolsero a molti, consumandoli nel languore,  
il dolce ritorno.<sup>2</sup>

Orfeo, dalla nave Argo, salva il compagni ingaggiando una sfida con le creature marine e sovrastando con la cetra il loro canto. Nelle *Argonautiche orfiche* la sconfitta diventa mortale per le Sirene. Lo stupore nell'udire il suono della cetra le invade: fanno cadere gli strumenti, gemono e si gettano in mare, trasformandosi in scogli silenti. È lo stesso Orfeo a narrare l'evento:

[...] La rupe scoscesa che dall'alto  
incombe sporgendo coi suoi nudi crepacci, si spinge dentro il mare  
e di sotto, nel cavo, freme l'onda azzurra.  
Là sedendo alcune fanciulle ammaliano i mortali che all'udirle  
non vogliono più tornare. Piacque allora ai Minii di conoscere il canto  
delle sirene e non vollero sottrarsi a quella funesta melodia  
e dalle mani avevano già lasciato andare i remi  
e Anceo aveva messo la prora verso l'alto promontorio,  
ma io tra le mie mani tesi le corde della lira,  
infusi su ispirazione di mia madre la piacevole armonia di un canto.

[...]

Allora, al suono della mia cetra stupirono le sirene  
dall'alto della rupe e cessarono il loro canto.  
Si lasciarono cadere di mano l'una il flauto l'altra la lira  
ed emisero angosciosi gemiti perché era giunto il triste destino  
della morte fatale. Dalla rupe scoscesa si gettarono  
nell'abisso del mare ondoso.  
E in pietra mutarono il corpo e la loro fiera bellezza.<sup>3</sup>

Circe mette in guardia Ulisse dalle Sirene che stregano i marinai con il loro canto. Il verbo omerico è *thélgein* che raccoglie nel suo etimo l'idea dell'incanto, dell'incatenamento: «Alle Sirene prima verrai, che gli uomini / Stregano tutti, chi le avvicina.»<sup>4</sup>

<sup>2</sup> Apollonio Rodio, *Le Argonautiche*, trans. Guido Paduano, intr. Guido Paduano, Massimo Fusillo (Milano: Rizzoli, 2002), 631 (900–902).

<sup>3</sup> *Argonautiche orfiche*, ed. Luciano Migotto (Pordenone: Edizioni Studio Tesi, 1994), 97, 99 (1265–1290).

<sup>4</sup> Omero, *Od.*, XII, ed. Rosa Calzecchi Onesti (Torino: Einaudi, 1989), 331 (39–40).

Narrando ad Alcinoò la sua avventura con le Sirene, Ulisse ricorda le raccomandazioni di Circe. Per indicare sia il piacere intellettuale che nasce dall'ascolto sia il piacere dei sensi, la maga usa il verbo *terpein*: «sicché tu goda ascoltando la voce delle Sirene».<sup>5</sup> Preservati dal rischio, grazie allo stratagemma del *polymetis* Ulisse, i marinai non possono udire la melodia incessante e monotona, che annienta i sensi e la mente, provocando l'intorpidimento della volontà:

Ma come tanto fummo lontani, quanto s'arriva col grido,  
correndo in fretta, alle Sirene non sfuggì l'agile nave  
che s'accostava: e un armonioso canto intonarono.  
«Qui, presto, vieni, o glorioso Odisseo, grande vanto degli Achei,  
ferma la nave, la nostra voce a sentire.  
Nessuno mai si allontana di qui con la sua nave nera,  
se prima non sente, suono di miele, dal labbro nostro la voce;  
più pieno di gioia riparte, e conoscendo più cose.»<sup>6</sup>

Il desiderio di conoscenza, che incatena Ulisse all'albero della nave, disegna una vera e propria *temptation scene*. Nella simbologia cristiana verrà accostata alla sfida biblica del conoscere il bene e il male con il riferimento a *Genesi*, 3,5, e al serpente tentatore che promette alla coppia la conoscenza e la vita eterna: «Anzi, Dio sa che quando voi ne mangiaste, si aprirebbero i vostri occhi e diventereste come Dio, conoscendo il bene e il male.»<sup>7</sup>

Socrate esorterà Fedro, nell'omonimo dialogo, a non lasciarsi ipnotizzare dal canto incessante delle cicale nell'ora della canicola, pericoloso come quello delle Sirene. Per forza d'incanto, Roger Caillois dice che le Sirene sono allegoria della canicola e le accosta ai demoni meridiani che insidiano gli uomini nell'ora panica.<sup>8</sup>

Attraverso il loro canto ammaliante e funesto, che cosa hanno rivelato le Sirene? A Ulisse promettono di dire tutto ciò che l'uomo può sapere sulla vicenda di Troia, il dolore che «Argivi e Troiani patirono»; e non solo: gli sarà svelata una sapienza universale:

5 Omero, *Od.*, XII, 331 (52).

6 Omero, *Od.*, XII, 337, 339 (181–188).

7 Gennaro D'Ippolito, «Ulisse nella letteratura cristiana antica,» *Ulisse nel tempo. La metafora infinita*, ed. Salvatore Nicosia (Venezia: Marsilio, 2003): 195–210; Nicola Pace, «Il canto delle Sirene in Ambrogio, Gerolamo e altri Padri della Chiesa» *Nec timeo mori*, Atti del Congresso internazionale di studi ambrosiani nel XVI centenario della morte di Sant'Ambrogio (Milano, 4–11 aprile 1997), ed. Luigi F. Pizzolato, Marco Rizzi (Milano: Vita e Pensiero, 1998): 675–677.

8 Roger Caillois [1988], *I demoni meridiani* (Torino: Bollati Boringhieri, 1999).

Noi tutto sappiamo, quanto nell'ampia terra di Troia  
 Argivi e Teucri patirono per volere dei numi;  
 tutto sappiamo quello che avviene sulla terra nutrice<sup>9</sup>

Avrà potuto veramente udire Ulisse quelle profonde verità? Non lo sappiamo perché Omero non lo dice. Su questa reticenza espositiva ed ermeneutica, si sono formulate innumerevoli interpretazioni.

Nella letteratura greca posteriore ai testi omerici, l'interpretazione del mito delle Sirene tiene come *focus* la seduzione intellettuale che porta all'oblio degli affetti. Una fondamentale evoluzione dell'immagine della sirena si perfeziona alle soglie dell'età ellenistica, quando il suo fascino terribile, legato al canto, si trasforma in capacità di seduzione. Alla forza persuasiva della parola s'accompagna una maggiore sensualità. La *malìa*, che esse esercitano, trasforma il fascino del *logos* retorico in *himeros*, nel richiamo dei sensi.

Questa lettura passa anche nella tradizione latina che sviluppa interpretazioni sulle capacità canore delle Sirene. Cicerone nel *De finibus* segue la linea greca e attribuisce la seduzione alla forza di un canto depositario di una sapienza superiore:

a mio parere, Omero vide qualcosa di simile nella favola da lui immaginata sul canto delle Sirene. E infatti risulta che esse solevano richiamare i naviganti non per la dolcezza della voce o per qualche nuova e diversa maniera di cantare, ma perché dichiaravano di saper molte cose, tanto che gli uomini rimanevano attaccati ai loro scogli per desiderio di imparare. [...] Omero s'avvide che il mito non poteva ottenere approvazione, se un sì grand'uomo fosse stato trattenuto irretito da canzoncine; promettono il sapere, e non era strano che per uno desideroso di sapienza esso fosse più caro della patria.<sup>10</sup>

Stazio nelle *Sylvae* descrive gli effetti d'incanto del suono armonioso delle Sirene: «hinc levis e scopulis meliora ad carmina Siren / advolat, hinc motis audit Tritonia cristis.»<sup>11</sup> Nelle *Allegorie omeriche* di Eraclito (II sec.), Omero è il cantore d'impresche che vanno interpretate con un significato allegorico, comprensibile solo a iniziati in grado di andare aldilà della lettera, scoprendo verità nascoste.<sup>12</sup>

<sup>9</sup> Omero, *Od.*, 339 (189–191).

<sup>10</sup> Marco Tullio Cicerone, *De finibus bonorum et malorum*: «Vidit Homerus probari fabulam non posse, si cantiunculis tantus irretitus vir teneretur; scientiam pollicentur, quam non erat mirum sapientiae cupido patria esse cariorem. Atque omnia quidem scire, cuiuscumque modi sint, cupere curiosorum, duci vero maiorum rerum contemplatione ad cupiditatem scientiae summorum virorum est putandum» (5, 49). La traduzione è di Nino Marinone.

<sup>11</sup> P. Papinio Stazio, *Sylvae* (2, 116–117).

<sup>12</sup> Eraclito, *Questioni omeriche. Sulle allegorie di Omero in merito agli dèi*, ed. Filippomaria Pontani (Milano: ETS, 2005).

Il mito delle Sirene ha grande fortuna nella patristica greca e latina che ne forza la spiegazione con significati *e contrario*. Le interpretazioni allegoriche del mito, che la religione cristiana mette in atto per scopi di edificazione, trasformano le Sirene da incantatrici a meretrici che impediscono il ritorno agli affetti familiari. Clemente Alessandrino si riconduce alla linea interpretativa del neoplatonismo che rilegge l'episodio omerico come atto di volontà con il quale Ulisse riesce a sottrarsi al canto delle Sirene e alla loro tentazione.<sup>13</sup> Il viaggio di Ulisse diviene una grande metafora, in cui la nave è la Chiesa che fende i flutti perigliosi; l'anima supera il mare delle tentazioni delle Sirene che invitano al piacere e al sapere.<sup>14</sup> Per Boezio della *Consolatio* (1.1. 11) le Sirene sono tentatrici della carne e dell'intelletto, apostrofate dalla filosofia: «Partitevi dunque tostante, vane e folli sirene, che colla dolcezza vostra n'arrecate infino morte, e lasciate costui alle Muse mie, che lo curino e guariscano.»<sup>15</sup> In *Purg.* XXXI (43–48), Dante segue l'interpretazione canonica della seduzione intellettuale. Per sfuggirne le lusinghe, pone Beatrice come giudice delle sue fuorvianti seduzioni letterarie:

Tuttavia, perché mo vergogna porte  
del tuo errore, e perché altra volta,  
udendo le serene, sie più forte,  
pon giù il seme del piangere e ascolta:  
sì udirai come in contraria parte  
mover doviati mia carne sepolta.

In *Purg.* XIX (19–21), Dante ricorda il mito e la seduzione della Sirena con il verbo «dismago» che riprende il *thélgein* omerico:

«Io son,» cantava, «io son dolce serena,  
che' marinari in mezzo al mar dismago;  
tanto son di piacere a sentir piena! ...»

Anche Petrarca nella *Familiare* si difende dalle «Sirenum blanditias et viscum tenacissime voluptatis.»<sup>16</sup> Nel *Canzoniere*, si affida all'incanto della Sirena/Amore che regola la sua vita, come una Parca:

<sup>13</sup> Platone, *Symp.* (216a).

<sup>14</sup> *Das Meer der Welt*, «Zeitschrift für katholische Theologie,» 66 (1942), 91 ss.

<sup>15</sup> Giuseppina Mezzadrolì, «Dante, Boezio e le sirene,» *Lingua e stile*, XXV (1990): 25–56.

<sup>16</sup> Francesco Petrarca, *Familiare*, 5. 8.

Così mi vivo, et così avolge et spiega  
 lo stame de la vita che m'è data,  
 questa sola fra noi del ciel sirena (CLXVII).

L'Umanesimo recupera il mito nelle forme dell'allegorismo morale, sia esaltando le valenze della seduzione sia del canto. In una stanza di canzone (*Amorum libri*), Boiardo descrive la Sirena secondo stilemi canonici di seduzione pernicioso e di fascino; in un'accurata allocuzione, consiglia di fuggire dall'inganno finché resti un barlume di senno:

Quel dolce mormorar de le chiare onde,  
 ove Amor nudo a la ripa se posa,  
 là giuso ad immo tien la morte ascosa,  
 ché una sirena dentro vi nasconde  
 con gli ochi arguti e con le chiome bionde,  
 co il bianco petto e con lo adorno volto;  
 canta sì dolce che il spirito confonde,  
 e poi lo occide che a dormir l'ha colto.  
 Fugeti mentre il senso non vi è tolto,  
 ché il partir doppo il canto è grave affanno;  
 ed io, che scio lo inganno,  
 quasi contro a mia voglia ancor l'ascolto.<sup>17</sup>

Nella traduzione moderna del mito le Sirene possono cambiare statuto ontologico: non irretiscono i marinai con il loro canto bensì con il loro silenzio. Per Kafka, le Sirene non ascoltate e non guardate stanno in silenzio: la loro è una scelta strategica per contrapporsi all'astuzia di Ulisse che si fa sordo al loro fuorviante richiamo.<sup>18</sup> Venendo meno la loro stessa ragione di esistere, il loro principio ontologico, le Sirene si avviano dolorosamente verso la fine.<sup>19</sup>

Al tema del silenzio allude una poesia di Rainer Maria Rilke (*L'isola delle Sirene*, 1907), dove l'episodio mitico viene narrato per antifrasi: il pericolo delle Sirene nasce da quel terribile silenzio che i marinai cercano di annullare dirigendosi verso il luogo mitico; estinta la loro vocalità primitiva, il canto/poesia non esiste più:

<sup>17</sup> Matteo Maria Boiardo, *Amorum libri tres* (3, 59, 37–48).

<sup>18</sup> Franz Kafka, *Il silenzio delle Sirene: scritti e frammenti postumi (1917–1924)*, ed. Andreina Lavagetto (Milano: Feltrinelli, 1994), 44–46; Iolanda Stocchi, *Il silenzio delle Sirene. Figurezioni della psiche femminile* (Milano: Vivarium, 2005).

<sup>19</sup> Valeria Gigante Lanzara, *Il segreto delle Sirene* (Napoli: Bibliopolis, 1986); Viva Tedesco, *Il canto delle Sirene* (Castrovillari: Teda, 1994).

[...] di quell'isole  
 la cui vista fa sì che muti volto  
 il pericolo, e non è più nel rombo,  
 non nel tumulto come sempre era;  
 ma senza suono assale i marinai  
 i quali sanno che là su quell'isole  
 dorate qualche volta s'ode un canto,  
 ed alla cieca premono sui remi,  
 come accerchiati  
 da quel silenzio che tutto lo spazio  
 immenso ha in sé e nelle orecchie spira  
 quasi fosse la faccia opposta del silenzio  
 il canto cui nessun uomo resiste.<sup>20</sup>

## 2 Tra *ekphrasis* e pittura

La lunga tradizione iconografica rappresenta le Sirene nella loro prima forma teriomorfa di esseri metà donne, metà uccelli. Nel corso del tempo la loro immagine si trasforma assumendo anche valenze simboliche. Nel *Liber monstrorum de diversis generibus* (VIII sec.) le Sirene diventano donne bellissime con la coda di pesce, unendo alla malia del canto la bellezza e la seduzione dei sensi. Il loro stigma è la *voluptas*.<sup>21</sup>

Il binomio bellezza/canto, che ammalia, passa nella tradizione attestandosi nella pittura *fin-de-siècle* secondo stilemi di forte dualità: la donna è portatrice di valori ambigui, salvifici e perversi.<sup>22</sup> A questa linea seduzione/bellezza si conforma il pittore preraffaellita Dante Gabriel Rossetti, che sviluppa il motivo della Sirena nel sonetto *Sea Spell* (1868) e da questo trae ispirazione per l'omonima

**20** Rainer Maria Rilke, *Nuove poesie – Requiem*, ed. Giacomo Cacciapaglia (Torino: Einaudi, 1992), 203.

**21** Elisabetta Moro, *L'Enigma delle Sirene. Due corpi. Un nome* (Napoli: L'Ancora del Mediterraneo, 2009).

**22** Sia la poesia sia la pittura, dai preraffaelliti ai simbolisti, fanno del mito della Sirena un tema importante, cogliendo l'aspetto perturbante, ossessivo angosciante secondo le opposte polarità di *Eros* e *Thanatos*; cfr. Gilbert Durand, *L'immaginazione simbolica* (Roma: Il pensiero scientifico, 1977); Silla Consoli, *La candeur d'un monstre. Essai psychanalytique sur le mythe de la Sirène* (Paris: Le Centurion, 1980); Joseph A. Kestner, *Mythology and Misogyny: The Social Discourse of Nineteenth-Century British Classical Subject Painting* (Madison: University of Wisconsin Press, 1989).



tela, dipinta anni dopo (1877).<sup>23</sup> In un processo che va dalla scrittura poetica al segno pittorico, due espressioni artistiche che Rossetti interpreta con maestria durante l'intera sua vita (anche se si definiva «a poet, primarily»)<sup>24</sup>, il tema della Sirena richiama elementi del profondo, coinvolgendo un mito che ha creato forme dell'immaginario collettivo e strutture di pensiero. Il rapporto tra testo poetico e immagine, che caratterizza l'opera rossettiana, rinvia alla formula oraziana «ut pictura poësis»: un binomio estetico in cui la pittura è una sorta di poesia silenziosa, mentre la poesia è pittura parlante.<sup>25</sup>

Dell'intreccio tra *verbum* e *imago* si era avvalsa la retorica classica: attraverso il processo dell'*ekphrasis* e dell'*enargeia* (per i latini *evidentia* o *demonstratio*) la comunicazione verbale dell'oratore si strutturava su «valori fonici, visivi, icastici,» coinvolgendo l'uditorio con un discorso di alto impatto emotivo.<sup>26</sup>

Nella *Rhetorica ad Herennium* Cicerone chiarisce i termini di questo processo: «L'evidenza è quando una cosa viene espressa con parole, così che sembra che il fatto si svolga e la cosa si trovi sotto gli occhi.»<sup>27</sup> Nel *De oratore* precisa che: «crea un forte coinvolgimento sia l'insistere su un'unica cosa, sia il fornire una spiegazione chiara dei fatti come se stessero accadendo, in un certo senso ponendoli sotto gli occhi dell'uditorio.»<sup>28</sup>

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**23** Il quadro «A Sea-Spell» è stato dipinto su commissione dell'armatore Frederick Leyland. Da principio Rossetti aveva deciso di illustrare i versi del poema di Coleridge Kubla Khan «A damsels with a dulcimer / In a vision once I saw.» Il quadro s'ispira al sonetto omonimo inscritto sulla cornice e posto a commento del dipinto. Sulla pittura vittoriana cfr. Lynda Nead, *Myths of Sexuality: Representations of Women in Victorian Britain* (Oxford: Basil Blackwell, 1990).

**24** Oswald Doughty, *Letters of Dante Gabriel Rossetti*, ed. John Robert Wahl, vol. II (Oxford: Clarendon Press, 1967), 849.

**25** Definizione che, secondo la testimonianza di Plutarco (*De gloria Athen.* 346f), sarebbe del poeta Simonide di Ceo.

**26** Alessandra Manieri, *L'immagine poetica nella teoria degli antichi. Phantasia ed enargeia* (Pisa-Roma: Ist. Editoriali e Poligrafici, 1998), 12; Heinrich Lausberg, *Handbuch der literarischen Rhetorik* (München, 1960); Graham Zanker, «Enargeia in the Ancient Criticism of Poetry,» *RhM* 124 (1981): 297–311; Claude Calame, «Quand dire c'est faire voir: l'évidence dans la rhétorique antique,» *EL* 4 (1991): 3–22; eds. Carlos Lévy, Laurent Pernot, *Dire l'évidence. Philosophie et rhétorique antique* (Paris-Montreal: Editions L'Harmattan, 1997).

**27** Cicerone, *Rhetorica ad Herennium* (4.68) «Demonstratio est, cum ita verbis res exprimitur, ut geri negotium et res ante oculos esse videatur.»

**28** Cicerone, *De oratore* (3.202): «Nam et commoratio una in re permultum movet et inlustris explanatio rerumque, quasi gerantur, sub aspectum paene subiectio. Traduzioni da un lavoro di Nicoletta Marini sull' *Enargeia* o *evidentia* nella tradizione retorica greca e latina.

Quintiliano afferma che il retore deve disporre delle armi della fantasia e dell'*enargeia*, che è la capacità di rendere visivo un avvenimento o una scena, trasformando l'ascoltatore in uno spettatore:

È una grande virtù esprimere le cose di cui trattiamo in modo chiaro e tale da renderle visibili. L'orazione, infatti, non è abbastanza efficace né, come dovrebbe, domina completamente se ha forza solo sino alle orecchie e se il giudice crede che ciò su cui deve esprimere il giudizio gli viene narrato, non rappresentato e mostrato agli occhi della mente.<sup>29</sup>

Ma, torniamo al quadro di Rossetti. Le due espressioni artistiche (poesia e pittura), che Rossetti coniuga per la sua opera *Sea Spell*, rispondono a precisi caratteri retorici. Il sonetto è inserito visivamente nello spazio della cornice che, per sua natura, ha un'importanza simbolica molto precisa.<sup>30</sup> La ricchezza degli elementi bizantineggianti e la cura attribuita dal pittore a questo paratesto materiale, svolgono la funzione di indirizzare l'attenzione dello spettatore sull'immagine, evidenziandola all'interno dello spazio. Pur nella sua condizione di soglia, la cornice diviene parte integrante del dispositivo della rappresentazione, organizzando lo sguardo in modo estetico e inducendo a osservare ciò che sta dentro i suoi limiti. Secondo Georg Simmel la cornice svolge un duplice ruolo: come elemento di chiusura, ma anche come punto di apertura del quadro. La cornice porta lo sguardo dello spettatore dentro, ma anche aldilà della rappresentazione, sfondando verso la dimensione immaginaria dell'occhio che guarda.

Nella prassi artistica e letteraria, Rossetti segue le riflessioni filosofiche ed estetiche dei Romantici che smentiscono ciò che Lessing aveva teorizzato sul gruppo del *Laokoon*. Interpretando la famosissima scultura, Lessing aveva sancito la fine del paradigma oraziano «ut pictura poësis,» distinguendo i due codici estetici: quello letterario da quello figurativo, essendo la poesia arte in movimento, espressione del tempo lineare, mentre la pittura e la scultura arti dello spazio. I Romantici, al contrario, considerano spazio/tempo strettamente

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**29** Quintiliano, *Institutio oratoria* (8.3.61–62): «Magna virtus res de quibus loquimur clare atque ut cerni videantur enuntiare. Non enim satis efficit neque, ut debet, plene dominatur oratio, si usque ad aures valet, atque ea sibi iudex de quibus cognoscit narrari credit, non exprimi et oculis mentis ostendi.»

**30** Georg Simmel, «La cornice del quadro. Un saggio estetico,» in *I percorsi delle forme. I testi e le teorie*, ed. Maddalena Mazzocut-Mis (Milano: Bruno Mondadori, 1997); Jacques Derrida, *La vérité en peinture* (Paris: Flammarion, 2010); Louis Marin, *De la représentation* (Paris: Seuil/Gallimard, 1994).

uniti attraverso il processo efrastico della descrizione/narrazione. Leggendo e immaginando si giunge a un'integrazione dialogica ed ermeneutica.<sup>31</sup>

Nella seconda parte del XIX secolo, gli studi teorici sull'arte di Walter Pater ebbero un ruolo importante nella definizione del principio della comunione delle arti. Nel volume *The Renaissance. Studies in Art and Poetry*, Pater sottolinea la stretta interazione tra poesia e pittura, parafrasando la formula oraziana con le parole: «*painted poems, they belong to a sort of poetry which tells itself without an articulated story.*»<sup>32</sup>

Con il sonetto *Sea Spell*, inserito nello spazio della cornice, Rossetti attribuisce al paratesto un ruolo ermeneutico fondante, associando *verbum* e *imago* in un processo estetico d'integrazione. Il paratesto e il testo divengono elementi di supporto all'interpretazione dell'immagine, completando ciò che il quadro non rivela. Guidato dalla *dynamis* della narrazione, lo spettatore completa con «l'occhio della mente,» l'immagine del quadro.<sup>33</sup> Procedendo per *ekphrasis* attraverso i versi del sonetto di Rossetti, il processo interpretativo si costruisce secondo una nuova esperienza visiva, lasciando alla forza immaginativa il compito di integrare il non espresso del dipinto: vediamo le cose che non ci sono, attingendo al nostro vissuto esperienziale e culturale.

Il quadro ci mostra una giovane donna a pieno campo che domina lo spazio come un'icona pagana: con il suo strumento riempie un luogo, totalmente invaso da una natura lussureggiante; foglie, fiori, frutti contornano la sua figura armoniosa, avvolta in un abito luminoso. Lo spettatore coglie la condizione di melanconica solitudine della fanciulla, volutamente accentuata dallo sguardo perso verso un altrove infinito. La creatura incarna l'idea dell'arte come creazione non mimetica, è figura cosmologica di una femminilità atemporale, di una simbologia che unisce *eros* e *thanatos*, sacro e profano.

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**31** Michele Cometa, *Parole che dipingono. Letteratura e cultura visuale tra Settecento e Novecento* (Roma: Meltemi, 2004); Michele Cometa, *La scrittura delle immagini. Letteratura e cultura visuale* (Milano: Raffaello Cortina Editore, 2012); Federica Mazzara, «Il dibattito anglo-americano del Novecento sull'*ékphrasis*,» in *Intermedialità ed Ekphrasis nel Preraffaellitismo: il caso Rossetti* (Napoli: Università di Napoli, 2007), 1–70. Leo Spitzer, *Lo stile e il metodo*, Atti del XXXVI Convegno Interuniversitario (Bressanone/Innsbruck, 10–13 luglio 2008), eds. Ivano Paccagnella, Elisa Gregori (Padova: Esedra ed. 2010); Claus Clüver, «Ekphrasis Reconsidered. On Verbal Representations of Non-Verbal Texts,» in *Interart Poetics. Essays on the Interrelation between the Arts and Media*, eds. Ulla Britta Lagerroth, Hans Lund, Erik Hedling (Amsterdam: Rodopi, 1997).

**32** Walter Pater, *The Renaissance. Studies in Art and Poetry* (Mineola-New York: Dover Incorporations, INC), 99.

**33** Ruth Webb, *Ekphrasis, Imagination and Persuasion in Ancient Rhetorical Theory and Practice* (London-New York: Routledge, 2016).

Il titolo comune «*Sea Spell*» del sonetto e del dipinto suggerisce che stiamo assistendo a un incantesimo e autorizza lo spettatore a spostare la lettura del quadro a un tempo mitico. L'evento che sta per compiersi è sospeso, le dita della donna toccano lo strumento in un'atmosfera di totale abbandono verso il soprannaturale che viene interpretato dalla musica misteriosa:

Her lute hangs shadowed in the apple-tree,  
While flashing fingers weave the sweet-strung spell  
Between its chords; and as the wild notes swell,  
The sea-bird for those branches leaves the sea.

Come Orfeo, la fanciulla incanta, sovvertendo le leggi della natura: l'uccello marino lascia il mare e si ricovera sull'albero del melo. Rossetti ne accenna in una lettera: «[Siren] charms a bird into the magic of her lay.»<sup>34</sup>

Il quadro, legato alla spazialità, con il suo misterioso silenzio sospeso, entra nella *dynamis* della narrazione: attraverso il sonetto, che invade il paratesto, siamo in grado di seguire la temporalità degli accadimenti. La donna/Sirena creatrice di «note misteriose» è a sua volta incantata dalle voci che vengono da altri mondi, dall'oltremondo degli abissi e dalle sfere armoniche dei cieli. Una cosmologia fantastica la richiama:

But to what sound her listening ear stoops she?  
What netherworld gulf-whispers doth she hear,  
in answering echoes from what planisphere,  
along the wind, along the estuary?

La fanciulla seduce con la sua musica le creature marine, che affiorano sulla schiuma delle onde. Attirato da un canto che non promette di rivelare una sapienza arcana, ma è solo un'armoniosa melodia, un nuovo Odisseo, libero da funi, si dirige verso la sua fine:

She sinks into her spell: and when full soon  
her lips move and she soars into her song,  
what creatures of the midmost main shall throng.  
In furrowed self-clouds to the summoning rune,

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**34** Dante Gabriel Rossetti, *His-Family Letters*, vol. I (London: Ellis and Elvey, 1895), 364. Lo strumento suonato dalla sirena è il Koto; Dante Gabriel Rossetti, *A Sea Spell*. Fogg Museum, Harvard University (Cambridge, Massachusetts). Cfr. Henry Johnson, *Dante Gabriel Rossetti and Japan: the Musical Instrument Depicted in «The Blue Bower» and «A Sea Spell.»* «Music in Art,» XXX, 1–2 (2005), 145–153, 147.

till he, the fated mariner, hears her cry,  
and up her rock, bare breasted, comes to die?

La *fabula* di *Sea Spell*, che Rossetti narra nell'interazione delle due arti, si fonda sui collegamenti tra mitologia e psicologia del profondo, sui quali Károly Kerényi imposta la sua rilettura del mito.<sup>35</sup> Il rapporto tra la sfera fantastica e la struttura concettuale è: «una *via* psichica al mito,» scrive James Hillman, «una connessione con il mito che procede attraverso l'anima.»<sup>36</sup> In questo processo estetico, i miti sono sottratti alla sfera del puro racconto e riportati sulla terra e dentro l'intima essenza dell'essere.

La donna/Sirena di Dante Gabriel Rossetti, nella sua assoluta e irredimibile solitudine, vive un costante rispecchiamento narcisistico che non concede relazioni con l'alterità. La Sirena ha perso la sua essenza mitica perché la musica non ha più funzioni sapienziali, ma rinvia solo a se stessa.

Sulla fascinazione del puro canto si è soffermato Michel Foucault (*La pensée du dehors*), che riconosce nella promessa un appagamento infinito e la vera tentazione:

Le sirene sono la forma inafferrabile e proibita della voce che attrae. Non sono altro che canto. [...] La loro musica è il contrario di un inno: nessuna presenza scintilla nelle loro parole immortali; solo la promessa di un canto futuro ne percorre la melodia. È per questo che le sirene seducono, non tanto per ciò che fanno udire, ma per ciò che brilla nella lontananza delle loro parole, l'avvenire di quel che stanno per dire. Il loro fascino non nasce dal canto attuale, ma da quello che s'impegna a essere. Ora, ciò che le sirene promettono a Ulisse di cantare è il passato delle sue stesse imprese, trasformate per il futuro in poema. [...] Offerto come in cavo, il canto non è che l'attrazione del canto, ma non promette all'eroe nient'altro se non la copia di quel che ha già vissuto, conosciuto, sofferto, nient'altro se non lui stesso.<sup>37</sup>

La Sirena, ripresa e riletta da Rossetti sul modello delle *Pathosformeln* warburghiane, assolutizza il ruolo della bellezza e della forza ammaliatrice. Nella rappresentazione dell'eterno femminino che incanta la natura, la donna/Sirena è pura musica mentre la poesia conserva la sola possibilità di eternare ciò che è caduco. Il mito si è dissolto nell'atto di un pianto di morte: tutto l'altro è silenzio.

35 Károly Kerényi, *Il rapporto con il divino*, trans. Maria Anna Massimello (Torino: Einaudi, 1991).

36 James Hillman, *Saggio su Pan* (Milano: Adelphi, 1977), 29.

37 Michel Foucault, *Il pensiero del fuori*, trans. Vincenzo Del Ninno (Milano: SE, 1998), 43–44.

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# **From Modernism to Post-postmodernism**



Svend Erik Larsen

# Breaking the Silence: Cultural and Legal Encounters

## 1 Two judiciaries

Isak Dinesen's *Out of Africa* (1937) is an autobiographical novel-like narrative about life in colonial Kenya, set on her coffee plantation near Nairobi from WWI to the early 1930s during the years of British jurisdiction. "Kitosch's Story"<sup>1</sup> forms a short subsection of this narrative. It tells how a killing exposes a gap between British law in the European tradition and local customary law as well as a gap between the two continents concerning such issues as explicit and implicit conceptions of law, the individual human being, culture and society, ethics, justice, punishment, verdict and retribution. The fatal killing renders the differences between two judiciaries clear for everybody, but not necessarily the mutual understanding of how and why the two systems are formed as they are, and how and why they work as they do. What is obvious, however, is the need to recognise the existence of this cultural disparity and to find ways to approach it, a need which, in Kitosch's case, has no resonance in either of the two cultures. Hence, the legal particularity of each system opens a cultural context much larger than the case itself and the problems of issuing a verdict that can be accepted in accordance with a particular sense of justice.

However, neither of the systems is able to discuss its own limitations vis-à-vis its counterpart, which would require an imaginative capacity to view the law with the eyes of others through the lens of a sense of justice different from one's own. Such a capacity is not spurred by legal thinking. Instead, it is the task of a literary narrative to nurture the eye-opening comprehension of others and, not least, to be attentive to the limits of the respective legal systems. In the story, such an awareness is created with a criminal case and divergent legal practices as its plot, which leads to a demonstration of the open-ended ambiguity of law when squeezed between two cultures that are alien to each other yet co-exist in the same place.

With legal issues as a filter, literature enables us to address the larger cultural question of encounters between cultures as well as the formal and informal value systems and the identity formations each of them underpins, particularly

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1 Karen Blixen and Isak Dinesen, *Out of Africa* (London: Penguin, 1985), 289–294.



in places that, like colonial Kenya, could qualify as a ‘contact zone’.<sup>2</sup> Here, cultures co-exist in an asymmetrical power relation, in this case with the British maintaining the upper hand, and this situation requires a sensibility to cultural improvisation in social micro-management, which is foreign to the aim of jurisprudence yet familiar to literary imagination. “Kitosch’s Story” is a discussion of the need for and the constraints of this imagination.

Dinesen tells the tragic story of a Kikuyu boy, Kitosch, who takes the liberty of riding his master’s horse against the orders given to him. Kitosch is later found dead after having been severely flogged and locked up by his master. It is assumed he has died because of his master’s enraged overreaction. However, the expert medical report denies this conclusion; his master’s treatment could not have been fatal. Another witness, a black boy who brought water to Kitosch while he was locked up, explains that the imprisoned Kitosch had expressed a wish to die and that his death could therefore be seen as an act of volition.

Inside the court, the problem arises that, without an unambiguous cause of death, the judges cannot sentence the white farmer for being responsible for intended manslaughter, and the alternative explanation, death by sheer volition, has no bearing according to British law. Circumstantial evidence for the cause of death and for the farmer’s intention must carry the case. All the principles concerning individual responsibility, the role of intention and motive, forensic evidence for the cause of death, and respect for *habeas corpus* are taken into account as prescribed by British law, which is the formal law of the colony.

While the court is in session, Kitosch’s extended family and members of the Kikuyu community gather in great numbers outside the building, probably, the narrator assumes, without fully understanding the proceedings. The narrator herself is familiar with the practical working of the local and informal customary law yet does not understand the deeper reasons behind its logic and procedures. In another story, “A Shooting Accident on the Farm”<sup>3</sup>, she works hesitantly as an active mediator between the two systems, while, in Kitosch’s story, she simply tries to interpret what happens when these systems collide. In both cases, she continuously reminds us that she is working in the dark. She has to explore a whole range of emotions in herself and in the community while trying to grasp a complicated mix of legality and ethics, which implies that she has to engage with an entirely different sense of time for when and how an acceptable conclusion is reached. A court session is over when a verdict is reached, but

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2 Mary Louise Pratt, *Imperial Eyes* (London: Routledge, 1992).

3 Karen Blixen and Isak Dinesen, *Out of Africa* (London: Penguin, 1985), 89–162.

when is a case closed in the local community? She is not sure about this, and the British judges do not care.

The narrator embarks on a long learning process about legality and a sense of justice in a contact zone. From the local perspective, the building blocks of British law, such as intention, motive, cause and individual responsibility, are irrelevant to Kitosch's case, and, since it follows from the same principles, the retribution directed towards the perpetrator, measured as time behind bars, a fine, or something similar, is also of no interest. Kitosch is dead regardless, and the only important issue is to negotiate a settlement that will compensate the family for the loss, a process that may drag out endlessly, since it is also an occasion for the local people to get together. The verdict in the colonial court is final and would have been the same back in Britain: a fine and a short period of imprisonment because of the status of the proof. According to the law, this is a just closure of the affair. It satisfies a certain sense of justice underpinning British law with its underlying notion of humankind, which is based on a universal principle of individual responsibility and the assumption that any individual as a rational being is capable of accepting such responsibility for his or her actions independent of any particular context.

However, no compensation from the farmer or the white community to the family is mentioned or even considered, be it valuable objects, animals, crops, women, or another man's son to replace Kitosch as a labour force in the household. For the Kikuyu people, the individual human being is first and foremost part of a tribal community, inscribed in an extended family, and identified as a person according to locally defined rules of honor and shame which are rooted in a belief system based on ancestral spirits that shape the fate of each individual.<sup>4</sup> In this context, the narrator suggests – without fully understanding her suggestion – that Kitosch could have decided to die because a sense of shame overpowered him. In this way, according to local beliefs and traditions, he may have satisfied the spirits and restored the status of the community as a whole. The essential function of the local legal system is to rebalance the system when it is broken, both in relation to the spirits on behalf of the entire community and to the economic conditions of the family who has suffered a loss.

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4 Didier Njirayamanda Kaphagawani, "African Conceptions of a Person: A Critical Survey," in *A Companion to African Philosophy*, ed. Kwasi Wiredu (Oxford: Blackwell, 2006): 332–342; Ifeanyi A. Menketi, "Person and Community in African traditional Thought," in *African Philosophy*, ed. Richard A. Wright (Lanham: University Press of America, 1984): 171–182; Ifeanyi A. Menketi, "On the Normative Conception of a Person," in *A Companion to African Philosophy*, ed. Kwasi Wiredu (Oxford: Blackwell, 2006): 324–331.

The two legal principles, each with their own underlying sense of justice and embedded in different and more comprehensive cultural norm systems, are mutually exclusive. With no dialogue between them, they are also irrelevant to each other, most importantly because their ideas about the core event, Kitosch's death, are incompatible. For the British system, there is no doubt that the killing belongs to the categories of offence defined by the British law, and a sentence can be issued without any problem as long it obeys the forensic requirements. A killing is of course a serious offence, but it does not present a serious challenge to the legal system as a whole or result in a verdict at odds with a collectively acknowledged sense of justice within the white colonial community. In contrast, the narrator surmises, the killing represents an almost unforgivable offence in the local system, not because of the oppressive white violence itself, but because Kitosch, without being personally guilty, seems to have activated a shameful imbalance in the indigenous cosmological universe, a collectively unbearable infliction of humiliation.<sup>5</sup> He then himself restores the cosmological dimension, but the compensation, which in the social dimension should satisfy the local sense of justice, never occurs, and the Kikuyus are, shamelessly, left powerless. For the British, the farmer faced justice. For the Kikuyus, he avoided it. In the colonial contact zone, this conflict between verdict and a sense of justice apparently finds a solution through the practice of law, but, in reality, it is a result of the exercise of colonial power, which makes invisible the possibility of other forms of mediation or of coping with the boy's death. 'What might such forms have looked like?' the text implicitly invites us to ask.

The story itself does not ask this question. Instead, it exposes the need for these forms and the difficulty of finding them, ignorant as the two parties are with regard to each other's legal system and sense of justice and mutual lack of interest in closing the cultural gap. The narrator only opens the question, but she lacks the tools to suggest answers, grounded as she is in European legal thinking and cultural values and, whilst open to alternative cultural realities, unable to get under the skin of the Kikuyus. Hence, together with the narrative itself, her construction of herself as reflexive narrator with a broader, though still restricted, view than the British colonial court exposes her doubtful openness.

In the first paragraphs of the story, the narrator repeats Kitosch's story in the same way it was reported by a local newspaper, tersely and matter-of-factly like

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<sup>5</sup> Martha Nussbaum, *Hiding from Humanity. Disgust, Shame, and the Law* (Princeton: Princeton University Press, 2004); Gabrielle Taylor, *Pride, Shame, and Guilt. Emotions of Self-Assessment* (Oxford: Clarendon, 1985).

the reporter, ending by giving the location of the court. This forms the first half of the narrative frame, a sort of factual meta-level. She then moves her attention to the assembled Kikuyus in front of the courtroom, who are as foreign to the deeper logic of European law as she, the narrator, confesses she is to local thinking, which she can only describe rather superficially for the reader. In this middle part, several stories are intertwined: the stories of the court and the medical experts, seeking facts, the white farmer, the owner of the horse, the boy guarding Kitosch, through whom we hear Kitosch's voice, and, finally, the natives, who are never heard outside the narrator's story. In other words, the whole cultural complexity of the case cannot be contained in one story, told by a reliable narrator, but only by partly incompatible voices, which the narrator brings together in their incompatibility, beyond her capacity to overcome.

The final paragraph contains the second half of the narrative frame, a self-reflexive meta-level. Like the white farmer and the judges, she places herself as a foreigner in relation to the local culture, yet, in contrast to the whites, she demonstrates an understanding of the incompatibility of the two cultures and sympathy for the rights of the local culture to define the law of the land. Yet, still, she cannot imagine how to unify the stipulated native prerogative with the colonial power of British law and culture. Before I present a possible way of bridging an opposition like this, it is necessary to take a brief conceptual detour.

## 2 Sense of justice and radical wrongdoing

The cultural and legal conflict made visible by Dinesen's story offers an opportunity to describe both what 'radical wrongdoing' and 'sense of justice' mean in a multicultural contact zone. In line with Clifford Geertz,<sup>6</sup> I here prefer to use the term 'thick description' instead of 'definition.' A thick description is relevant for concepts concerned with attitudes, values and actions because it suggests a contextual interconnection of these features, not a decontextualised definition. A sense of justice can be described 'thickly' as an ethical-emotional agreement, shared by a large or small cultural community where the ensuing informal and invisible norms are translated into human action, which is attached to human responsibility in such a way that this ethical-emotional agreement interacts with and underpins the legal system in the culture where it operates. In other words, a sense of justice unites legal ideas with a sense of individual and collective identity.

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6 Clifford Geertz, *The Interpretation of Cultures* (New York: Basic Books, 1973).

The center of gravity for any sense of justice is a culturally determined cluster of ideas about what it means to be human – what a human can do, must do, may do and ought to do. In Dinesen's story, a foundational idea of individual responsibility is pitted against the responsibility embedded in a communal fate. Moreover, the notion of humanity also points to what a human must not, cannot, may not and ought not to do. In short, it points to the limits of humanity. Kitosch was undoubtedly forced beyond the limits of humanity as conceived in his community when he was locked up and flogged, troubling his family, community and the ancestral spirits and releasing a process of further collective shameful-ness – they are not worthy of compensation or even negotiating compensation. In this limbo, no law can reach him and he himself has to assume the responsibility for what he must do to help his community to overcome its shame.<sup>7</sup>

In contrast, the white farmer has offended the law, but he can still be held responsible within existing legal categories. His own sense of guilt or arrogance is irrelevant to the court. A gap between law and sense of justice does not appear within either of the two cultural spheres of colonial Kenya, but it does appear forcefully between them, unnoticed by the British colonial power but registered, the narrator believes, by the local community. What happened was unjust according to their sense of justice; the white community, not the white farmer himself, should have paid compensation. Something – though not the same thing – is missing on both sides, and this separates the law from sense of justice. One party searches in vain for the cause of death; the other searches in vain for compensation. The former represents a problem that the British law can solve and poses only a minor problem for the local community; the latter shakes the very foundation of local law and sense of justice and is irrelevant to the British.

On such cultural conditions, no ideal or neutral universal platform is available to decide unambiguously what is a radical wrongdoing and when a sense of justice is or is not satisfied. Moreover, a set of terms rooted in Westernised individualism, norms and religion will represent only one option without carrying the same weight everywhere. Blatant crimes against humanity, such as genocides, massacres, ethnic cleansing, consistent and violent persecution of minorities, random terror condoned by authorities, and mass rapes as a strategy of war, will most often qualify as radical wrongdoing across cultural division lines, mainly because they attract the attention of global media. Yet such agree-

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<sup>7</sup> See my analysis of Chinua Achebe's *Things Fall Apart* in Svend Erik Larsen, "From Comparatism to Comparativity. Comparative Reasoning Reconsidered," *Interfaces. A Journal of Medieval European Literatures* 1.1 (2015): 318–347, available at: <http://riviste.unimi.it/interfaces/index> (last access February 16, 2018) and chapter 7 of my *Literature and the Experience of Globalization. Texts Without Borders* (London: Bloomsbury, 2017): 193–222.

ment is not always universal. There are holocaust deniers; Japan finds it difficult to acknowledge the fate of Korean comfort women; the Turkish government has never accepted as genocide the treatment of the Armenians in the early twentieth century; the Syrian regime has not categorized the well-documented gas attacks on civilian Syrians as crimes against humanity but instead as just and legitimate means to defend the state against terrorists; horrifying Indian rape cases are for some defensible within the caste system and its perception of gender. Tragically, there are many such examples.

Cases of greater complexity occur where different notions of humanity underpin divergent judicial systems and the ensuing sense of justice. Nevertheless, such notions have to co-exist in the growing number of multicultural contact zones in today's world. Female circumcision, to take but one example, is defended within certain cultural norm systems as a gendered indication of humanity with a long tradition. However, as a cultural practice, it is also perceived as a revolting iniquity in cultures that cultivate a sense of justice based on individual human rights, including the principle of gender equality and autonomy of the body. In spite of their acclaimed universality, human rights and the ensuing definitions of crimes against humanity are also based on a context-specific notion of humanity. This notion is rooted in the secularism of European Enlightenment with the fully responsible individual as its core. It has subsequently been transported from its European origin to other cultural contexts without an inherent human rights tradition and, hence, not met with universal acclaim.

Therefore, radical wrongdoing, independent of the scale of atrocity, is always culturally situated and should be regarded as any act *perceived and experienced* to disrupt a shared notion of humanity that supports the law, the established sense of justice and the processes of identity formation in a given community. This applies both to communities within narrow or wide physical borders and to those with open or rigid norm systems. It also holds when such system claim to rest on norms of universal validity, as is the case in most norm systems based on religion. In today's multicultural contact zones, there is no universally accepted watertight definition of a radical wrongdoing that covers all instances and is exempt from the difficult cultural negotiation of its status.

This is an everyday experience in multicultural contact zones. It is only by taking such cultural contextualization seriously that we can grasp how a contested or entirely destroyed sense of humanity resulting from large- or small-scale iniquities seeps into the minds of people whose values and individual and collective identities, as in the case of the Kikuyus, have been pushed beyond their capacity to cope with acts that they perceive and experience as a radical wrongdoing. When such normative differences are brought to the point of conflict,

shared conditions of coping can only be obtained by difficult and ongoing negotiations between more or less compatible or conflicting values and practices.

In cases of gross violation, the gap between the law and the sense of justice widens to an unbridgeable abyss because neither can absorb the event – the law has no sufficient categories with which to operate, and the notion of humanity supporting the sense of justice is shattered regardless of whether the sense of justice is defined by individual or collective responsibility. In 1996, the South African apartheid perpetrator Eugene de Kock was sentenced to two life sentences plus 212 years in prison, which may be meaningful in a formal legal system given the seriousness of his crimes, but is otherwise absurd. Hence, no sense of justice can be satisfied, individually or collectively. The fact that he was released on parole after twenty years probably did not redress this imbalance or solve the basic problem: de Kock's work as a torturer and hangman was beyond what any legal system could translate into a measurable punishment to which any sense of justice could relate. In cases of actions that are perceived as radical wrongdoing in a given cultural context, it is necessary to imagine tools other than formal law to either work alongside or perhaps replace the law.

### 3 Coping

In order to better come to terms with acts of gross wrongdoing, I would like to suggest an enlarged interpretation of the notion of 'coping,' mostly known from individual psychotherapy. During therapy, people with experiences of a more or less traumatic nature can receive help to find strategies to approach these experiences in new ways in order to achieve a better balance in their lives. The aim is not to forget the troubling experiences but to remember them in ways that integrate them into a larger existential context. There are many possible strategies, such as physical exercise, mental training or narration of life stories, and they all aim to achieve a mental sustainability and to nurture the capacity to live on. The general denominator of the strategies is *recontextualisation*: from trauma to narrative or from bodily pain to a mental and physical training programme. The basic requirement for this recontextualisation is human imagination, viz. an individual's ability to imagine that his or her confrontation with a painful experience can be moved from the original to a new context, where the possibility to reevaluate or re-negotiate ways to approach the experience is opened up.

It is possible to see a judiciary as a particular set of tools for collective coping and to understand its practices as coping strategies. Its aim is to secure the sustainability of a society and a culture with regard to its material life, its ethics and

its basic ideas on human communality and responsibility in order for this society and culture to continue to exist and develop. In a court, a crime is transferred from its original scene to a new context of a legally based quantitative measurement that matches the local sense of justice, be it a fine, imprisonment, a life sentence, forced labour, exile or another type of retribution, which are negotiated by lawyers and judges.

If formal law in its various social and cultural appearances indicates one end of a spectrum for collective coping, the sense of justice marks the other end. Here, the recontextualisation of the event is a conversation in many public and private fora concerning the social and cultural values involved. This multi-directional conversation decides if a verdict is appreciated as fair, but without recurrence to what is required by formal law, only to what is perceived as fair or unfair in the public eye, often charged with more emotions than paragraphs. Such negotiation of value adjustments may take place at the lunch table, on social media, on TV, in the press or otherwise. The central point is that a trespass has made visible the limits of agreement on cultural values, and coping takes places as a re-assertion or modification of these limits. When the public fora are blocked or censored and secret surveillance is active in totalitarian regimes, the conversation may be minimal, but throughout history it has always been there.

Coping establishes a balance between two basic principles: retribution and reconciliation, where retribution dominates the legal end of the spectrum and reconciliation dominates the other – though often these principles are combined. Lynching, honor killing or violent ethnic harassment are rarely condoned by the law but are perhaps condoned by a local sense of justice. Yet, conversely, in some cultures, the law may turn a blind eye to cases of rape or serious economical offences involving money laundering, bribery or corruption. The global *Corruption Perception Index* bears witness to this fact.<sup>8</sup> If recontextualisation is the basic mode of individual and collective coping, striking a balance between retribution and reconciliation is the goal offered by various coping strategies available in a culture. This may occur collectively through legal punishment negotiated in a court room, or, alternatively, as illegal acts of revenge counterbalanced by different types of pardon or truce-making between clans and families. It may also occur individually through self-injury (a known punishment) – for example, self-flogging on a religious road to redemption for various trespasses – coun-

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<sup>8</sup> Available at: <https://www.transparency.org/research/cpi/overview> (last access February 16, 2018).



terbalanced by attempts at self-forgiveness through confession or staged encounters between a perpetrator and a victim.

If both law and a sense of justice can be included within a larger framework of coping, the shortcoming of law and the disparity between legal decision and a sense of justice may also allow for new imaginative approaches to a recontextualisation of life-shattering atrocities with the goal of maintaining or reestablishing the sustainability and continuation of a society. In cases of large-scale iniquities on the level of apartheid, genocide and other crimes against humanity, or, as in Dinesen's story, the mutual alienation of culturally different legal systems and senses of justice with entirely opposed perceptions of individual and collective identity and responsibility, the need for such imaginative approaches is obvious. The severe iniquities that destroy human lives beyond any human scale both question the particular cultural norms and address the larger ontological and existential issue of a broken sense of humanity and of personal and collective identity.

## 4 Breaking the silence: forgiveness as speech act

Breaking the silence marks the point at which coping may reach a dead end, on an individual as well as a collective level. Therapeutic talking cures, and storytelling, life writings, theatre and other performative exercises with a verbalizing core may help rape victim or victims of war crimes to recontextualise their suffering and imagine a life beyond their traumas without forgetting the origin of their tribulations. However, certain experiences may be beyond verbalization, either because of their traumatic nature or because of cultural ignorance. The latter applies to Kitosch's story, where only the narrator fills the silent gap between the two cultural contexts. In both cases, imagination is key, and lack of verbalized imagination enables the suffering to continue. In the aftermath of apartheid, Njabulo Ndebele made the case for literary imagination as "the capacity for our society to stimulate the imaginations of its peoples through voices that can go beyond the giving of testimonies, towards creating new thoughts and new worlds."<sup>9</sup>

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<sup>9</sup> Njabulo Ndebele, "Memory, Metaphor, and the Triumph of Narrative," in *Negotiating the Past: The Making of Memory in South Africa*, eds. Sarah Nuttall and Carlie Coetzee (Cape Town: Oxford University Press, 1998): 19–28, 28.

Yet speaking up is not always accepted. With the explicit goal of promoting a national reconciliation on a collective level and supporting the transition to democracy, a large majority of the Spanish parliament passed an amnesty law in 1977 confirming the so-called Pact of Forgetting (*El pacto de olvido*). The Spanish civil war 1936–1939 and the ensuing Franco dictatorship represent a terrifying period in Spanish history. Pablo Picasso's canonical painting *Guernica* (1937) turned the terror bombardment of civilians in the Basque town of Guernica that very year into an iconic expression of what was later codified as crimes against humanity. Nevertheless, forty years of mass atrocities still lie hidden in graves, archives, stories, memories, guilt, fear and traumas. According to the Pact of Forgetting, these atrocities should remain there: no official investigations or reports on the years of oppression should be issued or supported and no collective responsibility for atrocities during the war and the repressions during the dictatorship should be assumed. Some modifications to the pact have been made, but no profound change in the public approach to the troubled past has occurred. Silence has been the order of the day. Yet, in Spain and other places in a similar situation, creative writing has fought to break the silence of the hidden memories.<sup>10</sup>

Post-apartheid South Africa chose the opposite strategy. In order to promote national reconciliation, prominent personalities in the new democracy believed it important to bring as many of the disturbing facts as possible from the past into the open to be discussed, evaluated and then, most importantly, recontextualised. This complicated process was framed by an institutional and discursive space, the *Truth and Reconciliation Commission*, where reconciliation could begin on the basis of unearthing as much truth as possible – and more than could be contained by any single individual. A series of public inquiries in the Commission ran from 1996 to 1998 and were conducted as a combination of public and widely publicized testimonies, confessions and pleas for forgiveness intended to be followed by explicit forgiveness uttered by the victims (neither the pleas for forgiveness nor the forgiveness always eventuated). Speech, not silence, was the order of the day – also for writers and other artists – but in a climate entirely different from that in Spain. The prison house of language is radically different from the prison house of silence. I will now briefly consider coping as forgiveness before I return to the South African case.

1) *Forgiveness is not about forgetting but about remembering* – often a very painful remembrance. This is because it is enacted as a recontextualisation;

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**10** See the project UNREST under Horizon2020, available at: <http://www.unrest.eu/home/> (last access 16 February 2018).

in other words, the event is transported to a new context in which coping as reconciliation is possible.

- 2) *Forgiveness occurs as an individual act but is a manifestation of the limits of collective norms.* Some conflicts, like genocide, are of a magnitude that no legal system can contain in their entirety. It is for this reason that ethical-emotional coping, such as forgiveness, is important, both as a point of departure and as an appeal to a new sense of justice.
- 3) *Forgiveness is always a verbal act or conditioned by verbal acts.* Performative speech acts have the capacity to establish a real event that materializes in language without simultaneously presenting a truth claim. This is what happens when a judge utters a verdict, even if this verdict is based on forensic evidence that does not speak for itself but is verbalized through legal terms. The same holds for forgiveness, whether it is given or requested. It has to be uttered, maybe indirectly, but there is not always a formal authority to guarantee the seriousness of the utterer. In contrast to a final verdict, it has to be confirmed explicitly by the receiver. Ultimately, a verdict stands irrespective of what the accused may say or think.
- 4) *Forgiveness is not an act that settles a case once and for all.* Unlike a verdict, repetition is a necessary aspect of forgiveness, which has to unfold in a continuous process of a fragile and repeated confirmation with the risk of never reaching a final reconciliation that satisfies the different types of sense of justice that frame the crime and its consequences, legal and otherwise. Forgiveness marks the opening of a communicative space, not its closure.

There are two reasons for the processual nature of forgiveness. First, it rests on a paradox, because the condition of possibility of forgiveness is the radical norm transgression, which is made explicit by the constitutive speech act of forgiveness. As Jacques Derrida points out, forgiveness is conditioned by the unforgivable.<sup>11</sup> It does not hide or annihilate the derisive act, but forces people to face it,

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**11** Jacques Derrida, "To Forgive: The Unforgivable and the Imprescriptible," in *Questioning God*, eds. John Caputo, Mark Dooley and Michael Scanlon (Bloomington: Indiana University Press, 2001): 21–51; Richard Holloway, *On Forgiveness. How Can We Forgive the Unforgivable?* (Edinburgh: Canongate, 2002). – See also, Svend Erik Larsen, "Forgiveness as a Challenge to the Law," in *Dialogues on Justice*, eds. Helle Porsdam and Thomas Elholm (Berlin: de Gruyter, 2012): 141–159; Svend Erik Larsen, "After the Battle. Complexities of Emotional Post-War Reactions," in *Repräsentation des Krieges*, eds. Søren Fauth, Kasper Green Krejberg and Jan Süsselbeck (Göttingen: Wallstein, 2012): 355–369; Svend Erik Larsen, "Emotion and Forgiveness in Literature," in *Exploring Text and Emotions*, eds. Patrizia Lombardo, Lars Sætre and Julien Zanetta, (Aarhus: Aarhus University Press, 2014): 63–89; Svend Erik Larsen, "The Good Life Lost and Found: East, West, Home's Best," in *East-West. Cultural Patterns and Neurocognitive Cir-*

thereby possibly enabling them to live with it in the challenging process of ongoing confirmation of forgiveness. Second, this confirmation is emotionally situated in a zone where the real and culturally determined but not legally defined sense of justice exists, which, in contrast to the law, involves individual and collective identity in the coping process. Hence, what is confirmed by the repetition of a final verdict is precisely the same verdict, but what is at stake when repeated in the process of forgiveness is a constant development of identity, confirming its power to cope with experience of what is perceived as radical transgression.

The repetition is a way of enabling people to reconstruct the past on new conditions that turn themselves into active subjects, making the painful past not *a* past but *their* past. Yet as a speech act, the process initiated by the first move of forgiveness does not contain criteria for when or how the process is completed successfully. Repetition is more fundamental than completion and non-conclusiveness is crucial for forgiveness as a relevant cultural coping strategy. Desmond Tutu, among others, emphasizes how forgiveness precisely as a risk gains its cultural importance:

[W]hen you embark on the business of asking for and giving forgiveness, you are taking a risk. [...] It could even sometimes make things worse. It is a risky undertaking. [...] Forgiving means abandoning your right to pay back the perpetrator in his own coin.[...] In the act of forgiveness we are declaring our faith in the future of a relationship and in the capacity of the wrongdoer to make a new beginning. [...] Once the wrongdoer has confessed and the victim has forgiven, it does not mean that [it] is the end of the process. [...] Confession, forgiveness and reparation, wherever feasible, form part of a continuum [...] by learning the languages and cultures of others.<sup>12</sup>

There is always, Tutu claims, the risk that forgiveness cannot be completed by both opponents. The differing understandings of the events, the interpretive framing and the status of the subjects may not find a common ground. If anybody had proposed reconciliatory coping as part of the trial after Kitosch's death, the attempt would in all likelihood have failed on both sides.

Alisa Carse and Lynne Tirrell call forgiveness an attempt at 'world-building'. They are less inclined than Tutu to offer a grand vision of a transformed worldview to guide the process and instead prefer the small steps approach, based on experiences from Rwanda. However, both the idea of forgiveness according to their 'emergent model' and Tutu's reflections point in the same direction:

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*cuits*, eds. Jan Vassbinder and Balász Gulyás (Singapore: World Scientific Publishers, 2016): 141–168.

12 Desmond Tutu, *No Future Without Forgiveness* (London: Rider, 1999), 216–222.

Our view of forgiveness emphasizes [...] *regeneration* – and let us add, *generation* – of shared normative structures, a shared moral world, in which survivors and perpetrators can develop mutual moral recognition and understanding, thereby paving a way for the possibility of forgiveness. [...] World building is not a solo activity; one always starts somewhere, with someone.<sup>13</sup>

## 5 Experimenting with cultural encounters

The *Truth and Reconciliation Commission*, or TRC for short, has achieved a global reputation as the prime example of reconciliation as a collective coping strategy in face of what the Commission called “gross violations of human rights” and has served as a model for the establishment for similar institutions in post-war or post-dictatorship situations. The TRC grew out of an appendix to the interim constitution of South Africa from 1993, called “Nation Building and Reconciliation”, and consisted of three sub-committees. The sub-committee responsible for dealing with human rights violations has attracted the most attention due to the public hearings it performed and the way the Commission staged them. The committee was active from 1996 to 1998 when it published a five-volume report. Another committee, The Amnesty Committee, only finished its work in 2003. In general, South Africa was and still is an example of the necessity and precariousness of transitional justice.<sup>14</sup>

It is impossible to elaborate fully on the extensive and diverse discussion surrounding the TRC in this article. Yet it is important to note that, over a relatively short amount of time, numerous books and articles, special issues, fiction and non-fiction, films, and TV programmes have been made describing, advocating, digesting, praising, criticizing, even condemning the TRC, its works, its foundation, its final reports and its cultural and political consequences in general.<sup>15</sup>

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**13** Alisa L. Carse and Lynne Tirrell, “Forgiving Grave Wrongs,” in *Forgiveness in Perspective*, eds. Christopher Allers and Marieke Smith (Amsterdam/New York: Rodopi, 2010): 43–65, 50 and 53.

**14** *The Truth and Reconciliation Commission*, available at: <http://sabctrc.saha.org.za> (last access February 15, 2018); *International Center for Transitional Justice*, available at: <http://ictj.org> (last access February 15, 2018). While fully recognising the aim and efforts behind TRC, the first thorough critical report, from a sociological (not a legal, cultural or literary) point of view, evaluating the limits and the failures of the transition process is Richard Wilson, *The Politics of Truth and Reconciliation in South Africa* (Cambridge: Cambridge University Press, 2001).

**15** See, for example, Sarah Nuttall and Carlie Coetzee, eds., *Negotiating the Past: The Making of Memory in South Africa* (Cape Town: Oxford University Press, 1998); David Attwell and Barbara Harlow, eds., *South African Fiction after Apartheid*, *Modern Fiction Studies* 46.1, 1998; Susan VanZanten Gallagher, *Truth and Reconciliation. The Confessional Mode in South African Literature*

The debate has not stopped, and the fragile nature of nation building has become evident in the country's recent development. Although the TRC was a time-limited exercise, it was not a finite event; as an institution it may be a model, but, as an experimental exercise, it can only be emulated in new experiments on reconciliation.

Many analyses of the assumed success or failure of the TRC tend to overlook its experimental character and the types of cases it dealt with: not any criminal act but gross violations of human rights with a traceable political motive. All other cases were referred to the criminal court with its formalized retributive procedures (an institution also in its making after apartheid, one has to add). In contrast to Spain after Franco, the TRC did not simply urge the people of South Africa to forget or repress the past but instead launched a diametrically opposite experimental exercise to bring memories and emotions sparked by gross human rights violations out into the open. Or, to be more precise: the aim was not to cope with the past but, by coping, to make it a shared past – not any shared past but the shared past of atrocities, also for those not directly involved. As such, for the TRC, both an appeal to an existing sense of justice and the attempt to re-direct this justice was more important than formal law.

The TRC is a tool to establish transitional justice; in other words, to establish a human rights-based constitution and judicial system where no such constitution had been possible before. This means that a new, broadly accepted sense of justice and a formal judicial and political system have to come into being at the same time. In post-war Germany, there was a history to refer to for democracy and proper jurisprudence; when Israel was created after the holocaust, there was already a sense of unity, law and shared values from the history of Jewish communities around the world. None of this existed in South Africa as a whole. In many ways, the TRC was a ship built while sailing.

This situation also shaped the discourse that backed the creation of the TRC and that was used and further developed when the TRC was in session 1996–1998. This discourse was a very particular construct and was created around two centers: one was human rights, which gave the TRC a universal and global

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(Portsmouth, New Haven: Heinemann, 2002); Rita Barnard and Grant Farred, eds., “After the Thrill Is Gone: A Decade of Post-Apartheid South Africa,” *The South Atlantic Quarterly* 103.4 (2004); Stefan Helgesson, *Writing in Crisis. Ethics and History in Gordimer, Ndebele and Coetzee* (Durban: University of KwaZulu-Natal Press, 2004); Shane Graham, *South African Literature after the Truth Commission. Mapping Loss* (London: Palgrave, 2009); Rita Barnard, *Apartheid and Beyond: South African Writers and the Politics of Place* (New York: Oxford University Press, 2012); Rita Barnard, ed., “Beyond Rivalry: Literature/History, Fiction/Non-Fiction,” *Safundi: The Journal of South African and American Studies* 13.1–2 (2012).

dimension, and the other was *ubuntu*, which provided the TRC with a local reference. Together with its equivalents across sub-Saharan Africa, *ubuntu* refers to the mutual recognition of the shared humanity of people and is considered the cornerstone of the traditional indigenous social fabric that pre-dates colonization. It is supposed to put reconciliation before retribution and to use retaliation and revenge as coping strategies when faced with (severe or less severe) norm transgressions. These two centers – human rights and *ubuntu* – had been compared in the past, but never before had they been combined as the unified dynamic center of one discourse.

Also knowing the importance of Christianity within the black population, but different from the unpopular Dutch Reformed Church supportive of apartheid, Tutu takes another form of Christianity as a valid underpinning of a sense of justice in tune with the idea of many people. For example, 88% of the Xhosa, to which Nelson Mandela and Tutu belonged, are Methodist. As such, views of the Methodist, Baptist and Anglican Church, to which Tutu himself and many Anglophone white anti-apartheid liberals belonged, merged in a deceptively seamless way with human rights and *ubuntu*, having reconciliation on both an individual and collective level as the common denominator. This leads to a definition of the TRC as an institution for restoration, not retribution, which is taken care of by other institutions in the transitional justice of the new South Africa. Nevertheless, the Amnesty Committee had the right to accept or refuse applications for amnesty, which, in the case of refusal, would mean that the applicant might be subject to criminal justice. Thus, it was not all about reconciliation but also about its limits. However, Tutu's somewhat manipulating rhetorical strategy has been globally accepted and thus successful, supported by his charismatic personality. Fully aware of the importance of combining a local notion with internationally recognizable terms, Tutu diligently addresses two audiences at the same time: the international audience through notions of human rights; the local audience through the reference to *ubuntu*, and both audiences through the inclusion of Christianity.

But what does Tutu leave out in order to make ends meet in this unique ad hoc construction? As research has shown, *ubuntu* involves mutual recognition of humanity within a certain local norm that favors honesty, courage, righteousness, magnanimity, tolerance and other similar notions.<sup>16</sup> In fact, *ubuntu* points

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**16** In particular in Christian Gade, "The Historical Development of the Written Discourses on *Ubuntu*," *South African Journal of Philosophy* 30.3 (2011): 303–329; Christian Gade, "The Historical Development of the Written Discourses on *Ubuntu*," *South African Journal of Philosophy* 31.3 (2012): 484–503; Christian Gade, "Restorative Justice and the South African Truth and Reconciliation Process," *South African Journal of Philosophy* 32.1 (2013): 10–35.

to a social reality built much more on the norms of cultures of honor and shame than on human rights and reconciliation, and therefore it can contain both punishment and exclusion from the social order. Yet, first and foremost, *ubuntu* as a social system works with negotiated settlements between opposing parties concerning compensations of various kinds in case of transgressions. Such social systems, also those outside sub-Saharan Africa, in contrast to systems based on universal human rights, are always bound by place. In other words, *ubuntu* is an informal judicial system that also includes the Kikuyus waiting outside the courtroom in Dinesen's story.

Human rights, on the other hand, are taken by Tutu to be congruent with certain branches of Christian faith that advocate forgiveness and reconciliation based on an immediately shared universal sense of humanity. This humanity is supposed to be deeply rooted in victims and perpetrators alike and to be revealed by narrative truth telling. During the TRC sessions, this truth telling took the form of public confessions, which were actually more in tune with the public world of honor and shame than with inward Christian intimacy. However, human rights are by definition *secular* notions that were introduced in Europe alongside the idea that humans, and not God, are the sovereign arbiters of the unforgivable. This secular turn was based on the new role attributed to emotions in the European Enlightenment, proposed by philosophers like David Hume and Adam Smith. Emotions like empathy and sympathy were assumed to provide all humans with a shared and recognizable universal and cross-cultural humanity and with new criteria for unforgivable and radical wrongdoing, namely as crimes against humanity, not against God or the king. At the same time, foundational empathy and sympathy made it both a possibility and a duty for all humans to forgive each other. Of course, the Christian sense of unconditional forgiveness seeps into Tutu's human rights discourse, but without its inherent ambiguities in the *Bible*.<sup>17</sup>

Tutu neglected the broader cross-cultural contexts of both *ubuntu* and human rights and repressed the contradictions that this neglect produced. For him, the task at hand was to deal with a contradictory reality, and the TRC was a form in which contradictions could move and not be petrified. His particular combination of *ubuntu* and human rights defined that form. I am convinced that Tutu himself was fully aware of the hidden complexity. The difficult hearings of Winnie Mandela show this. Winnie Mandela had gathered a group of

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<sup>17</sup> Frederick W. Keene, "Structures of Forgiveness in the New Testament", available at: <http://www.faithtrustsinstitute.org/resources/articles/Structures-of-Forgiveness.pdf> (last access February 15, 2018).



youngsters in a football club in Soweto, and these youngsters were suspected of necklacing several young blacks they believed to have betrayed the black cause. The report itself from the hearings just quotes the witness statements, the statements of the TRC and Winnie Mandela's final expression of regret, admitting what she did went terribly wrong, but only after she skillfully refused to recognize any wrongdoing throughout the hearings.

However, beyond the terse language of the report, Antjie Krog's *Country of my Skull* (1999) quotes from the hearings themselves and also interprets most of the dialogue between Winnie Mandela and Tutu that actually produced her regret.<sup>18</sup> This dialogue is an example of *ubuntu* used with the framework of a sense of justice based on honor and shame, not a sentimentalized principle of universal humanity and Christian doctrine. Part of what Tutu said to Winnie Mandela's stubborn denial proceeds as follows: He knows her status as Nelson Mandela's wife, as the so-called 'mother of the nation', her affiliation with Xhosa royalty, her contributions to the anti-apartheid struggle, and the patient waiting for her husband to be released from Robbin Island. But he also knows her responsibility for the atrocities of the football club. He is stepping into a minefield where he has to advance with caution. Which he does:

We need to be counted for goodness, for truth, for compassion, and not kowtow to the powerful. I acknowledge [Winnie] Madikizela-Mandela's role in the history of the struggle. And yet one used to say that something went wrong. [...] And all of us can only say: "There but for the grace of God go I." [...] Many, *many* say you should have been where you ought to be. The First Lady of the country. [...] You are a great person. And you don't know how your greatness would be enhanced if you were to say, "I'm sorry ... things went wrong. Forgive me."<sup>19</sup>

After this appeal – longer and more convoluted than quoted here – she concedes and admits with an apology that things went terribly wrong. Krog continues to interpret how Tutu managed to achieve this:

The essence of the hearing was the collision of two cultures alive in the black community. The culture of responsibility, human virtue and guilt, and the culture of clan honour and shame. [...] Honour becomes the code, the atmosphere breathed by any close-knit group – a group *outside* the powerful group – whether it's based on clan loyalties, or ethnicity, or colour. Winnie is the monarch of the people for whom the new system does not work. She symbolized their collective honour. [...] If she admits to wrongdoing, she dishonours them all. [...] Winnie's ethos of honour [...] establishes two sets of rules: one for kinsmen

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<sup>18</sup> Antjie Krog, *Country of My Skull* (London: Vintage, 1999).

<sup>19</sup> Krog, *Country of My Skull*, 391.

and one for strangers. [...] By admitting that things went wrong, she herself wiped out her whole culture of honour.<sup>20</sup>

Tutu cleverly succeeds in appealing to a third sense of honor related to her national status beyond her personality. Increasing this honor by asking for forgiveness, he suggests, is more important than acquiring the honor of kinsmen and strangers – and she cannot have it all. This is *ubuntu* in practice, which, I believe, was acknowledged by both Winnie Mandela and Tutu. He appealed to her sense of shared humanity by mutual recognition of status *not* according to a universal human rights humanity but to a sense of human identity fostered by codes of honor and shame in a local community, now a nation, not a clan or a tribe. The Kikuyus did not understand the proceedings of British law, but they would have easily been able to follow this hearing, even considering that, in this case, we are beyond a request for compensation. For Winnie Mandela, losing honor is worse than paying the families of the boys killed by her thugs.

Tutu's main ideological concern is to merge this mutual recognition of *ubuntu* with universal values, and he does so, rhetorically, by glossing over the dimension of honor and shame in the advancement of a notion of forgiveness. Yet, when necessary, his rhetorical practice shows that he is completely aware of the reality of honor and shame and knows how to use it to the benefit of the cause of national reconciliation. To dismiss *ubuntu* as a romanticized and sentimental idea, as many skeptics have done, amounts to adapting a purely Europeanised interpretation of non-European cultural norm systems that betrays the local complexity of transitional justice and also to denying the subtlety and complexity of the ideological foundation of the TRC. This complexity is essential to understand its experimental and fragile character, which continues to be tested and contested. The ongoing testing runs parallel to the literature that attempts to spark the necessary imagination of the present complexity, its dealing with the past and its visions of the future. If the narrator of "Kitosch's Story" had attended the TRC hearings, she would, perhaps, have reshaped her story and imagined the possibility of building a bridge between the divergent senses of justice among the Kikuyus and the British.

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<sup>20</sup> Krog, *Country of My Skull*, 393.

## 6 Conclusion: the power of imagination

If the troubled past is neglected by law, as in Spain, imagination is required to cope and prosper in life as individuals and as a community with a restored sense of justice; if the past is brought out into the open, as in South Africa, imagination is required for the same reason; if mutual ignorance of past and present, right or wrong, separates co-existing cultures, as in Dinesen's Kenya, imagination is required to recognize the reality of the cultural abyss. Yet, in all these cases, more than imagination is required. Imagination also has to be verbalized to enable people to transfer the experience of perceived wrongdoing and humiliation to a new context where transitional justice can frame restorative and reconciliatory practices.

Literature joins forces with such practices by being imagination *in actu*. As J. M. Coetzee points out in his essay "Into the Dark Chamber" on censorship during apartheid, the enforced silencing of atrocities does not limit literature. Quite the contrary:

the novelist is a person who, camped before a closed door, facing an insufferable ban, creates, in place of the scene he is forbidden to see, a representation of that scene, and a story of the actors in it and how they come to be there. [...] The dark, forbidden chamber is the origin of novelistic fantasy per se.<sup>21</sup>

Literature has a transitory potential that supports the recontextualisation at the heart of coping, including forgiveness: The disastrous event, experienced as a radical wrongdoing of varying magnitudes, is also always open for imagination and literature to transport it into the limelight of the shared cultural space. Dinesen's story shows the capacity of literature to grasp this complexity, albeit without seeing a way out. Both Dinesen and Coetzee confirm Patrick Lenta's astute observation:

Literature has the potential to undercut the regard the law has for itself as an autonomous discipline, and reintroduce the historical and political – the contingent – to destabilize the legal claims of legal judgments to universality. [...] Literature may also temper the harsh and symmetrical world of legal retribution by providing insight into the complexities of mo-

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<sup>21</sup> John Maxwell Coetzee, *Doubling the Point* (Cambridge: Harvard University Press, 1992): 361–368, 364.

tivation, character and social reality which invite the reader's judgment of culpable characters to be tempered with equity or mercy absent from the punitive sentence of the court.<sup>22</sup>

With a clear awareness of the precarious nature of forgiveness, which cannot be promoted – only made visible – by literature alone, it is appropriate to give the last word to one of the victims of apartheid, Cynthia Ngewu. She lost her son Christopher Piet to the torturers and is now faced in the TRC with the perpetrator asking for forgiveness after his testimony: “This thing called reconciliation ... if I am understanding it correctly... if it means this perpetrator, this man who has killed Christopher Piet, if it means he becomes human again, this man, so that I, so that all of us, get our humanity back ... then agree, then I support it all.”<sup>23</sup>

This is not only about restoring her personal life but also about restoring a sense of humanity that can lay the ground for a new sense of justice. In a highly personal synthesis of emotional investment, revealed in the broken syntax of her declaration, and with an intellectual grasp of the situation when she tries to understand it ‘correctly’, she does not explicitly state that reconciliation is not first of all about the past. Rather, she actually shows in her speech act, by its repeated ‘if...’, that reconciliation is about transcending her past sufferings by recontextualising them through the imagination of a possible future. Cultural encounters of law and a sense of justice require the imagination of literature – and the courage of people like Cynthia Ngewu who takes the risk of reconciliation.

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<sup>22</sup> Patrick Lenta, “Executing Death Sentence: Law and Justice in Alan Paton’s *Cry the Beloved Country* and Nadine Gordimer’s *The House Gun*,” *Current Writing: Text and Reception in Southern Africa* 13.1. (2001): 49–69, 49–50.

<sup>23</sup> Antjie Krog, *Country of My Skull* (London: Vintage, 1999), 164.



Anja Meyer

# Urban Readings: The City as Text in Isherwood's *Goodbye to Berlin*

For those who pass it without entering, the city is one thing; it is another for those who are trapped by it and never leave. There is a city where you arrive for the first time; and there is another city which you leave never to return. Each deserves a different name.

Italo Calvino, *Invisible Cities*, 172

## 1 Reading the city

“Perceptions of the urban landscape are inseparable from the words we use to describe them and from the activities of reading, naming, and metaphorizing that make all our formulations possible.”<sup>1</sup> With these words Sharpe and Wallock evidence the implications of considering the city as an actual text characterized by the notion of “legibility.” Before the concept of legibility of urban space became a topic of research in Urban Studies starting from the 1960s, the city had been opened up by poststructuralist theoreticians as a system of signification.

In his study *The Image of the City* (1960) Kevin Lynch introduced the concept of mental map to explain the urban experience; he focused on the visual quality of cities by examining the mental images held by their citizens. Made of subjective memories and meanings, such environmental images are crucial for creating a sense of orientation against the dangers of urban bewilderment and feelings of terror or anxiety. Consequently the mental maps are intrinsically linked to a coherent and clear image of the city that, even in fragmentary and undefined realities, “must be readable.”<sup>2</sup> Through cognitive maps, the cityscape becomes a personal space of the mind, while its topography is converted into psychological maps. Lynch speaks also of “public images” as common mental pictures whose meaning is shared by the members of the same group and always remain adaptable to changes.<sup>3</sup>

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1 William Sharpe and Leonard Wallock, “From ‘Great Town’ to ‘Non Place Urban Realm’: Reading the Modern City,” in *Visions of the Modern City: Essays in History, Art, and Literature*, eds. William Sharpe and Leonard Wallock (Baltimore: Johns Hopkins University Press, 1987): 1–50, 14.

2 Kevin Lynch, *The Image of the City* (14th ed) (Cambridge, Massachusetts: MIT Press, 1977), 9.

3 Nora Plesske, *The Intelligible Metropolis* (Bielefeld: Transcript Verlag, 2014), 130–131.

In his attempt to realize a semiotics of the city Roland Barthes praises Lynch as one of the few theorists who stressed the importance of the meaning of urban space as perceived by its inhabitants. Barthes adopts Lynch's theory as point of departure to develop his own semantics of the city in the essay "Semiology and Urbanism" (1970):

[Lynch] thinks of the city in the same terms as the consciousness that perceives it, that is to say to rediscover the image of the city in the readings of that city. [...] As a good semanticist he has a sense of discrete units in the urban space which, relatively speaking, would somewhat resemble phonemes and semantemes. These units he calls paths, fences, districts, knots, reference points. There are categories of units that could easily become semantic categories.<sup>4</sup>

Barthes observes that "the city is a discourse and this discourse is truly a language: the city speaks to its inhabitants; we speak our city, the city where we are, simply by living in it, by wandering through it, by looking at it."<sup>5</sup> Hence it is in relation to personal experiences that urban texts are continuously reinterpreted and by accumulating urban stories from multiple subjects, from "the native to the stranger," it is possible to create the language of a city. Each city therefore presents a specific semantics made of signs and meanings, which evidences the arbitrariness that characterized the relationship between signified and signifier. While signifiers remain invariable, signifiers are always transitory and might present an infinite chain of signification or even acquire meaning as empty signified: the city of Tokyo, for instance, presents an institutional centre occupied by the imperial palace that is actually felt absent by its inhabitants.<sup>6</sup> As a general rule, city centres, called "solid nucleus"<sup>7</sup> in barthesian terms, do not represent the peak point of any specific activity, but empty focal points necessary for the image and the orientation of the community. Barthes's semiotic theory then conceives the urban environment as a discourse whose assessment derives from its usage and from the way its inhabitants relate to him.<sup>8</sup>

According to the more recent theory of the sociologist Henri Lefebvre (1996) the city text specifically consists of four elements: "the *utterance* of the city," or what is said in the city; "the *language* of the city," or the particularities of the city

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4 Roland Barthes, "Semiology and Urbanism," *Rethinking Architecture: A Reader in Cultural Theory*, ed. Neil Leach (London: Routledge, 1997), 167.

5 Barthes, "Semiology and Urbanism," 168.

6 Neil Leach, *Rethinking Architecture: A Reader in Cultural Theory*, (New York: Routledge, 1997), 162.

7 Barthes, "Semiology and Urbanism," 169.

8 Caroline Brothers, *War and Photography: A Cultural History*, (New York: Routledge, 1997), 101.

expressed in discourse or habits; a “*urban language*,” namely the urban connotations; and “the *writing* of the city” as physically inscribed on walls or its layout.<sup>9</sup> Consequently the city is a unique system of meanings perceived differently from every subject inhabiting it and constantly renovated by the production of new social spaces. Lefebvre also refers to the deeper invisible layers of the city text, namely the mental structures: “If I compare the city to a book, to a writing [...], on this book are projected mental and social forms and structures [...] The whole is not immediately present in this written text, the city.”<sup>10</sup> Legibility of the urban thus depends also on the knowledge of the context, which underlies the text and has to be deciphered: daily life, immediate relations and familiar habits are just a few elements that hide themselves in the inhabited urban spaces.<sup>11</sup>

The importance in urban discourse of the figure of the *flâneur*, first introduced by Baudelaire, has developed through the work of Walter Benjamin, who focused his attention on the relationship between the city as a multifaceted meaningful space and the act of disclosing its layers of meaning.<sup>12</sup> According to the German intellectual the *flâneur* is both a stroller and a spectator who “takes refuge in the shadow of cities”: he is thus an observer who gazes the urban landscape but remains largely invisible. For Benjamin the *flâneur* is highly detached from physical reality. This ambivalent perspective of standing aside but in synergic relation to the city marks the *flâneur*'s perception as fragmentary and incoherent; his mind selects specific components of the city and assembles them in order to realize a personal understanding. Significantly the appearance of the *flâneur* coincided with the transformation of the European cities in the nineteenth century and he consequently become a metaphor for a “new urban mentality.”<sup>13</sup> From that moment all of his experiences would be marked by a generic-urban experience encompassing states of isolation, apathy, melancholia, marginality and psychological dissolution. The dominating gaze of the *flâneur*, however, does not seem enough in itself to create the urban consciousness of literary representation. Michel De Certeau's ultimate vision of the urban artist considers language as an essential element of pressure that affects the moving body in the city: in his essay “Walking in the City” De Certeau affirms that living and

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9 Plesske, *The Intelligible Metropolis*, 135.

10 Henri Lefebvre, *The Production of Space* (Oxford: Blackwell, 1996), 102.

11 Lefebvre, *The Production of Space*, 109.

12 Deborah Stevenson, *Cities and Urban Cultures*, (Philadelphia: Open University Press, 2003), 22.

13 Deborah Parsons, *Steetwalking The Metropolis. Women, the City and Modernity*, (Oxford: Oxford University Press, 2000), 21.



walking in the urban environment means to experience a unique and subjective text even if it is an unconscious act. Street names, sensations, memories of spaces all intersect through the walking person, who produces meaning through his movement.<sup>14</sup> The interaction between the individual and the city is thus a continuous negotiation between subject and object, actual and abstract space, what is represented and its representation.

## 2 Modern city and urban alienation

Ambiguity and fragmentation become the defining characters of the urban experience in the modern age. Baudelaire is the first to experience life in a western metropolis. Living in the eclectic Paris of the late nineteenth-century he feels a strong sense of exile and becomes, at the same time, addicted to that monstrous and mesmerizing entity.<sup>15</sup> Between the end of the nineteenth- and the early twentieth-century European metropolis like London, Paris, Berlin and Vienna undergo a series of significant cultural and technological changes, becoming the truest symbols of the modernist sensibility. The perception of space and time is critically affected by the massive transformations of the urban landscape, caused by the process of industrialization together with the diffusion of innovative technologies like the railway, artificial illumination and photography.<sup>16</sup> New aesthetic categories come to replace the traditional systems of representation and the narrability of the metropolis becomes one of the crucial aspects of the debate on modernity.<sup>17</sup> The old conception of the city as the symbol and the centre of rationality is now replaced by that of the metropolis as an entity dominating men and absorbing them in its alienating reality. The consequences of this experience have significant effects on the structure of the modernist novel, since innovative narrative techniques are now being adopted to give account of the inner lives of the characters.

At the beginning of the twentieth century German theorists Georg Simmel and Walter Benjamin are the first to establish a connection between modernity and the city. In his “The Metropolis and Mental Life” (1903) the sociologist Simmel analyses the phenomenon of the metropolis defining it “the quintessence of

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**14** Michel De Certeau, “Walking in the City,” in *The Certeau Reader*, ed. Graham Ward (Oxford: Blackwell, 2000): 101–118.

**15** Burton Pike, *The Image of the City in Modern Literature* (Princeton, NJ: Princeton University Press, 1981), 17.

**16** Rosario Pavia, *Le Paure dell'Urbanistica* (Roma: Meltemi, 2005), 46–47.

**17** Pavia, *Le Paure dell'Urbanistica*, 12.

modernity,” intended as the space in which fortuity and impermanency find their expression, a place which “tends to escape every form.”<sup>18</sup> Simmel points out the effects of the urban condition on individuals and depicts it as fundamentally alienating. The excess of shocking and stimulating impressions is perceived on a psychological level as suffocating and threatening. The urban way of life resulting from such intensification of stimuli is characterized by two experiential modes: distance and stress (or autonomy and threat).<sup>19</sup> Simmel understands the urban condition of the individual partly on psychological grounds: “[t]he psychological foundation is the intensification of emotional life due to the swift and continuous shift of external and internal stimuli.”<sup>20</sup> The human mind, indeed, reacts to the increased sensory pressure of the urban environment by raising up an unconscious degree of alertness that provokes urban stress.

Change is the very fundament of modernity, and the metropolis becomes the space of its fullest expression. Thus, the man of the metropolis finds himself in a condition of perpetual transformation: while he attempts to establish his own coordinates in time and space, he also looks for appropriate forms and categories to describe this mutable entity.<sup>21</sup>

In his essay “Images of Cities” (1973) Benjamin describes cities such as Moscow, Berlin and Naples through a narration made of images of shifting spaces, related to the new perspective forced by modern technologies. Consequently, the city becomes a place of mental distortion in which the structural changes of the space coincide with the perceptual variations of the mind. In “The Work of Art in the Age of Mechanical Reproduction” (1935) Benjamin claims that sense impressions are relative and change in response to the historical collective circumstances. In reaction to the shocking conditions of the metropolis, such as the continuous confrontation with anonymous crowds and motorized traffic, the individual activates defensive modes of individualization. Since the perceptual system is too busy registering the great amount of superficial urban impressions (in the German sense of “Erlebnisse,” as ephemeral occurrences), the acquisition of a deeper memory and insight (in the sense of “Erfahrung,” as a deeper experience) is consequently repressed according to a mechanism of psychic economy.

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**18** Georg Simmel, *La Metropoli e la Vita dello Spirito* [*Die Grosstädte und das Geistesleben*, 1903] (Roma: Armando, 2010) (Ed. or. *Die Grosstädte und das Geistesleben*, 1903), 19

**19** The Ghent Urban Studies Team, *The Urban Condition: Space, Community and Self in the Contemporary Metropolis*, (Rotterdam: O10 Publishers), 1999, 112.

**20** Simmel, *La Metropoli e la Vita dello Spirito*, 325.

**21** Daniela Carpi, “From Past to Future, the Postmodern City in Literature and Cinema,” in *Memory, Imagination and Desire in Contemporary Anglo-American Literature and Film*, eds. Constanza Del Rio Alvaro and Luis Miguel García-Mainar (Heidelberg: Winter, 2004), 28.

Benjamin introduces then the concept of “phantasmagoria” to define the modern response to the shocks of urban innovation. Phantasmagoria is not only the sense of euphoria produced by the novelties and the spectacles of the modern city, but also the illusion of a hedonistic life in anonymity where the social control falls.<sup>22</sup> As mechanism of defense to the popular middle-class phantasmagoria, literary writers have developed an aesthetic mode of observation of reality that usually takes the negative connotation of dysphoria, based on the preponderant negative effects of the city.

According to Louis Wirth social factors like crime and marginal behavior undermine the sense of urban community provoking, instead, the experience of alienation. The structural disorganization of the metropolis and the heterogeneity of its social system lead individuals to compete in order to achieve a specialized function into it, but the effect is a state of *anomie*, as Wirth points out, that is the estrangement from the ideal of community and thus from their proper identity:

Whereas the individual gains, on the one hand, a certain degree of emancipation or freedom from the personal and emotional controls of intimate groups, he loses, on the other hand, the spontaneous self expression, the morale, and the sense of participation that comes in living in an integrated society. This constitutes essentially the state of *anomie*.<sup>23</sup>

### 3 The text and the city in *Goodbye to Berlin*

“Berlin is a skeleton, which aches in the cold: it is my own skeleton aching”.<sup>24</sup> with this metaphor taken from the final chapter of his novel, *Goodbye to Berlin* (1939) Christopher Isherwood reaches the climax of the process of identification between the first-person narrator and the urban space.

In *Goodbye to Berlin* the relationship between the text and the city constitutes the standpoint of the narrator’s personal observations and experiences of the reality that surrounds him. Berlin represents the perfect place of expatriation for an intellectual in search of cultural excitement and delight, but at the same time it is a land of economic depression, dull and decadent. The historical setting of the novel shows the agonising Weimar Republic witnessing Hitler’s ascend to power. Thus, the novel itself is not a praise of the city of Berlin, but

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<sup>22</sup> The Ghent Team, *The Urban Condition*, 116.

<sup>23</sup> Louis Wirth, “Urbanism as a Way of Life,” in *Classic Essays on the Culture of Cities*, ed. Richard Sennett (New York: Appleton-Century-Crofts, 1969): 143–164, 153.

<sup>24</sup> Christopher Isherwood, “Goodbye to Berlin [1939]” in *The Berlin Novels* (London: Vintage, 1999), 464. Further references in the text, abbreviated as GB.

rather an intricate twine of textual motifs and elements that replicate the fragmentary and contradictory identity of the city itself, an identity in which the author finds his own reflection.

In *Goodbye to Berlin* the city and the text form the literary units – at time intertwined at time disconnected – where the numerous characters of the six episodes that constitute the novel act.

As Isherwood states in the introduction of the novel: “[t]he six pieces gathered in this volume create an almost continuous narration. This is all that is left from my original intentions, it was meant to be an epistolary novel on Berlin before Hitler, which I wanted to call *The Lost*” (GB, 9). Isherwood goes on by defining his work as “a brief sequence of diaries and sketches tied together in a very released way” (GB, 10) and denies, in the end, the autobiographical identification with the first-person narrator, deceptively called *Isherwood*. The first section, entitled *A Berlin Diary (Autumn 1930)* recounts the life of the author in the *Nollendorfstrasse*, and his job as a teacher of English for rich Berliner families. The second piece centers on the sensual character of *Sally Bowles*, a cabaret dancer, while the third part *On Rügen Island (Summer 1931)* narrates the story of the tormented homosexual relationship between a German boy and a British man. By contrast, the last three chapters of the volume *The Nowaks*, *The Landauers* and *A Berlin Diary (Winter 1932–3)* all describe the unsettling rise to power of Nazism and the progressive moral disruption of the Berliner society. The author’s identity is split between that of an autobiographic first-person narrator and a third-person protagonist who continuously changes his mask through the novel’s characters: Arthur Norris, a homosexual gentleman in disgrace; Sally Bowles, a sensual cabaret dancer; the Jewish entrepreneur Bernhard Landauer; the male prostitute Otto Nowak and his mother penned in a mental institution. By the means of the *mise en scène* of those miscellaneous characters, the author is able to hide his own identity, while the process of fragmentation of the self evokes a sense of alienation in the reader himself.

Isherwood’s stylistic choice to open *Goodbye to Berlin* by adopting the technique of the naturalist reportage seems to deliberately contrast with the canons of modern urban narration. In fact, the introductory paragraphs foster a realistic and impersonal description of what the main character sees when looking out of the window. A highly objective and clear image, reinforced by the self-identification of the narrator with the camera (“I am a camera”) and its objective reproducibility:

From my window, the deep solemn massive street. Cellar shops where the lamps burn all day, under the shadow of top-heavy balconied facades, dirty plaster frontages embossed with scrollwork and heraldic devices. The whole district is like this: street leading into

street of houses like shabby monumental safes crammed with the tarnished valuables and second-hand furniture of a bankrupt middle class. I am a camera with its shutter open, quite passive, recording, not thinking. Recording the man shaving at the window opposite and the woman in the kimono washing her hair. Some day, all this will have to be developed, carefully printed, fixed. (GB, 243)

The “I am a camera” opening to the 1930 Berlin diary typifies the bored alienation of the exiled writer. In this case, the narrator places himself in the role of a passive and detached observer, as if he intends to deliberately hide his own identity behind the lenses. The camera works as a protective mask for a vulnerable character, alone in a foreign country and completely exposed to the fear of metropolitan isolation. The initial camera view adopted by the narrator is a wide angle perspective from above, which allows him to keep every detail under control, thus conferring upon himself a feeling of omnipotence. In his essay “Little History of Photography” Benjamin in fact problematizes the nature of the view from up high, opposing it to the more common and immediately understandable view from the street, that all men, for the very nature of their gait in an erect position, are more used to. If, at the beginning, the author is able to maintain an objective distance from what surrounds him, due to the forced distance applied to the view from above, he is then capable of zooming in by entering the inner subjectivity of the characters and abandons his initial idea of distancing himself from the very essence of the objects of his descriptions.

When referring to the opening of the novel Richard Mayne affirms that it “very closely describes the role which Isherwood plays as the narrator of his novels,”<sup>25</sup> namely a self-proclaimed onlooker, who makes no judgments and is apparently not involved. As stated by many commentators, the “camera” passage can be considered a theoretical *manifesto* of the narrative method adopted by Isherwood. Whereas the camera perspective places the protagonist, on the one hand, in a restless condition of passivity determining his role of detached viewer, it clearly contradicts, on the other hand, the autobiographical implications inferred by the author himself. Not only does Isherwood employ his own name, Christopher, for the main character and narrator of the novel, but he makes use of what he has described as “islands of facts,”<sup>26</sup> namely the actual diaries of his Berliner experience. The result is a narration based on a double movement, oscillating between revelation and retirement, self-confession and disguise, where the reader is called to decipher and seek the authorial personality behind the

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25 Richard Mayne, “The Novel and Mr. Norris,” *Cambridge Journal* 6 (1953): 564–565.

26 Stanley Poss, “A Conversation on Tape,” *London Magazine* 1 (1961): 41–59, 42.

narrative protagonist.<sup>27</sup> As Isherwood affirms a few years later: “The novelist [...] is playing a game with his reader; he must continually amaze and deceive him, with tricks, with traps, with extraordinary gambits, with sham climaxes, with false directions.”<sup>28</sup>

The initial, self-proclaimed emotional detachment negates itself in the third paragraph, as the narrator suddenly loses the passive perspective and indulges in a very “human” confession:

At eight o'clock in the evening the house-doors will be locked. [...] And soon the whistling will begin. Young men are calling their girls. [...] Because of the whistling, I do not care to stay here in the evenings. It reminds me that I am in a foreign city, alone, far from home. Sometimes I determine not to listen to it, pick up a book, try to read. But soon a call is sure to sound, so piercing, so insistent, so despairingly human, that at last I have to get up and peep through the slats of the venetian blind to make quite sure that it is not as I know very well it could not possibly be for me. (GB, 243)

For the first time, the narrator momentarily reveals his unprotected self. In the span of few paragraphs, then, Isherwood adopts two apparently conflicting literary strategies: the detached objectivism of the camera and the grotesque expressionism progressively embodied in the people and the streets of Berlin. While the first person narrator gradually connects with the urban space, it becomes clearer that the city is not an intelligible reality that one can grasp through the means of documentary memory. Rather, it is a vague entity, distorted and ambiguous that demands a tireless interpretative endeavor to its “reader.”

The characterization of Berlin as a decadent city is partly conveyed through the presentation of the human characters that Christopher –both character and author– encounters and portrays in pre-war Berlin: the so called *Verlorenen*, lost and doomed figures who wander through the city stage. In opposition to the Modernist urban discourse that has marked the crowd as a metonym for the city, *Goodbye to Berlin* represents a singular case of city novel where the crowd has almost disappeared. Actually, the crowd is a hidden presence fragmented in a series of separate encounters, of peculiar human types, often depicted in separate contexts, like houses and cafés, rather than in the open flow of the streets.<sup>29</sup> Consequently, it can be argued that the perceiving mode of the au-

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<sup>27</sup> David Thomas, “Goodbye to Berlin: Refocusing Isherwood’s Camera,” *Contemporary Literature* 13.1 (1972): 44–52, 49.

<sup>28</sup> Christopher Isherwood, *Lions and Shadows* (London: Four Square, 1963), 152.

<sup>29</sup> Roberta Gefer Wondrich, “‘Berlin is a Skeleton which aches in the Cold’: the City as fictional Autobiography in Christopher Isherwood’s *Goodbye to Berlin*,” *Prospero* X (2004): 131–155, 146–147.

tobiographical protagonist tends to select its human characters separately and to characterize them in isolated contexts, creating what Isherwood himself defined as “dynamic portraits.”<sup>30</sup> Such narrative mode tends to compress the spatiality of the city into domestic and closed settings: the character of Sally Bowles, for instance, is always relegated within the walls of an apartment or in the bar where she performs, and the descriptions of these interiors become metaphoric images of the city itself.

The first time Christopher goes to one of Sally’s singing performances, he finds her in an old fashioned cabaret:

The Lady Windermere (which now, I hear, no longer exists) was an arty “informal” bar; just off the Tauentzeinstrasse, which the proprietor had evidently tried to look as much as possible like Montparnasse. The walls were covered with sketches of menu-cards, caricatures and signed theatrical photographs. (GB, 270)

The description of the interiors epitomizes the portrait of an empty and unimpressive city, with a pretentious intent. The owner, indeed, has tried to make the place “look like” an analogous of the much more fashionable bohemian quartier of Paris, but with no success. The sketches and the caricatures on the wall are altered images that convey a sense of dissimulation: the silly effort to make the bar an “arty” place remains a far illusion. Through a narrative strategy based on metonymic images, Isherwood is able to evoke the deep and distinctive atmosphere that is proper of his contemporary Berlin.

Similarly, the description of the narrator’s apartment interiors, in the first chapter of the novel, is also emblematic as it is made of a series of metonymic images that foster a figurative perception of the city. As a camera, Isherwood has the capacity to distort objects, in his room everything appears “abnormally heavy and dangerously sharp” and he feels almost threatened by the animated objects that surround him, like “a pair of candlesticks shaped like entwined serpents, an ashtray from which emerges the head of a crocodile.” (GB, 244). Moreover, the obvious symbolic and metaphoric connotation through which these interior spaces are represented as deceptively dull and lousy, is a clear example of how the textual space becomes inextricably twined with the urban:

The extraordinary smell in this room where the stove is lighted and the window shut; not altogether unpleasant, a mixture of incense and stale buns. [...] The cupboard also is Gothic, with carved cathedral windows; Bismarck faces the King of Prussian in stained glass. My

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**30** Christopher Isherwood, *Conversations with Christopher Isherwood*, eds. Chris Freeman and James Berg (Missisipi: University Press of Missisipi, 2001), 120.

best chair would do for a bishop's throne. In the corner, three sham medieval halberds are fastened together to form a hat stand. [...] Everything in the room is like that: unnecessarily solid, abnormally heavy and dangerously sharp. Here, at the writing table, I am confronted by a phalanx of metal objects – a pair of candlesticks shaped like entwined serpents, an ashtray from which emerges the head of a crocodile, a paper knife copied from a Florentine dagger, a brass dolphin holding on the end of its tail a small broken clock. What becomes of such things? How could they ever be destroyed? They will probably remain intact for thousands of years: people will treasure them in museums. Or perhaps they will merely be melted down for munitions in a war. Every morning Fräulein Schröder arranges them very carefully in certain unvarying positions: there they stand, like an uncompromising statement of her views on Capital and society, Religion and Sex. (GB, 244)

The description is governed by a religious and military imaginary, which creates a direct – and at times, ironic – association with the city and the hollow society that inhabits it. Every object in the room plays a part in remembering a glorious and – at the same time – oppressive past, but it also recalls the menace of a potential war. The grotesque parade of middle-class kitsch ornaments evokes a marked sense of danger and violence, and it is through those images of domestic interiors that the author reveals the presence of an old social class, stubborn and oblivious to the immanent disaster.

The absence of a proper urban crowd necessarily implies the absence of its natural habitat, that is to say the street. However, although the configuration of the city in *Goodbye to Berlin* is mainly realized through the depiction of compressed interior spaces, the street emerges as both a metaphor and a metonym of the city in a few relevant passages. The celebrative tone of the opening pages – “the deep solemn massive street” (GB, 243) – contrasts with the threatening and dark connotations of the Wassertorstrasse, in the working-class neighborhood where Christopher is given accommodation by the Novaks:

The entrance to the Wassertorstrasse was a big stone archway, a bit of old Berlin, daubed with hammers and sickles and Nazi crosses and plastered with tattered bills which advertise auction or crimes. It was a deep, shabbily cobbled street, littered with sprawling children in tears. [...] The pavement was chalk-marked for the hopping game called Heaven and Earth. At the end of it, like a tall, dangerously sharp, red instrument, stood a church. (GB, 362)

Isherwood poses his camera eye on the street in a wide zoom angle. The urban graphic inscriptions, or what Henry Lefebvre would call “the writings of the city,” strongly denote the violent and threatening atmosphere pervading Berlin, in allegorical opposition to the street traces left by its young “inhabitants.” While the Nazi inscriptions have been permanently fixed on the walls, the chalk-marks of the street games are destined to vanish on the first rainy day.



The protagonist of the novel evokes the Baudelerian *flâneur* – a concept re-vised by Benjamin too – as a subject who dives into modern civilization and develops a dynamic perception of the surrounding reality. He lets the people, the noise and the movements of the ever-changing city guide him, but at the same time he is pervaded by a sense of anxiety and alienation.<sup>31</sup> Isherwood's *flâneur* represents the expatriate artist incapable of finding a sense of belonging to the city of Berlin, as well as a mere spectator of the events happening around him. He is an ambiguous character, apparently comfortable in the artificial and hazy atmosphere of the city, but his personal relationships are always superficial and as a writer he produces the minimum necessary to survive.

Moreover, the traditional character of the *flâneur* becomes the symbol of a new conception of camera eye within the same novel. As a matter of fact, the protagonist abandons his isolated position behind the window, symbolized by the lens of a camera, in favor of a dynamic contact with the city. In other words, the passive technique of recording adopted at the beginning develops into a direct approach with the city, through which the *flâneur* abandons himself to a physical and subjective process of 'registration' of the essence of Berlin.

Despite the fact that the narrator has chosen Berlin as the elective city of his artistic education, it is never perceived or interpreted as a work of art. On the contrary, the visual dimension of the city is limited to a disconnected and fragmentary spatiality and made of monumental, decadent and oppressive visions: it is a place inhabited by an austere bourgeoisie, tragically affected by the moral decay of the German past. The first-person narrator, initially detached and hidden behind the camera, gradually unbends to a process of transformation that will lead him to openly identify himself with the city in the last section of the novel, where he comes in front of the camera:

Tonight, for the first time this winter, it is very cold. The dead cold grips the town in utter silence, like the silence of intense midday summer heat. In the cold, the town seems actually to contract, to dwindle to a small black dot, scarcely larger than hundreds of other dots, isolated and hard to find, on the enormous European map. [...] Berlin is a skeleton, which aches in the cold: it is my own skeleton aching. I feel in my bones the sharp ache of the frost in the girders of the overhead railway, in the ironwork of balconies, in bridges, tram-lines, lamp-standards, latrines. The iron throbs and shrinks, the stone and the bricks ache dully, the plaster is numb. (GB, 464)

In the cycle of seasons, winter symbolizes the obscure historical parable that Germany is slowly running into, while the city – initially reduced to a topograph-

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<sup>31</sup> Walter Benjamin, "Baudelaire, or the Streets of Paris," in *Reflections: Essays, Aphorisms – Autobiographical Writings*, ed. Peter Demetz (New York: Schocken Books, 1986), 157.

ic image – undergoes an anthropomorphic transformation into the topic figure of the suffering body, in which both city and author are finally identified. The organic representation of the city, identified with an aching human skeleton instantly experiences another passage of de-humanization. That very body is not made of flesh, skin and arteries, but of bones: stern, cold and metallic bones. The narrator and the city are united in this image like the two sides of the same coin: on the one hand, the vision of the city as an aching, human body; on the other, the image of a suffering artist, his art reduced to an alienated experience of the city.

At the end Isherwood completes the description of Berlin with a reference to the modernist archetype of the hellish city and puts it in stark contrast with the image of a long-deserted countryside:

Berlin is a city with two centres – the cluster of expensive hotels, bars, cinemas, shops round the Memorial Church, a sparkling nucleus of light, like a sham diamond, in the shabby twilight of the town. [...] In grand international styles, copies of copies, they assert our dignity as a capital city – a parliament, a couple of museums, a State bank, a cathedral, an opera, a dozen embassies, a triumphal arch; nothing has been forgotten. But the real heart of Berlin is a small damp black wood – The Tiergarten. At this time of year, the cold begins to drive the peasant boys out of their tiny unprotected villages into the city, to look for food and work. But the city, which glowed so brightly and invitingly in the night sky above the plains, is cold and cruel and dead. Its warmth is an illusion, a mirage of the winter desert. It will not receive these boys. It has nothing to give. The cold drives them out of its streets, into the wood, which is its cruel heart. And there they cower on benches, to starve and freeze, and dream of their far-away cottage stoves. (GB, 464)

The presence of two opposite city centers strongly epitomizes the ambivalence of the city, affirming the symbolic purpose of what would be called, in barthesian terms, “solid nucleus.”<sup>32</sup> Their function in a city, indeed, is intrinsic to the mental image developed by its community. The first *nucleus*, the shiny and glittering *façade* of expensive buildings around the Memorial Church, represents an illusionary and dangerous simulacrum, that deceptively attracts the young people who live in the suburban villages. The second and real *nucleus* of the city is, on the other hand, the *Tiergarten*, a small wood located in a central position, which turns to be a brutal and heartless wasteland for those who come in search of a refuge. Winter, in particular, represents the most ferocious period of the year and its deathly quality strongly evokes T. S. Eliot's cruelest season.<sup>33</sup>

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<sup>32</sup> Barthes, “Semiology and Urbanism,” 169.

<sup>33</sup> Richard Lehan, *The City in Literature: an Intellectual and Cultural History* (Berkeley: University of California Press, 1998), 8.

In this passage, therefore, Isherwood engages with a series of motifs that generally relate to a late nineteenth century archetype of the Infernal City as a devouring *femme fatale*,<sup>34</sup> as well as to the clichéd country-city opposition. Young people, seduced by the shimmering surface of the city, abandon their lands and end up facing a ferocious entity that deprive them of every hope and sense of belonging. As Raymond Williams affirms: “in the great city [...] it is an absence of common feeling, an excessive subjectivity, that seems to be characteristic.”<sup>35</sup> It is thus in the divided consciousness, torn between the desire to belong and the impossibility of belonging, that the modern urban experience reveals himself.

Another archetypal image of the city adopted by Isherwood is that of the jungle. Even in this case, the depiction of the city appears through its inhabitants, who are often portrayed as animals. Otto, for instance, the young proletarian who exploits his homosexual relationship with the upper-class Peter Wilkinson is described as “naturally selfish, like an animal” (GB, 346).

The paralyzing cold striking the city is a symbolical prelude to the final catastrophe represented by the Reichstag fire on February 28, 1933: a crucial event for the rise of Nazism. Even the snow, in the chapter on the Novak family, plays a part in emphasizing a dark and painful atmosphere, and in so doing it reaffirms itself as a symbol of isolation and dispersion in the modern urban imaginary.<sup>36</sup> When Christopher is about to leave the sanatorium where Frau Novak is confined, he has to face a group of sick women who try to withhold him: “their lit faces ghastly like ghosts against the black stems of the pines” (GB, 464). The scene is narrated as a dark nightmare until the protagonist, guiltily terrified that the women will attack him, suddenly realizes that it was just an illusion: “[b]ut the moment passed. They drew back – harmless, after all, as mere ghosts – into the darkness, while our bus, with a great churning of its wheels, lurched forward towards the city, through the deep unseen snow” (GB, 464). In a circular movement whereby the ghostly figures disappear as darkness advances, the snow finally materializes as a blinding and isolating element that seems to keep the nightmare alive. This passage, which is one of the most relevant dramatizations of such theme of isolation in the novel, presents a strong intertextual allusion to Joyce’s short story “The Dead,” where the snow actually symbolizes

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**34** The notion of city as *femme fatale* was firstly introduced by Baudelaire in his essay “The Painter of Modern Life.” Christopher Isherwood was already familiar with Baudelaire’s urban imagery, since he had translated his *Journaux Intimes* in 1930.

**35** Raymond Williams, *The Country and the City* (London: The Hogarth Press, 1970), 215.

**36** Monroe K. Spears, *Dionysus and the City: Modernism in Twentieth-Century Pottery* (New York: Oxford University Press, 1970), 40.

the spiritual death of its protagonists and becomes the archetypal symbol for isolation.<sup>37</sup> Similarly, Christopher's helplessness in the face of the suffering women does not only reflect his spiritual poverty, but symbolizes the more general passivity of the city of Berlin.

The historical and moral decay acts as a background for the conclusive passage of the novel, where Isherwood is about to leave the city of Berlin in a seemingly joyful spirit inspired by the new season, which is at the same time awfully tragic and hostile because of the new historical conditions. The reflection in the mirror of the first-person narrator, of the artist observer of the city, is recalled – as in the first pages – with a sense of alienation towards the surrounding reality.

Today the sun is brilliantly shining; it is quite mild and warm. I go out for my last morning walk, without an overcoat or hat. The sun shines, and Hitler is master of this city. The sun shines, and dozens of my friends – my pupils at the Worker's School, the men and women I met at the I.A.H. – are in prison, possibly dead. [...] I catch sight of my face in the mirror of a shop, and am horrified to see that I am smiling. You can't help smiling, in such beautiful weather. The trams are going up and down the Kleiststraße, just as usual. They, and the people on the pavement, and the tea-cozy dome of the Nollendorfplatz station have an air of curious familiarity, of striking resemblance to something one remembers as normal and pleasant in the past – like a very good photograph. No. Even now I can't altogether believe that any of this has really happened... (GB, 465)

The narrator recognizes his camera-eye perspective as helpless since no documentary accuracy can be provided in a city at the mercy of a fascist regime. Thus, the city is a document of the memory of the past as well as a space of uncertain transformation. It can be considered as a kind of *hypertext*<sup>38</sup> since it does not have a core nor definite borders, and it is made of an intricate intertwining of signs that open a multiplicity of reading paths. In this sense the last image of Berlin recalls Italo Calvino's *Invisible Cities*, where the view of the city from its opposite side seems to multiply its range of images in an infinite perspective. The mirror, in this case, well represents the infinite possibilities of readings of a city text, as Burton Pike affirms: "the city as an image can consist only of mirrors or mirages, which constantly refract and reflect shifting lights and angles in times."<sup>39</sup> The impossibility of producing an unequivocal interpretation of the text causes a sense of bewilderment in the reader, and it can be translated into the author's existential disorientation. Accordingly, space does not only determine

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<sup>37</sup> Spears, *Dionysus and the City*, 99.

<sup>38</sup> Pavia, *Le Paure dell'Urbanistica*, 78.

<sup>39</sup> Pike, *The Image of the City*, 136.

the narrator's actions, but it also affects his literary production, while the text, in turn, enables a metonymic and metaphoric reading of space itself.

Susana Onega

# Embodied Monstrosity and Identitarian Fluidity in Jeanette Winterson's Novels of the 1980s

A striking phenomenon of British postmodernism is the emergence, from the 1970s onwards, of a significant number of novels written by women in which the female protagonists have monstrous traits. Angela Carter's *The Infernal Desire Machines of Doctor Hoffman* (1972), *The Passion of New Eve* (1977) and *Nights at the Circus* (1984); Emma Tennant's *The Bad Sister* (1978) and *Two Women of London: The Strange Case of Ms Jekyll and Mrs Hyde* (1989); Fay Weldon's *Remember Me* (1976) and *The Life and Loves of a She-Devil* (1983); and Jeanette Winterson's *The Passion* (1987) and *Sexing the Cherry* (1989) are well-known examples of this new type of novel with a monstrous female protagonist. Like Dracula or Dr Frankenstein's creature, these female monsters defy the rules of nature by their sheer existence. However, their monstrosity has nothing to do with unnatural behaviour with respect to the family, as was the case with their nineteenth-century predecessors.<sup>1</sup> Rather, they may be said to illustrate Angela Carter's assertion in *The Sadeian Woman* that: "[a] free woman in an unfree society will be a monster,"<sup>2</sup> as the monstrosity of these female characters is the embodied manifestation of their creators' rejection of women's enforced position as "other" in the patriarchal definition of the subject and their exclusion from the Symbolic Order. As such, their monstrosity constitutes a parodic gesture involving the acknowledgment and subversion of the canonical conceptualisation of monstrosity

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1 As an aristocrat feeding on his victims, Dracula is the epitome of parental narcissism, while Doctor Frankenstein's unnatural behaviour exemplifies filial ingratitude and disobedience. See Susana Onega, "Patriarchal Law and the Ethics and Aesthetics of Monstrosity in Mary Shelley's *Frankenstein*," in *Monstrosity: from the Canon to the Anti-canon*, ed. Daniela Carpi (London and New York: De Gruyter, 2019), 115–130.

2 Angela Carter, *The Sadeian Woman: An Exercise in Cultural History* [1979] (London: Virago, 2006), 27.

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allotted to transgressive women in patriarchy. This double parodic gesture is genuinely postmodernist. As Daniela Carpi notes, “the main feature of postmodernism [is] its relationship with tradition. Tradition is confronted, challenged, subverted and revised, in an agonistic struggle to impose one’s own perspective.”<sup>3</sup> Indeed, it was the strongly felt need to confront and subvert this patriarchal tradition that led Angela Carter and other women writers of the 1970s and 80s to rewrite canonical fairy tales; to include fantasy, gothic or picaresque elements in their fictions; and/or to adopt the satiric and grotesque tone of the Bakhtinian Carnavalesque. By so doing they were seeking to deconstruct essentialist assumptions about women and cast a new perspective on them that, as Bakhtin forcefully argued in *The Dialogic Imagination*, would allow for the construction of “free unions [between objects and ideas] no matter how monstrous these unions might seem from the point of view of ordinary, traditional associations.”<sup>4</sup>

In her path-breaking study, *Feminine Fictions: Revisiting the Postmodern*, Patricia Waugh, after analysing the evolution of feminine fictions from the 1960s until the mid-1980s, reached the conclusion that the relation of women writers to postmodernism was more undecided than that of male writers. While male writers and critics were “busily proclaiming, celebrating, mourning, or heralding ‘The Death of the Novel’ and then ‘The Death of the Self,’”<sup>5</sup> female writers, following on the lead of second-wave feminism, were becoming aware of the marginal position of women in patriarchy and feeling a strong need to redefine themselves as subjects in their own terms.<sup>6</sup> A main tenet of the feminist criticism that emerged as part of the postmodern turn was the rejection of the liberal humanist definition of subjectivity as essence and the insistence that identity is a cultural construction resulting from impersonal and social relations of power that can and should be changed. Particularly relevant in this respect was the work of “Psyche et Po” (*Psychoanalyse et Politique*), a branch of French feminism founded by Antoinette Fouque in the 1970s and integrated, among others, by Luce Irigaray, Julia Kristeva and Hélène Cixous. These critics set themselves the task of addressing the question of the oppression of women in patriarchy by contesting the main tenets of (post-)Freudian psychoanalysis, particularly of Jacques Lacan’s relegation of women to the unsymbolized realm of the Imag-

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3 Daniela Carpi, *Fairy Tales in the Postmodern World: No Tales for Children* (Heidelberg: Universitätsverlag Winter, 2016), 16.

4 Mikhail Bakhtin, *The Dialogic Imagination: Four Essays [1934–1935]* (Austin: University of Texas Press, 1981), 169.

5 Patricia Waugh, *Feminine Fictions: Revisiting the Postmodern* (London and New York: Routledge, 1989), 1.

6 Waugh, *Feminine Fictions*, 2.

inary and his designation of the phallus as the organising point of sexual identity and desire in the realm of the Symbolic. As Cixous forcefully argued in “Sorties,”<sup>7</sup> the way out of patriarchal oppression lies in an alternative, feminine practice of writing, the creation of an *écriture féminine* capable of discursively creating subjectivities that would be plural and shifting, and that would break up the set of hierarchical oppositions that, as Simone de Beauvoir had contended in *Le Deuxième sexe* as early as 1949, have structured Western thought and governed its political practice from its very origins, such as “culture/nature”; “head/heart”; “form/matter”; “speaking/writing,” derived from the basic opposition “man/woman.” Similarly, in the US, the poststructuralist critic Judith Butler argued in *Bodies that Matter*<sup>8</sup> for the deconstruction of these oppositional identitarian categories and postulated the possibility of sustaining a bisexuality, not as a denial of sexual difference, but as a lived recognition of plurality, of the simultaneous presence of masculinity and femininity within an individual subject. Another US feminist critic, Elaine Showalter, after analysing the work of women writers from Charlotte Brontë to Doris Lessing, asked the women writers of the 1980s to produce a literature “of their own,”<sup>9</sup> capable of articulating an alternative individual and collective sense of female subjectivity and selfhood. As the title of Showalter’s book makes clear, the model of feminine writing theorized by these critics had a telling precedent in Virginia Woolf’s *A Room of One’s Own*.<sup>10</sup> As is well known, in this essay, Woolf contended that the scanty contribution of eighteenth- and nineteenth-century women to the British literary canon had to do with women’s subservient position in patriarchy and that what a woman truly needed in order to become a writer was “money and a room of her own [to ensure her] freedom to think of things in themselves.”<sup>11</sup> She also argued that, although women had so far written mostly novels because “[t]he novel alone was young enough to be soft in her hands,” it was not yet clear what form their writing would take in the future, but that, in any case, this new form should be capable of “providing some new vehicle, not necessarily

7 Hélène Cixous, “Sorties,” in *The Newly Born Woman* by Hélène Cixous and Catherine Clément [1975], ed. and trans. Sandra M. Gilbert (London: I. B. Tauris Publishers, 1996), 63–132.

8 Judith Butler, *Bodies that Matter: On the Discursive Limits of “Sex”* (New York and London: Routledge, 1993).

9 Elaine Showalter, *A Literature of Their Own: British Women Novelists from Charlotte Brontë to Doris Lessing* (London: Virago, 1982).

10 Virginia Woolf, *A Room of One’s Own* [1929], in *A Room of One’s Own and Three Guineas* (London: Vintage, 2001), 1–98.

11 Woolf, *A Room of One’s Own*, 2, 32.



verse, for the poetry in her.”<sup>12</sup> Woolf closed her comment with a reflection on the importance of “physical conditions” and, clearly forerunning the French feminist notion of *écriture féminine*, described the books women would write in the future as “somehow to be adapted to the body.”<sup>13</sup> The year before, Woolf had provided readers with an excellent example of this new type of feminine writing adapted to the body in *Orlando*,<sup>14</sup> a semiautobiographical fantasy in which, again forerunning second-wave feminism, Woolf expressed her conception of identitarian fluidity by making the eponymous protagonist change from man to woman and spanning his/her life almost four centuries while s/he aged only thirty-six years. The flippant and playful tone of this literary experiment acquired a bitter edge when Woolf illustrated the tremendous social discrimination Orlando was submitted to both in Britain and abroad when she found herself incarnated in a woman’s body.

In “Professions for Women,” a paper read to the Women’s Service League on January 21, 1931, Woolf described “a phantom” that used to visit her when she was trying to write a review. As she explained,

the phantom was a woman, and when I came to know her better I called her after the heroine of a famous poem, The Angel in the House. It was she who used to come between me and my paper when I was writing reviews. It was she who bothered me and wasted my time and so tormented me that at last I killed her. You who come of a younger and happier generation may not have heard of her – you may not know what I mean by the Angel in the House. I will describe her as shortly as I can. She was intensely sympathetic. She was immensely charming. She was utterly unselfish. She excelled in the difficult arts of family life. She sacrificed herself daily. If there was chicken, she took the leg; if there was a draught she sat in it – in short she was so constituted that she never had a mind or a wish of her own, but preferred to sympathize always with the minds and wishes of others.<sup>15</sup>

Her fantasy of killing the ghost in Coventry Patmore’s poem, “The Angel in the House,”<sup>16</sup> shows Woolf’s awareness of the harmful effects of behaving according to the model of all-enduring and compliant womanhood generally accepted in the Victorian period, whose roots go back, as Deborah D. Rogers has pointed

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<sup>12</sup> Woolf, *A Room of One’s Own*, 66.

<sup>13</sup> Woolf, *A Room of One’s Own*, 66.

<sup>14</sup> Virginia Woolf, *Orlando: A Biography* [1928] (London: Vintage, 2000).

<sup>15</sup> Virginia Woolf, “Professions for Women” [January 21, 1931], in *The Death of the Moth and Other Essays*, ed. Leonard Bloom [1942], The University of Adelaide, available at: <https://ebooks.adelaide.edu.au/w/woolf/virginia/w91d/chapter27.html> (last access January 2, 2018).

<sup>16</sup> The poem, dedicated to his wife Emily, was published by Patmore in 1854 and revised in 1862, Project Gutenberg, available at: <https://www.gutenberg.org/files/4099/4099-h/4099-h.htm> (Last access January 18, 2018).

out, to the pattern of affectionate motherhood that developed alongside the novel during the long eighteenth century (1650–1865).<sup>17</sup>

The fact that Woolf saw the ghost of this angelic woman as a significant threat to her aspirations of professional development offered the British women writers of the 1970s and 80s a wonderful point of departure for their projected deconstruction of the definition of woman either as angel or monster. As Sandra Gilbert and Susan Gubar argue in *The Mad Woman in the Attic*, this oppositional pattern is already implicit in the ambivalence of the term “charm,” recurrently applied to women in patriarchy: domestic angels are “charming” while transgressive women are dangerous “charmners.” This type of linguistic discrimination makes transgressive women feel in constant danger and fear of being labelled as mad and/or monstrous. In Gilbert and Gubar’s own words:

male ambivalence about female “charms” underlies the traditional images of such terrible sorceress-goddesses as the Sphinx, Medusa, Circe, Kali, Delilah, and Salome, all of whom possess duplicitous arts that allow them both to seduce and to steal male generative energy.

The sexual nausea associated with all these monster women helps explain why so many real women have for so long expressed loathing of (or at least anxiety about) their own, inexorable female bodies. The “killing” of oneself into an art object – the pruning and preening, the mirror madness, and concern with odors and aging, with hair which is invariably too curly or too lank, with bodies too thin or too thick – all this testifies to the efforts women have expended not just trying to be angels but trying *not* to become female monsters.<sup>18</sup> (34)

With Woolf’s and Gilbert and Gubar’s cautionary words in mind it is easy to see why women writers belonging to the postmodernist period felt the need to characterize their female protagonists as monsters. By rejecting the model of Angel in the House and identifying with the hateful images of transgressive women (the monster, the witch, the madwoman, the whore) they were performing an act of subversion aimed at setting the validity of patriarchal values into question. As María del Mar Pérez has pointed out, in the 1960s and 1970s we find a significant number of fictions written by women whose protagonists respond either to the pattern of extremely submissive and compliant woman suffering from physical and psychical wounds, or their counterpart, Amazonian men-haters living on their own and waging a cruel war against patriarchal power. Both types are pre-

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<sup>17</sup> Deborah D. Rogers, *The Matrophobic Gothic and its Legacy: Sacrificial Mothers in the Novel and in Popular Culture* (New York: Peter Lang, 2007), 4.

<sup>18</sup> Sandra Gilbert, and Susan Gubar, *The Madwoman in the Attic: The Woman Writer and the Nineteenth-Century Literary Imagination* [1979] (New Haven and London: Yale University Press, 1984), 34.

sent in such novels as Angela Carter's *The Infernal Desire Machines of Doctor Hoffman* (1972) and *The Passion of New Eve* (1977), Emma Tennant's *The Bad Sisters* (1978) or Fay Weldon's *Remember Me* (1976).<sup>19</sup> In the next decade, the duplicitous inner monstrosity and bodily beauty attributed to transgressive women in patriarchal discourse will be reversed, giving way to a new parodic prototype: the physical monster that hides the psychological angel, what María del Mar Pérez calls *monstruos angelicales* ("angelic monsters").<sup>20</sup> Thus, Fevvers, the aerialist in Carter's *Nights at the Circus*, grows natural feather wings; Villanelle, the Venetian croupier in *The Passion*, is born with webbed feet; the Dog Woman in *Sexing the Cherry*, has the grotesque body of a Brobdingnagian princess; Ruth, the plain heroine of *The Life and Loves of a She-Devil*, in a gesture that parodies Dr Frankenstein's making of the creature, remakes her own ugly body to the image of her hated antagonist, Mary Fisher, by means of radical plastic surgery. Pérez connects this embodied manifestation of monstrosity with women's growing obsession with their physical aspect in patriarchal societies and even with the unprecedented increase of mental diseases like bulimia and anorexia as a form of protest against patriarchy's control over their own bodies.<sup>21</sup> Drawing on Waugh's contention that the female body is a social construction,<sup>22</sup> Pérez argues that, in the 1980s, "[t]he female body becomes a battlefield that men wish to possess and dominate and women to reconquer."<sup>23</sup>

In striking contrast to this, Sara Martin, in an article on Fay Weldon's *The Life and Loves of a She-Devil*, Angela Carter's *Nights at the Circus* and Jeanette Winterson's *Sexing the Cherry*,<sup>24</sup> sets the feminist ideology of these novels into question,<sup>25</sup> discards previous interpretations of the novels on the consideration that "*whereas criticism of these novels has focused on their (questionable) feminism, little has been said about the role played by men in them or about the im-*

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19 María del Mar Pérez, "¿Angel o monstruo? La imagen de la mujer en la novela británica de los ochenta," *La Página* 16.2 (1994): 71–88, 74.

20 Pérez, "¿Angelo o monstruo?," 75.

21 Pérez, "¿Angelo o monstruo?," 74. See also Albaraq Mabobah, "Reading the Anorexic Maze," *Genders* 14 (Fall 1992): 87–97.

22 Waugh, *Feminine Fictions*, 175.

23 "El cuerpo de la mujer se convierte en un terreno de batalla que el hombre desea poseer y dominar, y la mujer reconquistar." Pérez, "¿Angelo o monstruo?," 74; my translation.

24 Sara Martin, "The Power of Monstrous Women: Fay Weldon's *The Life and Loves of a She-Devil* (1983), Angela Carter's *Nights at the Circus* (1984) and Jeanette Winterson's *Sexing the Cherry* (1989)," *Journal of Gender Studies* 8.2 (2010): 193–210. Available at: <http://dx.doi.org/10.1080/095892399102706> (Last access October 30, 2014). DOI: 10.1080/095892399102706.

25 Martin, "The Power of Monstrous Women," 193; italics in the original.

*plicit androphobic discourse of some fiction by women,*"<sup>26</sup> and argues that "the model of female power offered by these novels is too limited; they pale besides the analysis of powerful female monstrosity offered in some novels by men."<sup>27</sup> She concludes that, in these novels, "women are offering a biased portrait of themselves, in which the exploration of women's weaknesses is too narrow, even when the issue of female monstrosity is addressed."<sup>28</sup> Martin's largely negative outlook on these novels can only be interpreted as an attempt to read them from a theoretically unbiased angle of political correctness. The critic herself fosters this interpretation when she admits that "[she] would not agree with Winterson's statement that 'if it doesn't shock, it isn't art'."<sup>29</sup> The problem with her approach is that it is based on a literal reading of the protagonists' often shocking actions without taking into consideration the logic of excess informing the overtly parodic and grotesque character of these female monsters. The angelic monsters created by Carter, Weldon, Winterson and other women writers of the 1980s constitutes an ironically charged reversal of the patriarchal stereotype of the transgressive woman's beautiful body and evil spirit. As such, their creation represents a collective attempt to deconstruct this stereotype and its underlying self/other conceptualisation of subjectivity; and to substitute it for the more fluid and complex both/and feminist one. Heralded by Virginia Woolf and further theorized by second-wave feminist critics, this reconceptualisation of female identity may be said to inform Jeanette Winterson's representation of women in all her fictions, but it is in the novels of the 1980s that she will systematically subvert the stereotype of transgressive women as fiendish charmers with alluring bodies, by creating her memorable angelic monsters.

## Embodied monstrosity and identitarian fluidity in Jeanette Winterson's novels of the 1980s

Virginia Woolf's androgynous model of identitarian fluidity lies at the heart of the representation of women in Jeanette Winterson's fictional work as a whole. In her poetic manifesto, *Art Objects: Essays on Ecstasy and Effrontery*, Winterson rejects realism and acknowledges the influence of Modernism in general and of Virginia Woolf in particular. Echoing Woolf's description of the women's writing

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26 Martin, "The Power of Monstrous Women," 193; italics in the original.

27 Martin, "The Power of Monstrous Women," 193; italics in the original.

28 Martin, "The Power of Monstrous Women," 193; italics in the original.

29 Martin, "The Power of Monstrous Women," 208.

of the future, Winterson aligns her first novel, *Oranges Are Not the Only Fruit*,<sup>30</sup> with Woolf's *Orlando* and Gertrude Stein's *Autobiography of Alice B. Toklas* and contends that the three books belong to a hybrid new type of fictional autobiography based on the blurring of fictional and biographical boundaries.<sup>31</sup> The protagonist of *Oranges*, a physically normal little girl called Jeanette, adopted, like the author, by an astringent Pentecostal Evangelist couple, is treated as a monster by her fundamentalist foster mother and her religious community when she confesses her lesbianism. Endowed with a Blakean capacity to imagine alternative worlds, little Jeanette invents stories or adapts fairy tales as a form of resilience. Thus, after listening to a sermon in which Pastor Spratt equated "perfection" with "flawlessness,"<sup>32</sup> she invents the tale of the Prince in search of a woman "flawless in every respect. [...] a woman who is perfect."<sup>33</sup> After three years of fruitless wandering, the Prince found a young woman who was perfect "because she was symmetrical in everything,"<sup>34</sup> but she was far from being flawless: she was so absorbed in carrying out her daily tasks to perfection that she did not have time to listen to the Prince and did not even consider the possibility of changing her routine and marry him. Incapable of admitting his error, the enraged Prince chopped off her head.<sup>35</sup> Then, he encountered "a man selling oranges" who offered him a leather bound book about "how to build a perfect person":

'it's all about this man who does it, but it's no good if you ain't got the equipment.'  
The prince snatched it away.

'It's a bit weird,' continues the old man, 'this geezer gets a bolt through the neck ...'<sup>36</sup>

The vendor's cryptic allusion to *Frankenstein* serves the double purpose of acknowledging *and* establishing an ironic distance between Mary Shelley's canonical model of monstrosity and Winterson's own feminist conception of it. While the monstrosity of Dr Frankenstein's creature is physical, Jeanette has a normal female body, but her lesbianism qualifies her as a transgressive monster. The fact that she expresses her strong opposition to Pastor Spratt's definition of the per-

**30** Jeanette Winterson, *Oranges Are Not the Only Fruit* [1985] (London, Sydney, Wellington: Pandora Press, 1990).

**31** Jeanette Winterson, *Art Objects: Essays on Ecstasy and Effrontery* (London: Jonathan Cape, 1995), 50.

**32** Winterson, *Oranges*, 60.

**33** Winterson, *Oranges*, 61.

**34** Winterson, *Oranges*, 64.

**35** Winterson, *Oranges*, 67.

**36** Winterson, *Oranges*, 67.

fect woman by means of a cautionary tale that parodies Doctor Frankenstein's failed attempt to create a perfect man shows Jeanette Winterson joining Angela Carter and other postmodernist women writers in the deconstruction of the patriarchal conceptualisation of female monstrosity through the parodic rewriting of canonical texts.

In the next novel, *Boating for Beginners* (1985), a trenchant rewriting of the biblical Flood, Winterson will present Noah both as a "priest" in William Blake's sense of the term and as a preposterous version of Dr Frankenstein. He is the founder of "Fundamental Religion," a dreadfully dogmatic and sexist doctrine meant to satisfy the fancies of "Yahweh, the Unpronounceable," the whimsical and potentially deadly patriarchal god that Noah had accidentally created out of a slab of Black Forest Gâteau and a scoop of ice cream he had found in the refrigerator in a nauseating state of decomposition after an electricity failure caused by a thunderbolt.<sup>37</sup> His preposterous creation of Yahweh through a combination of hubris and a chance electricity failure points to Noah as a satiric counterpart to Doctor Frankenstein. After this, Noah, with the invaluable collaboration of his fiancée, Bunny Mix, launched a world-wide propagandistic campaign meant to convince the Ninevehians to overthrow the existing "vegetarian, charitable and feminist order"<sup>38</sup> and abandon the blissful worship of "The Trivia,"<sup>39</sup> a parodic version of the Trinosophia, the triadic Mother-Earth or Mother-Nature goddesses of archaic agricultural societies described by Sir James Frazer in *The Golden Bough* (1922) and popularized by Robert Graves in *The White Goddess* (1948).<sup>40</sup>

Bunny Mix has obtained fame and fortune indoctrinating women in the values of the Angel in the House. She is the award-winning author of "two and a half thousand"<sup>41</sup> escapist romances about "the purity of love between men and women, the importance of courtship and the absolute taboo of sex before marriage."<sup>42</sup> The dreadful influence she exerts on women through her trashy romances is increased by her roles as conductor of "The Bunny Mix Romance

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37 Jeanette Winterson, *Boating For Beginners* [1985] (London: Methuen, 1990), 83.

38 Winterson, *Boating*, 14.

39 Winterson, *Boating*, 21.

40 See Susana Onega, "Writing, Creation and the Ethics of Postmodernist Romance in Jeanette Winterson's *Boating for Beginners*," *Recherches anglaises et nord-américaines (Ranam)* 39 (2006): 213–227, 217. See also Susana Onega, "Circularity and the Quest in the Novels of Jeanette Winterson," guest eds. Christoph Henke and Martin Midekke, *Symbolism. An International Annual of Critical Aesthetics* 9. Special Focus: Literature and Circularity (2010): 193–216, 198–199.

41 Winterson, *Boating*, 130.

42 Winterson, *Boating*, 16.

Show” – “a very popular afternoon programme in which a woman would be pleasantly accosted by a mysterious tall figure”<sup>43</sup> – and as the owner of “Bees of Paradise,”<sup>44</sup> an elitist rest house and health spa where women endure all types of dreadful beauty treatments aimed at shaping their bodies according to the patriarchal canons of beauty, such as the losing of weight by covering their bodies in a solution of honey and glycerine, and then having trained ants “chew away the fat.”<sup>45</sup> Bunny’s ideological antagonists are Noah’s daughters-in-law, Rita, Sheila and Desi, three physically exuberant and psychologically “angelic” professional women, overtly associated with The Trivia,<sup>46</sup> who own “a kind of clinic, a place to help people who have problems, personal problems with their bodies and themselves.”<sup>47</sup> In striking contrast to “Bees of Paradise,” this clinic specializes in psychological therapy for the liberation of women’s sexuality and in change-of-sex surgery. Thus, they have operated on Marlene, a transsexual who wanted to be a woman, and when she said that she loved her breasts but wanted to have her penis back “for decoration,” they operated on her again.<sup>48</sup> As Desi explains: “We handle people who can’t come to terms with either their sexuality or their chosen expression of it [...] we tell them that *we’re all God’s children* and they can have a great time just as they are.”<sup>49</sup> Desi’s remark casts crucial insight into Winterson’s deconstruction of gender as a stable corporeal feature and her reconceptualisation of it as culturally determined and, therefore, changeable.

In *Boating for Beginners*, as in Fay Weldon’s *The Life and Loves of a She-Devil*, physical transformation is achieved through surgery. However, in Winterson’s following novel, *The Passion* (1987), the female protagonist, Villanelle, will be born with webbed feet as the result of a mistake made by her pregnant mother during a propitiatory magic rite.<sup>50</sup> Villanelle’s webbed feet confer on her female body an animal-woman hybridity that, like that of Medusa or the Sphinx, is a defining trait of female monstrosity in patriarchal cultures. However, given that, in the magical world of Venice, webbed feet are a normal male attribute, what they really symbolize is Villanelle’s bisexuality in the feminist definition

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43 Winterson, *Boating*, 74.

44 Winterson, *Boating*, 74.

45 Winterson, *Boating*, 77. See Onega, “Writing,” 218. See also Susana Onega, *Jeanette Winterson* (Manchester: Manchester University Press, 2006), 41.

46 Winterson, *Boating*, 14. See Onega, *Jeanette Winterson*, 42.

47 Winterson, *Boating*, 27.

48 Winterson, *Boating*, 37.

49 Winterson, *Boating*, 33; italics in the original.

50 Jeanette Winterson, *The Passion* [1987] (Bungay, Suffolk: Penguin, 1988), 49–50.

of the term, that is, as the embodied expression of the fluid and nuanced conception of the individual subject.<sup>51</sup> At the same time, from a mythical perspective, Villanelle's webbed feet would be the embodied expression of her androgyny, an attribute of the gods conveying the idea of perfection and completion. What is more, while from a Jungian perspective Henri, the young French soldier with whom Villanelle alternates the narration, would respond to the role of ego, Villanelle possesses the innocent/corrupt, virgin/whore duality of the anima.<sup>52</sup> In keeping with this role, she behaves as a genuine angelic monster with Henri: she plays a crucial role in helping him overcome his Lacanian mirror-stage infatuation with Napoleon; she helps him move to the phase of genital maturity by initiating him into sex; and she crucially teaches him the value of individual human life and the meaning of true love.<sup>53</sup>

In her last novel of the 1980s, *Sexing the Cherry* (1989),<sup>54</sup> Winterson will round off the deconstruction of patriarchy's exclusionary and objectifying definition of woman through the creation of the Dog Woman, her most complex and excessive female monster. Just as in *The Passion* the narrative role is shared by Henri and Villanelle, so in *Sexing the Cherry*, the Dog Woman alternates the narration with Jordan, her adopted son. Structurally, the novel is divided into three sections. The untitled first one is situated between 1630 and 1649; the second, entitled "1649," begins with the Civil War and ends in 1661; and the third, entitled "Some Years Later," covers the period from 1661 to the Great Fire of 1666. However, in this third section, temporal linearity is disrupted by the fact that the narrative voices of the Dog Woman and Jordan are interwoven with those of a nameless ecologist and a naval cadet called Nicolas Jordan, who live in the novel's present and thus appear as the twentieth-century alter egos of the seventeenth-century characters. Although the contemporary ecologist shares many traits with the Dog Woman, she lacks her astounding physical monstrosity.

As we have seen, Sara Martin interprets the discourse of *Sexing the Cherry* as an example of implicit androphobia because of the contrasting roles played by the Dog Woman as a figure of power and by men as victims of her murderous rage. However, this is not the only role allotted to men in the novel. The perspective provided by the Dog Woman's narrative discourse is systematically set against that of Jordan, a visionary young man with an idealist attitude to life that strikingly contrasts with his mother's materialism. Significantly, these differ-

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51 Cixous, "Sorties," 84–85.

52 See Onega, *Jeanette Winterson*, 72.

53 Winterson, *The Passion*, 154–156.

54 Jeanette Winterson, *Sexing the Cherry* [1989] (London, Melbourne, etc.: Vintage, 1990).



ences do not interfere with the intense love they feel for each other. From the day she found the newly-born baby cast ashore by the river, “caked in mud”<sup>55</sup> but miraculously alive, the Dog Woman devoted herself wholeheartedly to his care with the tenderness and solicitude of an exemplary mother and the child responded in kind to her love. Only by ignoring this nurturing facet of the Dog Woman could we agree with Martin’s assertion that the novel’s discourse is implicitly androphobic and the model of female power embodied by the Dog Woman, limited and pale.

From the beginning of the novel, the Dog Woman is presented as a freak of nature existing beyond the bounds of Puritan rule. She lives with Jordan and her dogs on the muddy bank of the Thames in the only neighbourhood of a decrepit witch, that is, in a watery feminine world (like the Venice of Villanelle) well away from London/the Symbolic Order. As I pointed out elsewhere,<sup>56</sup> her name and trade as a hound breeder suggest a parodic inversion of the Dog Man, the patriarchal symbol of sexual prowess who mated with the legendary Amazons. Early reviewers of the novel compared her to Rabelais’ Gargantua;<sup>57</sup> to Jabba the Hutt, the alien monster in *The Return of the Jedi*; and to Fevvers, the bird-woman in Carter’s *Nights at the Circus*<sup>58</sup>; and she has even been interpreted as a grotesque reincarnation of Moll Flanders.<sup>59</sup> The Dog Woman herself describes her gigantic body as “the mountain of my flesh,”<sup>60</sup> thus echoing the name given by the Lilliputians to Gulliver: “the Man-Mountain.”<sup>61</sup> She is heavier than an elephant<sup>62</sup>; and has an ugly face with “a flat nose, a few broken black teeth and skin covered with pock marks as big as caves where fleas live,”<sup>63</sup> features all of them that point to her embodied monstrosity as belonging in the category of the grotes-

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55 Winterson, *Sexing the Cherry*, 14.

56 Susana Onega, “Jeanette Winterson’s Politics of Uncertainty in *Sexing the Cherry*,” in *Gender Issues in Literature and Film*, eds. Chantal Cornut-Gentille and José Ángel García Landa (Rodopi: Amsterdam-Atlanta, G.A. 1996): 297–313, 303.

57 Eugene Wildman, “*Sexing the Cherry*, by Jeanette Winterson,” *Chicago Tribune* (5 June 1990): Section 5, 3; Lewis Buzbee, “Hidden Journeys, Mythical History,” 9; Michael Dirda, “A Cornucopia of Earthy Delights,” *Washington Post* (13 May 1990): X09.

58 Dirda, “A Cornucopia,” X09.

59 Patricia Waugh, “*Harvest of the Sixties*”: *English Literature and its Background 1960 to 1990* (Oxford and New York: Oxford University Press, 1995), 194.

60 Winterson, *Sexing the Cherry*, 14.

61 Jonathan Swift, *Gulliver’s Travels* [1726], eds. Peter Dixon and John Chalker, intr. Michael Foot (Harmondsworth: Penguin, 1967), 117.

62 Winterson, *Sexing the Cherry*, 25.

63 Winterson, *Sexing the Cherry*, 24.

que,<sup>64</sup> alongside Mikhail Bakhtin's description of the grotesque body characteristic of carnival imagery, as found in writers like Shakespeare, Cervantes, Diderot, Voltaire, Swift or Rabelais."<sup>65</sup> Her fantastically huge body is comparable to that of an ogress in a fairy tale, with the difference that it is male adults, rather than children, who are panic-stricken and revolted by the sheer sight of it. Sara Martin suggests as much when she compares her to "another monstrous giantess, that of Ted Hughes' story for children, *The Iron Woman* (1993),"<sup>66</sup> but the trait in common she finds in them is that they are both:

viragos [who] use radical, violent methods to teach patriarchal men to behave properly – that is to say, as women would like – but they cannot be taken as role models because they are as violent and narrow-minded as any patriarchal man.<sup>67</sup>

Martin then goes on to explain that:

Ted Hughes' text deals with a black, metallic giantess who emerges one day from the filthy river mud to prevent men from further poisoning the waters. She might thus be a symbol of the current conservationist vogue, associated with (eco)feminism and with nature marked female.<sup>68</sup>

This description fails to take into consideration the symbolic force of the giantess emerging out of polluted river mud in a state of despair and covered in chemicals to bring havoc on the men who have poisoned it. Thus, Martin flatly concludes that: "The horrific punishment that the men of England suffer seems an act of feminist wishful thinking,"<sup>69</sup> and that: "Ted Hughes may even have written his tale as a tongue-in-cheek indictment against Margaret Thatcher, the Iron Lady,"<sup>70</sup> even though she is well aware that: "since Thatcher is not a feminist, interpreting the meaning of Hughes' *Iron Woman* from this point of view is even more problematic."<sup>71</sup>

Needless to say, what the Dog Woman and the Iron Woman have in common is their close association with mud, the fertile combination of water and earth

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<sup>64</sup> Chris Baldick, *In Frankenstein's Shadow: Myth, Monstrosity, and Nineteenth-century Writing* [1987] (Oxford: Clarendon Press, 1996), 14.

<sup>65</sup> Onega, *Jeanette Winterson*, 81.

<sup>66</sup> Martin, "The Power of Monstrous Women," 201.

<sup>67</sup> Martin, "The Power of Monstrous Women," 201.

<sup>68</sup> Martin, "The Power of Monstrous Women," 201.

<sup>69</sup> Martin, "The Power of Monstrous Women," 202.

<sup>70</sup> Martin, "The Power of Monstrous Women," 202.

<sup>71</sup> Martin, "The Power of Monstrous Women," 202.

that constitutes the very material of Mother Earth's grotesque body according to Carnival imagery. According to Bakhtin, the earth has a paradoxical double nature: "[it] is an element that devours, swallows up (the grave, the womb) and at the same time is an element of birth, of renaissance (the maternal breasts)."<sup>72</sup> The Dog Woman (and the Iron Woman in Martin's own description above) perfectly fits into this characterization. Her mountain-like shape and her love of Jordan correspond to the earth's benign facet of maternity, cyclical renewal and cosmic regeneration, while her atrocious killing of men, particularly Puritans with a double standard of morality, would correspond to Mother Earth's all-devouring and deadly facet. It is with the fanatic upholders of patriarchal Law, and only with them, that the Dog Woman literally behaves as a man-killing monster,<sup>73</sup> just as the Iron Woman's rage – like that of the twentieth-century ecologist in the third section of *Sexing the Cherry* – is directed against the male community that is destroying the environment and condemning the animals to painful deaths by pouring toxic material into the marsh from the local waste-disposal factory. Indeed, as Terry Gifford states, "this children's story is as far as Hughes comes to directly addressing the environmental crisis that overtook his writing career."<sup>74</sup> Only by taking into consideration the dual nurturing/devouring symbolism of these Mother-Earth figures can readers appreciate the ideological and ethical charge underlying the Dog Woman's and the Iron Woman's behaviour.

The subversive element in the Dog Woman's characterisation is made explicit on the occasion of her visit to the Royal Gardens, when the panic-stricken half-wit who kept the gate described her to John Tradescant Jr., as "an evil spirit and her Hounds of Hell,"<sup>75</sup> thus associating her, as Patricia Waugh acutely notes, to Milton's Sin in *Paradise Lost*.<sup>76</sup> Sin is the half woman/half serpent incestuous daughter of Satan and the abject mother of innumerable Hell Hounds.<sup>77</sup> Therefore, the gate-keeper's association adds to the Dog Woman's Mother-Earth's gro-

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72 Mikhail Bakhtin, *Rabelais and His World* [1965], trans. Helen Iswolsky (Bloomington: Indiana University Press, 1984), 21.

73 See Onega, *Jeanette Winterson*, 84.

74 Terry Gifford, *Ted Hughes* (London and New York: Routledge, 2009), 79.

75 Winterson, *Sexing the Cherry*, 29.

76 Patricia Waugh, "Harvest of the Sixties," 194.

77 "[Sin] seem'd Woman to the waste, and fair, / But ended foul in many a scaly fould / Voluminous and vast, a Serpent arm'd / With mortal sting." John Milton, *Paradise Lost* [1667] (DjVu Editions E-books: Global Language Resources, Inc., 2001), Book II, ll. 650–652. Available at: <http://triggs.djvu.org/djvu-editions.com/MILTON/LOST/Download.pdf> (Last access February 13, 2018).

tesque body the animal/human hybridity of transgressive women in patriarchy.<sup>78</sup> Like Sin, the Dog Woman is an unnatural mother, since her son is adopted, and she is, like her, surrounded by hounds,<sup>79</sup> but unlike Milton's monstrous mother, who is endlessly devoured by her own children, the Dog Woman lives in perfect harmony with her dogs, with Jordan, and with her neighbour, the witch (another transgressive woman), in her own marginal space. What is more, she has numberless female friends in London, running all the spectrum from nuns and prostitutes to the all-enduring wives of the Puritan men she abhors. This fact suggests that the Dog Woman has an "angelic" side that contrasts with her physical monstrosity even if it is constantly set into question by her murderous behaviour with men. The first man she killed was her own father, but she did so because, being ashamed of her, he had tried to sell her as a freak in a travelling fair.<sup>80</sup> She had once "bitten off with a snap" an exhibitionist's member, but only because he had asked her to put it in her mouth "as a delicious thing to eat."<sup>81</sup> She had also set about plucking out the teeth and eyes of every Puritan she came across, but only in an attempt to please a hell-fire preacher after listening to his sermon on Moses's Law, "an eye for an eye and a tooth for a tooth."<sup>82</sup> Always the practical woman, she fed the plucked eyes to her dogs (just as she had done with the exhibitionist's member after spitting it with disgust), and she made herself a bed of watercress and the 2,000 teeth she had torn from the skulls of the Puritans, after the discomfited preacher refused to take them.<sup>83</sup> Her murderous zeal reached a grotesquely excessive gory climax of horror in the brothel, when she put an abrupt end to the pervert sexual fantasies of two of her most hated Puritans, Preacher Scroggs and Neighbour Firebrace by chopping them to pieces with an axe.<sup>84</sup> In striking contrast to this, the Dog Woman feels great respect and admiration for the King and John Tradescant Jr., the gentle royal gardener who had taken Jordan as his apprentice. Significantly, for all the horror and nausea the sheer sight of her huge and repulsive body provokes in her enemies, neither Jordan nor Tradescant see fault with it. Their capacity to see the Dog Woman's angelic spirit behind her monstrous body points to them as representative of the

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78 See Onega, *Jeanette Winterson*, 82.

79 "about her middle round / A cry of Hell Hounds never ceasing bark'd / With wide CERBEREAN mouths full loud, and rung / A hideous Peal." Milton, *Paradise Lost*, Book II, ll. 653–56.

80 Winterson, *Sexing the Cherry*, 107.

81 Winterson, *Sexing the Cherry*, 41.

82 Winterson, *Sexing the Cherry*, 84.

83 Winterson, *Sexing the Cherry*, 85.

84 Winterson, *Sexing the Cherry*, 86–89.

male alternative to the morally duplicitous and politically repressive phallogocentrism of the Puritans.

Sara Martin describes the Dog Woman as “both a freak and a moral monster.”<sup>85</sup> However, only by interpreting her actions literally rather than symbolically can we consider her morally monstrous. Certainly, she has murdered or maimed thousands of men, including her own father, but the reason for these bloody actions is, as we have seen, her radical incapacity to understand the metaphors of patriarchal discourse. The facts that she does not understand symbolic language and that she lives in her own feminine space in blissful communion with her son, point to the Dog Woman as the personification of the abject mother, in Julia Kristeva’s acceptance of the term,<sup>86</sup> living in the unsymbolized realm of the Semiotic (Lacan’s Imaginary). Her position outside the Symbolic Order and her double nurturing/devouring Mother Earth characteristics qualify the Dog Woman as a subversive agent of social transformation and renewal of patriarchal Law/the socio-cultural order. Needless to say, her colossal inability to understand symbolic language situates the Dog Woman in the strategic position recommended by Bakhtin in *The Dialogic Imagination* from which to reshape patriarchy’s false picture of the world, since it is only by deconstructing the metaphors of patriarchal discourse that women can aspire to create a new Symbolic Order that would respond to women’s own feminine and more ethical, because egalitarian, picture of the world.<sup>87</sup>

We can gauge the characteristics of the new picture of the world the Dog Woman aspires to draw by realising the importance she gives to freedom in her conception of love, and to friendship in human relations. During the Plague of 1665, she showed her conception of human relations by volunteering to collect the numberless corpses overcrowding the streets and take them to the infernal pit where they were massively burned, and when she realized that one of them was the body of a friend from the brothel, she took it on her shoulder to the bottom of the pit, instead of throwing it into it from the brink, on the reflection that it was an “indignity to be tossed aside.”<sup>88</sup> Similarly, we can gauge the quality of her love for her adopted son from her remark at the beginning of the novel that she called him “Jordan” because she wanted him to have “a river name, a name not bound to anything, just as the waters aren’t bound to any-

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**85** Martin, “The Power of Monstrous Women,” 201.

**86** Julia Kristeva, *Powers of Horror: An Essay on Abjection* (New York: Columbia University Press, 1982).

**87** See Onega *Jeanette Winterson*, 83–84.

**88** Winterson, *Sexing the Cherry*, 140.

thing.”<sup>89</sup> In consonance with this, when Jordan expressed his desire to undertake a dangerous journey to remote lands in search of exotic fruits for the Royal Gardens, she refrained from expressing her maternal worries so well that Jordan wondered whether she loved him at all. By so doing, the Dog Woman was granting him the freedom to round off his individuation process. Jordan's true motivation to undertake this journey was to find Fortunata, the youngest of the Twelve Dancing Princesses in the brothers Grimms's tale, whom he had glimpsed during one of his waking reveries. But rather than search for a female partner that would play the role of other to his sense of selfhood, what Jordan was looking for was “the dancing part of [him]self.”<sup>90</sup> In other words, Jordan was recognizing the coexistence of masculine and feminine traits in himself and searching, like Henri in *The Passion*, for his anima, the feminine facet in himself that would allow him to overcome the patriarchal self/other oppositional binary and move towards a plural and shifting conception of himself as subject. The very fact that Jordan has embarked on this life journey shows that the Dog Woman has succeeded in her educational task. Although there is no denying that, in *Sexing the Cherry*, Jeanette Winterson is trying to impose her own views on men, as Martin asserts,<sup>91</sup> it seems evident that the alternative she proposes to the patriarchal conception of self and world is neither androphobic nor immoral but rather ethically charged and unquestionably informed by feminism.

In her later novels, Winterson will further develop her conception of fluid subjectivity alongside the model created by Virginia Woolf.<sup>92</sup> Thus, for example, in *The Power Book*,<sup>93</sup> she pays tribute to *Orlando* by overtly acknowledging it as the main hypotext of her novel, while in *Written on the Body*,<sup>94</sup> she creates a self-conscious experiment in *écriture féminine* that takes to a climax the embodied perception of fluid subjectivity proposed by Woolf and theorized by feminist critics like Cixous and Butler. In this novel, Winterson creates an autodiegetic narrator whose gender and physical aspect are never made explicit, thus suggesting that s/he has the bisexuality Villanelle enjoyed and Jordan was attempt-

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**89** Winterson, *Sexing the Cherry*, 11.

**90** Winterson, *Sexing the Cherry*, 40.

**91** Martin, “The Power of Monstrous Women,” 202.

**92** See Susana Onega, “(De)Constructing Gendered and Sexual Identities in the 21<sup>st</sup> Century: Fluid Selves and Multiple Worlds in Jeanette Winterson's *The PowerBook* (2000) and *Lighthousekeeping* (2004),” in *The British Novel in the Twenty-First Century: Cultural Concerns – Literary Developments – Model Interpretations*, eds. Vera Nünning and Ansgar Nünning (VTW: Wissenschaftlicher Verlag Trier, 2018), 187–199.

**93** Jeanette Winterson, *The PowerBook* (London: Jonathan Cape, 2000).

**94** Jeanette Winterson, *Written on the Body* (London: Jonathan Cape, 1992)

ing to achieve.<sup>95</sup> Still, in this and the other novels written after the 1980s, there is no indication of any kind of physical deformity or embodied monstrosity in Winterson's female protagonists, surely an indication that she does not feel any more the need to set her conception of subjectivity as fluid and changeable against the traditional representation of transgressive women as monstrous.

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<sup>95</sup> See Onega *Jeanette Winterson*, 108, 115.

Marc Amfreville

## “In Some Dark Form I’ll Continue”: James Ellroy’s *Silent Terror*

This very last sentence of Martin Plunkett’s fictitious memoir – and thus, of James Ellroy’s famous 1986 crime novel – defiantly proclaims that the imprisoned serial killer, having put an end to his autobiography, now feels free to commit suicide by a mere act of willpower but will go on existing in a metamorphosed state, thus paving the way for immaterial beyond-death textual haunting. Although subsequent editions have reverted to the author’s favored title, the first one had been published, perhaps for its flashy and awesome quality, under that of *Silent Terror*<sup>1</sup>, which, quite in the spirit of the final sentence quoted above, may be found more in keeping with the novel’s ambitious poetic resonances than the blatantly descriptive *Killer on the Road*.

More than just a mere anecdote, this change in titles is the sign that there may be more to this novel than meets the eye, and everything seems to indicate that the then budding author – this thriller preceded the *LA Quartet* (four volumes starting with *The Black Dahlia* 1987, followed by *The Big Nowhere* 1988; *L.A. Confidential* 1990, *White Jazz*, 1992, which won him critical acclaim – had decided to conceal his underlying literary ambition to secure mass market production and sales.

It is the main contention of this paper that *Silent Terror*, a hybrid between Gothic fiction, the crime novel and trauma literature offers stimulating insight into what an ambitious “psychotic” text can achieve. Playing on the subtle and paradoxically complementary workings of repulsion and fascination, this first-person narrative, reminiscent of Poe’s most macabre short stories and of Dos Paso’s newsreel collages, imprisons the reader in the mesh of horror he/she is bound to feel, the better to suggest possible ways of irrepressible movements of sympathetic – at least, understanding – approximation. Such affects are made possible by the writer’s profound knowledge of the tropes and secret devices of Gothic fiction which we shall analyze in a first part, before moving on to demonstrate how the recorded mechanisms of trauma inform this retroactive fiction, to finally endeavor to understand how unspeakable horror triggers the silence necessary to *repressed* identification – one that, by Freudian definition, is bound to *return* and give birth to the uncanny phenomenon of doubling.

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1 James Ellroy, *Silent Terror* (London: Arrow Books, 1986). Further references in the text, abbreviated as *ST*.



American Gothic, as widely known, started off with Charles Brockden Brown's 1798 *Wieland, or the Transformation*, and it is no accident but still a matter of perplexity, given the writer's longing for literary offspring, that it should have begun with the story of a late eighteenth-century American Abraham who sacrificed his wife and children to obey a divine command that ultimately proved to have been the result of hallucinatory voices. Madness in its most radical acceptance, one that provokes murder in a symbolically unnatural form – infanticide in the case of *Wieland* – thus heralded a streak of horror fiction that less than half a century later gave birth to Poe's gloomiest short stories, notably the one most relevant to the study of *Silent Terror*: "The Tell-Tale Heart" (1843). One cannot help noticing that Poe's interest in writing Gothic tales that unite the representation of madness with a police inquiry is at the source of much detective fiction, notably American, and that Ellroy's may be seen as a particularly telling offshoot of that conjunction. The most salient intertextual moment comes near the end when Martin Plunkett resides for a while with an elderly gentleman named Rheinhardt before he kills him: just as the anonymous narrator in "The Tell-Tale Heart," he consistently calls him "the old man," leaving the reader free to associate this avuncular figure to Plunkett's early eloped father. But from the very start, we may have been alert to the poetics of dismemberment that closely recalls Poe's short story. In both cases, however gory the implications, the narration remains surgically cold and distant, perhaps all the more strikingly so in Ellroy's novel as the physical arousal and consequent orgasm attending the killings are often mentioned, but here too in clinical, dispassionate fashion. What is more, Martin seems perfectly aware of an almost medical correlation between his psychotic hallucinations and nightmares on the one hand, his sexual satisfaction on the other. He explicitly and repeatedly describes the urge to kill as a practical solution, almost a remedy, to appease his harrowing inner turmoil. No such confession in Poe's tale, evidently. But we do feel something akin to Plunkett's irrepressible desire in Poe's narrator's thumping heart, so loud it will be believed to be the recently killed victim's pulse that goes on beating after death, dismemberment and burial under the flooring. A significant detail may be added: "The night waned, and I worked hastily, but in silence. First of all I dismembered the corpse. I cut off the head and the arms and the legs." (Poe, 558)<sup>2</sup> Notwithstanding the night and silence that could easily belong to any murder tale, either in the nineteenth or the twentieth century, one notices how the assassin describes his cutting off the head, arms and legs in a sentence

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<sup>2</sup> Edgar Allan Poe, *The Tell-Tale Heart* [1843], in "Poe, Poetry and Tales" (New York: Library of America, 1984): 555 – 550.

that immediately follows that announcing the old man’s dismemberment (which should logically refer to the arms and legs in question). It is tempting then to understand “dismember” in its precise castrating connotation, one that would perfectly fit the Oedipal drive present from the start of the short story, but what matters most is the way the text manages to de-sexualize the gesture by juxtaposing it to the severing of “other” members. The sexual content is thus almost totally repressed, in keeping with the description of Martin Plunkett’s exactions that are said in the intercalated police report to often include penis severing while the first-person narrator never mentions it. This ellipsis in turn is perfectly consistent with the strict evangelist education Martin had received at the hands of a profoundly disturbed – not to say outwardly schizophrenic – mother, who did not even possess the necessary words to speak of sexual organs and referred to them as “places,” a wordlessness that the narrator duplicates in his memoir, first between quotation marks, then adopting it fully as his own (*ST*, 242).

Related to sexual repression, as we shall study it in our second part, madness is of course the most telling link between Poe’s narrator and Martin Plunkett. My point is not to come up with ready-made diagnoses whose relevance to works of fiction is always at least doubtful. It may prove useful, though, to underscore how in many respects *Silent Terror* expands upon the clinical possibilities that Poe had no space – and perhaps insufficient psychiatric knowledge – to unveil. The first blunt nosographic fact, in both cases, is the presence of all-pervading visual and/or auditory hallucinations – present in “The Tell-Tale Heart” in the form of the ticking of the death watches in the wall even before the heart of the dead man went on beating post mortem and materialized near the end of the text in *Silent Terror* by the invasion of the page by onomatopoeic “tick tick” (*ST*, 234, for example). It is one of the feats of the novel to have given us access to Martin’s childhood through his own perception and thus to make palpable his gradual estrangement from the world, his never voiced dejection when his father decides to leave the family never to be seen again and above all his growing hatred for his mother. We should perhaps recall the key summary he gives us of his situation in his family in the very first chapter, one that amazingly fuses a denial of pain and the blunt expression of it.

I realize now that both my parents had furious, and furiously separated, mental lives. They were together for the first seven years of my life, and early on, I remember designating them as my custodians, and nothing else. Their lack of affection, to me and to each other, registered inchoately as freedom – dimly I perceived their elliptical approach to parenthood as a neglect that I could capitalize on. They did not possess the passion to abuse me or to love me. I know today that they armed me with the equivalent of enough childhood brutality to fuel an army. (*ST*, 10)

The moment when, aged seventeen, he substitutes Benzedrine for his mother's usual Phenobarbitals, thus triggering a delirium that leads her to commit suicide, and remains totally insensitive to her plight and death, is in a sense only the logical consequence of the early rift that had developed between a totally unloving parent and a child who found refuge in violent comic strips. Shroud Shifter, the arch villain in the latter, endowed with superpowers, builds himself into an ideal hero and support for identification while the couple he forms with and his crudely alluring mate, Lucrezia, become the ever-haunting parental pair that will cut him off all sort of social intercourse and invade his mental space with their violent adventures and intrusive advice. The most significant aspect of his entering a world of psychotic fantasy is that it leads Plunkett to assert from the outset that ["he] feel[s] no remorse and seek[s] no absolution" (SL, 7), here too very much in the way Poe's narrator asserted his lack of guilt by trumpeting his own genius. This sends us on the track of a paranoid psychopath's personality, one precisely characterized by the firm belief in the subject's own grandeur – a feeling not exempt from devastating self-loathing episodes when the threat of madness becomes too keen – coupled with an aggressiveness and, in its most extreme form, the desire to kill those who will not acknowledge said greatness. In Martin Plunkett's case, this translates into a refusal to be pitied and the proud affirmation of his deserving awe instead. (ST, 8)

Although the explanatory process may appear slightly schematic, it is essential to underscore the importance of silence in the development of the narrator's illness. Ironically enough, it was imposed by his mother, either as a way for her to be left alone or as a six-month punishment when Martin was caught sexually aroused by his hacking a Shroud Shifter cape out of his mother's long neglected girl's clothes. Silence, comparable to that of the transparently metaphorical house of "The Tell-Tale Heart" 's narrator, thus becomes the condition and consequence of his playing more and more intense brain movies, gradually completed by their own sound-track and even the reproduction of smells. It becomes the locus for Martin Plunkett's arch fantasy: intrusion, followed by killing and subsequent dismemberment of the victims, soon to be rearranged after death in the position of intercourse. The killer, it is to be noted, thus becomes both the witness and the agent of a clearly necrophiliac fantasy, a scenario that will repeat itself *ad lib* in his murderous career as a serial killer: fifty victims according to the police reports, but a body count deemed low by the killer in the novel's very first sentence. This return to the very origin of the text naturally leads us to consider the *Nachträglich* movement that informs the novel.

In its strictest Freudian sense, one developed as early as 1895 in the *Project of a Scientific Psychology*, *Nachträglichkeit*, somewhat misleadingly translated into

English by “belatedness” or “deferment” or else “afterwardsness,” does have to do with consequences. A given event does have belated effects. Thus, a childhood trauma, although unconscious, has an impact on future behavior and may well be said to trigger a second one (more accurately, a second shocking event will only build itself as traumatic with the known emergence of a memory block and or haunting images, amnesia, or hypermnesia) if a first shattering episode took place. But the profound originality of the concept has to do with its exact contrary, more specifically Freudian: a logic-defying reversal of the standard chronological modes of explanation. When a trauma occurs in adult life, in a war, let us say, or in such dire circumstances as “9–11,” it sends a retroactive light on a former one, most of the time deeply buried since childhood and hidden from consciousness. As far as consciousness is concerned then, we could say that event B actually *triggers* event A. To bring matters closer to literature, as I have several times contended, a rime in poetry goes unperceived until we reach a second occurrence that sends us back to the first manifestation of a sound and forces us to consider the two vertically, on the metaphorical axis rather than on the metonymic one.<sup>3</sup>

In the case of Martin Plunkett, we do have the interesting juxtaposition of the two modes of *nachträglich* action, and I wish to assert that it is precisely the resort to these psychoanalytical complex workings that gives *Silent Terror* an outstanding literary quality in the mass of crime fiction in general and particularly serial killers’ novels. As will have been gathered from preceding remarks, fiction has it that the greatest part of the text is composed of Martin Plunkett’s memoir, for which he traded a contract for publication against a minute description of his innumerable crimes, the majority of which still baffle the police. In rather conventional fashion, after an introductory chapter that spells out the writing (and reading) pact, chapter 2 goes back to Martin’s childhood, adolescence and implacably develops the revelation of psychotic hallucinations and the relating of a growing sense of omnipotence, associated with the performing of what Plunkett calls “psychic invisibility” ... culminating in the blood-thirsty killing of his mother. Following her demise, Martin is placed in the care of a former police officer... and while gathering invaluable information on the various techniques of housebreaking from the ever-so talkative old man and on the mistakes convicted thieves should have avoided, he plans and stages his first burglaries. While the text, resorting to dramatic irony, both conceals and reveals

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<sup>3</sup> This theoretical development, inspired by *Ecrits en souffrance* (Marc Amfreville, Paris: Michel Houdiard, 2009), has been used in slightly different form in a to be published plenary lecture I gave at the University of Lublin (May 2008) on Rick Moody’s *Black Veil*, informed by the same psychoanalytical mechanism.

that every forceful intrusion is linked to the memory of his mother's discovery of his unhealthy sartorial carvings associated, as we saw, with sexual arousal, we are gradually introduced to another of Martin's key fantasies: his spying on love-making couples, which will later turn into the rearrangement of naked dead bodies in a similar position – the only source of sexual gratification he indulges in at this stage – but which, in the meantime, produces daydreaming and nightmares during which he realizes surgical cross-gender transplants and amputations with the help of his “mental scalpel” (ST, 55). Zeroing on real-life primal scenes he spies on when hidden in houses he has forced his way into, or imagining collages of “butchered sex organs” (60), he can only lose his painfully acquired “invisibility” and compulsively reach out to touch the exposed bodies of a lovemaking couple, which results in his arrest and subsequent one year jail sentence.

The episode is extremely revealing, and not only because it will soon become Martin's dominant psychic scene, ever to be replayed and leading him on to his murderous career. It also and perhaps chiefly conflates the two contradictory motions of *Nachträglichkeit*. The reader may develop a causal explanation that has to do with the early disappearance of his father, his mother's ensuing madness and the repressive denial of both his emotional needs and sexual urges. But nothing will become clear until the very end of the novel's plunge into the origin of the boy's trauma is revealed and has cast a retroactive light on every previously described scene.

On the plane of the character's development, what happened? His father, taking advantage of the boy's mother's absence, invited a “girlfriend” to the family place and Martin, then aged four or five, on his way to the bathroom, caught them in the act of love making. The noise made by the mattress is thus revealed to lie at the origin of the ticking sound that had unaccountably pervaded the murderer's inner world and his narration. The illegitimate couple are wearing powder-white wigs, which the woman associates with her eternal wish to have had fair hair, and thus, the killer's obsession for blonde victims receives its belated explanation. When Martin's father falls into post-coital sleep the woman, most probably a prostitute, beacons to the child and provides manual, then oral caresses. He is suddenly hurled out of what he describes as a highly pleasurable moment, complete with the expression of his pride in his virility, by the return of his mother, who has just hit the woman, now heavily bleeding from the mouth. The utter sordidness of the situation vies with the mother's enduring guilt-inducing reaction: she will from then on constantly drug her son with Phenobarbital, so that he forgets what he “did with the wig woman” and so that God may forgive him.

Only less than forty pages to the end of the novel does the reader finally grasp the mysterious equation that formed in the child's mind and forever as-

simulated sex to guilt, blondness to threatening oral predation, blood with climax and retribution. There remains then only to go back some two hundred pages earlier to see how, carefully interwoven with every significant scene in the book, these different signs had been posted. However, they remain totally undecipherable on first reading, which in itself justifies our conception of the novel itself as a trauma fiction. Not so much because the character undergoes trauma, in the radically clinical sense of an afflux of excitation too massive to be integrated<sup>4</sup>, having been the victim of the woman's sexual aggression and of his mother's obsession with guilt and religion, but because the text itself functions along the lines of a retroactive reading. To take just one example of this *nachträglich* action, one should only remember that the medicine his mother forces him to take after the "scene" is the same as she herself was daily taking, probably to appease the sexual urges she thus managed to repress and transform into sadistic impulses towards her child. Can we then be surprised that the teenager should decide to replace these tranquilizers by a powerful excitant that provokes the bout of liberated delirium that leads to her suicide? At the end of a rather complex identification process, he introjects the mother he hates, she becomes part of him, and the next step is "naturally" self-deprecation and hatred. Particularly and obliquely illuminating in that respect is the analysis Julia Kristeva makes of the melancholic patient, one who, unlike Martin, constantly flirts with self-annihilation as opposed to letting his own hatred and violence explode against various objects that in fact represent the inaccessible Mother of his own origin.

The lesser or greater violence of matricidal drive, depending on the individuals and the milieu's tolerance, entails when it is hindered, its inversion on the self. The maternal object having been introjected, the melancholic or depressive putting of the self to death is what follows, instead of matricide. [...] This my hatred is safe and my matricidal guilt erased. I make of Her an image of Death so as not to be shattered through the hatred I bear against myself when I identify with Her.<sup>5</sup>

Martin partly did the reverse: he acted out his matricidal drive, had to numb all reactions to her actual death and find objects for a constant reenactment of a

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<sup>4</sup> On this specific point, see Freud's "Beyond the Pleasure Principle," *Complete Works Standard Edition*, vol. XVIII, 7–61 (London: Hogarth Press, 1955), notably p. 29: "We describe as 'traumatic' any excitation from the outside which are powerful enough to break through the protective shield. It seems to be that the concept of trauma necessarily implies a connection of this kind with a breach in an otherwise efficacious barrier against stimuli."

<sup>5</sup> Julia Kristeva, *Black Sun: Depression and Melancholia*, trans. L. Roudiez (New York: Columbia UP, 1992), 28.

scene that did not manage to spare him bouts of self-hatred. Can we doubt that, given this early history, Martin had to lock himself in silence and emotional numbing as the only ways of securing his psychic survival? The compulsion to repeat the early associations of blood and sex may not fully explain the serial killer's future behavior – the novel would probably lose some of its haunting power if motivations were reduced to mechanical cause and effect perspectives – but the partially solved enigma suffices to satisfy the detective urge that motivated the thriller-accustomed reader's interest.

At the joint levels of the character's personal development and textual functioning, then, trauma offers an alternative to the mere radical alterity of psychosis, and one should note that such a combination has often been clinically observed. This possibility of understanding the monster, that is of going beyond the mere revulsion – or unhealthy thrill? – brought about by the naked picture of the links that unite sex, violence and death at the deepest level of the psyche – is further enhanced by the literary and psychoanalytical poetics of doubling.

Doubling, as very often the case in fiction, intertwines two aspects of the same poetics: on the one hand, the inner splitting of a given character, that in its most spectacular form, results in two different impervious halves of the protagonist – Wieland, here again, is a case in point; on the other hand, the scattering of various signifying traits in the creation of two different characters allows to identify them as complementary. “Together,” says Freud speaking of Lord and Lady Macbeth, “they exhaust the possibilities of reaction to the crime, like two disunited parts of a single psychical individuality, and it may be that they are both copied from a single prototype.”<sup>6</sup> Resolutely away from a mimetic approach to characterization, what Freud suggests here implies a radical reconsideration of fiction reading, one strikingly ahead of his time, that entails a closer attention directed to signs and symbolic workings rather than the search for absolute verisimilitude.

The character of Ross, a hidden serial killer but also a policeman, lends itself to such analysis of the doubling process. Martin and Ross's encounter, starting with the former's arrest by the latter for a routine identification blood test, will soon entail a merging of their identities. Both psychopathic murderers, both convinced of their superiority over the rest of the world, both driven by an “artistic” conception of death-giving, they readily recognize their resemblance and build their reciprocal admiration upon an appreciation of their respective

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6 Sigmund Freud, “Some Character-Types Met With in Psychoanalytic Work” [1916], in *Standard Edition of the Complete Works*, vol. XIV (London: Hogarth Press, 1955), 324.

killing styles. Ross thus protects Martin from further investigation and while following the younger man's murderous career through puzzled newspaper accounts of ever renewed but unattributed killings and police secret reports, he goes on treading his own bloody path.

Doubling, however obvious for the reader, proves to be profoundly misleading for and ultimately fatal to Martin, as it implies the misconception that, to a certain extent, the two *Doppelgänger* are interchangeable. Immediately destabilized by the realization of a secret kinship ("I knew he knew (ST, 145)), however defiant at first, Martin lets himself be actually carried away by what he soon acknowledges as homosexual passion. Their first chaste night together – as they are forced to share bed in a hotel during a snowstorm – ends up in a totally unexpected kiss initiated by Ross who had just asserted he might "need" Martin in the near future:

I was reverberating with the implications of "need you" when Ross leaned forward and kissed me on the lips. I leaned into it and tasted wax on his moustache and bitter coffee on his tongue, and when he broke contact and about-faced through the door, I was flushed and angry for more. I did not yet know that the kiss would push me and haunt me and hurt me and drive me for the next two and a half years of my life. (ST, 154)

What Martin experiences, although only backward knowledge will teach him to consider it as such, is unreciprocated love. While for "Ross the boss" a mere romp is at stake, Martin's identity dissolves in admiration, identification and fusion, of which the final lovemaking scene will be the physical paroxystic expression. It is no accident that Dusenberry, the special policeman in charge of the double chase as he is at the head of the newly formed serial killers' unit, recognizes Martin's feelings for the other man as his ultimate all-informing secret and driving force. Much further than the obvious paternal quest triggered by the early disappearance of his genitor, it does seem that Martin, having perhaps a child's intuition of his mother's all-engulfing psychosis, constantly strove to "reach" his father – to be taken here in the psychoanalytical sense of the symbolic agency that must separate the child from his mother to avoid identity-annihilating fusion and represented in the novel through different father figures. It is highly significant that, in the recovered memory of the scene with the prostitute, the little boy, when she sexually abused him, was extending his arm across the woman intruder's body to wake his father up and boast his newly discovered virility. Bearing this retroactively illuminating traumatic moment, one understands better – on second reading only – why young Martin, now about nineteen, can't help reaching towards the lovemaking couple whom he has secretly spied upon and touching the man's legs. Instantly caught and punished by his prison sentence, Martin will have to wait for a whole year to enact similar impulses to-



wards the male body, that, associated with guilt and a fear (and desire) to be caught, will take the form of men's slaughter and dismemberment. One may wonder at this stage, but perhaps decide not to choose from the two complementary psychoanalytical options, whether Martin is forever seeking his father's missing tenderness and punishing him for this failure, or striking and torturing his own body by proxy, thus fusing the two indissociable manifestations of the death instinct: the annihilation of the self and the destruction of the Other. Most importantly, his surrendering to the expressed desire of another man thus assumes the symbolic enactment of what had so far been a repressed feeling: the introjection of his absent father. It is then no wonder, at the level of the functioning of a text that at this stage too mimics the inner workings of the protagonist's mind, that the lover/father should once more betray the son and tell on Martin when he is arrested so as to spare himself the otherwise unavoidable death penalty. Such betrayal, because it brings together the logic of characterization and that of plot structure, can only result in the realization of Martin's death drive: he will let himself, pushed by a wish to return to a non-organic state, symbolically equivalent to, after the repetition of the father's nullification, a return to the all-obliterating womb.

From a less formally psychoanalytical point of view, Martin thus exhibits a vulnerability that the Inspector fully measures with utmost anger since it certainly does not dovetail with the vision of the killer as the principle of evil, the one-sided monster that needs to be implacably sought and destroyed. The novel then adds a new dimension to doubling: no longer the all-too-easy intellectual game of reading that made us aware of the mirror effects between the two serial killers, but the principle of identification that governs the least expected movement of empathy towards the most alien soulless killer. There is a tender spot in Martin, a suffering in the man whose very characteristic was not to feel remorse or pain for his victims and this hidden "lack" elicits a movement of furious understanding in the policeman ("You loved him, didn't you, you fuck" *ST*, 268). It is then only logical that at that point Dusenberry should undergo in his turn a form of identification that exceeds the traditional hunter/prey projective relationship and become capable of writing a memoir of his chase – at the very moment when Martin Plunkett is writing his "valediction in blood," and inevitable too, that the policeman should commit suicide right before the end, right before the last page when Martin is announcing his. At the level of the characters, the novel thus manages to fuse the three streaks of his inspiration: Gothic romance, detective fiction and psychopathological probing.

As suggested in the last line of the preceding development and alluded to in my introduction, *Silent Terror* is much more than the story of a killer on the road. We have seen how the narration is situated at the *nachträglich* confluence of two

movements: the detective drive whose suspense is spoiled by the very first news-reel on the opening page announcing the capture of the protagonist and the subterranean path that gradually paves the way to the originating traumatic scene, leaving milestones that can only be retroactively interpreted. This double movement owes its condition of existence to the first-person narrative – interspersed with newspaper accounts that sometimes announce, sometimes belatedly explain the killer’s actions – and in the latter part, mingled with the police officer’s personal diary fraught with dramatic irony.

The reader is thus paradoxically placed as near to and as far as possible from the serial killer. As several times the novel itself metafictionally underscores – to describe the killer’s modus operandi –, I would like to draw attention to the fact that the reader’s emotional involvement and distance are thus mainly “a question of style.” The unsparing cruelty, unattended by any emotion apart from a rather unsavory sexual excitement, logically leads to a conscious estrangement – that may or may not have unconscious, repressed correlations. But the carefully calculated revelation of an underlying vulnerability in the killer is paramount. Beyond the highly specific traumatic history of the protagonist, it is grounded in absence and in a form of unrequited passion that duplicates earlier love deprivation and forces upon the reader the haunting realization that the monster is not that alien. It is the “stylistic” feat of this disturbing novel to precisely ground identification in the quiet certitude of its very impossibility.

The silent terror-inspiring narrator is then right: “in some dark form, [he] will continue.”



Chiara Battisti

# Barnes' "The Stowaway" Between Post-Modernism and Post-Anthropocentrism

We patronize the animals for their incompleteness, for their tragic fate of having taken form so far below ourselves. And therein we err, and greatly err. For the animal shall not be measured by man. In a world older and more complete than ours, they are more finished and complete, gifted with extensions of the senses we have lost or never attained, living by voices we shall never hear. They are not brethren, they are not underlings; they are other nations, caught with ourselves in the net of life and time, fellow prisoners of the splendour and travail of the earth.<sup>1</sup>

(Henry Beston, *The Outermost House*, 25)

The myth of Universal Flood belongs to many Eastern and Western civilizations. There are two great strands of irradiation of the myth in the Mediterranean area: the Mesopotamian and the Biblical. The Mesopotamian myth, concerning the epics of Ziusudra, Gilgamesh and Atrahasis, spreads to India and beyond, to the East and to the south-east Mediterranean area (Phenicia, Egypt, ...). The biblical myth engages with the whole of Western culture. In both narratives, the invariant of the myth is the divine punishment by water inflicted on a corrupt community with the exception of a group of chosen ones who will have the task of repopulating the world after the waters have withdrawn.

The biblical "Book of Genesis" describes a flood submerging the whole Earth, sent by God to exterminate sinful mankind. Noah is the righteous man, chosen by God to implement the divine plan of salvation and to re-establish the rules of human coexistence. Noah will have to build an Ark in order to save his family and all animals from the fury of the waters. The following lines starkly describe the event:

The Lord regretted that he had made human beings on the earth, and his heart was deeply troubled. So the Lord said, "I will wipe from the face of the earth the human race I have created – and with them the animals, the birds and the creatures that move along the ground – for I regret that I have made them. (Gen. 6:7)

The biblical account has had an extraordinary iconographic and literary fortune, thus making the rewriting of the catastrophic event and of the Ark a long-lasting

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<sup>1</sup> Henry Beston, *The Outermost House. A Year of Life on the Great Beach of Cape Cod* [1928], (New York: Viking Press, 1962), 25.

theme. The Ark proves to be an outstandingly apt metaphor for contemporary struggles and anxieties and for the crisis affecting both individuals and whole communities: indeed, Western literatures propose many re-readings that re-open and re-negotiate the previously mentioned biblical verses.

In a quick and necessarily incomplete overview of this wide literary panorama, we can mention re-readings with a target audience of children and young adults. For example Peter Dickinson's<sup>2</sup> thirty-three old testament stories, retold for children and illustrated by Michael Foreman, are "set in a time before the Bible was written down, when its stories were handed from generation to generation by the spoken word."<sup>3</sup> Barbara Cohen's young adults dystopia<sup>4</sup> stages the re-telling of the biblical story in a future filled with fear and violence. The more recent *Not the End of the World*<sup>5</sup> by Geraldine McCaughrean makes teenagers themselves, to whom the novel is addressed, the real protagonists of the biblical flood thanks to the introduction of the fictional characters of Timna, Noah's teenage daughter, and of her brothers. Through Timna's perspective, McCaughrean considers the importance of personal moral decisions.

The grand design of the flood depicted by Timothy Findley,<sup>6</sup> Jeanette Winterson,<sup>7</sup> Julian Barnes<sup>8</sup> and Maggie Gee<sup>9</sup> seems to question patriarchal, anthropocentric and capitalist issues and to address social and political problems of contemporary society.

Findley's re-telling combines ecocritical and feminist issues in its assessment of the connivance of patriarchal systems in environmental degradation. Findley implicitly cautions that as long as we think dichotomically and hierarchically "objectifying nature and women along with people of non-dominant races, we doom both ourselves and other life"<sup>10</sup>. Winterson's *Boating for Beginners*, "a

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2 Peter Dickinson, *City of Gold: and Other Stories From the Old Testament* (London: Victor Gollancz Ltd, 1980).

3 Annal: Carnegie Winner 1980 "City of Gold: and Other Stories From the Old Testament, Peter Dickinson," available at: [http://www.awardannals.com/v/Annal:1980\\_Carnegie\\_Medal](http://www.awardannals.com/v/Annal:1980_Carnegie_Medal) (last access August 30, 2018).

4 Barbara Cohen, *Unicorns in the Rain* (New York: Collier Books, 1988).

5 Geraldine McCaughrean, *Not the End of the World* (New York: HarperCollins, 2004).

6 Timothy Findley, *Not Wanted on Voyage* (Penguin: Markham Ont, 1984).

7 Jeanette Winterson, *Boating for Beginners* (London: Methuen, 1985).

8 Julian Barnes, *A History of the World in 10 ½ Chapters* (London: Picador, 1989).

9 Maggie Gee, *The Flood* (London: Saqi Books, 2004).

10 Dorothy Nielsen, "Timothy Findley's *Not Wanted on the Voyage*: an Exemplary Ecofeminist Text," *Canadian Poetry: Studies, Documents, Reviews* 42 (1998): 100 – 122, 100.

comic book with pictures"<sup>11</sup> as Winterson's website defines it, questions patriarchal and capitalist society by offering an ironic description of Noah and his family in a contemporary, commercialized and media-saturated world.

In *The Flood*, Gee brings together characters from her previous novels and sets them in an apocalyptic London threatened by a modern-day Noah's flood in order to debate questions about racism, class conflict and global catastrophe.

Contemporary re-readings of the Flood "extract [...] from the late twentieth-century the basic coordinates of its culture, condense [...] them to fit a ship, and unveil[...] its moral vacuity, ecological ignorance, propensity for fanaticism, and intolerance;"<sup>12</sup> instead, in Julian Barnes' "The Stowaway,"<sup>13</sup> the Flood becomes a metaphor for literature/art as an almost apocalyptic –and unabashedly post-modern – voyage through history in order to deconstruct its status as a form of objective representation. No more positive science, but "metahistory"<sup>14</sup>, narration, discourse, cultural source, in Barnes' postmodern approach, history

[...] isn't what happened. History is just what historians tell us. There was a pattern, a plan, a movement, expansion, the march of democracy, it is a tapestry, a flow of events, a complex narrative, connected, explicable. One good story leads to another. [...] We make up a story to cover the facts we don't know or can't accept; we keep a few true facts and spin a new story round them. Our panic and our pain are only eased by soothing fabulation, we call it history. (HW, 242)

In order to reflect on the playful authorial game with the grand-narrative paradigm suggested by the novel's title, *A History of the World*, I shall focus my attention on two aspects: Barnes' use of the term "History" and the division, proposed by the title, into 10 ½ chapters. The choice of the number ten is, of course, a nod to the Ten Commandments; ten chapters would suggest the hypothesis of an objective historical account, thus evoking the idea of a serious and universal history, precisely that History with a capital "H," from which an objective and efficient historian could manage to pinpoint the most salient features. However,

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11 Jeanette Winterson.website, *Boating for Beginners*, available at: <http://www.jeanette-winterson.com/book/boating-for-beginners/> (last access August 30, 2018).

12 Ewa Rychter, "When the Novel Meets the Bible. The Flood in Four Contemporary British Novels," *Caliban, French Journal of English Studies* 33 (2013): 183–195, 184.

13 Barnes, *A History of the World in 10 ½ Chapters*. "The Stowaway" is the first chapter in Julian Barnes' collection of short stories titled *A History of the World in 10 ½ Chapters*. All of the following citations will be taken from this edition and indicated in the body of the text with the abbreviation HW.

14 See Hayden White, *Metahistory. The Historical Imagination Nineteenth-Century Europe* (Baltimore, London: Johns Hopkins UP, 1973); Daniela Carpi (a cura di), *Storia e Narrazione* (Ravenna: Longo, 1996).

the half-chapter and the indefinite article “A” as the title’s first word evidence Barnes’ multiple questioning of the great-narrative paradigms evoked by that “World History” (tradition, authority, condemnation and salvation); in addition, the indefinite article introduces one of the recurring themes in Barnes’ writing; that is, the ironic and conflictual relationship between reality and history. Salman Rushdie astutely defines Barnes’ novel “as footnote to history, as subversion of the given, as brilliant, elaborate doodle around the margins of what we know we think about what we think we know. This is fiction as critique.”<sup>15</sup>

Let us return to the title and its not so cryptic critical cues. “10 ½ Chapters”: ten and a half chapters traverse and define a possible history of the world; ten and a half chapters not connected by a narrative progression, but cyclically dealing with the same themes, events and objects. Noah’Ark, voyages and disasters at sea, the apocalypse, irreverent woodworms, reindeers and improbable divisions between clean and unclean return within the pages of the novel as if to indicate a historical progress made up of infinite variations on the same theme.

As many critics have pointed out, in Barnes, the title reveals how it is the very idea of history as a single narrative progression that must be interrogated and challenged. It is, as Salman Rushdie would say, the subversion of the “historical” given. Historians do not record objective data, but rather choose and organize them in order to construct a narrative, thus imposing their personal order on the past. Why cannot we accept the alternative version suggested by Barnes’ “histories/stories”? Thanks to this approach, the history of the world is the imperfect and unsatisfactory collection of our attempts to make sense of our past through diverse literary genres and different narrators.

To Barnes, as already mentioned, human history is a journey adrift from disaster to disaster, avoiding one catastrophe only to perish in another one. Disaster is the source of Barnes’ historical *continuum* in a vision evoking Walter Benjamin’s angel who sees the past as an accumulation of “wreckage.”<sup>16</sup>

Consider the very beginning of this historical *continuum*: “I am going to bring floodwaters on the earth to destroy all life under the heavens, every crea-

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15 Salman Rushdie, “Julian Barnes” in *Imaginary Homelands: Essays and Criticism, 1981–1991* (London: Granta, 1991): 241–243, 241.

16 “A Klee painting named ‘Angelus Novus’ shows an angel looking as though he is about to move away from something he is fixedly contemplating. His eyes are staring, his mouth is open, his wings are spread. This is how one pictures the angel of history. His face is turned toward the past. Where we perceive a chain of events, he sees one single catastrophe which keeps piling wreckage upon wreckage and hurls it in front of his feet.” Walter Benjamin, *Illuminations*, edited with an introduction by Hannah Arendt, trans. Harry Zohn (New York: Schocken, 1969): 257–258.

ture that has the breath of life in it. Everything on earth will perish." (Gen. 6:17). "The Stowaway" – the first short story of Barnes's novel – is the rewriting of the first attempt at avoiding an imminent catastrophe or of the first deaths in a catastrophe. In "The Stowaway" this avoidance is narrated from the point of view of a "passenger," whose identity the author will unveil only at the end of the short story, one who is stowing away on Noah's Ark. The style of the first person narrator is direct, typical of spoken language and the readers are often involved with precise questions; this artifice will make them more attentive to and more confident in the storyteller himself.

The narration of the Universal Flood, as in the case of every official History according to the first person narrator, reflects the interests and constructs of the winners: the biblical tradition relates the accounts of the "designated" survivors, who "gloss over the awkward episodes" or suffer from "convenient lapses of memory" (H. W, 4). The testimony of Barnes' narrator – who assures the reader that "My account you can trust" (H.W, 4) – reflects, instead, the point of view of the marginalized and is meant to keep these misleading accounts in check.

"The Stowaway"'s ideological openness towards traditionally marginalized and isolated subjects helps to expose, in "Genesis" itself, the presence of the assumptions which have historically established the ideas of selection and exclusion. The second "given" subverted by Barnes – and this will also be the thread leading to the second part of this analysis – is therefore the hierarchy of power and authority where the human race is positioned above the rest of the natural world. This hierarchy is the basic premise of the biblical narration:<sup>17</sup>

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17 Theodore Hiebert in "Rethinking Dominion Theology" reflects on the ways in which biblical texts might have legitimated certain kinds of power in antiquity, and ways in which contemporary readers might interpret biblical texts to enhance their own power and privileges. In particular, he argues that: "The inescapable fact about the biblical term "dominion," from the Hebrew verb *radah*, is that it grants humans the right and responsibility to rule, to govern the rest of creation. It establishes a hierarchy of power and authority in which the human race is positioned above the rest of the natural world. Such a conclusion is clear from the use of *radah* elsewhere in the Old Testament, where it is employed for the rule of the head of the house over household servants (Lev. 25:43) and of Solomon's officers over his conscripted labor force (1 Kings 5:16 [Hebrew, 1 Kings 5:30]). On the international scene, *radah* is used for the rule of Israel's king over Israel's enemies (1 Kings 4:24 [Hebrew, 1 Kings 5:4]), or for the rule of Israel's enemies over Israel itself (Lev. 26:17). In all cases, *radah* signifies the power, control, and authority of one individual or group over another. The verb *radah* does not itself define how this dominion is to be exercised, whether benevolently or malevolently. The laws of Leviticus, when they stipulate that household servants are not to be "ruled" harshly (Lev. 25:43, 46, 53), imply that this kind of dominion may be kind and humane. Yet the use of *radah* in the context of international relations, where it is more commonly employed, carries a decidedly more antagonistic tinge, since it signifies rule over one's enemies. It occurs frequently in descriptions of military conquest, where it



And Noah and his sons and his wife and his sons'wives with him went into the ark to escape the waters of the flood. Of clean animals, and of animals that are not clean, and of birds, and of everything that creeps on the ground, two and two, male and female, went into the ark with Noah. (Gen. 7: 7–8)

It is worth thinking about this order, which seems to be the order of the world as we are intended to perceive it: men come first, then women, the animal kingdom being only of tertiary significance. In this cosmic moral hierarchy, Western cultures have for centuries operated on the premise that nonhuman animals (where the term 'nonhuman animal' is used to highlight the interconnection with the human being, viewed as a human animal) are lower than humans; therefore, humans have the right to use nonhuman animals arbitrarily for their own purposes.

Let us return to our clandestine narrator now. The question arising as a matter of course is why, if we conceive history as a subjective construction, is such an account to be trusted? And what does the subjective construction of our narrator add to the History that we (already) know?

In his acute reflection on the status of the historical narrative, Hayden White reminds us that historical events are "value-neutral"<sup>18</sup> in themselves and it is how the historian arranges them into history that gives them emotional and ideological nuances. Stated in these terms, it could be argued that we should trust the account of the clandestine narrator for the very fact that it is not recounted from the point of view of someone who is accustomed, metaphorically and literally speaking, to add something to the facts. The narration comes, instead, from the point of view of someone who habitually and literally deconstructs and destroys structures from the inside. The first person narrator is a **woodworm**. The very fact that Julian Barnes ascribes the judgement about one of the cornerstone events in Western history to an insect that weakens and destroys a structure from the inside, implies two things. First, it suggests that History is literally consumed and corroded from the inside. The woodworm will creep into other short stories of *A History* as protagonist and/or co-protagonist (no longer as a narrating voice) of other episodes, as if to reiterate decadence as a part of history itself. Secondly, the "destructive" nature of the woodworm's

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is paired with such verbs as "destroy" (Num. 24:19) and "strike down" (Lev. 26:17; Isa. 14:6). When used by the Israelite king, *radah* always refers to dominion over his enemies, not to rule over his own Israelite subjects, for which the verb *malak*, "reign," is the usual term." Theodore Hiebert, "Rethinking Dominion Theology," *Direction* 25.2 (1996): 16–25, 17.

<sup>18</sup> Hayden White, "The Historical Text as Literary Artifact" in *The Writing of History: Literary Form and Historical Understanding* eds. Robert Canary and Henry Kozicky (Madison: University of Wisconsin Press, 1978): 41–62, 47.

counter-narrative becomes an avant-garde mode of representation capable of reducing the "burden of History." Indeed, it tells a hi/story "that will educate us to discontinuity more than ever before; for discontinuity, disruption and chaos is our lot."<sup>19</sup> A threat to integrity in both the literal and figurative sense, the woodworm represents the voices of those who were "Not Wanted on Voyage" (HW, 7). This exclusion, or prohibition, printed in capital letters in the text, is an obvious intertextual reference to the novel *Not Wanted on Voyage* by Timothy Findley (1984), a direct homage Barnes pays to a text that he acknowledges as a model for his own rewriting of the Universal Flood. The tone of the woodworm's comments is similar to that of the often disrespectful observations of the anonymous narrator in Findley's novel.

For example, unlike the orderly account offered by "The Book of Genesis",<sup>20</sup> Findley's anonymous narrator tells a somewhat different story, giving readers the possibility to depict in their minds an image where desperate people and nonhuman animals cling to a rock as the waves are about to tear them away. This image is created by a simple, critical and ironical comment, "Everyone knows it wasn't like that," as a laconic gloss to the biblical text. Timothy Findley continues with as much irony:

To begin with, they make it sound as if there wasn't any argument; as if there wasn't any panic – no one being pushed aside – no one being trampled – none of the animals howling – none of the people screaming blue murder. They make it sound as if the only people who wanted to get on board were Doctor Noyes [Noah] and his family. Presumably, everyone else (the rest of the human race, so to speak) stood off waving gaily, behind a distant barricade: SPECTATORS WILL NOT CROSS THE YELLOW LINE and: THANK YOU FOR YOUR CO-OPERATION. With all the baggage neatly labelled: WANTED or NOT WANTED ON THE VOYAGE.<sup>21</sup>

Barnes' woodworm, as the protagonist of *Not Wanted on the Voyage*, pointedly focuses on the hardships the nonhuman animals suffer. The initial description of the woodworm brings us into the reality of the crowded stalls of a dirty and smelly Ark's under-deck:

It wasn't like those nursery versions in painted wood which you might have played with as a child – all happy couples peering merrily over the rail from the comfort of their well-

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19 Hayden White "The Burden of History" *History and Theory* 5.2 (1966): 111–134.

20 "And Noah and his sons and his wife and his sons'wives with him went into the ark to escape the waters of the flood. Of clean animals, and of animals that are not clean, and of birds, and of everything that creeps on the ground, two and two, male and female, went into the ark with Noah, as God had commanded Noah." (Gen 7: 7–8)

21 Findley, *Not Wanted on Voyage*, 3.

scrubbed stalls. Don't imagine some Mediterranean cruise on which we played languorous roulette and everyone dressed for dinner. (HW, 3)

The narrative function of this incipit is evident: an explicit testimony of the plausibility of the woodworm's version, which is subjective, but undoubtedly more credible than the idyllic one proposed by Noah's story. The mystification of reality operating in the description of the Ark (whose characteristics are, instead, more like those of a prison ship than a life boat) comes before a long account of betrayals and oppression revealing the totalitarianism of official history from a position strongly requiring a comprehensive memory policy. From this perspective, let us consider Noah's decision/imposition to rewrite the story of the discovery of dry land. This is the account of the end of the Flood as described in "The Book of Genesis":

After forty days Noah opened a window he had made in the ark and sent out a raven, and it kept flying back and forth until the water had dried up from the earth. Then he sent out a dove to see if the water had receded from the surface of the ground. But the dove could find nowhere to perch because there was water over all the surface of the earth; so it returned to Noah in the ark. He reached out his hand and took the dove and brought it back to himself in the ark. He waited seven more days and again sent out the dove from the ark. When the dove returned to him in the evening, there in its beak was a freshly plucked olive leaf! (Gen, 8: 6–11)

The woodworm asserts, instead, that it was the raven who found the olive tree and brought back its branch to Noah, who decided that it was "more appropriate' to say that the dove had discovered it" (HW, 25). The woodworm's revelation discloses Noah's awareness about the iconic and emotional impact of colors and images: the white of the dove<sup>22</sup> evokes uncontaminated purity, innocence and

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**22** Almost from the dawn of Christianity, the dove has been a symbol of purity and innocence because of its sweet and mild nature; on some occasions it later represented divine intervention. As a symbol of gentleness, it is used in several Biblical stories. In the Song of Solomon, "My dove" is an affectionate epithet given to the Shulamite girl, the shepherd's beloved; the girl's gentle eyes are compared to those of a dove. It is also cited in several biblical narratives as a symbol of divine will. In Genesis 8:11, a dove brings to Noah the olive branch announcing the end of the Great Flood, the beginning of salvation, and a new era of peace between God and man. In Matthew 3:16, John the Baptist sees a dove descending from the sky during the Baptism of Jesus. For this reason, the bird was later associated with baptism (as in Tertulliano or in fourth century devotional representations). In illuminated manuscripts of the fifth and sixth centuries, however, the dove had already been released from the sole meaning related to baptism, in order to become the symbol of the Holy Spirit, in episodes such as the Annunciation or representations of the Trinity. See, Juan Eduard Cirlot, *A Dictionary of Symbols* (Mineola: NY, Dover Publications, 2013).

peace whereas the black raven<sup>23</sup> is the messenger from a corrupt world that no longer exists, a world washed away by the flood.

According to Ernst Kris, images do not transmit only a thought or a meaning: they capture reality for those who look at them.<sup>24</sup> In an image (even a mental one such as that provided by the contrast dove/raven) some relevant aspects are, in fact, hierarchized and the symbolic substance can be chosen by the sender, in the specific case by Noah, in order to guide the observer toward a certain interpretation. Since the selective and hierarchical processes adhere to the cultural contents of an image and substantiate its intentionality, Noah's decision creates in the dove itself a proud awareness of the future perception of its image: "the dove [...] could already envisage herself on postage stamps and lettersheads" (HW, 26).

Noah's choice, along with the division of the nonhuman animals into clean and unclean (a division which, as the woodworm explains, is functional to the dietary needs of the patriarch's family), unhinges the ethical and pragmatic order on which the nonhuman animal world was based before the Flood; in addition, it introduces competition, confrontation and hierarchy into the nonhuman animal world as well, causing, in fact, the loss of Edenic innocence: "If you had a Fall, so did we. But we were pushed" (HW, 10). The original Fall is

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**23** The raven is a bird with black feathers. It is said that for the very reason that the newborn chicks are of a different color and that they are without feathers, they are not fed until the sixth day because the crow does not recognize them as her own. As a result, the chicks cry and ask God for help, who feeds them with dewdrops. From the seventh day on, however, the similarities begin to be more noticeable, and thus the parents begin to look after them with love, not only feeding them, but giving them as much food and care as they need. It seems that this description is inspired by a passage in the Holy Scriptures, in which the prophet Job says "Who feeds the raven? When her own chicks ask God for help, when they continue to roam because there is nothing to eat?" It is common that a story based on Bible verses should contain a moral lesson; man is like the raven's chick: as long as he chooses not to recognize God as his only master, yielding to the temptations of the Devil, rejection will come from God and man will fall into poverty and adversity. A second nature is attributed to the raven, quite bizarre and without any scientific foundation. It is said that when a raven finds a corpse, it goes toward the body and eats the eyes first, in order to extract the brain and then continues pecking until it has eaten everything. In Richard de Fournival's *Bestiary of love* (mid thirteenth century) this characteristic of the raven is assimilated to the nature of Love, which captures "the gentle heart" using gazing trickery in order to penetrate the mind and the heart. But the demon also "eats the eyes of sinners": by sinning, man lets the devil take away the vision from his mind, without which he cannot see God and His light. See, Cirlot, *A Dictionary of Symbols*; Richard de Fournival, *Bestiary of Love and Response*, trans. Jeanette Beer (Lafayette: Purdue University Press, 1999).

**24** See Ernst Kris, *Psychoanalytic Exploration in Art* (New York: International Universities Press, 1952).

also noticed by the nonhuman animal world; the woodworm can proceed to challenge provocatively the official story, calling into question the fabled version of Noah's voyage, that oft-repeated story "which still charms even [human] skeptics" (HW, 4).

From the narrator's account emerge features that are absolutely discordant with the version of Noah as he appears in the Bible. Far from being an ancient patriarch, venerable and kind, Noah is "a monster" (HW, 12), an "old rogue with a drink problem" (HW, 8). If the account of the woodworm is truthful, then the Bible's meta-story, where Noah "was a just and upright man among his peers, and he walked with God" (Gen, 6:9), has enigmatically omitted important nuances in its description.

Puzzled by the divine choice of Noah as "the chosen one," the woodworm reaches the resigned conclusion that the patriarch represents the most inoffensive exemplar of a "species whose creation did not reflect particularly well on its creator" (HW, 8).

This conclusion is repeatedly confirmed during the journey thanks to which the woodworm understands that "Man is a very unevolved species compared to animals. We don't deny, of course, your cleverness, your considerable potential. But you are, as yet, at an early stage of your development" (HW, 28). This statement leads us to place the woodworm in the category of those that the critics of "official history" would define as the "resilient losers" of history.

As previously mentioned, the woodworm embodies the point of view of the "designated others" in history, thus confirming by his account, the extent to which interpretations of history depend on the interpreter's choices and therefore on the "point of view" that has been privileged. The winner's perspective, embodied by Noah, is countered by that of the woodworm, the "resilient loser." In fact, there are two classes of losers: those who submit to the winners, recognizing their superiority, taking on their point of view, taking in their culture and identifying with them; and those who rebel and resist in violent or nonviolent form. It is the latter who provide the point of view of the excluded, thus emerging as "real subjects": "We had survived," the woodworm proudly states, "we had stowed away, survived and escaped – all without entering into any fishy covenants with either God or Noah" (HW, 28).

The rebellion is first and foremost intellectual: it implies the refusal to accept passively the point of view of the strongers, their culture, their value system, their interpretation of events ("we had done it by ourselves" (HW, 28). In addition, the woodworm proudly states that he has also acquired the will to discover the other ("That Voyage taught us a lot of things," "those of us who made the Voyage on the ark learned [what] to expect from your species" (HW, 28). The winner, on the other hand, is impervious to discovery. The will to dominate the other

becomes an overwhelming obstacle to dialogue and awareness: it necessarily causes a concealment/variation of the truth.

The resilient losers' point of view on history and culture primarily involves the ability to adopt an attitude fostering an honest intellectual search for truth. It guarantees to the oppressed the possibility of unmasking the violence of which they were victims and of allowing for the real truth to become known. And what is the truth of the journey in the Ark that the woodworm so forcefully deplures? It is the modality of survival of Noah's family: "Put it another way: what the hell do you think Noah and his family ate in the ark? They ate us, of course" (HW, 13). This affirmation identifies traces of a reflection on the status of nonhuman animals; it condemns attitudes, such as the anthropocentric one, that give humans a value enormously superior to other forms of life, which therefore become resources to be exploited.

The text analysed so far illuminates the cumulative effect of historical discourse(s), thus categorizing Barnes as a postmodernist<sup>25</sup>, whereas this last suggestion highlights the presence of post-postmodernist foreshadowing in Barnes' writing. Volha Korbut Salman brings this anticipation back to the emphasis, present in Barnes' fiction, about the existence of the Truth and the necessity to fabulate metanarratives, the only guiding poles in human progress through life in post-postmodernism.<sup>26</sup> The present reflection calls attention also to Barnes' capacity, typically post-postmodern, to open up the prospect of employing fictional animals as a means of promoting a post-anthropocentric consciousness.<sup>27</sup>

Thinking about Barnes' fictional nonhuman animals in a post-anthropocentric/ animal studies' view presents at the outset a major problem. What has been analysed so far suggests that "The Stowaway"'s first person narrator possesses a consciousness and a capability of abstract reflections that lie outside the subjective experience of an actual woodworm. Indeed, implicit in Barnes' depiction is the anthromorphic characterisation of the woodworm; that is, the attribution of human traits, emotions or intentions to nonhuman entities.

The issue of anthropomorphism has raised numerous debates within the fields of literary theory and animal studies in relation to whether, challenging

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25 See Daniela Carpi, *L'ansia della scrittura, Parola e silenzio nella narrativa inglese contemporanea* (Napoli: Liguori, 1995).

26 Volha Korbut Salman, *The Rise of Post-Postmodernism in the Novels of Julian Barnes: Fabulation of Metarratives in Metroland, Flaubert's Parrot, A History of the World in 10 1/2 Chapters, England, England* (Riga: Lambert Academic Publishing, 2012).

27 Rosi Braidotti, "Post-Anthropocentrism: Life beyond the Species" in *The Posthuman*, ed. Rosi Braidotti (Cambridge: Polity Press, 2013): 55–104.

the anthropocentric view and the resultant human/animal opposition, is part of the problem or of the solution. The perception of anthropomorphism as part of the problem is often implicitly associated with the view that anthropomorphism is an expression – the most radical, according to some critics – of an anthropocentric bias in human thinking. Anthropomorphism and reification seems to be the two sides of the same anthropocentric coin which denies nonhuman animals their own specific ontology, their role in the relational dialectic with human beings and their perspective released from projective, functional and prospective parameters.

Reflecting on this projective viewpoint, Kari Weil observes that “as a process of identification, the urge to anthropomorphize the experience of another, like the urge to empathize with that experience, risks to become a form of narcissistic projection that erases boundaries of difference.”<sup>28</sup> However, with the opacity always surrounding the complex issue of anthropomorphism, Weil also states, in an almost contradictory manner, that animal studies’ turn to ethics has “brought a new focus on the notion of anthropomorphism [...] as a potentially productive, critical tool that has similarities to empathy within recent historical research.”<sup>29</sup> Indeed, the present discussion embraces the notion of an anthropomorphism – supported by recent research within human-animal studies<sup>30</sup> – conceived as a powerful and multifaceted representational tool for the development of a discourse that might enable literature to conceptualize nonhuman agencies. Disentangled from anthropocentrism, anthropomorphism – as the political theorist Jane Bennett argues-moves towards biocentricism;

A touch of anthropomorphism [...] can catalize a sensibility that finds a worlds filled not with ontologically distinct categories of beings (subjects and objects) but with variously composed materialities that form confederations. In revealing similarities across catego-

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**28** Kari Weil, *Thinking Animals: Why Animal Studies Now?* (New York: Columbia University Press, 2012), 19.

**29** Weil, *Thinking Animals*, 19.

**30** For further references see: Jane Bennett, *Vibrant Matter: A Political Ecology of Things* (Durham, London: Duke University Press, 2010); Aaron Gross and Anne Valley, *Animals and the Human Imagination: A Companion to Animal Studies* (New York: Columbia University Press, 2012); Susan McHugh, *Animal Stories: Narrating Across Species Lines, (Post)humanities* (Minneapolis: University of Minnesota Press, 2011); Susan J Pearson and Mary Weismantel. “Does “the Animal” Exist? Toward a Theory of Social Life with Animals,” in *Beastly Natures: Animals, Humans, and the Study of History*, ed. Dorothee Brantz (Charlottesville: University of Virginia Press, 2010): 17–37; Derek Ryan, *Animal Theory: A Critical Introduction* (Edinburgh: Edinburgh University Press, 2015); John Simons, *Animal Rights and the Politics of Literary Representation* (New York: Palgrave, 2001); Dinesh Wadiwel, *Critical Animal Studies: War Against Animals* (Leiden: Koninklijke Brill, 2015); Weil, *Thinking Animals*.

riacal divides and lighting up structural parallels between material forms in 'nature' and those in 'culture,' anthropomorphism can reveal isomorphisms.<sup>31</sup>

According to Derek Ryan, "literary fiction provides an ideal form to consider the [...] potential of [this biocentric] anthropomorphism";<sup>32</sup> let us therefore analyse—once the previous conceptual premises are established – Barnes' attempt at articulating and negotiating his anti-anthropocentric narration in "The Stowaway". If, according to Rosi Braidotti, "anti-anthropocentrism criticizes species hierarchy,"<sup>33</sup> then the implications of the following observation of the woodworm are worthy of consideration: "He was a large man, Noah – about the size of a gorilla, although there the resemblance ends. [...] The flotilla's captain was an ugly old thing. Both graceless in movement and indifferent to personal hygiene. [...] Put him side by side with the gorilla and you will easily discern the superior creation" (HW, 17–18). The counter-narrative logic of the woodworm reverses the usual animal categorization and reveals the use of derogatory animal metaphors which has been and is a characteristic of human languages. The irony with which the woodworm rejects nonhuman animal/human comparisons insisting instead on the separate (superior) subjectivity of the nonhuman animals underscores the extent to which the history of human oppression of other humans abounds in animal metaphors and animal categorisations to justify exploitation and objectification.

Furthermore, the woodworm's ironic perspective helps us to see how the centuries old metaphorisation of "animal" as a derogatory term in marginalising discourses makes it difficult even to discuss the status of nonhuman animals without causing a profound unease. As Cary Wolfe observes

As long as this humanist and speciesist *structure* of subjectivization remains intact, and as long as it is institutionally taken for granted that it is all right to systematically [including metaphorically] exploit [...] nonhuman animals simply because of their species, then the humanist discourse of species will always be available for use by some humans against other humans as well, to countenance violence against the social other of *whatever* species – or gender, or race, or class, or sexual difference.<sup>34</sup>

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<sup>31</sup> Bennett, *Vibrant Matter*, 99.

<sup>32</sup> Ryan, *Animal Theory*, 42.

<sup>33</sup> Rosi Braidotti, "Post-Posthuman Critical Theory" in *The Oxford Handbook of Feminist Theory*, eds. Lisa Disch and Mary Hawkesworth (Oxford: Oxford University Press, 2016): 673–698, 674.

<sup>34</sup> Cary Wolfe, *Animal Rites: American Culture, The Discourse of Species, and Posthumanist Theory* (Chicago: University of Chicago Press, 2003), 8.



The emphasis on traditional Western constitutions of the human as the “not-animal” (or the negative definition of humans as animals in order to justify oppression) calls attention to the negative consequences of speciesism, both for human and nonhuman; in addition, this process invites a serious rethinking of this relationship from a post-anthropocentric perspective. It will then be possible to find alternative politics to overcome the troublesome opposition between animality (conceived as inferior and pejorative) and humanity (defined as superior). Barnes’ post-postmodern thinking can therefore be traced back to this research – though not explicitly in “The Stowaway” – to try and define ethical and political principles.

According to Gary Steiner “this is precisely what one does not find in postmodern writings on animals. Instead one encounters a panoply of vague gestures toward some indeterminate sense of continuity between human and animal life, and a general sense that we ought to have more compassion for animals.”<sup>35</sup> In Steiner’s view, much of what has been published under the heading of postmodernist theory lacks ethical and political principles. Ethics requires notions of self, agency, and value that are unattainable to postmodernists: “thus while postmodernism may outwardly appear to hold the promise of [...] providing us with a more adequate grasp of reality, its real function is to leave reality and our relationship to it essentially unchanged.”<sup>36</sup> Steiner attributes this fatal limitation of postmodernism to the fact

that it embraces two notions that are fundamentally incompatible with one another: a commitment to the indeterminacy of meaning and a sense of justice that presupposes the very access to a sense of determinacy that postmodern epistemology dismisses as illusory. Postmodern appeals to justice are fundamentally incoherent in the absence of humanistic notions such as agency and responsibility.<sup>37</sup>

In “The Stowaway” we can observe the presence of humanistic notions such as agency and responsibility, in which humanism, however, is deprived of its anthropocentric prejudice.

Barnes strongly challenges the anthropocentric prejudice by his uncanny use of the pronoun “we.” Indeed, in the short story, the pronoun leaves out that portion of humanity generally identified by the pronoun “we” in an anthropocentric perspective—that is, human beings. Instead, they are oftentimes directly addressed by the personal pronoun “you” (as opposed to the “we” used for

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<sup>35</sup> Gary Steiner, *Animals and the Limits of Postmodernism* (New York: Columbia University Press, 2013), 2.

<sup>36</sup> Steiner, *Animals and the Limits of Postmodernism*, 3.

<sup>37</sup> Steiner, *Animals and the Limits of Postmodernism*, 4.

animals), or described by the pronoun "they" or by expressions such as, for example "your species" (HW, *passim*). This uncanny use of these forms of address forces the readers to confront and question the norms of internal standards of language and their origin. Barnes' answer seems to acknowledge that this standard is, in fact, anthropocentric and relates to "the 'egocentric' nature of linguistic communication."<sup>38</sup> Our cognitive world, as it reveals itself in linguistic communication, takes it for granted that there is a categorical and hierarchical distinction between humans and other nonhuman animals. As humans, we give special status to other humans with an unquestionable and unconscious manifestation of anthropocentrism in language. As Mutsumu Yamamoto puts it, the "hierarchical scale of animate and inanimate beings is a product of anthropocentric human cognition"<sup>39</sup> and humans are invariably represented at the top of the hierarchy or at the center of the circle of animacy.

The woodworm creates a new center that, considering its diversity, is necessarily ex-centric, therefore distant from the normative, anthropocentric center. However, the "we" in action in the short story is not a unitary entity, but rather a nomadic assemblage: in its ex-centric center, the woodworm's "we" sometimes includes all the nonhuman animals<sup>40</sup> and sometimes comprises only the marginal nonhuman animals – the "not chosen" (HW, 4), the creature "Not Wanted on Voyage" (HW, 7), the "unclean" (HW, 10) – opposing them to the clean animals.

In so doing, the pronoun "we" blurs categorical distinctions because, to be more specific, the contemporary readers understand how all those devalued humans who are and have historically been excluded by the dominant system can be figuratively included in it. Such a blurring of the boundaries not only allows the readers to perceive and recognize the deep entanglements of oppression,<sup>41</sup> but forces them to confront the similarities between species instead of the usu-

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<sup>38</sup> Simon C. Dik, *The Theory of Functional Grammar* (Berlin, New York, Mouton: De Gruyter, 1997), 40.

<sup>39</sup> Mutsumi Yamamoto, *Animacy and Reference: a Cognitive Approach to Corpus Linguistics* (Amsterdam: John Benjamins, 1999), 9.

<sup>40</sup> Consider, for example, the passage in which the woodworm describes the fair way of living in the animal kingdom: "But among us there had always been, from the beginning, a sense of equality. Oh, to be sure, we ate one another, and so on; the weaker species knew all too well what to expect if they crossed the path of something that was both bigger and hungry. But we merely recognized this as being the way of things. The fact that one animal was capable of killing another did not make the first animal superior to the second; merely more dangerous. Perhaps this is a concept difficult for you to grasp, but there was a mutual respect amongst us" (H.W., 10).

<sup>41</sup> See David Alan Nibert, *Animal Rights/Human Rights: Entanglements of Oppression and Liberation* (Lanham: Rowman and Littlefield Publishers, 2002).

ally emphasized differences. A desirable consequence of this focusing on the similarities is the removal of the “hierarchies of difference that promote human subjectivity at the expense of animal subjectivity and agency.”<sup>42</sup> Thus, the discussion returns to the previously evoked notion of an agency which is the basis, according to Gary Steiner, of ethical and political principles. As mentioned earlier, the idea of agency, of animal agency in this case, is absent in postmodernist thinking; it is, instead, an important post-postmodernist foreshadowing in Barnes’ short story.

The attempt to postulate the challenging notion of animal agency<sup>43</sup> is not a new one; indeed, as Sarah E. McFarland and Ryan Hediger observe, “many of the most prominent advocates for a new understanding of animals trace their views back to Darwin”<sup>44</sup> and his argument that emotions—such as love, attention, imitation, reason—evolved via natural selection and are not unique to humans. Without going into the specificity of the wide and multifaceted debate about this matter, in this analysis we are following Martha Nussbaum’s idea: according to her view, once we develop a “sense of the animal itself as an agent and a subject, a creature to whom something is due, a creature who is itself and end”<sup>45</sup> a new set of obligations becomes incumbent upon us. Nowadays, the idea of animal agency is important because it invokes and evokes the idea of justice and of animals as recipients of justice in a cultural contest in which our legal, economic and cultural paradigms still ignore nonhuman animals as legitimate subjects of justice. Indeed, most contemporary cosmopolitan approaches to global distributive justice<sup>46</sup>, egalitarian at least in spirit, while declaring that the sphere of jus-

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**42** Sarah E. McFarland, Ryan Hediger, “Introduction” to *Animals and Agency: An Interdisciplinary Exploration*, eds. Sarah E. McFarland, Ryan Hediger (Leiden, Boston: Brill, 2009), 20.

**43** Animal agency is extremely difficult to define since “perhaps no animal—even a human one—has a pure agency, but many animals seem to have a kind of agency in [a] more limited sense.” McFarland, Hediger, *Animals and Agency: An Interdisciplinary Exploration*, 15.

**44** McFarland, Hediger, *Animals and Agency: An Interdisciplinary Exploration*, 3.

**45** Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, MA: Belknap Press, 2006), 337.

**46** On the idea of global justice see, for example, Gillian Brock, *Global Justice: A Cosmopolitan Account* (Oxford: Oxford University Press, 2009); Simon Caney, *Justice Beyond Borders: A Global Political Theory* (Oxford: Oxford University Press, 2005); Janet M. Conway, *Edges of Global Justice: The World Social Forum and Its “Others”* (London and New York: Routledge, 2013); Alasdair Cochrane, *Animal Rights Without Liberation: Applied Ethics and Human Obligations* (New York: Columbia University Press, 2012); Sebastiano Maffettone, Aakash Singh Rathore (eds.), *Global Justice: Critical Perspectives* (New Delhi: Routledge, 2012); Robert Garner, *A Theory of Justice for Animals: Animal Rights in a Nonideal World* (Oxford: Oxford University Press, 2013); Nussbaum, *Frontiers of Justice*; Angie Pepper, “Beyond Anthropocentrism: Cosmopolitanism and

tice is global in scope, remain problematically anthropocentric; they assume the priority of *human* needs and interests while ignoring the needs and interests of all other nonhuman animals.

Let us consider the woodworm's heartfelt complaint about Noah's classifications of animals and, even more importantly, of the alienating logic behind it. The main purpose of this inquiry is to try and to recognize the value of the already mentioned innovative (post-postmodern) drives in an "animal rights," "animal agency" perspective. Barnes writes: "Noah – or Noah's God – had decreed that there were two classes of beast: the clean and the unclean. Clean animals got into the Ark by sevens; the unclean by twos" (HW, 10). And a few lines later, the woodworm goes on to say:

Though being "clean," as they rapidly realized, was a mixed blessing. Being "clean" meant that they could be eaten. Seven animals were welcome on board, but five were destined for the galley. It was a curious form of honour that was being done them. But at least it meant they got the most comfortable quarters available until the day of their ritual slaughter. (HW, 11)

This passage forces the readers to confront the core premise of the animal rights approach: "animal do not exist to serve human ends: animals are not slaves or servants of human beings, but have their own moral significance, their own subjective existence which must be respected."<sup>47</sup> The very fact that Noah butchered unsuspecting animals from the Ark, animals selected initially to be saved from the deluge, becomes in an enlarged perspective, a powerful statement against animal suffering. Through systemic institutional domination and exploitation, the value of their lives has been reduced to their utility to humans. The woodworm traces the origin of this institutional oppression back to the contract between God and Noah after the Flood: "God made Noah's dining rights official. The pay-off for all that obedience was the permission to eat whichever of us Noah chose for the rest of his life" (HW, 22).

Actually a legal aspect is evoked in "The Stowaway," this being the contract between God and humans; a contract in which the idea of justice applied to non-human animals is completely absent: "This so-called covenant had absolutely nothing in it for us [the nonhuman animals] – except our death-warrant" (HW, 22), the woodworm specifies.

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Nonhuman Animals," *Global Justice: Theory Practice Rhetoric* 9.2 (2016): 114–133; Mathias Risse, *On Global Justice* (Princeton: Princeton University Press, 2012).

<sup>47</sup> Sue Donaldson, Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (Oxford: Oxford University Press, 2011), 4.

Perhaps far from the idea of animal justice later evoked by Martha Nussbaum, Barnes offers an important contribution to now ongoing debates about human obligations to nonhuman animals and about the grounds of those obligations. He enables his readers to understand the necessity of introducing ethical principles that can respond to the ecological and ethical crisis we face, a crisis in which all humans risk playing the part of “his” Noah, as he seems to warn us. Barnes’ writing exposes, without directly addressing it, the issue of animal justice. Implied is a principle of responsibility, whose fundamental point is precisely its suitability to basic asymmetric, ethically relevant constellations, such as responsibility towards the environment and animals.

The obligation to certain actions or non-actions should not be based on the recognition of the needs raised by another party, needs in principle as justified as ours. In the real world, unlike in the woodworm’s fictional one, there are no demands/claims from the other party, as it does not speak the same language.

Notwithstanding the absence of a dialogue (based on a human cultural construct), one must be aware of nonhuman animals’ existence and listen to them, simply recognizing them as agents: the mere being of an ontologically simple entity contains in an immanent and evident way a duty regarding others. The first step towards a more detailed definition of animal justice is to “see” what the other is in order for moral duty to arise.

Jean-Michel Ganteau

## Resilience, Narrative Attentiveness and Care(-giving): Martin Amis's *Time's Arrow*

*Time's Arrow, or The Nature of the Offence* (1991)<sup>1</sup> is Martin Amis's seventh novel. It provides his first book-length exploration of the Shoah and thereby announces in many ways, at least thematically, the developments in his more recent narrative, *The Zone of Interest* (2014).<sup>2</sup> The novel has generated a great deal of critical attention, on account of its contribution to what is known as "Holocaust literature," and more specifically as regards its development of a sample of postmodern aesthetics (Finney, among others),<sup>3</sup> its treatment of trauma (see for example Lapugean, Rosenfeld and Martínez Alfaro's path-breaking article)<sup>4</sup> and its highly singular way of addressing temporal issues (Burgin, Chatman, Phelan, Port, Slater, etc.).<sup>5</sup> I have retained just a few categories through which the novel has been addressed as they are of direct interest for the subject at stake. The first observation that may be made is that even though Amis's narrative has been envisaged through the prism of trauma studies, never has resilience been instrumental (or even mentioned) in the critical production that it has given rise to. The second

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1 Martin Amis, *Time's Arrow, or The Nature of the Offence* [1991] (Harmondsworth: Penguin, 1992). Further references in the text, abbreviated as TA.

2 Martin Amis, *The Zone of Interest* (London: Jonathan Cape, 2014).

3 Brian Finney, "Martin Amis's *Time's Arrow* and the Postmodern Sublime," in *Martin Amis: Postmodernism and Beyond*, ed. Gavin Keulks (New York: Palgrave Macmillan, 2006): 101–116.

4 Mirela Lapugean, "Speaking about the Unspeakable: Trauma and Representation," *B. A. S.: British and American Studies* 21 (2015): 85–91. Natania Rosenfeld, "Turning Back: Retracing Twentieth-Century Trauma in Virginia Woolf, Martin Amis, and W. G. Sebald," *Partial Answers: Journal of Literature and the History of Ideas* 2.2 (2004): 109–137. María Jesús Martínez Alfaro, "Where Madness Lies: Holocaust Representation and the Ethics of Form in Martin Amis' *Time's Arrow*," in *Ethics and Trauma in Contemporary British Fiction*, eds. Susana Onega and Jean-Michel Ganteau (Amsterdam: Rodopi, 2011): 127–154.

5 A.J. Burgin, "Reversing Filth: Temporal Play and Violence in Martin Amis' *Time's Arrow*," in *The Oracle of the 'Tiny Finger Snap of Time': A Study of Novels with a Specific Time Culture*, ed. Pauline Winsome Beard (Newcastle upon Tyne: Cambridge Scholars, 2016): 35–55. Seymour Chatman, "Backward," *Narrative* 17.1 (January 2009): 31–55. James Phelan, "The Ethics and Aesthetics of Backward Narration in Martin Amis's *Time's Arrow*," in *After Testimony: The Ethics and Aesthetics of Holocaust Narrative for the Future*, eds. Jakob Lothe, Susan Rubin Suleiman and James Phelan (Columbus, OH: Ohio State UP, 2012): 120–139. Cynthia Port, "No Future? Aging, Temporality, History, and Reverse Chronologies," *Occasion* 4 (June 2012): 1–19. Maria Slater, "Problems When Time Moves Backwards: Martin Amis's *Time's Arrow*," *English: The Journal of the English Association* 42.173 (1993): 141–152.

one is that its main thematic and formal characteristic—i.e. the fact that it chooses to reverse the arrow of time so much so that time consistently runs backwards throughout—, on which the narrative’s ethics relies, fairly naturally brings to mind the notion of resilience.

*Time’s Arrow* is in many ways a quest narrative, as its subtitle makes clear. The eponymous “Nature of the Offence” that it systematically investigates is that of the historical and cultural complex of determinations that led to the conception and engineering of the Shoah. To do so, the novel espouses the entropic potential of reversed narration, inverting even while questioning the Modern myth of progress. It is presented as a first-person narrative that invents some form of split autobiography – or rather a fictional autobiography narrated by part of a split, traumatised subject.<sup>6</sup> The narrator, “passenger or parasite” (TA, 16), seems to be the manifestation of the protagonist’s soul (“I am really the soulful type.” [TA, 50]). Trapped inside the protagonist’s body, it has to share the latter’s perceptions, which makes him a figure of passivity and exposure. He is thereby embarked on a voyage that he has not chosen, on board a vehicle or inside a host that he has not selected either and whose trajectory he has to espouse, even though he does not share his feelings and values in the least. Such a poetic choice of course renews the narrative parameters by introducing an ironical perspective right into the heart of the story, which is emphasized by a second radical option, i.e.: temporal inversion.

The novel’s most conspicuous trait lies in its consistently pervasive inversion of the arrow of time. The opening lines are devoted to the protagonist’s return to life from the depths of “the blackest sleep” (TA, 11) to end up with a vision of regression *ab ovo*: “Then eventually our corporeal bond will be tied, with Solingen scissors. When I enter her, how she will weep and scream. That I am gone.” (TA, 171–172) In these hardly intelligible lines, the umbilical cord is *fastened* by the scissors prior to the baby’s invagination, in a paradoxical *in extremis* vision of birth echoing the a-pragmatic original version of death on which the novel opens. The main consequence of the consistent inversion of chronology is that all actions, from walking to ingesting food (and other bodily functions), are seen in reverse, and that, while the novel begins in 1980s suburban America, it ends up in interwar Germany, where the nature of the offence may be glimpsed. The story thereby takes Tod Friendly, an elderly GP working in US suburbia, to postwar Portugal and Europe, where he assumes two different identities: John Young and Hamilton de Souza; then on to Poland and Auschwitz-Birkenau by way of the Vatican, among various steps in his continental journey. The

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6 Martínez Alfaro, “Where Madness Lies,” 136–137.

bulk of Part Three is devoted to the evocation of Odilo Unverdorben's (his real name) work as a Nazi doctor in the death lager where he is seen to create a race from the smoke flying over the crematoria and restore to health some inmates. Of course, the radical irony determining the pragmatic force of the narrative makes the reader rectify the apparent, surface message (he heals patients) and stabilize the implicit one (he experiments on human guinea pigs under Mengele's orders). The rest of the novel concentrates on Odilo Unverdorben's participation in the early, preparatory stages of the Shoah, as he is involved in the euthanasia programme destined to exterminate the invalid and vulnerable at Schloss Hartheim. The last pages evoke the context of the protagonist's childhood conditioning, his infancy and, as already mentioned, his regressive birth.

Admittedly, this briefest of synopses does not do justice to the intricacy of an experimental novel that has fitted form to ethical commitment, producing a narrative that, in the systematicity of its choices and of its reading practice, mirrors the systematicity of the monstrous planification and manufacture of death the better to provide an experiential evocation of the offence, its nature and consequences. More space would be needed to evoke the inversion of the dialogues (or rather the fact that they are designed to be read in two ways at the same time, by moving down and up the page); or the palindromic dimension of a narrative that may be read from the beginning and from the end;<sup>7</sup> or the fact that if the protagonist has a knowledge of his criminal (historical) past that he tries to hold back and partly denies, the narrator has only access to the past situated in the protagonist's future. The narrator and the protagonist thereby stand in a chiasmic relation, as each one does not know what the other has access to, a very efficient way to radicalize textual ironies and to enhance the ethical interrogations with which the novel reverberates. Such a diametrical positioning is also made obvious as regards the feelings experienced by both instances, since Odilo Unverdorben is characterized by a crippled – not to say inexistent – openness to alterity, while the narrator is endowed with a heavy freight of empathy allowing him to engage with various vulnerable characters.

At the heart of this exacting, experimental narrative lie the issues of trauma and how one moves away from or builds up on exposure to traumatic situations. One of the solutions may be resilience, and I shall argue in the first part that the choice of chronological inversion could well point at the possibility of resilience. I shall then insist that what the novel offers, above all, is a negative presentation

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<sup>7</sup> See Michel Morel, "Time's Arrow ou le récit palindrome," *Jeux d'écriture: le roman britannique contemporain*. *Cahiers Charles V* 18 (1995): 45–61.



of resilience, before concluding on the special knowledge granted by literature, i.e.: a “not-knowing knowledge”.

## 1 Repairing and living on

The narrative’s double temporal helix does provide a vision of human resilience, and this more particularly in the first part, devoted to the effects of the protagonist’s recovery after his ‘rebirth’ – or, better said, his return from the kingdom of the dead. Despite the fact that the original, paradoxical birth is dominated by the towering, nightmarish image of the doctor, wielding power over life and death (and announcing the protagonist’s function at the heart of the narrative), the beginning is characterized by a fairly buoyant tone. This is certainly due to the fact that the backward movement of the plot, generally productive of a sense of determinism, or at least indicating that one’s fate cannot be escaped as the future of the narrative is a past that has already been experienced and expended, allows the rejuvenating protagonist to get a fuller grasp on his bodily functions. That frailest of moments (the hour before death) is made to tie in with an equally precarious instant (that of birth), producing a hyperbolic, paradoxical vision of vulnerability. The *incipit* and following pages are a powerful reminder of the fact that there is such a thing as an “ontological vulnerability”<sup>8</sup> that is shared by all beings, and particularly human beings, at the beginning and end of their lives, in which they face situations of extreme exposure and have to rely on others to survive.

In the early pages, the protagonist’s situation is one of total dispossession and passivity, one of the conditions for the experience and practice of an ethics of alterity that the main character is not going to take advantage of. Instead, he concentrates on his own progress and assumption of a limited autonomy, moving away from the total dependence of the opening lines. Some ten pages into the story, the narrator (whose voice provisionally melts with that of the protagonist prior to his disappearing in the Auschwitz chapters and the temporary shift to a third-person narrative) enthuses: “Physically I’m in great shape. My ankles and knees and spine and neck no longer hurt all the time – or not all at once, anyway.” (TA, 20) Some pages later, the narrator confirms this impression (with one of the first instances of the split between him and the protagonist):

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<sup>8</sup> Nathalie Maillard, *La Vulnérabilité. Une nouvelle catégorie morale?* (Genève: Labor et Fides, 2011), 198.

Tod and I are feeling so damn good these days: physically. I can't understand why Tod doesn't show more gratitude for the improvement. When I think back to how things were [...], man, we were still walking, but only just. It was taking us twenty-five minutes to cross the room. We can bend over now with scarcely a groan, scarcely a knee-crackle. We're up and down those stairs – hey, where's the fire? Occasionally we get some spare bit of our body back, from the trash. A tooth, a nail. Extra hair. (TA, 36)

In this powerful vision of *re-memberment*, underpinned by the relentless use of the asyndeton, a hyperbolic figure of resilience powerfully emerges. The narrative's backward drive is harnessed to the evocation of that central feature of resilience that Cyrulnik identifies as metamorphosis, as he explains that “history is not fate. Our sufferings lead us to metamorphosis.”<sup>9</sup> He harps on this theme throughout his *oeuvre*, namely in his next book when he insists that “the scar [left by traumatic experiences] is never safe and can always open up again,” a reality that he associates with the necessity to “work towards an untenable metamorphosis,” compounded of “fragility, as one cannot forget the past but think about it in a way that remains bearable.”<sup>10</sup> For Cyrulnik, resilience is certainly not synonymous with invulnerability but remains entrained in and conditioned by vulnerability and ontological frailty. The subject's metamorphosis that is a defining trait of resilience implies a knitting together or interweaving – to translate one of Cyrulnik's favorite phrases – of various parameters leading to the protagonist's recovery. *Time's Arrow*, in its first part, may be in many ways considered a story of healing and re-building/re-memberment. Fairly literally, it gives a literary figuration of the original, technical acceptance of the term ‘resilience’: in the same way as a piece of metal put under stress may recover its original shape after a shock, the traumatized (in many senses of the terms, as we shall see later) protagonist recovers his lost capacities and goes through some form of empowerment. Resilience is shown to be compounded of vulnerability, or rather to be a modality of vulnerability. Amis's experimental narrative shows resilience as inseparable from vulnerability, situated in a continuum in which exposure and dispossession may be toned down but never quite completely effaced. This is tantamount to envisaging the positive dimension and powers of vulnerability, a condition and/or situation that dogs both protagonist and narrator and which accompanies them along their paradoxical careering through personal and collective history.

In experimental fiction of the type favored by Amis here, the contradictory or at least paradoxical temporality may be said to evoke that of Wordsworth's “Im-

<sup>9</sup> Boris Cyrulnik, *Un merveilleux malheur* (Paris: Odile Jacob, 1999), 16; translation mine.

<sup>10</sup> Boris Cyrulnik, *Vilains petits canards* (Paris: Odile Jacob, 2001), 16–17; translation mine.

mortality” ode. Not only could it be said that the poem’s liminal indication “The child is father of the man” is given a new twist here, as childhood problematically lies in the protagonist’s future; but also the final line (“Thoughts that do often lie too deep for tears.”) could be envisaged as an allusion to trauma, in its dissociation of thought and affect. One step further, the double temporality at work in the narrative, with the backward movement of the plot that never manages to completely efface the reader’s empirical, pragmatic experience of time’s chronological flow (this being concretized in passages of hesitation when the narrator glimpses the possibility of time flowing *chronologically*, as for instance on page 91) appears as a structural rendition of the complex temporality of trauma that Freud identified as *Nachträglichkeit*. The term was variously translated as afterwardsness or belatedness<sup>11</sup> and, following in Freud’s wake, French psychoanalyst Jean Laplanche has devoted a whole study to this notion, in which he pores over the intricacies of the temporal paradox according to which, to provoke trauma, one needs two violent breakthroughs affecting a subject, i.e.: a first violent occurrence that does not register in the subject’s psyche and that is reactivated by a second brutal event.<sup>12</sup> This implies a double orientation for the traumatic wound, as the trajectory of trauma may be read in two ways, both chronologically and counter-chronologically. In this respect, the second occurrence allows for moving backwards towards the first one, and thereby for a re-reading of the latter. As has been argued elsewhere,<sup>13</sup> I would point out that Amis’s experimentation with the double temporal helix is a way of troping the paradoxical time of trauma: in this instance of a perpetrator’s trauma, the first part of the novel, with its insistence on getting younger, evokes the temporal paradox of the co-presence of two. In Laplanche’s terms, it allows for “the simultaneity of the adult and the child moments.”<sup>14</sup> Though present in two different contexts (a Romantic poem and a contemporary, experimental novel), the double vectorisation is used as a heuristic device, based on the creation of an experiential reading meant to explore possibilities of temporal unhooking and co-presence. In many ways, the novel may be said to illustrate the issue of youthful resilience in the adult and give the reader a glimpse of the healing powers of afterwardsness that helps revisit the locus and nature of the original traumatic breakthrough so as to abet it and open the way towards healing. The metamor-

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**11** On the issue of *Nachträglichkeit* and its translations, see Jean Laplanche, *Problématiques IV. L’après-coup* (Paris: PUF, 2006), 23–24.

**12** Laplanche, *L’Après-coup*, 135. In this evocation, Laplanche clearly builds up on Freud.

**13** Martínez-Alfaro, “Where Madness Lies,” 140–141.

**14** Laplanche, *L’Après-coup*, 131.

phosis inherent in resilience necessarily needs a temporal subtract on which to get initiated and develop.

## 2 Negative presentation

Despite the fact that the protagonist gets younger throughout the narrative one cannot say that he ever heals, even if the novel provides the reader with a powerful vision of the possibility of resilience. The trauma inherent in exposure to the perpetration of violence on others (in the two stages of the Holocaust that he participates in) is a pathology well-documented by specialists like Robert J. Lifton whose influence is mentioned in the afterword to the novel (TA, 175). In *Time's Arrow*, the protagonist only heals after he has had his experience of extermination in the chronology of the narrative, i. e.: *before* he has had that experience, in the early 1930s, according to the historical chronology that is always present at the back of the reader's mind. In other terms, the narrative gives an impression of healing that is erroneous, as the only way to dispose of the traumatic condition is simply by not having been traumatized in the first place. Healing is shown to be impossible. Only non-experience or narrative effacement are considered as options. Of course, the persistence of trauma accounts for the two main characteristics of this experimental narrative, that is the paradoxical handling of time to figure out *Nachträglichkeit* and the splitting of the central "character" into two instances (protagonist and narrator), as seen above. The separation into two instances clearly points at the protection mechanism characteristic of trauma and originally analyzed by Freud, Janet or Ferenczi, and later taken up by Lifton in his analysis of the various stages of traumatic development affecting perpetrators exposed to the spectacle and practice of criminal acts: numbing, followed by splitting, that he designates through the term "doubling."<sup>15</sup> In the first part of the novel, the central character refuses/is unable to admit to what he did and appears to be dominated by the necessity to deny. Only in the unique scene of the confession to a Roman Catholic priest, in which he evades responsibility for what he did by referring to contextual conditioning, does the possibility that he is aware of what he did surface. In fact, after evoking the context of his interventions ("In a situation like that, certain acts suggested themselves. [...] The situation was mad and impossible" [TA 120]), he goes on clinching the matter by unwittingly privileging the principle of production and efficiency as op-

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15 Robert Jay Lifton, *The Nazi Doctors: Medical Killing and the Psychology of Genocide* (New York: Basic Books, 1986), 337–383.

posed to ethical values, in a sentence that also provides the title to chapter 4: “You do what you do best, [...] not what’s best to do.” (TA, 120). Only briefly, in the middle of a short confession in which attrition seems to be highly motivated by the need to find help at the hands of what is presented as a Roman Catholic accomplice who is going to help him escape from his pursuers, does an inkling of the character’s humanity or, at least, of his consciousness that he perpetrated horrors emerge. The revelation “We lost our feelings about the human body. Children even. Tiny babies.” is followed in the upwards, logical reading of the pages by the ultimate confession, produced in “a deep and distant voice,” as if the character were not all there, i.e.: as if from the hardly bridgeable gap inherent in some traumatic splitting: “I lost my idea of the gentleness of human flesh.” (TA, 120) Despite the apparently resilient recuperation of his bodily functions, the protagonist’s psyche remains radically affected, and he keeps his dirty secret:

‘You don’t want to know,’ Tod whispers.

She doesn’t want to know. *I don’t want to know. No one wants to know.* (TA, 66)

In the early stages of the story, when the aged protagonist, Tod Friendly (he who has befriended death), has a relation with the ethically-named Irene, the narrator does not know yet what happened in the protagonist’s historical past. Only by taking the pulse of his host’s feeling-tone and through access to his nightmares does he know that something lies in store, whose disclosure will be painful (hence the reluctance to know). If Irene is prevented from knowing by what looks here like Tod Friendly’s refusal to disclose, the soul actually does not want to know, for fear of the oncoming horrors. In these circumstances, the figure that might be most closely associated with resilience – or at least the capacity for resilience – is the anonymous soul, “[p]arasite or passenger” (TA, 72), “generally slow on the uptake. Possibly even subnormal, or mildly autistic.” (TA, 37) *Time’s Arrow’s* radical, black irony promotes a negative presentation of resilience, showing what it *could* be, or at least *how* it could be attained.

In fact, the persistence of childhood or youthful traits is more precisely associated with the narrator figure. As already mentioned, he is a figure of complete exposure to the other, the latter being the protagonist whose perceptions and sensations he shares, without knowing anything of his historical past. Entrapped inside the character’s consciousness, the narrator is a picture of passivity and dispossession: his access to perceptions and sensations is limited, and even more so his comprehension of events, biographical and historical. This is suggested by the “slow on the uptake” phrase above, an indication that he represents only a part of the split psyche. Thanks to this device that renews in more

ways than one the conception of fictional characterization, the specificity of traumatic states that Cathy Caruth among others has defined as a “crisis of truth”<sup>16</sup> or a “collapse of [...] understanding”<sup>17</sup> is fleshed out and given a practical dimension. Far from dwelling on abstractions, what the experimental novel does is provide an *experience* of a traumatic state from within, so that the reader may have some sort of a concrete apprehension of the sense of splitting. In *Time's Arrow*, then, the reader is granted some special knowledge, or “not-knowing knowledge” that paradoxically puts him/her in a situation of openness to alterity: the otherness of the traumatized victim who, precisely, has no access to the whole of the truth and whose memories are partly occluded. Still, the anonymous, imprisoned narrator is anything but autistic: on the contrary, he is beautifully equipped to get in touch with others, not only his host, to whom he is permanently attuned, but also the secondary characters, who are admittedly few. Still, what accrues through the soul figure is the capacity to feel, and to feel *for* the other, more especially. From this point of view, the anonymous narrator may be considered a protective figure, some avatar of a guardian angel concretized into a figure of care. Perhaps the most apposite description is encapsulated at the very end of part one, with the terse self-portrait: “I have a heart but I don't have a face: I don't have any eyes to cry.” (TA, 102) The paradoxical formulation that hovers between incarnation (“heart”) and ethereality (no face, no eyes) typecasts the narrator as the seat of appetite for the other. The unlimited powers of the heart bump against the perceptual and sensory limitations. The full capacity for affect associated with the incapacity to act build up a situation in which feelings for the other are pushed to a point of incandescence, turning the protagonist into a block of raw (essentially positive) affects that characterizes infant and childhood states, making him closer to Wordsworth's meliorative evocation and turning him into a figure of vulnerability. What I mean here is vulnerability in Martha Nussbaum's sense, as she evokes the way in which classical literary works (tragedy and poetry) present a vision of the good life that is based on positive affect. According to her readings, what makes the human a figure of excellence is his/her fragility in front of fate and others. This she describes in relation to the model of the plant (in contradistinction with that of the hunter):

a kind of human worth that is inseparable from vulnerability, an excellence that is in its nature other-related and social, a rationality whose nature is *not* to attempt to seize,

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16 Cathy Caruth (ed.), *Trauma. Explorations in Memory* (Baltimore: Johns Hopkins UP, 1995).

17 Caruth, *Trauma*, 7.

hold, trap, and control, in whose values openness, receptivity and wonder play an important part.<sup>18</sup>

In other terms, what defines human worth is the “orectic”<sup>19</sup> orientation of the individual whose feelings lead him/her to engage with the world and with the other, exacerbating the “needy and non self-sufficient elements of our condition.”<sup>20</sup> Through the powerful image of the heart without a face, what emerges is a vision of the narrator as essentially orectic and dependent in his vulnerability, he being the epitome of exposure, if Athena Athanasiou and Judith Butler are to be believed when they aver that “[t]he human is always the event of its multiple exposures.”<sup>21</sup> Through his hyperbolic reliance on affects, through his radical exposure, though his capacity to be wounded, hence his ontological vulnerability, the narrator becomes the type of figure whose “wound allows for a sensibility through the wound.”<sup>22</sup> That constitutive condition of resilience, the capacity to feel, is almost the prerogative of the narrator in the bleak universe of *Time’s Arrow*. By contrast with the closed, affectless demeanor of the protagonist, and owing to the radical irony of the narrative that challenges all appearances, the candidate for resilience is certainly not the protagonist, whose plasticity of mind and feeling cannot be mobilized, but the faceless narrator whose incandescent heart makes him a figure of vulnerability. The capacities and values of resilience are paradoxically incarnated by this disembodied figure.

Furthermore, and even if this may sound as a self-evidence, what characterizes the narrator is that, precisely he *narrates*. In his chiasmic relationship with the protagonist’s mutism, he is the one who is in charge of telling and voicing, which turns him into a figure of address.<sup>23</sup> Even if he becomes eclipsed in chapters 5 and 6 (Auschwitz and Schloss Hartheim), when Odilo Unverdorben is left to his own devices, his soul or conscience being numbed in the passages where horror is being perpetrated, the narrator is a fairly loud, chattering one, who strives by all means to make sense of the character’s story, thereby giving an account of himself and of the other. In so doing, he manages to voice his exposure

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18 Martha C. Nussbaum, *The Fragility of Goodness. Luck and Ethics in Greek Tragedy and Philosophy* [1986] (Cambridge: CUP, 2001), 20.

19 Nussbaum, *Fragility*, 357.

20 Nussbaum, *Fragility*, 357.

21 Judith Butler and Athena Athanasiou, *Dispossession. The Performative in the Political* (Cambridge: Polity, 2013), 32.

22 Cyrulnik, “Vilains petits canards,” 27; translation mine.

23 Martinez Alfaro even speaks of his “garrulousness” (140).

that constitutes his singularity,<sup>24</sup> and this he has to do by addressing his reader. This is characteristic, of course, of the practice of giving an account of oneself, which is compounded of a great measure of risk-taking (“one has to avow the limits of self-understanding,”<sup>25</sup>) has to take into account the failure to narrate fully, and once again entails a great deal of exposure and dispossession. This is all the truer as account-giving implies a structure of address that makes reliance on the other (hence vulnerability to the other) unavoidable and even a necessary condition for existence. Butler insists on this aspect when she comments on “the fact that we cannot exist without addressing the other and even without being addressed by the other, and that there is no wishing away our fundamental sociality.”<sup>26</sup> With the proviso, here, that the narrator receives no address in return, which turns him into a fumbling, orrectic figure, condemned to address the reader in many ways without being able to get a response, necessarily. The pragmatic force of the text is such that the reader is being called to witness the narrator’s strivings and the protagonist’s perpetrations without ever being able to achieve contact, once again transforming himself into a figure of tension towards alterity. Interestingly, the structure of address is a feature that Cyrulnik considers as central to resilience and, one could add, as a *condition* of resilience. He repeatedly comes back to this issue in his *oeuvre*, and this as early as his ground-breaking *Un merveilleux malheur*, where he demonstrates that addressing one’s narrative to someone else (possibly but not exclusively what he calls a “tutor of resilience,” perhaps an echo of Freud’s *NebenMensch*) amounts to “making it exist in the other’s mind and giving oneself the illusion that one is understood and accepted,” which is tantamount to insisting on the “necessity of representation to feel that one is understood.”<sup>27</sup> Addressing one’s narrative is thereby a condition for healing and for resilience, as it implies that the past is remembered but that the subject can develop with this past (as opposed to a past that would be forgotten, non-inscribed or denied). *Time’s Arrow*’s narrator is clearly the repository of such a capacity for resilience that is figured out counter-pragmatically in this highly ironical narrative: what is not present (the protagonist being but very partly resilient) is evoked implicitly, as if in counter-relief, tapping the powers of a negative presentation to provide an experiential account of the situation.

In the end, the narrator boasts another fundamental trait of resilience: not only does he have the capacities to feel and address, but also, following logically

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<sup>24</sup> Judith Butler, *Giving an Account of Oneself* (New York: Fordham UP, 2005), 33.

<sup>25</sup> Butler, *Giving an Account*, 82.

<sup>26</sup> Butler, *Giving an Account*, 82.

<sup>27</sup> Cyrulnik, *Merveilleux malheur*, 34; translation mine.



from those, to relate. From Cyrulnik's point of view, this is a pre-requisite for resilient adaptation. In an interview given in 2009, he insisted that "[b]eing is being together."<sup>28</sup> This of course is a reference to an idea that he had developed in his earlier publications, i.e.: that of knitting relationships with one's environment or milieu (the latter word being used in the French original).<sup>29</sup> In the same way as narrating implies the presence of an addressee and that resilience, even if it involves internal dispositions or capacities, relies on meeting tutors that help the subject work through his/her trauma and develop, the narrator has to be able to rely on both internal and "external resources."<sup>30</sup> And once again, the diametrical opposition between the closed protagonist, entrapped in his denial, and the open, orrectic narrator, always eager to reach out towards the other, stabilizes the novel's axiomatic programme. In his sympathetic evocation of various victims of the protagonist's medical activities, in his systematic antiphrastic testimony to the other's pain, in his spontaneous way of siding with the vulnerable and those who *care*, the narrator supplies the ethical compass of the narrative. This is particularly the case with the character of Irene, the longest-standing of the protagonist's girlfriends, who, as indicated by her name, is the repository of the values of peace and caring, a figure of help and healing who is driven to commit suicide by his callousness. All things considered, the anonymous, faceless narrator, endowed with the qualities of the heart asserts the values of vulnerability for the other, hence of relationality, when he formulates the possibility of the eclipse or invisibility of the human: "Is it that the human being is secretly nothing without others? He disappears." (TA, 71) Being for the other, and being endowed with the capacity and urge to relate, is what characterizes the narrator in the limitations of his perceptions and comprehension that bolster up his straining towards the other and his attentiveness to the other.

### 3 Literature's knowledge

The literary – more specifically experimental – presentation of resilience brings along an apprehension of the notion close to what critic Geoffrey H. Hartman has called a "not-knowing knowledge"<sup>31</sup> akin to the representational and epistemo-

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**28** Nicolas Martin, Antoine Spire and François Vincent, *La résilience. Entretien avec Boris Cyrulnik* (Lormont: Bord de l'Eau, 2009), 39; translation mine.

**29** Cyrulnik, *Merveilleux malheur*, 16; translation mine.

**30** Cyrulnik, *Vilains petits canards*, 31; translation mine.

**31** Geoffrey H. Hartman, "On Traumatic Knowledge and Literary Studies," 26.3 (Summer 1995): 537–563, 544.

logical specificities of trauma. First, it is a type of information only available circuitously, through its effects more than thanks to some direct presentation: "It can be inferred from certain effects and symptoms, including a repetitious imagery that veils, without effacing."<sup>32</sup> Whether it veils without effacing or ostentatiously underlines, the non-knowing knowledge provided by the novel "combin[es] insight and blindness"<sup>33</sup> so as to bolster up the imaginative powers of the fictional text. In *Time's Arrow*, the conflation of the ironical, circumlocutive presentation of resilience allows for the emergence of a "negative narrativity"<sup>34</sup> that evokes the reality of trauma circuitously (as the protagonist is split, he has no access to part of his psyche, which requests a narrative doubling through the means of the narratorial instance), even while the resilient capacities are in fact available as potential in the narrator, while apparently manifested by the protagonist. This aspect of literature's knowledge is all the more efficient as it is diffuse and haunting, nowhere to be placed and hovering all over the text. More importantly, it is an affective, experiential, practical type of knowledge that puts the reader at the heart of the narrative and solicits his/her active participation, thereby effecting a better appropriation of the special knowledge.

What the novel fosters is a development of the reader's perceptive qualities. Intrinsically relying on the presence of a narrator, the story is by definition fixed. It thereby determines a zone of focus and perception relating to elements that are not directly visible or accessible. The singling out of historical and psychological (even psychiatric) events and the protracted dwelling on such information creates the conditions for a greater concentration. Through its in-built resort to focalization, fictional narrative in general and such a specifically focused, experimental novel as *Time's Arrow* in particular develop and train the reader's capacity of perception that Nussbaum, in the wake of Aristotle and Henry James, sees as an "ethical ability."<sup>35</sup> Perception is here the prime condition of the *reconnaissance* of the hidden or occluded, of that which is generally kept away from general recording and acquaintance. By focusing on the inaudible and the invisible, by getting the reader to access the two sides of the split consciousness of a protagonist suffering from perpetrator's trauma, by calling forth a supplementary instance – i.e.: the innocent, ethically unsullied narrator –, what the novel does is provide an ethical apparatus that is indexed on the singularity and powers of perception.

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32 Hartman, "On Traumatic Knowledge," 539.

33 Hartman, "On Traumatic Knowledge," 544.

34 Hartman, "On Traumatic Knowledge," 548.

35 Martha C. Nussbaum, *Love's Knowledge. Essays on Philosophy and Literature* (New York and Oxford: OUP, 1990), 37.

What pointed perception allows for, in turn, is the exercise of the reader's attentiveness. In fact, when looking for "The Nature of the Offence," keen focalization and the consideration of the least accessible or palatable both reveals and activates the reader's attentiveness to specificities of a historical, psychological and ethical type. From this point of view, Amis's experimental narrative seems to reflect in more ways than just one Aristotle's conception of the good life as interpreted and rehearsed by Nussbaum when she considers literature as allowing for "a sense of life that leads us to build into the overall procedure an *attention to particulars*, a respect for the emotions and a tentative and non-dogmatic attitude to the bewildering multiplicities of life."<sup>36</sup> Of course, as we are reminded by other critics, attention is certainly not egalitarian and cannot be squandered or at least applied indiscriminately and profusely.<sup>37</sup> This is exemplified in a novel that makes it emphatically clear that the only possible perception is through the protagonist's eyes and senses, which the narrator repeatedly assesses in terms of limitations and entrapment. Still, the narrator's attentiveness to the protagonist's mood shifts and emotional tone, his constant empathy with the exposed and the suffering, his incessant wonderings as to some of the aspects of the protagonist's medical practice, for instance, all this associated with the radical antiphrasis that seizes hold of the whole of the text train the reader's attentiveness as s/he shares the narrator's consideration of details and, one step further, strives to learn to decipher the real meanings behind the apparent ones.

By privileging affect (either of the violent or positive type), perception and attentiveness, all meant as instrumental in promoting a sense of the good life, novels in general and *Time's Arrow* in particular tend towards the practice of an empirical, experiential knowledge. In Nussbaum's terms (still following on Aristotle and James), the knowledge of literature is empirical "in that it is based on and responsible to actual human experience; it aims to elicit an 'intelligent report,' as James put it, of that experience – that is, of 'our apprehension and our measure of what happens to us as social beings.'"<sup>38</sup> And as historical, ethical beings, I would add. Besides, what seems to me even more to the point is that the empirical dimension opens the door to an *experiential* knowledge of a type inherent in the nature of fictional representation, based as it is on mimesis, i.e.: the "imitation" of an action through repetition, a rehearsal that allows for the reader to participate in and almost re-enact the reconstituted

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<sup>36</sup> Nussbaum, *Love's Knowledge*, 27; emphasis added.

<sup>37</sup> Jon Foley Sherman, *A Strange Proximity. Stage Presence, Failure and the Ethics of Attention* (London and New York: Routledge, 2016), 145.

<sup>38</sup> Nussbaum, *Love's Knowledge*, 173.

'original' action. Such an experiential opaqueness depends on the structural and poetical nature of the literary text that captivates the reader and makes him/her share in the focalization and rhythms of the narrative, implicating him/her through his/her senses and soliciting his/her perception, attentiveness, physical and affective response. Such a soliciting of sensation, affect and emotion fosters an exposure to the representational contents and an openness to the represented other that is figured out not through the abstraction of other types of literature (Nussbaum's example being philosophical discourse) but through a distinct concreteness and incarnation. When the focalizations, modulations and rhythms of the literary text espouse those of the reader (or *vice versa*, more specifically), a common ground of percept and affect makes for an experiential knowledge that in many ways seems to be specific to the narrative of fiction, and to such a novel as *Time's Arrow*, more particularly.

In the end, the special knowledge that fiction promotes is above all a *practical* knowledge "in that it is conducted by people [artist and reader] who are themselves involved in acting and choosing and who see the inquiry as having a bearing on their own practical ends."<sup>39</sup> This is tantamount to suggesting that the negative presentation of resilience provided by the novel gets the reader to be involved and, in other terms, to *care*, i.e.: to consider him-/herself as affectively dependent on subjects and situations outside him-/herself, which is a means of underlining the reader's exposure to and accountability for the unsuspected other brought into visibility and within the reader's remit by the novel. The end of such a knowledge would then be "practice, not just theory."<sup>40</sup> Interestingly, the foundation of this practice could be a consciousness of one's limitations, hence a greater understanding and tolerance of the other's flaws and imperfections. From this point of view, the common ground of such a presentation of resilience could be the discovery of a form of anthropological vulnerability characterizing all subjects and revealing their inherent dependence on others, interdependence with others, hence responsibility for others. Fiction, and *Time's Arrow* most emblematically, fills in a practical ethical purpose by training the reader's attentiveness and responsiveness, hence responsibility.

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<sup>39</sup> Nussbaum, *Love's Knowledge*, 173.

<sup>40</sup> Nussbaum, *Love's Knowledge*, 173.



Gerd Bayer

## Displaced Memory: The Screened Past of *Fugitive Pieces*

Mediated Holocaust memory dates back almost as long as the Holocaust itself. Indeed, since the majority of those who “remember” the Holocaust have no personal experience of the events, the Holocaust exists predominantly as a mediated memory, one based on images, photographs, or other forms of representation. This essay concentrates on Anne Michaels’s first novel, *Fugitive Pieces* (1996), and its cinematic adaptation, arguing that both fiction and film speak to changes in the way that Holocaust memories are being represented. By dealing extensively with questions of mediation, the two texts engage in a dialogue with the past that actively reflects on both the abstract possibility and the actual need to remember what already and necessarily exists as a distant and screened memory.

Holocaust memory has famously gone through various stages, intensities and political profiles. Aleida Assmann has recently set out a sequence of forms of memory that present Holocaust commemoration as initially marred by a post-war political will in the west to move beyond the atrocities of war and, during Cold War tensions, focus on a shared front against the evil empire. This led largely to what Assmann calls “a culture of forgetting,”<sup>1</sup> driven in part by the active wish to forget by political leaders like Winston Churchill; and later challenged by philosophical forms of intervention by intellectuals like Hannah Arendt. In the 1980s, the tide began to shift, and memory now became marked by forces of “identification, ethics, and empathy.”<sup>2</sup> For Assmann the third stage, only starting in the second decade of the new millennium, is driven by the forces of belated, second-generation memories as well as by the various postmemory effects theorized in critical discourse. At this point in time, to witness the past is only partially related to a historical event and becomes implicated, in various ways, by the medialized forms that both memory and commemoration have

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1 Aleida Assmann, “Transformations of Holocaust Memory: Frames of Transmission and Mediation,” in *Holocaust Cinema in the Twenty-First Century: Memory, Images, and the Ethics of Representation*, eds. Oleksandr Kobrynsky and Gerd Bayer (New York: Wallflower-Columbia UP, 2015): 23–40, 23.

2 Assmann, “Transformations,” 28.

taken on, in particular at the historical point in time when the number of surviving eye witnesses is dwindling.<sup>3</sup>

The history of Holocaust cinema has by now also moved into a third stage, one that fully embraces the critical epistemology of postmodernism. In other words, recent films are willing to discuss explicitly or implicitly the complex and often frustrating workings of personal and collective memories without feeling at risk for being accused of either denying or belittling the Holocaust. Suggesting that this kind of cinematic engagement with a traumatic past constitutes a third stage requires a definition of the first two stages, and in this I follow closely what Annette Insdorf, in *Indelible Shadows: Film and the Holocaust*, describes as first and second wave of Holocaust films.<sup>4</sup> She differentiates between a first wave that focused on “establishing the basic facts of deportation and extermination” and a second wave that concentrated on “resistance and rescue” and,<sup>5</sup> in doing so, allowed for some agency to be returned to the utter passivity that the first wave had assigned to the victims of the Holocaust. As with other typologies of this kind, this grouping, needless to say, is at best helpful in sorting out general tendencies. Its essential flaws become obvious once we realize that it does not provide critics with a tool to place films indubitably into one or the other category.

A postmodern approach to the Holocaust,<sup>6</sup> and to traumatic events in general, allows for a strategy that can be described as displaced memory. This displacing relates to two features: on the one hand, it reminds its audiences that each act of remembering is by necessity a displacement in that it resorts to visual, acoustic, or linguistic forms of representation that, by necessity, have to be distinguished from the experience of the trauma itself, from the kind of witnessing that remains elusive and always only experiential. Memory, like cinema and art

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**3** See the introduction as well as the individual chapters in *Holocaust Cinema in the Twenty-First Century: Memory, Images, and the Ethics of Representation*, eds. Oleksandr Kobrynskyy and Gerd Bayer (New York: Wallflower-Columbia University Press, 2015).

**4** Annette Insdorf, *Indelible Shadows: Film and the Holocaust*, 3rd ed. (Cambridge: Cambridge University Press, 2003). For a recent analysis of the history of Holocaust cinema, see also Lawrence Baron, *Projecting the Holocaust into the Present: The Changing Focus of Contemporary Holocaust Cinema* (Lanham: Rowman & Littlefield, 2005).

**5** Insdorf, *Indelible Shadows*, 247. Insdorf’s approach silently assumes that the vastly different cultural and political environments of Holocaust film on both sides of the Iron Curtain (to mention but one example) generated similar cinematic strategies.

**6** For the best application of postmodern theories to the topic of the Holocaust, see Robert Eaglestone, *The Holocaust and the Postmodern* (Oxford: Oxford University Press, 2004).

in general, is thus at best an imaginary signifier,<sup>7</sup> a system of signification limited by the very mediality of the representations through which it is perpetuated. However, it bears repeating that, like in the Derridean concept of *différance*, such focus on semantic deferring offers commentary on the epistemological force of memory or language, not on the ontology of the referent.<sup>8</sup> Put differently, it emphasizes that the system of representation has its limitations and is prone to manipulation and even error;<sup>9</sup> but not that the referent lacks substance. In other words, this approach actively opposes any attempt at denial and instead addresses the aesthetic implications of how the logic of representation affects the commemoration of trauma, keeping in mind how trauma theory has discussed the inherent belatedness of such events.<sup>10</sup> The second feature evoked by the notion of displaced memory is even more political, or ethical, in that it strains to project an event outwards – both in time and place –, thereby claiming importance beyond the unique circumstances of its original occurrence. As with other Holocaust texts, *Fugitive Pieces* contributes to the discussion, as defined by Daniela Carpi, about the ethicality of humanity as it relates to questions over authenticity and inauthenticity.<sup>11</sup>

Novels and films relying on this concept of displaced memory produce Holocaust representations that can be placed even less easily into the two types initially presented by Insdorf. It makes sense, therefore, to think beyond her confines and ask what some of the constitutive features of more recent Holocaust films are. Discussing two recent films from Germany and France, Robert Thalheim's *Am Ende kommen Touristen* (2007) and Marceline Loridan Ivens's *La petite prairie aux bouleaux* (2003), I have argued elsewhere that the kind of ap-

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7 This concept was famously developed in Christian Metz, "The Imaginary Signifier," *Screen* 16.2 (1975): 14–76.

8 Much recent criticism has built on Jacques Derrida, *Spectres de Marx* (Paris: Galilée, 1993), and his playful conflation of ontology and hauntology, the science of ghosts; see for instance Colin Davis, "État présent: Hauntology, Spectres and Phantoms," *French Studies* 59.3 (2005): 373–379.

9 For a famous case of mis-remembered Holocaust testimony, relating to architectural details at concentration camps, see Shoshana Felman and Dori Laub, *Testimony: Crises of Witnessing in Literature, Psychoanalysis, and History* (New York: Routledge, 1992), 60–63.

10 For a standard introduction to trauma theory, see Roger Luckhurst, *The Trauma Question* (Abingdon: Routledge, 2008); for direct applications of trauma studies to literary analyses, see Susana Onega and Jean-Michel Ganteau, *Contemporary Trauma Narratives: Liminality and the Ethics of Form* (New York: Routledge, 2014), in particular Onega's own contribution to the volume, which also discusses *Fugitive Pieces*.

11 Daniela Carpi, "Violation of Human Rights in Holocaust/Post-Holocaust Era," *Polemos* 8.1 (2014): 175–191.



proach to what is commonly described as postmemory,<sup>12</sup> following publications by critics like Marianne Hirsch,<sup>13</sup> no longer works for these films since they willfully violate against some of its core principles, namely the demand to pass on any and all information. Third-wave films instead concentrate on what remembering will have to mean for later generations in the absence of witnesses and in the light of the sorry fact that human existence continues to create horrific examples of traumatic events. This kind of richly textured historical engagement with the Holocaust relating, for instance, to questions of decolonization has recently been discussed by Michael Rothberg in his *Multidirectional Memory*,<sup>14</sup> where he contends that such a comparatist approach to the Holocaust does not at all take away from the uniqueness of the Nazi genocide on European Jewry. Artworks that belong to this third type might have quite the opposite effect in that they relate the Holocaust to other events and the historical present, making it all the more relevant and necessary to teach and study.

One of the most influential forms of Holocaust commemoration, at least in terms of audience numbers reached, is Holocaust film, and scholarship on the topic is still picking up momentum as films like Quentin Tarantino's *Inglourious Basterds* (2009), *Son of Saul* (2015), for which director László Nemes received an Academy Award, or Yael Hersonski's *A Film Unfinished* (2010), a documentary film about the very pliability of documentary footage, find both commercial and academic viewers. As matters of ethics and memory frequently take a central role in the discussion of Holocaust film,<sup>15</sup> including questions about the limitations that might exist in the context of exploitative films,<sup>16</sup> more recently schol-

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**12** Gerd Bayer, "After Postmemory: Holocaust Cinema and the Third Generation," *Shofar* 28.4 (2010): 116–132. The almost uncanny return of the Holocaust in German television is also discussed in Wulf Kansteiner, "Entertaining Catastrophe: The Reinvention of the Holocaust in the Television of the Federal Republic of Germany," *New German Critique* 90 (2003): 135–162.

**13** See, for instance, Marianne Hirsch, "The Generation of Postmemory," *Poetics Today* 29.1 (2008): 103–128; and Aleida Assmann, "Three Stabilizers of Memory: Affect – Symbol – Trauma," in *Sites of Memory in American Literature and Culture*, ed. Udo J. Hebel (Heidelberg: Winter, 2003): 15–30.

**14** Michael Rothberg, *Multidirectional Memory: Remembering the Holocaust in the Age of Decolonization* (Stanford: Stanford University Press, 2009).

**15** See Joshua Hirsch, *Afterimage: Film, Trauma and the Holocaust* (Philadelphia: Temple University Press, 2004), and Libby Saxton, *Haunted Images: Film, Ethics, Testimony and the Holocaust* (London: Wallflower, 2008).

**16** See, for instance, Aaron Kerner, *Film and the Holocaust* (London: Bloomsbury, 2001).

arship has also addressed the question over film's mimetic power in representing the Holocaust, in particular in the context of documentary film.<sup>17</sup>

In the light of these recent developments in cinematic representations of the Holocaust, I would now like to look at one Holocaust novel and its film adaptation in order to show how postmodern concepts about narrative and mediated memory have allowed for new forms of remembering events such as the Holocaust. They do so in a manner that enables future generations to learn about the past, reflect about the essential elusiveness of all forms of belated signification, and at the same time engage themselves in the workings of trauma and memory. I shall concentrate on what is maybe still a less known film, *Fugitive Pieces* (2007) by director Jeremy Podeswa.<sup>18</sup> The film is a fairly straightforward adaptation of Anne Michaels's 1996 novel, also titled *Fugitive Pieces*.<sup>19</sup> The novel begins with the first person narrative of Jakob Beer, the only member of his Jewish family to survive a Nazi attack on his village in Poland. He almost witnesses how his parents are killed and his sister Bella is carried off by the soldiers. After hiding in the woods following his flight, he finally arrives at Biskupin, an archaeological site where he meets Athos, a geologist who takes Jakob with him to his small Greek island.<sup>20</sup> After a very difficult period there during the Nazi occupation of the island, they finally move to Toronto. Jakob remains haunted by the memory in particular of his sister, feeling that he may have left their home too early, prior to her returning.

The film draws on various visual strategies to show how the past is constantly present in Jakob's life. It intentionally blurs the border between past and present, for instance by cutting to flashbacks without making the temporal shift very obvious. It consistently refuses to follow linear chronology and will even cut in less than one minute of discourse time between five or more distinctly different moments in Jakob's life on the story level.<sup>21</sup> Sometimes Jakob daydreams about seeing Bella, putting himself back into his early childhood, and it is not clear whether what we get to see is an actual memory or merely a figment of

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17 See Brad Prager, *After the Fact: The Holocaust in Twenty-First Century Documentary Film* (London: Bloomsbury, 2015).

18 Jeremy Podeswa, director, *Fugitive Pieces* (Samuel Goldwyn Films, 2007). Podeswa had earlier done much television work on such series as *Six Feet Under* or *Queer as Folk*.

19 Anne Michaels, *Fugitive Pieces*, 1996 (London: Bloomsbury, 1997).

20 For the importance of emplacement in *Fugitive Pieces*, see Dalia Kandiyoti, "Our Foothold in Buried Worlds': Place in Holocaust Consciousness and Anne Michaels's *Fugitive Pieces*," *Contemporary Literature* 45.2 (2004): 300–330.

21 Podeswa, *Fugitive Pieces*, 55:00.

his dreams. In one scene,<sup>22</sup> following a short Yiddish conversation with neighbors about his sister playing the piano, Jakob sits at the kitchen table in Toronto and starts to “see” Bella play mock piano at the kitchen table, his closing his eyes signalling to the audience that he might be dreaming. Both siblings clearly look at each other, suggesting that this moment is really taking place, but another cut shows Jakob sitting at the table by himself, with Athos talking to him about Bella.<sup>23</sup> The scene develops into Athos giving Jakob a notebook, encouraging him to write down his thoughts. Through this gift the film implies that writing can not only have a positive effect on the mental state of one suffering from a traumatic experience, and both Athos and Jakob are to some extent saved by the fact that they can communicate through their writing; but writing can also prevent the past from being forgotten. Yet the practice is also linked to the opposite notion, that writing can easily be used to lie. Athos’s main academic work, once they resettle to Canada, consists of a manuscript entitled “Bearing False Witness,” a book dedicated to the fact that Nazi scientists intentionally “abused archaeology to fabricate the past” in such a way that it fit in with their ideology.<sup>24</sup> In a sense Athos sets out to save history from lying; but the fact that both novel and film so openly address the pliability of language as a medium also serves as a warning not to trust representations all too easily. What *Fugitive Pieces*, the film, sets out to achieve on an aesthetic level, other recent cinematic Holocaust texts, like *A Film Unfinished* or Andre Singer’s historical essay *Night Will Fall* (2014), have addressed on a formal level, directly engaging the matter in which film became implicated in the crimes of the Holocaust.<sup>25</sup>

The notebook that Athos presents to Jakob occasions another moment where writing, reality, and the responses of readers jar. The scene in the film is very carefully set up earlier with Jakob finally finishing, after Athos’s death, a full draft of the manuscript “Bearing False Witness.”<sup>26</sup> His desk is filled with

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<sup>22</sup> Podeswa, *Fugitive Pieces*, 1:06:20.

<sup>23</sup> The film builds on similar moments in the book, where Jakob feels the presence of his sister but does not manage to connect with her: “I turn and Bella’s gone; my glance has caused her to vanish.” Michaels, *Fugitive Pieces*, 125.

<sup>24</sup> Michaels, *Fugitive Pieces*, 104.

<sup>25</sup> See Martin Modlinger, “The Ethics of Perspective and the Holocaust Archive: *Spielberg’s List*, *The Boy in the Striped Pyjamas* and *Fateless*,” in *Holocaust Cinema in the Twenty-First Century: Memory, Images, and the Ethics of Representation*, ed. Oleksandr Kobrynsky and Gerd Bayer (New York: Wallflower-Columbia UP, 2015): 161–180.

<sup>26</sup> Podeswa, *Fugitive Pieces*, 08:57. Interrupted by a short flashback to when Jakob and Athos first arrived in Greece, the scene discussed here runs for about 4:30 minutes and then turns into a longer flashback that covers the first meeting and courtship between Jakob and Alex.

notes, books and other paperwork. Later that night, Alex returns home to find it cleaned up, with the typed pages prominently placed in the middle of an otherwise empty desk. Rather than reading the typescript she comes across Jakob's diary, from which she learns about all his mental turmoil and the difficulties he has in dealing with what she assumes he takes to be her own shallowness. This revelation quickly leads to their separation.<sup>27</sup> The notebook that Athos had originally given to young Jakob as a means to calm his mind and deal with his traumatic memories thus comes back with a vengeance and destroys what little social stability Jakob had been able to build.

Quite appropriately, Athos had handed him the journal by quoting an old saying: "The great mystery of wood is not that it burns, but that it floats."<sup>28</sup> Unlike in the novel, where Michaels refrains from explaining this aphorism, the film has Athos point to the fact that one thing can have different properties. Athos explains to Jakob that "You can choose to see, what destroys something or what saves it."<sup>29</sup> Trained as a scholar to see the essential multiplicity of meaning in each individual object or situation, Athos takes courage from the fact that reality is not absolutely determined. For Jakob, however, the materiality of wood seems dominated by its destructive power and by the force of decay. To him, wood either degrades into peat or mud, or it vanishes in a burning flame. Yet he too slowly comprehends the deeper teachings of Athos's woody wisdom.

It is indeed a first turning point in *Fugitive Pieces* when Jakob finally embraces the mystery of wood, when he believes in the wonder of floating and thus in the power of movement. Like Derrida's ruminations about the force of cinders both to testify to fire and to refuse its finality by always leaving a trace,<sup>30</sup> Jakob's willingness to float does not deny the destructive force of fire. Yet it allows him both to live and to remember and thus to think also about the future. As Jakob learns to deal with his biographical and second-generation memories, he comes to realize that, at times, it is only by relinquishing aspects of the past that a meaningful continuation of commemoration becomes possible and meaningful. Jakob, as a fictional figure, thus repeats the argument put forth by Eva Hoffman

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When, much later in the story, Michaela reads Jakob's diary (1:33:40), the film treats her reaction in a very different way, as her interest is mostly in his past and traumatic suffering.

**27** Podeswa, *Fugitive Pieces*, 23:19. In the novel, the relationship between Jakob and Alex merely peters out, with Jakob's nightmares and unwillingness to socialize finally driving his wife away. Jakob, throughout their final separation, feels utterly paralyzed and unable to speak; Michaels, *Fugitive Pieces*, 148.

**28** Michaels, *Fugitive Pieces*, 28.

**29** Podeswa, *Fugitive Pieces*, 1:08.

**30** Jacques Derrida, *Cinders*, trans. Ned Lukacher (Lincoln: University of Nebraska Press, 1991).

in *After such Knowledge*, where she reflects about the ethics and pedagogical implications of teaching about trauma.<sup>31</sup>

This turning point inspired by the mystery of wood matures into Jakob's gradual acceptance of his life situation, without abandoning his past. The film's sensuality, playing off of the highly lyrical diction of Anne Michaels's novel,<sup>32</sup> thus evokes a possible scenario for future engagements with the past, one that walks a fine line between remembering and the avoidance of secondary traumatization.<sup>33</sup> The film smartly connects this strategy back to the Holocaust itself and to the fact that even in the horror of concentration camps, hope sometimes managed to survive and provide the inmates with a reason not to turn into the deadly figure of the Muselmann, the atrophied shell of a human being.<sup>34</sup> This connection is established when, during the first meeting of Jakob and Michaela, Ben's wife, Naomi, discusses her research into songs and ballads from around the world and suggests that there is a song for every person. Asked by Michaela which song best fits Jakob, Naomi quickly suggests "Die Moorsoldaten," The Peat Bog Soldiers.<sup>35</sup> The song, which would become hugely popular in Spain during the Spanish Civil War, echoes Jakob's moment of flight, when he ran during the night and dug himself into the soil during the day. The history of this chthonic song leads back to the Holocaust in that it is one of the songs of resistance composed in a camp and even first performed there. By turning to music and song, the inmates reasserted their voice and identity, trying to put up resistance in the face of the Nazi machinery of mass murder. Like Jakob's own life, saved by his love for his sister and the love he receives from Athos and later Michaela, the song testifies to the power of art not to change physical reality but to influence

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**31** Eva Hoffmann, *After such Knowledge: Memory, History, and the Legacy of the Holocaust* (New York: Public Affairs, 2004).

**32** On the lyrical quality of Michaels's novel, see Marita Grimwood, "Postmemorial Positions: Reading and Writing after the Holocaust in Anne Michaels's *Fugitive Pieces*," *Canadian Jewish Studies* 11 (2003): 111–130, 111.

**33** The issue of secondary traumatization is vividly presented in Shane Rosenbaum's Holocaust novel, *Second Hand Smoke* (New York: St. Martin's, 1999).

**34** On the contentious figure of the Muselmann, see Giorgio Agamben, *Remnants of Auschwitz*, trans. Daniel Heller-Roazen (New York: Zone Books, 1999); on how stereotypes about Jewish intelligence play out in Holocaust cinema, see Sander L. Gilman, "'Smart Jews': From *The Caine Mutiny* to *Schindler's List* and Beyond," in *Screening the Past: Film and the Representation of History*, ed. Tony Barta (Westport: Praeger, 1998): 63–81.

**35** How spatial tropes are related to identity in Michaels's novel is discussed in Paul M. Malone, "The Geography of Identity in Anne Michaels's *Fugitive Pieces*," *Philological Papers* 46 (2000): 91–98.

our perception of life and hence our attitude toward the future. It thus resorts to the dual postmodern strategy of displaced memory.

These ethical implications the film version of *Fugitive Pieces* does not fully develop, mostly because it opts to close on a positive outlook. The novel, by contrast, ends on two notes, one of finality and one of hope. The first ending, two thirds through the book, presents Jakob finally at peace. Resulting from the happiness of his love for Michaela, he finally turns to life. In an important gesture, he tries to let go of his pain and longing for his sister Bella and realizes that life triumphs over death. The specter of her absence finally transfigures into a separation that moves beyond mourning:

All the years I felt Bella entreating me, filled with her loneliness, I was mistaken. I have misunderstood her signals. Like other ghosts, she whispers; not for me to join her, but so that, when I'm close enough, she can push me back into the world.<sup>36</sup>

At the same time, Jakob begins to look at both his own life and existence in general as having a purpose beyond keeping the memory of atrocity alive.<sup>37</sup> He and Michaela plan to start a family, and it is his vision of his own children – named after his sister either Bela, if a boy, or Bella, if a girl – that finally allows him to appreciate the precariousness of life. In a reversal of Giorgio Agamben's Holocaust inspired ruminations about "homo sacer," the human being stripped of humanity who has lost all ethical status, Jakob's eventual embracing of humanity, on the individual level, consists of an acceptance of the inherent value of each individual biographical experience. This Levinasian turn to the individuality of existence also drives Judith Butler's recent commentaries on "precarious life," when she notes that an ethical response to violence requires "images that convey the full horror and reality of the suffering."<sup>38</sup> Attesting to this need, Jakob's ability to confront his own anxieties and trauma already anticipates the catalytic role he himself will play in Ben's engagement with displaced memories. It is also to Jakob's own family that he addresses his last words in the novel, in a moment of epiphany that shows he has finally understood that it was his love for Bella, and hence love *per se*, that has kept him alive:

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<sup>36</sup> Michaels, *Fugitive Pieces*, 170.

<sup>37</sup> Michaels's novel, in this and a number of other aspects, mirrors the kind of traumatic reworking through dream strategies also found in David Mitchell, *number9dream* (London: Hodder & Stoughton, 2001); see, for instance, Kathryn Simpson, "'Or something like that': Coming of Age in *number9dream*," in *David Mitchell: Critical Essays*, ed. Sarah Dillon (Canterbury: Gylphi, 2011): 49–76.

<sup>38</sup> Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (London: Verso, 2004), 146.

Bela, Bella: Once I was lost in a forest. I was so afraid. My blood pounded in my chest and I knew my heart's strength would soon be exhausted. I saved myself without thinking. I grasped the two syllables closest to me, and replaced my heartbeat with your name.<sup>39</sup>

One striking feature of this revelation is the fact that Jakob, writer of poetry and hence somebody keenly aware of the elusiveness of semantic reference, here transfigures and displaces his sister into two syllables, into a phonetic entity that materializes only as word and not substance. What gives him strength is not so much his sister, but his evocation of the syllables that stand for her. Tellingly, the passage cited above explicitly denies the importance of cognitive or rational aspects in this development, when Jakob stresses that his rescue came about “without thinking.” It was a purely emotional and corporeal investment in forms of attachment that provided him an escape from utter destitution. In effect it is himself remembering his love for his sister – that is to say, a displacement of this memory – which enables him to survive in the film version of *Fugitive Pieces*.

Yet live is precisely what Anne Michaels, who has called the Holocaust “an unavoidable topic,”<sup>40</sup> does not allow Jakob to do in her novel. Jakob's voice remains silent after the lines just quoted since he and Michaela die in an accident at this point in the novel. In fact, readers were prepared for this event in a short note at the very beginning of the book that, without any title or heading, faces the page with copyright and publisher information. The very placing of this note, at what could be described as the paratextual margin of the book,<sup>41</sup> creates a reality effect that hopes to heighten readerly empathy, seemingly bypassing the displacement and supplement that is fiction.<sup>42</sup> Michaels's novel transcends the limitations of both the book and narrative in order to create a literary space that outlives traumatic memories by displacing them.

While this paratextual blurb informs readers early on about Jakob's death, it does not prepare them for the sudden break in the novel's narrative point of view halfway through the text. Without so much as a comment, the book moves from

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<sup>39</sup> Michaels, *Fugitive Pieces*, 195.

<sup>40</sup> Gordon Bölling, “The Gradual Instant: An Interview with Anne Michaels,” *Zeitschrift für Kanada-Studien* 29.2 (2009): 147–155, 151.

<sup>41</sup> Jacques Derrida, “The Parergon,” *October* 9 (1979): 3–41. What Derrida has described as the elusive parergon extends the more structuralist approach to this phenomenon, famously outlined in Gérard Genette, *Paratexts: Thresholds of Interpretation* (Cambridge: Cambridge UP, 1997):

<sup>42</sup> On the notion of the Derridean supplement in recent Holocaust films, see Sue Vice, “Supplementing Shoah: Claude Lanzmann's *The Karski Report* and *The Last of the Unjust*,” in *Holocaust Cinema in the Twenty-First Century: Memory, Images, and the Ethics of Representation*, eds. Oleksandr Kobrynsky and Gerd Bayer (New York: Wallflower-Columbia UP, 2015): 41–58.

Jakob's first-person narrative to what initially is a second-person narrative, addressed by Ben to Jakob. The readerly reliance on narrative reliability is thus disappointed, and careful readers will furthermore notice that Ben's ensuing attempts at recreating from the remaining documents a narrative of Jakob's life produce results that are substantially flawed and frequently driven by speculation. Yet Ben's struggle to capture the essence of Jakob's life nevertheless brings him to the realization that this very bond between people, which closely binds him both to Jakob and his history, constitutes the most important and beneficial aspect of human existence. Ben learns through working on restoring Jakob's life narrative, a task at which he largely fails,<sup>43</sup> that the emotional ties between people are what matters most.

Reading about Jakob's love for Bella and Michaela, just as the readers of *Fugitive Pieces* do, Ben reconsiders his own attitude to his wife and the people closest to him. The novel's final section, covering the last two or so pages, begins with Ben imagining in Greece what his wife Naomi is doing at the very moment in Canada and a little later turns into a direct address to a second-person listener by Ben, explicitly aimed at the physically absent yet spectrally omnipresent Naomi. Tellingly, it turns to the power of narrative: "Naomi, I remember a story you told me."<sup>44</sup> In the novel's last sentence, Ben's thoughts have turned back to his parents, whose traumatic memories of the Holocaust have shaped both his life and his relationship with Jakob and Naomi. Ben's displaced memory work, even though it suffers from various inaccuracies and misunderstandings, turns into a didactic moment of ethical awakening and at the same time keeps the story of Jakob's traumatic childhood alive.

Let me conclude my comments about Anne Michaels's *Fugitive Pieces* by a further comparison of the novel and the film and by commenting on the losses and gains of the adaptation. The novel can serve as an example of what I have called displaced memory, the kind of postmodern strategy of combining the elusiveness of semiotic processes with the omnipresent need to keep the flow of history alive across both time and place. The resistance of memory, its refusal to go away or be denied, the fact that while some wood burns, other pieces will float away: all these facets of the mnemonic process, as it plays out individually, via personal contact and in the more impersonal engagement between reader and book, instill a principle of hope that, surprising as it may

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**43** I discuss the text's metafictional postmodernity in Gerd Bayer, "Der Holocaust als Metapher in postmodernen und postkolonialen Romanen," in *Literatur und Holocaust*, ed. Gerd Bayer and Rudolf Freiburg (Würzburg: Königshausen & Neumann, 2009).

**44** Michaels, *Fugitive Pieces*, 294.



be, emanates from the very elusiveness of the semiotic process that lies at the deconstructed heart of the postmodern project. It is the reassurance that Derrida, in *Cinders*, finds in the ashes of the Holocaust, in the force of dissemination visible in this token of non-absence, which reenergizes Jakob and Ben in their search for memory. This ghostly presence of an absolute loss transcends its absence; and it is this potentially performative force of the act of remembering that instills it with ethical rigour. After all, as Anne Whitehead points out, memory always invariably relies on active acts of forgetting.<sup>45</sup>

The film version does not present the complex debate about historiography and memory that fills many pages of Michaels's novel, yet Jakob's voice-over and the numerous scenes where characters read journals, testimonies, or books about the past allow history to be present as a textual, medialized entity. The film furthermore resorts to strong contrast of color and light in presenting Jakob's painful experiences as a child and his happiness with Michaela.<sup>46</sup> This visual indulgence of exotic and romantic landscapes remains at odds with the overall theme. It is indeed a little disconcerting to encounter such joyful sexuality in a film that, at heart, deals with the traumatizing effects of the Holocaust; yet it is precisely through the celebration of unrestricted love, both emotionally and sexually, that *Fugitive Pieces* points a pathway for the future. The displacement of Jakob's traumatic memories to the sunshine of Greek coastlines still serves the purpose of disseminating history. While Derridean dissemination tends to emphasize the corrosive nature of any form of communication, where information is contaminated by desire and the sheer lack of accuracy that accompanies any form of signification, 'to disseminate' nevertheless carries with it a distributive force: it does pass on information, it does reach an audience, and it does make it next to impossible to be met with a totality of disinterestedness. The various elements of Anne Michaels's *Fugitive Pieces*, in particular in its cinematic form, also stresses this aspect; and it does so through forms of what I have discussed here as displaced memory.

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<sup>45</sup> Whitehead draws explicitly on Harald Weinrich's discussion of the Greek muse of forgetting, Lethe; see in particular the conclusion in Anne Whitehead, *Memory* (New York: Routledge, 2008).

<sup>46</sup> For generic connections to the pastoral tradition, see Donna Coffey, "Blood and Soil in Anne Michaels's *Fugitive Pieces*: The Pastoral in Holocaust Literature," *Modern Fiction Studies* 53.1 (2007): 27–49. The connection is also discussed, on a much broader textual base, in Simon Schama, *Landscape and Memory* (London: HarperCollins, 1995).

Valentina Adami

# Mythic and Fairy-Tale Elements in Doris Lessing's *Mara and Dann*

## 1 Myths and fairy tales in postmodern fiction

One of the defining traits of postmodernism is the idea of rewriting the old to make it new. Let us think, for instance, of Harold Bloom's "anxiety of influence,"<sup>1</sup> Jean-François Lyotard's "incredulity toward metanarratives,"<sup>2</sup> and his definition of postmodernity as "the pastime of an old man who scrounges in the garbage-heap of finality looking for leftovers,"<sup>3</sup> Jean Baudrillard's simulacra<sup>4</sup>, Hans-Georg Gadamer's elaboration of Heidegger's "hermeneutic circle,"<sup>5</sup> and Julia Kristeva's notion of intertextuality.<sup>6</sup> As Daniela Carpi has highlighted, contemporary literature is characterised by "the problem of creative originality, the sense of the literary tradition as burden and opposition, the awareness of one's own belatedness and the impossibility of saying anything new."<sup>7</sup> Therefore, she argues, "we may consider the main feature of postmodernism to be its relationship with tradition. Tradition is confronted, challenged, subverted and revised, in an agonistic struggle to impose one's own perspective."<sup>8</sup> Accordingly, our culture is pervaded by reboots, rewritings and reinventions of old stories – first and foremost of myths and fairy tales, which are by their very nature meant to be retold and reinterpreted: "[t]he fairy tale, born as an oral process

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1 Harold Bloom, *The Anxiety of Influence: A Theory of Poetry* (New York: Oxford University Press, 1973).

2 Jean-François Lyotard, *The Postmodern Condition: A Report on Knowledge*, trans. Geoff Bennington and Brian Massumi (Manchester: Manchester University Press, 1984), xxiv.

3 Jean-François Lyotard, *The Differend: Phrases in Dispute*, trans. Georges Van den Abbeele (Minneapolis: University of Minnesota Press, 1988), 136

4 Jean Baudrillard, *Simulacra and Simulation*, trans. Sheila Glaser (Ann Arbor: University of Michigan Press, 1994).

5 Martin Heidegger, *Being and Time* [1927], trans. John Macquarrie and Edward Robinson (London: SCM Press, 1962); Hans-Georg Gadamer, "Hermeneutics and Social Science," *Cultural Hermeneutics* 2.4 (1975): 307–316.

6 Julia Kristeva, "Word, Dialogue, and Novel," [1966] in *Desire in Language: A Semiotic Approach to Literature and Art*, trans. Thomas Gora et al. (New York: Columbia University Press, 1980), 64–91.

7 Daniela Carpi, *Fairy Tales in the Postmodern World. No Tales for Children* (Heidelberg: Winter, 2016), 7.

8 Carpi, *Fairy Tales in the Postmodern World*, 16.

based upon formulaic repetitions, becomes in contemporary writers a typically literary process founded upon the play with tradition.”<sup>9</sup>

In *Why Fairy Tales Stick*, Jack Zipes tried to answer the question in his title by “using a biological analogy to make sense of the great tradition of the literary fairy tale.”<sup>10</sup> Zipes argued that, as a product of human culture, fairy tales are generationally transmissible just like genes:

the literary fairy tale has evolved from the stories of the oral tradition, piece by piece in a process of incremental adaptation, generation by generation in different cultures of people who cross-fertilized the oral tales with the literary tales and disseminated them. If we consider that tales are mentally and physically conceived by human beings as material products of culture, then it is possible to analyze how special forms of telling originated as species or what literary critics call genres. [...] I likened the evolutionary process of the specific form of the oral wonder tale and the literary fairy tale to a process of contamination and contagion – the motifs and plots of stories spread like viruses that eventually formed a clearly identifiable genre, species, or virus that we generally call the fairy tale.<sup>11</sup>

The idea that culture can be transmitted across generations through processes of replication similar to those of DNA was first theorised by evolutionary biologist Richard Dawkins, who in 1976 coined the term “meme” to indicate “a unit of cultural transmission” that “propagate[s] [itself] in the meme pool by leaping from brain to brain via a process which, in the broad sense, can be called imitation.”<sup>12</sup> The model of the meme is very useful to examine the peculiar style adopted by Doris Lessing in her two Mara-and-Dann novels, *Mara and Dann: An Adventure*<sup>13</sup> and *The Story of General Dann and Mara’s Daughter, Griot and the Snow Dog*<sup>14</sup>, where she does not only replicate fairy-tale and mythic elements in terms of characters and events (the orphaned brother and sister, the ogre figure, the old lady as a helper, the final recognition...), but also mimics the language and structure of oral tales.

As a literary appropriation of the traditional folk tale, in fact, the fairy tale is a “transitional genre” that bears the traces of oral narratives, folklore and cultur-

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**9** Carpi, *Fairy Tales in the Postmodern World*, 11.

**10** Jack Zipes, *Why Fairy Tales Stick: The Evolution and Relevance of a Genre* (New York: Routledge, 2006), 3.

**11** Zipes, *Why Fairy Tales Stick*, 3

**12** Richard Dawkins, *The Selfish Gene* [1976], 30th anniversary edition (Oxford: Oxford University Press, 2006), 192.

**13** Doris Lessing, *Mara and Dann: An Adventure* [1999] (HarperCollins ebooks, 2007), further references in the text, abbreviated as MD.

**14** Doris Lessing, *The Story of General Dann and Mara’s Daughter, Griot and the Snow Dog* [2005] (HarperCollins ebooks, 2007), further references in the text, abbreviated as SG.

al performance.<sup>15</sup> Its typical flatness of language and simplicity of structure favour the suspension of disbelief, allowing readers to believe the impossible. In his article on the importance of fairy tales for contemporary fiction, Michel Lincoln praises the power of such flatness for yet another reason, arguing that “the deceptively simple language and structure of fairy tales actually allows for other elements – from the sexual to the philosophical – to stand out.”<sup>16</sup> This simplicity, which in children’s tales is instrumental to letting the moral message stand out, is used in contemporary fiction to turn characters into symbols to represent complex social or political issues: as Jack Zipes has highlighted,

the meaning of the fairy tales can only be fully grasped if the magic spell is broken and if the politics and utopian impulse of the narratives are related to the socio-historical forces which distinguished them first as a pre-capitalist folk form (*Volksmärchen*) in an oral tradition and which then gave rise in Germany at the end of the 18th century to a bourgeois art form (*Kunstmärchen*) that has its own modern literary tradition.<sup>17</sup>

This is particularly true for dystopian rewritings such as Doris Lessing’s *Mara and Dann*, which forces us to confront the contemporary power structures that create the conditions that could lead to the terrifying futures envisioned in the novels. Through a double process of unveiling and revisioning, Lessing offers us a revised version of the myths and fairy tales that form our collective past, as well as an experience of a potential future. As inherited fictions, or memes, fairy tales are both fixed in their closed narrative structure and mutable in their openness to infinite metamorphoses across time and space. It is precisely this duality that allows the fairy tale to respond to cultural shifts and be at the same time universal and culture-specific. Postmodern rewritings thus combine the universal and socialising function of traditional fairy tales with reinventions and adaptations that make them applicable to the contemporary age: they both unveil the socio-historical forces and power structures at the basis of traditional fairy tales and create new narratives to challenge those forces and power structures.

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<sup>15</sup> See Cristina Bacchilega, *Postmodern Fairy Tales: Gender and Narrative Strategies* (Philadelphia: University of Pennsylvania Press, 1997), 3.

<sup>16</sup> Lincoln, “Follow the Breadcrumbs: Why Fairytales Are Magic for Modern Fiction,” *The Guardian* (May 13, 2016), available at: <https://www.theguardian.com/books/booksblog/2016/may/13/follow-the-breadcrumbs-why-fairytales-are-magic-for-modern-fiction> (last access February 11, 2019).

<sup>17</sup> Jack Zipes, “Breaking the Magic Spell: Politics and the Fairy Tale,” *New German Critique* 6 (1975): 116–135, 116.

While Jack Zipes has underlined the “humanistic role” of traditional fairy tales, whose goal was “to humanize society by revealing the dangers of a growing reification,”<sup>18</sup> Christina Bacchilega has pointed out that postmodern rewritings are characterised by “anti-humanistic conceptualizations of the subject,”<sup>19</sup> whose identity is deconstructed and reconstructed through narrative strategies that “doubl[e] as both deconstructive and reconstructive mimicry.”<sup>20</sup> The binary oppositions and the patriarchal values on which classical fairy tales were based are dismantled to give way to new characters whose identities are unstable and continuously redefined in the course of the narrative: “[t]he characters of the postmodern fairy tales lose their classical limiting flatness in favour of a new roundness that makes witches less wicked, princesses less flawless, and princes less brave.”<sup>21</sup>

Marleen S. Barr’s notion of “feminist fabulation” – which she defines as “feminist fiction that offers us a world clearly and radically discontinuous from the patriarchal one we know, yet returns to confront that known patriarchal world in some feminist cognitive way”<sup>22</sup> – provides an interesting starting point to analyse Lessing’s novels. By rewriting patriarchal master narratives, feminist fabulations reduce the distance between high and popular literature, creating a “postmodern canonical space for feminists.”<sup>23</sup> Furthermore, they undermine traditional notions of power and subjectivity and reveal the mutually constitutive relationship between power and knowledge<sup>24</sup> by proposing new myths, stories and histories that create alternative knowledge about past, present and future.

Fairy tales lie at the core of the process of storytelling: as Carol Bearse has demonstrated in her study on “The Fairy Tale Connection in Children’s Stories,”<sup>25</sup> when children are asked to write stories, they tend to borrow various elements from the fairy tales they know. What is particularly interesting is that they do not only borrow content-elements such as magic, children lost in the woods,

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**18** Zipes, *Breaking the Magic Spell: Radical Theories of Folk and Fairy Tales* (Lexington: The University Press of Kentucky, 2002), 74.

**19** Bacchilega, *Postmodern Fairy Tales*, 19.

**20** Bacchilega, *Postmodern Fairy Tales*, 141.

**21** Raffaele Cutolo, *Into the Woods of Wicked Wonderland: Musicals Revise Fairy Tales* (Heidelberg: Winter, 2014), 15.

**22** Marleen S. Barr, *Feminist Fabulation: Space/Postmodern Fiction* (Iowa City: University of Iowa Press, 1992), 10.

**23** Barr, *Feminist Fabulation*, 12.

**24** See Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Random House, 1977), 27.

**25** Carol I. Bearse, “The Fairy Tale Connection in Children’s Stories: Cinderella Meets Sleeping Beauty,” *The Reading Teacher* 45.9 (1992): 688–695.

giants and knights, but also structures and formulas, “the cadences, rhythms, and particular phrases characteristic of fairy tales,”<sup>26</sup> and they often do so unconsciously. Lessing herself describes her experience of writing *Mara and Dann* as “unconscious writing,” claiming that she “dreamt every night what [she] was going to write the next day.”<sup>27</sup> The result of this process of “unconscious writing” is a novel in which mythic and fairy-tale elements combine to form a new creation story that describes the process of community building through the adventures of two orphaned siblings who grow up in a post-apocalyptic and post-technological world struck by an Ice Age which has caused water and food shortages, power struggles and unremitting violence. In this sense, Lessing’s novels resemble myths of creation, the narration of “a sacred history,” of “how something was produced, began *to be*,”<sup>28</sup> mimicking the themes, language and structure of fairy tales and oral story-telling to portray both the search for identity of the protagonists and their role in the community-building process.

The use of mythic and fairy-tale elements<sup>29</sup> allows postmodern novelists to “operate outside of real or invented rules”: “With the wave of a wand, the reader is in a space where the surreal, the gothic and the weird can all thrive – and maybe will there be a trail of breadcrumbs to lead you out again.”<sup>30</sup> This is particularly true for postmodern rewritings that interweave different literary genres, such as Doris Lessing’s *Mara and Dann* novels.<sup>31</sup> While it is difficult to categorize

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26 Bearse, “The Fairy Tale Connection,” 693.

27 Doris Lessing, “Mara and Dann,” Interview for “Web of Stories – Life Stories of Remarkable People” (published posthumously on April 19, 2017), available at: <https://www.youtube.com/watch?v=jaqCeKYXrMM> (last access February 11, 2019).

28 Mircea Eliade, *Myth and Reality* [1963], trans. Willard R. Trask (Long Grove: Waveland Press, 1998), 5–6.

29 In my analysis, I will consider mythic and fairy-tale intertexts together, keeping in mind the distinction posited by folklorists and taken up by Sharon Rose Wilson, according to which fairy tales are “wonder stories” while myths are “stories believed to be true and sacred, stories that are etiological explanations of creation and the world.” Sharon Rose Wilson, *Myths and Fairy Tales in Contemporary Women’s Fiction* (New York: Palgrave Macmillan, 2008), 2. However, let us also remember that in ancient Greece, the word “myth” (*mythos*) referred to stories that tried to explain the origin of the world in an imaginative way, while the “true stories” belonged to the realm of “logos,” inspired by reason. On this, see also: Jack Zipes, *Breaking the Magic Spell* (Lexington: University Press of Kentucky, 2002); Carpi, *Fairy Tales in the Postmodern World*, 21–24; Mircea Eliade, *Myth and Reality*, trans. Willard R. Trask [1963] (Long Grove: Waveland Press, 1998), 5–10.

30 Lincoln, “Follow the Breadcrumbs.”

31 Although this essay will focus mainly on the first novel for what concerns the description of specific episodes and examples from the plot, most of the general comments regarding the presence of mythic and fairy-tale elements are actually valid for the whole duology.

Lessing's duology into a single genre, the predominant aspects are indeed the dystopian and the fantastic, whose forms combine to destabilize readers' assumptions about fairy tales, storytelling and the world we live in. For example, Ester Gendusa defines *Mara and Dann* as "an adventure,"<sup>32</sup> not only because the word "adventure" is in the title but also because the novel represents a quest; Sharon R. Wilson defines it as "an utopic text," that is, "a combination of utopian and dystopian features that satirize civilizations of past, present, and future while revealing multicultural greediness and blindness"<sup>33</sup>; Tom Sperlinger focuses on Lessing's "didactic style" and on her "critique of formal education."<sup>34</sup> Finally, Lessing herself in the "Author's Note" defines it as "a reworking of a very old tale, [...] found not only in Europe but in most cultures in the world."<sup>35</sup> It is precisely on this "reworking," which dismantles the authority of the text and undermines readers' certainties, that I would like to focus my analysis.

## 2 Mythic and fairy-tale elements in *Mara and Dann*

As Anna Wolf declares in *The Golden Notebook*, "It's a question of form."<sup>36</sup> And this search for the best literary form to shape stories has been a constant pursuit in Doris Lessing's career, particularly in her later works, in which she was very much inspired by the form of oral storytelling.<sup>37</sup> In the post-apocalyptic world of *Mara and Dann*, oral transmission is the only way to preserve memory and achieve the knowledge needed to survive, since writing no longer exists. Accordingly, the only form the narrator can choose for Mara and Dann's story is that of oral tales, namely, a pre-novelistic, fairy-tale structure that mimics the language, patterns and techniques of oral narratives, using "popular culture intertexts, especially myths, fairy tales, and folklore, and the characterization, images, themes,

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**32** Ester Gendusa, "Doris Lessing's Fiction: Literature as Commitment," *Altre Modernità* 12 (2014): 129–139, 135.

**33** Sharon R. Wilson, "Introduction" to *Women's Utopian and Dystopian Fiction*, ed. Sharon R. Wilson (Newcastle upon Tyne: Cambridge Scholars Publishing, 2013), 3.

**34** Tom Sperlinger, "Radical Pedagogy in Doris Lessing's *Mara and Dann*," *Critique: Studies in Contemporary Fiction* 58.3 (2017): 300–311.

**35** Doris Lessing, "Author's Note," in *Mara and Dann*, vii.

**36** Doris Lessing, *The Golden Notebook* (London: Flamingo, 1993), 418.

**37** See Kevin Brazil, David Sergeant and Tom Sperlinger, "Introduction" to *Doris Lessing and the Forming of History*, eds. Kevin Brazil, David Sergeant and Tom Sperlinger (Edinburgh: Edinburgh University Press, 2016), 1–9.

structures, and techniques (e. g., magical realism) associated with them.”<sup>38</sup> Furthermore, as Lamia Tayeb has noted, there is a connection between Lessing's novel and traditional Arabian Nights tales:

the novel is woven into a very rich narrative texture comprising different, mostly pre-novelistic, pre-realistic fictional genres: it partakes of the fairy-tale in the line of an Arabian Nights marvellous tale and of the folktale in the line of an oral tale-telling; it also shades into legend, romance, adventure story, and travel account. [...] The text is manoeuvred as a narrative kaleidoscope liable to take the reader from one fictional genre to another.<sup>39</sup>

Set in a distant future during an Ice Age, *Mara and Dann* is “an attempt to imagine what some of the consequences might be when the ice returns and life must retreat to the middle and southern latitudes”<sup>40</sup>: Europe (now known as “Yerrup”) and the whole Northern Hemisphere are covered by glaciers, the Mediterranean Sea (the “Middle Sea”) has dried up, and Africa (“Ifrik”) is inhabited by a few primitive tribes that fight for survival against drought and dangerous animals, as well as against each other. The novel opens with two young children being abducted from their village, given new names and taken to a remote Rock People's village to be protected from their family's enemies. During the kidnapping, four-year-old Dann is traumatised for life by a “bad man” named Garth, a fairy-tale-like ogre figure who will hauntingly return throughout the novel to scare Dann, either as a ghost in Dann's dreams or as his “alter ego” Kulik, who is actually the main “ogre” in the story. Even more hauntingly, Garth has a “good” brother that looks exactly like him and tries to help Mara and Dann: this confuses and further traumatises little Dann, who develops a phobia for look-alikes, a phobia that will re-emerge when they encounter a tribe of people who all look the same (clones?).

On the other hand, seven-year-old Mara immediately takes on the role of carer for her little brother: like Gretel in “Hansel and Gretel,” she tries to reassure him, keeping her eyes open to memorise what she sees and to make some sense of it.

She put her arms tight around him, whispering, “Hush, shhh, you must be quiet.” And then, using a threat that frightened her too, “Quiet, or that bad man will come.” And he at once went quiet, and trembled as he clutched her. The man who had brought in the little boy had not gone away. He was whispering with someone out in the darkness. And then

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<sup>38</sup> Wilson, *Myths and Fairy Tales*, 71.

<sup>39</sup> Lamia Tayeb, “Arabian Nights Fairy-Tale Turned Postcolonial Parable: Narrative Manoeuvres in Doris Lessing's *Mara and Dann*,” *Doris Lessing Studies* 28.2 (2009): 18–25, 19.

<sup>40</sup> Lessing, “Author's Note,” vii.



this someone came in, and she almost screamed, for she thought this was the bad man she had threatened her brother with; but then she saw that no, this man was not the same but only looked like him. (MD, 2)

When they finally reach the Rock People's village (also thanks to a seemingly magical "cart bird"), Mara and Dann are taken in and raised by Daima, a kind old lady from their tribe, the Mahondis. Daima is not only their protector, but also a "Memory," entrusted with recording precious knowledge and passing it on to the next generations. Observing and remembering are very important skills in a world where all knowledge is transmitted orally, and Mahondi children are taught these skills through a game, "What did you see?," thanks to which Mara learns the importance of observation and develops the skills that will help her survive through many adversities. The Rock People's village is also the place where Kulik, the ogre, appears for the first time ("This is Kulik,' Daima said. 'He is the head man here'," MD, 39): he will then constantly haunt Mara and Dann throughout their journey, and only towards the end of the novel will he be defeated, although his death is never really confirmed:

Kulik, always Kulik. How strange it was that again and again all through her life there was Kulik, the danger in a place, or in a group of people – her enemy and Dann's too. Now she thought, I'm going to kill him. I want him dead. This is the time and this is the place. And then never again will I be looking over my shoulder, or see someone I seem to know, and he turns his head and I see Kulik...

[...] Mara was so full of hatred that she could have rushed at him with bare hands, but she threw her knife, aiming at his neck. It struck his shoulder and fell clattering. [...]

"I felt it touch," said Dann.

"Him, or his clothes?"

"Flesh – I think."

"Then we'd better move fast," said Mara. [...]

Dann and Mara conferred, with their eyes, and then Dann told what had happened. He said the poisoned knife had only just touched flesh, but probably that was enough to kill. (MD, 396)

Kulik's spectral presence will thus loom over them till the very end of the novel:

Mara looked at Dann. He was looking at her. Both were thinking, they knew, of Kulik, who might not be dead. And Mara was thinking that now, just as often before, vague and possible dangers were taking a definite shape – Kulik, who was going to haunt them both – because of their uncertainty. (MD, 401)

During Mara and Dann's stay at the Rock People's village, Kulik is very cruel and threatens them several times, for example by almost drowning Dann in the river:

Kulik was holding him under. "Stop it," said Daima, and Rabat said nothing but climbed down into the water and pulled Dann up, coughing and spluttering. Kulik only laughed, showing those big yellow teeth. (MD, 42)

Or by humiliating Mara when she asks him to let her only milk beast mate with his, so that she will produce more milk:

"Down on your knees, Mahondi brat, down on your knees and beg."

At first Mara was not sure what he wanted her to do, but she dropped to her knees in the dust, and when she looked at him she could hardly see through her tears.

"Now bend right down, three times," said Kulik..

Mara had to think again, but she bent down once, twice, three times, trying to keep her hair out of the dust. On the last time she felt Kulik's big hand on her head, grinding her face down into the dirt. (MD, 52)

As desertification and drought make life more and more difficult at the Rock's people village, most inhabitants leave in search of food and water, and the village empties out. Daima is too old to travel and Mara decides to stay with her. Dann leaves without informing Mara, but soon after Daima's death he comes back and takes his sister with him. From this moment onwards, the novel describes "the trials and tribulations of the long journey north,"<sup>41</sup> during which the siblings have to overcome several dangers, cross hostile and war-ravaged territories, survive famine and drought, "in and out of the clasp of pimps and brothel keepers and up wide rivers like the Cong which is infested with water dragons."<sup>42</sup> Occasionally, someone helps Mara and Dann, such as the Mahondi slaves who shelter Mara in their "Kin" in Chelops, a city run by the dissolute tribe of the Hadrons, who prosper thanks to drug trade. There, they spend several months, but while Mara experiences an almost "comfortable" life for the first time, Dann sinks to the depths of addiction in an abandoned enclave called The Towers.

As Lamia Tayeb has noted, the episode of the kin, which takes up chapters six and seven of the novel, is full of mythological references: its "mythic feel" is "suggested by the names of the characters, their mode of life and the compact community they form."

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<sup>41</sup> Rajat Chaudhuri, "*Mara and Dann*: Doris Lessing's futuristic novel embodies a journey away from our dismal world," *Scroll.in* (2017), available at: <https://scroll.in/article/862554/mara-and-dann-doris-lessings-futuristic-novel-embodies-a-journey-away-from-our-dismal-world> (last access December 1, 2018).

<sup>42</sup> Chaudhuri, "*Mara and Dann*."

Apart from the slightly modified mythic names (Juba for Jupiter, Meryx for Mercury, Orphne for Daphne, Kim for Hera), the names Ida, Candace, Dromas and Larissa have a clear mythological ring. The threatening and dark towers are also a clear echo of Hades. The characters live within a self-enclosed, enchanting universe on the fringes of Hades: their world is an easy-going universe, where they court one another, suffer the pangs of jealousy, and fall in and out of love. In this respect, the episode clearly appropriates the Classical myth framework.<sup>43</sup>

Mara tries to warn the people from the Kin that their enchanted world is doomed to fail, because the rainy seasons are getting shorter and shorter, crops more and more uncertain, and stronger tribes may overturn the Hadrons and make the Mahondi slavery much harsher than it is. However, nobody believes her, so Mara and Dann decide to leave Chelops by themselves and continue their journey northwards.

Faithful to her “Gretel” role, Mara repeatedly protects and saves her little brother. In the Brothers Grimm’s fairy tale, the siblings are abandoned in the forest by their parents (actually, their father and their stepmother), who cannot provide for them during a period of starvation, and they are trapped by a witch in the Gingerbread house. Gretel saves her brother by pushing the witch in the oven and freeing him from the cage, and even if at first they cannot find their way home, they are finally reunited with their father in a typical “happily ever after” fairy-tale conclusion. Mara and Dann’s “Gingerbread House” is their hunger, which “traps [them] through their need and greed,” and their journey parallels that of Hansel and Gretel, although it is actually much harder:

They must battle ogres, drought, floods, marshes, wars, lizards, water stingers, ice, spiders and other creatures. They lose their names, cultures, and families [...] and later go on walking and taking such often broken contrivances as sky skimmers, carrying chairs, cart birds, carriages, coaches, and boats throughout the *Mara* book.<sup>44</sup>

Unlike the fairy tale, where the siblings are loyal to each other, Dann gambles Mara away, basically selling her to the witch, represented by “Mother Dalide,” the owner of the brothel where Mara is somehow protected. Despite Dann’s frequent betrayals, Mara’s protectiveness keeps guiding both her feelings and her actions (“I didn’t say I am not angry. But he is my brother”; MD, 319):

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<sup>43</sup> Tayeb, “Arabian Nights,” 19.

<sup>44</sup> Sharon R. Wilson, “Storytelling in Lessing’s *Mara and Dann* and Other Texts,” in *Women’s Utopian and Dystopian Fiction*, ed. Wilson, 23–29, 26.

Time and again she sets out into mortal danger to rescue Dann, who, for his part, remains flat and does not mature much beyond the terrified little boy of the first chapter. Opportunistic and self-serving, he abandons Mara repeatedly and at one point even gambles her into slavery. But Mara's loyalty [...] is unshakable.<sup>45</sup>

In a cosmic cycle of rise and fall, Mara and Dann's frustratingly repetitive misadventures lead them in circles over and over again: as they make their way north through hot deserts and villages full of spies, they are separated many times but always manage to find each other and continue their journey together. Mara herself defines their story as a "slog of endurance" (MD, 321): these words may also apply to the novel itself, and some reviewers have used them to criticise the "epic" proportions of the book, claiming that "at more than 400 pages, it feels inflated, repetitious and strangely devoid of surprise,"<sup>46</sup> or that the story "quickly devolves into a series of repetitious and annoyingly predictable encounters with evil villains, kindly benefactors and unforgiving weather."<sup>47</sup> However, I think that this correspondence between form and content actually adds to the significance of the novel, especially to its fairy-tale quality, since repetitiveness and circularity are common narrative devices in fairy tales.

Following the footsteps of *The Golden Notebook*, *Mara and Dann* represents Lessing's attempt to "shape a book which would make its own comment, a wordless statement,"<sup>48</sup> and, as such, it also "testifies to her artistic tendency to pack shape with meaning"<sup>49</sup> and "illustrates Lessing's creative engagement with narrative form."<sup>50</sup> In fact, form and content go hand in hand in *Mara and Dann* not only in terms of repetitiveness and circularity, but also because of an intricate pattern of progress and regression:

Lessing makes an artistic leap backward into pre-novelistic narrative genres through the structure of the narrative kaleidoscope, which is curiously made the artistic vehicle of a temporal leap forward into futurity. This pattern is further complicated since the narrative aligns the movement forward in time to a reverse move back in human development. [...]

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45 Mona Knapp, "Review" of *Mara and Dann* by Doris Lessing, *World Literature Today* 74.2 (2000): 366.

46 Michael Upchurch, "Back to Ifrik," *The New York Times* (January 10, 1999), available at <http://movies2.nytimes.com/books/99/01/10/reviews/990110.10upch.html> (last access February 11, 2019).

47 Michiko Kakutani, "Mara and Dann: Flat-Footed Lessing," *The New York Times* (January 26, 1999), available at <https://archive.nytimes.com/www.nytimes.com/books/99/01/24/daily/lessing-book-review.html> (last access February 11, 2019).

48 Doris Lessing, "Preface" to *The Golden Notebook*, 13.

49 Tayeb, "Arabian Nights," 19.

50 Tayeb, "Arabian Nights," 19.

The human civilizational regression on the level of narrative context and meaning is matched by a “generic regression” on the level of narrative form.<sup>51</sup>

Such shifts between past and future, backward and forward movements, evolution and devolution highlight the contradictions inherent in human history, which is itself a repetitive and circular story of growth and decay, whereby humans never learn from the mistakes of the past.

The “exotic” vocabulary used by Lessing to describe contemporary animals and objects that have survived in the world of Mara and Dann further reinforces the idea of the circularity of history and the perception of an ambivalent relation between remembering and forgetting: “milk beasts” (MD, 60) are clearly cows, “sun-traps” (MD, 231) are solar panels, the magic-like, transparent material they identify as “not-glass” (SG, 138) is plastic, the “glass that showed them to themselves” (MD, 282) is a mirror, and so on. Such estranging language does not only distance Mara and Dann’s post-technological world from our own, while at the same time making it recognisable, but it also makes clear that humans have forgotten both the names of such objects and the technology needed to produce them.

Everywhere they go, Mara and Dann find themselves stepping through the detritus of previous, and much more advanced, civilizations. In *Chelops*, for example, Larissa gives lessons to the young women of the Kin, telling them “tales ‘from long ago, no one knows how long’ [...] from a medical textbook found in ancient records” (MD, 166). Since writing is a “technology” that is no longer in use, these stories can now only be preserved through oral transmission: Flaubert’s novel has become the tale of “Mam Bova, who hated her husband, tried to seduce a handsome youth, who rejected her, so she took poison and died” (MD, 166); Anna Karenina is “a beautiful, powerful woman called Ankrena, who similarly hated her husband, left him for a handsome soldier, and committed suicide” (MD, 166); *Madame Butterfly* is “Mam Bedfly, [...] a young slave girl, in love with a sailor from across the sea [...] but the point was, feeling abandoned, she killed herself” (MD, 166). When Larissa narrates the “old myth about a girl called Jull and a boy called Rom, from different clans,” who “fell in love and killed themselves because the clans disapproved” (MD, 166), the girls are immediately able to connect this story to their own times, thus confirming what was previously said about the circularity of history: “This tale provoked much more discussion than yesterday’s, for someone said, ‘Like Mahondis and

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51 Tayeb, “Arabian Nights,” 20–21.

Hadrons,' and they shuddered at the idea of being in love with an ugly Hadron" (MD, 166–167).

Throughout the novel, readers are teased by suspicions that Mara and Dann are special and predestined for something big, as both their enemies and helpers are surprisingly well-informed about their movements, and several people seem to be constantly monitoring them. When they finally reach "the Centre," their destination near the Middle Sea, it is revealed that they are the last prince and princess of the former-ruling Mahondi tribe. This typical fairy-tale pattern, in which "a humble foundling's illustrious origins are eventually revealed after much hardship,"<sup>52</sup> further reinforces the folklore-like character of the novel. In particular, according to Lamia Tayeb, "the royal identity of the protagonists, Mara and Dann, and the Eastern ring of their real names disclosed at the end of the novel as princess Shahana and prince Shahmand, are important indications of the kinship of Lessing's reworked story to an Arabian Nights tale."<sup>53</sup>

At the Centre, Mara and Dann are faced with an invitation that clarifies the expectations surrounding their arrival: they are asked to bear children together to re-establish the Mahondi rule, a request that Dann seems willing to accept but Mara firmly rejects.

"You two are the last, the very last. You are the only two Royals of the right age."

"Wouldn't any two young Mahondis do?"

"Real royalty. We need the Royal blood. Your child would revive the Royal house, the Royal family. When people know there is a Royal couple back in the Centre, and Royal children, then they would support us, as they did in the past." [...]

"You will think about our plan," ordered Felix.

"We'll think about it," said Mara and stood up, and so did Dann, and they went to their rooms. There Dann said, violently, "They want me as a stud, and you as a brood animal."

"That's about it," she said.

Then his mood changed and he said, "I rather fancy the idea of being married to you, Mara. And all our little ones running about."

"I would say they are a little insane," said Mara, "a little mad."

"Perhaps we shouldn't be too quick to see everything as mad." She did not know what to say; she felt apprehensive. (MD, 374–376)

The theme of incest links the novel both to fairy tales and to mythology, where (often involuntary or inexplicit) incestuous relationships and marriages are common. Let us think, for instance, of Perrault's *Donkeyskin* or the Brothers Grimms' *The Handless Maiden*, or of Greek myths such as Zeus and Hera (who were mar-

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52 Upchurch, "Back to Ifrik."

53 Tayeb, "Arabian Nights," 19.

ried siblings, children of Cronus and Rhea, who were brother and sister themselves), Byblis and Caunus (whose story was notably told by Ovid), as well as, obviously, Oedipus (popularised by Freud's theory of the Oedipus complex). In particular, the theme of brother-and-sister incest is often related to stories about the origin of the human race or of a dynasty, just like in the case of Mara and Dann, who are asked to play a kind of Adam-and-Eve role of "First Couple."<sup>54</sup>

The first book ends with yet another fairy-tale motif: after they have left the Centre, Mara, Dann and a group of friends have retreated in a farm and they are sitting on a veranda, nostalgically thinking about their past adventures, in what seems to be a typical "happily ever after" conclusion, with the overcoming of dangers, the dispelling of mysteries, the reunion of characters, and the revelation of Mara's pregnancy. However, as the sequel will confirm, this is but a new, and not-so-happy, beginning, and Mara seems to be very-well aware of it:

The big house, spreading over a hill where you could hear the sea booming or sighing all day, all night, was like the end of tales she had seen in an ancient book in the Centre: "And so we all lived happily ever after." But Mara's heart, which these days in no way resembled a cold stone, told her otherwise. (MD, 403)

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<sup>54</sup> See Allen W. Johnson, Douglass Richard Price-Williams, *Oedipus Ubiquitous: The Family Complex in World Folk Literature* (Stanford: Stanford University Press, 1996), 27–28.

Jeanne Gaakeer

# “Wrest once the law to your authority. To do a great right, do a little wrong?”<sup>1</sup>

The further we advance in life, the more we become convinced of two contradictory truths. The first is that, confronted by the reality of life, all the fictions of literature and art pale into insignificance. [...] The second is this: every noble soul wishes to live life to the full, to experience everything and every feeling, to know every corner of the earth and, given that this is impossible, life can only be lived the full subjectively, only lived in its entirety...<sup>2</sup>

## 1 Shock and awe

My contribution focuses on the German author-jurist Ferdinand von Schirach's play *Terror* that deliberately seeks to engage its theatre audiences in participating in the decision whether a pilot who shot down a civilian plane hijacked by a terrorist and destined to crash into a football stadium, is guilty of multiple murders. The play also asks us to consider other questions central to criminal law, namely about an individual actor's intent and responsibility. In the sense that *Terror* is a literary work that on account of its fictionality represents “not exactly our own world”<sup>3</sup> whereas its plot is mimetic in its topicality given the threats of terrorist acts in contemporary societies, and thus fits exactly with the Aristotelian concept of mimesis as representation, or “what may happen,”<sup>4</sup> it is eminently suited both to address any authorial truth claim and to pay homage to Daniela Carpi's interdisciplinary research fields of *Law and Literature* and *Law and Culture* and her interest in the sublime.<sup>5</sup> This is of even more interest because Von Schirach claims that the stories that he writes are both truthful and not. They are not called truthful because they are in conformity with “reality”; they are truthful

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1 William Shakespeare, *The Merchant of Venice*, in *The Norton Shakespeare*, eds. Stephen Greenblatt et al. (New York and London: W.W. Norton & Company, 1997): 4.1.210–211.

2 Fernando Pessoa, *The Book of Disquiet*, introduction by William Boyd, ed. Maria José de Lancastre, transl. Margaret Jull Costa (Croydon: CPI Group UK, 2010), 220.

3 Walter R. Fisher, “The Narrative Paradigm: An Elaboration,” *Communications Monographs* 52 (1985): 347–367, 347.

4 See Aristotle, *Poetics*, ed. and trans. Stephen Halliwell (Cambridge and London: Harvard University Press, 1999): 59, IX, 1451a–1451b.

5 E.g., Daniela Carpi, “Introduction 1: The Sublime of Law,” in *Liminal Discourses, Subliminal Tensions in Law and Literature*, eds. Daniela Carpi and Jeanne Gaakeer (Berlin: De Gruyter, 2013): 1–13.



because they are literature, i. e. the truth criterion is not facticity but the success of the fictional.<sup>6</sup> Yet, in his work, and explicitly so in *Terror*, Von Schirach refers to actual German legislation and court cases. So one could say that Von Schirach also explores the idea that literary writers can and should contribute to the societal and political debate of their era, as already exemplified in the works of authors in American literary realism.

Since Ferdinand von Schirach was a practicing attorney in criminal cases before he started to write fiction, he epitomizes what in German literary-legal theory is called a *Dichterjurist*. That connects my topic to the European foundations of the bond of *Law and Literature*. As Jacob Grimm noted in “Von der Poesie im Recht”: “that law and literature arose from the same bed is not hard to believe.”<sup>7</sup> To Grimm, this medieval idea was still relevant – although he writes in the heyday of the formalistic, Prussian *Begriffsjurisprudenz* developed by von Savigny – because then as much as in Grimm’s days “Richter” (judges) are “Dichter,” poets in the meaning given to the term in ancient Greece, i. e. finders of the right words and makers of texts. This thesis has not lost its importance since. Upon his retirement the *Dichterjurist* Theodor Storm, for example, explained that he had taken up law because it is a discipline based on common sense and because he had always found the combination of theory and practice inspiring for both his legal and literary activity.<sup>8</sup> Well-known German *Dichterjuristen* are Goethe, Heine, von Kleist and, more recently, Bernhard Schlink and Juli Zeh.<sup>9</sup>

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**6** Manuel Bauer, “Der geschundene Mensch: Ferdinand von Schirach oder Der Anwalt als Erzähler,” in *Dichterjuristen, Studien zur Poesie des Rechts vom 16. Bis 21. Jahrhundert*, ed. Yvonne Nilges (Würzburg: Königshausen & Nuemann, 2014): 281–296, 282 n.7.

**7** Jacob Grimm, “Von der Poesie im Recht,” in *Kleinere Schriften* vol. 6 (Hildesheim: Olms, 1965): 152–191, 151, “Dass Recht und Poesie miteinander aus einem Bett aufgestanden waren, hält nicht schwer zu glauben” (English translation mine).

**8** Klaus Kastner, “Literatur und Recht – eine unendliche Geschichte,” *Neue Juristische Wochenschrift* 65.9 (2003): 609–615, 610, “... die Wissenschaft des gesunden Menschenverstandes... .”

**9** Martin W.J. Tegelkamp, *Recht und Gerechtigkeit in Dürrenmatts Dramen und Prosa* (Baden-Baden: Nomos, 2013), 20, calls Von Schirach a *Dichterjurist*. See also Ekkehard Kaufmann, *Deutsches Recht* (Berlin: E. Schmidt, 1984); Hans Fehr, *Das Recht in der Dichtung* (Bern: A. Francke, 1931); Eugen Wohlhaupter, *Dichterjuristen* (Tübingen: Mohr Siebeck, 3 Vols, I. 1953, II. 1955, III. 1957); Bodo Pieroth, *Recht und Literatur* (Munich: Beck, 2015); Lorenz Frank, “Digitales Fundheft ‘Recht und Literatur’,” available at: <https://www.lorenzfranck.de/dokumente/litrecht/litrecht2017.pdf> (last modified 2016, retrieved 7 October, 2017); Heinz Müller-Dietz, “Literarische Verarbeitung von Recht in Gegenwartsromanen,” in *Recht Populär, populärkulturelle Rechtsdarstellungen in aktuellen Texten und Medien*, eds. Franziska Stürmer and Patrick Meier (Baden-Baden: Nomos, 2016): 37–59. On Grimm’s meaning for contemporary *Law and Literature*, see Christine Künzel, “‘Aus einem Bette aufgestanden,’ Anmerkungen zum Verhältnis zwischen Recht und Literatur,” in *Figures of Law, Studies in the Interference of Law and Literature*, ed. Gert

Furthermore, *Terror* is important because it was broadcast on television in many Western-European countries. Its reception is therefore insightful because TV audiences, too, could express their vote for an acquittal or a guilty verdict. That draws the attention to the way in which *Terror* poses the question after the effect of mediality and visibility, yet another of Daniela Carpi's topics, in popular culture when that deals with legal and moral dilemmas. And, as Bauer notes, in the sense that Von Schirach uses real cases for his literary output, he belongs to the German genre of the so-called *Pitavalgeschichten* of the early nineteenth century: famous cases re-told, i.e. both the facts of the case and the defendant's personal circumstances, used as both study material for legal practitioners and a source of information for the lay public.<sup>10</sup> Thus, Von Schirach can be read from the perspective of *Law and Popular Culture* as well.

And if we consider morphological affinities, the concept of the implied reader comes to mind. In drama, the characters address each other and the audience watches and overhears them, and the same goes for the debate in the courtroom that the judge and the public overhear, obviously with different consequences as far as the legitimacy of their decisions is concerned. Put differently, we can indeed say that the story told in both the courtroom situation and in the dramatic action is always also held up to the audience as the kind of thing “that may happen.” The audience, whether it is the judge, society at large or the theatergoers in general, and specifically given their roles in the case of *Terror*, reacts to the moral it provides.

Literary inspiration found in trials has characterized Western literature since Sophocles' *Antigone* and Aeschylus' *Oresteia* and the topics of these plays still resonate in contemporary plays and novels, with François Ost's *Antigone Voilée*, Kamila Shamsie's *Home Fire* and Colm Tóibín's *House of Names* as recent cases in point.<sup>11</sup> What is more, both the play as performance and the trial literally and figuratively elevate what happens and what happened in the sense of the story told. They do so in the limited time frame and the limited space of the stage and the court, with props, e.g. in court ‘exhibit A,’ and costumes, e.g. the gown and

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Hofmann (Tübingen and Basel: A. Francke Verlag, 2007): 115–132; Greta Olson, “Law is not Turgid and Literature not Soft and Fleishy: Gendering and Heteronormativity in Law and Literature Scholarship,” *The Australian Feminist Law Journal* 36 (2012): 65–86.

<sup>10</sup> Bauer, “Der geschundene Mensch,” 284. This genre is based on the French François Gayot de Pitaval's 1734 *Causes Célèbres*. Cf. Marx Rudolf (ed.), *Unerhörte Kriminalrechtfälle* (Leipzig: Verlag Dieterich, 1980).

<sup>11</sup> François Ost, *Antigone Voilée* (Brussels: Larcier, 2004); Kamila Shamsie, *Home Fire* (London: Bloomsbury Circus, 2017); Colm Tóibín, *House of Names* (London: Viking/Penguin Random House UK, 2017).

bands of the judge. In other words, the narratological concepts of ‘story time’ in the sense of the story that is told within the play, and ‘discourse time’ in the sense of the time it takes to perform as a play the trial and within it, the narration of the events that happened and the time it takes to view the performance, are of mimetic relevance.<sup>12</sup>

All of these aspects together, I suggest, also draw our attention to disciplinary boundaries and interdisciplinary ambitions. That is why a reading of *Terror* can serve as an investigation of a cultural performance that may, or may not be exemplary of contemporary issues that research in *Law and Humanities* can and should address if it is to fulfill its task to provide nourishment to legal practice in the Wigmorean tradition.

## 2 *Terror*: a (not so) minimal departure of/or the actual world?<sup>13</sup>

### The Prologue

The Presiding Judge enters, gown over his arm, the curtain behind him closed. He tells the audience that they are going to be the lay judges of the case they are about to see, and that they have to judge solely on the basis of what they hear in the courtroom, the so-called immediacy principle in law. Furthermore, comparable to the Prologue in Shakespeare’s *Henry V*,<sup>14</sup> he emphasizes that, “[I]n court proceedings we re-enact the events: the court is a stage. Of course we’re not going to perform a play, we’re not actors. We will be re-enacting the events through language, this is our way of understanding them.”<sup>15</sup> So the

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**12** Michael Schaffer, Antonius Weixler, and Lukas Werner, “Time,” in *The Living Handbook of Narratology*, eds. Peter Hühn et al., available at: <http://www.lhn.uni-hamburg.de/article/time> (last access November 10, 2017).

**13** The title of this paragraph derives from the principle of minimal departure endorsed by Marie-Laure Ryan who claims “that we construe the central world of a textual universe in the same way we reconstruct the alternate possible worlds of nonfactual statements: as conforming as far as possible to our representations of AW [The actual world].” See Marie-Laure Ryan, *Possible Worlds, Artificial Intelligence, and Narrative Theory* (Bloomington: Indiana University Press, 1991), 51.

**14** William Shakespeare, *The Life of Henry V*, in *The Norton Shakespeare*, eds. Stephen Greenblatt et al. (New York and London: W.W. Norton & Company, 1997): 19–23.

**15** Ferdinand von Schirach, *Terror*, trans. David Tushingham (London: Faber and Faber, 2017), 11; further references in the text, abbreviated as T. Originally Ferdinand von Schirach, *Terror, ein Theaterstück und “Machen Sie unbedingt weiter”, eine Rede* (Munich: btb, 2016), 8, “Wir spielen

play’s the thing, literally and figuratively, with a mix of the Brechtian alienation effect and the notion of the spectators of plays in ancient Greece as the *theoroi* of the performance of plays who learn why things happen by the skillful representation of the events that are shown and subsequently form a judgment about it. In addition, the audience is cautioned not to forget their own humanity because the defendant, too, remains a human being, even though the act he committed may be gruesome. Then the Presiding Judge exits while putting on his gown, the curtain is drawn and “the play” begins.

## Act One

The Presiding Judge enters the stage, a courtroom. He acknowledges the presence of the defendant Lars Koch, a major in the air force, the State Prosecutor Ms Nelson and the Counsel for the Defense Biegler.<sup>16</sup> In an earlier collection of essays, Von Schirach introduced the embryonic plot of *Terror*: what would you decide if a terrorist kills the crew of a plane and announces that he will crash it into the Potsdamer Platz in Berlin?<sup>17</sup> Von Schirach’s main point is the question prominent in our contemporary societies when battling acts of terrorism, namely the one after the value of human dignity *per se* and legal guarantees against intrusions or torture. The prosecutor then reads out the charge:

Lars Koch [...] is charged under the German Criminal Code according to section 154a, paragraph 1 of the Code of Criminal Procedure that on 26 May 2013 above the village of Oberappendorf he did use deadly force to kill 164 people. The charge states that on 26 May 2013 at 20:21 hours, using an air-to-air guided weapons system, he did shoot down a passenger aircraft type A320 – 100/200 manufactured by Airbus Industries belonging to Lufthansa German Airlines which was at that time flying from Berlin to Munich under flight code LH 2047, and did thereby kill the 164 persons on board. He is charged with the crime of murder according to section 211, paragraph 2, group 2, variant 3.52, paragraph 1 of the German Criminal Code. [T,16]

The charge is deliberately succinct for rhetorical reasons. One would also expect a separate charge of the destruction of property, i.e. the plane itself but that

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die Tat durch Sprache nach, das ist unsere Art sie zu erfassen.” The film version is *Terror, Ihr Urteil*, directed by Oliver Berben (Moovie/Constantin Film, 2016), in English *The Verdict*.

<sup>16</sup> The Biegler character was introduced in Ferdinand von Schirach, *Tabu* (Munich: Piper Verlag, 2013).

<sup>17</sup> Ferdinand von Schirach, *Die Würde ist antastbar, essays* (Munich: Piper Verlag, 2016 [2014]): 5 – 17, 9.

would detract from the main issue. The judge reads the defendant his rights, including the right to remain silent. Biegler sketches the societal context of the case, i.e. terrorist attacks since 9/11. What the charge does not say, and what Biegler emphasizes is the circumstance that the Lufthansa plane was hijacked by a terrorist who forced the plane to fly to Munich and crash it into a sold-out football stadium, the Allianz Arena, where 70,000 people were present to watch the match between Germany and England. He needs to do this because it is his only line of defense. The context is this: in 2005 the German legislator passed the *Aviation Security Act* that entitled the Minister of Defense to use armed force against a plane hijacked by terrorists.<sup>18</sup> Or, as Biegler puts it, “It allowed the state to kill people. Not people who have committed a crime but people who are the victims of crime.” (T, 18) However, the Federal Constitutional Court revoked the Act on the view that “... it was unconstitutional to kill innocent people in order to save other innocent people. One life should never be weighed against another.” (T, 18)<sup>19</sup> So, “was Lars Koch permitted to kill these 164 people? Are there situations in our lives where it is right, proper and prudent to kill people? And indeed: where doing anything else would be absurd and even inhuman?” (T, 19)

From a point of view of law, this is incorrect because the wording of the charge is leading when it comes to deciding on a defendant’s guilt. Biegler specifically frames the problem to stay away from the wording of the charge, i.e. the required elements that have to be proved and are, in fact, admitted by Koch, in order to draw his conclusion later on that the defendant’s act does not qualify as murder.

The judge then calls the witness Christian Lauterbach, the Duty Controller at the National Airspace Security Situation and Command Centre who monitors German airspace and is constantly on the lookout for ‘renegades’, i.e. civilian planes hijacked by terrorists. To jurists, the name Lauterbach would seem to refer, ironically given this witness’s statement, to that name so renowned in international law of Hersch Lauterpacht, later judge at the International Court of Justice, who developed the concept of “crimes against humanity” during the Nuremberg trials.<sup>20</sup> Lauterbach narrates the events of 26<sup>th</sup> May 2011: the Lufthansa

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**18** In German law, the *Luftsicherheitsgesetz*, LuftSiG, of 11 January, 2005, paragraph 4 sub 3, on the permission to shoot down a hijacked plane when it is used as an instrument to kill many people.

**19** The decision of the German Constitutional Court, the *Bundesverfassungsgericht*, is dated 15 February, 2006.

**20** For the story of Lauterpacht and Rafael Lemkin who promoted the concept of “genocide” for German war crimes, see Philippe Sands, *East West Street, on the origins of genocide and crimes against humanity* (London: Weidenfeld & Nicholson, 2016).

plane departed from Berlin at 19:20 hours and was scheduled to arrive in Munich at 20.30 hours. At 19:32 hours, the pilot sent a radio transmission saying that he was forced to read aloud a text from a hijacker, who later was found to be a suicide bomber belonging to an Al Qaeda splinter organization, and crash the plane into the Munich football stadium. So Lauterbach informed the Lieutenant General Radtke, the highest Commander of the Air Force, and gave the order for the rapid reaction force to be deployed: Major Koch and First Lieutenant Weinberger. As they caught up with the plane, they saw a man in civilian clothes in the cockpit. Radio contact with the plane, however, was impossible. Radtke then ordered that the plane should be forced off course. This ‘Intervention’ order had no effect. The plane stayed on its designated course. In the meantime, Radtke called the Minister of Defense who ordered warning shots to be fired, “Warning burst” (T, 31) which Koch as the senior officer did. The warning shots had no effect. Then Radtke proposed that the plane be shot down. The Minister rejected that, given the decision of the Federal Constitutional Court. Lauterbach informed Koch and Weinberger that they were not allowed to shoot. After twenty-eight minutes Koch asked twice whether he had understood correctly and Lauterbach confirmed that the order “engage” was not given. When the plane began its descent, Koch shouted, “If I don’t shoot now, thousands of people are going to die” (T, 35) and then fired the Sidewinder guided missile. The plane crashed at 20:21 hours and 34 seconds, there were no survivors. Koch was arrested immediately after having landed.

The Presiding Judge has no further questions: “The facts of the case appear to lie clearly before us.” (T, 37) Suddenly the prosecutor asks, seemingly as an aside: “Who [...] decided to evacuate the stadium?” (T, 38) Lauterbach is perplexed. He has no idea and, furthermore, that was no time to do so. The prosecutor then reveals her point: nobody actually gave the order to evacuate. Yet there was an emergency plan indicating that it would only take fifteen minutes to do so. Between the first radio signal and the estimated crash of the plane there were fifty-two minutes. So, “Was it perhaps the case that you and your colleagues were quite simply certain? [...] Certain that Major Koch would shoot the plane down [...] because you knew that if the worst came to the worst the defendant would shoot?” (T, 40) Thus, Lauterbach is forced to admit under oath not only that he could imagine that Koch would shoot, but also that he was aware of the then Minister of Defense’s view that contrary to the Federal Constitutional Court’s ruling, he would still order hijacked planes to be shot down because he would declare “an extra-legal state of emergency.” (T, 41) This should alert the reader to what Giorgio Agamben delineated as the state of exception that forms the start of a development towards totalitarianism in any state. Ironically, because it was introduced to fight communism, the concept was founded in the

Weimar Constitution. Carl Schmitt elaborated upon it, in National-Socialist legal theory and political theology, as the will of the sovereign transcending the rule of law if the *bonum commune* in the definition given by that very same sovereign is at stake, the sovereign being the crux of any legal ordering.<sup>21</sup> After this, the prosecutor proceeds with the – destructive – argument that everybody present in the Command Centre that day simply expected Koch to act as he did. Nobody thought of what would have been done, i.e. evacuating 70,000 people, should there not have been a rapid reaction force. Biegler's damage control that Lauterbach was not personally responsible for evacuation drops dead when at the end of the testimony the banality of the witness's bureaucratic attitude shows: Lauterbach as an "über"-civil servant asks for his witness compensation money because today was his day off.

Then Koch gives his own account of "what happened." He explains how he had asked repeatedly whether there was no order to shoot, how he had considered whether he was disobeying an order, how he had thought about his wife and son as he deliberated about shooting down the plane, because he was not prepared to let 70,000 people die. The prosecutor asks Koch whether he could see any passengers in the cockpit. This foreshadows the testimony of the joint plaintiff. In vain, Biegler tries to object, but Koch has to admit that he cannot rule out that there were any passengers in the cockpit. What is more, he gave a lecture on the Federal Constitutional Court's ruling to young fighter pilots in which he expressed his view that this ruling was wrong. In short, he admits that he acted deliberately contrary to the meaning of the ruling, even though as a representative of the state he was bound to it, and he deliberately disobeyed orders as a soldier whose duty it is to protect the lives of civilians.<sup>22</sup> The *hubris*, indeed, of the protagonist in ancient Greek drama.

To Koch, numbers matter: "it was right to kill a few people in order to save a great many" especially because the 164 passenger on the plane were "non-participants" who "placed themselves in danger by boarding the aircraft" (T, 59) given contemporary terrorist threats. Thus, as they boarded the passengers, and that included children because their parents chose for them, became part of "a terrorist weapon." (T, 61) Koch explains that exceptions can be made for large numbers. The prosecutor confronts him with a hypothetical case of a man who comes to hospital with a broken arm at the very moment that many

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<sup>21</sup> Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005). Originally *Stato di eccezione*, 2003.

<sup>22</sup> Cf. Wolfgang Schild, *Verwirrende Rechtsbelehrung, zu Ferdinand von Schirachs Terror* (Berlin: Lit Verlag, 2017), 25, note 67, that at a performance in Germany, then Minister of the Interior, Thomas de Maizière, voted not guilty, which Von Schirach called bewildering.

patients are waiting for various donor organs: is it okay to kill that man in order to harvest his organs? This question foreshadows the prosecutor’s closing speech. Koch is unable to pinpoint the number at which to draw the line which is exactly what the prosecutor wants to hear. Koch’s defense is that the passengers would not have lived much longer anyway. He does not realize that his view objectifies human beings. After all, says the prosecutor, how about the people in the stadium, or audiences of pop concerts and people on underground trains generally: do they willingly take the same risk? What is more, is there no difference between a soldier like Koch who voluntarily joins an army knowing that he may be killed in action and an innocent civilian on a plane? Koch’s reply is that the federal Constitutional Court’s ruling gives free rein to terrorists and that reasons of state demanded that the passengers sacrificed themselves. However, when asked whether he would have acted differently if his wife and son had been on board, Koch replies that any answer would be wrong.

After Koch’s statement, the joint plaintiff, Mrs. Meiser, widow of one of the passengers, testifies. She reveals that at 19:48 hours her husband texted her a message that the plane had been hijacked and that the passengers tried to get into the cockpit, a message she had immediately shown to a policeman. It suggests that there were probably passengers in the cockpit when Koch fired the Sidewinder. There would have been enough time for an evacuation. Mrs Meiser is anxious to know whether the passengers succeeded in getting into the cockpit, because “If they had, they could have stopped the terrorist, couldn’t they? Then there would have been no need to shoot the plane down.” (T,71) Thus ends Act One.

## Act Two

The prosecutor’s closing statement follows the line of thought of the Federal Constitutional Court. First, rhetorically comparable to Biegler’s first speech, it asks one single question: “Are we allowed to kill innocent people in order to save other innocent people?” (T, 75) and, secondly, what the criterion to answer that question is. Is it our consciences, our morality, or simply common sense? Do we decide on the basis of what the former Minister of Defense called “an ‘extra-legal state of emergency’ “ and what others called “natural law”” (T, 75), rather than statutory law? From a point of legal theory, this “nudging” is deeply disturbing. From the view on law in ancient Greece as a natural ordering of the cosmos, via the development of rational natural law, based on the *recta ratio* emphasizing human intellect, in the seventeenth century by Hugo Grotius, among others, to Thomas Hobbes’s elaboration of the hypothesis of the social contract



as the basis for society, the value-absolutism of natural law is not comparable to the state of exception where the will of the sovereign is of decisive importance, for it is precisely the value-relativism of legal positivism that allows this to happen. So perhaps rather than “natural law,” what is meant is the Hobbesian “state of nature” that exists prior to the social contract, in which everybody is at war with the others, the *bellum omnium contra omnes* with the brute force of the *lex talionis* and in which human life is “[...] solitary, poore, nasty, brutish, and short.”<sup>23</sup>

In this part of the play the referential aspect is dominant. The prosecutor refers to the German philosopher Hans Wenzel and the American philosopher Judith Thomson on the topic of the so-called ‘trolley problem’: a train runs out of control and will kill hundreds of people in a nearby train station unless it is diverted to a side track, but on that track are five workmen who will be killed as a result. What do you do? Divert the train or not? Or, more complicated, the problem’s elaboration in ‘the fat man’ example: what if you are on a bridge and the only way to stop the train is to kill a fat man next to you and push his body on the track to stop the train? Most people would divert the train in the first example but refuse to kill the fat man. To Von Schirach, this means that the state can never weigh the life of one of its citizens against the other.<sup>24</sup> (166/179)

Philippa Foot analyzed the ‘trolley problem’ in the context of the Roman Catholic dogmatic discussion on abortion.<sup>25</sup> Does the “doctrine of the double effect” apply in these cases? That is based on “the distinction between what a man foresees as a result of his voluntary action and what, in the strict sense, he intends.”<sup>26</sup> In other words, “[H]e intends in the strictest sense both those things that he aims at as ends and those that he aims at as means to his ends.”<sup>27</sup> The latter may be regretted in and of themselves, but are nevertheless necessary and wanted in order to accomplish the end. The doctrine of the “double effect” refers to both the effect that one wants to bring about, and the one that is foreseen but not in itself actively intended or wanted. This is the difference between direct and oblique intention relevant in law for the difference between positive and negative duties of the person acting. Foot asks, what if a mad murderer threatens to kill two people, would we then kill one to prevent it? The doctrine

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<sup>23</sup> Thomas Hobbes, *Leviathan*, intr. Kenneth Minogue (London: J.M. Dent and Sons, 1987): 65.

<sup>24</sup> Von Schirach, *Die Würde*, 11–12.

<sup>25</sup> Philippa Foot in “The Problem of Abortion and the Doctrine of the Double Effect,” *Oxford Review* 5 (1967): 1–7. For the Weichenstellerfall, see Hans Welzel, *Naturrecht und materiale Gerechtigkeit* (Göttingen: Vandenhoeck & Ruprecht, 1951).

<sup>26</sup> Foot, “The Problem,” 1.

<sup>27</sup> Foot, “The Problem,” 1.

of double effect saves us: “[I]f we refuse, we foresee that the greater number will be killed but we do not intend it: it is he who intends (that is strictly or directly intends) the death of innocent persons; we do not.”<sup>28</sup>

In *Terror*, it is the terrorist who intended the death of the people in the stadium, so, comparably, Koch should have refrained from acting. However, says Foot, in a situation in which one can intervene and neglects to do so, the situation is different. That is neglecting a positive duty. Not even considering the evacuation of the stadium is such a neglect by the authorities under the circumstances in *Terror*. Foot concludes that, “We may therefore refuse to be forced into acting by the threats of bad men. To refrain from inflicting injury ourselves is a stricter duty than to prevent other people from inflicting injury, which is not to say that the other is not a very strict duty indeed.”<sup>29</sup>

Judith Jarvis Thomson took up Foot’s examples for her discussion of the difference between moral permissibility and moral requirement when it comes to deciding whom to save and connected it to tort law and criminal law.<sup>30</sup> She brings in the question comparable to the one in *Terror*, of whether or not the workmen on the track in the trolley-example consented to the risk of getting killed when signing up for the job. More recently, Michael Sandel applied the example to the actual situation a group of four American soldiers in Afghanistan found themselves in. They were searching a Taliban leader and came across unarmed Afghan goatherds: if they let them go, the goatherds would undoubtedly inform the Taliban and the American mission would fail. Should they kill the goatherds or not? As fate would have it, they had forgotten to bring a rope! The vote was negative. They came to regret it very soon when the Taliban killed three of them and the soldiers that came to their rescue. Sandel wants us to consider that, “Some people reject the torture of terror suspects as a moral abomi-

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**28** Foot, “The Problem,” 4.

**29** Foot, “The Problem,” 6. Cf. Herbert Lionel A. Hart, “Intention and Punishment,” in *Punishment and Responsibility*, ed. Herbert Lionel A. Hart (Oxford: Oxford University Press, 2008 [1968]): 113–135, 127: “The distinction seems to make its appeal to a feeling that to use a man’s death as a means to a further end is a defilement of the agent: his will is thus identified with an evil aim and it is somehow morally worse than the will of one who in the pursuit of the same further end does something, which, as the agent realizes, renders the man’s death inevitable as a second effect. If this is the basis of the distinction we may well ask whether the law should in such case give recognition to it, especially where [...] recognition will lead to an acquittal.”

**30** Judith Jarvis Thomson, “The trolley problem,” *Yale Law Journal* 94 (1985): 1395–1415.

nation unworthy of a free society, while others defend it as a last resort to prevent a terrorist attack.”<sup>31</sup>

To me, the question would not be just about a moral abomination, but about both a legal and a moral abomination for that is what torture is about. And, as Kamm argued earlier on, our focus should be on the agent rather than on the victims when we deal with the violations of rights, however minimum they might seem when weighed against others. He engages with Thomson’s point – which is the situation in *Terror* – that perhaps we may kill a few in order to save the greater number of people, “provided ... we do not save the greater number *by* infringing significant rights of the few, and provided that the few die of the same threat that faced the greater number.”<sup>32</sup>

This cumulative criterion is relevant if we think of the question in *Terror* that perhaps the passengers could have overpowered the terrorist. Furthermore, and highly relevant for the situation that Lars Koch is in, in *Terror*, “[O]ne way to express the agent-focused concern is to say agents must not do harm (e.g., crush people) though they may sometimes bring about harm (i.e., bring about that people are crushed).”<sup>33</sup>

Ulpian’s basic principles of law as found in the *Digests* (1.1.10), i.e. *honeste vivere* (to live honorably), *alterum non laedere* (not to harm or injure other people), *suum cuique tribuere* (to render to everyone what is his) remain remarkably relevant!

Not least since the very idea of torture being used in order to obtain a defendant’s confession has been put back on the legal agenda in Europe since what is called the Daschner-case in Germany and Gäfgen versus Germany in European human rights law. Gäfgen had kidnapped and killed the eleven-year old son of a banking family. In fact the child was dead already when Gäfgen was arrested but the police hoped that the life of the child could be saved. Gäfgen was verbally threatened by police interrogators, so ordered by Daschner, the Frankfurt deputy chief of police, that he would be subjected to considerable pain by a person specially trained for such purpose and that he would be locked in a cell and sexually abused by two men. After ten minutes Gäfgen revealed where the body of the child could be found.<sup>34</sup> Was this cruel, mental torture –

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**31** Michael J. Sandel, *Justice: What’s the Right Thing to Do?* (New York: Farrar, Straus & Giroux, 2009): 21–30, 27.

**32** F.M. Kamm, “Harming Some to Save Others,” *Philosophical Studies* 57 (1989): 227–260, 229.

**33** Kamm, “Harming Others,” 250.

**34** *Case of Gäfgen v. Germany*, Application no. 22978/05, Grand Chamber, 1 June 2010, rectified 3 June 2010.

no physical abuse to place – or justifiable in order to save a child? The European Human Rights Court noted that it

has confirmed that even in the most difficult circumstances, such as the fight against terrorism and organized crime, [that] the Convention prohibits in absolute terms torture and inhuman and degrading treatment or punishment, irrespective of the conduct of the person concerned.<sup>35</sup>

It rejects the idea that the right to life is superior to the prohibition of inhuman treatment and torture. But, having said so, the Court took into consideration that during the trial Gäfgen repeated his confession, and even because his attorney advised him to do so. Clearly this was a huge mistake given Gäfgen’s right to remain silent and the presumption of innocence. It resulted in the decision that there was no breach of articles 3 and 6 of the European Convention because the police officers had been brought to justice which was deemed sufficient compensation and Gäfgen had been given a fair trial. The dissenters, however, pointed out that “the proceedings as an organic whole” without “break in the causal chain” should be looked at because

there is an equally vital, compelling, and competing public interest in the preservation of the values of civilized societies founded upon the rule of law. [...] Though the situation in this case was critical it is precisely in times of crisis that absolute values must remain uncompromised.<sup>36</sup>

In other words, while the majority decision expressed the fundamental norm, it diminished its value by deciding that under the circumstances nothing was wrong with Gäfgen’s confession and trial. As Von Schirach notes, the situation in the Gäfgen case was one resembling Greek tragedy: the policeman as a state official is prohibited to do what he wants to do as a human being precisely because as an official he has to uphold the law.<sup>37</sup> In *Terror*, Lars Koch is in a comparable situation. But why didn’t his superior officers have any qualms about Koch being in the rapid reaction force when they knew his view on the Constitutional Court’s decision?

To the prosecutor, “Law and morality must be kept strictly separate” (T, 77) and the hypothetical examples show that we need principles to give ourselves

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**35** *Gäfgen*, par. 87, 23. Cf. D. Cole, *The Torture Memos. Rationalizing the Unthinkable* (Oxford: Oneworld Publications, 2009).

**36** *Gäfgen*, dissenting opinion, par. 12–13.

**37** Von Schirach, *Die Würde*, 109–116. In *Tabu*, the torture of the protagonist Sebastian von Eschberg is based on Gäfgen.

our own laws and guide our actions. A nation's constitution provides these. This is the idea proposed by theorists of the social contract as the basis for the formation of the state and sovereignty from Hobbes to Kant. The German Constitution starts with "Human dignity shall be inviolable" (T, 78) and "the Federal Constitutional Court says that dignity means that a human being may never be turned into a mere object by the state." (T, 78) In other words, an idea "traced back to Kant" (T, 78) that shows us that "Life cannot be measured in numbers. It is not a market." (T, 79) This is also to reject the kind of right to resistance that Koch based his action on, because in his case "this was not about killing a tyrant." (T, 78) It should be noted here that the 1948 *Universal Declaration of Human Rights* in its Preamble puts dignity prior to the concepts of human rights and the rule of law. In a legal context, the concept of human dignity is problematic. Used often as a container concept, it is formulated as a negative as well as a positive "right" while at the same time it is referred to in terms of a foundational value. The *Charter of Fundamental Rights of the European Union* states that "[H]uman dignity is inviolable. It must be respected and protected,"<sup>38</sup> So far, agreement on the substantive scope of human dignity has not been reached; by its nature and contents, it is a contested concept. It is more honored in the breach than in the observance.<sup>39</sup> Furthermore, as the prosecutor claims, if the people in the Command Centre would have acted according to the Constitution, they would have evacuated the stadium, "and only a few people would have been in danger." (T, 79) The prosecutor does not realize that "only a few" is actually 164 people, so implicitly the number-problem in this case simply does not go away. To the prosecutor, Koch acted "in defiance of his orders, in defiance of our laws, in defiance of the constitution and in defiance of our courts." (T, 80) This is why Koch should be found guilty of the murder of 164 people, and if the audience does not find him guilty, they "declare human dignity and [...] our constitution worthless." (T, 81)

Biegler starts with strong rhetoric: "Because of a principle 70,000 people should have died. [...] thank God Lars Koch did not act on principle, instead he did what was right." (T, 81) Placing the principle of human dignity above saving human lives in this case is insane. In other words, for there was no alternative. As far as the Federal Constitutional Court's ruling is concerned, for these judges the question of criminal liability for shooting down a plane did not come up because they only had to decide whether the *Aviation Security Act* was constitutional. This remark is redundant because judicial review does not

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<sup>38</sup> 2000/C 364/01, Chapter 1: Dignity, Article 1: Human Dignity.

<sup>39</sup> Von Schirach, *Die Würde*, 9.

resemble the act of ascertaining the facts and circumstances of a criminal case. In the plea, too, the referential returns, in the form of the English case of the *Siamese Twins*,<sup>40</sup> and the case of *United States v. Holmes*.<sup>41</sup> The latter is about the vessel William Brown that went down after it struck an iceberg. One of the lifeboats began to leak while weather conditions worsened. The crew threw 16 people overboard on the shipmate Holmes’ suggestion. At trial, the jury refused to indict Holmes for murder. The charge was then reduced to voluntary manslaughter which took away the threat of capital punishment. Holmes was convicted and sentenced to 6 months imprisonment and a \$20 fine, for which fine he was relieved by presidential pardon. On the basis of this case, Biegler moves for a not guilty verdict: any other decision would mean that we are not allowed to defend ourselves against terrorists.

The Presiding Judge instructs the audience on how to reach their verdict, saying, “Do not let yourselves be swayed by sympathy or antipathy towards the Defence Counsel or the State Prosecutor. Judge purely on the basis of what you consider to be right.” (T, 85)

This is a most unusual instruction. It is internally contradictory in its combined refusal to accept sympathy or antipathy, i.e. emotions as a basis for a verdict, and appeal to what is right. And, furthermore, not only is a judgment based on the individual’s conscience, the defendant’s, precisely what is at stake in this trial, such judgment also contravenes with the principle that the judgment should be based on the facts and circumstances in light of the charge. To add to a jurist’s confusion, the judge explains, “Legally [...] Your deliberations should therefore focus on the question of whether the defendant was allowed to contravene the restrictions placed upon him by the Federal Constitutional Court and the constitution.” (T, 86)

A decision on the constitutionality of a statute is not a restriction of human behavior in the sense of what articles of a criminal code prohibit a person from doing if he does not want to risk punishment. The Presiding Judge also tells the audience that a judicial pardon is out of the question if they deliver a guilty verdict because it is not allowed in Germany. That is doubly odd once more, i.e. first the judge says that the question is whether or not Koch was allowed to contravene law, then he tells the audience they themselves cannot do so, even if their conscience rules their decision!

The play ends with *The Verdicts*. Practically, in each actual performance the audience votes by re-entering the auditorium after the interval via different door-

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<sup>40</sup> *Re A. (conjoined twins)* [2001] 2 WLR 480, Court of Appeal, Justice Ward et al..

<sup>41</sup> *United States v. Holmes*, *U.S. Circuit Court*, 26 F. Cas. 360 (C.C.E.D. Pa. 1842).

ways so that the votes can be counted. As far as each individual member of the audience's deliberation and decision is concerned, the situation is comparable to Koch's: the individual theatregoer has to decide, and has to do so there and then in the duration of the interval, on the basis of the information provided. In short, in a crisis situation, if we consider the etymological root of the word crisis that can be traced back to the Greek verb κρῖνειν (krinein), to judge. According to the vote, the Presiding Judge then reads the guilty verdict or the not guilty verdict including the grounds for the decision.

The Guilty Verdict is grounded on the constitutional principle of human dignity – human beings are not to be objectified and weighing one life against another is wrong, “no matter what the numbers are”(T,88) – and the criminal charge of murder, putting aside the excuse of the so-called extra-legal state of emergency. The real case that the Presiding Judge references is that of the *Mignonette*, i.e. *The Queen v. Dudley and Stephens*, 9 December 1884.<sup>42</sup> The vessel *Mignonette* sank in a storm. The crew saved themselves in a lifeboat. After 18 days without food and water, the seamen Thomas Dudley and Edward Stephens killed the then already dying ship's boy Richard Parker, so that the rest of them might survive by eating his flesh. Four days later they were saved. Dudley and Stephens were sentenced to death for murder by the jury in the Devon and Cornwall Assizes, which was affirmed by a panel of five judges of the Royal Court of Justice. The judges cited sources as varied as the jurist Bracton and Shakespeare to arrive at the conclusion that while an absolute divorce of law and morality would have fatal consequences, this does not mean that there is an absolute right to life. The bond of law and morality came back with a vengeance, when afterwards the sentence was commuted by the Crown to six months imprisonment. The Presiding Judge in *Terror* cites the part of the judgment, “We are often compelled to set up standards we cannot reach ourselves, and to lay down rules which we could not ourselves satisfy. But a man has no right to allow compassion for the criminal to change or weaken in any manner the legal definition of the crime.” (T, 90)

He makes clear that while the court accepts that Koch tried very hard to reach what he thought the right thing to do, the law must be upheld. This is in contradiction to the previous instruction that the audience should do what they think is right. Oddly, the play ends without sentencing. Where the German lay judges would help the professional judges on the panel to decide about punishment, the members of the audience in *Terror* resemble the members of Anglo-American juries who decide on the matter of guilt only, after which the profes-

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42 14 Queen's Bench Division 273 (1884), All RE Rep 61, Lord Coleridge et al..

sional judge determines the sentencing. Is this deliberately framed to tie in with aspects of popular culture? Is that same bond also the reason why the play does not take into consideration the fates of the pilots and the terrorist himself? Paragraph 3 returns to this topic.

The Not Guilty Verdict, by contrast, is grounded on precisely the extra-legal state of emergency. Koch is not criminally responsible because he “chose what was objectively the lesser evil”(T,93) to save the 70,000 people in the stadium. Furthermore, because there are “no legal criteria to test the decision of his conscience definitively” and “The law, the constitution and the courts left him alone with his decision. It is therefore our considered view that it is wrong to condemn him for it now.” (T, 93) From a point of view of law, this line of argument could work if one thinks in terms of supra-statutory law, rather than the state of emergency. Supra-statutory law, or principles of the law of reason (i.e. rational natural law as noted above) set aside as invalid law that is considered “statutory lawlessness,”<sup>43</sup> but, since Gustav Radbruch coined it by way of response to national-socialist positive law, this would mean considering the Aviation Security Act after the decision of the Constitutional Court as lawless which could only happen if and when the rule of law was abolished. In short, the law cannot solve each and every problem of morality so that at such moment of crisis the individual’s conscience is the only thing that matters. Again this reference to conscience and morality, which is perhaps even more striking than in the guilty verdict and the instruction of the judge to the audience before that. Furthermore, the judge mistakenly and/or deliberately and/or necessarily says that there are no legal criteria while in fact there is one, article 1 of the German Basic Law.

Both Verdicts disregard the concept of murder as laid down in the charge. A guilty verdict would necessitate differentiating between murder and manslaughter given that for murder proof of the defendant’s premeditation is required. Why? Because there are differences between the people on the plane. Killing the hijacker is perhaps not comparable to causing the death of the passengers by taking down the plane. And how about the pilots of the plane? Is there no difference between them and the others as well? What Koch claims about taking risks by boarding a plane is something that could apply more to the crew given

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<sup>43</sup> Gustav Radbruch, “Statutory Lawlessness and Supra-Statutory Law,” trans. Bonnie Litschewski-Paulson and Stanley L. Paulson, [originally “Gesetzliches Unrecht und übergesetzliches Recht” 1946] *Oxford Journal of Legal Studies* 26.1 (2006): 1–11, 8; cf. 7, for Radbruch’s definition of law: “For law, including positive law, cannot be otherwise defined than as a system and an institution whose very meaning is to serve justice.” See also Gustav Radbruch, “Five Minutes of Legal Philosophy,” trans. Bonnie Litschewski-Paulson and Stanley L. Paulson, [originally “Fünf Minuten Rechtsphilosophie” 1945] *Oxford Journal of Legal Studies* 26.1 (2006): 13–15.



contemporary terrorist threats, on the view that pilots opt for a hazardous form of employment whereas passengers are mere customers. Neither verdict considers that there are situations in which a human act falls within the scope of a criminal rule but is not deemed punishable because there is a “justification” (a circumstance which makes the act itself not contrary to law) or an “excuse” (a circumstance which takes away the blameworthiness of the defendant), concepts that recognize human fallibility and our common humanity. The concept of “duress” (both a justification and an excuse) would throw a different light on the tragic situation Koch was in (and appease judicial conscience when confronted with a situation of *dura lex sed lex*).

### 3 Double effect or popular equivocation?

As I hope to have shown, *Terror* is a fascinating play from multiple points of view: the legal, the political and the moral. The effect of the Constitutional Court’s judicial review of the *Aviation Security Act* is the perhaps uncomfortable realization that there would not have been a case against Koch if the Court had “done a little wrong” and left the *Act* intact as far as acts of terrorism are concerned. After all, many countries have by now implemented anti-terrorism legislation, and what is wrong with a bit of Benthamite utilitarianism in an age that demands national security, right? The question of who then gets to decide the scope of the concept of terrorism is disturbing. Von Schirach wants us to realize that it is not terrorism that destroys our societies, but we ourselves if we distance ourselves from the rule of law that is “the only way for a state based on justice to manifest its resilience and integrity.”<sup>44</sup> Furthermore, “Democracy demands discourse,” i.e. “I wanted us to talk about how we want to live. Terrorism is the greatest challenge of our time; it is changing our lives, our society, our thinking. How we deal with it isn’t just a legal question. It’s an ethical-moral decision.”<sup>45</sup>

Here is also the connection to Von Schirach’s combined interest in jurisprudence, literature and drama.

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<sup>44</sup> Ferdinand von Schirach, “Keep Going Come What May,” speech on the occasion of the presentation of the M100 Sanssouci Media Award to Charlie Hebdo in 2015, as included in the English edition of *Terror*, 95–104,101.

<sup>45</sup> Detlev Baur, “Interview with the author Ferdinand von Schirach: When the only heroes left are law and morality,” (originally for the magazine *Die Deutsche Bühne*, October 2016, reprinted Goethe Institut, translated by Jonathan Uhlener), available at: <https://www.goethe.de/en/kultut/gen/tup/20848876.html> (last access September 29, 2017,

This brings me to a final perspective: the “popular” in every sense of the word. Does *Terror* exemplify theatre as a mirror of society, comparable to re-enactments in court? Is it an example of the genre of courtroom drama?<sup>46</sup> Or is it a contemporary, allegorical morality play? The audience participates. It, too, plays a role, and sometimes alienation makes it forget reality.<sup>47</sup> What, then, does it mean that the audience generally votes 60%:40% for an acquittal?<sup>48</sup> Has morality won? Or should we conclude that the general audience’s sentiment is deeply utilitarian? Or is it because of the effect of the often inaccurate instruction by the judge, the argumentative strategies of both prosecutor and attorney that rhet-

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**46** The subtitle of the play is taken from the German TV format “Wie würden Sie entscheiden?,” broadcast 1974–2000, in which the audience got to decide real cases, after which they were told what the real judicial decision had been. See Thomas Möbius, *Ferdinand von Schirach, Terror* (Hollfeld: Bange Verlag, 2017), 42. For an overview of courtroom drama, police dramas and reality-based, law-related TV entertainment, see Peter Robson and Jennifer L. Schulz (eds.), *A Transnational Study of Law and Justice on TV* (Oxford and Portland: Hart Publishing, 2016). Cf. on courtroom drama, film, TV tribunals, Cornelia Vismann, *Medien der Rechtsprechung*, eds. Alexandra Kemmerer and Markus Krajewski (Frankfurt am Main: S. Fischer, 2011). Michael Asimov and Shannon Mader (eds.), *Law and Popular Culture, a course book* (New York: Peter Lang Publishing, 2013), for a course of canonic law-related films for educational purposes. A more theoretical perspective on law and popular culture is provided by Michael Asimov, Kathryn Brown and David Pay Papke (eds.), *Law and Popular Culture: International Perspectives* (Newcastle upon Tyne: Cambridge Scholars Publishing, 2014). Cf. Greta Olson, “Recht und Moral in TV-Gerichtsshow mit vorsitzenden Richterinnen: *Judge Judy* und *Richterin Barbara Salesch*,” in *Recht und Moral. Zur gesellschaftlichen Selbstverständigung über “Verbrechen” vom 17. bis zum 21. Jahrhundert*, eds. Hans-Edwin Friedrich and Claus-Michael Ort (Berlin: Duncker und Humblot, 2015), 476–506.

**47** Cf. Baur, “Interview with the author Ferdinand von Schirach,” Von Schirach remarking that “At the premier in Düsseldorf, the prosecutor put a question and one of the audience called out: ‘The question is inadmissible.’”

**48** Cf. Mark Brown, “Lyric Hammersmith’s courtroom drama *Terror* will let audience be jury,” accessible at: <https://www.theguardian.com/stage/2017/mar/07/lyric-hammersmith-terror-courtroom-drama-ferdinand-von-schirach> (last access August 28, 2017): “A website for the play charts the number of guilty and not guilty verdicts across the 46 theatres in seven countries that have staged the show. In 1,063 trials, 91.9% of verdicts have been not guilty. Of the 287, 236 jurors who have cast a vote 60.7% voted not guilty. In Japan, two-thirds of jurors found the pilot guilty.” In Germany, the TV audience in 2016 voted 87%: 13% for an acquittal, see <https://www.tz.de/tv/ferdinand-von-schirach-aeussert-sich-zu-tv-experiment-terror-ihr-urteil> (last access May 10, 2017). At the Berlin performance, 255: 207 for an acquittal, see Peter Kümmel, “Ferdinand von Schirach, 255 gegen 207,” available at: <http://www.zeit.de/2015/41/ferdinand-von-schirach-terror-deutsches-theater> (last access May 10, 2017). The Swiss TV audience voted 84% voted for an acquittal, available at: [http://www.focus.de/kultur/kino\\_tv/terror-ihr-urteil-terror-das-publikum-urteilt-nicht-schuldig](http://www.focus.de/kultur/kino_tv/terror-ihr-urteil-terror-das-publikum-urteilt-nicht-schuldig) (last access May 10, 2017). In Austria 86,9% for acquittal, available at: <https://www.welt.de/kultur/artice158845701> (last access August 28, 2017).

orical and narrative affect seems to have won?<sup>49</sup> What does this mean in an age of populism and alternative facts? This would be a fine topic for further research. Is the vote also a gender issue perhaps? In the film version the defendant, judge and attorney counsel are male, and the prosecutor is female, whereas in the Frankfurt performance all representatives of the law were female;<sup>50</sup> in American performances the defendant was female, the prosecutor male.<sup>51</sup> The votes remained comparable. Differences between national legal systems did not matter either. So we should never forget that, “[I]n the telling of any story, it is possible to emphasize one particular aspect over another so that that aspect looms out of all proportion to the context.”<sup>52</sup> In short, what Benjamin Cardozo advocated, i. e. to always combine the “how” and the “what” in law and literature, remains relevant.<sup>53</sup> We should therefore reflect on how we read and decode *Terror* and in what way the play constitutes our response, i. e. by its presumed fidelity to the real world, its (lack of legal) verisimilitude, its narrative plausibility, or as we ourselves “are,” legal professionals or lay persons with moral and political views. Von Schirach has already been criticized that his writing lacks subtlety and imagination, for giving his reader only what is strictly necessary to make his point.<sup>54</sup> Christine Künzel critically notes the uniformity of Von Schirach’s short stories and his manipulative, formulaic narrative strategies in which the third-person narrator becomes the “I” that is, and is not Von Schirach himself.<sup>55</sup>

That is ironical for a *Dichterjurist*, because it means that he writes like the kind of jurist that *Law and Humanities* would not want us to be, and it defies Grimm’s idea that law and literature arose from the same bed and contemporary

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49 Cf. Greta Olson, “The Turn to Passion: Has Law and Literature become Law and Affect?,” *Law & Literature* 28.3 (2016): 335–353. The Dutch audience’s vote when the film version was broadcast on *National Geographic*, 11 September, 2017, was an astounding 95% for acquittal. The way in which the film was broadcast was highly specific: the viewing was interlaced with commentaries of among others, a general, a critic and an attorney. See <http://www.broadcastmagazine.nl/televisie/kijkers-national-geographic-vinden-lars-koch-onschuldig>, (last access September 15, 2017).

50 Kümmel, see above note 48.

51 Aaron Krause, “*Terror*, a new play by Ferdinand von Schirach,” available at: <https://culturevulture.net/theater/terror-play-ferdinand-von-schirach> (last access August 28, 2017). See Möbius, *Ferdinand von Schirach, Terror*, 46, 105, for an overview of the votes.

52 Charlotte Rogan, *The Lifeboat* (London: Virago, 2012), 222–223.

53 Benjamin N. Cardozo, “Law and Literature,” *Yale Review* (1925): 489–507.

54 Möbius, *Ferdinand von Schirach, Terror*, 33–34.

55 Christine Künzel, “‘Pimp my Krimi:’ Anmerkungen zu den etwas zu perfekten Erzählungen Ferdinand von Schirachs,” in *Recht Populär, populärkulturelle Rechtsdarstellungen in aktuellen Texten und Medien*, eds. Franziska Stürmer and Patrick Meier (Baden-Baden: Nomos, 2016): 60–78.

scholarship on law and literature as comparable ways of knowing. To come to Von Schirach’s defense, I would say that the critique that his narratives are uniform in that they always start from a disruption of normality is unfair, because such disruption is precisely what starts a legal case. But both in literature and criminal court cases there is the problem that Von Schirach succinctly notes, that for the “truth” to be found, a certain formalization is necessary, e.g. in law, procedural law, evidentiary rules and legal concepts, or in literature, genre-specific characteristics.<sup>56</sup> Such formalization entails the risk, obviously, of forgoing critical potential, especially in popular cultural artifacts. That, I suggest, is a pitfall that *Terror* is prone to, and it reduces the success of the fictional as Von Schirach’s truth criterion, noted in paragraph 1. While Von Schirach wants his play to provide a platform for a democratic discourse on societal issues and emphasizes that the vote itself does not matter,<sup>57</sup> it does not offer enough the dramatic quality of recognition, the *anagnorisis* of what is indeed the truth in a specific case and that may well mislead and have a different effect from the one intended. Our continued research in *Law and the Humanities* therefore remains important. To rest my case: the jury is still out on the questions I raised above, but not on Daniela Carpi’s advocacy of and outstanding contributions to *Law and the Humanities* throughout her long and distinguished career. There the eyes have it!

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56 Franziska Burkhardt, “Der Dichterjurist als Produkt einer fruchtbaren ‘déformation professionnelle,’ Überlegungen zum literarischen Schaffen Ferdinand von Schirachs und Bernard Schlinks,” available at: <http://literaturkritik.de/id/20829> (last access August 1, 2017). Cf. Bauer, “Der geschundene Mensch,” 283, that truth in the criminal trial and literature is only arrived at through simplification, i.e. truth is a formal concept.

57 Volker Wieprecht, “Interview Ferdinand von Schirach über ‘Terror – ihr Urteil’: Nachdenken, in welchem Staat wir leben wollen,” available at: <http://www.rbb24.de/kultur/beitrag/2016/Interview-von-schirach> (last access August 28, 2017).



Paola Carbone

## ***Posts Manent, Lex Volat: Detective Stories in Electronic Literature***

It is well known that a formulaic genre has a predictable story and a conventional meaning, nevertheless what makes each story unique is the *ethos*, that is to say the relationship between characters and environment. When the environment is digital, new media renegotiate the main formulaic traditional features, as is the case with the detective stories in electronic literature.<sup>1</sup> The latter is ontologically rooted in that liminal zone in-between the virtual and the real world. This essay is about how eliterature is giving rise to a new form of crime fiction, in particular for Twitter.

As we are aware, the world of a detective story needs at least one murder, a crime scene, a detective and a sidekick, an investigative method, an investigation, a number of witnesses, a red herring, a multitude of lies, an objective and/or psychological analysis of the events, but in the end the police, the law or even the private eye succeed in restoring the original order.

We are usually less aware, anyway, that the plot of a detective story normally consists of two narrations: the story of the crime and the story of the investigation. Therefore the plot-line is marked by a time-line which goes from the diegetic present of the inquiry into the case with its own narrative dynamics, back to the moment of the criminal event, and even earlier to the past life of the victim and/or the killer. For the narration the logical connections are momentous, and the art of the criminal storytelling lies in the capacity to tell a story in reverse.

Moreover, from a narrative perspective, the detective story is multilayered because all the characters are storytellers. Since the very first scenes, the detective and all the persons involved make hypotheses about the reasons and the dynamics of the criminal act. Such hypotheses are then steadily reformulated as soon as a new clue is given. As a cognitive operation, it implies the rational praxis of sewing data together, filling gaps and making use of an inductive or deductive reasoning. Along the same line, we should say that the plot of a detective story is a net of relationships happening in sequence, which will turn in the end into the detective's logical argumentation against the criminal.

Are these premises still adequate in the age of digital communication and electronic literature? The answer is positive if we (paradoxically) consider, as

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1 When we talk about eliterature we refer to those literary texts which require the computation performed by a digital device in order to be written as well as to be read.

an example, a “basic” generative approach to the crime genre called “Plot Generator: Create a Crime Thriller Plot in Seconds”<sup>2</sup>, where the user/writer is asked to fill in a form with information about the main characters (name, sex, physical appearance, psychological attitudes), the location and the weapon. It might seem strange that the application asks also to specify the name of the author, indeed, since the plot is already traditionally defined, only the authorial intentionality and creativity can make the story unique. I refuse to discuss the literary value of generative literature, but it is true that if the machine alone cannot create new genres, at least it can change our perspective about traditional literature when it reveals its narrative praxis. The following story is an example of computer aided literature:

### **The Mangled Legs**

A Crime Thriller  
by Paola

Mangled legs have been turning up all over New York and the inhabitants are scared. Ten murders in ten weeks, all committed with a blade, and still nobody has a clue who the greedy killer is.

John Ford is a hairy and lovable gardener with a fondness for bird watching. He doesn't know it yet but he is the only one who can stop the selfish killer.

When his wife, Rachel Wishmonger, is kidnapped, Ford finds himself thrown into the centre of the investigation. His only clue is a minuscule book.

He enlists the help of a modest painter called Jessica Kikki.

Can Kikki help Ford overcome his chocolate addiction and find the answers before the mean killer and his deadly blade strike again?

### **Praise for *The Mangled Legs***

“Ford is the best detective ever. A passion for bird watching and chocolate is something we all can relate to.”

– *The Daily Tale*

“About as scary as a minute ant, but *The Mangled Legs* does deliver an important message about the dangers of a blade.”

– *Enid Kibbler*

“As always, a modest painter makes the best sidekick.”

– *Hit the Spoof*

“I could do better.”

– *Zob Gloop*

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<sup>2</sup> Plot generator available at: <http://www.plot-generator.org.uk/create.php?type=2> (last access in August 2017).

This sketch suggests neither an investigative method nor a conclusion, but it stimulates the curiosity of the reader who does find himself into the culturally well known literary context of a thriller. The system generates the incipit of an adventure that the reader can develop. This text is both the output of a digital process and the input of a new human creative process. As it happens in eliterature, a text is never given once and forever, but it always implies the engagement of the reader in the creation of the story. In this specific text, readers are not walking hand in hand with the official detective to unveil the mystery, but they can become the creators of a possible investigative scenario that has already been outlined for them by the machine. Besides, an unlikely section called *Praise for the story* is added in order to create the realism of the writing and the publishing process.

Deeply rooted in traditional detective literature, *Generated Detective: A NaNoGenmo comic #70*<sup>3</sup> is a generative project realized by Greg Borenstein in 2014 at the NaNoGenmo. As the author writes at the bottom of each page, captions were first “generated from a series of fragments of public domain detective books” from Project Gutenberg; then the selected sentences were used as keywords to search for images in Flickr; afterwards the images were processed and turned into sketches which now form a cartoon. The verbal and the visual creative process have been mediated by technology, but the text is still strongly influenced by the author and his literary tradition. On the contrary, readers are responsible for bridging the gaps created by the generative and random juxtaposition of the cartoons. Each processed page can be either conceived as a single story or read in succession as far as the reader can keep all the verbal and visual suggestions together in a coherent storytelling. This work seems to be a puzzle narrative, which requires the effort to create one picture from a multitude of sketches. It is obvious that what we read can be literary understood and accepted only by having in mind the main features of traditional detective fiction. The reading process is rooted into a cultural heuristics which stimulates the attention of the reader as a means of furthering investigation. As Poulaki maintains, puzzle stories

(...) remain deliberately and emphatically open, rather than closed in a beginning-middle-end schema. They abound with instances of self-reflexivity, constantly calling into question

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<sup>3</sup> Greg Borenstein, *Generated Detective: A NaNoGenMo Comic #70* (NaNoGenmo, 2014). Available at: [http://gregborenstein.com/comics/generated\\_detective/1/](http://gregborenstein.com/comics/generated_detective/1/) (last access March 20, 2018).



the borders between the fictional and the factual, and they follow a descriptive and object-oriented rather than causality-driven presentation of their storyworlds<sup>4</sup>

Yet, electronic literature is more than generative literature. If a linear prose and the turning of the page of the book is suitable to formal argumentation, what happens when the narration is notoriously sequential but non-linear, hypertextual or even geolocalized? What happens when a crime story is told or is set within a social media? What happens when the body of the reader invades/penetrate the storyworld and even the crime scene, as in augmented reality? Can we hypothesize a new golden age for the detective story?

In the highly structured and conservative 1920s English society, and also during the Great Depression in America, the issue of social order was crucial in literature, but how does contemporary aporia call into question the happy ending of the investigation? How does the post-postmodern contradiction affect our search for truth? Does contemporary sensitivity to truth, law and order change our knowledge of reality and, along with it, also the detective story? Can the detective's logical reasoning still be instrumental in an engaging digital detective story? We can anticipate that in electronic crime fiction the final social order and the need for penalty measures are not part of the storytelling.

This essay will examine two digital works for Twitter, but we first have to point out that the *ethos* of the new genre is widely influenced by the interface or the writing/reading surface (the screen, the landscape, the body ...), which is often bewildering for the readers. As Johanna Drucker states, "The interface is not an object. Interface is a space of affordances and possibilities structured into organization for use..."<sup>5</sup> Indeed, each medium has its own rules of communication that must be acknowledged by both authors and readers in order to create and/or have experience of a compelling storytelling. In a digital environment, the interface plays a strategic role for being either part of the investigative method or the stage of the action, or even an immersive and virtual environment which creates a deep empathic engagement in an accomplished suspension of disbelief. As a consequence, not only is the creative process digital as much as the text and the reading process, but also the content is deeply influenced by the binary code. "Products of digital technology, artefacts of digital culture, and events of digital media can all be traced back to an underlying code

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<sup>4</sup> Maria Poulaki, "Puzzled Hollywood and the Return of Complex Films," in *Hollywood Puzzle Films*, ed. Warren Buckland (New York: Routledge, 2014): 37.

<sup>5</sup> Johanna Drucker, "Performative Materiality and Theoretical Approaches to Interface," *Digital Humanities Quarterly* 7.1. (2013), available at: <http://www.digitalhumanities.org/dhq/vol/7/1/000143/000143.html> (last access August 2018).

to which they are in some measure equivalent. The digital admits input and generates output; both of these moments include an irreducible contact with the human world.”<sup>6</sup>

## 1 Elliot Holt’s *#TwitterFiction story was it a suicide? A homicide? Or an accident? Or the investigative method*

Elliot Holt’s *#TwitterFiction Story Was it a suicide? A homicide? Or an accident? Read and decide...*<sup>7</sup> is a Twitter fiction which combines the main features of social media with the detective story. The text was written during the Twitter Fiction Festival in 2012 and only at a later time The Penguin Press published it on Storyfy. The choice to move the work on a different platform underlines how Twitter was not completely suitable as a literary platform for many different reasons.

As it always happens in traditional detective stories, where the reader is immediately taken on the crime scene with the detective, in this work the very first four tweets present the context of the story from the account of the author (@elliiotholt), who enters the fictional framework as a third person narrator:

1. @elliiotholt

On November 28 at 10:13 pm EST a woman identified as Miranda Brown, 44, of Brooklyn, fell to her death from the roof of a Manhattan hotel.

2. @elliiotholt

Investigators are trying to determine whether Ms. Brown’s death was an accident or if, as some speculate, she was pushed off that roof.

3. @elliiotholt

At the time of her death, Ms. Brown was at a party. No one witnessed her fall, but three guests were tweeting from the party all evening.

4.@elliiotholt

None of the tweeting guests appear to have known Ms. Brown, but all observed her at various times in the 2 hours leading up to her death.

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<sup>6</sup> Drucker, “Performative Materiality,” 7.

<sup>7</sup> Elliot Holt, *#TwitterFiction Story Was it a Suicide? A homicide? Or an accident? Read and Decide...*, now available at: <http://www.u10.mi.it/wp-content/uploads/2012/12/@elliiotholt.pdf> (last access January 2019).

After a short list of posts introducing the three eyewitnesses at the party, readers are asked to participate in the creative process as well as in the investigation:

@elliiotholt

You decide. Read the evidence.

@elliiotholt

Then tweet your verdict (tonight or tomorrow) using the appropriate hashtag: (#homicide #suicide or #accident) & #twitterfiction

They turn into the detective and – strangely enough – into the judge. Besides, they share with the official police investigators the same information sources:

@elliiotholt

What follows, in chronological order, are all the tweets sent from that party, which began at 7:30 pm EST...

@elliiotholt

...and concluded when police arrived on the scene at 10:17 pm EST. Was Ms. Brown's death a #homicide, a #suicide, or an #accident?

Since the beginning readers know *who* the victim is: Miranda Brown; *what happened*: Miranda fell to death from the top of the skyscraper; *where it happened*: from the roof of a Manhattan hotel; and *when it happened*: during a party. *How* and *why* Miranda Brown died are the subjects of the investigation. In order to answer these questions, instead of looking for *indicia*, the police decides to proceed by examining what the eyewitnesses told their followers on Twitter that night.

The canonical presence of the eyewitnesses is respected, but in a very unusual way. Twitter is conceived as a collective memory-tool<sup>8</sup> and the Net as a generative multi-memory. If each single tweet is an atom of thought, the chronological sequence of such atoms – which is essential in a traditional investigative argumentation – turns into the collective storytelling of the party. Unlike traditional detective stories, witnesses are not subjected to questioning and, as a consequence, their stories are deprived of the natural mental distortion induced by memory or by the emotional impact of the criminal act on their mind, which are generally meant to be part of the investigation. However, in case the three witnesses were directly involved in Miranda's death, their red-herrings or lies are almost impossible to detect, firstly because a confrontation with the detective is

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8 Patty Jansen, "Networked Connected Memory," *Digimag* 75 (2017): 30–34, 31.

missing, secondly because of the naturalness and immediacy of the account provided, which *seems* to be spontaneous and free of over-structures. Since tweets are generally posted in real time, the mimesis of the medium makes the readers believe in the truthfulness of the messages. How could we doubt a post like this:

@ElsaJohanssen  
omg i thought i'd never find a taxi #sixblocksaway  
1:53 AM – 29 Nov 2012

Being the party a situation in transition and open to any representation or meaning, tweets are not originally designed to tell a complete story, but only to report on single moments as far as they are important for the writers. An interrogatory or a deposition, on the contrary, has a linguistic and narrative frame of reference rooted in a well-defined objective reality, namely the crime scene. While we read about how the witnesses make experience of the party, we are asked to form indirect, critical and rational relationships with Miranda. We cannot deny that she was at the party that night since her corpse is on the pavement, but she is a mere object of the multivoiced discourse: she is one and many. Miranda almost never directly interacts with the witnesses, but the more they speak about her, the more she becomes an individual and true to us, even if *in reality* she is an abstraction. In retrospect these tweets are what photograph is for Roland Barthes: ‘Ultimately, what I am seeking in the photograph taken of me [...] is Death: Death is the *eidōs* of that Photograph.’<sup>9</sup> Each tweet is like a selfie with the dead: even when she is alive, Miranda is an evanescent object, a corpse *in absentia*.

In Twitter, Miranda is a digital object, the product of digital media communication, and as any other digital object she is ontologically abstract: “The hallmark of the digital is to render abstraction materially operative, to bring abstraction into the concrete without it ceasing to be abstract.”<sup>10</sup> Indeed Jean Baudrillard taught us how the hyperreal is the generation by models of a “real” without origin or reality, a simulacrum. If Samuel Edward Ratchett, alias Cassetti, the rich American traveler murdered on Agatha Christie’s Orient Express, is other-than-Ratchett for all his thirteen murderers, he is *the* subject of the story. Miranda is no more than a far distant entity for the eyewitnesses. We do not see an ‘original’ Miranda and her digital representation: she simply

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<sup>9</sup> Roland Barthes, “Camera Lucida,” in *An Anthropology of Images: Picture, Medium, Body*, ed. Hans Belting, (Princeton and Oxford: Princeton University Press, 2011): 16.

<sup>10</sup> Aden Evans, “Web 2.0 and the Ontology of the Digital,” *Digital Humanities Quarterly* 6.2 (2012), available at: <http://www.digitalhumanities.org/dhq/vol/6/2/000120/000120.html> (last access in August 2017).

exists in the relationship between digital subjectivity (communicated via social media) and an (hyperreal) objectivity made of binary code. Technically speaking she is a sequence of 0 and 1, a lifeless system or, as John Searle would say, she is syntax. As a matter of fact, followers do not need to know whether Miranda exists in real life or not, they merely believe in what they are told and, as a consequence, she *lives* only in this virtual dimension. Holt creates a character who is exiled from the objectivist system, although she exists *in* a social network *for* the followers and, in a subordinate position, also for the readers. Somehow she is locked into some tweets, but beyond the real world.

How can a police investigation cope with this? If once language was formerly responsible for the formal delineation of a cognitive universe (the crime and the investigation) and a deposition had a legal value, now social media communication seems to undermine or dispossess reality of the concepts of “reference” and “referent.” All this is part of the digital ontology and we must keep it in mind when we study detective stories and the influence they have on our legal or judicial awareness. The risk to overlap digital ontology and material reality, namely what is inside or outside the digital world, is truly existing. As Alessio Chierico states: “Digital is an abstraction which emancipates its form from the necessity of having any referent. Thus, digital must be intended as a self-referential entity.”<sup>11</sup> With this regard we could extend what Riccardo Manzotti states about computer graphic images: we do not only witness “a lack of reference or value, but rather a physical substitution of our everyday world with a façade made of pixels” or rather, I would say, posts. What Manzotti maintains might be applied also to Miranda’s identity:

CGI and virtual reality are bleaching the very notion of sign. Pixels have no longer any semantics because they are not signs in human lives, they are things in a world of things. Only they are not the things we live in. Pixels are not people, cars, and buildings. Pixels are only pixels, no matter how they are organized.<sup>12</sup>

The alarming paradox of our times is that the shift of the real towards virtual cognitive universes makes people conceive real life as if it were virtual, to the point that also ‘real’ death is approached as an abstraction. As an example, we should remember the murder committed in Cleveland in 2017 and posted

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**11** Alessio Chierico “The Representation of Self in Digital Life. Digital Ontology for Digital Identity,” *DIGIMAG* 75 (2017): 6–14, 6.

**12** Riccardo Manzotti, “Pixels Are Driving Out Reality,” *Motherboard* (2016), available at [https://motherboard.vice.com/en\\_us/article/8q8mzz/pixels-and-the-inflation-of-meaning](https://motherboard.vice.com/en_us/article/8q8mzz/pixels-and-the-inflation-of-meaning) (last access in October 2017).

on Facebook, captioned “Easter day slaughter.” The act is not shocking only because tragically absurd, but especially because, in the intention of Steve Stephens, the killing *had to* be social. This story underlines the disproportion between life online vs offline: the irredeemability (more than the cruelty) we experience in real life does not belong to social media interaction and, in a sort of inflation of meaning we are (probably and regrettably enough!) getting used to the idea that everything is reversible, everything is suspended or in permanent transition in an aleatory social contract. The murder in Cleveland dramatically, perilously, tragically highlights how the production of a digital content, the digital product and the digital distribution can be dangerously misconceived. Whenever a moral and ethical responsibility is missed in a digital environment, a criminal or a lawless attitude can emerge.

Hence, how can the rule of law and the inflexibility of the law be introduced into this real/virtual world? It is known that only a subject of right has a duty of responsibility, but electronic fiction hardly represents fictional characters who are subjected to any legal liability. Moreover, the readers of an electronic detective story do not generally expect to know the name of the killer or to see the positive resolution of the case. Contrary to what happens in conventional literature, social order and penalty measures do not belong to their storytelling. Generally speaking, readers are more interested in the narrative process and in the construction of the narrative meaning. The traditional investigation is more suitable for videogames, where the player is challenged to solve the case. Technically, the readers of eliterature learn how to read the text and what to expect from it anew every time they begin a new work. The degree of engagement is always different: sometimes they are asked either to participate and become characters themselves as in videogames or to interact with other readers or even to simply accept the aesthetic experience created by the author.

Beyond any doubt, digital technology is extremely powerful in creating alternative universes and truths, that is alternative virtual referents, as mixed or virtual reality demonstrates. As an example of a gamified detective story in mixed reality consider *Fragments*<sup>13</sup> created by Microsoft in partnership with Asobo Studio. By wearing HoloLens, the participant plays the part of a detective in search for clues to solve the case he’s been assigned. What is interesting is that his own apartment, or any other place where he physically is, is scanned so that spatial mapping and custom AI allow the reader’s room layout and furniture to influence placement of evidence (clues can be hidden in his *real* cupboard or

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<sup>13</sup> To see a description of *Fragments* visit <https://www.microsoft.com/en-us/hololens/apps/fragments> (last access in July 2017).

under the participant's *real* bed). Besides, life-sized holographic characters enter into the physical/narrative space and directly interact with the detective. The body of the reader and the physical world that he knows so well are cognitively displaced for a short period of time, and the complex objective vs. subjective, abstract vs. concrete, virtual vs. real, fake vs. true relationships become the skeleton of the narrative and the reading praxis of a very empathic storytelling.<sup>14</sup>

Back to Holt's story, readers are asked to perform a multilayered reading process: at first, they read the tweets as if they were potential followers in order to learn about the events, but then they read as investigators in order to understand what happened to the victim. With this respect, readers have to be aware that the eyewitnesses have specific (interactive) identities like any other 'conventional' eyewitness. For detective Hercule Poirot, the psychological analyses of the contrastive personalities of the characters is a prominent part of the investigative method, which is decisive for the making of the plot. If we acknowledge that tweets are extensions of consciousness that make 'real' what is a transient and impulsive perception, the traditional approach to truth should be replaced by a close stylistic analyses of the posts. The reliability of the contents lies in the storytelling (the story told along with the emotional and intellectual engagement designed by the writers) and in the skill writers/witnesses show when they write *for* a specific social medium. Yet a criminal, who wants to exploit social media, must be skillful in social media communication, which means that he should know – at least – how to write effective short messages, when to post them, how to interact in real time with followers and/or followings, how to expand the text with hashtags.

All this confirms that Holt's characters are storytellers, but, once we are asked to tweet our verdict, we are supposed to consider their posts, listed in chronological order, as the legal truth synthesized in a sentence by the judge in court. In this work, it is as if investigation and fair-hearing overlapped, but witnesses describe facts outside the canonical frame of a legal argumentation.

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**14** The body of the reader is deeply involved also in *The Breathing Wall* by Kate Pullinger, where the reader is asked to breath in unison the main character, who is in jail charged with his girlfriend Lana's death. Indeed, only by breathing into the microphone of the computer with the proper rhythm, readers can know the name of the true murderer. Useless to say, the process is complicated to realize, but an hypnotic over-imposition of bodies become the reading experience. The curiosity to know the name of the killer is a provocation or a motivation to activate the poetics of the work. The canonical glorification of reasoning and logic has turned into a physical identification with the character. Anybody can be like the most powerful of the detective if he only knows not how to think, but how to perceive the physical relationship with the fictional storyworld.

This approach to truth and justice is epistemologically and ontologically wrong: the spectacularization of the event by means of the medium replaces, in the mind of the followers, the legal procedure (or a fair-hearing made of cross-reference and evidences) with all the guarantees that the latter should provide. The request of a judgement suggests how the concepts of justice, jurisdiction, lawfulness are categories which do not belong to digital ontology. In the canonical detective novel, readers should participate only in the investigation. Abstraction and concreteness, virtual and real find a compromise in specific socially and formally *acceptable* behaviors in a digital environment, but they are not enough to guarantee certainty, truth, formal respect of the procedure, fair-hearing, namely, they cannot ensure Justice in the 'real' world.

As in the movie *The Boston Strangler* (1968) directed by Richard Fleischer, where the screen is split into several frames in order to show multiple viewpoints of the same scene, the three witnesses tell the same story from just as many points of view and sensitivities. In the movie, each frame reinforces the expectations of the observers to the point that they easily hang in suspense and anxiety for the poor victim. On the contrary, in Holt's work, though the readers already know that the tragedy is at hand, it is the complexity of the scene to prevail and to make them more attentive and inquisitive about the dynamics of the events. As a matter of fact, readers are not emotionally involved in Miranda's fate, since they observe the scene with a pragmatic approach to the event: they are *rationally* led towards death, and they never lose control (de facto as a detective or a judge should do); in case, emotions are stimulated by curiosity. The suspense is connected to what we already know is going to happen. Somehow, tweets take the readers back in time on the (supposed) 'crime' scene as any other investigation does, but the immediacy of a tweeted narration turns a simple reading experience into a highly (rationally) immersive one.

It can be stated that the story is more complicated than complex. The plot seems to lack a real center in favor of a more general narrative strategy. The complexity of M. Dupin's argumentation and his shrewdness are missing, even if the telling is agreeable and consistent. The multiple tweets create a visual landscape of the death *in context*, but it is hard to find a clever argumentation of them. Tweets draw the mood of the party and reveal the *crescendo* of Miranda's desperate state of mind, but the emphasis on the process of communication makes the criticality and the danger of the situation less palpable. The immediacy of the event is supposed to stimulate the 'little grey cells' of the reader rather than present the deductive or inductive performance of the detective.

The complication is even more evident if we consider the temporal dimension of the diegesis. The author is writing a story set in the past, which lasted about three hours, but such story is presented in the imminence of its becoming.



The traditional to and fro of the detective story is here concentrated on an absolute present, immediately before the death of Miranda, and it is made vivid by the impulsiveness and directness of the tweets posted in real time. A crime story on Twitter should exploit the coincidence of the narrative present and the present of the criminal act, given as a chronological sequel of tweets. In Holt's fiction the story of the investigation (the recollection of the tweets) and the narrative reconstruction of the past life of the victim or the crime (through the viewpoints of the eyewitnesses) coincide, while in traditional detective fiction they cover two different points in time. Whatever cannot be justified in social media communication cannot be included in the story.

The timeline of events, traditionally deduced by a logical approach to reality, is replaced by a more sensationalistic approach to death. If we consider that – with a certain narcissism – the users of Twitter usually write in order to be read and re-tweeted, it is astonishing the fact that these three witnesses are sharing the experience of death or, even more appalling, a criminal act. Actually, one of the most delicate and intimate moment in one's life is violated by the mundane noise of a party on a social media platform. Twitter seems to be shameless, outrageous of human life. Of course, the witnesses cannot be conscious of the significance and the consequence of their posting. As in a selfie a photographer does not have a full feeling of 'being into' the world, because he is concentrated on the image of it<sup>15</sup>, Holt's eyewitnesses are less concentrated on Miranda than on her description for Twitter. The levity of the writing process (or posting) prevents them from perceiving that any moment is *the* meaningful moment in one's existence. The screen and the interface are substantial parts of the real, they are the way they experience the world and themselves: they live under the conditions of interfaces, displays and peripheral devices, that is within an integrated structure of networks.<sup>16</sup> Nowadays in the pervading social media interaction, self-penning seems to be the main criteria people have to relate to the world, and their state of mind lives within both a networked society and an electronic environment. In a *Twittercentric* vision of existence, identity is self-sufficient since any object of discourse is always implicitly subordinated to the subject. Self-representation is the paradigm of comprehension of the real: the world and the others exist only through my self-representation, my selfie, my experience, my place, my likes ... Miranda's death violates this praxis and it brings

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15 Ana Peraica, *Culture of the Selfie: Self-Representation in Contemporary Visual Culture*, Theory on Demand #24, (Amsterdam: Institute of Network Cultures, 2017), 82.

16 Claire Burke, "The Post Human Cyborgian Body: Dithering Between the Real and the Virtual," *DIGIMAG 75* (2017): 21–24, 21.

into focus life in a less subjective way and with a less egotistic attention for the Other. The dead body of Miranda challenges what it means to be human inside and outside the boundaries of technology. Contrary to the posthuman condition, where both body and identity are authored by technologies, as cyberpunk literature told us, Miranda becomes a mirror for social communication and for human experience once the human is reduced to 1's and 0's.<sup>17</sup>

Obviously, in order to use Twitter efficiently (or mimetically), Holt had to create the *proper* narrative framework for such social communication: firstly, the characters had to be in the position of using a social media (they attend a social event); secondly, they had to be socially interactive, which technically implied that several Twitter accounts had to be opened and plausible. Indeed, the traditional mimesis of the story needs interacting with the mimesis of the medium, that is its verbal and diegetic grammar. It is my opinion that the real challenge for an author who wants to write a detective story in Twitter is the construction of a storyworld coherent with both the means of communication and the investigation. Twitter becomes the meta-model of the make-believe. Any fictional truth is a true proposition within the game of the make-believe. For this reason media usually play an essential role of co-protagonists. Within the means of communication we find the essence of the digital ontology and the politics embedded into it.<sup>18</sup> In Holt's work, all the voices are realistic with respect to the way they communicate: each post lets the reader enact a subjectivity by inference:

@elliottholt

The 3 tweeting guests were: 1) @MargotBurnham, 31, a public relations executive whose firm was hosting the party at which Ms. Brown died.

@elliottholt

2) @SimonSmithMilla, 44, of London, who was on the guest list because as he put it, "he knows people."

@elliottholt

And 3) @ElsaJohanssen, 26, a self-described "Swedish fashion designer" though she is an American citizen who was born in San Francisco.

Objective data about the three narrators or witnesses are instantly associated to a distinguishing characteristic of their personality which should help the reader/detective/judge to decode their following messages. Being tweets very brief, readers are obligated to expand the text beyond its meaning by using their imag-

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17 Burke, "The Post Human Cyborgian Body," 22.

18 Chierico, "The Representation of Self in Digital Life," 11.

ination. Each witness engenders this process through the hashtags. Generally speaking, in their double role of *topic* and *comment*, hashtags potentially generate links and debates within the community<sup>19</sup>, but in this case they make readers focus their attention on certain aspects of the scene, and in so doing they guide the comprehension of the story. Hashtags are essential storytelling generators as well as powerful mimetic devices. To sum up, all the voices are fictional, but absolutely realistic. Besides, the rhythm of their tweeting makes the story immersive and engaging: the vivid details of the party work as a form of simulation of the real, immersive experience of/at the party. The value of their evidence is rooted in the observation skills of the narrative voices, on the one hand, and on their ability to create engagement, on the other one.

Accordingly, we must acknowledge that the medium is the environment or *ethos*, and the mimesis of the medium plays a strategic role in the storytelling. Eventually the readers are asked to write their verdict, but there is no authorial or definite ending. This unusual approach to the detective narrative is justified by the fact that the story was written on a digital *social* medium, and that in a post-postmodern society the uncertainty of truth is no longer perceived as a limit: the communication of the event seems to be more important than bringing a criminal to justice, or even more important than the positivist approach to truth and investigation. The ending is open and the law offers a method rather than Justice: as we have already pointed out, on trial the judicial judgement truth is the synthesis of multiple lines of argument.

We should wonder why this fiction was moved on Storyfy, since the choice seems to question the effectiveness of Twitter as a narrative platform. Certainly, Storyfy provides a narrative framework to keep all the different narrations together in chronological order. However, we should also assume that on Twitter posts are linearly displayed bottom-up, which means that the last tweets are at the top of the thread, while the first ones, which should introduce the story, are at the bottom of the page. Since the purpose of the text is to reconstruct the events to the advantage of the police, the chronological linearity of the story defines the narrative discourse. We should not forget that the fictional detective-framework pretends to be built after and around tweets which were written only to describe a social event. As a matter of fact, a narration in reverse could compromise the formulaic storytelling of the detective story.

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**19** Francesca Chiusaroli, “Sintassi e semantica dell’hashtag: studio preliminare di una forma di Scritture Brevi,” in *Proceedings of the First Italian Conference on Computational Linguistics – CLiC-it 2014*, eds. Roberto Basili, Alessandro Lenci, Bernardo Magnini (Pisa: Pisa University Press, 2014): 117–121, 118.

Moreover, being Twitter a social network, re-tweets and comments are vital. However, in this case, the narrative project could have been “corrupted” by the latters, therefore the publisher minimized the risk by moving the work. Any literary text has its own narrative architecture which envisages an implicit reader, but it could hardly bear the presence of a reader who dishevels the literary framework by opening uncontrollable narrative lines. Storyfy is a way to save the text, the poetics and the concept of the story from the medium. This sounds like a contradiction in terms, considering that the text was conceived entirely for Twitter. The main feature of the social medium turns into an intolerable noise. The followers would have interrupted the logical and/or chronological stream of the events of the detective story.

Holt’s work is consistent, but it is a little forced and unnatural because it lacks the noise of life on Internet, which is an essential dimension in Twitter. The story is conceived only to be a paratactic structure that must be read linearly as an individualistic experience. In the three hashtags *#suicide #homicide #accident*, comments mainly refer to the story in general, instead of adding new narrative lines useful to close the investigation:

Sleeping Tiger @wakingtigers 22 dic 2012  
*#suicide @elliottholt #twitterfiction* But I feel like I’m missing something.

Hanna J SenderAccount verificato @no\_such\_zone 29 nov 2012  
 Love this concept! just wish it was more realistic tweets. Incorporating pics & RTs? <http://storify.com/penguinpress/elliottholt-s-twitterfiction-story> ... *#TwitterFiction #suicide*

Sarah Beth @bookgirlsb 29 nov 2012  
*@elliottholt* I vote *#suicide*. But I feel like I might change my vote after a second read! *#twitterfiction*

Kim Schuette @SharpSchuette 29 nov 2012  
*@ElliottHolt* You ace it! *#TwitterFiction* Story <http://ow.ly/1PRDuZ> via @Slate Oh yeah, *#suicide*

Mike Fix @fixitup2 29 nov 2012  
*@elliottholt* Best *#twitterfiction* idea!! It has to be *#suicide*

Josh Radnor @JoshRadnor 29 nov 2012  
*@elliottholt #suicide*. She seems like the kind of person who would try to win an argument by throwing herself off a roof. *#twitterfiction*

Comments are projected as additional texts, and even if they respond to the request of the author, they are *other* than the main text. Readers seem to collaborate, while maintaining their traditional narrative role. It is as if they expected to

suggest the author how to proceed with the story and take it to an end, but they never convey an idea of emotional engagement or immersion into the story-world. For sure they do not play neither the detective nor the judge to the end, since they do not provide neither a rational motive for Miranda's death nor their deductions.

The conciseness of the tweets stimulates a limited deductive/inductive process of interpretation, but the fascination of the investigative method (or Poirot's grey cells at work) is missed. Objective data of the crime scene, oddities during the party, and bizarre behaviors never turn into clues: in so doing, the investigation cannot take a step forward towards a conclusion. Nonetheless, it is the method that gives consistency to the story and the perception that the mystery will be unveiled and the criminals punished. Indeterminacy and uncertainty pervade this work for Twitter, but the reader is not disappointed. As I have already stated, the reader does not actually expect anything else. He is satisfied for being part of an event which is not only criminal, but also social.

## 2 Davide Pedrazzini, *Unnamed* or a detective story remixed

Another example of crime story for eliterature is Davide Pedrazzini's *Unnamed*<sup>20</sup> work, which could be considered a detective story remixed. This work is authentically thought for Twitter, namely it is impossible to move the story from this communication platform, since it is organized around a variety of accounts.

The main profile by Emile Jacobs – @emj1900 has a statement: “The detective that nobody recognize but actually everyone need.” (<https://twitter.com/emj1900>) In the very first page, the detective reveals that part of his archive has been published online:

Emile Jacobs @emj1900 19 gen 2016

#01d5 g

#67b8d

#01b37

My whole support and condolences for the families & friends involved..

Emile Jacobs @emj1900 19 gen 2016

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<sup>20</sup> Davide Pedrazzoli, *Unnamed*, available at: <https://twitter.com/emj1900> and <https://twitter.com/drgwhite8> (last access in August 2017).

New on twitter, my case list went Online on my investigative site's database.. here some few that went not as expected.. #Improvefuture

While Emile is posting, he is reached via Twitter by a certain Greg White and a conversation between the two starts in real time. The story is based on the online interaction between the two men. In this case, Twitter works as a true means of communication. By opening the thread “Tweet and answer,” the most recent posts, as we have already pointed up, are at the top of the page and the first couple of tweets are unquestionably captivating and haunting:

Emile Jacobs @emj1900 19 gen 2016  
@drgwhite8 OHW F\*CK!

Emile Jacobs @emj1900 19 gen 2016  
@drgwhite8 @Dani\_Pritch ... It was an accident.. U can't blame me

The reader immediately realizes that he has the responsibility to work backwards in order to understand what is happening and the kind of relationship there is between the detective and his mysterious interlocutor. As investigators themselves, readers are supposed to exploit their knowledge of the medium in order to investigate in a net of accounts. They have to observe, remember, induce, deduce not only what is happening in the diegetic present, but also the reasons behind the scenes. Still they can only rely on what the characters write, on the hashtags they choose as well as on the photos they post, that is on the *picture* they create of themselves.

Since the beginning Emile shows a certain ingenuity when he creates a profile inspired by famous American crime movies and their private eyes. As a consequence, even if he is more concrete than Miranda by virtue of the fact that he speaks for himself, from an ontological point of view he exists only as a literary or cultural construction. But it is only at the end that we will understand what a simpleton he is with respect to technology.

Since this digital fiction is not a videogame and there are no level-ups, the reading process is highly engaging and even difficult to achieve at its best because we are not provided with explicit directions about the quest. Besides, at the beginning it is not easy to understand what Greg is looking for. To take one example, at a certain point in order to communicate where he physically is, Greg posts a photo taken from the window of his apartment in New York. Even if the name of the street is not specified, Jacobs understands that Greg is very near to him, but it is only by reading the account of one of Jacob's neighbor that the reader can find out the exact street numbers (309/409B). All this means that paratext and networking are crucial to get all the necessary information to

understand the plot. The storytelling lies in between the online and the offline lives of the characters in the diegetic present.

The screens of the digital devices are liminal zones which, also in this fictional work, play an essential role in the enactment of the world and the narrative structure. To Huhtamo: “The history of the screen fluctuates between the imagination and the world of things. As gateways to displaying and exchanging information, screens are situated (...) between the material and the immaterial, the real and the virtual.”<sup>21</sup> Indeed, the narration is fed by social interactivity, but it is also widely influenced by a very concise, rapid, arrogant, provocative American English. Soon we become aware that the story is the *mise en scene* of a verbal and physical duel between a victim and his executioner taking place online, albeit it is not clear who the victim is: is it Luke – Greg’s friend – who died probably because of Jacobs, or someone else? In point of fact, in order to wreak revenge on the private detective for the death of his friend, drgwhite8 seeks for the investigator online and eventually he (physically) kills him in his apartment. As in a traditional detective story, the investigator reveals the name of the murderer, but he does it through his own death. This work is a revenge tragedy and a detective story at the same time, but as Francis Bacon said at the time of its first developments, revenge is ‘a kind of wild justice’<sup>22</sup> or a lack of justice.

Greg’s strategy is to lure the investigator into a virtual conversation in a social media in order to make him lose control over his physical environment. It is interesting that the means of communication has turned into a snare for the detective. De facto, the detective was so much deeply immersed into the conversation that he forgot how the medium was working on him – Narcissus as Narcosis, McLuhan would say – and he died of it: while he thought he was safe behind the screen, he was utterly vulnerable, since the interface was ubiquitous and the mobile digital device allowed the murderer to reach the detective’s apartment and put him to death.

With this regard, from the beginning through the hashtag #Improvefuture, Pedrazzini links the story to an essay by Warren Ellis about digital media, where we read: “The idea is that things are designed to activate a psychological predisposition to believe that we’re in a static and dull continuous present,” which is exactly the mood readers develop reading the story: the two men are talking and it seems that the world is still, although, on the contrary, the murder-

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21 Erkki Huhtamo, “Elements of Screenology: toward an Archaeology of the Screen,” *ICONICS: International Studies of the Modern Image* 7 (2004), 34.

22 Francis Bacon, *Essays* [1598] (London: Everyman, 1999), 11.

er is approaching his victim. Decades ago McLuhan suggested that technology was an extension of man “to the degree that ... it is a development that suggests a desperate and suicidal autoamputation, as if the central nervous system could no longer depend on the physical organs to be protective buffers against the slings and arrows of outrageous mechanism.”<sup>23</sup> This condition is “subliminal and forbid self-recognition, as the effects of media happen below the levels of perception and opinions.”

Technology altered Jacob’s consciousness to the point that he has forgotten his physical being in the material world. Not only, the question is that we tend to forget that the digital has – as Kirschenbaum stated<sup>24</sup> – a forensic evidence and a formal evidence. Johanna Drucker theorized that the materiality of the performance “constructs meaning as a result of engagement, the text is performed, rather than received.”<sup>25</sup> The interface and the screen cause a performance, but we tend to forget the interface. The interface “re-order familiar conventions through acts of generative, performative engagement.”<sup>26</sup> This shift from an approach grounded in what something *is* to how something *works* changes our awareness about the materiality of the digital artifact (whatever it might be: text, performance, identity). Pedrazzini has, therefore, put on stage the drama of technology as McLuhan predicted. He has created a short circuit between the real and the virtual identities of the subject. If the hyperreal is a simulacrum, “human relations forged in the era of social networking and other digital communication tend to behave digitally, abstractly, reductively.”<sup>27</sup>

Unlike Miranda, Emile has a physical referent, and the author stigmatizes the danger of an unwitting perception of oneself and technology. Here the digital ontology previously discussed raises again the relationship between abstract and concrete: while Emile makes an abstraction of himself, Greg brings abstraction into the concrete without it ceasing to be abstract, that is he kills Emile without making himself visible to the victim and to the reader. To the detective, Greg is an inscribed body, that is a “textual persona, a user profile on an app, or an

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<sup>23</sup> Marshal McLuhan, *Understanding Media: The Extensions of Man* (Cambridge, MA: The MIT Press, 1964), 47.

<sup>24</sup> Matthew G. Kirschenbaum, *Mechanisms. New Media and the Forensic Imagination*, (Cambridge, MA: The MIT Press, 2008).

<sup>25</sup> Johanna Drucker, “Performative Materiality and Theoretical Approaches to Interface,” 4.

<sup>26</sup> Drucker, “Performative Materiality,” 18.

<sup>27</sup> Aden Evans, “Web 2.0 and the Ontology of the Digital,” *Digital Humanities Quarterly* 6.2 (2012). Available at: <http://www.digitalhumanities.org/dhq/vol/6/2/000120/000120.html> (Last access in August 2017): 7.



avatar, among other forms”<sup>28</sup>, while he is *also* a *true* villain. As already pointed out, Emile is first the stereotype of a Hollywood private eye, then he is the ID of his Twitter account, but in the end he is a corpse, even if his image is culturally mediated by Adolphe Bertillon forensic views of the body. More than an object to be investigated like Miranda’s, Emile’s corpse transforms an abstract identity into a posthumous concrete subjectivity. In photography, death appears on a real and symbolic level, but if it usually displays the absence of life, in this case the corpse is the supplement of an absence or the supplement of the digital abstraction of Emile Jacobs.

Actually, the picture is overdetermined since it is the visual concreteness of Emile and his abstract ID as well as Greg’s admission of guilt (tweets *manent!*). But more than anything else it is a moral outrage. Forensic photographs are commonly made for internal, institutional purposes of analysis and they are controlled by a strong professional ethics and a legislation that aim to avoid any possible desecration of the privacy of the deceased subject.<sup>29</sup> Emile’s picture, on the one hand, makes us straightaway understand what happened, therefore it has a powerful narrative function. But on the other hand, it is uncalled-for unless Greg did want to show all his disrespect for Emile, who, according to him, was responsible for his friend’s death. As a murderer, he is not hiding himself from the police. On the contrary, Greg is making his criminal act manifest on the Net. Anyway, contrary to the killer from Cleveland, probably he wanted to punish a man rather than simply kill a human being publicly. About the reluctance to represent corpses, Julia Kristeva said that a “body without soul, a non-body, disquieting matter, it is to be excluded from God’s territory as it is from his speech”:<sup>30</sup> as corpse, the investigator is speechless and deprived of a soul, and for that it is despicable.

Consequently, a homicide, a motive, a corpse and even the lies of the murderer to the investigator are provided, as it usually happens in a conventional detective story. Nonetheless, Greg creates a kaleidoscope effect for his co-protagonist but also for the reader, who has to redefine the paradigms of the genre. What is unusual is the remixing of all the conventional features and, once again, the pervasive sense of uncertainty we feel. We do not know neither the real name of the murderer nor whether or not the detective was responsible for Luke’s death, and, in the end, law is dismissed in favor of revenge, namely

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28 Samaa Ahmed, “Putting the Self in Selfie: An Exploration into the Ways in Which Digital Devices Act as an Extension of the Self,” *DIGIMAG* 75 (2017): 57–65, 59.

29 Ana Peraica, *Culture of the Selfie*, 71.

30 Julia Kristeva, *Power of Horror, An Essay of Abjection*, (New York: University of Columbia Press, 1982), 109.

a ‘wild’ justice. As in Holt’s work, justice and Right are presented as a do-it-yourself, which leaves the reader with vicar truths and the suspension of the principle of responsibility. As Catherine Belsey notes,<sup>31</sup> revenge ‘is not justice.’ Ironically, it is in the absence of justice that the revenger pursues a course of action that is itself unjust, in an attempt to restore the unity and social order that justice promises. Furthermore, the tragedies of revenge are often structured around the fact that criminality has invaded the centers of justice. Avengers disrupt the social order they are trying to restore.

Similar to the previous example, also Pedrazzini’s work is highly conditioned by communication technologies. Any detective story does exploit journals and newspapers, letters, TV, radio, local news and so on (consider how M. Dupin solves the murder of Marie Roget by reading newspapers), but this story is all about the mindful use of social media and digital devises.

We can probably maintain that the setting of any electronic literary work is generally permeated by media while the actions of the fictional characters conform to all those actions the reader has to undertake in order to ‘enact’ the text. This is the reason why digital storytelling is usually immersive, even if we risk to confuse real and virtual world. More than a real matrix, I suspect we are immersed in an ontological and epistemological bewilderment or contradiction.

Still in *#Improve the future*, we read:

Understand that our present time is the furthest thing from banality. Reality as we know it is exploding with novelty every day. Not all of it’s good. It’s a strange and not entirely comfortable time to be alive. But I want you to feel the future as present in the room. I want you to understand, before you start the day here, that the invisible thing in the room is the felt presence of living in future time, not in the years behind us. ...

To be a futurist, in pursuit of improving reality, is not to have your face continually turned upstream, waiting for the future to come. To improve reality is to clearly see where you are and then wonder how to make that better.

### 3 Conclusion

The essay highlights that a detective story in digital environment has a specific narrative purpose. If in the past, a writer used to give the reader a criminal case to solve within the rules of law, even when the detective was a hardboiled tough, insensitive, sexist one who solved crimes with harshness rather than deductive

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<sup>31</sup> Catherine Belsey, *The Subject of Tragedy: Identity and Difference in Renaissance Drama* (London: Methuen, 1985), 112.

reasoning, nowadays a digital writer gives his readers an experience. The traditional plot made of *peripeteia* (the investigation) and *agnorisis* (the ‘recognition’ or ‘discovery’ of the villain and his guilt) has been turned upside down. Actually, the readers are no longer asked to share the detective’s acumen and insight, which is the most valuable and intriguing feature of ‘armchair detection,’ but to participate in various ways to the criminal case. These new stories are conceived to be immersive, namely to engage the readers into an ‘event’ and in its internal logic, even though this logic deviates from the logic of the real world. Readers are supposed to participate in the creation of a storyworld which is immaterial as much as sensory.

It is important to realize that these kinds of interactions create the *ethos* of the story. The environment of the story is no longer a well-furnished space where the characters live, but it can be a screen, an interface, an application, a GPS technology and, along with them, all the possible consistent interactive behaviors the authors design for the readers. Therefore, the formulaic genre is highly influenced by the technological approach to the fictional world. If, as already seen, social order, justice and the logical argumentation of the investigator are no longer constitutional elements, it is the immersion into the fictional digital storyworld that counts.

It would be a mistake to consider this approach to a canonical story weird, because it fits a certain sensitivity which is pervasive among the millennials. As a matter of fact, as any other literary genre, detective story has always been influenced by the historical context: Christie’s inter-war fiction purposely represents a conservative, middle-class, social vision of the Edwardian world, once deprived of the devastation of the Great War and the social and economic upheaval of 1920s. For her, reason is to be found in the attempt to ‘assuage the anxieties of a respectable, London-based, middleclass audience’<sup>32</sup>. On the other hand, American hard-boiled literature talks about crime as a career within an aggressive capitalist society. Anyway as John Scaggs points out, hard-boiled detective fiction survived the Second World War because of the

uncertain post-war world in which writers and readers, found themselves, to which the calm certainties of the whodunnit were unsuited and in which they were no longer useful. A second, and more interesting, reason for this survival is the suitability of hard-boiled fiction for gender, ethnic and cultural appropriation.<sup>33</sup>

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**32** See also Stephen Knight, *Form and Ideology in Crime Fiction* (Macmillan: Basingstoke, 1980), 67.

**33** John Scaggs, *Crime Fiction (The New Critical Idiom)* (Routledge: USA and Canada, 2005), 29.

Similarly, in the late 1990s, the postmodern anti-detective novel rejects any notion of truth or the certainty of knowledge, as for example *Hawksmoor* by Peter Ackroyd<sup>34</sup> stigmatizes. In a very postmodern line of reasoning, the questions raised were about the nature of reality and the limits of knowledge.

Today the anti-canonical digital detective fiction gives the opportunity to wonder how we attain knowledge, in epistemological terms, when we live in-between the real and the virtual world. The ideas of truth, certainty, contradiction are reconsidered in the light of digital communication, social media, instant messages, transience. Eliterature does creatively represent the obsolescence of both deconstruction and the reconciliation of opposites, as well as the questioning of truth statements (“bricolage”).<sup>35</sup> Reality is not a narration as for Derrida, but it lies in whatever can cross a medium: the relationship between objectivity and subjectivity does not acknowledge a principle of referentiality, but only a contradictory relationship between abstraction and concreteness. Within this cultural context, eliterature makes the digital ontological issue of a pervasive contradiction emerge. Contradiction morbidly rules politics, society, reference systems, values and the way the real and the virtual are represented. Actually, digital ontology puts in question the juridical system that we had considered – up to the present – the foundation of our culture. Contemporary detective stories do not merely tell stories of crimes and justice, but they put on stage how the Law does no longer play its role in society. That is the way the law is communicated. Nowadays law tries to codify online and offline behaviors, rights and duties, but the more the relationship between these two realities are undefined the harder it is for the law to be effective and incisive in its goal.<sup>36</sup>

In digital literary works, law does not seem to be able to bring order in society or even to identify the criminal. The investigator does not seem to worry about his failure. The threat of social disruption is not a danger that (paradoxically) concerns an entire society, but it selfishly concerns an individual (either the protagonist or the reader). The search for evidences are not that important because bringing the villain to justice is not a priority. Readers are not shaken by their involvement in the story, on the contrary they feel gratified by the experience.

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<sup>34</sup> Peter Ackroyd, *Hawksmoor* (London: Penguin Books, 1985).

<sup>35</sup> See also what Serge Bouchardon maintains: see Serge Bouchardon, “Towards a Tension-Based Definition of Digital Literature,” *Journal of Creative Writing Studies* 2.1 (2016) article 6: 1–13, 2.

<sup>36</sup> Giuseppe Rossi, “Il Cyberlaw tra metafore e regole,” *Rivista di diritto civile*, 48.6 (2002): 751–99.

If this is the pervasive approach to crime, the question is: what can we expect from jurisdiction? What will be the perception of the law in the near future? What will be the role of the law in society with respect to civil and criminal law? How should law communicate itself to the community? A more general difference between good and evil seems to be enough for the public of eliterature, but can an ethical dimension of existence substitute our Western positivist juridical system? The emphasis on the right conduct, reinforced by the harsh punishments meted out in the stories from the Book of Daniel in the Bible, is characteristic of most narratives of crime up until the mid-nineteenth century, but positivism took our culture beyond this idea of mere punishment, therefore what about the principle of legality and the culture of Right? Terms like right, equity, justice, law might need to be redefined perhaps (or rescued, possibly), but they cannot be ignored. We cannot let civil and criminal responsibility be aleatory or inconsistent in the imagination of the next generation. It seems that, in the present as well as in the future, literature still has a crucial and influential role in making people aware of our 'legal' condition.

William P MacNeil

# Promethean Longing: Ridley Scott's Speculative Legalism

## 1 Science fiction's new natural law: The "theogonic turn" in the *Alien* series

With its dazzling opening sequence of a primaeval Earth fully flourishing long before man's appearance, Ridley's Scott's *Prometheus*<sup>1</sup> vouchsafes its viewer a (primal?) scene of what speculative materialist, Quentin Meillassoux, might call "the ancestral."<sup>2</sup> Only, here, the ancestry cinematically sketched for the audience is anything but speculative – at least in the materialist, or, more popularly, *realist* sense. Fantasy, rather than realism, prevails in this opening shot; and fantasy of the worst sort of '70s New Age, "chariot of the gods"<sup>3</sup> sort, as the film focalises for its viewers a vision of intergalactic *panspermia* with an alien super-being sacrificing himself (christologically?) for the dissemination of his vitalist DNA. Is this a clear case of bad theology for a bad movie? That might be the glib dismissal of some, but *not* this viewer. While sensitive to the many flaws of *Prometheus* – and its successor, *Covenant*<sup>4</sup> – I will argue in this chapter that Scott's much anticipated return to the *Alien* series<sup>5</sup> speculates *materially*, indeed *realistically*, on the nature of creation, evolution and extinction, as well as the "missing link" between the three, all the while articulating a new *natural law* that reposes the question of origins and ends: *why* we were put here (which this chapter's Part II addresses in the thematics of creationism, principally raised by

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1 Ridley Scott (dir), *Prometheus*, [film] (Los Angeles: Twentieth Century Fox, 2012) [DVD, Twentieth Century Fox Home Entertainment, 2012], sc 1.

2 Quentin Meillassoux, *After Finitude: An Essay for the Necessity of Contingency* (London: Continuum, 2008), 1–27.

3 Erich von Daniken, *Chariots of the Gods* (New York: Berkley Publishing Group, 2018).

4 Ridley Scott, *Covenant* [film] (Los Angeles: Twentieth Century Fox, 2017) [DVD, Twentieth Century Fox Home Entertainment, 2017].

5 Titles in the series include: Ridley Scott (dir), *Alien* [film] (Los Angeles: Twentieth Century Fox, 1979) [DVD, Twentieth Century Fox Home Entertainment, 2008]; James Cameron, *Aliens*, [film] (Los Angeles: Twentieth Century Fox, 1988) [DVD, Twentieth Century Fox Home Entertainment, 2008]; David Fincher, *Alien3* [film] (Los Angeles: Twentieth Century Fox, 1992) [DVD, Twentieth Century Fox Home Entertainment, 2008]; Jean-Pierre Jeunet, *Alien Resurrection* [film] (Los Angeles: Twentieth Century Fox, 1997) [DVD, Twentieth Century Fox Home Entertainment, 2008]. Unless otherwise indicated, all subsequent references will be to the "Theatrical Release."

and represented in the character of android, David); *how* we got here (which this chapter's Part III investigates in and through the *topos* of evolutionary development, as exemplified in the monstrous offspring of the Holloway-Shaw coupling); and, finally, if there is a higher purpose or terminal point to our existence here (which this chapter's Part IV explores around the trope of mass extinction and its logical corollary, a post-human future). In executing what might be called this "theogonic turn" – of origins and ends, of higher purposes and hidden meanings – Scott's film discloses as profoundly jurisgenerative the real Promethean longing animating its storyline and, quite possibly, the *Alien* saga as a whole: that is, for nothing less than a *speculative legalism*.

## 2 Transgression as law-ful(l): David as promethean over-reacher

That legality – speculative, natural or otherwise – is complicated, however, by the film's very title, Prometheus having been, historically, *the* mythic – and literary, artistic and political – figure of *transgression*. Prometheus, after all, is the Titan who stole fire from the gods and who, after being chained to Mount Caucasus in perpetuity, was condemned to have his liver devoured by an eagle, only to discover, after this horrific act of avian mastication was over, that, overnight, the organ had miraculously regenerated, thereby starting the whole process over again, day in, day out<sup>6</sup>. No wonder the Romantics<sup>7</sup>, in particular, the Shelleys – Percy Bysshe Shelley (e.g., *Prometheus Unbound*<sup>8</sup>) and Mary Godwin Shelley (e.g., *Frankenstein: The Modern Prometheus*<sup>9</sup>) – dolised Prometheus as *the* rebellious over-reacher *par excellence*. Both found in his story of cruel punishment

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6 Robert Graves, *The Greek Myths*, vol. 1, intro Kenneth McLeish (London: The Folio Society, 2005), 140–145.

7 For an exploration of this Promethean theme in Romantic literature, see the following classic literary critical study: Meyer Howard Abrams, *Natural Supernaturalism: Tradition and Revolution in Romantic Literature* (New York: W.W. Norton & Co., 1971); Harold Bloom, *The Ringers in the Tower: Studies in Romantic Literature* (Chicago: University of Chicago Press, 1971); Maurice Bowra, *The Romantic Imagination* (London: Oxford University Press, 1950); Mario Praz, *The Romantic Agony* [1933], trans., Angus Davidson, second edition (London: Oxford University Press, 1970), 151.

8 Percy Bysshe Shelley, *Shelley: Poetical Works*, ed. Thomas Hutchinson, corrected by G.M. Matthews (Oxford: Oxford University Press, 1970).

9 Mary Shelley, *Frankenstein; or The Young Prometheus*, ed. Maurice Hindle (London: Penguin Books, 2003).

and unending pain, a heroic suffering made all the nobler because his theft rebounded to the greater human good: fire – or, more expansively, *techne* – grounds civilisation and lays down what Levi-Strauss would call the *laws* of culture.<sup>10</sup> In so nominating both his film and its eponymous spacecraft, *Prometheus*, Ridley Scott taps into the very *legality* that promethean fire inaugurates and shifts the series' focus away from the colonial/capitalist enterprise's death-dealing, always on the hunt for weapons of mass destruction – and so well evoked by the Conradian names of its earlier vessels: the *Nostromo*<sup>11</sup> (*Alien*), the *Sulaco*<sup>12</sup> (*Aliens*), the *Patna*<sup>13</sup> (*Alien3*), the *Almayer's Folly*<sup>14</sup> (renamed the *Betty* in *Alien Resurrection*<sup>15</sup>) – and towards that of lawful *life-giving*, even if it is, paradoxical-ly, predicated on a transgressive and calamitous taking.

Whether it goes to infinite ends (Weyland's quest for immortality<sup>16</sup>) or finite beginnings (Shaw's cosmic search for an originary source<sup>17</sup>) *life* prevails, thematically, in *Prometheus*, thereby expanding the series' speculative reach – as if scripted by a combination of Jane Bennett<sup>18</sup>, Eugene Thacker<sup>19</sup> and Nick

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**10** See, for example, the chapter “Language and the Analysis of Social Laws” in Claude Levi-Strauss, *Structural Anthropology*, trans. Claire Jacobson & Brooke Grundfest Schoepf (New York: Basic Books, Inc., 1963), 55–66.

**11** The title and nickname of the principal character (Giovanni Battista Fidanza, nicknamed “Nostromo” which could be a contraction of “nostro uomo” or “Our Man”) of Joseph Conrad's tale of Latin American intrigue. See: Joseph Conrad, *Nostromo: The Tale of the Seaboard* (Oxford: Oxford University Press, 2009).

**12** The fictional city in which Conrad's *Nostromo* is set, located in the equally fictional South American country of Costaguano. See: Joseph Conrad, *Nostromo: A Tale of the Seaboard* (Oxford: Oxford University Press, 2009).

**13** The name of the seriously damaged old steamer that Jim, with the rest of the crew, abandons in Conrad's *Lord Jim*; and for which act of desertion he, subsequently, faces an official inquiry. See: Joseph Conrad, *Lord Jim*, ed. Thomas C Moser (New York: W. W. Norton & Company, 1996).

**14** In this case, the title of Conrad's novel and the residence—a Malay plantation house – of its principal character. See: Joseph Conrad, *Almayer's Folly: A Story of an Eastern River*, intro. Nadine Gordimer (London: Penguin Classics, 1991).

**15** See the entry for the “Betty” in *Xenopedia – The Alien vs. Predator*, Wiki available at: <https://avp.fandom.com/wiki/Betty>.

**16** *Prometheus*, sc. 27.

**17** *Prometheus*, sc.34.

**18** See, e.g., Jane Bennett, *Vibrant Matter: A Political Ecology of Things* (Durham & London: Duke University Press, 2010).

**19** See, e.g., Eugene Thacker *After Life* (Chicago: University of Chicago Press, 2010). See also: Eugene Thacker, *In the Dust of this Planet: Horror of Philosophy*, vol. 1 (Winchester, UK: Zero Books, 2011).



Srniecek<sup>20</sup> – well beyond its hitherto compulsively repetitive plot-lines: of oblique distress beacons answered; of exploratory “away teams” infected; of space crew being picked off, one by one; of a lone survivor, the “final astronaut,” living to tell the tale. Instead of this severely circumscribed narrative arc<sup>21</sup> – as constrict-

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**20** See, e.g., Nick Srnicek, “Capitalism and the Non-Philosophical Subject,” in *The Speculative Turn: Continental Materialism and Realism*, eds. Levi Bryant, Nick Srnicek and Graham Harman (Melbourne: re.press, 2011), 161–181.

**21** The series’ narrative arc is as follows: in *Alien*, an intergalactic cargo vessel, the *Nostromo*, is returning to Earth in 2122 with its seven crew in cryostasis. A distress signal, however, diverts the spacecraft from its course, landing it on LV426, a hitherto unexplored planetoid. An “away” team of the now awakened crew locate the source of the signal in a derelict alien ship, where they come upon two kinds of organic life: one, the enigmatic “space jockey,” long dead in his pilot’s seat, his chest ripped open, indicative of a brutally violent end; the other, a field of mysterious gelatinous eggs, one of which releases a ferociously parasitical spore that wraps itself around one of crewman Kane’s face (John Hurt), rendering him unconscious in order to “impregnate” him with the embryo of an alien being.

Unaware of what Kane carries inside of him, the other crew violate quarantine and return with him to the *Nostromo*, flouting the express prohibition of the ship’s warrant officer, Ellen Ripley (Sigourney Weaver). Once aboard ship and, again, conscious, Kane expires, an alien infant gnawing its way through his exploding chest out. That alien eludes capture and grows rapidly to maturity, managing to kill, in the meanwhile, all crew – with the notable exception of the plucky Ripley. After learning from another crew member – the hitherto hostile, now neutralised android, Ash (Ian Holm) – that his orders were, as ship’s science officer, to capture and return the alien to the *Nostromo*’s corporate owners, the Weyland-Yutani Corporation, for commercial development in their weapons division, Ripley jettisons the alien from her escape pod, after blowing up the *Nostromo*. Only she and ship’s cat, Jonesy, survive – only to be found still in hypersleep, some fifty-seven years later in *Aliens*, by a roving salvage vessel. Awakening aboard a medical space station orbiting Earth, Ripley’s account of events on the *Nostromo* is rejected at an inquiry and she learns, to her dismay, that LV426 is now home to a terraforming colony. When contact with the colony is lost, Ripley soon finds herself aboard the *Sulaco*, bound for the planetoid, now as a Corporation-nominated conscript in a squadron of crack Colonial Marines dispatched to investigate the situation. Once there, they discover the colonists have been wiped out – but for one – after finding the derelict alien ship and its deadly cargo from the first film. When it becomes clear that the Corporation’s real objective is the preservation of the alien species at all costs – rendering expendable the lives of the Marines, in addition to the colonists – Ripley, once again, springs into action, destroying not only the alien hive (by blowing up LV426), but the alien queen herself (by discarding her, as a stowaway on the *Sulaco*, into space). Only to have it revealed in *Alien3* that this self-same Queen has smuggled two eggs aboard the *Sulaco*: one which has impregnated Ripley while *in transit*; another which infests a dog on the prison planet of Fiorina “Fury” 161 where Ripley has crash landed. Again, the Corporation’s concerted efforts to acquire the alien species for its weapons division are thwarted by Ripley who, with the planet’s surviving inmates, destroy both the canine-like alien rampaging outside in the prison, and, more importantly, the embryonic queen inside Ripley herself. Finally, after two hundred years have passed, the Corporation in *Alien Resurrection* seems to have succeeded in cloning

ing as a facehugger's grip on its host – the series extends its thematic reach in *Prometheus*, enabling the exploration of larger, more philosophical, theological and jurisprudential issues: principally, the Promethean paradox of life, law and culture's gift/theft through Romantic over-reaching. Nowhere is that paradox better distilled than in the story of David (Michael Fassbender), the "synthetic" on board the *Prometheus* who is the arch-figure of over-reaching transgression because he first takes (*Prometheus*, sc. 15), then disastrously infects (*Prometheus*, sc. 15) the hapless Charlie Holloway (Logan Marshall-Green) with the Alien's DNA in the hopes of yielding, experimentally, new life (*Prometheus*, sc. 27) for his creator-"father" (*Prometheus*, sc. 5), Peter Weyland (Australia's Guy Pearce). Equally, as Weyland's replicant "son" (*Prometheus*, sc.5), David is, himself, a product of transgressive over-reaching, his "father" (having played God here, designing a creation who, ironically, will never transgress against his creator, unlike Frankenstein's monster – or humanity itself. From this vantage, David is the most obedient of juridical subjects, ever willing to submit to his creator's sovereign command:<sup>22</sup> the lawful(l) – meaning full of law – android.

This doubleness – at once, transgressive and lawful – renders David a robotic figure of indeterminacy, both good, like *Aliens'* Bishop (the android played by Lance Hendrickson who saves Ripley and Newt<sup>23</sup>), and evil, like *Alien's* Ash (Ian Holm's android who tries to kill Ripley<sup>24</sup>). Even more ambiguously, as good and evil, at one and the same time, like Call (Winona Ryder) in *Alien Resurrection* (the "auton" who tried to kill, then save Ripley<sup>25</sup>). Further, what the figure of David does is not only embody and enact over-reaching creation, he dialogizes it, ren-

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not only a long dead Ripley (herself "alienised," with acid for blood) but the Queen she was carrying (now "ripleyised," and possessing a human-like womb) – the latter of which bears an uncannily Ripley-esque alien offspring who kills her real alien mother and is, in turn, killed by her symbolic mother, Ripley.

**22** Consider how instantaneously David responds to Weyland' to "try harder" by infecting with an alien spore Holloway (*Prometheus*, sc. 15).

**23** Not once, but twice: first, by remote-controlling, then piloting the *Sulaco's* last drop ship to a rendezvous with Ripley (Sigourney Weaver) and Newt (Carrie Henn) before the generators explode what's left of the colony's power station (*Aliens*, scs. 40, 41); second, by rescuing Newt before she is sucked off the *Sulaco's* landing platform when Ripley opens an emergency airlock to expel the Alien Queen into space (*Aliens*, sc. 42).

**24** By choking Ripley with a rolled document (*Alien*, sc. 29): a bizarre choice, given its inefficacy (why not, given Ash's strength, simply rip off Ripley's head?); but, in terms of the plot, providing enough time for other crew to effect a rescue.

**25** Endowed with a conscience, indeed (Christian) faith, and motivated to save the universe from the death-dealing destruction of the alien race that Ripley bears and that the military cultivates (*Alien Resurrection*, scs. 10, 24).

dering this filmic subtext discursively explicit, particularly in his riposte to Holloway's off-hand claim that, if humans made him because they *could*, then perhaps the Engineers made humans because they *could too* (*Prometheus*, sc. 15). So what the viewer is presented with in the David storyline is a creationist parable, but in a mode that is anything but Biblical-evangelical and is absolutely New Age-obscurantist, with the "Engineers" – the "space jockey(s)" of earlier films<sup>26</sup> – now revealed as some sort of astro-divinities in the best Erich von Daniken style (Daniken, 2018), seeding the universe, as the striking opening suggests – a fecund but uninhabited world, a retreating spaceship, an alien being disintegrating into genetic bits and pieces – with their vital life-force.

Here, then, is anything but a scientific explanation of humanity's origins, the science behind the disseminating alien DNA being a false lead, with cosmic *teleological* trajectory trumping any mere chemical compound: that is, the emergence of humanity, as a species, was predetermined, even *predestined* by the Engineers, who turn out, however, to be anything but God. Or if they are gods, then they are so in an essentially *pagan* sense; that is, as grander versions of ourselves, super-beings who, presumably, are themselves, *created* by someone or something else. Certainly, with their fast and easy violence (think how quickly they dispose of Weyland (*Prometheus*, sc. 31)), they are as capricious as the Olympian pantheon; or, better yet, the Titans, such as Prometheus, whom they physically resemble, as if Greek statuary – all white marble and oversized proportions – had come to *life* (*Prometheus*, scs. 1, 13, 31, 32, 34). Recall, for example, the massive humanoid head of the Engineers (*Prometheus*, 11), sculpted into and presiding over something like a sarcophagus Prometheus, sc. 11), the breeding ground of the genetic fundament of the Alien species, the worm-like micro-units that, again like Prometheus, David steals (*Prometheus*, scs. 11, 15). All of which is to say that the Engineers and their ilk are, if anything at all, *mythological* rather than theological, this chapter rejecting any reading – prevalent in the much of the commentary about *Prometheus*<sup>27</sup> – of the Engineer's sacrifice in the

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**26** For "space jockey," see the entry for "Mala'kak" (aka "Engineers," "Pilots," or "Space Jockeys") in *Alien Species Wiki on Fandom* powered by Wikia – <http://aliens.fandom.com/wiki/mala%27kak>.

**27** For an informed typological analysis of this sort, see for example: Christopher S Morissey, "Prometheus and the Cross," *The Catholic World Report* (11 July 2012), available at: <http://www.catholicworldreport.com/2012/07/11/end-the-cross>. For a summary of far less theologically minded and much more credulous fan theories about *Prometheus* and Christ, see: "Prometheus and the Space Jesus Theory," *Angels of the Lightning*, available at: <http://tcfan1.wordpress.com/the-space-jesus-theory>.

opening scene as christological, simply because it brings life not redemption; and while life can be taken away, redemption certainly *cannot* be removed.

### 3 The Alien within: Cinematic materialism's monstrous births

So neither theology nor science *appear*, at least initially, to be thematically operative here; rather, *mythos*, instead of *theos* or *episteme*, seems to be the film's preferred discursive register, and, with it, something like "the hero with a See his thousand descendants." Not to dismiss *mythoi*, Joseph Campbell-esque<sup>28</sup> or other wise; far from it, especially given that "the truth" of the *anthropos* and its question of the species' earthly and intergalactic origins (e.g., Spontaneous Generation, Big Bang, Intelligent Design), as well as that of *psyche* and its question about humanity's inner life (e.g., Oedipus, Electra, the "family romance") come more often than naught in highly mythicized forms – as to which Darwinian anthropology<sup>29</sup> and Freudian psychology<sup>30</sup> richly attest. All of which brings the physical (Darwin) and social (Freud) sciences, as well as the mythic discourse *nonpareil*, religion, in addition to their respective *laws* of nature, back into the picture: a return (of the repressed?) that this chapter will address at its close. But, first, this chapter will examine *Prometheus*' law in a more positivist, indeed "black letter" sense: specifically, that of doctrinal *cause*, be it tortious, criminal or otherwise. Simply put: why did this happen? Not just the *creation* of humanity, but, more to the point, humanity's *extinction* which, undoubtedly, will be the endgame of the catastrophe that the Engineers plan to unleash: first, the worms; then, the face huggers; finally, the aliens – all culminating in Earth's Armageddon (*Prometheus*, scs. 23, 27, 28, 31, 32).

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**28** See his still magisterial study, the germinal influence on George Lucas' *Star Wars* series and many other popular culture narratives: Joseph Campbell, *The Hero with a Thousand Faces*, Commemorative Edition, into. Clarissa Pinkola Estes (Princeton, NJ, USA, Princeton University Press, 2004).

**29** Referenced directly in the film by crewmember Millburn (Rafe Spall) who voices his skepticism about the Engineers' existence by asking Shaw and Holloway whether or not their theory flatly contradicts "three centuries of Darwinism" (*Prometheus*, sc. 5).

**30** Not so much referenced, like Darwin, in the filmic text as enacted, psychoanalysis underwriting his story of Oedipal fathers (Shaw as the phallic father of prohibition; Weyland as the anal father of "enjoyment") and surrogate sons (David), errant daughters (Vickers, Elizabeth) and lost (Mrs Weyland? Mrs Shaw?) or monstrous (Elizabeth, again) mothers.

In response to this confronting problematic, “Why was life created in order to be destroyed?” *Prometheus* posits two tentative solutions, both “legal” in the broadly jurisprudential sense of the term. The first might be called the “law of the signifier” in that it dispatches Shaw and David to the Engineers’ home world so they can carry out a version of a “truth and reconciliation,” putting these destructive creators to the test through legality’s essentially linguistic processes of testimony and cross-examination (*Prometheus*, scs. 31, 35). The other might be called the “law of the body” because it takes up the essentially forensic question with which the series is concerned: that is, of the body cocooned<sup>31</sup>, of the body parasitised<sup>32</sup>, of the body dismembered<sup>33</sup>. The series recycles this dis-incorporating corporeal *topos* endlessly, both in terms of the human (eviscerated from within<sup>34</sup>) and the alien (dispatched from without<sup>35</sup>). In so doing, this itera-

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31 See, e.g., *Aliens*’ sole Colony survivor Newt (Carrie Henn) (*Aliens*, sc. 38) and *Alien Resurrection*’s mad scientist Gediman (Brad Dourif) (*Alien Resurrection*, sc. 23), both of whom are cocooned in preparation for “impregnation” by facehuggers. In each film, the *mise-en-scene* of their respective cocoons is a ghoulish gallery of already cocooned colonists (*Aliens*) and/or colleagues/crewmates (*Alien Resurrection*).

32 See, e.g., *Alien*’s Kane (John Hurt) who, upon discovery of the spore bearing eggs in the derelict alien vessel on LV426, is immobilised by and enfolded within one of their newly hatched facehuggers, necessitating his emergency return to the *Nostromo* (*Alien*, scs. 9, 10).

33 Most spectacularly exemplified in *Alien*’s gruesomely staged death of Kane (John Hurt), the first of the *Nostromo*’s victims of the Alien intruder (*Alien*, sc. 15). In *Aliens*, it is best represented in that utterly horrifying picture of life-in-death upon which the Marines stumble: specifically, the nameless cocooned colonist discovered alive by Dietrich (Cynthia Scott) and pleading “Kill me!” before being eviscerated by the alien embryo she carries to term (*Aliens*, sc. 21). Interestingly, as the series progresses, the onscreen depictions of alien attacks mount. In *Alien3*, the viewer watches, for example, most of the cast devoured by the quadruped Alien, including characters as different as love interest Clemens (Charles Dance) (*Alien3*, sc. 18), officious warden Andrews (Brian Glover) (*Aliens3*, sc. 21) and plucky David (Peter Postlewaite) (*Alien3*, sc. 27). In *Alien Resurrection*, these deaths reach a parodic level with, for example, a two-for-one: the “impregnated” Purvis (Leland Orser) clasping the head of scientist Wren (J.E. Freeman) to his chest so that both die as the alien infant explodes from the chest of one (Purvis) and through the skull of the other (Wren) (*Alien Resurrection*, sc. 22).

34 Again, *Alien*’s Kane (John Hurt) (*Alien*, sc. 15), but innumerable others throughout the series, *ibid.*, notes 31, 32, 33.

35 In *Alien*, the alien creature is expelled from the *Nostromo*’s escape pod, having been “harpooned” by a grappling hook, then blown into space by the vessel’s activated exhausts (*Alien*, sc. 31). In *Aliens*, the alien queen is sucked out of the *Sulaco*’s temporarily opened airlock, then released into (and forever lost in?) space (*Aliens*, sc. 42). In *Alien3*, the alien quadruped is destroyed by a combination of heat (fire) and cold (water), shattering its exoskeleton and combusting it internally (*Aliens3*, scs. 29, 30); while the infant alien queen is immolated in Ripley’s self-sacrificing plunge into the fires of the Fiorina facility’s furnaces (*Alien3*, sc. 31). In *Alien Res-*

tive storyline of the body *in extremis* ironically defers, more than any unbelievably invincible character intervention (Ripley or Elizabeth as *deus ex machina*?), the threat of extinction because the Aliens are *never, ever* allowed to make it to Earth. In fact, Joss Whedon's original script for *Alien Resurrection* was ruthlessly pruned of its apocalyptic ending, the studio eliminating any Earth-bound battle between humans and aliens as too confronting<sup>36</sup> (that awaits, instead, another franchise: the Alien/Predator series<sup>37</sup>).

So, for all their ferocity, all their drive, all their "perfection" – as every admiring android in the series affirms in astonished and approving acclaim<sup>38</sup> – the alien species is forever stillborn and always locked into this loop of its monstrous creation, its maniacal rampage and its desperate, eleventh hour destruction. Philosopher and cultural theorist, Slavoj Žižek, advises that whenever a text begins to repeat itself, then it is here that the reader approaches its "ideological core,"<sup>39</sup> one that is expressed through and by its formalist "texture":<sup>40</sup> what Žižek further calls "cinematic materialism"<sup>41</sup>, in which camera shots, *mises-en-scene*, set design, music score and so forth drive home the basic political but also social, cultural, economic, even legal message of the filmic text<sup>42</sup>. In *Prometheus*, that paradigmatic material/formal scene is none other than that of Elizabeth's grueling self-performed caesarean, frantically removing, with Vickers' high-tech surgical equipment, the facehugger before it can explode into murderous life (*Prometheus*, sc. 25). As the narrative centerpiece of the film, this scene resonates with what has been and continues to be the overarching trope

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*urrection*, the "ripleyised" alien newborn of the dead Queen is sucked out of one of the cracked windows in the *Betty*, bit by (painful) bit (*Alien Resurrection*, sc. 26).

36 Ryan Lambie, "Alien Resurrection – Joss Whedon's Original Endings," Den of Geek, available at: [www.denofgeek.com/movies/alien/38965/alien-resurrection-joss-whedon-original-ending](http://www.denofgeek.com/movies/alien/38965/alien-resurrection-joss-whedon-original-ending) (16 Feb 2016).

37 See the following: Paul Anderson, *Alien vs Predator*, Los Angeles: 20<sup>th</sup> Century Fox, 2004; Greg & Colin Strause, *Aliens vs Predator: Requiem*, Los Angeles: 20<sup>th</sup> Century Fox, 2007.

38 Most admirably by *Alien's* Ash (Ian Holm) who advises that the Alien's "structural perfection" is matched only by its 'hostility' rendering it unbeatable: a "survivor" unclouded by "conscience," "remorse" or "morality" (*Alien*, sc. 23). More muted – but nonetheless fascinated – is *Aliens'* Bishop (Lance Henriksen) who calls even the facehuggers "magnificent" (*Aliens*, sc. 11). *Prometheus'* David finds even the resin that the aliens secrete "impressive" (*Prometheus*, sc. 13).

39 Slavoj Žižek, *The Plague of Fantasies* (London: Verso, 1997), 145.

40 Slavoj Žižek, "The Thing from Inner Space," *Mainview*: September 1999, available at: <http://www.lacan.com/zizekthing.htm>.

41 Žižek, *ibid.*

42 Žižek, *ibid.*

of the series – that of monstrous births<sup>43</sup> – given another turn of the interpretive screw here when the viewer witnesses, at the close of *Prometheus*, the parturition of the Alien from the Engineer himself (*Prometheus*, sc. 34): an horrific natality that takes one back to the beginning of the series, and the blood-soaked death of *Alien*'s Kane (played by a tubercular John Hurt) while “giving birth” to his xenomorphic progeny (*Aliens*, sc. 15).

Of course, these are only “births” by analogy; they are, in fact, host-parasite relationships, rather than ones of mother-child. It is, however, the mother-child relationship that the series goes out of its way to evoke, indeed literalize, starting with *Aliens*' Newton/Ripley pairing, the latter of which is called “Mummy” by the former after a last reel rescue from that most monstrous of Mothers, the Alien Queen (*Aliens*, sc. 30). Or, in *Alien 3*, where Ripley is “impregnated” by a facehugger and, at the close of the film, gives “birth” just as she suicides in a kind of sci-fi suttee, killing her “newborn” in the process (*Aliens3*, sc. 31). Then, in *Alien Resurrection*, where the now “ripleyised” Alien Queen actually gives birth to her progeny through a human-like *womb*. All these prior scenes from the series are alluded to, called up, indeed *resurrected* by the film, so as to be *sutured*, as if by the staples of the whirring Medlab machinery performing Shaw's caesarean, into this scene which, in all its high-tech ghastriness, condenses the current era's profound anxieties around twenty-first century reproduction: *in vitro*, surrogacy, cloning, genetic modification and so on (*Prometheus*, sc. 25). What remains so interesting about this entire sequence, however, is *not* Elizabeth's monstrous birth; in fact, the audience should have seen that coming light years away, one of the series' hard and fast conventions being this: if there is a female protagonist on the spaceship, then she *must* be impregnated, however metaphorically<sup>44</sup>.

Instead, what captures the interest of this chapter is the way in which this pregnancy originates. For what *causes* this not-so-delicate condition is a union that renders it a pregnancy in an extremely old-fashioned, indeed essentialist sense: specifically, as the result of an ovarian egg fertilized by semen which,

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43 As observed and commented upon by many film critics, including: Barbara Creed, *The Monstrous-Feminine: Film, Feminism, Psychoanalysis* (London: Routledge, 1993); Catherine Constable, “Becoming the Monster's Mother: Morphologies of Identity in the *Alien* Series” in Annette Kuhn, ed., *Alien Zone II: The Spaces of Science Fiction Cinema* (London: Verso, 1999); Ximena Gallardo and Jason Smith, *Alien Woman: The Making of Lt. Ellen Ripley* (New York: The Continuum International Publishing Group, Inc, 2004).

44 Even *Aliens*' Newt (Carrie Henn), as underaged as she is, is not immune, as the Company's treacherous representative, Burke, intends to “impregnate” her, as well as Ripley, in order to smuggle the aliens past Earth's quarantine (*Aliens*, sc. 23)

however tainted by Alien DNA, is, nonetheless, the product of intensely heteronormative coitus, involving a man (Charlie Holloway) and a woman (Elizabeth Shaw) (*Prometheus*, sc. 17). This biological act of an extremely *human* nature positions its scenic spectators in much the same way it did Freud's patients:<sup>45</sup> as unwitting witnesses to what was their fundamental fantasy, the "primal scene" of parental intercourse, in all its excruciatingly traumatic detail. For which Shaw and Holloway stand in, here, as Mummy-and-Daddy surrogates in a scene even more traumatic for the viewer than it was for Freud's most celebrated *voyeur*, "the Wolfman"<sup>46</sup> because the film's audience bears witness, in the Shaw/Holloway coupling, to the *origin* of another newer, in fact better *species* (*Prometheus*, scs. 17, 25, 35). So, far from being a creationist fable, the narrative logic of *Prometheus* is profoundly *evolutionary*, its fundamental fantasy focalising the anthropological emergence of the "missing link" – Elizabeth's face hugger, *trieb* or "instinct" at its purest (*Prometheus*, scs. 25, 35) – who connects (but also disconnects) humanity to and from the Alien through a stage-ist (and *stage-y*) 'survival of the fittest'.

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**45** Such as highborn analyst, indeed *de facto* royal patron of psychoanalysis, HH Princess Marie Bonaparte (aka HRH Princess George of Greece and Denmark), whose childhood "primal scene," according to Freud, focalised carnal relations between her father's equerry and her wet nurse/nanny. See: Marie Bonaparte, *Five Copy Books Written by a Little Girl between the Age of Seven-and-a-half and Ten*, trans. Nancy Proctor-Gregg (London: Imago: 1950–1953), Vol. 1, 48. Or the young man who fantasied his parents' intercourse from within the womb. See: Sigmund Freud, *The Interpretation of Dreams*, Pt II, *The Standard Edition of the Complete Psychological Works of Sigmund Freud*, trans. & ed. James Strachey, collab. Anna Freud, assisted by Alix Strachey & Alan Tyson (London: Hogarth Press), vol. 5, 399–400 (hereafter referred to as *SE*, followed by volume and page number(s)). Or "Katherina" in *Studies in Hysteria* in Freud, *SE*, vol. 2, 48–106. Of course, Freud's most famous patient associated with the "primal scene" is "the Wolfman," see below, note 45.

**46** Russian aristocrat (later *émigré*, displaced by the 1917 Revolution) and celebrated Freudian analysand, Sergei Konstantinovich Pankejeff (1886–1979), known as "the Wolfman" for his vivid childhood dream of a tree bristling with wolves – an oneiric displacement of his parents' *a tergo* copulation. See: Freud, "From the History of an Infantile Neurosis," *SE*, vol. 14, 261–272.



## 4 The post-human future: *Prometheus*' extinction event and the end of civilisation as we know it!

Within this new line of ascent – (wo)man, facehugger, alien – older biological hierarchies are demolished; for example, the hitherto superior Engineer is, by the end of the film, reduced to a mere instrumentality, a host for the parasitic creature gestating within him (*Prometheus*, sc. 35). No wonder then *Prometheus* ends with the emergence of the *ur*-Alien who will later go on to spawn the other aliens of the series: not only from Engineers (*Prometheus*), but humans (*Alien* and *Aliens*), then dogs (*Aline3*), finally itself (*Alien Resurrection*) – a xenomorph in the truest sense of the word, endlessly morphing as the *trans-biological* and, in so doing, laying down its *law*, as Meillassoux would have it, of *contingency*.<sup>47</sup> An aleatory condition that brings *physis* (science), as much as *theos* (*God*) back into the picture under the sign of *nomos* (law): what this chapter calls “speculative legalism.” I say “speculative” because the question that arises here is not the standard philosophical one, as formulated by Heidegger, “Why is there something rather than nothing?”<sup>48</sup> Nor is it the routine psychoanalytic one, as asked by Jacques Lacan, “Why is there nothing (lack/*béance*) at the very heart of something (the subject of desire’s law)?”<sup>49</sup> Rather, the interrogative posed here is a properly *speculative* one and recalls the organic basis for *Prometheus*' endless torments – namely, his ever-regenerating liver – by inquiring as follows: “Why is there *something* – alive, undying, autonomic: a *law* unto itself – where there should be nothing?”

This speculative legalism is clearly on the side of the aliens who, if ever-changing, are always *enjoying* themselves, instead of the immobile, static, lifeless humans who cannot tell who is real and who, the simulation, because they are one and the same. Contrast their wan world of regulatory rationalism – all scientific protocols and quarantine restrictions – to the *vitalism* of the aliens with their enormous energy, their implacable drive, their relentless *will-to-power*.

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47 Quentin Meillassoux, “Potentiality and Virtuality,” trans. Robin Mackay in *The Speculative Turn: Continental Materialism and Realism*, eds Levi Bryant, Nick Srnieck and Graham Harman (Melbourne, re-press, 2011), 224–236.

48 Martin Heidegger, *Introduction to Metaphysics*, trans. Gregory Fried and Richard Polt (New Haven: Yale University Press, 2000), 100.

49 Jacques Lacan, “Direction of Treatment and Principle of its Power,” *Ecrits: A Selection*, trans. Alan Sheridan (London: Tavistock Publications, 1977), 251, 259.

Which is, of course, a characterological allegiance that the series, especially *Prometheus*, is in deep denial about, wanting us to take humanity's "big questions" seriously – who am I? what is my purpose? where do I come from? – yet all the while leaving its audience panting for *how*, *when* and *why* the Aliens will get to Earth and what havoc they will wreak: e.g., a post-apocalyptic Paris, reduced to a smoking ruin, as it was in one of the scotched endings of *Alien: Resurrection*<sup>50</sup>. Here, the increasingly evil, indeed *genocidal* David of *Prometheus*' sequel, *Covenant*, seems to be, oddly, on the right track, smuggling two deadly embryonic spores onto *Covenant*, presumably with the intention of wrecking havoc with the Origae-6 colony and possibly releasing a galactic epidemic that will obliterate all trace of mankind, including those on Earth (*Covenant*, sc. 23).

A terrifying prospect, indeed; though, for viewers increasingly inured to disaster scenarios, that situation is normal – and normalizing. After all, catastrophic dystopia is not only the fiction *du jour* of popular media (*The Walking Dead*<sup>51</sup>, *The 100*<sup>52</sup>, *Jericho*<sup>53</sup>, *The Hunger Games*<sup>54</sup>, *Divergent*<sup>55</sup> and *The Passage*<sup>56</sup> – to

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<sup>50</sup> Jean-Pierre Jeunet (dir), *Alien Resurrection*, note 6, sc. 32.

<sup>51</sup> Where dystopia takes the form of zombie apocalypse; for the television series, see: Frank Darabont (cr), *The Walking Dead* [television series] (New York, NY, USA: AMC Studios, *et.al.*: October 2010–ongoing). For the graphic novel series, see: Robert Kirkman, *The Walking Dead* [graphic novel], art by Charlie Adlard et al, (Berkeley CA: Image Comics, 2003–ongoing).

<sup>52</sup> Where dystopia takes the form of a return from space of one hundred teens to an Earth long abandoned and rendered hitherto uninhabitable by nuclear holocaust. For the Young Adult novel, see: Kass Morgan, *The 100* (New York, NY, USA: Little Brown, 2013). For the television series, see: Jason Rothenberg (cr), *The 100* [television series] (Burbank, CA, USA: Warner Bros. Television, 2014–ongoing).

<sup>53</sup> Stephen Chobsky, Josh Schaer & Jonathan Steinberg (crs), *Jericho* [television series] (Los Angeles, CA, USA: CBS Paramount Network Television, 2006–2008).

<sup>54</sup> Where dystopia takes the form of a futuristic totalitarian state of "bread and circuses" organized around an annual set of gladiatorial games to the death; for the novels, see: Suzanne Collins, *The Hunger Games* (London: Scholastic, 2008), *The Hunger Games: Catching Fire* (London: Scholastic, 2009) and *The Hunger Games: Mockingjay* (London: Scholastic, 2010). For the film series, see: Gary Ross (dir), *The Hunger Games* [film] (W Hollywood, CA, USA: Color Force, Lionsgate, 2012), Francis Lawrence (dir), *The Hunger Games: Catching Fire* [film] (W Hollywood, CA, USA: Color Force, Lionsgate, 2013), Francis Lawrence (dir), *The Hunger Games: Mockingjay, Part I* [film] (W Hollywood, CA, USA: Color Force, Lionsgate, 2014), Francis Lawrence (dir), *The Hunger Games: Mockingjay, Part II* [film] (W Hollywood, CA, USA: Color Force, Lionsgate, 2015).

<sup>55</sup> For the book series, see: Veronica Roth, *Divergent* (London: Harpercollins Pub, 2011); *Insurgent* (London: Harpercollins Pub, 2012); *Allegiant* (London: Harpercollins Pub, 2013). For the film series, see: Neil Burger (dir), *Divergent* [film] (Los Angeles, CA, USA: Summit Entertainment, 2014); Robert Schwentke (dir), *The Divergent Series: Insurgent* [film] (Los Angeles, CA, USA: Sum-

name a few), but figures prominently in current over-coded *fact*-ions about, variously, climate change, Donald Trump, Brexit, Chinese global hegemony, Catalan independence and so forth. All of which ignores Ray Brassier's brilliant and profoundly speculative insight that it is the very prospect of extinction – of our collective death, decomposition and disappearance – that attests, most vitally, to the very *aliveness* of humanity as a species<sup>57</sup>. Which is why this chapter closes with the wish the *Alien* series would depart from its seemingly iron *law of genre* and take the next, big, non-correlationist step: explore the possibility of an Alien victory on a post-human Earth with their Queen, a triumphal conqueror (the *ends* of the series), as well as their origins in a pre-human outer space as extra-terrestrial invertebrates, worm-like in appearance (the series' *beginnings*). In short, bring the *alpha* and *omega*, the ends and beginnings of the *Alien* story together as a new juristic hybrid – in which theology is science (a contingent law of nature) and science is theology (a natural law of contingency)–nipping, biting, gnawing its way out of the cinematic carcass of the series, itself awaiting a real alien resurrection, indeed revival.

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mit Entertainment, 2015); Robert Schwentke (dir), *The Divergent Series: Allegiant* [film] (Los Angeles, CA, USA: Summit Entertainment, 2016).

**56** For the novel series, see: Justin Cronin, *The Passage* (London: Orion Books, 2010); *The Twleve* (London: Orion Books, 2012); *The City of Mirrors* (London: Orion Books, 2017). For the recent (and now cancelled) television series, see: Liz Heldens, Matt Reeves (crs, prods), *The Passage* [television series] (New York, NY, USA: Fox Broadcasting Corp, 2019).

**57** Ray Brassier, *Nihil Unbound: Enlightenment and Extinction* (London: Palgrave Macmillan, 2010), 205–239.

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## **Epilogue: Back to Shakespeare and Towards the Contemporary Period**



Marett Leiboff

# ***The Rocky Horror Show* as Liminal, Gothic, Monstrous, Shakespearean Biolegal Fable**

## **1 Starting out**

In 1973, one of the most enduring of a new genre of popular culture, *The Rocky Horror Show*, had its first outing in London. Though best known for the genre style that it created, *The Rocky Horror Show* has a deeper cultural legal studies resonance to it, a liminality reflecting the ambiguity of its characters, plot, theme and storyline, but most significantly, the nature of its production and the times out of which it was created. It is Gothic and monstrous in one, with echoes of Faustian bargain combined with a boy and girl who find themselves caught in an *A Midsummer Night's Dream* tussle of identity and desire, this musical play challenged norms and assumptions of gender, bioethics and identity and sexuality, encapsulated in a microcosm of law and legalities, licit and illicit. This most fabulous of products of the 1970s still speaks to us now, albeit changed and changing, for what was unknown to or unknowable to law then has become normalized now, what was illicit now permissible, what was monstrous and unspeakable now a commonplace.

Created by the English born New Zealander, Richard O'Brien, and workshoped, directed and given shape by an Australian directorial wunderkind, Jim Sharman (who also gave the play its name), and with the significant creative contribution of another Australian, designer Brian Thompson (along with street performer Little Nell),<sup>1</sup> this musical play borne of the Antipodes fell to earth at the experimental Royal Court Theatre in Sloane Square, in one of the most happening parts of London in the 1970s.<sup>2</sup> It grew out of a world of glam rock, tinged with a hankering for the musical genres of the 1950s and a nostalgia for a soon to be extinct form of entertainment, the cinematic double-feature that entertained children who grew up before the ubiquity of television, along with their parodic televisual progeny – and contemporary literature. A product of the freedom movements of the 1960s and 1970s, combined with hedonism

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1 Robert Shaw, "From the Unseen Hand to the Sydney Olympics: A Long Strange Trip with Brian Thomson," *Crazed Imaginations* 106 (2001). Available at: [http://www.rockypedia.org/Brian\\_Thomson\\_interview\\_-\\_Crazed\\_Imaginations](http://www.rockypedia.org/Brian_Thomson_interview_-_Crazed_Imaginations) (last access November 20, 2017).

2 Armando Rotondi, "The Rocky Horror Picture Show: parodia camp del gotico tra Mary Shelley, J.B. Priestley e James Wale," *Between* 12 (2016): 1–28.

and a liberatory and liminal sexuality that gripped London and the rest of the world, *The Rocky Horror Show* drew on avant-garde theatre practices of the turn of the 20<sup>th</sup> century – Dada and Cabaret Voltaire – along with the influences of radical theatre practices of the 1960s and early 1970s, including Peter Brook’s game changing *A Midsummer Night’s Dream* of 1970.<sup>3</sup> The original London production ran until 1979 (with a final outing in 1980); its 1975 filmic cousin, the US produced *The Rocky Horror Picture Show*, remains a constant presence, holding the popular imagination,<sup>4</sup> as pastiche and portmanteau of the film and the play, it entertains but does little to take us to the possibilities of law and jurisprudence bound up in the original.

Though on the surface a trifle, an entertainment without much more, there is a depth to the original production that is easily missed in the catchy songs and seemingly trite story line. Boy and girl take a chance on an outing in stormy weather and end up captured by a transsexual alien, Frank-N-Furter, who has created a beautiful man – Rocky – made of the body parts of another human Eddie (subsequently murdered by an enraged Frank), the misfit and nephew of Dr Scott, the teacher who introduced the boy and girl, Brad and Janet. Their virginal innocence is taken by Frank, opening up in Janet a desire that she seeks to fulfill with Rocky, who has demonstrated that he has agency and free will, much to the chagrin of Frank who had considered him his property.<sup>5</sup> Though boy and girl and Dr Scott ultimately survive, the servants Riff Raff and his sister Magenta take control, exercising power and returning to their planet of origin after Frank, Columbia (a groupie and in love with Eddie) and Rocky are killed by Riff Raff using a ray or laser gun. The storyline is as good as interchangeable with everything from serious Romantic fiction, to the Gothic and the B grade movie – the creation of life through nefarious means – along with rape themes, the deprivation of liberty and indiscriminate and targeted killings, but in the end, a modified form of good wins out, albeit with numerous casualties along the way.

But look a little more closely and it is apparent that the original version of the play is deeply riven with social, sexual and cultural politics of the time. The themes and concerns of *The Rocky Horror Show* were grounded in the

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3 Marett Leiboff, “Theatricalizing Law,” *Law & Literature* (2018): 351–367.

4 The film as repository functions as a permanent record. The *Rocky Horror Picture Show* differs from the original in a number of significant respects through text, as well as production, not least its setting. It is possible to a sense of the original London production through audio recordings, a photographic archive, and a large body of media, as well as the recollections and autobiographical accounts of its creators.

5 Daniela Carpi, “A Biojuridical Reading of Dracula,” *Pólemos* 2 (2012): 169–182.

world around its creators, wrapped up in the mantle of a B grade science fiction spoof. Science fiction had become science fact; the first test tube baby was conceived in 1977 and born in 1978, the first human heart transplant had occurred a few years before and an artificial heart created in the early 1970s. Social mores had been transformed: in the UK in 1974, single women could now be prescribed the pill, previously only available to married women. Homosexuality between consenting adult men had been decriminalized in England in 1967, but in the early part of the 1970s, a series of political activities began, from the founding of the Gay Liberation Front in 1970, the first Gay Pride March in 1972. All of these themes appear in one form or another in the play, as a critical and liberatory engagement.

But there was more. Just two years before the play opened, the satirical underground magazine *OZ*, that had had its birth in Australia before being taken to the UK in 1967, was subject to a high-profile obscenity trial that brought conventional forms of morality up against its counter-cultural principles and challenges to conventional morality. Its title references Frank Baum's *Wizard of Oz*, but *oz* is also a phonetic version of the abbreviation of Australia – Aus (pronounced with a “z”). This double meaning, from the place and from the genre, is dripping through the magazine, from its contributors to its politics and agenda. Its amazing art and design created by another Australian, Martin Sharp, and with contributions by, among others, Germaine Greer, an Australian English literature scholar and feminist now living in the UK, challenged convention through its text and images.<sup>6</sup> The magazine had become a target of the police, but the obscenity trial related to one issue of *OZ* only: the “Schoolkids” edition, edited by secondary schoolkids in 1970, but ultimately published by the three editors, including the Australian Richard Neville, who faced deportation if found guilty. The trial became a *cause célèbre*, and its minutiae recounted in books and television programs, was remarkable for its celebrity witnesses and the initial jailing of the editors on the charge of a conspiracy to corrupt public morals. The directions of the trial judge, however, were unsafe and the decision overturned on ap-

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<sup>6</sup> A digital repository of both the Australian and London versions of *Oz* is held in the institutional repository of the University of Wollongong Australia, my institution. Digital versions were authorized for the purposes of research and study by the late Richard Neville. A warning accompanies the content of the site linking to the London issues of the magazine: “Please be advised: This collection has been made available due to its historical and research importance. It contains explicit language and images that reflect attitudes of the era in which the material was originally published, and that some viewers may find confronting”: available at: <http://ro.uow.edu.au/ozlondon/>. The Australian issues can be browsed at: <http://ro.uow.edu.au/ozsydney/> (last access January 21, 2018).



peal in 1971. But the magazine was unable to continue and closed in 1973, the same year the play opened. The play is replete with in your face sexuality and the then extraordinary image of a ‘sweet transvestite’ with an ambivalent and fluid sexuality bestriding the stage, in the tradition of the magazine and its challenges to convention.

1973 was memorable, too, for all the wrong reasons. In the wake of Bloody Sunday, waves of IRA bombings began in early 1973 and continued throughout the 1970s, not abating until the end of the century. Targeting railway and tube stations, including a telephone booth at Sloane Square tube, not far from the Royal Court at the end of 1973, bombs were placed at London attractions and government buildings, department stores, pubs and restaurants, causing deaths and mass injuries. The murderous ending to the play echoed the world beyond its limits as much as its science-fiction B grade origins.

This is the world out of which the play grew but what is less obvious is how the production intensified and distilled a set of social and cultural and political conditions of the 1970s that raise questions about law and legality, power – in the absence of law and profound challenges to norms – as a more subtle law and jurisprudence. The original musical play speaks of the counter-cultural and the challenge thrown down cultural and social conventions that provides a remarkable vehicle through which to celebrate the work of Daniela Carpi, who, as it happened, published her first scholarly piece, “A psychoanalytic interpretation of Iris Murdoch’s *A Severed Head*,” [my translation] around the period of the first production of the play: in 1978.<sup>7</sup>

## 2 A demolished cinema

It is now almost impossible to strip away the layers of expectation that the filmic version of *The Rocky Horror Show* has created, an ossification found in the visual that is so well known: a female mouth on a black background that lip synchs the voice of Richard O’Brien in the opening sequence of the film, to the repetition of key images associated with B grade horror movies that mark its opening – lost in a storm, a creepy castle and the assorted paraphernalia of Transylvanians dancing to a fully choreographed *Time Warp*. Yet this is not what the original musical play looked or felt like at all. The original London productions were set in a cinema under demolition (and the production transferred soon after opening to ac-

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<sup>7</sup> Daniela Carpi, “Per un’ interpretazione psicanalitica di *A Severed Head* di Iris Murdoch,” *Il Lettore di Provincia* 9.33 (1978): 60–70.

tual disused cinemas),<sup>8</sup> and played in front of a screen (echoing symbolist productions of the late nineteenth century): “Brian Thomson’s blue-canvassed cinema-under-demolition set] turned virtually every theatre or old cinema we played in into a tent.”<sup>9</sup> This was both accidental and an act of creative genius, prompted in part because it had to be staged with next to no funds in a small space reserved for experimental productions at the Royal Court in Sloane Square. This now largely forgotten central physical concept was inevitably abandoned in the film – why use an abandoned cinema when you could use an actual castle rather than one created from thin air – but lost the image and symbolism wrought by a closed and isolated space that held the ghosts of the abandoned stock characters summoned once the play begins. They are wraiths, however, filmic misfits and has-beens that the original production was able to amplify through the space created by Sharman and the designer Thompson. Their celluloid home lost, it can only be restored through the call by the sweet-seller who opens the play, singing the opening song made famous in the film. There are stock characters aplenty, from Brad and Janet, the innocents about to be confronted with a profound challenge to conventional morality, from Dr Frank-N-Furter, the murderous mad scientist as transvestite and transsexual (Jim Sharman said that both he and Tim Curry, who played the character, “knew it was a panto dame in mufti.”), the visibly extra-terrestrial Riff Raff and Magenta, the creation of the perfect man, Rocky, as a cinematic icon, the misfits – the second-ranked Eddie and Columbia and Dr Scott, the narrator as double agent, are all archetypes of the genre.

It is in that place of decay and destruction, and through those stock characters, that we can best obtain a presence of the liminal, Gothic, monstrous, Shakespearean biolegal fable that the text and its production engenders. The space marks the boundary of the real and the shift into a world beyond the destroyed and decaying space that becomes a *theatrum mundi* of extra-legality – of a locus of power, of negated and repressed sexualities and of the problematics of the bioethical and the biolegal in an empty space that turns our eye to a place where convention, where law and where mores are traduced and overturned.<sup>10</sup> The tent

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**8** The Chelsea Classic Cinema on the Kings Road from 14 August 1973 to 20 October 1973, and then the King’s Road Theatre, also on the Kings Road from 3 November 1973 until 31 March 1979.

**9** *Jim Sharman*, available at: <http://www.ozrockyhorror.com/Brian%20Thompson.html>; Brian Thomson, *Rocky Horror 1973*, available at: <http://brianthomson.com.au/artwork.php?artwork=20130730082629> (last access November 21, 2017). Sharman came from a famous family of travelling showmen who moved around Australia.

**10** *Bioethics and Biolaw through Literature*, ed. Daniela Carpi (Berlin: De Gruyter, 2011); Carpi, “Introduction,” in *Bioethics*: 1–19.

therefore operates in much the same way as the isolated space manifested in Gothic novels and films, as island, as *isola*. We see this thematic in Daniela Carpi's work, from *The Island of Dr Moreau*,<sup>11</sup> to the place of the garden,<sup>12</sup> the island of *The Tempest* and the forest in *A Midsummer Night's Dream* and where the infernal creations of Angela Carter and Iris Murdoch can be played to their hearts content.

This place of isolation distils and highlights conduct that challenges acceptable concepts of morality. There is too much about the conduct that is reprehensible, in the hands of Dr Frank-N-Furter in particular, from his taking of part of the brain of Eddie to create Rocky and then eventually killing him. But it is his trammeling of the virginity of each of Brad and Janet that I would like to take further. The scene is clever and brilliantly shaped and diabolical in one. A scrim, a piece of gauze cloth used in the theatre that achieves particular effects through lighting, is deployed as a vertical bed that hides two bodies and voices, one male and one female. The actors are hidden under the vertical sheets, and through their voices we assume that it is Brad and Janet and Janet and Brad, but it isn't. It is Frank with Brad and Frank with Janet and in each case, inevitably, their virginity and dignity has been taken. In law, this is rape, compounded by his pretending to be someone other than he is, the legal concept of personation, that is, pretending to be someone whom you would otherwise have consented to engage in sexual conduct. Of course, neither consented and each thought they were engaging in sexual activity with each other, not Frank. Indeed, each was saving themselves for marriage. This is reprehensible, immoral, unlawful and criminal; it is also the stuff of the Gothic and the B grade where rapes and criminality abound, but there is something else going on here in the 1970s production of *The Rocky Horror Show*.

There is an additional sting that we should notice in Frank's targeting of the recently engaged and virginal Brad and Janet – he is attacking the Establishment and convention, for they are convention personified, and his action functions as a potent and appalling symbolism, to be read beyond the literal. It is a trope, the action of the abject as shaped by law, as the counter-cultural symbol, with Frank acting for (though not speaking for in anyway), those traduced by conventional forms of morality as shaped by law. In the same way that the law of the era was vilifying individuals and groups that failed to meet the expectations of conven-

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**11** Daniela Carpi, "The Beyond: Science and Law in *The Island of Doctor Moreau* by H. G. Wells," in *Bioethics and Biolaw*: 178–187.

**12** Daniela Carpi, "The Garden as the Law in the Renaissance: A nature metaphor in a legal setting," *Pólemos* 6.1 (2012): 33–48. Daniela Carpi, "The Gothic Picturesque Garden and the Historical Sense," *Pólemos* 7.2 (2013): 269–284.

tional conduct and morality, ranging from the treatment of the editors of *OZ*, to the denial of property rights and privacy rights for rock stars on the basis that their conduct failed to meet the expectations of acceptable norms, the law was used to negate the interests of those who failed to meet the expectations of a confined and limited morality, represented here by the virginal Brad and Janet.

And this is the ultimate symbolism of the space in which the original London productions were staged, as a crumbling edifice, where the demise of a physical building – the cinema – stands for the demise of the conventional, the traditional, the Establishment. The space of the musical play is shaped, then, as being owned by an anti-Establishment counter-culture. The confining, alien surroundings of its bounded structures amplify realities and truths, forcing us to notice that something is in the process of change, and that it should be changed. This is inevitably lost in the film, where a more literal, creepy, US style Gothic horror and science fiction genre takes over, stripping the satirical edge and its deeper engagement with law and justice of which the original speaks. The crumbling edifice of convention, in the shape of the destruction of the cinema, thus speaks to the crumbling convention of the law that would hold onto outdated conceptions of morality and justice, which would take decades to correct. Thus secreted into the London productions of 1973–1979 is a counter-cultural challenge to the injustice of law made manifest in the last third of the twentieth century and a challenge through it to the Establishment that had shaped it.

### 3 *The Rocky Horror Show* as counter-sublime

In 2013, Daniela Carpi remarked that: “the sublime of law implies a kind of sacred belief in the capacity of the law to bring about a sort of metaphysical justice. In both cases, in the law and in the sacred, meaning is centered on iconology, representation and theatricalization.”<sup>13</sup> The sublime, she observed, “is a tragic agon that attains a sublime ethical reconciliation.”<sup>14</sup> This struggle of law, grounded in romantic and classical conceptions of the sublime, has a clear outcome: “law has always been considered absolute, sacred, universal supreme: it has therefore almost been paired with the transcendent.”<sup>15</sup> But this, of course, isn’t straightforward or perfectible. It is the sublime, she remarks, that reminds us when law has reached its limits and where it is needs attention:

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13 Daniela Carpi, “The Sublime of Law,” in *Liminal Discourses: Subliminal Tensions in Law and Literature*, eds. Daniela Carpi and Jeanne Gaakeer (Berlin: De Gruyter, 2013): 1–14, 9–10.

14 Carpi, “The Sublime of Law,” 10.

15 Carpi, “The Sublime of Law,” 10.

The ethical aspect of the legal sublime is to contain the arrogance of the law: the jurist must learn to accept the fallibility of the juridical system and strive to attain a more equitable form of justice. He must act as the intermediary between the abstract, transcendent aspect of the law and the difficulty of its application. He must accept the gap between the disembodied essence of the law and its material application ...<sup>16</sup>

As I will come to shortly, the law of the 1970s rejected this ethical sublime and by holding onto limited and confined expectations of morality, would cause immense harm for one particular section of society, among many at the time. In pointing to a critical collapse of the legal sublime, however, and the remedy posed that grew out of the shock to law brought about by the emergence of a political critical jurisprudence of the 1960s, she remarks:

When Critical Legal Studies started to theorize about miscarriages of justice, the failure of the law and the loss of all certainties in jurisprudence in the sixties, it sounded like a plunge into the abyss ... the sublime is the reaction of the interpreter before the failure of justice: it corresponds to the vertical movement of the sublime, from disempowerment (a sense of loss and deracination when faced with the failure of the law) to re-empowerment (the law must go on to signify, justice must be redressed).<sup>17</sup>

The possibilities of a new sublime, a law grounded in justice, was the catch-cry of the 1960s and the 1970s. Yet the law bound up in *The Rocky Horror Show*, in its 1970s guise, does something different, shaping a very different liminality in order to register the limits of law and the difficulties of constituting and shaping justice. Instead, it does something that is the wont of the theatrical, which is the possibility of using counter-stories and conduct in order to achieve that action of strange making that Brecht deployed in his theatre and that the critical and radical theatre of the 1960s and 1970s wanted to achieve – to have us notice and pay attention to the limitations of accepted norms. It is possible then to think of the law conceived within the musical play as shaping and creating a *counter-sublime*, a distinct form of conduct and jurisprudence that can be deployed to help us notice when law goes wrong, when the interests and rights of individuals borne of their difference and social variation are traduced. Daniela Carpi has drawn our attention to dangers of what can happen when the law negates the rights and interests of those who are marked by their difference, from the treatment of Shylock to the deployment of the fairytale to mark out the op-

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16 Carpi, “The Sublime of Law,” 12.

17 Carpi, “The Sublime of Law,” 10.

eration of law as a place of the denial of human rights.<sup>18</sup> The counter-sublime shocks by forcing a reaction through laughter and displacement, the conduct of the musical play, in order to trouble and insist on pause for thought, in order to notice when the possibility of metaphysical justice is negated through the denial of alternative existences, that is those of alien and alienated status. It must be stressed that the counter-sublime is a form through which we notice and respond, in the manner of the overtly politically agit-prop theatre of the era; if we think about the musical play, it is really agit-prop in heels, glitter and corsets.

As counter-sublime, then, as an adjunct to the counter-cultural, and counter-legal, is an act of recognition of difference, as an in-your-face demand for attention and as a way to know, in a material sense, something other. While most of these forms of counter-conduct happened on the streets, through demonstrations and marches, by placing this alternative into a space like a theatre (or cinema), through comedy and music, the promise of an alternative can be made manifest. Here, the alternative, counter-cultural *theatrum mundi* operates as a counter-sublime of law, revealing through horror, laughter and that ghastly feeling when you realize that you shouldn't have been laughing, that you begin to notice when something is not quite right, when someone's difference renders them beyond the protection of the law. The counter-sublime, then, is meant to disrupt first and foremost. Then the sublime of law can come back in to fix and correct the problem, but sometimes it takes something beyond law noticed by the counter-sublime.

## 4 Corbett v Corbett (otherwise Ashley)<sup>19</sup>

If there was something unsettling within the *theatrum mundi* of *The Rocky Horror Show*, it was, inevitably, something that the audience could walk away from, hopefully noticing more of the experience of difference, and alert to injustice, as shaped by the counter-sublime. Of course, for anyone who was subjected to law themselves because of their difference, the situation couldn't be stripped away and it couldn't be corrected, in the face of a law that denied them of rights and thus of a humanity. In the years leading up to the stage production, a case had bubbled away that was decided in 1971. *Corbett v Corbett* involved the di-

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<sup>18</sup> Daniela Carpi, "Fables of the Holocaust: Hansel and Gretel," in *Fables of the Law: Fairy Tales in a Legal Context*, eds. Daniela Carpi and Marett Leiboff (Berlin: De Gruyter, 2016): 309–330.

<sup>19</sup> *Corbett v Corbett* [1971], 83.

voiced by Arthur and April Corbett, but instead resulted in a decision denying a status in law for transsexual people in the UK, and not remedied until 2004, with the passage of the *Gender Recognition Act 2004*. It and its circumstances offer something of the injustice faced by individuals through the operation of law based in the kind of morality criticized by *The Rocky Horror Show* and its symbolism, as law that harms, in the name of transsexualism.

April Ashley MBE was born in Liverpool in 1935 and given the birth name of George Jamieson.<sup>20</sup> She realized that she was female and, after a period in the Navy, moved to Paris and joined the cabaret Le Carrousel. In 1960, she went to Casablanca in Morocco to have a seven hour gender reassignment surgery, undertaken by Dr George Burou, a pioneer in the field. She was the ninth person who had received this operation. She returned to London and changed her name by deed poll to April Ashley. April, now in her 80s, is stunningly beautiful, and in the early 1960s, even more so, quickly becoming a fashion model and actress, photographed for *Vogue*, and who mixed (and slept with) famous musicians, actors and members of London's high society. It was through these connections that she met and began an affair in 1961 with Arthur Corbett, an Eton-educated aristocrat. Arthur was fully aware of April's history and gender re-assignment and left his wife and four children to begin a relationship with her. But, soon after, she was outed in the *Sunday People* newspaper:

prompting numerous other headlines around the world. The press coverage of April's gender transition was hostile and transphobic, portraying her in an inhuman way. April was humiliated and shocked by the unexpected revelations. Her modelling assignments soon stopped.<sup>21</sup>

Despite this publicity, she and Arthur married in Gibraltar in 1963, but the relationship soon broke down and April returned to London. But after April had sought maintenance under the *Matrimonial Causes Act 1965*, Arthur commenced divorce proceedings in 1967, on the basis that because April was born male, there had been no marriage at all. Put another way, if there'd been no marriage, then Arthur wouldn't be obliged to pay maintenance, or financial support, to April,

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**20** The account that follows is adapted from an exhibition and celebration of her life at the Museum of Liverpool *April Ashley: Portrait of a Lady*, that ran from 27 September 2013 to 1 March 2015, available at: <http://www.liverpoolmuseums.org.uk/mol/exhibitions/april-ashley/index.aspx> (last access February 12, 2018).

**21** *April Ashley: Portrait of a Lady*, "Life After Surgery," available at: <http://www.liverpoolmuseums.org.uk/mol/exhibitions/april-ashley/court-case.aspx> (last access February 12, 2018).

but the consequences of the decision had wide and appalling ramifications for transsexual people and for people born intersex. Thus, a personal desire to not provide support to a former spouse, would, in the nature of the common law, go on to have broader, highly damaging consequences.

The case was heard in 1970 by Lord Justice Ormrod, and His Lordship held that the marriage was void *ab initio*, meaning that there had never been valid marriage in the first place. Arthur then wouldn't have to pay maintenance as April had never in law been his wife. A series of medical experts were consulted, and Ormrod J, himself a doctor, determined that April had been born male and no variation of this basic classification would be accepted by law, regardless of the medical interventions she'd had. In his judgment of February 1971, Ormrod J held that April would be classified as male by law, based on a series of tests to determine the sex of an individual. The applicable tests were all physical: chromosomal, gonadal and genital. Psychological factors were also noted, but were of no relevance to the determination of someone's sex. Transsexualism was confined to the category of "Psychological factors." In the opinion of the doctor who founded the first UK transgender clinic, the appropriate classification to be applied to April would be that of "homosexual transsexualist."

Thus *Corbett* stood for the principle that it would be impossible for a change of sex to be countenanced by law, meaning that legal recognition of transgender and intersex would be denied. It would take nearly 35 years for the law in the UK to be changed, through the enactment of the *Gender Recognition Act 2004*, in part because of April's lobbying. The year after the enactment of the law, April was now legally recognized as female and issued with a new birth certificate. But there was also an Antipodean twist that contributed to convincing the UK Government to change the law, to which I will come shortly.

The judgment in *Corbett* is long and detailed, and mostly medical in nature, but there are some other factors about it about which little attention has been paid and which are troubling. Ormrod J, in accounting for his observations about each of Arthur and April, lets slip something of his prejudices and attitudes. We are left with the impression Arthur had made a mistake, an Old Etonian who strayed into the path of that which was 'abject'. And though noticing April's physical self as that which was obviously female, at least on a first impression, Ormrod J was unable to resist remarking on her voice and other features as that of a "female impersonator." Moreover, as a general principle, Ormrod J held that April "cannot reproduce a person who is naturally capable of performing the essential role of a woman in marriage."

Though not express, we see in the judgment the sense of distaste for April, but that Arthur is characterised as a man who had made a mistake. She is treated as both monster and as alien; as a now more or less defunct category of law, the



monster is denied the status of human.<sup>22</sup> And it is not hard to see that this is the Establishment at work, protecting Arthur against April. It was always apparent that the decision was going to be wide-ranging, affecting the ability of transsexual people to obtain birth certificates, passports and more, reflecting their identities and spilling over into how the individual would be treated in the everyday, from hospital treatment to access to basic services. The circumstances surrounding April's predicament, and that of anyone whose status was denied through *Corbett*, revealed that law would treat harshly anyone who failed to meet the norms and expectations of social order. And we see, too, a confined, limited and narrowly conventional view of women, of the kind represented by Brad and Janet in the musical play.

The impact of this judgment, like the other social circumstances already charted, have made their way into the musical play, through a counter-sublime that asks us to notice and pay attention to the alienated and of the alien, who comes from the planet of Transsexual. This is troubling and problematic, for the alliterative device to which Transsexual is coupled – transvestite and Transylvania – contributes to terminological confusions along with the denial of selfhood invested in nouns rather than adjectives (the terminology of transsexual person or people and transsexualism as a state of being that was yet to be noticed in 1971 or 1973). To call the place Transsexual then, is conflicted, because it draws attention to a place beyond law, its protection and its recognition, of alien and denial by law; that a generation or two of young people would then sing along with Frank in the song *Sweet Transvestite*, celebrating a status outside of law's protection and support, is an action of the counter-sublime *par excellence*. If anyone can sing along with the song, then it becomes a difficult step to deny the rights and humanity of transsexual people.

It would only take a few more years for scientific knowledge to definitively reject the medical position taken by Ormrod J, and while the law remained resolutely unchanged in the UK, in Australia, some changes had begun to take root. All the while, through the subtle intervention of the counter-sublime in a range of forms, from activism to the writing of articles and, too, theatre, the social and legal consciousness of injustice was activated and acted upon. In 1985, the then Australian High Court Justice, Sir Ronald Wilson, observed, in an extra-judicial essay:

Medicine has outstripped the law. April Ashley represented as successful a change of sex as can be imagined yet any legal significance attaching to her post-surgery condition was de-

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<sup>22</sup> Marett Leiboff, "Of the Monstrous Regiment and the Family Jewels," *Australian Feminist Law Journal* 23.1 (2014): 33–59.

nied. No doubt the Court was bound to come to the decision that it did but nevertheless the decision signals the need for a greater flexibility in the law to enable it to come to grips with current reality freed from bondage to displaced historical circumstances.<sup>23</sup>

Echoing the remarks of Daniela Carpi about the role of law in instances of profound change, some 14 years after the decision, Sir Ronald Wilson points to the deep injustice and denial of the ethical in the decision in *Corbett*, and though the words might seem to point to something else, is deeply and highly critical of the law as it was applied. The High Court of Australia had just begun to take into account the precise concerns Professor Carpi raises about the role of the courts, and the inferior courts in Australia were able to follow its lead.

Then, 30 years after Ormrod J negated the status of transsexual people in law, a decision at first instance in the Family Court of Australia in 2001, dealing with the marriage of Kevin and Jennifer, eviscerated the logic, medical evidence and politics of the decision of Ormrod J in *Corbett*.<sup>24</sup> Chisholm J stripped the decision apart and added a concept of ‘brain sex’ into the mix to recognise that Kevin, whose status as male was unquestioned by experts, would be able to marry Jennifer, meaning that this was a lawful marriage. Chisholm J also took to the remarks about the “essential” role of a woman in marriage. The Australian Government appealed to the Full Family Court in 2003 and lost.<sup>25</sup> The three appeal Justices, Nicholson CJ, Ellis and Brown JJ, refused to accept the Government position that Chisholm J should follow *Corbett*. It instead held that Chisholm J was correct:

His Honour’s analysis and criticism of Ormrod J’s judgment was that he had adopted an “essentialist view” of sexual identity that excluded matters other than biology. We agree with this view. It is the essence of Ormrod J’s judgment. Whatever the state of medical

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**23** Sir Ronald Wilson, “Life and Law: The Impact of Human Rights on Experimenting with Life,” *Australian Journal of Forensic Sciences* 17.3 (1985): 61–83, 80, cited in *The Attorney-General for the Commonwealth v “Kevin and Jennifer” and Human Rights and Equal Opportunity Commission* [2003] FamCA 94, [206].

**24** *Re Kevin (Validity of Marriage of Transsexual)* [2001] FamCA 1074.

**25** Australia is a federation, and in law certain powers are held by each of its states and others, listed in the Australian Constitution, are within the remit of the Australian (or Commonwealth Government). The Government chose not to appeal to the High Court of Australia, the final court in Australia. It instead amended the *Marriage Act*, inserting into it a requirement that marriage be between a man and a woman. Most transsexual people are protected under state anti-discrimination law and would be allocated new birth certificates recognizing their selfhood, and so could marry. The people who couldn’t marry were people of the same sex. The law was changed at the end of 2017 following overwhelming results of a postal survey.

knowledge was as at 1970, it is apparent that 30 years later, Ormrod J's test is far too limited and we do not think that it represents the law in this country.<sup>26</sup>

In echoing Sir Ronald Wilson's position and the call of Daniela Carpi for law to be alert to injustice as an action of the legal sublime, the Full Family Court held that a decision recognising the rights of transsexual people in law is "in our view, a finding consistent with international law *and with humanity*. A *contrary finding would, in our opinion, result in considerable injustice to transsexual people and their children, for no apparent purposes.*"<sup>27</sup>[my emphases].

Humanity and justice, this is the law at its best, and law that is alert to the world around it and the realities of existence.<sup>28</sup> The two judgments have been feted internationally, even when they've not been followed.<sup>29</sup> As Rachael Wallbank remarks:

*Re Kevin* has been relied upon in several landmark international decisions; including *I v The United Kingdom* and *Christine Goodwin v The United Kingdom*, decided by the European Court of Human Rights. These decisions, which quote Justice Chisholm's decision in *Re Kevin* at length and with approval, finally determined that there had been violations of articles 8, 12, 13 and 14 of the *Convention for the Protection of Human Rights and Fundamental Freedoms* in respect of the legal status of people who had experienced Transsexualism in the United Kingdom and, in particular, such people's treatment in the spheres of employment, social security, pensions and marriage. As a result of these decisions the government of the United Kingdom introduced the *Gender Recognition Act 2004*.<sup>30</sup>

What this suggests is that April Ashley could make all the representations to change the law in the world, but the foundational influence on the change in the law came from the other side of the world, from these cases. But there is something else. Rachael Wallbank had appeared for the couple at first instance and on appeal and had, through her submissions and the evidence adduced, been instrumental in having arguments heard that would undo *Corbett* and pave the way for the judgment in *Re Kevin*. Her own experience was of para-

<sup>26</sup> "Kevin and Jennifer," [35].

<sup>27</sup> "Kevin and Jennifer," [380].

<sup>28</sup> Rachael Wallbank, "Re Kevin in Perspective," *Deakin Law Review* 9.2 (2004): 461–502

<sup>29</sup> *Bellinger v Bellinger* [2003] UKHL 21 (10 April 2003) noted the terms of the Australian judgments but held that it wasn't possible for the court to accept the marriage on the basis of existing UK law.

<sup>30</sup> "Rachael Wallbank," *Australian Women Lawyers as Active Citizens*, available at: <http://www.womenaustralia.info/lawyers/biogs/AWE5634b.htm> (last access March 9, 2018). See also "Wallbank, Rachael (1956– )," *The Australian Women's Register*, available at: <http://www.womenaustralia.info/biogs/AWE5634b.htm> (last access March 9, 2019).

mount significance in shaping the law both in Australia and internationally, as her biography notes.<sup>31</sup>

But she also suggests that there is something in the Australian experience that allowed this to happen.<sup>32</sup> Of course, there is something, through the experience of making strange that Australians and New Zealanders take for granted, not least standing up against an Establishment that doesn't play fair. And the counter-sublime had a part to play, in helping all of us notice that there was something wrong in treating people so unfairly because of who they were, through humour and sarcasm and satire, appalling and funny in one, that was fundamentally disruptive, forcing us to notice. David Bowie's androgyny would do this too.<sup>33</sup> But the job of the counter-sublime is done at that point and it must slip away back into the shadows, like the wraiths of films long past, Puck-like, having done its work in helping us notice what we would otherwise miss. For law to work, the counter-sublime must disappear and be replaced by Daniela Carpi's legal sublime.

## 5 Celebrating Daniela Carpi

Daniela Carpi has spent her career problematizing and seeking to reconcile the kinds of difficulties thrown out by the breadth of moral and ethical dilemmas and the response of law and literature to them. The musical play holds within it the themes and concerns that Daniela Carpi has identified through the trajectory of her scholarship and through the shaping of new genres in law and literature: English Renaissance theatre through Shakespeare,<sup>34</sup> the relationships between literature and science and law and science fiction, the existence and operation of fable and fairytale,<sup>35</sup> the monstrous and the Faustian,<sup>36</sup> the body,

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**31** It is noted on each biographical entry that Ms Wallbank has permitted her background to be recorded. At her birth, her name was Richard Wallbank: "Rachael Wallbank," "Wallbank, Rachael (1956 - )."

**32** Wallbank, "Re Kevin in Perspective," 500.

**33** Alex Sharpe, "Scary Monsters: the Hopeful Undecidability of David Bowie (1947–2016)," *Law and Humanities* 11.2 (2017): 228–244.

**34** Daniela Carpi, "Prospero's Books and The Tempest Metamorphosing Shakespeare: Mutual Illuminations of the Arts," *Clueb* 2004: 109–119; Daniela Carpi, "Renaissance into Postmodernism: Anticipations of Legal Unrest," in *Liminal Discourses*: 179–191.

**35** Daniela Carpi, "Fables of the Law, a Literary Perspective," in *Fables of the Law*: 3–32. Carpi, "Hansel and Gretel," in *Fables of the Law*.

**36** Carpi, "Renaissance into Postmodernism," in *Liminal Discourses*: 177–189.

bioethics and biolaw,<sup>37</sup> and liminality.<sup>38</sup> From the Gothic novel and its influences on film, along with the pull of a pop culture and the sublime,<sup>39</sup> the making strange that comes from the inversion of the world along with the contemporary cultural phenomenon such as *The Infernal Desire Machines of Dr Hoffman*,<sup>40</sup> (complete with a science teacher), the play raises the themes in microcosm that she charts with panache in her opening chapter in the collection *Bioethics and Biolaw Through Literature*.<sup>41</sup> She marks out the problems that law faces against the challenge of science and its implication for morality and the scope of law. She charts, through science fiction literature, the material and imaginative identification of problems that law and society would eventually have to face because of the challenges of biolaw. She highlights the problems for human rights that are thrown out through new forms of human existence and the challenge to conception of persona that is wrought as a result. As she remarks:

Law may make acceptable what seems unacceptable, may create new norms for what seems abnormal. We have recourse to law to reorganise a troubled order. The debate is between law and conscience, law and ethics, legal law and moral law.<sup>42</sup>

It is through Professor Carpi's expertise in literature and the practices of post-modernism, that has allowed her to pay attention to what might be best described as a missing supplement that has broken new ground, opening up new readings of law that could only be undertaken through the eye of a literature scholar. But there is something more. Her work affords a "making strange," in the same register as the Brechtian *Verfremdungseffekt*, that allows us to see something afresh and with clarity precisely through the disruption of expectations and norms. For law, bound up in expectation and convention, is both resistant to and thus a prime site to be subjected to the practices of making strange, to highlight problems bound up in its expectations and limitations.

There is, however, another facet to the possibilities of making strange, and that is one that comes from the demands placed on thinking grounded in the expertise and immersion in a language other than the one in which she grew up. This is something other than her devotion and commitment to English and its

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37 Daniela Carpi, "Introduction," in *Bioethics*: 1–19.

38 Carpi, "The Sublime of Law," in *Liminal Discourses*: 1–14.

39 Daniela Carpi, "Focus: Law, Literature and (Popular) Culture," *Pólemos* 8.1 (2014): 1–9.

40 Daniela Carpi, "The Infernal Desire Machine of Dr Hoffmann di Angela Carter: fantasia e conoscenza," *Strumenti Critici* 2 (1999): 311–332.

41 Carpi, "Introduction," in *Bioethics*: 1–19.

42 Carpi, "Introduction," in *Bioethics*: 1–19.

literatures, but that extraordinary possibility that comes from reading the world through a different prism, embodying the action of “making strange” as a critical practice. We see this too in her work with law. Though coming later in her work, it is through the common law as the prime legal method of the Anglosphere that captured her attention and her expertise, rather than the civil law of her home country, which has again produced exciting synergies and possibilities for thinking about law. All of these factors, then, have contributed to her engendering collegiality and international collaborations in the field, through the wonderful book series *Law and Literature*, which she co-edits with Klaus Stierstorfer through De Gruyter, and the journal *Pólemos: Journal of Law, Literature and Cultures*, which she co-edits with Pier Giuseppe Monateri, also published by De Gruyter.

And it has been my privilege to be brought by Professor Carpi into that circle, and her generosity in bringing me in as a co-editor of *Fables of the Law*.<sup>43</sup> Bringing a strand of strange making scholarship into the mix from my vantage point of Australia, as a jurispudent inured in theatre studies, was always going to be different. In many ways, Australians have all the advantages, as native English speakers and as common lawyers, but we are perpetually caught in the strange making that comes from our place at the bottom of the world, allowing us to also see things differently and afresh. It is my joy to bring something of this to celebrate Daniela Carpi, who has also looked South, to neighboring New Zealand,<sup>44</sup> and to celebrate a time and place that we must have shared, long before we first met. In doing so, I look to a time that coincided with my arts degree, undertaken between 1976–1978, where I majored in Drama, Fine Arts and English Literature, undertaken long before I began a law degree and by drawing on my scant recollections of seeing *The Rocky Horror Show* at what must have been the Kings Road Cinema in Chelsea, as a seventeen year old in 1975, just before commencing university.

What couldn't have registered then were the theatrical practices surrounding the production, whose fame preceded it and which had already had a season in Australia, or the marks of law contained in it. That could only come much later, with the perfection of hindsight and now as lawyer and as jurispudent, which reveals that *The Rocky Horror Show* functions as a microcosm, a petri dish as it were, of challenges to accepted conventions of law. But it needed the insights of Daniela Carpi's work that I have already catalogued, to show that it is possible

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<sup>43</sup> Carpi and Leiboff, *Fables of the Law*.

<sup>44</sup> Carpi Daniela, “Bill Manhire's South Pacific: A Poet's Experiment with the Short Story,” in *Theory And Practice of the Short Story: Australia, New Zealand, the South Pacific*, ed. Angelo Righetti (Saggi e Testi Università di Verona: Verona, 2006): 153–164.

to notice through the action of making strange, how much of *The Rocky Horror Show* allows us to notice the limitations and problems of law that might otherwise slip past. So drawing inspiration from Professor Carpi's work, I tentatively conceive of a very brief jurisprudence that lurks in the original *The Rocky Horror Show*, as a fable of law that grew out of the Antipodes into the world at large and that continues to revel and reveal something of the human condition and of law, just as Professor Carpi's work will continue to shape our thinking in this field and maintain a vital presence in the years to come.

# Contributors

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