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**EXPERIENCE ON TRIAL: CRIMINAL LAW AND THE
MODERNIST NOVEL**

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Doctor of Philosophy**

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Abstract

The cultural forms of modernity become truly modern only when specific experience, as opposed to tradition or faith, is made the basis of epistemological authority. By taking the primary examples of law and literature, this thesis argues that the criminal trial and realist novel of the eighteenth and nineteenth-centuries perfectly conform to this statement. But by the early twentieth-century, experience had, as Walter Benjamin put it, ‘fallen in value’. As such, the modernist novel and trial come to have foundations in a non-experience which nullifies identity, subverts repetition and supplants presence with absence. The philosophical basis of experience, its fundamental basis within the novel and trial, and the theoretical manifestations of its dissolving, are outlined in the substantial Introduction to this thesis. Chapter One then specifically examines E.M. Forster’s *A Passage to India* (1924) within the context of the administration of justice in British India. Adela Quested’s supposed assault within the Marabar cave is argued to be a non-event which in no way conforms to the modern sense of experience outlined in the Introduction. This resonates with the state of the trial in British India, in which many magistrates became convinced of the rampant perjury of the natives, turning their decisions into a matter of deciding between the less untrue of two false accounts. Like the non-event in the Marabar cave, the crime that was supposedly at the heart of the trial, the experience at its core, was thus slipping from view. In the second part of Chapter One, it is argued that in his theoretical work, *Aspects of the Novel* (1927), Forster, responding to anxieties about the novel’s experiential loss, attempted to codify the laws of the realism. This project had much in common with the Acts of legal codification that took place in British India in the 1860s and ‘70s, particularly that of Sir James Fitzjames Stephen’s Indian Evidence Act 1872, which sought to retain a form of representation that was congruent with a traditional conception of experience, thus safeguarding judgment. In Chapter Two, Ford Madox Ford’s *The Good Soldier* (1915) is analysed in the light of legal developments in expert witnessing and criminal identification. One of the specific issues of Ford’s novel is the kind of identity it portrays. Without commensurable experiences that can be reasonably assimilated and communicated, the identities of *The Good Soldier* resist the common recognition of a realist character. Legal developments in the attribution of responsibility and the identification of criminals are argued to parallel the methods by which Ford’s ‘Literary Impressionism’, by contrast, provides the *image* of his actors. In many ways, these issues were matters for expert witnesses, a growing number of whom were taking the stand in British courts. By taking judgment out of the hand of the layman, expertise was supplanting

experience. But this was not limited to the legal forum – in the final part of Chapter Two it is suggested that Ford's novel, itself, responds to a sense of expert reading. Chapter Three discusses Marcel Proust's *In Search of Lost Time* (1913-1927) in connection to two points of legal interest. Firstly, the Dreyfus case, which, in its reliance upon absent evidence parallels the denigration of presence that exists in Proust's novel. Secondly, Dreyfus' supporters, in calling for a re-trial, asked for a certain form of repetition to take place. The repetitious legal forms of review, appeal, and precedent are then examined in relation to the various forms of repetition that exist within Proust's work. By utilising Platonic, Nietzschean, and Freudian theories of repetition, it is argued that experience has truly fallen in value when the origins of repetition can be only obliquely discerned. In the Conclusion, the continuity of a realist tradition, and a modernist impulse of non-experience, will be traced in contemporary works – Ian McEwan's *Atonement* (2001) and *The Staircase* (2005), a documentary film by Jean-Xavier De Lestrade about a real murder trial in North Carolina. Finally, a view is offered of the future of experience in the novel and courtroom: one which, based upon John D. Caputo's reading of Jacques Derrida's work, stresses the ethical nature of doing truth and making reality in the very act of allowing experience to slip away.

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INTRODUCTION: THE TRIALS OF EXPERIENCE

The life of the law has not been logic: it has been experience.

Oliver Wendell Holmes, *The Common Law*¹

There's something the matter with people. It seems they're unable to take in their experiences or else to wholly enter into them, so they have to pass along what's left.

Robert Musil, *The Man Without Qualities*²

Between these quotations from Oliver Wendell Holmes and Robert Musil there lies a gulf. For Holmes, experience is everything; for Musil it is nothing. Holmes sees the history of law as being identical to the history of experience. Musil declares experience to be resistant to intellectual assimilation. Most emphatically, for Holmes, law is alive – the history of the law is a history of its *life* precisely because it is based in experience. But, for Musil, experience is exactly what life no longer contains, refers to, or enters into. This chasm cannot be bridged by any simple notion that it indicates the irreducible difference between the disciplines of law and literature. Nor does it exist because Holmes is writing in an American context, while Musil's novel is firmly set within the borders of Austrian culture. Rather, these towering figures are separated only by the time in which they wrote. Holmes' treatise, published in 1881, is in many ways a modern classic of legal thought – but it is also the product of a century which believed in experience. Musil's novel, the first volume of which was published in 1930, and which is set on the eve of the First World War, forms a perfect expression of its dissolution and fragmentation. What happened in the period between these figures? What were the various formations in which the loss of experience manifested itself? What did the life of the law, and the life of individual consciousness, look like, when their basis in experience was being relentlessly undermined?

To ask these questions is to read legal and literary history in a way that goes against much recent criticism. In his 1992 study, *Strong Representations*, Alexander Welsh claims that from the late eighteenth-century to the end of the nineteenth-century a certain form of narrative dominated the discourses of law, literature, science, philosophy and religion. These narratives, described as 'very much of the Enlightenment' are 'strong representations': collections of

¹ Oliver Wendell Holmes, *The Common Law* (Boston, MA: Little, Brown, and Company, 1881) 1.

² Robert Musil, *The Man without Qualities*, trans. Sophie Wilkins (London: Picador, 1997) 158-59.

circumstances connected in such a way as to prove the existence of unseen events.³ Welsh's theory allows him to group, amongst others, Fielding's *Tom Jones* and Tennyson's *In Memoriam* with the Shakespearean criticism of A. C. Bradley, and the legal theory of Sir James Fitzjames Stephen. In his final chapter Welsh suggests that in its literary form 'strong representations' were weakened by texts such as Browning's 'The Ring and the Book', Collins' *The Moonstone*, and James' *The Golden Bowl* – texts which he terms 'stories of experience'. Indeed, the pivotal scene from James' novel in which the supposed 'proof' that the golden bowl forms is smashed by Fanny Assingham is interpreted as the symbolic destruction of 'strong representations' hold on narrative construction. The advent of modernism marks the end of circumstantial evidence's hallowed position in the novel. Welsh's final words make this plain: 'James's novel is not so different, in this way, from Woolf's *Orlando* or Joyce's *Ulysses*; and in its entertainment and rejection of proof from circumstantial evidence, it is quite like Forster's *A Passage to India*. But no one even begins to study those works as strong representations'.⁴

Welsh's analysis is both wide ranging and incisive, and *Strong Representations* has proven to be a hugely influential contribution to studies of law and literature. The connecting of narrative formations within novels, poetry, and literary criticism to legal theory, legislation, and the specific unfolding of court cases has, in particular, shown itself to be a fruitful combination for cultural study. But subsequent work which has utilised a similar method and operated within a comparable time frame has suggested important qualifications to Welsh's theory. In *Testimony and Advocacy* (2000), Jan-Melissa Schramm argues that Welsh, although being aware of the issue, fails fully to contend with the fact that there is no such thing as neutral circumstances. That is to say, her focus is on testimony, and she rightly argues that what are taken for circumstances, especially in a court of law, have always had to enter discourse *via* a particular testimony.⁵ It is not, therefore, simply the collection of circumstances that matters but the weight that each one is given dependent on the authority and trustworthiness of the witness who has brought it into being. Likewise, Lisa Rodensky, in *The Crime in Mind* (2003), suggests that there is a central weakness in Welsh's argument. Rodensky argues that Welsh ignores crucial differences between novelistic and trial narratives in the Victorian period. In particular, the conceptions of mind

³ Alexander Welsh, *Strong Representations: Narrative and Circumstantial Evidence in England* (Baltimore: Johns Hopkins University Press, 1992) 8.

⁴ Ibid. 256.

⁵ Barbara Shapiro makes a similar point. She writes that 'during the eighteenth-century we also begin to hear maxims such as "Facts don't lie" being used to support a preference for circumstantial evidence over the direct testimony of witnesses. Only in the early nineteenth-century did legal thinkers begin to suggest that "circumstances" did not speak for themselves and that circumstantial evidence too had to be established by witnesses'. Barbara J. Shapiro, *A Culture of Fact: England, 1550-1720* (Ithaca: Cornell University Press, 2000) 196.

evinced by the third-person novel, in which the thoughts of the characters are directly available to the reader, and the inferential method by which the mind of the criminal has to be ascertained in court present serious discrepancies between supposedly alike ‘strong representations’.

These are indeed both important and useful qualifications to *Strong Representations*: and it is testament to the originality of Welsh’s argument that they, in many ways, serve to enrich rather than dilute his work. However, it is the intention of this thesis to suggest an alternative view to all three approaches. That is, while taking Welsh’s position as a starting point, it is not the particulars of the argument that will be questioned but the terms of the historical reading. Welsh writes that no one begins to read modernist novels as strong representations – this is quite right. But the nature of his final chapter suggests that while these texts move away from ‘strong representations’, towards what he terms ‘stories of experience’, the law remains firmly emplaced within them. Likewise, the legal and literary connections evinced by Schramm and Rodensky are seen to cease with the advent of modernism. Rodensky, in particular, claims that modernist conceptions of character do not allow for the attribution of guilt required by the law. Again, this is a valid argument. The common law trial continues to utilise, to this day, notions of character that do seem more congruent with the realist novel, just as circumstantial evidence remains prominent in modern day criminal trials.⁶

In contrast to these claims, the initial argument of this thesis is that significant connections continue to exist between novels and trials in the modernist period. The issue is, in this sense, a question of degree. It is not the intention to suggest that novels and trials are, in the modernist period, identical. Nor is the purpose to argue that trials in the early twentieth-century cease to have anything in common with realist novels. Rather, the argument is intended to indicate that the early twentieth-century trial is *more* like a modernist novel than has thus far been presumed.⁷ But, to understand how this is the case involves not a question of degree but an active reconfiguration of Welsh’s basic historical terms. Modernist novels, and those that prefigure them, are not ‘stories of experience’ as opposed to ‘strong representations’ precisely because this is not a true opposition. ‘Strong representations’ though they may claim evidence of ‘things unseen’ are actually ‘very much of the Enlightenment’ precisely because they rely on Enlightenment conceptions of experience for their authority. Realist novels are therefore both ‘strong representations’ and ‘stories of experience’ at one and the same time.

⁶ Nicola Lacey argues that while the notion of ‘capacity’ has become the dominant concept in the attribution of responsibility the law still utilises ‘character’ to a certain degree. Nicola Lacey, “Responsibility and Modernity in Criminal Law,” *The Journal of Political Philosophy* 9, no. 3 (2001).

⁷ A notable exception to this is Melanie Williams work on Woolf and Joyce: see Melanie Williams, *Empty Justice: One Hundred Years of Law, Literature and Philosophy* (London: Cavendish Publishing, 2002).

Modernist novels, on the other hand, venture into a different realm of in- or non-experience. The three texts that will form the basis of this study – E M Forster’s *A Passage to India*, Ford Madox Ford’s *The Good Soldier*, and Marcel Proust’s *In Search of Lost Time* – all thus display a marked turn away from experience as the subject matter of their writing. From the blank space of Adela Quested’s *experience* in the Marabar cave, to the duplicity and absence from his own story of Ford’s narrator Dowell, to the ‘crepuscular states’ of Marcel, a common link is formed.⁸ As they are no longer of experience, these novels, in ways that mirror developments in the law, build narratives on new foundations. Without an authoritative and neutral experience to rely on, judgment becomes an issue of prejudice or of subservience to an expert authority, identity becomes fragmented into traces and abstract images, and repetition, as a reliable site of experimental method and judicial review becomes an unstable compulsion to repeat a trauma that never took place.

The period of study, in terms of the novels’ publication dates (Ford, 1915; Forster, 1924; Proust, 1913-1927) is fairly compact. The legal context, however, stretches this timeframe considerably. The analysis of colonial rule in British India, in particular, involves the use of sources from as early as the 1870s. In the other direction, certain works of legal theory, most significantly the work of Jerome Frank, will move the field of study into the 1930s and ‘40s. The fact that the novels under consideration lie in the middle of this elongated time scheme should suggest a central feature of this thesis: it is not a study in influence. Certain developments in the law, such as the anxiety over perjury in British India, or the rise of fingerprinting as a system of identification, while preceding the novels in question, are thus not to be thought of as directly influencing the authorial process. Likewise, legal texts written post 1930 are not to be seen as responding to the work of Ford, Forster, or Proust. The position cannot be stated more concisely than it is by Rodensky, who writes of her own work that ‘the legal texts are neither subordinate or superordinate to the literary, and the literary functions neither as supplement to nor master of the legal’.⁹ This is not to deny that Forster was influenced by his knowledge of colonial trials (which he probably was) or that Jerome Frank was interested in modernist fiction

⁸ The phrase ‘crepuscular states’ comes from Giorgio Agamben. Giorgio Agamben, *Infancy and History: Essays on the Destruction of Experience* (London: Verso, 1993) 42.

⁹ Lisa Rodensky, *The Crime in Mind: Criminal Responsibility and the Victorian Novel* (Oxford: Oxford University Press, 2003) 8. This methodology is in contrast to Schramm, who argues for the primacy of the legal: ‘I conclude that the rise of the third-person realist novel is simultaneously in imitation of, and in reaction against, the increasing prominence of the activities of defence counsel’. Jan-Melissa Schramm, *Testimony and Advocacy in Victorian Law, Literature and Theology* (Cambridge: Cambridge University Press, 2000) 23. Jonathan Grossman makes similar claims, while it is the law-making power of literature that is the focus for Maria Aristodemou: see Maria Aristodemou, *Law and Literature: Journeys from Her to Eternity* (Oxford: Oxford University Press, 2000), Jonathan H. Grossman, *The Art of Alibi: English Law Courts and the Novel* (Baltimore: Johns Hopkins University Press, 2002).

(which he may well have been). It is, rather, to avoid the infinite regression that can befall the investigation of influence. The aim is not to determine what came first but, rather, to elucidate with as much clarity as possible, the way in which an experiential loss manifested itself in the narratives utilised by law and literature at this time. Welsh identified the use of 'strong representations' in the domains of law, literature, philosophy, science, and religion. This thesis will operate in a more restricted fashion, not because non-experience is not evident in these other discourses (indeed it is particularly apparent in the natural sciences) but because literature and law are taken to be exemplary of its cultural impact. The novel and the trial are the primary examples of the way in which, from the late nineteenth century onwards, experience was put on trial.

To undertake such a project involves making certain assumptions about the commensurability between the legal and the literary. These are, however, not assumptions without academic precedent. The literary quality of the law has been well noted, in terms both of its formal structures in statute and prior judgments, and in the narrative construction involved in 'cases' presented in court. Peter Goodrich's comment that 'the law is a literature that denies its literary qualities' is suggestive of much of the scholarly work undertaken in the last twenty years designed to undeceive the law of this conceit.¹⁰ In some cases, this has led to a more subtle form of studies in influence. For Kieran Dolin, the linguistic play of judicial law-making institutes a normative legal world (or *nomos*).¹¹ Literature is always in some way expressive of the *nomos* from which it comes, but literary texts also contribute to that legal world by locating it and giving it meaning.¹² But the literary, in both its legal guise and in terms of literature itself, forms a relationship with something beyond the *nomos*. As Robert Ferguson puts it, 'the struggle of attorneys to find the best accounts for their clients turns courtroom transcripts into excellent barometers of what is said and thought in a culture at any given moment of time'.¹³ This is quite obviously the case with novels. The methods by which narratives are formed in both novels and law (taken in the widest sense to include case construction, the development of rules of evidence,

¹⁰ Peter Goodrich, *Law in the Courts of Love: Literature and Other Minor Jurisprudences* (London: Routledge, 1996) 112.

¹¹ Kieran Dolin, *Fiction and the Law: Legal Discourse in Victorian and Modernist Literature* (Cambridge: Cambridge University Press, 1999).

¹² James Boyd White argues that the law is best understood as a literary activity with its own language. The language of the law 'is not just a set of special-sounding words, but a set of intellectual and social activities, and these constitute both a culture [...] And a community'. James Boyd White, *Heracles' Bow: Essays on the Rhetoric and Poetics of the Law* (Madison, Wisconsin: University of Wisconsin Press, 1985) 11.

¹³ Robert A. Ferguson, "Untold Stories in the Law," in *Law's Stories: Narrative and Rhetoric in the Law*, ed. Peter Brooks and Paul Gewirtz (New Haven: Yale University Press, 1996), 87. For a full length study that makes similar claims see Ann M. Algeo, *The Courtroom as Forum: Homicide Trials by Dreiser, Wright, Capote and Mailer* (New York: Peter Lang, 1996).

and statutory legislation) indicate how literary activity *must* operate in the given time and place of its appearance. As this thesis is concerned with the parallels and connections between these two sets of narratives, the examination of specific literary representations of the trial is not essential. *A Passage to India*, of course, includes a very prominent court case, and the 'Kilsyte Case' is one of Edward Ashburnham's many misdemeanours in *The Good Soldier*, but the way the law is depicted in this sense is not the crucial matter. What is essential, rather, is the way that the legal and the literary partake of similar forms, produce similar features, and create similar effects.

These forms, features, and effects have been noted by another recent publication, albeit within a more strictly literary setting and with a still different set of terminological tools. In his *Unknowing*, Philip Weinstein characterises the modern West since Descartes as being concerned with knowing.¹⁴ Modernity strives for knowledge and believes in the human capacity to attain it, even if imperfectly. The modernism that springs up at the turn of the twentieth-century, by contrast, is characterised by such deep doubts as to the possibility of knowledge that the age can only be described as one dominated by opposing principles - those of unknowing. Weinstein's argument holds numerous parallels with this thesis and will be referred to repeatedly. Unlike Welsh, the difference in terminology here is indicative only of a difference in the terms used to describe historical developments rather than differences which alter the conception of that history itself. Weinstein's 'knowing' and 'unknowing' are, therefore, very closely connected to the terms of 'experience' and 'inexperience' that will be utilised in this thesis. This is perfectly logical, as it was precisely in modernity that experience became the matter of epistemology and knowledge became a matter for experience to judge. But what exactly is meant by experience here? What precisely does it mean to have an experience?

The Emergence of Experience

In the 1930s the British philosopher Michael Oakeshott noted that "'Experience", of all the words in the philosophic vocabulary, is the most difficult to manage'.¹⁵ Some thirty years later Hans-Georg Gadamer commented that 'the concept of experience seems to me one of the most obscure we have'.¹⁶ However, if Welsh's claim about 'stories of experience' is to be modified then an attempt to manage experience's obscurity must be made. A brief examination of some

¹⁴ Philip Weinstein, *Unknowing: The Work of Modernist Fiction* (Ithaca, NY: Cornell University Press, 2005).

¹⁵ Michael Oakeshott, *Experience and Its Modes* (Cambridge: Cambridge University Press, 1933) 9.

¹⁶ Hans-Georg Gadamer, *Truth and Method*, trans. Joel Weinsheimer and Donald G. Marshall, 2nd ed. (New York: Continuum, 2004) 341.

semantic roots can be of assistance here. 'Experience', as derived from the Indo-European root '*per-', emphasises 'attempt', 'venture', and 'risk'.¹⁷ The immediate sense is thus created of an activity that is somehow perilous – experience is always a venture into the unknown realm of an outer world which cannot be wholly controlled. The English word 'experience' is, however, more immediately, derived from the Latin *experientia*, meaning 'trial, proof, or experiment'.¹⁸ Again, the connection is made to something that is 'tried', but now an important link is suggested between experience and the modern traditions of jurisprudence and science. A case is heard at 'trial' while the outer world is subject to controlled and repeated 'experimentation'. Martin Jay goes further back, tracing the Latin word to its Greek antecedent *empeiria*, which also serves as the root for the English 'empirical'. As Jay writes: 'here a crucial link between experience and raw, unreflected sensation or unmediated observation (as opposed to reason, theory, or speculation) is already evident'.¹⁹ Finally, Emile Benveniste charts a connection between '*per-' and Greek terms for selling – 'to cause to pass, to transfer'.²⁰ Experience is thus a valuable good; and one that can be both passed on and exchanged. All of these meanings are important in terms of the way that trials and novels will be seen to operate. But they are also partly responsible for the vexed history of the word itself. Experience holds an excess of meaning that make its definition as troublesome as it is rich. This excess is hinted at by the German language, in which there are two alternative words – *Erfahrung*, which will be the subject of discussion later in this introduction, and *Erlebnis*, which will be taken as it is defined by Gadamer.

Gadamer begins his analysis of *Erlebnis* by noting that, as a noun, it is derived from the verb *erleben* which he translates as 'to be still alive when something happens'. He writes: 'thus the word suggests the immediacy with which something real is grasped – unlike something which one presumes to know but which is unattested by one's own experience, whether because it is taken over from others or comes from hearsay, or whether it is inferred, surmised, or imagined. What is experienced is always what one has experienced oneself'.²¹ The dual nature of experience is thus emphasised – that it involves an 'experience of' and an 'experienced by'. More importantly, the individual brute fact of immediacy is stressed. Experience is neither heard about from another, nor conjured up from within the mind. However, Gadamer goes on to note that

¹⁷ Victor W. Turner, "Dewey, Dilthey, and Drama: An Essay in the Anthropology of Experience," in *The Anthropology of Experience*, ed. Victor W. Turner and Edward M. Bruner (Urbana: University of Illinois Press, 1986), 35.

¹⁸ Martin Jay, *Songs of Experience: Modern American and European Variations on a Universal Theme* (Berkeley: University of California Press, 2006) 10.

¹⁹ Ibid.

²⁰ Emile Benveniste, *Indo-European Language and Society*, trans. Elizabeth Palmer (London: Faber, 1973) 109.

²¹ Gadamer, *Truth and Method* 53.

the form '*das Erlebte*' means the permanent content of what is experienced – the significant form that is made from transient experiencing: 'both meanings obviously lie behind the coinage *Erlebnis*: both the immediacy, which precedes all interpretation, reworking, and communication, and merely offers a starting point for interpretation – material to be shaped – and its discovered yield, its lasting result'.²² The point implicitly made is that the discovered yield of experience is something which, by contrast, can be interpreted, reworked and communicated. Experience, denoting its connection to financial transactions, can be exchanged. It is the currency of a world shared with others.

It is the interplay between these two conceptualisations of experience that, in the modern period, makes knowledge possible. Indeed, the connection between experience and knowledge has so dominated modern thought it is hard to imagine a different configuration. As Giorgio Agamben comments, 'the idea of experience as separate from knowledge has become so alien to us that we have forgotten that until the birth of modern science experience and science each had their own place'.²³ In the premodern world, experience was that which could be translated into maxims and proverbs.²⁴ The order of knowledge, by contrast, was pre-established by a divine positing that the authoritative tradition of the scholastics maintained.²⁵ But, in modernity, the ideal and eternal were substituted by the world of experience and the transience of the everyday.²⁶ Knowledge now had to rest on the experience man had of his world. This new paradigm meant that 'legitimate new experience must not be rejected because it conflicted with existing plausibility schemes; instead, those plausibility schemes must be set aside or rejected because they conflicted with legitimate new experience'.²⁷ But what modern science and philosophy relied on in this endeavour was the ability to subject the immediacy of experience to collection and consideration.²⁸ It is the discovered yield of experience that is the object of

²² Ibid.

²³ Agamben, *Infancy and History: Essays on the Destruction of Experience* 18.

²⁴ Ibid. 17.

²⁵ Jay writes that the legacy of Plato and Aristotle in medieval philosophy meant that 'the ephemeral happenings of everyday life were rendered marginal in the search for universal truths'. Jay, *Songs of Experience: Modern American and European Variations on a Universal Theme* 17. Weinstein give this understanding of pre-modern knowledge a literary interpretation when he writes that 'Seen through Cervantes's early modern eyes, Don Quixote reveals the madness of this premodern procedure. Quixote is incapable, precisely, of learning from experience'. Weinstein, *Unknowing: The Work of Modernist Fiction* 25.

²⁶ See Peter Dear, "Miracles, Experiments, and the Ordinary Course of Nature," *Isis* 81, no. 4 (1990).

²⁷ Steven Shapin, *A Social History of Truth: Civility and Science in Seventeenth-Century England* (Chicago: University of Chicago Press, 1994) 198.

²⁸ Jay writes that 'with the erosion of trust in Scholastic rationalism, the loss of the Catholic Church's corner on spiritual power, and the reversal of the hierarchy of the Ancients and the Moderns, modernity sought a new ground of legitimacy'. Jay, *Songs of Experience: Modern American and European Variations on a Universal Theme* 19.

reflection in modernity. As Charles Taylor comments on the founder of modern philosophy, 'what Descartes calls on us to do is to stop living "in" or "through" the experience, to treat it itself as an object'.²⁹ Experience becomes an object, the matter of knowledge, but only gains this authoritative status because of the self-evident truth of lived immediacy. British Empiricism and Continental Idealism, though beset by many differences, shared this fundamental premise. Both were 'united in their refusal to privilege deductive reason, dogmatic revelation, or textual authority as the foundation of knowledge, putting experience in their place'.³⁰

The double sided nature of experience – that it was always an experience *of* something had *by* someone - dictated that its yield contained knowledge of more than the external world. The emergence of modern subjectivity was the necessary correlate of experience's elevation in epistemological matters. According to Weinstein, 'in coming to know the object as an other reducible to the terms of one's own measure and scale, one comes, reflexively, to know oneself as oneself'.³¹ Individuality became a matter of 'knowing who you are'. Or rather, a matter of discovering who, as the subject of the early modern period emerged through an experiential interaction with the object – one's place in society, one's reason, one's spirituality, were all now given in the experience of the external world. Modern individuality, since the Renaissance, was formed – was self-fashioned – in a creative act of experiential manipulation: the world could make an individual, and the individual could make their world. The classic emanations of this in literature were Shakespeare's Hamlet and Milton's Satan. Yet what these figures perfectly attuned themselves to was the tension between will and contingency that made for modern experience. Hamlet wants to choose his experience, he wants to decide upon his fate, and Satan wants to live his assertion that 'The mind is its own place, and in itself/Can make a Heav'n of Hell, a Hell of Heav'n'.³² But in both cases the project is only partially successful. Hamlet's indecisiveness and Satan's misery are testament to the conundrum of modern experience. The individual can be what he wants, and the world will be what he makes it – yet he is also tied to brute facts which run against a complete freedom of existential choice.³³

²⁹ Charles Taylor, *Sources of the Self: The Making of the Modern Identity* (Cambridge: Cambridge University Press, 1989) 162.

³⁰ Jay, *Songs of Experience: Modern American and European Variations on a Universal Theme* 43. Jay also states that empiricism and idealism 'shared common responsibility for the reduction of experience itself to an essentially epistemological question, bracketing its other dimensions'. Ibid.

³¹ Weinstein, *Unknowing: The Work of Modernist Fiction* 29.

³² John Milton, *Paradise Lost*. Book 2, 254-255.

³³ The phrase 'Renaissance Self-Fashioning' comes from Stephen Greenblatt, whose work stresses this very balance. Greenblatt recognizes the rhetoric of individuality as free choice that is evident in the early modern period while also establishing the material conditions that produced such selfhood as a cultural artefact. Stephen Greenblatt, *Renaissance Self-Fashioning: From More to Shakespeare* (Chicago ; London: University of Chicago Press, 1980).

One of modernity's many paradoxes now becomes apparent. As Martin Jay notes, the 'democratization of the subject of experience also meant its implicit reduction to a single universal model, which was the disembodied, spectatorial Cartesian *cogito*, assumed to be normative for all humans'.³⁴ Individual experience thus became, at one and the same time, the site of knowledge of the external world, oneself, and mankind in general. Descartes' major work was an instruction on 'method'. It necessarily followed that 'because the right method could be learned by others, experience must be communicable, not merely intelligible. It must, in fact, be potentially available to anyone willing to follow the prescribed procedures, which, unlike the secret devices of magicians (or the special exercises of religious virtuosi) were to be fully accessible'.³⁵ Individual experience was thus 'experience which could just as well have been someone else's'.³⁶

This universality of experience gained credence because the object of study had been reduced to its most fundamental level. Lived immediacy was brute fact given in its most basic form of sensory perception. In British empiricism, but also in continental sensationism, 'sense-impressions', imprinting themselves on the *tabula rasa* of the mind, were the object of study.³⁷ Experience was passive: it inevitably occurred rather than being wilfully created. As Koselleck puts it "Experience" is "reality" and enters into opposition to "mere thought".³⁸ The neutrality of the subject's position was thus natural, though the correct method was still required to guarantee it. Bacon's method was similar to Descartes' in this respect. The knowledge gleaned from the inductive method is 'objective in the sense, not that it captures the object as it is in

³⁴ Jay, *Songs of Experience: Modern American and European Variations on a Universal Theme* 35. Agamben puts it another way: 'the great revolution in modern science was less a matter of opposing experience to authority [...] than of referring knowledge and experience to a single subject, which is none other than their conjunction at an abstract Archimedian point: the Cartesian *cogito*, consciousness'. Agamben, *Infancy and History: Essays on the Destruction of Experience* 19.

³⁵ Jay, *Songs of Experience: Modern American and European Variations on a Universal Theme* 34.

³⁶ Taylor, *Sources of the Self: The Making of the Modern Identity* 162.

³⁷ Paul Redding describes this well: 'in the approach of Descartes and Locke, mental contents are understood atomistically and representationally. That is, single mental contents are thought of as understandable in isolation, and as being mental representatives of diverse and isolable things in the external realm'. Paul Redding, "The Metaphysics of an Aesthetic Difference: Kant and Hegel on Colour in Painting," in *Aesthesis and the Economy of the Senses*, ed. Helen Grace (Kingswood, N.S.W.: UWS Nepean, 1996), 95-96. See also John C. O'Neal: 'to create a theory based on experience is to remain humbly within the confines of the world in which we live and to avoid extravagant, poorly founded explanations. In experience, Condillac finds as much a positive method for attaining the Enlightenment goals of truth and knowledge as a way of rooting out prejudice and mysticism. Experience for Condillac is intimately associated with sensory perception'. John C. O'Neal, *The Authority of Experience: Sensationist Theory in the French Enlightenment* (University Park, Pa: Pennsylvania State University Press, 1996) 14.

³⁸ Reinhart Koselleck, *The Practice of Conceptual History: Timing History, Spacing Concepts*, trans. Todd Samuel Presner and Others (Stanford, Ca.: Stanford University Press, 2002) 46.

itself, but that local subjective distortion is expunged from the human "sighting".³⁹ Experience also had to be recorded, tabulated, and subjected to rigorous analysis for its yield to be considered 'proof' of anything. This was a search for consistency in the world, a quest for repetition in the laws of nature: 'the ideal of generalization from replicable experiences, which then sought to explain what had been observed according to the workings of natural laws, became enthroned as the "scientific method"'.⁴⁰ Repetition within experience thus brought about universal knowledge. Jay writes that 'to be worth taking seriously, experience had to be public, replicable, and verified by objective instruments'.⁴¹ But the importance of repetition was not limited to scientific inquiry. Reinhart Koselleck, writing of historical method, argues that experiences are initially unique moments of immediacy. But this is not all they are: 'experiences are also collected; they are the result of a process of accumulation, insofar as they confirm or correct one another'.⁴² These 'confirmations and reinforcements of experiences are tied to the similar experiences of one's contemporaries' – thus the public sense of a shared world and a shared history can be an entity of study. Historical knowledge, in quantifying experiences or even in attributing weight to dominant forms of experience, has to grasp these repetitions as accurate copies of something with singular meaning. As Koselleck comments, 'the method that reconstructs a case and asks how it was possible in the first place, always relies on temporal multilayeredness, namely that experiences are uniquely made and yet accumulate'.⁴³ The methodologies of modern science and history (with the hint of judicial 'case' construction) thus rely on the identification of true repetition. This similarity of method comes as no surprise to Gadamer, who sees them as simply proceeding 'further toward a goal that experience has always striven after. Experience is valid only if it is confirmed; hence its dignity depends on its being in principle repeatable'.⁴⁴

What has so far been described is the ethos of experience that permeated a range of discourses in the West from the seventeenth-century, and on throughout the Enlightenment. But, just as Gadamer stresses the importance of the 'principle' of repetition, so too knowledge claims were given validity by the 'principle' of experience. The certainty that was the aim of the Enlightenment was something that could only be obtained by direct experience. But, even in

³⁹ Weinstein, *Unknowing: The Work of Modernist Fiction* 26.

⁴⁰ Jay, *Songs of Experience: Modern American and European Variations on a Universal Theme* 33.

⁴¹ Jay's footnote to this reads: 'Descartes' initial move, relying on the certainty of his *cogito* as a source of his being, did, of course, involve an introspective look inward, but his successors soon abandoned this step in the argument about the reality of the external world'. Ibid. 40.

⁴² Koselleck, *The Practice of Conceptual History: Timing History, Spacing Concepts* 51.

⁴³ Ibid. 59.

⁴⁴ Gadamer, *Truth and Method* 342.

science, direct experience of all the phenomena one wanted to study was impossible. There was simply too much experience for one subject. Steven Shapin has clearly shown that the concept of direct experience which acted as the authority for all scientific discovery in the early modern period was forced to include the testimony of others, accepted after weighing up various factors including trustworthiness and expertise. But, Shapin also notes that:

the category of "experience" customarily and justifiably encompassed not just what individuals had by way of their own senses but also the reliable testimony they had of others' sensory engagements with the world. In the case of phenomena removed from one in space and time, it was freely conceded that one's knowledge which came to one through these routes, and to say that such knowledge was not part of an individual's "experience" was either pedantic or solipsistic.⁴⁵

For this reason, a rhetoric of undiluted experience as the authoritative source of knowledge remained intact despite being filtered through testimony. Paradoxically, experience had become an ideal.

With full knowledge and absolute certainty now a holy grail, the 'likelihood' of truth was something that had to be weighed. For the first time in history, probability theory came into being as the means of weighing evidence in a variety of disciplines.⁴⁶ But despite its concern with chance, probability theory relied on the existence of a reality that could be said to have a degree of stability, measurability, and common character: the reality that was experienced by the subject of knowledge.⁴⁷ Enlightenment valorizations of rationality were based on the conceptualisation of reason as a faculty which could discern such reality. As Thomas M. Kavanagh points out, 'the validity claimed for the constructs of Enlightenment lay in their effort to enunciate a reality already there and already at work independent of human reason'.⁴⁸ This independence was precisely what was 'perilous' about experience: its openness to rational understanding combined with its rejection of rational control. The reason of the Enlightenment then, the project of which

⁴⁵ Shapin, *A Social History of Truth: Civility and Science in Seventeenth-Century England* 202-03.

⁴⁶ Ian Hacking, *The Emergence of Probability: A Philosophical Study of Early Ideas About Probability, Induction and Statistical Inference* (Cambridge: Cambridge University Press, 1975), Barbara J. Shapiro, *Probability and Certainty in Seventeenth-Century England: A Study of the Relationships between Natural Science, Religion, History, Law, and Literature* (Princeton, NJ: Princeton University Press, 1983).

⁴⁷ Ian Hacking stresses that probability theory involved both rational prediction of whether something was likely and a deliberation over previously collected statistical information: see Hacking, *The Emergence of Probability: A Philosophical Study of Early Ideas About Probability, Induction and Statistical Inference*.

⁴⁸ Thomas M. Kavanagh, *Enlightenment and the Shadows of Chance: The Novel and the Culture of Gambling in Eighteenth-Century France* (Baltimore ; London: Johns Hopkins University Press, 1993) 6.

Welsh claims 'strong representations' were 'very much of', was fundamentally reliant on the authoritative notion of experience.

Barbara Shapiro has, in several works, shown the inherent connections that existed between the intellectual endeavours of scientists, philosophers, novelists and lawyers in the seventeenth and eighteenth centuries. She writes that 'ultimately, what allowed both ideas and investigators to migrate freely between these various learned endeavours was the reorientation of all of them in the direction of empirical inquiry to establish matters of fact'.⁴⁹ The experience that was utilised in these endeavours always resembled itself, but was never quite identical. Philosophy reduced experience to sense-data, while Science, when possible, attempted to construct knowledge of distinct phenomena out of a direct experimentation in the world. In the trial and novel by contrast, experience was either precisely that which required reconstruction or the object of fictitious representation. The way a court went about 'finding the facts' and the factuality of the early novel, however, had much in common; a similarity which lay in the experiential qualities of each.

The Novel of Experience

Literary forms have not always been grounded in individual experience. Mikhail Bakhtin, in contrasting the novel with epic, argues that this earlier form of literature is based on an absolute past of national tradition 'inaccessible to personal experience'.⁵⁰ Bakhtin notes that 'to portray an event on the same time-and-value plane as oneself and one's contemporaries (and an event that is therefore based on personal experience and thought) is to undertake a radical revolution, and to step out of the world of epic into the world of the novel'.⁵¹ The novel, as it appeared throughout Europe in the eighteenth-century, instituted a literary art form in which the world of current and recognizable experience was the object of depiction. The philosophical and scientific underpinning of this institution has been noted by many. Lydia Ginzburg, for instance, in writing of the novel as it developed into the nineteenth-century argues that 'in conformity with the dominant scientific, philosophical, and sociological ideas of the nineteenth-century, realism

⁴⁹ Shapiro, *Probability and Certainty in Seventeenth-Century England: A Study of the Relationships between Natural Science, Religion, History, Law, and Literature* 12. An example of the theme of experience infiltrating an area of cultural life not addressed in this thesis is voiced by Jay: 'Luther sought to answer Erasmus's skeptical probabilism by appealing to the overpowering compulsion of self-evident experience'. Jay, *Songs of Experience: Modern American and European Variations on a Universal Theme* 82.

⁵⁰ Mikhail M. Bakhtin, "Epic and Novel," in *The Dialogic Imagination*, ed. Michael Holquist (Austin: University of Texas Press, 1981), 16.

⁵¹ *Ibid.*, 14.

opened up to artistic cognition a concrete, unified, and monistically conceived reality'.⁵² Most notably, in what still remains a vital and influential work, Ian Watt stresses the philosophical basis of 'formal realism' (his term for the characteristic features of the novel). Watt writes that 'from the Renaissance onwards, there was a growing tendency for individual experience to replace collective tradition as the ultimate arbiter of reality; and this transition would seem to constitute an important part of the general cultural background of the rise of the novel'.⁵³ The novel is seen to diverge from earlier forms of literature precisely because its formal qualities assert that its 'primary criterion was truth to individual experience'.⁵⁴

Apart from its consistency with the modes of other disciplines, the literary style of realism has been argued to have unique sources. Thomas M. Kavanagh, who entitles a chapter of his study of literature and gambling in eighteenth-century France 'Toward a Novel of Experience', cites the overt didacticism of the novel as determining its defining style:

Realism became a paramount value within the novel, because it was only to the extent that its characters and situations were perceived as pertaining to the same world as the reader's that they could become the vehicle of a moral lesson. In his preface to *Manon Lescaut*, Prevost claims for the novel a didactic value equal to, if not surpassing that of life itself. The story we are about to read will supplement the reader's limited experience through narrations so well drawn that they will teach lessons equally as vivid and equally as valid as those the reader has learned from life itself.⁵⁵

Michael Lund and Linda Hughes, on the other hand, see realism as being particularly linked to the serial system of publication. They argue that 'a work's extended duration meant that serials could become entwined with readers' own sense of lived experience and passing time'. They continue: 'the interruptions inherent in serials naturally encouraged writers to work in the

⁵² Lydia Ginzburg, *On Psychological Prose*, trans. Judon Rosengrant (Princeton, NJ: Princeton University Press, 1991) 229.

⁵³ Ian Watt, *The Rise of the Novel: Studies in Defoe, Richardson and Fielding* (London: Chatto & Windus, 1974) 14. Michael McKeon, in a more theoretically complex project, has extended the basis of Watt's work by subjecting his analysis to an understanding of dialectical history. By utilising this method, McKeon is able to explain the persistence of romance narratives in the seventeenth-century while still adhering to Watt's fundamental distinction between this earlier literary form and the novel. For McKeon, 'in its most pronounced form, [this] difference was conceived as nothing less than that between the investment of faith in a remote truth attested to by external authorities, and the immediate authentication of an empirically apprehensible truth that is present for all to see'. Michael McKeon, *The Origins of the English Novel: 1600-1740* (Baltimore: Johns Hopkins University Press, 2002) 57.

⁵⁴ Watt, *The Rise of the Novel: Studies in Defoe, Richardson and Fielding* 13.

⁵⁵ Kavanagh, *Enlightenment and the Shadows of Chance: The Novel and the Culture of Gambling in Eighteenth-Century France* 120.

primary mode of the Victorian age, realism. Reading one instalment, then pausing in that story, the Victorian audience turned to their own world with much the same set of critical faculties they had used to understand the literature'.⁵⁶ The reading of a novel was thus to be grasped in much the same way as an individual would discern their world. No specialist knowledge was required in order to decipher the theme, plot, or meaning: common experience was enough.

As the novel depicted particular experiences, the individual experience of the particular author was also often theorised as the source of literary production. In poetry, the cult of the Romantic genius had created a figure who transformed a unique experience into a communicable and uplifting expression.⁵⁷ The same ideal was applied to novelists of the nineteenth-century. Lydia Ginzburg writes of Tolstoi that 'the vast system of the Tolstoi novel was set in motion by the inclusion in it of the author's personal experience, the experience of addressing the problems that had accumulated at that point in his life'.⁵⁸ It was precisely this connection that formed the focal point of Wilhelm Dilthey's work in the 1890s and early 1900s. Dilthey was one of a group of thinkers who were, at that time, altering the terms in which experience was to be reflected upon and his conception of 'lived experience' will be discussed later in this introductory chapter. For the moment it is sufficient to say that the new complexity with which experience was imbued made a project like *Poetry and Experience* an almost impossible task. But, taken in a more simplistic form, Dilthey was only articulating the predominant thought of the nineteenth-century. For instance, he writes of the French authors Balzac, Taine, and Zola that 'whatever is alive and dynamic in human and social terms, whatever each of us experiences in his own life and in his own soul - if it has not already fallen under the knife of science - is placed under the dissecting knife of these new poets [...] Their aim is to know'.⁵⁹ Dilthey claims a wider canvas for this work than is the subject of this thesis. In his argument he cites Dante, Shakespeare and Cervantes while reserving his most adamant claims for the poetry of Goethe: 'surely the primary and most decisive feature of Goethe's poetic work is that it grows out of an extraordinary energy of lived experience'.⁶⁰ Indeed, his theory at times suggests a form of genius in all great authors that is reminiscent of Romantic conceptions. So his thoughts on Goethe are mirrored when he writes

⁵⁶Hughes, Linda K. and Lund, Michael, *The Victorian Serial* (Charlottesville ; London: University Press of Virginia, 1991) 11.

⁵⁷See Peter Burger, *The Decline of Modernism*, trans. Nicholas Walker (University Park, Pa: Pennsylvania State University Press, 1992) 60.

⁵⁸ Ginzburg, *On Psychological Prose* 245.

⁵⁹ Wilhelm Dilthey, *Poetry and Experience*, ed. Rudolf A. Makkreel and Frithjof Rodi, vol. V, *Selected Works* (Princeton, N.J.: Princeton University Press, 1985) 176.

⁶⁰ Ibid. 238. Gadamer also wrote of the term *Erlebnis* that 'Goethe more than anyone else tempts one to coin this word, since in quite a new sense his poetry acquires intelligibility from what he experienced. He said himself that all his poetry had the character of a vast confession'. Gadamer, *Truth and Method* 54.

of Dickens as a writer whose 'whole life is spent experiencing reality in the most detailed, spontaneous observation of that which new spheres of experience continually offered him'.⁶¹

Wherever it came from, recognizable experience was to be the outcome of a realist reading process. This meant a very precise emplacement of characters with believable proper names in identifiable space and time. The novel was the construction of credible people, places, and moments. In *The Rise of the Novel*, Watt is especially careful to emphasise the way that the novel threw off the constraints of mythological and legendary stories to offer new plots: narratives which literally 'plotted' a character's course through space and time, presenting the reader with 'a developing but unplanned aggregate of particular individuals having particular experiences at particular times and at particular places'.⁶² He writes:

The novel's mode of imitating reality may therefore be equally well summarised 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 - the time and place of the occurrence; both must be satisfied as to the identities of the parties concerned, and will refuse to accept evidence about anyone called Sir Toby Belch or Mr. Badman - still less about a Chloe who has no surname and is "common as the air"; and they also expect the witnesses to tell the story "in his own words".⁶³

A good example of the convergence of these procedures, themselves contained in literary form, is found in Walter Scott's short story 'The Two Drovers'. This tale, first published in 1827, begins with a prophetic vision: Janet of Tomahourich, referred to as 'an auld Highland witch and spawwife' by the locals, sees the blood of an Englishman on the blade of Robin Oig McCombich's skene-dhu.⁶⁴ Despite taking the precaution of depositing his knife with a friend, the prophecy is fulfilled, as Robin murders his fellow drover Harry Wakefield after a fist-fight in which he considers himself to have been dishonoured. The story culminates with Robin's trial, in

⁶¹ Dilthey, *Poetry and Experience* 254.

⁶² Watt, *The Rise of the Novel: Studies in Defoe, Richardson and Fielding* 31. In criticisms of Watt, it has been argued that Defoe, Richardson and Fielding still take advantage of the stock situations and conventions offered by medieval romance narratives. However, an authoritative rebuttal of these criticisms is made by McKeon, who argues that it is out of the very empirical epistemology which inspired the novel that its own counter critique of 'extreme skepticism' arises. What appear to be the old-fashioned forms of romance are, thus, in fact, the results of a newly found attitude designed to undermine 'naïve empiricism'. McKeon, *The Origins of the English Novel: 1600-1740*.

⁶³ Ibid.

⁶⁴ Walter Scott, *Chronicles of the Canongate* (London: Penguin, 2003) 127.

which the judge summarises his motives and offers his interpretation of the event's tragic significance. The narrator, Chrystal Croftangry reports that:

My story is nearly ended. The unfortunate Highlander stood his trial at Carlisle. I was myself present, and as a young Scottish lawyer, or barrister at least, and reputed a man of some quality, the politeness of the Sheriff of Cumberland offered me a place on the bench. The facts of the case were proved in the manner I have related them.⁶⁵

Scott's story thus begins with supernatural, pagan, belief and ends with the rationality of the Enlightenment (the historical juncture in which all Scott's work is situated). It charts the movement from pre-modern beliefs, which act on both faith and fate, to modern thought, which is seen to collect facts, based on prior experiences, and subject them to analysis. This ordering is crucial not only for the charting of Scotland's uneasy transition into modernity but also for the implicit faith that it displays in both trial procedure and the method of the historical novel. The reader is told what has happened: the events in question are given in the form of an immediacy that cannot be doubted. The trial then hears the same story, and only then is it revealed that this is the narrator's source of the narrative. Scott is, of course, famous for the establishment of historical sources for his novels and shorter fiction, and these are not always expected to provide absolute certainty. However, the importance of the forum in which Robin's fate is decided rests upon the incongruous judgment made on him – incongruous because it attributes modern guilt to a pre-modern man of the Highlands who, it is suggested, could not have acted in any other way. That is to say, the court is a site of political and social tyranny (of English or Lowland morals over those of the Highlands) but decidedly not one of epistemological frailty. The facts of the case were true, and the judgment, given in the forum of a modern English court, inevitable. Likewise, Croftangry's narrative itself is seen to unambiguously reflect concrete experiences. Both it, and the identical trial narrative, coincide with, or repeat, the actual event.

This sense of neutrality – both in terms of the facts of experience and the representation of literature – is central to the realist novel's connection to reality. John Bender argues that 'from the eighteenth-century onward, the realist novel has attempted the appearance of having removed all distance between itself and the processes of daily life: it pretends to be a transparent, unmediated form of knowledge about that life'.⁶⁶ Bender is, broadly speaking, right, but the

⁶⁵ Ibid. 142.

⁶⁶ John Bender, *Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth-Century England* (Chicago: University of Chicago Press, 1987) 8.

‘transparency’ of which he speaks must be envisaged in somewhat cloudy terms.⁶⁷ Firstly, the original life of the eighteenth and nineteenth-century subject was not given in a completely simple and coherent form. Realism, rather, took the loose ends of experience and found that they ‘could be made into answerable self-activity *at the level of representation*’.⁶⁸ To put it another way, as Weinstein does, re-presentation was what the realist novelist never produced. It was, rather, built upon a concept of verisimilitude: a familiarity or likeness to an original reality.⁶⁹

Realism, then, was never a trivially simple form of representation. Words are not things, and the discrepancy between the two was not lost on realist authors. George Eliot exhorted her readers to ‘examine your words well, and you will find that even when you have no motive to be false, it is a very hard thing to say the exact truth, even about your own immediate feelings - much harder than to say something fine about them which is not the exact truth’.⁷⁰ Eliot’s comments, which come in Chapter Seventeen of *Adam Bede*, in which the narrator/author directly addresses the reader on the subject of novelistic method, do two things. They argue that truth about the immediacy of life is what an author should strive for while, at the same time, they also insist that complete truth is impossible. We have returned to the scene of modernity’s grappling with the desire for certainty and the settling for probability – and again it is ‘method’, this time in the guise of novelistic method, that will guide the reader. Not only this, earlier in the same chapter the narrator has claimed that:

I aspire to give no more than a faithful account of men and things as they have mirrored themselves in my mind. The mirror is doubtless defective; the outlines will sometimes be disturbed; the reflection faint or confused; but I feel as much bound to tell you, as

⁶⁷ It should also be noted that other critics have argued that there are major differences between the eighteenth and nineteenth-century novel. Peter Brooks, for instance, argues that study of the eighteenth-century novel has often looked through the lens of the nineteenth-century novel, thus obscuring its unique qualities: ‘critics tend to look for the wrong things, to emphasize the rudiments of a “realism” which was not these writers’ concern’. Despite acknowledging these concerns, the argument of those who stress a continuity between the novels of these two periods, such as Watt and Bender, is to be favoured in this thesis. Peter Brooks, *The Novel of Worldliness: Crebillon, Marivaux, Laclos, Stendhal* (Princeton, NJ: Princeton University Press, 1969) 3.

⁶⁸ Grossman, *The Art of Alibi: English Law Courts and the Novel* 172.

⁶⁹ Weinstein, *Unknowing: The Work of Modernist Fiction* 52. Tzvetan Todorov has also written on this subject: ‘we speak of a work’s verisimilitude insofar as the work tries to convince us it conforms to reality and not to its own laws. In other words, verisimilitude is the mask which is assumed by the laws of the text and which we are meant to take for a relation with reality’. Tzvetan Todorov, *The Poetics of Prose*, trans. Richard Howard (Oxford: Basil Blackwell, 1977) 83.

⁷⁰ George Eliot, *Adam Bede* (London: Penguin, 1985) 223.

precisely as I can, what that reflection is, as if I were in the witness-box narrating my experience on oath.⁷¹

Eliot wants to be envisaged as a witness here but, as Rodensky rightly points out, if taken literally, this bold statement of method is not adhered to in the rest of the novel. The narrator of *Adam Bede*, unlike a witness in court, is not constrained by the limits of 'my experience' at all. Even the citing of Adam Bede as a testimonial source cannot account for the omniscient access to other minds that is gained throughout the novel. Indeed, in terms of the courtroom actors, the practice of a realist author would also seem to have more in common with the lawyer than the witness. In writing on *Tom Jones*, Welsh claims that Fielding's narrative is, in evidentiary terms, *indirect*. The narrator 'is not an eyewitness but a manager of the evidence, analogous to a prosecutor or a judge and to later defense (*sic*) attorneys in a trial'.⁷² Welsh uses this idea to bolster his theory of 'strong representations', but it need not be tied to circumstantial evidence in this way. The legal manipulation of evidence, and the guiding hand of the author, take, as their base material, experiential reporting as much as circumstance. Jan-Melissa Schramm's critique of Welsh is significant here, as, while writing in a context of testimonial, as opposed to circumstantial sources, she also writes that the 'emergence of the novel in the 18th century can be seen as an imaginative imitation of the lawyer's skills in the manipulation of evidence'.⁷³

Rodensky takes Eliot's statement too literally. Her aim is to challenge Welsh for failing to observe the difference between the representation of characters in a realist novel, in which direct access to the minds of others is given and the inferential accounts with which the law has to make do. There is undoubted truth and value in this insight, but the continuity and stability of realist characters serves to dilute its importance somewhat. Rodensky herself writes that 'Eliot offers a continuity of character over time'.⁷⁴ This is not only true of the continuity of thought and action perceived in a single character but the continuity, or commensurability, between those thoughts and actions themselves. Thus, Rodensky comments that 'Dickens is not a novelist who generally imagines a difference between inner and outer: the characters perform who they are'.⁷⁵ Even if motivation is made mysterious for a time it will ultimately be revealed by the completion

⁷¹ Ibid. 221.

⁷² Welsh, *Strong Representations: Narrative and Circumstantial Evidence in England* 58.

⁷³ Schramm, *Testimony and Advocacy in Victorian Law, Literature and Theology* 7.

⁷⁴ Rodensky, *The Crime in Mind: Criminal Responsibility and the Victorian Novel* 40. Watt also comments that in Defoe's novels 'we have a sense of personal identity subsisting through duration and yet being changed by the flow of experience'. Watt, *The Rise of the Novel: Studies in Defoe, Richardson and Fielding* 24.

⁷⁵ Rodensky, *The Crime in Mind: Criminal Responsibility and the Victorian Novel* 38.

of the text. It is, therefore, no great leap to see the thoughts of a realist character as placed in a relationship with their actions such that inferences could be drawn one from the other. More generally, Rodensky's critique of Eliot is misplaced because Eliot is concerned not to produce a witness statement as such but to produce statements that are deemed as authentic as truthful witness testimony.⁷⁶ Just as in older forms of narrative, like the epic that Bakhtin contrasted with the novel, Eliot attains to the appearance of general truth. But this is now to come in the form of particularised instances of common experience. Truth cannot appear other than through a committed portrayal of 'the processes of daily life'.⁷⁷ In other writers, this commitment was made even stronger, as the lines were blurred between fact and fiction.⁷⁸

Of course, the lawyer is supposed to be dealing only with facts. But the manipulation of evidence that Welsh and Schramm rightly connect to the activity of lawyers in court is dependent upon another feature of realist fiction. This is that the facts of novelistic experience exist in a state of completion. The realist novel is written from the point of its conclusion – for the narrator, the story is finished and now just requires telling. So, prior to the reader approaching the book, the experiences have all been accumulated, ordered, and manipulated in a way that serves for a simple communication. As Roland Barthes suggests, the realist author's infallibility is based on 'the authority of his competence; it is he who knows the code, the origin, the basis, and thus he becomes the guarantor, the witness, the author (*auctor*) of reality'.⁷⁹ Witnessing is therefore invoked as a position from which authority is gleaned. The author may proceed like a lawyer, but she is witness to a concrete reality and, in truthfully accounting for this world, makes witnesses of her readers. This is precisely because, following the etymology of Benveniste, experience is the currency of modernity and so precisely what the novel deals in. Eliot can thus situate her work in such a way that she never has to write of 'heroes whom I shall never know except by hearsay'.⁸⁰ She can envisage herself, rather, as an impartial witness to 'things as they are'.⁸¹

⁷⁶ McKeon argues similarly that realism 'validates literary creation for being not history but history-like, "true" to the only external reality that still makes a difference, but also sufficiently apart from it (hence "probable" and "universal") to be true to itself as well'. McKeon, *The Origins of the English Novel: 1600-1740* 120.

⁷⁷ Bender, *Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth-Century England* 8.

⁷⁸ Watt argues that Defoe and Richardson's novels 'pretend to be no more than a transcription of real life'. Watt, *The Rise of the Novel: Studies in Defoe, Richardson and Fielding* 30. For a more detailed account of the 'factual' element in the novel see Lennard J. Davis, *Factual Fictions: The Origins of the English Novel* (New York: Columbia University Press, 1983).

⁷⁹ Roland Barthes, *S/Z*, trans. Richard Miller (New York: Hill and Wang, 1974) 167.

⁸⁰ Eliot, *Adam Bede* 225.

⁸¹ This phrase is the alternative title to the William Godwin's novel more commonly known as *Caleb Williams*.

A novel in which the author ingeniously combines the skills of a lawyer with a stricter sense of witnessing is Wilkie Collins' *The Moonstone* (1868). It is also a particularly telling example of the parallels between novel writing and trial procedure of the time. Collins hit upon the form of his narrative, in which several contributors narrate their own knowledge of the case, while at the trial of William Palmer in 1856.⁸² Each contributor is to relate what they know 'as far as our own personal experience extends, and no farther'.⁸³ The narrative is thus built upon witness statements, prompting Welsh to call it a 'story of experience', but a guiding hand is also present in the shape of the author who has collated the individual statements and placed them in a way which enhances the drama. A long first part is taken up by the account of the faithful butler Gabriel Betteredge, who comically delves randomly into the pages of *Robinson Crusoe* whenever faced with a problem. Defoe's status as an early proponent of 'factual fictions' is significant here, as his novel is used by Betteredge like a bible and, thus, an adherence to experiential facts (even though given in a fictional setting) is seen to usurp metaphysical faith.⁸⁴ Betteredge comments that 'things must be put down in their places, as things actually happened'.⁸⁵ This adherence to 'fact' is instilled in the procedures for relating testimony. Betteredge writes that 'I am forbidden to tell more in this narrative than I knew myself at the time. Or, to put it plainer, I am to keep strictly within the limits of my own experience, and am not to inform you of what other persons told me'. He continues:

In this matter of the Moonstone the plan is, not to present reports, but to produce witnesses. I picture to myself a member of the family reading these pages fifty years hence. Lord! what a compliment he will feel it, to be asked to take nothing on hearsay, and to be treated in all respects like a Judge on the bench.⁸⁶

The member of the family that Betteredge envisages is none other than any reader of the text. Collins, like a skilful lawyer, is producing witnesses to present a story in such a way that its truth appears self evident. The reader, thus, becomes the equivalent of a juror (according to Watt, precisely the position in which all readers of 'formal realism' are placed). Welsh claims that

⁸² In fact, the method inspired by Collins' attendance at the trial of Palmer was first used by him in *The Woman in White*, but the technique is identical to that of *The Moonstone*. Schramm, *Testimony and Advocacy in Victorian Law, Literature and Theology* 2.

⁸³ Wilkie Collins, *The Moonstone* (Oxford: Oxford University Press, 1990) 8.

⁸⁴ The term 'factual fictions' comes from Lennard J. Davis. Davis, *Factual Fictions: The Origins of the English Novel*.

⁸⁵ Collins, *The Moonstone* 21.

⁸⁶ *Ibid.* 213.

the prevalence of testimony in the novel indicates a move towards a modernist aesthetic in which 'the need to establish the facts and draw the appropriate conclusions - the very atmosphere of proof and trial and sanctions - gives way to a renewed interest in experience that can be captured only from testimony'.⁸⁷ Experience is therefore seen as authentic, but not necessarily productive of truth. However, the fact that truth is so forcefully expressed by the novel leads to Welsh assuming a position in which he states that '*The Moonstone*, I believe, shows how difficult it is to shake off the habit of making strong representation of innocence in the English novel after Fielding and Scott. In his attention to testimony and use of multiple narratives, Collins thought to represent the process and thereby the experience of discovering the truth'.⁸⁸ But, rather than with the later modernists who would elevate experience above truth, Collins 'let the "discovery of the truth" wag the dog once again'.⁸⁹

This is not a true opposition. Collins is not an early figure of a modernism that denies truth in favour of experience, but a particularly strong example of the Victorian who places truth and experience in indissoluble conjunction. In Collins' novel, the truth will out precisely because the experience can be reconstructed. The central narrative of who stole the Moonstone is a mystery that can, and will, be solved. This logic extends to any seeming enigma in the text.⁹⁰ For instance, Franklin Blake is visited by a strange figure early in the novel. The nature of this visit and the identity of the gentleman are not immediately revealed. But a novel like this cannot allow such loose ends to remain loose – the man is later identified as a moneylender to whom Blake was in debt. Consequences are never left without causes in this novel and this tightness of plot makes it exemplary of a realist tradition. As Watt writes of the genre in general:

the novel's plot is also distinguished from most previous fiction by its use of past experience as the cause of present action: a causal connection operating through time replaces the reliance of earlier narratives on disguises and coincidences, and this tends to give the novel a much more cohesive structure.⁹¹

⁸⁷ Welsh, *Strong Representations: Narrative and Circumstantial Evidence in England* 198.

⁸⁸ Ibid. 235.

⁸⁹ Ibid. 236.

⁹⁰ Roland Barthes, in *S/Z*, sees the hermeneutic code of a realist, or 'readerly', text as being disturbed by enigmas. These are, however, always implanted in the text so as to be ultimately resolved by the code. He writes that 'the hermeneutic terms structure the enigma according to the expectation and desire for its solution'. Barthes, *S/Z* 75.

⁹¹ Watt, *The Rise of the Novel: Studies in Defoe, Richardson and Fielding* 22. Also see Georges Poulet, who writes of the realist novel that 'everything is manifested in it under the form of a continuous implication of causes and effects. Everything is developed in it as the necessary application of principles'. Georges Poulet, *Studies in Human Time* (Baltimore: The Johns Hopkins Press, 1956) 32. The same point is made by Lydia Ginzburg: 'the underlying

The whole of the present action in *The Moonstone* is governed by what happened on the night the stone was stolen (in fact, it can even be traced back to the day the stone was plundered from Seringapatam). The precise mapping of who was where and when becomes the crucial concern of Sergeant Cuff's investigation and his part-solving of the mystery is a triumph of causal connection. A smudge of paint is spotted on Rachel Verinder's door, thus enabling Cuff to calculate the time of the theft. A consultation of the house laundry records then enables him to ascertain what garment had the paint stain on it. As Welsh points out 'around the tiny smear of paint - apparently the only physical trace of the crime - must be reconstructed all the other facts of the case, including the movements of everyone in the house'.⁹² But in order for this explanation to work it is 'essential to assume a closed universe of tidy cause and effect'.⁹³ In addition to Welsh's point, this world of cause and effect is tabulated – it is the very record of past actions in the laundry book that allows Cuff's investigation to progress.

The fact that this mystery is solved by the novel's conclusion is testament to the very method by which the narration is made. The production of witnesses allows for the multiplication of experiences all pointing in the same direction: the solving of the mystery. But these multiple perspectives can only unambiguously aid the discovery of truth if they are both truthful and accurate. There is an implicit trust in the experiential reports provided by the testimony in the novel. This does not mean that there is no filtering of interpretation. Miss Clack's contribution, for instance, is comically rendered in the tone of a devout Christian whose religious fervour borders on the delusional. She completely fails to see Godfrey Ablewhite's intentions towards Rachel Verinder until the moment she becomes surreptitiously witness to his marriage proposal. The reader can thus read against the grain of a narrator's account to a certain extent, but this is limited. Crucially, what is never doubted is the experiential elements of a report like Miss Clack's. So the reader may doubt her interpretation of events but never that the events actually took place – there is never any question mark over whether Ablewhite really did propose to Rachel.

The passivity and neutrality of experience are thus retained. In addition, the multiple perspectives work to discover the truth because they all refer to the same reality. Shapin writes of the use of testimony in modern science's gathering of data that 'the very idea of multiple sources

principle governing the correlation of the elements contained in the artistic structures created by realism was the relationship between cause and effect'. Ginzburg, *On Psychological Prose* 229.

⁹² Welsh, *Strong Representations: Narrative and Circumstantial Evidence in England* 220.

⁹³ Ibid. 221.

which might warrantably induce assent presupposed a judgment that these were reports *of the same thing*' (his emphasis).⁹⁴ This is the case in relation to events, times, and places but also to the identity of individuals. The fluid identity of a self both choosing and created by his experience that emerged in the modern period retained a relative fixity. The eighteenth-century novel of personal journey and development thus speaks not only of progression but of consistency: as Welsh points out, in Defoe's novels 'we have a sense of personal identity subsisting through duration and yet being changed by the flow of experience'.⁹⁵ Novels of the nineteenth-century rest absolutely on this point. Character exists: identity, which may be hidden or obscured, will eventually be revealed. In *The Moonstone* not only is Godfrey Ablewhite ultimately revealed as the thief, he is also, literally, unmasked in his identity (his disguise being posthumously removed).⁹⁶ This *dénouement*, exposes Ablewhite in his *true self*: an act that receives its authority from being given in the form of the undoubted immediate experience of Franklin Blake. But, in reading the novel the reader 'gets' the identity of not only a villain like Ablewhite but, in a much more basic sense, heroes like Franklin Blake and Gabriel Betteredge. It is these characters who more accurately evince the belief in identity and narration in the mid-Victorian era: Blake and Betteredge, whether narrating or narrated about, are always the same. A sense of identity therefore overrides the narrative positions from, and in, which it is observed.

The reconstruction that takes place in the novel, like in Scott's short story, seeks, in some way, to repeat the central event in question. But repetition is itself given textual realisation in Collins' novel. Following the discovery of Blake's nightgown, the evidence against him is compelling. It is only the intervention of Ezra Jennings that saves him. Jennings, while tending Dr Candy prior to his death, is struck by what initially seem to be the disconnected ramblings of a diseased mind. But, upon taking notes, Jennings discerns a logic to Candy's words – that is, he discerns the connected thoughts behind the disconnected speech. In so doing, Jennings comes to form a picture of what occurred on the night the Moonstone was stolen. Candy played a trick on Blake by spiking his drink with opium, thus bringing about a disturbed sleep in which Blake took the stone whilst sleepwalking. To prove this, and therefore Blake's innocence, both he and Jennings plan a recreation of the previous year's circumstances. According to Jennings, if they can repeat the prior conditions exactly 'it is physiologically certain that we should arrive at exactly the same result'.⁹⁷ This 'experiment' relies on precisely the same faith in a world of discoverable

⁹⁴ Shapin, *A Social History of Truth: Civility and Science in Seventeenth-Century England* 216.

⁹⁵ Welsh, *Strong Representations: Narrative and Circumstantial Evidence in England* 24.

⁹⁶ Collins, *The Moonstone* 498.

⁹⁷ *Ibid.* 434.

laws and genuine repetition that was discussed in relation to modern science. In fact, the repetition is only partially created. It is proved that Blake took the diamond while under the influence of opium but what happened to it after that remains a mystery. But the repetition has served its purpose and the limited success of the experiment only serves to prolong the drama of the novel. Reflection on the partial failure of the experiment is also couched in terms which retain the rationally causal structure of experience. Jennings claims that 'we have only partially reproduced the conditions, and the experiment has been only partially successful in consequence'.⁹⁸ A complete repetition is therefore still thought to be, in principle, possible, as on another occasion the exact conditions could be reproduced.

While modernism radically undermined the terms of novelistic representation, realism was not entirely killed off by the literature that appeared in the early twentieth-century. The majority of books for sale in booksellers are, to this day, broadly speaking, realist. Realism lives on in a theoretical sense also. For Ian Watt, the characteristics of 'formal realism' are the guiding principles for all novels, including those of the modernist era. Likewise, Phillip Weinstein takes care not to condemn realism as something that modernism 'got over'. Rather, Weinstein argues that 'no fiction can succeed without a minimal assumption (however modified and self-conscious) of the value of linguistic representation as an engagement with something more than words'.⁹⁹ When it comes to the novel then, realism is never completely dead. But the concentration of particular experiences, the close mapping of a character's trajectory through space and time, the clear and unambiguous account of causation, and the attempted transparency of language were all features of the novel that were questioned by modernist authors. Taken as a whole, this interrogation formed a significant challenge to the novel and cast doubt on its fundamental basis in modern experience. Can a similar history be traced in the development of the criminal trial?

The Reconstruction of Experience

Criminal procedure has not always sought to reconstruct an experience. According to Michel Foucault, the pre-modern 'test' gained its authority to judge by four separable means. Firstly, 'when a person was accused of murder, he could completely establish his innocence by gathering about him twelve witnesses who swore that he had not committed the murder. The oath was not based, for example, on the fact that they had seen the alleged victim alive, or on an alibi for the

⁹⁸ Ibid. 476.

⁹⁹ Weinstein, *Unknowing: The Work of Modernist Fiction* 54.

alleged murder'.¹⁰⁰ These were witnesses, rather, to the accused's strength and importance in the community. Secondly, there were verbal tests in which an individual had to repeat a set formula of words attesting to their innocence. In this form, guilt could be attached not just to falsehood but to incorrect repetition: 'a grammatical error, a word alteration would invalidate the formula, regardless of the truth of what one asserted'.¹⁰¹ Third in Foucault's list are religious tests of oath, clearly based on the power of the divine. Finally, the most pervasive form of pre-modern testing was that of the physical trial. Ordeals of the body, such as walking on hot coals, were not designed as the tortuous means of extracting truthful confessions but as tests which betrayed the physicality of guilt. This idea of physical confrontation extended to include combat between the parties involved – again, tests of strength but also imbued with a religious overtone as God would never allow the guilty to prevail.¹⁰²

These archaic forms were condemned by the Lateran Council in 1215 and jurisdictions throughout Europe were forced to approach the issue of judicial decision making in altered terms.¹⁰³ In England, it led to trial by jury, but not as it is known in its contemporary form. Jurors in this early period were selected as men of the neighbourhood who knew the facts of the case and/or the individuals involved.¹⁰⁴ Their task was to pass judgment upon what they supposedly already knew. But, as communities grew and society became more mobile, jurors could no longer always be expected to be familiar with the facts of the case. Juries thus 'increasingly came to rely on the testimony of witnesses for information'.¹⁰⁵

As Barbara Shapiro has shown, the production of 'facts' in early modern courts was mirrored by epistemological activity in other major disciplines. She writes:

a number of assumptions underlay the modes of inquiry of early modern courts. The first was that it was possible to gain adequate if not perfect knowledge of events that could not be seen, heard, or repeated in court. Neither judges, jurors, nor lawyers would actually "see" the killing or the land transaction at issue. The law dealt with "transient

¹⁰⁰ Michel Foucault, "Truth and Juridical Forms," in *Power: Essential Works of Foucault 1954-1984*, ed. James D Faubion (London: Penguin, 2000), 37.

¹⁰¹ Ibid.

¹⁰² Ibid., 38.

¹⁰³ Shapiro, *Probability and Certainty in Seventeenth-Century England: A Study of the Relationships between Natural Science, Religion, History, Law, and Literature* 173.

¹⁰⁴ In their task of self-informing jurors would often rely on 'local hearsay or rumour about the incident'. Anthony Duff et al., eds., *The Trial on Trial*, vol. 3: Towards a Normative Theory of the Criminal Trial (Oxford: Hart, 2004-2007) 26.

¹⁰⁵ Shapiro, *Probability and Certainty in Seventeenth-Century England: A Study of the Relationships between Natural Science, Religion, History, Law, and Literature*. 176.

things" of no "constant being." Firsthand sensory experience might provide "best evidence" for "matters of fact," but it was unattainable by courts.¹⁰⁶

This is self-evidently true. During the course of a trial, the event in question does not magically come into being to be seen, heard, and touched. But, just like Rodensky's critique of Eliot's claims to be a 'witness', this is to take things too literally. The ability to see and hear the crime is brought up by Shapiro because this is the benchmark of certainty throughout the modern period. The crime could not be literally 'sensed' by the court, but a judgment matching the level of certainty attained by such brute experience was what a trial could and should strive for. In the eighteenth-century, Geoffrey Gilbert, following the likes of Locke and Boyle, wrote of the primacy of sensory experience in matters of evidence. As this was unattainable by courts, probabilities had to be weighted in relation to testimony and circumstances. But, crucially, Gilbert claimed that this course of action produced statements of fact that could be accepted without 'any more reason to be doubted than if we ourselves had heard and seen it'.¹⁰⁷ Foucault's analysis of the 'inquiry' which succeeded the 'test' makes a similar claim:

This was a new way of extending actuality, of transferring it from one time period to another and of offering it to the gaze, to knowledge, as if it were still present. This integration of the inquiry procedure, reactualizing what had transpired, making it present, tangible, immediate, and true, as if one had witnessed it, constituted a major discovery.¹⁰⁸

Here we see the sense of 'witnessing' extended, just as in *Adam Bede*. Actuality is to be transferred to the gaze of knowledge in a certainty that equates to the sensory experience of witnessing. But to make the court a witness to fact involved not just an openness to, but also a control of, actual witness statements. Shapiro writes that 'although hearsay was a familiar concept and hearsay evidence was clearly viewed as inferior, it does not appear to have been rigorously excluded until the mid-eighteenth-century'.¹⁰⁹ This dating places the exclusion of hearsay, which was what George Eliot was so keen to avoid, in neat correlation with the rise of the novel. In legal terms, it is usually argued that the impossibility of a rigorous cross-examination of the

¹⁰⁶ Shapiro, *A Culture of Fact: England, 1550-1720* 13.

¹⁰⁷ Sir Geoffrey Gilbert, *The Law of Evidence*, fourth ed. (London: printed by His Majesty's Law Printers, for J. F. and C. Rivington, W. Owen, T. Longman, J. Johnson, G. Robinson, [and 5 others in London], 1777) 4.

¹⁰⁸ Foucault, "Truth and Juridical Forms," 47.

¹⁰⁹ Shapiro, *A Culture of Fact: England, 1550-1720* 13. 15. See also David Bentley, *English Criminal Justice in the Nineteenth Century* (London: The Hambledon Press, 1998) 13.

testimonial source is the reason for the hearsay exclusion. But this argument only makes sense because the witness who is in court has not had the experience in question. In other words, it is only experience that can be interrogated, and thus verified.

The trial developed in the nineteenth-century in a way that culminated in its transformation into a recognizable form for twenty-first century observers. The Prisoners' Counsel Act 1836 gave all those accused of felonies the right to defence counsel and, thus, the fully adversarial trial was born. John Langbein has written at length on how the subsequent development of the trial was dependent on the increased power of lawyers and the silencing of the accused.¹¹⁰ The trial became a contest in which the prosecution's efforts to portray reality were contested by defence counsel (either through the offering of a conflicting version of events or by the undermining of the prosecution's account). The trial, as it developed to full fruition at the turn of the twentieth-century, has also been termed the 'reconstructive trial' – a format which:

relied on the development of techniques for interrogating witnesses and collecting information in the attempt to extend the actuality of the past into the present, to make the court 'witnesses' to the truth of the event, judging an accused on the basis of what was seen in the courtroom. This was not, of course, an exact reproduction of the event, reflecting the fact that the purpose of the trial is not only to investigate/establish the truth, but also to dramatize it.¹¹¹

Courts thus produced a realist verisimilitude rather than a re-presentation of events. Trials also, like novels, became witness to the truth because of, and not despite, its dramatic nature. Earlier courts were well aware of this. David Taylor writes that 'eighteenth and nineteenth-century justice was intended to be a theatrical experience' and this was not simply intended to display the majesty of the law.¹¹² Trials were public occasions, attended by the society at large in a way more

¹¹⁰ John H. Langbein, *The Origins of Adversary Criminal Trial* (Oxford: Oxford University Press, 2003).

¹¹¹ Lindsay Farmer, "Trials," in *Law and Humanities: An Introduction*, ed. A. Sarat, M. Anderson, and C. Frank (Cambridge: Cambridge University Press, forthcoming 2010), 460. Jerome Bruner has written on this dramatic element to court procedure: 'attorney's and judges do not like being complimented as great storytellers. They work hard to make their law stories as unstorylike as possible, even anti-storylike: factual, logically self-evident, hostile to the fanciful, respectful of the ordinary, seemingly "untailored". Yet in pleading cases they create drama, indeed are sometimes carried away by it'. Jerome Bruner, *Making Stories: Law, Literature, Life* (Cambridge, MA: Harvard University Press, 2002) 48.

¹¹² David Taylor, *Crime, Policing and Punishment in England 1750-1914* (Houndmills: Macmillan Press, 1998) 113.

commonly associated with the theatre.¹¹³ Truth was a matter of drama, but drama was also a matter of truth. Experience was still the currency in both domains. As Gadamer put it: 'the significance of that whose being consists in expressing an experience cannot be grasped except through an experience'.¹¹⁴ Just like the realist novel, the reception of the experience that it was the court's objective to find had to be grasped, to be undergone, as a form of experience itself. The commensurability produced – the fact that the criminal, the juror, the crime, and the trial, all dealt in experience – was what allowed for justified verdicts to be made and responsibility recognized.

This dramatization, like the drama of the novel, was developed in part from the very precise and detailed mapping of an individual's progress through time and space. It was the human ability to recreate the past experience rather than a divine sign of inherent guilt that was now the ultimate arbiter of truth. As Weinstein comments:

Trials, like realist novels, specialize in producing narratives of individuals travelling in highly specified ways through uniform spaces and times. The uniformity is key, for it guarantees space and time as reliable conditions, thus rendering subject-behaviour within them *consequential* - in both senses of that term. Like realist novels but more drastically, trials edit the messiness of life histories into the selective clarity of a developmental line. Both the protagonist of such novels and their readers engage in a jurylike trying out of materials encountered, sifting through appearance, zeroing in on the shape of the real.¹¹⁵

In both forms, trial and novel, the ability to discern this reality lay within the domain of ordinary experience. While the judge was in charge of an abstruse and obscure law, the jury of laymen were in charge of the facts.¹¹⁶ No special training or knowledge was required to form a judgment

¹¹³ J. M. Beattie comments that the meeting of assize courts in the eighteenth-century 'were significant events in the life of the county and [...] they would take on a festive character. The magistrates and gentlemen in attendance often brought their wives and families to what became a fixed entry in the social calendar of provincial society, one of the "public occasions," and of course this in itself attracted many others'. J. M. Beattie, *Crime and the Courts in England 1660-1800* (Oxford: Clarendon Press, 1986) 330. Peter Linebaugh also stresses the way that the London courts functioned as modes of entertainment for the general public in the same period. Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (London: Penguin, 1991) 87-88. This particular feature of the justice system can also be seen in antiquity. Jerome Bruner notes that in ancient Athens, citizens went to the law courts when there were no good plays on. Bruner, *Making Stories: Law, Literature, Life* 49.

¹¹⁴ Gadamer, *Truth and Method* 61.

¹¹⁵ Weinstein, *Unknowing: The Work of Modernist Fiction* 65.

¹¹⁶ Peter Goodrich writes that 'the history of the common law is by and large a history of the recording and documentation of custom in a professional and extremely obscure language, that of law French, and hidden in technical and often verbose reports'. Peter Goodrich, *Reading the Law: A Critical Introduction to Legal Method and*

– common experience was enough. As Weinstein rightly points out, ‘plotting’ allowed for a guarantee of consequential behaviour in which both a recognizable chain of cause and effect was presented to the jury and in which a subject’s actions could be held to account.

Having said that, it should be noted that the experience which was spoken to was restrictive: juries were limited to male citizens of a certain level of means and between a specified age range. David Bentley argues that ‘the hallmark of trial juries in the nineteenth-century was their wholly unrepresentative character. The only persons eligible to serve were men aged between twenty-one and sixty, and possessed of the requisite property qualification’.¹¹⁷ The men who sat on juries were placed in a position of power – both legally and epistemologically. But though the experience of the poor, or of women, or of other races, was thought of insufficient standing to perform as a juror, access to the experience of these others was assumed to be possible. *Mens rea* could be attributed to all manner of criminals by recourse to such conceptions as the ‘reasonable man’ or the ‘responsible individual’ – formulations which assisted in determining attributable guilt in relation to the consequences that could naturally be expected to follow certain acts.¹¹⁸ The fact that the experience of jurors was in many respects limited was simply not something that was contemplated in this period. The middle-aged white male could extrapolate from his own experience and gain insight into the life of anyone, just as the realist novel could take in life in all its guises, from the poorest peasant to the richest nobleman.

In this thesis, it will be claimed that certain elements of the early twentieth-century trial made it less ‘reconstructive’ than its development throughout the nineteenth-century would suggest. Having said that, we do not live without realism, or without reconstruction, today – just as we still cling to a certain form of experience in the modern form so far discussed.¹¹⁹ The trial, in its contemporary form, continues to operate largely in the fashion described. Trials continue to gesture towards a coincidence with real experience. They continue to form the experiential expression of an original event – understood as the discovered yield of a brute immediacy. As such, many of the features most typical of the trial as a reconstruction can be seen in cases covering a wide period of time. For instance an exemplary use of witnesses to build up a connected narrative of an accused’s movements in space and time can be seen from the 1862

Techniques (Oxford: Basil Blackwell, 1986) 68. Also see Shapiro, *Probability and Certainty in Seventeenth-Century England: A Study of the Relationships between Natural Science, Religion, History, Law, and Literature* 251.

¹¹⁷ Bentley, *English Criminal Justice in the Nineteenth Century* 89.

¹¹⁸ Martin J. Wiener, *Reconstructing the Criminal: Culture, Law and Policy in England, 1830-1914* (Cambridge: Cambridge University Press, 1990).

¹¹⁹ Joan Wallach Scott claims that ‘experience is not a word we can do without, although, given its usage to essentialize identity and reify the subject, it is tempting to abandon it altogether’. Joan Wallach Scott, “The Evidence of Experience,” *Critical Inquiry* 17, no. 4 (1991): 797.

Scottish case of Jessie McLachlan. Mrs. McLachlan was charged with the murder of her friend Jessie McPherson in the house where she, the victim, worked as a servant. The other inhabitant of the house at the time of her death was James Fleming, the owner's father. The case was untypical in that the defence took the unusual step of naming an alternative individual as the murderer: Mr. Fleming. What was typical was the way that much of the defence case then circulated around tracing Fleming's movements over the course of the weekend in which Mrs. McPherson was killed.¹²⁰ When he opened the door to the milkboy on Saturday morning and why (given the fact that this was a task usually undertaken by the servant) became central questions in the defence's cross-examination. Fleming's behaviour was thus reconstructed as the rational response to a given set of circumstances: the fact that he knew Jessie McPherson was dead. It was later claimed by Mrs. McLachlan, in a suspiciously obtained confession, that she had opened the door to the milkboy but the fact that Fleming had done so had been attested to by him, the milkboy, and the milkman. As the editor of the *Notable Trials* publication of the case put it, 'if any reliance whatever is to be placed in human testimony, this fact must be accepted as proved'.¹²¹ At this time, the oath still had a degree of weight. Testimony, therefore, was relied on to be predominantly truthful and accurate and it was through these sources that the facts of the past could be reconstructed.

A trial that was referred to earlier as an inspiration for Wilkie Collins, that of William Palmer, also relied on such a close mapping of movements. Palmer was accused of poisoning an associate of his, John Parsons Cook, with strychnine. The remarkable thing about this case was that, despite the accusation of poisoning, medical and scientific experts could find no trace of strychnine in the victim's body.¹²² It was, rather, the piecing together of witness statements placing Palmer in the position to be able to poison Cook, and the clear motivation of financial gain, that formed the strength of the prosecution case.¹²³ Palmer prepared, or served, food to Cook on several occasions; on each occasion Cook was subsequently stricken with violent bouts of sickness. Several other circumstances also pointed to Palmer's involvement in other murders.

¹²⁰ More predictably, the same efforts to reconstruct Mrs McLachlan's actions were undertaken by the prosecution: 'her movements during Saturday, 5th July, may be traced with much minuteness in the evidence of the various witnesses'. William Roughhead, ed., *Trial of Mrs McLachlan* (Glasgow: William Hodge & Company, 1911) 35.

¹²¹ *Ibid.* 89.

¹²² Ian Burney writes that 'this had resulted in a gap at the centre of the case against him: although strychnine was named as the poison that had killed Cook, none was detected in his body'. Ian Burney, *Poison, Detection, and the Victorian Imagination* (Manchester: Manchester University Press, 2006) 1.

¹²³ In an account sympathetic to Palmer's fate, Robert Graves writes that, following the verdict, the prevalent view of most medical authorities was that if Palmer must be hung 'it must be on the circumstantial evidence alone, not on the medical evidence; because that has broken down, horse, foot, and guns'. Robert Graves, *They Hanged My Saintly Billy* (London: Xanadu, 1990) 254.

The judge in the case, Lord Campbell, referred to these on sentencing: 'whether it is the first and only offense of this sort which you have committed is certainly known only to God and your own conscience. It is seldom that such a familiarity with the means of death should be shown without long experience; but for this offense of which you have been found guilty your life is forfeited'.¹²⁴ The trial had thus produced knowledge of another that, without its process, could only be obtained by an omniscient being: the figure who, more often than not, narrated a realist novel.

In many respects the trial developed in a way that simply extended these mid-nineteenth-century forms. As such, a trial that took place in the midst of the modernist period – the trial of George Joseph Smith in 1915 – was, in fact, a fine example of a trial of experience. This infamous trial, known as 'The Brides in the Bath' case, was noteworthy for being one of the first cases to utilise 'similar fact evidence' in order to establish system or method on the part of the accused. Smith had been married to three different women all of whom had drowned in their own baths. The use of 'similar fact evidence' allowed him to be tried for the murder of one of them, Beatrice Mundy, with the case against him being corroborated by evidence of what had happened in the other two instances. It also utilised expert opinion in a controversial and, as will later be claimed, undermining fashion. But in certain of its other particulars it was a classic trial of reconstructive realism. For instance, one hundred and twelve witnesses were called to trial – all of them contributing to a detailed and precise mapping of Smith's actions in various settings throughout England over a lengthy period of time. The expansion of police forces and greater communication between them thus only served more accurately to accrue the kind of information that could allow for such reconstructions of movements and actions. Secondly, the very concept of system and method relied upon a consistency of character which translated thought to action. Thirdly, the question of whether the deaths could all have been accidental was predominantly approached by way of common sense reasoning rather than specialist expertise. It was Detective Arthur Neill's experiments with a female swimmer, in which he tested the ease with which a healthy young woman could be drowned while bathing, that formed one of the most striking instances of witness testimony. Fourthly, absolutely clear motivation was produced in the form of significant financial gain for Smith in all cases. Finally, in sentencing, the Judge affirmed the judgment of the jury to the extent of suggesting an infallible certainty:

¹²⁴ George H. Knott, ed., *Trial of William Palmer*, 2nd ed. (Edinburgh: William Hodge & Company, 1923) 313.

Gentleman of the jury, I thank you for the great attention you have paid to this case. As I have said, I thoroughly concur in your verdict. It may interest you to know, and it may show the fairness of an English trial, that there was evidence before the magistrates which has not been given before you [...] The fairness of the English law has not put those facts before you on the trial, and it may help to satisfy you that your verdict is the right one.¹²⁵

In contrast to the Palmer trial, the certainty of the verdict in the Smith case was validated by evidence that had not been seen in court. But the coincidence of the jury's judgment, made on the basis of permitted evidence, with that of the judge, made by recourse to supplementary proof, serves to illustrate the implicit faith that was placed in the ability of a fair trial to reach the truth. The prosecution cases against McLachlan, Palmer, and Smith also share a formal similarity which make them exemplary of the reconstructive trial: the fact that they are made from the point of their completion. Despite referring to the jury's role in *deciding* the case, the prosecuting lawyer, in a way identical to that of the realist author, proceeds as if simply reporting prior events that undoubtedly took place. Much of the rhetorical skill of counsel is therefore employed in producing a narrative that treads a fine line: on the one hand it declares that judgment is still delicately hanging in the balance, while on the other it suggests that only one outcome is possible. A level of certainty was thus produced by the presentation of evidence in a trial even prior to the final judgment.

The certainty established by such final judgments was, in fact, something that was not given a universal and formal possibility of challenge in England and Wales until the establishment of the Court of Criminal Appeal in 1907. In France, appeal had been instituted as a right following the Revolution but was excluded from the most serious cases, which were tried by jury. Changes to the possibility of review by the *Cour de Cassation* which made it much like the English Court of Criminal Appeal only came into place in 1895. Prior to the turn of the century, much more emphatically than today, the verdict of courts throughout Western Europe represented a finality, a completion of events. When the verdict was in, the story was finished and could be related exactly as a realist novel.¹²⁶

Barbara Shapiro claims that at least since the late seventeenth-century 'determinations of fact in the courtroom should not be too far divorced from what are considered to be the

¹²⁵ Eric R. Watson, ed., *Trial of George Joseph Smith* (Edinburgh: William Hodge & Co, 1922) 310.

¹²⁶ Much in the way that the trials are set out in the Notable Trials series.

soundest means of evaluating factual evidence in the scientific disciplines'.¹²⁷ The epistemological similarities with a tradition of empiricism will be duly noted. But, the common law also had close ties with the development of a Utilitarian approach - a philosophy which rests fundamentally on the commensurability of experiences as measurements of 'the good'. Utilitarianism was the guiding philosophy for those reformers of the law in the nineteenth-century who sought to, amongst other things, provide a codified version of the common law for use in British India.¹²⁸ For K J M Smith, the fundamental attraction of Benthamism for these legislators was its "reverence for facts" - its belief that the source of knowledge was observation and the systematic appeal to experience'.¹²⁹ Marianne Constable, likewise, claims that:

the principle of utility provides the lawful measure of behaviour for human beings, who can rely on their experience of bodily sensations of pleasure and pain to calculate, as rational agents, how to behave. The Benthamite legislator extrapolates from experience to create the human *positive law* that is to improve society and its members in the future.¹³⁰

As Constable notes, many contemporary scholars and legal practitioners still believe in this stage: 'these philosophers take laws to be phenomena - and law to be a phenomenon - of a real empirical world of experience'.¹³¹

The common law, since the mid seventeenth-century and up until today, has also been considered as various formations of a rationalist tradition. But rather than a rationalism that, in philosophical terms, is often characterised as opposing an empirical approach, this view found 'its classic expression in English empirical philosophy in the writings of Bacon, Locke, and John Stuart Mill'.¹³² By the same token, the continental rationalist tradition which is thought to underpin civil law jurisdictions is fundamentally tied to the empirical approach of modern science. In J D Jackson's analysis, this is an approach that assumes firstly:

¹²⁷ Shapiro, *Probability and Certainty in Seventeenth-Century England: A Study of the Relationships between Natural Science, Religion, History, Law, and Literature* 193.

¹²⁸ Eric Stokes describes Macaulay's Indian Penal Code as being moulded from a cast of Bentham. Eric Stokes, *The English Utilitarians and India* (Oxford: Clarendon Press, 1969) 225.

¹²⁹ Of Sir James Fitzjames Stephen specifically, Smith writes: 'along with J S Mill and the broad utilitarian school, Stephen's deductions and prescriptions largely rested on the near events of modern history and the realities of what could be seen and experienced'. K. J. M. Smith, *James Fitzjames Stephen: Portrait of a Victorian Rationalist* (Cambridge: Cambridge University Press, 1988) 44 & 148.

¹³⁰ Marianne Constable, *Just Silences: The Limits and Possibilities of Modern Law* (Princeton ; Oxford: Princeton University Press, 2005) 38.

¹³¹ Ibid. 39.

¹³² William Twining and Terence Anderson, *Analysis of Evidence: How to Do Things with Facts Based on Wigmore's Science of Judicial Proof* (Evanston, Illinois: Northwestern University Press, 1998) 97.

that there is a world of fact which exists out there as part of reality, independent of the human observer, and the work of the scientist is to discover as much of it as he can by comparing this reality with his own theories and hypotheses, what has been called the correspondence theory of truth. Secondly, it is assumed that although many conclusions can only be stated with probability, given time the complete truth is in principle capable of being revealed, the principle of universal cognitive competence. Third, since knowledge of reality can be obtained by using as a foundation the empirical evidence of our sense-experiences which is value-free, science can be conducted in a value-free manner.¹³³

The correspondence theory of truth referred to here works precisely because of the perilous nature of experience. To experience the world is to take an adventure into that which cannot be wholly open to egoistic control. Experience, and reality, cannot simply be willed and what comes from within them is *discovered* rather than created. The terminology of trial procedure is indicative of this thought as 'the term "finding the facts" is located within a general conception of law where the judge, or jury, are regarded as finding a reality (and therefore that reality is "given")'.¹³⁴ The central concern of a trial is the central 'fact' of the crime, the 'reactualizing' of which has to be, in principle, possible. The certainty referred to by Gilbert, reached by the weighing of probabilities therefore has to somehow produce the same neutrality as value-free sense-experience. To discern truth had to involve, as well as active deliberation, a certain passive reception.

Part of the way that the trial established its credibility in this regard was through its trappings of impartiality. John Bender argues that the rules of evidence came to replace blatant authority in judicial matters: 'rules are supposed to be passive, disinterested, objective, and transparent: their ideology is that they embody no ideology'.¹³⁵ Rules thus provided the law with the capacity to produce passive, disinterested and objective observers (the ideal type of the modern subject of knowledge). The illusion created was of a group of individuals who would be able to transparently reflect reality. Bender then connects this insight to literary method: 'the reformulation of authority in terms of ostensibly autonomous rules finds its counterpart in the

¹³³ J. D. Jackson, "Two Methods of Proof in Criminal Procedure," *Modern Law Review* 51, no. 5 (1988). 552.

¹³⁴ Patrick Nerhot, "The Law and Its Reality," in *Law, Interpretation and Reality: Essays in Epistemology, Hermeneutics and Jurisprudence*, ed. Patrick Nerhot (Dordrecht ; Boston: Kluwer Academic Publishers, 1990), 60.

¹³⁵ Bender, *Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth-Century England* 176.

convention of transparency that distinguishes the realist novel'.¹³⁶ In stark contrast to Welsh's analysis of Fielding, Bender argues that in *Tom Jones* 'this kind of justice is prospectively realized within the action itself by Tom Jones, an honest man who understands human nature through experience'.¹³⁷ Just like the formal methods which governed scientific experimentation, the rules of evidence and the method of the novel sought to safeguard experience from its impersonators: hearsay, speculation and irrelevance.

These rules, systematically formulated into the law of evidence from the eighteenth-century onwards, gained their authority as the embodiment of prior decisions made in relation to particular cases. The law of evidence was thus *made* from specific decisions taken in relation to concrete experiences. The immediacy of a specific circumstance is discovered, held, and interpreted in a way which allows it to form a guide for future action. Just as in the experimental method, therefore, repetition is thought to be both possible and easily discernible. The system of *stare decisis* is, in one sense, then, all about the preserving and sharing of experience. On the other hand, and in what seems a paradoxical situation, common law as precedent is how law binds itself to a tradition that supposedly stretches back several centuries: and so the authority is based on a pre-modern sense of custom or convention. But the dating of this system of law, and how far back its tracing of decisions goes, is crucial to understanding its underlying sources. Shapiro argues that legal casebooks and court reports, often treated as a purely independent development 'began to flourish only after Bacon [...] emphasized the need for the careful and accurate collection and correlation of data from which generalizations might be drawn'.¹³⁸ The institution of the materials required to chart precedents were, therefore, not in place until the modern era. Indeed, Peter Goodrich would say that this was not fully realised until some time later. He argues that 'the emergence of reliable law reports in the early 1800s, together with the somewhat earlier revival of the academic and literary expositions and systematizations of the common law, provided the basic preconditions of the modern conception of common law as precedent'.¹³⁹ Precedent, as a system, though held to be a traditional tie to ancient law, is, thus, rooted in the modern conception of experience so far discussed, and came into being contemporaneously with the rise of the realist novel. As Holmes put it 'the life of the law has not been logic: it has been experience'.¹⁴⁰

¹³⁶ Ibid. 177.

¹³⁷ Ibid. 179.

¹³⁸ Shapiro, *Probability and Certainty in Seventeenth-Century England: A Study of the Relationships between Natural Science, Religion, History, Law, and Literature* 168.

¹³⁹ Goodrich, *Reading the Law: A Critical Introduction to Legal Method and Techniques* 70.

¹⁴⁰ Holmes, *The Common Law* 1.

The Experience of Experience

The scientific method, one of the predominant manifestations of the modern concept of experience, was, in fact, partly responsible for its disintegration. As modernity developed, scientific disciplines multiplied, knowledge diversified, and an abundance of minute causes were discovered in relation to individual effects.¹⁴¹ The idea of experience which had been utilised in early modern science had involved a certain reliance on the testimony of learned individuals, but this trust had been predicated on an assumption that anyone else could have had the same experience. Descartes had even denied that individual sciences had differing goals and methods, instead claiming that 'the person who had trained his reason in a general way was more likely to make discoveries than the one who concentrated on some particular field of study'.¹⁴² By the early twentieth-century, while technically this was still the case, the authority of specific expertise was far more prevalent. Odo Marquard, for instance, bemoans the fact that, in the contemporary world, knowledge has become an act of blind submission to a specialized authority. As Marquard puts it 'we increasingly have to accept experience that we have not had ourselves but are only acquainted with through hearsay'.¹⁴³ The treating of experience as an object, and its dissection into smaller and smaller mechanised elements had ultimately led many to question its continued connection to 'lived experience'. What was being examined was no longer anything like experience as it was experienced.

Returning to Gadamer's definition of *Erlebnis* can help to illustrate how many sought to reject prevailing methods and reinvigorate the role of experience in philosophy. As a noun, the term had only come into use in the 1870s, subsequently being taken up by Dilthey, who sought to establish the human sciences upon the concept of 'life' – often taken to form a very similar meaning to *Erlebnis*. Dilthey wrote that:

a lived experience is a distinctive and characteristic mode in which reality is there-for-me. A lived experience does not confront me as something perceived or represented; it is not given to me, but the reality of lived experience is there-for-me because I have a reflexive

¹⁴¹ Stephen Kern argues that from the nineteenth to the twentieth-century 'causal understanding moved in the direction of increasing specificity, multiplicity, complexity, probability, and uncertainty'. Stephen Kern, *A Cultural History of Causality: Science, Murder Novels, and Systems of Thought* (Princeton: Princeton University Press, 2004) 6.

¹⁴² Jerrold Seigel, *The Idea of the Self: Thought and Experience in Western Europe since the Seventeenth Century* (Cambridge: Cambridge University Press, 2005) 65.

¹⁴³ Odo Marquard, *In Defense of the Accidental: Philosophical Studies* (Oxford: Oxford University Press, 1991) 78.

awareness of it, because I possess it immediately as belonging to me in some sense. Only in thought does it become objective.¹⁴⁴

Dilthey's work paralleled that of his contemporary, Henri Bergson, as well as the American Pragmatists, all of whom sought to ground philosophy on the multiplicitous experience of everyday life.¹⁴⁵ As Agamben points out, 'the inner sense which, for Kant, was without cognitive value and, with its "rhapsody of perceptions", expressed only the impossibility of the transcendental I knowing itself, now became the source of the most authentic experience'.¹⁴⁶ These thinkers proceeded as if experience had never before been at the centre of philosophical inquiry. Their project was as simple as it was ambitious: to revive 'a common lifeworld that had relinquished its coherent meaning with the development of subcultures of expertise'.¹⁴⁷

Confusingly, *Erlebnis* was supposed to contrast with 'the notion of *Erfahrung*, or experience that entails taking an attitude toward an object and evaluating it, a kind of "secondhand" experience'.¹⁴⁸ This sounds suspiciously like the second meaning of *Erlebnis* that Gadamer identifies from its semantic roots. Yet, it is this very confusion that indicates the crisis which was occurring in the late nineteenth-century. As Gadamer notes, the coinage of the word *Erlebnis* is intended to imply that lived immediacy is not lived as philosophy has so far envisaged it. In other words, the perception of sense-impressions does not happen in a vacuum but is inflected by will, feeling, and memory (the discovered yield of experience). But all of this is to be considered as 'preconscious' and as separate from another form of discovered yield – that of the cognitive judgments of *Erfahrung*. As Rudolf Makkreel writes:

the words *Erlebnis* and *Nacherleben*, are not strictly defined, but they suggest various ideas: the idea that an experience can be a kind of unity with its own immanent teleology; the idea that such a unity can be communicated in such a way that we are able to re-

¹⁴⁴ Dilthey, *Poetry and Experience* 223.

¹⁴⁵ For James, a stronger relation between everyday life and philosophical thought was required. He wrote that 'the world of concrete personal experience to which the street belongs is multitudinous beyond imagination, tangled, muddy, painful, and perplexed. The world to which your philosophy professor introduces you is simple, clean and noble'. William James, *Pragmatism: A New Name for Some Old Ways of Thinking* (Cambridge, MA: Harvard University Press, 1978) 17.

¹⁴⁶ Agamben, *Infancy and History: Essays on the Destruction of Experience* 35-36.

¹⁴⁷ Jay, *Songs of Experience: Modern American and European Variations on a Universal Theme* 263.

¹⁴⁸ Quotation taken from Ramon J. Betanzos' introduction to Wilhelm Dilthey, *Introduction to the Human Sciences: An Attempt to Lay a Foundation for the Study of Society and History*, trans. Ramon J. Betanzos (London: Harvester Wheatsheaf, 1988) 13. Hans Ulrich Gumbrecht phrases it thus: 'An *Erlebnis*, one could then say, is an object of perception on which a consciousness focuses without having made sense of it'. Hans Ulrich Gumbrecht, *The Powers of Philology: Dynamics of Textual Scholarship* (Urbana ; Chicago: University of Illinois Press, 2003) 77.

experience and re-live to a certain degree what has been experienced and expressed by other people even generations ago; and, finally, the idea that the conception of a work of art is rooted in a particularly intense kind of contact with reality where a unification of outer and inner experiences take place.¹⁴⁹

Many of the features of an earlier form of experience thus continue to exist (Dilthey often described himself as an empiricist) but what has changed is the initial unit of immediacy. This 'lived experience' is not an object in the modern sense in which Bacon, Descartes, or Locke took it. In fact, Dilthey wrote of his philosophical forefathers that, 'there is no real blood flowing in the veins of the knowing subject fabricated by Locke, Hume, and Kant'.¹⁵⁰ In common with these earlier figures, Dilthey wanted to make experience the object of study: but it was an object that had to be considered in a much more subjective manner. Experience now had to be liberated from epistemology and considered in more complex terms which stressed what it was to be alive.¹⁵¹ As Hans Ulrich Gumbrecht puts it, there is an 'untamedness' to this new conception of experience.¹⁵² But in this act of freeing experience from its position as the matter of knowledge and envisaging it in more primal yet intricate terms, its explication became inherently difficult. Indeed this is perhaps one of the reasons why Dilthey's work remained fragmentary and incomplete.¹⁵³

As described earlier, one of Dilthey's many projects was the attempt to understand art as an expression of experience. This old idea was given fresh impetus with the new concept of *Erlebnis*, the reaching of which could *only* be achieved through an examination of its objective expression. But, paradoxically, the more experience was envisaged as it was actually lived, the more permanent became its disconnection from its discovered yield. In other words, as *Erlebnis* is considered in more complex terms, *Erfahrung*, rather than becoming closer to immediacy, recedes ever further into the distance. *Erfahrung* comes to denote something in excess of the discovered yield of *Erlebnis*. The most striking development of this thought is in Freud, as to recover the traumatic event that explained neuroses was precisely to reconstitute what had never

¹⁴⁹ Quotation taken from Rudolf Makkreel's introduction to Dilthey, *Poetry and Experience* 21.

¹⁵⁰ Dilthey, *Introduction to the Human Sciences: An Attempt to Lay a Foundation for the Study of Society and History* 73.

¹⁵¹ Remember Gadamer's first definition of *Erlebnis* was 'to be still alive when something happens'.

¹⁵² Gumbrecht, *The Powers of Philology: Dynamics of Textual Scholarship* 77.

¹⁵³ In his introduction to Dilthey's *Introduction to the Human Sciences*, Ramon J. Betanzos writes: 'the fascination with human life in toto, the conviction that "man" is to be found not in some abstract philosophical definition but amid a historical-cultural process that continuously "defines" him and then partially "undefines" him by way of a continually expanding process of "redefinition" meant in effect that whatever success Dilthey might achieve in his enterprise must be provisional, partial, and permanently corrigible'. Ramon J. Betanzos, Introduction to Dilthey, *Introduction to the Human Sciences: An Attempt to Lay a Foundation for the Study of Society and History* 8.

been an experience. As Freud wrote, memory 'traces are often strongest and most enduring when the process that brought them into being never entered consciousness at all'.¹⁵⁴ Strictly speaking, therefore, they were not forgotten experiences but unconscious psychic processes.¹⁵⁵ As if this were not enough of a blow to the pre-eminence of experience, Freud also soon came to the realisation that the traumas of infant sexual abuse that his patients began to recall could not all have been actual occurrences. Screen-memories which represented 'the forgotten childhood years as completely as the manifest content of dreams represents the dream-thoughts' then came to form a prominent role in the constitution of psychic life.¹⁵⁶ So, not only was what was remembered in analysis something that had not strictly speaking been forgotten, as it had never reached consciousness, but it had also never been unconsciously endured. The return of the repressed was, thus, the creation of an excess beyond *Erlebnis* that *Erfahrung* needed to make sense of a range of other psychic phenomenon. *Erfahrung* and *Erlebnis* were becoming stretched – lived immediacy and meaningful conceptualisation were no longer stages of the same thing but distinct entities.

While the unconscious drives and fantasies discovered by psychoanalysis subvert the pre-eminence of conscious experience, the configurations of unconscious life themselves reorient what had been experience's main features. Weinstein argues that Freud's theory alters conceptions of space and time. In Freud:

Space here appears as no longer orientational but rather *uncanny* (reconfigured by the drivers of the subject immersed in it). *Time* shows itself as no longer progressive but rather *traumatic* ("now" deformed by "then", for the same reasons space is deformed). The *subject* emerges as no longer individual but plural, inhabited invisibly by *other(s)* encountered - and unknowingly interjected - in the past.¹⁵⁷

This radical reorientation of space and time is something that invades literary representation. In Ford Madox Ford's *Parade's End* the portrayal of a subject's existence within a spatial and temporal scheme is so fluid it becomes difficult to place the concrete position from which they

¹⁵⁴ Sigmund Freud, *Beyond the Pleasure Principle and Other Writings*, trans. John Reddick (London: Penguin, 2003) 64.

¹⁵⁵ Cathy Caruth comments that 'trauma is suffered in the psyche precisely, it would seem, because it is *not* directly available to experience'. Cathy Caruth, *Unclaimed Experience: Trauma, Narrative, and History* (Baltimore: Johns Hopkins University Press, 1996) 61.

¹⁵⁶ Ibid. 35.

¹⁵⁷ Weinstein, *Unknowing: The Work of Modernist Fiction* 83. Agamben agrees that the crisis of modern Cartesian experience was at its most salient in relation to the unconscious. Agamben, *Infancy and History: Essays on the Destruction of Experience* 41.

speak, remember, and expect. And it is not only the shock of First World War trenches that causes this. Sylvia Tietjens, for instance, is as capable of temporal and spatial fragmentation as her husband: 'Sylvia had acquired also the habit of losing herself almost completely in reveries. Thus she was now vaguely conscious that a greyish lump, Tietjens, sat at the head of a whitish expanse: the lunch-table. There were also books [...] actually she was seeing quite a different figure and other books'.¹⁵⁸ This dissolving of immediacy is prevalent in Ford's other fiction, including *The Good Soldier*, and it is the defining state of Proust's narrator, Marcel. Memory, both consciously recalled and at work in the sub-conscious activity of the psyche, was overloading the present moment, supplanting its claim to authority. Henri Bergson wrote that:

in fact, there is no perception which is not full of memories. With the immediate and present data of our sense, we mingle a thousand details out of our past experience. In most cases these memories supplant our actual perceptions, of which we then retain only a few hints, thus using them merely as "signs" that recall to us former images.¹⁵⁹

Experience is always of a moment, but in modernism the moment is precisely what one cannot live through.

For many thinkers of a slightly later period, the attempted enrichment of a 'life philosophy' undertaken by the likes of Dilthey, Bergson, and James was, after Marx and Nietzsche, a pointless exercise. Experience, like consciousness for Freud, was not a neutral unit of examination: it was, rather, the construct of ideological forces.¹⁶⁰ To claim an authority for, or from, experience was therefore a form of false consciousness.¹⁶¹ The Frankfurt School of philosophy was a particularly prominent strand of this kind of thought. But for one of its members, Walter Benjamin, experience still came to play a fundamental role in his elliptical and elusive work. What made Benjamin's thought so apt for his time was the way in which he wrote

¹⁵⁸ Ford Madox Ford, *Parade's End* (London: Penguin, 2002) 164-65.

¹⁵⁹ Henri Bergson, *Matter and Memory*, trans. N. M. Paul and W. s. Palmer, 7th ed. (New York: Zone Books, 2002) 33.

¹⁶⁰ As Adorno put it, 'in the universally mediated world everything experienced in primary terms is culturally performed'. From *The Jargon of Authenticity* quoted in Jay, *Songs of Experience: Modern American and European Variations on a Universal Theme* 346.

¹⁶¹ This is probably an unfair criticism, especially of Dilthey. Agamben argues that the philosophy of life is aware of the fact that reflection on experience makes it immediately slip away. We cannot grasp it wholly. Indeed, *Erlebnis* can only be approached by way of its cultural manifestation: expression. As Agamben puts it: 'it is not accidental that Dilthey should arrive at a consideration of lived experience only in so far as it ceases to be "mute" and "obscure" to become "expression" in poetry and literature, thereby converting the "philosophy of life" into hermeneutics'. Agamben, *Infancy and History: Essays on the Destruction of Experience* 36.

of experience only in terms of its demise. His short essay 'The Storyteller', for instance, is nothing short of a lament to lost experience. He writes:

It is as if something that seemed inalienable to us, the securest among our possessions, were taken from us: the ability to exchange experiences. One reason for this phenomenon is obvious: experience has fallen in value. And it looks as if it is continuing to fall into bottomlessness.¹⁶²

Benjamin's main concern is that 'the communicability of experience is decreasing'.¹⁶³ Experience has 'fallen in value': its relation to the 'goods' of reality is no longer in step; it is a currency that has been beset by hyper-inflation. Benjamin argues that this is not a modern rupture but something which has been dying out gradually. The storyteller of archaic times is thus contrasted with the novelist. He writes that 'experience which is passed on from mouth to mouth is the source from which all storytellers have drawn'.¹⁶⁴ His argument continues:

The storyteller takes what he tells from experience - his own or that reported by others. And he in turn makes it the experience of those who are listening to his tale. The novelist has isolated himself. The birthplace of the novel is the solitary individual, who is no longer able to express himself by giving examples of his most important concerns, is himself uncounselled, and cannot counsel others. To write a novel means to carry the incommensurable to extremes in the representation of human life.¹⁶⁵

The authority of these statements is weakened somewhat by obvious contradictions in Benjamin's argument. For instance, one of the features that Benjamin associates with storytellers, the accounting of how they have come by the story, is identical to the 'factual' apparatus that surrounds many realist novels.¹⁶⁶ The overt didacticism of many novels of the realist period also challenges Benjamin's argument that novelists are 'uncounselled, and cannot counsel others'. Benjamin's argument is further diluted by the fact that the figure of the isolated author is, in fact,

¹⁶² Walter Benjamin, *Illuminations*, ed. Hannah Arendt, trans. Harry Zorn (London: Pimlico, 1999) 83.

¹⁶³ Ibid. 86.

¹⁶⁴ Ibid. 84.

¹⁶⁵ Ibid. 87.

¹⁶⁶ Ibid. 91. This 'storytelling' feature of the realist novel has been remarked on by many. One example is Lennard J. Davis, who writes that 'in the early novel, authors almost always claim to be writing factual accounts rather than fictional ones'. Davis, *Factual Fictions: The Origins of the English Novel* 8.

much more reminiscent of the specifically modernist image of Proust working by night in his cork-lined room on Boulevard Hausmann.

But to look for the value of this essay in its coherence of argument is to look in the wrong place. For though it may be weakened by inconsistency, what is not diluted in any degree is the palpable sense of loss that it expresses. It is also precisely because of this loss that his writing cannot proceed in the systematic fashion of earlier philosophers. The difficulty now faced in 'communicating experience' is why Benjamin's work, even more than Dilthey's, is produced as disconnected and unsystematic (something which culminates in the myriad of quotation and fragment that is his *Arcades Project*).

Benjamin's writing often displays a sincere admiration of Dilthey and Bergson, yet he also argues that Bergson's *durée* is 'the quintessence of a passing moment [*Erlebnis*] that struts about in the borrowed garb of experience'.¹⁶⁷ For Benjamin, the brute sensation of the moment as felt by the solitary individual had been given precedence over the reflectively assimilated and collectively understood *Erfahrung*. Experience, throughout the Enlightenment, had been an entity that everyone had: its content could be agreed upon, its quality shared. But experience now became experiences: fragmented entities that had fallen in value precisely because they no longer made sense as a shared currency. As Gumbrecht puts it 'we can communicate and "share experience" as that which is interpreted and cast into concepts, but lived experience, as that which precedes such interpretation, must remain individual'.¹⁶⁸ *Erlebnis* was the individual's true experience: but its singularity both isolated and silenced it. Even more than this, the problem of communicating experiences to another was mirrored by an internal struggle of translation: *Erlebnis* and *Erfahrung* no longer spoke the same language.

Odo Marquard, a more recent philosopher from the school of German hermeneutics, has written on precisely this experiential lack in the twentieth-century. In a particular essay ('The Age of Unworldliness'), Marquard claims that the modern world is characterised by the obsolescence of experience.¹⁶⁹ This, in itself, is only one element of a wider malaise which he describes as 'Tachogenic Unworldliness' – the result of an accelerated speed in daily life (*tachos* meaning speed in Greek): something which is clearly evident in the shifting stimuli of the modernist metropolis.¹⁷⁰ Everything in these urban landscapes changes at an increased rate:

¹⁶⁷ 'On Some Motifs in Baudelaire' in Benjamin, *Illuminations* 181.

¹⁶⁸ Gumbrecht, *The Powers of Philology: Dynamics of Textual Scholarship* 84.

¹⁶⁹ In a nice contrast, Peter Brooks has stressed the 'worldliness' of the eighteenth-century novel. Brooks, *The Novel of Worldliness: Crebillon, Marivaux, Laclos, Stendhal*.

¹⁷⁰ In 'The Metropolis and Mental Life', first published in 1903, Georg Simmel wrote that 'the psychological basis of the metropolitan type of individuality consists in the *intensification of nervous stimulation* which results from the swift

This last observation also holds for our experience, because in our life-world the situations in which and for which we acquired our experience recur less and less frequently. Consequently, rather than becoming self-reliant, which is to say grown-up, through a continuous increase in our experience and our knowledge of the world, we more and more regularly fall back again into the situation of those for whom the world is predominantly unknown, new, alien, and enigmatic - that is, into the situation of children. Experience is the antidote, and probably the only antidote, for unwordliness; but now it no longer gets any grip. Since, nowadays, what is familiar becomes obsolete at a faster and faster rate, and the future world will increasingly be different from the world which we have experienced so far, the world becomes foreign to us (as modern human beings), and we become unworldly. Modern grown-ups become childlike.¹⁷¹

A related element of modern unworldliness, according to Marquard, is the split that has arisen between experience and expectation. It has become 'less possible to gauge one's own expectation of what is to come by one's experience up to the present'.¹⁷² Therefore a 'willingness to accept illusion' is brought into being and expectations can become boundless (as they clearly do in Proust). But a concomitant feature of this condition is that genuine repetition has evaporated. As seen earlier, both the scientific method and the possibility of historical inquiry had relied on the repeatability of experience. Even more than this, as Gadamer claims, 'experience is valid only if it is confirmed; hence its dignity depends on its being in principle repeatable'.¹⁷³ Memory may have helped with this potential for repetition – but it was now supplanting the present with past sensations rather than allowing for an accurate and unbiased comparison of facts. Repetition relied on both grasping the immediacy of the moment and accurately reflecting upon the one that was past, neither of which could now be done. As Max Weber wrote: 'reflective knowledge, even of one's own experience, is nowhere and never a literally "repeated experience" or a simple "photograph" of what was experienced; the "experience", when it is made into an "object" acquires perspectives and interrelationships which were not "known" in the experience itself'.¹⁷⁴

and uninterrupted change of outer and inner stimuli'. Georg Simmel, *Simmel on Culture: Selected Writings*, eds. David Frisby and Mike Featherstone (London: Sage, 1997) 175.

¹⁷¹ Marquard, *In Defense of the Accidental: Philosophical Studies* 77.

¹⁷² Ibid. 81.

¹⁷³ Gadamer, *Truth and Method* 342.

¹⁷⁴ Max Weber, "Objective Possibility and Adequate Causation in Historical Explanation," in *The Methodology of the Social Sciences*, ed. Edward A. Shils and Henry A. Finch (New York N.Y.: The Free Press, 1949), 178.

One way in which 'lived experience' and repetition were wholly congruent was suggested in the later work of Freud – but, typically, these terms had to be redefined by the psychoanalytical context in which they were used. Freud revised the theory of psychoanalysis when he claimed that his patients often did not remember what their 'original' trauma had been but, rather, repeated it: 'he reproduces it not as a memory, but as an action; he *repeats* it, without of course being aware of the fact that he is repeating it'.¹⁷⁵ Freud defined such repetition within analysis as 'a real, lived experience', yet how different it is from the modern experience of a Descartes or Locke – or, for that matter, a George Eliot or Geoffrey Gilbert – and how strange this new form of repetition is also.¹⁷⁶ For Freud, the analyst 'must necessarily make him (the patient) re-experience a certain portion of his past life, and must see to it that he remains to some degree above it all so that he remains cognizant at every turn that what appears to be reality is in truth the refracted image of a forgotten past'.¹⁷⁷ But when combined with Freud's other mature insight that there had, in many cases, never been an original experience, this repetition becomes ever more distanced from an experiential entity. It is now only the refracted image of a projected fantasy.

Experience on Trial

In the discourses of law and literature the disintegration of modern experience is something that is not expressed with a great degree of consistency. Experience, as a neutral, earlier, form of *Erlebnis*, does not become wholly absent or present in the trial and *Erfahrung*, as an excess of raw experience, does not come fully to dominate the novel. There are numerous and varied manifestations of the loss that is being felt. For instance, the attempt to reach a newly conceived *Erlebnis* with the minimum of reflective control could be said to be the project of the 'stream of consciousness' novel (given the fact that this phrase was coined by William James this connection to the narrative being charted here is unsurprising).¹⁷⁸ However, the novels chosen as the focus of this thesis illustrate the demise of modern experience in a much more literal way.

¹⁷⁵ Sigmund Freud, 'Remembering, Repeating, and Working Through', in Freud, *Beyond the Pleasure Principle and Other Writings* 36.

¹⁷⁶ Ibid. 41.

¹⁷⁷ Sigmund Freud, 'Beyond the Pleasure Principle', in Freud, *Beyond the Pleasure Principle and Other Writings* 57.

¹⁷⁸ As Melanie Williams writes, 'early 20th century "modernist" literature no longer seeks to present the coherent and harmonised narrative familiar from the "realist" genre of the 19th; it experiments instead with the shifts and fragmentations experienced *within* individual subjective experience. Most notably, such studies in the "streams" of individual consciousness permit engagement with prevailing *philosophical* debate concerning the possible role of consciousness itself in the construction of reality'. Williams, *Empty Justice: One Hundred Years of Law, Literature and Philosophy* xxxiv.

The ensuing chapters will attempt to demonstrate this by focussing on specific elements of modern experience that are problematised by its splitting. Thus, the chapter on Forster, while in some ways serving as an introduction to the broader issues, will concentrate on the implications for judgment and representation when experience, in its modern form, is disappearing. *The Good Soldier* will be examined in relation to conceptions of identity and expertise. Finally, Proust's novel will be analysed in the context of what, in experience, allowed for the experimental method and the accumulation of knowledge: genuine repetition.

In an introduction to *Parade's End*, Max Saunders writes that 'Ford was always profoundly attuned to the poignancy of the transient, and to the fact that to describe experience is to write its elegy'.¹⁷⁹ Saunders is referring to particular experiences and to a method of writing that, like the realist novel, is of experience. But, taken more generally, his statement is especially valuable. To describe experience, in general, is not to portray something that has died but to undertake a project that is, in itself, dead (or at least dying). Once again, Gadamer is a powerful voice in this regard:

Only when it is no longer self-evident that a work of art consists in the transformation of experiences - and when it is no longer self-evident that this transformation is based on the experience of an inspired genius which, with the assuredness of a somnambulist, creates the work of art, which then becomes an experience for the person exposed to it - does one become conscious of the concept of *Erlebniskunst* in its outline. The century of Goethe seems remarkable to us for the self-evidence of these assumptions.¹⁸⁰

For Gadamer, the twentieth-century is no longer an age of art based on experience (*Erlebniskunst*). Certainly, the experiential quality of being in the world – of having an experience of a wholly other reality – is removed from the aims of many artistic endeavours. Jean-Francois Lyotard, referencing Alexander Kojève, writes that with the work of Kandinsky 'an objective and concrete type of painting is born which draws nothing from nature, which reproduces nothing. This type of painting is an object that possesses its own self-sufficiency and does not derive it

¹⁷⁹ Max Saunders introduction to Ford, *Parade's End* ix. According to Leo Bersani 'modernism was rich in this type of reflection, and it included paeans to the presumably new consciousness of the times and elegiac expressions of regret for the invaluable and irrecoverable modes of consciousness presumably enjoyed in former times. And each of these moods can of course nourish the other: an apocalyptic sense of loss gives an unprecedented glamour to the notion of modernity; it summons the modern writer to nothing less than the reinvention of the terms and conditions of human experience'. Leo Bersani, *The Culture of Redemption* (Cambridge, Mass.: Harvard University Press, 1990) 47.

¹⁸⁰ Gadamer, *Truth and Method* 61.

from its model'.¹⁸¹ 'There was now nothing before art, nothing which it reflected. The artist did not draw on their experience and attempt to reflect it in a given form. As Tzvetan Todorov puts it 'in the realm of art, there is nothing which is antecedent to the work, nothing which is its origin. The work of art itself is original; the secondary is the sole primary'.¹⁸²

The mantra of art for art's sake was not, then, an elitist withdrawal from political activity but a perfectly rational response to a changing mode of consciousness. Realism had been based on verisimilitude and had sought to be lifelike. Modern art, by contrast, attempted to supplant life.¹⁸³ Giorgio Agamben remarks that 'it is in the context of this crisis of experience that modern poetry finds its place. For, on close scrutiny, modern poetry from Baudelaire onwards is seen to be founded not on new experience, but on an unprecedented lack of experience'.¹⁸⁴ 'The shock of the new, such a prominent motif of modernism, is, in fact, the result of this lack, as it is experience which would protect the individual from surprise. Marquard's diagnosis is right: the twentieth-century makes children of adults.

In legal theory, contemporary scholarship has tended to emphasise the importance of narrative in case construction at trial. Of course, cases were given narrative construction for many years and the introduction of lawyers into trial proceedings increased this element of *representation*. But the increasing length of trials, which, in serious cases had risen to as long as a week by the turn of the twentieth-century, allowed for a greater subtlety and complexity in both the narrative construction of the prosecution and its undermining by defence counsel. The stress upon narrative, in this sense, turns truth into a matter of coherence rather than correspondence. Monica Den Boer defines narrative coherence as 'a test of truth or probability of fact and evidence upon which direct proof by immediate observation is unavailable'.¹⁸⁵ In other words, narrative coherence performs the same role as Welsh's strong representations but with a subtle difference. Narrative, used in this sense, is distinct from Welsh's chain of circumstances because the narrative is made believable by recourse to certain 'fictions'. Den Boer argues that in court

¹⁸¹ Jean-Francois Lyotard, "Philosophy and Painting in the Age of Their Experimentation: Contribution to an Idea of Postmodernity," in *The Lyotard Reader*, ed. Andrew Benjamin (Oxford: Basil Blackwell, 1989), 187. The Kojève article referenced is 'Pourquoi Concret' (1936).

¹⁸² Todorov, *The Poetics of Prose* 168.

¹⁸³ Bersani, *The Culture of Redemption* 97.

¹⁸⁴ Agamben, *Infancy and History: Essays on the Destruction of Experience* 41.

¹⁸⁵ Monica G. W. Den Boer, "A Linguistic Analysis of Narrative Coherence in the Court-Room," in *Law, Interpretation and Reality: Essays in Epistemology, Hermeneutics and Jurisprudence*, ed. Patrick Nerhot (Dordrecht ; Boston: Kluwer Academic Publishers, 1990), 361.

'the truth as a unified concept of "what really" happened does not exist; it is the argumentative-pragmatic game with the story parts that decides what has to pass for "the truth"'.¹⁸⁶

As such, what comes out of a trial is a truth but not one that corresponds to a prior reality of experience. Rather, truth is created by a trial, on its own terms and in its own right (just as art no longer refers to reality but subsists by itself). Jerome Frank, in the mid twentieth-century, wrote that:

the trial court's facts are not "data", not something that is "given"; they are not waiting somewhere, ready made, for the court to discover, to "find". More accurately, they are processed by the trial court - are, so to speak, "made" by it, on the basis of its subjective reactions to the witnesses' stories.¹⁸⁷

Frank was the first legal theorist to articulate the productive nature of trials in this sense, but it is something that can be seen in trial practice from much earlier in the century. Indeed, it first becomes prevalent in British India in the late nineteenth-century. As colonial rule had progressed, magistrates had become increasingly anxious about their ability to accurately judge the event under consideration. The belief in rampant perjury undermined the trial in British India to the extent that the supposed crime at the heart of the inquiry slipped from view and magistrates chose between the less false of two accounts rather than the true one. The uneasy balance supposedly made between the law of the colonizer and that of the indigenous population was also significant, as fictitious cases were constructed against individuals in order to place them within the common law's conception of criminality.

The fundamental faith that had been placed in the trial as a method of criminal procedure had been its ability to reach the event which had occurred. As Foucault claimed, the inquiry was about reactualizing what had happened, producing it as a tangible entity for the jurors in court. But the court could only be witness to the truth in this sense if there was at least some faith placed in experiential testimony. The widespread belief in the dishonesty of Indian witnesses therefore undermined the claims of the trial to be operating on a correspondence theory of truth and it was an anxiety that filtered through to British courts by the turn of the

¹⁸⁶ Ibid. 375.

¹⁸⁷ Jerome Frank, *Courts on Trial: Myth and Reality in American Justice* (Princeton: Princeton University Press, 1950) 23. Also see Nerhot: 'legal description contributes to both *creating and modifying a reality* that it is its object to found'. Nerhot, "The Law and Its Reality," 65.

century. In this new era 'evidence was not what it seemed; confessions were unreliable; and the oath was no guarantee of truth'.¹⁸⁸

In Chapter One, E. M. Forster's *A Passage to India* will be examined within this context of judicial doubt. Indeed, the origination of many of the issues so far discussed in British colonial history is one of the reasons why this novel will be examined first. But it is not the only reason. Perhaps even more crucially, Forster comes first because his novel perfectly represents the movement from one novelistic epoch to another. Forster, though he wrote throughout the modernist period was, in the main, a producer of realist fiction.¹⁸⁹ However, the incident in the Marabar caves from *A Passage to India* is precisely the moment when his writing becomes modernist. This turn away from realism is followed by his turn away from the novel form as he never wrote another line of fiction.¹⁹⁰ What happened in the cave is the unresolved issue of the novel. It is an enigma that the hermeneutic code never accounts for. But the significance of this moment is actually that nothing happened. Far from the trivial claim that there was no crime committed, or the suggestion that Adela Quested found herself in a spiritually altered state, the point here is, rather, that nothing about this incident conforms to the modern concept of experience.

In the second part of this chapter it will be argued that *Aspects of the Novel* and the Codification Acts (particularly Sir James Fitzjames Stephen's Evidence Act of 1872) are responses to *A Passage to India* and the problem of the trial in British India respectively. They are attempts to set rules to govern representation – the point being that rules are required because, unlike the realist novel and the earlier trial, experience cannot be assumed to be the governing authority for representation. Unlike the rules of evidence that Bender saw as producing a transparency of disinterested observers, in which certain evidence would be *excluded*, these rules attempted to define all that could be admitted as *relevant*. In so doing, experience could slip away while truth remained intact.

Chapter Two extends this analysis by examining Ford Madox Ford's *The Good Soldier*, in light of the way in which judgment, in the early twentieth-century, was becoming a matter of

¹⁸⁸ Farmer, "Trials," 464.

¹⁸⁹ Another moment which, it could be argued, is more aligned with a modernist aesthetic is the scene from *A Room with a View* in which Lucy Honeychurch falls into the terrace bathed in violets and is kissed by George Emerson. But as Malcolm Bradbury points out, 'where the kiss in *A Room with a View* is the dawn of nature and instinct, the event in the Marabar cave in *A Passage to India* is the source of ambiguity and anarchy, and it can never mean what it is'. Lucy's fall is symbolic, but its narration is still contained within the bounds of realism: it is an objective report of a definite event. Malcolm Bradbury, Introduction to E. M. Forster, *A Room with a View* (London: Penguin, 2000) xxvi.

¹⁹⁰ As Weinstein puts it, 'a modernist "ou-boum" shuts down Forster's career as a novelist, intimating a crisis of sense-making that his available narrative options are powerless to resolve'. Weinstein, *Unknowing: The Work of Modernist Fiction* 222.

expert knowledge rather than common experience. More than ever before, the evidence given at trial was appearing in the form of specialized testimony, offered by experts trained to see what the layman could not. This testimony, supposedly designed to educate the juror, in fact, often offered an authoritative pronouncement of judgment. The fact that it was normally based upon a body of scientific research undertaken and disseminated by many more people than the expert witness himself, also meant that this form of testimony had to be enshrined in law as a permissible form of hearsay. Expertise was thus supplanting the previously unquestionable authority of experience.

Precisely the same phenomenon was occurring in the novel. What had not come to fruition as the result of experience could not be grasped in the form of an experience either. In the modernist period, apart from anything else, texts became more specialized: they required a knowledge of previous literature and classical myth. The theme, meaning and also plot of a modernist novel became factors not immediately discernible to the individual by recourse to their own common, everyday experience. In *The Good Soldier*, critical writing has offered wildly divergent readings, not just of what the novel is about in terms of meaning but simply on the basis of what has actually taken place. One interpretation in particular, that made by Roger Poole, will be analysed in some detail in Chapter Two. Poole's evidence, based upon the expertise of the literary scholar versed in the psychoanalytical theory, deconstruction, and structural linguistics, is so forcefully presented it becomes difficult to doubt his case, despite the fact that it completely subverts the surface narrative of the novel. The reader is thus placed in the position of discounting his own experience in favour of the expert who interprets for him.

Many of the varied interpretations which have been made of Ford's novel have involved the issue of what kind of identity it portrays. Neither Dowell, the narrator, nor Ashburnham, the 'good soldier' of the title, are given in the form of a realist character portrait. This is precisely because their *experiences* have resisted collection, manipulation and communication. As such, Dowell's intentions become vague and Ashburnham's responsibility unclear – notions the determining of which were also becoming problematic for the criminal law. Attributing responsibility and discerning intention were, themselves, becoming matters of expertise at this time, as was the act of criminal identification. In the late nineteenth-century new methods emerged in the identification of criminals. Firstly, anthropometry, in which precise measurements were taken of individual portions of the body and kept on file, fragmented the body into separable units that had to be reassembled to make an identification. This was a system that was superseded by that of fingerprinting, in which the identity of an individual lay in an abstract *image* that bore no relation to the subject's physical appearance. In the fingerprint,

identity could be seen, but it was only the trained expert who had the vision to bear witness to it. In Chapter Two it will be argued that these forms of capturing identity can be seen to have parallels in the way that Ford provides his reader with the *image* of Edward Ashburnham.

Proust's *In Search of Lost Time* forms the basis of the final chapter for two reasons. To begin with, Proust's work represents the supreme expression of the disintegrating experience which appears in *A Passage to India*, and permeates *The Good Soldier*. There are various examples of how this is so: from the denigration of lived immediacy in favour of expectation and memory, to the oblivion of the present that characterises the famous moments of involuntary memory; from the narrator, Marcel's, seeming invisibility, not to say complete absence, from many scenes to Proust's radical withdrawal from the world of experience that facilitated the writing of his novel. Giorgio Agamben, who has been quoted repeatedly in reference to lost experience, saves his greatest claims for *In Search of Lost Time*:

the most peremptory objection against the modern concept of experience has been raised in the work of Proust. For the object of the *Recherche* is not a lived experience but, quite the contrary, something which has been neither lived nor experienced. And not even its sudden emergence in the *intermittences du coeur* constitutes an experience, from the point when the condition of this emergence is precisely a vacillation of the Kantian conditions of experience: time and space. And it is not only the conditions of experience that are called into question, but also its subject, for the latter is undoubtedly not the modern subject of knowledge (Proust seems rather to have in mind certain crepuscular states, like drowsiness or a loss of consciousness: *Je ne savais pas au premier instant qui j'étais* - I did not know who I was at first - is his typical formula).¹⁹¹

Despite writing from, and about, a state of non-experience, a central issue of the novel is a real life legal case – that of Captain Alfred Dreyfus. But far from drawing the narrator, or this novel, out of its solipsistic labyrinth, this fact actually serves to highlight the lack of experience in the real Dreyfus Case. In Chapter Three it will be argued that the Dreyfus Case is defined by its

¹⁹¹ Agamben, *Infancy and History: Essays on the Destruction of Experience* 42. Adorno had already made a similar point. In his 1960 essay 'Presuppositions' he claimed that in the modernist writing of Joyce and Proust one could see 'the dying out of experience, something that ultimately goes back to the atemporal technified process of the production of material goods'. Theodor Adorno, "Presuppositions: On the Occasion of a Reading by Hans G. Helms," in Theodor Adorno, *Notes to Literature*, ed. Rolf Tiedemann, trans. Shierry Weber Nicholson, vol. 2 (New York: Columbia University Press, 1992) 101.

reliance on absent evidence (hence paralleling the superiority of absence in Proust). But the Dreyfus Case is also notable for its continuous repetitions. These come in a variety of forms: from his own appeals, to the trials of Esterhazy and Zola, to written versions of the case. The discussion of appeals therefore forms a second reason for Proust coming last in the succession of chapters, as appeals themselves come after the original trials that formed the subject matter of the first two chapters.

The growing uncertainty that was being produced by these original trials is what led to the institution of the Court of Criminal Appeal in England in 1907 and to changes to the *Cour de Cassation* in France at a similar time. But what was brought into being with these institutions was a facility for repetition – a testing of the test itself. The idea of repetition as guarantor, though it may be the law's only option, was now out of date. Utilising distinctions made between a Platonic and a Nietzschean conception of repetition (following Deleuze) will allow for an analysis of the way that appeals operate, the functioning of *stare decisis* in legal thought, and the issues of re-writing and re-reading that are brought up by Proust's texts (which include *Jean Santeuil* as well as *In Search of Lost Time*). It will be seen that repetition no longer involves a conception of the original which is being repeated. Freud's ideas of screen memories, fantasy traumas, and repetition compulsion thus come into play, as human behaviour is envisaged as responding to unconscious fantasies and drives rather than concrete experiences.¹⁹² The Nietzschean world of infinite difference has come into existence, in which all repetition is merely a ghostly repeat of something dis-similar.

In Proust, *Erlebnis* has clearly lost its value. *Erfahrung* appears to be elevated – as it is Marcel's ability to recover value from the past that is seen as such an important part of the text. As stated earlier, in modernism, the moment is precisely what one cannot live through: Marcel's epiphanies perfectly illustrate this as they regain an immediacy that serves to occlude the present moment. The past of Combray, brought into being with the taste of a tea-soaked madeleine, is also a past which never really existed. The unified experience that Marcel is able to encounter, which appears to be an act of memory, thus, has as much to do with fantasy, imaginative projection, and artistic creation, as with an objective past of immediate experience. Experience is nowhere to be found in Proust's masterpiece. The novel, rather than reflecting experience, has come to replace it.

¹⁹² Peter Goodrich comments that 'both in textbooks and in the courts, however, the balance of habit and reaction, of tradition and deference to precedent, tips the scales imperceptibly toward continued adherence to the rule, toward what Nusbaum, an American, termed "repetition compulsion"'. Peter Goodrich, *Oedipus Lex: Psychoanalysis, History, Law* (Berkeley, CA: University of California Press, 1995) 201.

CHAPTER ONE: MYSTERIES AND MUDDLES IN *A PASSAGE TO INDIA*

Because Balzac was a genius, and because every genius seems to bring to his art a final and conclusive solution, it has been decreed that the proper function of the novel is to rival the *etat-civil*. Balzac constructed his work; he never claimed to codify the novel; his article on Stendhal proves it. Rival the *etat-civil*! As if there weren't enough fools and bores in the world as it is! What have I to do with the *etat-civil*? *L'etat c'est moi*! I, the artist; civil or not, my work doesn't pretend to rival anything.

Andre Gide, *The Counterfeiters*¹

On the face of it, E M Forster's *A Passage to India* (1924) is a novel made from experience. It is thematically constructed around his own personal response to India, following two enriching visits, and is littered with the re-telling of events that either befell Forster or that he was witness to.² This adherence to experience as the source of his fiction is perfectly consistent with the style of his writing which, throughout both the majority of this novel and in the rest of his work, is exclusively realist. Yet, *A Passage to India* is also a novel with a central incident, around which the narrative adheres, whose status as an experience dissolves into uncertainty. By the end of the novel the reader remains ignorant of what has occurred in the Marabar cave. But not only the reader – the inability to find the *facts* of this case extends to include the protagonist (the individual who supposedly had the experience), the purportedly omniscient narrator, and the author himself. No one knows what happened in *A Passage to India* because nothing happened: there was no experience.³

In this chapter it will be argued that this feature of Forster's novel resonates with the context of judicial decision-making in British India. During the course of colonial

¹ Andre Gide, *The Counterfeiters*, trans. Dorothy Bussy (Harmondsworth: Penguin, 1966) 167. Bussy defines the *etat-civil* as 'the State records of each individual citizen, in which are noted the legal facts of his existence'.

²For an autobiographical account of Forster's time in India see *The Hill of Devi* (1953). E. M. Forster, *The Hill of Devi: and other Indian Writings* (London: Edward Arnold, 1983).

³ It is this particular moment, allied to the realist style, that prompts Malcolm Bradbury to write that 'some have seen it [*A Passage to India*] as very much a novel of a traditional type, drawing on the techniques of Victorian fiction to establish a wide social panorama and a close relationship between author and reader; others have seen it as eminently a modernist or symbolist novel'. Malcolm Bradbury, ed., *A Passage to India: Casebook Series* (London: MacMillan Press, 1978) 12.

rule, the erosion of traditional methods of fact-finding and sentencing had progressed at some pace. An uneasy balance had, at times, therefore had to be made between competing conceptions of justice – a state that resulted in fictitious cases being constructed in order to achieve the desired outcomes. Of more pressing concern to working magistrates was the widespread belief in perjury. The lying native became a symbol of colonial anxiety, signifying the British inability to know their colonial subjects and the impossibility for courts consistently to make the correct decisions. Rather than coinciding with the event that had occurred – the prior experience in question – trials became a matter of choosing the less untrue of two accounts. This anxiety reached a peak following the Mutiny of 1857 and, in legal terms, the response was a series of codification Acts that sought to infuse a greater certainty into the judicial system.

Forster, though more beset by a sense of collective guilt over British rule in India than fearful of native duplicity, was, however, subject to his own form of anxiety. *A Passage to India*, with its sudden delve into the world of modernist writing that eschewed modern experience, is the culmination of Forster's literary career – but it is also the final act in his life as a purveyor of fiction. Rather than writing any more novels, the subsequent years of Forster's life were taken up with factual writing such as documentary accounts of, amongst other things, his time in India. He also published *Aspects of the Novel*, in which he appeared to set certain limits to the novel. These restrictions sought to impose laws upon what novelistic representation could look like and, as such, had much in common with the legal codification undertaken in British India in the late nineteenth-century. Sir James Fitzjames Stephen's Indian Evidence Act of 1872, in particular, can be seen to have similar goals to *Aspects of the Novel*. Both are responses to specific anxieties about the state of law and literature respectively. They are attempts to govern the scope of representation, to limit what can be told: precisely what is required when experience can no longer be relied upon to perform such a role.

Muddle or Mystery?

What makes the episode in the Marabar cave a non-experience? In order to answer this question, and because this non-incident is so central both to Forster's novel and the argument of this thesis, a detailed account of its narrative representation is a necessary introduction. Its setting is a day trip to the Marabar hills, planned by Dr Aziz and on which he invites his British friends Fielding and Mrs Moore and Mrs Moore's

prospective daughter-in-law, Adela Quested. The optimistic idea behind the outing is that it will form a more informal, spontaneous, and warm-hearted version of the patronising 'bridge party' thrown by the Collector, Turton. However, the day gets off to a bad start when Fielding is late, misses the train, and leaves Aziz with the two ladies to entertain. Forster's artful depiction of social manners – so prevalent in this and his other novels – forms the basis of the subsequent narration, as a series of awkward scenes ensues. These are eventually to be dissipated by the focal point of the trip: a walk in the Marabar hills and an investigation of their numerous caves. But Mrs Moore, who suffers a bad reaction upon entering the first cave of their walk, ends up staying behind while Aziz and Adela, together with their guides, ascend the Kawa Dol (the main peak of the Marabar).⁴ Adela's thoughts, at this time, are preoccupied with doubts about her impending marriage to Mrs Moore's son, Ronny Heaslop, and she, tactlessly and abruptly, asks Aziz how many wives he has. Aziz, offended by her question, retreats into a cave by himself. Adela 'followed at her leisure, quite unconscious that she had said the wrong thing, and not seeing him she also went into a cave'.⁵ The chapter concludes at this point, the narration being picked up in the next with Aziz still within his cave, smoking a cigarette. On emerging, he discovers that Adela has vanished. The guide reports that he saw her enter one of the caves, but is unable to say which one. Aziz's state of panic soon increases as a brief search proves fruitless. But then he is provided with 'the simple and sufficient explanation of the mystery' as he observes Adela in a gully at the bottom of the Kawa Dol with Miss Derek, who has just arrived in her car (165). Relieved more than puzzled, he returns to camp, spotting and retrieving Adela's field-glasses, which have been broken, on the way. When he gets to the bottom of the mountain he finds that Fielding has just arrived. Miss Derek's servant also appears, having been dispatched with the message that Miss Derek and Adela have returned to Chandrapore by themselves. Fielding, perceiving this as a slight to his friend, questions Aziz about his and Adela's expedition. But Aziz, keen to retain some atmosphere of success around the day, fends these off by fabricating a story in which he and Adela were together for the duration of their walk, omitting the fact that he was unaware of her whereabouts for a short while. The rest of the day passes without incident but, upon returning to Chandrapore, the party are met by the police who inform Aziz that he is under arrest. In a rash moment, Aziz attempts to run and is restrained by

⁴ Mrs Moore's reaction to the cave will be referred to at greater length in due course.

⁵ E. M. Forster, *A Passage to India* (Harmondsworth: Penguin, 1989) 164. All subsequent references to the novel will be given in brackets within the text.

Fielding, who warns him that he should 'never act the criminal' (172). Aziz is then taken into custody: he has been accused of assault by Adela.

In a very basic sense, then, the supposed event in the cave has eluded an initial representation – it has failed to arise as a lived immediacy (*Erlebnis*) in the text. But this is often the case in fiction. Detective novels, for instance, proceed on the basis that the central event that has not been narrated will, through the process of what is narrated, be revealed.⁶ More significantly, though, it is resistant to recollection. Adela's only description of what happened recounts that:

there was this shadow, or sort of shadow, down the entrance tunnel, bottling me up. It seemed like an age, but I suppose the whole thing can't have lasted thirty seconds really. I hit at him with the glasses, he pulled me round the cave by the strap, it broke, I escaped, that's all. He never actually touched me once. It all seems such nonsense (199).

What, if any, is the crime here? Who, if anyone, is the assailant? The 'sort of shadow' that bottles Adela up is an image designed to elude conceptualisation. During Aziz's investigation Adela begins to have doubts as to his guilt. When she finally takes to the stand at his trial she is suddenly made aware of the fact that she cannot place Aziz within the cave. But this realisation does not come in the way of a normal recollection of a prior experience. It is, rather, a creative act: 'her vision was of several caves. She saw herself in one, and she was also outside it, watching its entrance, for Aziz to pass in. She failed to locate him' (231). This is not a memory, it is an out-of-the-body reconstruction of her doubt. She does not become certain that Aziz is innocent, much less certain of what actually happened, she has simply given in to uncertainty. As such, she refuses to name Aziz as her assailant, the trial collapses, and the text yields no further detail as to what, if anything, happened in the cave.⁷

⁶ Tzvetan Todorov argues that detective fiction thus produces two stories: 'the first - the story of the crime - tells "what really happened", whereas the second - the story of the investigation - explains "how the reader (or the narrator) has come to know about it". 'The Typology of Detective Fiction' in Tzvetan Todorov, *The Poetics of Prose*, trans. Richard Howard (Oxford: Basil Blackwell, 1977) 45.

⁷ Many critics have ignored this and attempted to offer explanations of what happened to Adela. See David Shusterman: 'E M Forster, always reticent about his own work, has never stated publicly exactly what he meant by Mrs. Moore's experience in the cave. Naturally, however, his refusal has not prevented critics from having a heyday with this intriguing section of the novel'. Shusterman himself makes a particularly imaginative explanation in which Professor Godbole is culpable. David Shusterman, *The Quest for Certitude in E. M. Forster's Fiction* (Bloomington, Indiana: Indiana University Press, 1965) 164 & 89-91.

Such uncertainty is already something that differentiates *A Passage to India* from a realist novel.⁸ However, what is really distinctive about the Marabar non-experience is the way in which its un-narrated quality functions within the text. Not only is what happened to Adela never revealed, its unknown quality does not, ultimately, open up a gap in experiential knowledge that can, or should, be filled. The first clue to this way of reading the novel can be found in a letter Forster wrote to his friend Goldsworthy Lowes Dickinson:

In the cave it is *either* a man, or the supernatural, *or* an illusion. And even if I know! My writing mind therefore is a blur here – ie. I will it to remain a blur, and to be uncertain, as I am of many facts in daily life. This isn't a philosophy of aesthetics. It's a particular trick I felt justified in trying because my theme was India. It sprang straight from my subject matter. I wouldn't have attempted it in other countries, which though they contain mysteries or muddles, manage to draw rings round them.⁹

Forster, though he employs the realist viewpoint of an omniscient narrator, thus claims to have a less than omniscient knowledge of the facts. That is, he is not aware of everything that occurs beneath the level of his own narration. Yet to retain this uncertainty requires a wilful act of resistance: Forster has to 'will' the scene in the caves to remain a blur. Why does he do this? If the event was to remain un-narrated then what would be the harm in him knowing what happened? Why did he resist not only a resolution in the plot but also a concrete event in the story?

To use this language of story and plot is to invoke Forster's own distinction from *Aspects of the Novel* (which will be discussed at length in due course). For the moment, it is sufficient to think about it in relation to a prevalent strain in critical theory which ran throughout the twentieth-century. Originally defined by the Russian Formalists in the early part of the century as *fabula* and *sjuzhet*, then taken up by proponents of narratology theory in the 1960s (most notably with Tzvetan Todorov's work on 'story' and 'discourse'), the distinction between a narrative representation and the events it

⁸ In the previous chapter it was argued that Collins' *The Moonstone* is exemplary of realism's desire to tie up all the loose ends.

⁹ Extract from letter quoted in P. N. Furbank, *E. M. Forster: A Life*, vol. 2 (London: Secker and Warburg, 1978) 125.

represents has a rich and influential history. What the *fabula*/story and *sjuzhet*/discourse distinction postulates is that under every narration (*sjuzhet*/discourse) made in a particular language or set of images or collection of signs, there is a base structure of *fabula* or story. Story is essentially what every narrative is a representation of. Discourse is those representations as they appear to the reader.¹⁰

By ‘willing’ the scene in the caves to remain a blur to his own mind, Forster is denying not only the representation of an event, but also the event itself. The scene in the caves exists neither on the plane of discourse nor story. Were the event to be only unrepresented an apt description would be to say that it remained shrouded in mystery, but Forster is careful, even in his letter to Dickinson, to describe it as either a mystery or a muddle. This phrasing is mirrored in the novel itself, most prominently in a scene in which Adela and Mrs Moore wonder why a carriage promised for them by the Battachyara family has failed to appear:

‘I do so hate mysteries,’ Adela announced.

‘We English do.’

‘I dislike them not because I’m English, but from my own personal point of view,’ she corrected.

‘I like mysteries but I rather dislike muddles,’ said Mrs Moore.

‘A mystery is a muddle.’

‘Oh, do you think so, Mr Fielding?’

‘A mystery is only a high-sounding term for a muddle. No advantage in stirring it up, in either case. Aziz and I know well that India’s a muddle.’ (86).

Mystery is ‘high-sounding’ because, epistemologically, it implies the need for a discovery. Mysteries, in this sense, are essentially about the unknown but existent. A series of facts resists explanation because it cannot be connected in a satisfactory manner. This is because there is a gap in understanding, a missing piece in a chain of cause and effect. Solved mysteries are therefore the stuff of realist novels – they are enigmas that are

¹⁰See Jonathan Culler, “*Fabula* and *Sjuzhet* in the Analysis of Narrative: Some American Discussions,” *Poetics Today* 1, no. 3 (1980), W. J. T. Mitchell, ed., *On Narrative* (Chicago: University of Chicago Press, 1981), Todorov, *The Poetics of Prose*.

eventually solved by the conclusion of the text and the finding of the missing fact.¹¹ In a muddle, on the other hand, nothing is missing. Everything that one would require to make a judgment is to hand, but the terms are being misread, or the known elements are entangled. Sorting out a muddle, as opposed to solving a mystery, is a case only of rearranging what is already apparent. The distinction between mysteries and muddles is thus paralleled by that made in philosophy following Wittgenstein and the linguistic turn. Whereas traditionally philosophy had dealt with problems, with a metaphysical realm, which could be striven towards via rational discourse, Wittgenstein declared that there were, in fact, only philosophical puzzles, the solutions to which were found in the analysis of the linguistic forms in which they were couched.¹² In *A Passage to India*, Fielding's claim that mysteries, in fact, always reduce into muddles, is Wittgensteinian in this sense.

To ask whether the Marabar incident is a mystery or a muddle is therefore a question with some significance. As a mystery, it implies experience: if there was an experience in the cave then its lived immediacy is open to reconstruction in such a way that it can be grasped as the missing fact that completes the causal chain and solves the mystery. On the other hand, muddle indicates a non-experience as, by its terms, the reconstruction of a supposed immediacy is neither here nor there: all that matters is the way in which the known elements are arranged.

Of course, the logic of the reconstructive trial, and the investigative work that precedes it, dictates that the court be envisaged as becoming a witness to the truth of what happened. Indeed McBryde, the District Superintendent of Police who investigates in *A Passage to India*, follows this logic when he declares that, in Aziz's trial, 'the facts will speak for themselves' (226). He thus sets out to produce a 'strong representation' in which 'the circumstances cannot lie'.¹³ In affiliating his court narrative to the continuing influence of 'strong representation' McBryde, in effect, promises to produce a *sjuzhet* indistinguishable from its *fabula*. But this can only be achieved if the correct arrangement of circumstantial facts is placed around Adela's testimony. Sir James Fitzjames Stephen,

¹¹ See previous chapter for analysis of Collins' *The Moonstone* in this regard. The idea of the 'enigma' comes from Roland Barthes. Roland Barthes, *S/Z*, trans. Richard Miller (New York: Hill and Wang, 1974).

¹² Judith Genova writes that 'repeatedly, Wittgenstein argues that philosophical problems, unlike scientific ones, are not "real" problems, but puzzles caused by misunderstanding the grammar of language'. Judith Genova, *Wittgenstein: A Way of Seeing* (New York; London: Routledge, 1995) 38.

¹³ Alexander Welsh, *Strong Representations: Narrative and Circumstantial Evidence in England* (Baltimore: Johns Hopkins University Press, 1992) 7.

law member in India in the early 1870s, would have understood this. Stephen wrote on the difficulties of assessing testimony in isolation in his *Introduction to the Indian Evidence Act 1872*. In fact, a particular example used by him is strikingly similar to the case in Forster's novel:

For instance, a man and a woman are travelling alone in a railway carriage. The train stops at a station, and the woman charges the man with indecent conduct, which he denies. Nothing particular is known about the character or previous history of either. The woman is not betrayed on cross-examination into any inconsistency. There are no cases in which the difficulty of arriving at a satisfactory decision is anything like so great. It is easy to decide them as it is easy to make a bet, but it is easier to deal satisfactorily with the most complicated and lengthy chain of inference.¹⁴

While it may be easier to deal with a complicated and lengthy chain of inference, Forster shows in *A Passage to India*, that the chain itself is never neutral. There must always be a starting point from which the collection of evidence is made. In McBryde's case, the starting point is Aziz's guilt. On searching Aziz after his arrest Adela's field-glasses are found upon him. But the innocent explanation that the reader has been privy to is not given any credence. Rather, 'the logic of evidence said "Guilty"' (176). Evidence of 'character' and 'previous history', such as that referred to by Stephen, also originates in a prior belief in Aziz's guilt. During a search of his house the police find letters mentioning trips to a brothel which are interpreted as proof of Aziz's perversion. Photographs of women are found, further adding to the weight of evidence proving his uncontrollable sensuality (when these are in fact perfectly innocent photographs of his deceased wife). As the authorities push for a degree of premeditation in the charge, the failure of Fielding and Professor Godbole to make the train on time is also developed into the fruition of a cunning plan made by Aziz. These circumstances, when taken together, do indeed amount to a 'strong representation'.

Of course, in Welsh's argument, the authority of such 'strong representations' had been weakened by the late nineteenth-century. His analysis of Henry James' *The Golden Bowl* attaches particular significance to the smashing of the bowl at the end of the

¹⁴ Sir James Fitzjames Stephen, *The Indian Evidence Act (1 of 1872) With an Introduction On The Principles of Judicial Evidence* (London: MacMillan and Co, 1872) 44.

novel. For Welsh 'it is a memorable moment in James's fiction and, I would argue, a last rite of circumstantial evidence'.¹⁵ A similar action is at play in *A Passage to India*, only now the symbolic breaking of the evidence is made even before it is brought into a realm of such understanding: the field-glasses are broken before Aziz picks them up. McBryde's 'the facts will speak for themselves' is thus undermined by Forster's depiction in the same way as 'the circumstances cannot lie' is destroyed by the smashing of James' Golden Bowl. There is a certain privileging of testimony at play here, as the trial collapses once Adela refuses to name Aziz. Yet, while testimony may be elevated in terms of its authority by these moments, it is certainly not because of its epistemological benefits. The lack of testimony destroys the trial but, as is made clear by Stephen in his earlier comment, and by Welsh, testimony on its own is an extremely weak representation.

More important, in the context of this discussion, is the precise way in which the weakening of 'strong representations' reduces mystery to muddle. Fielding's defence of his friend, as his Wittgensteinian sense of the issue would suggest, relies on exactly this movement. From the first moment of the charge being made against Aziz, Fielding's attitude is that the affair is based on a 'mistake' or a 'blunder': in other words a muddle. His attempts to save Aziz are then founded on methods designed to expose the case against him as just that. In 'Periphrasis, Power and Rape in *A Passage to India*', Brenda Silver attaches particular significance to the British refusal to name the charge, the victim or the accused following the accusation against Aziz. Adela's ordeal is constantly referred to as 'unspeakable' while, when inquiring at the club as to Adela's health, Fielding produces, 'a bad effect, partly because he had pronounced her name; she, like Aziz, was always referred to by a periphrasis' (189). Silver, whose article is a feminist reading predominantly concerned with the imposition of white male power over their female and colonised subjects, claims that the use of synecdoche reduces to an object the other referred to: 'rather than suggesting "relationship" or "connectedness", synecdochal representation opens up unbridgeable gaps'.¹⁶ Silver's insight can also be fruitfully considered in relation to the synecdochal representation of the crime. For, it is precisely the gap created by such representation that the British require for their judicial investigation to retain its authority. In the gap remains the sense that a mystery is being uncovered, and in it can disappear the notion that all is simply muddle. Fielding's refusal

¹⁵ Welsh, *Strong Representations: Narrative and Circumstantial Evidence in England* 246.

¹⁶ Brenda R. Silver, "Periphrasis, Power, and Rape in *A Passage to India*," in *E. M. Forster New Casebook Series*, ed. Jeremy Tambling (Basingstoke: MacMillan Press, 1995), 176.

to play along with this is evident when he refers to Adela by name during a tense meeting at the club. Silver argues that, in doing so, Fielding attempts to 'reach her directly'.¹⁷ It is an element of his more pressing desire, not to reach the crime directly, but to cut through its rhetoricity. For Fielding there are too many words, too much muddle. Indeed, when it is all over he remarks to Adela: 'my belief is that poor McBryde exorcised you. As soon as he asked you a straightforward question, you gave a straightforward answer' (241).

The fictional investigation of Aziz is a travesty of justice averted at the last minute. The reader feels this with acute sensitivity precisely because they have been given access to the consciousness of Aziz during the moments in which the assault supposedly took place. But Aziz contributes to his own, narrowly avoided, downfall by adding to the muddle that points towards his guilt. Upon seeing Adela with Miss Derek, he feels he has received the 'simple and sufficient explanation of the mystery', yet when he descends the Kawa Dol and meets Fielding he lies about the circumstances surrounding Adela's departure:

He did not like to remember Miss Quested's remark about polygamy, because it was unworthy of a guest, so he put it from his mind, and with it the knowledge that he had bolted into a cave to get away from her. He was inaccurate because he desired to honour her, and – facts being entangles – he had to arrange them in her vicinity, as one tidies the ground after extricating a weed (168).

As with his own investigation, the facts, in Aziz's mind, are arranged around a central issue; in this case the rudeness of Adela. The facts themselves are simply 'entangles' until they are arranged by an organising mind in such a way. But both the arrangements that Aziz and McBryde make are organised around a central point that the reader is allowed to know is false. There is no mystery as to these matters: the known facts are simply muddled.¹⁸

¹⁷ Ibid., 180.

¹⁸ Jan Melissa-Schramm diverges from Welsh by dating the loss of confidence in circumstantial evidence as beginning in the 1820s. She writes that 'increasingly, jurists came to recognise that the interpretation and the arrangement of facts were not completely impartial or objective - that circumstance in fact can "lie"'. Schramm's point here, though, is to emphasise other ways in which 'credible testimonies' were established in court. As shall be seen, the argument in this chapter is more to do with the significance of 'incredible testimonies'. Jan-Melissa Schramm, *Testimony and Advocacy in Victorian Law, Literature and Theology* (Cambridge: Cambridge University Press, 2000) 61.

The official investigation of the *incident* and Aziz's recounting of it are both mysteries which reduce to muddles. But these are only two of the ways in which Forster expresses this wide-ranging theme. Adela and Ronny's relationship, for instance, is initially depicted in a way which suggests little in the way of personal compatibility. Adela, dimly aware of this, breaks their engagement but, on their journey home later that night, their car hits an unidentified animal and a mysterious spark of sexual union is hinted at. As they check for tracks of the animal 'they forgot their abortive personal relationship, and felt adventurous as they muddled about in the dust' (104). While Adela's skirts obfuscate the very tracks they are attempting to view, the muddle of this adventure creates the false impression that there is some real connection between them. The fact that this is only an illusion is borne out by the pitiful wilting, and eventual death, of their relationship following Aziz's trial.

Forster wrote to Dickinson that he only attempted the particular trick in the caves because his setting was India. In the early part of the novel, this comment could easily refer to the enigmatic 'mystery' that India formed in the colonial imagination. The novel opens with both Mrs Moore and Adela expressing their desire to see the 'real India' as opposed to the Anglo-India of the club. As Weinstein points out:

the desire "to see India" rehearses a classic premise of Western epistemology: that the centred subject - the British I/eye - can measure/comprehend/negotiate the object it beholds, even an object the size of India. No matter how foreign the object, the centred subject presumes a detached, and accurate, purchase on what it sees.¹⁹

Despite this belief in the possibilities of experience, knowledge of 'India', as a singular entity, always remains suspended – the distant Marabar hills, visible from Chandrapore, becoming emblematic of a withheld mystery. But, as the novel progresses, the mysterious nature of the 'real India' is undermined. Ultimately, the novel indicates that there is no mystery to India at all. It is, rather, as Fielding characterises it, a muddle: a nebulous collection of histories, beliefs, religions and castes none of which can be 'seen' at the

¹⁹ Philip Weinstein, *Unknowing: The Work of Modernist Fiction* (Ithaca, NY: Cornell University Press, 2005) 221.

same time.²⁰ As Aziz points out, 'Nothing embraces the whole of India, nothing, nothing' (156). And the repetition of 'nothing' comes to echo throughout the text as every word uttered in a Marabar cave is distorted into the 'ou-boum!' of an indecipherable echo: 'if one had spoken vileness in that place, or quoted lofty poetry, the comment would have been the same - 'ou-boum' (160). Indeed, the mystery of the Marabar, seen from the urban setting of Chandrapore, is soon seen to dissipate upon visiting them. For, after making a trip to these famed caves 'the visitor returns to Chandrapore uncertain whether he has had an interesting experience or a dull one or any experience at all [...] nothing, nothing attaches to them' (138).

For Mrs Moore, this nothingness initially comes in the form of a sensory disorientation. Upon entering the first cave of their visit, she finds that: 'crammed with villagers and servants, the circular chamber began to smell. She lost Aziz and Adela in the dark, didn't know who touched her, couldn't breathe [...] there was also a terrifying echo' (158). The effect of the cave on Mrs Moore is instantaneous and dramatic, turning the kind-hearted and receptive figure of the early part of the novel into a crotchety and cruel old woman. It is the response to a huge disappointment. After visiting the Marabar, Mrs Moore finds that 'the wonderful India of her opening weeks, with its cool nights and acceptable hints of infinity, had vanished' (168). Hints of infinity, the possibility of mystery, the spiritual regeneration she had felt the stirrings of, all vanish when she visits the caves. This is precisely because the Marabar, which should represent such infinity and mystery are, in fact, composed of nothing. Far from unlocking the key to a mystery in the caves 'she [Mrs Moore] had come to that state where the horror of the universe and its smallness are both visible at the same time – the twilight of the double vision in which so many elderly people are involved [...] But in the twilight of the double vision a spiritual muddledom is set up for which no high-sounding words can be found' (212). The high-sounding word which had previously sufficed was *mystery*, but this will no longer do. Mrs Moore's realisation is that there is nothing beyond the muddle of her finite existence and that all attempts to commune with a withheld mystery are futile.²¹

²⁰ This impossibility is mirrored in *Howards End*: 'It is impossible to see modern life steadily and see it whole, and she [Margaret] had chosen to see it whole. Mr Wilcox saw steadily. He never bothered over the mysterious or the private'. E. M. Forster, *Howards End* (Harmondsworth: Penguin, 1989) 165.

²¹ David Shusterman makes a comparison in this respect between Forster's novel and Ernest Hemingway's short story 'A Clean, Well-Lighted Place' in which there is a Spanish waiter for whom everything is nada. 'For E. M. Forster it was all "ou-boum" in 1924 as for Hemingway later it was all "nada"'. Shusterman thinks that Forster's novel shows that life is either a mystery or muddle – he does not think it matters which term is used: 'within this mystery or muddle man is groping for clarity and lasting

The depths of Indian spirituality are also undermined by the way that Mrs Moore, after her departure from Chandrapore, becomes a figure with the status of a deity. Having been referred to briefly at Aziz's trial as a positive witness for the defence, a mispronunciation of her name, 'Esmiss Esmoor', is chanted by the gathered crowd for days afterwards. Indeed, even several years later she still retains her hallowed position in Aziz's own mind. He remarks to her son Ralph that she was his 'best friend in all the world', subsequently pausing and wondering at this peculiar depth of feeling for a woman he hardly knew: 'What did this eternal goodness of Mrs Moore amount to? To nothing, if brought to the test of thought' (306). The hollowness of Mrs Moore in this sense is matched by the representation of Hindu beliefs, predominantly illustrated through the figure of Professor Godbole. In one of his earliest appearances, Godbole sings a song in which he is placed in the position of a milkmaid who repeatedly asks the God Krishna to come to her. When asked if Krishna ever does come to the milkmaid he replies: 'oh no, he refuses to come' (96). The absence of the deity is later offered by Godbole as an explanation of what happened to Adela. According to his faith, acts of good and evil express the whole universe, as both are aspects of God: 'He is present in the one, absent in the other, and the difference between presence and absence is great, as great as my feeble mind can grasp. Yet absence implies presence, absence is not non-existence, and we are therefore entitled to repeat, "Come, come, come, come"' (186).

For Godbole, the incident in the cave is an exemplification of Krishna's absence. Yet, it is an absence that implies his presence just as mystery implies the presence of an absent event that can link the chain of cause and effect. Godbole's cave thus forms a duality like Plato's, where the shadows of experience imply the presence of a reality outside the cave.²² But Adela's shadows are not like this at all. For her, 'there was this shadow, or sort of shadow, down the entrance tunnel, bottling me up' (199). These shadows, as indistinguishable as the distorted 'Ou-Boum!' of the cave's echo, do not refer to anything else. There is no original entity to be discerned. After the collapse of the

peace and lasting connection which, alas, he never achieves. He is trapped in a Marabar cave, and he finds there only panic and emptiness'. Shusterman, *The Quest for Certitude in E. M. Forster's Fiction* 168 & 204.

²² Weinstein writes that 'echoing Plato's cave (that other challenge to the individual's epistemological over-confidence), the scene at Marabar turns suddenly modernist, becoming the epicenter of the novel's implosions, the moment at which a gathering mystery (the novel's awareness that what is precious about India is beyond policing or commodification) reaches crisis and deflates into muddle (the state in which the attempt to pass over has necessarily failed.)'. Weinstein, *Unknowing: The Work of Modernist Fiction* 221.

trial Adela and Fielding discuss the possible *experience* that had actually occurred. Fielding suggests that Adela, suffering from a heat-induced hallucination was ‘alone in that cave the whole time’ (240). Whether this is the case or not is actually irrelevant. More importantly, it signals the way that the incident, as Adela’s experiential possession, has been lost. She is content for Fielding to speak of the supposed event with as great an authority as she can, just as she has passively let it become a ‘problem for others’ during the course of the investigation and trial.²³ Gadamer’s definition that ‘what is experienced is always what one has experienced oneself’ is thus drastically undermined, as everyone in the novel owns as much of this experience as anyone else.²⁴ But this is only logical, for, when it is not a mystery that requires reconstruction but only a muddle that needs disentangling, the individual experience no longer matters.

Fictions and Lies

In *A Passage to India*, the trial of Aziz collapses because Adela cannot produce a definitive statement about a prior experience. Without a specific charge, there can be no further effort at reconstruction: few would argue that this is an instance in which there is no case to answer. Yet, the criminal trial often attempts to reconstruct experiences which are not directly recounted – most notably the experience of the suspect, with its attendant features of intent and motive. The law in British India, in the latter part of the nineteenth-century, had the benefit of clarity on how to proceed in these matters. Sir James Fitzjames Stephen, in his *Introduction to the Indian Evidence Act of 1872*, wrote that ‘when it is affirmed that a man has a given intention, the matter affirmed is one which he and he only can perceive’. As such:

the approximate rules which relate to human conduct are warranted principally by each man's own experience of what passes in his own mind, corroborated by his observation of the conduct of other persons, which every one is obliged to interpret upon the hypothesis that their mental processes are substantially similar to his own.²⁵

²³ Ibid. 220.

²⁴ Hans-Georg Gadamer, *Truth and Method*, trans. Joel Weinsheimer and Donald G. Marshall, 2nd ed. (New York: Continuum, 2004) 53.

²⁵ Stephen, *The Indian Evidence Act (1 of 1872) With an Introduction On The Principles of Judicial Evidence* 15 & 31.

This description reflects the nineteenth-century reliance on the 'reasonable man' construct in questions of criminal intent.²⁶ In the Victorian era, 'courts tried to avoid tortuous questions about states of mind. Instead, they relied on commonsense questions about what a "reasonable man" would know, feel and do under similar circumstances'.²⁷ The 'reasonable man' also puts in an appearance in the rhetoric surrounding what reasonable doubt could mean: 'proof does not mean proof to rigid mathematical demonstration, because that is impossible. It means such evidence as would induce a reasonable man to come to a conclusion'.²⁸ A useful summation of this constructed figure is given by G. F. Arnold:

He is sometimes known as "the reasonable man" or "a reasonable man" sometimes as "the man of ordinary prudence", or again he will appear as "the man who displays common care and caution" or as "the man of ordinary sense". But under these various aliases there is a common feature, namely, that he does not correspond to anybody in particular in everyday life, but is rather a type with whom everybody may be compared.²⁹

'The reasonable man', formed independently of any evidence in a particular case, is the embodiment of modern experience: a universal position in which an individual can assume other people's mental processes and perception of the world to be 'substantially similar to his own'. Arnold, a writer markedly up to date in matters of psychology and philosophy yet writing in the context of British Indian Law in the early twentieth-century, describes the issue of judging another's intentions in a subtly altered fashion. He writes that, when forming a judgment, 'consciously, sub-consciously or unconsciously, the judge or the juryman does in each case when he attempts to apply this test have in his mind a concrete individual who is no less person than himself'. Arnold, thus, emphasises a

²⁶ This figure also came in the guise of the 'responsible individual'. See Martin J. Wiener, *Reconstructing the Criminal: Culture, law and policy in England, 1830-1914* (Cambridge: Cambridge University Press, 1990).

²⁷ Roger Smith, *Trial by Medicine: Insanity and Responsibility in Victorian Trials* (Edinburgh: Edinburgh University Press, 1981) 75-6.

²⁸ Quote from Lord Moulton (*Hawkins v. Powells Tilley Co., Ltd* [L.R. [1911] 1 K.B., p. 995) in Walter Russell Donogh, *Principles of Circumstantial Evidence Applicable to British India*, 2nd ed. (Calcutta: Thacker, Spink & Co, 1922) 5.

²⁹ G F Arnold, *Psychology Applied to Legal Evidence and other Constructions of Law*, 2nd ed. (Calcutta: Thacker, Spink & Co, 1913) 239.

greater specificity of experience than Stephen's more universal outlook.³⁰ For Arnold, to judge, in practice, is to turn oneself into the accused: judgment is always a self-judgment. Lisa Rodensky makes a related point in her analysis of Stephen's essay on the trial of Nuncomar and the involvement of Warren Hastings and Elijah Impey. She writes: 'Stephen imagines what a reasonable man might have intended when faced with the choices Impey and Hastings were making, but the reasonable man looks more like Stephen himself'.³¹ The idea of adopting another's position is repeated – 'one is struck by the moments in the narrative in which Stephen speaks in the voice of Hastings or Impey' – and through this repetition a crucial point is emphasised: Stephen may speak in the voice of Hastings and Impey but not once does he adopt the position of Nuncomar.³²

In the context of imperial Britain in the late nineteenth and early twentieth-centuries this is perhaps unsurprising. Even Arnold's modern bent of thought betrays a fracture when it comes up against the question of native Indians and their testimony. In his attack upon the standard of 'the reasonable man' he writes:

to seek to apply the same standard at all stages of development is to attempt the impossible: for no sane person can neglect the differences of temperament and race, and can really believe that the average Burman can be bracketed side by side with the average Englishman, and the same reason and prudence demanded from each on every occasion.³³

The native of India was thus seen to occupy a place outwith the realm in which standards of 'reasonableness' could be assumed.³⁴ The construct of the 'reasonable man' was,

³⁰ Ibid. 247.

³¹ Lisa Rodensky, *The Crime in Mind: Criminal Responsibility and The Victorian Novel* (Oxford: Oxford University Press, 2003) 178-79.

³² Ibid. 206. Rodensky also analyses an essay by Keshub Chandra Achyrya, commenting that, 'Achyrya objects when Stephen interprets the external circumstances of the trial as if the trial could be fair, but a trial of an Indian in a colonial territory is necessarily unfair. Acharya's objection to Stephen recalls Peter Brooks's analysis of the Supreme Court's rulings on the admissibility of confessions. Acharya implicitly contests the way Stephen's colonialist discourse tells the legal event - Nunocmar's trial and execution. Brooks argues that the United States Supreme Court creates a story about voluntariness and involuntariness of confessions by invoking a context within which the confession takes place'. Ibid. 209.

³³ Arnold, *Psychology Applied to Legal Evidence and other Constructions of Law* 257.

³⁴ Of course the British were guilty of thinking themselves a superior race to the Indians and it cannot be denied that this was the reason they felt a universal standard such as reason could not be applied to the natives. However, more recent thinking on the cultural/historical rootedness of 'reason' in a tradition of the Western Enlightenment (ie. not a universal entity that existed in its own right) does shed a different

therefore, of no assistance in forming a judgment, as the inner world of the native represented an inexperiencable position. Within the context of trial judgment in British India, new methods had to be found in order to reach the criminal. No longer able to rely on a sense of shared experience, magistrates were entreated to perform radical acts of willed imagination. Arnold, for instance, writes that, in India, a judge must:

search in his own mental life for analogies which will enable him to construct in imagination the different mental life of those around him [...] If he can succeed in doing this, actions which would otherwise appear to him extraordinary and motiveless, will be explained and seem natural while if through want of imagination he fails to do it, he will needlessly suspect everything that is told him, and will be forced to account for every event by supposing some deep motive which has not come to light.³⁵

Arnold further comments that, in forming judgments, 'if imagination is the most important quality, prejudice is perhaps the worst impediment'.³⁶ Yet this clarity of language belies the conflation of concepts contained within it. Rather than being separate entities, the interplay of imagination and prejudice is clearly evident in the numerous classifications of Indian criminality made throughout colonial rule. A prominent example of this drive towards classification can be seen in the identification of criminal gangs, such as *thags*, who were believed to roam the highways, strangling and robbing their victims.³⁷ Those guilty of robbery were identified as *thags* by their criminal method as well as their use of 'a secret code of expressions, words, and signals'.³⁸ This information was

light on the matter. In fact, the standard of the reasonable man was dropped by Indian law after Independence, in 1962 to be precise, as it was felt the diversity of social and cultural life in the country meant that the construction of a single figure to cover all its inhabitant was an impossible enterprise. See The Indian Law Institute, *Essays on the Indian Penal Code: Published on the Occasion of the Centenary of the Indian Penal Code* (Bombay: N. M. Tripathi Private Ltd, 1962) 158.

³⁵ Arnold, *Psychology Applied to Legal Evidence and other Constructions of Law* 367.

³⁶ Ibid.

³⁷ Thags were just one of several groups identified. Bernard S. Cohn notes that in the British perception there 'were people who appeared by their nature to wander beyond the boundaries of settled civil society: sannyasis, sadhurs, fakirs, dacoits, goondas, thags, pastoralists, herders, and entertainers. The British constructed special instrumentalities to control those defined as beyond civil bounds, and carried out special investigations to provide the criteria by which whole groups would be stigmatized as criminal'. Bernard S. Cohn, *Colonialism and its Forms of Knowledge: The British in India* (Princeton, NJ: Princeton University Press, 1996) 10.

³⁸ H. L. Adam, *The Indian Criminal* (London: John Milne, 1909) 202.

collected by the British authorities from the evidence of ‘approvers’ or, as they would be termed in Britain, those turning Queens evidence.³⁹ According to H L Adam, writing in 1909, ‘by this means, and by no other means, it was possible to obtain such inner knowledge of the vast and subtle ramifications of the many criminal fraternities which had existed there from time immemorial’.⁴⁰ Such knowledge could then be assimilated and organised into a structure of understanding in which the British saw ‘that a vast amount of crime committed in India is hereditary, and has been so for generations upon generations. Thus the natives guilty of such deeds do not imagine that they are committing any heinous offence, inasmuch as it is a natural result of their birth’.⁴¹

In fact, this conception of a criminal fraternity of *thags* was nothing more than a figment of the British colonial imagination. As Thomas Metcalf writes, ‘*thagi* was never a coherent set of practices, nor could *thags* easily be differentiated from other armed robbers, who were known more generally as *dacoits*’.⁴² By creating a loosely defined criminal gang, membership of which was an offence, the British authorities facilitated a greater ease in arresting, and hence controlling, the native population.⁴³ What had been a dimly sensed anxiety of Indian otherness became a unit of classification within a definite system of knowledge and ‘the narrative of mystery unveiled and mastered caught the imagination of the British public’.⁴⁴ But, the method by which knowledge of *thag* practice was supposedly built up exemplifies the ignorance that motivated its creation. As evidence was gleaned exclusively from ‘approvers’ it suggested ‘the inability of the Raj to

³⁹ On the evidence of approvers see Ameer Syed Ali & John George Woodroffe, *The Law of Evidence Applicable in British India* (Calcutta: Thacker, Spink & Co, 1898) 806-813.

⁴⁰ Ibid. 277.

⁴¹ Ibid., 11.

⁴² Thomas R. Metcalf, *Ideologies of the Raj, The New Cambridge History of India* (Cambridge: Cambridge University Press, 1994) 41.

⁴³ In the mid-nineteenth-century the British wanted to include poisoning in their definition of *thagi*, which was originally restricted to murderers by strangulation. ‘Consequently, Act III of 1848 defined the term “*Thag*”, as a “person who is, or has at any time been habitually associated with any other or others for the purpose of committing by means intended by such person or known by such person to be likely to cause the death of any person, the offence of childstealing or the offence of robbery not amounting to *dacoity*”. The word *Thagi* was defined as “the offence of committing or attempting any such child-stealing or robbery by a ‘*Thug*’”. And “Murder by *Thuggee*” was explained as the “Murder when employed as the means of committing such child-stealing or such robbery by a *Thug*”. The circularity of these definitions is blatant – a *thag* is defined as doing *thag* acts; *thag* acts are defined as being done by *thags*. Institute, *Essays on the Indian Penal Code: Published on the Occasion of the Centenary of the Indian Penal Code* 25.

⁴⁴ Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Oxford: Oxford University Press, 1998) 203.

make use of testimony from supposedly disinterested witnesses and victims'.⁴⁵ One of the foundations of the modern reconstructive trial was thus undermined. The collection of disinterested information, a fundamental tenet of modern science (with its basis in the modern concept of experience) was replaced by self-interested testimony that told the authorities what they wanted to hear.⁴⁶ As Metcalf writes, rather than offering an account of any kind of experience, whether British or Indian:

What gave *thagi* its distinctive appeal was rather the way it enabled the British to give voice to their own enduring fears and anxieties. Uneasily dependent upon native intermediaries, whom they could not bring themselves to trust, but without whose collaboration the Raj could not function, the British saw deception and deceit everywhere in India. *Thagi* thus became a metaphor for the representation of what they feared most in India, the inability to know and control their colonial subjects.⁴⁷

The inability to know their colonial subjects and the perceived deception and deceit of the natives was nowhere felt so forcefully as in the law courts. Quite apart from the identification of *thags*, the administration of justice was widely thought to be undermined by rampant perjury. Adam writes:

one of the most difficult tasks European officials, new to their posts, have to deal with is the sifting of evidence, in order to separate the truth from that which is rank mendacity. Experience, of course, renders this task lighter, and in time a magistrate is able, by familiarity with the idiosyncrasies of his subjects, to tell them at once when a native is endeavouring to "trim" his evidence.⁴⁸

Adam clings on to a certain sense of experience here, as the guide to understanding and assessing witness testimony. Stephen, too, thought that 'the natural and acquired shrewdness and experience by which an observant man forms an opinion as to whether a

⁴⁵ Sandra Freitag, "Collective Crime and Authority in North India," in *Crime and Criminality in British India*, ed. Anand A. Yang (Tucson, Arizona: The University of Arizona Press, 1985), 150.

⁴⁶ Ibid., 151.

⁴⁷ Metcalf, *Ideologies of the Raj* 41.

⁴⁸ Adam, *The Indian Criminal* 14.

witness is or is not lying, is by far the most important of all a judge's qualifications'.⁴⁹ Yet, whereas in England the oath was still seen as enforcing a truthfulness in which false testimony was the exception rather than the rule, and so the goal of reactualizing an original experience could remain a dominant assumption, in India the situation was reversed.⁵⁰ Many judges and magistrates became convinced that perjury was the norm in their courtrooms, leading to crippling doubt over the judgments they made, and so to the practicality of the rule of law.⁵¹ The native who lied became a symbol not just of British superiority but of colonial anxiety: for, despite the physical control exerted on the population, a lack of veracity from witnesses took actions, events and the natives themselves, beyond the understanding of the British authorities.⁵² Yet, that lack of understanding, linked to the sense of native deceit, fed back into the British conception of themselves as morally superior, and therefore the justified rulers of the country.⁵³

Such an interplay of superiority and anxiety had a long history, announced by Cornwallis: 'Every native of Hindustan, I verily believe, is corrupt'.⁵⁴ With such a standard set it is hardly surprising that a significant proportion of judges and magistrates found their own courts 'corrupted' by native testimony. A typical opinion was voiced by a magistrate from Bahar in 1801: 'In short, to speak my mind without reserve, this crime [perjury] is so common and audacious, that it has excited in me the most complete scepticism with respect to all evidence which is offered and I seldom pass a judgment, without having cause to doubt if I have not been imposed upon'.⁵⁵ Wendie Ellen

⁴⁹ Stephen, *The Indian Evidence Act (1 of 1872) With an Introduction On The Principles of Judicial Evidence* 41.

⁵⁰ The belief in the trial's capacity to find truth was so great even false testimony was thought to be of value. Stephen wrote in 1863 that, in Britain, 'though it may be expected that particular classes of witnesses will not always tell the truth, yet their testimony will have some sort of relation to it, from which it may be inferred what the truth really is [...] In other words, evidence, whether true or false, is almost always instructive and ought therefore to be given in all cases for what it is worth'. Thus, even lies can be assimilated into a story of truth when truth is assumed to be dominant. When lies are dominant this no longer applies. Sir James Fitzjames Stephen, *A General View of the Criminal Law of England* (London ; Cambridge: Macmillan and Co, 1863) 284.

⁵¹ Wendie Ellen Schneider writes that 'perjury loomed large in the colonial imagination because of the British conviction of its prevalence. British administrators in India tended to see most, if not all, witnesses as likely perjurers'. Wendie Ellen Schneider, "'Enfeebling the Arms of Justice': Perjury and Prevarication in British India," in *Modern Histories of Crime and Punishment*, ed. Markus D. Dubber and Lindsay Farmer (Stanford: Stanford University Press, 2007), 300.

⁵² See Jorg Fisch, *Cheap Lives and Dear Limbs: The British Transformation of the Bengal Criminal Law 1769-1817* (Wiesbaden: Franz Steiner Verlag, 1983) 80.

⁵³ Metcalf, *Ideologies of the Raj* 24.

⁵⁴ Ibid.

⁵⁵ Schneider, "'Enfeebling the Arms of Justice': Perjury and Prevarication in British India," 303. See also Elizabeth Kolsky, who quotes from George Barker's memoir *A Tea Planter's Life in Assam*: 'the sahib acts as

Schneider has charted the various attempts to combat perjury made by the British in the nineteenth-century, commenting that by 1860, and the introduction of the penal code:

Justice in many cases had become a quixotic attempt to discern which of the parties was honest, not who had the better case. Disturbingly, judges confronted with the same case could come to radically different assessments of the credibility of witnesses. More than half a century of attempts to control perjury through legal innovations had led not to more efficient application of the law, but to the creation of a cadre of judges ruling on the basis of the perceived mendacity of witnesses.⁵⁶

Just as with the fabrication of *thagi*, the British preoccupation with perjury relied on their own 'colonizing' of Indian criminal justice. The structures of an enforced, alien, system, were not properly understood by the native population. The imposition of a foreign system of law in a colonial situation also did not render the indigenous people sympathetic to British justice. There was, therefore, a degree of perjury that was attributable both to a lack of understanding of the system and to a wilful undermining of that system by the Indian population.⁵⁷ More importantly, the imposition of British legal procedures wiped out traditional methods of fact-finding. In eighteenth-century India, testimony would be given in courts by a succession of local authorities such as local elders, religious scholars, legal experts and the like.⁵⁸ The veracity of such testimony was never in question. By subjecting such figures to a procedure in which they had to swear an oath (even when the Christian connotation was divorced from such a procedure) the British courts 'implied that their status by itself did not give sufficient credit to their deposition'.⁵⁹ This undermining of testimony began prior to rule by the Crown and the acts of codification. While under the rule of the East India Company, the ancient Muslim

judge and jury, and often sits in judgment, listening to the evidence brought forward [...] It is impossible to believe one word that a native utters in an affair of this kind'. Elizabeth Kolsky, "Crime and Punishment on the Tea Plantations of Colonial India," in *Modern Histories of Crime and Punishment*, ed. Markus D. Dubber and Lindsay Farmer (Stanford: Stanford University Press, 2007), 289.

⁵⁶ Schneider, "'Enfeebling the Arms of Justice': Perjury and Prevarication in British India," 326.

⁵⁷ Michael Edwardes writes that 'justice could be distorted. An alien system, based as it was on alien moral concepts, was bound to suffer in a society which gave general acceptance to very few of those concepts. Perjury, for example, was not thought to be particularly reprehensible'. Michael Edwardes, *British India 1772-1947: A Survey of the Nature and Effects of Alien Rule* (London: Sidgwick & Jackson, 1967) 210.

⁵⁸ Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* 46.

⁵⁹ Ibid.

and Hindu laws that the Indian population had traditionally lived under were supposed to remain in force. An uneasy alliance therefore had to be struck between young British magistrates who looked to English case law and the rules of evidence for their practice and Muslim and Hindu scholars well versed in their own respective legal precedents. In theory, the magistrate was to be in charge of determining the facts, while the *Maulavi* and *Pandit* were responsible for ruling on the applicable law.⁶⁰ In practice, however, magistrates sought to apply British justice by whatever means possible. To get the decisions they wanted, aspects of Hindu and Islamic law which became awkward, such as particular witnesses not being considered worthy due to class or age, had to be circumvented. In Islamic law, rules governing the level of evidence required for a conviction and the severity of punishment to be handed down were established by the *fatwa* in which the crime itself was stated. For 'British' justice to be executed the *fatwa*, therefore, had to produce the outcome that the magistrates deemed the crime to merit, rather than match the specific facts of the case. As Jorg Fisch writes:

from a formal point of view, not a new system of law was built up, but a system of fictions which transformed real cases into fictitious ones, so that the outcome, the *fatwa* of the law officers, although given according to the traditional Islamic law, corresponded to the expectations and wishes of the British. Because the laws could not be changed, the facts to which they applied were changed - the outcome was the same.⁶¹

That trials in India came to be based on 'fictitious constructions' was openly acknowledged by Thomas Macaulay. Indeed it was one of the pre-eminent arguments he made for the institution of a penal code which would automatically do away with such procedure. In Macaulay's covering letter to the draft Indian penal code of 1837 he wrote that 'Nothing is more usual than for the courts to ask the law officers what punishment the Mohammedan law prescribed in a hypothetical case, and then to inflict that punishment on a person who is not within that hypothetical case and who by the Mohammedan law would be liable either to a different punishment or no punishment'.⁶²

⁶⁰ It will be noted that a similar distinction exists in the common law jury trial, where the judge is deemed the authority on the law, while the jury are to be the arbiters of the facts.

⁶¹ Fisch, *Cheap Lives and Dear Limbs: The British Transformation of the Bengal Criminal Law 1769-1817* 46.

⁶² *Ibid.* 113.

The eventual instituting of the penal code may have offered a greater clarity over the charges laid, but the practices of the police remained unaltered. Cases were regularly ‘padded with false evidence’ in order to ensure convictions.⁶³ T C Arthur’s *Reminiscences of an Indian Police Official* (1894) offers a rare insight into the practice of investigating crime in late nineteenth-century India:

A very rough-and-ready investigation ordinarily suffices to bring home his guilt to the average Indian criminal. As a matter of fact, the commoner offences - murders, manslaughters, and thefts - have usually been traced to the perpetrators before the constable makes his appearance, and he finds that the patel (or head man) and the humble mhar (village watchman) have already got the offender in custody. It only remains for the constable to get the case into order and to supply - which he is very ingenious in doing - any gaps in the chain of evidence. After this it runs the usual monotonous course - to the nearest Magistrate or to the Sessions, as the case may be.⁶⁴

The police official is required to fill in any ‘gaps in the chain of evidence’, thus reducing the mysterious to the logical. But it is in the service of a ‘fictitious construction’ that events, states of mind, and circumstances are posited which can fill those gaps. Arthur, on a chapter specifically relating to perjury and forgery, goes on to write that:

I am afraid I must declare my belief that “tutoring” is commonly resorted to in India. Good cases are often broken down by being bolstered up, in what the police imagine are weak points, by false usually, (*sic*) unnecessary evidence. Bad cases are often supported by false evidence so cleverly connected that the innocent are not infrequently found guilty.⁶⁵

Ironically, the British, according to Arthur, were responsible for much of the perjury which they then became intensely anxious about, as it was in the need to create a

⁶³ Freitag, "Collective Crime and Authority in North India," 149.

⁶⁴ T. C. Arthur, *Reminiscences of an Indian Police Official* (London: Sampson, Low, Marston, 1894) iv. See also, Leonard Woolf’s description of a set-up court case in *The Village in the Jungle* where the Head Man conspires to frame Silindu and Babun by creating a story for the British judicial authorities. Leonard Woolf, *The Village in the Jungle* (London: Eland, 2005).

⁶⁵ Arthur, *Reminiscences of an Indian Police Official* 99-100.

connected story that the veracity of testimony was allowed a subservient role. The desire for 'strong representations' thus helped to create a situation in which trial representations became extremely weak. With the very real conviction that both sides in a case were lying, many magistrates and judges were left in a position where uncovering truth, solving mystery, and telling the real story had become impossible. Just like the attempts to reach Adela's *experience* in *A Passage to India*, the trial in British India had become a muddle of confused language only: the flood of deceitful words that indicated nothing in a trial mirroring the distortion of any words, true or false, into the indecipherable 'Ou-Boum!' of a Marabar echo.

Prejudice and Doubt

The anxiety about perjury that circulated amongst the British judiciary in India existed right up until the time of *A Passage to India*. Ronny Heaslop, the court magistrate who is engaged to Adela Quested, is emblematic of this fear as he claims to have seen a very different side to the natives than the one presented to his fiancée and mother:

Every day he worked hard in the court trying to decide which of two untrue accounts was the less untrue, trying to dispense justice fearlessly, to protect the weak against the less weak, the incoherent against the plausible, surrounded by lies and flattery. That morning he had convicted a railway clerk of overcharging pilgrims for their tickets, and a Pathan of attempted rape. He expected no gratitude, no recognition for this, and both clerk and Pathan might appeal, bribe their witnesses more effectually in the interval and get their sentences reversed (69).

In the Introduction, the development of a coherence, as opposed to correspondence, theory of truth in the study of the common law trial, was commented upon. While, theoretically, this did not occur until the mid to late twentieth-century it is precisely this movement in which Ronny finds himself caught. He genuinely wants to dispense justice in his court, to deliver verdicts based on a true reflection of events. As such, the

incoherent may correspond to the truth to a greater degree than the plausible.⁶⁶ But, Ronny is also uneasily aware of the fact that coherence is all he has to go on. The individuals he has convicted that day ‘might appeal, bribe their witnesses more effectually in the interval and get their sentences reversed’. These new explanations will not correspond to a prior truth in any way. They will simply offer a more coherent account which will, Ronny fears, guarantee their acquittal. The sense that his judgment can accurately reflect the past event – the prior experience – in question is therefore beginning to be lost. But, what made this such a source of anxiety for British magistrates was the fact that both sides in a case were capable of bribing their witnesses effectually. The problem was, paradoxically, one of too much coherence rather than too little. How could judgment be made in the face of this perceived mendacity? How could a court decide on truth when the narratives produced in court were both coherent and incredible?

In the investigation of Aziz in *A Passage to India*, the authorities see no such problem. Aziz, as a native, will lie, while Adela, as a British subject, will tell the truth. In a simplistic reading of the novel, this prejudice of the Anglo-Indians towards their colonial subjects is what convinces them of Aziz’s guilt while those lacking in prejudice, like Fielding and Mrs Moore, are able to perceive his innocence. But this reading ignores the prejudicial stance that is also immediately taken up in favour of Aziz by both Fielding and Mrs Moore. Shortly after Aziz’s arrest, Fielding has a discussion with the Collector, Turton, in which their opposing views become clear: ‘it is impossible to regard a tragedy from two points of view and, whereas Turton had decided to avenge the girl he [Fielding] hoped to save the man’ (174). In the subsequent gathering of evidence by both sides it is these diametrically opposed views that form the starting point of all inquiry. There is no neutrality, only presuppositions. When Adela’s field-glasses are discovered upon Aziz ‘the logic of evidence said “Guilty”’, but this could only show guilt if there was already an expectation as to what its discovery would prove (176). When Fielding is told of this find, for instance, his response is that ‘it’s impossible that, having attempted to assault her, he would put her glasses in his pocket’ (177). Fielding is seen to be fair-minded – ‘he was still after facts, though the herd had decided on emotion’ – when he is, in truth, just as prejudiced as the Anglo-Indians (174). Aziz’s lie about Adela’s initial disappearance, his attempt to run away when charged and his possession of Adela’s field-glasses are not

⁶⁶ Arthur too in his *Reminiscences of an Indian Police Official* recounts cases in which he initially became suspicious because the story he was told was too neat.

even considered by Fielding as possible evidence of his guilt. On the contrary, 'Aziz *was* innocent, and all action must be based on that' (181). The trial in *A Passage to India* is therefore a competition of reinforced prejudices (or pre-judgments). Its impotence as a means of discovering the truth, a fear that arose in the context of belief in widespread perjury, also has the effect of nullifying any sense of closure which a verdict is supposed to bring. It can hardly be doubted that Fielding, and the rest of Aziz's supporters, would continue to believe in his innocence no matter what the outcome of the trial just as, following the collapse of the case, the majority of Anglo-Indians 'still believed he [Aziz] was guilty, they believed it to the end of their careers' (259).⁶⁷

The nullity of the opposing view, in which impartiality and doubt are the starting point of inquiry, is summed up by Professor Godbole. He greets the news of Aziz's arrest with a tranquil calm and refuses to state an opinion on his guilt or innocence. Rather, when asked by Fielding for a judgment, he replies: 'That is for the court to decide. The verdict will be in strict accordance with the evidence, I make no doubt' (185). Godbole is the one character who remains neutral: he represents true impartiality. Yet, as in his song of the milkmaid, Godbole's stance ends in a position of absence, from which presence is merely implied. Godbole, starting from this initial point of indecision, will never make the leap to a position of knowledge about what happened. Fielding's attitude, on the other hand, is evident from his reply: 'I know he didn't, and from that I start. I mean to get at the true explanation in a couple of days' (185).

Forster's point is not the truism that bias influences judgment. Nor is it the necessarily pessimistic view that would attach to his depiction if it were of a mystery: which would indicate that truth and knowledge are beyond humanity's grasp. Rather, he is suggesting that knowledge is not discovered but produced, and that this production must always begin with a prior sense of what truth is to be fashioned. Developments made in both Anglo-Saxon and Continental philosophy of the time mirror this insight. Charles Sanders Peirce, writing in the late nineteenth-century, argued that 'we cannot begin with complete doubt. We must begin with all the prejudices which we actually have

⁶⁷ A nice reversal of the belief of a white woman over an Indian man is made in Mulk Raj Anand's *Untouchable* (1935). The hero of this novel, Bakha, and his sister Sohini are 'untouchables'. A local priest attempts to seduce Sohini. When she rebuffs the old man he accuses her of touching him, and of being present in the temple against his wishes, thus polluting it with her presence. All the local Hindus, of course, believe the priest over the 'untouchable' girl. Mulk Raj Anand, *Untouchable* (Harmondsworth: Penguin, 1940).

when we enter upon the study of philosophy'.⁶⁸ More contemporaneously with Forster, Heidegger proposed the concept of fore-understanding in epistemological matters – one of the fundamental inspirations for Gadamer's project of philosophical hermeneutics.⁶⁹ A later emanation of Wittgenstein's thought also stresses a similarly anti-Cartesian response to the problem of judgment: 'somewhere I must begin with not-doubting; and that is not, so to speak, hasty but excusable; it is part of judging'.⁷⁰ These notions are, of course, in stark contrast to the Enlightenment principles that were seen to underpin the realist novel and modern day trial. As Gadamer put it 'the fundamental prejudice of the Enlightenment is the prejudice against prejudice itself'.⁷¹

Of these philosophical schools, the connection between Forster's writing and a form of pragmatism is most obvious. In another letter to Dickinson, this time while staying with the Maharajah of Chhatarpur, he relates a story about a correspondence the Maharajah had entered into with Bertrand Russell. In what turned into a lengthy philosophical debate the Maharajah, according to Forster, had been left 'in a tight hole'. Not, it turned out, a drastic problem as 'every Indian hole has at least two exits'.⁷² In his letter, Forster then immediately proceeds with an analysis of Dickinson's latest novel *The Magic Flute*, in which he discerns a pragmatist influence. An overlap, or compatibility, between Indian life and pragmatist philosophy is thus stressed. Forster's idea that 'every Indian hole has at least two exits' is, in this sense, similar to James' attack on the 'ideal vanishing-point' of absolute truth which 'runs on all fours with the perfectly wise man, and with the absolutely complete experience; and, if these ideals are ever realised, they will all be realised together'.⁷³ By contrast, the truth that is attainable in pragmatism is akin to a temporary belief which can be placed in a pleasing and practically worthwhile relation with other beliefs. As such, and as William James points out, 'the greatest enemy of any one of our truths may be the rest of our truths'.⁷⁴ So, while the Maharajah, in his tight hole, cannot simply discard all the truths to which he holds, it must be recognised that there is more than one way to organise their relationship. Experience, here, is not *in*

⁶⁸ From 'Some Consequences of Four Incapacities' quoted in John P. Murphy, *Pragmatism: From Peirce to Davidson* (Boulder, Colorado: Westview Press, 1990) 11.

⁶⁹ Gadamer writes that 'the recognition that all understanding inevitably involves some prejudice gives the hermeneutical problem its real thrust'. Gadamer, *Truth and Method* 272.

⁷⁰ Ludwig Wittgenstein, *On Certainty* (Oxford: Basil Blackwell, 1979) 22e.

⁷¹ Ibid. 273.

⁷² Forster, *The Hill of Devi: and other Indian Writings* 81.

⁷³ Murphy, *Pragmatism: From Peirce to Davidson* 49.

⁷⁴ William James, *Pragmatism: A New Name for Some Old Ways of Thinking* (Cambridge, MA: Harvard University Press, 1978) 43.

the world, but rather, *toward* it, and it can be arranged in a variety of ways. The pragmatist position thus offers a striking challenge to the modern experience that was defined in the previous chapter, in which the inability to control experience is precisely what gives it its truth value. Doubt, in this epistemology, works as a starting point because experience can be relied upon to provide truth. But, according to Peirce, any 'initial scepticism will be a mere self-deception, and not real doubt; and no one who follows the Cartesian method will ever be satisfied until he has formally recovered all those beliefs which in form he has given up'.⁷⁵

At some point, trust has to be made in something. In the case of a trial in British India, the judge must decide to trust one of the witnesses (a belief that could be based on any number of prejudicial assumptions). The trial in *A Passage to India* is a case in which this trust is given on the basis of blatant racial prejudice, but this only dramatises what must always be the case: no judgment can be made without pre-judgment. Despite commenting on the functioning of prejudice in this sense, Forster himself was accused of a distorting bias by both British and Indian readers of *A Passage to India*.⁷⁶ A particularly strong rebuke came in a public letter by E A Horne (who had served in the Indian education service). Forster's response was published in *New Statesmen* on 16 August 1924. On specific points over which he was accused of being partisan he wrote:

but even if I made these and similar changes, you still wouldn't feel the Anglo-Indian picture fair. The facts might be right, but the accent would remain, and how on earth is one to do away with one's accent? I tried, but knew I'd failed [...] you have hit the nail on the head. I don't like Anglo-Indians as a class. I tried to suppress this and be fair to them, but my lack of sympathy came through. You say I don't like them because I don't really know them. But how can I ever like them when I happen to like the Indians and they don't? They don't (this part of my picture you do not challenge) - so what am I to do? Sympathy is finite - at least mine is, alas [...] That is why I feel your letter so fair and so unfair at the same time. You say that I am always prejudiced and frequently preposterous - quite right, I am (if by prejudice you mean honest prejudice, blindness temporary or congenital, and I think you do). But you haven't seen that this lack of balance

⁷⁵ Murphy, *Pragmatism: From Peirce to Davidson* 11.

⁷⁶ Furbank, *E. M. Forster: A Life* 126.

is inherent in the Indian tangle, and that if I got the Club sympathetically true, Aziz's shanty would ring false and no longer move you.⁷⁷

What Forster eschews here is the position of disinterested witnessing that informed so much of the realist narration of 'facts'. In writing of India, he has been forced to pick a side and make it 'sympathetically true' while, in doing so, he has allowed the other side to 'ring false'. But there is no other way. The view from nowhere is a view of nothing. The 'Indian tangle' is, therefore, the site of Forster's leap into modernism because it exemplifies this new facet of the modern world: there is no truth, only truths which are neither commensurable nor communicable. The novel itself expresses this idea with an array of misunderstanding and misinterpretation between the British and Indian communities.⁷⁸

But there is a still deeper prejudice hinted at here. In the uncertainty surrounding the *incident* at the Marabar one thing seems to be certain: Aziz is innocent. As suggested earlier, this is because the reader is given access to Aziz's consciousness at the time of the supposed assault. As Elizabeth Heine puts it, 'By all the rules of "old-fashioned" fiction, the reader provides Aziz's alibi, joining him as he smokes a cigarette in one cave while whatever happens to Miss Quested happens in another'.⁷⁹ While Chapter Twenty-Five concludes with the possibility that Adela has followed Aziz into the same cave, crucially, the next chapter begins with Aziz alone: 'he waited in his cave a minute, and lit a cigarette so that he could remark on rejoining her, "I bolted in to get out of the draught," or something of the sort' (164). The reader is then given access to Aziz's thoughts as he emerges from the cave, his panic over Adela's disappearance, and his relief upon seeing her with Miss Derek. These thoughts not only fail to contain any reference to assaulting Adela, they are incompatible with him having committed that act.

In a notebook that he kept prior to his *Aspects of the Novel* lecture series, Forster, musing over the shifts made by some authors between omniscience and a restricted viewpoint, asked himself the question: 'why is it right to deceive the readers in some ways and not in others'.⁸⁰ In the final draft a definitive response was given: 'questions like these have too much the atmosphere of the law courts about them. All that matters to

⁷⁷ Ibid. 129-30.

⁷⁸ For instance, Aziz gives his own collar stud to Fielding, who has lost his, only to be subsequently thought unrefined by Ronny for not wearing one

⁷⁹ Elizabeth Heine, Introduction to Forster, *The Hill of Devi: and other Indian Writings* xlii.

⁸⁰ E. M. Forster, *Aspects of the Novel* (Harmondsworth: Penguin, 1990) 167.

the reader is whether the shifting attitude and the secret life are convincing'.⁸¹ While the withdrawal of omniscience from Adela's cave was thus justified, the factual basis of what an omniscient narrator reports is still sacrosanct. In other words, it would be an unacceptable deception to narrate Aziz's definitive innocence if he was actually guilty. This, for the reader, is proof beyond a reasonable doubt. But what this rests on is an implicit belief in the narrator – an accepted prejudice that, while he may not impart the whole truth, he will not tell any blatant lies. So, just as the majority of the Anglo-Indians believe Adela's accusation without any proof, so too the reader believes the narrator even though Aziz's lies and attempt to run away make him look guilty. By highlighting this prejudice at play in novel reading itself, Forster is running dangerously close to a position in which the narrator, like the witness in an Indian court, could be perceived as someone to be mistrusted – someone who will not report an experience but fabricate a scene. But this is, of course, what a novelist does: fabricate scenes. What was changing in the early twentieth-century, and what the Marabar episode hints at, is the way in which those scenes refer to their own fabrication. What was being lost, in both the novel and the trial in British India, was the sense that they referred to anything other than their own forms of representation. The experience that should have been at their heart was disappearing.

Theories and Codes

In the practical action of a criminal trial in British India and in the last novel of E M Forster, there is a dissolution of the central axis. In the Indian courts, the sense of a real crime which the trial judgment can coincide with is being lost behind a flood of deceitful language while in *A Passage to India* the plot is based around a blank point in the story. In both instances, experience, in its modern guise, is being undermined. There is no experience to which these different forms of representation refer – rather, there is only the representations themselves, to be disentangled in a way that suits the prejudicial beginning of understanding held by the reader and writer. As such, *representation* attains to a more elevated status in epistemological matters. But this, in turn, calls for limitations as, when representation is all there is, it becomes even more important to control what it can look like: the belief being that in the precise control of representation, aesthetic experience and judicial decision-making can be safeguarded. It is just such projects that

⁸¹ Ibid. 86.

Forster, responding to his own novel, and Sir James Fitzjames Stephen, responding to the 'vices of vagueness' in the Indian legal system, embarked upon.⁸²

In Forster's case the site of such an effort was his theoretical work, *Aspects of the Novel*. Yet, just as his authorial freedom had required a forceful willing into submission for the scene in the Marabar cave to remain blurred, so too his artistic spirit rails against the controlling form of theory. Forster, in employing a conversational tone, attempts to distance himself from bold methodological statements. Indeed, the introductory lecture of the series is more a denial of method than a statement of one. The aspects themselves are formed neither directly from philosophical first principles, nor built upon a chronological understanding of literary history. It is, rather, from an a-historical interpretation of his own reading that Forster forms the structure of his aspects: 'by imagining that all the novelists are at work together in a circular room'.⁸³ The novel is to be attacked not 'with any elaborate apparatus. Principles and systems may suit other forms of art, but they cannot be applicable here'.⁸⁴ Indeed, the very title of *Aspects of the Novel* is used 'because it is unscientific and vague, because it leaves the maximum of freedom'.⁸⁵ Forster did recognize that a 'vantage-post' was required in order to assess the 'amorphous' mass of the novel. This position, however, was only to be based upon a partiality for certain novels which was ultimately to be measured by the 'human heart': 'the final test of a novel will be our affection for it'.⁸⁶

These gestures towards informality and vagueness obscure another Forster – one who has a deep and quite stringent sense of novelistic form. Some years later he would famously declare the work of art to be 'the one orderly product which our muddling race has produced'.⁸⁷ The first sentence of the first lecture in *Aspects of the Novel* also begins: 'we shall all agree that the fundamental aspect of the novel is its story-telling aspect'. A rhetoric of fundamentals is thus immediately established. The 'aspects' of *Aspects of the Novel* are, in fact, the principles of just such an 'orderly product' and affection for the novel, far from being the final test, is, in fact, the initial test that motivates further

⁸² The phrase 'vices of vagueness' was used by Stephen himself in a letter to the Earl of Mayo. Quoted in Elizabeth Kolsky, "Codification and the Rule of Colonial Difference: Criminal Procedure in British India," *Law and History Review* 23, no. 3 (2005): 640.

⁸³ Forster, *Aspects of the Novel* 31.

⁸⁴ Ibid., 38. Bakhtin makes a similar argument against systematic principles being applied to the novel, which he saw as a genre that was still evolving. Mikhail M. Bakhtin, "Epic and Novel," in *The Dialogic Imagination*, ed. Michael Holquist (Austin: University of Texas Press, 1981).

⁸⁵ Ibid., 39.

⁸⁶ Ibid., 24 & 38.

⁸⁷ E. M. Forster, *Two Cheers for Democracy* (London: Edward Arnold, 1951) 101.

analysis. In other words, it is from examining the novels that Forster considers most successful (an initially intuitive judgment) that he is able to form the ‘aspects’ he considers most important. There is a thin line, however, between the important and the essential and the ‘aspects’ soon come to look more like the latter, taking on a form of rules or laws. These rules are given the clarity and authority of philosophical first principles but they are not the product of abstract thought. Rather, Forster is attempting to uncover principles and values that are deemed to have always governed the novel though they have, up until then, been clouded by obscurity and only vaguely understood. His project, in *Aspects of the Novel*, is, thus, to codify the laws of the novel.

This work was undertaken just two years after the publication of *A Passage to India*: a novel placed in a cultural context deeply imbued with a history of legal codification. The initial period of expropriation to Company rule in India, dating from the late eighteenth-century onwards, was characterised by the organization of systems of courts and the gradual institution of legislation. A distinct change occurred around 1860 when a period of extensive codification began in which the system of courts was rationalised and the sources of law fixed.⁸⁸ It will be noticed from this historical analysis that the second stage begins shortly after the Mutiny of 1857 and the subsequent control of government in India moving from the East India Company to the Crown. Macaulay had in fact written the Draft Penal Code in 1833; its enactment with only minor alterations in 1862 would suggest that the theoretical preservation of Hindu and Islamic law (theoretical because it had already been gradually eroded through the work of judges and magistrates who looked to English case law for guidance and precedents) was something that could be thrown off more easily when the crisis of mutiny was so fresh in the memory.⁸⁹

It was due, also, to the legal climate in Britain itself. Eric Stokes writes that ‘in England law reform was under way, although it went forward in halting and piecemeal fashion. Reform progressed more quickly in India but it may be regarded as part of the

⁸⁸ This standard account of modern Indian history is paraphrased from Marc Galanter: see Marc Galanter, *Law and Society in Modern India* (Oxford: Oxford University Press, 1997) 17.

⁸⁹ George Claus Rankin writes on the erosion of Hindu and Islamic law in the eighteenth and nineteenth-centuries: ‘when a case was argued by a barrister before a *Mofussil* Judge, and when the English rules of evidence were pressed on his attention, he did practically accept those rules, and admit or reject evidence according to his construction of them’. George Claus Rankin, *Background to Indian Law* (Cambridge: Cambridge University Press, 1946) 114.

same movement'.⁹⁰ The roots of such reform are to be found in the philosophy of Utilitarianism; roots that Stokes argues were most forcefully expressed to practical purpose by Macaulay, whose code was the enactment of Benthamite principles: 'a code of law drawn not from existing practice or from foreign law systems, but created *ex nihilo* by the disinterested philosophic intelligence'.⁹¹ What this disinterested intelligence dealt in, however, was far from an idealist abstraction. According to K J M Smith, the fundamental attraction of Benthamism was its "reverence for facts" - its belief that the source of knowledge was observation and the systematic appeal to experience'.⁹² While Stokes argues that the later codes failed to live up to this noble beginning, in the work of Sir James Fitzjames Stephen a weaving of utilitarianism and the common law took place. Stephen claimed himself a follower of Bentham, but he was also loyal to the traditions of case law. He saw the goal of legal codification in India as 'the reduction for the first time, to a definite written form, of law, which had previously been unwritten, or written only in an unauthoritative form, such as that of text-books and reported cases'.⁹³ In fact, contrary to the analysis of Stokes, Stephen himself thought that Macaulay's own code was a direct descendant of the English common law. He wrote that, 'the Indian Penal Code is to the English Criminal law what a manufactured article ready for use is to the materials out of which it was made'.⁹⁴ While this conception of codification forms a polar opposite to the fruits of pure intellectual reasoning suggested by Macaulay, Stokes does allow that in comparison to the other codes enacted:

Fitzjames Stephen's Evidence Act of 1872 laid greater claim to originality. Although founded on an English basis, Stephen claimed to have "discarded altogether the phraseology in which the English text writers usually expressed themselves", and to have "attempted first to ascertain and then to arrange in their

⁹⁰ Eric Stokes, *The English Utilitarians and India* (Oxford: Clarendon Press, 1969) 263. Elizabeth Kolsky argues that 'whereas the British generally claimed that their mission was to bring ancient Indian civilization forward in time, here we find Calcutta developmentally ahead of London'. Kolsky, "Codification and the Rule of Colonial Difference: Criminal Procedure in British India," 633.

⁹¹ Stokes in fact argues that Macaulay actually had a 'curious unawareness of the English law as the basis of his thinking'. Stokes, *The English Utilitarians and India* 225 & 07.

⁹² K. J. M. Smith, *James Fitzjames Stephen: Portrait of a Victorian Rationalist* (Cambridge: Cambridge University Press, 1988). 44. Of Sir James Fitzjames Stephen, Smith writes: 'along with J S Mill and the broad utilitarian school, Stephen's deductions and prescriptions largely rested on the near events of modern history and the realities of what could be seen and experienced'. 148.

⁹³ Quoted in Stokes, *The English Utilitarians and India* 277.

⁹⁴ Quoted in Kolsky, "Codification and the Rule of Colonial Difference: Criminal Procedure in British India," 633.

natural order the principles which underlie the numerous cases and fragmentary rules which they have collected together".⁹⁵

The need for such work was most intensely felt in India, where Stephen claimed that, 'few persons are aware of the extreme degree in which both the unwritten and the written law were, and to a great extent still are, infected with the vices of vagueness, want of arrangement, redundancy and prolixity'.⁹⁶

Thus, despite the fifty years between them, Stephen's Indian Evidence Act of 1872 and Forster's *Aspects of the Novel* (1926) share the similarity of utilising the language of first principles within a broader context of textual background, in which those principles have come to the fore. They are both intent on the same thing: the quest for certainty that codification represents.⁹⁷ This similarity of form, and in motivation, is matched by the connection between the entities being codified. In coding the aspects of the novel Forster is stating what the novel can be: by implication this is to set limits on what the novel can tell of. The specific subject of Stephen's contribution to the codification of Indian law is the rules of evidence. He sets out to specify what can be proved and, therefore, sets a similar limit on what the trial can hear.

Why this need to limit what can be told? In both instances, the answer has to include an account of how these men, both Victorians though to varying degrees, responded to unsettling eruptions in their chosen fields.⁹⁸ For Forster, this came in the form of an experimental modernism that came even to invade his own work. Forster venerated the work of Proust, but his praise of other modernist figures is more muted. In *Aspects of the Novel*, Ford, Mann, and Kafka all go unmentioned while Joyce and Woolf are

⁹⁵ Stokes, *The English Utilitarians and India* 264. The systematic way in which the codes were written, where the leading idea was stated to begin with, followed by definite explanations and then exceptions was, in itself, a positive development in legal writing. As Edwardes notes, 'this clarity – and it was the pattern for later Indian codes – was one of the enduring Utilitarian legacies. It brought to Indian criminal law a precision and lucidity which were not to be found in the law of England'. Edwardes, *British India 1772-1947: A Survey of the Nature and Effects of Alien Rule* 208.

⁹⁶ Quotation taken from a letter Stephen wrote to the Earl of Mayo. Quoted in Kolsky, "Codification and the Rule of Colonial Difference: Criminal Procedure in British India," 640.

⁹⁷ Those involved in the codification project were adamant that it was 'the only way of attaining certainty'. Rankin, *Background to Indian Law* 155.

⁹⁸ Though the majority of his life was lived in the twentieth-century, Forster remained, especially in his fictional work, a Victorian at heart. Brian May writes that 'Forster is the novelist among American and British writers who is perhaps most often and most uncritically regarded as the chief post-Victorian purveyor of Victorian liberal humanism'. Brian May, *The Modernist as Pragmatist: E.M. Forster and the Fate of Liberalism* (Columbia, Missouri: University of Missouri Press, 1997) 75. Claiming Stephen as a Victorian is more obvious. See Smith, *James Fitzjames Stephen: Portrait of a Victorian Rationalist*.

given only limited acclaim. Through this omission of more experimental writers it becomes apparent that the limits on the novel are the limits it has traditionally kept within – limits which, in the past, had not been set by a codified set of practices but by experience itself. After his time in India, and his most adventurously modernist novel, which remained his last work of fiction, Forster felt the need to set boundaries.⁹⁹ In so doing he is not only responding to the disappearance of experience; he is attempting to salvage its place in the novel.

Forster's position was not unique, but it was an individual response to a specific circumstance in his own career. For Stephen, his drafting of the Indian Evidence Act was part of a much wider project of codification throughout the 1860s and '70s. The inspiration was, however, the same. The mutiny of 1857 stirred up anxieties about rule and beliefs about the native population that were to be quashed by acts of legal aggression, tightening the control over the sub-continent. Those anxieties had been long held, and many were found in relation to the conduct of the trial. The prevalence of perjury, anxiety over judicial knowledge, and doubt about the safety of most trial verdicts were all fears that inhabited the colonial imagination. In reducing case law to first principles, Stephen attempted to distil all that had been formed by the tradition of the British judicial system. As the notion of precedent had arisen in tandem with the authority given to experience in a range of disciplines, Stephen's project was thus an effort to reach a pure form of experience. The influence of utilitarianism on the codification project was also significant as, though working from first principles, it was designed to produce the same effect. Utilitarianism, in analysing the world in terms of commensurable conceptions of the 'good', suggested that experience could be collected, measured, and produced in quantifiable units – something that was seen by Forster to be undermined by the colonial situation and the contemporary world more generally.

The Relevant Aspects

⁹⁹ In *The Quest for Certitude in E. M. Forster's Fiction*, David Shusterman takes as his subject the fact that Forster wrote several novels, abruptly stopping after *A Passage to India*, and then wrote only non-fiction which amounted to a systematic philosophy of life. He writes: 'one wonders more and more whether the first period was a necessary forerunner of the second; whether the creative literature of youth was not necessary to open out the reflective literature of the older man. It is my contention that it was so. It is my belief that Forster was using his fiction, at least in part, as a means of self-discovery, of self-formulation'. Shusterman, *The Quest for Certitude in E. M. Forster's Fiction* 5.

In attempting to retain a sense of experience in the novel and trial, Forster and Stephen shared similar goals. But were their methods also similar, and how consistently were their principles maintained? An examination of Forster's first 'aspect' forms a good starting point to this discussion. He writes:

the novel tells a story. That is the fundamental aspect without which it could not exist. That is the highest factor common to all novels, and I wish that it was not so, that it could be something different - melody, or perception of the truth, not this low atavistic form.¹⁰⁰

Story is low because, in being simply the 'narrative of events, arranged in their time-sequence' it is something less than structure or plot (aspects which receive Forster's specific attention in separate lectures).¹⁰¹ The other adjective Forster uses to describe story – atavistic – is justified on the basis of its 'fundamental' nature. Story is the primary element of a novel precisely because it speaks to the most primeval desire involved in the reading process: curiosity. It is the basic drive to know what happened next that keeps a reader turning the pages of a novel. As Forster put it, 'we are all like Scheherazade's husband, in that we want to know what happens next. That is universal and that is why the backbone of a novel has to be a story'.¹⁰²

The simplicity of story is further emphasised by Forster when he claims that it is rooted in a sense of time divorced from any signification of value. The time of story is the chronological sense in which an individual sees 'dinner coming after breakfast, Tuesday after Monday, decay after death'.¹⁰³ There is no particular importance, indeed there is no importance at all, to be attached to any of these moments; it is simply that one comes after the other. Without such a time-sense, understanding would be impossible. Forster argues that this method of ordering is so pervasive it amounts to a tyranny and he commends the experimental writing of Gertrude Stein for valiantly attempting to liberate the novel by privileging value over time. Yet, despite his praise, it is at this moment that the novel's basis in story and a time-sense becomes most law-like. Forster declares that Stein's work ultimately fails because 'the time sequence cannot be

¹⁰⁰ Forster, *Aspects of the Novel* 40.

¹⁰¹ Ibid. 42.

¹⁰² Ibid. 41.

¹⁰³ Ibid. 42.

destroyed without carrying in its ruin all that should have taken its place; the novel that would express values only becomes unintelligible and therefore valueless'.¹⁰⁴ Not only is Forster unaware of any successful novels which are not based in time – there never could be any such novels. Stein, in transgressing the law, has failed to produce a novel of value, and Forster's description of an 'aspect' has become a prescription. But, as the preceding discussion suggested, this initial aspect is itself only a distillation of the novels that Forster has found most worthwhile – a list that is predominantly realist. It is, therefore, the realist stress upon 'plotting' a character's journey through time that Forster wants to preserve and, in order to do this, he has to reject the work of an arch-modernist like Stein.

Having established the basic status of story, Forster proceeds to advance the next stage of narrative:

we have defined a story as a narrative of events arranged in their time-sequence. A plot is also a narrative of events, the emphasis falling on causality. "The king died and then the queen died" is a story. "The king died, and then the queen died of grief" is a plot. The time-sequence is preserved but the sense of causality overshadows it [...] Consider the death of the queen. If it is in a story we say: "And then?" If it is in a plot we ask: "Why?".¹⁰⁵

Value, incapable of existing on its own, must be achieved within time, as plot is imposed on story. A novel's plot thus asks its reader not just to follow events but to notice the intrinsic value, intensity and meaning of those events. The act of interpretation that depends on a relationship between text and reader is based upon the value of plot in this sense; and the reader requires a greater sophistication than the primeval curiosity that was satisfied by the low form of story. Quite apart from constantly moving on to what happens next, the mind of such a reader must have the ability to remember what has occurred and apply its significance to the subsequent course of events. The memory of the reader:

will constantly rearrange and reconsider, seeing new clues, new chains of cause and effect, and the final sense (if the plot has been a fine one) will not be of clues

¹⁰⁴ Ibid. 53.

¹⁰⁵ Ibid. 87.

and chains, but of something aesthetically compact, something which might have been shown by the novelist straight away, only if he had shown it straight away it would never have become beautiful.¹⁰⁶

During the reading process, plot has a malleable quality which the reader is moulding into a shape that will match a particular interpretation. New events will either fit in with such interpretations or take on the status of a new clue and become part of a different reading. This point was realised in a more formally theoretical manner later in the century by reader-response theorists such as Wolfgang Iser, who formulated the concept of the 'wandering viewpoint'. In Iser's theory, 'a reader's view is constantly shifting dependent on how much of the text has been read, altering their understanding of previous sections (*gestalts*) and expectations for the rest of the text'.¹⁰⁷ Where Forster differs from Iser is that he sees the 'clues' of a text as being discerned and connected only by a central feature of realism: clearly visible chains of cause and effect.

The fact that Forster's thought can be connected to elements of twentieth-century critical theory belies the 'intellectual nullity' he was accused of by F. R. Leavis.¹⁰⁸ Forster's distinction of story and plot also bears a strong resemblance to the *fabula/sjuzhet* and story/discourse definitions of Russian Formalism and Narratology mentioned earlier. According to these schools of thought, *fabula* was exactly as Forster conceived of story: a chronologically ordered series of events. His conception of plot is slightly more problematic. Frank Kermode, another critic of *Aspects of the Novel*, has suggested that, particularly in modernist texts contemporaneous with Forster's own, effects of time-distortion manipulate the power of the *sjuzhet* in ways that a chronological ordering could not achieve. Kermode, therefore, argues that 'it is not merely, as Forster's plot formula suggests, that an element of causality is introduced into the "and then and then" of the fable'.¹⁰⁹ The plain definition given of Forsterian plot would suggest that Kermode is right, and Forster's novels do, in the main, comply with a *fabula*-like chronological structure. However, the prior distinction made between story and plot was between time,

¹⁰⁶ Ibid. 89.

¹⁰⁷ Wolfgang Iser, *The Act of Reading: A Theory of Aesthetic Response* (London: Routledge and Kegan Paul, 1978) 109.

¹⁰⁸ In his introduction to the Penguin edition, Oliver Stallybrass comments that 'Dr F. R. Leavis, who sat through all eight lectures [...] remembers being "astonished at the intellectual nullity that characterized them"'. Forster, *Aspects of the Novel* 13.

¹⁰⁹ Frank Kermode, "Fiction and E. M. Forster," *London Review of Books*, 10th May 2007, 5.

ordered by story, and value, offered by plot. For Forster, value, though contained intrinsically within time, was not measured by it. Rather, value is attributed by the 'intensity' accompanying certain events. Forster writes that 'when we look back at our past it does not stretch back evenly but piles up into a few notable pinnacles, and when we look at the future it seems sometimes a wall, sometimes a cloud, sometimes a sun, but never a chronological chart'.¹¹⁰ While a novel's story narrates the life in time, as a whole 'the life by values' in this sense will also be expressed.¹¹¹ As such, Forster's admiration for *In Search of Lost Time* is unsurprising: he described Proust as employing the 'legitimate' device of 'altering the hands' of the clock 'so that his hero was at the same period entertaining a mistress to supper and playing ball with his nurse in the park'.¹¹² The value that plot adds is therefore based upon an intensity that is not bound by a chronological sense of time, therefore allowing for the manipulation of a basic time-sense. A lot more can be done with Forster's 'plot' than either he explicitly stated or Kermode has admitted. Forster, according to his theory, can easily manipulate his *sjuzhet* into a form which confuses a chronological sense of time (though he did not choose to do so in his own fiction). What he will not do, however, is deny the time-sense at base in the *fabula*. What Forster fundamentally wants to retain is the sense that there is a chronologically ordered story (*fabula*) which the plot (*sjuzhet*) in all its potential manipulations and distortions, is narrating. In this sense, his thoughts are similar to Watt's, who emphasises 'the novel's insistence on the time process'.¹¹³ What happens with modernism is that this time process, and the *fabula* more generally, becomes harder to see: in fact, it could be said to hardly exist at all.¹¹⁴

Just as Forster attempted to preserve his sense of the *fabula* in *Aspects of the Novel*, so too Sir James Fitzjames Stephen set out, in his Indian Evidence Act 1872, to restore belief in the *fabula* by limiting the rules as to what *sjuzhet* could be produced in an Indian trial. The originality of the Act, referred to by Stokes earlier, was mostly attributable to Sections 6-11, coming under the chapter heading 'Of the Relevancy of Facts'. Stephen

¹¹⁰ Forster, *Aspects of the Novel* 42.

¹¹¹ Ibid. 43.

¹¹² Ibid.

¹¹³ Ian Watt, *The Rise of the Novel: Studies in Defoe, Richardson and Fielding* (London: Chatto & Windus, 1974) 22.

¹¹⁴ Barbara Herrnstein Smith argues as much in relation to *The Good Soldier*, writing that in Ford's novel 'there evidently are *no* sets and sequences of events that, already arranged in some particular way, could be spoken of as *rearranged*'. Barbara Herrnstein Smith, "Narrative Versions, Narrative Theories," in Mitchell, ed., *On Narrative* 224.

himself wrote: 'these sections are by far the most important, as they are the most original part of the Evidence Act, as they affirm positively what facts may be proved, whereas the English law assumes this to be known, and merely declares negatively that certain facts shall not be proved'.¹¹⁵ The rules of evidence, which had been built up by negatively excluding specific forms of proof and which John Bender had seen as so influential in the creation of disinterested judicial observers, now, in the face of the 'vices of vagueness', had to be asserted positively.¹¹⁶ Stephen's 'relevant facts' were, in the order of the Act, facts that are so connected with a fact in issue as to form part of the same transaction; facts that are the occasion, cause or effect, immediate or otherwise, of facts in issue; motives, preparations and previous or subsequent conduct; facts necessary to explain or introduce relevant facts or facts in issue; things said, done or written by conspirators in reference to their common intention; and facts not otherwise relevant that become relevant either because they are inconsistent with a fact in issue or because they make a fact in issue or relevant fact highly probable or improbable.¹¹⁷

Once stripped of their rhetorical veneer these principles actually all conform to the second definition. In Walter Donogh's analysis, 'facts to be relevant under sec. 7 must be connected. Similar but isolated facts, when they have a direct bearing on the fact in issue, are not admissible in evidence. The connection too must be that of cause and effect, or such as will afford the occasion or opportunity for the occurrence'.¹¹⁸ Stephen himself also wrote that, 'it would be correct to say that when any theory has been formed which alleges the existence of any fact, all facts are relevant which, if that theory was true, would stand to the fact alleged to exist either in the relation of cause or in the relation of effect'.¹¹⁹ The basis of connecting facts together, which forms the backbone of any trial narrative, is to be made by the linking of cause and effect. Facts brought forward to an Indian court must therefore, conform to a Forsterian sense of plot. The time sequence of story is important but, just as in *Aspects of the Novel*, it is not enough. There must also be a plot; 'a narrative of events, the emphasis falling on causality'.

¹¹⁵ Stephen, *The Indian Evidence Act (1 of 1872) With an Introduction On The Principles of Judicial Evidence* 55.

¹¹⁶ John Bender, *Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth-Century England* (Chicago: University of Chicago Press, 1987) 176. It is for this reason that Kieran Dolin refers to the Act as an 'epistemological manual'. Kieran Dolin, *Fiction and the Law: Legal Discourse in Victorian and Modernist Literature* (Cambridge: Cambridge University Press, 1999) 188.

¹¹⁷ Paraphrased from Sections 6-11 of the Indian Evidence Act 1872.

¹¹⁸ Donogh, *Principles of Circumstantial Evidence Applicable to British India* 9-10.

¹¹⁹ Stephen, *The Indian Evidence Act (1 of 1872) With an Introduction On The Principles of Judicial Evidence* 52. See also Rankin, *Background to Indian Law* 124.

In his *Introduction* Stephen attempts to bolster his doctrine of relevant facts by claiming it is based upon John Stuart Mill's theories of induction in his *System of Logic*. Much of the introduction in this connection is taken up with drawing parallels between judicial and scientific investigation. Stephen writes that 'inquiries into matters of fact, of whatever kind and with whatever object are, in all cases whatever, inquiries from the known to the unknown [...] They proceed upon the supposition that there is a general uniformity both in natural events and in human conduct; that all events are connected together as cause and effect'.¹²⁰ The underpinning of experience, which also, of course, informed the rise of the novel, is clearly evident here. Stephen perceives a 'general uniformity' of events and conduct: people are thus seen to experience the same world and act on it in the same way. But it is precisely this view of experience that is being undermined by the practical application of the law in British India and by *A Passage to India*. As Kieran Dolin remarks, the 'assumptions of this legislation, particularly the belief that individuals can testify to the facts of their own experience, or that the relevance of facts to rights in issue may be determined without prejudice or self-interest, or even the confidence that facts will be available, are put in question by the Marabar case'.¹²¹

Throughout the *Introduction*, and most importantly in the Act itself, the assumption is also made that causality is both a simple concept and that its concrete occurrences are easily discernible (precisely how Forster, and others, though of a realist 'plot'). This is one of the main grounds for G F Arnold's criticisms in his *Psychology Applied to Legal Evidence*, first published in 1906. Arnold claims that the law in general treats causation in 'a *dilettante* and inadequate fashion [yet] without it we should find it extremely difficult to arrive at any adequate idea of what "relevancy" means'.¹²² By analysing Stephen's lackadaisical attitude towards knowledge of causation in the light of contemporary debates in psychology and philosophy Arnold successfully argues that, in terms of causality, Stephen has defined nothing at all. He writes:

The fact is that by sometimes regarding cause and effect as requiring immediate connection and sometimes allowing remote connection and sometimes looking also to the intention of the agent in the case when deciding the mere question of

¹²⁰ Stephen, *The Indian Evidence Act (1 of 1872) With an Introduction On The Principles of Judicial Evidence* 25.

¹²¹ Dolin, *Fiction and the Law: Legal Discourse in Victorian and Modernist Literature* 188.

¹²² Arnold, *Psychology Applied to Legal Evidence and other Constructions of Law* 270.

causation, our author plays fast and loose with Causality, and so we get results that contradict one another and offend the plain man's sense of what is right.¹²³

Yet, to make such an argument is perhaps to attack Stephen for failing in a project he never intended to complete. For all the importance he claimed of 'relevant facts' Stephen admits that these sections are 'designedly worded very widely, and in such a way as to overlap each other'.¹²⁴ Earlier in the *Introduction* he writes that

approximated generalizations are more useful in judicial than they are in scientific inquiries, because in the case of judicial inquiries every man's individual experience supplies the qualifications and exceptions necessary to adjust general rules to particular facts, which is not the case in regard to scientific inquiries.¹²⁵

Stephen appeals to experience here – but it is in a form subtly different to that defined in the previous chapter. Stephen, though he refers to 'every man's individual experience', does not mean every man at all. Crucially, Stephen's experience, as in his reconstruction of the trial of Nunocmar, is only his own: a basis of thought that must be preserved by learned members of the judiciary and fed, piecemeal, to uninitiated others. In the case of many trials in India, which were adjudicated by a single magistrate, this could be easily achieved, as learned experience could come bound in a single authoritative judgment. But it was no less possible in jury trials as the issue of 'relevancy' dictated precisely what experience a jury would be allowed to hear of. Indeed, even once all the evidence had been heard, Stephen thought the Judge:

ought not to conceal his opinion from the jury, nor do I see how it is possible for him to do so if he arranges the evidence in the order in which it strikes his mind. The mere effort to see what is essential to a story, in what order the important events happened, and in what relation they stand to each other must of necessity point to a conclusion. The act of stating for the jury the questions which they have to answer, and of stating the evidence bearing on those questions and showing in what respects it is important generally goes a considerable way

¹²³ Ibid. 300.

¹²⁴ Stephen, *The Indian Evidence Act (1 of 1872) With an Introduction On The Principles of Judicial Evidence* 55.

¹²⁵ Ibid. 34.

towards suggesting an answer to them, and if a Judge does not do as much at least as this, he does almost nothing.¹²⁶

In attempting to retain a sense of experience at the heart of trial procedure, Stephen has slipped into something rather more exclusive: the experience of the judge alone. In a parallel with *A Passage to India*, whose narration was based on a prejudicial point of view that extolled one truth while denying another, the opinion of Stephen's judge is designed to push the jury towards a particular decision. In doing so the judge takes up a position of finality: the story, from where he sees it, is complete and all the jury have to do is follow his lead. There are no disinterested, neutral observers here.

Stephen's notion that to see what is essential to a story 'must of necessity point to a conclusion' thus mirrors Forster's contention that the reader's active connecting of 'chains of cause and effect' ultimately leads to the vision of 'something aesthetically compact'. Forster's conception of plot is as law-like as that of story (despite the inability he shares with Stephen to provide a definition of causation). But it is also an authorial deception that is deemed admissible. The author writes from the state of finality but obscures the correct interpretation of the chains of connection until the narrative is complete. Forster excuses such deception on the grounds of aesthetics. He writes that plot is 'something which might have been shown by the novelist straight away, only if he had shown it straight away it would never have become beautiful'.¹²⁷ Although not exclusively concerned with plot, Victor Shklovsky's well known theory of 'defamiliarisation', first expounded in 1917, strikes a similar chord. According to Shklovsky, 'the technique of art is to make objects "unfamiliar", to make forms difficult, to increase the difficulty and length of perception because the process of perception is an aesthetic end in itself and must be prolonged'.¹²⁸ What a fine plot does is make its simple articulation unfamiliar, more difficult, elongated, and thus aesthetically pleasing. A familiar truth is thus *made* beautiful by being connected in a way that makes the reader work for it.

As such, one of the most important elements of a plot is the way that it retards the final saying of a simple truth. A particularly important technique in this retardation is

¹²⁶ Quote from Stephen's *Digest of Criminal Law* made in H. A. D. Phillips, *Comparative Criminal Jurisprudence*, 2 vols., vol. 2. Criminal Procedure (Calcutta: Thacker, Spink and Co, 1889) 154.

¹²⁷ Forster, *Aspects of the Novel* 89.

¹²⁸ Victor Shklovsky, "Art as Technique," in *Russian Formalist Criticism: Four Essays*, ed. Lee T. Lemon and Marion J. Reis (Lincoln, Neb.; London: University of Nebraska Press, 1965), 12.

the use of enigmas or mysteries. For Forster, novelistic mystery is a 'suspension of the time-sequence; a mystery is a pocket of time'. It is also 'essential to a plot, and cannot be appreciated without intelligence. To the curious it is just another "And then-". To appreciate a mystery, part of the mind must be left behind, brooding, while the other part goes marching on'.¹²⁹ Mystery is evidently so closely connected to plot their specific effects become identical. It makes the reader ask 'why' rather than 'and then?', enforcing a pause in the reading process and a subsequent rearrangement of events into a causal chain. The final effect of a well conceived plot is, however, not to be of clues and chains of cause and effect but of 'something aesthetically compact'. That is to say, Forster's conception of mystery is of something that is temporary. His mystery is one that is ultimately solved in a way that creates beauty: to use Stephen's words, it will 'point to a conclusion'. Mystery is an experience that comes back: always existent in the *fabula*, it is subject to only temporal delay in the *sjuzhet* and its resolution produces, as Barthes puts it, 'a veritable "thrilling" of intelligibility'.¹³⁰

That this is precisely what fails to happen in *A Passage to India* which, as discussed earlier, descends into muddle, is testament to the doubts and divisions within Forster that induced him to write such a novel and then make it his last. On the one hand a Victorian, while on the other a man of the twentieth-century; at times an extoller of the realist tradition, though at others a practitioner of modernist aesthetics, the ruptures in Forster were summed up in a letter to William Plomer on the subject of his (Plomer's) latest novel. Forster, commenting on the similarity between Plomer's novel and *A Passage to India* wrote:

I tried to show that India is in an unexplainable muddle by introducing an unexplainable muddle - Miss Quested's experience in the cave. When asked what happened there, I *don't know*. And you, expecting to show the untidiness of London, have left your book untidy. - Some fallacy, not a serious one, has seduced us both, some confusion between the dish and the dinner.¹³¹

¹²⁹ Forster, *Aspects of the Novel* 88.

¹³⁰ Roland Barthes, "Introduction to the Structural Analysis of Narratives," in *Image, Music, Text*, ed. Stephen Heath (London: Fontana, 1977), 119. See also Jonathan Culler: 'it is only when the enigma or problem is resolved that he [the reader] moves from an understanding of action to an understanding or representation of plot'. Jonathan Culler, *Structuralist Poetics: Structuralism, Linguistics and the Study of Literature* (London: Routledge and Kegan Paul, 1975) 11.

¹³¹ Furbank, *E. M. Forster: A Life* 124-25.

For Forster, experience and mystery should not be lost to literature: and in never writing another novel, he chose never to commit the same fallacy as he thought he had with *A Passage to India*. His codification of the novel was an attempt to save an entity in which experience was enshrined – but his Act had come too late. Whether a fallacy or not, the form of his last novel, and the non-incident in the Marabar cave, were now emblematic of a new style of literature and of a new world: one in which experience was disappearing.

CHAPTER TWO: *THE GOOD SOLDIER* AND THE GOOD READER

The judge added it all up, starting with the police record and the vagrancy, and presented it as Moosbrugger's guilt, while to Moosbrugger it was a series of completely separate incidents having nothing to do with one another, each of which had a different cause that lay outside Moosbrugger somewhere in the world as a whole.

Robert Musil, *The Man Without Qualities*¹

The most amazing thing about it was that the police could not only dismantle a man so that nothing was left of him, they could also put him together again, recognizably and unmistakably, out of the same worthless components.

Robert Musil, *The Man Without Qualities*²

Unlike Forster's work, which suggests a trust in experience up until the break performed by the non-incident in the Marabar cave, the fiction of Ford Madox Ford, although mostly written prior to *A Passage to India*, assumes that a crisis is already in existence. In his theoretical writing this is couched in purely literary terms. Ford, together with his long time friend and collaborator Joseph Conrad, was intent upon changing the English novel. The Literary Impressionism promulgated by Ford and Conrad was designed to give the 'reader the impression that he was witnessing something real, that he was passing through an experience'.³ It is therefore assumed that the novel, in its nineteenth-century realist form, had failed to capture the reality of experience: a concern which would never have occurred to Eliot or Dickens and could, in fact, only appear once experience itself was in crisis. For Ford, these authors produced only the 'corrected chronicle' of events, while he was after the brute immediacy of life. If phrased in the manner of Dilthey, while realism dealt in a cognitively ordered *Erfahrung*, Ford was intent upon reaching an elemental *Erlebnis*.

In this chapter, it will be shown that, despite this aim, in *The Good Soldier* Ford produces not an experience of lived immediacy but an impression of obsessive reflection. Various features of this reflective narrative serve to undermine its relation to experience. The novel has been described as one 'which raises uncertainty about the nature of truth and reality to the level of a

¹ Robert Musil, *The Man Without Qualities*, trans. Sophie Wilkins (London: Picador, 1997) 75.

² Ibid. 169.

³ Ford Madox Ford, 'On Impressionism', in Martin Stannard, ed., *The Good Soldier: an Authoritative Text, Textual Appendices, Contemporary Reviews, Literary Impressionism, Biographical and Critical Commentary* (New York; London: W. W. Norton, 1995) 264.

structural principle'.⁴ It will be argued that this level of doubt, ultimately, attains a level in which the experiential quality of anything that Ford's narrator, Dowell, relates has to be questioned. Yet, while the question of what really happened is an important one, the more central issue of the novel is whom it portrays. Dowell trawls through his experience of Edward Ashburnham, and through Edward's experience itself, for signs of character, finding none, while the expression of his own identity seems to indicate a similar blankness. Unlike Forster and the Marabar cave, the question is less what happened in experience than what kind of identity, if any, can experience produce.

At roughly the same time as Ford was writing, several changes in the legal conception of character and identity were taking place.⁵ The straightforward question of what could be expected of a 'reasonable man', first seen to be undermined in British India, was being challenged as a barometer for testing criminal intention. In a similar development, the discernment of causes was no longer being seen as a case of perceiving the 'natural consequences' of actions. But, as opposed to the Indian codification projects embarked upon by the likes of Stephen, at home the attempt to safeguard judgment was made in a different way: the discernment of singular causes and the placing of responsibility became, increasingly, a job for experts. New technologies of identification also came into operation which allowed for an increase in the level of surveillance under which the general population lived while altering the very conception of individuality which such surveillance monitored. Again, these technologies operated through an economy of expertise that excluded lay participation. In both the trial and the novel, it will be argued, such expertise drove experience further from the centre of questions about truth, judgment and identity.

The Good Soldier

According to Michael Levenson, *The Good Soldier* is an entirely successful attempt to reach *Erlebnis*: he describes the narration as one in which, 'at every moment, he (Dowell) confronts experience as though for the first time'.⁶ But what Levenson describes is an illusion that belies

⁴ Samuel Hynes, 'The Epistemology of *The Good Soldier*', in *Ibid.* 311.

⁵ As has been suggested elsewhere, the connections between law and literature discussed in this thesis are not to be considered on the basis of influence. However, in the case of Ford, his specific interest in the law has been documented. Barbara Leckie writes that 'Ford, in fact, was an ardent reader of legal trials'. In her work, Leckie takes particular interest in divorce trials and how they shaped Ford's 'modernist narrative innovations'. Barbara Leckie, *Culture and Adultery: The Novel, The Newspaper and the Law, 1857-1914* (Philadelphia: University of Pennsylvania Press, 1999) 204.

⁶ Michael Levenson, "Character in *The Good Soldier*," *Twentieth Century Literature* 30, no. 4 (1984): 384.

the logical position from which the narration of *The Good Soldier* originates. Dowell, like most first-person narrators, is relating events that are now in the past. In the introductory chapter of this thesis it was argued, following Welsh and Schramm, that the realist narrator produced narratives that had certain traits in common with a prosecuting counsel in court.⁷ One of the major factors in this comparison was the way that these figures both submit cases and write novels from the point of their completion. The lawyer and realist novelist each present the illusion of finalised cases – which, in the case of the lawyer, is a particularly radical deception as the trial in which it takes place is charged with determining what actually occurred. In the case of the novel, the finality of the narrator's position does not entail that things are exactly as they first seem, or characters precisely whom they initially appear to be. Indeed, several of Wilkie Collins' novels rest on exactly this disguising of both truth and identity.⁸ But, as indicated in the previous chapter, such a state of finality implied that any mysteries within the text would eventually be solved and that true *character* would, ultimately, be fixed correctly and revealed.⁹

Ford, though tied to the same temporal position, finds a unique way of presenting it in a very different fashion. As numerous critics have noted, Dowell, as a narrator, is not in a timeless position. Vincent Cheng, by gathering all the textual clues on offer (a method that will be returned to later in this chapter) charted the chronology of the novel, showing that the majority of the action took Dowell six months to complete. Cheng is then able to show that there is a hiatus of eighteen months in which Dowell fetches Nancy from India, and Leonora marries Bayham. His work is calculated to be complete in late 1915 or early 1916: 'a curious computation, since Ford's *The Good Soldier* itself had already been published on March 17, 1915!'.¹⁰ In creating a narrator who is, himself, in time, Ford produces something quite different from realism's 'corrected chronicle' of events. Impressionism, by contrast, 'is the record of the recollection in your mind of a set of circumstances that happened'.¹¹ The reader is encouraged to feel that the reflections of Ford's narrator, Dowell, are reproduced the instant that he has them: as if they were a kind of pre-reflective reflection. Ford thus creates the illusion of reaching immediacy not by describing it but by providing the impression of its initial, most

⁷ For Maria Aristodemou, this connection exists to this day. She writes that 'legal writers are like writers of realist fiction, trying to maintain the illusion of an omniscient narrator, chronological sequence, plot inevitability, and causal connections between events'. Maria Aristodemou, *Law and Literature: Journeys from Her to Eternity* (Oxford: Oxford University Press, 2000) 25.

⁸ *The Moonstone* and *The Woman in White* being two examples.

⁹ Classic examples of this can be found in the hidden relationships (often familial) revealed by many of Dickens' plots: *Bleak House*, *Little Dorrit* and *Great Expectations*, for example.

¹⁰ Vincent Cheng, "A Chronology of *The Good Soldier*," in Stannard, ed., *The Good Soldier: an Authoritative Text, Textual Appendices, Contemporary Reviews, Literary Impressionism, Biographical and Critical Commentary* 388.

¹¹ Ford Madox Ford, "On Impressionism," in *Ibid.* 263.

unsophisticated, conceptualisation. But these basic forms of cognitive interpretation also have a cumulative effect. That is, as Dowell writes, he finds out more about his subject and his interpretation of events changes. As David H. Lynn comments, 'the narrative *evolves*' as it is produced.¹² Dowell's opening line – 'This is the saddest story I have ever heard' – which seems such a peculiar way to begin a story in which one is experientially involved, is justified in this respect. Dowell only *experiences* his story as he hears it told, by himself. But as he tells it slightly differently every time, the experience is never quite the same. Even the formal end of *The Good Soldier*, therefore, does not provide a final *case* because the sense is created that another, different, interpretation of events would have been proffered by Dowell if he had just kept on writing. The experience that supposedly prompted him to write in the first place thus recedes further and further from view.

Dowell's story is only *heard* by him in another sense, which relies on his basic condition of ignorance. *The Good Soldier* is a story in which Dowell's participation is limited by his sheer lack of knowledge. He claims to have been completely unaware not only of the deep unhappiness of Edward and Leonora's marriage but also of the fact that his wife, Florence, was, over a period of several years, having an affair with Edward. Florence's lack of a heart condition, the fact that she killed herself as opposed to suffering a fatal heart attack, and Edward's love for his ward Nancy, are, similarly, only known by Dowell once he has been told of them. Dowell only hears this 'saddest story' when Leonora apprises him of it. Her version of events, what Dowell only knows from her lips, then becomes another layer of subjectivity to be borne in mind by the reader. But the epistemological and ontological complications do not stop there. Dowell's real subject, the 'good soldier' of the title, is Edward Ashburnham. But though he may end up knowing many of the 'facts' of Edward's life, his experience, and Dowell's experience of him, remain frustratingly elusive. Dowell claims to be unable to give an 'all-round impression' of the good soldier, or to fully convey his tale.¹³ So, in the very act of telling Edward's story, Dowell tells the reader that he cannot tell it.

This does not, at first, appear to be a problem: the first impression that Dowell has of both Edward and Leonora is vivid enough. But it soon becomes apparent that this sense of their character is based solely on stereotype. In their first portrayal the Ashburnhams are described as

¹² David H. Lynn, "Dowell as Unromantic Hero," in *Ibid.* 392.

¹³ For instance, Chapter Eleven of Part One begins with Dowell commenting that 'I don't know how it is best to put this thing down'. After a brief narration he asks 'is all this digression or isn't it? Again I don't know'. Ford Madox Ford, *The Good Soldier* (London: Penguin, 2002) 123, 19 & 21. Future references will be made in brackets within the text.

being 'what in England it is the custom to call "quite good people"' (14).¹⁴ Much of the novel is taken up with the fragility of these respectable exteriors as, with the slightest of scratches, a seething mass of passion, betrayal and resentment is revealed. In this, simplistic, sense the exterior is a facade, a role that is played by people, while beneath it lies their *true* self. For instance, in the pivotal scene at Marburg, Florence tells Edward that it is only because of Luther's protest that he is decent, honest, hard-working and clean living – the stereotypical qualities of Protestantism which the reader later discovers that neither Edward nor Florence possess (42). But if this were all that the novel had to say about identity then it would be no different to its realist parent, and the revelation of Edward's infidelities would be no more than the lifting of the Victorian disguise worn by Godfrey Ablewhite in *The Moonstone*. The initial impression of Edward, by contrast, immediately suggests something other than a mask. In Dowell's description of the scene in which the couples first meet he writes that Edward's 'face hitherto had, in the wonderful English fashion, expressed nothing whatever. Nothing' (28). As Dowell gets to know Edward this perception is deepened as he comes to think of Edward as, in a very real sense, nothing at all. It is this nullity at the heart of Edward that leads Dowell to wonder at his attractiveness to women: 'Good God, what did they all see in him for I swear that was all there was of him, inside and out; though they said he was a good soldier. Yet Leonora adored him with a passion that was like an agony, and hated him with an agony that was as bitter as the sea. How could he arouse anything like a sentiment in anybody?' (29). Crucially, Dowell's sense of Edward as a person is not altered in any positive sense over time. After years of acquaintance he still feels that nothing has been gained from his time with the Ashburnhams: 'And as for experience, as for knowledge of one's fellow beings - nothing either [...] After forty-five years of mixing with one's kind, one ought to have acquired the habit of being able to know something about one's fellow beings. But one doesn't' (36).

The person whom, traditionally, one should know best of all (the beloved) is, in fact, the furthest from Dowell's recognition. Florence dupes Dowell into believing that she has a heart condition which precludes any sexual activity when, in reality, she has been capable of at least two affairs, one of them with Edward. Even her demise is only fully divulged to Dowell by Leonora, months after her death has actually occurred (92). Just as Dowell conceives of Edward as a kind of nothing, so too his marriage is represented as a blank space. Florence's death,

¹⁴ In this sense, the Dowells and the Ashburnhams are what Georg Simmel termed 'acquaintances'. Simmel wrote that 'in the very assertion that one is acquainted with a given person, or even well acquainted with him, one indicates very distinctly the absence of really intimate relationships. In such cases one knows of the other only his external characteristics'. Georg Simmel, "The Sociology of Secrecy and of Secret Societies," *American Journal of Sociology* 11 (1906): 452.

therefore, does not create a void in his life but is merely registered as a commonplace absence: 'You have no idea how quite extraordinarily for me that was the end of Florence. From that day to this I have never given her another thought; I have not bestowed upon her so much as a sigh [...] She just went completely out of existence, like yesterday's paper' (101). Florence's death fails to register with Dowell as a painful event because she had never managed to achieve a level of substantial reality in his eyes. Rather, she had only ever been a 'mass of talk', a 'scrap of paper' (101). Florence was only ever a collection of words which, as soon as they stopped being produced, went completely out of existence, as an object that need not be mourned.

The knowledge that Dowell eventually garners about Edward's life fails to dislodge his initial impression. Halfway through the novel he declares that 'it is impossible of me to think of Edward Ashburnham as anything but straight, upright and honourable' (96). Dowell clings to the superficial and stereotypical characteristics that are based on Edward's nationality, gender, and class. There is no deeper reality to be found in Edward's character other than the 'nothing' which first impressed itself upon Dowell. Having charted all the sordid deeds of Edward's life Dowell reflects that 'it is very difficult to give an all-round impression of any man. I wonder how far I have succeeded with Edward Ashburnham. I daresay I haven't succeeded at all' (123). He goes on to provide a description of a normal working day for Edward: a day of managing the affairs of his regiment, playing polo, and attending social evenings, all of which was done with a scrupulously applied integrity. In terms of the time it took up, this formed the larger part of Edward's life.¹⁵ Should it be discounted at the expense of a few costly mistakes? If the form of identity that could be summarised by the term a 'good soldier' or 'quite good people' could be seen to be false then so too should the form which makes itself visible in Edward's adulterous affairs and gambling binges. Both are 'characters' that are, in fact, painted on to the blank canvas that forms the reality of Edward's individuality. Edward's true self can never be exposed because when one disguise is lifted it is only another one that is revealed.

In the final pages of the novel Dowell admits that 'I can't conceal from myself the fact that I loved Edward Ashburnham – and that I love him because he was just myself' (197). Yet this seeming identity between the characters is immediately undercut as Dowell adds: 'If I had had the courage and virility and possibly also the physique of Edward Ashburnham I should, I fancy, have done much what he did'. Michael Levenson comments that 'Dowell refuses here,

¹⁵ In making Dowell question the relationship between time, value and identity, Ford's writing here forms a literary exposition of Forster's theory of story and plot from *Aspects of the Novel*. According to Forster, 'when we look back at our past it does not stretch back evenly but piles up into a few notable pinnacles, and when we look at the future it seems sometimes a wall, sometimes a cloud, sometimes a sun, but never a chronological chart'. E. M. Forster, *Aspects of the Novel* (Harmondsworth: Penguin, 1990) 42.

refuses with a supreme negligence, to define himself in terms of traits. He regards courage, virility, and physique as secondary qualities, mere contingencies which scarcely bear on the problem of identity'.¹⁶ The 'problem of identity', in this sense, is double-sided: it is not just that Dowell has difficulty in identifying a 'real' Edward but also that Dowell is not apparent to himself either. This nullity of self-knowledge is intimately related to his more commonplace ignorance. As discussed in the Introduction, modern experience was an arena in which the subject of knowledge found both itself and an external world. But, Dowell is no modern knowing subject, and his inability to find knowledge in experience extends into a sense of vacant self-identity. His reaction to Leonora's revelation that Florence had committed suicide rather than dying of a heart attack is complete incredulity: 'It had never entered my head. You may think that I had been singularly lacking in suspiciousness; you may consider me even to have been an imbecile. But consider exactly the position' (91). Dowell's complete ignorance makes him a preposterously weak narrator in a traditional sense (this is no promulgator of 'strong representations'). But his ignorance goes further – or, rather, recedes even deeper – as he is also unable to comprehend his own motivations. Dowell's first remark to Leonora after the death of Florence is 'now I can marry the girl' (meaning Nancy), yet he tells the reader that he had no idea he was going to say this before he did (93). Even more significantly, his words have first been intimated four pages earlier by Leonora's response to them: "'Of course you might marry her,'" and when I asked whom, she answered: "The girl"' (89). Dowell marvels that 'I had thought nothing: I had said such an extraordinary thing' (89). His own speech is thus prefaced by someone else's response to them, while his thoughts have remained completely obscure. Much of his emotional life is similarly murky. He writes: 'You ask how it feels to be a deceived husband. Just Heavens, I do not know. It feels just like nothing at all' (60). Basic human desires are similarly denied as Dowell, who finds it surprisingly easy to be the husband in a sexless marriage, denies any sexual urges: 'I will vouch for the cleanness of my thoughts and the absolute chastity of my life' (19). His feelings for Leonora, are claimed to be similarly devoid of erotic content. He writes, 'I loved Leonora always and, today, I would very cheerfully lay down my life, what is left of it, in her service. But I am sure I never had the beginnings of a trace of what is called the sex instinct towards her' (33). Dowell negates desire for another, but the very act of doing so works as a form of self-negation: there is no Freudian desiring subject here.¹⁷ The blankness of Dowell is summed up in a conversation with Leonora about his wish to marry Nancy. Dowell reports the content of the meeting but tells the reader: 'I spare you the record of

¹⁶ Levenson, "Character in *The Good Soldier*," 384.

¹⁷ It is also one of numerous inconsistencies in the narration. Later, Dowell claims that he actually dislikes Leonora.

my emotions' (192). This is Dowell encapsulated. Even when it is suggested they have been discerned, his emotions and the workings of his own mind will be withheld from the narrative. Dowell tells a story he has heard rather than acted in – a story that he feels and knows 'nothing' about. In the conclusion, Dowell, whose very life negates both himself and experience, ultimately succeeds in producing a kind of non-experiential life. After Florence has died he could return to the US, as 'my experiences there were vivid and amusing', yet he decides to spend the rest of his days at Bramshaw Teleragh as Nancy's attendant: Nancy, who has been reduced to virtually mute incoherence and withdrawn from experience completely to a state in which, as Richard Cassell puts it, she 'signifies nothing' (124).¹⁸ These peculiarities of the narrative allow Michael Levenson to write of Dowell that:

Doing nothing, he feels nothing, and feeling nothing, he knows nothing. [...] In important respects, let us recognize, Dowell *is* nothing. No "paradigm of traits" can describe him, because there is nothing substantial to describe: no determining past, no consistency of opinion, no deep belief, no stable memory. He cannot be "justified". There is no accounting for Dowell (369).

The figures of Edward Ashburnham and John Dowell, then, both fail to attain any level of substantiality. The attempt to describe Edward by Dowell has resulted, by Dowell's own admission, in failure, while the narration of Dowell has not expressed any abiding sense of his own character either. Welsh wrote that in Defoe's novels 'we have a sense of personal identity subsisting through duration and yet being changed by the flow of experience'.¹⁹ But what Ford is producing is something quite different. Here there is 'no determining past, no consistency of opinion, no stable memory'. *The Good Soldier* produces subjects who fail to grasp their experience and so cannot be defined by it: they are characters with no *character*.

Reasonable Intentions

Was the centrality of character diminishing in the legal context also? Martin Wiener, in charting the developing conceptualisation of criminality in the nineteenth and early twentieth-centuries

¹⁸ Richard A. Cassell, *Ford Madox Ford: A Study of His Novels* (Baltimore: Johns Hopkins Press, 1961) 200. Nancy's fate is somewhat similar to Mark Tietjens in *The Last Post*, the fourth part of Ford's tetralogy, *Parade's End*, though he is, of course, faking. Ford Madox Ford, *Parade's End* (London: Penguin, 2002).

¹⁹ Alexander Welsh, *Strong Representations: Narrative and Circumstantial Evidence in England* (Baltimore: Johns Hopkins University Press, 1992) 24.

writes of the early-to-mid-Victorian era that 'the guiding vision of this reconstructed system of criminal justice was that of the responsible individual. Members of the public were to be considered more rational and responsible than they had been hitherto'.²⁰ The Victorian conception of responsibility found character to be at the heart of criminal behaviour while at the same time seeking to build 'character' in the enforcement of its laws. By mid-century 'law was being employed with increasing consistency as an instrument for developing self-disciplining and gratification-deferring personalities in the population at large. To counter the crime wave and immorality wave of the first half of the century stood a newly character-building law'.²¹ While this active effort to establish moral character in the population at large was new to the nineteenth-century, the understanding of responsibility that it rested on was historically entrenched. Indeed, in classic texts such as Blackstone's and Hale's, it was considered so obvious as to be unworthy even of mention.²²

The character that was epitomised by the 'responsible individual' made judgment a simple matter. Lisa Rodensky notes that, in the early part of the nineteenth-century, 'knowledge and intent could be imputed to an accused on the basis of the "natural" consequences of his act, without any further evidentiary showing'.²³ Rodensky argues that the notion of criminal intent was then both fuelled and undermined by the development of the realist novel. As the novel seemingly offered direct access to the thoughts of another it provided 'an opportunity to know character separately from conduct', thus making the attribution of *mens rea* a more complex matter.²⁴ According to Rodensky, by the mid-nineteenth-century the criminal law was questioning whether 'intentions could be presumed from the natural consequences of acts or whether evidence of *actual* knowledge and intention needed to be introduced'.²⁵ The difficulty was that, while 'novels invite readers to imagine that they are in the mind of the criminal', in practical matters of criminal law, knowledge and intention could only be inferred from the known circumstances. Those sitting in judgment actually envisaged themselves in the same situation as the accused, as opposed to really entering the 'mind of the criminal', and the issue of determining *mens rea* thus reduced to the responsible individual theory, as that was how the

²⁰ Martin J. Wiener, *Reconstructing the Criminal: Culture, law and policy in England, 1830-1914* (Cambridge: Cambridge University Press, 1990) 11.

²¹ Ibid. 91.

²² Nicola Lacey, "Responsibility and Modernity in Criminal Law," *The Journal of Political Philosophy* 9, no. 3 (2001): 256.

²³ Lisa Rodensky, *The Crime in Mind: Criminal Responsibility and The Victorian Novel* (Oxford: Oxford University Press, 2003) 95.

²⁴ Ibid. 43.

²⁵ Ibid. 89.

majority of those judging conceived of themselves.²⁶ In the previous chapter, Sir James Fitzjames Stephen's thoughts on the matter from his *Introduction to the Indian Evidence Act* were quoted: 'the approximate rules which relate to human conduct are warranted principally by each man's own experience of what passes in his own mind, corroborated by his observation of the conduct of other persons, which every one is obliged to interpret upon the hypothesis that their mental processes are substantially similar to his own'.²⁷ The concept of the 'reasonable man' thus rested on the modern notion of experience as neutral and shared. It was 'premised not only on a dualistic vision of human being traceable back to Descartes but also on the idea that the interior world of human individuals can be the object of social knowledge and indeed of proof in a criminal court'.²⁸ This was precisely what was undermined by the practical functioning of courts in British India, where the commensurability of individuals' minds, and indeed the simple veracity of their testimony, could not be so comfortably assumed.

A similar undermining of the 'reasonable man' and 'responsible individual' was not fully felt in Britain until the early twentieth-century. However, its earliest stirrings can be seen not only in the treatment of natives in British India but also in the way that insanity was approached by the judicial system earlier in the nineteenth-century. Traditionally, the issue of whether an accused was of sound mind was solved by the right-wrong test. If the accused was aware that their actions were wrong then they could be prosecuted as normal. This test was supposedly shown to be inadequate following the case of McNaughtan, who was tried in 1843 for shooting a person whom he thought was the Prime Minister, thus becoming the third political assassin (or would be assassin) since 1800 to be acquitted on grounds of insanity.²⁹ However, the McNaughtan rules really only restated the right-wrong test.³⁰ Joel Eigen notes that 'by stressing the mind's cognitive faculties, the McNaughtan Rules affirmed the common law's traditional construction of the forensic *person*: a rational, purposeful being capable of perceiving the consequence of his acts'.³¹

²⁶ Ibid. 6 & 178-9..

²⁷ Sir James Fitzjames Stephen, *The Indian Evidence Act (1 of 1872) With an Introduction On The Principles of Judicial Evidence* (London: MacMillan and Co, 1872) 31.

²⁸ Lacey, "Responsibility and Modernity in Criminal Law," 268. See also Roger Smith: 'in practice, courts tried to avoid tortuous questions about states of mind. Instead, they relied on commonsense questions about what a "reasonable man" would know, feel and do under similar circumstances'. Roger Smith, *Trial by Medicine: Insanity and Responsibility in Victorian Trials* (Edinburgh: Edinburgh University Press, 1981) 75-76.

²⁹ Joel Peter Eigen, *Unconscious Crime: Mental Absence and Criminal Responsibility in Victorian London* (Baltimore: The Johns Hopkins University Press, 2003) 6.

³⁰ Smith, *Trial by Medicine: Insanity and Responsibility in Victorian Trials* 15.

³¹ Eigen, *Unconscious Crime: Mental Absence and Criminal Responsibility in Victorian London* 7.

Medical writing was, at the time, stringently questioning such a construction, with the conflict between the discourses of law and medicine continuing throughout the century and to this day.³² This was a battle between theories of depravity and of disease:

Depravity theories emphasised *continuity* between the criminal's past and present; it was right to find responsibility and to punish, since past actions could have been avoided. Medical theories, by contrast, emphasised *discontinuity* between past responsibility and present conduct. Disease cut across a person's life.³³

The theory of disease eroded the connection between thought and action, conduct and responsibility; and its proponents in terms of law reform were not without success as the rules were, gradually, worn down.³⁴ The pressure it exerted could also be said to have influenced the inauguration of the diminished responsibility plea, first recognized in Scotland in the case of Dingwall (1867).³⁵ This judgment required a state of mind to be construed that became notoriously difficult to define, the best-known attempt being made by Lord Alness in 1923:

It is very difficult to put it in a phrase, but it has been put in this way; that there must be aberrations or weakness of mind; that these must be some form of mental unsoundness; that there must be a state of mind which is bordering on, though not amounting to, insanity; that there must be a mind so affected that responsibility is diminished from full responsibility to partial responsibility - in other words, the prisoner in question must be only partially accountable for his actions.³⁶

Some crimes seemed to defy the possibility of establishing any level of responsibility, even when the accused stood in the dock and seemed in full command of their senses. In *Unconscious Crime*, Joel Eigen traces the history of a very special class of cases: those in which the accused, due to disorders including dual personality, could be said to be 'absent' from the

³² Truman Capote's *In Cold Blood* and Michel Foucault's *I, Pierre Riviere...* represent two case studies of this conflict (the cases in question being separated by over a century). Truman Capote, *In Cold Blood* (London: Penguin, 1966), Michel Foucault, ed., *I, Pierre Riviere, having slaughtered my mother, my sister, and my brother: a case of parricide in the 19th century* (Harmondsworth: Penguin, 1973).

³³ Smith, *Trial by Medicine: Insanity and Responsibility in Victorian Trials* 83.

³⁴ Roger Smith comments that 'modern psychiatrists in turn consider the Rules eroded through subsequent progressive court decisions which were responsive to the medical viewpoint'. Ibid. 16.

³⁵ F. A. Whitlock, *Criminal Responsibility and Mental Illness* (London: Butterworths, 1963) 94.

³⁶ H.M. Advocate v. Savage, [1923] S. C. (J). 49. Quoted in Ibid. 95.

commission of the crime they committed. Eigen notes that 'the legal issue that sat at the heart of these mid-nineteenth-century trials was not therefore the actor's intent, but whether the person on trial was the same *person* who committed the crime'.³⁷ Despite a positive *identification* of the body, these *identities* resisted easy definition. The legal system was unable to accommodate such cases: 'the Old Bailey was asked to decide the criminal responsibility of a defendant who failed to rise to the law's conception of the Person: a sentient being capable of maintaining a continuous awareness of who he was'.³⁸ 'These individuals were 'not deluded, not deranged, not delirious in the slightest, the defendant's action was involuntary because an *automaton* had committed the crime'.³⁹ Such a description finds parallels in the work of the pioneering psychiatrist Henry Maudsley, who, in 1868, described a girl in his care as 'an automatic machine incited by sensory impressions to mischievous and destructive acts'.⁴⁰ The body of the criminal is, here, a conduit for criminal activity while the 'character' and 'mind' of the individual is completely divorced from the mechanistic functioning of the brain. In the cases that Eigen examines, acts are produced rather than committed; they are manufactured without being designed.

Wiener argues that the Edwardian era forms a sharp contrast to the Victorian in its conceptualisation of the criminal. There are two main reasons for this. Firstly, the sense of getting inside the head of the criminal was being shaken by the growing awareness that this was an impossible task. Secondly, the source of behaviour was no longer thought to be formed by a necessary connection between cognition and action.⁴¹ Wiener writes that:

the giddy sense of unleashed powers that had excited, and frightened, middle-class early Victorians, was being countered as the century progressed by a sense of subjection to the actions of remote others, actions that became increasingly crystallized into impersonal forces. By the turn of the century, it was becoming widely recognized, as the social analyst Graham Wallas put it, that "each man's life depends on causes he can't understand".⁴²

³⁷ Eigen, *Unconscious Crime: Mental Absence and Criminal Responsibility in Victorian London* Preface x.

³⁸ *Ibid.* 14.

³⁹ *Ibid.* 10.

⁴⁰ Quoted in Smith, *Trial by Medicine: Insanity and Responsibility in Victorian Trials* 53.

⁴¹ In literary terms, Rodensky locates this change in Hardy's *Tess of the Durbervilles*, a text in which the fixed idea of 'character' required by the law to apportion guilt has been abandoned. Rodensky, *The Crime in Mind: Criminal Responsibility and The Victorian Novel*. 214-5.

⁴² Wiener, *Reconstructing the Criminal: Culture, law and policy in England, 1830-1914* 160.

Books such as William Morrison's *Crime and its Causes* (1891) and Charles Goring's *The English Convict: a Statistical Study* (1913) sought deeper explanations for the emanation of crime.⁴³ Why did it exist? Where did it come from? But these questions were only being asked because of earlier legal anxiety over the complete *otherness* of those such as native Indians and insane automatons. By the end of the nineteenth-century, the suspicion had grown that everyone but oneself was just such an-other.

As such, the most heinous crimes could exist in the most unsuspected of places. David Bentley reports that, in the early nineteenth-century, the calling of witnesses to speak to the character of the accused was common: 'if an accused was of good character judge and jury would indeed expect to hear the fact confirmed by witnesses'.⁴⁴ The idea of consistency was at play here: if someone was respectable they were likely to remain respectable throughout time and in any circumstances. Responsibility thus 'lay in an evaluation of the defendant's conduct judged in the light of evidence about his or her *character and reputation*'.⁴⁵ Such a view of character is evident in *The Moonstone*, as the most conclusive evidence imaginable is amassed against firstly Rachel Verinder and then Franklin Blake, only for the reader to have a sense of mystery aroused rather than be convinced of their guilt. Even the final unmasking of Godfrey Ablewhite only works because of an investment in the 'character' of the stereotypical gentleman: it is supposed to be a shocking *dénouement* precisely because it is almost unbelievable. But by the end of the century responsibility was no longer thought to be so straightforwardly connected to evident respectability in this way: evidence of good character, therefore, became far less prevalent.⁴⁶

Of course, the belief that Edward and Leonora's public image as 'quite good people' truly reflects their turbulent relationship is precisely the naive assumption that Dowell has smashed in the course of his 'saddest story'. But the real issue is how Edward is held responsible, or not, for the misery that ensues. Dowell reports of an incident from the past in which Florence's maid had stolen some jewellery: 'We should not have believed her capable of it; she

⁴³ Ronald Thomas also notes that 'in contrast with the biological positivism of the Italians, for example, the French school (following figures like Alexandre Lacassgne, Gabriel Tarde, and Henri Joly) emphasized the sociological conditions rather than the anatomical determinants that led to crime'. Ronald R. Thomas, *Detective Fiction and the Rise of Forensic Science* (Cambridge: Cambridge University Press, 1999) 25.

⁴⁴ David Bentley, *English Criminal Justice in the Nineteenth Century* (London: The Hambledon Press, 1998) 237.

⁴⁵ Lacey, "Responsibility and Modernity in Criminal Law," 257. Richard Sennett also argues that, due to changes in the constitution of social communities and class codes in the nineteenth-century, the modern city became an arena in which a person's outward appearance became a means of concealment rather than an indicator of character. Richard Sennett, *The Fall of Public Man* (Cambridge: Cambridge University Press, 1976).

⁴⁶ Nicola Lacey argues that thought on responsibility has shifted in emphasis from 'character' to 'capacity'. It should be noted, however, that this is a shift of emphasis and not a replacement. In current thinking, capacity' is to the fore, but 'character' is still utilised. Lacey, "Responsibility and Modernity in Criminal Law."

would not have believed herself capable of it. It was nothing in her character' (126). This denial of character as a cause of criminal activity is explicitly related to Edward's behaviour in the Kilsyte case and implicitly to all his various crimes: 'So, perhaps, it was with Edward Ashburnham' (126). As a victim of Edward's 'crimes', Dowell claims the right to denounce him, yet he chooses not to do so:

I have the right to say it, since for years he was my wife's lover, since he killed her, since he broke up all the pleasantness that there were in my life. There is no priest that has the right to tell me that I must not ask pity for him, from you, silent listener beyond the hearth-stone, from the world, or from the God who created in him those desires, those madnenses (46).

Firstly, Dowell makes a claim that is later shown to be somewhat melodramatic: that Edward killed Florence. But what comes from this over the top sentiment is not a desire to condemn, nor even a desire to forgive, but, rather, a desire to justify. Edward is not held responsible for his actions because they are 'madnenses'.⁴⁷ Of course, Edward is at no point portrayed as if he is literally insane. The point is, rather, that to probe his mind in search of a good 'reason' for his behaviour is a pointless exercise. His motivations are not 'reasonable' and, in a very important sense, not commensurate with ordinary experience.

At almost every turn, Edward is seen by Dowell as the innocent party in a series of unfortunate events. Dowell constantly shifts blame elsewhere. He writes that if he had suspected Florence of sleeping with Edward, and thereby making Leonora jealous, he would have turned on her with a 'mad rage' (58). He thereby negates the impact of Florence's betrayal on their own marriage (which itself is another example of his own experience consistently being demoted) while also denying the guilt that should attach to Edward. For Dowell, it is Florence who is guilty of hurting Leonora: Edward is absolved of any responsibility. In the final part of the novel, Edward is said to have spent a considerable amount of time in helping his gardener's daughter escape conviction following an accusation of infanticide. A short number of pages later, and in throwaway fashion, Dowell refers to the 'gardener's daughter who had murdered her daughter' (195). There is no reason given for this complete assurance of guilt but it shows that Dowell is

⁴⁷ In *The Diseases of the Will*, Théodule Ribot reports a case in which a young man feels the unwanted urge to kill his own mother. He tells her of this desire and insists on enlisting in the army so as to be separated from her. Ribot writes that 'he was immovable in his resolution, went away and was a *good soldier*. However, a secret will continually urged him to desert, so as to return to the country and kill his mother' (my emphasis). Théodule Ribot, *The Diseases of the Will*, trans. Merwin-Marie Snell (Chicago: Open Court, 1896) 59-60.

capable of judgment – even judgment of the harshest kind. There is plenty of guilt to go round in *The Good Soldier* but somehow Edward, the central ‘character’ of the tale, manages to escape Dowell’s censure.

Edward is less immune from criminal prosecution. In the Kilsyte case, Edward is accused of imposing his unwanted attentions on a young lady of a lower class whilst alone together in a train compartment. In Dowell’s account, which he gets from Edward, the girl was upset about a quarrel with her boyfriend and Edward’s desire to comfort her is the innocent explanation for his actions. Dowell reports that Edward:

assured me that, before that case came on and was wrangled about by counsel with all sorts of dirty-mindedness that counsel in that sort of case can impute, he had not had the least idea that he was capable of being unfaithful to Leonora. But, in the midst of that tumult - he says that it came suddenly into his head whilst he was in the witness-box - in the midst of those august ceremonies of the law there came suddenly into his mind the recollection of the softness of the girl's body as he had pressed her to him. And, from that moment, that girl appeared desirable to him - and Leonora completely unattractive (127).

In claiming not to have found the girl attractive until he was in court hearing about his own actions, Edward’s innocence is reinforced. What is also evident is that, for Edward, character and agency are formed within the forum of the law, and as an afterthought. What Dowell would term ‘madnesses’ have been formed into standardised desires which can be held open to judgment – he has been turned into what Eigen described as ‘the law’s conception of the Person’. But the law has not captured a moment in time and attributed blame here. It has created a ‘character’ who can explain the development of the facts as they have been presented.⁴⁸ The law, because of the influence of psychology, was becoming more aware of the stereotypical and fictional nature of such constructions. But Edward accepts such a formalisation, indeed he grasps it as a definitive sign of himself: he becomes the ‘character’ bestowed on him by the court. The

⁴⁸ As Maria Aristodemou writes: 'The law is unwilling to acknowledge the idea of a life made up of discontinuous, isolated events, without a logical sequence designed to conform to and achieve an overall plan'. Aristodemou, *Law and Literature: Journeys from Her to Eternity* 139.

individual in the train compartment, the event that occurred, and the experience that he went through are, thus, obliterated.⁴⁹

Peter Brooks connects similar ideas in his work on the formal implications of police interrogation in the narrative construction of confessions. In their subtle coercion of suspects, interrogators produce inculcating statements – and so the authoring of the confession is removed from the sole ownership of the suspect: 'the narrative written in his name - signed by him - is an alienated production'.⁵⁰ With Edward, such alienation moves beyond the coercive forms of judicial power and becomes completely internalised. He is said to have no intentions towards Nancy until the moment he starts talking to her as he would to a potential conquest. Dowell proclaims that:

in speaking to her on that night, he wasn't, I am convinced, committing a baseness. It was as if his passion for her hadn't existed; as if the very words that he spoke, without knowing that he spoke them, created the passion as they went along. Before he spoke, there was nothing; afterwards, it was the integral fact of his life (98).

Edward's words are, thus, an alienated production which create, rather than capture, experience. And they are words that appear to come from nowhere – at least nowhere from which blame or guilt could be attributed.⁵¹ Edward's indiscretions pile up without ever attaching themselves to him. His actions are, like the automatons that Eigen studies, somehow not his own. No wonder Dowell finds it impossible to give an 'all-round impression' of such a figure, and why he falls back on the superficial public construct of the 'good soldier' with which his knowledge of Edward had begun.

⁴⁹ Edward lets his motive be told to him because he cannot define it himself. Wittgenstein suggested a similar idea when he wrote that 'in a law-court you are asked the motive of your action and you are supposed to know it. Unless you lie you are supposed to be able to tell the motive of your action. You are not supposed to know the laws by which your body and mind are governed. Why do they suppose you know it? Because you've had such a lot of experience with yourself!'. Ludwig Wittgenstein, *Lectures and Conversations on Aesthetics, Psychology, and Religious Belief*, ed. Cyril Barrett (London: Blackwell, 1966) 21.

⁵⁰ Peter Brooks, *Troubling Confessions: Speaking Guilt in Law and Literature* (Chicago: University of Chicago Press, 2000) 78.

⁵¹ Ford writes of a similar idea in a non-fiction work, connecting notions of crime, authorship and motivation in a startling way: 'I imagine that the greatest literary crime ever committed was Thackeray's sudden, apologetic incursion of himself into his matchless account of the manoeuvres of Becky Sharp on Waterloo day in Brussels. The greatest crime that anyone perhaps ever committed! For the motive of most crimes is so obscure, so pathological or so fatalized by hereditary weakness that there is almost nothing that can not be pardoned once one has dived beneath the calm surface of things. But Thackeray as child-murderer can never be forgiven: the deeper you delve into the hidden springs of his offence the more unforgiveable does he appear'. Ford, 'The English Novel', in Ford Madox Ford, *Critical Writings*, ed. Frank MacShane (Lincoln: University of Nebraska Press, 1964) 7.

Causes, Clues and Expertise

In Wiener's account, by the end of the nineteenth-century, the criminal comes to be 'reconstructed' in a way that takes little account of the 'responsible individual' so prevalent throughout the nineteenth-century. One of the texts he cites in this development is the Rev. William Morrison's *Crime and its Causes*. Morrison, a prison chaplain, attempts to provide a serious account of crime's origins. Yet, while Wiener is right to use this source as an example of a more in depth explanation of crime (as opposed to simple 'depravity') it is also an example of the kind of thinking that was fast becoming outdated. Morrison, in attempting to discern causes, only considers crime in terms of the results it could rationally be expected to have. So the possible explanation of poverty as a cause of crime is only examined in relation to the specific offence of theft (as that is the only crime which it would be rational to see more evidence of amongst the poor rather than the rich).

In fact, the 'responsible individual' theory was lessening in influence precisely because such connections could not be so easily assumed. There was a proliferation of causes for any one event and reason or rationality was only one element amongst many. The myth of a single cause was being ousted in all fields of cultural life.⁵² For instance, whereas previously, Charcot had realistically postulated the cause of hysteria in a single lesion in the brain, Freud declared there to be an over-determination of causes in the dream work or neurotic symptom.⁵³ Similarly, the task of tracing the historical causes of events was undermined by Max Weber's methodological essays. In fact, Weber made a conscious parallel between the work of the social sciences and criminal inquiry:

We ask first, in common with juristic theory, how in general is the attribution of a concrete effect to an individual "cause" possible and realizable in principle in view of the fact that in truth an *infinity* of causal factors have conditioned the occurrence of the

⁵² In philosophy, such thinking had perhaps come a little earlier, as John Stuart Mill had criticised Hume for ignoring the complexities of antecedents which go to form a consequence. However, Mill did suggest that human beings still tended to think in terms of singular causes. See H. L. A. Hart and A. M. Honore, *Causation in the Law* (Oxford: Clarendon Press, 1959) 15-17.

⁵³ Stephen Kern, *A Cultural History of Causality: Science, Murder Novels, and Systems of Thought* (Princeton: Princeton University Press, 2004) 244.

individual "event" and that indeed absolutely all of those individual causal factors were indispensable for the occurrence of the effect in its concrete form.⁵⁴

The discernment of such an infinity of causal factors was partly due to scientific progress. In 1902 the French physicist Henri Poincare wrote that 'we are continually perceiving details ever more varied in the phenomena we know, where our crude senses used to be unable to detect any lack of unity. What we thought to be simple becomes complex, and the march of science seems to be towards diversity and complication'.⁵⁵ The illumination provided by science's intricate devices thus brought with it more, rather than less, uncertainty in the analysis of phenomena. In keeping with its own diversity there were, therefore, numerous reasons why between the nineteenth and twentieth centuries, as Stephen Kern puts it, 'causal understanding moved in the direction of increasing specificity, multiplicity, complexity, probability, and uncertainty'.⁵⁶

The relationship between this cultural dissolution of single causes and criminology was explicitly raised by a German literary series entitled *AuBenseiter der Gesellschaft: Die Verbrechen der Gegenwart* ('Outsiders of Society: The Crimes of Today'). In his penetrating analysis of the series Todd Herzog points out that 'the criminal justice system, like the criminal case study, seeks to construct a narrative that traces an event back to [...] a cause'.⁵⁷ For Herzog, the heritage of such criminal case studies in Germany was seen in the *Pitaval* tradition. Much like the *Old Bailey Sessions Papers* in England, these were short accounts of criminal cases, made with the lay reader in mind.⁵⁸ These works 'seemed to be able to explain the causes of criminal behaviour'.⁵⁹ By contrast, in 'Outsiders of Society', the illustration of a proliferation of causes 'is precisely what the series strives to attain as it demonstrates the difficulty (perhaps impossibility) of clearly locating causality and guilt'.⁶⁰

With even criminal case studies being driven into a position in which single causes could not be determined, how was the criminal court to react? The answer was to fall back on the very

⁵⁴ Max Weber, "Objective Possibility and Adequate Causation in Historical Explanation," in *The Methodology of the Social Sciences*, ed. Edward A. Shils and Henry A. Finch (New York N.Y.: The Free Press, 1949), 169. First published in 1914.

⁵⁵ From Henri Poincare, *Science and Hypothesis*. Quoted in Kern, *A Cultural History of Causality: Science, Murder Novels, and Systems of Thought* 9.

⁵⁶ Ibid. 6.

⁵⁷ Todd Herzog, "Crime Stories: Criminal, Society and the Modernist Case History," *Representations* 80 (2002): 54.

⁵⁸ The *Old Bailey Sessions Papers* were transcripts of trials from the famous court which were 'assembled and published as pamphlets, of which there were one or more for each session. It is pretty clear that the whole process was a commercial venture with an eye to the interest of the public in general'. Thomas Rogers Forbes, *Surgeons at the Bailey: English Forensic Medicine to 1878* (New Haven, Conn. ; London: Yale University Press, 1985) 17.

⁵⁹ Herzog, "Crime Stories: Criminal, Society and the Modernist Case History," 35.

⁶⁰ Ibid.: 39.

specificity of knowledge that was splintering the sense of singular causation in the first place. Hart and Honore write that 'very often expert evidence will settle whether an A can cause a B'.⁶¹ Such evidence had been a feature of common law trials for many years - the earliest official point of its use, and its classic formulation, coming in the case of *Folkes v. Chard* (1782).⁶² The judge in this case ruled that 'the opinion of scientific men upon proven facts may be given by men of science within their own science'.⁶³ In its earliest origins, the predominant science to be utilised in this respect was medicine.⁶⁴ The *Old Bailey Sessions Papers* contain the testimony of 'surgeons, physicians, medical students, apothecaries, chemists, midwives, and empirics' – evidence which was commonly given on the basis of a fairly broad range of knowledge.⁶⁵ In his analysis of the history of coroner's inquests, Ian Burney reports that prior to reforms in 1858 medical witnesses were not called to inquests for their special skill in reading dead bodies but for their experience of a specific individual whilst alive.⁶⁶ It was only as the century progressed that in depth post-mortems, conducted by trained Pathologists, became more routine.⁶⁷ By 1895, the London County Council's Public Control Committee was adamantly claiming that the earlier claim of the 1823 Medical Witnesses Act that 'all medical men are equally competent' was erroneous.⁶⁸

The Pathologist, in contrast to the earlier medical expertise of the practising Doctor, sought to 'ground all causal explanations in the physical traces he found upon and in [the body]'.⁶⁹ Such traces could, individually, reveal the causal factors of a death. Once knowledge was removed from the individual taken as a whole, living, organism in this way, the reduction of its dead matter to divisible parts began and forensic science, as opposed to medicine, became the dominant form of expert testimony. Roger Smith writes that in the division of labour in relation

⁶¹ Hart and Honore, *Causation in the Law* 366.

⁶² Some commentators have noted the un-formalised use of expert evidence in earlier times. Carol Jones writes that 'legal texts cite the case of *Folkes v. Chard* as the precedent for the acceptance of expert testimony on opinion in English courts despite the fact that experts had been giving opinion evidence for almost a century beforehand'. Jones cites the use of physicians as expert defence witnesses by Spencer Cowper in 1678. Carol A. G. Jones, *Expert Witnesses: Science, Medicine, and the Practice of Law* (Oxford: Clarendon Press, 1994) 57.

⁶³ Brian Wynne, "Establishing the rules of laws: constructing expert authority," in *Expert Evidence: Interpreting Science in the Law*, ed. Roger Smith and Brian Wynne (London ; New York: Routledge, 1989), 29.

⁶⁴ Roger Smith, "Forensic Pathology, Scientific Expertise, and the Criminal Law," in *Expert Evidence: Interpreting Science in the Law*, ed. Roger Smith and Brian Wynne (London ; New York: Routledge, 1989), 59.

⁶⁵ Forbes, *Surgeons at the Bailey: English Forensic Medicine to 1878* 15.

⁶⁶ Ian A. Burney, *Bodies of Evidence: Medicine and the Politics of the English Inquest, 1830-1926* (Baltimore ; London: Johns Hopkins University Press, 2000) 109.

⁶⁷ Ibid. 113.

⁶⁸ Ibid. 123.

⁶⁹ Ibid. 131. In relation to *The Good Soldier* Sally Bachner notes that 'death enables the novel's only successful strategies for knowing another's heart: identification and autopsy'. Sally Bachner, "'The Seeing Eye': Detection, Perception and Erotic Knowledge in *The Good Soldier*," in *Ford Madox Ford's Modernity*, ed. Robert Hampson and Max Saunders (Amsterdam: Rodopi, 2003), 106.

to dead bodies, the medical examiner 'performs the autopsy (or post-mortem) on "the body", the scientist examines "the bits" removed from the body'.⁷⁰ Poisoning trials then became focal points of public interest as the Victorian era progressed, with the expert Toxicologist acting 'as a mediator between the insensible and the sensible, his task to demonstrate the presence of things not evident to others'.⁷¹

While the coroner, pathologist and toxicologist examined the traces that were left on and in the body a whole array of techniques began to be used in the opposite direction. Alphonse Bertillon, whose anthropometric system of criminal identification will be referred to at length in due course, became one of the driving forces behind this as he directed his research 'to the crime sites themselves, and in this sense the use of clues, forensic photography, and anthropometry together contributed to the crystallization of what came to be called "criminal science"'.⁷² In India, in 1897, the first recorded case was solved using fingerprint evidence – a bloody thumbprint being left at the scene of a crime.⁷³ The new technology of discovering the criminal's latent prints at a crime scene then became one of the most potent weapons in the investigator's armoury. With an ethos summarised by Edmond Locard's influential dictum that 'every contact leaves a trace', the range of 'traces' left at a crime scene multiplied.⁷⁴ By the turn of the century 'the task of the forensic scientist was to examine paint, fibres, bloodstains, soil, debris, cigarette ash, marks, and impressions'.⁷⁵ The body always left a trace on whatever it had come into contact with, but these were traces that, to most, were invisible. It took the eye of the trained expert to discern who had been where.⁷⁶

Such techniques of detection formed the antidote to public concerns about hidden criminality: now the stain of guilt was invisible to the naked eye, but could never actually be erased. Crime tarnished the world in which it was committed with a smear that could be

⁷⁰ Smith, "Forensic Pathology, Scientific Expertise, and the Criminal Law," 60.

⁷¹ Ian Burney, *Poison, Detection, and the Victorian Imagination* (Manchester: Manchester University Press, 2006) 6.

⁷² Martine Kaluszynski, "Republican Identity: Bertillonage as Government Technique " in *Documenting Individual Identity: The Development of State Practices in the Modern World*, ed. Jane Caplan and John Torpey (Princeton: Princeton University Press, 2001), 127.

⁷³ Chandak Sengoopta, *Imprint of the Raj: How Fingerprinting was Born in Colonial India* (London: Macmillan, 2003) 158.

⁷⁴ Matsuda writes that 'medical-legalists operated with a profound assumption: nothing takes place without leaving some sort of imprint, track, or other indication. All events have their witness, their memory: the trace'. Matt K. Matsuda, *The Memory of the Modern* (New York, N.Y.; Oxford: Oxford University Press, 1996) 139.

⁷⁵ Jones, *Expert Witnesses: Science, Medicine, and the Practice of Law* 95.

⁷⁶ Roberts and Zuckerman write that 'an expert is often called on to report facts that are only observable or intelligible to a trained eye – whether to a naked eye, or to an eye enhanced by specialist equipment like an electronic microscope or infra-red sight – and to draw conclusions from his own direct observations'. Paul Roberts and Adrian Zuckerman, *Criminal Evidence* (Oxford: Oxford University Press, 2004) 292.

observed, collected, and deciphered by, and only by, the trained expert.⁷⁷ But the methodology employed by such expertise was not unique to the work of detecting crime. Carlo Ginzburg connects the art criticism of Giovanni Morelli, the psychoanalysis of Sigmund Freud and the detection of Sherlock Holmes as examples of a newly rediscovered epistemological paradigm that began to circulate in the late nineteenth-century. All three of these figures made almost imperceptible details the bearers of a hidden truth. While Freud examined the symptoms of neuroses, and Holmes found the clues to criminal activity, Morelli discerned forgeries not by what was perceived as the chief subject of the artwork but by its seemingly unnoticed features such as fingernails, eyebrows and eyelashes. One of Ginzburg's key claims is that these examples all required their clues to be placed in a classificatory schema of esoteric knowledge (a knowledge which, in fact, came into being with the creation of a method such as psychoanalysis itself).⁷⁸ In the criminal trial such a device could be seen in 'the development of new techniques of forensic investigation' which deduced 'unrepeatable causes from consequences (ie. the traces or clues that remain)'.⁷⁹ Those with the expertise to discern such causes became figures of some celebrity: 'these were the experts who supplied the means to trap even the most sophisticated villain. They could not only prove him guilty beyond reasonable doubt; they could prove him guilty beyond any doubt at all'.⁸⁰ In the early twentieth-century, the most prominent of these figures was Sir Bernard Spilsbury, whose testimony came to be considered of the highest value.⁸¹ Spilsbury, and experts like him, became mechanisms of social reassurance: they ensured that the criminal would, without fail, be caught, as their powers of detection were ranked alongside those of their fictional contemporary, Sherlock Holmes.

The comparison with Holmes' detection is, in fact, instructive in a number of ways. Franco Moretti writes of the way that 'Holmes knows all the possible causes of every single

⁷⁷ This sense of finding the invisible stain is still prevalent today, with recent reports of a new fingerprinting invention which can 'reveal "hidden" fingerprints on metal - especially shell casings - by detecting the minute traces of corrosion on the surface caused by salt in the sweat on human fingers'. Quotation taken from BBC News, "Fingerprint Test May Catch US Killer", 22/1/09. See <http://news.bbc.co.uk/1/hi/uk/7844665.stm>.

⁷⁸ Carlo Ginzburg, *Clues, Myths, and the Historical Method* (Baltimore: Johns Hopkins University Press, 1989).

⁷⁹ Lindsay Farmer, "Arthur and Oscar (and Sherlock): The Reconstructive Trial and the "Hermeneutics of Suspicion", *International Commentary on Evidence* 5, no. 1 (2007): 7.

⁸⁰ Jones, *Expert Witnesses: Science, Medicine, and the Practice of Law* 81.

⁸¹ M. A. Green comments that most of Spilsbury's evidence was 'always accepted without question by the court. No other expert could stand up against him. Indeed, in 1915 a disgruntled defence K.C. referred to his "papal infallibility"'. M. A. Green, "Is Sir Bernard Spilsbury Dead?," in *Crime Investigation Art or Science: Patterns in a Labyrinth: The proceedings of a Conference for senior police investigators and their specialist colleagues held at Christ Church, Oxford, on 24 and 25 September 1982 with the purpose of seeking to identify pathways and patterns of developments in modern crime investigation*, ed. Alistair R. Brownlie (Edinburgh: Scottish Academic Press, 1984), 25.

event. Thus the relevant causes are always a *finite* set'.⁸² It is this reduction of seeming infinitude into a limited set of circumstances which is precisely the reassurance that expertise provided. Of course, in the case of Holmes, his area of expertise is more wide ranging than any real life expert witness. He could never know what a case would throw up and so had to 'be well informed about a vast spectrum of potentially relevant bits of information'.⁸³ Such knowledge allowed Holmes to make logical connections between the normally unobserved minutiae of his surroundings. Or rather, the details that Holmes utilises are not *realised* by others in their full significance because they do not have his knowledge. Holmes' detection thus relies 'on strong indexical codes belonging to special areas of knowledge and techniques of classification and identification worked on and recast by Holmes himself'.⁸⁴ In another connection to Ginzburg's analysis, and in a method which bears striking similarities to the philosophy of Charles Sanders Peirce, Holmes' next move, following the discernment of a hidden clue, is to test his own hypothesis.⁸⁵ Neither induction nor deduction is, in actual fact, Holmes' complete method. Rather, he 'starts by observing, recording, and matching up several observational data (induction); he then advances a hypothesis to account for or interpret the observed facts in order to identify *possible causes* of the *resulting event (abduction)*'.⁸⁶ Holmes begins with observational data, but it is data that has only become observable, has only been made visible to Holmes himself, because of the 'techniques of classification' with which he works. The hypothesis then put forward, which tests the data observed, is similarly built upon Holmes' own special areas of knowledge. Holmes never ventures outside of this zone: he is never surprised by what he finds or placed in a position of having to revise what he thinks he knows. By the logic of pragmatism, Holmes thus only rearranges the *facts* in a way that makes for a practically efficient interpretation. The classic fictional detective, whose work was so intimately connected to the scientific expert, is, therefore, 'a riddle-solver, not an interpreter of "opaque" facts'.⁸⁷ As with Forster's portrayal of Aziz's trial in *A Passage to India*, the issue was how to create truth in an act of puzzle-solving, rather than how to reconstruct reality by the solving of a problem.

⁸² Franco Moretti, *Signs Taken for Wonders: Essays in the Sociology of Literary Forms*, trans. David Forgacs and David Miller Susan Fischer (London: Verso, 1988) 145.

⁸³ Marcello Truzzi, "Sherlock Holmes: Applied Social Psychologist," in *The Sign of Three: Dupin, Holmes, Peirce*, ed. Umberto Eco and Thomas A. Sebeok (Bloomington; Indiana: Indiana University Press, 1983), 62.

⁸⁴ Massimo A. Bonfantini and Giampaolo Proni, "To Guess or Not to Guess?," in *The Sign of Three: Dupin, Holmes, Peirce*, ed. Umberto Eco and Thomas A. Sebeok (Bloomington; Indiana: Indiana University Press, 1983), 127.

⁸⁵ Bonfantini and Proni note that 'anyone who knows Peirce's works will have no difficulty in discerning the perfect structural correspondence between the logic of investigation according to Holmes and the logic of the process of knowledge in general and of science in particular according to Peirce'. *Ibid.*, 123.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*, 127.

As knowledge has continued to branch off into ever more specialist areas, expert evidence has been submitted from a burgeoning range of witnesses.⁸⁸ A series of evidential rules have also arisen in relation to expert testimony. One of the most prominent of these, the ultimate issue rule, prohibits the solicitation of expert testimony as to the existence of a constitutive fact (such as the intention to kill in a case of murder). Yet it has been noted that 'it is doubtful whether any such rule has ever fully crystallized' and that 'experts are asked questions on such issues and do give their answers'.⁸⁹ This was one of the issues raised by Marshall Hall in his defence of George Joseph Smith in the infamous 'Brides in the Bath' case. Sir Bernard Spilsbury, who had been called as an expert witness by the prosecution, was specifically asked whether the deaths in question could be consistent with a theory of accidental death. Marshall Hall's objection was that this 'was *the* question for the jury', but the question was allowed and Smith was convicted.⁹⁰ This case was also the first in England to utilise 'similar fact evidence', in which evidence of other offences other than the one at issue is deemed admissible if it goes towards proving 'design' on the part of the accused. Expertise was thus employed, and in this case allowed, in the seemingly basic connection of facts as 'similar'.

Marshall Hall's objection was based on a notion of expert testimony summarised by a recent legal textbook:

Traditional theory has it that the role of the expert is to furnish fact-finders with the specialist knowledge they require to return a well-informed, true verdict on the facts of the case. Expert witnesses are not supposed to pre-empt the jury's determinations, even on technical or scientific matters beyond lay knowledge or experience.⁹¹

This 'traditional theory' is one in which expertise is utilised in order to educate the juror, providing them with the knowledge they need to adjudicate on a case. But, as Scott Brewer remarks, 'most judges and juries [...] are not sufficiently familiar with relevant scientific fields to be able independently and reliably to bring scientific information to bear on their decisions. Instead, they must solicit and defer to the judgments of expert scientific witnesses'.⁹² Rather than educating the juror, then, the expert commands that a certain decision be taken.

⁸⁸ Smith, "Forensic Pathology, Scientific Expertise, and the Criminal Law," 58.

⁸⁹ Roberts and Zuckerman, *Criminal Evidence* 95. Jones, *Expert Witnesses: Science, Medicine, and the Practice of Law* 105.

⁹⁰ Eric R. Watson, ed., *Trial of George Joseph Smith* (Edinburgh: William Hodge & Co, 1922) 37.

⁹¹ Roberts and Zuckerman, *Criminal Evidence* 294.

⁹² Scott Brewer, "Scientific Expert Testimony and Intellectual Due Process," in *The Philosophy of Expertise*, ed. Evan Selinger and Robert P. Crease (New York: Columbia University Press, 2006), 111.

The growing authority of expertise in the courtroom, while saving the world of singular causes so important for judgment to be possible, was, thus, removing the question of judgment from the layman. The notion of causation, the basic connecting of events crucial to a trial's reconstruction of events, was being taken out of the hands of ordinary observation and experience. As Matsuda writes 'the witness, the presence of the one who had heard and seen, was challenged, or justified, by the one who never heard and never saw, but who nonetheless could render commentaries on the experience of the other'.⁹³ The myth of singular causes needed the parallel myth of the unfailing expert vision that could see them. Experience was no longer enough – its raw immediacy and collected recounting now had to be supplemented by expert authority.⁹⁴ Crime, and the criminal, was not to be perceived by the layman in ordinary experience but to be deciphered, classified and interpreted by a range of experts bound by a schema of esoteric knowledge.

Identity and Identification

The use of expertise at trial helped to safeguard the notion of singular causes, of which 'character' and 'intent' could be examples. But identity and expertise intersected at exactly the same time in a different, perhaps even more essential way: that of criminal identification. What happened with the identification of criminals in the late nineteenth and early twentieth-century mirrors exactly the dissolution of character that was seen in questions of motive and intent. As Ronald Thomas notes, 'during the nineteenth-century, this development involved the systematic transformation of the notion of the individual citizen's essential reality from something we call "character" to something we came to call "identity"'.⁹⁵ The precise way in which this was done, and the role that expertise played in its evolution, also had parallels in the novel, where the depiction of identity needed new literary techniques.

The most obvious form of identification had, for a long time, been the individual name. But whereas in the medieval and early modern periods when this had been tied, as with so much else, to the local knowledge of a community, in the early nineteenth-century the greater mobility of people throughout nation states led to a more systematic tracking of individual identities.⁹⁶ In

⁹³ Matsuda, *The Memory of the Modern* 119.

⁹⁴ It will be noted that this stress on esoteric knowledge and authority in place of an undiluted experience suggests a pre-modern, as opposed to modern, outlook.

⁹⁵ Thomas, *Detective Fiction and the Rise of Forensic Science* 11.

⁹⁶ Jane Caplan and John Torpey, eds., *Documenting Individual Identity: The Development of State Practices in the Modern World* (Princeton: Princeton University Press, 2001) 7.

a sense, the change from character to identity was already complete at this stage, as identity became known by 'means of registrations, passes, censuses, and the like'.⁹⁷ As Jane Caplan and John Torpey put it:

The identity document purports to be a record of uniqueness, but also has to be an element in a classifying series that reduces individuality to a unit in a series, and that is thus simultaneously deindividualizing. This discloses the fundamental instability of the concept of the "individual" as such, and helps to explain the uneasy sense that we never fully own or control our identity, that the identity document carries a threat of expropriation at the same time as it claims to represent who we "are".⁹⁸

Even as it conferred identity, official documentation seemed to take it away. Despite this, the fundamental component of the early identity document – the validated name – was vitally linked to an individual's sense of self. To be an individual was to have a name.⁹⁹ To have the document was to be that person – but documents could be forged and names easily appropriated.

The motivation to take on new identities in this way was not limited to the potential it offered for criminal opportunities. First time offenders were treated with greater leniency by the justice system so avoiding recognition as a recidivist was also worthwhile. The authorities, becoming aware of this practice amongst the criminal classes, had to find methods of identifying the real criminal behind the fake name. In London, throughout the Victorian period, all newly convicted prisoners were initially held in Holloway and inspected three times a week by the Metropolitan and City of London Police. It was the recognition of previous offenders by these officers which was relied upon to identify recidivists and then treat them accordingly.¹⁰⁰ This was a reasonably successful system, but it was not without difficulties. It took up a considerable amount of man hours and relied on both chance (as not all police officers attended every inspection) and human fallibility. It was also easily circumvented. A criminal need only move to an area policed by a different force to completely evade detection. Failing this, the other main method of identification was the register of distinctive marks, in which descriptions of convicted

⁹⁷ Ibid.8.

⁹⁸ Ibid.

⁹⁹ The centrality of this feature of modern subjecthood is evident from its importance in the early novel of experience. As Ian Watt points out, in literature the 'function of proper names was first fully established in the novel'. Ian Watt, *The Rise of the Novel: Studies in Defoe, Richardson and Fielding* (London: Chatto & Windus, 1974) 18.

¹⁰⁰ This 'was considered a very effective method of identifying recidivists by the police: in 1883, for instance, 1,826 repeat offenders were identified by this exercise, 1,711 in 1888 and 1,949 in 1893'. Sengoopta, *Imprint of the Raj: How Fingerprinting was Born in Colonial India* 16.

criminals were made. The register was an unsystematic format and its descriptions were not formalised in any way. It listed only very broad traits such as 'tall', 'stocky', or 'dark', to which was added a note of any tattoos or visible scars.¹⁰¹ In placing faith in the ability of police officers to recognise previously convicted criminals, and the assurance found in an unsystematic description of physical attributes, Victorian society placed their belief in the hands of *recognition*. Just as in the realist novel, in reality, the identity of a character would inevitably be discerned.

But in the late Victorian period recorded crime was increasing. This was thought to be predominantly the result of recidivism, but nothing could be definitively proven. For crime to be reduced, it would first have to be ascertained exactly who was committing it. Recidivism therefore became 'the central issue around which criminal policy was reshaped in the 1890s'.¹⁰² Prominent legal cases formed the focal point of attendant concerns about criminal identification. The famous case of the Tichborne Claimant in the early 1870s had already raised serious question marks about the accuracy of identification. It was, however, superseded in the cultural imagination by the miscarriage of justice involving Adolf Beck, who was first tried in 1896 for a series of confidence tricks over the previous eighteen months in which affluent women were fleeced of both cash and jewellery.¹⁰³ A pattern of very similar crimes had taken place in 1877, with a conviction being made, and it was thought that this recent spate was the work of the same criminal. Beck was identified as the guilty party in two ways. Firstly, fifteen of the victims inspected Beck. Ten of them claimed that he was the culprit, with only one of them stating that he definitely was not the man in question.¹⁰⁴ Following this, the officers who had arrested the perpetrator of the 1877 frauds were traced and asked to identify Beck, which they both duly did, Constable Ellis Spurrell stating that 'There is no doubt whatever he is the man'.¹⁰⁵ The second way in which Beck was identified was by way of his handwriting. Letters had been exchanged as part of the confidence trick. A comparison was made between those sent in 1877 and those in 1894-5 and the judgment made that they were the work of the same hand. The fact that Beck had been in Peru in 1877 and so incapable of committing the earlier offences was, inexplicably, never raised by his defence counsel at trial. He was found guilty and sent to prison. Upon his

¹⁰¹ Simon A. Cole, *Suspect Identities: A History of Fingerprinting and Criminal Identification* (Cambridge, Mass.: Harvard University Press, 2001) 28.

¹⁰² Wiener, *Reconstructing the Criminal: Culture, law and policy in England, 1830-1914* 342.

¹⁰³ Ian Dennis writes that 'well-known cases of miscarriage of justice resulting from mistaken evidence of identity start with Adolf Beck'. I. H. Dennis, *The Law of Evidence*, 2nd ed. (London: Sweet & Maxwell, 2002) 216.

¹⁰⁴ John W. Shepherd, Haydn D. Ellis, and Graham M. Davies, *Identification Evidence: A Psychological Evaluation* (Aberdeen: Aberdeen University Press, 1982) 10.

¹⁰⁵ Eric R. Watson, ed., *Trial of Adolf Beck 1877-1904* (Edinburgh: William Hodge and Company Ltd, 1924) 19.

release he was charged again in 1904 for yet another outbreak of the same crimes. It was only at this point that he was finally discovered to be innocent as the real culprit was found.

The failure of identification in the Beck case, therefore, took place on two distinguishable planes. Firstly, he was falsely identified by witnesses because he shared a passing resemblance to the real culprit – who was later found to be one John Smith. In the preface to the Notable Trials series report of the case Eric Watson writes that for this reason the Beck case 'still remains a most remarkable example of the fallibility of human testimony and of human judgment'.¹⁰⁶ This had far reaching effects. After his acquittal 'a committee of enquiry, headed by the Master of the Rolls, investigated the whole saga, concluding that evidence of identity based solely on personal recognition was unreliable'.¹⁰⁷ Similar conclusions were being reached in the scientific forum, particularly on the continent.¹⁰⁸ In France, for instance, psychologists such as Edouard Claparède were conducting tests, the results of which undermined the certainty assumed to be provided by conscious human memory. Claparède had masked men burst into a room in which he was working with his students and make a series of strange gestures and outbursts. Upon asking his students for their recollection of the event some two weeks later he found their memory to be extraordinarily weak: most of them could not even identify the masks worn by the intruders. He concluded that 'the reliability of past events was shaped less by experience than by the structure of expectations by which they were investigated'.¹⁰⁹ Witnesses, even when acting with the best of intentions, were turning out to be the most unreliable of evidentiary resources. As Matsuda writes: 'witnessing depended upon presence, yet presence (like "experience") was itself a problematic category for establishing the truth of the past'.¹¹⁰ Experience, previously the source of fact and truth, was now a 'problematic category' in evidential terms because its discovered yield was bearing marked discrepancies to its original lived immediacy.

The second way in which Adolf Beck was falsely identified, the analysis of his handwriting, suggested that he had the same 'hand' as John Smith. The expert testimony of graphologists in this instance rested on the notion that Beck was consciously attempting to make his writing appear different to its natural style. The proof that they were, in fact, mistaken was a serious body blow to the 'science' of graphology. Its premise, that conscious disguise, as opposed

¹⁰⁶ Ibid. 7.

¹⁰⁷ Sengoopta, *Imprint of the Raj: How Fingerprinting was Born in Colonial India* 14.

¹⁰⁸ Shepherd, Ellis, and Davies, *Identification Evidence: A Psychological Evaluation* 1.

¹⁰⁹ Matsuda, *The Memory of the Modern* 109.

¹¹⁰ Ibid. 105.

to unintentional authenticity, could be spotted and unmasked had now to be seriously questioned.¹¹¹

Ironically, a further way in which the authorities strove to fix Beck's identity, but which was not properly utilised, bore striking similarities to methods which would soon become the focal point of efforts to avert similar injustices recurring. When Beck went to prison, he had to undergo the standard physical examination made on admittance. This information was to be added to his record – which was the criminal record of the 'John Smith' he was assumed to be. At this point it was discovered that while he was not circumcised, John Smith was. Beck therefore had his prisoner status changed to that of a first time offender. But, in another inexplicable oversight, this information was not communicated to the relevant authorities and the injustice remained unchecked.

The key marker of Beck's identity ultimately resided in an intimate physical detail – a hidden detail even. Of course, the discernment of the minutiae of an individual's physical being was not a new form of identification. In the Tichborne case, Lady Tichborne was convinced by the claimant because his ears 'looked like his uncle's'.¹¹² Similarly, in a case which resembled Tichborne in many respects, a man who claimed to be the Second Kumar of Bhawal was identified by his sister thus: 'I noticed his features. I noticed his adam's apple. I noticed his hair was red; *kata* eyes, brownish. I noticed his teeth: they were those of the Second Kumar, even, smooth and beautiful. I noticed his hands and fingernails – every one of the fingernails. I noticed the palm and back of the hand. I noticed his leg, feet and toes'.¹¹³ Just like the Tichborne claimant, 'the kumar's ears were so unusual that they were a mark of identity'.¹¹⁴ And, in a connection to the register of distinctive marks, it was the finding of a scar on the claimant's left foot which corresponded with an archived medical report on the Second Kumar that was thought to be particularly strong evidence of his identity.

But such distinctions of unusual physical detail could not always be relied upon to exist, and their random and unsystematic formation still implied a great deal of uncertainty (as such, the identity of the Kumar remains an open question to this day). That specific details could be systematically utilised for the purposes of identification was, however, the way forward. Alphonse Bertillon was, in the early 1880s, a low ranking official in the Parisian police force, tasked with the job of matching the descriptions of individuals in arrest reports in the hope of

¹¹¹ The subject of graphology will be returned to in more detail in the following chapter on Proust.

¹¹² Sengoopta, *Imprint of the Raj: How Fingerprinting was Born in Colonial India* 13.

¹¹³ Partha Chatterjee, *A Princely Impostor?: The Strange and Universal History of the Kumar of Bhawal* (Princeton, N.J.: Princeton University Press, 2002) 8.

¹¹⁴ Ibid. 250.

identifying repeat offenders.¹¹⁵ Frustrated by both the inaccuracy and lack of specificity in the descriptions he found, Bertillon hit upon a new, ‘anthropometric’, form of identification. This technique involved the measuring of various portions of the body (for example, the circumference of the head, the length between wrist and elbow, the width of the foot). Foremost, amongst these measurements was the examination of the ear. Bertillon’s method rested on two fundamental assumptions: that the human skeleton was peculiarly unique to its owner and that its dimensions remained unaltered once adulthood had been reached. But this was uniqueness by a route – it was not immediately discernible. Bertillon’s measurements were notoriously difficult to make and a specific area of expert ‘measuring’ came into being. This was no work for the lowly police clerk. Identity was now, rather, in the hands of the expert, via the measurements of their carefully calibrated instruments. As Matsuda writes: ‘Bertillon’s team carefully guided and noted the measurements, but the real testimonies of identity now were in the lenses and engraved scales of the camera, meter stick, and calipers’.¹¹⁶ This was a system which could literally capture identity: ‘no name change, no change in personality could elude Bertillon’s classification system, which ensnared the body in a textual net made of its own naked corporeality’.¹¹⁷ Like Florence in *The Good Soldier*, identity had become a ‘scrap of paper’.

The anthropometric system made detail king. As such, it utilised exactly the same evidential paradigm defined by Ginzburg. Bertillon’s ears were in fact the same as Morelli’s – the often unexamined item of the physical body that could *give identity away*.¹¹⁸ Yet, Bertillonage also had another facet. Identity lay in physical details, systematically measured and recorded. But, it was the *combination* of these details that made the individual. In Bertillon’s classroom, where he trained new operatives in his system, the following was written on the wall in large black letters: ‘The eye sees in each thing only what it is looking for, and it only looks for what is already an idea in the mind’.¹¹⁹ In normal perception, people only see what they expect to. With Bertillon’s system, by contrast, the identity card (termed a *portrait parle* by Bertillon) would *speak* the individual’s identity by collating measurements which had to tally within a set limit of diversion.¹²⁰ Identity was the sum of seemingly insignificant parts and ‘complete identity was

¹¹⁵ Matsuda, *The Memory of the Modern* 135.

¹¹⁶ Ibid.

¹¹⁷ Cole, *Suspect Identities: A History of Fingerprinting and Criminal Identification* 53.

¹¹⁸ Ginzburg, *Clues, Myths, and the Historical Method*.

¹¹⁹ Matsuda, *The Memory of the Modern* 136.

¹²⁰ Although not using the anthropometric system, the judge in the case of the Second Kumar of Bhawal used a similar logic in his findings. Identity, for him, was ‘proved to demonstration and with mathematical certainty by the bodily features, all exceptional, and by the bodily marks, all exceptional, which rest on nobody’s credibility. These, in

about taking the face and body apart'.¹²¹ The individual had to be fragmented in order to be discerned.

The anthropometric system worked, but its weaknesses were exposed by the discovery of a competing system of identification which is still utilised to this day: fingerprinting. The discovery of fingerprints, as a mark of identity, had first been made in British India. In fact, its development owed much to the very colonial situation which formed the context of the previous chapter. It was the issue of dishonesty – specifically, the problem of impersonation – that first led administrators to think of novel ways to guarantee identity. The drawing of pensions, for instance, seemed to indicate either members of the native population living to incredible ages or the criminal adoption of identities for financial gain. William James Herschel first explored the possibility of fingerprints being added to legal documents as a form of signature in the 1860s. Herschel, however, never dreamt of the overall impact fingerprinting could have on criminal law and the identification of prisoners. Francis Galton and Edward Richard Henry were responsible for driving the system in that direction. Their efforts proved successful as, in 1897, the identification of criminals by their fingerprints was universally adopted in British India.¹²²

One reason that the development first occurred in India was that Bertillon's system was thought unworkable in the sub-continent because of the perceived similarity of the natives. Eye colour, for instance, was considered a useless distinction between Indians, as all were brown. This was despite the fact that the anthropometric system listed over twenty different shades of brown eye colour.¹²³ What did help to advance the dominance of fingerprinting in Europe, however, was the powerful hold that its potential to solve crime had upon the public's imagination. The technology which allowed for guilty prints to be revealed at the scene was fast becoming another weapon of detection in the arsenal of the expert witness. For this reason, Bertillon's promotion of forensic science, in effect, led to the demise of his own identification system as 'criminals might leave their fingerprints at the scene of a crime, but never dropped lists of their anthropometric measurements'.¹²⁴

their totality, cannot occur in a second individual'. Chatterjee, *A Princely Impostor?: The Strange and Universal History of the Kumar of Bhawal* 270.

¹²¹ Matsuda, *The Memory of the Modern* 136.

¹²² Sengoopta, *Imprint of the Raj: How Fingerprinting was Born in Colonial India* 139.

¹²³ Cole, *Suspect Identities: A History of Fingerprinting and Criminal Identification* 71.

¹²⁴ Anne M. Joseph, "Anthropometry, the Police Expert, and the Deptford Murders: The contested Introduction of Fingerprinting for the Identification of Criminals in Late Victorian and Edwardian Britain," in *Documenting Individual Identity: The Development of State Practices in the Modern World*, ed. Jane Caplan and John Torpey (Princeton: Princeton University Press, 2001), 171.

Fingerprinting was also simply more reliable. Without being able to explain why from first principles, no one had yet discovered two people with the same fingerprints. By contrast, in 1903 in the US case of 'Will West', two men were discovered who were identical to the point of foiling the anthropometric system.¹²⁵ But just as anthropometry had altered the notion of identity by taking the individual apart in order to put him back together again, so too, fingerprinting offered a different view of identity. Identity had gone from being 'a string of measurements of body parts to an image of patterned lines and ridges; from a construction that construed identity as emanating from the whole to a formulation of permanent identification from a part'.¹²⁶ Fingerprinting found identity in just one of the insignificant details that Bertillon had added together. And this identity was an image that in no way connected to the normal view of the individual. The fingerprint provided a way of *seeing* identity as an abstract image. It was a sign of unalterable selfhood and it resided in the capillary ridges of everyone's fingers.¹²⁷

Just as with other forms of expertise, the institution of fingerprint analysis as a specialist form of knowledge had to be won by treading a fine evidential line. Fingerprints, as images of individuality, had to be, in some sense, self-evident. But the analyst who appeared in court to verify the identity of two sets of prints also had to maintain their position as a member of an enlightened group who were the only ones able to make such identifications. Just as with graphology, where identity was to be found in the *hand* of the individual but only correctly read by the expert, the ridges of an individual's fingers were only to be fully grasped by the analyst. Instruction manuals and diplomas were offered (the brochure for one claiming that 'this is the age of the man who knows – the trained expert').¹²⁸ By systematically offering formal training, the science of fingerprinting articulated 'norms of method and conduct that would *preclude* disagreement between experts'.¹²⁹ This, allied to a subtle refraining from the language of fact, allowed fingerprint examiners 'to insist both that fingerprints "spoke for themselves" and that credentialed experts spoke for them'.¹³⁰

¹²⁵ Ibid., 170.

¹²⁶ Ibid., 183.

¹²⁷ Even before its official use began in India, fingerprinting was formally brought into the law of Argentina in 1896 under the classification system designed by Vucetich. 'To Vucetich, fingerprints were as sublime as something like moral "truth" [they] were the "perfect expression of the physical ego"'. Kristin Ruggiero, "Fingerprinting and the Argentine Plan for Universal Identification in the Late Nineteenth and Early Twentieth Centuries," in *Documenting Individual Identity: The Development of State Practices in the Modern World*, ed. Jane Caplan and John Torpey (Princeton: Princeton University Press, 2001), 193.

¹²⁸ Cole, *Suspect Identities: A History of Fingerprinting and Criminal Identification* 195.

¹²⁹ Ibid. 201.

¹³⁰ Ibid. 209.

While the rest of the body, and certainly the 'self' that it supposedly housed, could change beyond recognition over the years, the fingerprint never altered. In this sense, it acted like a collected, tabulated form of what Walter Benjamin termed the dream 'image'. The 'image', for Benjamin, was generated in the 'echoing of two dissimilar things'.¹³¹ The physical being of an individual at two distinct moments, separated by time, were two such 'dissimilar things'. What echoed through the years though, what tied these two things together as an identity, was the image of whorls, loops and ridges that defined them. Benjamin's most developed use of the term comes in an article on Proust in which he writes that:

According to Proust, it is a matter of chance whether an individual forms an image of himself, whether he can take hold of his experience. It is by no means inevitable to be dependent on chance in this matter. Man's inner concerns do not have their issueless private character by nature. They do so only when he is increasingly unable to assimilate the data of the world around him by way of experience.¹³²

Finding an image of oneself was thus becoming a problem just as the identification 'image' of the fingerprint was coming into being. So, at the same time as citizens were coming to be identified with greater precision, thus increasing their potential surveillance, individuals were, themselves, losing their identities. Not only was the experience of knowing another person downgraded by the impoverishment of recognition as a form of identification, but the ability to turn one's own experience into identity was being lost.

By turning the digits of the hand into 'the individual letters of a printing press' the criminal could now be 'captured in police files in the form of a concise "primary text" literally "hand-written" by (and on) the suspect body itself'.¹³³ But what of the 'primary text' of literature and its printed form? For Ford Madox Ford the aim of fiction was to make his readers *see* truth, but this was not to be achieved by providing a realist account of 'facts'.¹³⁴ Ford's technique,

¹³¹ J. Hillis Miller, *Fiction and Repetition: Seven English Novels* (Oxford: Basil Blackwell, 1982) 9.

¹³² Walter Benjamin, 'The Image of Proust', in Walter Benjamin, *Illuminations*, ed. Hannah Arendt, trans. Harry Zorn (London: Pimlico, 1999) 155.

¹³³ Thomas, *Detective Fiction and the Rise of Forensic Science* 203 & 04.

¹³⁴ Ford's friend and collaborator Joseph Conrad famously wrote: 'my task which I am trying to achieve is, by the power of the written word to make you hear, to make you feel—it is, before all, to make you see'. Joseph Conrad, *The Nigger of the "Narcissus": an authoritative text backgrounds and sources, reviews and criticism*. Ed. Robert Kimbrough (New York: W.W. Norton & Company, 1979). In *The Good Soldier*, Dowell writes of Edward that 'the fellow talked like a cheap novelist. Or like a very good novelist for the matter of that, if it's the business of a novelist to make you see things clearly' (93).

rather, depended on his ability to ink out the impression of truth – his Literary Impressionism was designed to provide the ‘image’ of experience. Of this technique he wrote:

I [...] considered for a long time how conversations presented themselves to the mind. I would find myself in a room with a gentleman who pursued an almost uninterrupted monologue. A week later, I would find that of it I retained, verbally, only his most characteristic expletives - his "God bless my soul's," or his "You don't mean to say so's" and one or two short direct speeches: "If the Government goes to the country, I will bet a hundredweight of China tea to a Maltese orange that they will have a fifty-eight to forty-two majority of the voters against them". But I remembered the whole gist of his remarks.¹³⁵

At the beginning of this chapter, the lack of *character* in the depiction both of Edward and Dowell was noted. In *The Good Soldier*, the type of speech that Ford refers to above is, therefore, *characteristic* of nothing other than whatever mask is, at that moment, being worn. For instance, Dowell comments on the habitual topics of Edward's conversation: ‘Martingales, Chiffney bits, boots; where you got the best soap, the best brandy, the name of the chap who rode a plater down the Khyber cliffs; the spreading power of number three shot before a charge of number four powder ... by heavens, I hardly ever heard him talk of anything else’ (28). These subjects, utterly the domain of ‘the good soldier’, are listed precisely for their lack of essential *character* – nothing can be made of a person who talks only of such matters and, hence, Dowell still does not really know Edward after many years of acquaintance.

The impression of Edward Ashburnham, what Ford refers to as the ‘gist’ above, is exactly what Ford's narrator, Dowell, attempts to produce, thinking that he has failed. But despite his essential blankness being very much in evidence, a certain impression of Edward is given. Edward is found in the *image*, or images, which Ford creates. These images are not based upon a recognition of his physical characteristics – indeed, when such descriptions do appear their generic quality is significant. For instance, Edward is described at one point thus: ‘his hair was fair, extraordinarily ordered in a wave, running from the left temple to the right; his face was a light brickred, perfectly uniform in tint up to the roots of the hair itself; his yellow moustache was as stiff as a toothbrush’ (28). The ‘uniform’ tone of Edward's skin is, here, matched by the

¹³⁵ Ford, *Critical Writings* 70.

uniformity of the overall description, which eventually reduces to comparisons with the most commonplace of mass-produced objects (bricks and toothbrushes).

Edward's identity is given in a more individual fashion by way of certain *abstractions*. Near the end of the novel, Dowell, in emphasising the tortuous situation that Edward is in, writes that 'I seem to see him stand, naked to the waist, his forearms shielding his eyes, and flesh hanging from him in rags (186-7). A similar description occurs earlier, when Edward and Florence are imagined to be facing God's judgment: 'it is in black and white, my picture of that judgement, an etching, perhaps; only I cannot tell an etching from a photographic reproduction' (60). Is this an etching, a photograph, or the impression of Edward's *print*? Dowell's visions present a certain image of Edward. More significantly, however, is the way that Edward can be seen in certain of his poses and actions precisely because they form *images* which are caught between the dissimilar extremes of his life. After the listing of the topics of Edward's 'good soldier' speech, Dowell's narration continues:

And that was absolutely all that I knew of him until a month ago – that and the profusion of his cases, all of pigskin and stamped with his initials, E.F.A. There were guncases, and collar cases, and shirt cases, and letter cases and cases each containing four bottles of medicine; and hat cases and helmet cases. It must have needed a whole herd of Gadarene swine to make up his outfit. And, if I ever penetrated into his private room it would be to see him standing, with his coat and waistcoat off and the immensely long line of his perfectly elegant trousers from waist to boot heel. And he would have a slightly reflective air and he would be just opening one kind of case and just closing another (29).

Here, what begins as a similar cataloguing of objects becomes something quite different to the blank listing of Edward's speech. Within the single image of Edward in his 'private room' are the echoes of the various strands of his life, all of them connected to material objects rather than physical traits. Edward, the rough-and-ready officer in the mess, at work with his jacket and waistcoat off, is glimpsed at the same time as the line of his trousers illustrates his perfect elegance. The gun and helmet case of the robust soldier exists in tandem with the several cases 'each containing four bottles of medicine' of an ailing heart 'case'. The classic insignia of a gentleman, the monogrammed object, overlays the source from which the leather cases are made: a herd of gadarene swine, intent upon their own demise. What is also glimpsed is a man in a perpetual state of transit: objects are never removed from their cases permanently, only taken

from one and transferred to another – Edward is never at home, no matter what identity he occupies.

Edward is glimpsed in this way in numerous moments throughout the text. The boyish exuberance and desire for companionship as well as the ‘good form’ required of a gentleman are surely evident when he remarks to Leonora that ‘By jove, you’re the finest woman in the world. I wish we could be better friends’ (141). Yet, at the same time, is the guilt of his failure as a husband, his sense of his incompatibility with Leonora, and his simplistic interpretation of human affairs not equally as evident? Edward is never so much himself as when he is all things. Dowell remarks that, upon entering a room, Edward ‘snapped up the gaze of every woman in it, as dexterously as a conjuror pockets billiard balls’ (31). Edward is found in images of multiples, whether it be billiard balls or pigskin cases, and he pockets gazes both as a romantic innocent and a cruel seducer. His eyes, the windows to his soul, are therefore ‘as blue as the sides of a certain type of box of matches. When you looked at them carefully you saw that they were perfectly honest, perfectly straightforward, perfectly, perfectly stupid. But the brick pink of his complexion, running perfectly level to the brick pink of his inner eyelids, gave them a curious, sinister expression’ (30). Just as with the earlier physical description, Edward’s eyes, seemingly so extraordinary, are also compared to an everyday mass-manufactured object. But, in this image, Edward’s eyes also come to signify honesty, before being subverted into stupidity, only to become emblematic of his sinister side. Not one of these traits is more ‘Edward’ than another and, despite their incongruity, they all subsist equally within this singular image.

Ultimately, these images, though they echo dissimilar things, build up a collective *impression* of Edward. It is an impression that is bolstered by the variety of more commonplace dimensions of his life. Edward is produced as a collection. His existence is given in the form of not one or two, but a proliferation of *measurements*. The measure of his life that sees him gambling away forty thousand pounds in Monte Carlo and spending a week with *La Dolciquita* is to be placed alongside and not apart from his generous treatment of his tenants at Bramshaw Teleragh. Edward is fragmented through his incongruous collection of acts but all of these events can be *collected* and placed together in a *portrait parle*: crucially, one of Bertillon’s cards need not have meaning nor hang together cohesively, it just needed to be recorded and filed. It is purely information just as Edward’s identity is nothing but a record of events. His speech, which revolved around such seemingly trivial and impersonal matters, thus does contribute to the ultimate *image* of him which is created. Dowell admits that he fails to provide an ‘all-round impression’ of Edward that would satisfy his recognition but he offers something much more relevant to the time: his anthropometric measurements. In providing individual images which

suggest, or allude to, such a multiplicitous existence Ford inks out the *impression* of Edward in a single instant. Experience may no longer be evident, but the *image* of its echo has been retained, and Edward's prints are smeared all over the text.

The Good Reader

If identifying Edward is a matter of noting his measurements and viewing his images, what kind of expertise is required to read the rest of Ford's novel? Some of the epistemological complications of *The Good Soldier* were mentioned at the beginning of this chapter. These ranged from Dowell's significant lack of experiential knowledge, the filtering of the story through both Leonora's, then his, conscious reflection, and the stressed impossibility of expressing one's impressions with complete accuracy. Accepting these complications, and reading the novel as even a distorted vision of reality is something that requires a certain degree of good faith. Dowell, through no fault of his own, is ignorant; Dowell, no matter how hard he tries, is doomed to see his written version never quite live up to the real events as they occurred.¹³⁶ But there is another possibility which rests on a hermeneutics of suspicion rather than faith. What if Dowell knew more than he lets on and much of his written account is simply lies? This possibility is more than hinted at by the narration itself, as Ford creates the impression of a narrator who is prone to slip-ups. Dowell writes a narration in which he makes mistakes. These come initially in the form of simple factual errors: for instance, he wrongly associates William Penn with Farnham in Surrey. But these 'mistakes' develop into what feel like genuine slips of the tongue (or pen).¹³⁷ Dowell, this figure who supposedly knows nothing of what is going on around him, divulges that he was aware of Edward and Leonora prior to their first meeting because they are staying at the same hotel and Dowell, 'used, by the courtesy of Monsieur Schontz, the proprietor, to inspect the little police reports that each guest was expected to sign upon taking a room' (28). Dowell, who spends so much time protesting both his gullibility and ignorance, is here seen to have both a suspicious mind and to possess the requisite ingenuity to surreptitiously attain confidential knowledge. Why would he want the reader to know this? It is

¹³⁶ Dowell's lack of knowledge is, of course, in stark contrast to the 'experts', such as Sherlock Holmes, examined earlier. Sally Bachner writes that 'as a detective of barely visible traces, Sherlock Holmes holds out the hope that, if we only look with adequate attention, all will become visible. This fantasy of a visual empiricism without bounds is taken up by Dowell, who insists that his unflagging failure to know is an index only of his stunted observational powers'. Bachner, "'The Seeing Eye': Detection, Perception and Erotic Knowledge in *The Good Soldier*," 104.

¹³⁷ The influence of Freud's work on mistakes, slips, and forgetfulness, first published in 1901, is of obvious significance here. Sigmund Freud, *The psychopathology of Everyday Life*, trans. Anthea Bell (London: Penguin, 2002).

the impression that some statements are intentional while others, such as this one, are simply allowed to slip out that encourages critics to feel that they can strip away the false narration from the true. Yet, despite Dowell's inconsistency and unreliability being widely recognised, the full implications of these suspicions have rarely been discussed. Grover Smith writes that:

it was essential to Ford that the untrustworthiness of the frame, the narrator, should point to the untrustworthiness of the tale. For most readers Ford's clues have proved too subtle: they have rushed in and hailed the romance of Edward Ashburnham as something ideal and noble, paying Dowell the compliment.¹³⁸

To avoid 'paying Dowell the compliment' is to recognise that, in creating a narrator who seeks to conceal what he cannot fail to divulge, Ford not only leaves clues but also makes concealment Dowell's main feature.¹³⁹ As such, an immediate sense of guilt is created. Rather than performing as a prosecuting lawyer, marshalling the facts and producing a concise account of events, Ford's narrator thus comes to look more like an accused. The narration creates the peculiar sensation that Dowell is on trial, accused of some unnamed crime. Dowell is guilty – it is just not obvious of what.

Such a correlation between narrator and accused could only make sense once the accused had the right to speak in court – something that, in England and Wales, had only been sanctioned with the Criminal Evidence Act of 1898. For the duration of the nineteenth-century, the accused had been silent at trial, playing no part in a forum increasingly dominated by lawyers. But the change from narrator-as-lawyer to narrator-as-accused also alters the position of the reader. In realist fiction the action of the novel had been a communication of facts in which the general experience of the reader could both discern and test the causal connections made (the reconstructive trial, similarly, appealed to the experience of the jury). In the literature of modernism, not only are the causal connections less obvious, but the communication is bound to be incomplete: Dowell explicitly claims to be incapable of expressing everything he wants to. Being a witness to the truth of what is being divulged therefore becomes something that requires a certain skill or a degree of expertise. Dowell's possible duplicity adds another layer to this

¹³⁸ Grover Smith, "Ford Madox Ford," in *Six Modern British Novelists*, ed. George Stade (New York: Columbia University Press, 1974), 114.

¹³⁹ For a perceptive discussion along these lines see Colm Toibin, "The Art of Being Found Out," *London Review of Books*, 20th March 2008. Also, Peter Brooks, in summarising Foucault's comment that Western man became a 'confessing animal' writes that 'Foucault contends that the obligation to hide [...] is merely an aspect of the need to avow, to confess'. Brooks, *Troubling Confessions: Speaking Guilt in Law and Literature* 99.

expertise as the reader must, to greater or lesser degree, read against his narration. In becoming a witness to the story, the reader now needs to become an expert witness: *The Good Soldier* requires the good reader.¹⁴⁰

In law, a particular area of expertise had arisen in relation to this notion of reading another's words. During the early years of the twentieth-century, throughout continental Europe, various investigations were taking place in what could loosely be described as a science of testimony. Matt K. Matsuda, in examining the French variant of this research, which was undertaken by figures such as Ernest Dupré and Edouard Claparède, writes that 'the psychological investigation of testimony was an attempt to shape a science to interrogate a modern, indeterminate "self", driven by inner, unsuspected motivations'.¹⁴¹ Similar work was done by, amongst others, Alfred Niceforo, Hans Gross, and Hugo Munsterberg. Indeed, Munsterberg was responsible for many of the theories promulgated by these researchers spreading, as he accepted a position at Harvard and moved to the United States. Munsterberg then became involved in the development of the polygraph machine, famously publishing his findings in the case of Harry Orchard in 1907. Having found that Orchard was telling the truth, Munsterberg claimed that 'no witnesses for the prosecution could have such convincing character as the results of the tests, and no witnesses for the defense and, of course, no opinion of twelve jurymen could have shaken this scientific finding'.¹⁴² This 'science', it turned out, rested on exactly the same forms of belief that had been the foundation of pre-modern judicial practice: it *tested* the veracity of statements and was validated by a quasi-religious belief in its efficacy. The ritualistic procedure of being 'hooked up' to the machine and asked a series of trivial questions interspersed with potentially incriminating ones, as the twitching ink-filled rods scratched out the real truth, formed a powerful image. As Ken Alder writes: 'then, after the exam is over, the examiner confronts the subject with the inky, graphical traces of what the examiner asserts to be the subject's body's supposed betrayal (which, of course, the subject is unable to read), and advises the subject to confess. Under the circumstances, many subjects do self-incriminate'.¹⁴³ The polygraph machine has, in fact, never justified its claim to scientifically produce truth (hence the inadmissibility of its findings in US courts). But it has, despite this, produced results, and this

¹⁴⁰ In an article for *The Guardian*, Julian Barnes writes of Ford: 'he is not so much a writer's writer (which can suggest hermeticism) as a proper reader's writer. *The Good Soldier* needs The Good Reader'. Julian Barnes, "The Saddest Story," *The Guardian*, 7th June 2008.

¹⁴¹ Matsuda, *The Memory of the Modern* 103.

¹⁴² Quotation taken from unpublished 'Experiments on Harry Orchard' held at Harvard University. Quoted in Thomas, *Detective Fiction and the Rise of Forensic Science* 30.

¹⁴³ Ken Alder, "A Social History of Untruth: Lie Detection and Trust in Twentieth-Century America," *Representations* 80 (2002): 15.

is precisely because of the inability of the lay accused to read the results of his test. Alder notes that the technology of the machine has hardly altered since the 1930s, claiming that this is precisely because it is only a placebo and its outdated forms increase its 'unreadable' quality.¹⁴⁴ Only the expert could read the findings. By extension, only the expert could read the individual.

The task of being a 'good reader' is, in one sense, precisely to read the unreadable in this way. In another sense it is to avoid 'paying Dowell the compliment' and evade what Frank Kermode termed 'under-reading'. In 'Secrets and Narrative Sequence' Kermode argues that most readers under-read and that this allows for secrets to exist within texts – secrets which can only be uncovered by good, or even 'over' reading.¹⁴⁵ *The Good Soldier* requires the over-reading normally associated with the academic critic in order to make its secrets visible: Ford, like Joyce, wrote a novel that would keep professors busy for years to come. This form of reading, the critical study of academics, has come to be as expert as the testimony of a fingerprint analyst or ballistics expert in court and, in its ability to find meaning in 'inky, graphical traces' it turns the reading of a literary text into a form of *test*.

A striking example of the kind of reading against the narrator that can be achieved in *The Good Soldier* is found in an article by Roger Poole ('The Real Plot Line in Ford Madox Ford's *The Good Soldier*: An Essay in Applied Deconstruction'). Poole's reading depends, as his title suggests, on the expertise of the literary critic. This is first in evidence as he argues that what all previous readers of *The Good Soldier* have misunderstood is that Ford is writing a parody. It is always assumed that, following the example of his heroes Henry James and Joseph Conrad, Ford is producing just the same kind of narrative form. Poole argues that Ford is moving the technique on a stage, but, so subtly has this been done, it has eluded most readers:

Indeed, so expert and deft is the misuse of the conventionalizations of parody and irony that there is a case for suggesting that Ford is not so much parodying or ironizing the narrative techniques of James and Conrad as putting a completely mendacious simulacrum in their place, a copy so good that no one ever suspected that it was not genuine, a latterday Golden Bowl. Not gold at all as it appears, but gilded crystal, and cracked into the bargain.¹⁴⁶

¹⁴⁴ Alder writes that 'given the nature of the ruse, the internal working of the machinery was almost beside the point'. Ibid. 16.

¹⁴⁵ Frank Kermode, "Secrets and Narrative Sequence," in *On Narrative*, ed. W. J. T. Mitchell (Chicago: University of Chicago Press, 1981).

¹⁴⁶ Roger Poole, "The Real Plot Line of Ford Madox Ford's *The Good Soldier*: An Essay in Applied Deconstruction," *Textual Practice* 4, no. 3 (1990): 394. In the previous chapter, Welsh's analysis of *The Golden Bowl* was mentioned. For

By invoking the image of the Golden Bowl, as an artistic fake, Poole recalls the knowledge paradigm that Ginzburg finds in the art criticism of Morelli, where the insignificant detail becomes the marker of truth. In this case it is Poole himself who is the arch detective, discerning nuances of style and genre on the basis of his literary knowledge. It is thus his expertise as a reader that gives him his first clue towards a new reading of the novel – and it is also the very expertise of Ford that has made this reading so invisible to most readers.

For Poole, the narrative of *The Good Soldier* is not so much a communication of events as a test of the reader's credulity. Central to this notion is the incoherence in the text surrounding the date of the 4th of August 1904. This is the date on which the Dowells and the Ashburnhams are described as first meeting but it is also reported as the date of their trip to Marburg. As they first meet in the evening, but the trip to Marburg takes place in the afternoon, this is impossible. Most editors and critics have attributed this to Ford's slapdash attitude towards editing but Poole is not convinced.

If one happened, the other didn't. But, since that follows, why has the narrator, Dowell, spent such a lot of ingenuity and technical expertise in establishing, at different points of his narrative, a pair of time schemes which are in fact not compossible? What could be his motive for setting up, in a novel totally committed to accurate time schemes, a 'parallel causality' which equals in daring the inventions of the seventeenth-century theologians?¹⁴⁷

First the author's and now the narrator's 'technical expertise' have thus been invoked – this expertise forming precisely that which Poole's own expertise can then utilise as *proof* towards an uncovering of the 'real plot line'. And, in a further twist, it is not singular or plural causes that are at issue but a 'parallel causality' that evades logical conceptualisation. The conclusion Poole draws from this incoherent time frame is that the couples had met prior to the trip to Marburg

Welsh the smashing of the bowl is the last rite of circumstantial evidence's hold on matters of proof. Its invocation by Poole shows that, despite this, the bowl remains a powerful symbol of other forms of evidence.

¹⁴⁷ Ibid.: 405. Despite Poole's claims, the notion that Ford was simply in error should not be completely dismissed. It could also have been an intentional error designed to represent the fallibility of memory. Few would be as aware of this as Ford, himself a notoriously unreliable narrator. In the introduction to his autobiographical work *It was the Nightingale*, John Coyle notes that 'many of the versions of events in the volume are contestable, not least by Ford himself in other accounts; yet this is surely to be expected of the author of *The Good Soldier*, in his own way as keen an explorer of the relation between memory, subjectivity and narrative as Proust or Beckett'. John Coyle, Introduction to Ford Madox Ford, *It Was the Nightingale* (Manchester: Carcanet Press, 2007) ix.

but that Dowell wants to conceal this for some reason. But the concealment is then multiplied as the question of when the couples met is joined by the issue of what other seemingly non-compossible events could have occurred. For instance, if the two couples were not in Marburg then where might they have been when Maisie Maidan died? Poole argues that:

The reason why the two sets of events for 4 August 1904 seem to be both necessary as told, and also not compossible, is that Dowell has cleverly run in together two sets of descriptions which 'belong' to each other in terms of plot, while he has used one to 'mask' the other for reasons of alibi. For what Dowell wants the reader to come away with is the distinct impression that none of the four protagonists could possibly have had any opportunity to murder Maisie Maidan.¹⁴⁸

With the incoherence of the time frame, Poole begins to establish a completely new and unique view of the novel's plot— he begins to uncover a *fabula* that has been more obscured than related by its *sjuzhet*.¹⁴⁹ Firstly, he claims that Dowell and Leonora are the real adulterous couple and that they have plotted a scheme to rid themselves of their spouses, obtain the inheritance from Florence's Uncle Hurlbird, and marry. He claims that the whole characterisation of Florence is a fiction that rewrites history — including the fact that he considers Jimmy to be a figure of unadulterated fantasy. The strange ending in which Leonora marries Rodney Bayham he sees as the perfect cover for the story. As for Dowell's fate as the carer of Nancy — Poole claims that this is his natural position as Nancy's father!

All the specifics of Poole's theory do not need to be investigated in full. The crucial point is the expertise with which he makes his reading. The theory that Dowell and Leonora are involved in a passionate relationship, for instance, is tested by a close examination of the scene at Marburg. As they inspect the pencil draft of the protest drawn up by Luther, Bucer, Zwingli, and Ludwig the Courageous, Florence points out to Edward the importance of the document:

¹⁴⁸ Poole, "The Real Plot Line of Ford Madox Ford's *The Good Soldier*: An Essay in Applied Deconstruction," 408.

¹⁴⁹ This statement is true even in the most simplistic terms, as Ford's exploration of the 'time-shift' makes the placing of events quite a challenge. As mentioned earlier, Vincent J. Cheng undertook this task, producing a chronological account of the story. Vincent J. Cheng, 'A Chronology of *The Good Soldier*', in Stannard, ed., *The Good Soldier: an Authoritative Text, Textual Appendices, Contemporary Reviews, Literary Impressionism, Biographical and Critical Commentary*. Barbara Herrnstein Smith, on the other hand, and as referenced in the previous chapter, goes so far as to claim that, in, *The Good Soldier*, 'there evidently are *no* sets and sequences of events that, already arranged in some particular way, could be spoken of as *rearranged*'. Barbara Herrnstein Smith, 'Narrative Versions, Narrative Theories', in W. J. T. Mitchell, ed., *On Narrative* (Chicago: University of Chicago Press, 1981) 224.

‘It’s because of that piece of paper that you’re honest, sober, industrious, provident, and clean-lived. If it weren’t for that piece of paper you’d be like the Irish or the Italian or the Poles, but particularly the Irish...’

And she laid one finger upon Captain Ashburnham’s wrist (42).

At the beginning of this chapter the superficial sense of this portrayal of Protestantism was mentioned, but Poole takes the analysis in another direction by closely examining Leonora’s reaction. Having left the *Rittersaal*, she asks Dowell: ‘Don’t you see that that’s the cause of the whole miserable affair; of the whole sorrow of the world? And of the eternal damnation of you and me and them...’ (43). Poole, utilising the terminology of Roland Barthes’ *S/Z*, argues that Leonora’s question brings ‘the “hermeneutic” and the “proairetic” codes into collusion’: the proairetic code being that by which the text is grouped into a sequence of events and actions, the hermeneutic code that which creates and reveals an enigma in the text.¹⁵⁰ The mystery of what Leonora means by ‘that’ sets up an ‘agitation in the “hermeneutic” code’ – one which Poole argues is not adequately dissipated by the discord of Protestant and Catholic beliefs suggested at one level of the text (as Leonora is an Irish Catholic).¹⁵¹ Another possible explanation – that Leonora has discerned an intimacy between Edward and Florence – is rejected also. Why should that lead to the eternal damnation of her and Dowell? Dowell’s reply, which is not reported until some fifteen pages later, merely serves to agitate the ‘hermeneutic’ code further. He says ‘Do accept the situation. I confess that I do not like your religion. But I like you so intensely. I don’t mind saying that I have never had anyone to be really fond of, and I do not believe that anyone has ever been fond of me, as I believe you really to be’ (58). What is the situation that Leonora is to accept? Dowell is supposed to be ignorant of any relationship between Edward and Florence so it cannot be that. And how can Dowell think that Leonora is so fond of him if they have only just met? For Poole, the uncanny effect of the scene is due to its causal incongruity. There is a ‘disproportion between what is cause and what is caused’.¹⁵² But it is only disproportionate if considered in relation to the above mentioned explanations. If Poole’s theory is considered, that Dowell and Leonora are plotting lovers, and that the scene just witnessed represents a new snag in their plans, then the impassioned language between them becomes explicable. Poole’s analysis, by way of narratological and structuralist theory, is thus closely related to the abduction of Charles Sanders Peirce or Sherlock Holmes. The smooth connection between cause and effect is

¹⁵⁰ Poole, "The Real Plot Line of Ford Madox Ford's *The Good Soldier*: An Essay in Applied Deconstruction," 406.

¹⁵¹ Ibid.

¹⁵² Ibid.: 422.

still the major form of proof, but these connections are no longer easily discernible. Rather, they are detected by the trained eye of the expert and submitted to the test of his imagined hypothesis.

In a perfect use of one of Ginzburg's examples, Poole then uses the language of psychoanalysis to further his argument. Dowell declares that

Certain women's lines guide your eyes to their necks, their eyelashes, their lips, their breasts. But Leonora's seemed to conduct your gaze always to her wrist. And the wrist was at its best in a black or a dog-skin glove and there was always a gold circlet with a little chain supporting a very small golden key to a dispatch box. Perhaps it was that in which she locked up her heart and her feelings (33).

Poole, by way of Freud, points out that:

incomplete development of the sexual aim can lead to fixated desire, to desire for abnormal, partial, or displaced objects. One part of the body will stand in synecdochically for the whole possible relationship. Dowell's selecting of Leonora's wrist as her best feature seems to be such a partial perception of her. The transition through the glove, the little chain, the golden key and the implied dispatch box show the fetishistic gaze at work.¹⁵³

The scene at Marburg reaches a high point of tension when Florence 'laid one finger upon Captain Ashburnham's wrist' (42). Dowell, who is, for some reason, 'horribly frightened' by this scene then discovers that 'the pain in my left wrist was caused by Leonora's clutching it' (42). At this erotically charged moment in the text, therefore, passion and betrayal are connected, and condensed by the contact between finger and wrist. In this minor physical detail the pulse of the story beats. For Poole, it is the textual equivalent of a fingerprint.

Poole's account of the novel is hugely original, but it is also a prime example of what many critics have attempted to do with the text. Rose De Angelis, for instance, sees the underlying plot as one of Dowell's sexual desire for Edward, the surface narrative only betraying the intricate triangulations that such a desire has caused.¹⁵⁴ There have also been several readers

¹⁵³ Ibid.

¹⁵⁴ Rose De Angelis, "Narrative triangulations: Truth, identity, and desire in Ford Madox Ford's *The Good Soldier*," *English Studies* 88, no. 4 (2007).

who have suggested that, contrary to anything Dowell knows or admits, Nancy is, in fact, Edward's daughter.¹⁵⁵ These accounts, all attempts to uncover the real *fabula* behind the obscuring *sjuzhet*, are all predicated upon the use of specialist knowledge and the ability to find truth in details. Ford wrote that in a novel 'every word set on paper – *every* word set on paper – must carry the story forward'.¹⁵⁶ This desire was paraphrased by Kermode as the dream that 'nothing in the text is to be classifiable as formal or inert, merely consumable; everything is capable of production'.¹⁵⁷ This potential for ubiquitous production relies on just the multiplicity of possible meanings that the text's many critics have given evidence of. Not only is every word of *The Good Soldier* capable of production – every word is capable of multiple productions and, hence, the same words and sentences are utilised by different critics to bolster up the most divergent of readings.

Yet, while claiming genre, style, tone, narratology, and psychoanalytical theory as various forms of evidence, Poole, and other critics, also wants to use a more basic language of *facts*. Poole often refers to the 'fictional facts' of the novel while David Lynn argues that it is Florence's betrayal and Edward's suicide that motivate Dowell to tell the story: 'the two years it takes him to finish the tale, the events that occur during these years and, most important, the act of narration and the necessity of imposing pattern, all enable Dowell to come to terms with those first undeniable facts'.¹⁵⁸ Ford, himself, wrote in a similar vein, at one time proclaiming that as an author 'above all you must not fake events'.¹⁵⁹ The idea of 'factual fictions', discussed in the Introduction, is therefore still relevant throughout the twentieth-century. But are these the same kinds of 'facts'. In stressing the importance of eyewitness testimony in the establishment of evidence (both circumstantial and direct), Jan Melissa-Schramm argues that 'as with legal discourse, the history of the realist genre is also the history of the construction of credible

¹⁵⁵ See the chapter entitled 'Whose daughter is Nancy?' in, John Sutherland, *Can Jane Eyre be Happy: More Puzzles in Classic Fiction* (Oxford: Oxford University Press, 1997). Sutherland quotes from both Max Saunders biography of Ford and an article by Dewey Ganzell in the *Journal of Modern Literature*.

¹⁵⁶ Ford Madox Ford, 'Developing the Theory of Impressionism with Conrad', in Stannard, ed., *The Good Soldier: an Authoritative Text, Textual Appendices, Contemporary Reviews, Literary Impressionism, Biographical and Critical Commentary* 285. Ford thought that this notion actually went against the practice of most readers, who resisted giving their undivided attention to a novel. The author has to get around this by providing the reader with 'what he thinks are digressions - with occasions on which he thinks he may let his attention relax. . . . But really not one single thread must ever escape your purpose'. Ford, *It Was the Nightingale* 192.

¹⁵⁷ Frank Kermode, "Novels: Recognition and Deception," *Critical Inquiry* 1, no. 1 (1974): 106.

¹⁵⁸ David H. Lynn, 'Dowell as Unromantic Hero', in Stannard, ed., *The Good Soldier: an Authoritative Text, Textual Appendices, Contemporary Reviews, Literary Impressionism, Biographical and Critical Commentary* 393.

¹⁵⁹ Ford Madox Ford, "Developing the Theory of Impressionism with Conrad," in *Ibid.* 285.

testimonies'.¹⁶⁰ As such, realist authors 'resist an over-reliance on hearsay material'.¹⁶¹ Poole, in one sense, seems to arrive at the same logical position, as he is unwilling to give credence to anything that Dowell says for which there is no 'direct evidence' (something which, itself, allows for enough doubt, as much of the action is only what Dowell hears of second-hand). But he is, in fact, working in quite a different manner. Poole dismisses the character of Jimmy as a 'fiction' designed by Dowell to impugn Florence's character. This is despite there being Dowell's direct evidence that he existed. Poole's reasons for rejecting Jimmy: cultural knowledge and an eye for literary anomaly. How can the reader be expected to believe that, in the 1890s, a young girl would be accompanied on a trip around the world with a male friend? And why, in a novel committed to tracing its character's genealogies, is there a figure who is not even given a second name? For Poole, 'the name 'Jimmy' stands as a kind of bare forked nothing, a refusal of naming, a conundrum, a mystery, a locus of doubt. Dowell obviously intends us to understand a non-person, a non-character'.¹⁶²

It is not that there is inconsistency in Jimmy's portrayal, or uncertainty in his role, it is simply Poole's contention that he does not fulfil the conditions required by this novel of its real participants. This is a convincing argument, but in reading the novel, it is very difficult to doubt Jimmy's existence: his portrayal not being subject to the more normal forms of 'unreliable' narration. It appears that the best way to 'get' a reading like Poole's is by reading his essay even at the expense of reading Ford's text itself. That is not to say that it is a weak or unconvincing argument (far from it). It is, rather, to suggest that the 'good reading' has to, in a certain sense, replace the text itself, just as the expert's testimony has to be simply accepted by the juror. Of course, the good reader does provide various forms of evidence – but as has been shown this often comes in the form of the authoritative resources that they are able to utilise. As such, and unlike the realist novelist that Schramm wrote of, the good reader does rely on hearsay material.

But what, precisely, does it mean to rely on hearsay? The legal concept itself, which was only rigorously excluded from common law courts from the mid-eighteenth-century onwards, can be defined as evidence given by a witness of a statement made on a separate occasion by another person, when that evidence is offered solely in order to prove the truth of the statement.

¹⁶⁰ Jan-Melissa Schramm, *Testimony and Advocacy in Victorian Law, Literature and Theology* (Cambridge: Cambridge University Press, 2000) 66.

¹⁶¹ Ibid. 7.

¹⁶² Poole, "The Real Plot Line of Ford Madox Ford's *The Good Soldier*: An Essay in Applied Deconstruction," 412. Poole's expertise is, in this respect, partially a specialist knowledge of realism itself – in the introduction, Watt's comments on the genre's utilisation of proper names is referred to. The name was the most basic form of identification mentioned earlier.

In other words, a witness cannot say what someone else said as if it is a true statement of fact. However, 'it is not hearsay and is admissible when it is proposed to establish by evidence, not the truth of the statement, but the fact that it was made'.¹⁶³ Despite the basic rule against it, there are several forms in which hearsay becomes admissible – the words of a dying victim for instance. One of the most important of these arose in relation to the testimony of experts. Scientific knowledge is built upon generalizations and disseminated amongst a community of researchers in written form. If scientific evidence is to be allowed in court an acceptance of this fact has to be made: 'thus, experts are permitted to draw upon data bases, test results, and academic literature that would normally be rejected as hearsay if relied upon by an ordinary witness of fact'.¹⁶⁴ What would be ruled out in the context of the reporting of sensory experience, therefore, becomes admissible when related to esoteric knowledge. As Carol Jones notes, 'the law has increasingly allowed expert witnesses to include in their evidence facts and theories formulated by other people, which formed the underlying premiss or data upon which the expert's opinion was based'.¹⁶⁵

The crux of the standard rule against hearsay is that the absence of the individual who uttered the words in question means that their testimony is not open to cross-examination. The position of expertise at trial in the form of a witness is therefore important – as their position on the stand opens them to rigorous questioning.¹⁶⁶ So, although the expert, rather than reporting the evidence of their senses, works by distilling a large body of knowledge and applying it to specific circumstances, their believability rests on a very similar ability to project an air of trustworthiness. Initially, this trustworthiness may come in the demeanour of the witness. A guide to medical and scientific professionals on what is required of them to be expert witnesses, published in the early 1990s, contains a whole section on 'demeanour in court'.¹⁶⁷ Roger Smith, too, notes that 'when asked what makes a good expert witness, most people involved with forensic evidence, whether as lawyers or scientists, mention first of all communication skills'.¹⁶⁸ But such a demeanour, the word being taken in a broad sense, is about much more than a confident speaking style. The outstanding success of Sir Bernard Spilsbury has, in some quarters, been attributed to the impression he was able to create of his own integrity – but also his

¹⁶³ Jean Graham Hall and Gordon D. Smith, *The Expert Witness* (Chichester: Barry Rose, 1992) 49.

¹⁶⁴ Roberts and Zuckerman, *Criminal Evidence* 293.

¹⁶⁵ Jones, *Expert Witnesses: Science, Medicine, and the Practice of Law* 107.

¹⁶⁶ In earlier times, experts were often utilised as court advisers who sat with the judge. Even up until the twentieth-century some courts, such as the Admiralty and Patent courts, still operated in this fashion. See *Ibid.* 38.

¹⁶⁷ Hall and Smith, *The Expert Witness*.

¹⁶⁸ Smith, "Forensic Pathology, Scientific Expertise, and the Criminal Law," 69.

authority as a scientist. He first hit the headlines in the case of Dr Crippen, where he 'prepared slides of abdominal skin and demonstrated a healed surgical scar. He stood up well to cross-examination. He took the slides and his microscope, into court and demonstrated his findings to the Judge, counsel and Jury - the first time a medical witness had done this'.¹⁶⁹ Spilsbury's ability to perform well under cross-examination is, here, surrounded by statements in which his preparation, knowledge, and use of scientific instruments is to the fore. He took his microscope and slides, the authoritative symbols of his ability to *see* what the layman could not.

An ordinary witness has to perform in court in such a way that will emphasise their trustworthiness. An expert witness has to do something in excess of this. Not only must their honesty be unquestionable, they have to give the impression of excelling in their chosen field. The institutional authority with which their work is associated is the most obvious way in which a witness's credentials are measured but, as Smith notes, authority is assessed 'as presented in court rather than in terms which might satisfy scientific or medical communities'.¹⁷⁰ The pressure to provide authoritative evidence, as it is presented in court, can therefore lead to the reduction of important ambiguities for the sake of clarity. Jones writes that lawyers 'routinely require their scientific witnesses to mask the contingent nature of their conclusions and their methodologies. Scientists must become expert not only as scientists but as *witnesses*. The term "expert witness" is thus nicely ambiguous in this respect'.¹⁷¹ The expert witness has to make things understandable for the jury but the simplification that such communication requires inevitably courts the possibility of ignoring important qualifications to the findings.

The subtle acceptance of hearsay that is involved in expert testimony merely mirrors the way that wider social beliefs are adopted. The modern world, even by the early twentieth-century, was becoming saturated with the use of specialist apparatus, jargon and technology. It is this peculiarity of modernity that leads Odo Marquard to include a reliance on hearsay as one of the many facets of man's contemporary 'tachogenic unworldliness'. Marquard writes: 'Thus we increasingly have to accept experience that we have not had ourselves but are only acquainted with through hearsay [...] Precisely because experience, in modern times, is accumulated in a more and more scientific manner, we have to base our beliefs more and more on hearsay'.¹⁷²

¹⁶⁹ Green, "Is Sir Bernard Spilsbury Dead?," 23.

¹⁷⁰ Smith, "Forensic Pathology, Scientific Expertise, and the Criminal Law," 81. Scott Brewer also notes the difficulty faced by jurors in assessing the rival claims of academic institutions. Brewer, "Scientific Expert Testimony and Intellectual Due Process."

¹⁷¹ Jones, *Expert Witnesses: Science, Medicine, and the Practice of Law* 14.

¹⁷² Odo Marquard, *In Defense of the Accidental: Philosophical Studies* (Oxford: Oxford University Press, 1991) 78. A similar view was expressed by Georg Simmel in 1906. Simmel wrote that 'in a much wider degree than people are accustomed to realize, modern civilized life—from the economic system which is constantly becoming more and

Marquard equates the rise of expertise with a descent into a reliance on hearsay, and separates both from experience.¹⁷³ That is, the crisis in experience that has been the subject of this thesis is intimately associated with the rise of expertise that has been examined above. In the realm of the criminal trial, this led to a weakening of social trust in the trial itself: the Court of Criminal Appeal in England and Wales was founded in 1907, just when the burgeoning science of forensic analysis would seem to have allowed for greater certainty in criminal proceedings. In the novel, the same thing was happening. As the 'good reader' became the only one capable of comprehending the novel, its didactic aims, which had once been so crucial to its defining style of realism, were lessened.

This chapter began with a discussion of the seeming denial of character in *The Good Soldier* and the implications of such a rejection were traced through the difficulty of attributing responsibility in a criminal trial. This, in itself, was partly because of the impossibility of determining singular causes for events (of which 'character' and 'intent' could be examples). It was subsequently seen that the role of expertise, in both law and literature, and in a way quite similar to both Forster's and Stephen's aspirations for codification, was utilised as an authority that could safeguard causes and, hence, judgments. Its role in the fixing of identities was also seen to have parallels in the precise way in which the *image* of an individual could come into being in a literary sense. Finally, the role of the good reader supplanted the common experience of the layman in interpreting and analysing both modernist literary texts and modern trials. But, in becoming the preserve of experts, and thus relying on hearsay material for its interpretation, the novel and trial were removing themselves further and further from experience.

more a credit-economy, to the pursuit of science, in which the majority of investigators must use countless results obtained by others, and not directly subject to verification—depends upon faith in the honor (*sic*) of others'. Simmel, "The Sociology of Secrecy and of Secret Societies," 445-46.

¹⁷³ See also Brian Wynne: 'scientific knowledge is established, assimilated, and transmitted by social trust and authority, rather than by the radical sceptical testing suggested by science's dominant public image'. Wynne, "Establishing the rules of laws: constructing expert authority," 34.

CHAPTER THREE: THE REPEATED APPEAL OF PROUST AND DREYFUS

Repetition and recollection are the same movement, except in opposite directions, for what is recollected has been, is repeated backward, whereas genuine repetition is recollected forward.

Søren Kierkegaard, *Repetition*¹

In *Aspects of the Novel*, E M Forster writes that ‘no novelist anywhere has analysed the modern consciousness as successfully as Marcel Proust’.² According to the argument of this thesis, Forster’s statement implies that *In Search of Lost Time* creates a world devoid of experience – and this is, indeed, the case. Proust’s novel represents the supreme expression of the themes that were seen to appear in *A Passage to India* and permeate *The Good Soldier*. This is evident from the text itself – as lived immediacy is denigrated in favour of expectation and memory, and the famous moments of involuntary memory obliterate the presence of the concrete moment – and from its production: Proust’s act of writing involved a radical withdrawal from experience itself. Yet, in what initially appears a challenge to its position of pre-eminence in this respect, *In Search of Lost Time* is also concerned with several real life events, not least of which is a legal case: the Dreyfus Affair.

In this chapter, it will be argued that the manifestation of the Dreyfus Case in Proust’s novel serves not to pull the novel out of its position of non-experience but, rather, acts in a way which highlights the lack of experience in the case itself. The Dreyfus Case, like *In Search of Lost Time*, is built upon absence rather than presence: it relies upon secret irrefutable evidence just as Proust relies on an ideal past. But the potential for reading the right verdict and reading truth in the novel are connected in another way. In calling for a review of his conviction, Dreyfus’ supporters requested that his guilt be subjected to another, repeated, test. That this was, ultimately, achieved in a way which proved Dreyfus’ innocence served to highlight the need for specific forms of legal review and appeal – issues which were being debated at the same time in both Britain and France. In one sense, the authority granted to such forms of repetition seemed to spring from the same origins as had informed the development of modern science. By this rationale, the *laws* of nature are discovered by repeatedly experimenting upon the same materials in identical circumstances. To appeal a verdict could thus be seen as an attempt to repeat the

¹ Søren Kierkegaard, *Fear and Trembling/Repetition*, trans. Howard V. Hong and Edna H. Hong (Princeton, NJ: Princeton University Press, 1983) 131.

² E. M. Forster, *Aspects of the Novel* (Harmondsworth: Penguin, 1990) 26.

conditions of its judgment – with a greater degree of certainty being the end result. This certainty can be extended to include the law's conception of its own sources; as it is in appellate courts that authoritative precedents are set, which then, themselves, become the original decisions which must be followed in the future.

In Search of Lost Time is also the site of numerous forms of repetition. Elements of character, theme, and plot are all repeated in the course of the novel, while it has complete textual forerunners in Proust's earlier works, *Jean Santeuil* and *Contre Sainte-Beuve*.³ Just as with the possibility of appealing a verdict, there is a sense in which Proust seems to aim at a repetition which could guarantee the original: his writing seeks to present numerous copies of the same unique truth. But, in this chapter, it will be argued that, in both the legal concepts of review, appeal and precedent, and in the numerous repetitions of Proust's novel, a *rereading* occurs which subverts this possibility. Such rereading does not recreate conditions or reiterate originals. Rather, opaquely similar entities are unified in images which are then compulsively repeated in a variety of ways. Experience, once the origin of all knowledge, will, thus, be seen to have truly fallen in value when the origins of repetition can be only obliquely discerned.

In Search of Conclusive Evidence

The literary output of Marcel Proust could be said to form a similar trajectory to that of E M Forster, only it is at once more subtle and intense. Proust was, at no stage, a classic realist writer. His novel *Jean Santeuil*, written prior to *In Search of Lost Time* but not published until 1954, is a novel in which, as Andre Maurois notes, 'the hero has discovered the unreality of life'.⁴ The disappearance of experience was, therefore, something that Proust expressed in all his writing. But it is not quite as simple as Maurois' comment suggests. Jean may well be aware of the unreality of life but it never quite becomes a completely entrenched assumption and, as such, it fails to penetrate the form of the narrative. In other words, Jean still struggles with the possibility of experience and this struggle is narrated in a fairly straightforward fashion. In fact, at times, and in certain circumstances, Jean's faith in experience, reality, and truth are as robust as any realist character or author. Significantly, this is never more palpably expressed than in relation to the Dreyfus Affair, which is first mentioned at the beginning of Chapter Five:

³ Although written prior to *In Search of Lost Time*, both *Jean Santeuil* and *Contre Sainte-Beuve* were not published until 1954.

⁴ Preface to Marcel Proust, *Jean Santeuil*, trans. Gerard Hopkins (Harmondsworth, Middlesex: Penguin, 1985) xxii. All subsequent references to this text will be given in brackets after quotations.

Captain Dreyfus was arrested on a charge of communicating to a foreign Power certain documents bearing on National Security, was tried *in camera*, condemned on the strength of a number of exhibits which he was never shown, and sent to Cayenne. The proofs of his guilt were however gradually made public. Since they seemed to be far from satisfactory, an inquiry was opened by the Cour de Cassation with a view to deciding whether grounds existed for setting in motion a complete revision of his trial (319).

Following this introduction, much of Chapter Five is devoted to Jean's attendance at both the *Cour de Cassation* inquiry and the trial of Émile Zola who faced charges of libel following his infamous *J'accuse* article.⁵ Jean takes an avid interest in the Dreyfus Case as a public legal event. Indeed it is the public nature of both the *Cour de Cassation* inquiry and Zola's trial that 'was for him in some sort a proof that this experience of thrills and emotions was not insubstantial, not just a private dream, but had been lived through by others' (320). This sense of a shared experience is contrasted with his thoughts on the private activity of reading. His tutor, M. Rustinlor, whose opinion Jean values, undergoes a radical transformation in which he renounces the realms of literature and philosophy for that of 'real life'. Rustinlor proclaims:

As to the historians and the dramatists, that fellow Tacitus, that chap called Shakespeare, or Messire Balzac, they never painted anything half so thrilling as what is happening at this moment. Go to the Palais de Justice, my dear man, go to the Chamber, take a look at Esterhazy, make a study of all that business, Lanevois, Picquart. If human nature's what you're after, take my word for it, you'll find it there, in the raw, passion in all its manifestations (252).⁶

Jean's interaction with the trial, following Rustinlor's recommendation, conforms to a classic sense of modern experience. In attending the court he is placed up against an objective reality that he cannot control and must submit to. That his imaginative powers must come second to such a reality is indicated by his witnessing of Colonel Picquart's testimony:

⁵ These events took place in 1899 and 1898 respectively.

⁶ Rustinlor's mention of Balzac, and hence the realist novel, is echoed by Hannah Arendt who wrote that, 'the *dramatis personae* of the case might have stepped out of the pages of Balzac'. Hannah Arendt, *The Origins of Totalitarianism*, 3rd ed. (London: Allen & Unwin, 1967) 91.

It came to him with something of a shock that he could do nothing to modify that physical fact, each feature of which, the reddish complexion, the easy carriage of the head, made him feel almost embarrassed, such violence did they do to his imagination which so long accustomed to visualize the Colonel in a certain way had now to submit to a reality which it could not alter at will (335).

The reality that Jean confronts in the trial is paralleled by his sense of the truth that it is able to discover. The judges of the *Cour de Cassation* are described as applying 'themselves to the task of extracting the truth from the facts laid before them' (320). Such truth is objective: it exists in its own right, a sign of its authenticity being its ability to become discernible despite initial prejudices. The narration thus reports that 'if among the signatories of the protest in *l'Aurore* we see the name of an illustrious advocate, who is known to be a monarchist and a Christian, the emotion we feel is the more intense, because by reason of this deviation in his behaviour, we are made to see what truth really is' (352). Jean is, in this respect, particularly impressed by the evidence of the graphologist Paul Meyer, who, in examining the incriminating document supposedly written by Dreyfus, is 'willing to state on oath that this cannot possibly be Dreyfus's handwriting' (351). For Jean, Meyer's testimony, in being devoid of prejudice, is 'simply the outcome of a train of reasoning conducted on scientific lines' (351). It thus indicates that:

truth really was something which existed in itself and had nothing to do with opinion, that the truth to which a man of science owes his loyalty is determined by a series of conditions which are brought about, not by social prejudices – no matter how fine and noble – but by the very nature of things (351).

Yet, despite the 'nature of things' determining the authenticity of 'truth', this does not mean that it is something which is easily discerned. And even when it is, a series of competing, inauthentic, opinions may cloud its collective acceptance. Truth, thus, often has to be fought for in precisely the way that the writer most associated with the Dreyfus Affair, Émile Zola, did. Zola, whose naturalism was a self-conscious continuation of the realism of Balzac and Stendhal, set out systematically to describe the 'nature of things'. His novels, no less than his article *J'Accuse*, were concerned with realistically portraying the reality of life and blasting away the falsity of prejudicial social belief. For Zola, as for Jean, and despite Rustinlor's rhetoric, literature could play a part in

this immersion in experience.⁷ *J'Accuse* asks for truth to out as Jean (and *Jean Santeuil*) assumes that such an ambition can be achieved.

In Search of Lost Time places Dreyfus in a very different context. This is predominantly related to a differentiation that can be drawn between Dreyfus as a *case* and Dreyfus as an *affair*. In the form of a case, Dreyfus is principally a legal matter which manifests itself in trials, calls for appeal, and extra judicial commentary. The Dreyfus Affair, on the other hand, is the event in all its social and political implications: its anti-semitism, republicanism, monarchism etc. While *Jean Santeuil* concerns itself predominantly with the *case*, *In Search of Lost Time* is, on the face of it, interested only in the *affair*. For instance, rather than offering anything like the succinct description of the case that was found in *Jean Santeuil*, Proust's later novel provides only obscure allusions to the evidence for and against Dreyfus. Proust, by this stage, appears to be far more concerned with the wider social issues – in a particularly obvious departure from the earlier novel, it is the way in which truth, as in Forster, is not obscured by prejudices such as anti-semitism but formed precisely from them that now attracts Proust's attention. In a well-known metaphor, the beliefs of society are compared to the images created by a kaleidoscope. These beliefs, like their metaphorical images, seem fixed, static: 'But, like a kaleidoscope which is every now and then given a turn, society arranges successively in different orders elements which one would have supposed immutable, and composes a new pattern'.⁸ At the time of Marcel's childhood, for instance, 'right minded ladies had had the stupefying experience of meeting an elegant Jewess while paying a social call' (V, 103). After the Dreyfus Affair, the 'kaleidoscope once more reversed its coloured lozenges', and such events became a thing of the past (V, 103). Marcel argues that had a war with Germany occurred at this point in time, rather than the Dreyfus Affair, the pattern of the kaleidoscope would have moved in the opposite direction. Proust's point is that beliefs are never permanent for the simple reason that unpredictable events continually reconfigure the social, political, and legal world. But his interest appears to revolve around showing how such transient beliefs are structured and justified, rather than analysing their specific causes. So while the affair is present, the case is absent. Yet, while it may seem paradoxical, this absence is, in fact, the perfect counterpart to the way in which the case itself functioned. The Dreyfus Case was defined by absence.

⁷ As Shoshana Felman notes, 'in an unprecedented manner, Zola mobilized art as the victim's ally in the victim's struggle against law and against his oppression by the law'. Shoshana Felman, *The Juridical Unconscious: Trials and Traumas in the Twentieth Century* (Cambridge, Mass.: Harvard University Press, 2002) 116.

⁸ I will be using Terence Kilmartin's revision of the C. K. Scott Moncrieff translation, published in six volumes. Marcel Proust, *In Search of Lost Time*, trans. Terence Kilmartin & C. K. Scott Moncrieff (London: Vintage, 2002) V, 103. All future page references will be given in brackets after quotations in the form of (volume, page number).

There are several ways of defining the ‘beginning’ of the case, but one of its earliest manifestations can be traced to the collection of waste. The French military intelligence services, working under the guise of the ‘Statistical Department’, had a spy within the office of the German Military Attaché in Paris, General von Schwartzkoppen. The spy, who was the regular cleaner of Schwartzkoppen’s office, was charged with retaining the contents of the General’s waste paper basket and returning it to the officers in the Statistical Department. On 27th September 1894 a document arrived in the department through this route. It was a cover sheet, or *bordereau*, which referred to further documents which had presumably been retained by Schwartzkoppen. If the *bordereau* was accurate then these further documents divulged several important military secrets. The nature of the information in question led the agents of the Statistical Department to believe that only a staff officer could have had access to such a variety of knowledge (this was, in fact, the mistake upon which the whole injustice rested). Upon narrowing the field of possible traitors in this way, however, the investigators were able to examine staff reports and compare the handwriting of specific officers with that of the *bordereau*. It was by this method that Captain Alfred Dreyfus was first identified as a suspect and the expert testimony of graphologists was the main evidence of the court martial, which was conducted *in camera*.

There was, however, an even more important element of secrecy than the invisibility of the trial. The war minister, Mercier, determined that Dreyfus should be found guilty, yet anxious about the quality of the evidence against him, ordered a secret file to be compiled. This was produced from the swathes of information which had been garnered over several years by the Statistical Department. Included in this file was a note from Schwartzkoppen to the Italian military attaché in Paris, Panizzardi, which referred to ‘large-scale plans of Nice’ received from ‘that swine D’.⁹ This became known as the ‘*canaille de D*’ letter, ‘D’ being taken to be Dreyfus despite the unlikelihood of a spy using his real initial. A further note was unearthed, reconstituted from scraps of paper, in which obscure references to a ‘French Officer’ were made in Schwartzkoppen’s handwriting.¹⁰ Old reports from informants were also amended to suggest that there was a traitor in the general staff and included in the file. The secret file was never shown to the defence and was offered to the judges of the court martial only after they had retired to consider their verdict. Despite its apparent flimsiness it had the desired effect, the

⁹ Documents translated and cited in the appendix of, Douglas Johnson, *France and the Dreyfus Affair* (London: Bradford Press, 1966) 228.

¹⁰ Eric Cahm, *The Dreyfus Affair in French Society and Politics* (London Longman, 1996) 20.

judges apparently being particularly struck by the 'canaille de D' letter.¹¹ Dreyfus was convicted, subjected to a degradation ceremony, and transported for life to Devil's Island, Cayenne.

The importance of the secret file was not its contents but, precisely, the fact that it was secret. As Dreyfus' brother, Mathieu, took up the cause, and calls for revision began to gain pace, the invisible trial became the public affair. The country, Paris particularly, was split in two, with *Dreyfusards* on one side and *anti-Dreyfusards* on the other. In this climate, truth became a matter of faith rather than reason.¹² Guy Chapman writes that 'none except the handful of Dreyfusists in part, and the War Office staff again in part, had any evidence on which to base an opinion. Hence rumour pursued rumour, fantasy fantasy'.¹³ Of course, it is commonplace for rumours to surround a criminal trial. However, it is striking that at the very heart of the evidentiary questions about the Dreyfus case, there lay a file of documents which was nothing but an object of fantasy for almost everyone involved, including Dreyfus. Its attractiveness rested on the fact that it could reduce anxieties over national security, France's relationship with Germany and the possibilities of impending war, to the simple guilt of one man. Indeed, its influence has spread to many of the subsequent studies of the Dreyfus Case (made throughout the twentieth-century), a significant proportion of which have, in downgrading its persuasiveness as evidence, sought to replace it with another 'secret' discovered by the researcher.¹⁴ For the *anti-Dreyfusards*, the elusive contents of the secret file became the perfect security of Dreyfus' guilt: it was the evidence *par excellence*. For the *Dreyfusards*, by contrast, the invisibility of evidence was the surest sign of the institutional corruption and anti-semitism which had led to the Captain's conviction.¹⁵ Richard Griffiths notes that 'both sides in the Affair, carried away with their own rhetoric, lost hold on reality and created a new "reality" of their own - leaving far behind them the case itself'.¹⁶

When Colonel Picquart took over at the Statistical Department he was able to access the secret file and so became aware of how inconclusive the proof of Dreyfus' guilt was. He also

¹¹ Ibid. 27.

¹² While this is true, and the different factions were undoubtedly split throughout the country, it is dangerous to over exaggerate the prominence of the Dreyfus Affair to the daily life of the general public. Theodore Zeldin writes that, 'It is curious that social historians have continued to accept and transmit so much of the mythology of this period. The mass of the people were not interested in Dreyfus'. The affair was, in fact, fought by specific groups and power bases – members of which were limited in number. Theodore Zeldin, *France 1848-1945: Politics and Anger* (Oxford: Oxford University Press, 1979) 317.

¹³ Guy Chapman, *The Dreyfus Case: A Reassessment* (London: Hart-Davis, 1955) 171.

¹⁴ Douglas Johnson writes that, 'in treating the Dreyfus case as if it were a who-done-it, they have committed most of the errors of which historians are capable'. Johnson, *France and the Dreyfus Affair* 9.

¹⁵ At around this time, Georg Simmel also made 'secrecy' the subject of general sociological inquiry. Georg Simmel, "The Sociology of Secrecy and of Secret Societies," *American Journal of Sociology* 11 (1906).

¹⁶ Richard Griffiths, *The Use of Abuse: The Polemics of the Dreyfus Affair and Its Aftermath* (Oxford: Berg, 1991) 16.

came into possession of evidence which suggested that an officer named Esterhazy was the real author of the *bordereau*. This information was leaked to prominent *Dreyfusards* and so was in circulation prior to Émile Zola's *J'Accuse* article and his subsequent trial for libel. At Zola's trial his lawyers, 'Labori and Clemenceau, were able to insinuate, time after time, that Dreyfus was not guilty so that by force of repetition this insinuation seemed to acquire substance'.¹⁷

Lieutenant-Colonel Henry, who had subsequently bolstered the evidence against Dreyfus with a forged document which claimed that Panizzardi had been in contact with Dreyfus, hinted when he gave evidence that the file which Picquart had seen was not the real Dreyfus file at all. He was followed on the stand by the military investigator, Pellieux, who, having become completely exasperated by the tactics of Zola's lawyers, stated categorically that 'Dreyfus's crime is established by one piece of irrefutable evidence, which I have seen and held in my own hands'.¹⁸ The evidence that he referred to was the Henry forgery. Maurice Paleologue reports that, upon meeting Henry the following day, the Lieutenant-Colonel said, 'What Pellieux did was absurd! Documents as secret as that should not be disclosed in public'.¹⁹ Henry's fear was not just that his forgery would be detected but that the totality of evidence, in all its frailty, would have to be exhibited. It was a valid fear as, although Dreyfus' innocence remained temporarily unproved, and Zola was found guilty of libel, his trial was the beginning of the end in terms of Dreyfus' ordeal: the admission of undisclosed evidence at the original trial had made an appeal inevitable. The now incumbent war minister Cavaignac decided to go public with the evidence, much to the delight of the *Dreyfusards*. Jaures was quoted as saying, 'Meline (the former prime minister) was impregnable, because he refused to say anything. Cavaignac has come into the open, and now he is lost'.²⁰

The curious thing is that this is not the end of the fantasy document in the Dreyfus case. Once the *Cour de Cassation* had reviewed the file and ordered a retrial to take place it appeared that Dreyfus must be cleared of any wrongdoing. But General Mercier, the previous war minister who had instituted the secret file in the first place, had by now realised how to best mobilise belief in Dreyfus' guilt. He declared publicly, and with great confidence, that, at trial, Dreyfus' guilt would be proved beyond doubt while, at the same time, he surreptitiously spread the rumour that a document would be produced which would fulfil this claim. This document was

¹⁷ Johnson, *France and the Dreyfus Affair* 123.

¹⁸ Paleologue, *My Secret Diary of the Dreyfus Case* (London: Secker and Warburg, 1957) 102.

¹⁹ Ibid. 103.

²⁰ Cahm, *The Dreyfus Affair in French Society and Politics* 113.

said to be the original *bordereau*, of which the one exhibited at the first trial was only a copy. Eric Cahm writes that:

This legend of the *bordereau*, personally annotated by the German Emperor, a document of which the *bordereau* on onionskin paper was only a tracing or a copy, had [...] been circulating for a long time; in nationalist circles, in the salons, in newspaper offices and in officers' clubs, people continued, right up to the Rennes trial, to expect that the "great secret" would at last be revealed.²¹

In fact, the legend of the *bordereau* annotated by Wilhelm II gained such power in the public imagination it was even thought to exist by many *Dreyfusards*, though they believed it to be a forged document, Joseph Reinach referring to it as a '*faux des faux*'.²²

The constant withholding of the document, which Mercier thought could be achieved by various forms of political and legal wrangling, was, eventually ended when he was called to attend Dreyfus' retrial in Rennes. Being unable to produce the expected original version of the *bordereau*, Mercier refused even to mention it, offering instead a four and a half hour lecture, summarising the entire affair. He concluded his speech:

I have not arrived at my age without having discovered by sad experience that everything human is fallible. Consequently I have followed with keen anxiety the whole progress of the Dreyfusard campaign. If the slightest doubt had occurred to my mind, gentleman, I should be the first to tell you so, for I am an honest man, and the son of an honest man [...] But no! The certainty I have felt since 1894 has not undergone the slightest change; it has, indeed, been deepened by a more complete study of the case.²³

Mercier refers to his own experience, here, and positions himself as a figure of authority that can be trusted. It is in his experience, both of life generally and of the evidence he has studied, that Dreyfus' guilt can be guaranteed.²⁴ Yet, in a way that parallels Sir James Fitzjames Stephen's conceptualisation of learned judges, this is an experience that no one else can have. As such, it is diametrically opposed to the shared experience which underpinned Enlightenment thought, and

²¹ Ibid. 159.

²² Johnson, *France and the Dreyfus Affair* 188.

²³ Cahm, *The Dreyfus affair in French society and politics* 169. Paleologue, *My Secret Diary of the Dreyfus Case* 178.

²⁴ It is an argument that is far from outmoded. Recent events in Iraq and the evidence of WMD contained within the 'dodgy dossier' are testament to that.

which Jean Santeuil felt so palpably when attending the Dreyfus inquiry at the *Cour de Cassation*. For Mercier, the only alternative to silence was the production of an interminable labyrinth of language which would refer to the truth, while always holding it at bay. He attempted to sustain the strength of the *anti-Dreyfusard* case by constantly weaving between complete experience of the object and the site of its true value – its absence.

In Search of Experience

The defining logic of the Dreyfus Case, which allowed a non-existent document to be elevated, in evidential terms, above anything which could be tangibly experienced, is matched by that of *In Search of Lost Time*. This is most immediately evident in the prominence of expectation within the narrator's mental life. While the Marcel who narrates the novel looks back upon his life, the younger Marcel, who is narrated about, constantly looks forward. Leo Bersani writes that Marcel 'thinks of the world as possessing truths about to be revealed to him; he lives with a daily sense of imminent discovery'.²⁵ A classic example of this sense comes with Marcel's anticipation of seeing the great actress, Berma, performing in *Phedre*. From the moment Berma is described to him as a sublime artist, Marcel is enraptured by the thought of her, it becoming imperative that he must see her perform, especially in a great role such as *Phedre* – a combination which he compares to seeing a Carpaccio in Venice. He writes that 'if I had been to see Carpaccios in one of the galleries of the Louvre, or Berma in some piece of which I had never heard, I should not have experienced the same delicious amazement at finding myself at last, with wide-open eyes, before the unique and inconceivable object of so many thousand dreams' (II, 13). Marcel duly plans a visit to the theatre but is then suddenly struck down by an illness and forbidden by his parents from attending. He protests with great energy and, eventually, his mother and father relent. Almost the instant that they do, however, Marcel comments that 'being no longer troubled by the wish that it might cease to be impossible, I wondered whether it was desirable' (II, 16). From then on, the value of Berma's performance dwindles. Marcel's imagination continues to provide it with a certain value: 'No doubt, so long as I had not yet heard Berma speak, I still felt some pleasure' (II, 19), but this is eventually eradicated by the experience of watching her perform. Marcel reports that: 'all my pleasure had ceased; in vain did I strain towards Berma's eyes, ears, mind, so as not to let one morsel escape me of the reasons she would give me for admiring her, I did not succeed in gleaning a single one' (II, 22). In a reversal

²⁵ Leo Bersani, *Marcel Proust: The Fictions of Life and of Art* (New York: Oxford University Press, 1965) 30.

of Jean Santeuil's experience of Zola's trial, the potential offered by the theatre, and by Berma, for a meaningful, and shared, experience is thus reduced by Marcel.

Such episodes are repeated throughout the novel. For instance, Marcel anticipates a visit to see Balbec Church and the statue of the Virgin (images which he has, until then, only seen in photographs) with great excitement. Upon experiencing this sight in reality he actively says to himself that 'this is something far greater' than the two-dimensional reproductions he has previously been exposed to (II, 273). Yet he instantly comments that 'it was also something less' (II, 273). The statue of the Virgin, so elevated in Marcel's mind, is, in reality, beset by the 'tyranny of the Particular' (II, 274). In experience Marcel finds the statue reduced to 'a little old woman in stone whose height I could measure and whose wrinkles I could count' (II, 274). There is no great truth to be discerned here, no ultimate secret to be revealed. For Marcel, the moment of experience is always a disappointment. But, more importantly, the experience of the present – the experience of presence itself – is never even as concrete as the imagined one of its absence. As Bersani put it, 'the only "real" things in his (Marcel's) experience are those the future will bring'.²⁶

The realm of love does not escape this deferral. Complete possession of the beloved object is the goal towards which desire strives. Yet total possession, as a complete experience of love, will annihilate both desire and the beloved. If desire is to survive, possession must, therefore, somehow be suspended. Just such an attempt is poignantly made by Swann, as he holds Odette's head prior to their first kiss:

He had wanted to leave time for his mind to catch up with him, to recognize the dream which it had so long cherished and to assist in its realisation, like a relative invited as a spectator when a prize is given to a child of whom she has been especially fond. Perhaps, too, he was fixing upon the face of an Odette not yet possessed, nor even kissed by him, which he was seeing for the last time (I, 280).

Swann's semi-conscious attempt to retain the not-yet-possessioned Odette is replaced, to greater effect, by the unconscious impulse of jealousy - a theme that finds truly obsessional expression in the relationship between Marcel and Albertine. Jealousy is, in the Proustian world, the requirement of love, precisely because it can allow the beloved object to retain an existence independently of the desiring subject. That is, it turns the beloved into an autonomous subject

²⁶ Ibid. 31.

who may or may not be unfaithful but who, more importantly, retains an essential unknowability. Without jealousy, complete possession of the beloved, as simply an object of desire, may be attained and a complete experience of love reached. But, of course, this would suffer the same fate as the experience of Berma's acting or the statue of the Virgin at Balbec.

Marcel, whose instincts alert him to the danger posed by the end of jealousy, constantly avoids the potential for full knowledge – a particularly significant example of this occurring when he refuses to read Albertine's private letters, though given ample opportunity (V, 76). Such a denial of both knowledge and ultimate possession mirrors the withdrawal from experience made by Marcel at this stage in the novel: on the opening page of *The Captive* he writes that 'it was, in fact, principally from my bedroom that I took in the life of the outer world during this period' (V, 1).²⁷ With only partial knowledge, and reduced experience, his jealousy can persist, allowing his love to survive. Marcel, thus, sustains his relationship with Albertine in precisely the way that Mercier prolonged belief in the *anti-Dreyfusards* case: he continuously floats between the potential for complete possession of the beloved and its abnegation. The beloved, to remain beloved, must somehow also be absent.

As absence is elevated, the value of presence (the present moment of lived immediacy, or *Erlebnis*) is diminished. Giorgio Agamben writes that:

the most peremptory objection against the modern concept of experience has been raised in the work of Proust. For the object of the *Recherche* is not a lived experience but, quite the contrary, something which has been neither lived nor experienced [...] And it is not only the conditions of experience that are called into question, but also its subject, for the latter is undoubtedly not the modern subject of knowledge (Proust seems rather to have in mind certain crepuscular states, like drowsiness or a loss of consciousness).²⁸

Such 'crepuscular states' are indeed of such an essential quality that they are the condition within which the narrative opens. In the earliest pages of his search, the narrator writes of awakening in the middle of the night: 'not knowing where I was, I could not even be sure at first who I was; I had only the most rudimentary sense of existence' (I, 4). Leo Bersani describes this opening as characteristic of the way in which Marcel, 'loses his sense both of his own identity and of the

²⁷ This is one of the many examples in which the figure of Proust, the author who confined himself to his apartment while writing his novel, is brought into view.

²⁸ Giorgio Agamben, *Infancy and History: Essays on the Destruction of Experience* (London: Verso, 1993) 42.

identity of the external world'.²⁹ But, in analysing it thus, Bersani actually reverses the order of Proust's careful description. Marcel, firstly, does not know where he is. It is because of this that he is unsure of who he is. Modern identity, constituted in the concrete experience of a specific time and place, and the realist protagonist, meticulously 'plotted' in temporal and spatial terms, both crumble when these co-ordinates become uncertain. Yet, this is Marcel's essential state: 'I did not who I was at first – is his typical formula'.³⁰

Marcel, in finding neither knowledge nor identity in his typical condition, is no modern subject of knowledge. But this lack of experience is not limited to the 'crepuscular states' of his semi-consciousness. His partial state of constitution affects his wakeful life also, as he often has difficulty in acting upon the world in any meaningful way, being reduced to the status of a mere observer.³¹ Quite apart from the absence of Albertine, or the non-presence of his cherished expectations, Marcel is, himself, often absent from the world he inhabits. An example of this comes at the end of *The Guermantes Way* when Swann informs the Duc and Duchesse de Guermantes of his illness and impending death only for them to place more importance on what shoes the Duchesse should wear that evening. Marcel is present in this scene but, from the moment of Swann's arrival, it is a presence which becomes undetectable. He neither speaks, nor performs with any sense of agency, nor offers any opinion or judgment: he has dropped off the world he narrates.³² Marcel's positioning in the text is, in this sense, most truly represented by scenes in which he does not act but eavesdrops and spies on others – most notably his voyeuristic, and improbable, surveillance of Charlus' masochistic games within a brothel and his witnessing of an intimate, yet sadistic, scene between Mlle Vinteuil and an unknown woman through a window that carelessly remains open.³³

Marcel's disappearance from specific scenes is matched by the invisibility of numerous others. In a three thousand page novel which often reports every nuance of a trivial conversation, several seemingly more important events remain un-narrated. Marcel's first sexual

²⁹ Bersani, *Marcel Proust: The Fictions of Life and of Art* 21.

³⁰ Agamben, *Infancy and History: Essays on the Destruction of Experience* 42.

³¹ Ann Gaylin describes Marcel as 'rarely the person whose speech he renders for the reader'. Ann Gaylin, *Eavesdropping in the Novel from Austen to Proust* (Cambridge: Cambridge University Press, 2002) 160.

³² Philip Weinstein also notes the example of Marcel being incapable of warning Charlus of his coming humiliation despite standing right next to him: 'Marcel is not *there* in the capacity of one sharing the social scene. The status of his narrative being is other. He is present as a lens upon a social dynamic that he scrutinizes without interrupting, one that he does not (in any plotted way) cohabit'. Philip Weinstein, *Unknowing: The Work of Modernist Fiction* (Ithaca, NY: Cornell University Press, 2005) 126.

³³ Ann Gaylin sees these moments as representing narrative's origin: 'readers read because they are curious. Vicarious experience of other lives enables them to learn and grow, to transfer the experiences of fiction to the world of everyday reality'. Gaylin, *Eavesdropping in the Novel from Austen to Proust* 8.

encounter, for instance, is only obliquely referred to as occurring with his cousin. Likewise, Marcel only mentions briefly, and at a later date, his previous visits to brothels. While these events are referred to in retrospect and throwaway fashion, Swann's conquest of Odette, and Charlus' relationship with Morel are recounted in minute detail and with acute insight. Most importantly, the Dreyfus Affair is said to have been the cause of two duels fought by Marcel, though these have failed to be reported. The absence of these dramatic events from the narration parallels the absence of the case itself from the text. But, paradoxically, and in accordance with the discussion so far, this actually implies both its own importance and precise functioning, where the trial and the evidence were invisible.

The positioning of Marcel within something other than modern experience is also paralleled by the life of Proust. The conflation of *In Search of Lost Time's* narrator and author is, of course, dangerous territory and neither the novel nor the life should be read as explaining each other in any way.³⁴ In the present discussion, however, it is worth noting some striking similarities between the two. In his youth, and as a young man, Marcel Proust was a conspicuous socialite, circulating in the salons of the Parisian upper classes. As a young man the narrator of *In Search of Lost Time* also rapidly ascends the social ladder that leads him to the innermost confines of the Faubourg Saint-Germain. This was a life of parties, of balls, summers by the sea, and love affairs. Proust and Marcel, in childhood and early adulthood were both, thus, intent upon experiencing everything that the external world had to offer. This outlook was intimately linked to a deep involvement in the Dreyfus Case. Proust's belief in the innocence of Captain Alfred Dreyfus and his support for his re-trial and pardon were conspicuous, his attitude being accurately represented by the descriptions of the case in *Jean Santenil*. For the reader of *In Search of Lost Time*, Proust's belief that Dreyfus was wrongfully convicted is fairly apparent. Yet, as Georges Bataille notes, upon reading *Jean Santenil*, Proust's youthful radical activism and passionate energy is somewhat of a surprise. Bataille writes that Proust's 'dreyfusard sympathies are known to us all, but after *In Search of Lost Time*, written ten years later, he lost his ingenuous aggressiveness'.³⁵

This loss, if that is the best way to conceive of it, was only made as the cost of a far more significant gain. After struggling with a literary pursuit for many years, Marcel, by the end of the novel, and Proust, when aged twenty-eight, suddenly grasp the subject matter of a great work. The project envisaged is so vast that both Proust and Marcel are immediately placed in a race

³⁴ J Hillis Miller refers to this as 'an almost irresistible error'. J. Hillis Miller, *Black Holes* (Stanford, Calif.: Stanford University Press, 1999) 325.

³⁵ Georges Bataille, *Literature and Evil*, trans. Alastair Hamilton (New York; London: Marion Boyars, 1985) 134.

against time to complete it. The world of experience must, therefore, be completely renounced and writing made the sole object of life. The archetypal image of Proust is, thus, brought into being: a figure asleep all day and writing all night, never straying from the cork-lined bedroom of his apartment on Boulevard Haussman.³⁶ Proust took up a lifestyle which, in effect, denied experience and, in the end, denied life itself. Jacques Riviere wrote that:

Marcel Proust died of the same inexperience which permitted him to write his works. He died of ignorance of the world and because he did not know how to change the conditions of his life which had begun to crush him. He died because he did not know how to make a fire or open a window.³⁷

This same figure is at times glimpsed in the novel, both through the narrator's admission of his position as a, 'strange human who, while he waits for death to release him, lives behind closed shutters, knows nothing of the world, sits motionless as an owl, and like that bird can only see things at all clearly in the darkness' (IV, 441) and in some of his reported activity (in *The Captive* and *The Fugitive* in particular).³⁸

While it is not clear exactly how Proust came to his own epiphany, Marcel's realisation of what he must write about is reached only after traversing what Gilles Deleuze describes as an apprenticeship of signs.³⁹ Presaged by the taste of the *madeleine* in the opening pages, it is only by the end of the novel that Marcel discovers that these, and similar, moments of involuntary memory should be the subject of his art. But, the importance of recollection within the Proustian aesthetic is, in fact, not limited to such 'involuntary' remembrances. As discussed, present experience has acted as a site of potentiality for the subject of its past, but it also holds the potential to be transformed in the future. In other words, experience, though it may be annihilated as it is lived, is made meaningfully available to consciousness in recollection as well as expectation. Marcel's experience of the theatre illustrates this perfectly. While his great expectations have been dashed by the performance itself, as soon as it is over, he becomes free to construct value and pleasure once again. He writes that, 'the more I applauded, the better, it

³⁶ Agamben writes that '*L'inexperience*, of which Proust dies, according to Riviere [...] is understood in the literal sense: a refusal and negation of experience'. Agamben, *Infancy and History: Essays on the Destruction of Experience* 42-43.

³⁷ Quoted in Walter Benjamin, 'The Image of Proust' in Walter Benjamin, *Illuminations*, ed. Hannah Arendt, trans. Harry Zorn (London: Pimlico, 1999) 208-09.

³⁸ Also see the description of the writer Bastelle in *Jean Santeuil*. Proust, *Jean Santeuil* 719.

³⁹ Gilles Deleuze, *Proust and Signs* (New York: George Braziller, 1972). Deleuze argues that the search made by Marcel takes him through the signs of society, love, sensuous memory and, finally, art.

seemed to me, did Berma act' (II, 24). The reconstruction of something like experience can therefore be made, but it is not an accurate distillation of lived immediacy: the discovered yield of *Erlebnis* is being replaced by a self-sufficient *Erfahrung*. Indeed, the past occurrence is hardly even necessary – as much, is evident from Paul De Man's analysis of Marcel's decision to stay indoors and read on a bright summer's day. De Man comments that

the narrator is able to assert, without seeming to be preposterous, that by staying and reading in his room, Marcel's imagination finds access to "the total spectacle of Summer", including the attractions of direct physical action, and that he possesses it much more effectively than if he had been actually present in an outside world that he then could only have known by bits and pieces.⁴⁰

De Man's analysis can be taken a step further. The 'total spectacle of summer', while grasped in more of its entirety while reading, is, in fact, only fully realised years later by the involuntary memory within which it returns to the consciousness of the narrator and, even more importantly, in his act of writing about it.

It is the exterior element of the moments of involuntary memory (the fact that the memory seems to have been waiting for activation within an inanimate object) that seems to make them so much more special than this cognitive reconstruction. The recollection does not solely come from within, but seems to come from without and, hence, gestures towards a reality independent of the subject. What seems to have been recovered in these moments is, therefore, not simply the memory of past events but the *experience* of them. In tasting the *madeleine* Marcel does not just remember Combray, he is transported back to Combray. Even more importantly, he is no longer the middle-aged Marcel – rather, he is Marcel as a boy. The encounter between Marcel and Combray is thus brought into being as an experience. But, in fact, what has appeared is not an experience at all. Rather, it is in the luxuriantly sensuous reflection sparked by the taste of the *madeleine* that an entity worth writing about, which in fact is intensified further by writing and which can substitute for a modern, realist, experience, is brought into being.⁴¹ Walter

⁴⁰ Paul De Man, *Allegories of Reading: Figural Language in Rousseau, Nietzsche, Rilke, and Proust* (New Haven: Yale University Press, 1979) 60.

⁴¹ The same point is blatantly made in *Jean Santeuil*: 'all the same our lives are not wholly separated from our works. All the scenes that I have narrated here, I have lived through. How then can they be of less value in real life than in a book? The answer to that question is that while I was living them, I was doing so consciously, deliberately: I saw them as productive of pleasure or fear, of vanity or of malice. Their true, their inner essence escaped me. It would have escaped me just the same, no matter how hard I stared at them'. Proust, *Jean Santeuil* 426.

Benjamin pointed out that 'the important thing for the remembering author is not what he experienced, but the weaving of his memory, the Penelope work of recollection'.⁴² The site of the event, as a pure encounter with reality, has been downgraded in favour of the reflection made upon it by the recollecting subject who then writes about it.⁴³ As Philip Weinstein writes of the Proustian encounter, 'Until developed later [...] experience in the present moment is - nothing'.⁴⁴

The search for lost time, and the true development of earlier experience, appears to take place in the moments of involuntary memory. But, if examined carefully, what can really be said to be taking place here? The epiphany of recovering lost time, in fact, involves nothing less than the annihilation of present experience. When Marcel bites into the madeleine he is transported to a different time, a different place and an earlier version of himself. The present has vanished. Georges Poulet writes that in the Proustian world it is, 'the past which confers on the present its authentic existence. It is *the already lived* that saves *the living*; otherwise it would fall into the insignificance of oblivion, even before being *lived*'.⁴⁵ Indeed the past does allow the present to exist as meaningful, but it can no longer be a meaningful experience of that present in which one is situated. The apparent salvaging of experience is, therefore, its final annihilation, as the oblivion Poulet refers to cannot be held at bay. Perhaps it could be claimed that Marcel's search was not the right one to set out on. For in regaining the lost time of the past he has finally succeeded in destroying the time of the now. As Samuel Beckett said of *In Search of Lost Time*: 'time is not recovered, it is obliterated'.⁴⁶

What, then, of the race against time that the production of the text had instituted? Marcel, just prior to the novel's close, asks 'was there still time and was I still in a fit condition to undertake the task?' (VI, 434). While the fate of Marcel's project remains unknown, the completion of Proust's novel was curtailed by his death. Yet, this cutting short of his work made for an un-edited incompleteness rather than an unfinished fragment. Proust had, in fact, written the first and last volumes of *In Search of Lost Time* long before his death and his later years were

⁴² Benjamin, *Illuminations* 198.

⁴³ Hannah Arendt writes that 'reflections and reconsiderations constitute the specific reality and texture of Proust's world'. Arendt, *The Origins of Totalitarianism* 80.

⁴⁴ Weinstein, *Unknowing: The Work of Modernist Fiction* 124. Theodor Adorno also comments that, in Proust, 'no earlier experience is real that has not been loosed by involuntary remembrance from the deathly fixity of its isolated existence'. Theodor Adorno, *Minima Moralia: Reflections from Damaged Life*, trans. E. F. N. Jephcott (London: Verso, 2005) 166.

⁴⁵ Georges Poulet, *Studies in Human Time* (Baltimore: The Johns Hopkins Press, 1956) 305.

⁴⁶ Samuel Beckett, *Proust* (London: John Calder, 1965) 75. Also see Georges Poulet who writes that the Proustian novel 'is built upon an experience which is less an awakening of the remote past than the abolition of the immediate past, and thus the creation of a vacant place where a *causeless* being unexpectedly arises and displays itself'. Poulet, *Studies in Human Time* 36.

taken up with an inflation of the middle volumes. The race against time that Marcel and Proust describe is thus a false position. Or, rather, it is back to front. Having renounced experience for writing, life became inextricably bound to it. It is not that death took away the possibility to finish the novel. On the contrary, death was the only thing that could stop its production. The opposition is, therefore, not between life and death but between writing and death. While E M Forster turned his back on literature, attempted to control its limits, and tied his work to factual reportage and theoretical musings, Proust took a different route. Experience, having been obliterated, is far beyond resurrection. Yet, it does require a replacement. For Proust, this is to be found in the action of writing itself. *In Search of Lost Time*, in its production and reception, is at one and the same moment, both the destroyer of experience and its substitute.

In Search of Repetition

In renouncing experience in favour of writing, Proust embarked on a life of obsessive habit: as every day was spent in sleep, every night was employed in writing. His method of composition was also unique, as the text took shape on large sheets of paper (*paperoles*) which were constantly amended and inflated with loose notes and further drafts that were appended to the perimeter of the original text. In effect, Proust rewrote as much as he wrote. This form of repetition in the construction of the novel is matched by various repetitions that take place both within it and the entire Proustian *oeuvre*. A first clue towards a way of interpreting these structures is evident when Marcel lectures Albertine on the ‘new beauty’ that every artist of genius brings into the world:

You told me you had seen some of Vermeer’s pictures: you must have realised that they’re fragments of an identical world, that it’s always, however great the genius with which they have been re-created, the same table, the same carpet, the same woman, the same novel [...] Isn’t the Dostoievsky woman (as distinctive as a Rembrandt woman) [...] isn’t she always the same [...] That new and terrible beauty of a house, that new and two-sided beauty of a woman’s face, that is the unique thing that Dostoievsky has given to the world (V, 430-2).

While it is perhaps a trivial truth to suggest that the work of a great artist is unique, Marcel stretches this point to its logical conclusion. If great art is unique then it must be recognizable in every one of its manifestations. The Dostoyevskian novel, down through its individual scenes and characters, to its tiniest atom of language, is, therefore, always infused with the essence of

the author's specific genius. Every moment of every novel has this in common: it is Dostoyevskian. So, not only is this new world created by art unique, but it is also repeatable. In fact, it is bound to be repeated if the author writes at any length or the artist paints more than one picture. Vermeer always creates an identical world in which the same objects reappear again and again.

Connecting Vermeer to these ideas serves to further enrich one of the most well known passages in Proust's novel: the death of Bergotte. This occurs when Marcel's childhood literary hero visits an exhibition in which Vermeer's *View of Delft* is the main attraction. His eyes rest upon a 'little patch of yellow wall' to which a critic has alerted him. The critic has written of this patch that it 'was so well painted that it was, if one looked at it by itself, like some priceless specimen of Chinese art, of a beauty that was sufficient in itself' (V, 207). Bergotte, totally overwhelmed by the patch of yellow, feels that this minor instance of Vermeer's art eclipses his own entire life's work. It is at this moment, and with this realisation, that Bergotte dies.

On the face of it, this scene serves purely to distinguish between good art, such as Bergotte's, and the true genius of an artist like Vermeer. Such is the gulf between their artistic endeavours, Bergotte's whole *oeuvre* can be outweighed by the smallest unit of Vermeer's. Yet, while the patch of yellow is supremely painted, taken in itself, it is not enough to provoke such a denigration of Bergotte's own work. What Bergotte perceives is not that this one instance of Vermeer's art is superior to the sum of all his novels, it is that Vermeer's work, as a whole, is infinitely superior to anything that Bergotte has produced. Vermeer's art creates a whole new world which is constantly repeated. As such, the patch of yellow is not just a patch of yellow, it is the repetition of the whole of Vermeer's world. This is something which is to be distinguished from the reality of the scene represented. Vermeer was one of the first artists to utilise the inverted Galilean telescope which, amongst other optical effects, condensed the panoramic view of Delft, diminished figures to smaller magnifications than normal and emphasised the foreground.⁴⁷ This is a sight that, in effect, could not be had by the naked eye of experience: the *View of Delft* is not the view of Delft.

In re-creating the same world in everything that he painted, Vermeer produced repetitions of a singular originality. But is this always what repetition implies? In *Fiction and Repetition*, J Hillis Miller, following Deleuze, defines two forms of repetition. The first, Platonic sense, is based on the mimetic copy and on the notion that difference only occurs within a pre-established resemblance. The validity of such repetition depends upon 'its truth of

⁴⁷ Ruth Bernard Yeazell, *Art of the Everyday: Dutch Painting and the Realist Novel* (Princeton, NJ: Princeton University Press, 2008) 189.

correspondence to what it copies'.⁴⁸ It is precisely this form of repetition which underpinned modern science: to conduct repeated experiments in identical circumstances was the way by which natural *laws* were discovered. Historical investigation and the realist novel also *represented* the world and *copied* its truths in this sense. According to Gadamer, the similarity of these methods is perfectly logical as, by utilising repetition, they all simply proceed 'further toward a goal that experience has always striven after. Experience is valid only if it is confirmed; hence its dignity depends on its being in principle repeatable'.⁴⁹

The second, Nietzschean, form of repetition only appeared from the late nineteenth-century on. In this form, only differences resemble one another and the world of the copy is replaced by that of the 'phantasm' or the 'simulacra'.⁵⁰ Hillis-Miller writes that 'there is something ghostly about the effects of this second kind of repetition. It seems that x repeats y, but in fact it does not, or at least not in the firmly anchored way of the first sort of repetition'.⁵¹ Repetition, here, can never quite sustain its identity with an original and, just as absence supplanted presence in Proust and the Dreyfus Case, difference overrides recurrence. This idea of the Nietzschean phantasm has come to permeate all areas of cultural discourse.⁵² Indeed, for Odo Marquard, it is the essential condition of our practical existence, and is intimately linked to the increased diversification of life. He argues that:

in our life-world the situations in which and for which we acquired our experience recur less and less frequently. Consequently, rather than becoming self-reliant, which is to say grown-up, through a continuous increase in our experience and our knowledge of the world, we more and more regularly fall back again into the situation of those for whom the world is predominantly unknown, new, alien, and enigmatic - that is, into the situation of children.⁵³

Marquard's thoughts, although written from a recent perspective, have a history that stretches back even before Proust. Søren Kierkegaard presciently has his fictional narrator Constantin

⁴⁸ J. Hillis Miller, *Fiction and Repetition: Seven English Novels* (Oxford: Basil Blackwell, 1982) 6.

⁴⁹ Hans-Georg Gadamer, *Truth and Method*, trans. Joel Weinsheimer and Donald G. Marshall, 2nd ed. (New York: Continuum, 2004) 342.

⁵⁰ Miller, *Fiction and Repetition: Seven English Novels*.

⁵¹ Ibid. 6.

⁵² In his examination of many of these cultural manifestations Hillel Schwartz writes that 'the more adroit we are at carbon copies, the more confused we are about the unique, the original, the Real McCoy'. Hillel Schwartz, *The Culture of the Copy: Striking Likenesses, Unreasonable Facsimiles* (New York: Zone Books, 1996) 11.

⁵³ Odo Marquard, *In Defense of the Accidental: Philosophical Studies* (Oxford: Oxford University Press, 1991) 77.

Constantinus tortuously discovery that life will, 'treacherously *retake* everything it had given without providing a *repetition*'.⁵⁴ But if Marcel's comments about Vermeer are to be taken at face value then it would appear that art can provide the repetition that was eluding experience. Certainly, in Proust's novel, repetition appears to be possible (what are the moments of involuntary memory if not repetitions?) even although it is frustratingly beyond the will: Marcel cannot recreate the epiphanic moment no matter how many times he dunks his *madeleine* in his tea. Yet, at the same time, repetition is also denied. Gerard Genette identifies 'an anxious search for a law of recurrence' in Marcel's desire to know the routine of the girls at Balbec, thereby allowing him to be certain of their presence at certain times and places in the day.⁵⁵ Such a law is never found and such a presence never fulfilled. But the desire remains. Could it be that Proust's goal in retreating from experience, and writing at length about childhood, was precisely to grow up and become what Marquard would term adult? That is, was it in the repetition of re-writing that he sought a substitute for an experience in which recurrence, in the sense of the copy, was disappearing? Leo Bersani describes the Proustian aesthetic as circulating around just such a desire, commenting that 'in Proust, art simultaneously erases, repeats, and redeems life. Literary repetition is an annihilating salvation'.⁵⁶ While Bersani suggests that the repetition involved is of life, his comment can be elaborated in a related, but tangential direction. The important repetition of Proust's writing is not the way that it repeats life but the way that it continuously repeats itself (just as Vermeer repeated not reality but his own painting). It is the rewriting of Proust's own writing that is the 'annihilating salvation'. Annihilating, because it erases experience from writing, salvational because it preserves a unique, individual, specific truth; a truth which, though not tied to experience in the way that it is for Jean Santeuil, is just as real. Such an aim, taken in the context of Marcel's thoughts on Vermeer and Dostoyevsky, seems to hint at a further important supposition: that within writing a unified subject (a figure so absent from the action of the text and so connected to a classic sense of experience) can exist. Truly to understand Dostoyevsky is to see how his work is a constant repetition of himself. It is to see that, no matter how apparently different the literature may be, it is always related by the same hand.

The Dreyfus Case was, like Proust's novel, the site of numerous, and varied, forms of repetition, one of which relates to just this idea of writing in the same *hand*. Although Dreyfus was found guilty predominantly due to the evidence of the secret file, the submitted, visible

⁵⁴ Kierkegaard, *Fear and Trembling/Repetition* 172.

⁵⁵ Gerard Genette, *Narrative Discourse: An Essay in Method* (Ithaca: Cornell University Press, 1980) 125.

⁵⁶ Leo Bersani, *The Culture of Redemption* (Cambridge, Mass.: Harvard University Press, 1990) 11.

evidence was not completely without weight. The most significant element of this was the comparison made between Dreyfus' handwriting and that of the *bordereau*. Those investigating Dreyfus had, at the outset of the inquiry, utilised expert analysis in this regard. Leslie Derfler records that:

After having Dreyfus arrested, his accusers called in a M. Gobert, the handwriting expert of the Bank of France, who said the *bordereau* might have been written by someone else. General Mercier, Major du Paty de Clam, and Lieutenant-Colonel Henry were left dissatisfied and called on Bertillon, a notorious anti-Semite.⁵⁷

Bertillon, the founder of the anthropometric system of identification discussed in the previous chapter, unsurprisingly reported that 'if no forgery was committed, then a comparison of handwritings showed that Dreyfus had to have written the *bordereau*'.⁵⁸ Bertillon, having instituted the world's first forensic police department, saw himself as an expert in all the 'scientific' tools of detection, but the rationale behind this judgment was extraordinary. Having tendered the caveat that Dreyfus' handwriting was the same as the *bordereau*'s if, and only if, no forgery had been committed, his reasoning depended precisely on an identical notion of forging. According to Chapman, 'the handwriting of the *bordereau* and Dreyfus's were both of that commonplace sloping character which all French children were taught, but the writing of the *bordereau* was irregular. He (Bertillon) therefore reached the conclusion that Dreyfus had produced a forgery of his own hand'.⁵⁹ According to Bertillon's analysis, 'the similarities afford proof that the *bordereau* was indeed from the hand of Dreyfus. As to the dissimilarities, they show that he deliberately modified his handwriting to put investigators off the track'.⁶⁰ Bertillon's analysis was thus similar to that which, in England, helped to convict Adolf Beck: that true, and unconscious, similarity could be distinguished from enforced difference. In both cases their identification was founded upon the Platonic sense of a mimetic copy where differences only exist within similitude and, in fact, cannot even undermine the essential repetition.

What, for the *anti-Dreyfusards*, was scientific proof of guilt was, for the *Dreyfusards*, the visible emanation of innocence. Once a copy of the *bordereau* had come into public circulation Dreyfus' brother, Mathieu, 'paid for posters that displayed examples of the captain's handwriting

⁵⁷ Leslie Derfler, *The Dreyfus Affair* (Westport, Connecticut: Greenwood Press, 2002) 68.

⁵⁸ Ibid.

⁵⁹ Chapman, *The Dreyfus Case: A Reassessment* 75.

⁶⁰ René Floriot, *When Justice Falters*, trans. Rayner Heppenstall (London: George G. Harrap & Co. Ltd, 1972) 225.

alongside the facsimile of the memorandum. 'That striking image of Dreyfus' innocence would move the public [...] and force the government to respond'.⁶¹ Mathieu's plan rested on asking the public to perform a simple act of reading in which the prevalent view would be of essential difference with only incidental similarity. The view of the layman would deny repetition, just as it was unable to discern the single reason amongst the proliferation of causes. This opinion was given a positive emphasis by other handwriting experts: for instance, Paul Meyer whose evidence at the Zola trial was thought by Jean Santeuil to show how 'truth really was something which existed in itself and had nothing to do with opinion' (351). But Meyer's assertion that Dreyfus was not the right man, though opposing the experts in the *Dreyfusard* camp, in fact rested on a very similar conception of a unified subject who could be discovered in writing.

For the graphologist, handwriting was, and is, the direct reflection of both the individual's innate personality and the concrete physical act of writing.⁶² An unbreakable connection is thus posited between thought, expression, the physical act of writing, and the written word. As Roxanne Panchasi writes, 'graphology asserted itself as the exemplary strategy for identifying and truly understanding the "I"'.⁶³ Such a view can be discerned in the actions of the officers of the Statistical Department. Once Dreyfus had been identified as a suspect they ordered him to attend the office of Commandant Du Paty de Clam, who fed him a story about having injured his hand and needing someone to take dictation. Du Paty de Clam then read to Dreyfus from a script that contained several of the words and phrases contained in the *bordereau*. This method of investigation, referred to as the obtaining of a '*lettre d'expérience*',⁶⁴ was designed to obtain proof of Dreyfus' hand. But the army already had samples of this. The underlying motivation for the *lettre d'expérience* was, rather, to connect the written word with the writing subject. The investigators desired to witness the concrete existence of the physical writer and the experience of writing. It has even been reported that they had Dreyfus write in a variety of ways (with gloves on, lying down etc.) in order for the connection to become fully illuminated by his physical positioning and dress while writing the *bordereau*.⁶⁵

The reversal that comes about as the Dreyfus Case is fully played out, and as Proust's novel unfolds, is that the authority of the *hand* is overturned by that of the *eye*. Time has proven

⁶¹ Michael Burns, *Dreyfus: A Family Affair* (New York: Harper Collins, 1991) 190.

⁶² The fact that it is in the unconscious production of text that the writer's individuality can be seen makes it another form of interest for Carlo Ginzburg. Carlo Ginzburg, *Clues, Myths, and the Historical Method* (Baltimore: Johns Hopkins University Press, 1989).

⁶³ Roxanne Panchasi, "Graphology and the Science of Individual Identity in Modern France," *Configurations* 4, no. 1 (1996): 9.

⁶⁴ Quoted in Johnson, *France and the Dreyfus Affair* 20.

⁶⁵ Panchasi, "Graphology and the Science of Individual Identity in Modern France," 26.

the evidence proffered by the *anti-Dreyfusard* graphologists to be wrong. The prominence of anti-semitism in the *anti-Dreyfusard* view is obvious and well documented, and, of course, it is significant that Alphonse Bertillon, 'a notorious anti-semite', was brought in to provide the graphological analysis of the *bordereau*.⁶⁶ Despite this, most historians of the case have suggested that a more mundane mistake was the motivating principle behind Dreyfus' arrest.⁶⁷ As René Floriot writes, 'the officers of the intelligence service begin with a mistake. They do not for one moment doubt that only a staff officer can have furnished the documents, while we shall see that the traitor was a regimental officer'.⁶⁸ This mistake was then compounded by reports of Dreyfus that we received from superior officers: he was not well liked.⁶⁹ It was only after this, and so once the premises had been established for guilt to be read, that samples of Dreyfus' handwriting were examined. Just as with the investigation of Aziz in *A Passage to India*, a pre-judgment of blame was essential.

What this indicated was that the physical, experiential, act of writing was insignificant in comparison with the internal and personal act of reading. Such a shift in authority is referred to at the end of Proust's novel as Marcel ponders the readership his own novel could attain:

it seemed to me that they would not be "my" readers but the readers of their own selves, my book being merely a sort of magnifying glass like those which the optician at Combray used to offer his customers – it would be my book, but with its help I would furnish them with the means of reading what lay inside themselves (VI, 432).

The creative role that Proust envisages his readers playing in the construction of the text proclaims his own novel, in the terminology of Roland Barthes, a 'writerly' text.⁷⁰ He thus attacks the idea of the novel as a *lettre d'expérience* of its author. The reading of a novel says no more about the individual who wrote it than a study of his biography or an examination of his

⁶⁶ Derfler, *The Dreyfus Affair* 68. See, Stephen Wilson, *Ideology and Experience: Antisemitism in France at the Time of the Dreyfus Affair* (London: Associated University Presses, 1982).

⁶⁷ For instance, Chapman writes that 'anti-semitism played little, perhaps no, part in the arrest of the unhappy victim or in his trial'. Chapman, *The Dreyfus Case: A Reassessment* 9.

⁶⁸ Floriot, *When Justice Falts* 223.

⁶⁹ This opinion was not limited to anti-semites. René Floriot writes that 'we remember what was said by Clemenceau, one of those who worked most strenuously for a review of the case: "We made a bad choice of our innocent man"'. Ibid.

⁷⁰ Barthes described classic realist texts as 'readerly', as opposed to modern 'writerly' texts which asked its readers to contribute to its meaning and, hence, its completion. Roland Barthes, *S/Z*, trans. Richard Miller (New York: Hill and Wang, 1974).

handwriting.⁷¹ Proust was not modest about the potential his novel had to affect readers – he just thought it impossible for a reader to transcend the ‘horizon of expectations’ with which they had begun.⁷² In returning to the scene in which Marcel lectures Albertine on the repeatability of Vermeer and Dostoyevsky, a new feature can now be glimpsed. The straight reading of Marcel’s speech suggested that rewriting does occur. The figure who speaks these lines, however, is a young Marcel, whose view is placed halfway between Jean Santeuil’s belief in identifiable authorship and the older Marcel’s denigration of it. The young Marcel, therefore, still has a certain faith in the genius of Dostoyevsky and the re-writing that he creates, but the latent idea of the reader’s authority is also present in his words. Marcel chides Albertine that she ‘must have realised’ that Vermeer always repeats himself when he is plainly aware that she has not. His words boastfully proclaim his own, personal, interpretation and locating of essential repetition. It is, thus, a proof more of his, the reader’s, genius than that of Vermeer or Dostoyevsky.

In Search of Justice

Of course, the repetition of a unique *hand* was not the only form of repetition brought about by the Dreyfus Case. More obviously, the *Dreyfusards* sought to have the judgment of the trial reversed by instigating a repetition of its investigation. The desire for an appeal was also voiced by many prominent *anti-Dreyfusards*, who had come to see it as the only way of laying the matter to rest. A review would bring about finality, whichever way the verdict went. While the drive towards justice was situated around calls for appeal, related legal repetitions were also involved. The trial of Esterhazy was a repeat of the Dreyfus trial because it, in many quarters, purported to put the real guilty party in the dock. Even more emphatically, Zola’s *J’Accuse* article was written with the express intention of bringing a libel case upon himself. As Shoshana Felman writes, ‘Zola hoped to force the legal system to review the evidence of Dreyfus’s case in a *non-military* court: he wanted to initiate a legal repetition of Dreyfus’s sealed trial through a public - as opposed to the old hidden, secret - legal process’.⁷³ Even the case itself was seen as a historical repetition of prior events. Joseph Reinarch wrote to Scheurer: ‘I will give you only one piece of

⁷¹ The basis of Sainte-Beuve’s critical theory was that understanding an author’s biography was the key to understanding their work. Proust argued against this in *Contre Sainte-Beuve*.

⁷² The ‘horizon of expectations’ is central to the philosophical hermeneutics of Hans-Georg Gadamer. It has been most fully utilised in a literary theory context by Wolfgang Iser and Hans Robert Jauss. Wolfgang Iser, *The Act of Reading: A Theory of Aesthetic Response* (London: Routledge and Kegan Paul, 1978), Hans Robert Jauss, *Toward an Aesthetic of Reception*, trans. Timothy Bahti (Brighton: Harvester, 1982).

⁷³ Felman, *The Juridical Unconscious: Trials and Traumas in the Twentieth Century* 116.

advice: re-read the Calas affair. It is always, exactly, the same obstacles, the same difficulties, the same arguments, only the names have changed'.⁷⁴

At the time of the Dreyfus Case, the potential for appeal was an issue of some prominence in the criminal law of both France, and England and Wales. These jurisdictions are, of course, different from one another in numerous ways. French criminal procedure is often described as inquisitorial, intent upon a search for the truth, as opposed to the adversarial method of the common law, which concentrates on the proof presented by competing parties. The common law process also centres on a trial conducted orally, the very process of which is the guarantor of truth, while the civil law system places emphasis on the pre-trial construction of a written *dossier* of evidence. And when it comes to reaching a verdict, French jurors are required to have an intimate conviction (*intime conviction*) of guilt while their common law counterparts are to be convinced of guilt beyond a reasonable doubt.⁷⁵ However, while these notable differences are present when the two systems are presented in their starkest theoretical form, in practice, they both partake of each other's methods: they are 'mixed' systems more than anything else.⁷⁶ For instance, in providing counsel for those accused, the French system inevitably courts a certain degree of adversarial discourse. Likewise, 'reasonable doubt', as a concept, developed in the common law from a range of other phrases such as having a 'satisfied conscience' or reaching a 'moral certainty' which bear marked similarities to the *intime conviction*.⁷⁷ Most importantly, the common and civil law traditions, according to J. D. Jackson, share the epistemological traditions outlined in the introduction to this thesis.⁷⁸

In France, appealing the decision of lower courts had been enshrined in law since the Revolution and the inauguration of the *Cour d'Appel*. However, this only applied to those tried in courts presided over by judges. If tried for a serious crime, in the *Cour d'Assises*, an accused was judged by both three judges and a jury of nine. It was thought unjustified for the justice system

⁷⁴ Quoted in, Johnson, *France and the Dreyfus Affair* 93. In 1762 Jean Calas was sentenced to death on the wheel for the murder of his son. Calas was a Protestant and it was suspected that his son was planning to convert to Catholicism, thus providing motivation for the murder. After his execution Voltaire, convinced that the verdict was the result of religious intolerance, began a campaign to have the sentence overturned. This was achieved in 1765. The Calas Affair can thus be seen as a prior version of the religious prejudice and literary intervention that were found in the Dreyfus Case. Zola repeats Voltaire.

⁷⁵ René David, *French Law: Its Structure, Sources and Methodology*, trans. Michael Kindred (Baton Rouge, La: Louisiana State University Press, 1972) 147.

⁷⁶ Jacqueline Hodgson, *French Criminal Justice: A Comparative Account of the Investigation and Prosecution of Crime in France* (Oxford: Hart Publishing, 2005) 26.

⁷⁷ Barbara J. Shapiro, *A Culture of Fact: England, 1550-1720* (Ithaca: Cornell University Press, 2000) 23.

⁷⁸ J. D. Jackson, "Two Methods of Proof in Criminal Procedure," *Modern Law Review* 51, no. 5 (1988): 552. Hodgson glosses this as a 'broadly empiricist approach'. Hodgson, *French Criminal Justice: A Comparative Account of the Investigation and Prosecution of Crime in France* 26.

to second guess the jury as the arbiters of fact in the case.⁷⁹ In the late nineteenth and early twentieth-centuries, then, those afflicted with the harshest punishments (in line with their supposed offences) were the least able to apply for a reversal of their conviction. However, it was not impossible. The highest court in the land, the *Cour de Cassation* could review cases on the basis of judicial error, though this was ‘expensive and unlikely of success’.⁸⁰ The potential for such review was widened after 1867 and the effects of the case of Lesurques, who was convicted of murdering the courier of Lyon. It was only after Lesurques was executed that the real culprit was found and convicted. Such an obvious example of judicial error roused public opinion and the law was altered in 1868.⁸¹ Yet, this only allowed for the overturning of verdicts in the specific instance of the real offender being found. Miscarriages of justice were still thought to be occurring unchecked. Esmein writes:

Numerous proposals, emanating from parliamentary initiative, were introduced in the houses of parliament, and the movement resulted in the Law of 8th June 1895. This time, among the numerous reforms which it introduced, the Law contained one provision of prime importance: it introduced a new cause for appeal, very liberally conceived. The new Article 443 allows a fourth case for appeal: "(4) When, after a conviction, a new fact has happened or has come to light, or when documents unknown at the time of the trial are filed, tending to establish the innocence of the person convicted".⁸²

It was under this *pourvoi en revision* that Dreyfus was finally found not guilty and all judicial proceedings against him dropped in 1906.⁸³

In England and Wales a similar possibility for review, made by petition to the Home Office, had existed for decades. It was, though, the seemingly obvious cases of justice miscarrying with the trials of Florence Maybrick, Adolf Beck and George Edalji that led to calls for the establishment of a Court of Criminal Appeal. Following the Beck case, particularly, it was felt that ‘the right of appeal on questions of law should no longer be discretionary, to avoid a

⁷⁹ In fact, such a faith in jury verdicts obtained in France until the introduction of the Act of 15 June 2000. Catherine Elliott, Catherine Vernon, and Eric Jeanpierre, *French Legal System*, 2nd ed. (Harlow: Pearson/Longman, 2006) 112.

⁸⁰ Benjamin F. Martin, *Crime and Criminal Justice under the Third Republic: The Shame of Marianne* (Baton Rouge & London: Louisiana State University Press, 1990) 185.

⁸¹ A Esmein, *A History of Continental Criminal Procedure: With Special Reference to France*, trans. John Simpson (London: J. Murray, 1914) 566.

⁸² Ibid.

⁸³ Martin, *Crime and Criminal Justice under the Third Republic: The Shame of Marianne* 186.

repetition of what had happened in that case'.⁸⁴ While this was fairly uncontroversial, the debate surrounding the new court, which was created by the Criminal Appeal Act 1907, focused on the same issue as had exercised French jurists: whether or not an appeal on the facts should be allowed.⁸⁵ Section 3b of the Act read that those convicted could proceed on any 'ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or any other ground which appears to the court to be sufficient ground of appeal'.⁸⁶ However, while not enshrined specifically in the wording of the Act, appeals, in practice, have tended to suggest that the evidence presented should not be identical to that considered in the original trial. A report based on an inquiry into the Beck case set the tone for this. It read that:

in spite of some exceptions, the broad principle remains that a case will not be re-opened merely in order to reconsider evidence which has already been fully examined at the trial. If the plea is that the verdict is wrong and if no new material evidence is offered, nor any means suggested by which new evidence can be obtained, the petition will, in ordinary circumstances, be refused.⁸⁷

Despite the formal differences between review and appeal, then, it would appear that the potential to reverse a guilty verdict on the basis of the facts of the case was comparable in both France and England and Wales.⁸⁸ Something new had to be offered to the court.

In both jurisdictions, the opening of further possibilities for appeal was a response to the apparent failure of original trials to come to the right conclusion. Court verdicts were, thus, failing to correspond to truth: what were being proven as 'facts' were no such thing. While it was in the *fin de siècle* that such concerns were first beginning to surface, it was not until a generation later and the school of American Legal Realism that they found theoretical articulation. Jerome Frank attacked the pretensions of legal fact-finding in his *Courts on Trial*, where he argued that facts were, in effect, guesses. In adapting Kant's famous phrase he wrote of 'the facts

⁸⁴ Rosemary Pattenden, *English Criminal Appeals 1844-1994* (Oxford: Clarendon Press, 1996) 93.

⁸⁵ Edson R. Sunderland argued that the exclusion of new evidence was 'a mere survival of the ancient common law theory of an accusation against the judge. It was an inherited tradition and nothing more. It was often defended on the ground that it would be unfair to the trial judge to reverse his judgment on a point which had never been brought to his attention'. See, Edson R. Sunderland, "The Proper Function of an Appellate Court," *Indiana Law Journal* 5, no. 7 (1930): 489.

⁸⁶ Pattenden, *English Criminal Appeals 1844-1994* 129.

⁸⁷ From App. to Report of the Committee of Inquiry into the case of Mr Adolf Beck (1904), quoted in Ibid. 350.

⁸⁸ On the formal difference between revision and appeal see Thomas Barclay, "The Revision Powers of the Court of Cassation," *Law Quarterly Review* 15, no. 1 (1899).and, Martin Shapiro, "Appeal," *Law and Society Review* 14 (1979-1980).

themselves' which, just as Kant's *noumena*, were unreachable and inexperiencable. According to Frank:

The trial court's facts are not "data", not something that is "given"; they are not waiting somewhere, ready made, for the court to discover, to "find". More accurately, they are processed by the trial court – are, so to speak, "made" by it, on the basis of its subjective reactions to the witnesses' stories.⁸⁹

Frank's argument is that legal practitioners should come clean about what is really being discussed in a trial. The 'facts' of a case, rather than being objective entities, are really only what the jurors deem to be true (that the source of this 'truth' is often witness testimony is why the belief in a rampant perjury was of such significance to British magistrates in India). The central event around which the trial revolves, the crime that took place, in being assembled from such 'facts', is never found in an objective sense. On the contrary, what lies at the heart of a trial are a series of fictions or stereotypes (such as the state of mind that was imputed to Edward Ashburnham in the Kilsyte case) around which a collection of 'facts' can cohere. Truth is not *witnessed* in this kind of trial. Nothing is, as Foucault termed it, reactualized.⁹⁰ Frank's theory thus completely undermines the nexus of experience and truth which Jean felt so palpably in attending the Dreyfus trials in *Jean Santeuil*, and which was a perfect expression of both the realist aesthetic and the reconstructive trial.

While Frank's various theoretical writings appeared between 1930-1950, in the early 1900s his ideas were only dimly felt anxieties which required alleviation. The solution to the problem of inexperiencable facts which was offered at the time was a form of repetition – the appeal. The law, thus, appeared to follow the logic of modern science, where the Platonic repetition of precise circumstances and experimental methods could uncover natural *laws*. An appeal could guarantee the validity of the original verdict because, by repeating the test, or experiment, of the trial and coming up with the same result, the verdict of the *law* was established with greater certainty. The enacting of legislation that allowed for new facts to be

⁸⁹ Jerome Frank, *Courts on Trial: Myth and Reality in American Justice* (Princeton: Princeton University Press, 1950) 23.

⁹⁰ Michel Foucault, "Truth and Juridical Forms," in *Power: Essential Works of Foucault 1954-1984*, ed. James D Faubion (London: Penguin, 2000), 47.

presented upon appeal suggests an identical motivation: appeals were being instituted, and having their remit widened, in order to make a repeated test of what had actually happened.⁹¹

In both the criminal law of France and England and Wales, the introduction of appeal procedures which would allow the presentation of new evidence was seen as an important leap in the battle against miscarriages of justice. Such has not been the case. The eminent French jurist René Floriot wrote in 1972 that 'I have been engaged for more than forty years on criminal cases and have often been asked to seek the revision of a sentence. I personally have never come upon a new fact which enabled me to achieve this'.⁹² Pattenden also records that, since the inception of the Court of Criminal Appeal, 'appeals in which fresh evidence is adduced are few and far between'.⁹³ This situation has persisted: the 1990 Royal Commission on Criminal Justice reported that, 'fresh evidence cases are rare and treated with great caution by the Court. Only in very limited circumstances will such evidence be admitted and, if admitted, form the basis of a successful appeal'.⁹⁴ It would appear that recognizing a right to appeal on the basis of the facts of the case was a step of symbolic, rather than of real, value. Almost as soon as it was allowed, the judiciary undermined its scope: 'from the start the judges narrowly exercised this wide discretion to admit further evidence'.⁹⁵ Rather than providing the apposite evidence of innocence that it did in many of the cases which led to calls for appeals in criminal cases, new evidence, in practice, was, and is, very rarely produced on appeal and is usually unsuccessful when it is. That which most clearly seems to point towards the crime (the facts of the matter) tend, therefore, to be obscured by and occluded from appellate courts.

How, then, is a successful appeal to be launched? Most commonly, the answer is to find serious judicial error in the first trial: usually a mistake made by the judge in his interpretation of the law, such as the allowing of inadmissible evidence, or directing the jury either prejudicially or erroneously.⁹⁶ As with the codification efforts of Fitzjames Stephen, the crucial factor, here, is the control of the narrative. An appeal stands the greatest chance of success when it is argued that the story heard in court was one that should not have been allowed to be told in just the way that it was. For instance, in allowing inadmissible evidence, a judge opens himself to attack, not on

⁹¹ Harlon Leigh Dalton writes that 'to be sure, we are accustomed to thinking of the pronouncements of appellate courts as being more authoritative than opinions rendered by trial court judges'. Harlon Leigh Dalton, "Taking the Right to Appeal (More or Less) Seriously," *Yale Law Journal* 95, no. 1 (1985): 77.

⁹² Floriot, *When Justice Falters* 24.

⁹³ Pattenden, *English Criminal Appeals 1844-1994* 138.

⁹⁴ Kate Maleson, *Review of the Appeal Process, Research Study No. 17 for the Royal Commission on Criminal Justice* (London: HMSO, 1993) 11.

⁹⁵ Pattenden, *English Criminal Appeals 1844-1994* 131.

⁹⁶ Maleson, *Review of the Appeal Process* 15. Dalton, "Taking the Right to Appeal (More or Less) Seriously," 80.

the basis of the truth or falsity of the evidence heard, but simply on the grounds that he was in error. In making such a mistake, the judge allowed a certain narrative to be produced and, while an appeal on these grounds undoubtedly questions the *factual* status of the evidence against the appellant (as what is inadmissible cannot, strictly speaking, be a fact), its more important claim is that the trial was not procedurally correct. Appeals thus attempt not so much to alter the facts of the original trial as to reconfigure the form which that trial took. In essence, an appeal attempts to create a new *sjuzhet* for the same *fabula*.

A further reading of Jerome Frank becomes obvious here. Following his theory of ‘facts as guesses’, Frank went on to argue that judgments made in court (that is the beliefs that are proffered as true) are always intuitive and that legal rules only offer a system of ratiocination for an instinctive decision. It should be stressed that Frank is not suggesting that such decisions are necessarily invalid or that using legal rules in this way is a process without weight. To understand exactly what is going on in a trial should not, Frank contends, reduce either the meaning or authority of that process. He writes: ‘that a conclusion is prior in time to the reasoning which logically justifies it may make that reasoning seem artificial, but does not necessarily make that reasoning fallacious or useless’.⁹⁷ Frank was writing, predominantly, about courts of first instance, but his thoughts are even more intensely pertinent to appellate courts, where the concept of rules is so important. In England and Wales, for instance, the judges who sit on the Court of Criminal Appeal will often overturn a verdict if a particular point of law has been shown to have been breached in the first trial. However, they have the opportunity, via the proviso to section 4(1) to uphold the verdict if, despite this breach, they are satisfied that no miscarriage of justice has occurred. That is, the judges have it in their power to allow an appeal to fail, despite the fact that, technically, it could succeed. This seeming leeway is restrained by five instances in which the proviso may not be applied: (1) Where the conviction is "Unsafe or Unsatisfactory", (2) Where conviction at an Error-free Trial was not inevitable, (3) Where it was not open to the jury to Convict as they did, (4) Where there was a fundamental error, (5) Where the Appellant would be left with a sense of Grievance about his trial (an instance of fundamental uncorrectable error).⁹⁸ The decision making in these instances is given the veneer of sheer technicality. The rules are designed to cover every possible eventuality – to leave the judge with

⁹⁷ Frank, *Courts on Trial: Myth and Reality in American Justice* 183.

⁹⁸ Pattenden, *English Criminal Appeals 1844-1994* 184.

no choice as to what should be done.⁹⁹ But, a closer examination of these particular rules show them to be worded in an extremely loose fashion. What kind of error, for instance, is not 'fundamental'? And, what kind of appellant does not feel aggrieved about their first trial? The restrictions on the use of the proviso are open to such a variety of interpretations it, in fact, seems almost inconceivable that the proviso could ever be applied. Indeed, Pattenden has noted that predicting exactly when it will be used 'to dismiss an appeal is almost impossible'.¹⁰⁰ It would seem that Frank's logic finds perfect illustration here, as legal rules, and reasoning, come after the real work of judgment has been done.

These factors undermine the apparent attempt to repeat the test of what happened. This is, in fact, only logical, as appeals do not repeat anything in this sense. Appeals are not re-trials. The Judges who sit on the Court of Criminal Appeal and the *Cour de Cassation* do not carry out any investigations. They are rather, employed in the task of reading transcripts of the original trial. In France, this act forms a certain continuity with the initial investigation, it having already been structured around the written *dossier*. In England and Wales, however, it is an important departure from the first trial, that having been conducted in the adversarial fashion typical to the common law. An appeal, then, is not a form of repetition which demands a re-investigation, into the reality of what happened. Rather, what occurs, what is demanded by the form of the repetition, is that the language and rhetoric of the first trial be studied. Not only does such a procedure fail to grapple with the original experience, it has also been argued to have a negative effect on the initial trial court's efforts to do so. By having one eye on the potential for appeal, judges in courts of first instance may produce not 'better decisions, just better insulated ones'.¹⁰¹ Decisions, thus, have to be acceptable, or able to withstand attack, rather than be *right*. Part of the way that such insulation is provided is by descending even further into something which the law has, for centuries, been accused of: an overly technical use of a needlessly abstruse language which excludes lay understanding. Peter Goodrich argues that such an exclusive use of language forms a 'writing that binds and in which the reader must believe, for not only is it *vocabula artis*, the language of truth, but it is also a writing that only the learned should read'.¹⁰² Criminal appeal courts, both in their own decisions and through their influence on courts of first instance, accentuate even further the use of such technicality. Yet, they were instituted precisely because of

⁹⁹ On the fiction of inevitability in legal decision making see Sanford Levinson, "The Rhetoric of the Judicial Opinion," in *Law's Stories: Narrative and Rhetoric in the Law*, ed. Peter Brooks and Paul Gewirtz (New Haven: Yale University Press, 1996).

¹⁰⁰ Pattenden, *English Criminal Appeals 1844-1994* 187.

¹⁰¹ Dalton, "Taking the Right to Appeal (More or Less) Seriously." 88.

¹⁰² Peter Goodrich, *Oedipus Lex: Psychoanalysis, History, Law* (Berkeley, CA: University of California Press, 1995) 93.

anxiety about the original trial's failure to grasp the real event, the experience, at its heart. The law's response to a disappearing experience is therefore the same as Proust's. Both retreat into a specialist writing that acts as a substitute for the previously authoritative concept of experience – a writing which, like Ford Madox Ford's, is accessible only to experts.

The way that an appeal is limited by the terms set for its inquiry has a parallel in the Dreyfus Case – not in Dreyfus' appeal but, rather, in the trial of Zola. As mentioned earlier, Zola wrote his *J'accuse* article with the express intention of bringing libel charges upon himself: the idea behind this being that at his trial the veracity of his accusations would have to be tested and so all the evidence against Dreyfus would have to be re-presented. It would, therefore, be like Dreyfus' second trial, his appeal. Zola wanted the right, or rather, the full, story to be told. However, the government cleverly circumvented this necessity by proceeding against Zola only in respect of the accusations he made about the second court martial; that of Esterhazy. The appeal could only concern itself with this matter and any mention of Dreyfus by Zola's defence lawyers was quickly silenced by the presiding judge.¹⁰³ The potential for appeal was, therefore, blocked as the rereading was limited to a specific element of Zola's writing (based upon a particular reading of the government's actions). The trial, intended as a form of appeal, was held in a straitjacket from which it could not break out.

The aim of an appellant is always to break out of this straitjacket. They have to find a way of altering the terms of their initial conviction, as it is only by doing so that a new *synthèse* can re-present the same *fabula* (the story of their innocence). An identical ambition can be seen in the work of Proust, where *In Search of Lost Time* successfully appeals the earlier *Jean Santeuil*. In terms of one being a repetition of the other, this is obvious: the resonances are abundantly clear, with the doubling of characters becoming apparent almost immediately. Jean is clearly the forerunner of Marcel, the faithful servant Françoise appears firstly as Ernestine, the great friend Robert Saint Loup has a precursor in Henri de Réveillon, the childhood love Gilberte Swann finds an earlier incarnation as Marie Kossichief and the jealousy-inducing Albertine is initially known as Françoise. Allied to these examples, there are cases of recurring variations. For instance, Jean's youthful relationship with his mother and father is more openly antagonistic than Marcel's, and the figure of the Grandmother, so significant for Marcel, is virtually non-existent in *Jean Santeuil*, where it is the Grandfather whose death is heart-wrenchingly depicted. While these resonances of character are important, it is the repetition of specific scenes and descriptions that are most significant, examples of which can be found in the withholding of the mother's goodnight kiss

¹⁰³ Floriot, *When Justice Falts* 238.

which opens both novels, or the pollination metaphor that is used to describe friendship in *Jean Santeuil* and sexuality in *In Search of Lost Time*. One of the most famous scenes of the later novel, when Swann, suspecting Odette of infidelity, returns to the street in which she lives late at night, also occurs in the earlier novel, with Jean playing the part of the jealous lover. In both cases, Jean/Swann, seeing that their beloved's light is still on, become convinced that she is entertaining a lover within the confines of her bedroom. But, upon knocking on the window shutters, they are each greeted by two unknown elderly gentlemen. Jean and Swann, both conditioned by the prejudices of their jealous thoughts, have failed to notice that the lighted window is not that of their beloved's room. They are unable to interpret the real experience of what they see and are, instead, bound to read the same imagined infidelity no matter what the circumstances.

But there are, also, critical differences between these scenes: crucial ways in which Proust's great *appeal* is launched. The following passages describe Jean/Swann's initial reaction, and subsequent memories, of being confronted with the two gentlemen as opposed to Françoise/Odette. The first quotation is taken from *Jean Santeuil*:

He made his apologies and walked away. He returned home in a somewhat sheepish state of mind. He did not tell her of the incident. He kept to himself the new mood of doubt and anguish which had assailed him. It had in fact turned out to be altogether baseless, but logically, given certain circumstances, it might have been, could still be, amply justified. Then his natural sweetness where she was concerned smothered the more recent impression under those quite contrary feelings which were usual with him. Still whenever she said to him, "I shan't be able to see you tonight," he was conscious of a small but painful stab, and though he replied that really it didn't matter, relapsed into a melancholy and apathetic mood, leaving her to wonder at the change in him, though never guessing its cause (587-588).

He made what apology he could and hurried home, glad that the satisfaction of his curiosity had preserved their love intact, and that, having feigned for so long a sort of indifference towards Odette, he had not now, by his jealousy, given her the proof that he loved her too much, which, between a pair of lovers, for ever dispenses the recipient from the obligation to love enough.

He never spoke to her of this misadventure and ceased even to think of it himself. But now and then his thoughts in their wandering course would come upon this

memory where it lay unobserved, would startle it into life, thrust it forward into his consciousness, and leave him aching with a sharp, deep-rooted pain. As though it were a bodily pain. Swann's mind was powerless to alleviate it; but at least, in the case of bodily pain, since it is independent of the mind, the mind can dwell upon it, can note that it has diminished, that it has momentarily ceased. But in this case the mind, merely by recalling the pain, created it afresh. To determine not to think of it was to think of it still, to suffer from it still. And when, in conversation with his friends, he forgot about it, suddenly a word casually uttered would make him change countenance like a wounded man when a clumsy hand has touched his aching limb (I, 331-332).

In *Swann's Way*, the description of the pain felt in looking back on this event has become both more intense and more insular. While Jean walks away in a 'somewhat sheepish state of mind', Swann returns home 'glad that the satisfaction of his curiosity had preserved their love intact'. In other words, Jean is immediately affected by the presence of his humiliation while Swann is relieved that the experience has fizzled out into a non-event. It is only later that Swann really feels the pain as it is thrust 'forward into his consciousness'. For Swann, 'the mind, merely by recalling the pain, created it afresh'. Each recall, in fact, brings an independent and original pain into being which acts on him much more intensely than the lived immediacy of the moment itself.

A comparison between the two passages, thus, shows Swann's feelings to be more intimately interiorized than Jean's, yet this is despite a startling fact. While Jean, the protagonist of a third-person omniscient narration, is the actor of the scene in the earlier novel, in *In Search of Lost Time* it is Marcel's acquaintance, Swann, who is the central figure. This is despite the later novel being an intensely subjective first-person narrative written from the perspective of Marcel's consciousness. There is no new evidence to consider here - the facts of the scene are identical. Rather, what has altered is the whole procedure of novel writing and story-telling. Swann's adventures are as real as Jean's - but they are also the projections of Marcel as opposed to the experiential reporting of an omniscient narration.¹⁰⁴ It is this, rather than the oft-cited philosophical conception of time and involuntary memory that is the fundamental shift from one novel to the other. The real change of procedure, the fundamental point of law, is the

¹⁰⁴ J Hillis-Miller compares Eliot's *Middlemarch*, a classic novel of omniscience with objective characters, to *In Search of Lost Time*, where characters only exist as Marcel's interpretations of them. 'No verification of that interpretation by way of direct access to the other person's internal consciousness is ever possible, either for the writing or for the written Marcel'. Miller, *Black Holes* 323.

recognition of how fantasy is as real as experience for the modern consciousness. Proust has created a form of first person omniscient narration. The form that *In Search of Lost Time* takes up may therefore be said to form a successful appeal. But, it is an appeal to nothing other than the non-experience that has been charted throughout the course of this thesis.

In Search of Difference

That Proust repeated his work in a way that appealed to modern consciousness is what turned his unpublished early novel into a classic of modernism. The precise way in which *In Search of Lost Time* re-wrote *Jean Santeuil* implied a retreat from experience – but what of the various repetitions that existed within the later novel taken in itself? In Marcel's speech about Vermeer and Dostoyevsky, he proclaims that, 'if I've said to you that from one novel to another it's the same scene, it's in the compass of a single novel that the same scenes, the same characters reappear if the novel is at all long' (V, 432). *In Search of Lost Time* is, by any estimation, a long novel and the repetitions which Marcel would expect to appear do indeed occur. As mentioned earlier, Marcel's argument also seemed to suggest that what was constantly repeated was the unique world of the artist. A work of genius, thus, always reiterates its own ultimate truth.

One such truth, for Proust, could be argued to be the repeated portrayal of jealousy's role in love's survival. Swann, Marcel, Saint-Loup, Charlus, Gilberte, the Duc de Guermantes and countless others all, at different stages in the novel, become the type of the jealous lover. Yet, despite the initially apparent recurrence here, the specifics of these instances all apply variations to the theme. As Serge Doubrovsky has said, 'all of the scenes of the search are relived, but each time there is a qualitative difference that comes from the evolution of the book, of the text as such'.¹⁰⁵ In the case of jealous love, these qualitative differences are numerous. Swann's jealousy over Odette is seen to be partially justified by her past life as a courtesan but Marcel's suspicions of Albertine are less well founded. Within variations of gender and sexual preference, Marcel's greatest fear is that Albertine is a lesbian, while Charlus is tormented by Morel's heterosexual conquests. The different positions within jealous love are also reflected: Saint-Loup thus becomes, at one and the same time, both the jealous subject of his lover Morel, and the jealous object of his wife, Gilberte. In all these cases there is a repetition of the fundamental Proustian mechanism of jealousy within love, yet there is also always a variation in

¹⁰⁵ Gilles Deleuze, *Two Regimes of Madness: Texts and Interviews 1975 - 1995* (New York: Semiotexte, 2006) 42.

the materials that the mechanism will work upon. To reread jealousy in love is, therefore, to see it tried by repeated testing.

Yet, just as the rereading that was instituted in the court of appeal actually served to undermine the possibility of repeating anything like an investigation into the crime, so too the structure of *In Search of Lost Time* and the pre-eminence within it of memory and writing, in place of experience, confuses the repetition which it seems to contain. The positioning of Swann's story within Marcel's narration is a good example of this. It is commonly thought that Swann and Odette is the original story. That the jealousy which Marcel hears afflicted Swann (the true father figure as opposed to Marcel's biological father) influences his subsequent relationships with women and comes to warp his view of all romantic relations. But whose desire is really the locus of Proust's novel? As mentioned earlier, in *Swann in Love*, the reader is given access to every nuance of Swann's thoughts. Marcel is recounting, in scrupulous detail, both events that he neither saw nor could have been told in such detail and is given access to another consciousness (Swann's) that no human being ever has of another.¹⁰⁶ The crucial point is that Swann, for the reader, exists almost exclusively in the form of Marcel's subjective projections. His supposed, 'objective report on reality is actually a self-dramatization by means of novelistic character and incident'.¹⁰⁷ In creating such a narrative, Proust is conceding the importance of fantasy, as opposed to experience, for modern consciousness. But, in doing so, the precedence of stories becomes confused. Swann and Odette's story forms the cornerstone of the novel and would seem to offer a prelude to Marcel and Albertine's relationship. It would even appear that Marcel's jealousy is pre-empted, and thus in some way created, by his knowledge of Swann's.¹⁰⁸ However, Swann's story is related, and thus in some way created, by Marcel's recounting of it: at one stage he writes of 'a sheet on which I had jotted down a *story* about Swann and his inability to do without Odette' (V, 418, my emphasis).¹⁰⁹ Swann and Odette's affair is the product of Marcel writing about it, and reading his own thoughts and desires into it, just as his memory of Berma is altered by his continued desire to have found her acting sublime. But Marcel only writes of Swann's jealousy after he has already suffered his own over Albertine. So, while it

¹⁰⁶ Ironically, it is precisely such knowledge that Marcel desires, but never attains, of Albertine.

¹⁰⁷ Bersani, *Marcel Proust: The Fictions of Life and of Art* 137.

¹⁰⁸ This is the view expressed by most critics, including Samuel Beckett, who thought that every Proustian experience could be related back to Swann, and Vladimir Nabokov who wrote that, 'it should be borne in mind that Swann is a kind of fancy mirror of the narrator himself. Swann sets the pattern, and the narrator follows it'. Beckett, *Proust* 34, Vladimir Nabokov, *Lectures on Literature* (London: Picador, 1983) 239.

¹⁰⁹ In the original French, 'story about Swann' reads '*récit relatif à Swann*'. *Récit* usually denotes a fictional narrative, while 'relative to' as opposed to 'about' undermines, with even greater emphasis than the English translation, the idea of Marcel's written version being an objective historical record of events. Marcel Proust, *À la recherche du temps perdu* Folio Classique (Paris: Editions Gallimard, 1988) V, 352.

appears that Swann is pre-Marcel it is actually Marcel who is pre-Swann and the reflections of *Swann in Love* that we see in *The Captive* should be reversed.

In an article entitled 'Rereading in Proust: Perversion and Prolepsis in *A La Recherche du Temps Perdu*', Elisabeth Ladenson argues that Proust intentionally designed his novel to be reread. In relating a story told by Jean Cocteau, of Proust reading to him, it is said that Proust omitted certain paragraphs from his narration, saying that they would only be explicable upon reading later volumes. Rereading the earlier volumes is therefore prescribed by the later ones. In her analysis, Ladenson, at times, subscribes to a standard, chronological, view of repetition, writing that 'the affair between Swann and Odette [...] serves as a template for the hero's subsequent adventures with Albertine and Odette prefigures her successor in various particulars'.¹¹⁰ Yet, a more subtle and reversible understanding of rereading is suggested when Ladenson writes that Albertine, 'and Odette are assumed to be exclusively heterosexual until it is suggested otherwise, at which point, in each case, a dizzying cycle of rereading commences'.¹¹¹ The rereading here involves reading the later discovery into the earlier behaviour. But what is missing from this analysis is the fact that Marcel has beaten the reader to it. He has already read into the earlier life discoveries only made later. The precedence of events has been reversed.

Gilles Deleuze uses just such an idea to undermine the most primal assumptions, arguing that:

by loving his mother the hero of *In Search of Lost Time* repeats Swann's love for Odette. The parental characters are not the ultimate terms of individual subjecthood but the middle terms of an intersubjectivity [...] Behind the masks, therefore, are further masks and even the most hidden is still a hiding place, and so on to infinity. The only illusion is that of unmasking something or someone.¹¹²

The mother's goodnight kiss, withheld in the opening pages of the novel and seemingly so crucial to Marcel's subsequent development, is, thus, not the original scene at all. Rather, the repetitious behaviour itself is the original, which then posits the mother's kiss as a central

¹¹⁰ Elisabeth Ladenson, "Rereading Proust: Perversion and Prolepsis in *a La Recherche Du Temps Perdu*," in *Second Thoughts: A Focus on Rereading*, ed. David Galef (Detroit: Wayne State University Press, 1998), 261.

¹¹¹ Ibid., 260.

¹¹² Gilles Deleuze, *Difference and Repetition*, trans. Paul Patton (London: The Athlone Press, 1994) 105-06. The affinity with the argument of the previous chapter, and the impossibility of *unmasking* Edward Ashburnham, will be noted.

explanation of its own functioning.¹¹³ The theme of jealous love works in precisely the same way. Swann is not an original version of anything but, rather, a unit in a continuous repetition that is in search of an original.

The act of rereading, which is prescribed by Proust's novel, is therefore not a simple matter of repeating an original truth or re-testing the validity of a law: but what of the law itself? Appellate courts, in upholding or overturning the judgments of courts of first instance, reread decisions for signs of error, but in doing so they also make the *law* and ensure its uniform and consistent application. In England and Wales this is starkly evident in the strict application of precedents set by appellate courts. The common law is based upon the decisions of concrete cases. It is this feature that is often thought to save it from abstraction: precedents, in being tied to real cases, are intimately bound to an experience of the real world that had to be adjudicated on. In forming a precedent which is subsequently followed the experience is both shared and preserved. The formation of a tradition like this gave the illusion of a repetition that stretched back through the centuries. However, Peter Goodrich notes that it was not until the early nineteenth-century that the common law could be seen as consistent in this way. He writes that 'the emergence of reliable law reports in the early 1800s, together with the somewhat earlier revival of the academic and literary expositions and systematizations of the common law, provided the basic preconditions of the modern conception of common law as precedent'.¹¹⁴ Indeed the concept of binding precedent was first set out by Justice Parke as late as 1833:

Our common law system consists in the applying to new combinations of circumstances those rules which we derive from legal principles and judicial precedents; and for the sake of attaining uniformity, consistency and certainty, we must apply those rules, where they are not plainly unreasonable.¹¹⁵

In France, the law is based upon the numerous codes first introduced following the Revolution. It is thus an abstract system: legal rules are, 'divorced from the circumstances of

¹¹³ The same logic can be applied to the relationship between *Jean Santeuil* and *In Search of Lost Time*. *Jean Santeuil* is written earlier but published later (and is regarded as a lesser work) so it is the preceding work for Proust, but it is only a subsequent discovery to *In Search of Lost Time* for most readers. As a re-writing then, *Jean Santeuil* is prior, but as a re-reading it succeeds *In Search of Lost Time*.

¹¹⁴ Peter Goodrich, *Reading the Law: A Critical Introduction to Legal Method and Techniques* (Oxford: Basil Blackwell, 1986) 70.

¹¹⁵ *Mirehouse v Tennell* [1833]. Quoted in *Ibid*.

particular cases'.¹¹⁶ However, as with differences in criminal procedure, the distinction between the civil and the common law is, in this matter, less stark than it first appears.¹¹⁷ It has been argued that in the application of the law in France, 'caselaw (*la jurisprudence*) and doctrinal writings (*la doctrine*), although not theoretically recognised as formal sources of law, are of persuasive value'.¹¹⁸ In addition, although the rulings of the *Cour de Cassation* have no formal authority over the subsequent decisions either of itself or lower courts, 'in practice a decision thus fully matured establishes a uniform interpretation of the law'.¹¹⁹ Just as this ties the application of the law to particular cases in France, so too, in the common law, 'the whole idea of treating "like cases alike" can in fact be rendered intelligible only if we envisage decisions in individual cases as decisions of principle'.¹²⁰

It can also more generally be argued that the projects of common law precedent and civil law codification were developed with the same desire for uniformity in mind. In both jurisdictions, uniformity was to be gained from the direct application of the same law in the same situation. In other words, the correct application of the law requires the perception of a repetition between the concrete circumstances encountered in the present and the previously made decision or earlier conceived rule. While such repetition may be linguistic in form, it ultimately relies on a sense of experience being distilled by (in this case a formally recorded) memory. The same form can be identified as guiding both the realist novel and the reconstructive trial in which so many people, including Jean Santeuil, believed. However, by the time of *In Search of Lost Time*, and during the Dreyfus Case, the novel and the trial are changing – and so too is the sense of repetition involved in following precedent. The fiction of the completeness of the law was questioned in 1900 by the French legal philosopher Francois Géný, who argued that 'in addition to cases where one must interpret statutes, there are cases where one must be creative and solve problems without any assistance from legislative texts'.¹²¹ Goodrich has argued convincingly that the following of precedent in the common law is more than simple repetition and actually involves the very creative aspect that Géný advocated.¹²² The act of finding a precedent involves the selection of the case, the formulation of the rule and an

¹¹⁶ René David, *English Law and French Law: A Comparison in Substance* (London : Calcutta :: Stevens & Sons ; Eastern Law House, 1980) 19.

¹¹⁷ Goodrich writes that 'all legal systems embody some element of precedent, nor is the actual historical development of the common law peculiar to England'. Goodrich, *Reading the Law* 128.

¹¹⁸ Andrew ... [et al.] West, *The French Legal System: An Introduction* (London: Fourmat, 1992) 43.

¹¹⁹ R. C. K. Ensor, *Courts & Judges in France, Germany and England* (London :: Oxford University Press, 1933) 45.

¹²⁰ Neil MacCormick, *Legal Reasoning and Legal Theory* (Oxford: Clarendon Press, 1978) 154.

¹²¹ David, *French Law : Its Structure, Sources and Methodology* 167.

¹²² Goodrich, *Reading the Law: A Critical Introduction to Legal Method and Techniques*.

emphasis on certain similarities over specific differences. In other words, an act of rereading occurs. Goodrich quotes from Karl Llewellyn's *The Bramble Bush*: 'there is a distinction between the *ratio decidendi*, the court's own version of the rule of the case, and the true rule of the case, to wit what it will be made to stand for by another later court'.¹²³ Llewellyn, a contemporary of Jerome Frank and fellow Legal Realist, thus makes a similar argument to Frank's in relation to the facts of a trial. The practice of repeating decisions is not a simple matter of perception but involves a *decision* as to what the previous ruling meant – it commits the judge to rereading the earlier decision by way of the latter. It would appear, then, that, just as the primacy of Marcel and Swann's relationships are subverted by their repetition, so too, in the law, 'the language of precedence [...] proves to be a language of paradox'.¹²⁴

Llewellyn and Frank were both heavily influenced by philosophical pragmatism and psychoanalysis. In this context it becomes apparent that both Frank's view of facts and Llewellyn's of precedents correspond to Freud's conception of the infantile trauma. For Freud the realisation that not all of the primal scenes of abuse that he was uncovering could actually have occurred, rather than invalidating his theory, only served to make it stronger. 'Screen-memories', in fact, served to explain a patient's behaviour in a way that connected and made sense. They found a way to 'represent the forgotten childhood years as completely as the manifest content of dreams represents the dream-thoughts'.¹²⁵ Around the time that the first volumes of *In Search of Lost Time* were appearing, Freud's theory was changing in another way also. In his first conception of psychoanalytical method, remembering the trauma that lay behind neurosis was the key to its dissolving. But, he wrote of his new technique that the 'patient does not *remember* anything at all of what he has forgotten and repressed, but rather *acts it out*. He reproduces it not as a memory, but as an action; he *repeats* it, without of course being aware of the fact that he is repeating it'.¹²⁶ By this economy, the world of conscious life, guided by unconscious drives, has become the site of nothing more than a repetitious 'acting out' of something which never actually took place. As Lacan pointed out, it is, 'precisely out of what never was, that what repeats itself springs'.¹²⁷ Despite these non-origins, Freud argued that the continuous manipulation of present reality into the shape of a prior screen-memory was

¹²³ Ibid. 74.

¹²⁴ Bill Shuter, "Tradition as Rereading," in *Second Thoughts: A Focus on Rereading*, ed. David Galef (Detroit: Wayne State University Press, 1998), 77.

¹²⁵ Sigmund Freud, "Remembering, Repeating and Working Through," in Sigmund Freud, *Beyond the Pleasure Principle and Other Writings*, trans. John Reddick (London: Penguin, 2003) 35.

¹²⁶ Ibid. 36.

¹²⁷ Quoted in Shlomith Rimmon-Kenan, *A Glance Beyond Doubt: Narrative, Representation, Subjectivity* (Columbus, Ohio: Ohio State University Press, 1996) 9.

encountered as a ‘real, lived experience’.¹²⁸ The individual, ‘is driven to *repeat* the repressed matter as an experience in the present’, but the experience of which he speaks, having been drained of its neutral and immediate apprehension of a present world, is nothing like the modern concept with which this thesis began.¹²⁹ Rather, there is a creative aspect to the unconscious in that it manages to *repeat* the same reality out of an ever-changing set of material conditions.

Returning to the comparison of ‘window shutters’ scenes involving Jean Santeuil and Charles Swann, it will be remembered how rational and logical Jean’s reflections were. His suspicions were false but they could have been true. He is able to forget about the awkward scene, and his own paranoia, until reminded by a specific recurrence of the same situation (his lover not being able to see him in the evening). This again is logical and leaves him in an understandably ‘melancholy and apathetic mood’. For Swann, on the other hand, memory is much more fluid and mysterious: the repetition of the painful emotion is not as obvious as it was for Jean. He stumbles upon this particular memory as his thoughts take ‘their wandering course’ and then there is a confusion described between the memory of the mind and the body until a single ‘word’ could make him feel the pain of an ‘aching limb’. The repetition of the previous emotion and scene with the later one is therefore complicated as, without being specified, it is unclear whether the single word uttered at a later date actually has any obvious connection to the earlier event. Similarity is occurring, here, within fundamental difference: it is a Nietzschean form of repetition. In the previous chapter, Walter Benjamin’s theory of resemblances, in which objects are only ‘opaquely similar to one another’ was cited in reference to the science of fingerprinting.¹³⁰ Proust’s moments of involuntary memory fulfil the same role, creating within their repetition an ‘image’ (a term that Hillis-Miller, in glossing Benjamin, defines as ‘the meaning generated by the echoing of two dissimilar things’).¹³¹ The opaque similarity that reminds Swann of his humiliation is therefore a reminder of nothing so solid as an experience, or even a memory. Rather it is a repetition that conjures up a dream image – a fingerprint of his ‘aching limb’. Swann is driven to repeat the scene at the window shutters, and conjure up its image, every time an unspecified word is spoken: the word being unspecified precisely because it could be anything. Within the world of infinite difference, opaque repetition will constantly be enacted, creating endless repetitions of a fantastic ‘image’.

¹²⁸ Sigmund Freud, “Remembering, Repeating and Working Through”, 41.

¹²⁹ Ibid. 36

¹³⁰ Benjamin, *Illuminations* 200. Elements of this argument are also relevant to Benjamin’s famous essay “The Work of Art in the Age of Mechanical Reproduction”, where the possibility of reproducing an infinite number of copies obliterates the *aura* of art’s originality.

¹³¹ Miller, *Fiction and Repetition: Seven English Novels* 9.

The formation of legal rules, and their following, can most accurately be described in the same terms. Goodrich argues in *Oedipus Lex* that the *image* of the law was created by the very repressed matter of those who composed it. As the institution of the law, and its study, repressed pleasure, lust, and play, those same unconscious forces drove the melancholic lawyer's projection of what the law was and could be. Legal rules are thus created by their author's 'repeated practices, from their habits, habituations, and other pathological or incorporeal forms'.¹³² These rules, themselves never exactly responding to the experience's they apparently adjudicated on, are then reread in the light of new circumstances only subsequently encountered. The creative drive to see the current experience as only a repetition of the previous rule thus conforms to an understanding of Freudian repetition compulsion.¹³³ Paradoxically, while the law, in following precedent, does not repeat anything in terms of copying a pre-existent experience or truth, the repeated practices of *stare decisis* 'express repression by virtue of repeating rather than inventing, thinking, or judging anew'.¹³⁴

A reversal of the received logic about Proust's masterpiece now becomes apparent. The fundamental component of *In Search of Lost Time* is not the backward look of Marcel's recollection but, rather, the compulsive repetition of his behaviour. The mother's kiss exists as the fantasy which explains the repetition - but this is a creative memory: it is a gap, filled in just the way that a previous rule is creatively constructed in order to generate the conditions in which it can be obsessively adhered to. All Marcel's memories work in this way. His reminiscence of Combray, for instance, is an act that not only obliterates present experience but also returns the subject to a world that never actually existed. Deleuze writes that 'Combray reappears, not as it was or as it could be, but in a splendour which was never lived, like a pure past'.¹³⁵ Gerard Genette identifies the same ideal quality in the formal structure of the narration. The depiction of Combray aims toward a level of generality – in fact, Genette described Proust as being '*intoxicated with the iterative*' (his emphasis).¹³⁶ However, what Proust's narrative actually creates is defined by Genette as 'pseudo-iterative': a style evident from 'scenes presented, particularly by their wording in the imperfect, as iterative, whereas their richness and precision of detail ensure that no reader can seriously believe they occur and reoccur in that manner, several times, without

¹³² Goodrich, *Oedipus Lex: Psychoanalysis, History, Law*. 30

¹³³ The use of the phrase 'repetition compulsion' in relation to the following of precedent comes from A Nusbaum, "Comparative Aspects of the Anglo-American Offer-and-Acceptance Doctrine," 36 *Columbia Law Review* 920. Quoted in *Ibid.* 201.

¹³⁴ *Ibid.* 30

¹³⁵ Deleuze, *Difference and Repetition* 85.

¹³⁶ Genette, *Narrative Discourse: An Essay in Method* 123.

any variation'.¹³⁷ What is described as constantly reoccurring (the ritualistic Saturdays of Combray) are described with a particularity that could only be a representation of a specific instance. The repetition of summer days in Combray, thus, fails to repeat an original entity because the reminiscence is stuck in a general-particularity (or particular-generalality) that never existed. Not only could things, generally, not have occurred like this, the particular instances on which they are based, by being given in the form of a generality, also lose their specificity and, hence, their authority (which, remember, was the very authority of realism). Fantasy is, again, at the heart of the repetition.

As with so much in psychoanalytical theory, Freud saw a primal version of repetition compulsion in the play of children, arguing that 'it is plainly the case that children repeat everything in their play that has made a powerful impression on them, and that in so doing they abreact the intensity of the experience and make themselves so to speak master of the situation'.¹³⁸ Becoming adult, in this sense, is to break with such compulsive repetition and accept one's non-mastery of the world: it is to start having real experiences. Yet, it is precisely this that Marcel, and the modern consciousness generally, cannot do. To use the analogy of Marquard, Proust, or rather Marcel, never did 'grow up'. It is this inability of Marcel's to commune with reality – to have an experience – and his concomitant drive only to repeat, which prompts Gilles Deleuze to make a counter-intuitive claim about him. Deleuze writes that Marcel, 'has no organs, he can't see, he does not understand anything, he does not observe anything, he knows nothing; when something is shown to him, he looks but does not see it'.¹³⁹ Although Proust's novel, at times, seems wholly devoted to the narrator's observations, Deleuze's comments radically question exactly what it is that is being *witnessed*.

Marcel is, in fact, destined to see the same scenes no matter where he goes. In the final pages of *Sodom and Gomorrah*, while tortured by thoughts of Albertine's homosexuality, Marcel is led by his mother to the window of his hotel room. She urges him to look out and see the sea, the beach, and the promenade: in compelling Marcel to accept the view of a concrete reality (a lived immediacy) she hopes to break the spell of his jealous visions. But, it is an attempt that is doomed to failure. Marcel writes that 'beyond the beach of Balbec, the sea, the sunrise, which Mamma was pointing out to me, I saw, with a gesture of despair which did not escape her notice, the room at Montjouvain where Albertine, curled up like a great cat, with her mischievous pink nose, had taken the place of Mlle Vinteuil's friend' (IV, 614). The experience of looking out the

¹³⁷ Ibid. 121.

¹³⁸ Sigmund Freud, 'Beyond the Pleasure Principle', in Freud, *Beyond the Pleasure Principle and Other Writings* 55.

¹³⁹ Deleuze, *Two Regimes of Madness: Texts and Interviews 1975 - 1995* 30-31.

window is, for Marcel, dominated by the fantasy image of Albertine with another woman. He cannot see what is there but only what his mental life repeatedly projects.¹⁴⁰ He, thus, repeats the same experience in every, different, reality.

Something has gone very wrong here. The repetition that Proust seemed to seek out (if Marcel's speech on Vermeer is given any credence), as a form of mimetic copying that could provide the reiteration of a fundamental truth, has descended into a baseless form of mental projection which obscures any difference whatsoever. The 'tyranny of the particular' which was earlier seen to denigrate the value of present experience, is nothing in comparison to this tyranny, in which repetition, as a compulsion, repeats an identical world from a continuously different concrete reality.¹⁴¹ Given the dominance of repetition compulsion, can this world, as it is, ever really be glimpsed? The pages of *In Search of Lost Time* would suggest that, for Marcel, the answer is yes. Experience can spring up in isolated moments, though when it does, it is usually in the way of a painful encounter. Marcel first discovers such a possibility when on his first visit to Balbec. In another harrowing night time scene within a bedroom (both fulfilling and predicting the obsession with the mother's withheld kiss) Marcel is tortured by his lack of familiarity with the room in which he is supposed to sleep. Having not been in the habit of sleeping there, the room's dimensions and the objects within it are thrust upon Marcel's consciousness. This is a painful encounter because the control Marcel wields over his world, strengthened by habit, is ruptured by an exterior reality that is finally *experienced* as precisely that: exterior. It is Marcel's inability to assimilate this exterior within himself (and turn it into an interior) that throws him into paroxysms of despair. In another famous example, the external world suddenly crashes in upon Marcel's consciousness as he sits and looks out at a Venetian lagoon. No longer coated in a film of his own desires, the city is reduced to lumps of rubble and base molecular components. As Hillis Miller writes, 'this passage is the nadir in all Proust's work, the low point beneath which it is impossible to sink. The self, for once, confronts what is "really there"'.¹⁴² Venice may be reduced to its 'vulgar material elements' (V, 749) but, in one sense, this is exactly what is required: to see a world of real, physical constituents that cannot be shaped by Marcel's mental projections.

Repetition is breached, for Marcel, when he is halted from reading the same habitual reality wherever he goes. But for his reader, for the reader of Proust's novel, the possibility of

¹⁴⁰ For a more detailed analysis of this scene see Leo Bersani, *The Culture of Redemption*.

¹⁴¹ Deleuze also comments on how things are 'repeated obsessively' in the novel to the point at which the reader is confronted with 'a delirium that presents itself as narration'. Deleuze, *Two Regimes of Madness: Texts and Interviews 1975 - 1995* 51.

¹⁴² Miller, *Black Holes* 479.

perceiving difference is, paradoxically, achieved through the very repetitious structures that have so far been discussed. The rereading prescribed by the text not only intensifies the elusiveness of any sense of a Platonic copy but it also forces its reader out of compulsively reading the same thing in its proliferation of detail. According to the hermeneutical approach of Wolfgang Iser, this is perfectly logical. In a theory which displays striking similarities to the logic of the Dreyfus Case and *In Search of Lost Time*, Iser argues that reading is constructed by an ideation, as opposed to a perception, in which an 'imaginary object' is formed and acts as a pole around which understanding can circulate. The imaginary object is required, not just to visualize the specific scene being read but to fulfil the intention of the novel as a whole: 'it manifests itself in the scene as an "empty" reference, which thus motivates subsequent images'.¹⁴³ The significance of Iser's theory when it comes to rereading is that:

a second reading of the text will never have the same effect as the first, for the simple reason that the originally assembled meaning is bound to influence the second reading. As we have knowledge we did not have before, the imaginary objects accumulating along the time axis cannot follow each other in exactly the same way.¹⁴⁴

It is precisely this concern which manifests itself in much legal theory and practice surrounding appeal courts. The law is pulled in two competing directions. Firstly, it wants to establish finality in its decisions – to cling to the illusion that its judgments have coincided with experience. Yet, secondly it wants to allow the possibility of reversal – a prospect that, in order to be actualized, must somehow conceive of the initial judgment as temporary.¹⁴⁵ This can be achieved precisely by conceiving of the initial trial as an 'imaginary pole' around which the rereading of the appeal can circulate. Iser writes that while the structure of the text and the process by which meaning is assigned will always be the same, 'it is the product of each realization that is unique and unrepeatable. And, in turn, this structure-determined unrepeatability of meaning is precisely what conditions the repeatability of the newness of the identical text. It can never be the same twice

¹⁴³ Iser, *The Act of Reading: A Theory of Aesthetic Response* 148.

¹⁴⁴ Ibid. 149.

¹⁴⁵ Steven Shavell, "The Appeals Process as a Means of Error Correction," *Journal of Legal Studies* 24 (1995): 393. Bron McKillop, "Review of Convictions after Jury Trials: The New French Jury Court of Appeal," *Sydney Law Review* 28, no. 2 (2006): 349. The state of flux that this aim implies was summed up by the journalist Séverine who, in reporting on the Dreyfus Case, asked which court should be considered to have proclaimed the final judgment: "That of 1894? Those of 1898, the Esterhazy trial, the Zola trial? Those of 1890, Court of Cassation or Council of War? Which of these are we being urged to respect?". Quoted in Geraldine Muhlmann, *A Political History of Journalism*, trans. Jean Birrell (Cambridge: Polity, 2008) 37.

over'.¹⁴⁶ So, not only *can* the rereading of a text or trial produce a new meaning or judgment, it actually *must* do so: even when the verdict is upheld it is a new form of guilt that is being read in an appeal. Roland Barthes makes a similar point, arguing that the aim of rereading is 'to multiply the signifiers, not to reach some ultimate signified'.¹⁴⁷ In fact, Barthes lauds rereading as the only thing which, 'saves the text from repetition (those who fail to reread are obliged to read the same story everywhere)'.¹⁴⁸ In rereading, the reader can see beyond the scope of their own horizons, as those horizons have been modified by the first reading of the text.¹⁴⁹ Significantly, experience cannot provide the same modification. Whereas reading can modify horizons, conscious life is destined, by way of a compulsive repetition, to read the same story everywhere. The act of reading, and rereading, by contrast, implies a journey through infinite difference.

The Platonic, Nietzschean and Freudian forms of repetition discussed in this chapter have, therefore, all connected to Proust's novel in different ways. Proust's retreat into writing and inevitable rewriting seemed to produce the possibility for constantly rereading the Platonic copy of an ultimate, even ideal, truth. However, upon examination, it appeared that, as with the forms of appeal and precedent in the law, the question of what was being repeated was more complicated than it first seemed. The search for originals provided a regression only into fantasy and a subsequent compulsion to repeat appeared to guide both the structure of the novel and the law's continued application of *stare decisis*. In the end, the novel, and its reading, found ways out of such repetition – but only into a world of infinite difference and Nietzschean, ghostly, recurrence; partly the world that it seemed that Proust had retreated from in the first place. If Proust had been searching for Platonic repetition then his quest failed. If, on the other hand, and as E M Forster claimed, he was attempting to accurately portray modern consciousness, his project was emphatically successful. The final oblique repetition of the novel is that between itself and the world of non-experience which was the site of its production. *In Search of Lost Time* most fundamentally welcomes its readers to a brave new world. A world in which there are only judgments without truth, repetitions without originals, and novels without experience.

¹⁴⁶ Iser, *The Act of Reading: A Theory of Aesthetic Response* 150.

¹⁴⁷ Barthes, *S/Z* 165.

¹⁴⁸ Ibid. 16.

¹⁴⁹ As Hans Robert Jauss puts it, the first reading, 'as the pregiven horizon for a second, interpretive reading, at once opens up and delimits the space for possible concretizations'. Jauss, *Toward an Aesthetic of Reception* 145.

CONCLUSION: EXPERIENCING THE HYPER-REAL

If there's not at least reasonable doubt in this case – at least reasonable doubt – then I don't understand what I'm doing. And so when the jury came in it didn't just disappoint me, it shook the foundations of my beliefs. It shook the foundations of my beliefs in the justice system, in human beings, in my own abilities, in my judgment, in my sense of reality.

David Rudolf, *The Staircase*¹

What comes after experience?

In one sense, this is entirely the wrong question. Even though the concept may now shimmer in a nebulous light that defies any sense of its self-evidence, as Joan Wallach Scott points out 'experience is not a word we can do without'.² The modern concept of experience has never quite vanished, and the continuing utilisation of realism in the novel attests to just this persistence. Modernism did not kill off realism – on the contrary, realist novels continue to pack the shelves of booksellers and libraries. Even more significantly, and as Weinstein puts it, realism was never something to be 'got over': the experimental forms of the twentieth-century have, therefore, continued to utilise some, albeit minimal, form of realism.³ An even more prominent continuity with its eighteenth and nineteenth-century traditions can be seen in the criminal trial. Trials have not stopped attempting to reconstruct the reality of an experiential event, and courts, and lawyers, still perceive themselves as practitioners in realism: as dealers in experience.⁴

But the range of continuity does not stop there. Modernism has had a lasting effect on the novel, and the various changes to the trial that took place in the early twentieth-century can still be seen today. The novel and trial are not what they once were, in their realist heyday, and the loss of experience is still in evidence. In this conclusion, some brief comments on Ian McEwan's novel, *Atonement* (2001), and Jean-Xavier De Lestrade's documentary, *The Staircase* (2005), will show how this is the case. A suggestion will then be made, by way of John D.

¹ Jean-Xavier De Lestrade, *The Staircase* (Maha Films, 2005), DVD.

² Joan Wallach Scott, "The Evidence of Experience," *Critical Inquiry* 17, no. 4 (1991): 797. Despite this point, Scott argues that the reliance on 'experience' in the rhetoric of identity politics is, in a postmodern, post-structuralist, world, is somewhat outmoded.

³ Philip Weinstein, *Unknowing: The Work of Modernist Fiction* (Ithaca, NY: Cornell University Press, 2005) 54. For Ian Watt, also, all novels are based on his definition of 'formal realism'.

⁴ Maria Aristodemou writes that 'legal writers are like writers of realist fiction, trying to maintain the illusion of an omniscient narrator, chronological sequence, plot inevitability, and causal connections between events'. Maria Aristodemou, *Law and Literature: Journeys from Her to Eternity* (Oxford: Oxford University Press, 2000) 25.

Caputo's hyper-realist interpretation of the work of Jacques Derrida, as to the future of a world in which experience deconstructs itself.

Shimmering Experience

Ian McEwan's *Atonement* opens on a hot summer's day in 1934, amidst the setting of a vast country house owned by the Tallis family. The central character, Briony, who at thirteen is the youngest in the family, is intent upon organising her visiting cousins in the production of a play she has written – indeed Briony spends much of her time writing and has already decided upon this as her vocation in life. Briony's elder sister, Cecilia, and Robbie Turner, the son of the family's cleaning lady are also present, as is Briony's brother, Leon, and his friend Paul Marshall. This first section is then defined by three incidents which Briony *witnesses*. Firstly, she sees Cecilia and Robbie engaged in a vociferous conversation which culminates in Cecilia stripping down to her underclothes and diving into the large fountain that the house overlooks. Later that day, Briony enters the library to find Robbie and Cecilia having sex. She interprets this as an assault, partly because of a letter from Robbie to Cecilia, which Briony has read, that contains what she considers to be an obscene suggestion. The reader is made aware, by way of the novel's apparently omniscient narration, that Briony's *witnessing* is not wholly accurate. At the fountain, Cecilia plunges into the water in order to recover the fragments of a broken Meissen vase, while the sexual act between her and Robbie is absolutely consensual. The third scene which Briony is privy to – the apparent rape of her cousin, Lola – is only narrated from Briony's point of view. This incident takes place outside, at night, and Briony's perception is of a vague figure rising up from Lola and running away. In the light of her earlier 'discoveries' about his wanton sexual proclivities Briony feels sure that this figure is Robbie, and she names him as such.

In the second part of the novel, Robbie, having been released from prison, is now a soldier in war-torn France. Since his conviction he and Cecilia have seen each other just once, for half an hour, in a train station prior to Robbie's dispatch to the front. The memory of the kiss they share on that occasion keeps Robbie going as he takes part in the preparations for the Dunkirk evacuation – the section ending with him falling asleep, one day before the evacuation is due to take place. Briony's atonement is then what initially appears to be narrated in Part Three. With age, she has realised her mistake in accusing Robbie, and now believes that her brother's friend, Paul Marshall, was Lola's assailant (the wedding of these two is narrated later in the section). Rather than take up a place at Cambridge Briony has become a trainee nurse in London, dealing with the harrowing cases of returning war casualties. Cecilia, who has cut off all contact

with her family since their acquiescence in Robbie's conviction, is now living in Balham , London. Briony tracks her down, coincidentally arriving while Robbie is on leave and so there also. She attempts to make amends, to atone, by committing to making a legal statement of Robbie's innocence: while there is no forgiveness offered, it is suggested that, in the future, this may come.

In actual fact, neither Briony's self-inflicted distress in working with the wounded, nor her legal retraction, are the real atonements. Her literary ambitions have persisted into adulthood and she has written a novella, *Two Figures by a Fountain*. Upon sending the manuscript to *Horizon* she receives a letter back, initialled CC (Cyril Connolly was the real-life editor of *Horizon*), in which her work is rejected but not without several words of praise and advice. The letter quotes from the novella, with passages that the reader has read in Part One, and makes suggestions: for instance, the vase should not be Ming as this would be too valuable to be taken outside. The reader is, therefore, encouraged to feel that Part One is a revised version of Briony's novella. At the conclusion of the novel's third part it is initialled: 'BT, London, 1999'. It would now appear that the whole novel has been Briony's work.

In the novel's final part, itself entitled 'London, 1999', this is made clear. Briony, having had a long career as a successful writer is now aged seventy-seven: she narrates this short epilogue in the first-person. The novella rejected by *Horizon* during the war has been rewritten several times since then, eventually being completed as the novel the reader has just read. From the second version onwards Briony has 'regarded it as my duty to disguise nothing – the names, the places, exact circumstances – I put it all there as a matter of historical record'.⁵ The novel will not, however, be published until after Briony's death: Paul and Lola Marshall's 'vigorous libel actions against national newspapers' have precluded Briony's publishers from opening themselves to the risk that Briony's revised accusations would bring.⁶ But what is, in fact, the 'historical record' of events? What are the facts of this case? Briony's epilogue throws all this in doubt when she writes that:

All the preceding drafts were pitiless. But now I can no longer think what purpose would be served if, say, I tried to persuade my reader, by direct or indirect means, that Robbie Turner died of septicaemia at Bray dunes on 1 June 1940, or that Cecilia was killed in September of the same year by a bomb that destroyed Balham Underground station.

That I never saw them in that year [...] Who would want to believe that they never met

⁵ Ian McEwan, *Atonement* (London: Vintage, 2002) 369.

⁶ Ibid. 357.

again, never fulfilled their love? Who would want to believe that, except in the service of the bleakest realism? [...] When I am dead, and the Marshalls are dead, and the novel is finally published, we will exist only as my inventions. [...] I know there's always a certain kind of reader who will be compelled to ask, But what *really* happened? The answer is simple: the lovers survive and flourish. As long as there is a single copy, a solitary typescript of my final draft, then my spontaneous, fortuitous sister and her medical prince survive to love.⁷

For Briony, the ultimate atonement is to give Robbie and Cecilia their happiness, and their lives, in the confines of something that will live on – her novel. She thus produces something beyond the 'bleakest realism' of a completely factual account. In its third part, and short epilogue, *Atonement* thus takes on a characteristic trait of much postmodern writing: an utter revelling in its irreducible fictionality. But the shock of this effect is produced precisely by building the earlier sections on a strong foundation of apparent realism. In the earlier sections the reader is drawn into a story told in the omniscient style of a realist narrator in which the experiences of Briony, Robbie and Cecilia appear to be straightforwardly recounted.

A different kind of realism, and a different accuracy in relation to experience, is also at play though. In the closing section, Briony writes of the research she has undertaken at the Imperial War Museum, in order to write of Robbie's wartime experience – something which McEwan himself refers to in a brief post-script. She also sends her manuscript to an old Colonel for advice on military detail, the return of which she receives with glee: 'I love these little things, this pointillist approach to verisimilitude, the correction of detail that cumulatively gives such satisfaction'.⁸ Yet she later wonders at her pleasure in such details, pointing out that 'If I really cared so much about facts, I should have written a different kind of book'.⁹ For Briony, and for McEwan, the crucial thing is not the *facts* of what happened but the *factuality* of all that surrounds it. For instance, the *fact* of whether Cecilia really was killed by the bomb that destroyed Balham Underground station is less important than the *factuality* of that specific event, which actually did occur in October 1940.¹⁰ For McEwan, it is getting the details which, together, make up the totality of the event, right, that really matters.¹¹ What is produced is, thus, not so very different

⁷ Ibid. 370-71.

⁸ Ibid. 359.

⁹ Ibid. 360.

¹⁰ Note that McEwan, by having the bombing take place in September 1940, is a month out with his dating.

¹¹ McEwan's methods of research led to controversy, as he was accused of plagiarizing Lucilla Andrews autobiography, *No Time for Romance*. Andrews had been a nurse in London during the war, just like Briony, and the

from the 'factual fictions' of the eighteenth and nineteenth centuries, but the emphasis has been altered: it would, rather, be more accurate to describe McEwan as a purveyor of 'fictional documentaries'.¹²

This could also be an apt way to describe Jean Xavier De Lestrade's 2005 film, *The Staircase*. The story that this film narrates begins on December 9th 2001, when Michael Peterson, a published writer, calls 911, claiming that he has just discovered his wife, Kathleen, at the bottom of a staircase in their North Carolina home. According to Peterson, she is still alive, but badly injured – by the time medics arrive she is dead. The lead Detective dispatched to the scene is immediately suspicious as Kathleen Peterson has suffered a huge amount of blood loss. Upon being examined by the State Pathologist it is thought that the number, and severity, of the wounds suffered is also not consistent with an accidental death. A week after his 911 call, Michael Peterson is, therefore, duly arrested and charged with his wife's murder. De Lestrade's documentary charts the ensuing development of the case, particularly the work done by Peterson's defence team, and culminates in his trial, at which Peterson is found guilty.

As with *Atonement*, realism, and the reconstruction of experience which it forms, has not been completely discarded either by De Lestrade's documentary or the trial it depicts. Much of the film is taken up with fly-on-the-wall style filming of Peterson at home with his family, and in following his lawyer's various meetings, strategic discussions, and independent investigations. What this presents itself as portraying is the reality of the case from a certain angle – this is 'things as they are' when you are subject to a murder charge in Durham, North Carolina. There is no voice-over narration, and any interviews which take place do not include the film-makers questions. In this sense, the documentary, like the realist novel, presents itself as a transparent medium: the film merely documents reality.

The trial is very much a competition of reconstructions also. While the prosecution put forward the case that Peterson bludgeoned his wife to death with a fireplace 'blow-poke' which they claim has now mysteriously gone missing, the defence suggest that Kathleen Peterson suffered a fatal, but accidental, fall. The opening statements for both prosecution and defence utilise a rhetoric of finality: nothing is equivocal, the truth is spoken of in its neat, and

two accounts bore marked similarities. McEwan defended his position vigorously, claiming to have been inspired by Andrews work but not to have copied it. Regardless of what was done with this material, its status as a primary experiential source was clearly important to McEwan. He wrote that 'what Andrews described was not an imaginary world - it was not a fiction. It was the world of a shared reality'. Ian McEwan, "An Inspiration, yes. Did I copy from another author? No," *The Guardian*, 27th November 2006.

¹² The phrase 'factual fictions' is Lennard J. Davis's: see Lennard J. Davis, *Factual Fictions: The Origins of the English Novel* (New York: Columbia University Press, 1983).

completed, state. The prosecution, particularly, attempt to speak to the ‘common-sense’ of the jurors. In his closing statement, the District Attorney, Jim Hardin, displays a series of photographs of Kathleen Peterson at the scene and on the Pathologist’s table, claiming that each picture speaks a thousand words. Hardin asks: ‘What if those walls could talk? What would they say? Ladies and Gentlemen these walls are talking. Kathleen Peterson is talking to us through the blood on these walls. She is screaming at us for truth and for justice. It’s all in these photographs’.¹³ Hardin speaks to the jury’s lay experience, to the simple common-sense view of the scenes they are confronted with. How could these be produced by an accident? Who could fail to see that this is the result of murder? The guilty verdict reached by the jury suggests that such realist accounts have not yet completely fallen in value.

Despite these affinities with a realist tradition which reconstructs experience, *Atonement* and *The Staircase* also display the specific features of non-experience that were identified in the analysis of Forster, Ford, and Proust. Indeed, the parallels between McEwan’s novel and *A Passage to India* are striking, as they both depict the destructive results of a false accusation. But while Adela Quested rescinds her claim just in time, and appears to tell the truth as she knows it, Briony Tallis atones for the sins of her earlier falsehoods by producing more untruths. She writes of her merging of two, real, hospitals into one, fictional, one as ‘a convenient distortion, and the least of my offences against veracity’.¹⁴ Honest enough to ‘count myself an unreliable witness’, and admit to the fabrication of her ending, Briony dishonestly presents an *objective* account of the summer’s day in 1934 with which the novel begins.¹⁵ Briony writes of the real reason for Cecilia’s dive into the fountain, the Freudian slip behind Robbie’s obscene letter, and the consensual sex that took place in the library – but all of these go against what the young Briony thought she saw. How does Briony know that these are the true events, the real experiences that occurred (surely all this could not have been contained in Robbie and Cecilia’s letters to one another which are now said to be housed in the Imperial War Museum)?¹⁶ What if Robbie really was the rapist both of Cecilia and Lola? How does the reader know he is not? It is only Briony’s word that attests as much – the same word as convicted Robbie all those years before. In evidential terms there is nothing more solid to go on, other than the simple, but convincing, point that Cecilia would hardly be likely to form a loving relationship with her rapist. Yet it is precisely the notion that

¹³ De Lestrade, *The Staircase*. Episode 8.

¹⁴ McEwan, *Atonement* 356.

¹⁵ Ibid. 358.

¹⁶ Ibid. 371.

Lola married ‘her rapist’ that Briony suggests is the ‘clinching news’ of Paul Marshall’s guilt.¹⁷ With such a wealth of doubt it is hardly outlandish to suggest that the younger Briony was, in fact, right: that Briony is atoning for telling the truth. McEwan’s novel seems to produce more closure than Forster’s, it seems to name the perpetrator of the crime with definitive clarity, but, in fact, as in *A Passage to India*, the *Erlebnis* of the central event is never established in its experiential concreteness. Despite the atonement, and the confession, we are still stuck in the blankness of the Marabar cave.

The central question of Michael Peterson’s trial is whether there is even a criminal act to be adjudicated upon. The fact that no one knows, that the tragedy appears also to be a mystery, is what creates such interest in the case. In between the interviews and fly-on-the-wall style filming referred to earlier, De Lestrade’s documentary splices footage from TV news reports and talk shows (some of the filming showing correspondents preparing their pieces to camera and, hence, accentuating the *presented* element of such representation). Peterson himself refers to this as an entertaining spectacle which deflects attention from the major issues facing the residents of Durham:

Everybody is focussed on my trial. It’s a diversion. It’s something that, it’s an entertainment. It’s a show. And if one-tenth, one-tenth, of that amount of time or media exposure – if it were given to what’s real and what’s true – the problems – things would get better.¹⁸

While it may seem strange for Peterson to question the reality and truth of the process in which he is embroiled, it is something that the viewer is made quite aware of throughout the documentary. The TV cameras, the newspaper coverage, and the trial itself all present a certain representation. But if these are ‘entertainments’ then what is the documentary? Does the viewer perceive it as *real*? Does the style of filming, which, paradoxically, strikes one as similar to TV dramas which employ a documentary style, actually accentuate the fictional qualities of the trial itself? Both Peterson and De Lestrade (in an interview featured on the DVD copy of the film) refer to truth being forgotten about in the common law trial system – for Peterson ‘truth is of no meaning whatsoever. This has become a show’.¹⁹ But the additional layers of TV reports, interviews, and the documentary itself do not get any further towards uncovering the event in its

¹⁷ Ibid. 324 & 347.

¹⁸ De Lestrade, *The Staircase*. Episode 2.

¹⁹ Ibid. Episode 4.

reality. Rather, like *Atonement*, they take it much further away, into the realm of fiction: the prosecution even refer to Peterson's occupation as a writer in order to undermine his defence, claiming that 'he is a person who knows how to create a fictional plot'.²⁰

One way out of this morass of indecision was seen, in Chapter One, to rest on the fore-understanding of prejudice. Certainly, it could be argued that Peterson's conviction owed much to the distaste that the local community felt toward him. His claim that Kathleen Peterson was well aware of his promiscuity with other men was not thought convincing by the prosecution, who suggested that his wife's discovery of pornographic images on his computer was the reason for her murder. Equally, his family and defence attorneys were convinced of his innocence – yet with an identical lack of real knowledge to back it up. In more formal terms, Peterson's attorney, David Rudolf, in his closing statement, decides to focus on the reasonable doubt in the case, and reiterate that the burden of proof lies entirely with the prosecution. By the letter of the law this is, of course, true. But earlier surveys which the defence carry out on responses to their forensic expert's testimony suggest that potential jurors will be unhappy if no really feasible alternative is offered. According to Peterson, the prejudice he faced was not based on his specific personality but simply because he had become an accused. He argues that if 'the police arrest you, you're guilty. This is what people believe'.²¹ The 'common sense' view, so successfully adopted by the prosecution, was, perhaps, particularly convincing for a group of jurors who were already primed and ready to convict.

While the decision making process in British India was reduced to a question of whether to trust one untrue account over another, the prejudicial acceptance of omniscient narration as true was hinted at by *A Passage to India*. In *Atonement*, this feature is accentuated. The novel's conclusion should embolden the reader to ask more questions than Briony answers – to wonder, as above, at the stated innocence of Robbie. Yet, this is a response that rarely seems to be evoked.²² Even more than in Forster's novel, McEwan draws attention to the fact that one can never trust what is written. But for the text to be intelligible, trust has to be placed in something – for most readers, it would appear, the irresistible pull of the first part's realism is too great, despite the fact that it is undermined by subsequent sections. Of course, it is precisely these questions of where to place trust that allows for such divergent interpretations of *The Good*

²⁰ Ibid. Episode 8.

²¹ Ibid. Episode 2.

²² I have been unable to find any critic who questions Robbie in this sense. In addition, his death of septicaemia appears to be universally accepted as the true account, despite the fact that McEwan/Briony is careful to preface this version with the following 'what purpose would be served if, *say*, I tried to persuade my reader, by direct or indirect means, that Robbie Turner died of septicaemia at Bray dunes on 1 June 1940' (my emphasis).

Soldier. Roger Poole interprets the narrative in a way that totally subverts its surface manifestation – he reads a *fabula* that is almost completely obscured by its *sjuzhet*. Yet this reading can only be made by placing trust in some part of Dowell's tale. Depending on where this trust is placed, drastically different *characters* can appear in the guise of Edward Ashburnham.²³

By contrast, it was the idea of consistency of character that had allowed for both the realist representation of identity and important legal formations such as the 'responsible individual'. In Chapter Two, it was argued that, as these theories began to wane, and as the 'natural consequences' of actions could no longer be assumed, questions of causation were increasingly held to be a matter for experts. This form of evidence is extremely prominent in Michael Peterson's trial. The state Pathologist finds Kathleen Peterson's death to be the result of a beating. But, the defence team hire a forensic expert, Dr. Henry Lee, who argues that both the amount of blood loss, and the precise nature of the blood spatters on the walls, are more consistent with accidental death. Faris Bandak, a biomechanical researcher, produces computerised images of what could have happened, postulating several head knocks occurring as Kathleen Peterson attempted to get back up from an initial fall. Bandak is asked by the prosecution if the forensic pathologist who carried out the autopsy, who had direct experience of the body, is not in a better position to make a judgment as to cause of death: his response is that in matters of causation, presence is not enough.²⁴

Bandak, abducting like Charles Sanders Peirce or Sherlock Holmes, postulates a hypothesis which his computer model can then test. In one sense, a similar form of expertise is required of the reader of *Atonement*. McEwan invites his reader not only to guess between competing interpretations but to create their own and test it by the evidence of the text. But there is another layer of 'good reading' that this novel alludes to also. In the midst of the pandemonium created by the collapse of Aziz's trial in *A Passage to India*, Adela reflects that 'though the vision was over, and she had returned to the insipidity of the world, she remembered what she had learned. Atonement and confession - they could wait'.²⁵ Adela's atonement does wait – seventy-seven years until McEwan's novel and Briony's confession. The novel is littered with just such literary echoes as this, many of them noted by critics. The assumption of a child's view of adult affairs has been likened to Henry James' *What Maisie Knew* and L. P. Hartley's *The*

²³ Michael Peterson comments on his sister-in-law's testimony that 'she said I don't know who that Michael Peterson is. Now, I don't know who that person is either, who has been on trial'. His trial personality is thus a construct like Edward's in the Kilsyte case but, unlike Edward, he chooses to resist its explanatory power. De Lestrade, *The Staircase*. Episode 8.

²⁴ Ibid. Episode 7.

²⁵ E. M. Forster, *A Passage to India* (Harmondsworth: Penguin, 1989) 232.

Go-Between. Cyril Connolly's letter to Briony specifically refers to Virginia Woolf, while he comments that Elizabeth Bowen read the novella and found it reminiscent of Rosamund Lehmann's *Dusty Answer*.²⁶ Hermione Lee also notes the importance of the broken vase in this novel and connects it to that other shattered literary container – Henry James' Golden Bowl. Apart from the epigraph, taken from Jane Austen's *Northanger Abbey*, all of McEwan's influences are therefore from the modernist period. That is, he is specifically referencing and alluding to novels from an era in which readers were being transformed into experts. The expertise required of McEwan's reader is, thus, not just a close eye for detail but an appreciation of the novel form in history. To know *The Golden Bowl* is to recognize the themes of flawed truth, mistaken belief, and the partiality of circumstantial evidence. To spot Virginia Woolf in the style of the first part is to enjoy, before anyone else, its sheer fictionality.²⁷

According to Hermione Lee, in *Atonement*, 'historical layers of English fiction are invoked – and rewritten'.²⁸ But McEwan does not just produce a copy of this tradition. Rather, in showing how modernism's 'interior transformation can now be seen to have interacted with the larger march of 20th-century history' his novel could be said to appeal to the postmodern.²⁹ But what is also presented by the text is a fictional narrator's attempt to redeem life by way of art.³⁰ This connects Briony to the repetitious rewriting, and rereading of Marcel, and so McEwan to Proust. Briony's atonement does not come in *reality* – she does not, actually, confront Cecilia and promise to make a statement of Robbie's innocence.³¹ Rather, a retreat into writing is made which parallels Proust's withdrawal from experience and Marcel's forced imprisonment during *The Captive*. Since the first draft of her novella, *Two Figures by a Fountain*, Briony has constantly been engaged in its rewriting. But what guides this repetition? Is the trauma of the scene she *witnesses* – her first, youthful, encounter with sexuality – really the original source of this repetitious 'acting out'. By the logic of the discussion in Chapter Three, Briony's repetitions come precisely out of something that never existed at all. To search for the meaning of the text is therefore not to find the original event that began the torrent of words. Lola's rape and Briony's

²⁶ McEwan, *Atonement* 314.

²⁷ McEwan's admiration for *The Good Soldier* has also been noted by Julian Barnes, who reports that shortly after reading Ford's novel for the first time McEwan wrote *On Chesil Beach*. Barnes writes that 'only after publishing the book did he realise that he had unconsciously given his two main characters the names Edward (as in Ashburnham) and Florence (as in Dowell)'. Julian Barnes, "The Saddest Story," *The Guardian*, 7th June 2008.

²⁸ Hermione Lee, "If your memories serve you well ...," in Peter Childs, ed., *The Fiction of Ian McEwan* (Houndmills, Basingstoke: Palgrave Macmillan, 2006) 137.

²⁹ Geoff Dyer, "Who's afraid of influence?," in *Ibid.* 136.

³⁰ For a discussion of modern literature's conception of itself in these terms see Leo Bersani, *The Culture of Redemption* (Cambridge, Mass.: Harvard University Press, 1990).

³¹ McEwan, *Atonement* 371.

accusation of Robbie are not *originals* – they are merely the screen-memories that make sense of everything else. Briony does not rewrite because she wants to get closer to the original – she posits the original so that she can rewrite.

Since his conviction, Michael Peterson has attempted to have his case reread by launching a succession of appeals. In the most recent attempt, it was claimed that the prosecution suppressed evidence about a tire iron found in a neighbour's garden days after Kathleen Peterson's death. Peterson's lawyers argued that had such information been available at the time of his trial a different theory about the cause of death may have been proffered.³² The judge ruling on the appeal hearing, who was the judge in the original trial itself, ruled against Peterson's attempt to tell a different story, claiming that the new evidence would not have affected the judgment of the jury in the original trial. In *The Staircase*, Peterson's brother, Bill, himself a lawyer, advises Peterson the night before the verdict that even if he is convicted, there has been enough error in the trial for a successful appeal to be launched. One of his examples is the admittance of evidence from a previous death that the judge has allowed – itself an incident of seemingly remarkable repetition.

This death occurred in Germany, in 1985, when a friend and neighbour of Peterson's, Elizabeth Ratliff was found dead at the bottom of her staircase: it was Peterson who discovered the body. For the prosecution, and for the judge who allowed the evidence, this is too much of a coincidence. The body is exhumed and a second autopsy carried out, this time by the pathologist who examined Kathleen Peterson. The result comes back that Elizabeth Ratliff was murdered. Via a rule comparable to the 'Similar Fact Evidence' that helped to convict George Joseph Smith in the 'Brides in the Bath' case, these findings are then allowed into the trial of Michael Peterson. The prosecution, by establishing a repetition, aided their efforts to prove guilt. But one of the witnesses in particular, Amybeth Berner, produces statements which seem to question what kind of repetition is really taking place. She comments on her first statement, only made in 2002, that 'it contained every significant thing that I could remember at that time until I began to remember more things'.³³ She then reports subsequent 'flashbacks' in which ever more details are remembered which place Michael Peterson in a suspicious light. Many of these come once she has arrived in North Carolina and met up with other witnesses. She claims that 'hearing their voices has brought back some memories. The messages, the images are very very vivid, some of them are in colour'.³⁴ Quite apart from the sense of a TV reality (colour being an arbiter of

³² http://www.newsobserver.com/news/crime_safety/peterson/story/1437242.html

³³ De Lestrade, *The Staircase*. Episode 6.

³⁴ Ibid.

verisimilitude) contained in Berner's testimony, the issue of rereading is clearly evident here. Berner appears to read the previous scene by way of its subsequent, and supposed, repetition. She reads the previous event by way of her current emplacement in the trial of Michael Peterson. Like the reading of precedent in the law, the sequence is subverted – Kathleen Peterson comes first, Elizabeth Ratliff second.

Of course, the documentary itself forms a certain repetition of the case (and a repetition of itself as it can be watched and rewatched). But the proliferation of varied repetitions does not stop there. A true-crime book, *Written in Blood*, written by Diane Fanning, was published in 2005, followed by a TV drama, *The Staircase Murders*, starring Treat Williams, which was aired in 2007. The case was also the subject of an episode of the American documentary TV series *Forensic Files*. Allied to this, a brief web inquiry brings up a host of websites chronicling the case, two of them, in particular deriding De Lestrade's film for its accentuation of the plausibility of Peterson's innocence.³⁵ According to one site, 'Lestrade succeeded in creating reasonable doubt only by hiding the reasonable certainties of the situation'.³⁶ In addition to this, the effect of the filming process itself on what was then presented as a simple recording of 'reality' is questioned.

While it is dangerous to give credence to anything found by the judgment of google, these criticisms are justified in so far as De Lestrade's film does present a sceptical view of Peterson's conviction. There is no view from nowhere, and the *transparency* of the documentary does not preclude its presentation of a specific *case*. What these websites fail to notice however, is the way that *The Staircase* plays into this sense of multiple truths. The film constantly reiterates that the case is open to an amazing range and variety of media and representation. These versions cannot be combined: if put together they do not create a greater idea of what happened to Kathleen Peterson or a superior sense of Michael Peterson's character. But they do, to an extent, produce other *truths*. For instance, one of De Lestrade's key themes is the suggestion that Peterson's bisexuality and promiscuity were important factors in his conviction. These are factors that the trial can refer to, but never quite contain. Extra judicial media such as literature, newspapers, TV, film, and internet resources help to represent these other *truths*. But this is not something that is peculiar to this particular case. The trial, in general terms, cannot conceive of itself as being a witness to truth any more – not in the sense in which the event of the crime is 'reactualized' by the court. But, this is not all that trials produce. Verdicts make claims 'about the condemnation of the wrongdoer, the standing of the community to call them to account, and the

³⁵ www.peterson-staircase.com and www.vanceholmes.com/court/trial_m_peterson.html

³⁶ www.vanceholmes.com/court/trial_m_peterson.html

legitimacy of the trial itself.³⁷ Moreover, the trial makes a judgment of the society in which it is placed – it says something about the culture in which the judgment is made, how it envisages itself, and to what it aspires. The reconstructive trial, rather than producing something less than the truth of what happened, therefore ‘generates an excess of possible truths’.³⁸

Making Reality and Doing Truth

In *Atonement* and *The Staircase*, the influence of modernism, and experience’s denigration, are clearly evident, as are features which suggest the survival of certain inherent traits of realism. For this reason, the question which began this conclusion – what comes after experience? – was described as, in one sense, entirely the wrong one to set out with. But this is not the full story. That is, the question is entirely wrong in one sense, but entirely right in another. Something different has occurred in the last thirty to forty years of Western culture: something which suggests that the breaking of experience’s referential relationship with reality does not produce something less than realism but, rather, something more. In the final section of this thesis a particular reading of Jacques Derrida’s work made by John D. Caputo will be briefly discussed. Caputo’s article ‘For the Love of the Things Themselves: Derrida’s Phenomenology of the Hyper-Real’ offers a sense of how a form of reality can survive, when it is no longer found in the presence of experience.

In one sense, deconstruction is the culmination of much of this thesis’ argument. For Derrida, experience is an ‘unwieldy’ concept that ‘belongs to the history of metaphysics and we can only use it under erasure (*sous rature*)’.³⁹ Experience and realism are, in deconstruction, radically questioned. As Caputo writes, ‘If the real means what is present, what is really there, full blown and unvarnished, then deconstruction, as the deconstruction of the metaphysics of presence, is the deconstruction of realism, of any such real or full presence, which can always be shown to be a constituted effect’.⁴⁰ Likewise, if experience is thought to bring knowledge of the ‘things themselves’ (Husserl’s ambitious attempt for the phenomenological project and something which was intimately linked to the *Erlebnis* of Dilthey), deconstruction responds that

³⁷ Lindsay Farmer, "Trials," in *Law and Humanities: An Introduction*, ed. A. Sarat, M. Anderson, and C. Frank (Cambridge: Cambridge University Press, forthcoming 2010), 471.

³⁸ Ibid.

³⁹ Jacques Derrida, *Of Grammatology*. Quoted in Martin Jay, *Songs of Experience: Modern American and European Variations on a Universal Theme* (Berkeley: University of California Press, 2006) 363.

⁴⁰ John D. Caputo, "For the Love of the Things Themselves: Derrida's Phenomenology of the Hyper-Real," in *Fenomenologia Hoje II: Significado e Linguagem*, ed. Ricardo Timm de Souza and Nythamar Fernandes de Oliveria (Porto Alegre, Brazil: EDIPUCRS, 2002), 37.

the thing itself is what always slips away in the play of signifiers. It is precisely this point that has led Derrida to be mistakenly considered a relativist, subjectivist, and anti-realist thinker. Yet, what Caputo argues is that ‘deconstruction is not a way of undoing truth but a way of doing it’.⁴¹ Far from denigrating the idea of reality what Derrida offers, according to Caputo, is a love letter to it. With a logic that exactly matches that of Proust, this love affair only exists because the object cannot be reached. To love only what one can have, to calculate its value and offer it only when it is likely that it will be returned – these are the actions of, in the phrase of Kierkegaard’s fictional narrator, Johannes Climacus, a ‘mediocre fellow’. For Caputo:

Is not the realist just such a mediocre fellow, a fellow who, despite all his brave talk and chest-thumping bravado about reality, has no heart or passion for an elusive lover like the things themselves? Deconstruction’s desire is not satisfied with what presents itself to us as real, for what it loves goes *beyond* what presents itself as real to an ultra-real for which we pray and weep, towards a hyper-real, something that is not less than real but more, not below the real but beyond.⁴²

When Derrida says that the thing itself slips away it is not in order to question its existence. Rather, the deconstruction of presence, of experience, is designed to keep the thing itself safe (*sauf*). Husserl’s metaphor for his theory of intentionality – that, with cupid’s bow, the subject aims his arrow at the object of his desire – is undermined by Derrida in this sense. If the arrow hits its object – the thing itself – it wounds it: precisely what Derrida claims the lover would never want to do. To keep it safe, to retain its desirability, the thing itself must, therefore, always evade the subject’s arrow of love.

Despite Derrida’s continued avowal that language creates an infinite play of signifiers, Caputo argues that deconstruction arises precisely from a love of *singularity*. The thing itself, the signified, is always singular, even although the signifiers it gives rise to are infinitely deconstructing themselves. Take the proper name as an example. The proper name is the attempt to produce a singular signifier that refers to just one signified. It picks out that person, and that person alone. But, this is, of course, impossible. Not only does the proper name refer to more than one person, it also cannot be a singular entity in any sense: ‘for were the sign to be utterly proper, absolutely unique and idiomatic, no one would understand it, and we would not

⁴¹ Ibid., 39.

⁴² Ibid., 39-40.

even know it was a sign rather than just a noise'.⁴³ The proper name has to be understood, and so bear the possibility of being repeated. But in being repeated it loses its pretensions to absolute singularity. As Caputo puts it, 'it cannot be an absolutely *proper* name, not if it is to be a proper *name*. A proper name is an attempt to utter something repeatable about the unrepeatable'.⁴⁴ But this paradox is precisely what makes it work:

The aporia is not solved or resolved or unravelled by a cunning analysis or an adroit exercise of semantic skill; it is embraced and broken by a pragmatic leap, by *using* the name in a context which is, we hope, determinate enough to allow the usage to "work" or be "successful," to hit its target.⁴⁵

This usage works for only a moment. The context holds the referent just long enough for the meaning to adhere, but this is all that is required: 'the idea is not to have the *right* idea of truth, but to *do* the truth'.⁴⁶ For Derrida, the retention of a form of singular truth is thus not a matter of epistemology at all, but one of ethics.

In its most exalted form, experience was valued because of its correspondence to truth. The denigration of that view, and the application of a coherence theory of truth, has been one of the major themes of this thesis. But now a new stage is upon us: 'in hyper-realism, alterity is constituted by excess, by exceeding the reach of the self absolutely and irreducibly, which allows the other to be safely secreted away from the arrows of intentionality'.⁴⁷ Derrida's *other*, what Caputo interprets as being his *real*, is not reached by corresponding to its terms or cohering its manifestations to greater or lesser degree. Rather, the subject has to *make* realism and *do* truth. Such an interpretation can equally be applied to *Atonement* and *The Staircase*. In McEwan's novel, the various scenes of the text – Cecilia's stripping by the fountain, Briony's *witnessing* of Lola's rape, and Robbie's involvement in the Dunkirk retreat – are all various formations of presence which are deconstructed. The thing itself, the real scene by the fountain, the real crime, and the real wartime experience, are thus constantly held at bay. For McEwan's narrator, Briony, the atonement is achieved by 'doing truth'. By writing a happy ending for Robbie and Cecilia, Briony makes it true. The context is set, the intentional arrow aimed, and the bow released. Yet, contrary to her claim that this ending will always be true, as long as a copy of her novel exists, the

⁴³ Ibid., 41.

⁴⁴ Ibid., 42.

⁴⁵ Ibid.

⁴⁶ Ibid., 43.

⁴⁷ Ibid., 49.

conclusion, in fact, only holds for a moment. The reader is immediately confronted by another interpretation, which, itself, begins to deconstruct itself also.⁴⁸ What really happened to Robbie, Cecilia, Briony, and Lola is never reached. But it is precisely in this infinite withdrawal, this constant slipping away, that the *reality* of whatever did happen is made safe. Likewise, Briony's creator, McEwan, pays *homage* to his father's experience of the Dunkirk retreat by not quite getting it right. To put it another way, by stressing its fictional nature, its lack of *correspondence* to the real event, McEwan retains the essential, autonomous, *reality* of Dunkirk. Likewise, in *The Staircase*, what is reiterated time and again is the fact that the various accounts that are given can never exactly reconstruct Kathleen Peterson's death. By making a judgment, the jury fix the reality of what happened for a moment – a moment which is followed by the infinite reinterpretation offered by, amongst others, De Lestrade's film. Yet, this questioning of truth's fixity actually serves to make the event in question more, rather than less, real. Kathleen Peterson's death, which itself is never witnessed, therefore, becomes both the most real thing in the film and the trial.

In the course of this thesis the reduction in the trial's sense of corresponding to truth has been argued to be part of a wider malaise in which the modern conception of experience has, in Walter Benjamin's phrase, 'fallen in value'.⁴⁹ But with the deconstruction that Caputo describes, while the experience of presence is open to a never ending play of signifiers which never reach the signified, the event itself can remain safe. By this rationale, what happens in court is a deconstruction of what Foucault termed the 'reactualization' of the crime – but, paradoxically, what is now produced is an ethical affirmation of the event as something wholly real and other.⁵⁰ The trial, by never getting to the event at its heart, makes it real. Justice is done by doing justice to the reality of the event and never allowing it to fully be reached. The things themselves, like Jerome Frank's facts themselves, are never experienced in an unadulterated presence. Like the experience which supposedly lies at the heart of a novel (in the modernist period and beyond), the crime will always slip away. But it does not slip into nihilism. Where it lies is a place of reverence, of infinite respect, of a Marabar-like veneration. The experience of realism may be over but the love of the real, and the experience of its endless withdrawal, lives on.

⁴⁸ The theory of deconstruction is, in this sense, similar to Hans-Georg Gadamer's notion of 'play' which he claims replaces the idea of an art based on experience (*Erlebniskunst*). Hans-Georg Gadamer, *Truth and Method*, trans. Joel Weinsheimer and Donald G. Marshall, 2nd ed. (New York: Continuum, 2004) 102-10.

⁴⁹ Walter Benjamin, 'The Storyteller', in Walter Benjamin, *Illuminations*, ed. Hannah Arendt, trans. Harry Zorn (London: Pimlico, 1999) 83.

⁵⁰ Michel Foucault, "Truth and Juridical Forms," in *Power: Essential Works of Foucault 1954-1984*, ed. James D Faubion (London: Penguin, 2000), 47.

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