

**Character, Evidence, and Advocacy:
Representing Reality in Nineteenth-Century Law and Literature**

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Declaration of Authorship

I, Jennifer Clare Nicholson, hereby declare that this thesis and the work presented in it is entirely my own. Where I have consulted the work of others, this is always clearly stated.

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Abstract

The 1836 Prisoners' Counsel Act afforded all prisoners the right to full legal representation. Thereafter, the focus of felony trial proceedings shifted from the accused's character to the forensic scrutiny of evidence by advocates for both sides. This thesis examines the ways in which novels which focused on the presentation and revelation of character remained committed to a character-focused model of representation and how, conversely, writers of sensation and detective fiction began to appropriate the adversarial-evidentiary representational practices which flourished in criminal courts post-1836, and endorsed them as an alternative and more effective means of representing reality. In this way the thesis presents a new analysis of how methods of representation employed in the courtroom impacted on nineteenth-century literary representational practices. Particular focus is given to work by Jane Austen, Anthony Trollope, George Eliot, Wilkie Collins, Ellen Wood, Mary Elizabeth Braddon, and Arthur Conan Doyle.

Previous studies have either focused on how nineteenth-century law and literature competed to create accurate representations of reality, or have examined how the distinction between testimonial and circumstantial evidence presented literature with alternative models of representation. By contrast, this thesis argues that the competition over the matter of representation occurred within both law and literature rather than simply between them, and that the two opposing models of representation offered to literature by the law were not based on a distinction between opposing types of evidence, but rather on a distinction between character-focused and evidentiary-reasoning models of representation. In its reconsideration of how courtroom representations interacted with and influenced nineteenth-century literary representational practices, this thesis offers new readings of some of the most enduringly popular nineteenth-century texts, and constitutes the first examination of the extent to which the introduction of the Prisoners' Counsel Act helped shape the form and style of nineteenth-century sensation and detective narratives.

Table of Contents

	Introduction	6
1	Truthful Representations: The Criminal Jury Trial and the Character-Focused Novel	32
2	Making a Case: The Prisoners' Counsel Act and the Rise of Sensation Fiction	87
3	Engaging in the Debate: Evidence, Advocacy, and the Sensation Novel's Response	143
4	'The Perfect Reasoning Machine': The Advocacy of the Detective	206
	Conclusion	272
	Bibliography	278

Introduction

As the Judge might once have heard it, so the Reader shall hear it now.
- Walter Hartright, *The Woman in White*

The opening paragraphs of Wilkie Collins's *The Woman in White* (serialised in *All the Year Round* 1859-60) explicitly draw a connection between the object of courtroom representations and the object of the novel's narrative: 'to present the truth always in its most direct and intelligible aspect'.¹ In his seminal study *The Rise of the Novel*, Ian Watt also draws a connection between novelistic and courtroom representational practices, noting how 'the novel's mode of imitating reality may [...] be equally well summarised in terms of the procedures of another group of specialists in epistemology, the jury in a court of law'.² Watt's analogy usefully highlights how the jury trial and the novel become connected through a shared purpose: the accurate representation of – or in Watt's terms the 'imitation' of – reality. In drawing this comparison Watt reveals a fundamental homology at the heart of interdisciplinary studies of the law and literature, namely that law and literature both seek to structure and represent reality through language.³

In *The Rise of the Novel* Watt does not go on to explore the full implications of the analogy he makes, pausing only briefly to justify his employment of it by

¹ Wilkie Collins, *The Woman in White*, ed. by John Sutherland (Oxford: Oxford University Press, 2008 [1860]), p. 5. Further references to this edition are given after quotations in the text.

² Ian Watt, *The Rise of the Novel: Studies in Defoe, Richardson and Fielding* (London: Hogarth Press, 1987 [1957]), p. 31.

³ Kieran Dolin has also noted how the law and literature become intimately connected through their formal attempts to 'structure reality through language': Kieran Dolin, *Fiction and the Law: Legal Discourse in Victorian and Modernist Literature* (Cambridge: Cambridge University Press, 1999), p. 8. Paul Gewirtz has similarly identified a connection between law and literature as they both 'attempt to shape reality through language': Paul Gewirtz, 'Narrative and Rhetoric in the Law', in *Law's Stories: Narrative and Rhetoric in the Law*, ed. by Peter Brooks and Paul Gewirtz (New Haven: Yale University Press, 1996), pp. 2-13 (p. 4).

noting that the expectations of the juror and reader ‘coincide in many ways’.⁴ The reason for this is that Watt’s study is not concerned with examining how representations of reality are made across both disciplines, but rather with charting and analysing the development of the novel form alone. Nonetheless, Watt’s analogy opens up the question of how an understanding of the representational practices employed in the jury trial might further illuminate our understanding of how reality comes to be represented in the novel.

In *Fiction and the Law: Legal Discourse in Victorian and Modernist Literature*, Kieran Dolin claims that through a ‘contextualised study of fictional representations and appropriations of law, of institutions of law and legal practice’ we can gain an ‘enhanced understanding of nineteenth-century culture and its dominant genre, the novel’.⁵ This thesis follows Dolin by offering a contextualised study of nineteenth-century fictional appropriations of a specific legal practice: the representational methods employed in courtrooms to establish the truth of disputed facts in criminal trials. In particular this thesis will constitute the first detailed examination of the extent to which nineteenth-century sensation and detective narratives were influenced by the introduction of a full defence counsel for prisoners accused of felony following the passing of the Prisoners’ Counsel Act into law in 1836. In this way I hope to cast new light on, and thereby offer an ‘enhanced’ understanding of, the ways in which nineteenth-century literature was shaped by its interaction with the law.

⁴ Watt, *Rise*, p. 31.

⁵ Dolin, *Fiction and the Law*, p. 4.

Nineteenth-Century Fiction and the Representation of Reality

Nineteenth-century jurist William Forsyth QC, a prominent lawyer and Member of Parliament, noted how the jury trial was to be understood as a mechanism through which the ‘truth of disputed facts’ could be established.⁶ With this in mind, the analogy which Collins makes between his mode of representation in *The Woman in White* and courtroom representational practices seems an obvious one, as the story which Collins tells is explicitly concerned with establishing the truth of disputed facts.⁷ However, *The Woman in White’s* avowed purpose of representing the reality of past events in order that the truth might emerge from such a representation, could equally be applied to a wide range of nineteenth-century novels which sought to represent accurately some non-verbal reality beyond the page and, often, to reveal some ‘truth’ in the process.⁸

In his preface to the 1841 edition of *Oliver Twist* (first serialised in *Bentley’s Miscellany* 1837-9), Dickens states that he wished to teach his readers a ‘lesson of purest good’ by revealing the ‘stern and plain truth’ about the frightening social reality of the lives of ‘the most criminal and degraded of London’s population’.⁹ In keeping with this reformist spirit, Dickens’s other novels similarly aim to reveal the truth about social injustices, from his presentation of the ragged school in *Nicholas Nickleby* (1838-9), to his satiric look at the bureaucracy of government in *Little Dorrit* (1855-7), and his indictment of the workings of the Court of Chancery in *Bleak House* (1852-3). We see a similar impulse in the work of Dickens’s

⁶ William Forsyth, *History of Trial by Jury* (London: John W. Parker & Son, 1852), p. 8.

⁷ The story revolves around Walter Hartright and Marian Halcombe’s attempts to establish (legally and publicly) the truth of Laura Fairlie’s identity. Her husband Sir Percival Glyde and his friend Count Fosco, who have stolen her identity, dispute Hartright and Marian’s version of events.

⁸ For an examination of the relationship between literature and the idea of truth, see Peter Lamarque and Stein Haugom Olsen, *Truth, Fiction and Literature* (Oxford: Clarendon Press, 1994).

⁹ Charles Dickens, ‘Preface’, *Oliver Twist*, ed. by Kathleen Tillotson (Oxford: Oxford University Press, 1999 [1838]), p. liii.

contemporaries, not least in Elizabeth Gaskell's *Mary Barton* (1848), where her portrayal of working class struggles, poverty, and conflict was drawn from her own experiences which she wished to write about 'truthfully'.¹⁰

In this way authors such as Dickens and Gaskell were writing with a purpose, a purpose which J. Hillis Miller has identified as morally didactic:

George Eliot, Thackeray, Trollope, all tended to agree with Dickens that fiction is morally useful because it presents a sincere and accurate picture of things and people as they really are. Such fiction, in theory at least, was moralistic in the sense that it assumed undistorted pictures of real life would show us the consequences of bad or good acts and persuade us to choose good.¹¹

What Miller identifies here is the Victorian novelist's belief that some moral 'good' could be achieved through the accurate presentation of reality, whether that good be the exposure of some social evil or, as George Eliot wished, 'the extension of our sympathies'.¹² As George Levine has suggested, nineteenth-century novels often represent 'an attempt to get beyond language, to discover some non-verbal truth out there', and Lillian Furst has more recently noted how a number of nineteenth-century authors laid claim to the 'overarching truth value' of their fiction.¹³ Whatever the underlying message the author wished to put across, what is important to note for this thesis is that these nineteenth-century authors believed that they could achieve their aim, and sought to achieve it, through the accurate representation of reality.

In *The Rise of the Novel* Ian Watt traces the development of the novel as a new form of literature during the eighteenth century. Watt views the novel as having

¹⁰ Elizabeth Gaskell, 'Preface', *Mary Barton*, ed. by Shirley Foster (Oxford: Oxford University Press, 2006 [1848]), p. 4.

¹¹ J. Hillis Miller, *Victorian Subjects* (Hemel Hempstead: Duke University Press, 1991), p. 123.

¹² George Eliot, 'The Natural History of German Life', *Westminster Review*, 66 (July 1856), 51-79 (p. 54).

¹³ George Levine, *The Realistic Imagination: English Fiction from Frankenstein to Lady Chatterley* (Chicago: University of Chicago Press, 1981), p. 5, and Lillian R. Furst, *All is True: The Claims and Strategies of Realist Fiction* (Durham, NC: Duke University Press, 1995), p. 8.

at its centre an epistemological enterprise as it ‘more sharply than any other literary form confronted the problem of correspondence between literary work and the reality it imitated’.¹⁴ For Watt, the defining characteristic of the novel is the way in which it attempts to represent reality, something he calls the novel’s ‘formal realism’.¹⁵ Watt makes clear that formal realism is not ‘a specific literary doctrine or purpose’ but rather a ‘set of narrative procedures’ that work to create the effect that the novel ‘is a full and authentic report of human experience’, that it is, in fact, an accurate representation of reality as the reader understands it.¹⁶ Watt’s analysis of the novel’s formal realism highlights that at the heart of the development of the novel is a desire to achieve a faithful representation of reality through language.

The concern with creating accounts which accurately depict some reality beyond the words employed to represent it, can be traced back to the emergence in the seventeenth century of a plain prose style designed to convey information as effectively and as accurately as possible. Watt has noted that the novel’s ‘formal realism’ has its roots in the philosophy of Descartes and Locke who believed that the ‘truth can be discovered by the individual through his senses’.¹⁷ In her study *Probability and Certainty in Seventeenth Century England*, Barbara Shapiro examines how during the seventeenth century there occurred a ‘breakdown of the centuries-old tradition that divided “science”, “knowledge”, “certainty”, and “philosophy” on the one hand, from “opinion”, “probability”, “appearance” and “rhetoric” on the other’.¹⁸ Out of this ‘breakdown’ grew a new awareness and acceptance of human fallibility, arising from both the unavoidable subjectivity and

¹⁴ Watt, *Rise*, p. 11.

¹⁵ *Ibid.*, p. 10.

¹⁶ *Ibid.*

¹⁷ *Ibid.*, p. 12.

¹⁸ Barbara Shapiro, *Probability and Certainty in Seventeenth Century England* (Princeton, NJ: Princeton University Press, 1983), p. 3.

limitation of human perception, and from the limitations of language as the medium for communicating knowledge to others. This growing awareness and acceptance of the problems that surrounded knowledge and its communication occurred in all areas of thought, from the scientific to the literary. Shapiro notes how this growing scepticism led to a rise in probabilistic thinking, so that the primary concern regarding knowledge across all disciplines became a concern with the attainment of the highest level of probability: near certainty.¹⁹ Alongside this preoccupation with attaining near certainty, as Shapiro's study shows, there also emerged the question of how that knowledge could be effectively and accurately communicated to others. This led to an emerging preference in all disciplines for 'unbiased communication' through a clear and objective prose style.²⁰

The increasing importance placed on using clear and plain language during the seventeenth century can be seen in John Locke's influential *An Essay Concerning Human Understanding* (1690). It is clear from the *Essay* that Locke understood the problems facing those who wished to communicate their knowledge and ideas to others. In book three of the *Essay* Locke argues that effective communication is best achieved through a plain style of prose which focuses on the precise use of language. Whilst Locke notes both the necessity of spoken or written words to record and communicate our thoughts and ideas, he is equally alive to the problems of doing so: 'it is easy to perceive, what interpretation there is in language, and how the very nature of words, makes it almost unavoidable, for many of them to be doubtful and uncertain in their significations'.²¹ Locke explains that this uncertainty often occurs

¹⁹ In the sciences in particular this led to an increase in collaborative work which decreased the margin of human error. See Shapiro's 'Introduction' to *Probability*.

²⁰ *Ibid.*, p. 227.

²¹ John Locke, *An Essay Concerning Human Understanding* (Oxford: Oxford University Press, 2008 [1690]), Bk. 3, Ch. 9, pp. 305-306. Further references to this edition are given after quotations in the text.

because one can never be sure that a word one person uses to signify an idea corresponds to the same idea in the minds of others (Bk. 3, Ch. 9, pp. 306-307). Nevertheless, Locke's approach to the use of language in this essay demonstrates his belief that such problems can be (largely) overcome if language is used in a careful and responsible manner (Bk. 3, Ch. 11). Locke's essay was hugely influential and his advocacy of precision and clarity in the use of language came to dominate not only the sciences and philosophy, but also those disciplines which before the seventeenth century had traditionally been aligned with rhetoric, including both law and literature.²² As Shapiro has shown, the development of a Lockean plain prose style – meant to convey information as accurately as possible – is linked to the development of new literary forms such as newspapers and travelogues which were designed to provide factually accurate reports. This new interest in fact-orientated learning was also exploited in fictional writing, in particular in that 'fact-based fiction', the novel.²³

The rise and development of this fact-orientated fiction can be seen in the works of eighteenth century authors such as Defoe and Fielding. Defoe's *Robinson Crusoe* (1719) and *Moll Flanders* (1722), for example, set themselves up as the 'histories' of real people, written as though they are true stories.²⁴ During the eighteenth century novelists increasingly began to employ the device of the truthful and objective narrator as the faithful reporter of events, in order to create the effect that they were authentic stories of 'real' people in the 'real' world, a trend which continued into the nineteenth century. As Lillian Furst has pointed out, nineteenth-century authors tended to view themselves as 'chroniclers of their day', providing

²² Shapiro, *Probability*, pp. 256-257.

²³ *Ibid.*, p. 261.

²⁴ *Ibid.*, p. 263.

their reading public with ‘real accounts of the vicissitudes of life’.²⁵ All this is suggestive of the fact that nineteenth-century novelists believed that, whatever challenges they faced, an accurate representation of reality was ultimately achievable.²⁶

Peter Brooks has argued that one of the functions of the novel is to provide the reader with the sense that the accurate representation of reality is possible.²⁷ Brooks notes how ‘we thirst for a reality that we can see, hold up to inspection, understand’, asking why we ‘take pleasure in imitations and reproductions of things in our world’.²⁸ Brooks reasons that it is because these imitations and reproductions, like scale models, give us the sense that we can ‘master the real world’.²⁹ Brooks likens this sense of mastery offered by the scale model to the effect literature produces on us for, like the scale model, literature enables us to get ‘our minds around objects otherwise alien and imposing’ and gives us a way to ‘bind and organize the complex and at times overwhelming energies of the world outside us’.³⁰ This function of literature gained a special significance in the nineteenth century when readers were experiencing a time of rapid and massive social change.

²⁵ Furst, *All is True*, p. 13. George Eliot, for example, went to painstaking lengths to research and select material for her novels so that the final work was firmly grounded in real life. Furst has highlighted the care with which *Middlemarch* (1871-2) was constructed from Eliot’s notebooks in which she carefully collected all manner of information from schedules of Oxford University examinations to medical information, in order to provide her novel a sense of verisimilitude by grounding it in reality. As Furst notes, Eliot’s notebooks certainly reveal a ‘passion for exactitude’ and meticulous attention to detail: see Furst, *All is True*, pp. 84-85 (p. 85). Charles Dickens too noted in his 1836 preface to *Sketches By Boz* (1833-6) that his ‘object has been to present little pictures of life and manners as they really are’: Charles Dickens, *Sketches By Boz*, ed. by Dennis Walder (London: Penguin, 1995[1836-7]), p. 7. In *Victorian Subjects*, J. Hillis Miller highlights how both early reviewers and twentieth century critics tend to praise the *Sketches* for their ‘startling fidelity’, their ‘precision’ and ‘wealth of detail’: Miller, *Victorian Subjects*, p. 123.

²⁶ George Levine argues that nineteenth-century authors were well aware of the limitations and problems they faced in attempting to represent reality, but that they still believed accurate representation was possible. See Levine, *Realistic Imagination*, p. 4.

²⁷ Peter Brooks, *Realist Vision* (New Haven: Yale University Press, 2005), pp. 1-3.

²⁸ *Ibid.*, p. 1.

²⁹ *Ibid.*

³⁰ *Ibid.*, pp. 1-2 (p. 1).

Industrial and technological advancements, from the coming of the railway to the explosion of factory production and the formation and rapid growth of the modern city, transformed the English landscape. The rise of the middle-classes reflected the strength of new forms of economic power and eroded the traditional basis of economic power in land. Such change offered exciting opportunities, but at the same time it brought people face-to-face with a new reality which had the potential to be frightening, alienating and chaotic. In claiming to offer a comprehensible and communicable representation of that new reality, the nineteenth-century novel offered the reassurance that this reality had order and meaning: as Levine has put it, the novel offered to ‘invest experience with value for a new audience reading from a new base in economic power’.³¹ For Brooks and Levine the novelist’s endeavour is driven by an intense desire to know, to understand reality within the context of a changing society and to prove that it is both understandable and meaningful. This endeavour is nowhere more clear than in the nineteenth-century novel where it is so often easy to identify, as Levine suggests, the ‘struggle to reconstruct a world out of a world deconstructing’.³² Such an effort, however, necessarily raises questions about what sort of reality was actually ““out there”, of how best to “represent” it, and of whether, after all, representation was possible or the “out there” knowable’.³³

Finding the Truth of Disputed Facts: Legal Representations of Reality

In its attempts at representing reality, the nineteenth-century novel unavoidably became concerned with the question of how that reality might be represented most effectively. Of course any such representation had to be achieved through the words

³¹ Levine, *Realistic Imagination*, p. 22.

³² *Ibid.*, p. 4.

³³ *Ibid.*, p. 5.

on the page, and a number of critics have noted how a large proportion of novels during this period are characterised by an endeavour to ‘reveal reality through language’.³⁴ Jan-Melissa Schramm has noted how many nineteenth-century novels claim to be ‘truthful tales’ and so are fundamentally concerned with the question of how to achieve the ‘most truthful representation of the “real”’.³⁵ This concern, as Schramm points out, intimately links literature’s aims with those of the law during this period. Kieran Dolin also argues that literature becomes deeply connected to the law through its formal attempts to ‘structure reality through language’, and Paul Gewirtz has similarly noted how a connection arises between law and literature as they both ‘attempt to shape reality through language’.³⁶ As Schramm’s study *Testimony and Advocacy in Victorian Law, Literature, and Theology* demonstrates, this connection between law and literature during the nineteenth century is nowhere more strikingly revealed than in the aims of the criminal jury trial.

In the nineteenth century William Forsyth defined the jury trial as follows:

The Jury consists of a body of men taken from the community at large, summoned *to find the truth of disputed facts*, who are quite distinct from the judges or court. Their office is to decide upon the effect of evidence, and thus inform the court truly upon the question at issue, in order that the latter may be enabled to pronounce a right judgment.³⁷

For Forsyth the jury trial was, in the nineteenth century at least, understood as a mechanism through which the ‘*truth of disputed facts*’ could be established. Forsyth believed that this function of the jury trial was its ‘distinctive characteristic’, a characteristic fundamental to the administration of justice and the court being able to

³⁴ John P. McGowan, *Representation and Revelation: Victorian Realism from Carlyle to Yeats* (Columbia: University of Missouri Press, 1986), p. 21. See also Watt, *Rise*; Furst, *All is True*; and Jan-Melissa Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Theology* (Cambridge: Cambridge University Press, 2000).

³⁵ Schramm, *Testimony and Advocacy*, p. 23.

³⁶ See Dolin, *Fiction and the Law*, quotation at p. 8, and Gewirtz, ‘Narrative and Rhetoric’, pp. 2-13 (p. 4).

³⁷ Forsyth, *History*, p. 8.

pronounce a ‘right judgment’.³⁸ The growth of scepticism in the seventeenth century surrounding knowledge and its communication played a large role in the development of the novel, as Watt and Shapiro have shown. In legal thought this scepticism led to the emergence of the ‘beyond reasonable doubt’ principle. This principle dictated that the truth was whatever could be proved to be the truth of disputed facts *beyond a reasonable doubt*.³⁹ There remained, however, the question of how this truth could be established and communicated most effectively to a panel of jurors as reality.⁴⁰

During the early years of the nineteenth century this question was to be deeply contested in Parliament in a series of debates which concerned criminal trial practices in cases of felony. The outcome of these debates was that in 1836 the law was changed, and the methods employed for representing the truth of disputed facts in felony trials altered in a way that signaled an epistemological shift in the criminal felony trial process. These legal debates concerned the continued imposition of felony counsel restriction in criminal jury trials. Felony counsel restriction was a legal rule which denied prisoners accused of felonies the right to a full legal defence, which by the nineteenth century meant that a prisoner’s counsel was not permitted to address the jury on his behalf.⁴¹ The imposition of felony counsel restriction created and maintained what legal historian John Langbein has termed the ‘accused speaks’

³⁸ Ibid.

³⁹ See Barbara Shapiro, “*Beyond Reasonable Doubt*” and “*Probable Cause*”: *Historical Perspectives on the Anglo-American Law of Evidence* (Berkeley: University of California Press, 1991).

⁴⁰ The concept of ‘truth’ which Forsyth and other nineteenth-century jurists invoke is a correspondence conception of truth, where a statement is true if it corresponds to a state of affairs in external reality.

⁴¹ Through the centuries a variety of limitations were placed on how far defence counsel could go in defending their clients in cases of felony, with the result that defence lawyers in such cases did not share the same freedoms as the prosecution in the representation of their client. It should also be noted at this point that what constituted a ‘felony’ was never clearly defined, even by the nineteenth century. It was, however, understood to include most serious offences, and penalties included capital punishment and the forfeiture of land and goods. Strictly speaking treason was a felony, but it was traditionally treated as a different (more serious) species of crime: see David J. A. Cairns, *Advocacy and the Making of the Adversarial Criminal Trial 1800-1865* (Oxford: Clarendon Press, 1998), p. 3.

model of trial, where the trial itself was understood as an opportunity for the accused to respond to the charges against him in person.⁴² In 1836, however, the Prisoners' Counsel Act was passed and provided those persons accused of felony with recourse to a full legal defence. As Langbein argues, this change in the law turned those representational methods employed in felony trials away from the accused, his story and his character, and towards a model of trial where truth was determined through the forensic scrutiny of all the available evidence by both the prosecution and the defence: a model which I will hereafter refer to as the 'adversarial-evidentiary' model.

It is worth noting here that the adversarial-evidentiary model of representation employed in felony trials post-1836 was already being used in civil trials and criminal trials for misdemeanours and treason before the Prisoners' Counsel Act came into force. The detailed research of David Cairns and John Langbein has shown that until the eighteenth century all criminal trials were dominated by judges, with most cases being conducted without counsel for either side. However, the introduction of prosecution counsel in some criminal cases in the early eighteenth century prompted the emergence of defence counsel and led to the gradual 'lawyerization' of the criminal trial.⁴³ The increasing dominance of lawyers led to the rise of adversarialism in the eighteenth-century courtroom, as Cairns and Langbein have pointed out. Adversarialism promised rigorous inquiry, a 'comprehensive investigation of the truth, resulting from the fullest interpretation and investigation of the evidence'.⁴⁴ Yet felony counsel restriction prevented adversarialism from emerging fully in felony trials, which instead relied on the

⁴² John H. Langbein, *The Origins of Adversary Criminal Trial* (Oxford: Oxford University Press, 2003), pp. 2-3.

⁴³ See Langbein, *Origins*, and Cairns, *Advocacy*.

⁴⁴ Cairns, *Advocacy*, pp. 94-95.

‘accused speaks’ model as Langbein has noted.⁴⁵ When the removal of felony counsel restriction was suggested in Parliament in the 1820s, public attention was drawn to the contrast between two alternative models of courtroom representation, and the merits of both were vigorously debated. Cairns has noted how the Prisoners’ Counsel Act gave rise to long-lasting debates about the effectiveness of the adversarial-evidentiary trial as a truth-seeking model, and in particular raised questions about the correct interpretation of facts and evidence.⁴⁶ As Schramm has suggested, the expansion of the role of advocates into the defence of felonies gave the issues presented by adversarial advocacy a ‘sharper focus’.⁴⁷ In the years following the removal of felony counsel restriction, for example, there was extensive public debate about the ethical implications of defending suspected felons, and the licence which counsel should have to defend their potentially guilty clients. Following the Prisoners’ Counsel Act’s enactment, ‘anxieties about the nature of professional advocacy found their way into a number of fictional narratives’ as writers began to engage with the issues the Prisoners’ Counsel debates had raised.⁴⁸ While the adversarial-evidentiary model of representation had begun to emerge in courtrooms pre-1836, the Prisoners’ Counsel debates are an important context in which to examine literature of the period because they attracted the public’s attention to the distinction between two alternative legal models of representation, and the potential merits and deficiencies of both. The Prisoners’ Counsel debates were concerned with how the trial’s aim of uncovering truth, and representing it as reality to a panel of jurors, could most effectively be achieved. I aim to show that these

⁴⁵ Langbein, *Origins*, pp. 2-3.

⁴⁶ Cairns, *Advocacy*, Ch. 1.

⁴⁷ Schramm, *Testimony and Advocacy*, p. 102. The expansion of defence advocacy into felony trials was significant because, as Langbein has noted, civil litigation tended to be ‘trial avoiding’, whereas criminal justice was ‘trial centred’, see Langbein, *Origins*, p. 7.

⁴⁸ *Ibid.*, p. 103.

debates, which articulate concerns about the logic of representational practices, can further illuminate our understanding of novelistic representational practices employed during the nineteenth century. At the start of this introduction I noted how Ian Watt's analogy between the jury trial and the novel raised the question of how an understanding of the jury trial's mode of representing reality could shed light upon our understanding of how reality comes to be represented in literature. In this thesis I will answer this question by thoroughly examining attempts to represent reality in both criminal jury trials and literary narratives during the nineteenth century. In particular I will be examining the effect of a shift in legal thought which altered the representational methods employed in criminal trials for felony after 1836, and how this shift significantly influenced the development of two of the most popular literary genres during the nineteenth century: sensation and detective fiction.

Surveying the Field: Law and Literature

J. H. Wigmore first envisioned the potential value in studying law alongside literature when he created a list of 'legal novels' (novels which dealt with the law in some way) and suggested that judges and lawyers should study these novels as part of their professional development.⁴⁹ Richard H. Weisberg – who recognised the value of Wigmore's list, updated it, and helped pioneer the Law and Literature movement in the 1970s and 1980s – has noted how the stories which Wigmore suggests legal professionals read 'provide sources of legal understanding unavailable elsewhere' and can be valuable, as Wigmore suggested, because 'reading fiction will immeasurably improve lawyer-client comprehension, professional writing, and

⁴⁹ John H. Wigmore, 'A List of Legal Novels', *Illinois Law Review*, 2 (1908), 574-593. This list was reprinted and extended as 'A List of 100 Legal Novels', *Illinois Law Review*, 17 (1922), 26-41.

interpreting the texts of the law'.⁵⁰ Today the Law and Literature movement is generally regarded as containing two complementary sides: *Law in Literature* and *Law as Literature*, though often these strands interconnect and weave together.

Studies which fall into the *Law in Literature* category are interested in the ways in which literary texts (generally those which represent the law in some way) are instructive to the student of law and legal professionals, especially in regards to its 'capacity for promoting an empathetic understanding of the inner life of others' and 'its critical perspective towards the phenomenon it represents'.⁵¹ Wigmore's list largely falls into this category, and Richard Weisberg has similarly championed the relevance of legal-literary texts to the legal scholar and practitioner.⁵² *Law as Literature* on the other hand seeks to apply the techniques of literary criticism and theory to the study of legal texts, from scholarly articles to judicial rulings and barrister's speeches. James Boyd White's *The Legal Imagination* was the first study to fully examine the usefulness of treating legal texts as literary ones, and it demonstrates how the tools of literary analysis can be important when considering and examining the language used in the law. *Law as Literature* in particular has sparked some interesting and at times heated debates, not least over the matter of how legal texts come to be interpreted.⁵³

⁵⁰ Richard H. Weisberg, 'Wigmore and the Law and Literature Movement,' *Law and Literature*, 21 (2009), 129-147 (p. 134).

⁵¹ Gewirtz, 'Narrative and Rhetoric', pp. 2-13 (p. 3).

⁵² See Weisberg, 'Wigmore'.

⁵³ For an excellent summary and discussion of this debate see Robin West's 'Introduction' to *Narrative, Authority, and Law* (Ann Arbor: University of Michigan Press, 1993), and also Ian Ward, *Law and Literature: Possibilities and Perspectives* (Cambridge: Cambridge University Press, 1995). See further, Richard A. Posner, *Law and Literature* (London: Harvard University Press, 1998); Stanley Fish, *Is there a Text in this Class?: The Authority of Interpretive Communities* (Cambridge, MA: Harvard University Press, 1980); Stanley Fish, *Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Legal and Literary Studies* (Durham, NC: Duke University Press, 1989); Owen Fiss, 'Objectivity and Interpretation', *Stanford Law Review*, 34 (1982), 739-763; and Ronald Dworkin, 'Law as Interpretation', *Critical Inquiry*, 9 (1982), 179-200.

The interdisciplinary study of Law and Literature has been of burgeoning interest to literary scholars as well as legal ones. The contextualisation of literary texts within the relevant legal background and framework has proved especially fruitful, and a number of studies have revealed the nineteenth century to be a period of particular interest in this regard. Kathleen Loncar's study *Legal Fiction: Law in the Fiction of Nineteenth Century Women Novelists* reveals how a correct understanding of nineteenth-century law is crucial to a full understanding of literary texts which contain any legal aspect.⁵⁴ Kieran Dolin's *Fiction and the Law* is more subtle, but likewise argues for a contextualised study of fiction within the relevant legal discourses of the time. Dolin examines the dialectical interplay of the law in both nineteenth-century and modernist texts, analysing how through this interplay law came to help structure and shape literary narratives. Dolin also examines how literature began to engage critically with the law, questioning its parameters and providing the discursive space for the exploration of alternative possibilities of providing justice outside the law.⁵⁵ Other literary critics too have succeeded in revealing the close relation between the law and literature during the nineteenth century, in particular how questions and issues being raised in the legal world were also being addressed and explored in the literature of the time, often creating a dialogue between the two. Lisa Rodensky's *The Crime in Mind* is a particularly good example of this type of criticism. Rodensky examines how the Victorian novel's representation of the interiority of its characters, through the privileged vantage point

⁵⁴ Kathleen Loncar, *Legal Fiction: Law in the Fiction of Nineteenth Century Women Novelists* (Montreux: Minerva Press, 1995).

⁵⁵ In his examination of how the formation of a normative legal world is linked to the development of the novel, Dolin identifies and traces a movement from nineteenth-century narrative affirmation of the law to modernist critique through the study of six individual texts and their engagement with a particular aspect of the law. This general trend which Dolin identifies is complicated by the recognition that a tension often emerges within these texts between affirmation and critique of the law.

of the omniscient narrator, engaged the novel in contemporary legal debates and ideas about criminal responsibility.⁵⁶

The focus of this thesis is the way in which literary narratives engaged with the questions and issues raised by the Prisoners' Counsel debates of the nineteenth century, and the extent to which the changes in representational practices in criminal trials for felony wrought by the 1836 Prisoners' Counsel Act impacted on the development and structure of sensation and detective fiction. I have already noted how Ian Watt recognised the affinity between the legal trial and the novel, but as Jonathan Grossman points out in *The Art of Alibi: English Law Courts and the Novel*, the comparison is much more than a useful analogy; it is instead a 'cultural and historical entwining of the novel with the narratologically structured space of the court'.⁵⁷ In this thesis it is my aim to reveal how this 'cultural and historical entwining' of legal narratives told in the courtroom and nineteenth-century literary narratives, was effected in part through law and literature's active engagement with the issues and questions the Prisoners' Counsel debates raised.

Grossman's study undoubtedly reveals the significance of the interplay between the narratives of the courtroom and novel narratives in nineteenth-century England, but the focus of this thesis is different from that of Grossman in two fundamental respects. Firstly, Grossman examines how a shift in the eighteenth century away from a penal system centered around the spectacle of punishment to

⁵⁶ Lisa Rodensky, *The Crime in Mind: Criminal Responsibility and the Victorian Novel* (Oxford: Oxford University Press, 2003). Other accounts of the relationship between law and nineteenth-century literature include, for example, Jane Jordan, 'The Law and Sensation', in *A Companion to Sensation Fiction*, ed. by Pamela Gilbert (Oxford: Wiley-Blackwell, 2011), pp. 508-515; Simon Petch, 'Legal', in *A Companion to Victorian Literature and Culture*, ed. by Herbert F. Tucker (Oxford: Blackwell, 2002), pp.155-169; Clare Pettitt, 'Legal Subjects, Legal Objects: The Law and Victorian Fiction', in *A Concise Companion to the Victorian Novel*, ed. by Francis O'Gorman (Oxford: Blackwell, 2005), pp. 71-90. See also: Gill Ballinger, 'Law and Nineteenth-Century Literature', *Literature Compass*, 1 (2004), 1-6.

⁵⁷ Jonathan H. Grossman, *The Art of Alibi: English Law Courts and the Novel* (Baltimore: Johns Hopkins University Press, 2002), p. 4.

one focused on the courtroom trial scene, allowed the law courts to emerge as a story-telling forum which began to influence the development of the English novel's story-telling structure. However, Grossman's focus on the impact of the shift of emphasis from the gallows spectacle to the trial scene means that he does not fully take into account how the story-telling structure of the courtroom itself changed during this period, and so overlooks how two different models of representation were competing during the nineteenth century and offering themselves as alternative narrative structures for literary texts. Secondly, Grossman's focus is on creating a new history of crime fiction and leads to the conclusion that English detective fiction is best understood as a reaction against 'the larger judicial paradigm' of the law court which other nineteenth-century crime narratives, such as the Newgate Novel, had appropriated. I argue, conversely, that detective fiction in fact reveals itself to be very much committed to the story-telling structure of the adversarial-evidentiary trial, and that this is especially evident in the *Sherlock Holmes* stories.

At the heart of this thesis is the attempt to build on the excellent work of Alexander Welsh and Jan-Melissa Schramm, whose studies of how eighteenth- and nineteenth-century literary modes of representation responded to, and were influenced by, courtroom representational practices, have demonstrated just how illuminating such a contextualised study of literature can be. In *Strong Representations* Alexander Welsh argues that during the eighteenth century there emerged a distrust of testimonial evidence and consequently increased reliance was placed on the use of circumstantial evidence, which required the construction of what he terms 'strong representations', that is, representations which subordinate the evidence to a particular 'case' (explanation of the facts) being made. Welsh argues that this preference for circumstantial evidence influenced narratives employed in a

number of disciplines, but he is especially interested in how this legalistic narration comes to dominate literary narratives in the eighteenth and nineteenth centuries. Welsh's study reveals the deep connection between legal and literary narratives, forged through their shared use of strong representations to tell their stories or make their cases. However, as Schramm points out, Welsh wrongly views circumstantial evidence as being preferred to testimonial evidence until well into second half of the nineteenth century. In fact as early as the 1820s, when the Prisoners' Counsel Bill was first being introduced into Parliament, there already existed a scepticism about the reliability of circumstantial evidence, and from this time on the fallibility of evidence in general was a matter of both legal and public debate. Moreover, by focusing on the (somewhat misleading) distinction between circumstantial and testimonial evidence, Welsh does not consider the implications the Prisoners' Counsel Act had for both legal and literary representations.⁵⁸

Jan-Melissa Schramm's study *Testimony and Advocacy in Victorian Law, Literature and Theology* is the work which has most closely examined the significance of the Prisoners' Counsel Act to nineteenth-century literature, and has given the fullest account of the interaction between law and literature over the matter of representation which resulted from the passing of that Act. Schramm argues that following the enactment of the Prisoners' Counsel Act in 1836, authors created a style of literary advocacy that both emulated and reacted against the construction of narratives by advocates at the Bar. Schramm's study is invaluable in identifying the importance of the Prisoners' Counsel Act to the development of literary narratives, and this thesis was initially inspired by my enthusiasm to extend the scope of Schramm's study. During the course of my research however, it became clear that

⁵⁸ See Schramm, *Testimony and Advocacy*, pp. 20-21.

the conclusions I was drawing were different from those of Schramm. Schramm identifies a tension in nineteenth-century literature between an authorial preference for the pre-1836 ‘accused speaks’ model of trial and the use of a literary advocacy that imitated adversarial trial practices. However, Schramm does not consider the ways in which the narrative techniques of the novels she discusses can in fact be considered an imitation of pre-1836 felony trial practices. The novels Schramm considers (which she labels ‘realist’) are novels which in fact emulate the character-focused nature of pre-1836 felony trial proceedings and so allow their authors to remain fully committed to their critiques of the adversarial-evidentiary jury trial. In addition, Schramm does not include in her study a thorough analysis of fiction which does not primarily take a character-focused approach to representation, such as sensation or detective literature. Consequently, she does not consider how these other types of narratives not only structure themselves around the narrative techniques of the adversarial-evidentiary trial, but in doing so hold its methods up as a more effective means of representing reality than those employed in a model focused on character.

This thesis presents a new and more thorough analysis of the post-1836 ascendance of the adversarial-evidentiary legal representational model, and its relationship to, and impact on, literary representational practices employed in nineteenth-century fiction. In her analysis of the interaction between this legal model and nineteenth-century novels, Schramm presents the relationship between law and literature as an essentially rivalrous one, arguing that a ‘competition’ emerged between law and literature during this period over the matter of representation (rooted in literature’s preference for the pre-1836 ‘accused speaks’ model) with each discipline seeking to ‘monopolise the representation of the “real” in the cultural

imagination'.⁵⁹ By contrast, this thesis seeks to show how the competition which Schramm identifies is not as straightforward as being simply between law and literature, and is better understood as a competition between two alternative models of representation. Both of these models were employed in law and literature during this period, and both of these models were the subject of legal and popular debate.

In his examination of the changes in representational practices that were occurring in law and literature during the nineteenth century, Welsh does identify the existence of two alternative modes of representation within both law and literature. Yet, as Welsh does not fully consider the import of the Prisoners' Counsel debates in his discussions of evidence and its use in the representational process, he is led to conclude that the two competing models of representation are those of the testimonial versus the circumstantial. By examining the debates on evidence within the wider legal context of the Prisoners' Counsel Act, it becomes apparent that testimonial and circumstantial evidence are not completely separable in the way Welsh suggests. Instead, the two competing models which are more significant for our understanding of nineteenth-century legal and literary representations are those of the pre-1836 'accused speaks' model and the adversarial-evidentiary model.

Outline of Thesis

This thesis is comprised of four chapters. In chapter one, 'Truthful Representations: The Criminal Jury Trial and the Character-Focused Novel', I chart the development of the jury trial from its early beginnings in Anglo-Saxon and Norman England and trace the importance which the assessment of the defendant's character came to hold in the criminal jury trial before the introduction of the Prisoners' Counsel Act. The

⁵⁹ Schramm, *Testimony and Advocacy*, p. 192.

detail provided is intended to demonstrate just how fundamental the idea of character was to establishing the truth of disputed facts in criminal trials for felony up until 1836. I then go on to consider how a preference for this character-focused model of trial can be identified in the work of a number of popular nineteenth-century writers, not only in their fictional treatment of the jury trial process but also in the way in which their tales are told. Many of the novels and novelists I deal with in this chapter are those which critics commonly identify as ‘realist’.⁶⁰ However, labels such as ‘realist’ and ‘realism’ are some of the most contested terms in the critical literary lexicon, and the difficulty of definition can often lead to confusion and inconsistency of application.⁶¹ It is not within the scope of this thesis to offer a full analysis of what is meant by such terms; such a task could easily form the subject of a thesis in itself. However, one thing the authors which chapter one deals with have in common is that their narrative method focuses primarily upon the presentation and revelation of character. For the purposes of this thesis, and in order to avoid terminological inconsistency and confusion, I will be referring to these authors as writers of ‘character-focused’ novels.⁶² Schramm argues that such novels are conflicted, being

⁶⁰ See, for example, Levine, *Realistic Imagination*; Furst, *All is True*; and Schramm, *Testimony and Advocacy*.

⁶¹ Pam Morris has noted the ‘slippery nature’ of the terms ‘realist’ and ‘realism’: *Realism* (London: Routledge, 2005), p. 2. Alison Byerly has also noted how difficult it is to define what is meant by ‘realism’: *Realism, Representation, and the Arts in Nineteenth-Century Literature* (Cambridge: Cambridge University Press, 1997), p. 4, and Elizabeth Deeds Ermarth has likewise called this term ‘vexed’: *Realism and Consensus in the English Novel* (Princeton: Princeton University Press, 1983), p. xi.

⁶² Critics such as Georg Lukács, Arnold Kettle and George Levine, for example, have identified in nineteenth-century novelists’ attempts to represent reality the depiction of the underlying forces of social change, and argue that it is the representation of society in flux and the attempt to comprehend it that lies at the heart of English ‘realism’ in the nineteenth century. For Arnold Kettle, for example, the development of the novel should be viewed as a response to historical change, as it was a form which grew out of the need for a literary form which could engage with the experiences of people living in a changing society: ‘Realism and Romance’, in *The Realist Novel*, ed. by Dennis Walder (London: Routledge, 1995), pp. 207-223. See also Levine, *The Realistic Imagination*, and Georg Lukács, *Studies in European Realism: A Sociological Survey of the writings of Balzac, Stendhal, Zola, Tolstoy, Gorki and Others* (London: The Merlin Press, 1972). There are many useful, interesting, and diverse studies of ‘realism’ and its use in, and relation to, the novel, some of which aim to give an overall sense of the field such as Pam Morris’s *Realism*, and others which posit a particular theory of what realism is, such as Erich Auerbach’s *Mimesis: The Representation of Reality in Western*

both an ‘imitation of’ and a ‘reaction against, the increasing prominence of defence counsel’.⁶³ In contrast, by situating these character-focused novels in the context of the jury trial’s development, I aim to demonstrate how novelists who sought to represent reality through a central focus on character remain fully committed to their preference for an ‘accused speaks’, character-focused model of representation.

Chapter two, ‘Making a Case: The Prisoners’ Counsel Act and the Rise of Sensation Fiction’, focuses on the enactment of the Prisoners’ Counsel Act in 1836 and the surrounding debates. Central to these debates, in both legal and popular discourse, was the question of how representations should be made in order to reveal truth, including how legal evidence should be understood, used, and presented. This chapter then goes on to explore how the debates surrounding this legal issue also called into question the character-focused novel’s mode of representation, and begins to explore how the development of the sensation genre can be read, in part, as a response to such a challenge.

Chapter three, ‘Engaging in the Debate: Evidence, Advocacy, and the Sensation Novel’s Response’, examines how some of the most popular sensation novels of the period were engaging actively with contemporary debates over the matter of courtroom representation, especially in relation to the evidence debates. Through the close reading of a number of well known texts I hope to show how the sensation novel which emerges in the 1860s does so partly in response to the abolition of felony counsel restriction and the mode of telling courtroom narratives

Literature, trans. By Willard R. Trask (Princeton: Princeton University Press, 1991), in which Auerbach examines how ‘realism’ represented the first serious treatment of the lives of ordinary citizens and aligns the realist project with a democratic impulse. Other works which aim to investigate and understand what the term ‘realism’ means in relation to the nineteenth-century novel often provide useful analyses of the work of other critics, see, for example, Harry E. Shaw’s *Narrating Reality: Austen, Scott, Eliot* (Ithaca: Cornell University Press, 1999). Other studies, however, choose to focus on one particular aspect of ‘realism’ such as Lillian Furst’s *All is True*, in which she primarily focuses on the use of place to create a sense of authenticity.

⁶³ Schramm, *Testimony and Advocacy*, p. 23.

which flourished in its wake. Crucially I argue that, whilst sensation fiction is often critical of the law with regards to specific laws or legal practices and acknowledges the representational problems the law faces, readings of the sensation novel as a rejection of legal models of justice do not pay sufficient attention to this type of novel's overall representational mode, which not only adopts legal representational methods but upholds them as fundamentally effective ones.

Matthew Rubery has noted the 'high degree of interaction between [nineteenth-century] literature and journalism'.⁶⁴ In *The Novelty of Newspapers: Victorian Fiction After the Invention of the News*, Rubery demonstrates how 'the shape taken by the Victorian novel must be understood alongside the simultaneous development of the news as a commercial commodity read by up to a million readers per day'.⁶⁵ Through the careful analysis of a number of popular nineteenth-century novels, Rubery shows how authors, including Dickens, James, Trollope, and Braddon, were influenced by the narrative conventions found in the newspaper, from personal advertisements to foreign correspondence. In *The Sensation Novel and the Victorian Family Magazine*, Deborah Wynne demonstrates how reading the novel within the context of its periodical publication is often crucial to a full understanding of the text. In particular Wynne reveals the way in which the serialisation of sensation novels in popular periodicals allowed authors to respond to the important social and cultural debates of the day which were simultaneously being discussed in other articles within the publication's pages.⁶⁶ Following Wynne's approach, but

⁶⁴ Matthew Rubery, 'Victorian Print Culture, Journalism and the Novel', *Literature Compass* 7 (2010), 290-300 (p. 290). See also Matthew Rubery, 'Journalism', in *The Cambridge Companion to Victorian Culture*, ed. by Francis O'Gorman (Cambridge: Cambridge University Press, 2010), pp. 177-194.

⁶⁵ Matthew Rubery, *The Novelty of Newspapers: Victorian Fiction After the Invention of the News* (Oxford: Oxford University Press, 2009), p. 159.

⁶⁶ Deborah Wynne, *The Sensation Novel and the Victorian Family Magazine* (Houndmills: Palgrave, 2001).

expanding on her conclusions and methodologies, Julie Bizzotto has similarly offered some interesting new interpretations of novels by reading them in the context of their periodical publication.⁶⁷ My analysis of sensation novels is informed by this approach in its attempts to reveal the ways in which such texts were directly engaging in contemporary legal and popular debate over the matters of evidence and representation.

Chapter four, “‘The Perfect Reasoning Machine’: The Advocacy of the Detective’, builds on the conclusions of chapter three by extending its reading of sensation novels to detective fiction, and arguing that this genre was similarly influenced by criminal trial narratives post-1836. In particular I offer a new reading of the *Sherlock Holmes* stories that situates Holmes in the context of the rise of adversarial advocacy, rather than scientific discourse. This alternative contextualisation of Holmes reveals his power to lie not only in his scientific expertise, as critics have commonly suggested, but also in his equally important role as an advocate. Such a reading has implications for the way in which we read the character, function and effectiveness of not only Sherlock Holmes, but also that of Dr Watson.

By reading nineteenth-century fiction within the context of the legal debates relating to courtroom representational practices, this thesis offers new readings of some of the most enduringly popular nineteenth-century texts. Such readings not only offer a fresh perspective on the ways in which these texts are working to achieve an accurate representation of reality, but also reveal the significant and lasting impact of the Prisoners’ Counsel Act on the development of nineteenth-century literary narratives.

⁶⁷ Julie Bizzotto, ‘Serializing Sensation: The Dynamics of Genre in Victorian Popular Fiction’ (unpublished doctoral thesis, University of London, Royal Holloway, 2012), quotation at p. 14.

Textual Note

For ease of reference, quotations from novels, poems and short stories have been taken from widely available scholarly editions of these texts. Where such editions are not available I have quoted directly from the text's original publication either in serial or volume form (always clearly stated). Where I have used a modern version of a text which has reproduced the volume edition of the text rather than the serialised version, I have taken care to consult the original text in its periodical publication and, where relevant, have made a note of any significant changes between serial and volume form. Where quotations are given, any emphasis provided is to be found in the original text unless otherwise stated.

Chapter One

Truthful Representations: The Criminal Jury Trial and the Character-Focused Novel

He has convinced me of his innocence [...] not because I am specially soft, or because I love the man – for as to that I dislike him rather than otherwise – but because there is a real truth in his words.¹

Listening to Josiah Crawley's explanation (or rather lack thereof) as to how he came by a cheque for twenty pounds in *The Last Chronicle of Barset* (serialised 1866-7), the lawyer Mr Toogood becomes convinced that the clergyman is innocent of theft. The manner in which Toogood is persuaded echoes eighteenth-century jurist Sergeant William Hawkins's argument that the 'artless and ingenuous behaviour of one whose conscience acquits him' is sufficient to reveal innocence.² Hawkins's argument is one which was used in support of felony counsel restriction, a rule which prevented suspected felons the right to have counsel address the jury on their behalf, until its removal by statute in 1836. The scene between Toogood and Crawley, in which Crawley is permitted to tell his story in his own words, replicates the conditions of a pre-1836 legal model of courtroom representation where the focus of the trial would largely be on the assessment of the accused's character. In *The Last Chronicle of Barset* Trollope contrasts this method of representation with adversarial-evidentiary representational practices, implicitly criticising the latter model through Crawley's self-evident innocence once he is permitted to provide his own defence. This preference for a more character-focused model of legal representation can also be discerned in the novels of other popular nineteenth-

¹ Anthony Trollope, *The Last Chronicle of Barset*, intro. by Sophie Gilmartin (London: Penguin, 2002 [1868]), Ch. 32, p. 320. Further references to this edition are given after quotations in the text.

² William Hawkins, *A Treatise of the Pleas of the Crown*, 4th edn (London: Richardson & Lintot, 1762 [1724]), Bk. 2, p. 400.

century writers who, like Trollope, created character-focused narratives. A study of such novels within the context of the Prisoners' Counsel Act reveals a connection between the character-focused representational methods of the pre-1836 felony trial and the representational methods of character-driven narratives. This connection will form the focus of this chapter.

In his autobiography, Anthony Trollope identified a prevailing contemporary view that there existed a type of novel which was primarily focused on 'the elucidation of character':

Among English novels of the present day, and among English novelists, a great division is made. There are sensational novels and anti-sensational; sensational readers and anti-sensational. The novelists who are considered to be anti-sensational are generally called realistic [...] The readers who prefer the one are supposed to take delight in the elucidation of character. They who hold by the other are charmed by the construction and gradual development of the plot.³

Trollope's acknowledgement that there existed a group of novelists who relied upon the presentation of character in order to create a 'realistic' effect, indicates that a narrative focus on character was understood as one way in which the representation of reality could be achieved. On this understanding the group of novels Trollope identifies might be more properly labelled 'character-focused' rather than 'realistic', and in the interests of consistency and clarity this term shall be employed hereafter.⁴

³ Anthony Trollope, *An Autobiography*, ed. by Michael Sadleir and Frederick Page (Oxford: Oxford University Press, 2008 [1883]), pp. 226-227. Further references to this edition are given after quotations in the text.

⁴ The novels chosen for discussion in this chapter are often grouped together under the term 'realist'. This is the term which Schramm, for example, chooses to employ, and analysis of some of these authors is also undertaken in studies of realism such as Arnold Kettle's *An Introduction to the English Novel*, 2 vols (London: Hutchinson, 1951), and George Levine's *The Realistic Imagination: English Fiction from Frankenstein to Lady Chatterley* (Chicago: University of Chicago Press, 1981). However, as noted in the introduction (pp. 24-25), the terms 'realism' and 'realist' are fraught with difficulties, and so I have chosen to apply a term to these novels which might prove a more useful way of grouping them for this particular study. Whether we apply the term 'realist', or 'character-focused', or something else entirely, no term will ever be perfect. Novels are brought together under one label because they have certain characteristics in common which allows them to be grouped together in this way. Yet they will also have differences, and so no categorisation will ever be without objection. That said, this chapter hopes to show that the term 'character-focused' is not without justification within this particular context. For useful analyses of the relationship between character and the novel see, for

Novels which I take to fall into this category are, generally speaking, primarily interested in portraying the growth and development of their protagonists, concentrating on their struggle towards eventual triumph (or not) at the novel's close. These novels' representations are largely dependent upon the reader coming to know, understand and engage with that protagonist. This emotional investment ensures that the reader judges the protagonists in the way the novel's narrative suggests, with the result that the novel's final resolution of events is approved by that reader, thereby affirming the success of that novel as a truthful representation of the real. For example, a large part of the success of *David Copperfield* (1849-50) depends on our judgement of David's character. The vast majority of the novel is therefore spent establishing that David is good and finally deserving of the rewards he receives. Similarly, it is important that we judge Uriah Heep as bad and deserving of the punishment eventually meted out. In the end this is, broadly, the assessment that we make. The result is that our judgement coincides with that of the novel, and so its plot, characters, depictions of life and so on, acquire a verisimilitude which helps to secure its success. *David Copperfield* is narrated in the first person, but most character-focused novels are characterised by the use of an omniscient narrator who, ostensibly at least, has full access to the inner thoughts and feelings of the characters.

Jan-Melissa Schramm has identified an authorial 'preference' for the 'accused speaks' model in character-focused novels as they 'refused to follow the

example: W. J., Harvey, *Character and the Novel* (London: Chatto & Windus, 1965); Jeremy Hawthorn, *Multiple Personality and the Disintegration of Literary Character: From Oliver Goldsmith to Sylvia Plath* (London: Edward Arnold, 1983); Baruch Hochman, *Character in Literature* (Ithaca: Cornell University Press, 1985); Thomas Docherty, *Reading (Absent) Character: Towards a Theory of Characterization in Fiction* (Oxford: Clarendon Press, 1983); and James Phelan, 'Reading People, Reading Plots': *Character, Progression, and the Interpretation of Narrative* (Chicago: University of Chicago Press, 1989).

law and silence their own protagonists'.⁵ Yet Schramm also sees a tension between this preference and the 'urge to undertake fictional advocacy', arguing that the third-person, omniscient narrator assumes a role similar to that of the advocate.⁶ This chapter will argue that instead of there existing a conflict between the character-focused novel's narrative method and the underlying desire to hold on to an 'accused speaks' model, these novels in fact remain fully committed to an 'accused speaks' model of representation in two ways. Firstly, the truth of disputed facts is resolved through an 'accused speaks' model within the events of the novel, and secondly, through the narrative mode itself, which aligns itself methodologically with the 'accused speaks' model so that it does not display merely a preference for that model but rather becomes the story-telling structure of the novel itself. This is achieved largely through the narrator whose omniscience, instead of allying itself with advocacy, in fact continues to permit the accused's voice to be heard and remain at the centre of the representational process. Furthermore, the ability of the omniscient narrator to read the thoughts of the protagonists suggests that it is possible to have a knowledge and understanding of others in a way which is crucial to the representational process. This chapter will also concentrate, therefore, on how the 'accused speaks' model and the character-focused novel are further connected through a shared epistemology in which the understanding of reality in large part rests upon, and is communicated via, the knowledge of the characters of others.⁷

⁵ Jan-Melissa Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Theology* (Cambridge: Cambridge University Press, 2000), in particular Ch. 3, quotation at p. 192.

⁶ *Ibid.*

⁷ Legal historian John H. Langbein coined this term to describe the trial model employed in pre-1836 trials for felony. Throughout this thesis I will be employing Langbein's term when discussing the pre-1836 criminal trial model for felony. See John H. Langbein, *The Origins of Adversary Criminal Trial* (Oxford: Oxford University Press, 2003), pp. 2-3.

This chapter will begin by tracing the development of the criminal jury trial from its early beginnings in order to show the fundamental importance the idea of character played in pre-1836 felony trials. It will then go on to consider how character-focused novels display a clear preference for an ‘accused speaks’ model of trial in their representation of how the truth of disputed facts is most effectively uncovered. A connection is then made between the epistemology underpinning the ‘accused speaks’ model and that which underpins the narrative strategies of the character-focused novel. Finally, a consideration is offered of how the narrative mode of the character-focused novel mirrors that of the ‘accused speaks’ trial through its use of the omniscient narrator.

The Accused Speaks: Seeking the Truth of Disputed Facts through Character

The rules, procedures and methods employed in determining the truth of disputed facts in criminal trials have greatly altered through the centuries, and those practices employed in the primitive courts of Anglo-Saxon England seem barely recognisable when compared with the complexity of our contemporary, or even nineteenth-century, trials. Yet despite this evolution – which included the introduction and development of the trial jury – one feature of early trial practices remained an influential factor in the process for determining guilt right up until the early nineteenth century: the character of the accused. Before 1836 the procedures in place for determining guilt in felony trials were largely rooted in establishing how likely it was that an individual had committed an offence by determining whether or not they were of good or bad character.

The methods and techniques used in early nineteenth-century felony trials to determine the truth about the fact in issue – that is, the matter in dispute, usually the

guilt or innocence of the accused – grew out of Anglo-Saxon and Norman practices which governed the settling of disputes in English law's early beginnings. The Anglo-Saxons were the first people in Britain to keep written records of their laws and consequently very little is known about the legal structure and systems of England before this period. J. H. Baker has suggested that early England would have been guided by the customs passed down from generation to generation within a given community, and like the system of Anglo-Saxon England, there would have been no coherent or settled body of law during this time. The laws and customs of Anglo-Saxon England, including those concerning the settling of disputes, would therefore have varied from place to place.⁸ Nevertheless, the primitive origins of the criminal jury trial can be discerned within the legal workings of Anglo-Saxon England, not least the understanding of such proceedings as 'truth-seeking' and the importance of the idea of character to the establishment of that truth.

Before the unification of England in the tenth century, England was divided into separate kingdoms. Each kingdom was divided into shires, with each shire divided into hundreds (containing one hundred families), which in turn were divided into tithings (containing ten families).⁹ Each of these divisional units held assemblies which dealt with any issues or business affecting the community in question, and were presided over by the relevant official.¹⁰ With no separation of powers, each of these ancient assemblies would have been free to deal with legislative, administrative and judicial matters. The result was that, in the case of the hundred and shire at least,

⁸ J. H. Baker, *An Introduction to English Legal History*, 4th edn (London: Butterworths, 2002), p. 3.

⁹ Some areas (for example, London) were divided into boroughs and wards, rather than shires and hundreds but they functioned in much the same way. The division of kingdoms in this way continued even after unification and remains largely unchanged to this day. See further, Baker, p. 7.

¹⁰ The King stood at the head of the Kingdom, but in the shires, hundreds and tithings, the Shire-Reeve (also known as the *Ealdorman*), the Hundred-man (*Hundredes-Ealdor*) and the Tithing-Man (*Teothings-Ealdor*) would have presided respectively. See William Forsyth, *History of Trial by Jury* (London: John W. Parker & Son, 1852), pp. 62-64. After the Conquest there was also the introduction of Lord's Court which had some jurisdiction over feudal issues and existed alongside the shire and hundred courts. See Baker, *Introduction*, pp. 8-9.

such assemblies also functioned as primitive courts.¹¹ Above the hundred court and shire court stood the King's court which served as a court of appeal.¹²

The purpose of such assemblies in their judicial capacity was to settle any disputes arising in the area. When disputes were brought before the hundred or shire assembly, if the parties could not be made to settle the dispute amicably (to make a 'love-day'), then the dispute had to be settled by 'proof by oath'. This procedure relied on aggrieved individuals bringing cases before the assembly where they would swear on their oaths that the claims they made were true. These claims would be supported by the provision of other persons (the 'suit' or 'secta') who were willing to swear to the truth of this claim. Once a *prima-facie* case had been established in this way, the accused would swear upon his oath to the truth of his claim (usually that the plaintiff's claim was false), and in his turn would provide persons (known as 'compurgators' or 'oath-helpers') willing to swear on their oaths that he spoke the truth. After this ritual was completed, if the assembly considered that the accused had produced enough compurgators to discharge the weight of the accusation against him, then the case would be decided in his favour. If the accused failed to discharge the burden of proof in this way, he would have to face trial by ordeal.¹³

Whilst proof by oath may appear somewhat divorced from ideas of truth as they were understood and articulated by nineteenth-century jurists, the emphasis on swearing to the truth demonstrates that, even at this early stage of English Law's development, the trial was understood as a mechanism through which the truth of disputed facts could be found. What is more, is that it is clear that this process of

¹¹ It is unclear if the tithing assemblies also functioned as courts. See Forsyth, *History*, pp. 62-69.

¹² The 'Laws of King Henry I' (*Leges Henrici Primi*) show how this Anglo-Saxon court 'system' operated in much the same way during the Anglo-Norman period: *Leges Henrici Primi*, in *English Historical Documents 1042-1189*, ed. by David C. Douglas and George W. Greenaway (London: Eyre & Spottiswoode, 1953), pp. 459-462.

¹³ Baker, *Introduction*, pp. 4-6, and Forsyth, *History*, pp. 62-82.

truth-seeking is closely connected to the notion of character. The accused's compurgators and the plaintiff's suit were not witnesses to events, but rather character witnesses who would swear to their belief in the honesty of their party's character.¹⁴ Furthermore, the weight given to a party's suit or compurgators depended not only on how many people each party could provide to support their claim, but also on the social standing and reputation of each individual compurgator or member of the suit.¹⁵ The settling of disputes in Anglo-Saxon England, therefore, relied upon the establishment of truth through the establishment of *good character*, which was in turn established through the *good characters* of others. This clear, early connection between the determination and representation of truth and the idea of character, is a link which can be traced through the jury trial's development right up until the early nineteenth century.

When an accused person failed to discharge the burden of proof by his oath, then he faced trial by ordeal. As with proof by oath, trial by ordeal was designed to settle the truth of disputed facts, this time by requiring the accused to undergo some physical test to prove his innocence.¹⁶ During the ordeal it was believed that God would divinely intervene to protect the innocent and so reveal the truth. As it was necessary for God's judgement to be 'interpreted', the clergy tended to be

¹⁴ Forsyth, *History*, p. 74. See also John Hostettler, *The Criminal Jury Old and New: Jury Power from Early Times to the Present Day* (Winchester: Waterside Press, 2004), p. 19.

¹⁵ Forsyth, *History*, p. 74.

¹⁶ The two most common physical tests undergone by those facing the ordeal were *ordeal by fire* and *ordeal by water*. In ordeal by fire (also known as ordeal by hot iron), the accused was required to carry in his hands a piece of burning hot iron over a specified distance. The burns sustained would then be bandaged and left for a set period to recover. After the specified healing period had passed (often three days), the bandages were removed: if the wound had healed the accused would be declared innocent, but if the burn had festered then the accused was considered guilty. In ordeal by water, the accused would be bound and cast into a body of water which had been blessed by a member of the church. If the accused sank then it was deemed that the holy water (and so God) had accepted him, thereby revealing his innocence. Any bodies which floated were viewed as being rejected by God because of their guilt. Variations on these ordeals also existed. See further Forsyth, *History*, pp. 80-81; Baker, *Introduction*, p. 5; and Hostettler, *Criminal Jury*, pp. 19-20.

responsible for overseeing ordeals.¹⁷ However, in 1215 the Church made a decision to ban clerical involvement in the ordeal process and so effectively ended the ordeal as a viable mode of trial.¹⁸ It is widely accepted that this decision was responsible for the introduction of the jury trial into English Law.¹⁹ With no clear directive from the King on what was to replace trial by ordeal, the Royal Justices began to permit the accused to have a panel of twelve men to determine the issue of guilt, a panel which was to become known as the *trial jury*.²⁰

The decision of the judges to allow cases to be decided by a panel of lay persons had its roots in another type of jury, the *presenting jury*, which was in existence well before trial by ordeal became obsolete. During the Anglo-Saxon and Norman periods, most cases were privately prosecuted and so proof by oath had been the usual method of bringing disputes to the attention of the relevant assembly.

Whilst a firm and settled division between civil and criminal law developed gradually over time, as early as the Anglo-Saxon period those persons deemed to

¹⁷ Most ordeals were carried out in the Hundred Court for here it was common practice for the Bishop to support the *Hundreds-Ealdor* with matters arising in the hundred, including the settling of disputes: see Forsyth, *History*, p. 62.

¹⁸ The decision was made by the Church at the Fourth Lateran Council. The use of the ordeal as the primary means of settling disputes continued in England even after the Norman Conquest in 1066. This appears partly due to a Charter issued by William I in which he decreed that the English people were to continue to 'have and hold' the laws of the Anglo-Saxon King Edward the Confessor: 'The Laws of William the Conqueror', in *Documents*, ed. by Douglas and Greenaway, p. 400. Baker has suggested that the decision of the Church to forbid the clergy from taking any part in ordeals came after concerns were raised within the clergy regarding the appropriateness of asking God to intervene in human affairs in this way. Baker also argues that there is evidence to suggest that those whose role it was to interpret God's judgement increasingly came to feel responsibility for their decisions and so began to facilitate the result they believed to be just. In any case it would seem that during the last days of the ordeal, the acquittal rate was extremely high: see Baker, *Introduction*, p. 5. Maitland has also noted how 'success at the ordeal seems to have been far commoner than failure', finding only 'one single case of failure' when editing the *Select Pleas of the Crown 1200-1225*: see *Select Pleas of the Crown 1200-1225*, ed. by F. W. Maitland (London: Selden Society, 1888), p. xxiv.

¹⁹ Baker, *Introduction*, p. 5, and Hostettler, *Criminal Jury*, pp. 21-22. After 1215 there immediately followed a period of indecision regarding what should replace the ordeal, during which the Royal Justices were unclear about what procedure to follow when trying to resolve disputes. In 1219 a Royal Writ addressed to the Royal Justices in Eyre stated that the King had taken no decision on what procedure was to be used in place of the ordeal. In the interim it stipulated that suspects held on suspicion of great crimes were to be detained in prison without trial, that suspects accused of less serious crimes were to be banished from the realm, and those accused of minor offences should be set free on the condition that sureties could be found to keep the peace.

²⁰ Hostettler, *Criminal Jury*, p. 21.

have committed the worst offences were put to the King's mercy. These offences came to be known as *Pleas of the Crown* or *Royal Pleas*, over which the King's court had full jurisdiction. After the Conquest the number of Royal Pleas began to steadily increase, and this extension of royal jurisdiction was consolidated in *The Assize of Clarendon* (1166). This legal document extended Henry II (1154-89) and his government's jurisdiction over *all* felony prosecution and prescribed the procedure of 'presentment' to ensure that all suspected felons were brought to the King's justice.²¹ The procedure of presentment required that 'twelve of the more lawful men' (that is twelve men of good social standing and 'good character') from each hundred, and 'four of the more lawful men' from each tithing be chosen to report ('present') all suspected felons to the King's Justices.²² These suspects would then be tried by the ordeal. These 'lawful men' came to be known as the presenting jury.²³

In addition to making formal presentments, Green has shown how the presenting jury also had a discretionary role, which involved them in a 'screening process'.²⁴ After fulfilling their legal duty to report all suspected felons, the

²¹ Baker has suggested that the procedure of presentment was probably in use before the *Assize of Clarendon*: see Baker, *Introduction*, p. 73. Green, however, attributes the origin of presentment to this document: Thomas Andrew Green, *Verdict According to Conscience* (Chicago and London: University of Chicago Press, 1985), pp. 5-7.

²² *The Assize of Clarendon* (1166), in *Documents*, ed. by Douglas and Greenaway, pp. 407-410 (p. 408). In practice the procedure of presentment was usually carried out in front of the Sheriff in the hundred court: Green, *Verdict*, p. 7. This system appears similar to the Anglo-Saxon system of Frank-Pledge which was a mutual social agreement in which the head of each family within each tithing made a pledge to stand surety for the other nine men. This system continued into the Norman period, and is explicitly set out in 'The Laws of William the Conqueror'. As with the Frank-pledge, it would seem that presenting jurors could be fined if they failed to make presentments: see John G. Bellamy, *The Criminal Trial in Later Medieval England: Felony Before the Courts from Edward I to the 16th Century* (Stroud: Sutton Publishing, 1998), p. 19.

²³ The legal treatise known as *Bracton* (written during the mid-thirteenth century and so-called due to its being attributed to Henry de Bracton) suggests that these jurors were also responsible for arresting the suspects or, if this was not possible, to report suspects in writing to the Sheriff who then took responsibility for their capture. *Bracton: On the Laws and Customs of England*, trans. by Samuel E. Thorne, 4 vols (Cambridge, MA: Belknap Press, 1968), II, 329. The presenting jury ultimately came to be known as the *Grand Jury* and by the 1360s it was usual practice for these juries to examine bills of indictment and decide which of these were 'true bills' and should be put forward for full trial.

²⁴ Green, *Verdict*, pp. 7-10. Green argues this 'screening role' can be discerned within the document itself. Other legal historians do not go this far but are largely agreed that that the presenting jury did

presenting jurors would identify who they believed the *real* suspects were and so which persons should undergo the ordeal. Once again, however, the assessment of the accused's character remained central to this screening process. The presenting jury were drawn from the local neighbourhood and so in identifying who they believed the real suspects to be, they would take into account their knowledge of the accused. Persons of ill-repute who were known by the presenting jury to be of bad character would be dealt with summarily, but those persons of good social standing and established good character might be spared the ordeal on the advice of the presenting jury.

After the decline of the ordeal, the use of twelve men from the presenting jury to decide cases became increasingly common, and by 1229 it had become the usual means of settling disputes.²⁵ The twelve men sitting in a panel in this way came to be known as the *petty jury* or *trial jury*. Eventually the trial jury replaced the screening role of the presenting jury and in time it became established that accused persons could object to presenting jurors also sitting on the trial jury. It remained a requirement, however, that the members of the trial jury should still be summoned from the neighbourhood where the dispute arose in order that they could give evidence in court from their own knowledge.²⁶

The use of trial juries in this way demonstrates that the idea of character played a vital role in a process designed to determine the truth. Trial jurors were not only required to speak from their own personal knowledge, they were self-informing too, even performing an investigative function by enquiring in the neighbourhood

have discretion to state who they believed the real suspects were. See, for example, Hostettler, *Criminal Jury*, pp. 17-18.

²⁵ Hostettler, *Criminal Jury*, p. 23.

²⁶ The jurors were required to take an oath to 'speak the truth in a plea of the Crown': *Bracton*, II, 329. Both Forsyth and Baker have highlighted this panel of trial jurors functioned as little more than witnesses: Forsyth, *History*, p. 108; Baker, *Introduction*, p. 75.

after the accused's character, his reputation, and how he had conducted himself after the accusation: had he acted as an innocent or guilty man? These factors would form an important part of the jury's decision, and by the time such cases came to trial the jury had usually already made a decision on the issue of guilt based on their findings.²⁷ Over time, factors such as increased geographical mobility and the introduction of rules governing who was eligible to sit on a trial jury meant that the use of jurors who had personal knowledge of facts began to decline, as jurors were drawn from increasingly further afield.²⁸ By the seventeenth century the self-informing jury was essentially obsolete and it was commonplace for witnesses to be sworn separately.²⁹ However, even after the jury had relinquished its self-informing and witness functions, there continued to operate an open court procedure in which members of the jury could ask questions of the court and of the prisoner, make observations, and be sworn in as witnesses.³⁰

What is important to note here is that the idea of assessing the character of the accused continued to remain central to the determination of truth right up until the early years of the nineteenth century. This remained the case for two main reasons. Firstly, it appears to have become common practice to introduce a series of

²⁷ Green, *Verdict*, p. 17. This investigative function of the trial jury was often necessary because all felonies had to be prosecuted by the Royal Justices on the Eyre circuit, and so those accused of felonies (once having been presented in the Shire or Hundred Court) would often have to wait extended periods, sometimes years, before their case could be heard. Consequently those 'lawful men' of the local area who were to make up the jury would, if they did not know the accused personally, make enquires in the neighbourhood.

²⁸ Forsyth, *History*, p. 161.

²⁹ By 1368, although a statute still stipulated that those sitting on a trial jury were to have 'best knowledge of the truth and be nearest', it would appear that independent witnesses to events were being sworn in separately to give evidence under oath for the trial jury to consider. See Hostettler, *Criminal Jury*, p. 26. The first formal mention of this type of witness appears in 1468 in the treatise *De Laudibus Legum Angliae*, written by Lord Chancellor Fortescue. During this time it was still the case that jurors should be from the neighbourhood where the offence was committed and should have personal knowledge of events, but separate witnesses now appear as an established part of trial proceedings

³⁰ Such practices continued right up until the eighteenth century. See John Hostettler, *The Politics of Criminal Law Reform in the Nineteenth Century* (Chichester: Barry Rose Law Publishers, 1992), p. 44.

character witnesses to attest to the good character of the accused in an attempt to influence the jury to return a verdict of not guilty. The use of character witnesses in this way can be seen in the Old Bailey Reports, which suggest that by the eighteenth century this practice was not only common but, on the whole, successful in securing acquittals.³¹ Secondly, the continued refusal to allow those accused of felony the right to a full legal defence meant the accused had to answer the charges against him directly.

By the eighteenth century the criminal jury trial's mode of representing reality was firmly established as the 'old accused speaks' model. In this model the accused was required to tell his story in his own words, offering himself, his words and his character up to the full and direct scrutiny of the court. This model of representation arose out of a legal system which had for many centuries remained, for the most part, free from lawyers. In such a system, criminal trial proceedings were viewed as an opportunity for the accused to answer the charges against him in person, and to establish his innocence to the jury through his own words and manner.³² Consequently, criminal trials remained focused on the accused's character long after the jury ceased to have personal knowledge, first or second hand, of this themselves.

Before the eighteenth century it was not uncommon for lawyers to be employed in the prosecution and defence of civil wrongs and misdemeanours (minor criminal offences). In contrast, those on trial for felony were not permitted to employ defence counsel to address the jury on their behalf. In 1836 this was to change with the introduction of the Prisoners' Counsel Act, and it is this change which forms the focal point of this thesis. However, it has been important to chart the development of

³¹ Hostettler, *Criminal Law Reform*, p. 44.

³² See further Langbein, *Origins*.

the criminal jury trial in order to demonstrate the fundamental importance of the idea of character to the epistemology underlying the old ‘accused speaks’ model, an epistemology in which the primary way of understanding the world was through the knowledge of the characters of others, and through which the character-focused novels of the nineteenth century become intimately connected with the pre-1836 ‘accused speaks’ trial model.³³

An Appropriate Trial Model? The Accused Speaks in Changing Times

Until 1836 felony counsel restriction prevented defence counsel from addressing the jury on behalf of the defendant. The original reason for this restriction can be dated back to the reign of Edward I, where the appearance of the King’s name on the indictment for felony was given as justification for the denial of defence counsel.³⁴

Until the end of the seventeenth century it was uncommon for criminal proceedings to involve any lawyers at all and so felony counsel restriction appears not to have caused too many problems.³⁵ However, as the prosecution of crimes fell increasingly into the hands of professional advocates during the late seventeenth and early eighteenth centuries, the problems of denying the accused full legal representation began to emerge. It became common practice, for instance, for the prosecution to offer large rewards to witnesses willing to give evidence against the accused, or to offer exemptions from prosecution to those suspects who were willing to turn evidence against the main culprits, and so perjured testimony became an

³³ For further reading on the history of the criminal jury trial see: Baker, *Introduction*; Forsyth, *History*; Langbein, *Origins*; Green, *Verdict*; and David J. A. Cairns, *Advocacy and the Making of the Adversarial Criminal Trial 1800-1865* (Oxford: Clarendon Press, 1998).

³⁴ The argument was that no counsel could be admitted against the monarch. Legal treatises of the sixteenth and early seventeenth centuries refer to the well-established rule that the accused is not allowed defence as to the fact. It would seem that by the later middle-ages defence counsel was readily admitted to argue on points of law. See Cairns, *Advocacy*, p. 26.

³⁵ The employment of lawyers was more common in civil trials where private persons instituted proceedings.

overwhelming problem. The extent to which perjury vitiated criminal trials was publicly exposed in a number of treason trials which took place during the reign of the late Stuarts, including the Popish Plot (1678-80), the Rye House Plot (1683) and the Bloody Assizes (1685). In each of these cases it was later revealed that perjured testimony had been used to secure the convictions. Following the public outrage which resulted, the Treason Trials Act 1696 was passed, permitting those accused of treason to have recourse to a full defence.

The Treason Trials Act created an anomaly in criminal law. As felony counsel restriction still remained for all other felonies, the situation arose that those accused of the least and most serious crimes were permitted a degree of legal representation which was denied to those who fell in between. Nevertheless, as further problems with felony counsel restriction began to make themselves more clearly known, judges began to use their discretion to relax the rules, permitting prisoners accused of felony to employ defence advocates to examine and cross-examine witnesses on their behalf.³⁶ However, the continued restriction on defence counsel in felony trials, and the consequent form trial proceedings took, ensured the focus of criminal trial proceedings for felony still remained on the accused and his character.

In felony cases before 1836 the prisoner was firstly arraigned and pleaded, then prosecution counsel would make their submissions and witnesses would be examined and cross-examined. Finally the accused would address the court directly, telling his story in his own words, following which the judge would sum up before the jury considered and then delivered its verdict. This order of proceedings ensured

³⁶ For a discussion on the increasing use of prosecution and defence advocates in criminal trials during the late seventeenth and eighteenth centuries see J. M. Beattie, 'Scales of Justice: Defense Counsel and the English Criminal Trial in the Eighteenth and Nineteenth Centuries', *Law and History Review* 9 (1991), 221-67, and John H. Langbein, 'The Criminal Trial Before Lawyers', *University of Chicago Law Review* 45 (1978), 263-316.

that the criminal trial's model for representing reality maintained its emphasis on the accused in two ways. Firstly, it ensured that the accused was given the 'last word', the final opportunity to address the jury directly. The final address to the jury provided the last chance for anyone to impress his or her particular interpretation of events upon the jurors and so the 'last word' was highly valued by counsel in civil trials, where the prosecution possessed this final right of address.³⁷ Secondly, emphasis also remained on the accused's character due to the requirement that he address the court directly himself. The requirement that the accused speak on his own behalf meant that he remained a major testimonial source and so provided the jury with the opportunity not only to hear his version of events, but also to observe his behaviour and so to discern what sort of 'character' he appeared to possess.³⁸

From its primitive origins through to the beginning of the nineteenth century, the criminal jury trial's mode of representing reality was one which closely focused on the character of the accused. After centuries of using this model for uncovering and making representations about truth and reality, the question is why in the nineteenth century the decision was taken to adopt alternative means for the making of such representations? The decision to make such a change in the way truth and reality were represented in felony trial proceedings cannot be attributed to any one cause, but changes in the social structure of England appear to have been a fundamental factor in this decision. Legal historians John Hostettler and W. R.

³⁷ During the major debates surrounding the question of whether or not to remove felony counsel restriction entirely, the issue of who should be given the last word proved highly contentious. Indeed, the Bill which was to eventually become the Prisoners' Counsel Act nearly failed at the final stage for the very reason that it could not be agreed which side should be given the final speech. In the end it was decided the prosecution should have the last right of reply and so the final chance to discredit the defence and convince the jury of their interpretation of events. So highly valued was this final opportunity to address the jury, that in some cases the defence chose to close their case after their opening speech, for by not producing any evidence they were able to deny the prosecution the last word. In 1854 this decision was reversed by the Common Law Procedure Act which gave the final right of reply to the defence. This decision allowed adversarialism to expand and thrive even further in criminal trials after mid-century. See Cairns, *Advocacy*, pp. 107-109.

³⁸ Cairns, *Advocacy*, p. 49.

Cornish have highlighted that the traditional basis of English society was always agricultural, structured upon feudal values which placed the aristocracy at the top of the social structure and above those who farmed and laboured on the land.³⁹ Wealth and power were therefore traditionally tied up with the ownership of land, creating what Robin Gilmour has termed an ‘interdependent hierarchy’ which was based on the exercise of responsibility and patronage downwards and deference upwards.⁴⁰ This structure of society, coupled with factors such as limited migration and the hereditary nature of land ownership, which required that it be passed from father to son, ensured that agriculturally based societies remained relatively stable.⁴¹ Such a social structure meant that there always remained the opportunity for knowing the characters of others within a given community: that of your squire, your tenant, your clergyman, your neighbour. Consequently, whilst by the eighteenth century the self-informing days of the jury had long been a thing of the past, the criminal jury trial was able to maintain its use of a model focused on knowledge of the accused’s character precisely because the idea of being able to *know* an accused’s character was still a comprehensible concept in an England dominated by agriculture.

One of the most common arguments in favour of maintaining felony counsel restriction during the nineteenth century was the idea that an innocent man had the power to exonerate himself through the simplicity and innocence of his answers, and through the honesty of his countenance. The argument is presented in Coke’s *Third Institute* (1644) and it suggested that no man needs counsel to speak honestly, and

³⁹ Hostettler, *Criminal Law Reform*, p. vii. See also *Crime and Law in Nineteenth Century Britain*, ed. by W. R. Cornish and others (Dublin: Irish University Press, 1978), p. 19.

⁴⁰ Robin Gilmour, *The Idea of the Gentleman in the Nineteenth Century Novel* (London: George Allen & Unwin, 1981), p. 8. See also F. M. L. Thompson, *English Landed Society in the Nineteenth Century* (London: Routledge & Kegan Paul, 1963), pp. 1-24.

⁴¹ The tenure of land also tended to pass down the generations in this way, either by virtue of long leases or, in the cases of short hold leases, through a sense of duty and responsibility felt to the tenant farmers and their families. Farmers would also show responsibility to their labourers and farm workers, often providing them with places to live. See further G. E. Mingay, *The Gentry: The Rise and Fall of a Ruling Class* (London: Longman, 1976), pp. 190-191.

that no amount of evidence could obscure the truth. The argument was famously stated by the Earl of Nottingham, acting as Lord High Steward in the trial of Lord Cornwallis in 1678:

No other good reason can be given why the law refuseth to allow the prisoner at the Bar counsel on matters of fact, in the result of which his life may be concerned, but only this, because the evidence by which he is condemned ought to be so very evident, and so plain, that all counsel in the world should not be able to answer it.⁴²

It was also well established that the purpose of the accused's statement to the court was that he should clear himself or hang himself, for it was widely believed that a jury would be able to identify guilt or innocence through a prisoner's words and conduct. This view was perhaps most clearly articulated by William Hawkins in 1724 when he argued that, as it 'requires no manner of skill to make a plain and honest defence':

The simplicity and innocence, artless and ingenuous behaviour of one whose conscience acquits him, [has] something in it more moving and convincing than the highest eloquence of persons speaking in a cause not their own [...] On the other side, the very speech, gesture and countenance, and manner of defence of those who are guilty, when they speak for themselves, may often help to disclose the Truth, which probably would not so well be discovered from the artificial defence of others speaking for them.⁴³

Hawkins's reasoning presupposes that the outward show of a person corresponds to the inner truth, and in a society where it appeared at least possible to have some knowledge of the characters of others, such an assumption appears to have gone largely unchallenged.

By the nineteenth century, however, the traditional agricultural basis of society was, as Hostettler argues, 'crumbling'.⁴⁴ Urbanisation, industrialisation, geographical migration (especially to concentrated urban centres), new money from

⁴² *The Trial of Lord Cornwallis* (1687), in *Howell's State Trials* 21 vols (London: Hansard, 1816), VII, cols 143-158 (col. 149).

⁴³ Hawkins, *Pleas*, Bk. 2, p. 400.

⁴⁴ Hostettler, *Criminal Law Reform*, p. vii.

industry, trade and finance rather than land, and the consequent increase in social mobility, all challenged the traditional foundations of landed society.⁴⁵ Such social developments provided many people with the opportunity to place themselves, financially at least, on a level with the landed gentry or even the aristocracy. In the nineteenth century we therefore see the ‘emergence and consolidation’ of the middle classes.⁴⁶ The deferential social hierarchy dependent upon land ownership gave way to new social relationships which grew out of alternative forms of wealth, founded on interests in ‘merchandise and money, rather than land and game’, thereby uniting social groups through common economic interests, rather than through responsibility and patronage, deference and loyalty.⁴⁷

This shift in the structural foundations of society resulted in an increasing upset to the traditional intimacy and interconnectedness of landed agricultural society. The increase in geographical and social mobility that such alterations in society’s structure entailed, brought with it reduced opportunities to know one’s neighbours, tenants, landlords, even friends. During the nineteenth century the growing awareness that this was the case had a large impact on felony trial proceedings, which had long relied on the assumption that it was possible to know and pass judgements on the characters of others. The alteration in both legal and political thought which brought about the enactment of the Prisoners’ Counsel Act in 1836 therefore denotes a recognition that a legal model for representing reality which had grown out of a traditional landed social structure, was no longer appropriate in modern nineteenth-century society. This is evident from the *Second Report of His Majesty’s Commissioners on Criminal Law*, which openly discredited the well-established view that a man would be able to clear himself by the ‘simplicity’ and

⁴⁵ See Mingay, *The Gentry*, and also Thompson, *English Landed Society*.

⁴⁶ Gilmour, *Idea of the Gentleman*, p. 2.

⁴⁷ *Crime and Law*, ed. by Cornish and others, p. 19. See also Gilmour, *Idea of the Gentleman*, p. 8.

‘innocence’ of his answers. The Commissioners argued that in criminal cases the complexity of facts and evidence are often such that it requires a skilled advocate to reveal the truth. The Commissioners highlighted the very inability to comprehend the characters of others, stating plainly that an innocent man accused of a crime might often appear guilty through a natural ‘sense of the disgrace and danger to which he is exposed’.⁴⁸ The Commissioners argued from experience that:

It frequently happens that hardened villains possess more coolness and composure than the innocent; and that the latter, instead of having even their ordinary reason and speech at command, are deprived of their usual presence of mind, and exhibit a degree of confusion which might seem to indicate guilt.⁴⁹

In their report, the Commissioners emphasised the difficulty of relying on the accurate assessment of the characters of others and pressed the view that in a modern society some alternative model was needed to elicit truth in criminal trials, one which offered all the available evidence up to the full scrutiny of the court: the adversarial-evidentiary model.

‘There is a real truth in his words’: Trollope’s Preference for the ‘Accused Speaks’ Model

The change in the law represented an acceptance in legal (and political) thought that the ‘accused speaks’ model was no longer an appropriate way of making representations about reality and ascertaining the truth in nineteenth-century society. As I argued in my introduction, literature, like the law, was equally interested in creating accurate accounts of reality and the novel, like the trial, was also developing in a rapidly changing nineteenth-century society, and likewise responding to those

⁴⁸ *Second Report From His Majesty’s Commissioners on Criminal Law Parliamentary Papers*, in *Parliamentary Papers: Reports from Commissioners: Church, Education, Law etc*, 36 (London, 1836) pp. 183-314, (p. 189).

⁴⁹ *Ibid.*

changes. In the early years of the century, as the Prisoners' Counsel Act was being debated, the novel was rapidly emerging as a popular form of entertainment. Unlike the law, however, the character-focused novel demonstrates a continued commitment to the 'accused speaks' representational model. One of the ways in which this commitment manifests itself is through the ways in which the characters within these novels themselves search for and uncover the truth of disputed facts, especially in cases where criminal liability is concerned. The demonstration of the novelist's preference for an 'accused speaks' model in this manner is most evident in the novels of Anthony Trollope.

Despite declaring his belief that all good novels should be both 'realistic' and 'sensational', it is clear, from both his novels and his autobiography, that Anthony Trollope was a writer of character-focused novels.⁵⁰ Trollope's passion for creating believable characters is articulated in his autobiography, where he argues that a primary 'desire' of the novelist is 'to make his readers so intimately acquainted with his characters that the creations of his brain should be to them speaking, moving, living human creatures' (p. 232). Trollope firmly believed that the creation of such characters was the key to his success: 'it is so that I have lived with my characters, and thence has come whatever success I have attained' (*Autobiography*, p. 233). Throughout his work Trollope is interested in creating characters which are true to life; for him it is not a question of creating 'true' or 'false' characters but rather 'how far true, and how far false' (*Autobiography*, p.233). Through the creation of imperfect characters of varying shades of grey, Trollope invites his readers to reassess how they judge the actions of others both in his novels and in life.

⁵⁰ For a thorough examination of Trollope's use of character see Stephen Wall, *Trollope and Character* (London: Faber and Faber, 1988).

Trollope's commanding narrator continually cautions the reader against judging too hastily, and is always disposed to highlight the good along with the bad. For example, in *The Warden* (1855), the narrator ensures that the reader's harsh judgement of Archdeacon Grantly is tempered before the novel's close:

We fear that he is represented in these pages as being worse than he is; but we have had to do with his foibles, and not with his virtues. We have seen the weak side of the man, and have lacked the opportunity of bringing him forward on his strong ground [...] On the whole, the Archdeacon of Barchester is a man doing more good than harm – a man to be furthered and supported, though perhaps also to be controlled; and it is a matter of regret to us that the course of our narrative has required that we should see more of his weakness than his strength.⁵¹

A major aim of Trollope's novels is to educate readers in the art of judging others fairly, sympathetically, and accurately. This aim is one to which characterisation is crucial, and to be successful Trollope recognised his characters had to appear as 'speaking, moving, living, human creatures' (*Autobiography*, p. 232). Trollope achieves this by providing the reader with access to the thoughts and feelings of his characters, usually through the privileged insight of the narrator. In this way the characters in a Trollope novel are given the opportunity to tell their story in their own words, rather like a prisoner in a criminal trial for felony pre-1836.

Trollope's preference for an 'accused speaks' model of representing reality can most clearly be seen in *Orley Farm* (1861-2), a novel in which he takes issue with the replacement of the 'accused speaks' model of trial with adversarial practices. *Orley Farm* tells the story of Lady Mason, who has forged a codicil to her husband's will to ensure that her son inherits Orley Farm. The codicil is initially contested by her husband's first-born child, but unsuccessfully. Twenty years later, when Lady Mason's son comes of age, fresh evidence comes to light which suggests

⁵¹ Anthony Trollope, *The Warden*, ed. by Robin Gilmour (Harmondsworth: Penguin, 1984 [1855]) p. 174.

that the codicil was forged. Consequently, Lady Mason is charged with perjury and so commences ‘The Great Orley Farm Case’.⁵²

A novel which centres around criminal jury trial proceedings, as this one does, presents Trollope with the opportunity to examine the methods and techniques employed in courts of law in the interests of uncovering and determining the truth of disputed facts. The efficacy of such methods is brought into question at the outset by the fact that Trollope makes no secret of Lady Mason’s guilt, not only in respect of perjury, but also forgery:

I venture to think, I may almost say to hope, that Lady Mason’s confession at the end of the last chapter will not have taken anybody by surprise. If such surprise be felt I must have told my tale very badly. (Bk. 2, Ch. 45, p. 42)

The legal system is therefore guilty of a double failure, firstly of failing to find Lady Mason guilty in the original hearing, and then in the jury finding her innocent for a second time during the course of the novel. It is made clear to the reader that the blame lies (in the second trial at least) in the post-1836 adversarial practices employed in the courts. Trollope’s portrayal of Lady Mason’s trial manifests the concerns voiced by the Attorney General John Copley in 1826, when he warned that the use of defence counsel would transform courts into adversarial ‘arenas’ where, ‘instead of endeavouring to elicit the truth by a reference to plain fact, or the real merits of the case’, the defence would instead resort to rhetorical devices and so frustrate the true aims of the criminal jury trial.⁵³

Lady Mason’s defence team consists of four lawyers: Mr Chaffanbrass, Mr Aram, Mr Furnival and Mr Graham, and (with the exception of Felix Graham) all of these men are guilty of placing their client’s interests above the truth seeking aim of

⁵² Anthony Trollope, *Orley Farm*, ed. by David Skilton (Oxford: Oxford University Press, 1985 [1862]), Bk. 1, Ch. 1, p. 2. Further references to this edition are given after quotations in the text.

⁵³ From his speech on 25 April 1826, recorded in *Parliamentary Debates, 20 March 1826 – 31 May 1826*, 15 (London: Hansard, 1827), cols. 598-599.

the jury trial. Mr Chaffanbrass, a barrister, appears as the most extreme example of this kind of lawyer. It is made clear that Mr Chaffanbrass's specialty is securing 'not guilty' verdicts for guilty clients, a somewhat disconcerting notion when it is revealed that he spends most of his days in the Old Bailey dealing with criminal clients:

if any man in England could secure the acquittal of a guilty person under extraordinary circumstances, it would be Mr. Chaffanbrass. This had been his special line of work for the last thirty years. (Bk. I, Ch. 34, pp. 342-343)

The most disturbing thing about Chaffanbrass is the fact that he is a brilliant advocate. During the trial Chaffanbrass is successful in getting the calculating Mr. Dockwraith to betray his true mercenary motives in encouraging Joseph Mason to pursue his claim and, even more impressively, manages to make Bridget Bolster's truthful testimony 'look like falsehood' (Bk. 2, Ch. 71, p. 323). Furthermore, it is made clear to the reader that Chaffanbrass is part of a general barristerial trend. It is in fact Felix Graham who is the exception to the rule when he speaks out against such practices: 'let every lawyer go into court with a mind resolved to make conspicuous to the light of day that which seems to him to be the truth' (Bk. 1, Ch. 18, p. 179). Yet against such idealism, which reflects the true aims of the jury trial, is set a general view that Graham will never succeed at the bar. Indeed, the prevailing legal opinion is that a lawyer's duty is to his client and not the truth, as Chaffanbrass says of Graham: 'he does not understand the nature and duty which a professional man owes to his client' (Bk. 1, Ch. 34, p. 345).

In *Orley Farm* this prevailing professional ethos appears as the result of the introduction of the new adversarial-evidentiary model of trial which silenced the prisoner and allowed lawyers to dominate the criminal jury trial process. Even Mr Furnival, who apparently agonises for a large portion of the novel over the rights and

wrongs of defending a client he knows to be guilty, finds himself ultimately able to stand up in court and eloquently persuade a jury of Lady Mason's innocence, all the time knowing: 'that she had been guilty! [...] That those witnesses had spoken the truth' (Bk. 2, Ch. 72, p. 331). In the end, the reader too is left with that sense of shame which Mr Furnival himself feels, that:

more than this, stronger than this, worse than this, – when the legal world knew – as the legal world soon did know – that all of this had been so, the legal world found no fault with Mr. Furnival, conceiving that he had done his duty by his client in a manner becoming an English barrister and an English gentleman. (Bk. 2, Ch. 72, p. 331)

Orley Farm is in effect an indictment of the procedures of the post-1836 felony jury trial which Trollope shows not only to be ineffective in eliciting the truth, but effective in obscuring it. Sir Peregrine Orme is presented as naïve, and ultimately misguided, in his faith in such proceedings to reveal the truth. Instead the trial is revealed to be a sham, a set of proceedings where lawyers like Chaffanbrass can indeed make truth look like falsehood.

The failure of the trial in *Orley Farm* enables Trollope to explore alternative avenues of eliciting the truth and doing justice, and in so doing he returns to an 'accused speaks' model. Trollope's solution lies in placing faith in the social structure which exists in the world of the novel, a social structure based on an interdependent, landed hierarchy, where those within it show responsibility and patronage downwards and deference and loyalty upwards. In *Orley Farm* justice is eventually done when Lady Mason, touched by the patronage and kindness shown to her by Sir Peregrine Orme, confesses her guilt in order to save him from the disgrace of marrying her. Her tale, told in her own words, is one which evokes such sympathy and compassion, that those around her are able to go some way to understanding her actions and that fundamentally she possesses a good character. The result is that

through their patronage the Ormes are able to save Lady Mason from conviction whilst at the same time ensuring that justice is rightly done through the private restitution of the land. Where the legal system fails, the system of patronage succeeds, and shows itself able to uncover the truth and restore the rightful order of things. This system of society, out of which the ‘old accused speaks’ model of the trial itself grew is, Trollope’s novel suggests, the more effective means of administering justice within communities.

In *The Last Chronicle of Barset* (1867), the legal procedures employed in trying to establish the truth of disputed facts are again placed under the microscope and again are revealed to be inadequate for the uncovering of truth. In *The Last Chronicle* the Reverend Josiah Crawley is accused of stealing a cheque for twenty pounds. Although Crawley is himself unable to account for the cheque, it is made clear to the reader that – whilst there has been some kind of error – Crawley is not guilty of theft. Throughout the novel Trollope reveals the difficulty in which contemporary legal practice places Crawley, for the prevailing legal opinion is that Crawley should be made to have legal representation, and his refusal to accept this is treated as some kind of madness. Yet Crawley’s own view, ‘Why should I want a lawyer? I have done nothing wrong’ (Ch. 8, p.72), is presented to the reader as more consistent with his innocence.

Crawley’s view on the matter (consistent with the justifications for the old ‘accused speaks’ model of trial) is ultimately that which the novel supports, and in the end it is this approach to the establishment of the truth that wins through. During his appearance at the magistrates court in Silverbridge, Crawley is pressed with questions and soon becomes confused. The magistrates also appear more concerned with the form of proceedings and the issue that Crawley has no legal representation.

As a result, by the end of the hearing some magistrates may well be convinced that Crawley had no intention to steal the cheque, but no one is any wiser as to what the ‘truth’ of the matter is (Ch. 8). By contrast, when Crawley is given the opportunity to *tell his story in his own words*, the truth is ultimately revealed. On a visit to his wife’s cousin, the barrister Mr Toogood, Crawley is given the chance to narrate without interruption and – through the ‘simplicity and innocence’ of his answers – convinces Toogood of his innocence:

Perhaps, after all, this scheme of Mr Crawley’s – or rather the mode of defence on which he had resolved without any scheme – might be the best of which the case admitted. It might be well that he should go into court without a lawyer. “He has convinced me of his innocence,” Mr Toogood said to himself, “and why should he not convince a jury? He has convinced me, not because I am specially soft, or because I love the man – for as to that I dislike him rather than otherwise – but because *there is a real truth in his words* [...] I think it is true. By George, I think he did get the twenty pounds honestly, and that he does not this moment know where he got it.” (Ch. 32, p. 320, my emphasis)

In convincing Toogood of his innocence, by telling his story in his own words (as the ‘accused speaks’ model of trial would have allowed him to do) Crawley sets in motion a train of events which ultimately lead to the discovery of the truth.⁵⁴

Yet Crawley is living in that close rural community of Bassetshire which, like the society depicted in *Orley Farm*, is one founded on a social hierarchy which encourages an interconnectedness of lives through the exercise of patronage, responsibility, loyalty and deference. It is perhaps natural therefore that these novels should find these old methods of uncovering the truth more apt than the new. The county of Bassetshire is especially appropriate to this old model of justice being, as it is, ruled over by the ‘county squirearchy’:

There is a county in the west of England not so full of life, nor so widely spoken of as some of its manufacturing leviathan brethren in the north, but

⁵⁴ Mr. Toogood, compelled by Crawley’s tale, enlists the help of Johnny Eames who manages to track down the one person who is able to shed light on the mystery, Mrs Arabin whose testimony clears Crawley’s name.

which is, nevertheless, very dear to those who know it well. Its green pastures, its waving wheat, its deep and shady and – let us add – dirty lanes, its paths and stiles, its tawny-coloured, well-built rural churches, its avenues of beeches, and frequent Tudor mansions, its constant county hunt, its social graces, and the *general air of clanship* which pervades it, has made it to its own inhabitants a favoured land of Goshen. It is *purely agricultural; agricultural in its produce, agricultural in its poor, and agricultural in its pleasures* [...] [the clergy] do make up a society sufficiently powerful to be counted as something by the county squirearchy. *In other respects the greatness of Baresetshire depends wholly on the landed powers.* (my emphasis)⁵⁵

Baresetshire society, structured as it is on traditional, landed social values, provides the perfect environment for that knowledge of others and their ‘characters’ which played such a significant role in the early development of the jury trial.

Earlier in this chapter I examined how the idea of character remained central to pre-1836 criminal trials for felony, and how this was largely a result of the trial’s roots in Anglo-Saxon and Norman England. By the nineteenth century the trial procedure itself may well have changed beyond all recognition from its early beginnings, yet the idea that the establishment of truth in some way rested upon determining whether or not the accused person possessed a good or bad character survived. As noted earlier, this was largely because the trial process developed out of community justice, with the guilt or innocence of the accused being determined by local members of the community who knew the defendant personally, or had the opportunity of learning about the defendant and what sort of character they possessed. Even when this ceased to be the case, the idea that it was possible to judge the characters of others accurately in this way appears to have gone largely unchallenged. This was due in part to the traditional agricultural foundations of landed society remaining largely intact through the centuries, as limited social and

⁵⁵ Anthony Trollope, *Dr. Thorne*, ed. by Ruth Rendell (London: Penguin, 2004 [1858]), Ch.1, pp. 5-6. Further references to this edition are given after quotations in the text.

geographical migration ensured that (especially in rural areas) communities remained relatively stable.⁵⁶

Throughout *The Chronicles of Barsetshire* we see this structure in action, a structure which makes it the perfect society for the functioning of the ‘accused speaks’ model. Barsetshire is a paradigm example of what Raymond Williams calls a ‘knowable community’, that is, a community in which it is possible ‘to show people and their relationships in essentially knowable and communicable ways’.⁵⁷ Williams himself identifies Barsetshire as a key example of a knowable community, noting how the ease of the narrative tone is anchored by a confidence in a traditional landed social structure which requires ‘minimum searching analysis’.⁵⁸

Throughout the *Chronicles* the reader is presented with a variety of individual communities which make up the county of Barsetshire as a whole: the town of Barchester itself, Plumbstead Episcopi, Puddingdale, Hogglestock, Greshamsbury, Ullathorne, and so on. Within each of these individual communities the lives of the inhabitants are intimately connected; moreover, this intimacy extends beyond individual parishes and connects the lives of all those who live within the county. One could create a map connecting all the lives of Barsetshire dwellers, from Dan Morris the brick-maker in Crawley’s Hogglestock parish, to Farmer Greenacre of Ullathorne, right up to the County Squires, Lords and Earls. Throughout Barsetshire lives overlap and collide and, regardless of which chronicle we pick up, we are continually reminded of the existence of other Barsetshire dwellers beyond those immediately presented on the page.⁵⁹ What is more, this interconnectedness of lives

⁵⁶ See Hostettler, *Criminal Law Reform*, p. vii; Cornish, *Crime and Law*, p. 19; and (in more detail), Mingay, *The Gentry*.

⁵⁷ Raymond Williams, *The Country and the City* (Oxford: Oxford University Press, 1973), p. 165.

⁵⁸ *Ibid.*, pp. 174-175.

⁵⁹ Mary Poovey offers an interesting account of how the narrative strategies Trollope employs in *The Last Chronicle* unites Barsetshire as a whole, providing the reader with a sense of order and unity. See

has a real intimacy, for the connections between people are long standing familial and social bonds with their roots firmly in the traditional values of landed society. Rooted in old systems of patronage and loyalty, where the ownership and tenure of land is passed from father to son, so that tenants and landlords have for generations known each other well, Barseshire offers the chance for its inhabitants to gain some knowledge of the characters of those around them. It is for this reason that Miss Thorne is able to trust, 'as her ancestors had done before her, to the thews and sinews of native Ullathorne growth'.⁶⁰

This last quotation nicely illustrates a crucial feature of what a knowable community means for Williams. It is both a visible and a stable social structure, but also one that is 'a matter of consciousness, and of continuity as well as day-to-day experience'.⁶¹ The structure is crucial for making the community a knowable one, because the landed hierarchy in Barseshire provides an easily understandable framework within which people are 'more easily identified and connected within it'.⁶² The structure works to impose a sense of order and meaning on the world and, as Williams suggests, creates a collective consciousness amongst those within it, a feeling of organic unity, of individuals connected together as parts of a whole.⁶³ Crawley's crisis in *The Last Chronicle* therefore becomes all of Barseshire's crisis, and is experienced collectively as the entire community searches for an answer to the question of what happened. The answer to the question of whether Crawley stole the cheque for twenty pounds is one which will have serious implications for the

Mary Poovey, 'Trollope's Barseshire Series', in *The Cambridge Companion to Anthony Trollope*, ed. by Carolyn Dever and Lisa Niles (Cambridge: Cambridge University Press, 2011), pp. 31-43.

⁶⁰ Anthony Trollope, *Barchester Towers*, ed. by Robin Gilmour (London: Penguin, 1997 [1857]), Vol. 2, Ch. 1, p. 337. For an in-depth examination into the role of ancestry in the Victorian novel see Sophie Gilmartin, *Ancestry and Narrative in Nineteenth-Century British Literature: Blood Relations from Edgeworth to Hardy* (Cambridge: Cambridge University Press, 1998).

⁶¹ Williams, *Country*, p. 166.

⁶² Ibid.

⁶³ Ibid.

community at large, and which does materially impact the dynamics of the relationships within Crawley's community: the relationships between Mrs Proudie and her husband, between Grace Crawley and Major Grantly, between Lily Dale and Johnny Eames are amongst those which feel the shockwaves of the accusation. The struggle of Reverend Josiah Crawley becomes the struggle of a community to resolve and move forwards.⁶⁴

A similar examination into the efficacy of the 'accused speaks' model for finding the truth of disputed facts can be identified in George Eliot's *Felix Holt: The Radical* (1866). In this novel Eliot has her hero stand trial for manslaughter and in doing so, like Trollope, explores the extent to which the role of character can be useful in the representational process. The novel is set before the removal of felony counsel restriction in 1832, though it was written much later. Eliot's interest in the trial scene is primarily with how Felix's innocent state of mind can be demonstrated to a panel of jurors who have no real knowledge of him or his character. In this way Eliot's novel neatly captures the problems which jurors faced relating to the assessment of the defendant's character and actions once they ceased to have first hand knowledge of this themselves. In her portrayal of Felix Holt, Eliot is able to reveal the fundamental problem which the 'accused speaks' jury trial faced: the accurate assessment of the character and motivations of a defendant by a panel of jurors who had no prior knowledge of that defendant. Eliot brings this issue of the

⁶⁴ A similar mode of uncovering the truth of disputed facts is used in *Phineas Redux* (1873-4) when Madame Max Goesler, trusting that she truly knows Phineas's character and that he must be innocent of murdering Mr Bonteen, travels to the continent to find the evidence which will prove his innocence. Once again we are presented with a scene in which the 'simplicity and innocence' of a defendant's words manage to persuade a lawyer, in this case the formidable Mr Chaffanbrass, who declares after listening to Phineas 'tell his own story', is struck by 'the beauty and grace of the man', and declares: 'I have sometimes felt as though I would give the blood out of my veins to save a man. I never felt that way more strongly than I do now': Anthony Trollope, *Phineas Redux*, ed. by John C. Whale (Oxford: Oxford University Press, 2008 [1874]), Ch. 60, quotations at p. 177, p. 182 and p. 183. Ayelet Ben-Yisham has argued that Trollope's legal fiction demonstrates his interest in the social force of the community. See Ayelet Ben-Yisham, 'Trollope and the Law', in *Anthony Trollope*, ed. by Dever and Niles, pp. 155-167.

pre-1836 jury trial to the fore by creating a protagonist with whom it is necessary to have an intimate acquaintance to know that he is fundamentally good and honest.

When Esther, the daughter of local minister Reverend Lyon, first meets Felix she is unimpressed by his demeanour, finding him ‘very coarse and rude’.⁶⁵ However, as Esther spends more time with Felix, she comes to fully understand his character and falls in love with him. A crucial question in Felix’s trial is whether or not he was a ringleader in the riots which led to the manslaughter charge. Esther’s father makes the point that those who truly know Felix’s character know that he was an ‘enemy to the riot’ and not a ringleader: ‘in our ears, who know him, it sounds strangely that aught else should be credible’ (Vol. 3, Ch. 44, p. 427). Those who speak for Felix at his trial, including Esther and her father, are those who are ‘intimately acquainted with his character and views of life’, and who ‘know [him] well’ (Vol. 3, Ch. 46, p. 443 and p. 448). These are the persons who have the correct view of the matter, unlike the jury who, not being acquainted with Felix, find him guilty of manslaughter. Eliot’s novel, therefore, recognises the limitations of a character-focused model of representation. Yet, rather than reject this model as ineffective, Eliot instead seeks to identify the conditions under which it can function efficiently. These conditions Eliot finds within the knowable community outside the courtroom.

After Felix’s trial the influential Harold Transome, trusting to Esther’s assessment of a man of whose character she has first hand knowledge – ‘you saw a great deal of him, I suppose; and your testimony to anyone is enough for me’ (Vol. 3, Ch. 43, p. 418) – effects a meeting of the magistracy and gentlemen of the local community in which they decide to seek a pardon (ultimately granted) for Felix. In

⁶⁵ George Eliot, *Felix Holt: the Radical*, ed. by Lynda Mugglestone (London: Penguin, 1995 [1866]), Vol. 1, Ch. 5, p. 73. Further references to this edition are given after quotations in the text.

this meeting of influential local persons we see the ‘accused speaks’ model working efficiently. Like Transome, others within the local community have been moved by Esther’s testimony, which, described by the narrator as ‘naïve and beautiful’ (Vol. 3, Ch. 46, p. 449) has that ‘simplicity and innocence’ which Sergeant Hawkins suggested would persuade the listener of its truth: ‘Hang it! The fellow’s a good fellow if she thinks so’ (Vol. 3, Ch. 47, p. 452). In the end, *Felix Holt: The Radical*, whilst acknowledging the difficulties inherent in the ‘accused-speaks’ model, ultimately demonstrates that when it is employed in the right context it can be an effective means of eliciting the truth.

Jane Austen’s ‘Knowable Communities’ and the Knowledge of Others Therein

The highly visible social structure of Barsetshire, with its continuous day-to-day interactions, creates a collective consciousness that allows the community to be a knowable one in the way that Williams suggests. The knowable communities which we find in Trollope can equally be identified in the novels of Jane Austen. Williams singles Austen out as a classic example of an author whose novels present us with knowable communities.⁶⁶ For Williams, Austen’s communities are ‘wholly known’ through a network of the families and neighbours of local respectable houses.⁶⁷ This network provides a social structure which, like Trollope’s Barsetshire, enables characters within the world of the novel to understand both their place in society and how they are connected to others. This social structure provides a framework through which knowledge can be disseminated and also unquestionably trusted:

‘My dear Mr Bennet,’ said his lady to him one day, ‘have you heard that Netherfield Park is let at last?’
Mr Bennet replied that he had not.

⁶⁶ Williams, *Country*, p. 166.

⁶⁷ *Ibid.*

‘But it is,’ returned she; ‘for Mrs Long has just been here, and she told me all about it.’⁶⁸

For Williams, part of what makes Austen’s communities so knowable is the ‘outstandingly face-to-face’ nature of them, and how all the ‘crises physically and spiritually’ are played out exactly in these terms through ‘a look, a gesture, a stare, a confrontation’.⁶⁹ Austen’s characters are often able to read one another through looks and gestures because these are communities in which the characters of others can be known, and so their actions, thoughts, feelings, meanings are often easily interpreted by others within their community. Mrs Dashwood in *Sense and Sensibility* (1811) for example, instantly understands her daughter-in-law’s meaning when she alludes to her brother Edward and ‘the danger attending to any young woman who attempted to *draw him in*’: ‘Mrs Dashwood could neither pretend to be unconscious, nor endeavour to be calm’.⁷⁰

In Austen’s novels the way in which characters come to know and understand the world is through their knowledge and understanding of the characters of others, and their relationships with them. This way of knowing within an Austen novel fundamentally relies on it being possible to know the characters of others, and the traditional hierarchical structure of Austen’s societies provides for this. However, Austen’s approach to representing reality, which relies on the presentation of knowable characters, is also called into question in those same narratives. In this way Austen offers an interesting exploration of the effectiveness of the ‘accused speaks’ model. This questioning occurs in Austen’s narratives when an outsider is brought

⁶⁸ Jane Austen, *Pride and Prejudice*, ed. by James Kinsley (Oxford: Oxford University Press, 2008 [1813]), Vol. 1, Ch. 1, p.1. Further references to this edition are given after quotations in the text.

⁶⁹ Williams, *Country*, p. 165.

⁷⁰ Mrs Dashwood’s daughter-in-law wishes to warn Mrs Dashwood against encouraging the blossoming relationship between her brother and Elinor. Jane Austen, *Sense and Sensibility*, ed. by James Kinsley (Oxford: Oxford University Press, 2008 [1811]), Vol. 1, Ch. 4, p. 18. Further references to this edition are given after quotations in the text.

into the social milieu and throws doubt on the assumption that it is possible to have knowledge of the characters of others.

This question is explicitly explored, for example, in *Sense and Sensibility* through the character of Willoughby. Whilst Marianne feels she is easily able to gauge Willoughby's character and so have confidence in his intentions, Marianne's counterbalance, Elinor, is more cautious. Sir John is only able to say that he 'believes' Willoughby to be 'a good kind of fellow' because he is a keen rider and has a fine 'black pointer bitch' (Vol. 1, Ch. 9, p. 34), prompting Elinor to remark 'is *that* all you can say for him' and to ask who he is (Vol. 1, Ch. 9, p. 34). Elinor draws attention to the fact that Willoughby is not part of that knowable community which provides for the knowledge of others in the same way that, say, Colonel Brandon is. When Willoughby finally deserts Marianne, a good deal of the pain she suffers derives from the realisation that she did not know Willoughby's character as well as she thought. Early in the novel Marianne claims that 'seven years would be insufficient to make some people acquainted with each other, and seven days more than enough for others' (Vol. 1, Ch. 12, p. 45). Marianne is ultimately proved wrong in her belief, and it becomes clear that her misjudgement stems from her lack of any long standing knowledge of Willoughby. In the end it is the deserving Colonel Brandon whose 'excellent' character is 'well established' in the knowable community, who proves himself worthy of Marianne's love through his long-lasting and continuous relationship with the Dashwoods and their extended family (quotation at Vol. 3, Ch. 9, p. 255).

In *Sense and Sensibility* Austen makes it clear that, as Williams argues, something more is needed for the knowledge of the characters of others than mere face-to-face relationships; it requires also the continuity of that relationship maturing

over time. Austen makes it clear that both these elements are necessary for the knowledge of others to be achieved, as shown in Elinor's final meeting with Willoughby. In this face-to-face encounter Willoughby is able to convince Elinor of the genuineness of his feelings for Marianne: 'you have proved yourself, on the whole, less faulty than I believed you. You have proved your heart less wicked, much less wicked' (Vol. 3, Ch. 8, p. 250). Part of the reason that Elinor is so persuaded echoes the justification for felony counsel restriction, that through the simplicity and innocence of Willoughby's own words, Elinor can see and feel truth of them: 'had Mrs Dashwood, like her daughter, heard Willoughby's story from himself – had she witnessed his distress, and been under the influence of his countenance and manner, it is probable that her compassion would have been greater' (Vol. 3, Ch. 11, p. 264). *Sense and Sensibility* in the end reinforces the view that it is possible to have knowledge of the characters of others, but highlights that this possibility may only be realised under the right conditions, which the knowable community provides.

In *Pride and Prejudice* (1813) the question of whether or not it is possible to have knowledge of the characters of others is once again called into question and dramatised more fully and carefully through the development of Elizabeth Bennet's relationship with Mr Darcy. At the start of the novel Elizabeth subscribes to the novel's primary mode of knowing: through character. Indeed, Elizabeth takes it for granted that that she has been able to assess accurately the nature of Darcy's character. So confident is she, in fact, that she feels able to rebuke Darcy in these terms:

From the very beginning, from the first moment I may almost say, of my acquaintance with you, your manners impressing me with the fullest belief of your arrogance, your conceit, and your selfish disdain for others, were such as to form that ground work of disapprobation, on which succeeding events

have built so immovable dislike; and I had not known you a month before I felt that you were the last man in the world whom I could ever marry. (Vol. 2, Ch. 11, p. 148)

Elizabeth feels equally well placed to judge the character of Mr Wickham after just one conversation with him, and is quickly persuaded of the goodness of his character after he tells his story in his own words (Vol. 1, Ch. 16). Elizabeth's reasons for believing in the truth of his tale once again echo those given for justifying the old 'accused speaks' model. Elizabeth notes how Wickham's 'very countenance may vouch for [his] being amiable' (Vol. 1, Ch. 16, p. 61), how he is able to provide 'names; facts, everything mentioned without ceremony' (Vol. 1, Ch. 17, p. 65), and to Jane she argues 'there was truth in his looks' (Vol. 1, Ch. 17, p. 65). It would seem, then, that Austen's novel questions the efficacy of the 'accused speaks' model by using the justification on which it rests to explain Elizabeth's faulty judgement.

Similarly, the revelation that Darcy is a much better man than Elizabeth initially believes, at first might persuade us that the accused speaks model is flawed. However, Elizabeth is prejudiced against Mr Darcy because of his initial behaviour towards her, and so we know that her judgement is impaired. It is not long before it becomes clear that it is Elizabeth's own prejudices and not the 'accused speaks' model which is to blame for her inability to correctly judge the characters of Wickham and Darcy. Our first hint that this is the case comes from Elizabeth herself when she remarks on how strange it is that a man as charming as Bingley should be friends with a man such as Darcy if all Wickham tells her is true (Vol. 1, Ch. 16, p. 62). This is a point which Jane is also quick to note: 'can his most intimate friends be so excessively deceived in him? Oh! No' (Vol. 1, Ch. 17, p. 65). The significance of this point is clear, it is Bingley and not Elizabeth who is best placed to judge the character of Darcy because of the long standing and continuous nature of their

friendship. Once again in *Pride and Prejudice*, as in *Sense and Sensibility*, Austen's narrative works to explore the conditions which are needed to provide for the correct knowledge of others in order for the 'accused speaks' model to function effectively and so allow for the accurate representation and understanding of reality. Once again Austen is led back to the knowable community, which requires not only that relationships be face-to-face but also of a continuous and long standing nature. Nevertheless, Austen's narratives ultimately work as a vindication of the 'accused speaks' model of representing reality and revealing truth, as shown through the presentation of the character of Mr Darcy.

This vindication of the 'accused speaks' model begins with Darcy's letter to Elizabeth where he personally answers the charges laid against him, just as a prisoner might have done in a pre-1836 felony trial. Darcy writes, 'I can only refute it by laying before you the whole of his connection with my family [...] but the *truth* of what I shall relate, I can summon more than one witness of undoubted veracity' (Vol. 2, Ch. 17, p.153, my emphasis). Darcy writes of 'unfolding [Wickham's] real character' (Vol. 2, Ch. 17, p.153), something he is able to do because of both the long-standing and face-to-face nature of their relationship:

the vicious propensities – the want of principle which he was careful to guard from the knowledge of his best friend, could not escape the observation of a young man of nearly the same age with himself, who had opportunities of seeing him in unguarded moments (Vol. 2, Ch. 17, p. 153).

Darcy's letter is candid, he writes frankly and openly about his part in the separation of Jane and Bingley and even tells of his own sister's near disgrace. The letter is compelling, and through the artless ingenuousness of one 'whose conscience acquits him' Darcy is able to persuade Elizabeth, as Sergeant William Hawkins suggested he would, that this is indeed a 'faithful narrative' (Vol. 2, Ch. 17, p. 155).

Once Elizabeth is persuaded of the truth of Darcy's account we find she is able to better assess the nature of Wickham's own declarations. Elizabeth reflects that 'she had never heard of [Wickham] before his entrance into the –shire Militia', and moreover that 'of his former life, nothing had been known in Hertfordshire but what he told himself. As to his real character [...] his countenance, voice, and manner had established him at once in the possession of every virtue', but she is unable to recollect 'some instance of goodness, some distinguished trait of integrity or benevolence' (Vol. 2, Ch. 18, p. 157). As Elizabeth reflects she is 'struck with the impropriety' of his communications to her regarding Darcy:

she saw the indelicacy of putting himself forward as he had done and the inconsistency of his professions with his conduct. She remembered that he had boasted of having no fear of seeing Mr Darcy – that Mr Darcy might leave the country but that *he* should stand his ground; yet he had avoided the Netherfield ball the very next week. She remembered also, that till the Netherfield family had quitted the country, he had told his story to no one but herself; but after their removal, it had been everywhere discussed; that he had then no reserves, no scruples in sinking Mr Darcy's character, though he had assured her that respect for the father, would always prevent his exposing the son. (Vol. 2, Ch. 18, p. 158)

Elizabeth is faced with the realisation that she had no knowledge of Mr Wickham's character, and as a result she misjudged both him and Mr Darcy. The suggestion is that a lack of knowledge of the characters of others prevents the discovery of truth and allows for false representations of reality.

It is very telling that that Elizabeth's (correct) reassessment of Darcy comes after she gains real knowledge of his character at his country estate Pemberly. On her first visit to Pemberly, Elizabeth is given a glowing report of Darcy from his housekeeper Mrs Reynolds who describes him as a model landlord, master, brother, son: 'every idea that had been brought forward by the housekeeper was favourable to his character' (Vol. 3, Ch. 1, p. 189). It quickly becomes apparent that for Darcy to

be understood, to be known, he needs to be within his own knowable community where the conditions are right for true knowledge of his character. As Case and Shaw suggest, the true character of Darcy can only be ‘revealed’ once he is placed in his ‘proper, ideal setting’.⁷¹ In the end *Pride and Prejudice* champions the ‘accused speaks’ model through its implicit questioning of it. However, like *Sense and Sensibility*, *Pride and Prejudice* recognises that for this model to be a viable means of representing reality and revealing truth, it is necessary that it be employed within a knowable community.

Telling the Accused’s Story: The Omniscient Narrator and the Revelation of Character

As in Trollope’s novels, the way in which Austen’s characters know the world is through their knowledge and understanding of others within their knowable community. In this way the epistemology underlying these novels is the same as that which underpins the ‘accused speaks’ trial, a trial which grew out of early legal practice in which guilt or innocence would be determined by a group of jurors who had personal knowledge (or access to personal knowledge) of the accused and their character. What is more is that character-focused novels do not just share the same epistemology as the ‘accused speaks’ model, they actually employ that model in their attempts to represent reality accurately. This section will examine the way in which the character-focused novel can be seen to be employing an ‘accused speaks’ representational model through its the use of a third person omniscient narrator.

In the character-focused novel the story is most commonly told through a narrator who has access to the inner thoughts and feelings of the protagonists. In this

⁷¹ Alison Case and Harry E. Shaw, *Reading the Nineteenth-Century Novel: Austen to Eliot* (Oxford: Blackwell Publishing, 2008), p. 16.

way the use of an omniscient narrator ensures that, as in the ‘accused speaks’ trial, the focus of the novel remains on the accused’s story. Moreover, this omniscience ensures that the protagonist’s voice remains central to the representational process: they are allowed to tell their story in their own words because the narrator has access to their thoughts. Schramm argues that in this way late eighteenth- and nineteenth-century character-focused novels are narratives of innocence, which seek to establish the guiltlessness or inherent worthiness of the protagonists they represent.

Consequently these novels become:

a forum for the construction of an accused’s story in their ‘own words’ and as such reveal the novelist’s reluctance to abandon the view of the accused as a testimonial resource and insist the discovery of truth is dependent on defendants telling their story in their own words.⁷²

For Schramm, the importance of characters telling their stories in their own words becomes crucial to the novel’s mode of representing reality during the nineteenth century, with characters rarely being ‘subject to judgement’ without the reader being provided with ‘their personal testimony of guilt or innocence’.⁷³

However, the reluctance of character-focused novelists to abandon the ‘accused speaks’ model creates for Schramm a tension, as she views the use of a third person narrator as an ‘imaginative imitation of the lawyers’ skills in the manipulation of evidence’.⁷⁴ This tension is stretched to its limits in the nineteenth century, as literary representations strained between an imitation of courtroom strategies of representation (which subordinated facts and testimony to the making of an argument), and a preference for a model in which the accused had an opportunity to tell his story in his own words.

⁷² Schramm, *Testimony and Advocacy*, p. 121.

⁷³ *Ibid.*

⁷⁴ *Ibid.*, p. 7.

In 1836 the Prisoners' Counsel Act was passed. This Act allowed all prisoners the right to a full legal defence in which an advocate could address the jury directly on the defendant's behalf. The implications of this Act are considered more fully in the next chapter, but it is important to note here that, as Langbein has shown, the increased activities of defence counsel following the 1836 Act threatened the accused's status as an important testimonial resource.⁷⁵ The threat came from the fact that the adversarial-evidentiary trial had the effect of largely silencing the defendant in criminal trials, as following the 1836 Act the defendant or his advocate could address the jury, but not both. The silencing of the accused following the 1836 Act and the replacement of his central testimony with a speech by an advocate was one part of the new trial procedures that attracted fierce criticism from some of the most successful nineteenth-century novelists. The key concern of the novelists appears to have been the same as that of the opponents to the Prisoners' Counsel Bill, who argued that the 'trial of truth' would be 'converted into a war of wit, ingenuity and eloquence' that would tend to obscure rather than elicit the truth.⁷⁶ This concern can be discerned in the work of novelists such as Dickens, Trollope, and Gaskell. In their work these novelists would, through the fictional representation of trials, express their concern over adversarial practices which drew focus away from the accused's own story and relied on the advocate's skill to achieve a favourable verdict regardless of the truth. As already noted earlier in this chapter, this concern is made explicit in Trollope's portrayal of the barrister Mr Chaffanbrass in *Orley Farm*:

Mr. Chaffanbrass knew well enough that she had spoken nothing but the truth. But had he so managed that the truth might be made to look like falsehood, – or at any rate to have a doubtful air? If he had done that, he had succeeded in the occupation of his life. (Bk. 2, Ch. 71, p. 323)

⁷⁵ See Langbein, *Origins*, pp. 6-7 and Ch. 5.

⁷⁶ *Parliamentary Debates*, 11, col. 205.

The same concern is also articulated in Gaskell's portrayal of the prosecution counsel in *Mary Barton* (1848):

the counsellor for the prosecution prepared himself by folding his arms, elevating his eyebrows, and putting his lips in the form in which they might best whistle down the wind such evidence as might be produced by a suborned witness, who dared to perjure himself. For, of course, it is etiquette to suppose that such evidence as may be given against the opinion which lawyers are paid to uphold, is anything but based on truth; and 'perjury', 'conspiracy', and 'peril of your immortal soul', are light expressions to throw at the heads of those who may prove (not the speaker, there would then be some excuse for the hasty words of personal anger, but) the hirer of the speaker to be wrong, or mistaken.⁷⁷

In *Bleak House* (1852-3), George Rouncewell's innocence is linked to his reluctance to hire a lawyer:

I should have got a lawyer, and he would have said (as I have often read in the newspapers), 'My client says nothing, my client reserves his defence': my client this, that, and t'other. Well, 'tis not the custom of that breed to go straight, according to my opinion, or to think that other men do. Say I am innocent and I get a lawyer. He would be as likely to believe me guilty as not; perhaps more. What would he do, whether or not? Act as if I was – shut my mouth up, tell me not to commit myself, keep circumstances back, chop the evidence small, quibble, and get me off perhaps! (Ch. 52, p. 737)

George's stance echoes that of Josiah Crawley in *The Last Chronicle of Barset*, who also views the employment of a lawyer to speak on his behalf as being inconsistent with his innocence:

In this country a man is to be punished or not, according to his ability to fee a lawyer! [...] And presuming an innocent man to have the ability and not the will to do so, he is to be punished, to be ruined root and branch, self and family, character and pocket, simply because, knowing his own innocence, he does not choose to depend on the mercenary skill of a man whose trade he abhors for the establishment of that which should be as clear as the sun at noonday! You say I am innocent, and yet you tell me I am to be condemned as a guilty man [...] because I will not fee an attorney to fee another man to come and lie on my behalf, to browbeat witnesses, to make false appeals, and perhaps shed false tears in defending me. (Ch. 21, p. 207)

⁷⁷ Elizabeth Gaskell, *Mary Barton*, ed. by Shirley Foster (Oxford: Oxford University Press, 2006 [1848]), Ch. 32, p. 318. The issue of the licence of counsel is also taken up in Dickens's portrayal of Sergeant Buzfuz's adversarial practices in *The Posthumous Papers of the Pickwick Club*, ed. by James Kinsley (Oxford: Oxford University Press, 1986 [1837]), Ch. 34.

The fear that by diminishing the role of the defendant as a testimonial resource, and that by filling that space with the carefully constructed speech of an advocate, the course of justice would be obstructed, was not a fear without foundation. In 1840 Francois Benjamin Courvoisier was tried for the murder of Lord William Russell. During the trial Courvoisier confessed to his defence counsel, but still demanded he be defended as an innocent man. Courvoisier's leading counsel, Charles Phillips, complied with this request and in so doing attracted criticism.⁷⁸ In defending a man he knew to be guilty, Phillips apparently showed no scruples: he attempted to implicate others, he accused the police of negligence, conspiracy, corruption and planting evidence, he criticised the large reward the police offered in connection with the case, he attacked the credibility of Sarah Mancer (one of the leading prosecution witnesses), and in his address to the jury Phillips warned of the gravity of the duty they had to perform, telling them that 'the life of a fellow-creature was intrusted [*sic*] to their keeping; and so surely as they dealt with that life unjustly, so surely would they have to answer for it to the God who made them'.⁷⁹

Dickens followed the *Courvoisier* case with interest and in two letters printed under the title 'The License of Counsel' in *The Morning Chronicle* following the trial in June 1840, Dickens voiced his outrage with what he perceived as a gross violation of an advocate's public duty and a disgraceful attempt to 'get his client off' at whatever cost.⁸⁰ Such concerns and anxieties over the licence of counsel were echoed by other novelists and can be seen in their direct engagement with such issues through the direct representation of trial procedures.

⁷⁸ After the trial Phillips publicly admitted that Courvoisier had made such a confession.

⁷⁹ Reported in *The Times*, 22 June 1840. Reproduced in full in Cairns, *Advocacy*, pp. 186-200, quotation at p. 187. For an account of the effect of this case on the Bar's reputation see J. R. Lewis, *The Victorian Bar* (London: Robert Hale, 1982).

⁸⁰ The letters were signed 'Manlius' but Schramm notes how on 'strong evidence' these letters have been attributed to Dickens. See Schramm, *Testimony and Advocacy*, pp. 115-116.

On the one hand for Schramm the character-focused novel's preference for an 'accused speaks' model suggests a naïve acceptance of the belief that innocence speaks for itself, a belief which for centuries underpinned this model of representation. However, the novelist's adoption of a narrative style of literary advocacy represents a tacit acknowledgement that this innocence is not self-evident and requires representation, for 'if true innocence can "speak for itself", then the services of authors are [...] redundant'.⁸¹ Consequently Schramm reads the character-focused novel's effort to represent reality as one which 'adhered to an "accused speaks" model of trial whilst at the same rejecting the epistemology that had initially given rise to it'.⁸² Schramm's argument is persuasive but unlike Schramm I do not view the character-focused novel as simultaneously seeking to adhere to an 'accused speaks' model of representation and epistemologically distancing itself from it through the adoption of literary advocacy. Rather, the character-focused novel's endeavours to represent reality should be read as both methodologically and epistemologically aligning the character-focused mode with the 'accused speaks' model of trial.

Alexander Welsh has argued that in the late-eighteenth century and until the mid-nineteenth century, representations in both the courtroom and in literature were dominated by circumstantial narratives, in which circumstantial evidence was held up as being a more reliable form of evidence than testimony.⁸³ Welsh offers Henry Fielding's *Tom Jones* (1749) as a prime example of how narratives from the late eighteenth century onwards display a preference for circumstantial evidence and are often scornful of testimony. For Welsh, *Tom Jones* continually works to undermine

⁸¹ Ibid., p.122.

⁸² Ibid.

⁸³ Alexander Welsh, *Strong Representations: Narrative and Circumstantial Evidence in England* (Baltimore: Johns Hopkins University Press, 1992).

the reader's faith in testimony and champions the preference for relying on circumstances which do not lie as the 'evidence that holds up in *Tom Jones* is nearly all indirect and the evidence which misleads is mostly direct'.⁸⁴ Welsh argues that *Tom Jones* is 'closely patterned on the forensic debate' and that because the 'representation of facts is carefully managed by a narrator', this novel becomes a narrative of strong representation.⁸⁵ Schramm however, disagrees with Welsh and argues instead that what *Tom Jones* reveals is an ambivalence towards testimonial veracity and not a simple rejection of it.⁸⁶ Schramm argues that whilst *Tom Jones* no doubt contains many passages in which testimony proves either false or unreliable, the novel also reveals this to be true of circumstantial evidence. Instead, Schramm argues, the novel reveals that (just like testimony) 'facts do not "speak for themselves" and, depending on their purposeful arrangement, may condemn or acquit'.⁸⁷ For Schramm, the narrative of *Tom Jones* actually works in the opposite way to how Welsh suggests, and finally reveals the superiority of testimony as this is the evidence on which Tom is acquitted in the end: 'ultimately the narrator discloses all, and adjudicates justly on the basis of narratives of innocence, confessions and on evidence of good character'.⁸⁸

In her acknowledgement that Tom's final acquittal is partly bound up with evidence of the goodness of his character, Schramm identifies, but does not fully explore, the crucial basis upon which Tom's narrative of innocence rests: his character. Welsh notes that *Tom Jones* reads as a trial of Jones's character, a trial in which he is eventually acquitted.⁸⁹ However, whilst Welsh argues that this acquittal

⁸⁴ Welsh, *Strong Representations*, p. 77.

⁸⁵ *Ibid.*, p. 57.

⁸⁶ Schramm, *Testimony and Advocacy*, p. 77.

⁸⁷ *Ibid.*, p. 78.

⁸⁸ *Ibid.*, p. 77.

⁸⁹ Welsh, *Strong Representations*, pp. 47-48.

is achieved through the careful presentation of circumstantial evidence, this is not quite the case and *Tom Jones* in fact reveals that circumstantial evidence can at times be as misleading as testimony. However, neither Welsh nor Schramm appear to fully recognise the extent to which the narrative's success is tied in with its focus on portraying and revealing the innate goodness of Tom's character. Tellingly perhaps, after his lengthy examination of the ways in which the success of the narrative of *Tom Jones* depends on the careful presentation of circumstantial evidence, Welsh concludes that it is:

upon character the trial of Tom ultimately turns. The hero's good nature, his spontaneous sympathy, friendship, and good will, his loyalty and truth telling, high spirits and courage – even his impudence, insofar as it signifies disregard of his own interests – are qualities amply illustrated in the narrative.⁹⁰

As Schramm suggests, *Tom Jones* reveals the problems with both testimony and circumstantial evidence in a manner which anticipates the debates over evidence and the matter of representation in the 1836 Prisoners' Counsel debates. Ultimately, however, as Welsh himself suggests, it is 'upon character that the trial of Tom Jones ultimately turns' and it is through the representation and observation of his words and deeds that Tom is vindicated and so the novel succeeds.

The argument that *Tom Jones*, through its vindication of Tom's character, represents an alignment with the 'accused speaks' model and its epistemology is lent support by Henry Fielding's 'An Essay on the Knowledge of the Characters of Men' (1735) which was written before *Tom Jones* but which demonstrates Fielding's ideas about the notion of character. In the essay, Fielding reveals his view that the character of a person is something which is fixed, stable and also *knowable*: 'some unacquired original distinction, in the nature or soul of one man from that of another

⁹⁰ Ibid., p. 73.

[...] that can be penetrated only by study and observation of actions'.⁹¹ What Fielding reveals is the belief that through study and observation it is possible to know, and then accurately judge the characters of others: *Tom Jones* becomes an example of how this is achievable in practice and as such demonstrates the efficacy of the 'accused speaks' model.

The way in which we come to know Tom and judge his character is through the omniscient narrator's telling of his individual story. This not only ensures Tom's personal story remains at the centre of the narrative, it assures us that judgement of Tom is possible through coming to know and understand his character. I noted at the start of this section that the use of an omniscient narrator aligns character-focused novels with the 'accused speaks' trial model because the narrator's access to the protagonist's thoughts allows them to tell their story in their own words. Lisa Rodensky has highlighted how the use of the term 'omniscient' can vary from critic to critic.⁹² J. Hillis Miller uses the term, for example, to mean a narrator who has full and perfect knowledge of the minds of the characters he narrates. This is a step too far for Rodensky, who identifies a tension within the role of the omniscient narrator who she views as unable to make the minds of characters known without ambiguity.⁹³ Rodensky's discussion of the narrator is in relation to nineteenth-century views on criminal responsibility, but her questioning of the limits of the omniscient narrator's vision is relevant here too. The omniscient narrator may not be able to read the minds of characters perfectly, as Rodensky suggests, but they are still nonetheless able to read those minds in some way. This still suggests that knowledge

⁹¹ Henry Fielding, 'An Essay on the Knowledge of the Characters of Men', in *Miscellanies by Henry Fielding, Esq.* ed. by Henry Knight Miller, 2 vols (Oxford: Clarendon, 1972), I, 158.

⁹² Lisa Rodensky, *The Crime in Mind: Criminal Responsibility and the Victorian Novel* (Oxford: Oxford University Press, 2003), pp. 13-15.

⁹³ *Ibid.*, p. 15

of the characters of others is both a possible and a viable way of gaining and communicating knowledge.

If one takes texts which centre around knowable communities such as Austen's *Pride and Prejudice* or Eliot's *Adam Bede* (1859), then the use of the omniscient narrator is largely unproblematic. In these texts the narrator's powers to read and judge the characters of others and their inner thoughts and feelings is arguably reflective of the ability of the characters within the novel to do the same. Case and Shaw have noted how it is possible that the power of Jane Austen's narrator to read the internal thoughts of people (aside from the heroine) could be explained in terms of the keen observation of external signs.⁹⁴ Arguably Trollope's novels produce a similar effect. Trollope claimed he 'lived' with his characters 'in the full reality of established intimacy':

There is a gallery of them, and of all in that gallery I may say that I know the tone of voice, and the colour of the hair, every flame of the eye, and the very clothes they wear. Of each man I could assert whether he would have said these or the other words; of every woman, whether she would have smiled or so have frowned. (*Autobiography*, p. 233)

Trollope's 'intimacy' with his characters is reflected in the ease with which the narrator is able to access the inner thoughts of the characters. Furthermore, because Trollope's characters are so vividly realised, and because Trollope often used recurring characters, the reader also begins to feel that they too have some knowledge of the characters in the text. As Trollope himself claimed, one of his chief concerns as a novelist was 'to make his readers so intimately acquainted with his characters that the creations of his brain should be to them speaking, moving living, human creatures' (*Autobiography*, p. 232). In the *Barsetshire* series, for example, we come to know Mrs Proudie so well we hardly doubt what her reaction will be to the

⁹⁴ Case and Shaw, *Austen to Eliot*, p. 14.

news that Crawley has allegedly stolen a cheque for twenty pounds. In fact a good deal of our enjoyment of that novel derives from our anticipation of Mrs Proudie's (predictable) reaction.

In Trollope, as in Austen, the narration largely proceeds from external observation, with the narrator moving into the minds of characters to narrate their inner monologues in response to some conversation or event. The use of free indirect discourse in particular tends to emphasise this trend, with the third person narration of what is essentially (or purports to be) a first person account drawing attention to the fact that the narration is proceeding from the external to the internal. The narrator in Eliot's *Adam Bede* nicely illustrates this point. In chapter seventeen Eliot's narrator famously describes their role as that of a 'witness in a trial narrating [their] experiences on oath' and so giving a 'faithful account of men and things as they have mirrored themselves in [their] mind' (Ch. 17, p. 159). By comparing the narrator to a witness narrating events they have observed, Eliot suggests that this is both an adequate and possible way of narrating reality. It also highlights that the narration proceeds from an external vantage point. The externality of the narrator's stance is also alluded to in the text itself: 'we will enter very softly, and stand still in the open doorway' (Ch. 4, p. 49). Furthermore, it is often suggested by the narrator that conjectures are being made from external signs about the internal thoughts, feelings and motivations of the characters so observed: 'her dark eyes are somewhat dim now – perhaps from too much crying' (Ch. 4, p. 36). The suggestion is that other observers too may have surmised the same.

In chapter fifteen we see Hetty in her bed-chamber, imagining her future by the side of Arthur Donnithorne. Although the narrator appears to be able to access Hetty's inner thoughts with ease, occasional phrases such as 'I think she had no

feeling at all towards the old house' (Ch. 15, p. 140), suddenly draws attention to a potential limitation in the narrator's perspective. Indeed, other characters besides the narrator are well aware of Hetty's character, Mr Irwine explicitly warns Arthur not to 'feed her vanity' (Ch. 9, p. 92), and Mrs Poyser 'with her keenness and abundant opportunity for observation' is well aware Hetty is 'no better than a peacock' (Ch. 15, p. 141). Adam too is quickly able to guess, after finding Hetty and Arthur together in the woods, that Hetty has 'been fixing her heart on [Arthur]' (Ch. 28, p. 278). The implication is that if Mr Irwine, Mrs Poyser or Adam, with their knowledge of Hetty's character, had been in full possession of the facts then they too might equally well have been able to 'read' Hetty's thoughts as the narrator does.

One might go as far as to suggest that the narrator's ability to access the internal thoughts of the characters derives from the fact that they are narrating a knowable community of knowable characters, and not from any omniscient vision into the hearts and minds of those characters. *Adam Bede* is set in 1799 in the rural community of Hayslope, where the inhabitants know their place within the long-established landed hierarchy. The novel, which focuses on the relationships between the landed gentry and their tenants, once again presents the reader with an entirely knowable community and with knowable characters who are easily able to identify their place within their highly visible social structure, a structure which provides them with a framework for understanding reality. The young squire Arthur Donnithorne thinks of the world entirely in these terms:

He was nothing, if not good natured; and all his pictures of the future, when he should come into the estate, were made up of a prosperous, contented tenantry, adoring their landlord, who would be the model of an English gentleman.⁹⁵

⁹⁵ George Eliot, *Adam Bede*, ed. by Carol A. Martin (Oxford: Oxford University Press, 2008 [1859]), Ch. 12, p. 113. Further references to this edition are given after quotations in the text.

Arthur's way of thinking about the world is mirrored, lower down the social scale, by the artisan Adam Bede, who speaks of 'not forgettin' myself so far as to be wise above my betters' (Ch. 5, p. 52). Hayslope is another example of a community where the interactions are 'strikingly' face-to-face; landlord and tenants interact on a regular interpersonal basis, but we are also made aware of the continuing nature of such relationships which creates the perfect conditions for a knowable community. Adam, for example, has known Arthur since childhood and had taken 'quite a pride in the little squire in those early days' (Ch. 16, p. 148). The inhabitants of Hayslope appear to be, as Dinah claims for herself and the community of Snowfield: 'grown deep into [Hayslope], like the small grass on the hill-top' (Ch. 8, p. 81). Characters within these novels understand reality and find value and meaning therein through their understanding of their relationships with other people and the knowledge of their characters. However, whether we view the omniscient narrator as having unfettered access to the minds of the characters he claims to narrate, or if we believe such access is more restricted and made possible by the existence of the conditions which make knowledge of others possible, the use of the omniscient narrator in the character-focused novel methodologically aligns these novels with the 'accused speaks' trial.

Schramm herself provides extensive evidence of the preference novelists displayed for an 'accused speaks' model of representing reality, providing examples (both fictional and non-fictional) of where this preference can be seen, some of which have been discussed in this chapter. Schramm argues that it is the mediating effect of the act of writing which leads her to the conclusion that character-focused novelists were epistemologically distancing themselves from the 'accused speaks' model. For Schramm, in the very act of narration itself, novelists (like lawyers in

felony trials from 1836 onwards) were assuming the right to narrate the accused's story, and in so doing were recognising that innocence does not speak for itself but instead requires the advocacy of the author to demonstrate it. Schramm moves from the proposition that 'what the Prisoners' Counsel Act conferred was the right to narrate a suspected felon's thoughts or intentions', to identifying the novelistic method of narrating a character's thoughts and intentions through the use of free indirect discourse as the literary imitation of this legal strategy.⁹⁶ However, Schramm focuses too much on the idea of the advocate having the power to narrate a defendant's inner thoughts and intentions, for the advocate also had the power to do a good many other things besides, such as examine all the evidence and connect it into a coherent narrative of innocence. In the adversarial-evidentiary trial model, the inner thoughts and feelings of the accused are narrated only to the extent that they aid this larger narrative of innocence. Furthermore, the character-focused novel's use of free indirect discourse actually minimises the sense that a character's thoughts and feelings are being mediated through an outside narrative voice which seeks to subordinate them to a final narrative end, and instead works to provide the sense that the character in question is telling the story in their own words. Rather than representing an advocate's claim to the right to narrate the inner thoughts and feelings of individual characters, free indirect discourse works to provide the effect of direct and unmediated access to those internal thoughts. The ease with which the narrative voice can move from external events to the internal thoughts of individual characters (as Rodensky has shown) suggests that the character-focused novel remained committed to the epistemology of the 'accused speaks' model, in that it suggests that it is possible to have knowledge of the characters of others and base our

⁹⁶ Schramm, *Testimony and Advocacy*, p. 143.

judgements of them and their actions upon that knowledge. Schramm argues that through the very act of narrating a story the novelist is effecting a movement away from this epistemology, but the narrative focus of the nineteenth-century novel on the character of the protagonist both provides the assurance that he or she will be given the opportunity to tell their story in their own words, and that it will be possible to come to know and so accurately judge his or her story. Moreover, the narrator's use of free indirect discourse places the accused's (or protagonist's) story at the centre of the representational process, and so ensures the character-focused novel's commitment to an 'accused speaks' model.

As Levine argues in *The Realistic Imagination*, there exists in the nineteenth-century novelists' work discussed in this chapter a desire to depict 'a world beyond words' but more than that, a desire that this world be 'meaningful' and 'good' in the face of a fear that it might merely be 'mechanical, monstrous' or worse still, 'beyond human control'.⁹⁷ In the face of a rapidly changing society many novelists of the nineteenth century remained committed to a model of representing reality which centred around the presentation of character. In the law, however, a break with these representational practices occurred with the passing of the Prisoners' Counsel Act, and a different model of representing reality and uncovering truth came to dominate the criminal trial. The adversarial-evidentiary model, which focused on the careful presentation and scrutiny of all the available evidence by advocates for both sides, presented an alternative way in which reality might be represented, an alternative which, after mid-century, writers of the emerging genre of sensation fiction began to embrace.

⁹⁷ Levine, *Realistic Imagination*, p. 22.

Through an analysis of character-focused fiction within the context of the development of the criminal jury trial, this chapter has revealed the affinity between the ‘accused speaks’ trial model and character-focused narratives. In doing so this chapter has demonstrated how nineteenth-century narratives which are based on the presentation and revelation of character do not just display a preference for the ‘accused speaks’ model of representation, as Schramm suggests, but actually employ the same method in their own attempts at representing reality. The next two chapters will explore the ways in which a similar relationship emerges between the adversarial-evidentiary trial model and the sensation novel.

*Chapter Two***Making a Case: The Prisoners' Counsel Act and the Rise of
Sensation Fiction**

In 1836 the Prisoners' Counsel Act was passed. This Act of Parliament effected a change in the way criminal jury trials for felony were conducted, sidelining the hitherto central significance of the idea of character and replacing it with a model for representing reality and uncovering truth which focused on the forensic scrutiny of all the available evidence.¹ A central argument in this thesis is that the change in felony trial procedures introduced by the 1836 Act had a profound influence on the narrative structure and techniques employed in the sensation novel, and as such the relationship between post-1836 felony trial practices and the sensation novel's attempts at representing reality is one which merits critical attention it has not yet received. It is my purpose to fill this critical gap by offering new readings of sensation novels in locating them within this important legal context. The focus of this chapter will be on the Prisoners' Counsel Act debates and the issues they raised, not least how they challenged the efficacy of the 'accused speaks' trial model. The chapter will then explore how the reliability of character-focused representations in literature were also called into question, and will begin to explore how the rise of sensation fiction can be read, in part, as a response to such a challenge. By examining the rise of the sensation novel in the context of the 1836 Act, and the

¹Legal historian John H. Langbein has shown how the introduction of the 1836 Prisoners' Counsel Act had the effect of turning the felony trial away from an 'accused speaks' model and towards an adversarial model based on the prosecution's 'case' being tested by skilled advocacy: *The Origins of Adversary Criminal Trial* (Oxford: Oxford University Press, 2003). During the eighteenth century the trial had been becoming increasingly adversarial, with the rising prevalence of defence counsel as they began to be increasingly permitted to cross-examine witnesses in felony trials. However, until the 1836 Act, as defence lawyers were unable to address the jury directly, they were unable to fully 'test' the prosecution's case by providing their own interpretation of events and suggesting weaknesses or inconsistencies in the prosecution's case.

changes it brought to legal representational practices, I hope to show how such fiction can and should be read as an engaged response to the challenges faced by both novelists and lawyers when making representations about reality. In order to achieve this, it will first be necessary to give some detail of the background to the passing of the Prisoners' Counsel Act and the surrounding debates.

The 1836 Prisoners' Counsel Act

In chapter one I left off my account of the criminal jury trial at the end of the eighteenth century, by which time the felony trial's mode of representing reality was firmly established as the 'accused speaks' model. However, in the late seventeenth century and throughout the eighteenth century, the engagement of lawyers to investigate and manage criminal prosecutions gave rise to the question of whether or not a suspected felon should also have recourse to full legal representation, as the problems of denying the accused full legal representation began to emerge.² In response to these problems, judges began to use their discretion to relax the rules, permitting prisoners accused of felonies to employ defence advocates to examine and cross-examine witnesses on their behalf.³ Langbein views this move as being instrumental in turning the criminal jury trial into the adversarial proceedings we recognise today.⁴

This was not the end of the imbalance, however, for felony counsel restriction remained in place, despite it having been somewhat relaxed by the judiciary.

² As noted in chapter one, the major problem was that of perjury as the prosecution commonly offered large rewards for those willing to give evidence against the accused.

³ For a discussion on the increasing use of prosecution and defence advocates in criminal trials during the late seventeenth and eighteenth centuries see J. M. Beattie, 'Scales of Justice: 'Defense Counsel and the English Criminal Trial in the Eighteenth and Nineteenth Centuries', *Law and History Review* 9 (1991), pp. 221-67; and John H. Langbein, 'The Criminal Trial Before Lawyers', *University of Chicago Law Review* 45 (1978), pp. 263-316.

⁴ Langbein, *Origins*, p. 2.

Crucially, prior to the 1836 Act, defence lawyers continued to be denied the right to address the jury directly, unlike the counsel for the prosecution. Whilst criminal trial proceedings became increasingly combative in the examination and cross-examination of witnesses, the restriction on defence counsel ensured that the emphasis of the trial remained largely focused on the defendant's character: because the defendant remained a primary testimonial resource, the jury were afforded the opportunity not only to hear the prisoner's version of events, but also to observe his behaviour, and so to discern what sort of character he appeared to possess.⁵ The continued imposition of felony counsel restriction into the nineteenth century benefited the prosecution in one major respect: it allowed the prosecution (but not the defence) to address the jury directly and put forth their 'case' against the accused. Unlike a defendant, prosecution lawyers were professional advocates and their opening and closing speeches to the jury gave them the chance to connect all the facts into one coherent narrative of guilt. During the early years of the nineteenth century the undesirability of permitting one side but not the other to address the jury directly began to emerge in a number of trials.

In theory, because the prisoner was not permitted to have a lawyer to address the jury on his behalf, the prosecution counsel was required to exercise a duty of restraint. This duty required that prosecution counsel were only supposed to present the facts of the case in such a manner so that the jury would be able to follow the case. The prosecution, therefore, was not permitted to allude to any questionable facts, confessions or hearsay evidence, nor were they supposed to reason on the facts they presented, or to anticipate and argue against any defence which might be

⁵ Langbein, *Origins*, p. 49.

offered, or to appeal to the jury's emotions and prejudices.⁶ In practice, adherence to this duty was oftentimes scant at best. Cairns has shown how a number of cases in the early nineteenth century caused concern that the right of prosecution counsel to address the jury directly gave rise to much inequality if (as often happened) the duty of restraint was ignored.⁷ In *R v Patch* (1806) the prosecution's case was opened by William Garrow, a leading practitioner at the bar. In his opening address Garrow failed to show any duty of restraint at all: he presented all manner of dubious facts and evidence, he reasoned on the facts and argued that they were suggestive of guilt, he speculated, raised suspicions, talked in probabilistic terms, referred to how a hypothetical reasonable man would have acted, alluded to his personal experience and observations, all the while employing highly eloquent and emotive rhetoric.⁸ The dangers of such speeches caused much concern, and Garrow's opening was even alluded to as a 'hanging speech' in parliamentary debates concerning the introduction of full defence counsel for prisoners.⁹

The question of whether prisoners charged with felonies should have recourse to full defence counsel was first raised in the House of Commons in 1821 in the form of the Capital Crimes Defence Bill, where its proposer, Richard Martin, gave a short speech on the injustices of such a restriction.¹⁰ At this time, the move to remove felony counsel restriction was dropped from the Bill. The issue was raised again in 1824 and 1826 but on both occasions met with fierce opposition and did not pass the House. Supporters of a full defence for all prisoners maintained that equal representation for both sides was necessary to the discovery of truth, arguing that

⁶ David J. A. Cairns, *Advocacy and the Making of the Adversarial Criminal Trial 1800-1865* (Oxford: Clarendon Press, 1998), p. 39.

⁷ Cairns, *Advocacy*, pp. 40-46.

⁸ Cairns, *Advocacy*, pp. 41-42.

⁹ *Parliamentary Debates*, 13 March 1824 – 25 June 1824, 11 (London: Hansard, 1825), col. 210.

¹⁰ *Parliamentary Debates*, 23 January 1821 – 2 April 1821, 4 (London: Hansard, 1821), col. 1512.

felony counsel restriction led to an imbalance in the system that was prejudiced against the prisoner, and that an adversarial trial would lead to the discovery of the truth by ensuring that all possible interpretations of the facts and evidence were presented to the jury. However, the arguments of those who opposed the Bill ultimately held sway, and in both 1824 and 1826 the supporters of the Prisoners' Counsel Bill were defeated. The issue was raised once again in the House of Commons in 1833 and a new phase of debates began. This time the idea was received more favourably. The cause had gained a strong new ally in the form of Lord Lyndhurst (formerly John Copley), who had altered his position on the Bill and, as Cairns suggests, the 1830 election of a new Whig government committed to reform helped encourage increased support for change.¹¹ The strengthened cause ultimately ensured that (after another couple of failed attempts) the Prisoners' Counsel Bill was enacted into law in 1836 and finally removed felony counsel restriction so that all prisoners were permitted to have a full defence.¹²

Post-1836, felony trials now operated on a more adversarial basis which not only provided for a fuller investigation of all the facts and evidence, but also ensured the jury were presented with the different possible interpretations of those facts and that evidence. As Langbein has shown, this shift in the nature of trial proceedings also had the effect of greatly diminishing the role of the accused.¹³ Following the enactment of the Prisoners' Counsel Act, the rules which developed relating to the defence's right to address the jury had the effect of, in most cases, silencing the accused, as it was soon established by legal precedent that either defence counsel *or* the accused could address the jury directly, but not both. In the majority of cases the

¹¹ Cairns, *Advocacy*, p. 70.

¹² In 1834 a Bill to remove felony counsel restriction passed the House of Commons only to be defeated in the House of Lords. In 1835 a similar Bill once again passed the Commons but appears to have disappeared after being referred to a Select Committee.

¹³ See Langbein, *Origins*, pp. 6-7 and Ch. 5.

decision was taken to allow counsel, rather than the accused, to address the jury. Consequently the accused could no longer tell his story, and the opportunity for a prisoner to acquit himself through his own words and demeanour was removed from criminal trial proceedings.¹⁴ The felony trial's pre-1836 model of representing reality was therefore replaced by the adversarial-evidentiary model which was based on putting the prosecution's case fully to the test.¹⁵

A Superior Model for Establishing the Truth? Advocacy and the Problems with Evidence.

In chapter one I sought to demonstrate how even after centuries of the jury trial's development, the idea of character remained central to the felony trial process. In the nineteenth century, years of tradition were broken with when the decision was taken to adopt an alternative means for the making of such representations by the passing of the 1836 Act. The decision to make such a change in the way truth and reality were represented in felony trial proceedings cannot be attributed to any one cause but, as noted in chapter one, changes in the social structure of England appear to have been an influential factor. Legal historian John Hostettler has pointed out that by the nineteenth century the traditional basis of society was 'crumbling' as new relationships based on economic interests alone began to dominate, resulting in an increasing upset to the traditional intimacy and interconnectedness of landed agricultural society, and a decline of the knowable community.¹⁶

The alteration in both legal and political thought which brought about the enactment of the Prisoners' Counsel Act in part reflected a recognition that the 'accused speaks' model of trial was no longer appropriate in modern nineteenth-

¹⁴ Cairns, *Advocacy*, p. 49.

¹⁵ Langbein, *Origins*, pp. 6-7.

¹⁶ John Hostettler, *The Politics of Criminal Law Reform in the Nineteenth Century* (Chichester: Barry Rose Law Publishers, 1992) p. vii.

century society. This thinking is demonstrated by the *Second Report of His Majesty's Commissioners*, which openly discredited the well-established view that a man would be able to clear himself by the 'simplicity' and 'innocence' of his words.¹⁷ The *Second Report*, produced in 1836, was instrumental to the passing of the Prisoners' Counsel Act. The Commissioners were appointed by Henry Brougham in 1833 for the purpose of codifying all criminal law, both statute and common. In their report the Commissioners highlighted the inability to comprehend the characters of others, stating plainly that an innocent man accused of a crime might often appear guilty through a natural 'sense of the disgrace and danger to which he is exposed'.¹⁸ In their report, the Commissioners worked to dispel the myth that it was easy to judge the characters of others and pressed the view that in a modern society some alternative model was needed to elicit truth in criminal trials. The model suggested was one based on advocacy, where both sides would have an opportunity to present their interpretation of events to a panel of jurors.

During the first round of debates over the matter of counsel for prisoners during the 1820s one of the most prominent opponents to the Bill was Sir John Copley (later Lord Lyndhurst).¹⁹ Copley spoke out strongly against the introduction of full defence counsel in the major debates of 1824 and 1826, basing his opposition on the premise that it would interfere with the trial as an 'investigation of truth'.²⁰ Copley argued that the truth-seeking aim of the criminal jury trial would be compromised by such an alteration in procedure, which would see the 'trial of truth

¹⁷ This argument was articulated by Sergeant William Hawkins, see chapter one, p. 46 for the full quotation.

¹⁸ *Second Report From His Majesty's Commissioners on Criminal Law Parliamentary Papers*, in *Parliamentary Papers: Reports from Commissioners: Church, Education, Law etc*, 36 (London, 1836) pp. 183-314, (p. 189).

¹⁹ Copley had established himself as a respected defence counsel, was made Solicitor General in 1818, was promoted to Attorney General in 1824, and was eventually elevated to the peerage in 1827 as Lord Lyndhurst, before being made Lord Chancellor.

²⁰ See Copley's speeches in *Parliamentary Debates*, (London: Hansard, 1827), 11, cols. 206-208, and *Parliamentary Debates*, 15, cols. 596-601.

[...] converted into a war of wit, ingenuity and eloquence'.²¹ For Copley, the introduction of full defence counsel would turn the court into an adversarial 'arena, where opposing advocates might meet in professional conflict', and so, 'instead of endeavouring to elicit the truth by reference to plain facts, or the real merits of the case', advocates would seek to win the 'contest' with counsel on the other side by whatever means necessary.²²

What the debates leading up to and surrounding the passing of the 1836 Act reveal is a deep concern in legal and political thought with establishing the most effective means of representing the facts in order to discover the truth of disputed acts. However, the view that advocacy would lead to the court being turned into an adversarial arena which would tend to obscure truth, was not one shared by the Criminal Law Commissioners. The *Second Report* explored in detail the question of whether or not a full defence counsel should be permitted in all criminal trials, with one hundred and thirty two pages of the report being dedicated to this issue. In their report the Commissioners took the view that allowing advocates to speak on behalf of the defence 'tends, generally, to the discovery of truth' and recommended that a full defence counsel should be permitted in all criminal trials.²³ The report carried much weight, and the second reading of the 1836 Bill was even delayed in the House of Lords for the very purpose of reading it. In the end, the recommendations of the Commissioners were accepted and the 1836 Prisoners' Counsel Act passed into law.

The debates of the early nineteenth century demonstrate the controversy which existed in legal and political thought regarding how best to uncover truth and represent it as reality to a panel of jurors. As Jan-Melissa Schramm has noted, another crucial matter at the heart of the debates was 'the extent to which facts

²¹ *Parliamentary Debates*, 11, col. 205.

²² *Parliamentary Debates*, 15, cols. 598-9, quotations at col. 599.

²³ *Second Report*, pp. 183-314, (p. 189).

required interpretation and arrangement by a trained mind in order to serve as evidence'.²⁴ This question brought front and centre the problems pertaining to different types of evidence which the legal world had been increasingly struggling with since the late seventeenth century. By the sixteenth century the trial jury had ceased to be made up of jurors who had personal knowledge of the crime or defendant in question, and from this time the jury came to be understood and accepted as a panel of persons who passed judgement on the evidence presented to them. As Barbara Shapiro has highlighted in '*Beyond Reasonable Doubt*' and '*Probable Cause*': *Historical Perspectives on the Anglo-American Law of Evidence*, this shift in the juror's role raised the question of how jurors could be sure that they had made the right decision.²⁵ In her study, Shapiro shows how the rise of the jury, understood as a body of persons deciding upon the effect of evidence, coincides with the rise of probabilistic thinking in the seventeenth century. In *Probability and Certainty in Seventeenth Century England*, Shapiro examines how the rise of probabilistic thinking during the seventeenth century reflected an increasing acceptance that in a large proportion of human thought and endeavour there was no access to certain knowledge.²⁶ The criminal trial process was one area of thought where this was true, and legal treatises and cases during the seventeenth and eighteenth centuries clearly demonstrate that, by this time, it was commonly accepted that jurors could not hope to obtain any sort of mathematical, absolute certainty, but instead had to be satisfied with attaining the highest level of probability possible, that of moral certainty. This can be seen in what Shapiro has termed the

²⁴ Jan-Melissa Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Theology* (Cambridge: Cambridge University Press, 2000), p. 105.

²⁵ Barbara J. Shapiro, '*Beyond Reasonable Doubt*' and '*Probable Cause*': *Historical Perspectives on the Anglo-American Law of Evidence* (Berkeley, University of California Press, 1991), Ch. 1.

²⁶ Barbara Shapiro, *Probability and Certainty in Seventeenth Century England* (Princeton, NJ: Princeton University Press, 1983).

‘first real treatise on evidence’, written by judge and jurist Sir Geoffrey Gilbert in the early eighteenth century.²⁷ In *The Law of Evidence* Gilbert notes how ‘there are several degrees from perfect certainty and demonstration quite down to improbability and unlikeness [...] now what is to be done in all Trials of Right is to range all matters in the scale of probability’.²⁸ Gilbert recognises that trials depended upon the narration of past events retrieved from human memory and so trials had, out of necessity, to be determined by probability and not absolute demonstration.

By the nineteenth century the standard of probability required for conviction was well established as that of *beyond reasonable doubt*. Shapiro has identified the first use of this term in 1770 in the Boston Massacre trials, but argues that the terms in which it is used suggest that it was not an innovation in these cases.²⁹ In the nineteenth century one of the leading and most influential legal treatises on evidence was Thomas Starkie’s *Practical Treatise on the Law of Evidence* (1824). Starkie, like Gilbert, noted how in matters of fact (which legal trials necessarily had to determine) there could be no absolutes but merely ‘moral certainty’. In his discussions Starkie explicitly equates the attainment of moral certainty with the idea of conviction beyond any reasonable doubt:

Evidence which satisfied the minds of the jury of the truth of the fact in dispute, to the entire exclusion of every reasonable doubt, constitutes full proof of the fact [...] even the most direct evidence can produce nothing more than such a high degree of probability as amounts to moral certainty.³⁰

²⁷ See Shapiro, *Historical Perspectives*, p. 26. Shapiro refers to Gilbert’s treatise as the ‘first real treatise on evidence’ because he was attempting a systematisation of the law of evidence rather than a more abstract philosophical analysis like Hawkins or Hale. Gilbert’s treatise was first published in 1754, but Shapiro notes that it was most probably completed before 1726. See Shapiro, *Historical Perspectives*, p. 22 and p. 225.

²⁸ Sir Geoffrey Gilbert, *The Law of Evidence* (London: [n. pub.], 1756 [1754]), pp. 1-2.

²⁹ Shapiro, *Historical Perspectives*, p. 22.

³⁰ Thomas Starkie, *A Practical Treatise on the Law of Evidence, and Digest of Proofs in Civil and Criminal Proceedings* 2nd edn, 3 vols (London: J & W. T. Clarke, 1833 [1824]), I, p. 478.

The English evidence treatise tradition beginning with Gilbert and followed by Starkie is, as Shapiro has shown, heavily rooted in the epistemological formulations found in Locke's *An Essay Concerning Human Understanding*.³¹ These treatises follow Lockean formulations in their acknowledgements that outside of the realm of mathematical certainty (which is capable of absolute demonstration) there is the sphere of empirical events where such certainty is simply not achievable. However, it was also recognised that this did not mean that it was not possible to achieve anything approaching certainty. In Locke we see the acceptance of the idea of differing levels of certainty, and the idea that as the quantity and the quality of the evidence increases so too does the level of certainty arrived at.³² By the nineteenth century, it was commonly accepted that jurors should feel morally certain of a defendant's guilt before they could convict, and this meant feeling certain of guilt beyond any reasonable doubt.³³

The development of the beyond reasonable doubt principle was, of course, caught up with the problems that were increasingly being recognised as pertaining to evidence. As the self-informing jury declined, the usefulness and reliability of evidence came under increasing scrutiny.³⁴ As Shapiro has noted, before the late seventeenth century, criminal trials were not well documented, but a number of notable trials in the latter years of that century increased public interest in the standard of proof required to secure convictions. As reports of high profile trials

³¹ Shapiro, *Probability and Certainty*, pp. 179-193.

³² John Locke, *An Essay Concerning Human Understanding* (Oxford: Oxford University Press, 2008 [1690]), Bk. 4, Ch. 15, pp. 423-426. Further references to this edition are given after quotations in the text.

³³ Starkie, *Law of Evidence*, I, p. 478.

³⁴ The trial jury which emerged in the early thirteenth century was 'self-informing' in that the jurors were expected to perform an investigative function by making enquiries in the local neighbourhood about the defendant and the allegations against him. See chapter one of this thesis, pp. 41-42.

(usually for treason) began to be produced in pamphlet form, the public were alerted to evidentiary problems, not least the problem of perjured testimony.³⁵

At this point it is perhaps worthwhile to note that from this period jurists were already differentiating between two different types of evidence. The first type is that of testimonial evidence (often termed ‘direct evidence’), which was considered to constitute direct proof. The other species of evidence was circumstantial, which offered only indirect proof. Circumstantial evidence is evidence from which inferences could be drawn, and as such in some instances gives rise to presumptions of fact; for example if someone is found standing over a stabbed body with a bloody sword then this would amount to a strong presumption that they had committed the deed.³⁶ For a long time in English legal history direct testimonial evidence was favoured over circumstantial evidence. In criminal law during the medieval era, only a confession or the testimony of two witnesses amounted to ‘full proof’ which required no further evidence of guilt. By contrast, circumstantial evidence was treated with suspicion and was mainly reserved for use in exceptional cases and ‘secret crimes’, crimes which by their nature were unlikely to have any direct witnesses, such as rape or witchcraft. As Shapiro has shown, throughout the sixteenth and early seventeenth centuries there appears to have been a good deal of uncertainty over the extent to which circumstantial evidence should be used in trials and under what circumstances it could be legitimately employed.³⁷ But by the second half of the seventeenth century the use of circumstantial evidence in trials appears to be common. In the 1663 *Trial of Dover, Brewster, and Brooks*, for example, Lord

³⁵ See also Shapiro, *Historical Perspectives*, pp. 18-21.

³⁶ This example of circumstantial evidence giving rise to a strong (or ‘violent’) presumption can be found in the works of Quintilian and is also used in Bracton, and in Sir Edward Coke, *Institutes of the Lawes of England*, 4 vols (London: E. and R. Brooke, 1797 [1628-1644]).

³⁷ See Shapiro, *Historical Perspectives*, Ch. 4.

Chief justice Hyde told the jury: ‘pregnant, strong, undeniable circumstances are good evidence’.³⁸

By the eighteenth century there is no doubt that testimonial and circumstantial evidence were both being used to secure convictions in criminal trials and that both species of evidence were duly considered by juries when making a decision about whether a defendant was guilty beyond any reasonable doubt. Moreover, by this time the preference for direct testimonial evidence over circumstantial evidence was being re-evaluated, and debates were emerging over the relative merits of both species of evidence. The debates were probably the result of a number of factors, including the development of a scholarly treatise tradition, the printing of case reports, and high profile cases where problems with evidence became a major issue.³⁹ Whatever the causes, the result was that the long established preference for direct testimony was reversed in the eighteenth century and circumstantial evidence was elevated to the position of the preferred form of proof.

It is clear from the work of noted jurist and judge Sir Matthew Hale that by the late seventeenth century there were two categories of witnesses, ‘legal witnesses’ (those deemed competent to testify) and ‘credible witnesses’ (those whose testimony could be considered trustworthy).⁴⁰ So already by this time there existed the notion that *any* testimony from anyone was not sufficient in and of itself. In *Primitive Origination of Mankind* (1677) Hale discusses (in relation to the scriptures) the reliability of witness testimony and states that it is possible to discern whether or not

³⁸ *The Trial of Dover, Brewster, and Brooks* (1663), in *Howell’s State Trials*, 21 vols (London: Hansard, 1816), VI, cols 539-564 (col. 559).

³⁹ In her incredibly detailed and well researched study, Shapiro is unable to identify any specific trigger: *Historical Perspectives*, Ch. 4.

⁴⁰ A number of groups of persons were precluded from testifying, such as those with previous convictions and those unwilling to take an oath on religious grounds (Quakers for example). See further, Christopher Allen, *The Law of Evidence in Victorian England* (Cambridge: Cambridge University Press, 1999).

a witness speaks the truth from his manner of giving his testimony. Hale expresses not only the possibility but the necessity of *weighing* testimonial evidence given.⁴¹ This suggestion is also found in Locke's *Essay*, which informed so much of eighteenth- and nineteenth-century jurisprudential thinking on the matter of evidence. In Locke's *Essay* we can identify a perception that testimonial evidence was crucial to the achievement of the highest possible standard of certainty. Locke notes that probabilistic knowledge required observation, experience and also the *testimony of others* to vouch for those observations and experiences. For Locke, when determining what weight to give to the testimony of others it was important to consider: (1) the number of witnesses; (2) the integrity of those witnesses; (3) the skill of those witnesses; (4) the design of the author (when dealing with testimony cited from books); (5) the consistency of the testimony and the circumstances of how it was related; and (6) any existing testimonies to the contrary (*Essay*, Bk. 4, Ch. 15, p. 425). It is clear that the probability of a proposition rested largely on testimony but the *Essay* also reveals that testimony was not to be considered reliable simply by virtue of its being direct evidence, but rather the more corroborating testimony that exists, the more consistent a testimony is, and the more reliable the witnesses themselves are perceived as being, the more likely a proposition becomes. Locke's thinking on testimony informs Gilbert's treatise on evidence, which notes that the credibility of a witness may be called into question if there is evidence and experience which contradicts his statements or if he fails to state 'the reasons and causes of his knowledge', and that the more witnesses there are, the more credible that testimony becomes.⁴² Nevertheless, as both Shapiro and Alexander Welsh have shown, during the eighteenth century testimony came to be increasingly distrusted, to

⁴¹ Sir Matthew Hale, *Primitive Origination of Mankind* (1677), cited in Shapiro, *Historical Perspectives*, pp. 194 – 195.

⁴² Gilbert, *Evidence*, pp. 150-151.

the point where its privileged position was usurped by circumstantial evidence which became the favoured type of proof.⁴³ This sea change can be discerned in a number of famous trials during the eighteenth century.

In 1752 Mary Blandy was tried for poisoning her father. In his charge to the jury, the judge, Mr Baron Legge, noted that this was a case which had to be proved on circumstantial evidence alone but that it was possible for a 'violent presumption' to arise from such circumstances which was 'more convincing and satisfactory than any other kind of evidence because facts cannot lie', and that to believe anything to the contrary 'where circumstances speak so strongly would be absurd'.⁴⁴ A similar argument is to be found in a case which closely followed that of Mary Blandy. In the trial of John Barbot, the Solicitor-General asserted that the most trustworthy sort of evidence was circumstantial evidence as it was 'the least likely to deceive and mislead'.⁴⁵ The Judge presiding over the case agreed. Thirty years later in *R. v Donellan* (1781), this view was again echoed by the judge who argued that circumstantial evidence was a preferable type of evidence because:

a presumption, which necessarily arises from circumstances, is often more convincing and more satisfactory than any other kind of evidence, because it is not within the reach and compass of human abilities to invent a train of circumstances which shall be so connected together as to amount to a proof of guilt.⁴⁶

What is clear from these seventeenth century cases is that increasingly circumstantial evidence was being favoured over testimony based on the view that circumstances were free from human error or perjury; as William Paley stated in *The*

⁴³ See further Shapiro, *Historical Perspectives*, Ch. 4, and Alexander Welsh, *Strong Representations: Narrative and Circumstantial Evidence in England* (Baltimore: The Johns Hopkins University Press, 1992).

⁴⁴ *The Trial of Mary Blandy* (1752), in *Notable English Trials*, ed. by William Roughead (London and Edinburgh: William Hodge, 1914), p. 132.

⁴⁵ *The Trial of John Barbot* (1753), in *Howell's State Trials*, 21 vols (London: Hansard, 1816), XVIII, cols 1230-1322 (col. 1292).

⁴⁶ Joseph Gurney, *Trial of John Donellan* (London: [n. pub.], 1781), p. 52.

Principles of Moral and Political Philosophy (1785): ‘a concurrence of well authenticated circumstances composes a stronger ground of assurance [...] than positive testimony, unconfirmed by circumstances, usually affords. *Circumstances cannot lie*’ (my emphasis).⁴⁷ Such sentiments were also echoed in the work of noted jurist Edmund Burke: ‘when circumstantial proof is in its greatest perfection, that is, when it is most abundant in circumstances, it is much superior to positive proof’.⁴⁸

Welsh argues in his study *Strong Representations* that this preference for circumstantial evidence remained unshaken until the mid-nineteenth century. However, in an alternative assessment of the relationship between legal evidence and literary narratives, Schramm locates a weakening faith in circumstances in the debates surrounding the passing of the Prisoners’ Counsel Act. Schramm notes that a central point of debate was the extent to which facts did ‘speak for themselves’ and how much they depended upon the skill of an advocate to make it appear as though they were speaking for themselves.⁴⁹ Schramm’s point here nicely brings us back to the Prisoners’ Counsel Act and highlights the importance of those debates. As noted earlier, these debates were a crucial part of not just legal but also contemporary popular discourse surrounding the matter of representation, and brought together a number of key questions and issues surrounding the problems of representing reality and revealing the truth, most importantly those surrounding the nature of evidence. Such questions struck at the very heart of the literary critical debate also, for both the legal trial and the novel were interested in finding an answer to the question: what was the best and most effective means of narrating reality and thereby revealing truth?

⁴⁷ William Paley, *The Principles of Moral and Political Philosophy* (London: Baldwin, 1812 [1785]), p. 428.

⁴⁸ Edmund Burke, *The Works and Correspondence of the Right Honourable Edmund Burke*, 8 vols (London: Francis & John Rivington, 1852), II, p. 623.

⁴⁹ Schramm, *Testimony and Advocacy*, p. 20.

As we have seen, the passing of the Prisoners' Counsel Act was largely aided by the influential report of His Majesty's Law Commissioners, a report which expressly recognised the complexity of assessing the value of both circumstantial and testimonial evidence. To the Commissioners it was clear that it was often the case that the skill of an advocate was required to interpret evidence and present it in such a way so as to reveal the truth, not least when circumstantial evidence was involved. The Commissioners reasoned that, especially where the charge is false, justice required the skill of an experienced advocate:

It much more frequently happens that an innocent person is surprised and confused by false evidence, and rendered incapable of making an efficient defence by a forcible exposition of the improbabilities and discrepancies arising on a nice comparison of facts, which may be the only means of discovering the truth and rescuing an innocent man.⁵⁰

Following the recommendations of the Criminal Law Commissioners, the Prisoners' Counsel Act was passed and introduced into all criminal trials a model of representing reality and uncovering truth based on advocacy which tested the prosecution's case. Crucially, what this model allowed for, and the Criminal Law Commissioners recognised it was needed for, was the forensic scrutiny of all evidence (both testimonial and circumstantial) by two opposing sides who could ensure that all possible interpretations of that evidence were suggested to the minds of the jury. In the debates surrounding the passing of the 1836 Act, and also in the cases and treatises dealing with matters of evidence in the seventeenth, eighteenth and nineteenth centuries, and in the debates concerning the efficacy of trial proceedings which continued long after the passing of the Act, it is possible to discern a deep-seated and continued anxiety over how to attain that moral certainty which was required to deliver a verdict beyond reasonable doubt. The Parliamentary

⁵⁰ *Second Report*, p. 189.

debates and the Law Commissioners' report relating to the passing of the 1836 Act also demonstrate this anxiety, but they represent a consensus that a better trial model was needed to represent reality and uncover truth, one which had regard to all the evidence and every possible interpretation of it. Whilst not perhaps perfect, it was decided that a model based on advocacy and thorough assessment of all the evidence would be a more effective means of achieving this aim and so the Prisoners' Counsel Act passed into law.

Evidentiary Issues: The Problem of Defining, Assessing and Interpreting

Evidence.

Once the criminal jury trial came to be understood as a process which required jurors to determine the truth of disputed facts based on the effect of evidence, the question of how evidence should be assessed and, more fundamentally, what even constituted evidence, became increasingly important in jurisprudence. Once felony counsel restriction was removed, such questions gained an added significance as the jury found themselves presented with two alternative interpretations of that evidence: both the prosecution and defence putting forward contrasting 'cases', subordinating the evidence to their particular narrative of guilt or innocence, and each claiming their representation was the truth. In a trial model based on the interpretation of all the evidence by opposing sides, the difficulties attendant upon such a task were thrown increasingly into focus.

In their studies, both Schramm and Welsh examine how evidentiary issues affected representations in both the courtroom and literary narratives. One evidentiary problem which the two studies reveal is the problem of definition. In her critique of Welsh's study, Schramm questions the premise upon which Welsh's

thesis depends, namely, that from the eighteenth century until the second half of the nineteenth century circumstantial evidence became the favoured form of proof in both legal and literary narratives. For Schramm, Welsh's argument is flawed as it rests on making what she sees as a false distinction between testimonial and circumstantial evidence:

Welsh seems to ignore the fact that most circumstantial evidence is presented to the court in testimonial form. If 'I saw a crime committed' is direct eye-witness evidence, then telling the jury 'I saw a footprint outside the house' remains an oral assertion, even though it relates only to a subsidiary fact in issue from which the existence of the main fact (the crime) may be inferred.⁵¹

Schramm's criticism of Welsh here is one that illuminates a wider problem with terminology, a problem that stems from a lack of precision employed by nineteenth-century commentators when attempting to differentiate between different species of evidence.

Schramm is right to question the validity of Welsh's distinction, as during the nineteenth century the two opposing types of evidence were understood as being either *direct* or *indirect* (circumstantial) in nature.⁵² Both species of evidence could take testimonial, documentary or physical form:

All judicial evidence is either *direct* or *circumstantial*. By "direct evidence" is meant where the principal fact or factum probandum is attested *directly* by witnesses, things, or documents. To all other forms the term "circumstantial evidence" is applied, which may be defined, that modification of *indirect evidence*, either by witnesses, things or documents, which the law deems sufficiently proximate to be receivable as evidentiary of a principal fact or factum probandum.⁵³

⁵¹ Schramm, *Testimony and Advocacy*, p. 20.

⁵² This is still true today.

⁵³ William Mawdesley Best, *A Treatise on the Principles of Evidence and Practice as to Proofs in Courts of Common Law; with Elementary Rules for Conducting the Examination and Cross-Examination of Witnesses*, 2nd ed., (London: Hodges and Smith, 1854), Bk. 2, Ch. 1, p. 365.

However, the distinction which Welsh draws between testimony and circumstantial evidence is perhaps inherited from his source materials, in which terms were not always applied with precision.

From the sixteenth century onwards, once juries were understood to be deciding upon the effect of evidence, legal cases and treatises begin to clearly distinguish between *direct evidence* and *indirect evidence*. Direct evidence is evidence which is immediate proof of the guilt of the accused; in terms of testimony, *direct testimony* would therefore be where a witness can testify that they directly saw or heard the crime committed, for example they saw X stab Y. Indirect evidence (also called circumstantial evidence) is any evidence from which inferences can be made about the guilt of the accused. *Indirect testimony* would be where Z could testify that though they didn't directly see X stab Y, they saw X running away from the scene with a bloody knife.⁵⁴ However, a general lack of precision when applying these terms can give rise to the misconception that a distinction is being made between testimony and circumstantial evidence, as the term 'testimony' occasionally appears to be applied in a manner synonymous with 'direct evidence', when in actual fact this is not the case.

In *An Essay on the Rationale of Circumstantial Evidence* (1838), William Wills notes that 'the epithets DIRECT and INDIRECT or CIRCUMSTANTIAL, as applied to testimonial evidence, [...] have frequently been very indiscriminately applied'.⁵⁵ Wills goes on to point out that the misapplication of these terms stems from the fact that circumstantial evidence is as 'equally direct in its nature' as direct

⁵⁴ Legal cases and treatises generally talk about indirect evidence giving rise to presumptions which can have a varying degree of force. The example of a person running away from a murder scene with a bloody sword is an example of 'violent presumption' which appears in English legal treatises from the thirteenth century onwards.

⁵⁵ William Wills, *An Essay on the Rationale of Circumstantial Evidence; Illustrated by Numerous Cases* (London: Longman, Orem, Brown, Green, and Longmans, 1838), Ch. 2, p. 23.

evidence.⁵⁶ Circumstantial evidence is, after all, just ‘direct evidence of a minor fact or facts’, from which ‘some other fact is therefore inferred’.⁵⁷ The terms ‘direct’ and ‘indirect’ or ‘circumstantial’ therefore apply to the facts themselves, but as Wills points out, ‘the *evidence* of these facts is *direct*’. However, the application of these terms is complicated by a repeated use of the term ‘direct testimony’ to mean testimony of direct facts (‘I saw X stab Y’) when, in reality, *all* testimony is direct: nonetheless, throughout the nineteenth century the term ‘direct testimony’ is frequently used to signify ‘testimonial evidence of direct facts’.⁵⁸

This trend may have its roots in the fact that before the seventeenth century circumstantial evidence was viewed so sceptically that its use was reserved for the ‘secret’ crimes of rape and witchcraft, where there was no direct evidence available at all. In medieval England ‘full proof’ of a crime meant the presentation of two eye-witnesses who could testify to having witnessed the crime directly, and so testimonial evidence naturally came to be associated with direct evidence. As the legal process came to include more and more evidence of an indirect nature, judges, lawyers and jurists did increasingly pre-fix the term ‘testimony’ with ‘direct’ or ‘positive’ in order to distinguish it from indirect evidence which may have been provided in testimonial form. However, it is rarely made clear in the source materials that circumstantial evidence and ‘indirect evidence’ are synonymous, and that circumstantial evidence is usually provided in testimonial form. Consequently, terminological opacity frequently results. In the three most influential nineteenth-century treatises on judicial evidence all three jurists – Thomas Starkie, William Wills and William Best – employ their terms in an inconsistent manner, one which

⁵⁶ Ibid., p. 24.

⁵⁷ Ibid.

⁵⁸ The term ‘positive testimony’ is also commonly used.

can easily lead to the conclusion that the distinction is to be made between testimony and circumstantial evidence, rather than direct and indirect evidence.

Barbara Shapiro has identified the dominant legal treatise of the nineteenth century as Thomas Starkie's *A Practical Treatise of the Law of Evidence* (1824), in which Starkie appears to place evidence into the two opposing categories of testimony and circumstantial evidence: 'evidence to be weighed by a jury consists either in, 1st, the direct testimony of witnesses; or 2^{ndly}, indirect or circumstantial evidence'.⁵⁹ Starkie then goes on to discuss the 'direct testimony of witnesses' in terms which imply testimony is a species of evidence in and of itself, wholly unrelated to the category of circumstantial evidence. At other points Starkie makes clear the distinction is really to be made between direct and indirect evidence, writing of direct evidence being used to 'prove a disputed fact *by the aid of testimony*' (my emphasis).⁶⁰ And yet Starkie's insistence on writing about circumstantial evidence in contrast to the direct testimony of witnesses, is less than clear. Like Starkie, Wills and Best also largely centre their discussions of direct evidence around testimony. Yet, rather than discussing the means of bringing indirect evidence forth (including testimony), the jurists tend to focus on how individual circumstances might form chains, or raise presumptions, which can indicate where guilt lies, despite a lack of direct evidence. As direct evidence requires (in theory) no inferences to be drawn, discussions naturally focus on the mode of providing that evidence; and so the term testimony comes to be more associated with evidence that is direct rather than circumstantial.

The complex signifying web of terms in the law of evidence is also apparent in modern studies. Shapiro's *Beyond Reasonable Doubt* is a good example of this,

⁵⁹ Thomas Starkie, *Law of Evidence*, I, p. 480.

⁶⁰ *Ibid.*, I, p. 48.

for in her discussion of the changing conceptions of different types of evidence, Shapiro, at moments, appears to be aligning testimony with direct evidence alone.⁶¹ Yet Shapiro obviously understands that the real distinction is between direct and indirect evidence, acknowledging in the conclusion to her final chapter that ‘a central problem to the jury’s fact-finding’ was that circumstantial evidence was presented in testimonial form.⁶² A similar ambiguity over terminology is present in Alexander Welsh’s *Strong Representations*. Throughout his study Welsh appears to treat circumstantial and testimonial evidence as though they are entirely separable and distinct species of evidence. There is a moment in his preface when Welsh appears to make the distinction between *direct* testimony (‘I saw X commit the crime’) and circumstantial evidence (whether introduced by testimony or otherwise).⁶³ Unfortunately, through the rest of his study Welsh lapses into simply using the term ‘testimony’, as in his analysis of *Tom Jones*, where he argues that the whole narrative is ‘against testimony in one form or another’ and an ‘onslaught upon testimony’.⁶⁴ By continually referring to an opposition between circumstantial and testimonial evidence and not clarifying fully what he means by testimonial evidence, Welsh’s analysis comes to rest on a distinction which, as Schramm quite rightly points out, does not exist, because ‘testimony serves as the vehicle by which all [circumstantial] evidence is presented to the court’.⁶⁵ Welsh’s study, and Schramm’s criticism of it, therefore demonstrate the care needed when applying terms.

⁶¹ The problem for Shapiro appears to be the same issue which nineteenth-century jurists faced: as direct evidence does not require careful interpretation in the same way which indirect evidence does, discussions centering on direct evidence tend to focus on the mode in which it is brought into court, that is, via testimony. As such, ‘testimony’ comes to be used as a synonym for ‘direct evidence’, which is confusing as testimony is also the means by which indirect evidence is introduced into court.

⁶² Shapiro, *Historical Perspectives*, p. 242.

⁶³ Welsh, *Strong Representations*, p. ix.

⁶⁴ Welsh, quotations at p. 57 and p. 61. Welsh does at various points in the text use the full term ‘direct testimony’, but inconsistently and it is nowhere made clear that he is using the term ‘testimony’ as a short hand for ‘direct testimony’.

⁶⁵ Schramm, *Testimony and Advocacy*, p. 19.

Another important criticism which Schramm levels at Welsh is that he locates a declining faith in circumstantial evidence in the second half of the nineteenth century, when in actual fact a distrust of circumstantial evidence emerged much earlier. Welsh's argument proceeds from the view that from the late eighteenth century until the mid-nineteenth century, circumstantial evidence became the favoured type of proof: a preference rooted in the maxim '*circumstances cannot lie*'.

Welsh notes how during the late eighteenth and the nineteenth centuries:

narrative[s] consisting of carefully managed circumstantial evidence, highly conclusive in itself and often scornful of direct testimony, flourished everywhere – not only in literature but in criminal jurisprudence, natural science, natural religion, and history writing itself.⁶⁶

Yet Schramm has shown how central to the Prisoners' Counsel debate was the question over the extent to which 'facts' required interpretation by a skilled advocate in order to function effectively as evidence in the minds of the jurors. In contrast to Welsh, Schramm argues that the debates over this central issue dates the weakening of legal, political and public opinion regarding the reliability of circumstantial evidence much earlier :

The late eighteenth-century idea of 'facts speaking for themselves' became increasingly discredited as both lawyers and authors realised that professional representations were required to render 'facts' effective as pieces of evidence.⁶⁷

Schramm takes issue with what she sees as a failure in Welsh's argument to recognise 'a genuine paradigmatic shift in the representation of fact itself in courts of law in the early decades of the nineteenth century'.⁶⁸ For Schramm, a major driving force behind the passing of the Prisoners' Counsel Act was the recognition that the 'complicated construction of inferential argument' was a necessary part of

⁶⁶ Ibid.

⁶⁷ Schramm, *Testimony and Advocacy*, p. 20.

⁶⁸ Ibid.

uncovering the truth.⁶⁹ Schramm's issue with Welsh's argument is that whilst he acknowledges 'the rhetorical effort involved in making "facts speak for themselves"' he 'seems to posit something of a seamless continuity between the eighteenth century notion that "circumstances cannot lie" and the complicated construction of inferential argument which both lawyers and authors demonstrated as the nineteenth century began'.⁷⁰ Schramm therefore identifies in Welsh's analysis a missing link, a failure to fully explore by what it means for narratives to 'explain' what was supposed to be self-evident. By placing the decline in the faith in circumstantial evidence after mid-century, what Welsh's analysis misses, Schramm claims, is the fact that the much earlier recognition of the complexity of circumstances opened the way 'for legal and literary feats of analysis and rhetorical power'.⁷¹

Contemporary newspaper and magazine articles also bear out Schramm's claim. In one 1820 article 'On Circumstantial Evidence', two cases are offered up as examples 'of wrongful conviction on circumstantial evidence', though the reader is warned that these are just two instances among many.⁷² In 1828, a front-page article in *The Kaleidoscope* laments the fact that 'many of our fellow-creatures have been judicially condemned, and executed, upon presumptive or circumstantial evidence, which was discovered to be fallacious after the execution of the presumed criminal'.⁷³ Again an example case is given, demonstrating how misleading such evidence can be no matter how 'plausible and connected' it appears.⁷⁴ Such articles are not rare and continue into the 1830s and 40s, typically giving examples of cases where circumstantial evidence has been misleading, or manipulated in order to make

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid., p. 21.

⁷² 'On Circumstantial Evidence' *Newcastle Magazine*, 1 (1 September 1820), 78-87 (p. 79).

⁷³ 'Circumstantial Evidence', *The Kaleidoscope or, Literary and Scientific Mirror*, 8 (20 May 1828), 385-386 (p. 385).

⁷⁴ Ibid.

the innocent appear guilty.⁷⁵ However, such articles do not simply demonstrate an increasing distrust of circumstantial evidence, but also a growing awareness of the difficult task of assessing evidence in general. Increasingly, the validity of the popular eighteenth-century maxim ‘circumstances cannot lie’ was questioned during the nineteenth century, as such articles demonstrate. However, this was not replaced by a renewed preference for direct evidence alone, but rather an understanding that all evidence whether direct or indirect (testimonial or not) should be treated with caution. This is clear from the article in *The Kaleidoscope* which both warns of the dangers of circumstantial evidence and notes that such evidence ‘is often more to be depended upon than what is called direct evidence’, highlighting only that it might be as ‘equally deceptive’.⁷⁶ What such articles demonstrate is a concern with evidence in general, and the question of whether it is possible (and if so, how far possible), to be sure that the truth has been uncovered.

The difficulty of this task, and the extent to which this was part of popular debate, is reflected in a letter published in *Blackwood’s Edinburgh Magazine* in May 1842. The letter is entitled ‘Who is the Murderer?: A Problem in the Law of Circumstantial Evidence, in a Letter to Christopher North’. The author of the letter, the lawyer Samuel Warren, takes twenty-six pages to consider a recent trial for murder at the spring assizes, one which he considers to be of ‘peculiar interest and

⁷⁵ *Chambers’s Edinburgh Journal* publishes a series of articles in this vein which appear throughout the 1830s and 1840s. See, for example: ‘Discovery and Punishment of Murder by Circumstantial Evidence’, *Chambers’s Edinburgh Journal* 6 (11 March 1832), 41-42; ‘Dangers of Circumstantial Evidence’, *Chambers’s Edinburgh Journal* 90 (19 October 1833), 300-301; ‘Circumstantial Evidence’, *Chambers’s Edinburgh Journal* 300 (28 October 1837), 319; ‘Circumstantial Evidence’, *Chambers’s Edinburgh Journal* 427 (4 April 1840), 87-88; ‘Anecdote of Circumstantial Evidence’, *Chambers’s Edinburgh Journal* 301 (6 October 1849), 223.

⁷⁶ ‘Circumstantial Evidence’, *The Kaleidoscope*, 385-386.

difficulty'.⁷⁷ The public anxiety with which this letter deals is made clear to the reader:

Who indeed, here or elsewhere, can fail to be profoundly interested on behalf of justice when in quest of a *great criminal*, and endeavouring, spite of a long lapse of time, to frustrate all his devices for secrecy and concealment; – and in ascertaining that neither the innocent has been condemned, nor the guilty acquitted?⁷⁸

The letter goes through the evidence of the case (an old unsolved murder), as Warren demonstrates the enormous effort required to correctly interpret evidence. Warren discusses the details of the case in great detail and demonstrates how all the various circumstances of the case might be explained in a variety of different ways, some of which indicate the innocence, some the guilt, of the accused, and all of which are perfectly reasonable and believable explanations of the evidence:

Now, in the present case, here is a man suddenly missing, known to have been possessed of a considerable sum of money – the prisoner to have been aware of it – to have been seen in his company up to almost the last moment before his disappearance – to become suddenly enriched, having previously been a pauper – and in possession of very many articles of clothing belonging to the missing man. All these circumstances point one way; but then, on the other hand, no attempt is made to conceal his possession of either money or clothes, nor to escape or quit the neighbourhood during the time when suspicion was the hottest. Then he certainly gives contradictory answers concerning the way in which he became possessed of these matters – but all *may* be reconciled with the story he tells [...] is this not indeed a striking specimen of the importance of, and the difficulties attending, circumstantial evidence?⁷⁹

In the end, Warren requires his readers to imagine themselves in the position of the jurors and asks, based on the evidence, what their verdict would have been. In this

⁷⁷ [Samuel Warren], 'Who is the Murderer?: A Problem in the Law of Circumstantial Evidence', in a Letter to Christopher North, *Blackwood's Edinburgh Magazine*, 51 (1842), 553-578, (p. 553).

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*, 575 – 576.

way, Warren draws the reader's attention to the evidentiary issues which the trial process faces, and how these problems should be a matter of public concern.⁸⁰

The difficulty of interpreting evidence was something that was keenly recognised in the Prisoners' Counsel debates. The fundamental importance of allowing all evidence to be fully scrutinised by skilled advocacy on both sides, and the deficiencies in evidence which were barriers to determining the truth, were key discussion points. In calling for a change in the law in 1824, Mr George Lamb (who proposed the Bill), urged that counsel for both sides should be fully allowed in order that the evidence be 'sifted and examined thoroughly'.⁸¹ Lamb argued that prisoners were simply not up to the job of defending themselves in the manner of an attorney, often 'too absorbed in the difficulties of [their] unhappy circumstances' or of an 'inferior mind and talent' to 'skilful and able advocates'.⁸² Sir James Mackintosh put forth a similar argument in his support of the Bill, highlighting the disadvantage a prisoner had in not being aware of the rules of evidence, arguing that 'the best mode of reaching the truth' was to employ 'learning and talent' on both sides.⁸³ The importance of ensuring that both sides were equally put forward through the skilful management and presentation of evidence was best summed up by Dr Lushington in his reflection on Garrow's notorious 'hanging speech' in *R v. Patch*:

Take the case of Patch, which had already been referred to. He well remembered that celebrated trial, and he also remembered that, when the leading counsel for the prosecution had concluded his address, the observation made upon it was, "that is one of his hanging speeches." Not that he had tried to rouse the jury – that would not have been permitted; on the contrary it was a most cool and connected statement of facts. It was a case of circumstantial evidence merely, and the proof of the guilt of the prisoner depended upon the skilful dove-tailing of the various circumstances, so as to render the case a whole and consistent piece of ingenuity. The jury were led

⁸⁰ Ibid., 578.

⁸¹ *Parliamentary Debates*, 1824, col. 183.

⁸² Ibid., at cols 181 and 186.

⁸³ Ibid., cols 202-203 (col. 203).

step by step to a persuasion of guilt of the party accused; hence it was called a “hanging speech,” and the result confirmed the opinion. On the other hand, the prisoner, whose life was at stake, who had never addressed a court before, was called upon to meet this able statement without the slightest preparation; he was to follow an ingenious counsel through an address of an hour and twenty minutes, to point out its inconsistencies, to unravel the web, to avail himself of doubts, and to convince the jury of his innocence. Not one prisoner in five thousand could be competent to such an undertaking.⁸⁴

Lushington’s reflection on the Patch case highlights the fact that a good deal of the force of evidence stems from the way in which it is presented, and reveals the importance of the advocate’s role in using evidence to create what Welsh terms a ‘strong representation’. But more than that, it stresses the importance of both sides having an opportunity to put forward their own strong representation, so the jury can fairly decide upon the effect of evidence.

Both Schramm’s and Welsh’s studies are invaluable in illuminating the complex nature of the intersections which occur during the nineteenth century between law and literature over the matter of representation. In particular they are both central to establishing how the increasing awareness of evidentiary problems became a crucial issue which representations in both novels and the courtroom had to face and try to resolve. For Welsh, these evidentiary issues were overcome by a distrust of testimony and a faith in circumstantial evidence but, as Schramm has pointed out, Welsh misses the significance of the Prisoners’ Counsel debates and so largely ignores the issues pertaining to a reliance on circumstances which were surfacing in the early nineteenth century. Conversely, Schramm’s focus on one of the debate’s key questions – the extent to which facts could be said to speak for themselves or needed skilled representation by an advocate – leads her to focus on how testimonial evidence emerged at the end of these debates as central to the criminal jury trial’s model of representing reality, albeit that it would now be

⁸⁴ Ibid., col. 210.

appropriated by advocates and subordinated to the representations which they made. As a result, Schramm's focus is largely on the negative impact of adversarialism and the ethical questions it raised. This leads her to identify a competition emerging during the nineteenth century between law and literature over the matter of representation. What Schramm does not give sufficient attention to, however, and what Welsh overlooks in his focus on the opposition of testimony and circumstantial evidence, is that an important effect of the introduction of the adversarial-evidentiary model into felony trials was that it provided for the close scrutiny of all the available evidence so that different possible interpretations of that evidence suggested themselves to the minds of the jury. This was a significant advantage of the adversarial-evidentiary model in the minds of the Criminal Law Commissioners, and its importance should not be overlooked.

It is true that Welsh's study is misleading in that it appears to maintain a distinction between circumstantial evidence and testimony which links the careful arrangement and narration of circumstances to a preference for circumstantial evidence. Nevertheless, one thing Welsh's study does show is the fundamental importance in legal cases of creating a connected narrative which subordinates evidence to the story being told. This is what adversarialism (fully introduced by the 1836 Act) provided for, so that all the evidence could be weighed and connected together as a narrative that persuades us of its truth. The continued imposition of felony counsel restriction provided the prosecution with an advantage over the defence team, for in their address to the jury the prosecution were able to piece together all the facts and evidence of the case in a connected and comprehensible narrative. The advantage of this was highlighted during the eighteenth century by the noted jurist Edmund Burke who advocated such an approach to the presentation of

evidence, arguing that through a connected narrative, the ‘multitude’, ‘combination’ and ‘relation’ of facts may reveal the truth through their ‘collective effect’.⁸⁵ By contrast, counsel for the defence had to rely upon the examination of witnesses as the primary means of suggesting an alternative interpretation of events to the jurors. Prominent judge and jurist Sir James Fitzjames Stephen noted in his *A History of the Criminal Law of England* that, before the introduction of the Prisoners’ Counsel Act, when a defendant’s counsel was not permitted to speak on their behalf, ‘the cross-examination tended to become a speech thrown into the form of questions’.⁸⁶ Indeed, supporters of a full defence counsel argued that the prosecution’s address to the jury provided them with an unfair advantage precisely because by presenting the facts and evidence in a coherent structure, they were able to put forward a particular interpretation of events suggestive of guilt, and that by denying the defence a similar right, alternative interpretations might not suggest themselves to the jury. As the Criminal Law Commissioners suggested: ‘the giving order and connexion to a mass of facts tends to impress the Jury with their materiality and to impart greater force to the evidence than it would otherwise possess’.⁸⁷ This is what the Prisoners’ Counsel Act provided for, and ensured that all evidence became equally important to the narrative of innocence.

Schramm argues that character-focused narratives become in the nineteenth century narratives of innocence, as authors become preoccupied with establishing the innocence and goodness of their protagonists. I have posited the view that by providing the space to hear the protagonist’s story in their own words, the character-focused novel represents a rejection of those adversarial, forensic methods of

⁸⁵ Edmund Burke, in a Report from the Committee of the House of Commons on 30th of April 1794, in *Works*, VIII, p. 96.

⁸⁶ Sir James Fitzjames Stephen, *A History of the Criminal Law of England*, 3 vols (London: Macmillan, 1883), I, 431.

⁸⁷ *Second Report*, p. 196.

representation which were coming to dominate the criminal court post-1836. Yet this is not to say that all nineteenth-century novels were doing the same. As the century drew on, the ‘accused speaks’ model of representation became increasingly difficult to sustain, and as the character-focused novel’s mode of representation moved evermore into the interior life of the individual, a new genre of fiction would emerge, and would engage openly with the problems of evidence and representation which led to a rejection of the ‘accused speaks’ model of criminal trial in 1836. This genre was that of sensation fiction, and it would seek an alternative model of representation to that of the character-focused novel, and in so doing fully embrace adversarial-evidentiary methods in its representations of truth and reality.

From *Adam Bede* to *Middlemarch*: Eliot’s Narrators and the Decline of the Knowable Community

As nineteenth-century society progressed and evolved, the knowable community fell into decline. Increased opportunities for social advancement and geographical migration brought with them reduced opportunities to know one’s neighbours, tenants, landlords, even friends, and so the nineteenth century saw a decline in the faith in our ability to accurately know and judge those around us. This reassessment of social ties was in part responsible for the introduction of the 1836 Prisoners’ Counsel Act, as can be seen from the influential *Second Report* from His Majesty’s Criminal Law Commissioners who stressed the difficulty in correctly judging the characters of others, and the dangers of seeking to do so.⁸⁸

Unlike in the felony trial, novelists were not required to abandon a character-focused mode of representing reality, but the challenges which presented themselves

⁸⁸ See *Second Report*, pp. 183-314.

to the justification of such a model can also be identified in the development of nineteenth-century novel narratives, especially in the use and development of the omniscient narrator. This development can be seen quite clearly in the works of George Eliot: as Lisa Rodensky has noted, the ‘narrative method that proceeds from the outside in’ in *Adam Bede*, shifts to a ‘narrative method that proceeds from inside out’ by the time Eliot is writing *Middlemarch* (1871-2).⁸⁹ The subtle shifting of the narrator’s vantage point in her later fiction reveals that, whilst character-focused novelists may well have favoured the ‘accused speaks’ model for their representations of reality, the continued use of a model reliant on the possibility of having accurate knowledge of the characters of others becomes problematic when the knowable community begins to disappear.

During the nineteenth century, the inner life of the individual becomes increasingly a source of interest. J. Hillis Miller has noted how ‘the rise of the novel is associated with a new discovery of the autonomy of the private mind’.⁹⁰ This new sense of the interior becomes ever more central in fiction as the reality which the novel seeks to represent becomes increasingly alien and isolating. As Raymond Williams has pointed out, the isolation of the individual is especially striking in writing which dealt with the disorientating experience of the modern city. He cites Engels (writing in 1844):

The very turmoil of the streets has something repulsive, something against which human nature rebels [...] all ranks crowding past each other, are they not all human beings with the same qualities [...] And still they crowd by one another, as though they had nothing in common, nothing to do with one another [...] The brutal indifference, the unfeeling isolation of each in his private interest.⁹¹

⁸⁹ Lisa Rodensky, *The Crime in Mind: Criminal Responsibility and the Victorian Novel* (Oxford: Oxford University Press, 2003), p. 85.

⁹⁰ J. Hillis Miller, *Victorian Subjects* (Hemel Hempstead: Duke University Press, 1991), p. 91.

⁹¹ Friedrich Engels, *The Condition of the Working Class in England in 1844*, trans. by F. K. Wischnewetzky (London: 1934), p. 24. Cited in Raymond Williams, *The Country and the City* (Oxford: Oxford University Press, 1973), pp. 215-216.

Often in the nineteenth century the city is contrasted with the countryside, but again as Williams highlights, by the time Thomas Hardy is writing in the late nineteenth century, it is clear that the formation of the modern city has similarly impacted rural life and forced the decline of the knowable community:

The village had formerly contained, side by side with the agricultural labourers, an interesting and better-informed class, ranking distinctly above the former – the class to which Tess’s father and mother had belonged – and including the carpenter, the smith, the shoemaker, the huckster, together with nondescript workers other than farm-labourers; a set of people who owed a certain stability of aim and conduct to the fact of their being life-holders like Tess’s father, or copy-holders, or, occasionally small free-holders. [...] These families who had formed the backbone of village life in the past, who were the depositories of the village traditions, had to seek refuge in the larger centres; the process, humorously designated by statisticians as “the tendency of the rural population towards the large towns” being really the tendency of water to flow uphill when forced by machinery.⁹²

In chapter one I noted the ease with which Eliot’s narrator in *Adam Bede* tells her tale. If one contrasts this with the narrative voice in *Middlemarch*, it becomes clear that the task of narrating reality through an omniscient narrator has become more complex in this later novel. The action in *Middlemarch* takes place between 1829-32, and is the study of a provincial town on the cusp of change. Unlike *Adam Bede*, *Middlemarch* is set in a recent past, in a more complicated nineteenth-century social structure undergoing reformulation: gone were the days when ‘summer afternoons were spacious, and the clock ticked slowly in winter evenings’.⁹³

Middlemarch represents the knowable community in decline, in which the conditions are no longer ripe for the knowledge of others. This is noticeably seen in the extent

⁹² Thomas Hardy, *Tess of the d’Urbervilles*, ed. by David Skilton (London: Penguin, 1985 [1891]), Ch. 51, pp. 435-436. This citation, together with the Engel’s citation at note 74, are two which Raymond Williams provides as evidence of the decline of the knowable community: see Williams, *Country*, p. 208.

⁹³ George Eliot, *Middlemarch*, ed. by David Carroll (Oxford: Oxford University Press, 1998 [1872]), Bk. 2, Ch. 15, p. 132. Further references to this edition are given after quotations in the text.

to which characters misunderstand and misread each other, interpreting the actions or words of others in a way that corresponds to their own, limited, world-view. The lack of insight into the minds of others leads to two disastrous marriages during the course of the novel simply because those involved have no real knowledge of the character of the other: ‘she was as blind to his inward troubles as he to hers [...] she had not yet listened patiently to his heart-beats, but only felt that her own was beating violently’ (Bk. 2, Ch. 20, p. 188).

This inability to judge and assess accurately the characters of others is also reflected in the role of the omniscient narrator, which in a novel like *Middlemarch* is much more complex. Rodensky’s identification of the decline of the narrator’s ability to move seamlessly from external observation to the internal thoughts of the characters is important to note again here, for it demonstrates the difficulty of accessing the thoughts of others and so reveals an increasing awareness of the difficulty of attempting to make sense of a reality in terms of understanding the characters of others and their relationships.⁹⁴ The textual strains which begin to emerge through the continued use of a narrator who claims to have unfettered access to the minds of characters so tragically cut off from one another, therefore demonstrates the struggle with which novelists were faced when trying to represent (and so make sense of) a reality no longer underpinned by a knowable community. Such textual strains are observed by J. Hillis Miller in his essay ‘Optic and Semiotic in *Middlemarch*’. In his reading, Miller uncovers the unreliability and contradictions in Eliot’s use of metaphor in the novel. For example, the narrator appears able to transcend all human limitations by employing ‘all the light that [she] can command’ in order to reveal universal truths by offering the reader a series of interlinking

⁹⁴ Rodensky, *Crime in Mind*, p. 85. Rodensky is interested in this shift in terms of its implications for Victorian conceptions of criminal responsibility.

metaphors to demonstrate how Middlemarch (and by extension all societies) operate.⁹⁵ At the same time, the narrator also argues that individuals are only able to see the 'whole picture' subjectively, as distorted by their own egos. So, as the candle placed in front of the mirror makes the random scratches on it appear as concentric circles, so 'Rosamond interprets what happens around her as being governed by her private providence'.⁹⁶ Miller questions how it is that a narrator who claims such things as being universal in their application, can then be exempt and maintain an objective vision. For Miller, the narrator cannot be so exempt, and so all the light she claims to command becomes a subjective light, and so the reality represented is revealed as one which is necessarily distorted by the narrator's own unique standpoint.

Miller's analysis draws attention to the struggle of the narrator to narrate reality in an objective manner through the consciousness of characters whose cognisance of that reality can only ever be subjective. As such, the novelist can be seen to be engaging with the same issues confronting the criminal jury trial, especially the recognition that the accurate assessment of the characters of others was far from a straightforward matter. This issue in particular is implicitly touched upon in Eliot's work through her characters' increasing isolation from one another. Through the evolution of her omniscient narrator, Eliot seeks to adapt her representational methods to come to terms with this fact. Yet her continued employment of the omniscient narrator in her novels despite the increasing problem of doing so, demonstrates a sustained commitment to this character-based model of representation and reveals the struggle to find the most effective means of employing it.

⁹⁵ J. Hillis Miller, 'Optic and Semiotic in *Middlemarch*', in *Middlemarch: New Casebooks*, ed. by J. Peck (Basingstoke: Macmillan, 1992), pp.65-83 (p. 69).

⁹⁶ *Ibid.*, p. 77.

As Levine has suggested, the continued attempts of authors like Eliot to represent ‘a reality that appears increasingly unnameable’ demonstrate an ‘intense commitment’ to ‘speaking the truth’ and reflect a ‘need to reorganise experience and re-invest it with value for a new audience reading from a new base of economic power’.⁹⁷ What Levine draws attention to here is the underlying desire of the novelist to make sense of a world which is becoming ‘increasingly unnameable’ and derive from it some sense of order and meaning. As Peter Brooks’s study *Realist Vision* implies, the novel represents, as much as anything else, an attempt to prove that this is possible.⁹⁸ This purpose of the novel can be identified in Dickens’s *Bleak House* (1852-3), where the text itself becomes an act of interpretation and piecing together of a (fictional) reality in order to invest the experience of reality with value and meaning. This project is one in which both the readers and the characters within the novel are engaged. A large proportion of the characters in the novel seek to discover who they are and their place in the world. The various attempts by the characters to unravel the mysteries of their own lives reflects a desire to find meaning and value in the personal experience of an overwhelming reality. This meaning, in the end, is located in the characters coming to understand who they are and who others are in relation to them. Like the fog that appears to seep out of the Court of Chancery, there is a pervasive fear in *Bleak House* that, just as in the case of *Jarndyce v. Jarndyce*, the challenge of interpreting, understanding and representing reality is so complex that value and meaning will forever elude not only the characters, but the reader as well. The success of a character like Esther in mastering her own reality in the end, provides the reader with the hope that the same is possible for them.

⁹⁷ George Levine, *The Realistic Imagination: English Fiction from Frankenstein to Lady Chatterley* (Chicago: University of Chicago Press, 1981), p. 12.

⁹⁸ Peter Brooks, *Realist Vision* (New Haven: Yale University Press, 2005), pp. 1-3.

I have argued that the character-focused novel of the nineteenth century adopted an ‘accused speaks’ model of representation. The decline of the knowable community, however, complicated the character-focused novel’s attempts at representing reality, not least in its use of an omniscient narrator. The character-focused novel’s representational mode was then frustrated further as people’s understanding of the stability of character began to change. In many nineteenth-century character-focused novels the characters appear knowable because they do not really change. In *The Last Chronicle of Barset*, the reader knows how Mrs Proudie will react in every circumstance because the nature of her character is immutable. Characters may err, they may make poor choices, but we know that despite Johnny Eames’s mistakes he will always love Lily Dale. Similarly, in *Pride and Prejudice*, it is not so much a case of Darcy’s character changing but rather of Elizabeth coming to know his true character, just as in *Persuasion* (1818) it is a case of Captain Wentworth and Anne Eliot discovering that the other has not fundamentally changed in character or affection. Likewise, Adam may learn to extend his sympathy by the end of *Adam Bede*, but the essential nature of his character, that he is good, does not alter. As Levine concludes, there is something about these characters which gives them an ‘artificial clarity that is dramatically unconvincing. Even as Eliot tries to complicate our sense of their moral rigidities, their characters seem too close to being fixed in marble’.⁹⁹ By contrast, Levine notes how the more authentic portrayal of character comes in Eliot’s later works such as *Daniel Deronda* (1878) because characters like Daniel are ‘not quite’ dramatically successful.¹⁰⁰

What Levine touches on here is explored in greater detail in the work of Mikhail Bakhtin. In ‘Epic and Novel’, Bakhtin argues that the nineteenth century

⁹⁹ Levine, *Realistic Imagination*, p. 273.

¹⁰⁰ *Ibid.*

novel ‘reflects more deeply, more essentially, more sensitively and rapidly, reality itself in the process of unfolding’ because it is a ‘developing genre’.¹⁰¹ A key reason for the success of the nineteenth-century novel’s representations of reality is because the ‘transferral of the image of an individual from the distanced plane to the zone of contact with the inconclusive events of the present (and consequently the future) result in the radical re-structuring of the image of the individual in the novel’.¹⁰² This ‘radical re-structuring of the image of the individual in the novel’ undergoes further examination in Bakhtin’s work on the *Bildungsroman*. Bakhtin examines how the formulation of the hero and heroine in the *Bildungsroman* is crucial to the development of the novel’s realistic effect. Bakhtin explores how during the nineteenth century there developed a type of *Bildungsroman* which he terms the ‘realistic novel of emergence’ in which the hero or heroine emerges alongside the changing world. For Bakhtin, the heroes and heroines of the nineteenth-century novel become more real, more convincing as people, because their characters change and develop in response to a changing world around them.¹⁰³

The recognition that characters change and develop had implications for the character-focused novel’s use of an ‘accused speaks’ model of representation which rested on the assumption that it was possible to have knowledge of the characters of others; an assumption which itself rested on the implied assumption that the characters of others could be known because they did not change. Once the nineteenth-century novel began to explore the development of character, the matter

¹⁰¹ Mikhail Bakhtin, ‘Epic and Novel’, in *The Dialogic Imagination*, ed. by Michael Holquist, trans. by Caryl Emerson & Michael Holquist (Austin: University of Texas Press, 2004 [1975]), pp. 3-40 (p. 7).

¹⁰² *Ibid.*, p. 35.

¹⁰³ See Mikhail Bakhtin, ‘The *Bildungsroman* and Its Significance in the History of Realism (Toward a Historical Typology of the Novel)’, in *Speech Genres and other Late Essays*, ed. by Caryl Emerson and Michael Holquist, trans. by Vern W. McGee (Austin: University of Texas Press, 2007 [1979]), pp. 10-59.

of representation became increasingly complicated, for once it was accepted that people's characters are not fixed, the assumption that it is possible to have knowledge of the characters of others was thrown further into question. As Rodensky suggests, we see in the later novels of George Eliot the retreat of the narrator into the subjective private mind of the individual, a retreat which further stretches and challenges the 'accused speaks' model of representation because it suggests that the minds of these characters can no longer be fully known by those acquainted with them.

In a novel like Dickens's *Oliver Twist* (1837-9), written in the first half of the nineteenth century, the matter of representing reality is relatively straight-forward. That Oliver is a good, honest, middle-class boy is plain for all to see. Indeed, Mr Brownlow goes so far as to declare that he would be willing to 'answer for that boy's truth with [his] life' (Ch. 14, p. 108), the reader may well feel the same. Oliver's story is that of one boy's struggle to find his true place in the world. This is the same challenge that Pip faces in *Great Expectations* (1860-1), yet Pip's struggles are made more complex by the use of a first person narrative which demonstrates the subjective nature of Pip's experience of reality. What we see in Pip's development in *Great Expectations* – in particular in his projection of his fantasies regarding Estella onto reality, which lead him to conclude Miss Havisham is his benefactress – is the extent to which Pip's mind distorts reality through his own subjective vision. We see a similar pattern in the work of other novelists too, even in the work of Anthony Trollope, who relied so heavily on the presentation of character for his success. J. Hillis Miller has pointed out that throughout Trollope's novels his characters 'are as transparent to one another as they are to the inward vision of the narrator', and Miller suggests that this transparency is a product of Trollope's 'faith in the permanence of

each man's character' within small, stable and ultimately knowable communities.¹⁰⁴ However, Miller identifies one of Trollope's last novels, *The Way We Live Now* (1875), as a text which 'denies all laws of [his] earlier works'.¹⁰⁵ Unlike his previous novels, *The Way We Live Now* shows the disappearance of the knowable community and its replacement with a new way of life, epitomised by city living and capitalism, in which 'cash payment' has become 'the universal sole nexus of man to man'.¹⁰⁶ As Miller neatly summarises:

The Way We Live Now also lacks the transparency normal in Trollope's novels. It is full of mysteries and opacities. The characters are again and again said not to be able to understand one another. Melmotte is the centre of fascinated attention just because nobody knows whether he is a scoundrel or a great financier, as in *The Last Chronicle* the blank place of the Reverend Crawley's loss of memory is the centre of concern for the community. In *The Last Chronicle* the blank place is opened at last to everyone's gaze and what is found ensures Trollope's world. In *The Way We Live Now* the opposite is the case. Melmotte is a great thief as most people come to suspect, but in his suicide he takes his secrets to the grave and remains a mystery to the end.¹⁰⁷

As the 'accused speaks' model is increasingly thrown into question during the nineteenth century we see characters within novels ever more cut off from one another, and novelists increasingly exploring the idea of reality as a subjective experience. By the end of the century this exploration has, in some cases, led to representations of reality being made in radically subjective ways: the impressionism of Joseph Conrad in works such as *Heart of Darkness* (1898-9) and *Lord Jim* (1899-1900), for example.¹⁰⁸ In the 1860s, the sensation novel responds to this challenge by turning towards those methods employed in the criminal courtroom post-1836 in order to achieve more accurate representations of reality.

¹⁰⁴ Miller, *Victorian Subjects*, p. 85.

¹⁰⁵ *Ibid.*, p. 86.

¹⁰⁶ Thomas Carlyle, 'Chartism', in *Selected Writings*, ed. by Alan Shelston (Harmondsworth: Penguin, 1986), pp. 149-232, quotations at p. 193. 'Chartism' was written in 1839.

¹⁰⁷ Miller, *Victorian Subjects*, pp. 86-87.

¹⁰⁸ For a detailed analysis of Joseph Conrad's Impressionism see John G. Peters, *Conrad and Impressionism* (Cambridge: Cambridge University Press, 2001).

Engaging in the Debate: Sensation Fiction and the Representation of Reality

Schramm's examination of the impact of the 1836 Prisoners' Counsel Act on literary representations of reality centres on the character-focused novel. However, her identification of the 'competition' which emerged between law and literature during the nineteenth century over the matter of representation raised the question of what other types of novels might be implicated in this competition over how to achieve the most accurate representation of the real. Not long after reading Schramm's study, I was struck by the distinction Anthony Trollope makes in his autobiography between character-focused (in Trollope's terms, 'realistic') novels and 'sensational' novels, which is worth citing again in full here:

Among English novels of the present day, and among English novelists, a great division is made. There are sensational novels and anti-sensational; sensational readers and anti-sensational. The novelists who are considered to be anti-sensational are generally called realistic. [...] The readers who prefer the one are supposed to take delight in the elucidation of character. They who hold the other are charmed by the gradual construction of the plot.¹⁰⁹

The distinction which Trollope makes prompted me to think about the construction of the sensation novel, and whether or not its narrative strategies – which, as Trollope tells us, focus on plot construction – could be related to the narrative strategies employed in courts in post-1836 felony trials.¹¹⁰

John Sutherland has noted how sensation novels were so named for two reasons. Firstly, because of the physical stimulation they produced on the body,

¹⁰⁹ Anthony Trollope, *An Autobiography*, ed. by Michael Sadleir and Frederick Page (Oxford: Oxford University Press, 2008 [1883]), pp. 226-227. Further references to this edition will be given after quotations in the text.

¹¹⁰ Trollope, however, also noted that he felt 'a good novel should be both' (*Autobiography*, p. 227). For an analysis of how Trollope blends sensationalism with his own realistic effects, see Jenny Bourne Taylor, 'Trollope and the Sensation Novel', in *The Cambridge Companion to Anthony Trollope*, ed. by Carolyn Dever and Lisa Niles (Cambridge: Cambridge University Press, 2011), pp. 85-98. For a more general discussion on the relationship between realism and sensation fiction see Daniel Brown, 'Realism and Sensation Fiction', in *Sensation Fiction*, ed. by Gilbert, pp. 94-106.

creating ‘sensations’ through their narrative strategies of shock and suspense; and secondly, because their subject matter was frequently drawn from the sensational newspaper headlines of the day, which by the 1860s (when sensation fiction was at its most popular) often related to white collar crime.¹¹¹ During the late 1850s a number of high profile cases gripped the nation and embedded into public consciousness a new fear, a fear of middle-class criminals. Legal scholar Martin Wiener has suggested that during the first half of the nineteenth century crime was generally seen as a ‘class problem’, one which, whilst threatening to middle-class domestic harmony, was also identifiable as lying outside that social strata.¹¹² A survey of *The Times Archive* from 1820-1830 bears out Wiener’s claim. *The Times* during this period contains numerous reports of recent crimes perpetrated, along with reports of criminal trials themselves, and the vast majority of the crimes reported are what can be considered as ‘lower-class’ crimes. Murders reported during this period, for example, mostly occur among the working classes and are associated with poverty, often motivated by desperate personal circumstances. In these cases the murder has often followed a burglary, a drunken brawl or domestic violence (again, frequently fuelled by alcohol). More often than not, the murderers are identified as

¹¹¹ See John Sutherland, ‘Introduction’, in Wilkie Collins, *The Woman in White* (Oxford: Oxford University Press, 2008 [1860]). For an analysis of sensation fiction as a genre, see further: Margaret Oliphant, ‘Sensation Novels’, *Blackwood’s Magazine*, 91 (May 1862), 564-84; P. D. Edwards, *Some Mid-Victorian Thrillers: The Sensation Novel, Its Friends and Foes* (St. Lucia: University of Queensland Press, 1971); Walter Clarke Phillips, *Dickens, Reade, and Collins, Sensation Novelists: A Study in the Conditions and Theories of Novel Writing in Victorian England* (New York: Columbia University Press, 1919); Patrick Brantlinger, ‘What is “Sensational” about the Sensation Novel?’, in *New Casebooks: Wilkie Collins* ed. by Lyn Pykett (London: Macmillan, 1998), pp. 30-57; and Elizabeth Langland, ‘*The Woman in White*’ and the New Sensation, in *A Companion to Sensation Fiction*, ed. by Pamela Gilbert (Oxford: Wiley-Blackwell, 2011), pp. 196-207. For an overview of the scope and direction of recent sensation fiction criticism see Mark Knight, ‘Figuring out the Fascination: Recent Trends in Criticism on Victorian Sensation and Crime Fiction’, *Victorian Literature and Culture* 37 (2009) 323-333; Andrew Maunder, ‘Mapping the Victorian Sensation Novel: Some Recent and Future Trends’, *Literature Compass* 2 (2005), 1-33; and Deborah Wynne, ‘Critical Responses to Sensation’, in *Sensation Fiction*, ed. by Gilbert, pp. 389-400. See also: Andrew Radford, *Victorian Sensation Fiction: A Reader’s Guide to Essential Criticism* (London: Palgrave, 2009).

¹¹² Martin J. Wiener, *Reconstructing the Criminal: Culture, Law, and Policy in England, 1830-1914* (Cambridge: Cambridge University Press, 1990), pp. 15-26.

‘labourers’. However, Wiener argues that by the second half of the nineteenth century the public consciousness was gripped by a concern over a perceived increase in crimes committed by apparently respectable members of society.¹¹³ Lyn Pykett has also drawn attention to this point:

Whereas in the first half of the century criminality was regarded as antithetical to respectability, some of the new crimes which seized public attention in the 1860s – such as fraud, embezzlement, poisoning, blackmail – actually depended upon the appearance of respectability.¹¹⁴

Judith Flanders’s recent study *The Invention of Murder* also reveals this trend.

Interested in how the Victorian imagination was fascinated with murder throughout the century, Flanders discusses some of the ‘crimes of the century’. Interestingly the *causes célèbres* which she discusses in the earlier part of the century, such as those of John Williams, William Corder, and James Greenacre, tend to have occurred lower down the social scale. However, those Flanders discusses from mid-century onwards begin to have distinctly middle-class settings and actors.¹¹⁵

In the late 1850s there occurred a number of high profile cases which sparked public anxiety over middle-class crime and created the perception that it was an increasingly widespread problem. The first of these was the trial of the doctor William Palmer in 1856 for the murder of John Parsons Cook by poisoning.¹¹⁶ This trial attracted an unprecedented amount of press attention.¹¹⁷ The extensive press coverage of such cases became common in daily papers and, as Richard Altick has

¹¹³ Ibid., pp. 244-245.

¹¹⁴ Lyn Pykett, *Wilkie Collins* (Oxford: Oxford University Press, 2005), p. 45.

¹¹⁵ See Judith Flanders, *The Invention of Murder: How the Victorians Revelled in Death and Detection and Created Modern Crime* (London: Harper Press, 2011).

¹¹⁶ This case is discussed in more detail in the next chapter.

¹¹⁷ Altick has described the Palmer case as ‘the first of the great Victorian murder cases starring a physician’. See Richard D. Altick, *Victorian Studies in Scarlet: Murders and Manners in the Age of Victoria* (New York: Norton, 1970), p. 152. Altick notes how the *Illustrated Times* doubled its normal sales during the trial, p. 153. Newspapers such as *The Times* even reported on the alterations which had to be made to the Central Criminal Court due to the public interest in the case, ‘The Trial of W. Palmer’, *The Times*, 1 May 1856, p. 9.

highlighted, the *Daily Telegraph* became a leader in this regard: ‘by the early seventies the *Daily Telegraph* was boasting that its circulation, then two hundred thousand, was the largest in the world; and mainly because of the exhaustiveness of its crime coverage’.¹¹⁸ The sensation caused by the Palmer trial was followed in 1857 by the case of Madeleine Smith, the respectable daughter of a wealthy business man who was suspected of poisoning her lover. In 1859 another sensational poisoning case hit the headlines. This time another doctor was suspected of poisoning his second wife, whom he had married bigamously. And in July 1860, the unsolved crime of that decade was first reported: the body of a little boy was discovered in an outside privy with its throat cut at his respectable middle-class family home in the quiet Wiltshire village of Road.

This last case provides another illuminating example of the sensational nature of crime reporting during this period and the interest which it generated. On Wednesday July 11th *The Times* reported the murder ‘just committed’ at Road Hill House.¹¹⁹ The following day the same paper offered readers an update and reported on the meetings which had taken place between the magistrates and the police and gave news of the interviews with witnesses.¹²⁰ Five days later a further update is provided by *The Times*, stating that the Home Secretary had ‘despatched Inspector Whicher of the metropolitan detective police, to Road, for the purposes of endeavouring to dissipate the mystery’.¹²¹ On July 21st, the apprehension of Constance Kent is reported, followed by a lengthy report of the magistrate proceedings which discharged her on the 28th.¹²² Regular updates of this case

¹¹⁸ Altick, *Studies in Scarlet*, p. 61.

¹¹⁹ ‘The Recent Murder at Road’, *The Times*, 11 July 1860, p. 5.

¹²⁰ ‘The Late Mysterious Child Murder at Road’, *The Times*, 12 July 1860, p. 9.

¹²¹ ‘The Child Murder at Road’, *The Times*, 17 July 1860, p. 12.

¹²² ‘The Late Child Murder at Road’, *The Times*, 21 July 1860, p. 5, and ‘The Late Mysterious Child Murder at Road’, 28 July 1860, p. 12.

appeared in this manner in *The Times* and other newspapers throughout the investigation, and in 1865 when Constance Kent was examined by magistrates after her confession, over thirty reporters were present from both London and the provinces.¹²³

Richard Altick has argued that cases such as these, and the hysteria which surrounded them, set the mood of sensationalism of the 1860s. In *Evil Encounters: Two Victorian Sensations*, Altick examines how two simultaneously reported, high-profile cases of July 1861 set the tone for the 1860s as ‘the age of sensation’. The two cases in question were that of the French Aristocrat Baron de Vidil who attempted to bludgeon his son to death on a secluded country lane, and that of Major Murray, a retired military man who was left with bullet wounds to his neck and head following a violent altercation with William Roberts in the respectable Northumberland Street, London. These two cases were shrouded in mystery, but as the facts began to emerge in the press they caused a sensational media storm as dark secrets such as blackmail, sexual obsession and murderous greed for a son’s inheritance began to emerge. The press speculation in both cases as to facts and motives, together with its dissection of evidence reported and the printing of every rumour whispered, was the epitome of the sensational reportage which typified the next decade and, as Richard Altick argues, ‘usher[ed] in what soon came to be called the Age of Sensation’.¹²⁴

Such sensational cases were reported exhaustively in popular middle-class newspapers such as *The Times*, *Daily Telegraph* and *The Illustrated London News*, all of which attracted a vast readership. Crime was clearly a popular subject that sold copy, and it is not surprising therefore that authors would soon exploit the national

¹²³ Altick, *Studies in Scarlet*, p. 62.

¹²⁴ Richard D. Altick, *Evil Encounters: Two Victorian Sensations* (London: John Murray, 1987), p. 10.

mood of sensation for themselves with the creation of the sensational novel, which gained widespread popularity by drawing on ‘real life crimes’ and exploiting the newly pervasive middle-class anxiety (fuelled by these sensational reports of middle-class crime) that *anyone*, including your neighbours or even family members, might be harbouring a dark and dangerous secret. Indeed, many of the new sensation novelists drew facts directly from such cases.¹²⁵

As Lyn Pykett has observed, ‘the sensation novel of the 1860s was one expression of and response to’ the development of middle-class crime seizing the public consciousness during that period.¹²⁶ For Pykett, crucial to our understanding of the sensation genre is a grasp of the social context out of which it grew. Pykett has noted that sensation fiction was in many ways responding to a variety of social factors: developments in literary production, distribution and mediation, the abolition of stamp duty, the increase in rail travel, for instance. In a contemporary review in 1863, H. L. Mansel makes the same point:

The railway stall, like the circulating library, consists partly of books written expressly for its use [...] The exigencies of railway travelling do not allow much time for examining the merits of a book before purchasing it; and keepers of bookstalls, as well as of refreshment-rooms, find an advantage in offering their customers something hot and strong, something that may catch the eye of the hurried passenger, and promise temporary excitement to relieve the dullness of a journey. These circumstances of production necessarily have their effect on the quality of the articles produced. Written to meet an ephemeral demand, aspiring only to an ephemeral existence, it is natural that they should have recourse the rapid and ephemeral methods of awakening the interest of their readers, striving to act as the dram or the dose, rather than as the solid food, because the effect is more immediately perceptible.¹²⁷

¹²⁵ The missing nightgown in Wilkie Collins’s *The Moonstone*, for example, was inspired by the missing nightgown in the murder case at Road Hill House, and the character of Sergeant Cuff, was inspired by the lead detective in the case, Jonathan Whicher. In the Road Hill Murder case Jonathan Whicher’s suspicions that the sister, Constance Kent, had committed the murder were unable to be proved because a crucial piece of evidence, a blood stained nightgown, was burnt. See further: Sue Lonoff, *Wilkie Collins and his Victorian Readers: A Study in the Rhetoric of Authorship* (New York: AMS Press, 1982), pp. 179-180. For a full account of the Road murder see Kate Summerscale, *The Suspicions of Mr Whicher or The Murder at Road Hill House* (London: Bloomsbury, 2008).

¹²⁶ Pykett, *Wilkie Collins*, p. 45.

¹²⁷ H. L. Mansel, ‘Sensation Novels’, *Quarterly Review*, 113 (April 1863), 482-514 (p. 485).

Yet one of the most crucial social contexts for Pykett's readings of sensation fiction is the increasing perception, during the second half of the nineteenth century among the middle-classes, that crime from within had become a real, prevalent and proximate threat. For Pykett, this anxiety played a key role in shaping the genre of sensation fiction. Pykett reads the sensation novel as both the embodiment of, and an exploration of, the hopes and fears of the Victorian middle-classes which were 'generated by interconnected anxieties arising from contemporary social changes and the attendant challenging of the social and moral status quo'.¹²⁸ As Pykett suggests, it is possible to link these anxieties to the changes which were occurring in nineteenth-century social structures, including the decline of the knowable community.

As Pykett has suggested, the transformation of 'knowable communities' meant that during the nineteenth century individuals increasingly felt a sense of alienation from those around them.¹²⁹ Pykett relates the decline of the knowable community to a mid-century crisis in narrative authority, arguing that the increased social complexity of the nineteenth century offered a challenge to the totalising view of eighteenth-century and early nineteenth-century novels.¹³⁰ Pykett's argument echoes that of Raymond Williams, who claims that by the mid-nineteenth century the social structure, and so the social experience, had shifted in such a way as to profoundly alter the nature of the novel:

This is a period in which what it means to live in a community is more uncertain, more critical, more disturbing as a question put both to societies and to persons than ever before in history. The underlying experiences of this powerful and transforming urban and industrial civilisation are of rapid and inescapable social change; of a newly visible and conscious history but at the same time, in most actual communities and in most actual lives, of a newly complicated and often newly obscure immediate process. These are not opposite poles: they are the defining characteristics of the change itself.

¹²⁸ Lyn Pykett, *The Sensation Novel: From The Woman in White to The Moonstone* (Plymouth: Northcote House, 1994), pp. 9-10.

¹²⁹ *Ibid.*, pp. 38-39.

¹³⁰ *Ibid.*, p. 38.

People become more aware of the great social and historical changes which altered not only outward forms – institutions and landscapes – but also inward feelings, experiences, self-definitions.¹³¹

Williams argues here, and more fully in *The Country and the City*, how the inescapable experience of social change brought with it not only a shift in people's perception of their own existence, but also a challenge to the idea that communities were, in some sense, 'knowable', and for Williams, 'these facts of change can be seen lying deep in almost every imagination'.¹³² Pykett, following Williams, sees these changes as giving rise to a crisis in narrative authority, and in particular bringing a challenge to the totalising vision of the omniscient narrator. For Pykett, the dispersal of narrative authority which occurs in sensation fiction is symptomatic of this crisis in narrative authority and as such can be related to the decline of Williams's knowable community. To an extent, Pykett reads sensation fiction as the antithesis of any totalising realism and as representative of a search for a more convincing verisimilitude and actuality in fictional writing; a search for an alternative means of accurately representing reality.¹³³

The narrative crisis experienced by sensation novelists echoes the crisis over the matter of representation in legal thought which fully emerged in the Prisoners' Counsel Act debates. Sensation novelists were no less interested than their contemporaries in finding an effective means of representing reality. For example, Wilkie Collins, one of the most celebrated sensation novelists of the nineteenth century, appears to have been consistently concerned that his stories appeared as

¹³¹ Raymond Williams, *The English Novel from Dickens to Lawrence* (London: Hogarth, 1984), Ch. 1, quotation at p. 12.

¹³² *Ibid.*, p. 12. See also Williams, *Country*.

¹³³ Pykett, *The Sensation Novel*, pp. 37-38. For an account of how sensation fiction was a response the middle-classes' confrontation with technology and modernity see Nicholas Daly, *Literature, Technology, Modernity 1860-2000* (Cambridge: Cambridge University Press, 2004), and Louise Lee, 'How does she do it? Sensation Fiction's Technologically Minded Villainesses', in *Sensation Fiction*, ed. by Gilbert, pp. 134-146.

believable accounts of real life to his reading public. This is clear from the use Collins made of his prefaces to defend or illuminate certain plot points that had attracted criticism. In his preface to the 1861 edition of *The Woman in White*, for example, Collins took the opportunity to dispel the ‘doubts’ which had arisen in ‘certain capacious quarters, about the correct presentation of the legal “points” incidental to the story’, by reassuring his readers that:

I spared no pains – in this instance, as in all others – to preserve myself from unintentionally misleading my readers. A solicitor of great experience in his profession most kindly and carefully guided my steps, whenever the course of the narrative led me into the labyrinth of the law.¹³⁴

Sensation novelists were also keen to defend their works against claims that the sensational nature of their subject matter made them unrealistic. In response to such criticism, George Augustus Sala argued that sensation novels were ‘realistic novels of human passion, weakness and error’ and he listed numerous high-profile, real-life sensational cases to make his point:

If we read the newspaper; if we read the police reports; if we can laugh at such a case as that of the “Honourable Mrs. Geraldine Maurice”, or weep over such a one as that of “Augustus Mitchell”; if we have ever troubled ourselves about a Yelverton marriage, a Titchbourne conspiracy, a Thellusson will, a Road Murder, a Cornhill burglary, a gold-dust robbery, a Roupell forgery, a Simba court-marshal, we shall take no great harm by reading realistic novels of human passion, weakness and error.¹³⁵

Mary Elizabeth Braddon, another popular sensation novelist of the time made the same point in an interview with the *Daily Telegraph*: ‘I undoubtedly believe that

¹³⁴Wilkie Collins, ‘Preface’, in *The Woman in White*, ed. by John Sutherland (Oxford: Oxford University Press, 2008 [1860]), p. 3. Further references to this edition are given after quotations in the text.

¹³⁵George Augustus Sala, ‘The Cant of Modern Criticism’, cited in Jennifer Carnell, *The Literary Lives of M. E. Braddon* (Hastings: The Sensation Press, 2000), p. 165.

[newspapers] give the best picture of the events of the day. They really are, as they profess to be, mirrors reflecting the life and views of the period'.¹³⁶

As noted in the introduction, Peter Brooks has argued that the novel offers readers (or seeks to offer readers) a sense of mastery over reality, and so provides them with the feeling that the complex and confusing reality outside them is readily understandable and knowable in communicable ways.¹³⁷ With this in mind, the crisis in narrative authority at mid-century which Williams and Pykett identify, and the consequent search for an alternative means of representation, becomes especially significant for the sensation novel given its subject matter. During the first part of the nineteenth century the threat posed by crime to the security of the middle classes, whilst present, was nonetheless clearly defined as a threat from the outside and so both identifiable and containable. However, the newly formed perception that middle-class crime was a real and prevalent threat, posed a different sort of challenge altogether, as it presented a threat from within. The newly emerging anxiety over middle-class crime is one which is played out in the sensation fiction of this period. This anxiety becomes especially significant in the sensation novel's attempts at representing reality because it initiates an exploration by such novels of the key issues which were so crucial to the Prisoners' Counsel Act debates. The fears and questions to which the perceived increase in middle-class crime gave rise, were underpinned by the question of how this 'new' sort of criminal was to be identified. In 1864 the Archbishop of York preached a sermon against sensation novels, claiming they sought to 'persuade people that in almost every one of the well-

¹³⁶ Mary Elizabeth Braddon in an interview dated 4th October 1913. Cited in Carnell, *Literary Lives*, p. 166.

¹³⁷ See chapter one of this thesis, and Brooks, *Realist Vision*, Ch. 1.

ordered houses of their neighbours there is a skeleton shut up in some cupboard'.¹³⁸

The Archbishop's sermon demonstrates a concern that sensation novels were tapping into a genuine public fear that amongst one's neighbours with 'well-ordered' houses there was the real possibility that one of them could be concealing a dark secret. Again and again the sensation novel vividly dramatises this fear, with Baronets, Ladies, Counts, charitable gentlemen, Governesses, often turning out to be murderers, poisoners, fraudsters, blackmailers, thieves.

One threat which the hypothetical middle-class criminal posed to the Victorian middle classes was the undermining of the social values which formed the basis of their understanding of the world. By taking middle-class crime as its subject matter, the sensation novel, in its search for an alternative means of representing reality that would provide its reader with a sense of order and meaning, directly engages with and explores the difficulties inherent in that project. Consequently, through its representation of sensational crimes, the sensation novel presents an engaged response to the difficulty of representation, and so emerges at the centre of popular debate regarding the efficacy of legal and literary models employed in the representation of truth and reality.

In *The Sensation Novel and the Victorian Family Magazine*, Deborah Wynne undertakes a study of a number of Victorian family magazines and examines how the novel and the periodical worked together to engage in the major social and cultural debates of the day. Wynne highlights how during the 1860s there emerged an 'unprecedented new range' of magazines and how many of these established

¹³⁸ Cited in Carnell, *Literary Lives*, p. 153. Henry James noted how sensation fiction brought mysteries into the domestic setting: 'Miss Braddon', *The Nation*, 1 (9 November 1865), 593-595. See further: Anthea Trodd, *Domestic Crime in the Victorian Novel* (Basingstoke: Macmillan, 1989), and Elaine Showalter, 'Family Secrets and Domestic Subversion: Rebellion in the Novels of the Eighteen-Sixties', in *The Victorian Family: Structure and Stresses*, ed. by Anthony S. Wohl (London: Croom Helm, 1978), pp. 101-116.

themselves through the serialisation of popular sensation novels, ‘a genre based on the disruptive forces of crime and secrets upon genteel domestic life’.¹³⁹ Through her study, Wynne reveals how these novels offered more than mere ‘titillation’ and ‘constituted an important response to the issues of the day’.¹⁴⁰ Wynne advocates the adoption of an inter-textual approach to the study of sensation novels, reading them in conjunction with the other texts which surrounded them in the magazines. This was the approach, Wynne argues, that editors of such magazines encouraged contemporary readers to adopt, inviting the public to ‘make thematic connections between the serial novel and other features through the power of juxtaposition’.¹⁴¹ Wynne’s approach is both illuminating and fruitful, and will inform some of my readings of sensation novels in the next chapter; the questions concerning circumstantial evidence raised by Braddon’s *Aurora Floyd* for example, take on an extra significance when considered together with the articles on the value of such evidence which appeared alongside that novel’s serialisation in *Temple Bar*. What Wynne’s approach provides for is an understanding of sensation fiction as an important response to, and engagement with, serious cultural and social issues and anxieties of the period.

Once public fear was alerted to the possibility that the middle-class family might be under threat from those within, the question of how the criminal might be detected took on an added significance. The processes in place for determining guilt, in particular the interpretation of evidence in the investigation of truth, thus came to be a much addressed topic in popular literature and journalism. As such, the efficacy of the legal and literary models which were employed for creating what purported to

¹³⁹ Deborah Wynne, *The Sensation Novel and the Victorian Family Magazine* (Basingstoke: Palgrave, 2001), p.1.

¹⁴⁰ *Ibid.*, p. 2.

¹⁴¹ *Ibid.*, p. 3.

be truthful accounts of reality became a matter of popular as well as professional debate. These debates in particular centred around the effect of and utilisation of evidence, and especially on the difficulties of interpretation. As noted earlier, the topic of the correct interpretation of evidence and the attendant anxiety over whether and how this is possible, recurs in periodical articles printed throughout the 1820s, 1830s and 1840s. From the mid 1850s, however, this topic is addressed with an unprecedented vigour as high profile, sensational cases begin to take hold of the public's imagination. If one reads the sensation fiction which emerged during this period alongside such articles, it is possible to see not only the sensation novel's engagement with this topic, but also how the sensation novel's own representational methods are affected.

That sensation novelists, just like their character-focused counterparts, were interested in creating accurate accounts of real life is clear. However, as Pykett suggests, the sensation novelist sought an alternative means of achieving such accurate representations. As to what this alternative means of representing reality might be, we are given some clue by Trollope's brief discussion of the opposition between realist and sensation fiction. Sensation fiction's method, Trollope tells us, is based on 'the construction and gradual development of the plot' (*Autobiography*, p. 227). The careful construction of the plot in sensation novels is something that still strikes critics today: Winifred Hughes, for example, notes how in sensation fiction 'plot and incident predominate'.¹⁴²

This apparent foregrounding of plot takes on an added significance when read in the context of the Prisoners' Counsel Act debates and the questions which they raised over the matter of representing reality, in particular the issues pertaining to the

¹⁴² Winifred Hughes, *The Maniac in the Cellar: Sensation Novels of the 1860s* (Princeton: Princeton University Press, 1980), p. 19 and p. 23.

interpretation of evidence. The sense which the sensation novel evokes – that the plot has been carefully thought out, planned and constructed – demonstrates that the sensation novelist was concerned with creating an internal connectedness, coherence and chronology in their narratives in a manner which bears a marked similarity to those representations being made by advocates in criminal trials. Viewed in this way, the foregrounding of plot and structure becomes the careful arrangement of all the story's elements into one coherent and connected narrative that convinces the reader of its truth and actuality. Indeed, in his autobiography, Trollope describes the method of Wilkie Collins in terms which could equally be applied to the work of an advocate constructing his 'case' before he presents it as a representation of the truth to a jury:

Wilkie Collins seems to construct his [novels] that he not only, before writing, plans everything on, down to the minutest detail, from the beginning to the end; but then plots it all back again, to see that there is no piece of necessary dove-tailing which does not dove-tail with absolute accuracy. The construction is most minute and wonderful. (p. 257)¹⁴³

The link between the methods of the adversarial-evidentiary trial model and the methods of the sensation novel generally can, therefore, be seen in the sensation genre's focus on plotting. Furthermore, close examination of some of the most popular nineteenth-century sensation novels reveal a deeper connection, as leaders in

¹⁴³ The importance of the internal connectedness to a convincing narrative was clearly something that Collins recognised. This can be seen in the trouble Collins took to ensure that certain 'technical errors' which appeared in the serialised and first editions of *The Woman in White* were rectified for the 1861 edition of that novel. In *The Woman in White*, the exposing of Count Fosco and Sir Percival Glyde's fraud, which strips Laura Fairlie of her identity and her fortune, turns on the hero (Walter Hartright) being able to establish the date on which Laura arrived in London from Blackwater Park. In the novel Collins makes it so that everything turns on establishing this date; the trouble is that everyone in the novel appears to have conveniently forgotten what date that actually was. However, in an 1860 review of the novel for *The Times*, E. S. Dallas noted that certain discrepancies in the text rendered the last volume a 'mockery, a delusion and a snare'. Dallas points out that by reading Miss Halcombe's diary and counting the days it was impossible for her to have left Blackwater Park before the 9th or 10th of August, which was at odds with the novel later establishing that she arrived in London on the 29th of July. See John Sutherland, 'Appendix C', in Collins, *The Woman in White*, p. 662. Collins carefully corrected his mistakes, ensuring that in the 1861 edition of the text, the chronology was sound.

the genre consciously embraced the adversarial-evidentiary model of representation, and held it up as a more effective means of representation.

Chapter Three

Engaging in the Debate: Evidence, Advocacy, and the Sensation

Novel's Response

‘Lady Audley, did you ever study the theory of circumstantial evidence?’
 ‘How can you ask a poor little woman about such horrid things?’ exclaimed my lady. ‘Circumstantial evidence,’ continued the young man, as if he scarcely heard Lady Audley’s interruption, ‘that wonderful fabric which is built on straws collected at every point of the compass, and which is yet strong enough to hang a man. Upon what infinitesimal trifles may sometimes hang the whole secret of some wicked mystery, inexplicable heretofore to the wisest upon the earth! A scrap of paper; a shred of some torn garment; the button off a coat; a word dropped incautiously from the over-cautious lips of guilt; the fragment of a letter; the shutting of a door; a shadow on a window-blind; the accuracy of a moment; a thousand circumstances so slight as to be forgotten by the criminal, but links of steel in the wonderful chain forged by the science of the detective officer; and lo! The gallows is built up; the solemn bell tolls through the dismal grey of the early morning; the drop creaks under the guilty feet; and the penalty of crime is paid.’¹

In an attempt to unsettle the controlled demeanour of the suspected bigamist and murderess in *Lady Audley's Secret*, Robert Audley confronts his suspect with the ‘theory of circumstantial evidence’, stressing how even the slightest of circumstances can be enough to betray the guilty. Robert Audley might credit the forging of the ‘wonderful chain’ of circumstantial evidence to ‘the science of the detective officer’, but the chain imagery he employs also recalls, and is more appropriate to, the work of the advocate. The Prisoners’ Counsel debates and the related discussions on evidence addressed the question of how much reliance could be placed on circumstantial evidence, a question that would be addressed repeatedly throughout the nineteenth century. In legal thought the idea that circumstances could be pieced together so that they created a ‘chain’ of evidence strong enough to reveal guilt was generally accepted. Yet, whilst the work of a detective was often necessary to

¹ Mary Elizabeth Braddon, *Lady Audley's Secret*, ed. by David Skilton (Oxford: Oxford University Press, 1998 [1862]), Vol. 1, Ch. 15, pp. 119-120. Further references to this edition are given after quotations in the text.

uncover the circumstantial evidence needed to prove guilt, the skill of the professional advocate was widely credited with turning those ‘trifles’ into Robert Audley’s ‘links of steel’. As the Criminal Law Commissioners noted in their *Second Report*, when an advocate gives ‘order and connexion [*sic*] to a mass of facts’ it tends to ‘impart greater force to the evidence than it would otherwise possess’.² Whilst it is true, therefore, that Robert Audley’s success depends in part upon his detective work, one must not ignore the significance of the manner in which Robert presents the evidence he uncovers during the course of the novel. As Robert Audley weaves this evidence skillfully together into one coherent narrative of guilt, he does not merely expound the ‘theory of circumstantial evidence’, he also describes his own narrative method: that of the professional advocate.

In the character-focused novels discussed in chapter one, the emphasis on character is maintained by placing the protagonist’s individual story at the centre of the narrative. By allowing the protagonist to tell their story in their own words – either through first person narration or an omniscient narrator who (ostensibly) has access to their inner thoughts and feelings – the protagonist’s character remains at the centre of the judgement process, and so aligns such novels with the ‘accused speaks’ trial model. After 1836, the focus of the felony trial shifted towards the careful sifting, analysing and piecing together of all the evidence by skilled advocates for both sides. The continued reliance of some novelists on the presentation of character as the primary means of representing reality seemingly created a division between law and literature over the matter of representation, as

² *Second Report From His Majesty’s Commissioners on Criminal Law Parliamentary Papers*, in *Parliamentary Papers: Reports from Commissioners: Church, Education, Law etc*, 36 (London, 1836) pp. 183-314, (p. 196).

Jan-Melissa Schramm has pointed out.³ It is my contention, however, that the introduction of an adversarial-evidentiary trial model offered novelists an alternative means of representing reality. Through a series of case studies, this chapter examines how through a direct engagement with the matter of representation in criminal trials, in particular issues pertaining to evidence, sensation novelists began to develop their own evidence based methods for representing reality, creating an alliance with adversarial-evidentiary courtroom representational practices, and thereby upholding that model as an effective representational mode.

Will the Truth Out? Sensational Criminals and the Unreliability of Evidence

During the second half of the nineteenth century, public attention was alerted to an apparent alarming growth in the number of middle-class domestic crimes. The perception of the increase in this sort of crime was in part generated by the increased reporting of such crimes, but the perception existed nonetheless, and one particular case in 1856 became an archetypal example of the ‘sensational case’ that held such fascination for the Victorian reading public. This was a case which epitomised middle-class fears about social infiltration, the unidentifiable criminal, and accurate detection. In 1856 William Palmer, an apparently respectable middle-class doctor, was tried for the murder by poisoning of John Parsons Cook.

The prosecution in this case claimed that William Palmer had first weakened his friend John Parsons Cook with antimony and then poisoned him with strychnine. William Palmer was a surgeon who had neglected his profession and wasted his talent and finances, largely through gambling. Before the death of his friend Cook, Palmer was known to be in desperate financial straits as his creditors were

³ Jan-Melissa Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Theology* (Cambridge: Cambridge University Press, 2000), p. 192.

pressing for their debts to be paid, and many of the bills bore signatures forged by Palmer (typically his mother's). Palmer was also suspected of having poisoned his wife and his brother, both of whom he had taken out a life insurance policy on for £13,000 not long before their deaths.⁴ At the time of Cook's death, Palmer found himself unable to hold off his creditors any longer. Cook owned a racehorse called Polestar, which won at the Shrewsbury races, an event which Cook had attended with Palmer. Cook found himself possessed of £800 in winnings and a valuable brood mare. On the night of his win, Cook was celebrating his success with Palmer, at a local hotel, when he became violently ill after ingesting some strange-tasting drink. Cook was then taken to the Talbot Arms Hotel in Rugeley, Staffordshire, where Palmer attended him. A week later he died. It was proved that Palmer had prepared for Cook some morphine pills and some broth, and that he had procured some strychnine two days before Cook's death.⁵ Not long after Cook's death Palmer was paying his debts in cash. On purely circumstantial evidence, including some highly questionable medical evidence, Palmer was found guilty.⁶

The Palmer trial was a huge sensation, to the extent that an Act of Parliament was passed in order to move his trial from Staffordshire to the Central Criminal Court, which underwent alterations in order that it might have enough room for those who wished to attend.⁷ The case proceedings were reported in all the major newspapers, and many more besides, as well as in journals and magazines, which, like the newspapers, also provided editorials and printed readers' letters on the

⁴ In December 1855, after a post-mortem inquiry on the bodies of Cook, and Palmer's wife and brother (whose bodies had been exhumed), the coroner found that all had been poisoned by Palmer, but the charges regarding his wife and brother were dropped for reasons of insufficient evidence.

⁵ Palmer admitted to buying the poison but claimed it was on a different date.

⁶ The facts here have been taken from George Knott, *The Trial of William Palmer*, ed. by Eric R. Watson, 2nd edn (London: William Hodge & Co. Ltd, 1923). See also, John Sutherland's detailed summary of the case: John Sutherland, *Victorian Fiction: Writers, Publishers, Readers* (London: Macmillan, 1995), pp. 35-39.

⁷ See Eric R. Watson, 'Preface', in Knott, *Trial of William Palmer*, p. xii, and 19 & 20 Vict., c. 16: Trial of Offences Act 1856.

subject. The Palmer case seemed to perfectly encapsulate all that the middle-classes feared most in respect of crime. Here was a member of their class, a seemingly respectable doctor, who had abused his position as a medical practitioner and trusted friend, in order to carry out a cold-blooded murder for financial gain. Moreover, as the lack of hard evidence in the trial proved, Palmer represented Count Fosco's 'clever criminal', the criminal who might have avoided suspicion or whose guilt might not be proven (*The Woman in White*, p. 236).

The evidence against Palmer, as John Sutherland has pointed out, was not especially convincing.⁸ It was not even satisfactorily proven that Cook had definitely died of strychnine poisoning, as contradictory medical evidence was given for both sides and the leading expert of the prosecution, Alfred Swaine Taylor, had given inconsistent testimonies at different times.⁹ Yet Palmer was found guilty nonetheless and, as Sutherland has suggested, this verdict was needed to provide the public with a sense of reassurance: 'everyone *knew* that [Palmer] was a killer, and quite probably a mass murderer. For him to have escaped justice because he was cleverer than the forces of law would have been intolerable'.¹⁰

William Palmer represented the middle-class fear of infiltration from criminality which might go undetected. The overwhelming interest in the case, as demonstrated by the sheer volume and detail of the reports of the trial, reflects the anxiety of which the Palmer case was a realisation.¹¹ Yet, even after he was found guilty and sentenced to death, the anxiety which Palmer caused was not removed, but

⁸ In particular Palmer arguably had little motive for the murder, apart from some immediate cash, Cook's death gave him little other than increased debt through joint liability. See Sutherland, *Victorian Fiction*, p. 39.

⁹ Palmer was accused of weakening Cook by giving him antimony and then killing him with strychnine. However, no trace of strychnine was found in Cook's body and only small traces of antimony were found, not even enough to harm a child. See Sutherland, *Victorian Fiction*, p. 39.

¹⁰ Sutherland, *Victorian Fiction*, p. 39.

¹¹ In the second edition of George's Knott's published transcript of the trial, Eric Watson's preface notes how 'no trial ever created greater public interest': *Trial of William Palmer*, p. x.

only raised further questions and apparently perpetuated the anxiety. One of the key reasons for this was Palmer's insistence that he did not poison Cook by strychnine. After the trial the newspapers discussed the case at length, in particular the attempts made to solicit a confession.¹² *The Examiner* lamented such attempts, 'for the assumption should always be that the crime has been proved beyond a doubt by the process of law [...] To solicit [a confession] is to imply that the verdict of guilty wants verification'.¹³ Yet, as a number of reports demonstrate, there was a feeling amongst some that such verification *was* needed, reflecting a desire to know absolutely that the truth had been discovered.

A number of articles on Palmer attempted to offer their readers this comfort. *The Examiner's* stance, as noted above, was to deny that such verification was needed and that the verdict of a jury was enough to convince the public of its truth. *The Leader* printed an article on the phrenological examination conducted after Palmer's death, which found that 'the worst part of his conformation was his head. The animal organs were excessively large. [...] It was physically impossible for him to have been a good man'.¹⁴ Charles Dickens's journal *Household Words* also chose to address the issue in a piece entitled 'A Criminal Trial', in which it was vehemently argued that the truth had been discovered and Palmer rightly convicted:

never before was a criminal case so argued, or summed up with such masterly elaboration. But the just and perfect statement of it tended – as, being the whole truth, it could only tend – to the complete assurance that the prisoner was guilty.¹⁵

¹² *The Journal of Mental Science* reported how 'from the time of his sentence to the very moment when he ascended the scaffold [...] Palmer was persuaded, entreated, implored day by day, almost hour by hour, to confess his crimes, not to God, but to man': 'The Trial and Execution of William Palmer', *Journal of Mental Science* 2 (1856), 513. Cited in Burney, 'A Poisoning of No Substance', 59.

¹³ 'Palmer's End', *The Examiner*, 21 June 1856, p. 386.

¹⁴ 'The Execution of William Palmer', *The Leader*, 21 June 1856, p. 583.

¹⁵ [Henry Morley], 'A Criminal Trial', *Household Words* 13 (June 1856), 529.

One of the reasons that the Palmer case produced so much hysteria was that it was a case of poisoning. Poisoning, as a crime, reflected most acutely the middle-class fears about criminality because it required not only intimacy of connection but was also a crime which could potentially go undetected and so the criminal unsuspected. An article in *The Leader* entitled ‘The Poisoner in the House’, explored this fear, beginning with the following passage:

If you feel a deadly sensation within, and grow gradually weaker, how do you know that you are not poisoned? If your hands tingle, do you not fancy that it is arsenic? How can you be sure that it is not? Your household, perhaps, is a “well-regulated family;” your friends and relations all smile kindly upon you; the meal at each period of the day is punctual and looks correct; but how can you possibly tell there is not arsenic in the curry?¹⁶

According to the article, ‘it literally, without exaggeration, is impossible to tell’.¹⁷

The article goes on to both confirm and exacerbate fears that such crime is ubiquitous, by noting how people may die with no one ever suspecting that they have been poisoned, and how even if (as ‘shown in courts’) ‘poison may be detected’, the murderer ‘shall escape detection’.¹⁸ The article goes even further, suggesting that in some cases innocent people may be ‘sacrificed’ whilst the real perpetrator remains undetected.¹⁹ The William Palmer case encapsulated all these fears, with Palmer himself appearing as the epitome of the clever poisoner who had ‘a greater cunning for concealment’.²⁰ The *Saturday Review of Politics, Literature, Science and Art* also noted the ‘peculiar atrocities’ of secret poisoning in another article concerning this crime, noting how ‘public feeling has been shocked, and the national character disgraced, by no fewer than three most fearful cases of poisoning’. The article then considered how many were now beginning to question whether these cases were

¹⁶ ‘The Poisoner in the House’, *The Leader*, 15 December 1855, p.1199.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

‘typical’.²¹ *The Saturday Review* article, like that in *The Leader*, reflects the growing public anxiety over such crimes and the fear that this sort of crime, reliant on the murderer maintaining a show of respectability and a relationship of trust with the victim, might go undetected.

Both of the articles cited above were written and published in December 1855, and were a response to a number of high profile poisoning cases, all of which offered a disconcerting lack of closure. Both articles consider the case of Mr Wooler, who was found not guilty of poisoning his wife. *The Saturday Review* described the fate of Mrs Wooler as ‘mysterious’, and ‘enveloped’ in a ‘deep shroud of horror’ which, ‘disturbed even the serene impassibility of the Bench’.²² *The Leader* noted that whilst this was the correct verdict, ‘when the evidence was imperfectly stated, his guilt looked almost established’.²³ This again raises the question of ensuring all the evidence is heard, but also raises the disturbing possibility that the real murderer of Mrs Wooler had gone undetected. Both articles also discuss a Scottish case where a son was accused of murdering his father with arsenic in order to gain his inheritance. The verdict was one of ‘not proven’ (peculiar to Scotland), once again cementing the idea that clever criminals might not only exist within one’s own home, but also might never be discovered; as *The Saturday Review* noted in its analysis of the Scottish case: ‘the chief result of the trial is to show the extreme difficulty of obtaining judicial evidence of this class of domestic atrocities’.²⁴ Finally, in *The Saturday Review*, the writer alludes to the Palmer case, the news of which was just emerging, and which was suggestive of ‘diabolical malice’.²⁵ Such cases as these

²¹ ‘Poisoning in England’, *The Saturday Review of Politics, Literature, Science and Art*, 22 December 1855, p. 134.

²² Ibid.

²³ ‘Poisoner in the House’, p.1199.

²⁴ ‘Poisoning in England’, p. 134.

²⁵ Ibid.

struck at the heart of middle-class sensibilities: ‘Father and son – wife and husband – patient and physician – these, the closest and most sacred relations of domestic and civil life, are said to have been violated by the drugged draught’.²⁶ Already in 1855, newspapers and journals were noting the ‘present temper of the public mind, so nervously sensitive’ with regard to such crimes, with the sensational trial of Palmer in 1856 adding to the frenzy.²⁷

Not long after the Palmer case had ended, two more sensational poisoning cases hit the headlines, and this time involved the added excitement of sexual transgression. In 1857 Madeleine Smith was accused of poisoning her lover, Emile L’Angelier, with arsenic. Smith, like Palmer, was part of ‘respectable’ society as the daughter of a successful architect and member of the upper-middle class. In 1855 she had begun a relationship with L’Angelier, a shipping clerk from Jersey. Madeleine Smith’s diary and the letters exchanged between the pair testify to a passionate relationship, and hinted at what were considered unnatural passions in a young lady. In 1857, Madeleine tried to break off the affair but L’Angelier threatened to go to her father with her letters. Two months later, and in the same month that Madeleine’s engagement to another suitor (acceptable to her family) was announced, L’Angelier was found dead from arsenic poisoning. There was some circumstantial evidence against Smith: she had written love letters to L’Angelier, she had tried to break off their affair, she had met with him in secret, she had given him hot chocolate after drinking which he had been taken ill with a gastric attack, and she had been seen purchasing arsenic. Yet, there were a number of gaps in the evidentiary chain. In particular it could not be proved that Smith had met L’Angelier just before his death, as her letters only proved an intention to meet. In addition, the handling of the

²⁶ Ibid.

²⁷ Ibid.

evidence had been mismanaged, with letters collected and placed in the incorrect envelopes which meant dates could not be firmly established. The verdict pronounced was that of ‘not proven’, signaling again that justice had not been done and that a murderer had, perhaps, escaped detection once again.²⁸

The Smith case was another sensational trial which raised again all those questions, fears and anxieties which Palmer’s case had raised, and it was not long before the case of Thomas Smethurst was doing the exact same thing again. Smethurst was, like Palmer, a respectable doctor. He was accused of poisoning Isabella Banks, his second wife, whom he had married bigamously. Smethurst was, in the first instance, found guilty of murder, but the verdict was overturned after a strong public outcry led to a review of the evidence. The difficulty here was the lack of evidence, as it was not absolutely proved that the victim had been poisoned. Alfred Swaine Taylor, once again a medical expert in this case, had made a mistake in his chemical testing and inadvertently had introduced arsenic into the results himself. Moreover, Smethurst appeared to have had little motive for the crime, as *Tait’s Edinburgh Magazine* pointed out.²⁹ After his sentence was quashed, Smethurst was arrested for bigamy, found guilty and sentenced to one year in prison.

Such cases were widely reported and extensively commented upon in newspapers, journals and magazines. As Deborah Wynne has shown, the printing of fiction alongside non-fiction allowed a dialogue to occur between the various articles appearing in the same issue and in subsequent issues, and thus implicitly encouraged

²⁸ Many believed Madeleine to be guilty. Both George Eliot and her partner G. H. Lewes expressed their belief in her guilt in letters to John Blackwood. See Judith Flanders, *The Invention of Murder: How the Victorians Revelled in Death and Detection and Created Modern Crime* (London: Harper Press, 2011), p. 284. The unsatisfactory nature of the Scottish verdict of ‘not proven’, which left a question mark over the guilt of the defendant is taken up in Wilkie Collins’s *The Law and the Lady* (1875). For a detailed examination of the case see Eleanor Gordon and Gwyneth Nair, *Murder and Morality in Victorian Britain: The Story of Madeleine Smith* (Manchester: Manchester University Press, 2009).

²⁹ ‘Circumstantial Evidence: The Smethurst Case’, *Tait’s Edinburgh Magazine* (September 1859), 548 – 553.

readers to adopt an inter-textual approach to their reading.³⁰ Publishing novels in this way enabled authors to directly engage with contemporary debates through their fiction in an effective manner, as readers would access their fiction in conjunction with other articles touching upon the same topics. The extensive coverage of sensational trials which raised evidentiary concerns, provided novelists with a chance to engage with the concerns and issues that sensational cases such as *Palmer, Smith* and *Smethurst* were raising.

Beware the Maxim ‘circumstances cannot lie’: Misleading evidence in *East Lynne* and *Aurora Floyd*.

East Lynne was one of the most popular sensation novels of the Victorian period.³¹ Written by Ellen Wood and serialised in the *New Monthly Magazine* from January 1860 to September 1861, *East Lynne* tells the story of Lady Isabel Vane, who, after being left penniless on the death of her titled father, marries the upwardly mobile country lawyer, Archibald Carlyle. During the course of the novel Isabel enters into an illicit affair with the rakish Francis Levison, abandons her husband (who divorces her), and is involved in a train crash that leaves her crippled and unrecognisably altered facially. The rest of the novel sees Isabel return to her family home disguised as a governess to her own children. Were this plot line not complicated or sensational enough, the sub-plot of *East Lynne* follows Archibald Carlyle and Barbara Hare’s (Carlyle’s second wife) attempts to clear the name of Barbara’s brother, Richard, who is suspected of murdering the father of his romantic attachment, Afy Hallijohn.

³⁰ See Deborah Wynne, *The Sensation Novel and the Victorian Family Magazine* (Basingstoke: Palgrave, 2001), Ch. 1.

³¹ Richard Altick lists *East Lynne* as a best seller. It sold 430,000 copies from 1861-1898: see Richard D. Altick, *The English Common Reader: A Social History of the Mass Reading Public 1800-1900* (Chicago: University of Chicago Press, 1957), p. 385. See also Marlene Tromp, ‘Mrs Henry Wood, *East Lynne*’, in *A Companion to Sensation Fiction*, ed. by Pamela Gilbert (Oxford: Wiley-Blackwell, 2011), pp. 257-268.

At the opening of the novel Richard Hare is widely believed to be the murderer of Hallijohn, the circumstances appearing to tell strongly against him: he was known to be a suitor to Hallijohn's daughter and Hallijohn was known to disapprove of his visits, his gun was identified as the murder weapon, he was witnessed running away from the murder scene shortly after the gun shot was fired with the gun in his hand, he was then witnessed disposing of the gun, after the murder both he and Afy disappeared, and he had lied about his whereabouts on that evening to his father. Yet, as it turns out, Richard Hare is an innocent man. The subplot of *East Lynne* thus brings into focus all the typical concerns which real life murders were raising in middle-class society, and which were being discussed in the pages of popular periodicals: an unsolved murder, misleading evidence, an innocent man believed to be guilty, an undetected killer going by an assumed name.

The evidence in the case against Richard Hare is purely circumstantial, there being no direct witnesses to the murder itself. However, the circumstances surrounding the murder appear to form a chain of evidence so strong that even Richard's own father believes him to be guilty. Through the murder plot, then, *East Lynne* explores the problematic nature of the truth-seeking process in criminal cases which have to be made on purely circumstantial evidence. In doing so, Wood's text directly engages with the contemporary debate over evidence and the question of whether the adversarial-evidentiary jury trial was the most effective means of overcoming evidentiary issues and revealing the truth.

In *East Lynne* the reader is presented with a society in which narratives of circumstantial evidence are privileged over direct individual testimonies to the truth; Richard's Hare's statement of events weighs little against the circumstances against

him, as Barbara puts it: ‘nobody would believe him against the evidence’.³² The question addressed in *East Lynne*’s murder plot is how the truth of disputed facts can emerge from such misleading circumstances. By the end of the novel, the answer to that dilemma appears to be that the truth will emerge through a trial process that enables all the evidence to be heard so that it may be interpreted correctly. After his identification of Francis Levison as the impostor Captain Thorn (who had been present at the murder scene), Richard Hare is able to come out of hiding and be proved innocent by a court of law. The trial process enables all the facts to emerge, including Levison’s bribery of Otway Bethel (who had seen him leaving Hallijohn’s cottage just after the murder in a state of agitation), and Afy Hallijohn’s testimony under oath (until then she had been happy to lie). As a result of this trial process, all the evidence emerges and is fully scrutinised, and consequently a coherent narrative of Francis Levison’s guilt emerges which persuades the jury, and the reader, of its truth.

A similar, but far more substantial intervention in the contemporary debate on legal evidence is to be found in Mary Elizabeth Braddon’s *Aurora Floyd* (serialised in 1862 in *Temple Bar; A London Magazine for Town and Country Reader*.) *Temple Bar*, which was aimed at a middle-class audience, had commenced in 1860, and like its rival publications featured serialised novels (as well as poetry and short stories) alongside topical non-fiction articles, ranging from social essays to articles on travel and literary reviews. At the time of *Temple Bar*’s inception, the topic of the efficacy of the criminal trial process – in particular the usefulness and pitfalls of evidence –

³² Ellen Wood, *East Lynne*, ed. by Elisabeth Jay (Oxford: Oxford University Press, 2008 [1861]), Ch. 5, p. 42. Further references to this edition are given after quotations in the text.

was ubiquitous, and the magazine lost no time in contributing to the contemporary discourse in its pages.

In *Temple Bar*'s inaugural issue in December 1860, an article entitled 'Notes on Circumstantial Evidence' appeared. Written by professional lawyer W. S. Austin, this article is the first in a series of three which directly addresses the difficulty of correctly interpreting circumstantial evidence, and interrogates the maxim 'circumstances cannot lie'.³³ Austin argues that 'circumstantial evidence cannot always be strictly relied on', as proved by the 'melancholy fact that innocent men and women have been legally murdered in England'.³⁴ Austin considers how convincing circumstantial evidence can be, especially when in the hands of skilled advocates, but he also notes how such evidence can mislead and can leave question marks over guilt: Austin cites the *Palmer*, *Smith* and *Smethurst* cases as instances of this, thus reminding the reader of the alarming ambiguity of the evidence in those high profile cases.³⁵ 'The fact is,' Austin tells his readers, 'circumstantial evidence is the most difficult evidence to deal with and to value what it is worth', so difficult in fact that 'your "plain, blunt man" is very likely to be misled by it'.³⁶

Austin resumes his discussion of circumstantial evidence in *Temple Bar* with 'Some Curious Cases'.³⁷ In this article, Austin illuminates his assertion that such evidence is 'in its nature so difficult, so likely to mislead', by providing example cases where circumstantial evidence has been so misleading so as to make innocence look like guilt.³⁸ Austin concludes by once again warning against the 'great dangers of circumstantial evidence' and by concurring with J. Pitt Taylor's assessment that

³³ [W. S. Austin], 'Notes on Circumstantial Evidence', *Temple Bar*, 1 (December 1860), 91-98.

³⁴ *Ibid.*, p. 91.

³⁵ *Ibid.*, p. 94.

³⁶ *Ibid.*

³⁷ [W. S. Austin], 'Some Curious Cases', *Temple Bar*, 2 (April 1861), 131-140.

³⁸ *Ibid.*, p. 133.

‘circumstances not only *can* but constantly *do*, lie’.³⁹ Austin’s first two articles articulate the prevailing sense of unease regarding the use of circumstantial evidence in criminal cases, a sense which also finds expression within the fiction printed in *Temple Bar*’s pages. The contemporary concern over the efficacy of criminal trial procedure to elicit truth in the face of evidentiary shortcomings (especially in relation to circumstantial evidence) was a widely addressed topic in the 1860s, and Austin’s articles in *Temple Bar* provided the starting point for the writers of fiction within its pages to begin engaging with this important and pervasive topic.

The theme of undetected and secret crimes is one which pervades *Temple Bar*’s literary offerings, in both prose and poetry. In a poem entitled ‘Death Bed Secrets’, a dying wife confesses her adultery to her devoted husband, only to discover she will have died by his hand: ‘I knew / Your love and your guilt – and I poisoned you’.⁴⁰ Whilst highly sensational, the poem’s subject matter reflects the contemporary anxiety that within any respectable home, family members such as husbands and wives may harbour secrets from one another and that they may murder undetected. The figure of the respectable member of society with a dark secret is one which recurs in the fiction found in *Temple Bar*. A short story entitled ‘Shot in the Back’, for instance, tells the story of a dying military man who wishes to confess to a murder he committed many years ago, noting how at the time, ‘no one suspected me, on the contrary, on the contrary’.⁴¹

The recurring figure of the undetected, respectable criminal enables the authors of such fiction to engage in fictional form with contemporary concerns over the fallibility of evidence in criminal trials. ‘Tried for His Life’ is a short story about a man named Arthur, who is wrongly suspected of murdering his adulterous wife

³⁹ Ibid., p. 140.

⁴⁰ Edward Wilberforce, ‘Death-bed Secrets’, *Temple Bar*, 1 (March 1861), 544.

⁴¹ ‘Shot in the Back’, *Temple Bar*, 3 (November 1861), 473-482 (p. 481).

with poison. The narrator of the tale describes how the evidence ‘told against’ Arthur after his wife ‘died suddenly, with symptoms of poison’ and an autopsy reveals arsenic in her body.⁴² The narrator details how a series of small circumstances built up against Arthur: Arthur had quarreled with his wife, he was jealous, he had bought arsenic shortly before his wife’s death and some was found to be in his possession, when his wife had been taken ill he had insisted on nursing her.⁴³

Stories such as this, together with the Austin articles on circumstantial evidence, reflect the pervading mood of scepticism regarding circumstantial evidence which, following sensational cases like those of Palmer, Smith and Smethurst, gained a new vigour during the second half of the nineteenth century. Such stories and articles in *Temple Bar*, therefore form part of the wider debates concerning the criminal trial process (above all the value of evidence) which was taking place across magazines, journals and newspapers during the period. However, the debate sustained within *Temple Bar*’s pages was not a simple attack on the value of circumstantial evidence, but rather a more nuanced interrogation which prompted readers to think more critically about the value of evidence. This can be seen in the third essay on circumstantial evidence which Austin writes, entitled ‘Secret Poisoning’.

In ‘Secret Poisoning’ Austin discusses the case of Catherine Wilson, a woman found guilty of poisoning on purely circumstantial evidence. In this instance, however, Austin argues that the verdict is sound, and that the weight of the circumstantial evidence was such as to produce absolute conviction of her guilt. The aim of Austin’s previous two articles was to ‘shake the accuracy of the doctrine that

⁴² ‘Tried for His Life’, *Temple Bar*, 7 (December 1862), 131-140 (p. 134).

⁴³ *Ibid.*, p. 134. Other stories printed in *Temple Bar*’s pages similarly cast doubt on circumstantial evidence. See, for example, [Robert W. Buchanan], ‘A Heart Struggle’, *Temple Bar*, 4 (January 1862) in which a lady falsely suspects her lover of murder after seeing a man (who turns out to be her lover’s mentally ill brother) dressed in his clothes commit the deed.

“circumstances cannot lie”, but in ‘Secret Poisoning’ Austin concedes that when evidence forms ‘a chain that lack[s] no single link’, despite being ‘purely that of circumstances’ it can be strong enough to produce a conviction of guilt.⁴⁴ In claiming to both not contradict his earlier articles, whilst at the same time expounding the merits of circumstantial evidence, ‘Secret Poisoning’ reveals a tension that can be traced through the discourse on evidence during the second half of the nineteenth century. Cases such as Palmer, Smith, and Smethurst (amongst others) created a fervent interrogation of the value of evidence (especially circumstantial evidence) and its utility in criminal trials. However, as discussed earlier in this chapter, cases such as Palmer’s were also followed with various articles which sought to reassure the reader that the truth had been uncovered, despite evidentiary shortcomings.

A tension therefore emerges within the discourse on evidence, between a movement towards more critical evaluations of the legal process for determining the truth of disputed facts, and a desire to reassure the public that the process in place is, in fact, functioning effectively. Austin’s three-part series on circumstantial evidence is demonstrative of this tension at play. Whilst ‘Notes on Circumstantial Evidence’ and ‘Some Curious Cases’ seek to question the reader’s faith in circumstances, ‘Secret Poisoning’ works as a counterbalance so that the final import of the series is that circumstantial evidence must be treated with the upmost care and scrutiny, but where there is ‘no link wanting’ it can be capable of leading to the truth.⁴⁵

Wynne has noted how many of the new magazines which were emerging in the 1860s gained much popularity by serialising sensation novels, but that these novels did not merely offer cheap thrills, they also engaged with contemporary issues

⁴⁴ [W. S. Austin], ‘Secret Poisoning’, *Temple Bar*, 6 (November 1862), 579-584 (p. 579 and p. 581).

⁴⁵ *Ibid.*, p. 584.

of the day.⁴⁶ *Temple Bar* was one such magazine, and as we have seen, published sensational poetry and short stories which tapped into the public alarm over secret crimes, and middle-class criminality, and in doing so provided for an engagement with the evidence debate. The serialisation of a full novel, however, provided authors with a more extensive opportunity to engage with the conversation that was occurring within the magazine's own pages and beyond. In *Temple Bar* the fullest exploration of the problems of evidence, specifically circumstantial evidence, came with the publication of Mary Elizabeth Braddon's *Aurora Floyd*.

Aurora Floyd tells the story of its eponymous heroine with a dark secret. Aurora is the only daughter of a wealthy banker (Archibald Floyd) and when she strikes up a relationship with her groom (James Conyers), her father intervenes and she is sent away to school on the continent. After Conyers is dismissed by Archibald Floyd, he pursues Aurora and persuades her to marry him. The marriage is an unhappy one, and after discovering she has grounds for divorce (as Conyers is both abusive and adulterous), she leaves him, although Aurora does not pursue divorce as an option. Not long after her return home Aurora receives news that James Conyers has been killed in a racing accident and she marries the good hearted John Mellish. The report of Conyers's death is, however, discovered to be erroneous when Conyers is employed as Mellish's new horse trainer. After blackmailing his wife, Conyers is eventually found murdered, having been shot with one of Mellish's pistols. The final portion of the novel is spent trying to unravel the mystery of who shot Conyers, and it is here where the novel's narrative is able to engage with *Temple Bar's* discussion on circumstantial evidence.

⁴⁶ Wynne, *Sensation Novel*, Ch. 1.

As Julie Bizzotto has pointed out, Braddon's exploration of problems pertaining to the interpretation of circumstantial evidence is enabled by the use of a narrative voice which is denied the traditional omniscience that third person narrators often enjoy.⁴⁷ The narrator has information and knowledge of the characters but does not have unlimited access to their thoughts, most crucially the protagonist's. The narrator is instead forced to describe events, dialogue and characters' responses from the outside, leaving the reader to draw inferences about the character of Aurora and her motivations. For example, no explanation is offered as to why Aurora is sent away to school by her doting father. Instead the reader is left to guess the reason from the facts stated, from the 'long' rides Aurora takes with her new groom, and the servants' identification of a 'terrible breach between the father and child' (Bk. I, Ch. 3, p. 22) for instance. Yet the reason for Aurora's departure is never explicitly stated by the narrator who, like the reader, is shut out from Aurora and her father's conversation as they are 'closeted together for upwards of an hour' in Archibald Floyd's room before Aurora leaves for Paris.⁴⁸ Similarly, on her return, Aurora encounters a dog-fancier and the narrator, like the other characters present, is not privy to the private conversation which 'reached no ears but those of Aurora herself' (Ch. 3, p. 28). Even when the narrator views Aurora on her own, access is still denied to her inner thoughts: after meeting the dog-fancier, she mysteriously packages up her diamond bracelet to send to 'J. C.', the only insight the reader gains is through the reporting of direct speech: "The tears were in my father's eyes when he clasped that bracelet on my arm", she said, as she reseated herself at the desk. "If he could see me now!" (Ch. 3, p. 37). The use of quotation marks to signify that

⁴⁷ Julie Bizzotto, 'Serializing Sensation: The Dynamics of Genre in Victorian Popular Fiction' (Unpublished Doctoral Thesis, University of London, Royal Holloway, 2012), pp. 85-86.

⁴⁸ Mary Elizabeth Braddon, *Aurora Floyd*, ed. by P. D. Edwards (Oxford: Oxford University Press, 2008 [1862]), Ch. 2, pp. 22-23. Further references to this edition are given after quotations in the text.

Aurora has exclaimed these thoughts out loud is significant because it highlights the narrator's apparent inability to access the character's inner thoughts. One result of not being able to access Aurora's inner thoughts and feelings, is that the narrator and the reader must build up a picture of her character and account for her actions through external evidence, a task which becomes crucial in establishing who killed Conyers. Throughout the narrative, Braddon builds a web of circumstances which must be interpreted by the various characters and the reader alike, and through the character of Aurora, Braddon is, like Austin, able to demonstrate just how difficult the interpretation of evidence can be.

The novel builds up a strong chain of circumstantial evidence against Aurora, despite her innocence, highlighting the difficulties of the act of interpretation. This is dramatised particularly well through Mellish's attempts to interpret the evidence, which lead him to believe in Aurora's guilt. The circumstances tell against Aurora: she is a bigamist (albeit an unknowing one), her first husband is blackmailing her, she attempts to pay him off with a large sum of cash, she is witnessed (by Captain Prodder) meeting Conyers on the night of his death, when Conyers asks if she would like to 'stab [him], or shoot [him], or strangle [him]', Aurora is overheard (again by Prodder) to reply, 'yes [...] I would!'" (Ch. 24, p. 283). Finally, it turns out that Conyers has been shot with a pistol taken from Mellish's gun room, a room which 'was only entered by privileged persons – the room which [Aurora] had busied herself with the re-arrangement of [Mellish's] guns upon the day of the murder' (Ch. 34, p. 398).⁴⁹ It is following this final realisation that Mellish believes his suspicions

⁴⁹ As Bizzotto has also pointed out, the question of whether Aurora is guilty of the murder is more ambiguous in the serialised version of the text. Aurora enters John's gun room on the day of the murder to find Stephen Hargraves there. Stephen had been handling the pistol before Aurora's entrance, and the original version of the text in *Temple Bar* read 'He had this pistol still in his hand when the door suddenly opened, and Aurora Mellish stood upon the threshold. She spoke as she opened the door, almost before she was in the room': *Aurora Floyd, Temple Bar*, 6 (Aug. 1862), 80.

are confirmed. Through Mellish's agony *Aurora Floyd* demonstrates the dangers of circumstantial evidence in a manner reminiscent of Austin's two articles. However, Braddon's approach to the evidence debate, like Austin's, is more subtle than perhaps might be realised, for after the train of circumstances appears to damn Aurora, John's interpretation of the evidence is rebutted by an alternative interpretation, offered by Mellish's friend, Talbot Bulstrode.

Through the character of John Mellish *Aurora Floyd* is able to expose the way in which circumstantial evidence can mislead, as Austin put it, the 'plain, blunt man'.⁵⁰ However, by contrasting Mellish with Talbot Bulstrode's more critical examination of the evidence, Braddon is able to show, as Austin did in 'Secret Poisoning', that despite the difficult nature of interpreting the evidence, when viewed in the right way, it can lead to the truth. What Bulstrode realises on examining the evidence is that 'there is a link missing in the chain, and we are all at sea' (Ch. 36, p. 414). As Bulstrode points out, Mellish has not taken the trouble to 'investigate the evidence' thoroughly (Ch. 35, p. 410). In his interrogations of the narrative of guilt John has represented to himself, Bulstrode reveals the flaws in John's interpretation:

"Aurora had been setting my guns in order."
 "You argue, therefore, that your wife took the pistol?"
 John looked piteously at his friend; but Talbot's grave smile reassured him.
 "No one else had permission to go into the room," he answered.
 "I keep my papers and accounts there, you know; and it's an understood thing that none of the servants are allowed to go there, except when they clean the room."
 "To be sure! But the room is not locked, I suppose?"
 "Locked! Of course not!"
 "And the windows – which open to the ground – are sometimes left open I daresay?"
 "Almost always in weather such as this."

In the volume version of the text this paragraph was amended to the less ambiguous: 'He had this pistol still in his hand when the door suddenly opened, and Aurora Mellish stood upon the threshold. The intruder dropped his pistol into the capacious pocket of his fustian jacket as the door opened' (Ch. 22, p. 260). See Bizzotto, 'Serializing Sensation', p. 94.

⁵⁰[Austin], 'Notes on Circumstantial Evidence', p. 94.

“Then my dear John, it may just be possible that some one who had not permission to enter the room did, nevertheless, enter it for the purpose of abstracting the pistol. Have you asked Aurora why she took upon herself to rearrange your guns? – she had never done such a thing before, I suppose?”
 “Oh, yes, very often. I’m rather in the habit of leaving them about after cleaning them; and my darling understands all about them as well as I do. She has often put them away for me.”
 “Then there was nothing particular in her doing so upon the day of the murder.” (Ch. 35, p. 410)

Bulstrode’s more critical approach to the evaluation of evidence reveals to the reader the dangers of circumstantial evidence by showing how someone like Mellish can so easily misinterpret them. This more interrogative approach reveals that there is a ‘link missing in the chain’ (Ch. 36, p. 410). Crucially Bulstrode identifies that what is lacking is Aurora’s testimony, when he demands if Mellish has asked his wife ‘how long she was in [his] room’ (Ch. 36, p. 410). John Mellish’s response that he has not spoken to his wife of his suspicions leads to Bulstrode’s examination of Aurora, where he elicits her version of events. During his questioning of Aurora two new pieces of evidence are revealed; firstly, that Aurora had met with James Conyers and handed over two thousand pounds in cash (cash which had not been discovered after the murder), and that Stephen Hargraves had been alone in her husband’s gun room on the day of the murder. The revelation of *all* the relevant facts in this way, together with the discovery of a blood-stained button from Stephen’s waistcoat, enables the chain of evidence to be completed so that the truth can emerge.

The return to the testimony of the accused in *Aurora Floyd* may at first seem to suggest that Braddon’s novel works as a warning against the reliance on circumstantial evidence. In the end, however, it is the chain of circumstantial evidence against Hargraves which leads to his conviction, the jury finding it ‘conclusive’ (Ch. 39, p. 457). Braddon’s analysis of the utility of circumstantial evidence, like Austin’s, is more nuanced than a mere indictment of it. *Aurora Floyd*

teaches that circumstantial evidence must be interrogated thoroughly, and that all witness accounts (of direct and indirect evidence) must be heard to ensure that all the relevant facts emerge. Braddon's novel concludes that once all the evidence is made available and examined rigorously, and if, as Austin concludes in 'Secret Poisoning', 'there is no link wanting in the chain of evidence', then the adversarial-evidentiary approach to the truth will lead to a 'right result' and 'righteous retribution'.⁵¹

From Talbot Bulstrode to Robert Audley: The Figure of the Advocate in the Search for Truth

Jennifer Hayward has argued that through the act of reading serialised fiction, 'readers learn to get all the facts before arriving at an interpretation; the genre teaches the impossibility of absolute interpretation before all the voices are heard'.⁵² In *Aurora Floyd* this aspect of serial fiction takes on an added significance through its engagement with the contemporary debate concerning the interpretation of evidence in legal trials. By building up a web of circumstantial evidence which appears to implicate Aurora, Braddon teaches her reader to defer judgement until all the evidence has come to light. Moreover, through the character of Talbot Bulstrode, Braddon demonstrates the importance of the careful scrutiny of all the available evidence. In fact, Bulstrode's role is crucial to Braddon's response to the evidence debate, and in situating *Aurora Floyd* more broadly in the discussions surrounding

⁵¹ [Austin], 'Secret Poisoning', p. 584. As Bizzotto has noted, this article was published at the same time as the installment which saw the discovery of the murder weapon, and the interplay of articles would have prompted readers to think critically about Aurora's guilt. Bizzotto reads the doubt which Braddon casts over Aurora's guilt in the novel's serial form as confirmation that Braddon was involved in an interplay with surrounding articles which were similarly engaging with contemporary concern over the reliability of evidence. See Bizzotto, 'Serialising Sensation', pp. 97-98. Like Bizzotto I have been arguing that *Aurora Floyd* was actively engaging in contemporary debates on evidence through a critical interrogation of its worth. In contrast to Bizzotto, I view *Aurora Floyd* as ultimately reinforcing the value of circumstantial evidence, providing it is interrogated thoroughly, as Bulstrode demonstrates.

⁵² Jennifer Hayward, *Consuming Pleasures: Active Audiences and Serial Fiction from Dickens to Soap Opera* (Lexington: University Press of Kentucky, 1997), pp. 76-77.

the efficacy of trial procedures. Bulstrode's interrogation of the evidence, his desire to ensure that all the evidence is heard from all sources, his careful questioning of Aurora, denotes him as a figure analogous to that of an advocate in a court of law. This is particularly evident when Bulstrode challenges Mellish's interpretation of the evidence, which reads like a defence lawyer testing the prosecution's case. As noted above, *Aurora Floyd* does not simply dismiss circumstantial evidence as misleading, despite exposing the ways in which it can mislead. Instead, through the character of Bulstrode, the novel argues that when all the evidence is brought forward for close and careful scrutiny, when the prosecution's interpretation is interrogated, and the opportunity for an alternative interpretation of the evidence brought forth, then the truth can and will be uncovered. *Aurora Floyd* thus becomes a novel which reinforces the efficacy of adversarial-evidentiary legal trial process. What *Aurora Floyd* demonstrates is the need for a figure to interrogate and present an interpretation of the evidence which will reveal the truth, the need for an advocate. The emergence of the advocate figure as the reader's guide to correct interpretation is more fully developed in another of Braddon's novels: *Lady Audley's Secret*.

Lady Audley's Secret had begun its serialisation in the short-lived publication *Robin Goodfellow*, from July to September 1861. After that magazine was discontinued, publication began again (from the beginning) in the *Sixpenny Magazine* from January to December 1862, being published, therefore, concurrently with *Aurora Floyd*.⁵³ *Lady Audley's Secret* tells the story of the mysterious disappearance of Robert Audley's friend, George Talboys. The novel follows Robert Audley's attempts to prove that his friend has been murdered by his uncle's wife, Lady Audley, whose real identity is that of George Talboys's first wife, Helen.

⁵³ *Lady Audley's Secret* was phenomenally successful. In 1863 it went through no less than nine volume editions and was re-serialised in the *London Journal* in 1863.

The fear that those close to us might be harbouring a dangerous secret is dramatically realised in the character of Lady Audley who, unlike the unwitting Aurora, is a knowing bigamist and would-be murderess. In *Lady Audley's Secret* Braddon once again tackles the question of how such crime is to be uncovered. As the story unfolds it is revealed that after her husband goes abroad to seek their fortune, Helen Talboys assumes the identity of Lucy Graham, a governess, and in this disguise she is able to win the affections of, and marry, Sir Michael Audley. When Helen (now Lady Audley) discovers her first husband has returned to England, she fakes her own death (as Helen Talboys) to prevent discovery. When George is taken to Audley Court by his friend Robert, who happens to be nephew to Sir Michael Audley, Lady Audley tries to avoid a meeting with her first husband. Not long after his arrival at Audley Court, George disappears. It is later revealed that Lady Audley had made an attempt on George's life by pushing him down a well. Lady Audley appears as the epitome of the villain whose outward appearance of respectability might enable her to go undetected. As the narrator of *Lady Audley's Secret* warns: 'we may look into the smiling face of a murderer, and admire its tranquil beauty' (Vol. 1, Ch. 18, p. 141). Through Robert Audley's attempts to prove that the beautiful Lady Audley, who 'everyone loved, admired and praised' (Vol. 1, Ch. 1., p. 6), is a bigamist and murderess, Braddon's novel becomes intimately concerned with the question of how reality might be most effectively represented in order that the truth be uncovered.

Though 'he had never had a brief, or tried to get a brief, or even wished to have a brief' (Vol. 1, Ch. 4, p. 32), Robert Audley is a barrister by profession and the majority of the novel's narrative is told from his perspective. The reader, therefore, is largely cut off from knowing the inner thoughts and motivations of other characters

and must ascertain the truth through Robert's presentation of the evidence. This truth is revealed gradually by Robert, who carefully collects the evidence piece by piece and connects it together into a narrative of Lady Audley's guilt. In short, Robert Audley is making what Alexander Welsh would term a 'strong representation' of Lady Audley's guilt, and because the narrative is told predominantly from Robert's viewpoint, it begins to read like a prosecution's address to the jury. Indeed, the skills and tricks which Robert employs in order to uncover the truth are those of the professional advocate. Firstly, Robert carefully collects and interprets the physical and documentary circumstantial evidence available, from labels on old hatboxes which reveal the use of different names, to samples of handwriting which mark Helen Talboys's and Lady Audley's hand as the same. Robert's interpretation of such evidence is persuasive, and as he reasons his way to the truth, so too he persuades the reader. Secondly, Robert employs the advocate's skill of witness examination to elicit truth and to fill the gaps which the physical and documentary evidence leaves:

"When I was last in this house, Mr. Maldon, you told me that George Talboys had sailed for Australia."

"Yes, yes – I know,"...

"Mr. Maldon," [Robert Audley] said, slowly, watching the effect of every syllable as he spoke, "George Talboys never sailed for Australia – that I know. More than this, he never came to Southampton; and the lie you told me on the 8th of last September was dictated to you by the telegraphic message which you received on that day [...]. The lie was dictated to you, and you repeated your lesson. But you saw no more of George Talboys here on the 7th of September than I see him in this room now. You thought you had burnt the telegraphic message, but you had only burnt a part of it – the remainder is in my possession."

Lieutenant Maldon was quite sober now.

"What have I done?" he murmured, helplessly. "O, my God! What have I done?"

"At two o'clock on the 7th of September last," continued the pitiless, accusing voice, "George Talboys was seen, alive and well, at a house in Essex [...]. At two o'clock on that day [...] my poor friend was seen, alive and well [...]"

From that hour to this I have never been able to hear that he has been seen by any living creature. I have taken such steps as *must* have resulted in procuring the information of his whereabouts, were he alive. I have done this patiently and carefully – at first even hopefully. Now I know that he is dead.”

Robert Audley had been prepared to witness some considerable agitation in the old man’s manner, but he was not prepared for the terrible anguish, the ghastly terror, which convulsed Mr. Maldon’s haggard face as he uttered the last word.

“No, no, no, no,” reiterated the lieutenant, in a shrill, half-screaming voice; “no, no! for God’s sake, don’t say that!” (Vol. 2, Ch. 3, pp. 168-170).

The passage above demonstrates how Robert Audley is able to supplement the physical clue of the half-burnt telegraphic message with the testimony of a witness to begin to draw the truth to the surface. Like a skilled advocate, Robert is very astute at knowing which witnesses he is able to press information out of, and often adopts the common stance of hostility towards difficult witnesses as the passage above demonstrates. Likewise, he also has a keen perception of when his skills are wasted: of Phoebe Marks, for example, Robert recognises that ‘this woman would be good in a witness box’ and that counsel for the prosecution ‘would get very little out of her’ (Vol. 1, Ch.17, pp. 132-133). And yet Robert is also adept at recognising tell-tale signs that lies are being told: ‘the eyes [...] shifted away as she spoke, [...] [she] was obliged to moisten her [...] lips [...] before she [spoke]’ (Vol. 2, Ch. 3, p. 174).

As in *Aurora Floyd*, the collection and interpretation of evidence is far from straightforward. Lady Audley is cunning and manipulative and has worked hard to destroy evidence and manufacture circumstances which lie: she arranges for the death of Helen Talboys to be reported in *The Times*, and the body of another woman is buried in her place. Braddon also explores the problems pertaining to testimonial evidence as Robert’s enquiries are frequently frustrated by those who seek to help Lady Audley in her deception and perjure themselves: her maid Phoebe, her father, Mrs Plowson (the mother of the girl who really dies), and Lady Audley herself. In

the face of such perjury and misleading circumstantial evidence, Robert Audley enacts the power of advocacy to reveal the truth through a rigorous examination of the evidence and the careful presentation of that evidence as one compelling and coherent narrative, connecting together those small circumstances to forge ‘links of steel’ against the criminal (Vol. 1, Ch. 15, pp. 119-120). Robert’s chain may be formed slowly with ‘very slight links’ (Vol. 2, Ch. 10, p. 259), but the skill with which Robert connects them transforms them into ‘links of steel’ which forces a confession from Lady Audley who admits defeat in the face of Audley’s powerful advocacy: ‘You have used your cool, calculating, frigid, luminous intellect to a noble purpose. You have conquered – a MADWOMAN’(Vol.3, Ch. 3, p. 345).⁵⁴

The Adversarial-Evidentiary Model Fully Realised: Wilkie Collins’s *The Woman in White* and *The Moonstone*.

East Lynne, *Aurora Floyd* and *Lady Audley’s Secret* are examples of how nineteenth-century novelists were using their fiction to contribute to contemporary debates concerning the efficacy of the criminal trial process in the wake of sensational trials which raised uncomfortable questions, particularly about the reliability of evidence. Whilst all three of these novels provide the space for both the author and the reader to be critically reflexive about evidentiary issues, the final conclusion ultimately affirms the efficacy of the truth-seeking methods of the adversarial-evidentiary criminal jury trial. In *Aurora Floyd*, and to a greater extent in *Lady Audley’s Secret*, this affirmation is achieved through the figure of the advocate, who actively employs

⁵⁴ For an examination into the presentation of madness and women in sensation novels see Andrew Mangham, *Crime, Medicine and Victorian Popular Culture* (Basingstoke: Palgrave Macmillan, 2007). A number of useful works have also been produced on the presentation and role of women in sensation fiction, see, for example, Lyn Pykett, *The Improper Feminine: The Women’s Sensation Novel and the New Woman Writing* (London: Routledge, 1992).

professional advocacy techniques to reveal the truth. As the reader is increasingly cut off from knowing the thoughts of the characters within the novel, so the process of interpretation comes to rely less and less on the assessment of character and more on the assessment of the direct and circumstantial evidence surrounding the novel's events. Meaning thus begins to emerge from the piecing together of the clues offered to the reader by the narrator and the characters, all of whom have a limited perspective. Consequently the sensation novel, especially in the work of Braddon, begins to align itself methodologically with the techniques employed in criminal jury trials for the uncovering of truth. This mode of representation, its merits and deficiencies is further explored in two of the most enduringly popular sensation novels ever written: Wilkie Collins's *The Woman in White* (serialised in *All the Year Round* 1859 – 1860) and *The Moonstone* (serialised in *All the Year Round* 1868). As the next two sections of this chapter will focus on the analysis of these two novels, it will be useful to give a brief summary of both novels' plots at the outset.

In *The Woman in White*, wealthy heiress Laura Fairlie enters into an arranged marriage, only to have her identity stolen by her husband, Sir Percival Glyde. Sir Percival and his friend Count Fosco are in need of money and, after failing to obtain Laura's consent to release trust fund monies, the two villains of the tale conceive and carry out an elaborate fraud in which they fake Laura's death. Laura is stripped of her identity and placed into an insane asylum as Anne Catherick, Laura's doppelganger and, as it turns out, half-sister. Fosco and Glyde are aware that Anne is seriously ill and they take advantage of this fact by kidnapping her and passing her off as Laura so that her imminent death, when it arrives, can be recorded as that of Lady Glyde. The plot follows the attempts of Laura's other half-sister, Marian Halcombe, and their drawing master Walter Hartright to re-establish Laura's true

identity. The plot of *The Moonstone* centres around the unsolved theft of the Moonstone, a large Indian diamond. This diamond is inherited by Rachel Verinder on her eighteenth birthday, but after the birthday celebrations, the Moonstone is stolen from her room. The story tells of her cousin (and suitor) Franklin Blake's attempts to discover the thief. In his preface to the 1860 edition of *The Woman in White*, Collins tells his readers:

An experiment is attempted in this novel, which has not (so far as I know) been hitherto tried in fiction. The story of the book is told throughout by the characters of the book. They are all placed in different positions along the chain of events; and they all take up the chain in turn, and carry it on to the end. (p. 644)

As John Sutherland has stressed, contemporary critics who were quick to note the unoriginality of Collins's narrative style rather missed the point, for

what Wilkie Collins primarily stresses in his opening remarks is the analogy of *The Woman in White*'s narrative to the process of law, as it is ritually played out in the English criminal court. The novel's technique is forensic, not historical.⁵⁵

In fact, Collins claimed to have originally stumbled upon the idea for his 'experiment' after attending an actual criminal trial:

One day about 1856 [Collins] had found himself at a criminal trial in London. He was struck by the way each witness rose in turn to contribute a personal fragment to the chain of evidence. "It came to me then [...] that a series of events in a novel would lend themselves well to an exposition like this [...] one could impart to the reader that acceptance, that sense of belief, which was produced here by the succession of testimonies [...] The more I thought of it, the more an effort of this kind struck me as bound to succeed. Consequently when the case was over I went home determined to make the effort."⁵⁶

It is clear, as Sutherland suggests, that Collins's claim to originality rests on his adoption of the criminal trial model for the form of his novel, something which *The Woman in White* makes clear to the reader from the start:

The story here presented will be told by more than one pen, as the story of an

⁵⁵ Sutherland, 'Introduction', *The Woman in White*, p. xv.

⁵⁶ Nuel P. Davis, *The Life of Wilkie Collins* (Urbana, Ill., University of Illinois Press, 1956), p. 211.

offence against the laws is told in court by more than one witness – with the same object, in both cases, to present the truth always in its most direct and intelligible aspect; and to trace the course of one complete series of events, by making the persons who have been most closely connected with them, at each successive stage, relate their own experience, word for word. (pp. 5-6)

The novel's reader is thus made aware at the narrative's opening that they are to assume the role of juror: they will 'hear' the story as a court might have heard it, a series of first person narratives (which function as witness statements) will be offered to them in order 'to present the truth' (p. 5). Furthermore, the characters who offer their version of events are conscious of their role as witnesses: one witness begins by telling the reader his words are offered 'at the request of my friend, Mr. Walter Hartright. They are intended to convey a description of certain events [...] which took place' (p. 127), another remarks: 'my testimony is wanted in the interests of truth' (p. 364), and the reader soon comes to feel that 'the events which fill these pages might have claimed their share of public attention in a Court of Justice' (p. 5). Collins's 'experiment' is repeated in *The Moonstone* where the reader is once more presented with a series of witness statements, this time collected by Franklin Blake in 'the interests of truth' (*The Moonstone*, p. 7). As in *The Woman in White*, the characters who contribute their personal narratives to the novel have full cognisance of their witness function: 'I am to help [Franklin Blake] by writing the account of what I myself witnessed' (*The Moonstone*, p. 192).

As is customary with sensation fiction, *The Woman in White* and *The Moonstone* present the reader with a mystery which needs solving, and the witness statements offered to the reader function as an attempt to reconstruct reality through evidentiary narratives in order to reveal the truth of disputed facts. Throughout both novels the reader is continually reminded of the ultimate aim of truth-discovery, as characters persistently speak of 'knowing', 'telling', 'speaking' and 'owning' the

truth.⁵⁷ Like Wood and Braddon, Collins uses his novels to offer his readers a critical evaluation of the effectiveness of legal forensic methods. However, by explicitly adopting an adversarial-evidentiary model as the form of the novel in its own quest for the truth of disputed facts, Collins is able to go further than his counterparts in answering the question of whether the adversarial-evidentiary trial model really was the most effective means of representing reality and thereby revealing truth.

The analogy which Collins makes between his narrative mode and the criminal trial process immediately locates *The Woman in White* (and later, *The Moonstone*) within the debates on evidence which surrounded the trial process. Through the use of plots which revolve around uncovering a mystery, both novels actively engage with the question of the reliability of evidence. As the nineteenth-century legal treatises demonstrate, jurists were keenly aware of the problems which surrounded witness testimony, and not just that humans could lie, but also that they could be mistaken. The anxiety over the reliability of witness testimony can be seen in the strict rules which governed the eligibility of testimonial witnesses during the nineteenth century. As Christopher Allen highlights in his study *The Law of Evidence in Victorian England*, a striking feature of nineteenth-century law was the degree to which potential witnesses were precluded from giving statements.⁵⁸ The highly prescriptive nature of the rules governing who was competent to give evidence reveal a deeply embedded concern to ensure that witnesses were reliable

⁵⁷ Sue Lonoff has noted how in both *The Woman in White* and *The Moonstone* the obsession with discovering the truth is shown through the repetition of the word and its derivatives, which occurs several dozen times in both those novels: 'Multiple Narratives and Relative Truths: A Study of *The Ring and the Book*, *The Woman in White* and *The Moonstone*', *Browning Institute Studies* 10 (1982), 143-161 (p. 145).

⁵⁸ Children, for example were unable to give evidence unless they could prove they fully understood the significance of the oath, persons with previous convictions were also precluded from testifying and certain religious groups (such as Quakers) were unable to give evidence as they would not swear the oath on religious grounds, though alternative oaths and exceptions were made as the nineteenth century progressed. See further Christopher Allen, *The Law of Evidence in Victorian England*, (Cambridge: Cambridge university Press, 1999).

and could be trusted to speak the truth. Collins explores this concern in *The Woman in White* and *The Moonstone*.

The most widely recognised problem with testimony was that it could be perjured. The problem of perjury was in part responsible for the increasing reliance on circumstantial evidence over direct testimony from eyewitnesses that emerged during the eighteenth century. Throughout *The Woman in White*, the problem of perjury is foregrounded, the reader being made continually aware of how easily people may be duped by the lies of others. At Blackwater Park, for instance, both Laura and the housekeeper, Eliza Michelson, are fooled by Fosco into believing that Marian has gone to London when she has just been hidden away in a secret corner of the house. Both Anne Catherick and Mrs Clements are likewise tricked by Count and Countess Fosco into being separated on the false promise of a meeting with Lady Glyde. The extent to which lies pervade the novel's narrative alerts the reader to be cautious, if not entirely distrustful, of direct testimony.

Another reason to be wary of testimony examined in *The Woman in White* is the extent to which it becomes devalued by the limited nature of human memory and perception. As Hartright struggles to confirm the actual date of Laura's arrival in London, he is met at every turn with witnesses who simply cannot remember: 'I made no memorandum at the time, and I cannot therefore be sure to a day, of the date' Eliza Michelson tells him (p. 365), and Hester Pinhorn (cook to the Foscos) similarly warns, 'whatever you do, don't trust *my* memory in the matter' (p. 408). Even when witnesses themselves are desperate for the truth to emerge, their testimony still cannot always be relied on: '[Laura's] recollections were found to be confused, fragmentary, and difficult to reconcile with any reasonable probability' (p. 435).

The Woman in White also explores how human perception is necessarily limited because reality is always filtered through a subjective consciousness. Early on in the novel, Hartright draws the reader's attention to this flaw in testimonial evidence as he struggles to articulate his first encounter with Laura: 'How can I describe her? How can I separate her from my own sensations, and from all that has happened in the later time?' (p. 48). It is clear throughout Hartright's narrative that his perception is shaped by his feelings for Laura, as seen in his interpretation of Anne Catherick's prophetic dream, which warns Laura against trusting Sir Percival Glyde. Whilst Marian's rational interpretation dismisses Anne's letter, Hartright acknowledges that the letter '*had* influenced' him (p. 83). Other characters are similarly influenced by their own subjective responses, not least Sir Percival, whose paranoia that his 'secret' will be revealed fuels his delusion that Anne Catherick can expose him, driving him to place her in an asylum.

After Laura is rescued from the asylum it is made clear that the direct testimony of Marian and Hartright who claim that Laura *is* Laura, falls short of the level of proof needed to establish, legally, Laura's true identity: 'as a lawyer', Mr Kyrle explains, 'it is my duty to tell you, Mr. Hartright, that you have no shadow of a case' (p. 450). Kyrle points out that Marian and Hartright's testimonial evidence amounts to little more than a 'declaration on [their] side that the person who died and was buried was not Lady Glyde' (p. 450), and that they have no evidence to 'support the declaration' (p. 450). In Hartright's concession that 'there can be no doubt [...] that the facts [...] appear to tell against us' (p. 451), the reader is presented with one further difficulty facing those seeking the truth, namely, that circumstances *can* lie.

As with the Wood and Braddon novels discussed earlier, *The Woman in White* explores the issues facing those whose task it is to interpret circumstantial

evidence in the search for truth. If one believes the maxim that ‘circumstances cannot lie’, the facts on the face of it appear conclusive: Lady Glyde is witnessed leaving Blackwater Park, a lady answering her description (and introduced as Laura Glyde) arrives in London unwell and soon passes away. The death is certified and recorded by a professional doctor as being that of Laura Glyde. The death certificate is matched by a tombstone erected in Laura’s memory. During this same period, a woman who resembles and is dressed in the clothes of Anne Catherick is returned to the institution from which that lady escaped, with no suspicions being awakened. All the circumstances appear to confirm Fosco and Glyde’s story, and as Mr Kyrle puts it: ‘when an English jury has to choose between a plain fact, *on* the surface, and a long explanation *under* the surface, it always takes the fact, in preference to the explanation’ (p. 452). Yet Laura is the victim of an elaborate fraud, and so *The Woman in White* reveals how circumstances can be made to lie, in this case through the careful management and arrangement of events by Fosco and Glyde. The death certificate, the dressing of Laura in Anne’s clothes, Laura’s tombstone, all of these are circumstances which are not only misleading (as was the case in *Aurora Floyd*) but have been skillfully managed so that they lie.⁵⁹

The issues which surround the use of evidence in legal trials is a subject which Collins takes up again in *The Moonstone* where he once again adopts the advocacy-based, evidentiary-trial model to frame his narrative. *The Moonstone*, however, offers a more probing analysis of evidentiary problems, as the text reveals a deeper understanding that circumstantial evidence is further complicated by the fact that it is usually provided through subjective testimony. In chapter two, I discussed the terminology issues which plagued the debate over evidence. In

⁵⁹ The marriage register which apparently offers plain evidence of the marriage of Sir Percival’s parents is also a fabrication, a circumstance which lies.

debunking the myth that ‘circumstances cannot lie’, J. Pitt Taylor cited the reason that:

Circumstances must be proved, like direct facts, by witnesses who are equally capable with others of deceiving or being deceived. So that in no sense is it possible to say that a conclusion drawn from circumstantial evidence can amount to absolute certainty, or in other words, that circumstances cannot lie.⁶⁰

In *The Moonstone* the role of interpretation in the representative process is explored in more detail than in *The Woman in White*. The significant role that interpretation plays in assessing evidence is initially brought to the reader’s attention through Betteredge and Franklin Blake’s discussion of John Herncastle’s motive for bequeathing his niece an extraordinarily expensive diamond that he is rumored to have stolen. The contrasting interpretations of Herncastle’s actions – one, that he was motivated by contrition and two, that he was motivated by malice – demonstrate the difficulties inherent in any act of interpretation for, as Blake concludes: ‘one interpretation is just as likely to be right as the other’.⁶¹ The act of interpretation then, is frustrated by the fact that different, and even opposing interpretations, may seem similarly rational and well reasoned.

The radically different interpretations which can emerge from one set of events is most strikingly shown by Sergeant Cuff’s suspicions that Rachel Verinder is the thief of her own jewel. Cuff explains Rachel’s behaviour in a way which accords with his own interactions with Rachel and with similar young women, and so he construes as guilt her determined hindrance of his investigation. Yet in spite of Cuff’s well-reasoned arguments, Betteredge, who has known Rachel all her life, finds himself unable to draw the same conclusion: ‘with all her secrecy and self-will,

⁶⁰ J. Pitt Taylor, cited in [Austin], ‘Some Curious Cases’, p. 140.

⁶¹ Wilkie Collins, *The Moonstone*, ed. by John Sutherland (Oxford: Oxford University Press, 1999 [1868]), p. 42. For future citations from this novel, references to this edition will be given in the text.

there was not so much as the shadow of anything false in her. I never remember her breaking her word; I never remember her saying No, and meaning Yes [...] Nobody ever knew her to lie' (p. 53). In this way the text demonstrates how individuals are unavoidably influenced by their own personal experiences, and so reveals how different interpretations can emerge of the same events. Franklin Blake recognises there are objective and subjective interpretations of all events, and yet, as all the narratives of *The Moonstone* reveal, all testimony is shaped by a subjective vision, even when objectivity is being striven for. The result is misinterpretation.

A number of characters in *The Moonstone* misconstrue events and circumstances due to personal prejudice. Godfrey Ablewhite's father, having been the subject of Verinder family snobbery when he married into the family, incorrectly believes this prejudice to be the cause of Rachel breaking off her engagement with his son:

I know your motive, Miss Verinder, for breaking your promise to my son! I know it as certainly as if you had confessed it in so many words. Your cursed family pride is insulting Godfrey as it insulted *me* when I married your aunt. (p. 257)

Rosanna Spearman similarly misconstrues the paint smear on Franklin Blake's nightgown as conclusive evidence of his guilt, simply because her infatuation with him makes her want to believe in his guilt:

In the case of any other gentleman, I believe I should have been ashamed of suspecting him of theft [...] But the bare thought that YOU had let yourself down to my level [...] seemed to open such a chance of winning your good will. (p. 316)

Early on in *The Moonstone*'s narrative the reader is warned to be on their guard against coming to conclusions about circumstantial evidence. In the 'Prologue', the story of how John Herncastle came to possess the Moonstone is related. The reader is told how Herncastle had boasted that 'we should see the Diamond on his finger'

(p.3) and how he was discovered during the storming of the Seringapatam holding a bloodied knife over a dying man who exclaimed: ‘The Moonstone will have its vengeance yet on you and yours!’ (p. 4). This chain of circumstantial evidence produces a strong conviction in the mind of the onlooker (a cousin of Herncastle) of Herncastle’s guilt, but the reader is quickly alerted to the fact that such an interpretation is simply that, an interpretation:

I have no evidence but moral evidence to bring forward. I have not only no proof that he killed the two men at the door; I cannot even declare that he killed the third man inside – for I cannot say that my own eyes saw the deed committed. It is true that I heard the dying Indian’s words; but if those words were pronounced to be the ravings of delirium, how could I contradict the assertion from my own knowledge? (p. 6)

Throughout the text characters continue to misconstrue events and despite the early warning to be on our guard, the reader is often drawn into making the same mistakes, especially when presented with the well-reasoned arguments of Sergeant Cuff who reveals not only how easy it is to be led to a false conclusion by evidence, but also how forceful such a conclusion can appear:

I observe three suspicious appearances in that young lady. She is still violently agitated, though more than four-and-twenty hours have passed since the Diamond was lost. She treats me, as she has already treated Superintendent Seegrave. And she is mortally offended with Mr. Franklin Blake. Very good again. Here (I say to myself) is a young lady who has lost a valuable jewel – a young lady, also, as my own eyes and ears inform me, who is of an impetuous temperament. Under these circumstances, and with that character, what does she do? She betrays an incomprehensible resentment against Mr. Blake, Mr. Superintendent, and myself – otherwise, the very three people who have all, in their different ways, been trying to help her to recover her lost jewel. (pp. 164-165)

Sergeant Cuff then refers to his own knowledge and experience to explain such ‘incomprehensible conduct’ (p. 165), and concludes that Rachel must have taken the stone herself to pay some debts. Rachel’s repeated refusal to aid his investigations provides Cuff with further evidence of her guilt. As the detective adduces ‘proof

after proof against Miss Rachel', Betteredge himself is forced to admit that 'there was no disputing the truth of what he said' (p. 166). Cuff believes that his explanation of events is underpinned by 'plain facts' (p. 165), but as it turns out, 'the circumstances, in this case, have fatally misled him' (p. 175). Cuff is not the only character to misinterpret the evidence before him. Rachel, having seen Blake take the Moonstone, feels 'sure' (p. 349) that he has used it pay off his debts but she too has been 'fatally misled' by the circumstances. The problem that both Cuff and Rachel face is that they do not have possession of all the facts and so are forced to draw conclusions from the fragmentary evidence on offer, interpreted through their own subjective experiences. *The Moonstone*, like *The Woman in White*, offers an exploration of the deficiencies of the adversarial-evidentiary model of representation employed in felony trials post-1836, and this exploration leads both novels to examine alternative ideas of how the truth might best be represented.

Leaving the Law Behind: Beyond the Evidentiary Model?

Hartright in *The Woman in White* and Blake in *The Moonstone* are frustrated at every turn by misleading evidence, whether that be because it has been deliberately manipulated to mislead, or more simply because there is a missing piece of evidence which will make everything make sense as a whole. This latter situation occurs, for example, when Franklin Blake is faced with evidence of his guilt (his paint-stained nightgown), and Dr Candy's missing testimony prevents a complete understanding of Blake's role.⁶² According to strict legal standards, Hartright and Blake are failed

⁶² Although Blake took the diamond, he did so unconsciously and in order to protect it. Blake did not wish to deprive Rachel of the jewel permanently, which does not make him a thief in the technical sense of the word. It is Godfrey Ablewhite who is the real thief, as he steals the diamond from Blake after witnessing him take the diamond unconsciously.

by the evidence available and must begin to operate outside the law in order to uncover the truth. After acknowledging that ‘the legal remedy lies, in every sense of the word, beyond [his] means’ (*The Woman in White*, p. 455), Hartright begins to pursue alternative avenues for arriving at the truth, and decides Count Fosco and Sir Percival must be ‘forced’ to confess. (p. 459). Blake is likewise pushed beyond rigid legal boundaries once it is revealed that the proof of his innocence lies in a bizarre physiological experiment.⁶³

Given that legal rules of evidence appear unhelpful to Hartright and Blake and their consequent extra-legal investigations, it is unsurprising that a number of critics have ultimately dismissed the analogy Collins makes between his narrative mode and the legal trial as one which dissipates not long after the narrative begins. D. A. Miller puts forward a persuasive argument that the parallel which Hartright draws between the narrative mode and the presentation of evidence in a courtroom has ‘limited pertinence’ in *The Woman in White*, which ultimately ‘aligns itself with extra-, infra- and supralegal modern discipline’.⁶⁴ U. C. Knoepfmacher has likewise contended that, notwithstanding Hartright’s designs, the ‘analogy between legal truth and his narrative truth [...] is subverted as soon as we are drawn into the story’s incidents’.⁶⁵ John Sutherland has drawn the same conclusion, and despite his recognition of the poignancy of the legal analogy, argues that once Hartright is failed by the law he becomes something of a vigilante, needing to go beyond the remit of the law in order to enforce it.⁶⁶

⁶³ The experiment demands that he be drugged with opium to demonstrate how he took the diamond while sleep-walking.

⁶⁴ D. A. Miller, *The Novel and the Police* (Berkeley: University of California Press, 1988), pp. 156-157.

⁶⁵ U. C. Knoepfmacher, ‘The Counterworld of Victorian Fiction and *The Woman in White*’, in *New Casebooks: Wilkie Collins*, ed. by Lyn Pykett (London: Macmillan, 1998), pp. 58-69 (p. 62).

⁶⁶ John Sutherland, ‘Wilkie Collins and the Origins of the Sensation Novel’, *Dickens Studies Annual*, 20 (1991), 243-256 (p. 256).

It is easy to see why critics question the validity of Collins's legal analogy, for in many ways the individual narratives draw the reader into the story in a way that a juror in court would not be so drawn in the hearing of a case, as

Knoepflmacher suggests:

The narrative strips that Hartright has assembled draw us into the same time scheme of characters wholly unaware of their future; for a long time we share their ignorance of the offence alluded to in the 'Preamble' and adopt their false surmises, their uncertainties, their surprise.⁶⁷

In her contemporary review of *The Woman in White*, Mrs Oliphant was struck by how 'the reader's nerves are affected like the hero's', and Collins's narrative technique certainly appears designed to induce such physical reactions.⁶⁸ In the passage where Hartright comes face to face with the woman in white for the first time he is situated on a deserted road late at night, and he describes his physiological response to the meeting, how he feels that 'every drop of blood in [his] body was brought to a stop by the touch of a hand laid lightly on [his] shoulder from behind' (p. 20). The reader is made aware of the woman's presence at the point of Hartright's recognition he is not alone, and they learn, only by degrees (as Hartright learns) that this is the touch of 'a solitary woman' (p. 20). The mystery generated by this encounter is slowly developed by the ensuing description, and on its apparent resolution Hartright and the reader are all at once forced into the realisation that this woman had 'escaped from [an] asylum' (p. 28). With understanding of the narrative power of the cliff-hanger, Collins chose to end the first installment at this juncture and, as D. A. Miller argues, suspenseful passages such as these force the reader to inhabit a "'sensationalised" body where the blood curdles, the heart beats violently, the breath comes short and thick, the flesh creeps, the cheeks lose their colour',

⁶⁷ Knoepflmacher, 'Counterworld', p. 62.

⁶⁸ Margaret Oliphant, 'Sensation Novels', *Blackwood's Edinburgh Magazine*, 91 (May 1862), 564-584, reprinted in *Wilkie Collins: The Critical Heritage*, ed. by Norman Page (London: Routledge and Kegan Paul, 1974), pp. 118-119.

mirroring the nervous responses of the protagonists.⁶⁹ The result for Miller is that, rather than legal justice being the reason the reader searches for knowledge of the truth, their motivation stems from a need ‘to uncover the grounds for *being* nervous’.⁷⁰

Both Miller’s and Knoepflmacher’s readings of *The Woman in White* (and by extension *The Moonstone*) are persuasive, and both indicate that it is the reader’s emotional investment in the story’s outcome that prevents the reader from truly coming to occupy the promised position of juror. Instead of being able to remain an impartial judge of the facts, the reader becomes, Knoepflmacher argues, a ‘subjective participant’, guided as the protagonists are by their intuition and emotional responses.⁷¹ Miller posits the argument that ‘characters who rely on utterly illegal standards of evidence like intuition, coincidence, literary connotation get closer to what will eventually be revealed as the truth’.⁷² Those who steadfastly maintain within the rigid boundaries of legal proof will simply fail to uncover the truth, as is the case with Mr. Gilmore’s legalistic assessment of Sir Percival which has him concluding that ‘the probabilities, on Sir Percival’s own showing [...] were plainly with him’ (*The Woman in White*, p. 133). Miller’s argument can be applied with equal force to *The Moonstone* where readers and characters alike are guided by intuition in the same manner: when it is discovered that Franklin Blake is the owner of the incriminating nightgown the reader nonetheless believes, as Betteredge believes, that Blake ‘will be cleared [...] beyond all doubt’ (p. 309).

Schramm’s reading of the nineteenth-century novel leads her to identify a competition between novelists and jurists over the creation of ‘the most truthful

⁶⁹ Miller, *Police*, p. 149.

⁷⁰ Ibid.

⁷¹ Knoepflmacher, ‘Counterworld’, p. 62.

⁷² Miller, *Police*, p. 159.

representation of the “real”, as both professions sought to ‘justify its model of reality by accusing the other of ‘misrepresentation’, or a failure to present evidence responsibly’.⁷³ For Schramm, the fundamental difference between the lawyer’s and the novelist’s approach can be located in the privileging of emotional responses in literature. In contrast to the law, novels are able to recognise the importance of, and so provide the space for, emotional responses to narrative representations and so, Schramm argues, authors believed they could create more accurate representations of reality.⁷⁴ In both *The Woman in White* and *The Moonstone* Hartright and Blake, driven by their love for Laura and Rachel respectively, reach beyond rational, legal approaches and follow their intuition. The legal analogies are therefore arguably rendered redundant in novels where protagonists are forced to devise their own methods for uncovering the truth.⁷⁵

Both *The Woman in White* and *The Moonstone* reveal the inadequacies of the legal process, the aims of which can be frustrated by the complex matter of interpreting evidence, much of which can be misleading. In Hartright and Blake’s recourse to non-legal truth-seeking methods appears to lie an implicit recognition that the legal processes are not necessarily sufficient to uncover the truth. In this way both novels suggest that a sympathetic understanding of the complex and relative nature of reality and truth – and the consequent difficulties inherent in representing them – is needed. Collins’s treatment of the representations of reality in the interests

⁷³ Schramm, *Testimony and Advocacy*, p. 23. Schramm, for example, notes how novels such as Dickens’s *The Pickwick Papers* drew attention to the problems of legal representations of the truth (see Ch. 3), and how lawyers charged authors with gross misrepresentation, as Sir James Fitzjames Stephen did in an article entitled: ‘The Licence of Modern Novelists’, *Edinburgh Review*, 106 (1857), 124-156.

⁷⁴ Schramm, *Testimony and Advocacy*, p. 15.

⁷⁵ For both Hartright and Blake this requires they place their trust in others. In *The Woman in White*, Hartright must rely on Pesca who turns out to be a member of ‘The Brotherhood’, a secret organization which Fosco has betrayed, information which enables Hartright to force Fosco into confessing. Blake must similarly trust Ezra Jennings and permit himself to be drugged with opium to re-create events leading to the theft of the diamond.

of truth therefore finds common ground with Robert Browning's *The Ring and the Book* (1868-69). This narrative poem retells the story of a real seventeenth-century Roman murder trial through a series of dramatic monologues. Through these monologues *The Ring and the Book* explores how the truth-seeking aim of the trial is threatened by the knowledge that everyone 'lies, it is the method of a man'.⁷⁶ In spite of this, the poem ultimately argues that truth is capable of revelation as the Pope (who acts as judge) is able to reach a verdict after rejecting legal argument in favour of empathy and intuition.⁷⁷ Arguably, it is towards this model of truth-seeking that Hartright and Blake turn.

Certainly in *The Woman in White* and *The Moonstone* it is the characters who allow themselves to be emotionally guided to the truth that are ultimately the most successful in uncovering it, as D. A. Miller suggests. As Mark Hennelly Jr. has pointed out, in *The Moonstone* Ezra Jennings emerges as the most successful detective because his tragic back story has imbued in him an imaginative sympathy that enables him to reach beyond the surface of circumstances and solve the mystery.⁷⁸ As already noted, Mr Kyrle is swift to point out to Hartright that 'when an English jury has to choose between a plain fact, *on* the surface, and a long explanation *under* the surface, it always takes the fact, in preference to the

⁷⁶ Robert Browning, *The Ring and the Book*, ed. by Richard D. Altick (Harmondsworth: Penguin, 1981), X.369. For future citations from this poem references to this edition will be given in the text.

⁷⁷ Mary Rose Sullivan has argued that the sympathetic understanding which the Pope brings to his role as judge, based upon a 'deep rooted love of his fellow creatures' allows him to instinctively *feel* what the truth is: Mary Rose Sullivan, *Browning's Voices in 'The Ring and the Book': A Study of Method and Meaning* (Toronto: University of Toronto Press, 1969), pp. 132-133. For further analysis of the Pope's judgement process see also: Adam Roberts, *Robert Browning Revisited* (New York: Twayne, 1996), Ch. 7, and Richard D. Altick and James F. Loucks, *Browning's Roman Murder Story: A Reading of 'The Ring and the Book'* (Chicago: University of Chicago Press, 1968).

⁷⁸ Mark Hennelly Jr., 'Reading Detection in *The Woman in White*', in *Wilkie Collins*, ed. by Pykett, pp. 88-108. Jennings's knowledge, experience and imaginative insight enable him to piece together a comprehensible narrative from Dr Candy's fevered ramblings, and so uncover the mystery of how and why Blake took the diamond. W. David Shaw also identifies Jennings as the novel's 'true detective': W. David Shaw, *Victorians and Mystery: Crises of Representation* (New York: Cornell University Press, 1990), p. 289.

explanation' (*The Woman in White*, p. 452).⁷⁹ Yet one of the messages of *The Woman in White* and *The Moonstone* appears to be that in its failure to penetrate 'under the surface', the law lacks the emotional response which is oftentimes essential to the recovery of truth. Yet, if the legal analogy set up in both *The Woman in White* and *The Moonstone* fails, as Miller and Knoepfelmacher suggest, then the reader may be left feeling the same sense of unease which the cases of Palmer, Smith and Smethurst generated, an unease brilliantly articulated by Fosco that 'there are foolish criminals who are discovered and clever criminals who escape' (*The Woman in White*, p. 236). As D. A. Miller has argued though, sensation fiction will always seek to assuage the alarm it initially gives rise to, as by the novel's close 'the grotesque aberrations of character and situation that have typified its representation' have been discarded and replaced with Victorian norms.⁸⁰ This is true of Collins's novels and, by the end of *The Woman in White* and *The Moonstone*, the reader is assured that 'clever criminals' such as Fosco, Glyde and Ablewhite can be, and will be, caught and punished. Crucially, this sense of reassurance is achieved in a very particular way, namely through the use of the adversarial-evidentiary jury trial model. Indeed, it is precisely because Collins's legal analogy does *not* break down that Collins is able to restore his reader's confidence that truth is always ultimately capable of revelation.

For all its concern with relativism, Browning's *The Ring and the Book* leaves the reader with no doubt over the Pope's final verdict. Fundamental to this is the Pope himself, who emerges as a guiding judicial authority, pointing the reader

⁷⁹ See p. 176 of this thesis.

⁸⁰ Miller, *Police*, pp. 165-166.

towards the correct judgement.⁸¹ In both *The Woman in White* and *The Moonstone* such a guiding judicial hand is absent, and yet in the end readers are no less able to identify who the guilty and innocent are. When Fosco, Sir Percival and Ablewhite meet their deaths, there is a sense that justice has been done, and this effect is achieved through the skilled presentation of the evidence to the reader. In a criminal jury trial, skilled advocates are able to present evidence through the making of what Alexander Welsh terms ‘strong representations’.⁸² As discussed in chapter two, ‘strong representations’ are representations which use the evidence by subordinating to the argument (or ‘case’) being put forward. Eighteenth-century jurist Edmund Burke suggested that from the ‘multitude’, ‘combination’ and ‘relation’ of facts told, some revelation of truth may occur from the ‘collective effect’, and Welsh views lawyers as making strong representations in precisely this way.⁸³ In *The Woman in White* and *The Moonstone* it is through the skillful presentation of evidence as one coherent narrative that both Hartright and Blake are able to persuade the reader of its truth. Whilst it is true that within their individual narratives, Hartright and Blake decide to pursue their own alternative (non-legal) paths to the truth, these individual narratives are just one part of the total testimonial evidence on offer, one piece of evidence to be placed and read alongside all the rest. Outside their individual narratives and ‘in the interests of truth’ (*The Moonstone*, p. 7), both protagonists take control of collecting and piecing together all the evidence into one cohesive and chronological narrative of past events and, in so doing, fulfill the function of

⁸¹ For example, the Pope repeatedly associates Pompilia with whiteness and innocence, and Guido with blackness and guilt: ‘Such I find Guido, midmost blotch of black’ (X.868); ‘Such I pronounce Pompilia, then as now/ Perfect in whiteness’ (X.1004-1005).

⁸² Alexander Welsh, *Strong Representations: Narrative and Circumstantial Evidence in England* (Baltimore: Johns Hopkins University Press, 1992), p. ix.

⁸³ Edmund Burke in a report from the Committee of the House of Commons on 30th April 1794, in *The Works and Correspondence of the Right Honourable Edmund Burke*, 8 vols (London: Francis & John Rivington, 1852), VIII, 96.

advocates in a court of law.

In both novels, it is evident from the manner in which Blake and Hartright set about collecting the evidence, from the way in which they address the reader, and from the manner in which they issue instructions to witnesses, that not only are they acting as advocates would in a trial, but also that they both understand their role in these terms. At the opening of *The Woman in White*, Walter Hartright addresses his readers directly like a barrister in a court of law:

As the Judge might once have heard it, so the reader shall hear it now. No circumstance of importance, from the beginning to the end of this disclosure, shall be related on hearsay evidence. When the writer of these introductory lines (Walter Hartright, by name) happens to be more closely connected than others with the incidents reordered, he will describe them in his own person. When his experience fails, he will retire from the position of narrator; and his task will be continued, from the point at which he has left off, by other persons who can speak to circumstances under notice from their own knowledge, just as clearly and positively as he has spoken before them.

Thus, the story here presented will be told by more than one pen, as the story of an offence against the laws is told in Court by more than one witness – with the same object, in both cases, to present the truth always in its most direct and most intelligible aspect; and to trace the course of one complete series of events, by making the persons who have been most closely connected with them, at each successive stage, relate their own experience, word for word. (pp. 5-6)

Hartright tells the reader they are to hear the story as though it were a legal trial: ‘as the judge might once have heard it’ (p. 5). The reader is then assured that ‘no circumstance of importance, from the beginning to the end of this disclosure, shall be related on hearsay evidence’ (p. 5), and that the story will be told by actual witnesses to events, just as they would be in a criminal jury trial. The reader is further told that the purpose of this is to ‘present the truth’ by tracing ‘the course of one complete series of events’ (p. 5). Hartright’s ‘opening speech’ to the reader, therefore, is reminiscent of a barrister’s opening speech to a jury in a court of law.

In the analysis that follows I will compare Hartright and Blake’s advocacy to

the advocacy of a real nineteenth-century prosecutorial team: that employed in the trial of William Palmer in 1859. There are two reasons why this particular case is appropriate as a comparison: firstly, because John Sutherland has persuasively argued that the Palmer case was probably the source of Collins's inspiration for *The Woman in White*'s narrative technique; and secondly because the skill of the prosecution advocates (one of whom was the Attorney-General, Alexander Cockburn), was widely praised and they managed to secure a conviction on very little, and entirely circumstantial, evidence.⁸⁴ After hearing the verdict, Palmer reportedly said to his counsel that it was the strength of the prosecution's advocacy that had convicted him, rather than the actual evidence against him.⁸⁵

Lead counsel for the crown was the Attorney-General, whose opening and closing speeches were both eloquent and persuasive. In his opening speech the Attorney-General first stressed the important nature of what the jury was about to hear: 'Gentlemen of the jury, the duty which you are called upon to discharge is the most solemn which a man can by possibility have to perform'.⁸⁶ Hartright too begins his 'speech' in *The Woman in White* by warning the reader of the serious nature of his subject matter, telling his readers that the events which will be related should have 'claimed their share of the public attention in a Court of Justice' (p. 5).

Cockburn also informed the jurors in the Palmer case that his 'duty' was:

to lay before you the facts on which the prosecution is based, and in doing so I must ask for your most patient attention. They are of a somewhat complicated character; and they range over a considerable period of time, so it will be necessary not merely look to circumstances which are immediately connected with the accusation, but to go back to matters of an antecedent date.⁸⁷

⁸⁴ Sutherland, *Victorian Fiction*, pp. 31-42.

⁸⁵ *Ibid.*, p. 39.

⁸⁶ Knott, *Trial of William Palmer*, p. 23.

⁸⁷ Knott, *Trial of William Palmer*, pp. 23-24.

Like the Attorney-General, Hartright in *The Woman in White* is required to go back over past events in order to make the reader understand all the relevant details of the case. The story does not merely begin when Laura is rescued from the asylum by Marian, but at a much earlier time when Hartright is first commissioned as drawing master at Limmeridge House. Hartright often drops in phrases such as: ‘events which I have to relate, make it necessary for me to mention in this place that [...]’ (p. 6), in order to justify going back so far in time before the fraud occurs. Throughout Hartright’s narrative he continually stresses he is telling an ‘unfolding’ story (p. 7), that the novel will ‘trace the course of one complete series of events’ (p. 5). On the whole, Hartright’s story is chronologically presented, as he ensures that when one witness is unable to continue, the narration of events will be picked up ‘from the point at which he has left off’ by other witnesses closer to events (p. 5). Again, this echoes the Attorney-General’s opening speech in the Palmer case, where he narrates events in a story-like fashion in order to set the facts of the case before the jury, telling them that it is necessary that his case should ‘follow the chronological order of events’.⁸⁸

Throughout his opening speech the Attorney-General links all the facts of the case together into one connected narrative which is easy to follow and understand:

The prisoner at the bar, William Palmer, was by profession a medical practitioner and he carried on that profession in the town of Rugeley, in Staffordshire, for several years. In later years, however, he became addicted to turf pursuits, which gradually drew off his attention and weaned him from his profession. Within the last two or three years he made over his business to a person named Thirlby, formerly his assistant, who now carries it on.⁸⁹

In a similar manner, Hartright’s introductory narrative to *The Woman in White* provides the novel reader with a connected sequence of events leading up to the

⁸⁸ Knott, *Trial of William Palmer*, p. 25.

⁸⁹ Knott, *Trial of William Palmer*, p. 25.

fraud, providing much of the background information the reader needs to make sense of events. However, the main events of the novel occur when Hartright is not there to witness them and so, after providing his introductory information, Hartright then hands narration over to the other witnesses. Likewise, the Attorney-General uses his opening narrative in the Palmer case to set the scene for the jurors. He informs them of Palmer's gambling addiction, of his debts, his shady dealings and how the financial pressure on Palmer was mounting. After setting the scene, he too then introduces his witnesses. Similarly, Hartright uses his opening narrative to build a case up against Sir Percival, connecting him from the first with the mysterious circumstances of the woman in white, revealing that he locked her up in the asylum and alerting the reader that he has a 'secret' which he wishes hushed up. The effect is the same as the Attorney-General's, to create an unfavourable impression before introducing the witnesses.

In *The Moonstone*, Franklin Blake also provides the reader with an opening speech (this time through Betteredge, who reports it). Once again the reader is alerted to the important reason for why this story is being told:

In this matter of the diamond [...] the characters of innocent people have suffered under suspicion already – as you know. The memories of innocent people may suffer, hereafter, for want of a record of the facts to which those who come after us can appeal. (p. 7)

The importance of the truth being told is therefore stressed early on by Blake, so that the 'memories of innocent people' do not suffer. Like Hartright, Blake reassures the reader that the story will be told in 'the interests of truth' (p. 7), and to that end will best be told by witnesses to events and not, as Hartright stressed, be reliant on 'hearsay evidence':

We have certain events to relate [...] and we have certain persons concerned

in those events who are capable of relating them. Starting from these plain facts, the idea is that we should all write the story of the Moonstone in turn – as far as our own personal experience extends and no further (p. 8).

By writing in these terms Hartright and Blake make the claim to impartiality. Of course both these protagonists are biased towards their particular interpretation of events, but barristers in criminal jury trials were similarly biased towards their client whilst maintaining a similar pretence of impartiality, claiming to be acting (like Hartright and Blake) in the interests of truth. This can be seen in Cockburn's speeches in Palmer's trial, for he frequently reminds jurors of his impartiality, claiming that he is like a 'minister of justice, with no interest and no desire save that justice shall be done impartially'.⁹⁰ Blake also ensures that all the events leading up to the theft of the Moonstone are told and, like Hartright and Cockburn, stretches back into family history in order to cast as much light on events for the reader as possible:

We must begin showing how the Diamond first fell into the hands of my uncle Herncastle, when he was serving in India fifty years since', before telling how it came to be 'in my aunt's house in Yorkshire, two years ago, and how it came to be lost in little more than twelve hours afterwards (p. 8).

Once again the story is told in a chronological order (as far as possible), starting with an old family paper, then moving to Betteredge's narration of events at the Verinder family home, and moving forwards in time to the end.

Another striking similarity between Cockburn's advocacy and that of Hartright and Blake is the extent to which they ensure their witnesses appear reliable and trustworthy. Throughout Palmer's trial, Cockburn cleverly sets up all his witnesses as honest and reliable. Cockburn ensures the reliability of one witness in the eyes of the jury by telling them that he:

⁹⁰ Knott, *Trial of William Palmer*, p. 24.

cannot possibly have any motive for coming here to give false evidence (which must be fatal to a man whom, if that evidence be not true he must believe to be innocent) – and to suppose that he would do so without a motive is to suppose human nature to be a hundred times more wicked and perverse than in the worst and most repulsive form experience has ever found it to be.⁹¹

Of another he notes: ‘you will bear in mind that [the testimony of] Mr Roberts, on whom there is no taint or shadow of suspicion, is decisive.’⁹² In Collins’s novels the credibility of witnesses is set up with the same amount of care. In *The Woman in White*, Mr. Gilmore (the Fairlie’s family lawyer) is soon established as a person who can be trusted as an independent witness:

My function was of the purely judicial kind. I was to weigh the explanation we had just heard; to allow all due force to the high reputation of the gentleman who offered it; and to decide honestly whether the probabilities, on Sir Percival’s own showing, were plainly with him, or plainly against him. (p. 133)

Other witness statements are offered in *The Woman in White* by ‘the widow of a clergyman of the Church of England’ who knows she must ‘place the claims of truth above all other considerations’ (pp. 364-365), and a ‘Christian woman’ (p. 413) who understands ‘that it is a sin and a wickedness to say the thing which is not’ (p. 408). Along with Hartright, Marian Halcombe provides a large portion of the testimony on offer and her statements are given an added veracity by the fact that they are taken from her diary, thus removing the issue of poor memory which testimony can suffer from.⁹³

The care with which witnesses are set up as reliable can once again be identified in *The Moonstone*. One of the main witnesses, Gabriel Betteredge is quickly established as someone who can be relied upon to furnish us with an accurate

⁹¹ *The Times*, 26 May 1856, p. 9.

⁹² Knott, *Trial of William Palmer*, p. 38.

⁹³ Of course the twist after reading Marian’s diary is the discovery that Fosco has also been reading it, and so there may be the suggestion that he tampered with it, involving *The Woman in White* once more in the legal-forensic debate regarding the reliability of evidence.

account of events: he has an ‘active memory’ (p. 8), something other characters also notice – ‘Betteredge, your edge is better than ever’ (p. 28) – and he holds a ‘position of trust and honour’ (p. 10) in the Verinder family home. Another key witness is the evangelical Miss Clack, whose religious fervour marks her out as one with a ‘sacred regard for the truth’ (p. 192), notwithstanding the fun which Collins pokes at her (hypocritical) piety. As with Marian Halcombe, Miss Clack’s narrative is lent credence because she is able to refer to her well-kept diary: ‘everything was entered (thanks to my early training) day by day as it happened’ (p. 192).

Advocates are also charged with the task of discrediting witnesses for the opposition. In the Palmer trial Cockburn did this with aplomb: not only did he use his cross-examinations to reveal inconsistencies in the testimony of defence witnesses, he also used his jury address to highlight these inconsistencies too:

a girl named Watson, deposed that, though she had not taken any poison and had no wound of any kind on her body, she was attacked with a violent paroxysm in the month of October last year. But in cross-examination it appeared that she had been ill all day, was taken worse at night, had a pain in her stomach and cramps in her arms, was for quite a while insensible, but soon recovered and went about her business. That is the case that they have brought forward as a parallel for that mortal anguish – the spasms – the convulsions – the death agony of this unhappy man.⁹⁴

In *The Woman in White* and *The Moonstone* too, if Blake and Hartright wish us to view certain aspects of the witnesses testimonies with care, they achieve this by allowing those witnesses to betray their own prejudices and foibles. In both novels the textual footnotes which Hartright and Blake offer to supplement the narratives reveal that only relevant passages have been included: ‘the passages omitted, here and elsewhere, in Miss Halcombe’s Diary, are only those which bear no reference to Miss Fairlie or to any of the persons with whom she is associated in these pages’

⁹⁴ Knott, *Trial of William Palmer*, p. 247.

(Hartright, *The Woman in White*, p. 163). In *the Moonstone*, Blake claims that:

Nothing will be added, altered, or removed, in [Miss Clack's] manuscript, or in any of the other manuscripts which pass through my hands [...] As genuine documents they are sent to me – and as genuine documents I shall preserve them; endorsed by the attestations of witnesses who can speak to the facts (p. 192).

However, Blake has himself selected what he deems to be the relevant passages to include, and so both Hartright and Blake are both controlling what the reader hears or does not hear. There is also a good deal included which is not directly relevant to their case and yet despite this irrelevancy these sections have been included, but such passages (which often involve personal opinion of others) are useful for Blake and Hartright in demonstrating the prejudices and foibles of their witnesses, thus ensuring that certain testimonies will be treated with caution. In *The Woman in White*, Eliza Michelson's testimony provides a good deal of useful evidence but we are clearly not meant to take her praise of Count Fosco seriously. This praise is therefore negated by the rest of her testimony which reveals that she is easily fooled, and by the carelessness of her own words, which reveal her to be judgmental and prejudiced, and so put the reader on their guard:

I have always cultivated a feeling of humane indulgence for foreigners. They do not possess our blessings and advantages; and they are, for the most part, brought up in the blind errors of popery. It has also always been my precept and practice, [...] to do as I would be done by. On both these accounts, I will not say that Mrs Rubelle struck me as being a small, wiry, sly person, of fifty or thereabouts, with a dark brown or Creole complexion, and watchful light gray eyes. (pp. 370-371)

Similarly, in *The Moonstone*, whilst Miss Clack provides an invaluable testimony to events, the personality that is allowed to shine through her narrative warns us to be on our guard against any opinion she advances. Indeed, her own descriptions of how she leaves religious tracts lying around the house in the hope people might pick them

up, her excitement at the thought of saving her aunt's soul before she dies, and her judgmental attitude towards Rachel, all mean that the reader is far from inclined to take seriously her personal interpretation of the events she relates, nor her admiration for Godfrey Ablewhite.

In both novels care is taken to provide expert witnesses. In Palmer's trial, medical and scientific experts were used by both sides in order to lend credence to the theories put forward. Again, the reliability and expert knowledge of these witnesses is stressed by Cockburn at every opportunity, telling us of their 'enlarged experience and knowledge' or of their 'highest competency and most unquestionable integrity'.⁹⁵ The intended effect of such witnesses is to lend authority to any theory advanced by the advocates. This opportunity is also taken in *The Moonstone*. Mr. Murthwaite, the 'celebrated Indian traveler [...] who, at the risk of life, had penetrated in disguise where no European had ever set foot before' (p. 65), is clearly meant to fulfill such a function as he provides the expert knowledge required to make sense of the 'Indian plot' and its place in the larger narrative. In fact, Murthwaite only appears when he is needed to elucidate events and he even draws attention to his own expert authority: 'I know what Indian juggling really is. All you have seen to-night is a very bad and clumsy imitation of it. Unless, after long experience, I am utterly mistaken, those are high-caste Brahmins' (p. 71). Likewise, Mr Yolland, a local fisherman, 'whose knowledge was to be relied on' (p.157), can be read as an expert witness introduced to convince us that Rosanna Spearman committed suicide:

I have a word to say to you about the young woman's death. Four foot out, broadwise, along the side of the spit, there's a shelf of rock, about half a fathom down under the sand. My question is – why didn't she strike that? If she slipped, by accident, from off the spit, she fell in where there's a foothold at the bottom, at a depth that would barely cover her to the waist. She must

⁹⁵ Knott, *Trial of William Palmer*, p. 33.

have waded out, or jumped out, into the Deeps beyond – or she wouldn't be missing now. No accident sir! (p. 157)

After addressing the reader with an opening speech, then allowing the witnesses to provide their testimonies, both Hartright and Blake return to offer further narratives of their own. Both return to address the reader at a crucial stage, when the truth is being uncovered. This gives both Hartright and Blake the opportunity to draw together all the fragmented pieces of the narrative and finally reveal the truth. Throughout *The Woman in White* and *The Moonstone*, both protagonists maintain control over the narratives offered, as we can see from their footnotes, and they return at the end to draw all the evidence together and so reveal the truth, as advocates do in their closing speeches to juries. In his analysis of *The Moonstone*, D. A. Miller has drawn attention to a 'master-voice' which 'in every crucial case,' guides readers to 'pass *the same judgment*'.⁹⁶ By locating this 'master-voice' in the various textual footnotes that Blake offers to supplement the narratives of others, Miller reveals what it is about the 'master-voice' which leads the reader of *The Moonstone*, and by extension *The Woman in White*, to 'pass *the same judgment*': namely, the 'master-voice[']' skilled presentation of evidence, as I have been arguing. Moreover, as both Hartright and Blake's advocacy is, in the end, successful, both *The Woman in White* and *The Moonstone* can be read as finally endorsing skilled advocacy as an effective means of representing reality and revealing the truth, despite their exploration of the limitations the legal process faces. Jenny Bourne Taylor has also noted how Hartright takes on two roles in the text, that of 'specific narrator' and that of 'general editor'. For Taylor, this produces a 'hierarchical order' of narratives with those Hartright produces as 'general editor' at the top of that

⁹⁶ Miller, *Police*, pp. 53-54.

hierarchy.⁹⁷ Interestingly, Taylor reads Hartright's 'general editor' narratives as 'claiming the legally and empirically verifiable authority of the truth', and so reveals the fundamental importance of the narrative authority which Hartright gains from his utilisation of adversarial-evidentiary representational practices, from his function as an advocate.⁹⁸

Whilst D. A. Miller persuasively argues that the legal analogy made by Collins has 'limited pertinence', the advocacy of Hartright and Blake ensures this analogy remains significant throughout both *The Woman in White* and *The Moonstone*.⁹⁹ The identification of Hartright's and Blake's roles at this meta-textual level transforms the narrative as a whole into a strong representation of their particular version of the truth. Within the novel's plot these characters go in search of the evidence they need for the truth to emerge, but in their role as advocates they carefully piece together and arrange all the evidence into a connected narrative that persuades the reader of its truth. As such, these narratives do not just mimic the adversarial-evidentiary truth-seeking model, they embrace it, and in so doing ultimately affirm that model as the most effective means of establishing the truth of disputed facts and, in literature, the most effective way of representing reality. In her study *In the Secret Theatre of the Home*, Jenny Bourne Taylor examines the ways in which Collins's narratives explore the subjective processes of the conscious mind. Not unlike Miller and Knoepflmacher, Taylor also views the reader as being drawn into the subjective interpretive process, experiencing, as the 'subjective narrating consciousness' does, the struggle 'to separate thoughts, to distinguish between valid

⁹⁷Jenny Bourne Taylor *In the Secret Theatre of the Home: Wilkie Collins, Sensation Narrative, and Nineteenth-Century Psychology* (London: Routledge, 1988), p. 111.

⁹⁸ Ibid. Catherine Peters has also identified Hartright's 'quasi-legal function as the collector and arranger of the narratives': Catherine Peters, *The King of Inventors: A Life of Wilkie Collins* (London: Secker & Warburg, 1997), p. 214.

⁹⁹ Miller, *Novel and the Police*, p. 156.

and delusory perceptions, to doubt whether one can trust the evidence of the senses'.¹⁰⁰ The focus of Taylor's study is on the relationship between nineteenth-century psychology and Collins's sensation narratives, and how they exploit the tenuous balance between mid-nineteenth-century psychology's simultaneous 'fascination with the apparently irrational workings of the mind and the urge to regulate and control them'.¹⁰¹ A major focus of Taylor's study is the ways in which Collins's narratives highlight 'the truth's subjective construction even as [they] prove it', and as such engage with nineteenth-century psychological theories, experiments and ideas.¹⁰² For Taylor, the interest in Collins's work therefore lies in the ways in which narratives like *The Moonstone* 'highlight the shifting and provisional nature of evidence and the arbitrary and unreliable nature of memory' and the 'relative inaccessibility of the past'.¹⁰³ However, whilst Collins's narratives no doubt do underscore the 'truth's subjective construction', they nonetheless still attempt to reconstruct that truth, as Taylor herself notes.¹⁰⁴ The question which Collins's narratives often pose is: given the subjective and often dubious nature of perception, interpretation, and memory, can the truth be recovered in any meaningful way? *The Woman in White* and *The Moonstone* both emphatically suggest that through the adversarial-evidentiary trial model, it can be.

The Adversarial-Evidentiary Model: A More Effective Novelistic Representational Mode?

If, as Peter Brooks suggests, what is so appealing about the nineteenth-century novel is that it offers readers a sense of mastery over reality, then any such sense must in

¹⁰⁰ Taylor, *Secret Theatre*, pp. 46-47.

¹⁰¹ *Ibid.*, p. 46.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*, p. 201.

¹⁰⁴ *Ibid.*, p. 46.

part be derived from the very fact that representation is even possible in the first place. Within the pages of a novel, the reader is given a version of reality which they can, as Brooks puts it, ‘hold up to inspection, understand’, and which therefore provides them with a sense that the often confusing reality around them is capable of comprehension: as Raymond Williams puts it, that their reality is ‘essentially knowable in communicable ways’.¹⁰⁵ In its attempts to represent reality, the nineteenth-century novel becomes a part of wider contemporary discussions concerning the effectiveness of representational methods which seek to communicate information to others, something with which the criminal jury trial was equally concerned.

For Lyn Pykett, there is a connection to be drawn between the development of the sensation genre and a crisis in narrative authority at mid-century due to a decline of the knowable community.¹⁰⁶ As the traditional signifiers through which people interpret the world and gain an understanding of themselves and others within it shift and change (class boundaries, for example, become more fluid), so the act of representation becomes increasingly difficult. Within a knowable community it made sense to base representational practices on a model of knowing that privileged the revelation and judgement of character. Such representational methods become increasingly difficult to maintain once that type of community begins to decline in the face of rapid and unavoidable social change and, as Raymond Williams puts it, ‘what it means to live in a community’ becomes less and less certain.¹⁰⁷

Throughout Collins’s novels, for example, characters are quite easily able to conceal secrets about themselves from others, and not only the villains but the heroes

¹⁰⁵ Peter Brooks, *Realist Vision* (New Haven: Yale University Press, 2005), p. 1, and Raymond Williams, *The Country and the City* (Oxford: Oxford University Press, 1973), p. 165.

¹⁰⁶ Pykett, *Sensation Novel*, pp. 9-10.

¹⁰⁷ Williams, *English Novel*, p. 12.

as well. In *Armadale* (1866) for example, Ozias Midwinter conceals his true name from his friend Allan; in *No Name* (1862) the Vanstones are able to conceal from their own children the fact they are unmarried, and in *The Law and the Lady* (1875), Eustace Woodville hides his real name from his wife to prevent her finding out he has been tried for murder. As Winifred Hughes has suggested, Collins's fiction is representative of that isolating modern existence where concealment and secrets are the norm.¹⁰⁸ Such fiction appears a long way from Austen's knowable communities, or the organic unity and functionality of Trollope's Barchinore. Whilst there may exist pockets of meaningful familial and social ties, such ties are easily torn apart by events outside the control of individual characters. In *The Moonstone*, Rachel becomes totally cut off from both her mother and her lover after the events of the novel place her in a situation in which she feels unable to confide in them. The alienation of characters from one another is mirrored in their surroundings:

Our house is high up on the Yorkshire Coast, and close by the sea. We have got beautiful walks all around us, in every direction but one [...] The sand-hills here run down to the sea, and end in two spits of rock jutting out opposite each other. [...] Between the two, shifting backwards and forwards at certain seasons of the year, lies the most horrible quicksand on the shores of Yorkshire. At the turn of the tide, something goes on in the unknown deeps below [...] A lonesome and horrid retreat I tell you! No boat ever ventures into the bay. No children from our fishing village, called Cobb's Hole, ever come to play here. The very birds of the air, as it seems to me, give the Shivering Sand a wide berth. (*The Moonstone*, pp. 22-23)

On one side, an archway, broken through a wall, led into the fruit-garden. On the other, a terrace of turf led to ground on a lower level, laid out as an Italian garden. Wandering past the fountains and statues, Allan reached another shrubbery, winding its way apparently to some remote part of the grounds. Thus far, not a human creature had been visible or audible anywhere.¹⁰⁹

At Aldborough, as elsewhere on this coast, local traditions are, for the most

¹⁰⁸ Hughes, *Maniac in the Cellar*, p. 166.

¹⁰⁹ Wilkie Collins, *Armadale*, ed. by Catherine Peters (Oxford: Oxford University Press, 1999 [1866]), p. 205.

part, traditions which has been literally drowned. The site of the old town, once a populous and thriving port, has almost entirely disappeared in the sea. [...] Thrust back year after year by the advancing waves, the inhabitants have receded, in the past century, to the last morsel of land which is firm enough to be built on – a strip of ground hemmed in between marsh on one side and the sea on the other.¹¹⁰

This last quotation from *No Name* in particular evokes the idea of the knowable community having declined, as it is literally forced to retreat by the changing world around it. As Pykett suggests, then, the sensation genre responds to the crisis in narrative authority which this decline in the knowable community creates, and represents a search for an alternative mode of representation.

Sensation novelists, like other nineteenth-century novelists, still sought to create accurate representations of reality. I have already noted how Collins, for instance, like Dickens and Gaskell, would use his prefaces in order to authenticate certain plot points. The nineteenth-century preoccupation with creating accurate accounts of reality can also be seen in the magazine articles which were published alongside these novels. The articles in these magazines demonstrate a recognition and acceptance that the nineteenth century is one of rapid and inescapable social development. In an article entitled ‘Our Social Progression’ which appeared in the *New Monthly Magazine* during *East Lynne*’s publication, the extent and rate of the progression is made clear: ‘In mechanics, chemistry, and manufactures, our improvements ever marked progress, not regeneration. In engineering [...] the English people stand prominent’.¹¹¹ Further articles attempted to make sense of this new emerging social reality. Throughout *East Lynne*’s serialisation the *New Monthly Magazine* printed a whole series of articles on travel and exploration which aimed to

¹¹⁰ Wilkie Collins, *No Name*, ed. by Virginia Blain (Oxford: Oxford University Press, 1998 [1862]), p. 325.

¹¹¹ ‘Our Social Progression’, *New Monthly Magazine*, 119 (August 1860), 492-500 (p. 497).

show the reader that reality was capable of being represented and understood. The desire to understand the world, to gain some total vision of reality which might be comprehended, is expressed neatly in an article entitled ‘A Holiday Tour in Spain By a Physician’, where the writer seeks to map the cities he visits for his reader and suggests that a full understanding of them is possible:

When strangers visit any locality for the first time, in order to obtain a correct notion of its general outline, they cannot take a more judicious step than to mount some high building, or an adjacent elevation, from whence a bird’s eye view of the entire neighbourhood may be at once obtained.¹¹²

The writer continues to provide a description of the city from the top of a cathedral tower. During the publication of *The Woman in White* and then *The Moonstone*, *All The Year Round* likewise published a variety of articles which aimed to illuminate and explain aspects of the reader’s world, from ‘Animal Intelligence’ to detailed scientific explanations of the solar eclipse.¹¹³

Like the writers of these articles, sensation novelists were also responding to a desire for a means of representation that would be accurate and truthful. Sue Lonoff has noted how, in *The Woman in White* and *The Moonstone*, Collins was seeking ‘a structural solution to a problem in epistemology’ and tried to demonstrate that the multiple narrative technique would disclose ‘a knowledge of “the Truth”’.¹¹⁴ The search for an alternative model of representation takes on added significance in novels which deal with mysteries and crime, for this subject matter raises questions about the process of representation, questions which involve such texts in the contemporary debate over the matter of representation in the courtroom. In the

¹¹² ‘A Holiday Tour in Spain by a Physician’, *New Monthly Magazine*, 118 (March 1860), 346.

¹¹³ See ‘Animal Intelligence’, *All the Year Round*, 20 (July 1868), 113-115, and ‘The Coming Eclipse’, *All The Year Round*, 20 (July 1868), 185-187.

¹¹⁴ Sue Lonoff, ‘Multiple Narratives & Relative Truths: A Study of *The Ring and the Book*, *The Woman in White* and *The Moonstone*’, *Browning Institute Studies*, 10 (1982), 143-161 (p. 144).

sensation novels discussed here, the mystery plot exposes the problematic nature of representation, in particular the evidence-based representational practices employed in the courtroom. However, through this exploration the figure of the advocate emerges as the location of the most effective representations, and so the adversarial-evidentiary trial model is upheld as the most effective representational mode. In *The Woman in White* and *The Moonstone*, this is taken further and the adversarial-evidentiary model becomes the narrative method. The sensation novel, then, in its search for an alternative means of representing reality, moves away from traditional character-based approaches and towards one based on the careful presentation and scrutiny of evidence.

Chapter Four

‘The Perfect Reasoning Machine’: The Advocacy of the Detective

There is an innate desire in all men to view the earth and its cities and planes from “exceeding high places,” since even the least imaginative can feel the pleasure of beholding some broad landscape spread out like a bright-coloured carpet at their feet, and of looking down upon the world, as though they scanned it with an eagle’s eye. For it is an exquisite treat to all minds to find that they have the power, by mere vision, of extending their consciousness to scenes and objects that are miles away; and as the intellect experiences a special delight in being able to comprehend all the minute particulars of a subject under one associate whole, and to perceive the previous confusion of the diverse details assume the form and order of a perspicuous unity; so does the eye love to see the country, or the town, which it usually knows only as a series of disjointed parts – as abstract fields, hills, rivers, parks, streets, gardens, or churches – become all combined, like the coloured fragments of a kaleidoscope, into one varied and harmonious scene.¹

Floating over London in a hot air balloon in 1862, Henry Mayhew reflects on the ‘special delight’ the mind experiences when it is able to ‘comprehend all the minute particulars of a subject under one associate whole’.² As Mayhew observes the vast cityscape from the air, he promises to render the ‘Great Metropolis’ comprehensible ‘at one single glance’, creating from the ‘previous confusion of the diverse details’ a ‘form and order of a perspicuous unity’.³ Throughout the piece, entitled ‘A Balloon View of London’, Mayhew’s descriptions impose a sense of order onto the sprawling city, ostensibly bringing this ‘strange conglomeration’ under control as he writes of a ‘harmonious [...] scene’ emerging from the ‘fragments of the kaleidoscope’.⁴

Invoking the metaphor of London as a ‘monster’, Mayhew casts the city as a frightening, unfamiliar thing of chaos.⁵ Yet the piece as a whole works to subdue this threat, to tame this monster by demystifying it through the demonstration that, given

¹ Henry Mayhew, ‘A Balloon View of London’, in Henry Mayhew and John Binny, *The Criminal Prisons of London, and Scenes of Prison Life* (London: Griffin, Bohn, and Company, 1862), pp. 7-10 (p. 7).

² *Ibid.*

³ *Ibid.*, pp. 7-9.

⁴ *Ibid.*, p. 9 and p. 7.

⁵ *Ibid.*, p. 9.

the right vantage point, it is capable of being viewed and understood as ‘one associate whole’.⁶ Take, for instance, the following passage:

the earth, with its tiny hills and plains and streams, assumed the appearance of the little coloured plaster models of countries. The bridges over the Thames were positively like planks; and the tiny black barges [...] seemed no bigger than summer insects on the water. The largest meadows were about the size of green-baize table covers; and across these we could see the line of the South-Western Railway, with the little whiff of white steam issuing from some passing engine, and no greater in volume than the jet of vapour from an ordinary tea-kettle.⁷

The description of the London landscape in familiar and domestic terms such as ‘planks’, ‘table covers’, and ‘tea-kettles’ instantly makes the cityscape familiar and unimposing, something which is comprehensible and communicable in everyday terms. On reading this passage one is reminded of Peter Brooks’s analysis of how the novel functions to provide the reader with a sense of mastery over their world, Mayhew’s descriptions recalling the analogy Brooks makes between the novel and the scale model which allows us to ‘bind and organize the complex and at times overwhelming energies of the world outside us’.⁸ Like the scale model, Mayhew’s piece offers readers a coherent picture of a city otherwise a ‘confusion’ of ‘diverse details’.⁹

The position of Mayhew in the basket of the hot air balloon provides him with a privileged vantage point not unlike that of the omniscient narrator, who offers to show the reader their world in understandable terms. At one point, Mayhew describes his viewpoint as that of an ‘angel’, and ‘A Balloon View of London’ culminates with the suggestion that above the confusing ‘hubbub’ of everyday ‘petty jealousies and heart-burnings, small ambitions and vain parade of “polite society”’

⁶ Ibid., p.7.

⁷ Ibid., pp. 8-9.

⁸ Peter Brooks, *Realist Vision* (New Haven: Yale University Press, 2005), p.1.

⁹ Mayhew, ‘A Balloon View’, p. 7.

there exists an ‘Elysian destiny’: Mayhew not only offers to show the reader their world in understandable terms, he hints that it might be meaningful too.¹⁰ In this way, Mayhew’s design mirrors that of the Victorian novelist who ‘offers to show people and their relationships’ (and so by extension the world in which they live), ‘in essentially knowable and communicable ways’ as Raymond Williams and Peter Brooks suggest.¹¹

Both Raymond Williams and Lyn Pykett have linked the decline of the knowable community to a crisis in narrative authority which occurs at mid-century, a crisis which Pykett has identified as crucial to the development of sensation fiction and its alternative mode of representation.¹² As chapter three argued, the alternative representational methods employed in a number of sensation narratives mirror those adversarial-evidentiary methods used in felony trials post-1836. In contrast to texts which continued to rely upon a character-based model of representation when its epistemological foundation was being called increasingly into question, the sensation narratives discussed in this thesis demonstrate that an alternative mode of representation – one which moved away from relying on the knowledge and revelation of character – could still provide readers with the sense that contemporary reality, however confusing it might appear, was still understandable in ‘essentially knowable and communicable ways’.

It has been my intention to show that the introduction of the Prisoners’ Counsel Act in 1836 not only had a deep impact on the shape and nature of the criminal trial but that it was also deeply influential in the development of sensation

¹⁰ *Ibid.*, p. 9.

¹¹ See Brooks, *Realist Vision*, Ch. 1, and Raymond Williams, *The Country and the City* (Oxford: Oxford University Press, 1973), quotation at p. 165.

¹² See Raymond Williams, *The English Novel from Dickens to Lawrence* (London: Hogarth, 1984), Ch. 1, and Lyn Pykett, *The Sensation Novel: From The Woman in White to The Moonstone* (Plymouth: Northcote House, 1994), p. 39.

fiction's narrative style. I included in my discussions of sensation fiction Wilkie Collins's *The Moonstone*, a novel that is often referred to and discussed as a detective novel.¹³ Criticism of detective fiction will often include a chapter or section on sensation narratives, and many novels typically classified as sensational could arguably be categorised as examples of detective fiction: Robert Audley's investigations in *Lady Audley's Secret* or Valeria Woodville's detective work in *The Law and the Lady*, for example, could easily identify these novels as detective stories. The fact is that a good deal of sensation fiction contains a detective element. The protagonists usually carry out this detective work, but sometimes an official detecting agent (like Cuff in *The Moonstone*) is introduced to search for clues. Such detective work tends to perform a supplementary role, functioning to provide the evidence that can then be interpreted and presented in a coherent narrative that purports to be a representation of the truth.¹⁴ However, as some evidence can only be unearthed through the act of detection, this act becomes fundamental to the final representation made. In terms of this thesis, this is significant because, as the representational methods of sensation narratives were influenced by adversarial-evidentiary trial practices, and as the detective element of the sensation novel marks it out as forming part of the detective story's history, then the influence of the Prisoner's Counsel Act on nineteenth-century fiction may well extend beyond the sensation novel and to the detective stories which flourished in the late nineteenth century. It is this impact of the 1836 Act that I will be exploring in this chapter, with

¹³ Genre boundaries are never rigid and hard and fast categorisation of novels is often difficult. I chose to include *The Moonstone* in my discussion of sensation fiction as its construction matched that of *The Woman in White* and so its analysis was best suited to that chapter. Also, whilst the detective element is prominent in this novel, it still bears the hallmarks of the sensation genre: a mystery at the heart of the middle-class home, a middle-class villain with a secret, as well as sensational details such as a legendary cursed diamond.

¹⁴ In *The Woman in White* and *The Moonstone* this is more patently done through the provision of the various witness testimonies that are controlled by Hartright and Blake, but in the other instances the narratives themselves, as I argued in chapter three, functioned as what Welsh terms 'strong representations'.

particular emphasis on how the rise of adversarial advocacy following its enactment helped both to shape the *Sherlock Holmes* formula and to secure its success.

Crime, the Criminal, and the Threat to Narrative Order and Meaning

Throughout the nineteenth century, crime remained a popular and recurring theme in fiction. In novels that purported to be accurate representations of reality which promised the reader that the world in which they lived was capable of being narrated in comprehensible and meaningful ways, the portrayal of crime takes on an added significance because it challenges the value system that provides the framework within which the reader interprets the text. The rise of the novel in the nineteenth century is closely linked to the rise and consolidation of the middle-classes, who became its predominant audience.¹⁵ The traditional nineteenth-century novel is consequently underpinned by a value system which coincides with that of the typical reader. As such the novel appears to that reader as an accurate representation of the world in which they live because it inscribes reality with meaning in terms they understand, as epitomised by the usual concluding marital or familial tableau. By the novel's close, therefore, the readers feel reassured that the world is ordered in terms they understand.

Crime represents a challenge to the middle-class norms endorsed by such novels and so threatens to disrupt the hermeneutic process if it is not successfully circumvented. During the first half of the nineteenth century, crime in novels was typically presented as a class problem. The threat of crime in such novels was one that, whilst very real, was nonetheless a challenge from outside the middle-class social milieu and so could be both identified and conceptually contained. Novels of

¹⁵ This is the argument Ian Watt makes in *The Rise of the Novel: Studies in Defoe, Richardson and Fielding* (London: Hogarth Press, 1987 [1957]).

the period which deal with working-class crime tend to be primarily interested in examining the conditions which produced that criminality in the first place, rather than addressing questions such as how the criminal might be identified and brought to justice. In *Oliver Twist* (1837-9), for example, the concern is not with how the guilt of Fagin, Sikes or Dodger might be proven but instead with providing the space for Dickens to explore social issues. Similarly in Gaskell's *Mary Barton* (1848), the main emphasis of the murder storyline is not an exploration of how one might best identify the real killer, but rather an examination into the desperate social and working conditions that can lead to such actions, and how this might be remedied.¹⁶ By writing in these terms, the novelist makes sense of crime in terms the middle-class reader understands: crime is essentially a working-class problem created by poverty, immorality, idleness, social ills, poor environment and so on. If crime can be explained in a way which chimes with a worldview that the reader recognises and subscribes to, then its threat to the reader's interpretive framework is neutralised, and the reality which the novel presents continues to appear as one that is accurately represented.

In contrast to this portrayal of crime, the sensation novel (which reached the height of its popularity in the 1860s) concentrated its interest on the criminal who either belonged to, or had infiltrated, the ranks of the middle and sometimes upper classes.¹⁷ The focus on crimes and mysteries that occurred within the middle-class

¹⁶ The drawing of lots to decide on who is to become the killer of Carson Junior serves to highlight the total erosion of any meaningful relationships between master and servant. The final deathbed tableau of John Barton dying in the arms of the father of his victim, suggests that only through the establishment of meaningful working relationships built on responsibility, understanding and mutual respect, can suffering such as that depicted in the novel be remedied.

¹⁷ As discussed in chapter two, the growing interest in the middle-class criminal can be explained by an increased awareness of their existence due to newspaper reporting of high-profile and sensational cases which involved this class of criminals, and also because, as Martin Wiener has suggested, the success of the measures introduced to deal with the problem of low-class crime during the first half of the century, such as the introduction of the metropolitan police force, threw middle-class criminality

Victorian home presented a more complex problem for novels dealing with crime to address, for suddenly the criminal threatened to remain unidentified and so unexplained. A recurring concern in sensation fiction is how the identity of the criminal is to be ascertained and exposed. On one level, the sensation novel's engagement with the question of how criminals can be identified when they no longer conform to class stereotypes simply reflects contemporary fears relating to an increased public focus on crimes committed within middle-class and family settings. Understood in this sense, the final exposure and punishment of the villains (and the subsequent re-establishment of Victorian middle-class norms at the end of the narrative) functions to reassure the reader that no matter who the criminal is, they can and always will be exposed and punished.¹⁸ That said, the focus on the middle-class criminal has a wider significance when the sensation novel is read, as Pykett reads it, as a response to a crisis in narrative authority.

In novels that deal with crime – especially those which, like sensation fiction, have a crime or mystery at their centre – the identification of the criminal becomes crucial not only because it enables punishment and the restoration of social order, but also because it re-establishes the reader's sense that the world is reliably knowable, as the criminal and their behaviour is decoded in terms the reader understands.¹⁹

Heather Worthington has noted how nineteenth-century literature demonstrates an increasing interest in motive.²⁰ This increasing interest in motive is a symptom of the wider desire to restore and maintain a sense of order through understanding. If the

into focus as the new concern. See Martin J. Wiener, *Reconstructing the Criminal: Culture, Law, and Policy in England, 1830-1914* (Cambridge: Cambridge University Press, 1990), Ch. 6.

¹⁸ D. A. Miller has read the exposure and punishment of the criminal and the restoration of order as performing a disciplinary function on the body of the reader. See, D. A. Miller, *The Novel and the Police* (Berkeley: University of California Press, 1988).

¹⁹ Lady Audley is labelled as 'mad' for example, thus containing her threat by marking her as an anomaly.

²⁰ Heather Worthington, *The Rise of the Detective in Early Nineteenth-Century Popular Fiction* (Basingstoke: Palgrave Macmillan, 2005), pp. 19-20.

motive of a criminal can be ascertained, if they can be understood as being motivated by greed, jealousy, or driven to desperation by cruelty or neglect, if they can be identified as being ‘mad’ as is Lady Audley, then they immediately become less threatening because the seeming chaos which is caused by their actions becomes capable of being explained in understandable terms, and so order and meaning become capable of recovery.²¹

My contention here is lent support by Vicky Greenaway’s illuminating analysis of *The Woman in White* in her essay ‘The Italian, The Risorgimento, and Romanticism in *Little Dorrit* and *The Woman in White*’.²² Greenaway examines how the opening of *The Woman in White* presents a world of ‘dislocated meanings’ and epistemological disruption, strikingly portrayed in Walter’s encounter with the woman in white on the lonely highway; Anne Catherick at this point appears as a ‘released signified un-anchored by a signifier’, her whiteness indicating a ‘lack of inscribed meaning’.²³ Greenaway notes how the novel’s crime (the theft of Laura’s identity) results in hermeneutic chaos caused by the separation of the signifier from its signified, and how the plot therefore follows the attempts to reunite the rightful owner with their rightful name so that order and meaning can be restored by the novel’s end. In particular, Greenaway’s analysis reveals just how significant the

²¹ A number of critics have noted the order the detective is able to offer in the face of a chaotic world of seeming unrest. See, for example, G. K. Chesterton, ‘A Defence of Detective Stories’, in *The Art of the Mystery Story*, ed. by Howard Haycraft (New York: Carroll & Graf, 1983 [1946]), pp. 3-6; Ian A. Bell, ‘Eighteenth-Century Crime Writing’, in *The Cambridge Companion to Crime Fiction*, ed. by Martin Priestman (Cambridge: Cambridge University Press, 2003), pp. 7-18; Rosemary Jann, *The Adventures of Sherlock Holmes: Detecting Social Order* (New York: Twayne, 1995); and Joseph A. Kestner, *Sherlock’s Men: Masculinity, Conan Doyle and Cultural History* (Aldershot: Ashgate, 1997), where Kestner notes how the first two Holmes stories appeared during a time of ‘stark unrest’ (p. 40); and Judith Walkowitz has noted how the stories which circulated about the ‘Jack the Ripper’ killings focused not only on the identity of the murderer but also on the ‘meanings of his murders’: Judith R. Walkowitz, *City of Dreadful delight: Narratives of Sexual Danger in Late Victorian London* (London: Virago Press, 1992), p. 3 (my emphasis).

²² Vicky Greenaway, ‘The Italian, The Risorgimento, and Romanticism in *Little Dorrit* and *The Woman in White*’, *Browning Society Notes*, 33 (2008), 40-59.

<http://gateway.proquest.com/openurl?ctx_ver=Z39.8820003&xri:pqil:res_ver=0.2&res_id=lion&rft_id=xri:lion:ft:abell:R04057061:0> [accessed 3 July 2012]

²³ *Ibid.*, (para. 6 of 44).

identification of the criminal is to this process, especially the identification of Fosco who ‘evades hermeneutically in order to evade moral and legal closures of criminal meaning’.²⁴ The identification of Fosco with his crimes becomes crucial in order that he might be punished so that he and his ‘associated sphere of criminality’ might be ‘brought into order and control’.²⁵ Only once this is achieved can the novel be brought to a resolution, and Victorian norms and values be re-established so that, as Greenaway puts it, Walter can emerge as an ‘effective [agent] of meaning in relation to [his] society’ as a husband and father.²⁶ *The Woman in White*, and other sensation novels that focus on the identification of the criminal, microcosmically reflect a wider concern with accurately representing reality in understandable and meaningful ways. The difficulty of the task of identifying the criminal, and so bringing him into ‘order and control’, mirrors the problems the author faces when attempting to bring reality into order and control within the text.²⁷

As I argued in chapters two and three, the sensation novel’s means of bringing about narrative control and so providing textual meaning was by employing those representational methods used in adversarial-evidentiary criminal trials. As noted above, a number of sensation novels are often cited and analysed as examples of detective fiction. In fact Greenaway’s analysis of *The Woman in White* focuses on what she terms its ‘detective plot’, drawing on Tzvetan Todorov’s ‘The Typology of Detective Fiction’ where he analyses the detective story’s narrative construction in terms of *fabula* and *sjuzet*.²⁸ Todorov’s analysis identifies in detective fiction the telling of two different tales, firstly the tale of the crime which he equates to *fabula*

²⁴ Ibid., (para. 28 of 44).

²⁵ Ibid., (para. 33 of 44).

²⁶ Ibid., (para. 14 of 44).

²⁷ For Greenaway, the novel’s crime mirrors *The Woman in White*’s larger concern with aesthetic separation.

²⁸ Ibid.

(often translated as ‘story’, and referring to the order of events as they chronologically occurred), and secondly, the tale of the investigation process which Todorov equates to *sjuzet* (often translated as ‘plot’ and referring to the order in which the events are narrated). The detective story’s *sjuzet* is therefore concerned with the process of reconstruction, of piecing together clues to past events so that the detective *fabula* might be revealed.²⁹ The analysis of detective fiction in these terms demonstrates just how closely allied this sort of fiction is with the criminal trial process, which similarly seeks to reconstruct a narrative of past events so that the truth might be uncovered. This, taken together with the fact that the sensation novel played a significant role in the detective genre’s development, indicates that the popular late nineteenth-century detective stories which were included in many middle-class magazines (perhaps most famously *The Strand*) were also significantly influenced by the adversarial-evidentiary model of narration which was introduced into felony trials by the Prisoner’s Counsel Act.³⁰

Whenever one thinks of nineteenth-century detective fiction, one name immediately springs to mind: Sherlock Holmes. In *Crime Fiction 1800-2000* Stephen Knight claims that ‘intriguing and memorable as some of the nineteenth-century detectives were, there is only one great detective’.³¹ There are many who would agree with Knight, and as he points out, Ian Ousby even postulated that Holmes

²⁹ Tzvetan Todorov, ‘The Typology of Detective Fiction’, in *The Poetics of Prose* (Oxford: Blackwell, 1977), pp. 42-53.

³⁰ Stephen Knight, for example, in *Crime Fiction 1800-2000* (Basingstoke: Palgrave Macmillan, 2004), includes a section on sensation fiction in chapter two ‘The Development of Detection’. See also LeRoy Lad Panek, *Before Sherlock Holmes: How Magazines and Newspapers Invented the Detective Story* (London: McFarland, 2011); Heather Milton, ‘Sensation and Detection’, in *A Companion to Sensation Fiction*, ed. by Pamela Gilbert (Oxford: Wiley-Blackwell, 2011), pp. 516-527; and Robert P. Ashley, ‘Wilkie Collins and the Detective Story’, *Nineteenth-Century Literature*, 6 (June 1951), 47-60.

³¹ Knight, *Crime Fiction*, p. 55.

might be ‘the most famous character in English literature’.³² The enduring popularity of Holmes is clear from his repeated adaptation onto stage and screen.³³ Throughout the nineteenth century there were many fictional detectives created and some, like Holmes, enjoyed investigating serial cases, from William Russell’s police officer Thomas Waters in *Recollections of a Detective Police-Officer* (1849-1853) to C. L. Pirakis’s *The Experiences of Loveday Brooke, Lady Detective* (1893-1894).³⁴ Whilst this chapter will examine a number of nineteenth-century detectives, the overwhelming popularity of Sherlock Holmes in the last decade of the nineteenth century (and beyond) merits particular attention and so a discussion of the *Holmes* canon will conclude this chapter. A good deal of careful and illuminating critical analysis has already gone into examining just why Holmes was, and still is, such a popular and memorable detective hero. What is lacking from this criticism, however, is an assessment of how the success of the Holmes formula is in part attributable to the influence of the 1836 Prisoner’s Counsel Act and surrounding debates. An examination of the *Sherlock Holmes* stories within this context sheds further light on our understanding of the appeal of this iconic detective.

Linking detective fiction to the aims of ‘realism’, John M. Reilly notes how in focusing on crime ‘which due to the economic conditions and social relations in

³² Ibid. Quotation taken from Ian Ousby, *Bloodhounds of Heaven: The Detective in English Fiction from Goodwin to Doyle* (Cambridge, MA: Harvard University Press, 1976), p. 140.

³³ The latest BBC adaptation *Sherlock* (2010-2012), starring Benedict Cumberbatch as the famous private consulting detective, sees Holmes transported to modern day London, and the show’s popularity clearly demonstrates that Holmes’s appeal remains unabated for contemporary audiences. The idea of a modern day Holmes has also found success in CBS’s *Elementary* (2012) with Jonny Lee Miller taking the role of the detective. Also, the films *Sherlock Holmes* (2009) and *Sherlock Holmes: A Game of Shadows* (2011), starring Robert Downey Jr. as Holmes were box office hits.

³⁴ *Recollections of a Detective Police-Officer* by ‘Waters’ is attributed to journalist William Russell, the stories were first published in *Chambers’s Edinburgh Journal* from July 1849 – September 1853 under the title *Recollections of a Police-Officer*. It was later made available in volume form under the title *Recollections of a Detective Police-Officer* in 1856. Whilst the stories were written post the 1842 creation of the detective police force, the tales are set at an earlier time and Waters is just a plain metropolitan police officer. Loveday Brooke’s experiences were first serialised in the *Ludgate Monthly* from February to July 1893, with one final story being published under the magazine’s new title *The Ludgate Illustrated Magazine* in March 1894. The series was published as a collection in 1894.

industrial cities' became a 'new, modern problem', the detective story 'represented an effort to comprehend a problem that demanded new routes to understanding and control'.³⁵ Here Reilly identifies in detective fiction, as Pykett identifies in sensation fiction, a new awareness that for 'understanding and control' to be created by narratives 'new routes' were needed which were suitable for a rapidly changing and increasingly complex society. As I argued in chapter three, sensation novels which employed an adversarial-evidentiary narrative method presented an alternative representational mode to the character-focused representational practices that had traditionally been employed in novels. However, despite the success of this alternative narrative mode, the sensation novel in a number of cases leaves two unsatisfactorily resolved issues which threaten to disrupt the text's final affirmation of the efficacy of the adversarial-evidentiary model. These two issues, I will argue, are finally resolved satisfactorily by the *Sherlock Holmes* stories, which affirm once more the efficacy of the adversarial-evidentiary model. In order to fully understand the context in which the creation of Holmes occurred it will be necessary to trace the development of literary detection through the nineteenth century.

Providential Detection and *The Newgate Calendar*

Sherlock Holmes did not emerge in a vacuum; his creation was the result of a century's worth of evolution. It is not my intention to provide a full history of the intricate and complex development of detective fiction during the nineteenth century: such a task would be a thesis in itself.³⁶ Nevertheless, it is necessary that some

³⁵ John M. Reilly, 'Conventions of Realism', in *The Oxford Companion to Crime and Mystery Writing*, ed. by Catherine Aird and John M. Rielly (Oxford: Oxford University Press, 1999), p. 375.

³⁶ For a full account of the development of detective fiction in the early nineteenth century, see Worthington's *Rise of the Detective*. For a sense of the range of critical approaches that have been applied to detective fiction see, for example, *The Poetics of Murder: Detective Fiction and Literary Theory*, ed. by Glenn W Most and William W. Stowe (London: Harcourt Brace Jovanovich, 1983),

aspects of its development be discussed in so far as they can help illuminate my analysis of the *Holmes* stories here, and nineteenth-century detective fiction more generally. In particular, the extent to which Divine Providence plays a role in crime fiction is significant here. In a good deal of nineteenth-century crime fiction a tension emerges between the text's desire to reveal that the criminal is capable of exposure through ordinary human means (primarily the interpretation of evidence) and the extent to which Providence is relied upon to bring the culprit to justice.³⁷ Through the nineteenth century there is a gradual erosion of this reliance on Providence to punish malefactors, and a growing emphasis on human agency to ensure that justice is done in fiction which centres on crime. This shift in emphasis demonstrates an increasing faith in crime fiction in the efficacy of the post-1836 felony trial process. The faith which the sensation novel placed in the adversarial-evidentiary trial model can also be identified in the detective story and, as this chapter will show, is equally crucial to our understanding of this genre of fiction.

Stories about crimes and criminals had been popular long before the nineteenth century began. During the eighteenth century broadside accounts of the latest dramatic crimes, and of the punishment of the criminals who perpetrated them,

and Laura Marcus, 'Detection and Literary Fiction', in *The Cambridge Companion to Crime Fiction*, ed. by Martin Priestman (Cambridge: Cambridge University Press, 2006), pp. 245-267. Other useful collections of critical essays include: *Two Centuries of Detective Fiction: A New Comparative Approach*, ed. by Maurizio Ascari (Cotepira: University of Bologna, 2000); *Nineteenth-Century Suspense: From Poe to Conan Doyle*, ed. by Clive Bloom and others (New York: St. Martin's Press, 1988); *Detective Fiction: A Collection of Critical Essays*, ed. by Robin W. Winks (Englewood Cliffs, NJ: Prentice-Hall, 1980); *The Art of the Mystery Story*, ed. by Howard Haycraft (New York: Carroll & Graf, 1983 [1946]); *The Art of Murder: New Essays on Detective Fiction*, ed. by H. Gustav Klaus and Stephen Knight (Tübingen: Stauffenberg, 1998). See also Andrew Radford, 'Victorian Detective Fiction', *Literature Compass*, 5 (2008), 1179-1196.

³⁷ Stephen Knight has noted how in the *Newgate Calendar* Providence often aids detection, usually through the awakening of a Christian conscience in the culprit. This sense of guilt causes the culprit to act rashly, in a way which aids detection. Knight also refers to the *Calendar*'s 'unconcerned use of chance' rooted in a Christian faith: Stephen Knight, 'The Newgate Calendar', in *Two Centuries of Detective Fiction: A New Comparative Approach*, ed. by Maurizio Ascari (Cotepira: University of Bologna, 2000), pp. 17-28 (pp. 19-21, quotation at p. 20). LeRoy Lad Panek has noted how this commitment to a 'Providential universe' is also to be found in the *Newgate* novels: Panek, *Before Sherlock Holmes*, p. 4. Panek's study reveals the decline of Providence in crime fiction, and its gradual replacement with the detective figure and his increasing reliance on evidence.

were immensely popular. Such accounts offered the reader both the excitement of reading about the crime itself and the symbolic assertion of state power over the criminal body in the violent spectacle of the scaffold. The popularity of broadside accounts continued into the nineteenth century and, together with other popular forms of literature which took crime as its subject, such as street ballads and ‘cocks’, they offered accounts of crime and punishment up to the public as a form of entertainment.³⁸ Such literature was aimed at the working classes, but, as Richard Altick has observed, such accounts would also be read by the middle and upper-classes as ‘the passion for real-life murder [...] prevailed as well by the firesides of the middle class and [...] more covertly in the stately halls of the aristocracy’.³⁹

The popularity of crime stories can be seen in the success of *The Newgate Calendar*. *The Newgate Calendar* began in the eighteenth century as a monthly report of executions which was put together by the Ordinary of Newgate Prison. The *Calendar* detailed both the crimes committed by those executed and the story of their capture. Initially these reports appeared as cheap pamphlets which would also be put into more expensive small collections, but eventually they would be published together in anthologies by publishers who were responding to the popularity of and demand for crime narratives. The first large collection (in five volumes) appeared in 1773, and its popularity led to several reprints and further editions during the late eighteenth and early nineteenth centuries.⁴⁰

³⁸ ‘Cocks’ are ‘accounts which may have had their origins in fact, but over time and with repeated publication came to be regarded as fictional’ (Worthington, p. 12). For a more detailed account of early street crime literature see Worthington, Ch. 1, and Beth Kalikoff, *Murder and Moral Decay in Victorian Popular Literature* (Ann Arbor: UMI Research Press, 1986). For examples of the Broad-sides see *A Collection of Miscellaneous Broad-sides, Consisting Chiefly of Almanacks and Accounts of Criminal Trials 1801-1858*, which is held in the British Library.

³⁹ Richard D. Altick, *Victorian Studies in Scarlet: Murders and Manners in the Age of Victoria* (New York: Norton, 1970), p. 42.

⁴⁰ See further Knight, *Crime Fiction*, pp. 5-6; Lyn Pykett, ‘The Newgate Novel and Sensation Fiction 1830-1868’, in *The Cambridge Companion to Crime Fiction*, ed. by Martin Priestman (Cambridge: Cambridge University Press, 2006), pp. 19-39 (p. 20); Panek, *Before Sherlock Holmes*, pp. 11-13.

The Newgate Calendar was aimed at a more educated reader than the broadside accounts, but it nonetheless fulfilled a similar policing function by warning the reader that criminal transgressions would be violently punished, as Knight and Worthington have pointed out.⁴¹ However, a large part of the appeal of the *Calendar* accounts was that they offered the reader the excitement of reading about crime whilst at the same time providing them with the security of knowing that the criminal had been successfully caught and punished. This dual function of the *Calendar* stories is demonstrated by the title page to the 1824 edition which claims to contain the ‘interesting memoirs of the most notorious characters’ whilst at the same time reassuring the reader that they have safely ‘been convicted’ for the outrages they perpetrated.⁴² Indeed, the title itself inscribes this dyad, with ‘Newgate’ as a synecdoche for violent crime and ‘calendar’ suggesting the idea of a conceptual grid for ordering our understanding of those crimes. What is striking about *The Newgate Calendar* is that there generally appears no discussion of the guilt or innocence of those convicted, with the emphasis remaining firmly upon the exposition of the capture and punishment of that individual.

The first story in the 1824 edition is that of clergyman Thomas Hunter, who was executed for the murder of two pupils. Hunter murdered the children after they caught him in carnal relations with a serving girl, and related what they had seen to their parents. Throughout the narrative, the barbarity of Hunter’s crime is stressed through its juxtaposition with the innocence of his victims whose throats he slit whilst ‘they were busied in catching butterflies, and gathering wild flowers’.⁴³ There is no question of Hunter’s guilt; he commits the deed in broad daylight and is

⁴¹ See Worthington, *Rise of the Detective*, Ch. 1, and Knight, *Crime Fiction*, Ch. 1.

⁴² Andrew Knapp and William Baldwin, *The Newgate Calendar* (London: J. Robins & Co., 1824), Vol. 1. Knapp and Baldwin were lawyers and their editions of *The Newgate Calendar* are the most widely known.

⁴³ *Ibid.*, Vol. 1, pp. 2-3. Further references to this edition will be given after quotations in the text.

witnessed in the act by members of the public who give chase and successfully apprehend him. The disciplinary function of the *Calendar* can be seen in the detailed description the narrative offers of his execution:

The Sheriff now passed sentence on the convict, which was to the following purpose: that, on the following day, he should be executed on a gibbet, erected for that purpose, on the spot where he had committed the murders; but that, previous to the execution, his right hand should be cut off near the wrist; that he then should be drawn up to the gibbet by a rope; and, when he was dead, hung in chains between Edinburgh and Leith: the knife with which he committed the murders being stuck thro' his hand, which should be advanced over his head, and fixed therewith to the top of the gibbet. Mr Hunter was executed, in strict conformity to the above sentence, on the 22nd of August 1700. (Vol. 1, p. 3)

The detailed description of the criminal's execution is common to the other *Calendar* stories and offers an expression of the state's disciplinary power which serves as a warning to would-be miscreants and offers comfort to the reader. Interestingly, there is no demonstration of skill in identifying or capturing the criminal. Instead, reassurance that his eventual capture is inevitable is provided by the guiding hand of Providence, which is the primary aid in bringing the malefactors to justice. The stories are underpinned by a religious rhetoric which everywhere suggests that the guiding hand of God will aid in the apprehension and punishment of the criminal; in many instances the narrator even stresses the crime as one which offends against both the State and God. In Hunter's case, his criminal acts are linked to his blasphemous atheist assertions and his ultimate end linked to the retribution of God:

It is a shocking part of Hunter's story that he was one of a society of abandoned young fellows, who occasionally assembled to ridicule the scriptures, and to make a mockery of the being and attributes of God! Is it then to be wondered that this wretch fell an example of the exemplary justice of Divine Providence? Perhaps a fate no less dreadful attended many of his companions: but, their histories have not reached our hands. There is something so indescribably shocking in denying the existence of that God "in whom we live, move, and have our being," that it is amazing any man who feels that he did not create himself can be an Atheist. (Vol. 1, p. 4)

The narrative tone of *The Newgate Calendar* is one of confidence, confidence in the fact that the criminal will always be apprehended and justly punished. This confidence stems, in large part, from a faith that Providence will play its part as God guides the community to bring the criminal to justice, as seen in Hunter's story.

The reliance on, and faith in, Providence which runs throughout the *Calendar* stories also serves to dispel any discomfort the reader may feel about those criminals who refuse to confess. A large proportion of the *Calendar* stories follow the pattern: crime described, criminal captured, criminal confesses, criminal is punished. The criminal who fails to confess is cause for alarm, raising questions over whether the real culprit has been found. The *Calendar* stories manage this potential for unsatisfactory endings, which disrupt the notion of certainty of punishment of the correct individual, by reinforcing the idea of Divine Providence. This can be seen in the story of Michael and Catherine Van Berghen and Dromelius.

Michael and Catherine Van Berghen are publicans who are found guilty of murdering and robbing a customer with the help of an accomplice, Dromelius. Michael and Catherine refuse to admit their guilt, even in the face of death. But rather than focus on the anxiety that this refusal to confess might cause and the questions it potentially raises over how guilt is to be determined, the text instead silences such disquiet with its authoritative tone which leaves no room for doubt:

The denial by this unhappy couple of the crime, at the very moment their souls must appear before the Almighty and after such clear proof, on which a jury, one half composed of their own country-men, without hesitation found guilty, greatly adds to their turpitude (Vol. 1, p. 7).

The narrative voice goes further, suggesting their capture was the work of God so that their guilt cannot be questioned: 'in the discovery of this murder the intervention of Providence is obvious' (Vol. 1, p. 7). The use of religious rhetoric is used to

detract from any questions which their denial of guilt might raise, and the narrative voice becomes almost threatening in its warning to the reader: ‘Let the righteous justice executed on the malefactors above mentioned inspire in the minds of our readers the force of the sixth commandment: “Thou shalt do no murder”’ (Vol. 1, p. 7).

In the Hunter and the Van Berghen cases, as elsewhere in the series, Divine Providence is the guiding hand that leads to the apprehension of the criminal by the community. Written in a time before the establishment of the new police, the community takes responsibility for the apprehension of its own criminals. In the Van Berghen case, when the victim’s body is found in the river, ‘several of the neighbours went to take a view of it and endeavoured to try if they could trace any blood to the place where the murder might have been committed’ (Vol. 1, p. 5), taking direct responsibility for seeking out the criminal who has offended against them. Likewise, in the Hunter case, after witnessing the murder, a local member of the community gets aid from other community members who take charge of apprehending Hunter. This policing by the community is usually guided, as in the cases cited above, by the hand of Divine Providence. Worthington has noted how one of the most prominent features of *The Newgate Calendar* stories is their insistence that crime is both ‘contained and containable’.⁴⁴ The reliance which the narratives place on community detection aided by Providence reveal the *Calendar* stories to be very much a product of the social structure out of which they emerged in the eighteenth century: a structure based on the idea of small, knowable, communities. As Worthington and Knight have noted, *The Newgate Calendar*

⁴⁴ Worthington, *Rise of the Detective*, p. 2.

belongs to a 'pre-urban, pre-capitalist' world.⁴⁵ By the nineteenth century the textual strains begin to show.

Within the *Newgate Calendar* the criminal is usually easily and comfortably identified. However, in some of the stories published in later editions of the *Newgate Calendar*, a tension emerges between the desire to be certain that the correct person has been punished and a growing scepticism about the reliability of evidence. One telling story is that of a man convicted of murder on the strength of circumstantial evidence alone, after he was found holding a knife over the body of a murdered man. It is later discovered, through a death-bed confession, that the wrong man had been convicted and executed. The narrative recognises the potential problems surrounding evidence, warning jurymen to be 'extremely guarded in receiving circumstantial evidence' (Vol. 1, p. 459) and then tries to assuage the anxiety which emerges from the revelation that an innocent man was convicted. The text negotiates this by arguing that the convicted man had in fact intended to commit the murder himself, only he had been beaten to it, which is why he was discovered with a knife by the body. In this way the text seeks to reassure the reader that, whilst the wrong man was executed, he was nonetheless still guilty of intent and so morally just as guilty (Vol. 1, p. 459). Nevertheless, the text's 'explanation' of the convicted man's murderous intention is awkward and reads as though it were added on as an afterthought in anticipation of difficult questions relating to why an innocent man has been executed.

A similar sense of uneasy resolution is apparent in the story of John Jennings, who was 'executed for a robbery of which he was innocent' after his master, 'in order to screen himself from the vengeance of the law', plants incriminating

⁴⁵ Worthington, *Rise of the Detective*, p. 2, and Knight, *Crime Fiction*, pp. 7-8, quotation at p. 8.

evidence on his innocent employee (Vol. 1, p. 455). The real truth only comes to light when Jennings's employer is convicted for another robbery and confesses to this first crime. In this case of fabricated evidence, the narrative voice can offer no comforting explanation. The text is comparatively short, alongside the other stories, which suggests a textual unease with what the story might signify: that the identification and apprehension of the criminal is no longer a simple matter which can be dealt with easily by communities. The inclusion of such stories within *The Newgate Calendar* reveals that, by the early nineteenth century, the reliance on divinely assisted community detection was no longer relevant in a society which was, as Knight puts it, 'socially and economically a long way from the rural religious feudalism where these stories originated'.⁴⁶ As Worthington has highlighted, the old system of the discovery of crime was increasingly seen to be failing in an ever more urbanised, industrialised and secular world.⁴⁷ Just as the appropriateness of the old 'accused speaks' model of trial was called into question in the 1820s and 1830s, in the early years of the nineteenth century so too was the appropriateness of the old system of policing communities.

Providence, Police, and the Emergence of the Literary Detective Hero

In the eighteenth century the policing system in operation in England was one which, like the jury trial, had evolved over the centuries. It was by no means a coherent or uniform system across the country but, generally speaking, it operated at a local level. Each parish had an unpaid Justice of the Peace who was aided in his policing function by a Parish Constable who was also unpaid. The Parish Constable was a role which rotated between local property owners, though it was not uncommon for

⁴⁶ Knight, *Crime Fiction*, p. 8.

⁴⁷ Worthington, *Rise of the Detective*, p. 2.

paid substitutes to be brought in by those wishing to avoid this mandatory duty. In urban areas Parish Constables were often supplemented by watch forces who patrolled the streets and were paid a small salary, generally paid for by a tax on those whose interests they were protecting.⁴⁸ This rudimentary policing system, which Ian Ousby has noted is best characterised by ‘a belief in the amateur’, began to meet with some reform in the second half of the eighteenth century.⁴⁹ In 1749 at the Bow Street Magistrate’s office, John and Henry Fielding sought to bring a structure to policing and set up organised street patrols, as well as creating a detecting unit in the form of Bow Street Runners, a group of professional thief-takers who were formally attached to the Bow Street office.⁵⁰ The success of this system saw it rolled out to seven more offices in 1792 by the Middlesex Justices Act.⁵¹

As Heather Worthington has noted, the Bow Street force occupied an intermediate space ‘between the old, semi-feudal systems of policing and the new professionalised and state-controlled metropolitan police’ that was to be created in 1829.⁵² *Richmond: Scenes in the Life of a Bow Street Runner, Drawn up from his Private Memoranda* (1827) offers a professional alternative to the community

⁴⁸ Ousby, *Bloodhounds*, pp. 4-9, and Haia Shpayer-Makov, *The Ascent of the Detective: Police Sleuths in Victorian England* (Oxford: Oxford University Press, 2011), pp. 13-26.

⁴⁹ Ousby, *Bloodhounds*, p. 5.

⁵⁰ Thief-takers were private individuals who worked to capture criminals for rewards and were available for private hire. By the late eighteenth century thief-takers had gained a poor reputation for providing perjured testimonies so that they might help ensure a conviction and claim a reward. This view of the thief-taker was compounded by Jonathan Wild, a famous thief-taker who was discovered to be part of the very underworld he claimed to be combating. It turned out he had supervised many of the robberies he investigated, controlling gangs that worked out of his ‘lost property office’, set up to recover stolen goods. He was also involved in other criminal activities too. See further Ousby, *Bloodhounds*, pp. 13-18.

⁵¹ I have attempted to provide a very brief overview of the state of policing at the start of the nineteenth century. Detailed histories and commentaries on the police in England can be found in Clive Emsley, *Crime and Society in England 1750-1900*, 4th edn. (Harlow: Pearson, 2010 [1987]), and Barry Godfrey and Paul Lawrence, *Crime and Justice 1750-1950* (Cullompton: Willian Publishing, 2005). Ian Ousby also provides a useful summary in *Bloodhounds*, Ch. 1.

⁵² Worthington, *Rise of the Detective*, p. 104.

detection that was relied upon in *The Newgate Calendar*.⁵³ *Richmond* follows the adventures of its eponymous hero who, after running away with a travelling band of actors and then spending time in the company of gypsies, joins the Bow Street Runners. As a Runner, Richmond protects the innocent and pursues the guilty but, as Worthington points out, Richmond's detective work 'follows a simplistic pattern of crime, pursuit and capture of the criminal' which is 'closer to *The Newgate Calendar* pattern of crime followed by capture of the criminal than the Holmesian pattern of crime followed by solution and finally retrospective explanation'.⁵⁴ Yet *Richmond* does denote a move away from the *Calendar* stories in its employment of a principal detecting figure, implicitly recognising the need for a more professional form of criminal detection.⁵⁵

In 1829 major reform of the Police came with the enactment of the Metropolitan Police Act. This Act, championed by Home Secretary Robert Peel, effected the replacement of the various police forces in London with one unified Metropolitan Police under state control.⁵⁶ The *General Instruction Book* (1829), written by Commissioners Charles Rowan and Richard Mayne for the instruction of new constables, reveals that the primary emphasis of the new police was on the prevention of crime. As Godfrey and Lawrence have highlighted, this emphasis is notable in the common nineteenth-century practice of uniformed policemen parading through the streets and dropping constables off at their beats, making them highly

⁵³ E. F. Bleiler has argued that whilst *Richmond* has been attributed by some to Thomas Gaspey, and by others to Thomas Surr, there is no compelling evidence to suggest either is the real author. See E. F. Bleiler's 'Introduction' to *Richmond: Scenes in the Life of a Bow Street Runner, Drawn Up from His Private Memoranda* (New York: Dover, 1976). See also Worthington, *Rise of the Detective*, p. 107.

⁵⁴ *Ibid.*, p.115.

⁵⁵ As Worthington notes, Richmond primarily relies on the techniques of surveillance, disguise and pursuit. See Worthington, *Rise of the Detective*, p. 115.

⁵⁶ The City of London Police was an exception to this general rule and remained autonomous. See further Shpayer-Makov, *Ascent of the Detective*, p. 30.

visible and so reinforcing their preventative, disciplinary power.⁵⁷ At its inauguration, the new police had no official system in place for the detection of crime. This was remedied in 1842 with the establishment of an official detective department.⁵⁸ Alongside the police detective emerged his literary counterpart.

Critics such as Ousby, Worthington, and Shpayer-Makov have drawn attention to how some high profile successes for the detective department, including the arrest of Frederick and Maria Manning for the murder of their lodger, led to its becoming increasingly admired and supported in the press.⁵⁹ Such admiration and support can be identified in a number of fictional detective police memoirs which began to appear around mid-century. In particular, the anecdotes of a fictional metropolitan police officer called Waters proved very popular. The first published anecdote was entitled ‘Recollections of a Police-Officer’, and this was soon followed by others in *Chambers’s Edinburgh Journal* between 1849-1853. The series has widely been attributed to William Russell.⁶⁰ The narrator of these tales, Waters, is a gentleman fallen on hard times who joins the force. Waters is not a member of the detective department – *Recollections* is set pre-1842 – but he carries out detective work nonetheless and, as Ousby has highlighted, his adventures are more in keeping

⁵⁷ Godfrey and Lawrence, *Crime and Justice*, p. 20.

⁵⁸ The introduction of the new police had met with opposition from some quarters, in part because people feared the introduction of a military police or a spy system like those that operated in France and which were perceived as a threat to civil liberties. The uniform of the police helped to assuage fears of that this was a spy system, but the need for a plain clothed detective department became increasingly apparent especially in the wake of a number of well publicised policing blunders, including one on the case of the murder of Lord William Russell. See further Shpayer-Makov, *Ascent of the Detective*, p. 32. In her study Shpayer-Makov provides an extremely lucid and informative account of the formation and development of the detective police force including analysis of its support and opposition.

⁵⁹ See Shpayer-Makov, *Ascent of the Detective*, Ch. 4-5; Worthington, *Rise of the Detective*, Ch. 3; and Ousby, *Bloodhounds*, pp. 65-66.

⁶⁰ When the first collected edition of *Recollections* (published with the new title of *Recollections of a Detective Police-Officer*) appeared in 1856 ‘Waters’, the narrator, also appears as the author of the series, but this was a pseudonym of William Russell. See Worthington, p. 141. The serial publication of *Recollections* ended in 1853 but, following its popularity, a second collected series of *Recollections of a Detective Police-Officer* appeared in 1859.

with the spirit of police detection subsequent to the creation of the official detective unit.⁶¹

The creation of Waters seems to be a response to an apparent need for a designated protector of the middle-class interest.⁶² Throughout Waters's exploits, we see him working as an agent of the propertied middle-classes and upholder of their values. Read in this way *Recollections*, rather like *The Newgate Calendars*, function as tales of reassurance that crime is being effectively dealt with and that the reader's value system is being upheld. What is different in *Recollections*, is that there is an implicitly recognised need for an organised and designated detecting agent, just as there was in *Richmond*. However, Waters's detective techniques have hardly advanced from those of his Bow Street predecessor, and there is also the apparent influence of the memoirs of Eugène-François Vidocq. Vidocq was a real-life thief turned police agent who published his anecdotes in France from 1828-1829, which were quickly translated into English. Aside from his extensive knowledge of the criminal underworld, Vidocq relies heavily on disguise and bravado in order to catch his criminals.⁶³ Waters makes similar use of these two detective tactics, but the extent to which he has to rely upon them means that chance and luck generally play a significant role in his success.⁶⁴ For example, in the case of 'Mark Stretton', which appeared in the second collected series, Stretton appeals to Waters for help after he becomes entangled with the villainous Achilles Mornay. Mornay is blackmailing Stretton with the knowledge that he killed a man during a bar brawl in Quebec. In

⁶¹ Ousby, *Bloodhounds*, p. 66.

⁶² Heather Worthington has noted how the new police first gained support and recognition from the propertied middle-classes who apparently benefited most from preventative policing: Worthington, *Rise of the Detective*, p. 149. See also Shpayer-Makov, *Ascent of the Detective*, Ch. 1.

⁶³ See further Ousby, *Bloodhounds*, Ch. 3, and Knight, *Crime Fiction*, pp. 23-24.

⁶⁴ Ousby has highlighted how Waters's use of disguise is often carried to absurd levels. In the series he masquerades as a variety of characters from a dog thief to the wife of a suspected felon: Ousby, *Bloodhounds*, pp. 67-68.

actual fact the evidence of the man's death has been fabricated by Mornay to fool Stretton. Stretton's appeal for aid comes after Mornay becomes engaged to his cousin, the heiress to their Uncle's fortune. Waters suspects foul play and agrees to investigate the matter to prove Stretton's innocence. Unfortunately Waters is unable to attain any firm evidence of Stretton's innocence and finally has to rely on bravado to trick a confession out of Mornay by confronting him with a confident assertion of his guilt. Fortune always seems to favour Waters in these moments, and in some cases Waters even seems to be guided by a Providential hand, as in the case of 'The Two Widows'. In this anecdote, in which Waters is charged with discovering which widow is the real mother of their deceased husband's son and heir, the story is almost at its end and Waters is no nearer to discovering the truth than he was at the start of the narrative. At this point he is guided by a Providential dream:

Finally, I awoke, and believed I had dreamt that Edmund Hughes, during the many years he had resided at Paris, had married a French lady, who was still alive, and that, consequently, neither the lady calling herself Mrs. Hughes, nor Mrs. Lister, was the true widow of the deceased owner of Stone Hall.⁶⁵

The dream, of course, leads Waters to the truth, but in doing so harks back to *The Newgate Calendar*. This underlying faith in the divine justice of God is also invoked in stories which have a less than satisfactory resolution. In the case of 'Mark Stretton' there is a suggestion made that Mornay is also a murderer, but once Mornay has fled the country and Mark Stretton, his cousin and her fortune are safe, this issue remains unresolved, Waters consoling the reader that they 'may be sure that though unseen by human eyes, [the murder] was witnessed by Him who said, "Vengeance is mine: I will repay"' (p. 43).

After the success of *Recollections* there was a proliferation of fictional detective anecdotes in newspapers and magazines, which largely followed the

⁶⁵ William Russell, *Recollections of a Detective Police-Officer* (London: W Kent, 1859), pp. 95-96. Further references to this edition are given after quotations in the text.

Waters model and copied his detective methods.⁶⁶ Russell followed up his success in 1862 with the anecdotes of ‘Inspector F’ in *Experiences of a Real Detective* and then again in 1863 with *Autobiography of an English Detective*. In both cases the heroes continue to rely on luck and chance to succeed: in one Inspector F case, for example, a chance fire when he happens to be on duty providentially leads him to correctly identify the criminal, who quickly confesses.⁶⁷

As Michael Sims has noted, one of the first authors of this brand of detective fiction to take significant steps to diminish the role of chance and Providence in favour of more reliable and sophisticated detective techniques was Andrew Forrester Jnr., who took the detective memoir stories and, as Sims puts it, ‘transform[ed] them into a well-organized, plot driven narrative built around investigative methods’.⁶⁸ This is especially apparent in Forrester’s *The Female Detective* (1864), whose heroine Mrs G utilises detective techniques which appear much closer to the methods employed by Sherlock Holmes than those of earlier heroes of detective memoirs, in particular in the story ‘The Unknown Weapon’.⁶⁹ In this story Mrs G’s investigations are led by a need to account for events in rational ways, with the result that her

⁶⁶ In 1860 *The Detective’s Notebook* and *The Diary of an Ex-Detective* appeared edited by ‘Charles Martel’, widely believed to be a pseudonym for Thomas Delf (Knight, *Crime Fiction*, p.33, and Shpayer-Makov, *Ascent of the Detective*, p. 236). Other examples include Robert Curtis’s *The Irish Police Officer* (1861), Andrew Forrester Jnr.’s *Revelations of a Private Detective* (1863), *Secret Service* (1864); and *The Female Detective* (1864), and *The Experiences of a Lady Detective*, attributed to W. S. Hayward in the British Library catalogue and believed to have first appeared in 1864, though some have dated it earlier to 1861. See *The Penguin Book of Victorian Women in Crime*, ed. by Michael Sims (London: Penguin, 2011), p. 3.

⁶⁷ William Russell, ‘No. 3: The Gold Dust Robbery in Barbican’, *Experiences of a Real Detective* (London: Ward & Lock, 1862). *Experiences of a Real Detective* was serialised from March to November 1862 in *The Sixpenny Magazine* with this story appearing in 2:10 (April, 1862), 470-474.

⁶⁸ Michael Sims, ‘Andrew Forrester’ in *Victorian Women in Crime*, ed. by Sims, p. 32. Andrew Forrester was the *nom de plume* of James Redding Ware.

⁶⁹ Mrs G. notes the influence of Edgar Allan Poe’s Dupin stories on her detective methods, the detective whose brilliant ratiocination had a marked influence on the detecting techniques of Holmes also. Andrew Forrester Jnr., ‘The Unknown Weapon’, in *Victorian Women in Crime*, ed. by Sims, pp. 33-101 (p. 94). For further citations from this story, references to this reprinted version will be given in the text. For an examination of female detectives more generally, see Maureen T. Reddy, ‘Women Detectives’, in *Crime Fiction*, ed. by Priestman, pp. 191-207.

detective method is primarily one which utilises material, circumstantial and testimonial evidence from which she can draw logical conclusions:

Now the clothes were not damp all over, for the fluff [which covered them] was quite wavy, and flew about in the air. It was necessary to know what time it left off raining on the Monday night, or Tuesday morning.

It was very evident that the clothes had not been exposed to rain between the time of their obtaining the fluffiness and the discovery of the body. Therefore ascertain at what hour the rain ceased, and I had the space of time (the hour at which the body was discovered being half-past five) within which the body had been deposited. (p. 61)

Along with the dry fluff, which Mrs G later identifies as originating from a pillow, she examines the articles found on the body, uses medical reports and witness testimonies, and remarks on the great importance to be attached to footprint evidence. From Mrs G's reliance on drawing inferences from the evidence available to her, it is evident that the increasing skill of the detective is beginning to diminish the role that chance and Providence play.⁷⁰

The use of forensic investigative skills in fictional detective work continues to increase in sophistication in the sensation novel, from Cuff's observation of the paint smear on the cabinet which enables him to produce a time frame during which the crime must have occurred as well to identify the need to trace the paint-smear on the night gown in *The Moonstone*, to the ballistics evidence used in *Aurora Floyd*, and Robert Audley's careful examination of handwriting samples, hat box labels and locks of hair in *Lady Audley's Secret*. And yet the help of Providence is never far away when it is needed, whether it be in the guise of the good-hearted Pesca in *The Woman in White*, whose affiliation with the mysterious 'Brotherhood' provides Hartright with the aid he needs in forcing a confession from Fosco, or in form of

⁷⁰ Chance does however still play a significant role, Mrs G. herself noting how the 'most extraordinary chance' discovery (p. 81) helped her to solve this case.

Ezra Jennings in *The Moonstone*, who appears in the narrative just as Franklin Blake is confronted with the knowledge that he (unconsciously) took Rachel's diamond.⁷¹ This observation must be qualified by noting that the reliance on Providence in these narratives is greatly diminished when compared against *The Newgate Calendars*, and the memoirs of fictional detectives such as Waters and Inspector F. In the sensation novel the role of Providence appears much reduced, working to supplement the role of actual detection rather than to supplant it once that detection has failed. Indeed, whilst the introduction of characters such as Pesca and Jennings can be read as providential, the revelation of the truth ultimately comes from the carefully constructed adversarial-evidentiary narrative, a narrative which often uses evidence supplied by the detective work. Furthermore, examples of Providence at work in sensation fiction often relate to the punishment of the villains, rather than the detection of them. This may be less to do with the need to supplement the detective work, and more to do with keeping the police out of the middle-class home and allowing that class to discipline themselves. The police and police detectives may have gained support from the middle-classes in so far as they protected their interests, but it was a different matter when it came to being policed themselves. In *The Novel and the Police*, D. A. Miller discusses the *cordon sanitaire* which is placed around the middle-class home and which prevents Sergeant Cuff from being able to function effectively. The representation of detectives such as Waters and Inspector F as essentially protectors of the propertied middle-class interest denotes a similar tension.⁷²

⁷¹ Ousby describes the use of providence in the guise of Jennings as 'blatant': Ousby, *Bloodhounds*, p. 127.

⁷² See D. A. Miller, *Novel and the Police*, Ch. 2. In the case of 'Mark Stretton' in *Recollections of a Detective Police-Officer*, Waters's task is complete once he has ensured Mark, his cousin and her fortune are safe from the clutches of the social infiltrator Achilles Mornay, leaving unresolved the question of whether or not Mark's uncle was murdered or not. The delicate balance of the relationship

The increasing reliance on forensic evidence and analysis in literary detection is closely linked to the advances in forensic science and its rising dominance in the courtroom in the second half of the century.⁷³ The real life cases on which sensation novels were drawing were ones in which scientific and medical evidence had been crucial. John Sutherland has stressed the influence of the William Palmer trial on *The Woman in White*, and this was a trial that hinged on medical and scientific testimonies.⁷⁴ Ian A. Burney has examined the importance of the Palmer trial to the rise of forensic medicine as a sub-discipline, and has noted the ‘culture of scientific proof’ that was emerging in England at this time.⁷⁵ Other high profile cases too depended greatly on forensic analysis, such as the toxicology reports in the case of Dr. Smethurst, or the bloodstain analysis which helped convict Franz Müller in 1864 of murdering Thomas Briggs in a railway car.⁷⁶ Newspapers, along with popular journals and magazines, took up the subject within their pages, discussing the use of forensics in specific cases such as Palmer’s and also printing more general articles which discussed the advantages and problems of this branch of evidence more generally.⁷⁷ In 1856, a piece in *The Examiner* entitled ‘Science in the Witness Box’

between the middle-classes and police detectives can also be seen even in Dickens’s complimentary sketches of them. While Dickens’s pieces for *Household Words* are laudatory of the detective police, his descriptions of their confidence, skill and knowledge in dealing with the lower classes and the criminal underworld connect them to this social strata in a way which distances them from the middle-classes. This is further emphasised by Dickens’s documenting their colloquial speech mannerisms: ‘It’s a singler story, sir’ (Charles Dickens, ‘Three Detective Anecdotes’, *Household Words* 1 (September 1850), 577-580 (p. 577)). The same point can be made of Dickens’s portrayal of Inspector Bucket in *Bleak House* when one contrasts his ‘friendly behaviour’ in the Bagnet household with his social awkwardness in front of Sir Leicester Dedlock who he repeatedly addresses as ‘Sir Leicester Dedlock, Baronet’ stressing his lack of ease in this setting: Charles Dickens, *Bleak House*, ed. by Stephen Gill (Oxford: Oxford University Press, 1998 [1853]), Ch. 49, p. 704 and Ch. 54.

⁷³ Within the definition of forensic science I include forensic medicine.

⁷⁴ More than half the witnesses listed were medical or scientific experts.

⁷⁵ Ian A. Burney, ‘A Poisoning of No Substance: The Trials of Medico-Legal Proof in Mid-Victorian England’, *Journal of British Studies*, 38 (January 1999), 59-92 (p. 61).

⁷⁶ In the Smethurst Case Dr. Alfred Swaine Taylor unfortunately made an error in his tests by introducing arsenic into the samples himself with contaminated copper gauze, his mistake being a major blow for the prosecution.

⁷⁷ See, for example: ‘Murder and the Microscope’, *Chambers’s Journal of Popular Literature, Science and Arts*, 150 (November 1856), 305-307, ‘The Medical Evidence of Crime’, *Cornhill*

examined the import of forensics in the Palmer trial and concluded that this branch of science provided for the certain discovery of the truth because the criminal leaves clues which science is inevitably able to interpret.⁷⁸ The emergence of forensic science and its increasing dominance in the courtroom offered the chance of certainty in a world which could no longer trust in the guiding hand of Providence to bring the guilty to justice. And it is in his knowledge of science and his complementary forensic detective methods that we partly find the key to Sherlock Holmes's success as a detective, because through science Holmes is able to overcome the need to rely on the help of Providence to solve a case.

The influence of earlier detective heroes on Doyle's characterisation of Holmes is evident: Sherlock shows the same pluck, courage and mastery of disguise as the likes of Vidocq, Richmond and Waters. Yet, as Doyle noted, such detectives lacked 'some scientific system' based on 'austere methods of observation and reasoning'.⁷⁹ As a wide range of critics have noted, this system owes much to Edgar Allan Poe's Chevalier Auguste Dupin, and Émile Gaboriau's Monsieur Lecoq and his mentor Père Tabaret.⁸⁰ To these detectives' brilliant ratiocination Doyle adds something extra by laying primary emphasis on the scientific nature of Holmes's deductive technique.⁸¹

Magazine, 7 (March 1863), 338-348, 'Science and Crime', *All The Year Round*, 24 (March 1880), 372-375;

⁷⁸ 'Science in the Witness Box', *The Examiner*, 19 January 1856, p. 35.

⁷⁹ Arthur Conan Doyle, 1929 'Preface' to *The Complete Sherlock Holmes Long Stories* (London: Book Club Associates, 1973), p. v.

⁸⁰ Père Tabaret appears as the lead (amateur) detective in Gaboriau's first detective novel *L'Affaire Lerouge* (1866), and acts as a mentor to a young policeman called Lecoq. However, Lecoq was to become the detective protagonist himself in the stories which followed, one even being named *Monsieur Lecoq* (1869).

⁸¹ For an account of the influence which French detective fiction had on Sherlock Holmes see Sita A. Schütt 'French Crime Fiction', in *Cambridge Companion to Crime Fiction*, ed. by Priestman, pp. 59-76; and Sita A. Schütt, 'Rivalry and Influence: French and English Nineteenth-Century Detective Narratives', in *The Art of Murder: New Essays on Detective Fiction*, ed. by H. Gustav Klaus and Stephen Knight (Tübingen: Stauffenberg, 1998), pp. 38-49.

Throughout the *Holmes* canon, the detective hero is cast firmly as a scientific analyst. When we first meet Holmes in *A Study in Scarlet* he is in a chemical laboratory discovering ‘an infallible test for blood-stains’.⁸² These sorts of scientific endeavours are not uncommon and from the first identify Holmes as a man of science.⁸³ In particular, Holmes is a man of forensic science, as Watson’s summary of his areas of expertise in *A Study in Scarlet* demonstrates. Holmes’s knowledge in some areas is clearly marked as that of a forensic expert: his understanding of botany is listed as ‘variable’ because, whilst he knows nothing of ‘practical gardening’, he is ‘well up in belladonna, opium, and poisons generally’; it is a similar case with geology, his understanding of which is ‘practical’, enabling him to tell ‘at a glance different soils from each other’; his knowledge of chemistry is, as one would expect of a forensics expert, ‘profound’ (*Study*, pp. 21-22). This expert scientific knowledge, combined with his forensic observational powers, enables Holmes to employ his trademark scientific deduction to ‘reason back from effects to causes’.⁸⁴

An excellent example of Holmes’s technique in action is provided at the opening of *A Study in Scarlet*. First we see his skill and precision in collecting his data: ‘his nimble fingers were flying here, there and everywhere, feeling, pressing, unbuttoning, examining’ (p. 29), ‘he whipped a tape measure and a large round magnifying glass from his pocket [...] he trotted noiselessly about the room,

⁸² Arthur Conan Doyle, *A Study in Scarlet*, in *The Complete Sherlock Holmes* (London: Vintage, 2009 [1887]), p. 18. For further citations from this story, references to this edition will be given in the text. *A Study in Scarlet* was originally published in 1887 in *Beeton’s Christmas Annual*.

⁸³ In *A Study in Scarlet* we also learn, for example, that Holmes beats cadavers in order to ‘verify how far bruises may be produced after death’ (p. 17). The identification of Holmes as a scientist continues in the short stories: in ‘A Case of Identity’ Watson finds Holmes engaged in ‘the chemical work which was so dear to him’: Arthur Conan Doyle, *The Adventures of Sherlock Holmes*, ed. by Richard Lancelyn Green (Oxford: Oxford University Press, 1994), p. 43. Further references to stories taken from *The Adventures* are taken from this edition and given after quotations in the text. ‘A Case of Identity’ was first published in *Strand Magazine*, 2 (September 1891), 248-259.

⁸⁴ Arthur Conan Doyle, ‘The Cardboard Box’, in *The Memoirs of Sherlock Holmes*, ed. by Christopher Roden, (Oxford: Oxford University Press, 1994), p. 42. For further references to stories taken from *The Memoirs*, are taken from this edition and given after quotations in the text. ‘The Cardboard Box’ first appeared in *Strand Magazine*, 5 (January 1893), 61-73.

sometimes stopping, occasionally kneeling, and once lying flat upon his face' (p. 31). From the data he collects, Holmes is then able to build a strikingly accurate picture of events and people. For example, Holmes tells Watson that 'the very first thing which I observed on arriving there was that a cab had made two ruts with its wheels close to the kerb' (p. 32). This observation, coupled with Holmes's knowledge that 'up to last night, we have had no rain for a week' means that he is able to accurately reason that 'those wheels which left such a deep impression must have been there during the night' (p. 32). What we see in Holmes's knowledge and method is that he has reduced 'detection as near to an exact science as it will ever be brought to in this world' (*Study*, p. 33). Indeed, Watson's characterisation of Holmes as 'the most perfect reasoning and observing machine that the world has seen', and his 'cold, precise [...] balanced mind', also links Holmes to the dispassionate world of science, ('A Scandal in Bohemia, *Adventures*, p. 5).⁸⁵ Holmes's scientific disinterestedness is also seen in his treatment of clients as 'a mere unit, a factor in a problem'.⁸⁶

The importance of Holmes's scientific expertise to his huge success has been noted and discussed by a great many critics. Amongst others, Ronald Thomas identifies Holmes's authority as scientific in nature, Martin Kayman has labeled Holmes as a 'scientific detective', Rudolph Glitz has attributed the success of the *Holmes* stories to the scientific nature of Holmes's explanations, and Rosemary Jann notes how the *Holmes* canon makes a hero of the scientist.⁸⁷ The nineteenth century

⁸⁵ 'A Scandal in Bohemia' first appeared in *Strand Magazine*, 2 (July 1891), 61-75.

⁸⁶ Arthur Conan Doyle, *The Sign of Four*, in *The Complete Sherlock Holmes* (London: Vintage, 2009 [1890]). Further references to this edition are given after quotations in the text. *The Sign of Four* originally appeared in the 1890 February edition of *Lippincott's Monthly Magazine* under the title of *The Sign of the Four*. In the short stories Holmes becomes more emotionally engaged with those he encounters in the cases he solves. Perhaps Doyle's attempt to soften the edges and give him a wider appeal. However, his portrayal as a rational man of science continues throughout the canon.

⁸⁷ Ronald R. Thomas, *Detective Fiction and the Rise of Forensic Science* (Cambridge: Cambridge University Press, 1999); Martin A. Kayman, 'The Short Story from Poe to Chesterton', in *Cambridge Companion to Crime Fiction*, ed. by Priestman, pp. 41-58 (p. 48); Rudolph Glitz, 'Horrorifying Ho(l)mes: Conan Doyle's Bachelor Detective and the Aesthetics of Domestic Realism', in *Formal*

was one of huge scientific advancement and discovery, but the power of science was at once both enlightening and threatening: Charles Darwin's theories of evolution, for example, challenged long held and deeply entrenched ideas about the existence of God. However, as Frederick L. De Naples has pointed out, Holmes is able to harness the power of science and restore it to the role of 'aiding humans rather than threatening or betraying them'.⁸⁸ This scientific method helps ban Providence and provide the certainty craved for and, as such, science plays a fundamental role in Holmes's success and enables Watson to feel that 'so accustomed was I to inevitable success that the very possibility of his failing had ceased to enter into my head' ('Scandal', *Adventures*, p. 14). Science replaces the role of Providence that had continued to play at least some role in stories of crime, including in sensation fiction. The second issue which sensation fiction struggled with, the issue of how far the assessment of character was useful to the establishment of truth, is similarly removed by Holmes's scientific method.

Sherlock Holmes and 'Character' as Evidence

In chapters two and three I argued that the felony trial's turn away from the centrality of the idea of character in the representational process influenced the development of sensation narratives which were similarly seeking an alternative mode of representation. However, the sensation novel's focus on the white collar criminal and the attendant anxieties regarding how that criminal might be identified, implicates such fiction in the debates interested in how the criminal character might be revealed

Investigations: Aesthetic Style in Late-Victorian and Edwardian Detective Fiction, ed. by Paul Fox and Koray Melikoglu (Stuttgart: ibidem-Verlag, 2007), pp. 1-28 (p. 21); and Jann, *Detecting Social Order*.

⁸⁸ Frederick L. De Naples, 'Unearthing Holmes: 1890s Interpretations of the Great Detective', in *Transforming Genres: New Approaches to British Fiction of the 1890s*, ed. by Nikki Lee Manos and Meri-Jane Rochelson (London: Macmillan, 1994), pp. 215-235 (p. 216).

and understood. Whilst there is a trend in sensation novels to adopt a narrative style modeled on the adversarial-evidentiary trial, differentiating them from character-focused novels, there remains in such fiction a continued interest in the assessment of other people's characters, and in particular the criminal's. This interest produces an oppositional undercurrent to these novels' implicit support of the post-1836 felony trial model, and so a tension emerges within these texts.

This tension is seen very clearly in Collins's *The Woman in White*, which explicitly adopts the trial model whilst at the same time maintaining its interest in the revelation of the criminal's character, in particular the character of Count Fosco. Throughout the novel Fosco adopts a courteous, sensitive and thoughtful manner towards the other characters, including (and oftentimes especially) the protagonists he conspires against. His manner leads a number of more minor characters to misjudge him, including the housekeeper at Blackwater Park, Eliza Michelson, who describes him as 'a most considerate nobleman' (p. 365). On the face of it Fosco is charm itself, a jovial aristocrat whose flamboyant waistcoats, appreciation for opera, fondness of animals, and weakness for pastries submerged in cream are not traits we typically associate with a villain. And yet, despite this, there is always the sense that his true character is something which remains hidden and which 'excites a strange responsive creeping' (p. 233) in Marian's nerves. As the novel develops, Marian and Hartright's investigations become as much about the exposure of Glyde and Fosco as they are about reuniting Laura with her true identity. Once a confession is forced from Fosco, his part in the story should be finished, having provided Hartright with the information that will enable him legally to restore Laura to her position so she can marry Walter and re-establish social order and control. The reappearance of Fosco just before the novel's close therefore betrays the text's unresolved fascination

with his character. Even in his written confession Fosco does not fully reveal his character to us, keeping up his theatrical style: 'Youths! I invoke your sympathy. Maidens! I claim your tears' (p. 628). Finding him dead in a Parisian morgue Hartright attempts to articulate Fosco's story in terms of his membership and betrayal of 'the Brotherhood', hoping to elucidate 'the mystery of Count Fosco's death' (p. 640); but Hartright might as well just say 'the mystery of Count Fosco', for the attempt to provide Fosco with a narrative that makes sense of his part in the story (and his character) signals Hartright's attempts to understand him and to render him knowable.

Hartright's desire to know Fosco, to unmask him and reveal his true character, is symbolised by Fosco's naked body lying in the morgue, stripped of its disguise as a Parisian artisan and offered up to public inspection. Lying naked on the mortuary slab, Fosco is ostensibly stripped bare and completely exposed to the reader's gaze. At this moment in the text the reader is tacitly promised that Fosco's character will be fully known. This promise is never realised. In the end Hartright can only 'leave others to draw their own conclusions' (p. 640) as he has drawn his about Fosco. In Hartright's final attempt to understand Fosco, the idea that it is possible to know and understand the characters of others is once again revealed to be illusory as Fosco's lifeless body becomes nothing more than evidence to be read and interpreted. In this way *The Woman in White* can be read as a transitional text in which the nineteenth-century novel's continued fascination with character is met with the recognition that the full understanding of character the reader desires as a means of interpreting the story's events and meaning may no longer be possible. This recognition, dramatically realised in Hartright's frustrated endeavours to reveal the true nature of Fosco's character, poses the question of the extent to which the

assessment of character can be useful in the representational process, if at all. The interest in character and its place in the representational process was also discussed in the popular periodicals of the time, in particular the legal case of *R v Rowton* (1865) brought the issue to the forefront of popular debate.⁸⁹

The case of *R v Rowton* was to directly address the extent to which an assessment of a defendant's character was useful to determining the truth of disputed facts in criminal trials. In 1864 schoolmaster James Rowton was in court facing the charge of indecent assault on a fourteen year old boy. Rowton's sole defence was that he possessed a good character and his defence team introduced a whole string of witnesses to testify to this fact, including a local clergyman who swore to Rowton's 'general reputation for purity of mind and morality of conduct'.⁹⁰ The prosecution sought to counter this evidence by producing their own witnesses to attest to the defendant's previous bad character and they called a former pupil who swore that Mr Rowton was capable of 'grossest indecency and immorality'.⁹¹ Rowton was found guilty but he appealed his conviction on the basis that the evidence given regarding his bad character was inadmissible. The appeal judges in *R v Rowton* (1865) were divided, but the majority (led by Lord Chief Justice Cockburn) held that evidence of bad character was only admissible where it was evidence of general reputation. The majority decision was that the evidence given in Rowton's initial trial had been based on individual knowledge of his disposition rather than his general reputation and so was inadmissible. The verdict was overturned.⁹²

⁸⁹ See, for example, 'Evidence as to Character', *The Examiner*, 9 August 1851, p. 499; 'Value of Evidence to Character', *The Examiner*, 25 June 1853, pp. 402-403; 'The Simplicity of Character', *Sixpenny Magazine*, 4 (November 1862), 213-216; 'Evidence as to Character', *The Examiner*, 4 February 1865, p. 67; 'Witnesses to Character', *The Saturday Review of Politics, Literature, Science and Art*, 4 February 1865, pp. 132-134.

⁹⁰ 'Evidence to Character', *The Examiner*, 8 October 1864, p. 643.

⁹¹ *Ibid.*

⁹² The distinction between general reputation and disposition upon which the decision turned was not made entirely clear, especially as Cockburn LCJ failed to define what he exactly meant by

The *Rowton* case sparked commentary and raised once again the issue of the extent to which an assessment of character was useful in establishing guilt. *The Examiner* took the issue up and noted the limited nature of character evidence, especially that of good character, as ‘it must be borne in mind that no man can enter upon the business of roguery on a large scale with any prospect of success without providing himself with a good character’.⁹³ A few years earlier *The Examiner* had made a similar point about character evidence whilst criticising judicial decisions to lessen a sentence if evidence of good character was brought forward:

All evidence as to character is fallacious. How often are we mistaken for better or worse about persons, and how different at different stages of knowledge of them would be our judgements. Every hypocrite had a good character to the extent of the success of his duplicity.⁹⁴

The Examiner articles reveal a prevailing scepticism regarding the usefulness of character evidence, questioning the extent to which knowledge of the characters of others could be relied on, citing Baron Alderson who responded to a defendant who produced a clergyman to attest to his good and religious character that such evidence ‘only went to show that a man might be capable of committing the most atrocious offences under the mask of religion’.⁹⁵ However, as *The Woman in White* demonstrates, despite an acceptance that attention to all the available evidence is to be preferred to a primary focus on the nature of the accused’s character, there remains an interest in nineteenth-century literature in how far an assessment of the criminal’s character might be useful, and whether or not such an assessment was even possible.

‘disposition’ (see *R v Rowton* (1865) All ER 549). *The Examiner* criticised the decision which appeared to reject evidence which was ‘too good’ as it was ‘founded on intimate knowledge rather than “vague” general repute’: ‘Evidence as to Character’, *The Examiner*, 4 February 1865, p. 67.

⁹³ *Ibid.*

⁹⁴ ‘Evidence as to Character’, *The Examiner*, 9 August 1851, p. 499.

⁹⁵ The defendant was indicted for giving drugs to two women in order to induce miscarriages. See *Ibid.*

In large part *The Woman in White* deals with an anxiety relating to how the criminal might be identified when, as *The Examiner* article notes, the rogue understands the importance of ‘providing himself with a good character’ if he is to succeed.⁹⁶ Nonetheless, through the intuitive negative responses that the characters feel for the villains, Collins’s novel tentatively suggests that there might be something innately, identifiably criminal about the criminal character.⁹⁷ As such *The Woman in White* gestures towards the idea that the criminal’s true character might reveal itself to others through the criminal’s demeanour, something which Charles Dickens argued for in an 1856 article for *Household Words*. In ‘The Demeanour of Murderers’, Dickens responds to contemporary anxiety over William Palmer’s refusal to confess by arguing that his guilt was evident from his whole demeanour.⁹⁸ Palmer’s continued insistence on his innocence of poisoning Cook with strychnine was cause for unease in certain quarters over the soundness of the verdict, with many trying to elicit a confession to ease any doubt: ‘from the time of his sentence to the very moment when he ascended the scaffold [...] Palmer was persuaded, entreated, implored day by day, almost hour by hour, to confess his crimes, not to God, but to man’.⁹⁹ Dickens’s article argues that no such confirmation was required as: ‘the physiognomy and conformation of the poisoner whose trial occasions these remarks, were exactly in accordance with his deeds; and every guilty consciousness he had

⁹⁶ ‘Evidence as to Character’, *The Examiner*, 4 February 1865, p. 67.

⁹⁷ I say ‘tentatively’ because the instinctive revulsion such characters feel is not shared by other characters and borders on being superstitious in nature: Laura’s dog Nina, for example, cowers away from Sir Percival, and Hartright is persuaded of Glyde’s villainy by a letter in which Anne Catherick describes a prophetic dream. Also, the novel does not explore how the protagonist’s responses might be accounted for in any rational way (through the study of external signs which might reveal the inner character), the whole narrative structure instead trusting to the careful presentation of evidence to expose the villains in the end.

⁹⁸ [Charles Dickens], ‘The Demeanour of Murderers’, *Household Words*, 13 (14 June 1856), 505-507.

⁹⁹ ‘The Trial and Execution of William Palmer’, in *Journal of Mental Science*, 2 (1856), 513. Cited in Burney, ‘A Poisoning of No Substance’, 59.

gone on storing up in his mind, had set its mark upon him'.¹⁰⁰ For Dickens, Palmer's actions and reactions throughout the trial could be read in terms of his guilty conscience and that in his whole demeanour 'there [was nothing] at all singular' but only that which 'is always to be looked for and counted on in the case of a very wicked murderer'.¹⁰¹ What Dickens does note though, is that whilst 'nature never writes a bad hand' and whilst that bad character is 'invariably legible' in the human countenance, one has to be 'trained to the reading of it'.¹⁰²

The idea that it is possible to read a person's character from external signs was one that the practice of physiognomy and phrenology had done much to popularise during the first half of the nineteenth century. Physiognomy, which had been popular long before the century began, posited the view that a person's inner character could be revealed through a study of their facial features.¹⁰³ As Taylor and Shuttleworth have noted, John Caspar Lavater's work on physiognomy during the last decades of the eighteenth century led to a renewed interest in its application.¹⁰⁴ Sharrona Pearl has also demonstrated the widespread popularity of physiognomy as a 'technology to make decisions about individual others' during the nineteenth century.¹⁰⁵ By the mid-nineteenth century the related practice of phrenology, which claimed that dominant character traits and propensities could be identified through the examination of a person's skull, had also become extremely popular.¹⁰⁶

¹⁰⁰ [Dickens], 'The Demeanour of Murderers', 506.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Sharrona Pearl has noted how during the nineteenth century physiognomic analysis was also extended by many people to the study of expressions, body types and also clothing, hairstyles, and self-presentation. See Sharrona Pearl, *About Faces: Physiognomy in Nineteenth-Century Britain* (Cambridge, MA: Harvard University Press, 2010), pp. 6-7.

¹⁰⁴ *Embodied Selves: An Anthology of Psychological Texts 1830-1890*, ed. by Jenny Bourne Taylor and Sally Shuttleworth (Oxford: Clarendon Press, 1998), p. 3.

¹⁰⁵ Pearl, *About Faces*, p. 1.

¹⁰⁶ Phrenology developed out of the Franz Joseph Gall's work on craniology in the 1790s, and was made popular in Britain by the work of Johann Gaspar Spurzheim, and then by George Coombe whose 1829 treatise *The Constitution of Man* was the forth most popular book of the mid-nineteenth

The popularity of physiognomy and phrenology suggests a widespread preoccupation in the assessment of character during the nineteenth century. Indeed, Pearl has linked the renewed interest in physiognomy at the start of the century with a ‘crisis in urban interaction’:

The scale of London changed the nature of the human interaction in dramatic and pressing ways. Physiognomy helped urbanites deal with the simultaneous overload and lack of human information by allowing people to make judgments on the basis of sight. The most important information physiognomy could provide was precisely what was lacking in the urban environment, namely, a system of establishing reasons to trust and, equally important, identifying whom not to trust. Without the lengthy timescale of rural life, and with the hustle and bustle of the streets, physiognomy emerged as a way to make sense of the city.¹⁰⁷

Nonetheless, whilst physiognomy and phrenology promised the chance to understand the characters of others, the question of whether this was actually possible was one which recurred again and again during the nineteenth century. This was especially the case where the criminal was concerned, as cases such as *Rowton* illustrate, and neither physiognomy nor phrenology offered a fail-safe way to understand the characters of others, and they were not without their critics.¹⁰⁸ As Pearl has shown, physiognomy was not a settled universal system, its practices shifted and changed over time, and it was non-expert and subjective in nature.¹⁰⁹ Phrenology on the other hand, whilst it had attempted to cast the principles of physiognomy within a more scientific framework, relied upon one person undertaking a physical examination of

century. See further: *Embodied Selves*, and Jenny Bourne Taylor *In The Secret Theatre of the Home: Wilkie Collins, Sensation Narrative, and Nineteenth-Century Psychology* (London: Routledge, 1988).

¹⁰⁷ Pearl, *About Faces*, pp. 10-11.

¹⁰⁸ Gall’s work which founded the practice of phrenology was particularly hostile to the practice of physiognomy, while writers such as William Hazlitt sought to debunk the principles of phrenology: see *Embodied Selves*, and Pearl, *About Faces*, Ch. 6. Writing in 1890 Havelock Ellis lamented the practice of both physiognomy and phrenology, see Havelock Ellis, *The Criminal* (New York: Scribner & Welford, 1890), p. 29.

¹⁰⁹ Sharrona Pearl has shown how the widespread popularity of physiognomy during the nineteenth century rested on the fact that it was a ‘technology of judgment’ accessible to all. Cheap and accessible pocket books were printed on physiognomy which suggested that everyone could use physiognomy in their assessments of others. Pearl’s study also reveals how the use of physiognomy relied very much on the personal subjective responses of the individual making the judgements, and how individual instinct was an important component of its practice. See Pearl, *About Faces*, especially ‘Introduction’.

another person's skull, and so, as Pearl notes, was limited in its usefulness for assessing the characters of others.¹¹⁰ By the late nineteenth century, however, the practices of physiognomy and phrenology appear to have been largely eclipsed by the emerging field of criminal anthropology which was spreading through Europe.

Havelock Ellis's *The Criminal* (1890) expounds nineteenth-century criminal anthropological theory, often citing uncritically the work of Italian criminal anthropologist Cesare Lombroso, noting his 'importance in the development of criminal anthropology'.¹¹¹ As Gibson and Hahn Rafter have noted, Lombroso emerged in the nineteenth century as 'the leader of an international movement called the positivist or scientific school of criminology'.¹¹² Lombroso's theories set forth in *Criminal Man* (which went through five editions, the first appearing in 1876), marked a turn away from criminal penology which suggested that punishment should be proportional to the crime committed because the criminal acted of their own free will.¹¹³ Lombroso put forward the alternative theory of the born criminal, and argued that criminality could be identified by the various 'anomalies' that marked his or her features.

Whilst no complete English translation of *Criminal Man* existed in the nineteenth century, Havelock Ellis's *The Criminal* notes its significant influence on the field and his work. Lombroso suggested that the criminal was marked by physical 'anomalies' which resembled the traits of primitive peoples and so proving (Lombroso claimed) the atavistic nature of the criminal. In *The Criminal*, Havelock

¹¹⁰ See further, Pearl, *About Faces*.

¹¹¹ Ellis, *The Criminal*, quotation at p. 36. Ellis would become more critical of Lombroso's work after the first edition of *The Criminal*.

¹¹² Mary Gibson and Nicole Hahn Rafter, 'Introduction' to Cesare Lombroso, *Criminal Man*, trans. by Mary Gibson and Nicole Hahn Rafter (Durham and London: Duke University Press, 2006), pp. 1-38 (p. 2).

¹¹³ The view that the punishment should be proportional to the crime was can be traced back to Cesare Beccaria's *On Crimes and Punishments* (1764).

Ellis also argues that the criminal could be identified through physical characteristics. For example, Ellis informs his readers that ‘lack of cranial symmetry is one of the most marked features of the criminal skull’, that ‘there is little doubt that the lower jaw is often remarkably well developed in those guilty of crimes’, and that ‘even non-scientific observers have noted the frequency among criminals of projecting or of long and voluminous ears’, echoing Lombroso’s observations.¹¹⁴ Ellis, like Lombroso in *Criminal Man*, attempted to examine and classify these anomalies and this suggested, as Gibson and Rafter have highlighted in relation to Lombroso’s work, that the identification of the criminal could be turned into an empirical science. Sharrona Pearl has argued that whilst the field of criminal anthropology was influenced by physiognomy, it also marked a shift away from the subjective physiognomic assessment of the individual, towards more objective group diagnostics. The aim of the work of Lombroso and Ellis, for example, was not to enable individuals to understand the character of other individuals, but rather to develop professional assessment standards which would enable the assessor to place individuals into established groupings, not least that of the criminal.¹¹⁵ Whilst physiognomy and phrenology had been concerned with enabling the assessment of individuals, criminal anthropology sought to classify the criminal type.¹¹⁶

The influence of Lombrosian criminal anthropology on the *Sherlock Holmes* stories is evident in the canon. In ‘The Final Problem’, Holmes’s description of the master criminal Moriarty is markedly influenced by criminal anthropology. In the first edition of *Criminal Man*, Lombroso identifies criminals as being of greater

¹¹⁴ Ellis, *Criminal*, quotations at p. 52, p. 63 and pp. 65-66.

¹¹⁵ Pearl, *About Faces*, Ch. 6.

¹¹⁶ For a more detailed analysis of nineteenth-century European criminal anthropology, see Daniel Pick, *Faces of Degeneration: A European Disorder, c.1848-c.1918* (Cambridge: Cambridge University Press, 1989).

height and weight.¹¹⁷ In Doyle's 'The Final Problem' Moriarty is described as 'extremely tall' (*Memoirs*, p. 254), and whilst he is said to be 'thin' (*Memoirs*, p. 254), this suggests a physical weakness which Lombroso also suggested was an indication of criminality.¹¹⁸ Other common 'anomalies' Lombroso identifies are protrusion of the jaws, sloping foreheads, and dark eyes.¹¹⁹ Moriarty is described as having eyes 'deeply sunken into his head' with a face that 'protrudes forwards' (*Memoirs*, p. 254), and whilst he does not fit every anomaly Lombroso suggests, the description of him having a 'curiously reptilian fashion' (*Memoirs*, p. 254) about him links him with idea of atavism which the whole of Lombroso's *Criminal Man* expounds. Throughout 'The Final Problem' Holmes does not express an interest in understanding Moriarty as an individual. There is no sense for example, as there is with Hartright and Fosco, that Holmes wants to uncover Moriarty's true character. Holmes knows that Moriarty is a criminal mastermind, and the tenets of criminal anthropology merely confirm this view, as he says to Watson: 'when I saw the very man who had been so much in my thoughts [...] his appearance was quite familiar to me' (*Memoirs*, p. 254). In 'The Final Problem', as elsewhere in the *Holmes* stories, the interest is not in ascertaining or assessing an individual's character, but rather with ascertaining whether that individual falls within a particular group: in Moriarty's case, that of the criminal.¹²⁰

Lawrence Frank has identified the influence of Darwin's work on Holmes's method, in particular, *The Expression of the Emotions in Man and Animals* (1872). In this work Darwin used neurological explanations alongside psychology and

¹¹⁷ Lombroso, *Criminal Man*, p. 50 and p. 56.

¹¹⁸ *Ibid.*, p. 56

¹¹⁹ *Ibid.*

¹²⁰ For a discussion of how Holmes's ability to read the criminal body connects Doyle's detective stories with wider concerns about individual and national identity, see Ronald R. Thomas, 'The Fingerprint of the Foreigner: Colonizing the Criminal Body in 1890s Detective Fiction and Criminal Anthropology', *ELH*, 61 (1994), 655-683.

evolutionary anthropology to produce a theory in which unconscious facial expressions and physical gestures of an individual could be used to interpret the state of mind, emotions and feelings of that person:

An old lady with a comfortable but absorbed expression sat nearly opposite me [...] Whilst I was looking at her, I saw that her *depressors anguli oris* became very slightly, yet decidedly, contracted; but as her countenance remained as placid as ever, I reflected how meaningless was this contraction, and how easily one might be deceived. The thought had hardly occurred to me when I saw that her eyes suddenly became suffused with tears almost to overflowing, and her whole countenance fell. There could be no doubt that some painful recollection, perhaps that of a long-lost child, was passing through her mind.¹²¹

As Frank notes, this reading of people is similar to the acts of reading people Holmes becomes engaged in as he takes his clues from physical appearance, gestures and facial expressions to draw conclusions about those around him. Yet, as with his use of criminal anthropology, Holmes uses such conclusions to categorise people, rather than make judgements about individual character. In ‘A Case of Identity’ for example, Holmes states confidently: ‘oscillation on the pavement always means an *affaire du coeur*’ (*Adventures*, p. 32).¹²² Whilst sensation novels like *The Woman in White* adopt adversarial-evidentiary methods of representation, they still raise the question of the extent to which the assessment of character is useful in determining the truth. In the *Holmes* stories our detective hero moves away from the assessment of the individual characters of others, and towards classifying others into groups according to external markers which function as pieces of data that enable categorisation. In this way the *Holmes* stories remove the idea of character

¹²¹ Charles Darwin, *The Expression of the Emotions in Man and Animals* (1872). Cited in Lawrence Frank, *Victorian Detective Fiction and the Nature of Evidence: The Scientific Investigations of Poe, Dickens, and Doyle* (Basingstoke, Palgrave Macmillan, 2003), p. 151.

¹²² Pearl has noted how Darwin’s work in *The Expression of the Emotions in Man and Animals*, like criminal anthropology, removes the idea of the individual from the equation: ‘Darwin provided a new kind of legibility for the face that connected it to other faces and other kinds of faces in other places at other times’ but he ‘couldn’t connect this to a person’s particular experiences or explain why it is expressed at that moment’, as we see in the quotation Frank offers, Darwin is only able to speculate on the cause of the lady’s distress: Pearl, *About Faces*, p. 200.

assessment from the equation entirely: there is no need to understand or reveal the criminal's true character in order to unmask him, his status as a criminal is legible from visible signs. The criminal becomes understood in terms of categorisation, and so becomes identifiable, and detectable, once more.

The Advocacy of Watson and Holmes

A number of critics who have analysed the Holmes canon have attributed the detective's popularity to the sense of reassurance with which he provides the reader. As Stephen Knight puts it: 'the embarrassing success [of the Holmes stories] depended on the hero's power to assuage the anxieties of a respectable, London-based, middle-class audience'.¹²³ Just as in the sensation novel, one of these anxieties was how crime and social transgression might be exposed and so punished. Yet, as I argued earlier in this chapter, this concern with neutralising potential threats to the middle-class status quo (in order that the social norms and values of that class be upheld) also reflects a wider concern with how the individual is to understand and derive meaning from the oftentimes confusing reality in which they find themselves. A large part of the appeal of the *Sherlock Holmes* stories therefore lies in the fact that they provide the reader with the sense that reality does have order and meaning. Through the doors of 221b Baker Street come Holmes's clients who represent the anxieties and fears of the middle-class reader realised, as they find themselves confronted with a confusing reality which they cannot understand; as Miss Morstan

¹²³ Stephen Knight, *Form and Ideology in Crime Fiction* (Basingstoke: Macmillan, 1980), p. 67. See also, for example, Rudolph Glitz, 'Horrorifying Ho(l)mes: Conan Doyle's Bachelor Detective and the Aesthetics of Domestic Realism', in *Formal Investigations: Aesthetic Style in Late-Victorian and Edwardian Detective Fiction*, ed. by Paul Fox and Koray Melikoglu (Stuttgart: ibidem-Verlag, 2007), pp. 1-28; Martin A. Kayman, 'The Short Story from Poe to Chesterton', in *Cambridge Companion to Crime Fiction*, ed. by Priestman, pp. 41-58; Christopher Clausen, 'Sherlock Holmes, Order, and the Late Victorian Mind', *The Georgia Review*, 38: 1 (1984), 104-123; Rosemary Jann, *The Adventures of Sherlock Holmes: Detecting Social Order* (New York: Twayne, 1995); and Martin Priestman, *Detective Fiction and Literature: The Figure on the Carpet* (Basingstoke: Macmillan, 1990).

tells Holmes and Watson in *The Sign of Four*, ‘I can hardly imagine anything more strange, more utterly inexplicable, than the situation in which I find myself’ (p. 94). In such a world characters find themselves isolated from those around them, unable to know them or explain their actions, as Miss Hunter says of her employers in ‘The Copper Beeches’: ‘I cannot understand them, and I am not easy in my mind about them’ (*Adventures*, p. 281).¹²⁴ The service Holmes provides is to make sense of his client’s reality for them by neutralising any potential threats and reinstating the middle-class norms, values, and relationships through which his clients understand the world. Just as Holmes tells Violet Hunter that any danger would ‘cease to be a danger if we could define it’ (*Adventures*, p. 278), so too if he can restore his client’s (and by extension the reader’s) reality to a pattern which reflects the worldview they subscribe to, he can make it appear understandable, meaningful and unthreatening once more.

Rosemary Jann has also argued that the reader has a desire for order and meaning which is satisfied by the *Holmes* stories, attributing much of their success to the hero’s ability to give meaning to seemingly inexplicable and bizarre events:

The power of Holmes’s inferences, as well as their appeal to his Victorian audience, rests on the assumption that beneath the chaotic surface of life exists an underlying social order to which all details can be linked by the trained observer. In the face of a universe that often seems incoherent and incomprehensible, Holmes affirms a fantasy of control by implying that all it takes to uncover nature’s hidden order is a sufficient exercise in human intellect.¹²⁵

Jann, like other critics, attributes the order and meaning which Holmes places on reality to his role as a scientist: ‘like many scientific essayists in the Victorian period, he demonstrates the most insignificant of everyday objects exemplify the working of

¹²⁴ ‘The Copper Beeches’ first appeared in *Strand Magazine*, 3 (June 1892), 613-628.

¹²⁵ Jann, *Detecting Social Order*, p. 50.

scientific laws and thus testify to the systematic nature of reality'.¹²⁶ But in focusing on the importance of Holmes's scientific expertise, critics like Jann tend to neglect the crucial impact that courtroom representations had upon the *Holmes* formula.

Before Russell's *Recollections of a Police-Officer* appeared in 1849 some proto-detectives had emerged in a series of fictional memoirs purportedly written by lawyers. A series of anecdotes entitled 'Experiences of a Barrister' was published in *Chambers's Edinburgh Journal* between 1849-1850 and was followed by the 'Confessions of an Attorney' series, published between 1850-1852.¹²⁷ Worthington has examined the importance of 'Experiences' and 'Confessions' to the history of the detective story, along with Samuel Warren's 'Passages from the Diary of a Late Physician' (published serially in *Blackwood's Edinburgh Magazine* 1830-1837), which she demonstrates inaugurated the case structure that later typified the detective story.¹²⁸ In 'Experiences of a Barrister' we are presented with a hero whose clients come to him for legal aid and assistance. He is helped by an attorney, Mr Ferret, who acts as a prototype detective, carrying out investigations and tracking down the evidence which the barrister needs to solve his client's problems by proving their case. In the 'Confessions of an Attorney' series the heroes are Messieurs Flint and Sharp, owners of a legal practice, who help their clients in a similar manner.

Worthington's analysis of these stories clearly demonstrates their importance to the development of the detective story, in particular how these stories introduced a case

¹²⁶ Ibid. See also, for example, Frank, *Victorian Detective Fiction*, and Thomas, *Detective Fiction*.

¹²⁷ 'Experiences of a Barrister' and 'Confessions of an Attorney' were published anonymously but have been attributed to Samuel Warren: see for example in the collected editions *Experiences of a Barrister* (New York: Cornish, Lamport & Co., 1852), and *Confessions of an Attorney* (New York: Cornish, Lamport & Co, 1852). However, as Heather Worthington has noted, their 'publication in *Chambers's*, a periodical with a socially broader target audience than that of literary magazines such as *Blackwood's*, makes it unlikely that Samuel Warren was their author, as his work was almost entirely published in *Blackwood's* or by Blackwood and Sons'. However, Worthington goes on to note, 'his criminographic writing was paradigmatic for the later populist legal anecdotes': see Worthington, *Rise of the Detective*, p. 74.

¹²⁸ Worthington, *Rise of the Detective*, Ch. 2.

structure and helped to ‘construct and introduce the paid investigating professional individual who works in the private sphere to solve problems’.¹²⁹ These tales are also crucial, however, in revealing the significance which the 1836 Prisoners’ Counsel Act debates had on the development of detective fiction.

The 1836 Act opened up the debate on legal evidence in the nineteenth century to a public audience who could read about it in newspapers, magazines and journals. The ‘Experiences’ and ‘Confessions’ both actively engage with this debate. In ‘The March Assize’, the first of the ‘Barrister’ stories, an innocent man is found guilty of, and hanged for, a robbery on the basis of a ‘beautiful point of circumstantial evidence’ alone.¹³⁰ It later turns out that the incriminating evidence had been planted on him by a disgruntled ex-employee. The story’s narrator, a barrister on his first circuit, describes how, despite there being ‘no direct evidence’ of his guilt, his client is found guilty on the strength of this circumstantial evidence alone (p. 15).¹³¹ The next anecdote, ‘The Northern Circuit’, strikes a similar tone and this time both direct testimonial and circumstantial evidence prove misleading, wrongly indicating the guilt of a landlord and his wife for murder.¹³² In fact, the servant who testifies to their guilt ‘with precision and apparent sincerity’ (p. 30) was herself an accomplice to the real killer. Once more the truth is only elicited by a last minute death-bed confession and the barrister again warns against ‘coming hastily to conclusions’ even when the truth appears obvious ‘upon the surface of the matter’ (pp. 33-34). In the ‘Confessions’ too, Messieurs Flint and Sharp face a catalogue of

¹²⁹ Ibid., p. 102. Stephen Knight also briefly notes the significance of these stories to the genre in *Crime Fiction*, p. 32, as does LeRoy Lad Panek in more detail in *Before Sherlock Holmes*, Ch.3.

¹³⁰ *Experiences of a Barrister* (New York: Cornish, Lamport & Co., 1852), pp. 13-15. Further references from *Experiences of a Barrister* are taken from this collected edition and are given after quotations in the text. This story originally appeared in *Chambers’s Edinburgh Journal*, 263 (13 January 1849), 24-28. This particular tale also offers a criticism of felony counsel restriction.

¹³¹ The real thief later confesses after being found guilty of another crime, gloating wildly at the judge who sentenced the innocent man to death.

¹³² This story originally appeared in *Chambers’s Edinburgh Journal*, 268 (17 February 1849), 107-111.

misleading circumstantial evidence, fabricated evidence and perjured testimony. In examining the potential for all kinds of evidence to mislead, these fictional legal anecdotes locate themselves very much within the popular debates concerning evidence, and so form part of the wider discussions regarding how the truth of disputed facts is to be established in legal trials which the Prisoners' Counsel Act debates were part of.

As noted above, Mr Ferret in 'Experiences' and the attorneys Flint and Sharp in 'Confessions', fulfil a detective function in their search for evidence which can save their client, and in this respect are important (as Worthington argues) to the development of the detective figure in the nineteenth century. Yet this detective role is useful only in so far as it provides the necessary evidence for our legal heroes to construct their overall narrative which proves their client's case. In most of the anecdotes the lawyers find themselves confronted with a narrative constructed from direct testimony and circumstantial evidence which they must counter with a competing narrative made up of their alternative interpretation of all the evidence available to them. In short, these stories provide the reader with a legal narrative which seeks to persuade that it is the true representation of the disputed facts, something which is achieved through the careful presentation and scrutiny of all the evidence.

Like courtroom representations, the 'Experiences' and 'Confessions' present their stories as 'cases' to be heard and become (to employ Welsh's term) strong representations of their client's story. Like their real life counterparts, the lawyers in these stories proceed chronologically, provide an outline of the facts of the case, scrutinise the evidence presented against them and counter it with their own, present their clients in a favourable light and attempt to discredit their opponents. Overall the

method of these lawyers is to present a coherent and persuasive narrative which discredits alternative representations of the facts; as Mr Flint tells those who oppose his client in ‘The Puzzle’, ‘we [...] shall, I daresay, if you push us to it, be able to tear this ingeniously coloured cobweb of yours to shreds’.¹³³ In fact, in a number of these stories, success depends on the lawyers constructing a narrative so convincing that it persuades the antagonists that their counter narrative will fail. In the ‘Confessions’, the case of ‘Bigamy or no Bigamy’ sees Flint and Sharp approached by the Countess Seyton, who is being blackmailed by a man who claims she entered into her second marriage before her first husband had died.¹³⁴ The case hinges on the lawyers being able to convince the blackmailer that their narrative of events is so strong, and backed by enough evidence, as to persuade a jury of its truth and see him convicted. Throughout the ‘Experiences’ and ‘Confessions’, it is often the case that the lawyers simply run out of time in trying to prove their case and have to rely on their advocacy skills in this way to force a confession and elicit the truth, and in doing so they reveal the impressive power of the advocate to reveal the truth from a tangled web of misleading evidence and lies. As such, these fictional legal anecdotes not only reveal the need for a detecting figure as Worthington suggests, but also the need for a figure who can present the detective’s evidence effectively: they reveal the need for an advocate.

As noted above, the theme of the reliability of evidence which recurs throughout the ‘Experiences’ and the ‘Confessions’ places these tales firmly within

¹³³ *Confessions of an Attorney* (New York: Cornish, Lamport & Co, 1852), p. 99. Further references from *Confessions of an Attorney* are taken from this collected edition and are given after quotations in the text. This story originally appeared in *Chambers’s Edinburgh Journal* 401 (6 September 1851), 146-151. By this point in its serial publication the title of the *Confessions* series had been altered to *The Reminiscences of an Attorney* but the protagonists remained the lawyers Flint and Sharp and these stories were published in a collected edition together with the ‘Confessions’ under the title *Confessions of an Attorney*.

¹³⁴ This story originally appeared in *Chambers’s Edinburgh Journal*, 359 (16 November 1850), 307-311.

the context of the debate on evidence which fully emerged in the wake of the 1836 Prisoner's Counsel Act.¹³⁵ The 'Experiences' and 'Confessions' have been attributed to Samuel Warren, a lawyer himself by profession, who took the matter of evidence up in some non-fiction articles. In 'Who is the Murderer? A Problem in the Law of Circumstantial Evidence' Warren examines the evidence of the trial of Robert Gouldsborough for the murder of William Huntley. In chapter two I noted how in this article Warren offers an analysis of the evidence given during the trial (in which Gouldsborough was acquitted). As Warren attempts to reconstruct the crime and lead the reader to conclusions about Gouldsborough's guilt, Warren succeeds in demonstrating the extreme difficulty of correctly interpreting evidence.¹³⁶ By taking the reader through the complex web of evidence in this case, Warren demonstrates the need for a professional, authoritative figure to guide the jury (or in the case of fiction, the reader) to help them decide correctly upon the effect of the evidence. Worthington argues that 'Who is the Murderer' highlights the need for a 'professional investigator to seek out reliable evidence, a specialist with training and knowledge that would overcome the "problem in the law of circumstantial evidence" and ensure safe convictions and protect the innocent' and as such creates the 'discursive space for the private detective'.¹³⁷ For Worthington, Warren's article casts him in the role of the detective and she lists the skills he uses in his analysis as those belonging to the detective: 'close observation, interrogation of witnesses, the ascertaining of motive, and the deduction of facts from the evidence presented'.¹³⁸

¹³⁵ *Chambers's Edinburgh Journal*, as noted in chapter two of this thesis, printed various articles and short stories dealing with circumstantial evidence during the time that both *Experiences* and *Confessions* were being published in its pages.

¹³⁶ [Samuel Warren], 'Who is the Murderer?: A Problem in the Law of Circumstantial Evidence', in a Letter to Christopher North, *Blackwood's Edinburgh Magazine*, 51 (1842), 553-578. See p. 111-112 of this thesis.

¹³⁷ Worthington, *Rise of the Detective*, pp. 73-74.

¹³⁸ *Ibid.*, p. 73.

However, these skills could equally be listed as those of an advocate, and the legal framework within which Warren places his readers – alluding to the fact he is a barrister himself, and providing the reader with the evidence produced within the courtroom – demonstrates the fundamental connection between the function of the advocate and the function of the detective. The advocate and the detective engage in the same practices, albeit at different stages of the criminal justice process, as both attempt to reconstruct past events from evidence left in the present. The casting of lawyers in the detective role in the ‘Experiences’ and the ‘Confessions’ therefore makes perfect sense, as they possess the necessary attributes to become successful detectives.¹³⁹

Crucial to the advocate’s success is the creation of a coherent and persuasive narrative. A large part of an advocate’s role is to connect facts into an ordered narrative so that, as Burke suggested, from the ‘multitude’, ‘combination’ and ‘relation’ of facts the truth might emerge through their ‘collective effect’.¹⁴⁰ The construction of a convincing narrative also becomes crucial to the detective project and can be seen in the detective stories which feature self-identified detective heroes. The reminiscences of police officers such as Waters and Inspector F are all narratives which have been constructed to persuade the reader that the police officer’s tale is true.¹⁴¹ They narrate a sequence of events which begin with a ‘case’ history, proceed

¹³⁹ It has also been suggested that lawyers make the perfect detective because they do not pose a threat to the middle classes in the way police detectives did. Police officers and detective police officers had the capacity to police the middle-classes as well as protect their interests, whereas a lawyer was a professional figure who was hired to protect the client’s interest only. See further, Worthington, *Rise of the Detective*, Ch. 2.

¹⁴⁰ Edmund Burke in a Report from the committee of the House of Commons on 30th of April 1794, in *The Works and Correspondence of the Right Honourable Edmund Burke*, 8 vols (London: Francis & John Rivington, 1852), VIII, 96.

¹⁴¹ In addition, the authors of these reminiscences claim truthfulness for their narratives by including in the titles words such as ‘autobiography’, ‘recollections’, ‘experiences’ and ‘revelations’. See, for example, William Russell’s *Recollections of Detective Police-Officer* (1856), *Experiences of a Real Detective* (1859), and *Autobiography of an English Detective* (1863), Andrew Forrester Jnr.’s *Revelations of a Private Detective* (1863), and Thomas Delf’s *The Diary of an Ex-Detective* (1860).

through the collection of evidence from which conclusions are drawn, ending with a conclusion which reveals the truth. Again this structure loosely resembles the structure of a barrister's case in court where he would begin with a statement of the facts of the case, then offer an analysis of evidence and examination of witnesses and end with a concluding statement to the jury which draws all the strands of his narrative of events together. In later detective stories this legal argument structure becomes more pronounced, as can be seen in Andrew Forrester's *The Female Detective* (1864). In 'The Unknown Weapon', for example, Mrs G begins with a full account of the case history, carefully setting out all the facts of the case and the initial evidence: 'here are the exact preliminary facts of the case' (p. 33). This is followed by her investigations in which she cross-examines witnesses:

"What about the big box?"
 "Doa noa." [This was the mode in those parts of saying "I do not know."]
 "Where was it?"
 "In the hall."
 "Where did it come from?"
 "Doa noa."
 "How long had it been there?" (p. 67)

and so on. Mrs G also scrutinises the evidence – 'It was a woman's handkerchief. It was new; had apparently never been used [...] and it was marked in the corner "Freddy"' (p. 59) – and subordinates it to the case she wishes to make:

This handkerchief belonged to a woman, in all probability young, whose Christian name was Frederica; as it was not soiled, and as it was not blackened by wear, it had recently been given to, or taken, by him; and as the handkerchief was found in the breast of his shirt, it appeared to have been looked upon with favour. (p. 60)

Indeed Mrs G understands the importance of creating coherent narratives to the detective project in order that her readers will be able to follow her reasoning: 'I will give the particulars, as far as I can, in the form of a narrative' (p. 33); 'I set out my

questions and his answers as closely as I can recollect them, together with a narrative of the actions which resulted out of both' (p. 57). As can be seen in 'The Unknown Weapon', this adversarial-evidentiary legal framework is crucial to the detective's ability to persuade the reader that the representation of events which they offer (the solution to the mystery) is the correct one, and read in this light this framework can equally be seen to be underpinning the *Holmes* stories.

The *Sherlock Holmes* short stories began appearing in *The Strand Magazine* in July 1891. Two longer stories had already been published prior to this, *A Study in Scarlet* first in *Beeton's Christmas Annual* in 1887, followed by *The Sign of the Four* (later just *The Sign of Four*) in 1890 in *Lippincott's Monthly Magazine*. However, it was with the short stories that Holmes's popularity really took off.¹⁴² *The Strand* was a magazine principally aimed at the middle-class family and commuter market and it contained short stories (designed to be read in one journey) alongside other articles of interest, from portraits of notable figures to essays on scientific developments and the law.¹⁴³ As Ronald Thomas has noted, during the serial publication of Holmes's adventures, crime, criminality and the administration of criminal justice were a continuing source of interest to *The Strand's* writers.¹⁴⁴ The appearance of the Holmes stories alongside such articles links them to legal issues which affected courtroom representations and in particular the reliability of evidence, a problem

¹⁴² See Priestman, *Detective Fiction and Literature*, p. 97.

¹⁴³ The 1891 October issue of *Strand Magazine*, for example, contained (amongst other things) an interview with W. S. Gilbert: Harry How, 'Illustrated Interviews: VI – Mr W S Gilbert', *Strand Magazine*, 2 (October 1891), 332-341; 'Portraits of Celebrities at Different Times of their Lives', *Strand Magazine*, 2 (October 1891), 366-371; an article on 'Smugglers' Devices', *Strand Magazine*, 2 (October 1891), 417-425; a short story about a man who believes he has accidentally killed someone: George Manville Fenn, 'Laying a Ghost', *Strand Magazine*, 2 (October 1891), 385-394; and a *Sherlock Holmes* adventure: Arthur Conan Doyle, 'The Boscombe Valley Mystery', *Strand Magazine*, 2 (October 1891), 401-416.

¹⁴⁴ Ronald Thomas, *Detective Fiction and the Rise of Forensic Science* (Cambridge: Cambridge University Press, 1999), p. 75.

which Holmes himself faces throughout his adventures.¹⁴⁵ Like his detective predecessors, Holmes often finds himself presented with faulty and misleading evidence. In ‘The Abbey Grange’ for example, the two principal witnesses deliberately lie to cover up what really happened.¹⁴⁶ Holmes is also keenly aware of the ‘tricky’ nature of circumstantial evidence: in ‘The Boscombe Valley Mystery’ Watson remarks that ‘if ever circumstantial evidence pointed to a criminal it does so here’, but Holmes counters this with the warning that:

Circumstantial evidence is a very tricky thing, [...] it may seem to point very straight to one thing, but if you shift your own view a little, you may find it pointing in an equally uncompromising manner to something entirely different. (*Adventures*, p. 78)¹⁴⁷

By addressing issues which relate to the use of evidence to prove a case, the Holmes stories, like the sensation novel, become part of the wider popular debate about how the truth of disputed facts is to be established successfully.¹⁴⁸

When reading the *Sherlock Holmes* stories it is difficult not to be struck by Holmes’s scientific expertise. Throughout Sherlock’s cases we are continually reminded of his view of detection as a scientific discipline: in *A Study in Scarlet* Watson reads an article by Holmes, entitled ‘The Book of Life’, in which the detective refers to his method as ‘the Science of Deduction and Analysis’ (*Study*, p. 23), and Watson notes how Holmes has reduced detection ‘as near to an exact science as it ever will be brought in this world’ (*Study*, p. 33). The importance of

¹⁴⁵ From April 1891 until July 1891, a series of articles entitled ‘The State of the Law Courts’ were published, with ‘The State of the Law Courts IV – The Criminal Courts’, *Strand Magazine*, 2 (July 1891), 84-92, appearing in the same issue as ‘A Scandal in Bohemia’.

¹⁴⁶ See Arthur Conan Doyle, ‘The Abbey Grange’, in *The Return of Sherlock Holmes* ed. by Richard Lancelyn Green (Oxford: Oxford University Press, 1994), pp. 266-290. Further references to this edition are given after quotations in the text. ‘The Abbey Grange’ first appeared in *Strand Magazine*, 28 (September 1904), 241-256.

¹⁴⁷ ‘The Boscombe Valley Mystery’ first appeared in *Strand Magazine*, 2 (October 1891), 401-416.

¹⁴⁸ Even into the twentieth century commentators would still be producing articles on legal evidence, touching upon the same issues which were being discussed throughout the previous century, see for example, Filson Young, ‘Circumstantial Evidence’, *Saturday Review*, 6 April 1912, pp. 423-424.

science to the *Holmes* stories is not to be underestimated and it is not uncommon for critics to stress the significance of nineteenth century science and forensics in the creation of one of the most enduringly popular detectives. However, sufficient attention has not been given to the way in which Holmes's scientific authority establishes a connection between Watson's narratives and the narratives of the courtroom.

As Ronald Thomas's study *Detective Fiction and the Rise of Forensic Science* has shown, the courtroom during the nineteenth century became increasingly dominated by forensic science. The creation of a detective whose authority derives largely from his forensic scientific method reflects this trend and, when read in this context, Watson's continued affirmation of Holmes's expertise reveals his narratives as those of the courtroom which seek to establish the expert trial witness. Despite the authority which scientific and medical experts appeared to possess in the witness stand, their expert testimony would frequently be countered by the testimony of experts for the opposing side. Consequently, the courtroom became a space in which differing narratives of medical and scientific expertise would compete for authority. In William Palmer's trial, for example, over half the number of witnesses called were scientific or medical experts, and those called for the defence had a very different view of the evidence than those called for the prosecution. Trial barristers would take great care in establishing their experts as authoritative and the Palmer trial was no exception: counsel for each side was keen to stress the eminence of their toxicologist, doctors and chemists before they testified in order that their evidence might have the most impact on the jury.¹⁴⁹

¹⁴⁹ See George Knott, *The Trial of William Palmer*, ed. by Eric R. Watson, 2nd edn (London: William Hodge, 1923).

Throughout his documenting of Holmes's cases, Watson likewise seeks to establish Holmes's authority as an expert witness before the case actually begins. This is largely achieved through Watson's descriptions of Holmes's displays of logical deduction, which usually occur as a prelude to the main act of detection and serve to demonstrate of what Holmes is capable. In *The Sign of Four*, for example, Holmes is able to tell the identity, character and habits of the previous owner of Watson's watch merely by examining it:

The watch belonged to your elder brother [...] He was a man of untidy habits – very untidy and careless. He was left with good prospects, but he threw away his chances, lived for some time in poverty with occasional short intervals of prosperity, and finally, taking to drink, he died (p. 92)

Watson confirms Holmes's deductions are 'absolutely correct in every particular' (p. 93) and then, through a few prompting questions – 'but it was not mere guesswork?' (p. 93) – Holmes is led to reveal his method and to prove his skill:

look at the inner plate, which contains the keyhole. Look at the thousands of scratches all around the hole – marks where the key has slipped. What sober man's key could have scored those grooves? But you will never see a drunkard's without them (p. 93)

Watson's confirmation that Holmes's deductions are correct, followed by Holmes's proving that it was 'not mere guesswork' and Watson's admiration at this demonstration of skill – 'I should have had more faith in your marvellous faculty' (p. 93) – set up Holmes's authority for the rest of the narrative. The short stories are generally also opened with similar displays of Holmes's deductive skill, and this repeated pattern in Watson's narratives enables him to condition readers to become (like him) so accustomed to Holmes's 'inevitable success' that 'the very possibility of his failing cease[s] to enter [their] head[s]' ('A Scandal in Bohemia', *Adventures*,

p. 14).¹⁵⁰ These demonstrations of Holmes's skill of course mirror in miniature the later deductions that Holmes will make in solving the cases he works on. But, just as in a trial, Holmes's authority as the forensic expert will be contested by competing interpretations of that evidence: the police, for example, sometimes offer an alternative explanation of the evidence at hand, as when Lestrade, in *A Study in Scarlet*, interprets the word RACHE (written in blood at the crime scene) to be the name 'Rachel' unfinished, as opposed to Holmes who reads it as the German for revenge (*Study*, pp. 30-32).¹⁵¹ The repeated demonstrations of Holmes's skill therefore work to reinforce his authority to ensure that his interpretation is the one which will be accepted: Watson is taking care that his expert witness is the most convincing. In fact, Holmes is fully aware that his success depends on his interpretation of the evidence being the most plausible. Speaking about circumstantial evidence in 'The Boscombe Valley Mystery', as noted above, Holmes tells Watson that interpreting evidence is 'tricky' because if you 'shift your own view a little' (*Adventures*, p. 78) you can find yourself drawing totally different conclusions to the ones you (or others) initially had. Watson's narratives work to create a shift in the reader's perspective so that it coincides with that of Holmes. In 'Silver Blaze' Holmes tells Watson that he must strip the 'absolute, undeniable fact[s]' of any existing 'surmise, conjecture, and hypothesis' (*Memoirs*, p. 4).¹⁵² Holmes may dismiss this 'surmise, conjecture, and hypothesis' as the 'embellishments of theorists and reporters' (*Memoirs*, p. 4), but in doing so he

¹⁵⁰ Watson sometimes even tests his own skill against Holmes in order to demonstrate his expertise in relation to the layman (himself). An example of this can be found at the opening of *The Hound of the Baskervilles* when Watson attempts to deduce information about Dr. Mortimer from his walking stick.

¹⁵¹ Although Jefferson Hope (the murderer) reveals that his writing of the word 'RACHE' was intended to suggest secret societies and so meant to be a misdirection, Holmes both correctly recognises that it means revenge and also that it has been written as a 'blind intended to put the police upon a wrong track' (p. 33).

¹⁵² 'Silver Blaze' first appeared in *Strand Magazine*, 4 (December 1892), 645-660.

identifies the existence of competing narratives which resist his interpretation, and so too Watson's final narrative version of events. In order for Holmes to be successful these competing narratives – whether they come from the police, a reporter or a witness – must be overcome by his own (narrated by Watson) and as such the *Holmes* stories mimic the adversarial nature of the post-1836 felony trial which focuses on the scrutiny of all the evidence by both sides.

I have drawn attention to the representation of Holmes as the expert witness, and how Watson's role in relation to this function of Holmes is similar to that of an advocate at trial, in that he goes to lengths to ensure that Holmes's expertise is established. Critical analysis of Watson's purpose in the *Holmes* stories quite often focuses on how he functions as a representative of the middle-class reader, embodying their values, sharing their hopes and their fears.¹⁵³ Whilst Watson is important in this respect, reading these stories within their legal context reveals that Watson is also performing the role of an advocate, a role which becomes pivotal to the success of the stories. Watson's advocacy reveals itself in his taking responsibility for crafting the narrative itself. As noted earlier in this chapter, this part of the advocate's role was key to his success. Watson's cases often begin with an address to the reader which consciously notes how he is taking personal responsibility for taking the various cases of Holmes and shaping them into a narrative: deciding which cases are related, what information to leave in and take out, and the order in which it should be presented. Indeed Watson's organisation of the material mirrors that of a barrister in a trial: he begins by providing the reader with the circumstances of the case and so recognises that, as Attorney-General Cockburn noted in the Palmer trial, it would be 'impossible' for a juryman to

¹⁵³ See for example Knight, *Form and Ideology*, p 84.

‘understand thoroughly [a] case in all its bearings without those circumstances being laid before [them]’.¹⁵⁴ This is followed, as it would be in a trial, by the introduction and scrutiny of the evidence, and finally Watson draws his narrative to a close by setting up a closing address to the reader (rather like an address to a jury) in which Holmes ties together all the different strands of the case into a final explanation of events which Watson’s tacit acceptance of urges the reader to likewise accept. Throughout the stories Holmes is wont to complain that Watson embellishes and romanticises his cases by turning them into stories rather than scientific demonstrations. In *The Sign of Four*, for example, Holmes complains that in his account of ‘the Jefferson Hope case’ Watson ‘attempted to tinge it with romanticism, which produces much the same effect as if [he had] worked a love-story or an elopement into the fifth proposition of Euclid’ (p. 90). Again, in ‘The Copper Beeches’, Holmes claims that Watson has ‘erred’ in his attempts ‘to put color and life into each of [his] statements, instead of confining [himself] to the task of placing upon record that severe reasoning from cause to effect’ (*Adventures*, p. 270). Yet this criticism of Holmes belies what Watson is able to achieve by this, the significance of which Watson does not miss himself:

The story has, I believe, been told more than once in the newspapers, but, like all such narratives, its effect is much less striking when set forth *en bloc* in a single half-column of print than when the facts slowly evolve before your own eyes and the mystery clears gradually away as each new discovery furnishes a step which leads on to the complete truth (‘The Engineer’s Thumb’, *Adventures*, p. 198).¹⁵⁵

In ‘A Case of Identity’ Holmes notes how ‘a certain selection and discretion must be used in producing a realistic effect’ (*Adventures*, p. 30), and a large part of this task

¹⁵⁴ *Trial of William Palmer*, p. 24. In Holmes’s cases the initial exposition of facts is provided usually by the client and sometimes by Holmes.

¹⁵⁵ ‘The Engineer’s Thumb’ first appeared in *Strand Magazine*, 3 (March 1892), 276-288.

falls to Watson who must employ the skill of the advocate in his selection and discretion in order to create a narrative which will produce the most realistic effect.

Sherlock Holmes is first and foremost a detective. Much of his authority as a detective derives from his scientific expertise, expertise which (as I have already argued) is that of the expert witness in a criminal trial. Yet the success of Holmes's detection also depends on his interpretation of all the evidence being sufficiently persuasive. This is partly achieved by the overall narrative of events which Watson provides and which marks the doctor out as an advocate, but this is a role which Holmes can also be seen to be assuming, and which ultimately helps to ensure his success as a detective. As noted earlier, Holmes is aware that the narrative space which he and Watson seek to occupy is a contested one, and as a result that he must construct a narrative version of events which provides the most plausible explanation. Holmes even thinks of his cases in terms of constructing a legal argument, wondering whether a 'clever counsel' would be able to 'tear' his case 'all to rags' ('Silver Blaze', *Memoirs*, p. 12). Like a barrister, we see Holmes 'cross-examining' ('The Naval Treaty', *Memoirs*, p. 232) and 'cross-questioning' ('The Crooked Man', *Memoirs*, p. 161) witnesses; and his own expert testimony can also be understood in terms of the careful presentation of the available evidence by an advocate as we see him carefully interrogating the evidence before him in order to reveal the truth.¹⁵⁶ In 'The Abbey Grange', for example, Holmes scrutinises the evidence of three wine glasses which seemingly attest to the presence of three men at the scene of the crime and consequently he is able persuasively to argue that the third glass had been planted to give this false impression (*Return*, p. 278). Holmes's final explanation of the case, which unravels the whole mystery at the end of the story,

¹⁵⁶ 'The Naval Treaty' first appeared in *Strand Magazine*, 6 (October 1983), 392-403, and 'The Crooked Man' first appeared in *Strand Magazine*, 6 (July 1983), 22-32.

functions as a kind of final address to the jury where he draws together all of the available evidence into one coherent explanation of events. In this denouement, Holmes's role as an advocate becomes particularly evident, his concluding remarks even taking the form of a direct speech in which he takes all the available evidence and subordinates it to the narrative which he (and Watson as co-counsel) are telling.

The creation of the overall narrative can therefore be seen as a collaborative process between Holmes and Watson, and as such they emerge as a formidable adversarial team, arguing the truth of their 'case'. Both characters even implicitly acknowledge their role as advocates by invoking the chain imagery which was so widely used in legal and lay articles which discussed how good advocacy could ensure that the evidence available revealed the truth: Holmes speaks of 'wonderful chains of events' ('A Case of Identity', *Adventures*, p. 30); of gathering the crucial bits of evidence and '[piecing] them together in their order so as to reconstruct this very remarkable chain of events' ('The Naval Treaty', *Memoirs*, p. 247); of finding the 'missing links' of a 'connected chain' (*The Sign of Four*, p. 159). Watson too invokes this imagery, noting how Holmes's reasoning creates 'a chain' where 'every link rings true' ('The Red-Headed League', *Adventures*, p. 73).¹⁵⁷

As Ronald Thomas has pointed out, 'the detective hero's function is to identify that contested narrative space and to occupy it with his truth-telling voice'.¹⁵⁸ Thomas argues that the truth-telling quality of Holmes's voice derives from his scientific authority and views the Holmes stories as 'attempts to establish the explanatory authority of science over legal argument'.¹⁵⁹ This competition which Thomas identifies in the stories between science and the law overlooks the

¹⁵⁷ See for example [W. S. Austin], 'Secret Poisoning', *Temple Bar*, 6 (November 1862), 579-584 (p.584). Robert Audley in *Lady Audley's Secret* is a barrister by profession and he also uses this imagery. 'The Red-Headed League' first appeared in *Strand Magazine*, 2 (August 1891), 190-204.

¹⁵⁸ Thomas, *Detective Fiction*, p. 9.

¹⁵⁹ *Ibid.*, p. 79.

significance which the legal case structure holds. Reading the *Holmes* stories in the context of post-1836 adversarial advocacy practices reveals how Conan Doyle appropriated such techniques in order to create successful detective stories. As such, Holmes's scientific expertise should not be read as an alternative to legal narratives, but rather as a part of them, reflecting the increasing importance of forensic science to the legal representational process within the courtroom. Indeed, even critics who focus their analysis of Holmes's success on his scientific authority still write in terms which evoke the role of the advocate. Rosemary Jann, for example, notes that Holmes 'reassures readers that from the fragmentary and confusing evidence left in the present a coherent, logically causal narrative of the past can still be constructed to give meaning to the most bizarre events'.¹⁶⁰ Martin Kayman has also noted that Holmes's power derives more from the narratives he weaves rather than his scientific expertise, rightly identifying that Holmes is more than simply a scientific detective. Kayman argues that Holmes's success derives from the 'absolute and exclusive monopoly' which he has over the 'meaning of events', guaranteed of course by his 'professional knowledge'.¹⁶¹ Yet Kayman overlooks the other narratives of events which often compete with Holmes's final explanation, which are variously offered by the criminal or the police, for example. What secures the success of Holmes's narrative is not only his professional and scientific expertise, but also the force of his advocacy. Holmes is aware of competing narratives – those of 'theorists and reporters' ('Silver Blaze', *Memoirs*, p. 4), for example – and he uses the skill of an adversarial advocate to ensure his narrative carries the greatest force.

Todorov's analysis of the detective story in terms of *fabula* and *sjuzet* reveals the similarities between the detective process and the criminal trial, as both seek to

¹⁶⁰ Jann, *Detecting Social Order*, p. 28.

¹⁶¹ Martin A. Kayman, *From Bow Street to Baker Street: Mystery, Detection and Narrative* (Basingstoke: Macmillan, 1992), p. 221-228, quotations at p. 222 and p. 228.

reconstruct a narrative of past events so that the truth might be uncovered. In the *Holmes* stories, the advocacy of Watson and Holmes further illustrates this connection. Moreover, as the adversarial advocacy techniques which Holmes employs form part of his detective method, it becomes clear that the development of the detective in literature owes some debt to the introduction of the Prisoners' Counsel Act which provided the conditions for such methods to develop and thrive. Holmes is a scientist, but this is just one side of the detective. To fully understand Holmes's success we must also acknowledge that the famous sleuth, along with Watson, is also an advocate. Characters such as Hartright in *The Woman in White*, Blake in *The Moonstone*, and Robert Audley in *Lady Audley's Secret* had demonstrated the power of adversarial advocacy to reveal the truth but, as I highlighted in this chapter, their efforts are jeopardised by the occasional reliance on Providence and a continued insistence that the idea of character might be of use to the truth-seeking process. In the *Holmes* stories, Conan Doyle overcomes these issues by making his detective a man of science who can offer certainty that the truth will be revealed through the scientific method. However, the advocacy of Hartright, Blake, and Audley is not replaced by science, but instead fused with it to create, as Knight terms him, the 'one great detective'.¹⁶² In 'A Case of Identity', Holmes states that whilst 'life is infinitely stranger' than fiction, it is still made up of 'coincidences', 'plannings' and 'chains of events' which can afford it meaning (*Adventures*, p. 30). The *Holmes* stories represent a promise to reveal this meaning to the reader, and by the end of any *Holmes* story, this promise has been fulfilled. As a result, the reader is left reassured that out of the seemingly unintelligible chaos will come meaning and order, and not only that, but it will seem (as Watson observes)

¹⁶² Knight, *Crime Fiction*, p. 55.

‘simplicity itself when it [is] explained’ (‘The Stockbroker’s Clerk’, *Memoirs*, p. 75).¹⁶³

Throughout this thesis I have noted how critics like Peter Brooks have argued that nineteenth-century fiction often functioned to provide the reader with the assurance that the world in which they lived, and their existence within it, was capable of being comprehended and having meaning.¹⁶⁴ I argued earlier in this chapter that fiction which makes crime its subject reveals this aim most fully because crime threatens to destroy the order of society and the value-system which the reader subscribes to, a value system which enables them to interpret and make sense of an otherwise confusing reality. In a rapidly changing, increasingly secular, modern society in which readers had to face the implications of technological, scientific and industrial advancement, the *Sherlock Holmes* stories offer those readers the reassurance that reality can be understood and articulated to others in a way which endows it with meaning. This reassurance is in large part achieved by the adoption of those adversarial-evidentiary methods of representation which flourished in criminal trials after the introduction of a full legal defence for all prisoners. In a number of studies on detective and crime fiction that aim to give a general historical and critical survey of the field, the *Sherlock Holmes* stories feature in one of the early chapters, and this is unsurprising given how much crime and detective fiction proliferated post-Holmes.¹⁶⁵ Yet Sherlock Holmes also represents an end point, the culmination of the rise of the nineteenth-century literary detective. Holmes features as the end point of this thesis, and in doing so demonstrates the significant and long-lasting

¹⁶³ ‘The Stockbroker’s Clerk’ first appeared in *Strand Magazine*, 5 (March 1893), 281-291.

¹⁶⁴ Brooks, *Realist Vision*, Ch. 1.

¹⁶⁵ See, for example, Charles J. Rzepka, *Detective Fiction* (Cambridge: Polity, 2005); John Scaggs, *Crime Fiction* (London: Routledge, 2005); *The Art of Murder: New Essays on Detective Fiction*, ed. by H. Gustav Klaus and Stephen Knight (Tübingen: Stauffenberg, 1998); Stephen Knight, *Crime Fiction 1800-2000* (Basingstoke: Palgrave Macmillan, 2004); and *Two Centuries of Detective Fiction: A New Comparative Approach*, ed. by Maurizio Ascari (Cotepira: University of Bologna, 2000).

impact of the 1836 Prisoners' Counsel Act, and the surrounding debates, on the development of nineteenth-century detective narratives.

Conclusion

Both Kieran Dolin and Jan-Melissa Schramm view the relationship between law and literature during the nineteenth century – connected as they are through a shared preoccupation with accurately representing reality through language – as fundamentally competitive.¹ Clare Pettitt has challenged such readings on the basis that the interplay between law and literature during this period is much more complex than a ‘simple’ reading of literature as merely ‘rivalrous’ or ‘supplementary’ to the law provides for, and she calls for further analysis of this relationship.² This thesis has been, in part, a response to Pettitt’s call and, by analysing nineteenth-century fiction within the context of the Prisoners’ Counsel Act debates, I have shown that the relationship between these two disciplines is not simply one of opposition. Instead, I have argued that law and literature’s interaction over the matter of representation was multifaceted, with two alternative models of representing reality – character-focused (‘accused speaks’) / adversarial-evidentiary – being employed and contested with equal vigour in both legal and literary spheres during the nineteenth century.

In chapter one I demonstrated that the nineteenth-century character-focused novel’s method of representing reality mirrors that of the pre-1836 felony trial model, and so reinforces and sustains the character-focused author’s preference for an ‘accused speaks’ representational model. Chapters two, three and four examined how, in contrast, the development of sensation and detective narratives was

¹ See and Jan-Melissa Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Theology* (Cambridge: Cambridge University Press, 2000), and Kieran Dolin, *Fiction and the Law: Legal Discourse in Victorian and Modernist Literature* (Cambridge: Cambridge University Press, 1999).

² Clare Pettitt, ‘Legal Subjects, Legal Objects: The Law and Victorian Fiction’, in *A Concise Companion to the Victorian Novel*, ed. by Francis O’Gorman (Oxford: Blackwell, 2005), pp. 71-90 (p. 87).

significantly influenced by the adversarial-evidentiary model of representation which flourished in criminal trials post-1836. Furthermore, my analysis of sensation and detective fiction within the context of the Prisoners' Counsel debates, and the related debates on evidence, has revealed how characters that are often identified as detecting agents can also be read as performing the function of an advocate. Chapter four posited the view that key to understanding the development of the fictional detective in the nineteenth century is an awareness of the increasing importance that adversarial advocacy was playing in the detective hero's skill set. In particular, chapter four called for a re-evaluation of what it is that makes Sherlock Holmes such a successful detective. In contrast to many previous analyses of the *Sherlock Holmes* stories, which have focused on the importance of Holmes's scientific expertise, I have argued that this is only part of what makes Holmes such an effective detecting figure, and that vital to understanding his success is an awareness of his dual role as both scientific detective *and* advocate.

As the final chapter of this thesis focused on nineteenth-century detective fiction, it seemed fitting to culminate with a discussion of the *Sherlock Holmes* stories, given that Holmes is possibly the most famous literary detective ever created. However, following Holmes's success there was a proliferation of literary detectives and so this thesis leaves room for further research into how the detective story and its use of adversarial-evidentiary representational practices developed after the creation of Sherlock Holmes. One of the most famous authors of detective fiction who followed Conan Doyle was Agatha Christie, and her detective hero Hercule Poirot has also achieved long-lasting fame and popularity. As I noted in chapter four, at the end of a *Sherlock Holmes* story the detective usually assumes the role of an advocate as he provides a final address to Watson and the reader in which all the evidence is

brought together into one coherent explanation of evidence and events. Hercule Poirot adopts a similar tactic in the dramatic denouements Christie offers, and if anything his advocacy is even more pronounced in his delivery of lengthy final speeches in which he reveals the culprit's identity, after first connecting together and explaining the meaning of all the evidence that has been presented throughout the narrative.³ In this way Christie's novels suggest that the influence of the Prisoners' Counsel Act continues to make itself felt in detective fiction (aside from the Holmes stories) post-1900. Examination of later detective stories within this legal context might therefore prove a fruitful critical project, especially in relation to our understanding of the development of rules for writers of detective fiction which began to prescribe the way in which evidence should be presented to the reader.⁴

Another possible direction for further study in light of this thesis also presents itself. During the course of my research it became apparent that the texts which formed the focus of this study – whatever concerns they might voice about legal structures and practices – tended, at the last, to reaffirm a trust in the English legal system's ability to provide justice. This tendency is particularly striking in the case of the sensation novel which, as I argued in chapter three, works to endorse adversarial-evidentiary courtroom strategies of representation. D. A. Miller notes how the close of the sensation novel provides a sense of reassurance through the re-

³ A very good example of Poirot's advocacy comes in *Death on the Nile* (1937) in which Poirot first cross-examines a series of witnesses before finally addressing a number of interested parties with a speech which makes sense of the evidence and reveals who the murderer is.

⁴ In 1928 Willard Huntington Wright, writing as S. S. Van Dine, listed the 'very definite laws' for writing detective stories which included that all evidence should be placed before the reader and be 'plainly stated and described'. See S. S. Van Dine, 'Twenty Rules for Writing Detective Stories', in *The Art of the Mystery Story: A Collection of Critical Essays*, ed. by Howard Haycraft (New York: Carroll & Graf, 1983 [1946]) pp. 189-199 (p. 189). W. H. Auden also alluded to how a detective story must 'conform to certain formulas', see W. H. Auden, 'The Guilty Vicarage', in *Detective Fiction: A Collection of Critical Essays*, ed. by Robin W. Winks (Englewood Cliffs, NJ: Prentice-Hall, 1980), pp. 15-24 (p. 15).

establishment of Victorian norms.⁵ I have argued that this reassurance is in part due to the affirmation of legal practices as ultimately effectual: whilst the protagonists might have to reach beyond the law initially to discover the truth, and whilst the villains may be punished extra-legally, the truth *is* finally capable of being legally established, even if the protagonists eventually decide not to seek legal recognition of that truth.⁶ This final endorsement of legal structures and practices suggests, perhaps, an underlying desire on the part of the readership to be assured that the justice system was one in which their trust could be placed.

The Victorian reader's desire that the justice system be both trustworthy and effectual is one which is embodied in the character of Sir Peregrine Orme in Anthony Trollope's *Orley Farm* (1861-2). However, *Orley Farm* is a novel in which this desire is not fulfilled: at the end of Lady Mason's trial she is declared innocent, when in fact guilty. Although the law fails in this case, it is clear that it is not Trollope's purpose to expose a failing or corrupt legal system, but rather to engage in contemporary debates over Prisoners' Counsel. *Orley Farm* might demonstrate a preference for an 'accused speaks' model, but it does not condemn the legal system as untrustworthy, it merely questions the efficacy of this one particular practice. This is clear from the fact that Lady Mason is not at any point presented as a threat to Victorian norms and order, especially as the failure of the legal system is soon rectified through the private restitution of the land. *Orley Farm* is not about a

⁵ D. A. Miller, *The Novel and the Police* (Berkeley: University of California Press, 1988), pp. 165-166.

⁶ As in Wilkie Collins's *The Law and the Lady* (1875). In this novel Valeria Woodville discovers that her husband was tried for poisoning his first wife, and the Scottish jury handed down a verdict of 'not proven'. In her attempts to clear her husband's name, Valeria discovers a suicide note which proves Eustace's innocence. Yet, in the end, husband and wife decide to leave the verdict unchallenged, happy with their personal knowledge of the truth and realising that any legal recognition would require the public sully of a dead lady's name. Clare Pettitt offers an illuminating analysis of how the decision not to legally establish Eustace's innocence creates a distinction between two conceptions of truth: the public and the private, see Pettitt, 'Legal Subjects, Legal Objects', pp. 85-86.

miscarriage of justice – indeed there are questions raised over the justice of inheritance laws – but rather a questioning of how justice can most effectively be achieved. One of the things that the Prisoners’ Counsel debates in Parliament reveal is a deep-rooted legal and political commitment to a fair and trustworthy justice system. Although not everyone agreed on the form this might take in terms of prisoners’ counsel, the parameters of the debate did not extend to suggesting that the legal system was a failure, or entirely ineffectual or corrupt. Furthermore, works of literature which focus most closely on crime in the nineteenth century, most notably sensation and detective fiction, tend to express anxieties over the exposure and punishment of the guilty, rather than dealing with concerns over wrongful conviction. The question that is repeatedly asked in such literature is whether or not guilt is capable of exposure. This makes an interesting contrast to some French novels of the same period, such as *Le Comte de Monte Cristo* (serialised 1844-6) and *Les Misérables* (1862), which express a deep rooted distrust of the legal system generally.

This thesis has been concerned with analysing the employment of two different legal models of representation in nineteenth-century literature. In a novel like *Le Comte de Monte Cristo*, when the legal system is revealed to be corrupt, its strategies become antithetical to the novelist’s project. With this in mind a question presents itself: do literary appropriations of legal narrative strategies only occur in cultures where there is some fundamental level of respect and trust in the law? Further research therefore might include a comparative study of French and English literature’s engagement with the law in order to identify whether in France there existed a more straightforward competition between legal and literary

representations, owing perhaps to a quintessentially post-Revolutionary distrust of state power and authority.

Dolin has argued that a study of nineteenth-century fiction within the context of contemporary law and legal practice can provide us with an ‘enhanced’ understanding of the period’s literature.⁷ By assuming the role of advocate myself, marshalling the evidence and connecting it together in into a coherent narrative designed to persuade, I have shown this to be true in the case of the 1836 Prisoners’ Counsel Act and surrounding debates. Specifically I have argued that much nineteenth-century fiction can be better understood in light of the opposition between the two representational modes offered by the ‘accused speaks’ and adversarial-evidentiary trial models, an opposition which was brought to the public’s attention by the Prisoners’ Counsel Act debates. By situating nineteenth-century fiction within this important legal context, I have been able to offer new readings of a range of popular nineteenth-century texts. As a result this thesis has demonstrated not only that there existed a significant interplay between nineteenth-century law and fiction, but also that legal and popular debate over courtroom representational practices had a significant and long-lasting impact on literary representations.

⁷ Dolin, *Fiction and the Law*, p. 4.

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