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Taking Ian Watt to Court, or How Do Jurors Read Stories?

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STORIES IN THE COURTS

TAKING IAN WATT TO COURT,
OR HOW DO JURORS READ STORIES?*

Marco Wan

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I. INTRODUCTION

In his seminal work, *The Rise of the Novel*,¹ Ian Watt posits an analogy between the readers of a novel and the members of a jury:

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. Their expectations, and those of the novel reader coincide in many ways: both want to know "all the particulars" of a given case—the time and place of the occurrence; both must be satisfied as to the identities of the parties concerned, and will refuse to accept evidence about anyone called Sir Toby Belch or Mr. Badman . . . they also expect the witness to tell the story "in his own words." The jury, in fact, takes the "circumstantial view of life," which T.H. Green found to be the characteristic outlook of the novel.²

This comparison has formed the foundation for much subsequent work on law-and-literature. Alexander Welsh, for example, begins his analysis of *Tom Jones* with Watt's analogy, which he finds "fully warranted."³ Given its centrality in our field, it is necessary to examine Watt's claim more closely. In this paper, I will test his analogy between reader and juror by bringing it into dialogue with a mid-Victorian novel, William Thackeray's *Vanity Fair*.⁴ I will then argue against the use of analogies as the basis for interdisciplinary work by demonstrating that the logic of fiction inherently resists the hermeneutic

* Special thanks to Jan Schramm for her advice and guidance. I am also indebted to Yota Batsaki, Andrew Counter, and Robert Macfarlane for the insightful comments.

1. IAN WATT, *THE RISE OF THE NOVEL* (1st ed. 1957).

2. *Id.* at 32.

3. ALEXANDER WELSH, *STRONG REPRESENTATIONS: NARRATIVE AND CIRCUMSTANTIAL EVIDENCE IN ENGLAND* 48 (1992).

4. WILLIAM THACKERAY, *VANITY FAIR* (2003).

strategy of the courtroom. I will conclude by gesturing towards an alternative model of interdisciplinary analysis.

II. THACKERAY AND WATT IN DIALOGUE

Vanity Fair is chosen for its exemplary traits of formal realism: it focuses on the "always unique and therefore new"⁵ experience of its heroine, Becky Sharp, as she seeks to move upwards socially; it emphasizes the details of the concrete and materialist world in which Becky lives; it shows how characters change through time and it takes pains to create an illusion of immediacy through its minute descriptions of places. One possible objection to the choice of *Vanity Fair* is that the use of a third person narrator puts Thackeray in the tradition of Henry Fielding, whom Watt regarded as less of a pioneer as a novelist than Samuel Richardson.⁶ The counter-argument to that objection is that while both writers make use of third person narrators, the authorial comments in *Vanity Fair* in fact perform very different functions from those of, say, *Joseph Andrews* or *Tom Jones*. For Watt, Fielding's mock epic style means that he conveys truth through his own authorial voice, and thus strays from the conventions of formal realism. Thackeray's narrator, on the other hand, abolishes the distance between his world and that of the reader by incessantly reminding him that the world of the story is the same as the one he inhabits. The collapse of the distance between narrator and reader occurs most dramatically in chapter sixty-two, in which the narrator reveals himself as someone who met Dobbin and Amelia on their tour. He is not some detached, omniscient narrator observing from afar. That the narrator can mingle with the characters in the novel places him on an equal level with the inhabitants of the Fair, and hence on an equal level with the reader.

The best way of testing Watt's analogy is to highlight a contentious legal issue in the novel and to compare the way it presents the facts to the reader with the way a lawyer presents facts to the court. Let us, then, focus on one of the issues in the novel which have generated the liveliest debate amongst literary critics⁷: does Becky Sharpe commit adultery with Lord Steyn?

As the quotation at the beginning of this essay indicates, Watt claims that the reader would approach this question with the mindset of a juror. Let us therefore set up the legal framework of analysis. As W.M. Best points out in his nineteenth-century textbook on evidence, quoting Lord Stowell, there is no need to prove adultery through di-

5. WATT, *supra* note 1, at 13.

6. *Id.* at 272-73.

7. See BARBARA HARDY, *THE EXPOSURE OF LUXURY* (1972); G. Armour Craig, *On the Style of Vanity Fair*, in THACKERAY: A COLLECTION OF CRITICAL ESSAYS, (Alexander Welsh ed., 1968).

rect evidence.⁸ The question, then, is whether there is sufficient indirect evidence to convict Becky. Her husband certainly seems to think so.⁹ There are two possible interpretations of the episode in which Rawdon returns home to find his wife entertaining Lord Steyn at their house. These two interpretations correspond to the two methods of inferring the evidentiary fact from the principal fact: through inference from the circumstances, and through attestation by a witness or a party directly involved.¹⁰ It is possible to conclude that Becky has been in an extra-marital affair with Lord Steyn, and purposefully keeps her husband in prison to facilitate her liaison with him. This is Rawdon's interpretation, and he reaches his conclusion through drawing an inference from the circumstances. Yet Becky gives a different account of the incident,¹¹ and insists that she was entertaining Lord Steyn in the house only to secure for her husband the appointment to the highly prestigious post of Governor of Coventry Island. This version of events comes directly from Becky, and is therefore an attestation by a party directly involved.

III. EVIDENCE FOR AND AGAINST BECKY

To start with Rawdon's interpretation: his verdict of guilt is based entirely on the circumstances, which confront him upon his return to the house. His wife had written to say that she did not have the money to bail him and had claimed to be suffering from "a headache and . . . a heartache" in bed when she found out that he was imprisoned.¹² Yet, when he returns home, he finds that Becky, far from bed-bound, had in fact invited Lord Steyn to their matrimonial home, and was laughing gaily and singing to him.¹³ His suspicions are confirmed by the words of Lord Steyn, who, when Becky meekly proclaims her innocence, exclaims: "You innocent! Why, every trinket you have on your body is paid for by me. I have given you thousands of pounds which this fellow has spent, and for which he has sold you. Innocent, by . . . !" ¹⁴

In Rawdon's eyes, even Becky's accomplice steps forward to incriminate her. The final piece of evidence which determines his guilty verdict is the discovery that she had hidden from him a note for one thousand pounds which Lord Steyn had given her, a discovery which

8. See W. M. 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 321 (London, S. Sweet, 1849).

9. THACKERAY, *supra* note 4, at 624.

10. See generally BEST, *supra* note 8, at 314-45 (discussing the differences between direct and circumstantial evidence).

11. THACKERAY, *supra* note 4, at 640-42.

12. *Id.* at 620.

13. *Id.* at 622.

14. *Id.* at 623.

breaks his heart: "You might have spared me a hundred pounds, Becky, out of all this—I have always shared with you."¹⁵

At first glance, the novel seems to support Watt's thesis, for the narrator explicitly invites the reader to act as the jury by asking for his opinion: "Was she guilty or not?"¹⁶ Indeed, Rawdon here acts as the reader's surrogate, forming his conclusion based on the evidence in front of him. The circumstantial evidence as outlined above seems to point unambivalently to Becky's guilt.

Yet, if the narrator invites judgment, he also makes the formation of an authoritative judgment difficult. When he resumes this thread of the narrative two chapters later, he presents new evidence, which casts doubt on the incriminating potential of the previous situation. As Becky hurries to Sir Pitt's house, she says to herself "Good Heavens! was ever such ill luck as mine! . . . to be so near, and to lose all. Is it all too late?"¹⁷ She is here presumably referring to her near success in securing the promise of Rawdon's appointment from Lord Steyn, and hence of achieving both financial security and social respectability. Significantly, she is speaking to herself, a venting of her frustration intended no one but herself. For this reason, she cannot possibly be lying. The notion that she may be deceiving herself as she speaks is pre-empted by the novel's pairing of Becky and Amelia, in which the former's perceptiveness and resourcefulness are contrasted with the latter's illusions and naivety. Unlike Amelia, Becky is not easily deceived, least of all by herself. Whatever doubt there is over the sincerity of her other utterances, this is one moment in the narrative in which Becky is clearly saying what she thinks. What this direct attestation reveals, then, is that she really was acting for the benefit of her husband in inviting Lord Steyn for dinner.

The novel offers further evidence of this view when Becky arrives at Sir Pitt's house. The reader is told that news of Rawdon's appointment had already been announced in the newspapers: "Is this true, what I see in the paper, then?" is the first question Sir Pitt asks when he sees Becky, to which Becky answers "It is true,"¹⁸ another instance of direct affirmation. The reliability of Becky's statement is supported by the text: the narrator explicitly tells us that Becky has not had an opportunity to read the paper on that day, for she "did not rally from the state of stupor and confusion in which the events of the previous night had lunged her intrepid spirit, until the bells of Curzon Street chapels were ringing for afternoon service."¹⁹ She never leaves the reader's attention from that point on, until she reaches Sir Pitt's residence. If Becky is aware of the announcement in the papers, it can

15. *Id.* at 624.

16. *Id.* at 625.

17. *Id.* at 640.

18. *Id.*

19. *Id.* at 636.

only be because she procured the appointment herself. The narrator manages the evidence in the novel so that the reader is first given enough evidence to pronounce a guilty verdict on Becky, and then is given further evidence which seemingly exculpates her.

So is Becky innocent then? If the reader scrutinizes the chronology of the new evidence, this interpretation of events does not fit the facts perfectly either. She tells Sir Pitt that Lord Steyn had secured Rawdon's appointment on Friday, following the news of the death of the previous Governor of Coventry Island.²⁰ Rawdon was arrested the same evening, "the night of that fatal ball."²¹ On Saturday, she receives her husband's request for bail, and Rawdon finds her with Lord Steyn on Saturday evening.²²

Now, if she had known about the appointment on Friday, as she professes to Sir Pitt, then by Saturday evening her husband's position would have been assured. Why, then, was she asking whether it was too late? And why was she still entertaining Lord Steyn in her home that Saturday evening, when news of the appointment had already come the day before? Most suspiciously, if she really is not having an affair with Lord Steyn, why did she not come to Rawdon's rescue on Saturday, after she received his letter? Her excuse that Lord Steyn had offered to pay the bail, so that she was prevented from going to Rawdon, is unsatisfactory, for surely she would have been able to persuade him to settle Rawdon's expenses without making him spend another night in prison. The evidence is not only dizzying, but it simply does not add up to enable the reader to form a judgment over the alleged crime. As soon as incriminating evidence is proffered, contrary evidence partially redeems Becky, and then further evidence partially, but again not completely, undermines the second set of evidence.

When both inference from circumstances and direct attestation fail, judgment becomes impossible. This impossibility of impartial judgment is further compounded by the multiple interpretations of Becky's behaviour in the novel. To start, almost at random, with Lady Jane's verdict: "To be a wicked woman—a heartless mother, a false wife! . . . She has deceived her husband, as she has deceived everybody; her soul is black with vanity, worldliness, and all sorts of crime. I tremble when I touch her."²³

This judgment is undermined almost immediately after it is rendered, for the narrator reveals that Lady Jane proceeds to spy on Becky and Sir Pitt from her window after she leaves them.²⁴ As Barbara Shapiro has shown, the law has since its inception placed the

20. *Id.* at 641.

21. *Id.* at 640.

22. THACKERAY, *supra* note 4, at 622.

23. *Id.* at 642.

24. *Id.*

greatest emphasis on choosing people who are morally dependable and socially acceptable to serve as members of the jury.²⁵ Lady Jane's sneaky behaviour not only brings her closer to the deceitful Becky than she would have liked to admit, but also disqualifies her as a juror. Her position implicitly asks the difficult question of whether anyone, including the reader, is sufficiently detached from the mores and conventions of the Fair to pronounce a judgment on Becky.

Furthermore, Lady Jane's judgment stands in direct contrast to judgments pronounced on Becky two pages later in the novel. When the soldiers in the regiment find out that Rawdon has been appointed Governor of Coventry Island, they credit his wife for his success, and one soldier refers to Becky as a "virtuous woman" who is "a crown to her husband."²⁶ Then, two pages later, another person, Wenhum, reveals that he and his wife had been invited to dine with Becky and Lord Steyn, and swears that Becky is "a most spotless and innocent lady."²⁷ With all of these judgments circulating in the novel around him, Rawdon no longer knows what he thinks, and can only convince himself of Becky's guilt by claiming that "[i]f she is not guilty . . . she's as bad as guilty,"²⁸ a statement which betrays the fact that he does not in fact know whether she is guilty or not. Rawdon's judgment, Lady Jane's judgment, the soldier's judgment, Wenhum's judgment, the narrator's judgment . . . in the face of these conflicting interpretations, all partial, all unsatisfactory, the reader does not know whom to believe, nor can he decide how to render his judgment. He has to suspend judgment.

IV. JUDGMENT, UNDECIDABILITY, AND THE LOGIC OF THE NOVEL

What the question of adultery in *Vanity Fair* reveals, then, is that ambiguity and undecidability constitute the logic of the novel. Neither the circumstantial evidence which confronts Rawdon, nor the direct attestation by Becky, adds up to allow the reader to reach a final verdict. Of course, the courtroom is also a site of ambiguity, but the ambiguity which the jury confronts in the court is necessarily of a different kind from the ambiguity which the reader confronts, for two reasons.

Firstly, and most obviously, the evidence in the court, no matter how ambiguous, always points to a referent. The existence of the referent gives rise to the illusion that the evidence presented before the jury could potentially act as a transparent window to the crime. This illusion is a necessary one, as no system of law can be built upon the conception of such categories as rape or grievous bodily harm as

25. BARBARA SHAPIRO, *THE CULTURE OF FACT* (2000) (illustrating the importance of selecting morally dependable people for jury duty).

26. THACKERAY, *supra* note 4, at 644.

27. *Id.* at 647.

28. *Id.* at 650.

absence. While the court may acknowledge that the jury might not hand down the correct verdict every time, it must still institutionally presuppose that the "truth" about a crime can be directly accessed. The evidence in a novel, on the other hand, has no referent. All of the characters in *Vanity Fair*, no matter the extent to which they resemble or are based on real people, are fictive creations. The reader who approaches the novel like a juror intent on finding a referent will be doomed to re-enact the tragedy of the Sarrasinean artist in Barthes' *S/Z*, who finds beneath all of the layers he attempts to penetrate the "nothingness of castration."²⁹

This difference between the two institutions implies that they handle ambiguity differently. In the courtroom, the mode is *adversarial*³⁰: ambiguity is generated by the presentation of different, often conflicting, evidence by the prosecution and the defence. Each side is trying to convince the court that their version of the facts is closer to the referent. The jury, as the body which hands down the verdict, is therefore institutionally under an obligation to choose between the two sets of evidence. From the beginning of the court case, their goal, and their duty, is to choose one side over the other, to approach the facts with the conviction that one side is truer than the other.

The novel, on the other hand, does not have an obligation to be faithful to an external referent when the narrator tells the reader about an alleged crime. The ambiguity here is brought about by a *playful*, rather than adversarial, presentation of evidence.³¹ The narrator gives us evidence which points one way, then presents evidence which points the other way, and finally undermines both positions. That fiction is capable of a plurality of meanings has long been recognized: *S/Z* has shown us that even the most "readerly" of texts has an element of "writability" in it, that no literary text, which is worthy of the name would yield a single, determinate meaning. The example of *Vanity Fair* shows that the playful ambiguity constitutes not only the logic of meaning in the text, but the presentation of evidence as well. What the reader finds in the novel, and in literature in general, is what Geoffrey Hartman calls a "crisis of evidentiality."³² It is impossible for the reader to reach a definitive verdict, because the presentation of evidence means that the facts cannot be assembled in a way which yields a single, coherent, convincing narrative revealing any pre-discursive "truth" about the crime. The reader of the novel who tries to

29. See generally ROLAND BARTHES, *S/Z* (Farrar, Straus and Giroux, Inc. trans., 1992) (1974) (referring to the Sarrasinean artist's experience).

30. See generally, JOHN LANGBEIN, *THE ORIGINS OF ADVERSARY CRIMINAL TRIAL* (2003) (discussing the history of the adversarial system).

31. See Jacques Derrida, *Structure, Sign, and Play in the Discourse of the Humanities*, in *WRITING AND DIFFERENCE*, 278–293 (Alan Bass trans., 1997), for an example of the theorization of the notion of play.

32. GEOFFREY H. HARTMAN, *CRITICISM IN THE WILDERNESS* 282–83 (1980).

act as juror always finds that "[e]vidence fails or is disabled, and unusual or ungovernable types of interpretation come into play."³³

Far from being "under an obligation to satisfy the reader"³⁴ with all the details of the story, then, the narrative mode of the novel refuses to allow him to fall on either side of the guilty/innocent divide when adjudicating a criminal act. Instead, it places him between the two, allowing him to position himself in an "in-between" space unattainable in the courtroom, and enabling him to relish ambiguity and undecidability. It is for this reason that the logic of fiction resists the hermeneutic strategy, which Watt propounds. The reader who approaches evidence in fiction the way a juror approaches evidence in court is bound to be frustrated by fiction's playful ambiguity. Fiction has a way of presenting evidence which is unique. It celebrates ambiguity, multiple meanings, and plural interpretations. The reader, therefore, ought to relish it, to respect this distinctive mode of handling facts, rather than to subsume it with the logic of the court.

V. THE DANGER OF ANALOGIES

The example of the Watt's model highlights the danger of using simple analogies as the basis for interdisciplinary work in literature and the law. When one sees points of similarity between two fields, it is tempting to bring those points together as an analogy, and to construct an analysis based on it. Yet, such an analogy, while seemingly placing two elements on equal terms, almost always privileges one term over the other. This means that interdisciplinary work based on analogical reasoning almost invariably imposes the methodology of one discipline over the other, leading to the danger of overlooking, if not completely eradicating, the distinctive qualities of the other discipline as an institution.

To avoid this kind of cannibalisation, interdisciplinary work should move from a mode, which sees similarity first, to a mode which sees difference first. In other words, instead of bringing literature and the law together through a perceived similarity in a common topic or concept, it should first and foremost ask how the differences between the two disciplines are reflected in that link. If both lawyers and literary critics interpret texts, or engage with evidence, then the initial focus should not be on how they perform those acts in a similar manner, but on how they do it differently. Each discipline has its distinct logic, its own conception of the relationship between language and reality, and its unique means of conceiving of itself as a field. Only when we have thought through the differences should we focus on the similarities.³⁵

33. *Id.* at 283.

34. WATT, *supra* note 1, at 32.

35. See RICHARD A. POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATION* 13, 17 (1988), in which Posner makes a similar point. While I agree with Posner's

In this way, the interdisciplinary enquiry starts from a foundation, which respects both literature and the law as institutions.³⁶ As Peter Brooks points out, real inter-disciplinarity occurs “when thought processes reach the point where the disciplinary boundary one comes up against no longer makes sense when the internal logic of thinking impels a transgression of borderlines.”³⁷ To remain true to the distinctive qualities of each discipline, we must respect their institutional boundaries before we attempt to move beyond them, rather than to ignore their existence from the beginning. Stories are powerful because they have their own logic and conventions. We, as law-and-literature critics, forget that at the peril of the very project in which we are engaged.

fundamental claim about the differences between literature and the law, I am more optimistic about the possibility of cooperation between the two fields.

36. See generally HARRY LEVIN, *THE GATES OF HORN* 16–23 (1963) (referring to literature as an institution). See GLANVILLE WILLIAMS, *GLANVILLE WILLIAMS: LEARNING THE LAW*, (A.T.H. Smith ed., 2002), for an example of a canonical text which initiates students to the law as an institution.

37. Peter Brooks, *Must We Apologize?*, in *COMPARATIVE LITERATURE IN THE AGE OF MULTICULTURALISM* 97, 102 (Charles Bernheimer ed., 1995).