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# Transparency and Textuality: Wilkie Collins' Law Books

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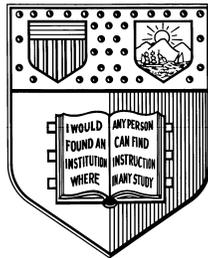
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# CORNELL LAW SCHOOL

## LEGAL STUDIES RESEARCH PAPER SERIES



### **Transparency and Textuality: Wilkie Collins' Law Books**

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TRANSPARENCY AND TEXTUALITY: WILKIE COLLINS' LAW BOOKS

I Transparency in Law and Literature

The rhetoric of democracy, particularly when correlated with the attempt to spread the rule of law, often insists upon the ever-increasing transparency of political and legal institutions, relying on the visibility of the mechanisms of power and law to obviate any of their adverse effects. The mantra of transparency is invoked throughout the pages of eminent law reviews: “If opacity frustrates and misleads outsiders [to the American criminal justice system], transparency and fuller disclosure can alleviate these problems”<sup>i</sup>; “Transparency is a core good governance attribute: Open procedures contribute to virtually all of the foundations of legitimacy . . . .”<sup>ii</sup>; and “transparency in recent years has developed from a buzzword into a substantive policy tool, particularly in efforts to make transnational actors more socially and environmentally responsible.”<sup>iii</sup> Although some question the transformative potential of transparency,<sup>iv</sup> efforts to achieve it are not about to disappear. Nor is the goal of transparency all that new. Since at least the seventeenth century, and probably earlier, law reformers have urged mechanisms for increasing transparency in the system. Under Cromwell, English law reformers proposed not only that courts post fees for each particular transaction so that it would be difficult for judges and other judicial personnel to charge extortionate rates, but even that the laws be simplified and redacted into a single book.<sup>v</sup> As Dickens’ *Bleak House* vividly dramatizes with its depiction of the London fog that seems to emanate from the law

courts, nineteenth-century law reformers likewise objected to the obfuscation of law and procedure in the Court of Chancery.<sup>vi</sup>

Both historically and today, law reform efforts aimed at increasing transparency often focus on the possibilities for access to knowledge about the law.<sup>vii</sup> One mode of achieving such access may be textual, through the dissemination of law reports, the publication of treatises explaining legal principles, and the production of volumes containing statutory enactments. To the extent that those attempting to promote transparency try to achieve this objective through generating a proliferation of texts, law may yet stubbornly refuse to unlock its secrets. The very form of textuality may prevent the attainment of transparency. Contrary to the Habermasian claims for the efficacy of dialogue or the Gadamerian insistence on hermeneutic understanding, the legal text may resist releasing its secrets. At several points in his work, Jacques Derrida gestured towards a critique of the value of transparency and an insistence that the “democracy to come” be linked with an absolute right to the secret, a secret itself connected with literature.

The idea of achieving democratic agreement through pursuing transparency excludes, for Derrida, the possibility of the secret:

In consensus, in possible transparency, the secret is never broached/breached [*entame*]. If I am to share something, to communicate, objectify, thematize, the condition is that there be something non-thematizable, non-objectifiable, non-shareable. And this ‘something’ is an absolute secret, it is the *ab-solutum* itself in the etymological sense of the term, i.e., that which is cut off from any bond, detached, and which cannot itself bind; it is the condition of any bond but it

cannot bind itself to anything—this is the absolute, and if there is something absolute it is secret.<sup>viii</sup>

Derrida further suggests that complete transparency may not be politically desirable, associating the loss of the secret with the becoming totalitarian of democracy: “I have an impulse of fear or terror in the face of a political space, for example, a public space that makes no room for the secret. For me, the demand that everything be paraded in the public square and that there be no internal forum is a glaring sign of the totalitarianization of democracy. I can rephrase this in terms of political ethics: if a right to the secret is not maintained, we are in a totalitarian space.”<sup>ix</sup> Elsewhere elaborating upon the dynamics of the secret, which is not a secret intentionally concealed by a self-present subject nor an inscription within a private as opposed to a public space, but rather a lack of response to a particular call, Derrida links this secret to the specifically modern place of literature.<sup>x</sup>

Literature provides the paradigm for the secret, and Derrida refers to “the *exemplary* secret of literature.”<sup>xi</sup> Literature itself he then connects with democracy, maintaining that “[l]iterature . . . ties its destiny to a certain noncensure, to the space of democratic freedom (freedom of the press, freedom of speech, etc.).”<sup>xii</sup> A democracy that eschewed the totalitarian would, therefore, embrace the exemplary secret of literature. The secret of literature may, however, also constitute the secret of law. Despite the multiplication of sources of law, the very textual form of these sources may retain its secrets, and, in doing so, keep the secrets of law.

Derrida himself indicates such a possibility in “Before the Law,” his essay on the Kafka parable of the same name. The parable describes a scene in which a doorkeeper stands “before [Vor] the law”; when a man from the country seeks admission to the law,

the door to which is open, the doorkeeper refuses, and continues to defer him, until the supplicant nears death. In response to the man from the country's final question, "how does it happen that for all these many years no one but myself has ever begged for admittance?," the doorkeeper shouts, to make himself heard despite the questioner's decline, "No one else could ever be admitted here, since this gate was made only for you. I am now going to shut it."<sup>xiii</sup> As Derrida emphasizes, the man from the country thinks "the Law . . . should surely be accessible at all times and to everyone."<sup>xiv</sup> The openness of the law is not, however, to be construed as the same as its accessibility, precisely because the law must be read. The hypothesis that Derrida furnishes is that perhaps "[B]eing able to read makes the law less accessible still."<sup>xv</sup> The mistake of the man from the country, on this account, would consist in his desire "to see or touch the law, . . . to approach and 'enter' it" without recognizing that "the law is not to be seen or touched but deciphered."<sup>xvi</sup> Confronted by the representative of the law, the man from the country believes he should have access to the law itself instead, an expectation that misconstrues the relation between the individual and the law, through which "S/he presents himself or herself before representatives: the law in person, so to speak, is never present, even though the expression 'before the law' seems to signify 'in the presence of the law.'"<sup>xvii</sup> The law is, thus, mediated through its representatives—but also through its texts; to the extent that law is accessible only through its appearance, Derrida suggests, "the law, without being itself transfixed by literature, share[s] the conditions of its possibility with the literary object."<sup>xviii</sup>

There subsists a historical dimension to this relation between law and literature, and between the secrets preserved by the texts of each. The nineteenth century, in

particular, witnessed an explosion of novelistic production, but also a vast increase in legal documentation, from treatises, to nascent law reviews, to popularized trial reports. The increasing volume of literary production generated anxiety that the act of reading would be transformed, becoming cursory and superficial.<sup>xix</sup> The explosion of genres suited to mass audiences likewise crystallized concerns that literature might corrupt society.<sup>xx</sup> These fears resulted, in part, in attempts to discipline readers and reading, and to guide their taste.<sup>xxi</sup> The growing proportion of female readers was of most concern; as James Machor has observed of the Antebellum period in America, “when reviewers addressed the relation between the production and consumption of fiction, their remarks frequently were coded in gender specific assumptions about how readers responded to fiction and how they should read if rightly informed.”<sup>xxii</sup>

Nor did novelists themselves stand at a significant remove from these discussions. On the contrary, they meditated self-consciously on the audience they were increasingly able to address. As Patrick Brantlinger has noted of one extremely popular genre, the sensation novel, “sensation novels are always allegories of reading.”<sup>xxiii</sup> Wilkie Collins, one of the foremost of these sensation novelists, wrote in the periodical *Household Words* in 1858 that “The Unknown Public is, in a literary sense, hardly beginning, as yet, to learn to read. The members of it are evidently, in the mass, from no fault of theirs, still ignorant of almost everything which is generally known and understood among readers whom circumstances have placed, socially and intellectually, in the rank above them. . . . The future of English fiction may rest with this Unknown Public, which is now waiting to be taught the difference between a good book and a bad.”<sup>xxiv</sup> The attention of this “unknown public” was not reserved entirely for the consumption of literature, but rather

as several of Collins' own novels suggest, directed itself as well to the popular texts of law, from William Blackstone's widely disseminated *Commentaries on the Laws of England* to the embellished accounts of criminal trials provided by various pamphlets. As the example of Collins' work demonstrates, the accessibility of more legal writing to a greater audience did not, for nineteenth-century observers, always mean that the law was rendered more transparent. Rather, problems akin to those that affected Collins' "unknown public" might plague naive readers of the law. For Collins, among others, the increased accessibility of law meant not that its secrets were revealed, but rather that they were differently kept; readers' approach to the text of law demonstrated the impediments to acquiring a hermeneutically ideal understanding of its content, but also, and more radically, revealed the deficiencies inherent in all efforts to textualize the law.

## II Acts of Reading Law and Literature

In the fall of 1882, a letter arrived from London for Albany prosecutor Nathaniel Moak, a trial lawyer responsible for the conviction of a number of notorious nineteenth-century criminals. Postmarked August 21 of that year, the missive had been penned by English crime novelist Wilkie Collins, and thanked the prosecutor for sending Collins a copy of a volume containing Moak's argument in the trial of Jesse Billings for the murder of his wife. This was a case on which government resources had been heaped and which had resulted in not only one, but two, successive trials. The book Collins received had included Moak's "Closing Argument at the Saratoga Oyer and Terminer on the part of the people, in the case of The People against Jesse Billings, Jr." dated Monday, Oct. 7, 1878, as well as Justice Landon's Charge to the Jury. These had been reported by Noel

C. Andrews, Esq., and were followed by an odd document from a series called “Contributions to Medical Jurisprudence,” which contained a doctor’s 1881 review of the medical testimony from Billings’ second trial.<sup>xxv</sup> Collins’ letter addressed Moak as follows:

My Dear Sir,

I can only trust to this kindness which has presented me with an interesting addition to my little library to excuse this late expression of my thanks. When the “Argument” reached me, I waited to write, in the hope of finding a fit opportunity to become one of your readers without much delay. But my literary labours ... in the way—and there ... my doctor prescribed a lazy holiday. I accepted an invitation to visit with a friend ... —and here I am ... reading your pages with the present interest, to say nothing of the “agreeable surprise” of finding *The Moonstone* borrowed by a favourable allusion, in a Court of Justice. The mental capacity which can make itself acquainted with an immense accumulation of facts—present them one after another in their proper order, and draw from them the crucial inferences, all steadily forming in one and the same direction—is simply a matter of wonder to *me*. I ask myself all sorts of simple questions relating to *you*. Were you assailed by nervous misgivings—especially on the first day? Did you never feel some little mental confusion here and there? Did the appearance of the jury—their look and ways ... —discompose you? And in the interval of the argument, what did you eat and drink before going to bed? These inquiries occur to a novelist—and they are followed by a novelist’s complaint. You seize my interest—and you don’t tell me how the terrible tale of guilt ended.

I look on to the last pages and see a judge's charge, and a medical writers' "Views" when I want to know *whether he was found guilty and hanged*. The case was mentioned in our newspapers—but the end has slipped our newspapers.

With renewed thanks—and in the hope that I may be excused,

Wilkie Collins<sup>xxvi</sup>

On first glance, this letter seems to stage the difference between literary and legal perspectives. Underlining "me" and "you", Collins opposes himself to Moak in their respective capacities as novelist and prosecutor. Whereas Moak's own lengthy argument focused on constructing a plausible narrative of the crime from the range of available circumstantial evidence, and the succeeding medical analysis of the testimony—including elaborate charts and detailed drawings of a skull with a bullet hole—concentrated on detailed evaluation of the "facts", Collins' novelistic desire led him to focus on the plot and its ending, or, in other words, the question of whether Billings "was found guilty and hanged."<sup>xxvii</sup> Likewise, whereas the report of Moak's argument depicts an elaborate process of ratiocination, expressing "[t]he mental capacity which can make itself acquainted with an immense accumulation of facts," Collins wishes to know what emotions lay behind this virtuosic display of reason, or what fissures might have rested beneath the eloquent surface of the argument, inquiring about the confusion, nervousness, and even sleep patterns of the prosecutor. On holiday from novel writing, Collins simultaneously became a novelistic reader of the report Moak sent him, supplementing the text as it was produced with questions characteristic of his fictional preoccupations. One of the burgeoning cadre of nineteenth-century "travel readers,"<sup>xxviii</sup> Collins replaced his work of fiction writing with the work of legal reading.

On second perusal, however, the letter opens onto a number of correlations between litigation and literary endeavors. As Collins notes, Moak referred at length in his argument to the novelist's work *The Moonstone*, often deemed the first detective novel.<sup>xxix</sup> Defense counsel had already drawn the jury's attention to a number of works of fiction broadly conceived, including *Oedipus* and the *Arabian Nights*. Critiquing the precedent provided by these texts, Moak insisted that the *Arabian Nights* might, in fact, be applicable, but only because of its framing conceit—the idea that the teller of the tales was spinning them out regardless of truth or falsity in order to save her own life. To provide a counter-example to these literary precedents, Moak instead invoked *The Moonstone* and its representation of deductive analysis. According to the prosecutor,

We may safely study fiction provided we discreetly apply it, for when properly applied it is intended to faithfully represent humanity. In the story of the Moonstone, a jewel had been stolen; detectives had been sent for to ascertain who was the guilty party; a door of the room from which the moonstone had been taken had been newly painted; upon the jamb of the door was discovered a small spot from which the paint had been brushed by a passing garment; the local detectives—or in the language of my learned friend, the 'wolves and hyenas' of the locality—had all passed it as of no importance; the city detective, with the experience of a life-time, regarded it as an important circumstance. I cannot better give you his idea of it than by reading it, for it is an illustration by one skilled in human character, of the importance of a trifling circumstance . . . . [then quoting from the Moonstone] That is a circumstance related in a work of fiction, but said to have been founded on fact—on the experience of an eminent detective.

. . . It is these small circumstances which lead as unerringly to the guilty party, as if the finger of Providence had pointed directly to him.<sup>xxx</sup>

Moak thus insisted that, rather than being specific to his own line of work, the mustering of circumstantial evidence into a coherent story pointing to the guilt of the defendant was a technique that none other than Collins himself had previously employed. The language of Collins' novel best encapsulated, he believed, the process of reasoning from a small clue to the guilt of the party accused.

Just as Moak relied on Collins to provide a literary precedent for his own legal argument, Collins similarly and frequently employed legal motifs ripped from the headlines in his novelistic work. The figure of aptly named female poisoner Lydia Gwilt in *Armadale* thus recapitulates the concerns with similar real-life anti-heroines like Sarah Chesham and Constance Wilson, who had been executed in 1851 and 1862 respectively.<sup>xxx</sup> Collins' novella *John Jago's Ghost*, published in installments during 1873 and 1874, likewise played upon an American trial report,<sup>xxxii</sup> and Collins himself acknowledged having found the plot of *The Woman in White*, among other works, in a collection of French trials he encountered in Paris when wandering there with Charles Dickens.<sup>xxxiii</sup> Not only did art imitate life in this context, but law simultaneously mimicked the work of fiction.

Finally, the kinds of questions that Collins raises about Moak's mental state—including his anxiety, and his relation to the jury—are questions similar to those that Moak himself asked about the motivations and feelings of the protagonists in his criminal narrative. The principal difference is simply one of perspective. Moak attempted to create a story of the case from which he was disentangled, as a neutral observer of sorts,

resisting the other side's imputations as to his motivations, including the defense attorney's claims that Moak desired to wrest a conviction from the case simply in order to rise up in the world. Collins insists instead that the prosecutor himself is bound up in the tale, and that his own character must be further developed beyond the surface of how Moak wished to represent himself.

Analysis of these distinctions reveals that the crucial differentiation between Moak's and Collins' perspectives is not that between lawyer and literary figure but rather that between author and reader—with Moak in this context assuming the guise of the former and Collins that of the latter. Collins, whose “little library” mentioned in the letter seems to have contained many law books,<sup>xxxiv</sup> and who also extracted legal updates from the newspapers and periodicals to which he refers, constructs a number of *critical readings* of law and its documentation, not only in materials like this letter but also in his novels.

The nineteenth century brought with it a proliferation of printed sources, among them newspapers, periodicals serializing works of fiction, and even a wealth of trial pamphlets, some quite dramatically illustrated. Increasingly, private libraries began to contain not only reports of English and American trials but even fictionalized accounts of historical “French trials.” These latter “French trials” included many stories of doubled or mistaken identity, such as “The Return of Martin Guerre,” several following along the lines of the mirroring of Anne Catherick and Laura Fairlie in Collins' own *Woman in White*.<sup>xxxv</sup> Such tales, although legal in substrate, presented a clearly fictional exterior, targeted at gratifying the reader's literary sensibilities more than at accurately depicting the developments in a particular case. They derived ultimately from the extremely

popular twenty-volume French collection, first published in 1734, called *Causes celebres et interessantes*, a collection present in various forms in Collins' library, as well as the genre of *memoires judiciaires*, trial briefs written by barristers for consumption by the courts of pre-revolutionary France but also published in volumes of several thousands at a time for perusal by the general public.<sup>xxxvi</sup> As Sarah Maza has demonstrated in *Private Lives and Public Affairs*, the *memoires judiciaires* self-consciously partook of the literary, playing upon the motifs of contemporary drama and fiction: "The new genre of trial briefs that appeared with the Morangies case drew on the subject matter of the *drame*. It also adopted some of the *drame*'s style and technique, its use of hyperbole, exclamation, faltering speech, and the awkward emphasis on identity and state of mind that served as signposts to a theater audience."<sup>xxxvii</sup>

The status of the French trial, in Collins' own representation, accords in many respects with that of the French novel. The latter serves the role of transporting the reader beyond the mundane confines of daily life; on the first night of his visit to American relatives in order to obtain some rest, the English lawyer-narrator of *John Jago's Ghost* explains that he "lit the candles, and took from [his] portmanteau what [he] firmly believed to have been the first French novel ever produced at Morwick Farm. It was one of the masterly and charming stories of Dumas the elder. In five minutes I was in a new world, and my melancholy room was full of the liveliest French company."<sup>xxxviii</sup> The French trial also functions to absorb the reader and remove quotidian concerns; as the individual nicknamed "the Cur" in *The Guilty River* recounts in his diary or confession, "The bookseller has found a second-hand copy of the French Trials, and has sent them to me (as he expresses it) 'on approval.' 'I more than approve—I admire; and I

more than admire—I imitate. These criminal stories are told with a dramatic power, which has impelled me to try if I can rival the clever French narrative. . . . I cannot remember having read any novel with a tenth part of the interest that absorbed me, in constructing my imaginary train of circumstances.”<sup>xxxix</sup> If the French novel functions to enhance sentimental distraction, the French trial instead increases morbid obsession.

The English and American trial reports are more difficult to classify, because they at once claimed to represent what had actually happened in a certain courtroom and simultaneously refrained from simply transcribing the events that took place. The title pages and front matter thus contained assurances of authenticity such as “Impartially taken by a Gentleman of the Profession,” or “The following Report, although unsupported by a name, is given to the public with an assurance that it is impartial, correct, and minute—and what need a preface say more?,” or later, “From the Short-Hand Notes of Marsh & Osbourne, Official Reporters of the Courts.”<sup>xi</sup> The same documents would, however, sometimes acknowledge their own possible errors; as the Preface to the report of the 1871 trial of murderess Laura Fair, who had shot her married lover in front of his family, explained, “[b]elieving that this report of the proceedings on the trial will prove worthy the consideration not only of members of the Bar, to whom it will be invaluable, but, also, to the public generally; and hoping that a generous public will overlook and excuse the little inaccuracies to which we have already adverted, the volume is respectfully submitted by THE PUBLISHERS.”<sup>xi</sup> Furthermore, these trial reports often assumed the generic form of sensation stories and were publicly received with the same fervor as fiction.<sup>xiii</sup> They thus occupied an uncertain status, remaining

based upon fact, yet consumed by the ordinary public, and susceptible to the critique of potential inaccuracy.

In a number of novels, Collins explores these legal documents and their newly expanded readership. On the one hand, he inquires about the extent to which reports of cases can adequately depict what actually occurred, and evaluates them almost as an appellate tribunal would. On the other, he asks about the uses—both serious and pleasurable—to which readers put the law books they encountered. Many of his novels thus depict libraries containing legal volumes, which novice readers encounter for the first time. Whereas Collins himself, having been legally trained at Lincoln’s Inn, could digest some of the more technical dimensions of works like Moak’s “Argument,”<sup>xliii</sup> his novels represent a range of readers more or less capable of evaluating the legal texts they undertake. What emerges is an immanent critique of the belief that law will inevitably become more transparent with its increased accessibility to the ordinary reader, or that writing will itself render the representation of law more accurate. Instead, Collins demonstrates, the very textuality of these legal documents may impede access to the posited “underlying” facts or law. Likewise, the process of translating the trial from event into text inevitably introduces error. At the same time, however, the rigorous reader, even if a novice, will ask the appropriate questions of the text and arrive (usually herself) at a less than credulous response to the document in question. Two examples from Collins’ work exemplify these points. In each, the privileged reader of the law—like that of novels—is identified as female, and she reads not simply for an abstract lesson or enjoyment but rather attempts to question or apply the text within the pragmatic context of everyday life.

In the 1875 novel *The Law and the Lady*, the heroine Valeria Woodville is perplexed as to the nature of a secret that seems to be plaguing her husband, Mr. Eustace Woodville, aka (as she has already discovered) Eustace Macallan. Finding herself, on account of youth and attractiveness with some sway over one of her husband's old friends, Major Fitz-David, Valeria persuades him to give her access to the possibility of discovering her husband's secret. Major Fitz-David does so by allowing Valeria free reign of his library for several hours. While Valeria first assumes that the clue must be provided by an object or letter contained within this room—focusing in particular on a peculiar vase—she suddenly realizes that “the clue might quite as probably present itself in the form of a book.”<sup>xliv</sup> As Valeria subsequently recounts her process of searching:

I looked along the lower rows of shelves; standing just near enough to them to read the titles on the backs of the volumes. I saw Voltaire in red morocco; Shakespeare in blue; Walter Scott in green; the History of England in brown; the Annual Register in yellow calf. There I paused, wearied and discouraged already by the long rows of volumes. How (I thought to myself) am I to examine all these books? And what am I to look for, even if I do examine them all?<sup>xlv</sup>

As she moves to higher shelves with the aid of a library ladder, Valeria discovers less uniform books, “some . . . bound in cloth; some . . . only protected by paper covers” as well as “empty spaces from which books had been removed and not replaced.”<sup>xlvi</sup> She eventually alights upon a cupboard with a large, “gorgeously-bound book,” encased in blue velvet with “clasps of silver in beautiful arabesque patterns” and an accompanying silver lock.<sup>xlvii</sup> Much to Valeria's disappointment and disgust, this volume contains not the secret for which she is searching but instead locks of hair documenting each of Major

Fitz-David's female conquests. Almost giving up in despair at this point, Valeria is then interrupted by Major Fitz-David's current paramour, who storms into the room and launches a verbal assault. This jealous fit has fortuitous consequences.

When Valeria explains that she is simply in the library looking for a volume, rather than attempting to insinuate herself into the Major's good graces, the girl inquires "Stop a bit! I wonder whether *that's* the book you have been looking after? Are you like me? Do you like reading Trials?" Valeria's response is to think "Trials? Had I heard her aright? Yes: she had said, Trials."<sup>xlviii</sup> The girl then recovers the volume from a space between the bookcase and the wall where it had fallen, and hands it to Valeria, accompanied with the statement "I've read it twice over—I have. Mind you, *I* believe he did it, after all."<sup>xlix</sup> When Valeria looks at the title page, she is struck by horror and immediately faints. It reads: "A Complete Report of/ The trial of/ Eustace Macallan/ For the alleged poisoning/ of/ His Wife."<sup>1</sup> Although Macallan had not been convicted, he had not been acquitted either, but had suffered from the ignominy of what is called a "Scotch verdict," or the verdict of "not proven" rather than "not guilty." When Eustace discovers that his new wife has learned of his past and of his prior identity, he flees, too ashamed to face her again.

This chain of events leads Valeria to an increased resolution, and she determines to get to the bottom of the circumstances leading to Eustace's first wife's death and to demonstrate her husband's innocence. In service of this pursuit, she reads the entirety of the trial. Although an active and emotionally engaged reader from the beginning—as demonstrated by the fainting fit she had upon seeing the title page as well as an episode in which she admits to having torn out and trampled underfoot some displeasing pages of

the report—Valeria is initially somewhat naïve. She believes, for instance, the claims of the report to be especially accurate. As she recounts:

Turning to the second page of the Trial, I found a Note, assuring the reader of the absolute correctness of the Report of the Proceedings. The compiler described himself as having enjoyed certain privileges. Thus, the presiding Judge had himself revised his charge to the Jury. And, again, the chief lawyers for the prosecution and the defence, following the Judge's example, had revised their speeches, for, and against, the prisoner. Lastly, particular care had been taken to secure a literally correct report of the evidence given by various witnesses. It was some relief to me to discover this Note, and to be satisfied at the outset that the Story of the Trial was, in every particular, fully and truly told.<sup>li</sup>

Rather than suspecting that the Judge and lawyers might have taken the opportunity for revision to embellish rather than render accurate, Valeria gives credence to the account that the reporter provided.

It is revealed later in the novel that this faith was at least partially misplaced. As Valeria digs behind the text of the trial report into the nature of the witnesses' accounts and the background circumstances of the case, she discovers that the trial had been rendered logical and readable at some cost. One of the chief witnesses for the defense had been a friend of Eustace's, the aptly named Misserrimus Dexter, a man depicted as beautiful in his upper body yet lacking legs. Whereas his testimony had seemed quite convincing in the context of the report, Valeria soon discovers that he is plagued by episodes of insanity. Conversing with her mother-in-law, who has claimed that, "in asking Dexter's advice . . . you appropriately consult a madman," Valeria responds "You

surprise me very much . . . . Mr Dexter’s evidence, given at the Trial, seems as clear and reasonable as evidence can be.”<sup>lii</sup> Mrs. Macallan’s more sophisticated understanding of the nature of trial reports emerges from her response; to Valeria’s expression of surprise, her mother-in-law replies:

“Of course it is! The shorthand writers and reporters put his evidence into presentable language, before they printed it. If you had heard what he really said, as I did, you would have been either very much disgusted with him, or very much amused by him, according to your way of looking at things.”<sup>liii</sup>

The trial report thus forces the evidence into a coherent unity, at the expense of an accurate representation of the witnesses’ testimony. The source for Collins’ question to Moak about whether he might have felt anxious or nervous or was ever less than coherent—circumstances not evident from the text of his argument—thus begins to emerge.

During the course of the novel, Valeria’s investigations teach her to be a critical reader of the trial report, refusing to accept the statements contained therein at face value. Not all novice legal readers that Collins represents, however, demonstrate the same learning curve. For the happy couple in *Armadale* who wish to discover the legal mechanism that could enable their elopement, a perusal of Blackstone’s *Commentaries on the Laws of England* proves to provide only an obstacle to their anticipated marriage rather than any clues as to how that impediment could be overcome. Allan Armadale is willing to marry without any thought of the legal consequences, but his prospective spouse, Neelie, insists that “I decline even to think of our marriage, till my mind is made easy first on the subject of the Law.”<sup>liv</sup> When asked how this law is to be ascertained,

Neelie responds “Out of books, to be sure! There must be quantities of information in that enormous library of yours at the great house. If you really love me, you won’t mind going over the backs of a few thousand books, for my sake!”<sup>lv</sup> Blackstone, of course, furnishes the ideal source of legal knowledge for the lay person; having written his *Commentaries* to educate university students and legislators about the current state of English law, Blackstone avoided much of the arcana of law, as evinced by the instantaneous and continuing popularity of his work.<sup>lvi</sup> After tallying up the negatives and positives from Blackstone under columns marked “good” and “bad”, they conclude that the marriage is impossible because of the lack of paternal consent. Nor does Neelie stop there—she insists instead that Blackstone must not only contain the black letter of the law but also specify its enforcement mechanisms, which she imagines applied to their contemplated misdeeds: as Collins writes, “Shut up the book,” said Neelie, resignedly. “I have no doubt we should find the police, and the prison, and the hair-cutting—all punishments for perjury, exactly as I told you!—if we looked at the next page.”<sup>lvii</sup> Law books—or at least Blackstone—thus contain, for these readers, the direct injunctions of the law, which operate on their own without need for independent enforcement mechanisms.

In these contexts, Collins at once explores the distortions introduced into law and its instantiations by documents like trial reports or Blackstone’s reduction of the law for the non-specialist and investigates the effects of access to legal texts upon an expanded readership. Although demonstrating that the law is not automatically rendered transparent by being recorded, and that unmediated access to the law may still leave the subject impenetrable to the reader, Collins at the same time provides a model of a reader

who can learn to be critical, who will ask how the protagonists experienced the trial, and how it ended. While Moak and the newspapers may have lost sight of the ultimate outcome, this new, critical reader, would ascertain that Jesse Billings was acquitted after his second trial and that Moak himself was often subject to accusations of partiality from the other side.

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For Collins, legal texts—like literature—retain their secrets. These secrets are not, however, exactly *theirs*, but rather constitute the secrets of law, and its continued impenetrability despite increasing access to the sources that claim to represent it. The very fact of law’s representation—whether it is that of Jesse Billings’ or Eustace Macallan’s trials or that of the niceties of English law regarding marriage—preserves law’s secrets. The education of the “unknown public” and the naive reader therefore takes the form not of a tutelage in how to read correctly, or for the truth, but rather in how to read while acknowledging the secrets that law retains. In the wake of each reading, the law keeps back a particular remainder, one that may create an incentive for ever more texts of explanation and simplification, but will never be entirely exhausted.

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<sup>i</sup> Stephanos Bibas, “Transparency and Participation in Criminal Procedure,” *New York University Law Review* 81 (2006): 911, 917.

<sup>ii</sup> Dan Esty, “Good Governance at the Supranational Scale: Globalizing Administrative Law,” *Yale Law Journal* 115 (2006): 1490, 1530.

<sup>iii</sup> Thomas N. Hale & Anne-Marie Slaughter, “Transparency: Possibilities and Limitations,” *Fletcher Forum on World Affairs* 30 (2006): 153.

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<sup>iv</sup> *Id.*; Mark Fenster, “The Opacity of Transparency,” *Iowa Law Review* 91 (2006): 885.

<sup>v</sup> See Bernadette Meyler, “Separating Powers in the English Revolution” (unpublished manuscript); Barbara Shapiro, “Law Reform in Seventeenth Century England,” *American Journal of Legal History* 19 (1975): 280.

<sup>vi</sup> Charles Dickens, *Bleak House* (London: Penguin Classics, 2003); Michael Lobban, “Preparing for Fusion: Reforming the Nineteenth-Century Court of Chancery,” Part II, *Law & History Review* 22 (2004): 565.

<sup>vii</sup> See Patrick Birkinshaw, “Freedom of Information and Openness: Fundamental Human Rights?,” *Administrative Law Review* 58 (2006): 177, 189-90 (“Access to information is a component of transparency, but the latter also entails conducting affairs in the open or subject to public scrutiny. It means keeping observable records of official decisions and activities (for subsequent access). Transparency includes the provision of reasoned explanations for decisions, the giving of adequate reasons when power affecting the public weal or individuals is exercised in a negative or positive fashion. It also means making processes of governance and lawmaking as accessible and as comprehensible as possible—to simplify them so that they are more easily understood by the public. Complexity, disorder, and secrecy are all features that transparency seeks to combat.”).

<sup>viii</sup> Jacques Derrida & Maurizio Ferraris, *A Taste for the Secret*, trans. Giacomo Donis (Cambridge: Polity Press, 2001): 57.

<sup>ix</sup> *Id.* at 59.

<sup>x</sup> Jacques Derrida, “Passions,” in *On the Name*, ed. Tom Dutoit (Palo Alto: Stanford UP, 1995): 22-31.

<sup>xi</sup> *Id.* at 29.

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<sup>xii</sup> *Id.* at 28.

<sup>xiii</sup> See Jacques Derrida, “Before the Law,” in *Acts of Literature*, ed. Derek Attridge (London: Routledge, 1992): 183-84.

<sup>xiv</sup> *Id.* at 195.

<sup>xv</sup> *Id.*

<sup>xvi</sup> *Id.*

<sup>xvii</sup> *Id.* at 201.

<sup>xviii</sup> *Id.* at 191.

<sup>xix</sup> See David D. Hall, *Cultures of Print: Essays in the History of the Book* (Amherst: U Mass P, 1996): 185 (describing “a change in the mode of reading, from the devotional mode of seventeenth-century Protestants to what contemporaries in the nineteenth century regarded as superficial reading”).

<sup>xx</sup> See Vicessimus Knox, *On Novel Reading* (“If it is true, that the present age is more corrupt than the preceding, the great multiplication of Novels probably contributed to its degeneracy. Fifty years ago there was scarcely a Novel in the kingdom.”), *quoted in* Patrick Brantlinger, *The Reading Lesson: The Threat of Mass Literacy in Nineteenth Century British Fiction* (Bloomington: Indiana UP 1998): 1. *See also id.* at 144-52 (discussing the panic about the sensation novel of the 1860s that Wilkie Collins’ *The Woman in White* is taken to have inaugurated).

<sup>xxi</sup> James L. Machor, *Historical Hermeneutics and Antebellum Fiction, in Readers in History: Nineteenth-Century American Literature and the Contexts of Response*, ed. James L. Machor (Baltimore: Johns Hopkins UP, 1993): 64-65.

<sup>xxii</sup> *Id.* at 66.

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<sup>xxiii</sup> Brantlinger, *The Reading Lesson*: 147.

<sup>xxiv</sup> Wilkie Collins, *quoted in* Richard D. Altick, *The English Common Reader: A Social History of the Mass Reading Public 1800-1900* (Chicago: U of Chicago P, 1957): 5.

<sup>xxv</sup> This volume is available in the Trials Collection of the Cornell Law Library.

<sup>xxvi</sup> Manuscript available in the Trials Collection of the Cornell Law Library.

<sup>xxvii</sup> One of Collins' own characters expressed a strangely similar sentiment with regard to his own fate after reading French trials and conceiving the idea of emulating them. As the individual who calls himself "the Cur" inquires of his own circumstances, "How will it end?" Wilkie Collins, *The Guilty River, in Miss or Mrs?, The Haunted Hotel, The Guilty River*, Norman Page & Toru Sasaki eds. (Oxford: Oxford UP, 1999): 272.

<sup>xxviii</sup> For a discussion of the dynamics of travel reading in the nineteenth century, see Stephen Roger Fischer, *A History of Reading* (Chicago: Reaktion Books, 2004).

<sup>xxix</sup> Several of Collins' novels, including, in particular, *The Woman in White* and *The Law and the Lady*, received wide acclaim in America. See *Wilkie Collins: The Critical Heritage*, Norman Page ed. (London: Routledge, 1974).

<sup>xxx</sup> Moak, *Argument*, at 33.

<sup>xxxi</sup> Wilkie Collins, *Armadale* (London: Penguin Classics, 1995): xvi.

<sup>xxxii</sup> Warden, *Wilkie Collins's The Dead Alive*; Collins, *John Jago's Ghost*: 103.

<sup>xxxiii</sup> William Baker, *Wilkie Collins's Library: A Reconstruction* (Westport: Greenwood P, 2002): 133.

<sup>xxxiv</sup> William Baker has provided the valuable service of reconstructing the contents of Wilkie Collins' dispersed library. Collins' collection included a number of compilations of trial reports from disparate countries. The list comprehended: George Henry Borrow's

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[Craik's] *Celebrated Trials and Remarkable Cases of Criminal Jurisprudence from the Earliest Records to the Year 1825* (6 vols., 1825); Peter Burke's *The Romance of the Forum, or, Narratives, Scenes, and Anecdotes from Courts of Justice* (2 vols., 1852-53); John Hill Burton's *Narratives from Criminal Trials in Scotland* (2 vols., 1852); *Causes Celebres* (2 vols.); William Jackson's *The New and Complete Newgate Calendar: or, Malefactor's Universal Register* (3 vols., 1800-03); Maurice Mejan's *Recueil des Causes Celebres, et des Arrêts qui les Ont Decidees* (26 vols., 1808); Francois Richer's *Causes Celebres et Interessantes, avec les Jugements qui les Ont Decidees* (18 vols., 1772-1781). William Baker, *Wilkie Collins's Library*: 81, 83, 87, 121, 133, 143.

During his 1873-74 reading tour in America, Collins also alighted upon at least one, if not more, trial reports, tracing his novella *John Jago's Ghost* back to this narrative of a false conviction for the murder of a man who remained alive. As Collins explained in his note to *John Jago's Ghost*,

The first idea of this little story was suggested to the author by a printed account of a trial which took place, early in the present century, in the United States. The recently published narrative of the case is entitled 'The Trial, Confessions and Conviction of Jesse and Stephen Boorn for the murder of Russell Colvin, and the return of the man supposed to have been murdered. By Hon. Leonard Sergeant, Ex-Lieutenant-Governor of Vermont. (Manchester, Vermont, *Journal Book and Job Office*, 1873).' It may not be amiss to add, for the benefit of incredulous readers, that all the 'improbable events' in the story are matters of fact, taken from the printed narrative. Anything which 'looks like truth' is, in nine cases out of ten, the invention of the author.

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Wilkie Collins, *John Jago's Ghost*, in *Who Killed Zebedee?* (London: Hesperus Press, 2002): 103. A recent book juxtaposes Collins' tale with a narrative of the original wrongful convictions. Rob Warden, *Wilkie Collins's The Dead Alive: The Novel, the Case, and Wrongful Conviction* (Evanston: Northwestern UP, 2005).

Finally, although Baker's reconstruction of Collins' library does not list Blackstone's *Commentaries*, it does include Henry John Stephen's *New Commentaries on the Laws of England Partly Founded on Blackstone*. Baker, *supra*, at 152.

<sup>xxxv</sup> See *The Literary Gazette and American Athenaeum*, Jan. 13, 1827, at 3, 19, Miscellany ("The *Causes Celebres* (a collection of French trials) are a mine of interesting histories, which novelists or dramatists may dig for centuries without exhausting. The following anecdote is a member of that family: in a romance it would be despised as frivolous. So true it is, that while in works of fiction we demand probability, the actual life around us is daily teeming with apparent impossibilities.").

<sup>xxxvi</sup> Sarah Maza, *Private Lives and Public Affairs: The Causes Celebres of Prerevolutionary France* (Berkeley: U of California P, 1993): 24-25; 34-39.

<sup>xxxvii</sup> *Id.* at 63.

<sup>xxxviii</sup> Collins, *John Jago's Ghost*: 38.

<sup>xxxix</sup> Wilkie Collins, *The Guilty River*: 270.

<sup>xl</sup> *Report of the Trial of Henry Bedlow, for Committing a Rape on Lanah Sawyer* (New York, 1793); *Report of the Trial of Richard D. Croucher, on an Indictment for a Rape on Margaret Miller* (New York: George Forman, 1800); *Official Report of the Trial of Laura D. Fair, for the Murder of Alex. P. Crittenden* (San Francisco: San Francisco Cooperative Printing Co., 1871).

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<sup>xli</sup> *Official Report of the Trial of Laura D. Fair*: 4.

<sup>xliii</sup> Daniel Cohen, “Trial Reports and the Rise of Sentimental Fiction,” *Legal Studies Forum* 17:2 (1993): 119-32; Caleb Crain, “In Search of Lost Crime,” *Legal Affairs* (July/August, 2002): 29.

<sup>xliiii</sup> Collins, who began studying at Lincoln’s Inn in 1846, became a barrister in 1851. Kenneth Robinson, *Wilkie Collins: A Biography* (London: The Bodley Head, 1951): 41, 51.

<sup>xliv</sup> Wilkie Collins, *The Law and the Lady* (London: Penguin Classics, 1999): 78.

<sup>xlvi</sup> *Id.*

<sup>xlvi</sup> *Id.*

<sup>xlvii</sup> *Id.* at 81-82.

<sup>xlviii</sup> *Id.* at 87.

<sup>xlix</sup> *Id.* at 88.

<sup>l</sup> *Id.* at 88.

<sup>li</sup> *Id.* at 119.

<sup>lii</sup> *Id.* at 186.

<sup>liii</sup> *Id.* at 187.

<sup>liv</sup> Wilkie Collins, *Armadale*, at 454.

<sup>lv</sup> *Id.* at 454.

<sup>lvi</sup> See David Lieberman, *The Province of Legislation Determined: Legal Theory in Eighteenth-Century Britain* (Cambridge: Cambridge UP, 2002).

<sup>lvii</sup> *Armadale* at 458.