The Unreliable Reader: 
The problem of Circumstantial Evidence 
in Nineteenth-Century Narrative

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Nineteenth-century jurists defined circumstantial evidence as any kind of indirect evidence: that is, any form of evidence other than the direct evidence of the senses, or the direct testimony of a witness. Circumstantial evidence included many different kinds of physical and psychological evidence, but the feature they shared was that the fact to be proved had always to be inferred from the evidence - it was not directly witnessed or attested.¹ If such evidence was weakened by being indirect, it was strengthened by being non-discursive. Testimonial evidence depended on what the jurist Thomas Starkie called a "principle of faith in human veracity sanctioned by experience",² but evangelical and utilitarian influences had impressed Victorian culture with a deep suspicion of all human testimony - partly because of the possibility of deceit or error on the part of the speaker, but also, more worryingly, because of a sense of the referential instability of all language and its constant threat of displacement into friction.

² T Starkie, Evidence (1824) Vol 1, p 13, quoted in Wigmore, above n 1, p 399.
In contrast, circumstantial evidence seemed to offer the testimony of pure fact, uncontaminated by language altogether, or separated from the designs of its users. The attraction of circumstantial evidence for many lawyers, historians and novelists was that it seemed to offer a kind of testimony which could not lie. This kind of evidence seemed especially useful in the novel’s efforts to guarantee its realism, and allay anxiety about its fictionality, in a culture which still exhibited traces of the traditional puritan identification of fiction with lies.

In attempting to rebut puritan charges of untruthfulness, the novel had traditionally sought to align itself with history, and the realist techniques of the nineteenth-century novel derived primarily from a historiographical model of narrative. Despite its use of forensic metaphors for its narrative processes, the realist novel drew more on historiographical than legal conceptions of evidence, and this meant that the idea of circumstantial evidence as a guarantee of truth in narrative came to the novel laundered, by historians, of the problematic status it had always held in law. Throughout the nineteenth century, forensic appeals to circumstantial evidence provoked extremes of opinion, from bland appeals to the aphorism, "circumstances can not lie", to the practice of discounting evidence as merely circumstantial. Treatises on evidence, while agreeing that some reliance on circumstantial evidence was necessary in almost all cases, constantly sounded a note of caution. Bentham warned that physical evidence could be forged and thus forced to "speak false" or at least "put to silence"; like suborned witnesses, circumstances could be guilty of perjury. Wills observed that indirect evidence had still in most cases to be reported to the court, and so "although 'circumstances cannot lie', the narrators of them may and often do lie". Most importantly, jurists repeatedly drew attention to the fact that the probative value of circumstantial evidence depended entirely on the inferences drawn from it, and that these inferences could simply be wrong.

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3 J F Pollock (judge in the Maria Manning trial) called circumstantial evidence "the language of facts"; see A Welsh, "The Evidence of Things Not Seen: Justice Stephen and Bishop Butler" (1988) 22 Representations 79.


5 Bentham, above, n 1, pp 50, 250.

6 Wills, above, n 4, p 43.

The question of what was a reasonable or fair inference to draw from a given fact relied on a consensual construction of experience, and particularly on agreement as to the necessary relations between cause and effect. Different readings of evidence might draw on different notions of probability or causation, and both idiosyncratic and consensual views of the way things happen might fail to account for some unusual but real combinations of facts and events. In addition, anxiety to have crime detected and punished could encourage judges and juries to draw rash inferences from circumstantial evidence, while a kind of intellectual pride could lead to over-ingenuity in piecing together the evidence to fit a particular theory.8

Throughout the century, legal enthusiasm for circumstantial evidence was tempered by warnings about the inescapable process of human interpretation which destabilised and potentially corrupted its probative value. Historians, increasingly concerned with the need to expose the mendacity of human testimony, were generally much less cautious about embracing a form of evidence which seemed to stand outside discourse. Influenced by the achievements of geologists and palaeontologists in reconstructing the past on the basis of slight circumstantial evidence, historians tended to ignore the ways in which such evidence was, for their own purposes, constructed by a process of selection and interpretation. Writing in the *Westminster Review* in 1842 on "The Modern Art and Science of History", Philip Harwood summed up contemporary enthusiasm for "the unwritten sources of history". "Books," he argues, "may make mistakes, or even tell lies; but the testimony of things ... is singularly genuine and veracious". For Harwood, circumstantial evidence yields "real history", "caught in the fact", and although he stresses the difficulty of interpreting such evidence, he ignores its dangers; his assumption is that "when interpreted", indirect evidence is absolutely trustworthy.9 An even greater enthusiasm for circumstantial evidence formed the basis of the most grandiose mid-Victorian attempt to turn history into an inductive science, as Buckle's *History of Civilization in England* (1857). Buckle attained instant notoriety with the audacity of his attempt to infer the great laws of historical development from the most minute circumstances of physical, social and economic life. His exaggerated claims for circumstantial evidence as a means of both reconstructing the past and predicting the future provoked great controversy, as moral objections to his deterministic philosophy were supported by logical objections to his flawed theory of

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8 Best, above, n 7, p 317; Wills, above, n 4, p 48.
causation. Nevertheless, despite its eccentricities, Buckle’s work was founded on the broad investment of contemporary historiography in what he called "circumstantial researches"; and his interest in indirect evidence and inductive methods remained an important feature of scientific historiography in the later nineteenth century.

The so-called "scientific" historians often referred to legal models for their handling of evidence, but in fact they carried their suspicion of human testimony much further than did the judges and juries they claimed to imitate: whereas legal procedure depended, as the jurist Wills stated, on "the reasonableness and propriety of our faith in testimonial evidence", historians were trained - contrary to the principles of British law - to regard all witnesses as guilty until proven innocent of deceit. This led to a belief that "the best and surest testimony concerning the condition of a people, in any age, is that which is given unconsciously," and that meant that historians gave a special credence to circumstantial evidence.

The project of a science of history lent intellectual weight to the circumstantial epistemology of realist fiction, which was most self-consciously theorised in the sensation novels of the 1860s. As D. A. Miller has demonstrated, the sensation novel’s representation of the material world as a field of circumstantial evidence awaiting interpretation constitutes an exaggerated version of the realist narrative which "bases its interpretative mastery on minutiae ... that it elaborates into 'telling details'." The lawyer Fitzjames Stephen criticised sensation novels for giving a value to circumstantial evidence which was not endorsed by legal conceptions of evidence or social practices of detection; he claimed that in real life, as opposed to fiction, detectives rarely performed great feats of inductive reasoning, crimes often remained undiscovered, and many criminals were never brought to justice. Stephen writes with a lawyer’s suspicion of the dangers associated with the inferential leaps of circumstantial evidence; the inductive ingenuity


Wills, above, n 4, p 52. Cf Anton’s warning that "a historian has to be treated as a witness, and not believed unless his sincerity is established. The maxim that a man must be presumed to be innocent until his guilt is provided, was not made for him" (16).

W S Lilly, "The New Spirit in History" (1895) 38 Nineteenth Century 624.

of the fictional detective is dangerous, he argues, because "The sphere of ingenuity is in making guesses, and the whole object of English courts of law and rules of evidence is to exclude guesswork." Although Stephen mocked its pretensions to science or philosophy, the theory of circumstantiality elaborated in sensation fiction had an intellectually respectable equivalent in contemporary historiography. Indeed, Buckle presented his *History of Civilization* as a massive project of detective-work, an attempt to "solve the great problem of affairs; to detect those hidden circumstances which determine the march and destiny of nations". The "romance of the detective" which Stephen criticised was the same romance of epistemological security which criticise the new science of history seemed to promise; both were based on the completeness and accuracy of the circumstantial record, and both ignored the possibility for rhetorical instability introduced by the reader of that record. Both created a narrativised world, in which every circumstance was part of a larger story and every object was the tell-tale trace of a past action, if only it could be read aright. In "scientific" historiography, the reader was either effaced (under the pretence that facts speak for themselves) or granted heroic stature for his intellectual work in wresting narrative meaning from slight circumstantial traces. This heroic sense of the reader of circumstantial evidence was also found in the sensation novel, where the work of the detective produced factual and moral certainty out of apparently incoherent experience. Similarly, the realist novel produced meaning through a masterful project of "reading", and thus rendering significant, the circumstantial details it amassed.

Towards the end of the century there were some signs the confidence of historians and novelists in the truth-telling function of circumstantial evidence was being disrupted by an increasing consciousness of the element which had always destabilised its probative value in legal narrative: the role of the reader. Although orthodox English historiography clung to the belief that a fixed body of data would admit only a very narrow range of readings, the crisis in historiography gathering in Europe was founded on the recognition that data could elicit an endless series of idiosyncratic and culturally relative

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15 J F Stephen, "Detectives in Fiction and in Real Life" (1864) 17 *Saturday Review* 713.  
16 Buckle, above, n 11, Vol 2, p 327.  
17 Stephen, above, n 15, p 712.  
18 See Buckle, above, n 11, Vol 1, pp 27, 31.  
19 Miller discusses the "conspicuous legibility" of the Balzacian world (144); see also Jonathan Culler, *Flaubert: The Uses of Uncertainty*, Paul Elek, London, 1874, p 100.
readings. In fiction, the idea of the detective as the guardian of truth survived - was in fact revivified - in the powerful figure of Sherlock Holmes. As Stephen Knight has observed, Holmes's virtuoso displays of inductive reasoning are often a kind of rhetorical flourish which have little to do with actually solving the crime in question. This parallels Robert Louis Stevenson's observation in 1883 that the technique of circumstantiality in realist narratives had "fallen into a merely technical and decorative phase" which lacked epistemological force. I would like to take up Stevenson's suggestion that in the late nineteenth century the realist novel (as exemplified by Balzac) had entered what was essentially a mannerist phase, and apply this notion to Henry James's novel of 1901, The Sacred Fount. In this novel, the interpretative processes associated with the circumstantiality of realist narrative are carried to absurdly self-conscious and exaggerated lengths. Critics have disagreed as to whether the novel represents an apotheosis or a dark parody of nineteenth-century detection. I think that it a mannerist version of the nineteenth-century novelistic project of mastering the world through the interpretation of circumstances, which, in its grotesque exaggeration of the inductive process, foregrounds the unreliability of the detective as reader of circumstantial evidence.

The narrator of James's The Sacred Fount is, like the inductive reasoners of Victorian science and history, an obsessive searcher after the laws that govern puzzling phenomena. At a weekend houseparty at a country house, he meets a married couple of his acquaintance, the Brissendens, who seem to have undergone extraordinary physical changes since he last saw them. Mrs Brissenden, whom the narrator knows to be ten years older than her husband, appears remarkably young, while her husband has preternaturally aged. By induction from these phenomena, the narrator creates his theory of "the sacred fount" - the "law" that in any intense sexual relationship, one partner gains at the expense of the other. Finding that another guest, Gilbert Long, seems to have gained remarkably in wit and cleverness, the narrator deduces that he has been the beneficiary of this law, and sets about trying to discover

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20 The English historian H A L Fisher was confident that "As the evidence accumulates the margin of doubt contracts in history as well as in other branches of study" and "sanity will set very narrow limits to the license of interpretation" - "Modern Historians and Their Methods" (1894) 56 Fortnightly Review 811. The loss of such confidence in European historiography is discussed by Harden White in Metaphistory: The Historical Imagination in Nineteenth-Century Europe, Johns Hopkins University Press, Baltimore, 1973, pp 40-1.


Long's sexual partner, who must, according to his theory, be an "intellectual ruin". The process of hunting down this woman becomes a game based on strict rules of evidence. The narrator scorns both the direct evidence of his own senses (which he calls the method of "the detective and the keyhole"), and the direct testimony of others, which, like a well-trained historian, he invariably regards with suspicion. Rather, his game of detection is based exclusively on circumstantial evidence. There is no shortage of this, because to the narrator, every observable detail of his world becomes evidence which fits - or must be made to fit - his theory. Physical, social and psychological circumstances solicit his readerly attention; the smallest detail, he believes, "clamoured ... for an interpretation" (102), and the most trivial circumstances are imbued, to his eyes, with "a guilty significance" (37).

The product of this over determination of circumstantial detail is, as D. A. Miller says of the Balzacian text, a world "not so much totally intelligible as it is totally suspicious". Because the narrator applies no principle of relevancy in gathering his evidence, every circumstance is made to bear witness in some way to his theory. His obsession that Things had ... to hang together" (228) recalls William Best's warning in his 1849 treatise on evidence about the seductions of circumstantial evidence; Best observed "there is ... natural to the human mind a tendency to suppose greater order and conformity in things than really exist, and a sort of pride or vanity in drawing conclusions from an isolated number of facts, which is apt to deceive the judgment". The great detectives of nineteenth-century fiction were created in defiance of such warnings about the pitfalls of intellectual vanity; Poe's Dupin and Doyle's Holmes pride themselves on drawing immense conclusions from a small number of facts, and their inferential leaps are endorsed by the texts in which they appear. But such endorsement is withheld from the narrator of The Sacred Fount: the novel is a truly "fantastic" text in Todorov's sense that it is finally impossible to decide between realistic and non-realistic explanations of events, and it is thus impossible to pass a final verdict on the narrator's theory. Still, it is hard to avoid the conclusion in reading the book we have been, as the narrator himself suggests, "steeped in the last intellectual intimacy with a maniac" (288). Intoxicated by the idea that inductive knowledge has made him an "omniscience" and a "providence", the narrator's attempt to appropriate his

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23 H James, The Sacred Fount, Methuen, London, 1901, p 38. All subsequent references are to this edition and are included in the text.
24 Miller, above, n 14, p 145.
25 Best, above, n 7, p 317; see also Wills, above, n 4, pp 48-9.
world through his power as a reader becomes more and more extravagant and
dangerous. As his readings from the evidence cut completely adrift from any
consensual notion of "the real", he becomes increasingly isolated within, and
threatening to, his community. The narrator of *The Sacred Fount* offers a
sinister parody of the project of detection celebrated in nineteenth-century
scientific history and sensation novels; here, the figure of the detective has
become the site, not of epistemological security, but of epistemological chaos.

The narrator figures his role through a narrative archetype of the process of
detection on the basis of circumstantial evidence: the fitting of the glass shoe
in the tale of Cinderella (258). But as he finally admits, "Anybody .. could
fit the shoe" to a false story (301). His readings from the evidence have to
compete with readings produced by other guests at the houseparty - readings
contemptuously dismissed by him, but finally completely dominant over him
in their power to define "reality", at least in any socially operative sense.
Listening to another guest give her interpretation of events, the narrator
marvels at the difference in the stories that could be inferred from the same
circumstantial evidence: "Vast, truly, was the world of observation, that we
could both glean in it so actively without crossing each other’s steps" (184).

The crisis of narrative authority in *The Sacred Fount* is the same crisis which
was shaking the scientific pretensions of historiography: the realisation that
readings from the evidence are potentially infinite, and that in elaborating a
particular interpretation, the reader engages in a discursive act no less suspect
than those of the witnesses and sources whose testimony was regarded with
so much suspicion. Circumstantial evidence increasingly raised in fiction and
in historiography the same problem it had always raised in law: the problem
of the reader and his or her role in constructing narratives. Merely to label
certain circumstances as evidence is a rhetorical act, and the use of
circumstantial evidence showed readers are rhetoricians no less than speakers
or writers, and the act of reading evidence falls within the same discursive
field as the act of giving testimony, being subject to the same forces of
language and ideology. Now the reader, no less than the narrator, had become
an object of suspicion. The late nineteenth-century disillusionment with
circumstantial evidence was more than the loss of faith in a particular
technique of realism; it entailed a radical recognition of the dynamics of the
narrative process. Circumstantial evidence had allowed lawyers, historians
and novelists to attack the problem of the unreliable narrator, but it was now
seen to raise an even deeper problem - the unreliable reader.