

Legal Realism in C.P. Snow

J. Neville Turner*

In 1978, I saw a review of a non-fictional book by the novelist C.P. Snow, called *The Realists*. It examined eight realistic novelists who had influenced Snow. I recommended it to my local library, at Ringwood, and they duly bought it.

When I was preparing this paper, I went back to the Ringwood Library to borrow the book. The girl at the Information Desk had never heard of C.P. Snow. However, she checked with the computer, and informed me that the book was not there. "Why not?" I said. "Probably taken out of circulation," she said. Nor was it at any connected branch library.

I mentioned this incident to my students. And not one of them had heard of Snow. And neither had the manager of the Monash University Book Shop!

Yet Snow died only in 1980. And at the time of his death he was regarded, perhaps with Graham Greene, as England's prime novelist. He is one of the very few English writers this century who obtained a title. Indeed, he was twice honoured, first knighted as Sir Charles Snow in 1957, and then becoming a Baron in 1964, under the name, Lord Snow. Of novelists with titles this century, I can think only of Sir Compton Mackenzie, Sir Hugh Walpole, and possibly Lord Archer. Snow never obtained the Nobel Prize for literature, but he was nominated for it, and was known to be disappointed not to achieve it. He was an academic, a scientist and a Cabinet Minister - in Harold Wilson's Cabinet. He coined two phrases, which have become common English parlance, "The Two Cultures" and "The Corridors".

The "Two Cultures and the Scientific Revolution" was the title of a

* Formerly Senior Lecturer in Law, Monash University; Visiting Lecturer in Law, La Trobe University.

famous lecture (The Rede Lecture of 1959) that sparked a notorious literary *contretemps*.¹ F.R. Leavis, the testy Cambridge scholar, counter-attacked him. Snow's major point was that the modern English *literati* had alienated literature from the important intellectual life of the era. He singled out "stream of consciousness" novelists such as Joyce and Virginia Woolf, and also attacked D.H. Lawrence, a great favourite of Leavis. He was particularly critical of departments of English where, he claimed, novels were studied as if they were merely verbal structures. The novelists who are the supreme practitioners of their art - the real "heavyweights", Tolstoy, Dostoevsky, Dickens, Balzac and Proust - are fish too big and too elusive for this kind of narrow criticism.

Leavis replied by an *ad nominem* attack.² He claimed that "Snow's novels read as if they were written by a computer rather than a living man."

There were threats of libel action. But sales of Snow's books soared as a result of this startling attack.

I am unaware of any artist who has lost favour so quickly and completely after his death as has Snow. Without entering into a debate on the merits of his craft, it seems to me that Snow's novels are ideal material, possibly uniquely so, in twentieth century English literature, for the aims of the teaching of law through literature, as I see them. What are these aims? I set them out in an article in 1985:

1. to introduce a three-dimensional approach to legal learning
2. to encourage students to think about the ethics of legal practice and the reality of the legal world
3. to introduce in a palatable way some of the niceties of the rules of evidence and procedure, and
4. to improve students' English.³

Snow's major work is a *roman fleuve*, entitled *Strangers and Brothers*. It is the story of the career of Lewis Eliot, who was born in a provincial city (not mentioned, but certainly Leicester, where Snow was born). The time sequence actually begins with the third book, *Time of Hope*, which covers Eliot's life from 1914 to 1933. Eliot becomes an articled clerk to a firm of solicitors, then is called to the Bar, then becomes an academic lawyer at Cambridge, and ultimately goes into Parliament and becomes a Cabinet Minister. The sequence consists of 11 books, ending with *Last Things* in 1970. Of course, a great deal of comment on law and legal practice is to be found throughout the books. But there are three books of Snow in which a trial features, and it is in these works that law is the central motif. Two of these novels are in the *Strangers and Brothers* series; they are *Strangers*

¹ F. R. Leavis, *Two Cultures? The Significance of C.P. Snow*. London: Chatto and Windus, 1962.

² Above n 1.

³ J.N. Turner, 'Teaching Law through Literature' (1985), 14 *University of Queensland Law Review* (1) at 61.

and *Brothers* itself (later re-titled *George Passant*) and *The Sleep of Reason*. The other is a later, independent novel, written in 1974, called *In Their Wisdom*. Respectively, the three books concern:- (1) a criminal trail for fraud; (2) a criminal trial for murder; (3) a testamentary dispute.

All of them contain minute analyses of the trial process, of the attitudes of lawyers, of the effect of the litigation on the litigants and witnesses, and comment on the capacity of the forensic process for obtaining the truth. The last book, *In Their Wisdom*, though almost completely unknown, is perhaps the most intriguing from a lawyer's point of view, in that, most unusually, it deals with proceedings in an appellate court. The contrast between the dramatic setting of a trial at first instance, and the rarefied atmosphere of the Court of Appeal, is very striking.

The hero of *Strangers and Brothers* is a rakish young solicitor called George Passant. He is an assistant solicitor at the solid, conservative firm of Eden and Martineau. He comes from a humble background, and, for that reason, is rather distrusted by the senior partner, Mr Eden. "He's not quite a gentleman". The partners themselves are an ill-matched pair. Eden is a man of the old school, but has no financial skills. He is not competent when it comes to detail and he is a snob. Martineau is amiable, a dreamer, but well disposed to Passant. Passant himself is ambitious and charismatic. He complains that he is doing more work than the rest of the firm put together - sometimes spending six nights running till dawn on a particular case. He also lectures part-time. Eden is not impressed by this. He describes Passant thus: "Passant's got a brilliant scholastic record - but that isn't the same as being able to take your coat off in the office."⁴ This is a typical comment of the practising lawyer (especially one who inherits a practice) on academic skills.

Passant, however, has gathered together a group of free-thinking young people, who worship him. Eliot is a fervent disciple. They meet at a farm at weekends, and discuss ways in which the young may rid themselves of the conventions imposed on them by the "bellwethers" i.e. the "old fogeys". They do not plot revolution, but they form a distinctly deviant fraternity in a provincial town. Eden considers that Passant's involvement is injurious to the firm's reputation - "Think of the clients," he admonishes.

Martineau turns religious, and becomes a nomadic preacher. He considers giving his share of the partnership to Passant. But he is dissuaded by Eden, who buys out Martineau, and gives Passant a rise of £25 - a gesture which Passant finds insulting. And yet, strangely, but rather in keeping with Passant's ambivalent nature, he remains with the firm and often shows pride in it.

In 1927, Lewis Eliot leaves his home town, and goes into chambers in London. He has little contact with Passant's group, but in 1932, he learns

⁴ C.P. Snow, *Strangers and Brothers*. New York: Charles Scribner's Sons, 1959, at 116.

that a scandal is brewing. Then he is summoned by a friend to come back to the town. Passant has been interrogated by the police. Lewis is able to ascertain the details of the accusation from the detective in charge of the case. He speaks to Passant, who is frightened that the police will tell his boss, Eden. But that would be a "breach of privilege", says Lewis. "Yes, but it happens", replies Passant, sagely and no doubt accurately.⁵ Here we see a legitimate fear that news will out even in spite of professional protocol.

And sure enough, Passant and two of his followers are arrested. Lewis Eliot is briefed to defend them in the Magistrate's Court. The charge is conspiracy to defraud. In effect, Passant, a roguish character Jack Cotery, and the latter's girlfriend, Olive, are accused of having persuaded people to donate moneys to a journal that they have bought, by falsifying the number of subscribers.

The proceedings before the Magistrates are known in England as "committal proceedings." The dilemma for the defence is whether to vigorously defend the charge, in hope that the Magistrates will hold that there is no *prima facie* case to answer. If this tactic fails, however, the prosecution will be fully apprised of the defence. Eliot advises against it, but George Passant is indignant. He assures Eliot that there is absolutely no justification for the prosecution. The dilemma is well discussed by Snow. Eventually, persuaded by his co-accused, Passant reluctantly accedes. And, sure enough, the Magistrates, inevitably on the evidence, commit the accused to a trial at the Assizes. Passant is angry. He rails against the incompetency of magistrates. "If [only] these magistrates were trained as they ought to be, instead of amateurs who are feeling proud of themselves for doing their social duty..."⁶ There is some merit in this attack, for, in England, almost all Magistrates' Courts are manned by lay justices.

The accused are remanded on bail. The following day's newspaper report is headed, "Allegations against Solicitor". Snow comments on the timorous way in which the newspapers need to "make shapes and counters out of human beings in order not to endanger the trial."⁷ George Passant is not George Passant, with his private history and mannerisms; he is simply a solicitor accused of fraud. "I hope they get him," say many townspeople, reflecting, no doubt, a peculiar satisfaction that a lawyer is getting his come-uppance.⁸

Now Eliot is privately convinced that the three will be convicted. He frankly suggests to Passant that he might be advised to jump bail. Snow is taking a cynical line here, by even contemplating that a barrister would be a party to such a scheme. Yet this highlights the *credo* that permeates

⁵ Above n 4, at 161.

⁶ Above n 4, at 185.

⁷ Above n 4, at 186.

⁸ Above n 4, at 187.

all Snow's work. Moral issues cannot be resolved or even debated in black and white terms. They can only be posed in the light of concrete circumstances, involving real situations and dilemmas, and complex human beings. Lewis Eliot's affection for his former *guru* prevails over dispassionate professionalism.

This is perhaps perceived by the solicitor, Eden, to whom Passant has turned despite his intense dislike of Eden. Eden now perceives that Eliot is too close to the case. Moreover he is too young. Shrewdly, Eden advises that a jury is likely to be prejudiced against a young person. Like any young barrister, Eliot is wounded by the rebuff, but prudently agrees to be led by a senior. Eden suggests the head of Eliot's chambers, Francis Getliffe. Piqued, Eliot replies that Getliffe is a bad lawyer. But Eden retorts, "No-one's a hero to his pupils."⁹

In fact, the trial demonstrates that, although Lewis may be right in his assessment of Getliffe's legal abilities, before a jury this is of lesser importance than his skills as an advocate.

Now the parallel with the *Brothers Karamazov* is exact. For in that case, the less able local prosecutor made a stronger appeal to the jury than the sophisticated city barrister.

The trial scene is consummately described by Snow. The nervousness of Getliffe before the case. The full gallery, expectantly awaiting scandalous revelations. The meticulous, but rather pedestrian, opening of counsel for the prosecution, Porson, for whose career winning this case was of overwhelming importance. The unshakeability of the witnesses, who adduced that the three defendants had stated that the paper had an average circulation of 5000 per issue. The banter between Getliffe and the judge, which, Snow comments, revealed that Getliffe was getting on better with him than Porson.

It is plain that the three accused made the statement. Their only defence is that they were themselves misled by the seller of the agency, no other than Martineau, the solicitor-turned-preacher. And it is his evidence that turns the case. He promised to give evidence for Passant. But, on the night before he was due to be called, he had not turned up. Passant panics. He accuses Eden of conspiring to keep him away. But at the last moment, Martineau appears.

He admits that he lied about the figures. Porson's cross-examination is bitter. "Why should he now expect to be believed when he lied then?" But Martineau is tranquil. He explains that he exaggerated the circulation figures because he was too ashamed to confess how unsuccessful he had been.

Eliot, as narrator, comments, "Martineau has done us proud."¹⁰ It is, of course, clear to Eliot that Martineau had lied in the witness-box to save Passant. In fact, Olive confesses next night that they were guilty. They

⁹ Above n 4, at 211.

¹⁰ Above n 4, at 253.

knew full well that the circulation figure had never exceeded 1200.

Getliffe's emotional address to the jury amounts to a plea for an understanding of misguided youth. Passant is a "child of his time". But, argues Getliffe, he cannot be blamed, because "he represents a time and generation that is wretchedly lost by the side of ours." Eliot comments that some spectators thought the speech "shoddy to the core," but most were affected by Getliffe's outburst of feeling.

Porson, on the other hand, appears embittered, especially with Martineau's duplicity. Eliot comments that his speech was ill-proportioned. He spoke the jury's minds, but yet distressed them.

The jury acquits all three defendants. Porson is a bad loser. "These clods of juries,"¹¹ he rants. But the defendants are not happy either. Passant is angry with Getliffe's allusion to his private life. He realises that, although he has been acquitted, his reputation has been irreparably damaged.

A miscarriage of justice has occurred. The trial has failed to elicit the truth. The parallel with the trial in *Brothers Karamozov* is manifest - although in that case the error was the other way. An innocent was convicted.

Like Dostoevsky, Snow hints that a jury can be swayed by specious reasoning. Again, Snow points to a disparity in the quality of legal representation. (Getliffe was clearly more competent than Porson, despite being apparently less academically sound). But the most important factor was the false evidence of a witness who appeared credible and convincing.

The Sleep of Reason

We jump now 30 years, to 1963. Eliot is now Sir Lewis Eliot, famous. The College where he studied under Passant is now a University. Eliot is on the Council. While he is in the town, two female students are accused of a vile crime. They are charged with having abducted an eight year old boy, and after abusing him, beating him to death. One of the women is the niece of George Passant. George asks Eliot to observe the proceedings.

Eliot's son, Charles, advises him against doing so. It will become known that he was a former devotee of Passant. "Some of the mud will stick," says Charles.¹² But Eliot cannot let down his old friend.

The trial is at the Assizes (where all serious provincial criminal cases were heard until the Crown Court was established in 1972). The court on its opening day is vividly described. Snow has been accused of blandness of style, of eschewing metaphor. But can there be a more evocative description than this?

¹¹ Above n 4, at 503.

¹² C.P. Snow, *The Sleep of Reason*. Charles Scribner's Sons: New York, 1968, at 277.

"The entrance hall was high, bright from the lofty windows, crowded, people hurrying past. There were spectators making their way into the courtroom, policemen in plain clothes, rooted on thick legs, policemen in uniform stationed by the doors. On the wall-panels stood out the arms of the county regiments.... We climbed up the stairs and found seats which looked down into the packed and surrattating court... The whole court might have been miniature Georgian theatre in a country town, except that light was streaming in from the back of the auditorium."¹³

This trail was clearly based on an actual case that Snow had attended - the Moors case at Chester Assizes, where Myra Hyndley and her male companion had been found guilty of mass murders of children. (Snow's wife, Pamela Hansford Johnson published an account of that trial.)

Snow comments that a murder trial had now lost its "shadow of horror", since the abolition of the death penalty. Nevertheless, it was incongruous that the leading counsel for the prosecution outlined the horrific facts as quietly and factually "as if he were proposing an amendment to the Rent Acts".¹⁴ The judge politely addresses the women as "Miss". Snow comments, memorably, on the "business-like pathos of the legal process".

Prosecuting counsel is one Clive Bosanquet (one example out of many names chosen by Snow from first-class cricketers). He comments on the transformation in English rhetoric in the law courts since the thirties, when Bosanquet began to practise. The proceedings are simply a prosaic outline of the facts, supported by witnesses. Even though they are gory and gruesome, so routinely are they presented that there is a sense of let-down. There are patches of doldrums. The judge writes in longhand, and asks counsel to slow down. The huntsman who discovered the body has a quiet voice. He is told to speak up, but that is impossible as asking a tone-deaf man to sing! In a typical admonition, counsel tells the witness not to speak to him, but to the Judge.

The victim's mother gives evidence and seems to enjoy being the centre of attention. Eliot and his brother Martin have lunch with the barristers. There is professional gossip that contrasts sharply with the horror of the trail. Bosanquet refers to the judge as "Old Jumbo". There is much talk about outcomes, the gossip of the Bar which seems incongruous to a non-professional. They talk about the case. Most perceptively Snow comments:

"Martin might not have realised how much information lawyers possessed but could not prove or use."¹⁵

The women have pleaded not guilty. It was expected that the defence

¹³ Above n 12, at 279.

¹⁴ Above n 12, at 284.

¹⁵ Above n 12, at 317.

would not dispute the facts. There seemed little doubt that the women had killed the boy. They would plead “diminished responsibility”. Snow explains accurately that this concept was introduced into English law by the *Homicide Act* 1957, following widespread dissatisfaction with the *M’Naghten Rules* relating to insanity.

But the Act is an unhappy compromise. This novel in fact demonstrates the flaws in it, and is perhaps, for that reason, valuable material for Criminal Law, and certainly Criminology, teachers.

The trial now revolves round the testimony of expert witnesses. A Home Office pathologist is called by the prosecution. “Unvivacious as a Buddha”, he nevertheless enjoys the experience of being a witness. When he testifies that the injuries are consistent with “systematic torture”, defence counsel objects, successfully, that he is going beyond his expertise.¹⁶ When cross-examined on whether serious wounds were inflicted near the time of death, he replies,

“I regard it as most unlikely”.

Counsel presses, “It is not impossible?”

His lapidary reply: “In giving scientific evidence, it is often wrong to say something is impossible”.¹⁷

The next day begins with a kind of conspiratorial discussion between judge and counsel. Snow refers to it as a “colloquing mystery” and comments on the private world and the secret language of those who do business in the courts. It is an intimate fraternity that excludes the outsider.

Clearly, something dramatic has occurred. The defence announces, at last, a change of plea. The facts are admitted. The women will plead guilty to manslaughter, with “diminished responsibility”. One of the defendants, Kathy Ross, shouts in protest. The air is ripped open. All the previous decorum of the proceedings is breached. The judge reprimands her. But some observers consider that this is deliberate acting by her.

And now the trial revolves round the evidence of psychiatrists. It is contradictory. Adam Cornford, for the defence, considers Ross schizoid. “Abnormal?” “I don’t like that word.” Bosanquet, for the prosecution, beneath his “stubborn phlegm”, is irritated. He suggests that Conford is saying that every crime is *ipso facto* a case of diminished responsibility.

This exchange gives Snow an opportunity for a disquisition on responsibility, free will and criminality. The argument is continued at a party for the lawyers that Eliot and his brother attend that evening. Tempers flare. But there is much sense talked. Martin concludes that “lawyers are less hard-baked than he expected!”

Next day a famous Home Office consultant, Matthew Gough, is called by the prosecution as a counterpoise to Conford. His fame is due to his regular, anonymous, appearances on TV. This, says Snow, in a typical aside, brought him envy, but he still maintained his professional reputa-

¹⁶ Above n 12, at 320.

¹⁷ Above n 12, at 322.

tion. Gough opines that the killing was premeditated, even though the killers might now be suffering from amnesia about it. Finally, the women give evidence, with some degree of conviction, but with equivocal answers. Snow comments eloquently of Miss Pateman, "Her answers were shifting and shimmering like translucent film". She reads a lot. Bosanquet asks which authors. "Oh well people like Camus". Snow comments acidly:

"Bosanquet was taken aback. He was a good lawyer, but he wasn't well up in contemporary literature."

The final day is devoted to counsel's addresses. Bosanquet, for the prosecution, speaks "not with passion, but with attrition". He dwells on the question of free choice. If these women were not guilty, whoever would be? The two defence counsel dwell on the psychiatric evidence and the performance of the women in the witness box.

The summing-up of the judge emphasises the "relatively new" nature of the defence of diminished responsibility, and the fact that the doctors have disagreed. But this, said the judge, in his "easy and unselfconscious" style, is not to be regretted. "It is not in the nature of our law to have judgment by professional experts". Snow comments that, underneath the calm, magisterial facade there could be detected a distaste for theorists, and an edge of sarcasm at the "explanations" of the psychiatrists.

The jury takes much longer than expected to reach their verdict. But, after eight hours, the verdict of guilty is returned, and a sentence for life is passed. Snow comments that it gave "none of the gloating fulfilment of a death sentence."

Bosanquet has too much professional taste to accept congratulations.¹⁸

In Their Wisdom

The third novel which contains a trial scene is not part of the *Strangers and Brothers* sequence, although certain characters from the saga appeared in it. It was written in 1974. The events take place in 1972, when England and Australia drew a Test series.

Five of the main characters bear the name of famous cricketers. Two of them are named Massie and Underwood. Bob Massie took 16 wickets to win the Lords' Test Match for Australia. Derek Underwood won the Leeds Test for England. The others are the judge, Mr Justice Bosanquet (prosecuting counsel in "The Sleep of Reason") and two solicitors called Balderstone and Skelding.

The dispute revolves round a will. Mr Massie, a widower in his eighties, had a penchant for making and revoking wills. In all of them, however, he left the residue of his estate to his daughter, Jenny. But in his last

¹⁸ Above n12, at 435.

will, apart from a few bequests, he left the whole of his property to Julian Underwood, the son of Mrs Underwood, who had cared for him for 5 years. At first Jenny disinclined to challenge the will. But she is persuaded to do so by the wealthy tycoon, Swaffield, who knows her through his connection with a charity for which she does volunteer work. Swaffield is a self-made man, who was once snubbed by Mrs Underwood. His offer to pay Jenny's legal costs is motivated by revenge for this social insult.

The will is challenged on the ground of undue influence. The trial takes place before Mr Justice Bosanquet. The solicitor for Jenny is a "hungrily ambitious" workaholic called Symington, who wishes to become one of the first solicitors to become a judge!

Swaffield is, as it were, his patron. The solicitor for the Underwoods is Alex Skelding (the name of a former Leicestershire cricketer and, more famous, umpire). He was Mrs Underwood's old solicitor who prepared the will - to whom Massie had transferred his business.

After half-hearted efforts to settle the case have failed, it reaches the High Court. The courtroom is described as hard on backsides.¹⁹ The lawyers are in good humour. The litigants, the Underwoods and Jenny, do not enjoy the sight of the lawyers being so jolly among one another.

Mr Justice Bosanquet wears a contented look. Late in life he had been appointed to the Family Division. (Snow was up-date, as this was created only in 1969.) He regarded this as "a nice terminal job for anyone like himself, not much of an abstract lawyer, but still inquisitive about people."²⁰ (A rather common gibe at Family Law.)

Counsel for Jenny, Mr Lander, opens. There are "gentle, pertinacious, twinkling questions from Mr Justice Bosanquet, and a few objections, part of the game, private badinage, incomprehensible to all but the lawyers."²¹ Lander makes a witty allusion, describing the case as "Cordelia cut out by King Lear", a phrase which the newspapers seize on!²²

The trial is long-winded and anti-climatic. Bosanquet J. pays great attention to detail. Jenny is nervous as Charles March, counsel for the Underwoods, strives to get her to admit that she had neglected her father. True, she had not seen him for ten years, but that was his wish, not hers. March insinuates that it had not been her first impulse to contest the will. But Jenny counters this impressively. As she steps from the witness box, she feels extremely let down. These people (the lawyers) are playing a game.²³ Was it worth it? At home, afterwards, she weeps.

The narrative of the trial is interrupted, as Snow probes the lives of the two barristers. They had been friends for years. Formerly they had been insecure with women. But they now enjoy the "star admiration" of successful barristers. March likes his liquor, but is never affected by it.

¹⁹ C.P. Snow, *In Their Wisdom*. London: Penguin Books, 1974, at 75.

²⁰ Above n 19, at 76.

²¹ Above n 19, at 77.

²² Above n 19, at 77.

²³ Above n 19, at 90.

Lander is more abstemious. Unlike the solicitors, they are not really concerned about the outcome of the case. As leading Chancery barristers, they each earn a comfortable £40,000.

(Incidentally, one wonders whether Snow got it right when he set this case in the Family, rather than the Chancery, Division. I rather think that matters of Probate were transferred to the Chancery Division on the abolition of the former Probate, Divorce and Admiralty Division).

The barristers discuss their case. They agree that much depends on the discretion of the judge. "No-one knows what passes through what the old Tortoise is pleased to call his mind", says Lander.²⁴

Of Jenny, March opines, "I have a very faint idea that she might be rather fun in bed."²⁵ Here, surely, Snow is accurately contrasting the childish badinage of the bar off duty with its decorum in it!

The prosaic nature of the evidence in these low-key proceedings adds some levity. A witness makes a mildly funny comment. Snow comments "which remark, the humour of the court as of all assemblies being elementary, gave much simple pleasure".²⁶

Mrs Underwood gives her evidence so confidently that one would not have realised that she had been sick before breakfast. (Snow here alludes to "litigation trauma" and also the Dostoevskyan perception that people often perform in court in a manner inconsistent with their true nature). She testifies that she had tended to Mr Massie because he was sad and lonely. She knew he had money, and had suggested that Mr Skelding should be consulted. Mr Skelding had gained Mr Massie's confidence. When asked why the will had been made not in her favour, but in that of her son, she says that it would not have been sensible to risk two sets of death duty.

Despite a testing, satirical cross-examination from Lander, Mrs Underwood leaves the witness box, having made a strong impression. But, Snow comments, the facts could not really have been as she had described. It had all sounded like an orderly business meeting - it must have been much less "tidy".²⁷

After brief addresses from counsel, Bosanquet J. gives judgment - "sitting contentedly in his place, teacher-like."²⁸ He begins with a homily on the wisdom of settling cases such as this. He expatiates on the law of undue influence, explaining that it was difficult to know where to draw the line. But, says Snow, although he was not a vain man, he prided himself on his understanding of human nature. It is plain that he had mistrusted Mrs Underwood. "One cannot study the final will without seeing in it the influence of Mrs Underwood."²⁹

²⁴ Above n 19, at 94.

²⁵ Above n 19, at 97.

²⁶ Above n 19, at 99.

²⁷ Above n 19, at 105.

²⁸ Above n 19, at 107.

²⁹ Above n 19, at 110.

The comment is made that the judge had no sense of dramatic shape. Instead of stopping short, he goes on for another five minutes, on the question of costs.

A notice of appeal is entered immediately. There follow negotiations for a settlement. Symington, Jenny's solicitor, is strongly in favour of it. And it might have been reached but for an extraordinary intervention. Swaffield is summoned by two politicians, who seek to dissuade him from further action because the revelations that he was involved in the case are having an adverse effect on the party. Swaffield is so piqued at this attempted blackmail that he vows to continue with the case. He persuades Jenny to defend.

Meanwhile, Julian's barrister, March, has arranged a conference, at which he also strongly advises Julian to settle. When Underwood enters March's chambers, he notices only a few law books. But there are also volumes of classical novels in old editions: Tolstoy, Dostoevsky, Dickens, Trollope, Balzac, Galdós. [This is a delicious allusion to the famous library of Counsellor Pleydell in Scott's *Guy Mannering* - but the novelists are all those written on by Snow in non-fictional works ("*Trollope - His Life and Art*", and "*The Realists*").

Underwood is not prepared to settle. "You'd be foolish if you didn't listen to lawyers," says Marsh.

"I did read law, a little once," replies Julian.

"That's worse than useless, as you ought to know.... Any lawyer in England will tell you that an appeal is more likely than not to fail."³⁰

And March parades the hallowed cliché, "Throwing good money after bad".³¹

And so the case proceeds to the Court of Appeal. The rarefied atmosphere of this court is consummately described by Snow. Abstract argument by both counsel on the meaning and scope of the doctrine of undue influence is supported by ancient precedents such as, *Hargreaves and Gay* and *Harwood and Baker*. [Snow correctly writes "and", not "versus" or "v", as this was oral argument.]

Snow describes the exercise in memorable terms:

"It had something of the air of a theological argument between people with faith in revealed truth. Calvinists trumping each other with a text, or a Marxist producing six lines from Lenin."³²

He comments that the law gets more abstract as you go higher up! The facts are "purified away".³³

There are three judges on the Court of Appeal. Two of them allow the appeal, the other dissents. The basis of the majority judgment is that Mr Justice Bosanquet had failed to give sufficient attention to the character

³⁰ Above n 19, at 195.

³¹ Above n 19, at 197.

³² Above n 19, at 273.

³³ Above n 19, at 274.

and condition of the testator. There was no sign that he was more influenceable than other men. The dissenting judge, predictably, considers that it is not enough for an appellate court to have come to a different conclusion from the trial judge. The verdict of the trial judge should stand unless manifestly unreasonable. In this case it was not so.

The irony of this case is, of course, that the advice of the lawyers, at all points, proved to be wrong!

Conclusion

This lengthy précis of the above books was necessary, for those who have not read them, to demonstrate the acuity of Snow in his perception of the trial process. Its interest lies in the doubts that Snow raises on the capacity of the forensic process to reach the truth. Snow's novels are characterised by dispassionate observation. He is not a polemical reformer. Neither is he an existentialist ritualist. Compared to Camus' *L'Etranger*, the trial processes in the above novels are not manifestly unjust or improper. Indeed, in the *Strangers and Brothers* trial, Snow adverts to the possibility of a jury being subverted from its ascertainment of the truth by the life-style of the defendants - precisely what occurred in *L'Etranger*. But the jury in fact acquitted.

The criticisms of the system are implied rather than expressed. True, Snow puts doubts about the jury system, and the wisdom of magistrates, in the mouths of some of their victims. But in these cases, it is special pleading. Moreover, the verdict in all cases was not manifestly wrong.

The key to Snow's perception of the fallibility of the legal system lies in his non-fictional writings. The influence of Trollope is probably paramount. Snow wrote a book on him alone. In *The Realists*, he considers eight novelists.³⁴ There are some surprising inclusions, and some surprising omissions. I should myself have considered Zola, in particular, and Flaubert more influential and certainly more "realistic" than either of Henry James or Proust. Galdós has indeed a mighty reputation in the Hispanic world, and was prolific. But can he be said to be a major influence? Dickens, I for once consider contains too much caricature to be considered a realistic novelist.

We are left with four writers, Balzac, Trollope, Tolstoy and Dostoevsky. In the *characterisation* of lawyers, as of others, the influence of Balzac is clearly to be seen. Trollope perceptibly influenced Snow's detached, non-judgmental narrative style, as well as his preoccupation with political and social intercourse, and the moral dilemmas raised by a professional career.

³⁴ C.P. Snow, *The Realists: Eight Portraits*. New York: Charles Scribner's Sons, 1978.

Tolstoy (and perhaps Proust) might be said to have inspired the rich characterising, and the panorama of characters that recur in Snow - and often, in the course of the saga, develop in unpredictable ways. Snow's constant recalling of previous events, in the later novels, and the relativity of *time*, owe something to Proust, one would think.

But surely, the salient influence on Snow was Dostoevsky, who occupies twice as many pages in *The Realists* as any other of the novelists.

There are frequent allusions to Dostoevsky in the novels. Surely, the discussion in jail with the lesbian women on their motivations for the murder may owe something to *Crime and Punishment*. Raskolnikov's senseless murder of the pawnbroker is based on a similar amorality, committed by the perpetrator on the general feeling that she was not fit to live, rather than from any personal animosity.

The character of Martineau in *Strangers and Brothers* (and again in later novels) might be Snow's attempt to create the "perfect man", as in Dostoevsky's *Idiot*. Of course, he finds that it is impossible to be a complete idealist in an imperfect society. (Eventually, Martineau renounces his preaching, and gets a job as a clerk in the firm of which he was formerly a partner!)

But, as far as the forensic process is concerned, it is surely *Brothers Karamazov* that has inspired all the three novels considered in this paper.

I have analysed the trial scene in that novel in some depth,³⁵ and come to the conclusion that, in the course of a trial, there are several factors that may lead to an error of justice. All of them were present in *Brothers Karamazov*. And I suggest that, in one way or another, most of them are presented in the three novels of Snow –

- a. Unequal Legal Representation
- b. The Role of the Judge
- c. The Jury
- d. The Evidence of Experts
- e. The Admissions of Inadmissible Evidence
- f. The Failure to Produce Admissible Evidence
- g. The Artificiality of the Trial Setting

The final one, the overreaching query is: **The Impossibility of Ever Reconstructing the Truth.**

Snow's realistic analysis demonstrates that absolute, objective truth is an illusion, a chimera.

³⁵ J.N. Turner, "Dostoevsky - The Trial in *Brothers Karamazov*," (1985) 8 *The University of Tasmania Law Review* at 62.