Legal Modernism

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Introduction

In the past twenty years or so, the scholarship in modernist studies has made an increasing play on the disparate incommensurability of various 'modernisms'. That this is the case is hardly surprising, given that no writer or artist ever defined themselves as modernist: the term, rather, being subsequently imposed upon, amongst others, the vorticists, imagists, futurists, expressionists and impressionists of the early twentieth century. But contemporary critical work has also had a constitutive role to play in the creation of such plurality. The stretching of temporal and geographical borders together with the focus upon critically undervalued, popular and middlebrow writing has led to a significant growth in modernist studies – indeed Douglas Mao and Rebecca Walkowitz write that 'were one seeking a single word to sum up transformations in modernist literary scholarship over the past decade or two, one could do worse than light on *expansion*'.[1] A key part of this expansion has been the detailed exploration of the conditions which allowed for modernisms and shaped their precise formulation, with a significant example of such being the legal world. Recent work thus lights on the importance of libel, obscenity and copyright law to the formation of early twentieth-century literary experimentation.[2]

This last term, experimentation, is key, for what continues to unite much of the logic surrounding the concept of modernism is the sense in which it offers a radical commitment to change. Famously, this move was often articulated as a radical break with tradition. Ezra Pound's call to 'make it new' is as emblematic, here, as Virginia Woolf's request for 'new forms for our new sensations'.[3] The palpable sense that many writers had of performing a 'break' instigated a view of the literary artist as freed from convention (both literary and social) – not just the isolated genius of Romanticism but the politically significant smasher of codes. This chapter, then, is about how such change is articulated, and how a conceptualisation of law both informs and facilitates such articulation. Due to the restrictions on space it will advance this discussion exclusively through thinking about modernist prose writing, though this is not to say that similar phenomenon could not be identified in the poetry and drama of the period. It will begin by focussing upon a specific change: namely, the development of prose forms designed to express the problematic relationship between subjective experience and writing. Moving on to examine two modernist short-stories – William Faulkner's 'Barn Burning' and Franz Kafka's 'In the Penal Settlement' – the essay will conclude by pointing to the way in which modernist prose conceptualised its radicalism as a change in law.

A Formal Subject

That the experimentation seen in prose-fiction in the early twentieth-century represents a live issue for law and literature studies is a point that is in many ways most effectively made by work not predominantly focussed on modernism. Alexander Welsh, Lisa Rodensky, Jan-Melissa Schramm, Jonathan Grossman, Nan Goodman, Wai Chee Dimock, Laura Korobkin and Nicola Lacey (amongst others) have all written on the deep connections between law and literature in the nineteenth century and the first three in this list, in making cases about the procedures of trials, are especially explicit in concluding at the turn into the twentieth century.[4] The logic here is that while law, and the activity of a trial, continue to operate much like a Victorian novel, the novel itself wanders off into strange, experimental, territory. It is a logic that is also voiced by Maria Aristodemou, who writes that 'legal writers are like writers of realist fiction, trying to maintain the illusion of an omniscient narrator, chronological sequence, plot inevitability, and causal connections between events'.[5] Lawyers and Realists maintain this form because it serves as the best way to present a narrative in a convincing way – that is, it serves to present a narrative as a veracious account of fact or as pure content. What many modernist writers do is to remove the transparency of the medium and self-reflexively deal with form over content. Or, perhaps to be more accurate (and following the theoretical insight of the Russian Formalists) in modernism, form *becomes* the content.[6]

For Desmond Manderson, this understanding of what modernism is and does has not only been missing from law and literature works which examine modernism but with law and literature as an enterprise more generally.[7] Manderson characterizes the majority of law and literature studies as being obsessed with content at the expense of form (thus reducing literature to being purely representational) and of presenting a Romantic view of literature as redemptive of the law in some way. But this only captures a certain sense of literature – one which is decidedly of the nineteenth century. To think about the modernist novel, by contrast, would be to recognize the centrality of its form, style and language, its making (rather than representation) of a world and its use of multiple voices. Manderson concludes that to think about law through this lens would be to consider legal judgment as a verb rather than a noun, meaning that law becomes something that is continually *being done* rather than existing as an accomplished fact.

There is a critical heritage to Manderson's thesis. His conclusion, for instance, is reminiscent of Robert Cover who, in Jay Watson's words, 'wrote 'liberally of law as a bridge, or sometimes

simply a "tension," lining an actual world with an imagined future. The rules, principles, and precepts we develop in the effort to move from that reality to that future are, in the deepest sense, what law is'.[8] The Critical Legal Studies school that Cover partly inspired had also already thought about modernism in this sense. David Luban's *Legal Modernism* (1994) thus utilises the term to designate the critique of the accepted, traditional, assumptions of an art through the form of that art itself. Luban argues that, by the 1990s, legal theory (which he identifies as an 'art') had become modernist: 'modernist legal theory consists in retelling significant legal events in a way that deliberately and conspicuously detaches them from their traditional context. It aims in this way to arouse wonder and to excite our sense of the incongruity of continuing to rely on those traditions' (379).[9] For Luban, then, rather than needing to call on literary modernism in order to animate a different view of law, modernism (as an active questioning of its form) is a concept which describes late twentieth-century legal theory.

The fact that modernist prose exhibits this focus upon form is in many ways attributable to a dissatisfaction with the realism of realism. That is to say, many of the experiments with prose that took place from the very late-nineteenth century onwards were motivated by the sense in which the Victorian realist form presented consciousness (if it did at all) as unrealistically rational and complete. Henry James' 'point of view', Joseph Conrad's and Ford Madox Ford's 'impressionism', Virginia Woolf's 'free indirect discourse' and James Joyce's and Dorothy Richardson's 'stream of consciousness' all foreground a central consciousness not just unreliable but inherently limited. In James' *What Maisie Knew*, for instance, Maisie can only know what her limited years allow her to of her parent's divorce while, in Conrad, consciousness only belatedly decodes what is an initially obscure and meaningless world. In theorizing what both himself and Conrad were attempting with their 'Literary Impressionism', Ford wrote of realism's production of a 'corrected chronicle' that was too neat and tidy in its packaging of consciousness. Most iconically, in her essay 'Modern Fiction', Woolf questioned whether life was anything like the realist novel:

> Look within and life, it seems, is very far from being "like this". Examine for a moment an ordinary mind on an ordinary day. The mind receives a myriad of impressions - trivial, fantastic, evanescent, or engraved with the sharpness of steel. From all sides they come, an incessant shower of innumerable atoms.[10]

These famous words of Woolf's are addended by a comment that is no less significant in the context of this essay: namely that 'the proper stuff of fiction is a little other than custom would have us believe it'.[11]

I will come back to the question of custom and tradition in more detail later, but for the moment I want to emphasise two things about the formal experimentation displayed in modernist prose. Firstly, it is important to recognize that modernist prose leans towards, but does not reach, a point of complete abstraction. Rather, what continually animates the prose forms of modernism are its efforts to render the reality of subjectivity. That this involves mistaken perception, errors in judgment and misremembered facts is self-evident. What is also entailed, though, is a restless anxiety about what prose, in any form, can capture. This leads to the second point, which is that this anxiety and doubt is predominantly centred upon notions of time. In Woolf's *Jacob's Room*, for instance, Jacob Flanders slips through the nets of definition imposed upon him by others – but its power as a narrative of loss is also based upon the impossibility of that narrative itself to capture a Jacob that now only exists in the past. The image of the empty room at the end of the novel is thus an image of the failure of narrative as much as it is an image of the young men who died in the First World War. In a similar vein, William Faulkner's *Absalom! Absalom!* writes of an antebellum South that has to be creatively conjured in the mind of Quentin Compson (situated both post civil war and in the North) with the suggestion that it can never quite be authentically imagined. That both these examples deal with war is significant, as warfare set a context of loss within which high modernism worked. Even more significantly, though, they see the modern subject as fundamentally traumatised: a figure conditioned by a past that they cannot even quite remember.

Ravit Reichman has written convincingly of the omnipresence of trauma in the period, claiming that the nature of personal injury claims in an increasingly mechanized world pushed the law's ability to define and judge. For Reichman, the law's 'attempts at clarity were often undone by the unrepresentable nature of the cases before it, which confounded law's language of visibility and causality'.[12] In other words, the law as 'realism' was brought into question. It is also the case that many of the developments in psychology which had, in themselves, fuelled the turn to subjectivity in literary modernism also had an influence upon legal thinking. The text which marks the beginning of this development is usually thought to be Hans Gross' *Handbook for Examining Magistrates as a System of Criminalistics* which was first published in German in 1893 and translated into English in 1911. Gross retained a strong level of Enlightened rationality in that his popular manual, as Lindsay Farmer explains, 'explicitly tutored legal professionals on such topics as how to interpret mental states from the outward appearances of witnesses and suspects' – which is to say that an accurate interpretation was possible.[13] The translation of Gross' manual into English was thus timely, as the Criminal Evidence Act (1898) had ended close to a century in which the accused in a criminal trial was not permitted to speak.[14] The criminal trial at the

beginning of the twentieth-century therefore placed the accused, and their testimony, more centrally than had been the case in the preceding century. Already indicative of a turn toward the subject, the criminal trial was also having to contend with ever more complex notions of responsibility that Gross', and others', work prompted and which his rational approach could not fully control. Gross' manual thus indicated a 'growing awareness of the complexity, and often opacity, of motives and desires' and was developed by a new [15] 'science of testimony' which arose in Continental Europe and was extended through work by Edouard Claparède, Ernst Dupré, Alfred Niceforo and Hugo Munsterberg – the latter being largely responsible for the spread of these ideas to the US when he took up a position at Harvard University. Most well-known for being involved in the development of the polygraph machine, it was, in fact, the work that Munsterberg and others did on the fallibility of testimony rather than its conscious duplicity that was most significant.

The US context is important here because it was through it that the science of testimony really became part of a legal theory which questioned not just testimony but the form of the legal trial in its entirety. This theory was the Legal Realism of Jerome Frank, first formulated fully in his 1930 work *Law and the Modern Mind*. Completely at odds with any idea of novelistic 'realism' Frank's writing is actually much more like the 'legal modernism' which Luban identifies in the Critical Legal Studies movement. Thus, one of Frank's main aims is to critique what the form of the modern trial actually deals in and produces. In a challenge to the common-sense view of legal decisions as rules applied to facts, Frank asserts that, in the trial setting, 'facts' are never known in an unproblematic sense. He argues that the courts themselves:

> have observed that testimony is not a mere mechanical repetition or transcription of past events and that testimony often involves fallible inferences; in other words, a witness in testifying to things seen or heard or felt is inevitably making judgments on or inferences from what he has seen, heard or felt. And numerous experiments, made out of court, go to strengthen the conviction that, without any improper motives, witnesses, in forming such inferences, may badly misrepresent the objective facts.[16]

The obvious implication of this fallibility was that 'facts' were inevitably distorted once spoken of in court. But, Frank wanted to add a further layer to this fallibility by emphasising the concomitant subjectivity of the trial court. Thus, in his slightly later *Courts on Trial* (1949), he writes that 'the trial court's facts are not "data", not something that is "given"; they are not waiting somewhere, ready made, for the court to discover, to "find". More accurately, they are processed by the trial court - are, so to speak, "made" by it, on the basis of its subjective

reactions to the witnesses' stories'.[17] Frank's ultimate question is to ask how judgments are reached when the form of the trial is recognized in this way. And his answer is that judges and jurors, rather than rationally considering the 'facts' in order to reach a valid conclusion, instead begin with vaguely formed conclusions which they subsequently find ways of rationalising. When thinking about this in the context of literary modernism, it is hard not to be reminded of Ford's ridiculing of the 'corrected chronicle' of realism – a form which rationalizes that which was inherently irrational.[18] Indeed, Ford could easily have written Frank's statement that 'a man ordinarily starts with […] a conclusion and afterwards tries to find premises which will substantiate it'.[19]

Frank's conclusions about what a court really deals in and produces amount, ultimately, to a drastic undermining of the trial's ability to recover the past. Terming the inauguration of court proceedings in Western Europe as an age of the 'inquiry', Foucault writes of it as 'a new way of extending actuality, of transferring it from one time period to another and of offering it to the gaze, to knowledge, as if it were still present. This integration of the inquiry procedure, reactualizing what had transpired, making it present, tangible, immediate, and true, as if one had witnessed it, constituted a major discovery'.[20] That this 'reactualization' was becoming questionable is evident not only in the theory of the Legal Realists but also in the fact that appellate procedures were extended in several jurisdictions in the late-nineteenth and early-twentieth centuries. In France, for instance, a greater possibility for judicial review was granted to the *Cour de Cassation* in 1895, while the England and Wales Court of Criminal Appeal was established in 1907. The extension of rights of appeal registers the simple fact that the judgments of courts of first instance were being considered in more doubtful terms. But their remit and processes also point towards the obsession with form that was emblematic of modernist experimentation. For, appellate courts do not re-try cases – rather, through a careful examination of records, transcripts and submissions, they determine whether the narrative produced in the original trial was *formally* correct.

From One Law to Another

Despite the congruence between certain acts of legislation and legal theory with a particular thread of modernism charted above, it would also be true to say that the law did not, and could not, change either as swiftly or as radically as the novel did. The intransigence of law thus makes it a target for modernist authors. As Kieran Dolin points out 'modernist literature is a space in

which traditional boundaries and categories are questioned, and for this reason its representations of the law tend to be deeply critical'.[21] What I want to offer are two examples which present something of a counterpoint to this narrative. The first of these is a story by William Faulkner ('Barn Burning') which seems to extol the virtues of the law and place it in a space worthy of ethical choice. The second is Franz Kafka's story 'In the Penal Settlement' which, rather than denigrating a static law, uses the example of a justice system in the process of change in order to explore the dynamics of change – an issue which is prompted by modernist radicalism.

'Barn Burning' (1939) opens in a courthouse. The scene, and the ensuing story, is related by a third-person narrator but very much through the central consciousness of a young boy. The boy's sharecropper father, it emerges, is accused of burning the barn of his previous employer and the boy – Colonel Sartoris Snopes or 'Sarty' for short – is asked to testify. In a typically Faulknerian move, some of the most apparently authentic thoughts and emotions of his central character are elicited through italicized prose. On the opening page, the accuser is thus 'his father's enemy (*our enemy* he thought in that despair; *ourn! Mine and hisn both! He's my father!*)'.[22] In giving evidence, Sarty recognizes that his father '*aims for me to lie*', which he does (4). The conflict is therefore immediately set up between the boy's father, on the one hand, and the law, on the other. While Sarty lies adequately in court, his father has perceived a weakening in his resolve. Later that day, and after the Justice of the Peace has advised Snopes to leave the county, he accuses his son:

> 'You were fixing to tell them. You would have told him.' He didn't answer. His father struck him with the flat of his hand on the side of the head, hard but without heat, exactly as he had struck the two mules at the store, exactly as he would strike either of them with any stick in order to kill a horse fly, his voice still without heat or anger: 'You're getting to be a man. You got to learn. You got to learn to stick to your own blood or you ain't going to have any blood to stick to you. Do you think either of them, any man there this morning, would? Don't you know all they wanted was a chance to get at me because they knew I had them beat? Eh?' Later, twenty years later, he was able to tell himself, 'If I had said they wanted only truth, justice, he would have hit me again.' But now he said nothing. He was not crying. He just stood there (8).

Snopes' speech and action here are an exercise in eliciting conformity. He disciplines his son's body as he did his mules, a brute force exerted 'without heat', while with his words he

emphasises his independence from the rule of law. Above all, Snopes extols the virtues of 'blood', invoking a sense of kinship and familial bonds but also the authority of genealogy

Finding a new place to work, on the land of one Major de Spain, Snopes takes his son to the Major's house. The boy reports that 'he had never seen a house like this before. *Hit's big as a courthouse* he thought quietly, with a surge of peace and joy whose reason he could not have thought into words, being too young for that' (10). From this point onwards, the house and the world of de Spain is associated with the law (which is already engendering feelings of peace and joy). Sarty is described as thinking of the house as safe from '*him*', meaning his father. In a comical turn of events, his father walks horseshit into de Spain's home and ruins a $100 rug. This gives rise to another scene with a new Justice of the Peace who rules that Snopes, unable to recompense the Major for the full cost of the rug, will pay 'the amount of ten bushels of corn over and above your contract with him, to be paid to him out of your crop at gathering time' – in other words $5 (19). This gives rise to a resentful Snopes planning to burn the Major's barn. In a crucial moment in the story and, it is suggested, in the boy's life, he escapes the clutches of his mother and aunt and races to the house to warn the Major, who mounts his horse and rides towards the fire. Shots are later heard, with the inference being that Sarty's father was killed.

That the story ends in the cool early morning following this blazing night and with the boy descending a hill he had ascended the night before with the words 'he did not look back' is instructive (25). Sarty chooses a path when he warns de Spain and the story suggests that this is the path not just of lawful behaviour but of the Law. In one reading of the story the choice is between that and sheer lawlessness. As with all of Faulkner's fiction, the civil war looms large and it gives rise to a pertinent detail in this regard: namely, that, unbeknownst to his son, Snopes fought in the war only for 'booty – it meant nothing and less than nothing to him if it were enemy booty or his own' (25). The text thus positions law as a set of social agreements (communal but not tribal) which are opposed to both mercenary gain and wanton force.

What this reading underestimates, though, is the power of the father *as* Law. In the speech quoted above, Snopes' talk of blood compels his son to accept not just his father's authority but that of his father's father and so on. This is to evoke a principle of tradition that can match that of the Law's recourse to founding principles and the precedents of case-history. And, however illogical it may be, Snopes' conflict with authority, and even his acts of barn-burning, do seem to be based on a certain sense of principle – all of which is to say that rather than lawlessness he signifies a certain, perhaps outmoded, form of Law. Significantly, in order to make the leap to the other side, Sarty needs a substitute father figure (de Spain) who is connected to his ideas of

truth and justice (his house is as big as a courthouse). Even more significantly, the transition from one law to another can only occur through the death of the old father, killed by the new.

In writing about another work, *Requiem for a Nun*, Jay Watson argues that Faulkner's writing is continually expressing a form of jurisgenesis (the creation of legal meaning). Following Robert Cover's insight, Watson argues that courts, rather than being where law is made, are 'much more typically places where law is *un*made, where nomos is destroyed. The judges who preside over them "are people of violence" who "do not create law but kill it'.[23] Faulkner's writing presents jurisgenesis in this sense but it also practices it. Paradoxically, although he wrote mostly about the past and an old South, the formal innovation of his writing also took part in the creation of a new South, and a shared law to inhabit.

Franz Kafka's 'In the Penal Settlement' (1919) can be read as making a similar point to 'Barn Burning', though in a strikingly different manner. The story describes the witnessing, by an unnamed 'explorer', of the workings of a punitive machine administered by a similarly unnamed 'officer' in a colonial settlement somewhere in the 'tropics'. Indeed, the other two figures in the story – a 'condemned man' and 'soldier' – are also unnamed, suggesting at a significant reduction of identities to roles within a system rather than to names within a wider world. The idea of system, and a judicial system at that, is precisely what the machine, or 'apparatus' as it is called in the opening sentence of the story, represents. For this apparatus doesn't merely execute the condemned individual. Rather, through a complex arrangement of wheels and needles, it also carves the charge and sentence into the prisoner's body. The whole process is designed to take twelve hours and includes a moment of apparent enlightenment at the six-hour point when the prisoner recognizes the sentence passed on him (which to that point he has been ignorant of). In the course of the story, the reader also learns that the officer is the sole judge of penal matters on the island and that the prisoner has been condemned on the basis of an accusation alone. The setting up and working of the apparatus therefore passes judgment on the individual, communicates a verdict, punishes the body and, finally, executes the sentence. That the act of passing sentence is, at the same time, the act of physical execution is particularly revealing and asserts a point made later in the century by Robert Cover: namely, that law *is* violence.[24] In Kafka's story it is specifically through the language in which law asserts its meaning that its violence can be seen.

The judicial system of the colony (both the machine and the system that it designates) is sustained only by the actions of the officer and through an engagement with tradition. In ensuring that the apparatus is maintained and used, the officer is preserving its origins in the

designs and wishes of the 'old commandant' (the settlement is now governed by a 'new commandant' who holds opposing views). Midway through the narrative, the officer betrays a confidence to the explorer to this effect:

> This procedure and method of execution, which you are now having the opportunity to admire, has at the moment no longer any open adherents in our colony. I am its sole advocate, and at the same time the sole advocate of the old Commandant's tradition.[25]

Like Faulkner's 'Barn Burning', the narrative thus invites a father/son reading. The officer's continued subservience to the 'old commandant', which comes with an attendant distrust and even hatred of the 'new commandant', is that of an obedient son to his father. Tradition, here, is thus a paternal tradition, a law of the Father. In taking the explorer into his confidence, the officer comments that he knows the 'new commandant' wishes to abolish the system and that 'he certainly means to use your verdict against me, the verdict of an illustrious foreigner' (185). He then attempts to convince the explorer to side with him and reject the claims of the new commandant that the apparatus is inhumane. The explorer refuses but also goes on to claim that his comments to the new commandant would only be as a 'private individual' and would carry no judicial weight. Despite this claim, his lack of support is enough: 'So you did not find the procedure convincing,' he (the officer) said to himself and smiled, as an old man smiles at childish nonsense and yet pursues his own meditations behind the smile' (191).

The officer proceeds to serve a written sentence on himself, strip off his clothes and prostrate himself on the apparatus, serenely confident of the moment of enlightenment to follow. But it never arrives. The broken judicial system (broken because no one now accepts its validity) can only be represented by a broken apparatus and, as such it fails to operate properly. The rods and needles therefore do not spell out the sentence but, rather, jab at the officer's skin indiscriminately, committing 'plain murder' as opposed to 'exquisite torture' (196). No longer attaining to a system of justice, the breaking of the apparatus is fundamentally tied to a failure of that system to communicate its sentence and by extension, to communicate the 'justness' of its operation. That this has been prompted by the inability of the explorer to be 'convinced' by the procedure (to recognize it as just) is matched by the fact that he cannot read the sentences as they are set out on paper. When asked to read the sentence which the officer pronounces on himself:

> The explorer bent so close to the paper that the officer feared he might touch it and drew it farther away; the explorer made no remark, yet it was clear that he still could not

> decipher it, 'Be just!' is what is written there,' said the officer once more. 'Maybe,' said the explorer, 'I am prepared to believe you' (192).

In the story, the moment of enlightened understanding experienced by a prisoner is, symbolically, the moment in which the justness and validity of the system, and the individual's place within it, is accepted. But what Kafka refutes is the notion that this can ever be a peaceful act of tacit consent. Rather, law forcibly effects its validity through a continuous violence upon subjected bodies. And to break free from this requires not just a movement away from an old order but a violent burying of it. Thus, the closing pages of the story describe the explorer walking up to the Commandant's 'palatial headquarters': 'it made on the explorer the impression of a historic tradition of some kind, and he felt the power of past days' (197). Yet in searching for where the old Commandant is buried he eventually finds an unmarked grave hidden underneath some random tables. Just as in 'Barn Burning', a change of Law requires a death of the father.

While the killings in 'Barn Burning' and 'In the Penal Settlement' are literal, what I want to suggest is that radical change is always violent. Modernist experimentation thus entailed nothing less than the death of an old order which was enacted through the creation of new forms of writing while, in the law, such destruction took place through positive acts of interpretation which necessarily misread the past. Not content with undermining the status of 'facts' in a courtroom, Jerome Frank had something to say about this also. In the common law system, lawyers and judges are supposed to make use of precedents. Frank asserts that 'what the courts in fact do is manipulate the language of former decisions' adding that 'somehow or other, there are plenty of precedents to go around.'.[26] His fellow Legal Realist, Karl Llewellyn made a similar point: 'there is a distinction between the *ratio decidendi*, the court's own version of the rule of the case, and the true rule of the case, to wit what it will be made to stand for by another later court'.[27] The issue is no less one of reading in civil jurisdictions, where the law is to be interpreted, or misinterpreted, from a range of codes and statutes.

Kafka was well aware of this, and the idea finds expression in his most obviously legal work, *The Trial*: a favourite text of law and literature criticism which has often focused upon the 'parable of the law', told by a Priest to K. near the end of the novel. The parable describes a man apparently being barred from entering a doorway which will provide access to the law. The man is told by the doorkeeper that 'it is possible' that he may enter, 'but not now'.[28] The man waits outside the door for many years, until, approaching death, he asks the doorkeeper why, in all those years, no one else has ever attempted to enter the door. The doorkeeper shouts: 'No one else could gain

admittance here, because this entrance was intended solely for you' and shuts the door (197).[29] This short section of the novel has given rise to numerous readings.[30] But, rather than go into what these many interpretations say what I want to register is way in which Kafka's text engenders such a multiplicity. In fact, *The Trial* even appears to pre-empt the phenomenon by having K. and the priest immediately dispute the central point of the parable: for K., the man was deceived, for the Priest, he failed to listen properly and grasp his opportunity to enter the Law. The text, like the law, thus provides the basis on which it may be read logically yet contradictorily. And such reading, as Hans-Georg Gadamer points out, is a continuous act. A law should not, according to Gadamer, be considered historically but, like a text, 'must be understood at every moment, in every concrete situation, in a new and different way. Understanding here is always application'.[31]

There have been a number of ways in which twentieth-century literary theory has talked of the multiplicity of interpretation. But it could also be argued that modernist prose was the first form which self-consciously drew attention to such an idea through formations such as Kafka's but also through the use of open endings (Woolf), unfinishable projects (Proust, Richardson, Musil) and enough puzzles to keep the professors busy for centuries (Joyce). I began this essay by writing about modernism as radical change and the idea of performing a break with the past. While this was undoubtedly part of modernist aesthetics, I want to finish by emphasising what it was a change to. For, rather than instituting some kind of artistic anarchism, it is noticeable how so many modernists actually sought to instigate codes and rules for the 'new' – often packaged in a form common to the law: that of censure.[32] Thus, Pound famously cites what *imagistes* are NOT to do, Woolf sets out what is no longer valid post-1910, Forster renews a pact with the accepted aspects of the novel and a dizzying array of manifestoes from all over Europe state a set view of artistic endeavour. Both Faulkner's and Kafka's work, as shown in the stories examined above, are part of this change. But as well as instituting formal change in the novel, their writing also contemplates what exactly change is, how it is effected and how radical it might be – with law providing the apposite form in which to present these matters.

Notes

[1] Douglas Mao and Rebecca L. Walkowitz, "The New Modernist Studies," *PMLA* 123, no. 3 (2008): 737.
[2] See Sean Latham, *The Art of Scandal: Modernism, Libel Law, and the Roman À Clef* (2015); Rachel Potter, *Obscene Modernism: Literary Censorship and Experiment, 1900-1940* (Oxford: Oxford University Press, 2013); Paul K. Saint-Amour, ed. *Modernism and Copyright* (Oxford: Oxford University Press, 2011).

[3] Virginia Woolf, “Hours in a Library”, in Virginia Woolf, *Granite and Rainbow: Essays by Virginia Woolf*, ed. Leonard Woolf (London: Hogarth Press, 1958), 30.
[4] Alexander Welsh, *Strong Representations: Narrative and Circumstantial Evidence in England* (Baltimore, MD: Johns Hopkins University Press, 1992); Lisa Rodensky, *The Crime in Mind: Criminal Responsibility and the Victorian Novel* (Oxford: Oxford University Press, 2003); Jan-Melissa Schramm, *Testimony and Advocacy in Victorian Law, Literature and Theology* (Cambridge: Cambridge University Press, 2000); Jonathan H. Grossman, *The Art of Alibi: English Law Courts and the Novel* (Baltimore, MD: Johns Hopkins University Press, 2002); Nan Goodman, *Shifting the Blame: Literature, Law, and the Theory of Accidents in Nineteenth-Century America* (Princeton, NJ: Princeton University Press, 1998); Wai Chee Dimock, *Residues of Justice: Literature, Law, Philosophy* (Berkeley: University of California Press, 1996); Laura Hanft Korobkin, *Criminal Conversations: Sentimentality and Nineteenth-Century Legal Stories of Adultery* (New York, NY: Columbia University Press, 1998); Nicola Lacey, *Women, Crime, and Character: From Moll Flanders to Tess of the D'urbervilles* (Oxford: Oxford University Press, 2008).
[5] Maria Aristodemou, *Law and Literature: Journeys from Her to Eternity* (Oxford: Oxford University Press, 2000), 25.
[6] See Boris Eichenbaum, from “The Theory of the ‘Formal Method’”, in Vincent B. Leitch et al, ed. *The Norton Anthology of Theory and Criticism*, 2nd ed. (New York: W. W. Norton & Company, 2010).
[7] Desmond Manderson, "Modernism and the Critique of Law and Literature," *Australian Feminist Journal* 35, no. 1 (2011).
[8] Jay Watson, "Dangerous Return: The Narratives of Jurisgenesis in Faulkner's *Requiem for a Nun*," *Modern Fiction Studies* 60, no. 1 (2014): 109.
[9] David Luban, *Legal Modernism* (Ann Arbor, Michigan: University of Michigan Press, 1994), 379.
[10] Virginia Woolf, “Modern Fiction”, in Virginia Woolf, *The Common Reader* (London: Hogarth Press, 1951), 189.
[11] Ibid.
[12] Ravit Reichman, "'New Forms for Our New Sensations': Woolf and the Lesson of Torts," *Novel* 36, no. 3 (2003): 399. For a fuller account of trauma, law and narrative see Reichman’s *The Affective Life of Law: Legal Modernism and the Literary Imagination* (Stanford, CA: Stanford University Press, 2009).
[13] Lindsay Farmer, "Criminal Responsibility and the Proof of Guilt," in *Modern Histories of Crime and Punishment*, ed. Markus D. Dubber and Lindsay Farmer (Stanford, CA: Stanford University Press, 2007), 53.
[14] David Bentley, *English Criminal Justice in the Nineteenth Century* (London: The Hambledon Press, 1998), 204.
[15] Farmer, "Criminal Responsibility and the Proof of Guilt," 53.
[16] Jerome Frank, *Law and the Modern Mind* (London: Transaction Publishers, 2009), 116.
[17] *Courts on Trial: Myth and Reality in American Justice* (Princeton, NJ: Princeton University Press, 1950), 23.
[18] Ford Madox Ford, ‘On Impressionism’, in Martin Stannard, ed. *The Good Soldier: An Authoritative Text, Textual Appendices, Contemporary Reviews, Literary Impressionism, Biographical and Critical Commentary* (New York, NY: W. W. Norton, 1995), 263.
[19] Frank, *Law and the Modern Mind*, 108.
[20] Michel Foucault, "Truth and Juridical Forms," in *Power: Essential Works of Foucault 1954-1984*, ed. James D Faubion (London: Penguin, 2000), 47.
[21] Kieran Dolin, *A Critical Introduction to Law and Literature* (Cambridge: Cambridge University Press, 2007), 146.
[22] William Faulkner, “Barn Burning”, in William Faulkner, *Collected Stories* (New York: Random House, 1950), 3. Future references will be made in brackets within the text.
[23] Watson, "Dangerous Return: The Narratives of Jurisgenesis in Faulkner's *Requiem for a Nun*," 112.
[24] Robert M. Cover, “Violence and the Word”, in Robert M. Cover, *Narrative, Violence, and the Law: The Essays of Robert Cover*, ed. Martha Minow, Michael Ryan, and Austin Sarat (Ann Arbor, MI: University of Michigan Press, 1992).
[25] Franz Kafka, “In the Penal Settlement”, in Franz Kafka, *Metamorphosis and Other Stories*, trans. Willa Muir and Edwin Muir (London: Vintage, 1999), 183. Future references will be given in brackets within the text.
[26] Frank, *Law and the Modern Mind*, 159 & 63.
[27] Quoted in Peter Goodrich, *Reading the Law: A Critical Introduction to Legal Method and Techniques* (Oxford: Basil Blackwell, 1986), 74.
[28] Franz Kafka, *The Trial*, trans. Richard Stokes (London: Hesperus, 2005), 196.
[29] Ibid., 197.

[30] Some examples include Theodore Ziolkowksi, *The Mirror of Justice: Literary Reflections and Legal Crises* (Princeton, NJ: Princeton University Press, 1997); Ian Ward, *Law and Literature: Possibilities and Perspectives* (Cambridge: Cambridge University Press, 2008); Dolin, *A Critical Introduction to Law and Literature*.

[31] Hans-Georg Gadamer, *Truth and Method*, trans. Joel Weinsheimer and Donald G. Marshall, 2nd ed. (New York, NY: Continuum, 2004), 308.

[32] Sascha Bru goes even further, arguing that 'the historical avant-garde, as an aesthetic *project* or *process*, continues to shape present-day culture and literature. Consensus dictates, therefore, that the laws of literature are very much the laws set out by the avant-garde'. Sascha Bru, *Democracy, Law and the Modernist Avant-Gardes: Writing in the State of Exception* (Edinburgh: Edinburgh University Press, 2009), 194.