CHARACTER WITNESSES: CREDIBILITY AND TESTIMONY IN THE EIGHTEENTH-CENTURY ENGLISH NOVEL

by

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Dedicated to the Memory of my Father,

Thomas J. Judge

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Abstract

This thesis considers the history of the English novel as part of the history of credibility and testimony. Over the long eighteenth century, it was a commonplace of moral philosophy and jurisprudence that testimony should be evaluated based on both the plausibility of the subject matter and the credibility of the speaker. The origins of the English novel have been ably examined with respect to plausibility (factual probability). This thesis develops the idea that credibility and the novel are also intimately connected and argues that eighteenth-century literary credibility practices, developed from philosophy and law, informed how novels were read and characters were interpreted. In the eighteenth century, readers were expected to see and hear testimony in the novel, to interpret testimony as having visual and aural sensory evidence, and to use that evidence to interpret credibility, and judge from there which characters, and what parts of what they said, could be believed. The thesis examines the historically conditioned protocols and devices institutionalized by the novel for testing the epistemic and moral traits of credibility and the underlying epistemological theories for how credibility should be tested; and, it advances a testimonial paradigm, which calls attention to the presence of testimony and credibility protocols in the eighteenth-century novel.

Credibility, or the quality of deserving to have one's testimony believed, figures prominently in eighteenth-century philosophy, law, and literature, with each inquiry adding to its history. Seventeenth- and early eighteenth-century philosophy developed principles for probabilistic inferences about credibility based especially on visual evidence of the speaker's body that was elicited during the act of testifying. The English legal contribution to credibility included differentiating credibility and character, extending what can be known about credibility when little was known about character, and formalizing protocols and heightening consciousness of the ordinary practice of testimony appraisal. The novel's contribution was to model and refine forensic credibility procedures and apply them to ordinary decision-making involving conjectures about future facts. Readers' and jurors' epistemological and hermeneutic environments newly converged in the eighteenth century, when both faced the difficult interpretive task of evaluating people from only the localized evidence of particular testimony, rather than from personal familiarity with people's character or knowledge of their reputation acquired over time.

In order that readers (and characters) could know when to believe what characters said, eighteenth-century novelists incorporated credibility indicia and included procedures by which readers could actively test credibility for themselves. Readers were expected to bring credibility acumen with them but also had those skills honed through the act of reading novels. The eighteenth-century novel represented characters testing other characters' credibility by observing them in the act of testifying. Novels therefore were pedagogical devices that instructed readers how to manage the subjectivity and discretion of credibility practices by modelling credibility interpretation and by incorporating acts of credibility judgment. Eighteenth-century novels taught how to acquire information *from* other people (through testimony) when there was imperfect information *about* other people (by evaluating credibility).

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Chapter One: Credibility and the Testimonial Paradigm in the Eighteenth-Century Novel

> let me sift thee thoroughly; and by thy answer I shall judge of the sincerity of thy pretended declarations.... for I am trying thy sincerity now, and shall judge of thy new professions by thy answer to this question.[1]

It was a central preoccupation of the eighteenth-century novel to know when people were credible in order to decide when to believe what they said. Testing credibility by sifting other people thoroughly and trying their testimony through the rigours of probabilistic inquiry, as Clarissa does of Lovelace, is a skill that was performed by characters and demanded of readers. Credibility testing was, and is, required of both characters and readers in order for them to know when to believe what characters *say*.

The history of credibility in the novel is tied to the history of probability and testimony. The problem of when to grant assent to a proposition in the face of uncertainty preoccupied eighteenth-century philosophers. Part of this debate looked at what sources of knowledge could be reliable substitutes for personal experience. Most theorists acknowledged that testimony was a necessary component of knowledge production, given temporal and spatial limitations on direct personal experience, and yet also worried about how to evaluate testimony with its peculiarly evanescent qualities.

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[1] Samuel Richardson, *The History of Clarissa Harlowe* (1748), 3d ed., intro. William Lyon Phelps, 8 vols. (New York: 1902; rpt. AMS Press, 1984), vol. 5, pp. 330-331.

The evaluation of testimony and witnessing occupied a central position in numerous controversies over the long eighteenth century.

The evaluation of testimony included a credibility and probability component. As Matthew Hale in his late seventeenth-century *The History of the Pleas of the Crown* instructed, the "jury are judges as well of the credibility of the witnesses, as of the truth of the fact."[2] That is, phrased more generally, to assent to testimony, one must find both probability in the tale and credibility in the teller. People were admonished to conduct two inquiries, into the credibility of the witness and the probability that the facts are true, before giving their assent to testimony. To borrow the terminology of the *Port Royal Logic*, testimony should be evaluated based on the "internal credibility"—the plausibility of the subject matter—and the "external credibility"—the credibility of the speaker. This paired formulation was a commonplace in moral philosophy and jurisprudence throughout the long eighteenth century, discussed by Locke and Hobbes, among others. Yet, although literary critics point to the parallels between the interpretive acts of jurors and novel readers, both "specialists in epistemology" as Ian Watt famously phrased it, credibility has been eclipsed by probability in discussions of the history of the novel.[3] The process by which people assess character traits and ascribe credibility to others is ephemeral and difficult to articulate, and yet it is an essential hermeneutic skill for novel readers to know these historically contingent

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[2] Matthew Hale, *Historia Placitorum Coronae. The History of the Pleas of the Crown* (1676) ed. S. Emlyn (London, 1736), 2 vols. (Philadelphia, 1847), vol. 2, p. 312.

[3] Ian Watt, *The Rise of the Novel: Studies in Defoe, Richardson and Fielding* (London: Hogarth Press, 1987), p. 31.

protocols: how and why people were assessed as credible in the eighteenth century, what character traits were favoured, and how those were tested.

Testimony's role, however, curiously has been underestimated by modern scholars of philosophy, law and literature, despite the intense attention it received in moral philosophy and jurisprudence during the period at issue, and credibility likewise has been overshadowed by the intense scrutiny of probability. Instead, the probability focus has brought other pairings to the forefront including Michael McKeon on novel and romance, Lennard Davis and Barbara Shapiro on fiction and fact, Douglas Lane Patey on literary structure and probable signs, and Alexander Welsh on realism and circumstantial evidence.[4] In terms of Hale's framework, these varied studies all share a probabilistic mindset in their attention to facts, realism and narrative, that is, to the story rather than the storyteller.

Literary critics have struggled with the unsettling notion of "probability" in fiction. Probability is a "relational term," and "always relative to evidence,"[5] and the intrinsic content of fiction awkwardly maps on to factual probability. Robert Newsom attributes literary critics' struggles with probability to the logical oddity of using actual

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[4] Michael McKeon, *The Origins of the English Novel, 1600-1740* (Baltimore: Johns Hopkins University Press, 1987); Lennard Davis, *Factual Fictions: The Origins of the English Novel* (Philadelphia: University of Pennsylvania Press, 1983); Barbara Shapiro, *A Culture of Fact: England, 1550-1720* (Ithaca: Cornell University Press, 2000), chap. 8; Douglas Lane Patey, *Probability and Literary Form: Philosophic Theory and Literary Practice in the Augustan Age* (Cambridge: Cambridge University Press, 1984); and Alexander Welsh, *Strong Representations: Narrative and Circumstantial Evidence in England* (Baltimore: Johns Hopkins University Press, 1992).

[5] Patey, *Probability and Literary Form,* p. 150; Robert Newsom, *A Likely Story: Probability and Play in Fiction* (New Brunswick, NJ: Rutgers University Press, 1988), p. 91.

"facts" or the "real world" as a standard by which to judge fictions. The paradox of probability colours the debate between Arabella and the cleric in the penultimate chapter of Charlotte Lennox's *The Female Quixote*.[6] Arabella adverts that "every Relation has some Right to Credit." Her sentiment is supported by a Humean view that, as Arabella phrases it, the human mind has a "Love of Truth" that is "so easily obtained from Reason and Experience," if it is "not naturally implanted" (as Thomas Reid's natural propensity to veracity would have it). The Doctor counters that fictional authors have neither hope nor intention to be credited, to which a puzzled Arabella remarks that one who "writes without Intention to be credited, must write to little Purpose."[7] Arabella points to the crux of "fictional probability's" antinomy: what purpose does fiction serve, by what referent should it be judged, and what does it mean to believe and assent to fiction?

Probability, more precisely factual plausibility, figures prominently in novelists' defences of the status of fiction that were embedded in novels and laced through prefaces and postscripts. Newsom observes how eighteenth-century critics and novelists are "taken in by the discourse" of probability, "even if [they] are not taken in by the illusion,"[8] and probabilistic discourse is woven through the early novel as novelists define the liminal discursive space by detaching the novel from both unfashionable romances and factual histories. The narrator's meditation on probability

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[6] Charlotte Lennox, *The Female Quixote* (1752), ed. Margaret Dalziel, intro. Margaret Anne Doody and chronology and appendix Duncan Isles (Oxford: Oxford University Press, 1989), book ix, chap. xi.

[7] Ibid. p. 376.

[8] Newsom, *A Likely Story,* p. 97.

and conservation of character in the first chapter of Book 8 of *Tom Jones* is one of the most famous examples, cataloguing that writers of fiction should "keep within the limits not only of Possibility, but of Probability too" in order more easily to meet with assent by readers.[9] That writers should take "great Care to observe the Probability of Truth, which consists in saying nothing but what may Morally be believed," as Mary Delarivier Manley advised in her 1705 preface to *Queen Zarah*; this advice, that writers must self-consciously attend to how readers will receive the story, weigh the probability and decide whether to believe what they read, was repeated in numerous prefaces to the emerging novel.

Literary critics, theorizing from the reference point of intrinsic evidence, have speculated that probability theory "opened up the literary space that comes to be occupied by the novel."[10] McKeon, Davis, Patey, J. Paul Hunter, Barbara Shapiro, and Welsh, who all discuss the origins of the novel in relation to factual discourse, probability and realism, are allied in this endeavour. I am highlighting that probability theory, applied to testimony, had a second component of the extrinsic evidence of credibility, and that eighteenth-century legal developments in credibility—formal methods of reliably acquiring information from other people and what can be known about other people—opened up the generic space for the novel. Credibility is essential to the interpretation of fiction, both as part of the subject matter, and as a critical practice, because characters, internally, and readers, externally, need to know which

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[9] Henry Fielding, *The History of Tom Jones: A Foundling* (1749), Wesleyan ed. of the Works of Henry Fielding, ed. Fredson Bowers, with an introduction and commentary by Martin C. Battestin ([Middleton, Conn.]: Wesleyan University Press, 1975), p. 402.

[10] Newsom, *A Likely Story,* p. 168.

characters to believe, in order to arrange their affairs and understand the story, and need to be provided with testimonial evidence to decide these questions of which character is credible and to whom you give assent. What does it mean to believe in other people and assent to what they say?

While probability figured prominently in contemporary criticism, authorial defences, and generic definitions of the novel, credibility figured prominently in novelists' practices.[11] Credibility, unlike the antinomy of factual probability, took a more direct lineage from eighteenth-century epistemology and required less overt defensive measures; in contrast to factual probability, credibility is not heavily discussed in eighteenth-century literary critical theory, and that in turn contributes to credibility being neglected in modern literary theory. However, eighteenth-century authors use prefaces, narrative structure, and literary evidence to validate novels' testimonial legitimacy, call attention to testimonial evidence, and foreground methods to parse characters' credibility. Testimony is important to knowledge production in the novel and many eighteenth-century novels revolve around testimony passed from one character to another. Live oral testimony moves plots forward, even in novels more commonly thought of as emphasizing interior debates or written documents. The interpolated tale and the pose of the eyewitness both effectively foreground testimonial moments and credibility, but are just two of the several ways that credibility was incorporated as content and as an interpretive practice in the novel, including the

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[11] See generally, Ioan Williams, ed., *Novel and Romance, 1700-1800: A Documentary Record* (London: Routledge & Kegan Paul, 1970); George L. Barnett, ed., *Eighteenth-Century British Novelists on the Novel* (New York: Appleton-Century-Crofts, 1968; and Miriam Allott, *Novelists on the Novel* (London: Routledge and Kegan Paul, 1959).

devices of first-person point of view and the mock trial. The eighteenth century subscribed to the idea that it was at least as important that readers be able to assess credibility as that the story itself be deemed factually probable. Readers had to be able to determine which characters to believe in order to understand a novel.

Reading Paradigms

Robert Uphaus has drawn our attention to how eighteenth-century narratives include passages, which he calls "reading paradigms," in which the authors address themselves directly to the reader's expectations, discuss how to read the book, and draw readers into being participants rather than observers.[12] Patey further describes with respect to these reading paradigms how Augustan novels self-consciously take conditions of knowledge and learning as their subject and "teach certain capacities of judgment by dramatizing those capacities in action, that is, by creating inferential structures which to be read require the exercise of that very judgment which the author wishes to teach." These novels "provide characters with the data from which conjectures must be made and...invite readers to probable judgment."[13]

As that reading paradigm has been elaborated by literary scholars, this mutual act of probabilistic inference and judgment that characters and readers engage in is "reading character." Eighteenth-century "character," as Deidre Lynch and Paula Blank have shown, was polysemous. "[T]o speak of 'reading character' is not to speak metaphorically at all," Blank asserts, if metaphor is taken to mean the "mapping of one

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[12] Robert W. Uphaus, *The Impossible Observer: Reason and the Reader in 18th-Century Prose* (Lexington: University of Kentucky Press, 1979), p. 5.

[13] Patey, *Probability and Literary Form,* pp. 179 and 195.

discrete semantic domain onto another." Instead, "character," a "stamp" or "mark," as Johnson's Dictionary's first definition states, was quite literally lexically coterminous with "graphic and written marks or signs."[14] As Lynch and Blank amply illustrate, the idea of "reading" character had a strong cognitive pull. The polysemantic nature of "character" invoked overlapping thought processes between written marks and individual and fictional characters, rather than metaphors.

Certainly, reading and writing were part of the lexicon of character assessment, and critical and philosophic theory addressed the legibility of characters. One prevalent discursive strategy was to compare faces with the materiality of the book, two physical texts that can be read. Hogarth, for example, in his 1753 *Analysis of Beauty* refers to the face as the "index of the mind" which gives "a true and legible representation of the mind."[15] Henry Fielding in "An Essay on the Knowledge of the Characters of Men" says the "Passions of Men do commonly imprint sufficient Marks on the Countenance," while the Man of the Hill, approving of Tom Jones's visage, tells him that a "good Countenance is a Letter of Recommendation."[16] Character, as Patey develops, could be indecorously overdrawn, illegible, or not "well marked".

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[14] Samuel Johnson, *A Dictionary of the English Language* (1755; rpt. London: Times Books, 1979), s.v. "character"; Paula Blank, "'Character' Analysis: Writing and Identity 1500-1755," *Social Semiotics* 10 (2000): 265-280, pp. 266 and 268.

[15] William Hogarth, *Analysis of Beauty* (1753), ed. J. Burke (Oxford: Blackwell, 1955), p. 235.

[16] Henry Fielding, "An Essay on the Knowledge of Characters of Men," in *Miscellanies*, ed. Henry Knight Miller, 3 vols. (London, 1743; Middletown, Conn: Wesleyan University Press, 1979), vol. 1, p.157; Fielding, *The History of Tom Jones,* p. 450.

The etymological origins of the word "character" "institutionalized the cultural habit of writing persons, and reading persons, as texts,"[17] a cultural habit which continues to be instantiated and makes it difficult to stand outside, or at least straddle, these aspects of the reading paradigm. We are *drawn* in literary criticism to *underscore* and *underwrite character* and to *read legible faces*.

Eighteenth-century novels scrupulously attended to probability, as Patey has shown, but an equally important probabilistic inquiry was to appraise credibility from live oral testimony, and not just to read character as and from written text. Many scholarly hands are cooperating in the history of probability, illuminating eighteenth-century ideas of probability, the influence of probability on novelists, and connections between factual probability and realism. The history of credibility, and specifically its relationship to the history of the novel and to testimony, has not yet been accorded the same scholarly attention. This thesis therefore seeks to add credibility and testimony to the epistemological landscape which influenced the development of the English novel.

Literary and Legal Credibility

The characteristics that we now retrospectively identify as part of the ontogeny of the eighteenth-century novel, setting aside the question about the birth date of the novel, which studies such as Margaret Doody's *The True Story of the Novel* and Homer Obed Brown's *Institutions of the English Novel* debate, are intimately connected with

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[17] Blank, "'Character' Analysis,'" p. 270.

English common-law trial theory on credibility.[18] Although the idea of credibility was widely debated in several fields, novelists turned to law's formalized credibility assessment process as a source of standards for both the content of character and the procedure for testing it. Credibility, or the quality of deserving to have one's evidence believed, carries a strong cultural currency.[19] In the seventeenth century, history, religion, science, and philosophy were preoccupied with the epistemology of testimony. As the external referent for checking the factual probability of stories of marvels, miracles, exotic lands, and historical authorities became more tenuous, there was a higher cultural premium placed on perfecting the credibility assessment of those who told the stories. These disciplines had informal guidelines for assessing credibility, which recommended social status and past experience with a person's character as important factors. Law borrowed from these cultural practices but also modified the factors to suit the jurors' limited knowledge and formalized the environment within which credibility decisions were made. The English jury diverged both from other legal systems and from other disciplines by accepting that credibility could be assessed without prior knowledge of the speaker and without the hermeneutic assistance of relying on status factors and extrapolating individual credibility from character categories.

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[18] Margaret Anne Doody, *The True Story of the Novel* (New Brunswick, NJ: Rutgers University Press, 1997); Homer Obed Brown, *Institutions of the English Novel: From Defoe to Scott* (Philadelphia: University of Pennsylvania Press, 1997). See also, Ralph W. Rader, "The Emergence of the Novel in England: Genre in History vs. History of Genre," *Narrative* 1 (1993): 69-83; Michael McKeon, "Reply to Ralph Rader," *Narrative* 1 (1993): 84-90; and Ralph Rader, "The Novel and History Once More: A Reply to Michael McKeon," *Narrative* 1 (1993): 173-183.

[19] *Oxford English Dictionary*, 2d. ed., s.v. "credible," "worthy of belief or confidence; trustworthy."

Credibility is among that distinctive pool of social virtues, like honour, reputation, and fame, which can be acquired only through attribution by others. Credibility, as formalized by forensic rules, changed the idea of character. Two eighteenth-century legal innovations, one epistemological and one hermeneutic, were critical. First, the introduction of qualitative credibility brought new ideas about what can be known about other people. Second, developments in the jury's role introduced new ideas about how such character indicia can be successfully tested. The sanctioning of qualitative credibility assessments was a long eighteenth-century phenomenon that newly invested assessors with the discretion to *weigh* testimony. Instead of carrying a predetermined value according to the general status of the speakers or general conditions, such as oaths, juridical testimony from the eighteenth century forward is evaluated according to the individual character profiles of the speakers and the particular context of the testimony.

At the same time that the law broadened the range of credibility criteria, it restricted the jury's supply of character information to courtroom evidence. By including as credibility criteria dynamic traits that could be evaluated only by watching and listening to oral testimony, English common law jury assessments were loosened from strict dependence on immutable and socio-economic status factors, such as sex, age, and class, that were relied on by England's ecclesiastical and chancery courts and European civil systems based on Roman proof. In these systems, testimony can be assessed before it is given or from a written record without degrading the evaluation process because character values are quantified and independent of the testimonial delivery. By contrast, in the English common law trial, credibility was assessed on the

basis of traits elicited during the act of testifying in the courtroom; these traits could neither be adequately deduced later from written records nor inferred from extrinsic factors such as an individual's status or past. It was not merely the words of the testimony but the act of testifying itself which revealed character.

These developments increased the interpretive challenge for jurors. Credibility testing was a "to-the-moment" process of catching character as it dynamically appeared. The judicial credibility process approved the feasibility of discerning character within more confined interpretive parameters. The eighteenth-century credibility model with its individualized character traits and an emphasis on oral delivery together meant that legal theory believed assessors had the ratiocinative capability to evaluate a more complex idea of character within a more demanding credibility testing process.

Along with adopting the forensic credibility standards, novelists adopted the jury as the model for the reader. The jury's particular mode of interpretation was an influential hermeneutic model whose effect was heightened by the fact that jurors' character assessments were being enacted in a highly visible public forum. The trial highlighted the act of credibility testing itself and endorsed a high ratiocinative ability.

The epistemological and hermeneutic environment of jurors and novel readers converged in the eighteenth century. Seventeenth-century philosophical advice on credibility weighed the assessors' prior personal experience with a speaker's character heavily. Legal rules first compensated for the increasing likelihood that jurors would lack this cognitive factor and later transformed this noetic weakness into a desirable norm that jurors be limited to the information within the courthouse proper. Through qualitative credibility assessments, the law legitimated the idea that people could both

access a rich array of character factors about someone else and assess credibility while restricted to a confined temporal and spatial framework. Novelists expected that readers would bring credibility assessment skills with them as part of their hermeneutic repertoire, and jurors were a natural model for how readers would respond. Jurors were thought to be using ordinary reasoning in a special interpretive environment; the difference between quotidian and juridical character assessment lay in the generic parameters of the trial which demanded that credibility be judged quickly, on the basis only of the information available within the courtroom, and according to credibility indicia activated by a speaker's act of testifying. Novel readers faced a comparable interpretive environment in which a character's credibility had to be assessed, as in the trial, without recourse to extrinsic testimonial information; a fictional character's character, in other words, lay only within the four corners of the novel, just as trial participants' lay within the four corners of the courtroom.

Readers and jurors not only exercised similar interpretive practices to evaluate testimony but also enjoyed, or were burdened with, a similar discretion and subjectivity when making those decisions. The forensic credibility inquiry was still fundamentally a probabilistic one, which recognized the inevitable imperfection of knowledge and fallibility of interpretation; the credibility protocols managed rather than resolved doubt. Testimony is by its nature subjective because of the distinction between the utterance and the event, which introduces subjectivity first, in the witness's perception of the event, depending on the witness's opportunity to observe, abilities to remember and narrate, and biases, and second, in the listener's perception of the testimony, depending on the listener's understanding and reception of the utterance from the testifier and the

evaluation of the testifier's cognitive and moral abilities. Eighteenth-century writers were acutely aware that testimony was always interested and partial, that moral and epistemic traits inevitably colour witness's observations, memory, and narration. "[N]othing is more common," Defoe found, "than to have two Men tell the same Story quite differing one from another, yet both of them Eye-witnesses to the Fact related."[20]

The common law trial provided a formal structure, spatial and temporal parameters for decision-making, and procedural maxims, but assiduously resisted dictating how the criteria should be balanced. Credibility protocols, some critics felt, left too much discretion unaccounted for, as the depiction of magistrates, like Fielding's Squire Western, careening from censoriousness to credulity indicates.

The subjectivity and discretion of the forensic model raised risks inside and outside the frame of the novel: for characters, who worry they will be misunderstood or will censoriously or credulously misjudge others; for authors, that their novels would be misinterpreted; and for readers, that they might believe the wrong (fictional or actual) person. The interpretive concerns about credibility could be triggered when one was a subject *or* an object of credibility evaluation, respectively evoking anxiety that others would not attribute credibility to oneself when belief was merited and that one might not evaluate someone else's credibility fairly. "No weakness of human nature is more universal and conspicuous," Hume writes in his chapter on knowledge and probability in *A Treatise of Human Nature*, "than what we commonly call CREDULITY, or a too

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[20] Quoted in McKeon, *The Origins of the English Novel,* pp. 120-121.

easy faith in the testimony of others."[21] Eighteenth-century novels are filled with credulous Allworthies who do not rigorously scrutinize credibility and too facilely evaluate character. Epistemic and moral traits need to be tested carefully because well-meaning witnesses can be mistaken and nefarious witness can be deceiving. People could be trained to be better credibility evaluators through greater experience, but authors worried this would come only at the expense of losing virtue. Credulous characters are often depicted as virtuous, and the talented discerners often as blemished characters, such as Jonathan Wild and Lovelace, who are spoiled by a surfeit of experience.

Such subjectivity then needed a pedagogical supplement, one that would instruct without compromising virtue by teaching through vicarious experience. The novel conveys "useful precepts," as Frances Burney observes in *The Wanderer*, through a "picture of supposed, but natural and probable human existence," and "gives to juvenile credulity knowledge of the world, without ruin, or repentance; and the lessons of experience, without its tears."[22] Literature took up the problem of instructing readers as to how moral and cognitive traits should be weighed and when subjective assent is warranted. Eighteenth-century novels provided a model for how to apply law's formalization of the credibility assessment principles back to ordinary decision-making. Novels modelled a praxis of credibility.

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[21] David Hume, *A Treatise of Human Nature* (1739-1740), ed. L.A. Selby-Bigge, 2d ed. rvsd. by P.H. Nidditch (Oxford: Clarendon Press, 1978), book I, part III, sec. 9, p. 112.

[22] Frances Burney, Dedication to *The Wanderer, or Female Difficulties* (1814), intro. Margaret Drabble (London: Pandora Press, 1988), p. xx.

Legal evidence and procedures provided rules for a backward-looking credibility assessment. *Did* an individual do a specific act? The novel supplied pedagogical guidelines for applying the juridical credibility model to prescriptive (conjectural) purposes, which the Doctor in *The Female Quixote* identified as the "Power of Prognostication" that allows us, through the testimony we cull from reading and conversation, to "extend[] beyond our own Knowledge...[by] participating without Labour or Hazard the Experience of others."[23] The theory of knowledge that supported the trial could be applied equally well to predictive decisions, as the *Port-Royal Logic* declared:

> These rules for judging about past events are applicable also to future events. Just as we ought to believe in an event if certain circumstances are known to have occurred which are commonly connected with the occurrence of such an event, so also if the *present* circumstances are those ordinarily followed by such an event, we should believe that the event will probably happen. According to this rule...ordinary men daily judge of the greater part of contingent affairs.[24]

Novelists were addressing a different set of questions than those in the legal forum, but using the same skills and drawing on the same epistemology. How should one decide when to assent to other people for the purposes of guiding our future actions? *Will* people act in the manner that they say? Do they have a propensity or

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[23] Charlotte Lennox, *The Female Quixote,* p. 372.

[24] Antoine Arnauld, *The Art of Thinking* [*Port-Royal Logic*], trans. and intro. James Dickoff and Patricia James, foreword Charles W. Hendel (1662; New York: Bobbs-Merrill Co., 1964), p. 354. Originally published as *La Logique, ou L'art de Penser.*

proclivity to behave in that manner, and if so, do clusters of character traits accurately predict how people will act on a specific occasion? How can one test character in order to be able to predict more rationally and accurately than merely the probability that any person would behave in a specific way given a finite range of possible actions? The novel's long prose form was particularly suited to exploring the permutations of character that legal credibility had opened up to inquiry. Legal theory no longer conceded that questions about whether *this* witness would be believable on *this* occasion could be answered only by general ideas about whether people *like* the witness were believable. When law shifted away from that compromise, it validated the idea that people could adequately assess round characters, to invoke Forster's term, even where information was limited by generic parameters.[25] Novelists adopted law's testimonial paradigm for character tests and favoured the credibility indicia foregrounded by the trial.

Credibility is a probabilistic and empirical inquiry, as Chapters Two and Three discuss. With the new discretion for readers, there was a corresponding anxiety by novelists that readers be calibrated to a mean between credulity and skepticism, neither believing characters too readily nor too hesitantly. Novelists expected that readers would have credibility aptitude as part of their interpretive repertoire but also anticipated that readers would need to be instructed.[26] Readers were learning how to negotiate a subjective assessment of more particularized and individual fictional

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[25] E.M. Forster, *Aspects of the Novel* (New York: Harcourt Brace Jovanovich, 1927), pp. 73-78.

[26] Indeed, *Clarissa*, if Richardson had not had a penchant for eponymous titles, could have had the Austenian title of *Credulity and Skepticism*.

character traits within the confines of generic boundaries that prevented access to the kinds of extrinsic character evidence that would normally inform these judgments. Part of the novel's mission was to provide guidelines for how to manage social interactions that were not necessarily embedded in a web of personal relationships, how to acquire information *from* other people when there was imperfect information *about* other people. Eighteenth-century novelists were schooling characters in a kind of credibility *bildungsroman* to assess testimony by examining credibility *and* factual probability considerations, and to guide them to a golden mean between credulity and skepticism, the twin dangers of believing too readily or too grudgingly, by steering them toward warranted assent based on probability. Readers took the same instructional journey that characters did, first bringing credibility skills with them, to know which characters to believe and what statements to trust, and then having those skills refined during the process of reading the novel and identifying with the characters. The novel was a pedagogical device to help negotiate the belief spectrum between scepticism and credulity. Credibility aptitude, the art of sifting through a "heap of probabilities," was precisely the skill that readers needed to bring with them to the novel and which the experience of novel reading would then refine, improving people's subsequent decisions, whether made while serving on a jury, reading, or in daily life; novel readers could be epistemologically and hermeneutically rehabilitated as refined credibility assessors.

Novels were better instructional guides for credibility than either philosophy or law because they could provide more detail about both the act of testifying and the experience of receiving testimony. The eighteenth-century philosophical and judicial

writers, reticent about articulating and prescribing rules, deliberately omitted programmatic or dogmatic methods of how jurors were supposed to be deciding credibility, but the details of that attribution process were animated in the novels of this period. Novels generically are adapted to giving subtler nuances to the penumbra around testimony, such as demeanour, countenance, tone, and gestures, than legal trial texts, as well as more detailed insights about the cognitive processes to which philosophical and legal treatises can merely allude. The novel explores these processes in several ways. The novel acts as a pedagogical tool, in which novelists teach readers how to assess credibility by following the character-to-character judgments of "testimony," some successful and some not. Readers are then expected both to make their own credibility assessments of the novel's characters based on the novelists' inclusion and choice of credibility indicia, and to learn how to apply those character assessment processes outside the novel.

As a pedagogical device, novelists included examples of fictional characters assessing each other's credibility according to the same testimonial paradigm that readers were to use. Such character-to-character credibility simulations not only taught readers how to assess fictional characters inside the novel but modeled correct and incorrect credibility techniques for readers to apply outside the novel. Urbanization belied the assumption that, outside the courthouse or the novel, people would have recourse to prior experience with an individual, community opinion, or reputation to assist them in making credibility judgments. Daily interactions increasingly resembled the limitations found in the trial's and novel's generic constraints; individuals had to make on-spot judgments of others but could not draw on any reserve of character

information, either nurtured through direct experience or accumulated from other people's opinions, and required a repertoire of skills to help them make competent character assessments. The credibility model formalized by the trial and internalized by the novel helped hone character assessment skills that came to have broad social and cultural applications. While novelists assumed readers brought (some) skills with them, readers could also improve their moral and epistemic skills through the reading process itself, by following characters assess other characters.

Novels can also help us to extrapolate historical information about credibility interpretation and cultural ideas about what mattered for credibility. As an historical source, eighteenth-century novels give us today a sense of what traits are particularly important for a period and how people watching and listening to that testimony were expected to discern those traits. From novels, we can learn how people were expected to decide; how they actually did make decisions; which decisions were praised and which criticized; which beliefs failed and which succeeded; when assent was chastised as credulity or scorned as skepticism; and how characters were taught to make better credibility decisions.

There are no surviving legal sources which provide a privileged access to the methods by which juries judged credibility, or details of their reasons in specific cases, only terse conclusions in such sources as the *Newgate Calendar* and the *Old Bailey Sessions Papers*, with little indication of the cognitive processes themselves; moreover, even basic information about the testimonial evidence, such as who was speaking, are confused, making it very difficult to extrapolate not only what inferences the jury made

and by what method, but also on what evidentiary basis.[27] For example, illustrating how especially bereft these sources typically are of information that is relevant to the credibility evaluation process, the *Newgate Calendar* entry on Mary Edmondson, convicted in 1759 of murdering her aunt, relates only, "She made a defence indeed; but there was not enough of probability in it to have any weight."[28] Similarly, the narrative

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[27] David Cairns, for example, discusses how transcripts of trial testimony in newspaper reports, pamphlets, books, speeches and serial reports such as the *Old Bailey Sessions Papers* and the *State Trials* are full of errors, omissions and inconsistencies:

> Their accuracy and completeness is always questionable, and was a matter of complaint amongst contemporary lawyers. It is commonplace to find in these accounts translations from the first to the third person, the confused use of tenses, the juxtaposition of names, jumbled sense, and references to matters that do not appear elsewhere in the report but, more importantly, the comparison of alternative accounts of trials, where this is possible, often reveals disturbing levels of mistakes, omissions, or amendments in one or both accounts.

Advocacy and the Making of the Adversarial Criminal Trial (Oxford: Clarendon Press, 1998), p. 10. John Langbein describes how all the surviving sources, including the *Old Bailey Sessions Papers,* the *State Trials*, and the "Ordinary's Accounts" (compilations of the latter appeared in the *Newgate Calendar, Remarkable Tryals,* and *Select Trials* series) have weaknesses. The *Old Bailey Sessions Papers* are suspect sources whose narratives "suffered much deletion and compression," but lamentably, notwithstanding all their flaws, are the best surviving source, according to Langbein. The *State Trials*, Langbein concludes, are both unreliable and "grossly unrepresentative." The "Ordinary's Accounts," written by the clergy who attended Newgate inmates, include some descriptions of the trial, but focus on post-trial events such as a convicted criminal's prison stay and execution. These accounts, like the *State Trials*, were atypical. Written for a non-legal audience, the narratives highlighted more salacious and noteworthy crimes and more renowned criminals. "Shaping the Eighteenth-Century Criminal Trial: A View from the Ryder Sources," *University of Chicago Law Review* 50 (1983): p. 4, and generally pp. 1-24; "The Criminal Trial before the Lawyers," *University of Chicago Law Review* 45 (1978): 264-272. See also, Gerald Howson, *Thief-Taker General: The Rise and Fall of Jonathan Wild* (London: Hutchinson & Co., 1972), pp. 321, 324-325.

[28] I have taken this example from *The Complete Newgate Calendar, Being CAPTAIN CHARLES JOHNSON's General History of the Lives and Adventures of the Most Famous Highwaymen, Murderers, Street-Robbers and Account of the Voyages and Plunders of the Most Notorious Pyrates, 1734; CAPTAIN ALEXANDER SMITH's Compleat History of the Lives and Robberies of the Most Notorious Highwaymen, Foot-*

of Patrick Bourke's trial for sheep-stealing in 1745 reports only that, due to Bourke's story excusing his confession to the constable "not being credited by the jury," he was convicted.[29] This paucity of credibility information reflects the conundrum that the trial was institutionalizing formal rules for a process that contemporary philosophy had iterated was not governed by any rules and whose workings remained evanescent.

But the novel in turn can provide us with clues about how character assessment was conducted by jurors and thus fill in some of the gaps in the legal historical sources.[30] By re-animating the evanescent processes absent in legal sources, novels can help us extrapolate how juries historically have determined the credibility of trial speakers. The novel, with its full character assessment and psychological focus, is a Baedeker detailing how forensic procedures for credibility and testimony were applied informally to social interactions during the eighteenth century.

The common law trial was intimately bound up with the formalization of protocols for credibility ascription and the enactment of an empirical process. Novels

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Pads, Shop-Lifts and Cheats, 1719; The Tyburn Chronicle, 1768; The Malefactors' Register, 1796; GEORGE BORROW'S Celebrated Trials, 1825; The Newgate Calendar, by ANDREW KNAPP and WILLIAM BALDWIN, 1826; CAMDEN PELHAM's Chronicles of Crime, 1841; etc. ed. J. L. Raynor and G.T. Crook. 5 vols. (London, 1926), vol. 3, p. 268. There is no single definitive version of the *Newgate Calendar.* A "calendar" refers to the trial docket of accused in prison who are scheduled for criminal trials, and the "Newgate" calendar to Newgate prison, which held criminal defendants pending trial at the Old Bailey in London, and convicted criminals waiting for sentencing, and execution, pardon or, in the later part of this period, transportation.

[29] *The Complete Newgate Calendar,* vol. 3, p. 133.

[30] The realist novel can also ameliorate concerns many scholars raise about using actual legal records for micro-histories. Legal records deal by their nature with atypical people, making it difficult to extrapolate general cultural views from those records; and, the particular records which are the subject of micro-histories often exacerbate this problem because the records which are selected often feature quirky figures or curious happenings.

were intimately associated with pedagogical purposes. Novels enhanced the prescriptive aspect of credibility and domesticated it. They gave privileged access to how interior consciousness and states of mind correlated with another person's perception. When characters believe or assent, are their credibility evaluations correctly interpreting honesty and integrity, biases and motives, and competence? How might they better evaluate character so their attribution of credibility corresponds as closely as possible to the epistemic and moral attributions that credibility is testing for? Neither philosophy nor law can offer this revealing look within the ratiocinative processes that novels can represent. We cannot speculate whether eighteenth-century jurors correctly interpreted the veracity of a witness and whether jurors in practice were actually good at evaluating competence and integrity. But novels allow us, and permitted contemporary readers, a Momus's window into these ratiocinative processes. More significantly, novels' resolutions provide us with a measurement of how well characters do when they try to exercise these protocols—that is, how closely the belief resulting from particular credibility indicia and tests approximates "knowledge" within the internal referent of the novel—and these results are suggestive of contemporary belief systems about credibility.

More boldly, the history of these influences can be phrased as follows: the novel arose when full forensic credibility was born. Law formalized cultural credibility practices; novels instructed on how formal credibility is practiced, at the same time that their narrative structure relied on readers bringing credibility skills with them. Forensic credibility differentiated credibility and character, which in turn allowed the novel to develop intriguing and suspenseful plot lines and emotional identification with

characters as they struggled to assess when good characters lacked localized credibility and when bad characters bore particularized credibility. Moral philosophy provided the criteria and epistemology for testimony and factors for evaluating credibility (as Chapters 2 and 3 detail). The common law trial by jury design incorporated cultural facility with credibility and formalized protocols (as Chapter 4 describes). Novels instructed by detailing the indicia, modeling the protocols, and providing the means for readers to test the testimonial paradigm personally and then apply it in their ordinary decision-making (as Chapters 5, 6 and 7 discuss).

New theories of knowledge and interpretation lead to new literary forms and new procedures of interpretation, as Patey argues.[31] Thus, when we read we must account for prevailing theories of knowledge. I have been connecting theories of knowledge with theories of proof, the ratiocinative principles by which readers and jurors assess credibility. Credibility, as the quality of being believable, relates to an evaluation of the speaker. Thus, as credibility signifies an attribution rather than a quality intrinsic to the speaker, it focuses attention on the assessors and their ratiocinative processes, by contrast with probability's focus on the facts related. My interest then in exploring the affinities between the English novel and jury trial on credibility, character and testimonial paradigms is in the principles of proof, what John

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[31] Patey, *Probability and Literary Form*, p. 124.

Wigmore calls the "natural processes of the mind in dealing with evidential facts"[32] or what Barbara Shapiro calls "the ratiocinative process of continuous persuasion."[33] How does a juror, reader, or character come to believe that someone else is credible? What indicia signal credibility? What processes are used to test character? As Barbara Shapiro observes, there has been little scholarly attention to this area because, as "such matters of evaluation lie largely in the habitual patterns of thought of judges and juries, rather than in the formality of procedure, they leave few skeletal remains" in the form of rule changes.[34] Formal procedural and evidentiary rules do, however, supply the parameters within which the jury operates. These rules are tightly connected to the trial's epistemology and set up the parameters within which credibility is assessed, what indicia of credibility are favoured and made available to jurors, and how the testing is conducted. Foremost among these rules with an influence on credibility are the trial's rules on who can speak and with what authority and the time and space parameters for juries to assess these speakers.

My approach is sympathetic to Patey's Postscript to *Probability and Literary Form*, which cautions against ahistorical literary critical theories, particularly in the context of probability. Testimony is historically conditioned and contingent and the

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[32] John Henry Wigmore, *The Principles of Judicial Proof, as given by Logic, Psychology, and General Experience and Illustrated in Judicial Trials* (Boston: Little Brown, 1913), p. 14.

[33] Barbara Shapiro, *Probability and Certainty in Seventeenth-Century England: A Study of the Relationships Between Natural Science, Religion, History, Law and Literature* (Princeton: Princeton University Press, 1983), p. 182.

[34] Shapiro, *Probability and Certainty*, pp. 182-183.

credibility practices that authors have in mind for character-to-character and reader-to-character credibility evaluations are related to specific historic forensic practices.

Credibility and testimony have their own epistemology and hermeneutics. Different proof systems suggest different perceptions of who can evaluate credibility and what can be known. New procedures and evidentiary rules signal new ideas about proof, knowledge, certainty, and assent; proof, after all, is what is persuasive to the contemporary jury and what is persuasive depends on the prevailing theory of knowledge about what can be known. The argument here is that new theories of probability and testimony are connected to new ideas about credibility, and in turn to new trial procedures and to new generic possibilities for literature. I locate epistemological significance in the changing views of how credibility can be tested, how much can be known, and what indicia reveal information relevant to testing credibility. It is worth clarifying that this is not a teleological theory, but rather one that emphasizes historical conditions and change. The way that readers and jurors practice credibility, what they expect and what is expected of them, changes with the prevailing epistemology and formal principles of proof. The trial's procedures and evidentiary practices become formalized but also change over time, and, no doubt, such presumptions about credibility—who speaks and with what authority and how they should be judged—will change again in line with new cognitive theories.[35] Likewise,

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[35] Borrowing from H.A. Innis and Marshall McLuhan, one can argue that the kind of medium by which the trial reaches the public is significant. With the advent of electronic modes of disseminating the trial, as for example court television, the trial is subjected to a form of mediation which is comparable neither to spectating within the venue of the courtroom nor to newspaper or popularized trial accounts from this period such as the "Ordinary's Accounts" .

there is no apotheosis to be reached in the method of credibility testing and characterization in the novel. But there is epistemological significance and hermeneutic consequence to the decision of these genres, trial and novel, to include certain credibility criteria from which character can be assessed and to exclude others, and to permit a particular creditability testing device or to prohibit another by withholding the evidentiary means to conduct it.

It is a central tenet of this thesis that the history of the English novel is connected to England's legal history in all its particularity, including how juries decide credibility: who speaks to them and with what institutional imprimatur, where they sat, what they saw and heard, who saw them, how they deliberated, what they were expected to be doing, what information about character they brought with them to inform their judgments, how they compensated for what they did not know about the people who were speaking, how they decided whether to believe testimony. When we say readers are like jurors, that parallel has to be historically situated according to what jurors are doing in specific periods. I am proposing a multivalent scheme of influences in which neither literature nor law is autonomous.[36] In positing a relationship between

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[36] Pierre Bourdieu makes a related point. He theorizes that law formalizes latent cultural practices and that the formalization process of institutionalizing law itself has a significant influence on the culture.

> The shaping of practices through juridical formalization can succeed only to the extent that legal organization gives explicit form to a tendency already immanent within those practices. The rules which succeed are those which, as we say, *regularize* factual situations consonant with them. Even so, however, the movement from statistical regularity to legal rule represents a true social modification. ...[J]uridical formalization introduces into social relations a clarity and predictability.... [W]e must ... grant social reality to the symbolic power

literary and forensic credibility, the novel and the trial, and readers and jurors, I argue that the hermeneutic processes which were publicly enacted in the high profile venue of the courthouse is, as Geertz puts it, "constructive of social life not reflective, or anyway not just reflective."[37] As Geertz further describes, "Law. . . is, in a word, constructive; in another, constitutive; in a third, formational."[38] The trial captured novelists' imaginations as a potent epistemological *topos,* and also contemporary writers' attention from disciplines outside of law who freely drew on criminal trials as analogies. While the law was, in one sense, reflecting a cultural context in which traditional sources of information from which people made judgments about character were becoming lost and had to be supplemented or replaced, the rules that were newly incorporated into the trial-by-jury model to accommodate this cognitive deficit by jurors also effected a wider change in the cultural context, and in particular in novels. Geertz's axiom that "[l]aw ... is local knowledge," and "local not just as to place, time, class, and variety of issue, but as to accent—vernacular characterizations of what happens connected to vernacular imaginings of what can"[39] is important to keep in mind.

Credibility—literary, legal, and philosophical credibility—has a history. My approach has been influenced by what Ian Hacking in recent characterizations of his and Mary Poovey's research in *A History of the Modern Fact* calls "historical meta-

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> that 'formally rational' law (to use Weber's language) owes to the specific effect of formalization itself.

Pierre Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field," *Hastings Law Journal* 38(1985): 805-853, pp. 848-49.

[37] Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology*, 3d ed. (n.p.: Basic Books, 2000), p. 218.

[38] Geertz, *Local Knowledge*, p. 218.

[39] Ibid., p. 215.

epistemology,"[40] or what Barbara Shapiro distinguishes as the branch of law and literature studies that links "legal modes of thought of particular historical eras with non-legal cultural experiences of the same era."[41] Lorraine Daston defines historical epistemology as:

> the history of the categories that structure our thought, pattern our arguments and proofs, and certify our standards for explanation. Historical epistemology can be (indeed, must be) instantiated by the history of ideas, but it poses a different kind of question.... Historical epistemology not only transcends the history of ideas, by asking the Kantian question about the preconditions that make thinking this or that idea possible; it also drastically curtails the chronological scope of the history of ideas as traditionally conceived, for it radically challenges the

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[40] Ian Hacking, "Facing the facts. . . sort of: 'Historical epistemologist' examines the evolution of our basic ideas about knowledge," review of *A History of the Modern Fact: Problems of Knowledge in the Sciences of Wealth and Society*, by Mary Poovey, *The Globe and Mail*, 5 December 1998. For examples of the work of the historical meta-epistemologists, see Lorraine Daston, *Classical Probability in the Enlightenment* (Princeton: Princeton University Press, 1988; Mary Poovey, *A History of the Modern Fact: Problems of Knowledge in the Sciences of Wealth and Society* (Chicago: University of Chicago Press, 1998); Shapiro, *Probability and Certainty*; Shapiro, *Beyond Reasonable Doubt and "Probable Cause": Historical Perspectives on the Anglo-American Law of Evidence* (Berkeley: U of California Press, 1991); Shapiro, *A Culture of Fact*; Steven Shapin, *A Social History of Truth*; Steven Shapin and Simon Schaffer, *Leviathan and the Air-Pump: Hobbes, Boyle, and the Experimental* Life (Princeton: Princeton University Press, 1985); Peter Dear, "From Truth to Disinterestedness in the Seventeenth Century," *Social Studies of Science* 22 (1992): 619-631; and Peter Dear, *Discipline and Experience: The Mathematical Way in the Scientific Revolution* (Chicago: University of Chicago Press, 1995).

[41] Barbara Shapiro, "Circumstantial Evidence: Of Law, Literature and Culture," rev. of *Strong Representations: Narrative and Circumstantial Evidence in England*, by Alexander Welsh, *Yale Journal of Law and the Humanities* 5(1993): 219-241, p. 220.

> assumption of resemblance between ideas advanced by thinkers working within different conceptual categories.[42]

Mary Poovey, in *A History of the Modern Fact,* includes her work in "historical epistemology," describing the scholarship as assuming that "the categories by which knowledge is organized...inform *what* can be known at any given time, as well as *how* this knowledge can be used."[43] My study is also influenced by the interdisciplinary "new evidence" scholarship, which is returning to the philosophical and epistemological concerns underlying evidence law, including probability, which preoccupied eighteenth-century thinkers.[44]

The conventional formulation in the eighteenth century, as Hale's quotation indicates, divided testimony into two parts, comprising the content of the subject matter and the credibility of the speaker. Historical epistemology has concentrated on the probability of the subject matter, while this study takes up the second part. That is,

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[42] Lorraine Daston, "Historical Epistemology," in *Questions of Evidence: Proof, Practice, and Persuasion across the Disciplines*, ed. James Chandler, Arnold I. Davidson, and Harry Harootunian (Chicago: University of Chicago Press, 1994), pp. 282-283.

[43] Poovey, *A History of the Modern Fact,* p. 7.

[44] See, for example, William Twining, "The Rationalist Tradition of Evidence Scholarship," in *Well and Truly Tried: Essays on Evidence in Honour of Sir Richard Eggleston*, ed. Enid Campbell and Louis Waller (Sydney: Law Book Co., 1982), pp. 211-249; Twining, "Evidence and Legal Theory," in *Legal Theory and Common Law*, ed. William Twining (Oxford: Basil Blackwell, 1962), pp. 62-80; Richard Lempert, "The New Evidence Scholarship: Analyzing the Process of Proof," *Boston University Law Review* 66 (1986): 439-477; Jonathan Cohen, *The Provable and the Probable* (Oxford: Clarendon Press, 1977); Symposium, "Does Evidence Law Matter?" *Loyola of Los Angeles Law Review* 25 (1992): 673-1024; Symposium, "New Perspectives on Evidence," *Virginia Law Review* 87 (2001): 1491-2081; and Symposium, "Probability and Inference in the Law of Evidence," *Boston University Law Review* 66 (1986): 377-952. See also the special topic issue on *The Status of Evidence*, *PMLA* 111 (1996): 6-134, discussing various concepts of evidence in literary theory and criticism.

while those studies examine the criteria by which information becomes accepted as true and acquires the status of "fact," my own focus is on the ephemeral and transient process by which people assess character traits and ascribe credibility to others. *How* and why are people assessed as credible as part of the inquiry of evaluating whether to assent to testimony? What character traits are favoured and how are those tested? Are these protocols historically contingent? What is the role of law and literature, specifically the common law trial by jury and the novel as the most elaborate generic platforms for this hermeneutic exercise, and how do they integrate the epistemology?

This project is indebted to the scholarship on historical epistemology while also expanding its scope. In a review of Poovey's book, Hacking describes the idea of this discipline as to "understand the forgotten formation and evolution of core ideas that run through our notions of knowledge and argument: truth, objectivity, evidence, information, probability, proof, experience, experiment, wonder, curiosity, ignorance, classification."[45] In the following interpretation, I add credibility to the historical meta-epistemologists' list of core ideas informing knowledge and argument, an idea whose history is closely related to evidence, probability and proof. Whereas historical epistemologists have attended to the historical construction of "fact," "truth," and "objectivity," my focus is on the epistemology of testimony and the hermeneutics of credibility. Like Poovey's project,[46] this work also seeks to extend the method of historical meta-epistemology from its origin in the history of science to new disciplines,

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[45] Hacking, "Facing the facts. . . sort of." Ian Hacking's contribution to the field includes *The Emergence of Probability: A Philosophical Study of Early Ideas about Probability, Induction, and Statistical Inference* (Cambridge: Cambridge University Press, 1975).

[46] Poovey, *A History of the Modern Fact,* p. 7.

in my case literature and the history of law. It focuses then on the constellation of credibility, testimony, persuasion, belief, assent, character, proof, knowledge and interpretation.

A Testimonial Paradigm for the Novel

I am recuperating a tradition of testimony. Novels, just like numerous other Restoration and Enlightenment fields of inquiry, were seen as being full of testimony and people recognized the presence of and problems with testimony more explicitly than today. Seventeenth- and eighteenth-century culture was prepossessed with testimony; people were inclined to look for testimony, identify and acknowledge its presence *and* test its probability. Testimony was acknowledged as a probabilistic inquiry and it was a well understood formula that testimony would be evaluated using a two-fold framework that examined factual plausibility *and* the subject's credibility.

With the declining philosophic interest in and cultural neglect of testimony after the eighteenth century, the presence of testimony is less noticeable, and the attention to credibility accordingly diminished. But for the eighteenth century, testimony was part of the zeitgeist and credibility was intrinsically part of that culture. In the eighteenth century, readers were expected to see and hear testimony in the novel, to interpret testimony as having visual and aural sensory evidence, and to use that evidence to interpret credibility, and judge from there whom and what to believe. Readers, like characters, evaluated other people, "sifted them thoroughly," in order to know whether they should assent to what other people *said* they knew, so that readers and characters could decide if they believed them and could know that information too.

The English judge Francis North strongly expostulated with a late seventeenth-century jury, "It is the proper business of . . . juries to try not the grammatical construction of words . . . but the credibility of persons and things; which require collation of circumstances and a right judgment thereupon."[47] To put Judge North's suggestion more colloquially and apply it to the novel, by focusing on linguistic information, and what is written, readers miss the act of testifying, and by overlooking testimonial evidence—including the axis of credibility—the epistemological and hermeneutic universes of the novel are flattened, dampening the presence of testimony and hiding credibility protocols. Thus, while we recognize that jurors and readers are performing a similar epistemological exercise, we read out the testimonial aspect that most distinguishes the jury's role. The jury and reader parallel is an apposite one because jurors and readers use similar strategies for assessing credibility to evaluate testimony and operate from within the same epistemology. Readers *were* acting like jurors, but jurors were not "reading"; both were seeking out credibility information as an evidentiary basis from which to assess the probability of testimony. In a markedly similar directive to North's precept to attend to "the credibility of persons and things" and "try not the grammatical construction of words," we learn from Clarissa that Anna requests that she give her "the air and manner in which things are spoken" and Clarissa commends her because the "air and manner often express more than the accompanying words" (*Clarissa* 1:7). The act of testifying, Clarissa and Anna agree, is essential.

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[47] Roger North, *The Lives of the Norths*, ed. A. Jessopp, 3 vols. (London, 1890), vol. 1, pp. 303-314, quoted by Barbara Shapiro, *Probability and Certainty*, p. 261 n. 38.

I am proposing that by turning the reader and juror analogy around—by looking at how reading a novel is like evaluating credibility from testimony, rather than how evaluating testimony is like reading from written texts—we more closely replicate how the eighteenth century approached novels and the inquiries about testimony and credibility within them. The jury and reader comparison that I rely on here is not new. Watt famously observed in *The Rise of the Novel* (1957) that readers and jurors share many characteristics as interpreters of evidence, indicating that a comparison of the reading processes involved in the trial and the novel might be profitable. But previous treatments, influenced by the polysemantic notion of character, have thought first of jurors as interpreters of text, and not how the eighteenth-century reader was an interpreter of testimony; that is, the theoretical construct has worked closely in the paradigm that links "reading" and "character" and misses aspects related to "testimony" and "credibility." The tendency is widespread, and for an example we can look to Watt in *The Rise of the Novel,* who approvingly quotes Charles Lamb comparing Defoe's fiction to "reading evidence in a Court of Justice," without remarking the incongruity, in the common law trial by jury, of comparing the juror's role to *reading* evidence in court.[48] Lamb's phrasing of the metaphor gives a clue to how the reader and jury comparison has been understood: jurors, it is argued, are like readers (rather than the reverse), and hence, reader paradigms are an apposite model for the jury trial. The analogy between readers and jurors has been invoked in a consistent manner to call

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[48] Ian Watt, *The Rise of the Novel* (London: Hogarth Press, 1957), pp. 31-34. Watt uses the reader and jury analogy to support his theory of the novel's circumstantial realism by observing that both jurors and readers, in their shared expectations to know "'all the particulars' of a given case," take a "circumstantial view of life" (31).

attention to the readerly qualities of the jury by emphasizing those parts of the trial which can most readily be paralleled to written narrative, including circumstantial, factual reporting.

It is natural for literary critics and explicable for legal critics to turn to a reading paradigm and to see connections as one way: interpretation is *like and about* "reading." The perception of the jury's hermeneutic process has been circumscribed in accordance with the inferential data that has been accessible in the sources, and thus in hindsight jurors appear to be reading testimony. The reader paradigm makes a virtue out of necessity by accommodating the limitations of the surviving sources. As Lawrence Stone remarks of this mediated approach, "We historians cannot, alas, actually be present with notebooks, tape-recorders, and cameras, at the events we describe, but now and again we can find a cloud of witnesses to tell us what is was like to be there,"[49] or, more precisely, we can read what witnesses have said. "[S]torytelling, the circumstantial narration in great detail of one or more 'happenings' based on the testimony of eyewitnesses and participants," he explains, "is clearly one way to recapture something of the outward manifestations of the *mentalité* of the past."[50] What might be called satellite literature about the eighteenth-century criminal trial survives and has been a fertile resource for social and legal historians and for literary historians, who posit that factual documents, such as criminal biographies, are a precedent for the early novel. This satellite literature includes materials on the trial

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[49] Lawrence Stone, "The Revival of Narrative: Reflections on a New Old History," *Past & Present* 85 (1979): 14.

[50] Ibid., p. 16. Stone describes "historians of *mentalité*" as "chasing ideals, values, mind-sets, and patterns of intimate personal behaviour—the more intimate the better." Ibid., p. 21.

participants, criminal law and punishment, print crime advertising, and, in particular, biographies of felony defendants as in the *Ordinary of Newgate's Account*; these sources figure in the studies by Lincoln Faller, V.A.C. Gatrell, Philip Rawlings, Peter Linebaugh, John Bender, Hal Gladfelder, and Ian Bell, John Styles and Andrea McKenzie.[51]

These printed sources, however, lack the evidence on which the jury based their credibility assessments. Historical written narratives of trial proceedings, even where they purport to contain transcriptions of testimony as in the *Old Bailey Sessions Papers*, convey few visual and aural cues and limit our access to certain testimonial dimensions critical to credibility assessments.[52] Jurors in a criminal trial do not literally read

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[51] Lincoln B. Faller, *Turned to Account: The forms and factions of criminal biography in late seventeenth- and early eighteenth-century England* (Cambridge: Cambridge University Press, 1987); V.A.C. Gatrell, *The Hanging Tree: Execution and the English People, 1770-1868* (Oxford: Oxford University Press, 1994); Philip Rawlings, *Drunks, Whores and Idle Apprentices: Criminal Biographies of the Eighteenth Century* (London: Routledge, 1992); Peter Linebaugh, "The Ordinary of Newgate and His *Account,*" in *Crime in England, 1550-1800,* ed. J.S. Cockburn (London: Methuen, 1977), pp. 246-269; Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (London: Penguin, 1991); John Bender, *Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth-Century England* (Chicago: University of Chicago Press, 1987); Hal Gladfelder, *Criminality and Narrative in Eighteenth-Century England: Beyond the Law* (Baltimore: The Johns Hopkins University Press, 2001); and Ian Bell, *Literature and Crime in Augustan England* (London: Routledge, 1991); John Styles, "Print and Policing: Crime Advertising in Eighteenth-Century Provincial England," in *Policing and Prosecution in Britain, 1750-1850*, ed. Douglas Hay and Francis Snyder (Oxford: Clarendon Press, 1989), pp. 55-111; and Andrea McKenzie, "Making Crime Pay: Motives, Marketing Strategies, and the Printed Literature of Crime in England, 1670-1770," in *Criminal Justice in the Old World and the New: Essays in Honour of J.M. Beattie*, ed. Greg T. Smith, Allyson N. May and Simon Devereaux (Toronto: Centre of Criminology University of Toronto, 1998), pp. 235-269.

[52] Indeed, the loss of information conveyed through oral testimony and consequent dearth of credibility information that can be recorded in sources for subsequent analysis is precisely the justification for standards of review which restrict

evidence; they watch and listen. *Viva voce* testimony is a hallmark of the English common law trial form. They "try not the grammatical construction of words . . . but the credibility of persons and things."[53] Rather than approaching the jury through a reader paradigm, as Watt, Uphaus, Lynch, and Douglas Patey do, this thesis advances the idea of approaching the reader through a forensic testimonial paradigm.

The trial's orality and the jury's distinct role as assessors of oral testimony are, in a sense, "written out" by a reading paradigm. The historians of print and history of the book theorists, including Elizabeth Eisenstein and Adrian Johns, and orality scholars such as Walter J. Ong, set up chronologies which suggest that, in Western cultures, printing supplanted oral evidence as an authoritative method of transmission.[54] This

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appellate courts in their review of the trial courts' findings of fact. "[W]itnesses without any conscious bias towards a conclusion may have in their demeanour, in their manner, in their hesitation, in the nuance of their expressions, in even the turns of the eyelid, left an impression upon the man who saw and heard them which can never be reproduced in the printed page," as Lord Shaw wrote in *Clarke v. Edinburgh and District Tramways Co.*, [1919] S.C. (H.L.) 35, 36-37. This premise, that trial courts enjoy a "privileged position to assess the credibility of witnesses' testimony at trial," underlies the appellate deference toward trial courts' findings of *fact* (as opposed to *law*) (*Schwartz v. Canada* [1996] 1 S.C.R. 254, para. 32).

[53] Roger North, *The Lives of the Norths*, vol. 1, pp. 303-314, quoted by Barbara Shapiro, *Probability and Certainty*, p. 261 n. 38.

[54] Elizabeth L. Eisenstein, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early-Modern Europe,* 2 vols. (Cambridge: Cambridge University Press, 1979); Adrian Johns, *The Nature of the Book: Print and Knowledge in the Making* (Chicago: University of Chicago Press, 1998); Walter J. Ong, *Rhetoric, Romance and Technology: Studies in the Interaction of Expression and Culture* (Ithaca: Cornell University Press, 1971); Walter J. Ong, *Orality and Literacy: The Technologizing of the Word* (London: Methuen Press, 1982); Walter J. Ong, *Interfaces of the Word: Studies in the Evolution of Consciousness and Culture* (Ithaca: Cornell University Press, 1977); M.T. Clanchy, *From Memory to Written Record: England, 1066-1307* (Cambridge: Harvard University Press, 1979); Richard J. Ross, "The Commoning of the Common Law: The Renaissance Debate over Printing English Law, 1520-1640," *University of Pennsylvania Law Review* 146 (1998): 323-461; Richard J. Ross, "The Memorial Culture of Early Modern English Lawyers:

approach is congenial with law-and-literature scholarship, derived from the philosophy of Heidegger and Gadamer, which focuses on the linguistic and narrative qualities of law and treats written narrative as the legal text, and with the turn in twentieth-century philosophy toward linguistics. Literary critics of the novel, an irrefragably written genre, have accommodated the ineffably oral trial by emphasizing parallels between the trial's written evidence and the novel's written narrative.[55] Testimony, however, is the dominant instrument of proof by which to adduce evidence in the common law trial by jury. *Viva voce* testimony in open court highlights the jury's hermeneutic role as credibility assessors but is ill served by the surviving materials. The jury tends to be devalued in favour of other participants such as judges, magistrates, lawyers, legislators, and scholars, whose contribution is more easily conveyed through written text. Nevertheless, the jury served a critical hermeneutic role. Every trial speaker presupposes the existence of an individual or body of individuals who watch and listen to the speaker to make a credibility evaluation as a step in weighing the probability of testimony; in addition to determining the probability of the facts, the jury's role includes assessing and attributing credibility. A testimonial paradigm is designed to focus on

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Memory as Keyword, Shelter, and Identity, 1560-1640," *Yale Journal of Law & the Humanities* 10 (1998): 229-326; Bernard J. Hibbitts, "Coming to Our Senses: Legal Expression in Performance Cultures," *Emory Law Journal* 41(1992): 873-960; Bernard J. Hibbitts, "Making Senses of Metaphors: Visuality, Aurality, and Reconfiguration of American Legal Discourse," *Cardozo Law Review* 16 (1994): 229-356.

[55] See, for example, Margaret Anne Doody, "Voices of Record:Women as Witnesses and Defendants in the *Old Bailey Sessions Papers,*"in *Representing Women: Law, Literature and Feminism*, ed. Susan Sage Heinzelman and Zipporah Batshaw Wiseman (Durham: Duke University Press, 1994): 287-308; and Susan Sage Heinzelman, "Guilty in Law, Implausible in Fiction: Jurisprudential and Literary Narratives in the Case of Mary Blandy, Parricide, 1752," in *Representing Women: Law, Literature and Feminism*, ed. Susan Sage Heinzelman and Zipporah Batshaw Wiseman (Durham: Duke University Press, 1994): 309-336.

these credibility evaluations and attributions, and to recover how readers would have been interpreting testimony in the novel.

Patey speaks of the "isomorphism of theory of knowledge, literary structure, and implied procedures of interpretation," and articulates the truism that "all theories of literary structure entail theories about how such structures are properly to be read" and are therefore "an account of interpretation as well."[56] Of course, this testimonial paradigm that I am advancing also is a theory about how to read and interpret novels. Both paradigms are hermeneutic models. Where the testimonial paradigm differs from, and supplements, a reading paradigm based on a written and textual notion of character is in bringing out testimony as an essential part of knowledge production and the sensory assessment of credibility as a customary practice. The testimonial paradigm I am developing here describes how a praxis of credibility informs eighteenth-century reading and interpretation of the novel. It is a commonplace of literary criticism that eighteenth-century novels take interpretation and judgment as their own subjects and are about reading and judging reading; they are also, I am arguing, about testifying and judging testimony.

Finally, a few clarifications about my terminology of probability, credibility, and testimony are in order. "Probability" and "credibility" historically were each applied both to facts and to people.[57] For clarity throughout this work, excepting

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[56] Patey, *Probability and Literary Form*, pp. 175 and 88.

[57] J. Paul Hunter, for example, indiscriminately applies probability to people in *Before Novels: The Cultural Contexts of Eighteenth Century English Fiction* (New York: W.W. Norton, 1990) and Mary Poovey does likewise with credibility (*A History of the Modern Fact*). The Greek *"pithanon"* means persuasive or plausible and "can be used of both speakers and what they say." See James Franklin, *The Science of*

quotations, I use credibility only in reference to speakers and probability or plausibility only in reference to facts.[58] Although the terminology was fluid historically, the concepts were differentiated in the theory. The formulation that assent to testimony depended on the credibility of the speaker and the probability of the facts accurately captures the concept that threaded through these works. In retrospectively giving precision to the terms, therefore, my practice is consistent with contemporary ideas. Although "credibility" was not typically part of the authors' rhetorical defence or generic definition of the novel, in practice novelists assumed that the normative skill of credibility was part of the readers' repertoire and novelists embraced instruction about credibility as a key part of the novel's mission. For "testimony," I do not limit the term, as in law, to sworn witnesses since part of the inquiry here is to study why certain individuals are designated as official "witnesses" and others are not, and to bring out how testimony is a mundane part of our knowledge and how credibility assessments infuse our ordinary decisions.[59] I am exploring the interaction between the trial's procedures and evidence and the credibility of all participants who speak (or who are prohibiting from speaking) at the trial, including the parties, counsel, jury, witnesses,

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Conjecture: Evidence and Probability before Pascal (Baltimore: The Johns Hopkins University Press, 2001), p. 103.

[58] *Oxford English Dictionary*, 2d. ed., s.v. "credible" lists as its first definition "1. capable of being believed; believable: a. of assertions;...b: of matters of fact." That reference identifies the application of credibility, as meaning "worthy of belief or confidence; trustworthy, reliable" to "*persons*" as archaic except in the case of "'witness' or the like." I am developing the idea that in the eighteenth century the concept of the credibility of people was important. The credibility of *speakers* (people) was distinguished from the factual plausibility of *facts* and together those criteria were used to evaluate testimony.

[59] For example, criminal defendants accused of felonies could not give sworn testimony under oath until 1898.

and judge, and the credibility of fictional characters who speak and how their credibility is tested in novels.

J. Paul Hunter, in *Before Novels*, remarked that one of the questions of "old literary history" asked whether "realism" or "individualism or subjectivity," or "some essence yet unfound" defined novels (xv). There is still a currency to these broad categorizations of history of the novel criticism. Patey, like Watt, focuses on realism of presentation. John Preston, Uphaus, John Dussinger, and Patricia Spacks emphasize subjectivity, and McKeon combines these in his discussion of truth and virtue.[60] Hunter commonsensically responds to this old question that settling for a single characteristic "diminishes" and "trivializes" the "very idea of the novel."[61] By advocating that history of the novel criticism should attend to credibility and character assessments based on testimonial criteria, I am not proposing a new "essence." Rather, criticism's focus on probability (or the novel's relation to things or facts) and subjectivity (or the novel's construction of individual identity) should be supplemented with a focus on credibility and the epistemology of testimony (the novel's incorporation of what can be known from and about other people). Assessing other characters, and doing so on the basis of testimonial moments, is another, but of course not the only, defining feature of the trial and the novel.

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[60] John Preston, *The Created Self: The Reader's Role in Eighteenth-Century Fiction* (London: Heineman, 1970); Uphaus, *The Impossible Observer*; John Dussinger, *The Discourse of the Mind in Eighteenth-Century Fiction* (The Hague: Mouton, 1974); Patricia Meyer Spacks, *Desire and Truth: Functions of Plot in Eighteenth-Century English Novels* (Chicago: University of Chicago Press, 1990); McKeon, *The Origins of the English Novel.*

[61] J. Paul Hunter, *Before Novels*, p. 22.

"Character Witnesses: Credibility and Testimony in the Eighteenth-Century English Novel" examines how the English novel applied English trial procedures for assessing the credibility of witnesses' characters during the long eighteenth century. It follows previous insights that readers and jurors, as specialists in epistemology, are engaged in a similar interpretive exercise, but suggests that this parallel is in their approach to the principles of proof, or the ratiocinative processes of persuasion, with respect to assessing and attributing credibility, and that this relationship can be understood through a testimonial paradigm rather than a reader paradigm. Eighteenth-century novels shared the same epistemological assumptions and credibility protocols as the eighteenth-century common law trial by jury, and both internalized an empiricist epistemology in which credibility traits were revealed by the recipient of testimony actively watching and listening to the speaker's act of testifying and his or her dynamic countenance and demeanour. The thesis looks at how eighteenth-century jurors, characters and readers decided whether people were credible and whether testimony was believable. Other characters and readers assess the credibility of novels' characters during testimonial moments, using the same indicia and the same methods as jurors use in the trial. This chapter, "Credibility and the Testimonial Paradigm in the Eighteenth-Century Novel," has introduced the idea that seventeenth- and eighteenth-century intellectuals conceptualized the interpretation of testimony as a two-fold inquiry into the plausibility of facts and the credibility of the source, and begins to set out a paradigm for recognizing and testing credibility in the novel.

Chapters Two, Three and Four re-construct the context of probability, testimony and credibility in both philosophy and law in fine detail in order to appreciate the

context in which eighteenth-century readers approached the novel. Chapter Two on the "Philosophy and Epistemology of Testimony" recovers the historical context for testimony. The chapter elucidates this complex matrix in the philosophy of factual plausibility and credibility. The philosophy of testimony was an integral part of the *weltanschauung* during the long eighteenth century and permeated eighteenth-century discussions, figuring in the philosophy of Hobbes, Boyle, Hartley, Locke, Arnauld, Stillingfleet, Tillotson, Wilkins, Wolseley, Glanville, Hooke, Campbell, Whately, Reid, Watts, and Price, among many others. In the well-known miracles literature and King of Siam parables, writers explored the meaning of "experience," the limits of empiricism, and the relationship of testimony to belief and probability, and to certainty and knowledge. Whereas the eighteenth century developed guidelines for appropriate inducements to assent and attribute credibility to others, most writers thought that the ratiocinative process could not be defined by rules; some flirted with a "calculus of credibility" but the general tenor was committed to principles rather than rules, developing testimony and credibility as fundamentally probabilistic and empirical inquiries. This commitment sets up the need for the novel as a pedagogical supplement to teach readers how to manage subjective and discretionary credibility judgments.

Chapter Three explores the differences between reading character and evaluating credibility to develop the testimonial paradigm further. The chapter explores credibility as a composite of epistemic and moral attributes and looks closely at both the eighteenth-century attribution process for credibility assessment and the epistemology that underlay it. The novelty of the credibility process during this period was that individuals were assessed as individuals, rather than as exempla of character traits,

through dynamic cues, and by those of ordinary hermeneutic skills, and with reference to a particular testimonial context. As testimony and credibility are about getting information from other people, it was not obvious at first how these concepts would fit within empiricism, the underlying epistemology for the eighteenth century. However, writers highlighted how the *reception* of testimony was empirical. The result of this positioning was an "Embodiment of Credibility," which identified the countenance, demeanour, and manner of expression as key credibility factors, and thus sensory perception of a speaker was central to the credibility process. If the subject area is phrased very broadly to include all fields of inquiry that draw connections between body and mind, then credibility assessment can claim kinship with physiognomy, and such disciplines as theatre, rhetoric, visual arts and etiquette. In broad outline, the "embodiment of credibility" resembles physiognomy, although it resonates more with pathognomy with its focus on the dynamic revelation of fleeting impressions. However, as this chapter details, credibility assessment also has several features which set it apart from these methods of character assessment. Credibility, as an attribution assessed against a localized context, increases how much people are capable of knowing about other people and from how little information, and applies those proofs to evaluate what people say.

Readers and jurors are engaged in similar epistemological processes of assessing credibility in order to evaluate testimony. Reader and juror parallels are apposite but the comparison needs to be historically situated. We commonly say readers are like jurors, and thus Chapter Four looks more precisely at what jurors knew and did in the eighteenth century and how the interpretive conditions for jurors and readers merged in

the period, demanding that people make credibility judgments without extrinsic character information. Chapter Four, "Jurors, Readers, and the Architecture of Forensic Credibility," describes how the credibility process is formalized by the legal process. The legal idea of full credibility was integrally linked to epistemological beliefs about what could be known *from* other people (testimony) and what could be known *about* other people (character and credibility). Forensic credibility confidently believed jurors could make a pointillistic judgment about credibility based on fleeting impressions revealed during testimonial moments. The chapter explores how legal credibility protocols compensated for the jury's lack of previous experience with a witness's character by making the reception of testimony itself an empirical experience incorporating the concept of embodied credibility.

Chapters Five, Six and Seven turn to the eighteenth-century novel and its role as a pedagogical supplement. Chapter Five, "Credibility and the Testimonial Paradigm: Pamela and Disbelief," describes the testimonial paradigm in more detail and in relation to the reading paradigm. It applies the testimonial paradigm to *Pamela*, discusses the anti-Pamela controversy and explores why single point of view might have undermined credibility.

Chapter Six, "In Your Own Words: Legal and Literary Point of View and the Technology of Credibility," explores how novels modeled a praxis of credibility. It analyses how eighteenth-century trial procedures influenced a cultural predisposition toward first-person point of view, and the emerging critique of these first-person narratives. It also examines how the epistemological theory of "embodied credibility" for assessing credibility in trials was applied in the eighteenth-century novel by

including both the indicia and the testing context—"mock trials" for testimonial moments—to permit characters to probe other character's credibility and to educate readers on how to emulate these tests, instructing readers through vicarious experience. This chapter looks at characters as subjects and objects of credibility evaluation.

Chapter Seven, "Pedagogy and Practice: Novels and the Teaching of Credibility," examines how three eighteenth-century novels, *David Simple, Evelina,* and *Amelia*, teach readers to apply credibility protocols to everyday social encounters, and extend the interpretive practices developed in philosophy and law to ordinary life.

Chapter Eight provides an epilogue and conclusion.

My subject is thus a meta-epistemology of credibility in the trial and the novel over the long eighteenth century focusing on how jurors, characters and readers attribute credibility to others. This thesis considers eighteenth-century philosophy of testimony, the trial's role in formalizing credibility assessment through juridical protocols, and the novel's role in offering a pedagogical supplement for credibility assessment through the representation of characters engaged in this hermeneutic exercise of testing credibility during testimonial moments. A meta-history of credibility can enrich our understanding of the history of the novel. This thesis attempts to recapture some of the "epistemological fluidity that was customary for [Enlightenment] contemporaries."[62] By expanding the epistemological context from factual probability alone, to a larger cluster of credibility, testimony, persuasion, belief, assent, character, proof, knowledge and interpretation, and by supplementing the reading paradigm with a

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[62] Michael McKeon, "Origins of Interdisciplinary Studies," *Eighteenth-Century Studies* 28 (1994): 26.

testimonial paradigm, we can better understand how an eighteenth-century author would represent a novel character as "credible," and how a contemporary reader would interpret credibility. What makes a fictional character worthy of belief and why should readers assent to believe a novel's testimony?

Chapter Two: The Philosophy and Epistemology of Testimony

In Defoe's eponymously titled novel, Roxana famously begins her story, "I was born, *as my friends told me,*" in France, and brought to England at age 10 in 1683.[1] The way that Roxana calls attention to and acknowledges testimony as the origin of what she knows about her birth place and date, carefully pointing out how this is what her friends *told* her, rather than assimilate information about her own origins as if it were intrinsic evidence, or settle for more definitive phrasing regarding parentage and birth, is typical of the long eighteenth-century tendency to dwell on the social origins—the *extrinsic* evidence—of even such highly personal information, and its probabilistic nature. The eighteenth century was more self-conscious about testimony as a necessary source of ordinary information than the modern day is in its neglect of testimonial sources and seamless, often subconscious, integration of testimonial information.

Testimony is an important source of knowledge in eighteenth-century novels. Whereas these novels have been seen as relentlessly highlighting the materiality of printed letters and documents, it is also true that enlightenment in these novels comes from testimonial sources. In *Clarissa*, for example, when Anna says "I have been making inquiry," to discover what the Harlowes planned for Clarissa's Wednesday "trial," she lays together "several pieces of intelligence" from witnesses (3.255). Thus when Anna, and later Belford and Morden, act as detectives to discover the truth, they seek information from oral communications rather than written evidence and are

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[1] Daniel Defoe, *Roxana: The Fortunate Mistress* (1724), ed. David Blewett (New York: Penguin, 1987), pp. 37-38.

rewarded with accurate insights, while the bumbling officious Brand, who misunderstands the facts by failing to speak directly to Clarissa and knowledgeable sources, is condemned as credulously "light of belief," and repents for judging "by appearance and conjecture" (7.169, 7.318, 8.16, 8.58-59). By corollary, Lovelace realizes a false environment can only engender belief if there is testimony from fake personages to support it, and in his forgery of Anna's letter takes care to catalogue *testimony* as the convincing falsified evidence: "you have Mr. Doleman's testimony to the credit of the house and the people you are with; ... Mr. Mennell's at least passive testimony; Mr. Tomlinson's; and now, lastly, Miss Lardner's; so that there will be less need for inquiry...all doubt will soon be lost in certainty" (5.167); each forged reference to testimony is underscored in the text, punctuating and drawing strength from testimony's cultural salience and potency to turn doubt into (moral) certainty, at the same time that his reliance on impersonators threatens to undermine testimony's persuasiveness.

Testimony was endorsed in novels for the probabilistic and pragmatic reasons that personal experience is limited. As Arabella recounts in the *Female Quixote*, summarizing a precept learned from the Reverend, "The most restless Activity in the longest Life, can survey but a small Part of the habitable Globe: and the rest can only be known from the Report of others."[2] This period was also acutely aware of the

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[2] Charlotte Lennox, *The Female Quixote* (1752), ed. Margaret Dalziel, intro. Margaret Anne Doody and chronology and appendix Duncan Isles (Oxford: Oxford University Press, 19 89), p. 373. The penultimate chapter from which this quotation is taken, which has the most extensive discussion of testimony, is the chapter which Samuel Johnson at least influenced, and, some critics argue, wrote. See John Mitford *Gentleman's Magazine,* n.s. 20 (1843), pp. 132-133, quoted by Duncan Isles in his

philosophical frameworks for evaluating the probability of testimony. That well-circulated formula held that assent to testimony was warranted when there were plausible facts (consistency, authenticity, verisimilitude, realism) and a credible speaker (moral and epistemic traits). This pairing of plausibility *and* credibility was a conventional and trusted rubric. In the *Female Quixote,* for example, Arabella is led through a catechism of how to interpret testimonies. The cleric "Doctor" asks her, "How is any oral, or written testimony, confuted or confirmed," and Arabella knows the textbook answer. Echoing a familiar formulation from the *Port Royal Logic,* Arabella briskly responds in rote, by "comparing it...with the Testimony of others, or with the natural Effects and standing Evidence of the Facts related, and sometimes by comparing it with itself."[3] The eighteenth-century novel foregrounds testimony, and follows the seventeenth- and eighteenth-century philosophy of testimony. This chapter discusses probability theory and the epistemology and hermeneutics of testimony to make more familiar the context in which readers were approaching the novel.

Literary criticism, I suggest, has focused too acutely on a reading paradigm at the cost of neglecting testimonial aspects of the novel. The reading paradigm has a strong hold on literary scholarship because it is accurate: writing, materiality, and factual plausibility do permeate the eighteenth-century novel. Writings, from letters to manuscripts, gun wadding, stamps, and coins, literally populate the novel, behaving and being treated as characters. Writings are personified, circulated to move the plot forward, lost and their secrets re-discovered. Epistolary novels, including *Pamela,*

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appendix to the novel, p. 422. Mitford first made the claim that Johnson authored the chapter.

Clarissa, *Humphry Clinker,* and *Evelina,* exemplify this intense preoccupation with print, in which characters and anthropomorphized writings interact, frequently placing characters into more intimate and more protracted relationships with these writings than with their human counterparts. Likewise, the convoluted preambles in novels such as *Castle Rackrent* and *Man of Feeling,* which authenticate the story by inventing it as found written object, invoke the complicated affiliations of authors, identity, characters and print. This self-conscious inscription of writing into character has been associated with eighteenth-century bookselling practices, copyright, capitalism, colonialism, and credentialing strategies for these new prose narratives. The relationships between characters and their documents are protracted not least to provide an authenticating documentation for the "true histories," and the relationships are intimate in part because that intimacy between person and print provided one model for how readers might identify with the novel. Deidre Lynch argues that we approach closer to the eighteenth-century perspective, not when we marvel that in eighteenth-century novels writings are characters, but when we come to see characters as writings. She contends the viewpoint, "Characters matter...in some measure because they *are* matter,"[4] constituted eighteenth-century intellectual conditions, a view at odds with Ian Watt's familiar account connecting the rise of the novel with the rise of subjectivity.

This reading paradigm is accurate, but only partial in its truth. It slights testimony, not surprisingly given the modern disposition to integrate information from other people seamlessly into our thoughts without noticing that it originates from

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[3] Charlotte Lennox, *The Female Quixote*, pp. 377-378.

[4] Deidre Lynch, "Personal Effects and Sentimental Fictions," *Eighteenth-*

external sources, but unfortunately misrepresents the eighteenth-century propensity to remark and appraise testimonial sources. Long eighteenth-century philosophers recognized that people must rely on other's words because personal sensory experience and knowledge were unavoidably limited, at the same time that they issued strident warnings that assent to testimony should be prudently and proportionately bestowed. Testimony, they cautioned repeatedly, should be believed only if it consisted of plausible information relayed by a credible source.

I wish to show how factual plausibility, or probability, which forms the locus of the reader paradigm, can be re-situated into the testimonial paradigm and that this framework is most congenial with the eighteenth-century mindset toward testimony. McKeon writes how, "To 'historicize' eighteenth-century 'literature,' to subject eighteenth-century 'history' to the antipositivist scepticism of a literary 'textuality,' might even be seen as acts of multilayered anachronism by which we project onto the past the terminology of a modern disjunction, and presume to relieve the past of its disjunctive burden by methods of its own invention."[5] Although he is not addressing the reader paradigm issue in the way that I am posing it here, the anachronistic "textuality" of which he speaks is informative of my distinction between a reading paradigm and a testimonial paradigm. As this chapter describes, the philosophy of testimony, which figured so prominently as an intellectual inquiry during the time that the English novel was emerging, advocated that factual plausibility and the credibility of the speaker should together regulate assent to testimony.

Century Fiction 12.2-3 (January-April 2000): 353.

[5] Michael McKeon, "Origins of Interdisciplinary Studies," *Eighteenth-Century*

I argue here, in agreement with some modern philosophers of testimony, that testimony is neglected today as an epistemological category and, consequently, its significance for preceding centuries underestimated; modern (and post-modern) scholars do not study testimony because they tend not to notice the social origins of knowledge. By contrast over the long eighteenth century, as this chapter details, testimony possessed intellectuals, "possessed" them both in the sense of preoccupying and troubling them. In an empirical age, testimony, at least initially, sat uneasily with the inclination to favour *personal* sensory experiences. Further, in an age of increasing urbanization, people were increasingly faced with deciding the credibility of individuals with whom there was relatively limited previous acquaintance. Eighteenth-century intellectuals identified the tensions: it was foolhardy to dispense with all knowledge that came from "strangers," yet it was extremely complicated to define and to teach criteria for evaluating their credibility because credibility indicia were so nuanced and transitory as to be almost inexpressible. The cognoscenti repeatedly returned to testimony as an intellectual inquiry, offering detailed expositions of testimony's role in knowledge production and recommendations for discriminating between good and bad testimony.

I will be developing and advocating the testimonial paradigm throughout this thesis. I hope in this chapter to call attention to the eighteenth-century predilection to treat testimony as an insistent albeit problematic presence in mundane life, and in later chapters to show how testimony infused the novel and how the novel took on the role of teaching credibility. Only on rare occasions do literary critics today study testimony. The reading paradigm retains a strong hold on critical sensibilities, with influences as

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Studies 28 (1994): 26.

variable as new historicism and deconstruction alike emphasizing materiality and textuality; to criticize is tautologically to read. By comparison, in the testimonial paradigm, to criticize, to interpret and to read is also to listen and to watch testimony and to evaluate the speaking character. Alexander Welsh, a notable exception to the rule of neglect, laudably examines testimony and its effect on the history of the novel; however, he posits that the history of the novel is written *against* testimony and represents a *turning away* from testimony toward circumstantial evidence. His *Strong Representations*: *Narrative and Circumstantial Evidence in England* focuses on the history of evidence law and argues that the nineteenth-century trial and novel shared a narrative model that was constructed from circumstantial evidence.[6] Whereas he argues that the novel arose from a shared sensibility to privilege things over people, my own approach suggests that the novel arose from a shared sensibility that knowledge comes from people and things that they say. The English novel, I argue, accepts and integrates testimony, while it teaches how to evaluate it.

Probability, Testimony and Credibility

The seventeenth century has been identified as a key period in the "coming to consciousness" of probability.[7] I begin with a terse potted history of how testimony and credibility figure into the probabilistic mindset to highlight how this period's preoccupation with testimony and credibility is fundamentally a probabilistic inquiry

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[6] Alexander Welsh, *Strong Representations: Narrative and Circumstantial Evidence in England* (Baltimore: Johns Hopkins University Press, 1992).

[7] James Franklin, *The Science of Conjecture: Evidence and Probability before*

that sought, like all probability questions, to answer when belief from imperfect knowledge is rational. "Every probable argument hath in it something of persuasion and proof," as Jeremy Taylor observed.[8] Novels would be taking up the difficult probabilistic question of what makes characters believable as knowledge sources when they speak, how readers will know what they can believe from what other characters say, and how this information can be conveyed. This chapter contributes to historical epistemology, since a history of credibility has not been written, and to literary history, since it illuminates the epistemological and hermeneutic context in which eighteenth-century authors and readers would have approached a new genre. That new genre of the novel was peculiarly suited, I argue, to chronicle and influence the social production of knowledge through testimony. I draw here on the scholarship of meta-epistemologists, such as Lorraine Daston and Steven Shapin, as well as philosophers of testimony, such as C.A.J. Coady, and build on their work to develop a history of credibility and to begin to outline how such a history will contribute to our understanding of the history of the English novel.

Précis of Argument on the Philosophy of Probability, Testimony and Credibility

Repeatedly over the long eighteenth century, intellectuals forward a version of the following argument to justify belief in conditions of uncertainty, such as the

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Pascal (Baltimore: The Johns Hopkins University Press, 2001), pp. x and 325.

[8] Jeremy Taylor, *The Rule of Conscience [Ductor Dubintantum]* (1660) in *The Whole Works of the Right Rev. Jeremy Taylor, D.D. Lord Bishop of Down, Connor and Dromore: with a Life of the Author, and a Critical Examination of His Writings, by the Right Rev. Reginald Heber, D.D.* 3d ed. of the Collected Works, 15 vols. (London: 1839), chap. 4, Rule II, vol. 12, p. 34.

question of how to know whether someone is credible. Mortal and fallible life, they acknowledge, has uncertainty. Two extreme reactions to such uncertainty are scepticism, the suspension of belief, and dogmatism, unjustified assertion of belief. Prudence suggests a more pragmatic response in which we act without full information but with different degrees of certainty that are proportioned to the available evidence. Although it is necessary to make decisions with only incomplete knowledge, these decisions can be justified as rational and moral.

The preferred source of knowledge, these thinkers concede, is from ourselves. But there are inevitable gaps in the scope of first-hand experience because we need to know information from other times and other spaces that we cannot personally experience. Therefore we need to rely on other sources. These sources can be individuals, single persons identified by name living in the present or traditional authorities from the past, or can be multiple sources, over time (history) or over space (community, "authority," or more dispersed sources such as gossip and rumour). It can be rational to assent based on the evidence of testimony and one can reach moral certainty through this evidence source.

How then to evaluate this evidence of testimony? Testimony has to be scrutinized for the plausibility of the facts related—the intrinsic information—and the credibility of the source—the extrinsic information. Finding a rational means to assess credibility presented a difficult interpretive problem. Knowledge as to other people's credibility, comprising sincerity (moral traits) and competence (cognitive traits), is irretrievably uncertain, but we can at least approach toward certainty and can make more enlightened interpretations by using a credibility evaluation method consistent with the

contemporary theory of knowledge. In the long eighteenth century, epistemological theory viewed knowledge as attainable through empiricism and hence, by emphasizing the empirical basis of the reception of testimony, credibility assessment could be justified as epistemologically sound. The empirical act of receiving testimony would provide assessors with evidence about moral and epistemic character traits. Although not receptive to being governed by rules, credibility assessment could be regulated by principles that combined descriptive and prescriptive norms. The moral, intellectual and practical thus came together, providing practical reasoning for moral judgments and moral reasoning for practical judgments.

In the *Port Royal Logic*, the authors remark that there are "many cases of knowledge about whose certitude we are in doubt and about which we can say only that they are more or less certain."[9] As Grotius expanded, "[V]ery few facts are discernible through the senses, since we cannot be in more than one place at one particular time, and since the senses perceive only those things which are very close at hand. Yet there is no other way of attaining to true knowledge."[10]

By contrast to the extreme responses of scepticism and dogmatism, many philosophers advocated a pragmatic response to this uncertainty and to the limited scope

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[9] Antoine Arnauld, *The Art of Thinking* [*Port-Royal Logic*], trans. and intro. James Dickoff and Patricia James, foreword Charles W. Hendel (1662; New York: Bobbs-Merrill Co., 1964), p. 338. Originally published as *La Logique, ou L'art de Penser.*

[10] Hugo Grotius, *De Iure Praedae Commentarius* (1604 manuscript; 1868 publication), trans. G.L. Williams (Oxford: Oxford University Press, 1950), pp. xiii-xv. Quoted by James Franklin, "The Ancient Legal Sources of Seventeenth-Century Probability," in *The Uses of Antiquity: The Scientific Revolution and the Classical Tradition,* ed. Stephen Gaukroger (Boston: Kluwer Academic Publishers, 1991), p.138.

of personal senses, acknowledging that demonstrative certainty could not be attained, but arguing that deciding and acting with imperfect information can be rational, and indeed moral. People must act without full information, and in practice do so in ordinary decision-making. These intellectuals proposed to bridge the residual gap between knowledge and "mere" opinion through degrees of knowledge, which respectively would have different kinds of evidence, which would warrant different degrees of certainty. Testimony would come to be accepted as one solution to the mental frustration engendered by the inconsistency of, on the one hand, philosophical demands to acquire knowledge through observation and experiment and, on the other hand, pragmatic limitations to depending on personal senses as the only evidentiary source. The insight that we are a "community of finite minds," and therefore must rely on other people, as the philosopher John Hardwig has recently written of modern society's need for trust, motivated the probabilist intellectuals.[11]

At the same time that they acknowledged uncertainty, the virtuosi emphasized that humans need to make decisions despite uncertainty. The practice of making decisions when there was incomplete information was both normalized, by showing its prevalence and ordinariness, and morally elevated, by the same association of being immersed in the quotidian.

John Locke, in *An Essay Concerning Human Understanding*, stresses that indiscriminate demands for more certainty are disingenuous cavils, for people are already acculturated to the practice when no one calls attention to it. "Who almost is

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[11] John Hardwig, "The Role of Trust in Knowledge," *The Journal of Philosophy* 88 (December 1991): 693-708, p. 707.

there, that hath the leisure, patience, and means, to collect together all the Proofs concerning most of the Opinions he has, so as safely to conclude, that he hath a clear and full view; and that there is no more to be alledged for his better information?" he queries. "And yet we are forced to determine our selves on the one side or other. The conduct of our Lives, and the management of our great Concerns, will not bear delay: for those depend, for the most part, on the determination of our Judgment in points, wherein we are not capable of certain and demonstrative knowledge, and wherein it is necessary for us to embrace the one side, or the other."[12] Richard Whately likewise emphasizes the mundane and requisite nature of deciding and acting notwithstanding uncertain knowledge. Just as a "traveller may be in doubt, and may have no means of deciding with just confidence, which of two roads he ought to take; while yet he must at a venture take one of them," "the like happens in numberless transactions of ordinary life, in which we are obliged practically to make up our minds at once to take one course or another, even where there are no sufficient grounds for a full conviction of the understanding."[13]

Once one recognizes that a kind of rationality inheres in resigning oneself to making decisions within conditions of uncertainty, the virtuosi reasoned, then one can back away from the irrationality that inheres in demanding certainty in situations where

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[12] John Locke, *An Essay Concerning Human Understanding* (1689), ed. and intro. Peter H. Nidditch (Oxford: Oxford University Press, 1975), book IV, chap. XVI "Degrees of Assent," sec. 3, p. 659.

[13] Richard Whately, *Elements of Rhetoric Comprising an Analysis of the Laws of Moral Evidence and of Persuasion, with Rules for Argumentative Composition and Elocution*(1828; 7th ed. 1846), ed. Douglas Ehninger and foreword David Potter (Carbondale and Edwardsville, Ill: Southern Illinois University Press, 1963), p. 81.

it is not possible. Thus probability is not only necessary, but moral, and the suspension of judgment is turned into folly. Jeremy Taylor warns in *Rule of Conscience* that following the sceptic's logic would lead to paralysis: "for if it were not safe to do that which is only probable... sometimes we should neither act nor suspend, it being but probable that either is to be chosen."[14] The rational and the moral are conflated by Taylor. "Probable arguments and prudential motives are the great hinges of human actions" and "it is not, therefore, likely to be an error by which so perpetually so many good things are procured and effected."[15] Or, as Locke more bluntly observes of the absurdity of a sceptic withholding judgment:

> Man would be at a great loss, if he had nothing to direct him, but what has the Certainty of true *Knowledge*. For that being very short and scanty, as we have seen, he would be often utterly in the dark, and in most of the Actions of his Life, perfectly at a stand, had he nothing to guide him in the absence of clear and certain Knowledge. He that will not eat, till he has Demonstration that it will nourish him; he that will not stir, till he infallibly knows the Business he goes about him will succeed, will have little else to do, but sit still and perish.[16]

Prudence, pragmatism and probabilistic decision making were combined in this project of justifying judgment within uncertainty. "The emphasis upon action as the basis of

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[14] Jeremy Taylor, *The Rule of Conscience* [*Ductor Dubintantum*], chap IV "Of the Probable, or Thinking Conscience," Rule I, vol. 12, pp. 31-32.

[15] Taylor, *The Rule of Conscience [Ductor Dubintantum],* chap. IV, Rule II, vol. 12, p. 34.

[16] Locke, *An Essay Concerning Human Understanding*, book IV, chap. XIV "Of

belief, rather than the reverse, was key to the defense against scepticism...."[17] All of these features—turning ordinary decision-making into a criterion for rational belief, emphasizing the necessity to decide and act, forgiving and lauding the willingness to venture reasonable judgment in conditions of uncertainty—are key features of how interpretive acts were modelled in the long eighteenth century and created a testimonial paradigm that would be influential as a heuristic model not only for jurors but more widely.

Probability Theory and Belief

Probability theory is notoriously unaccommodating of categorical simplicity. Modern theorists generally distinguish probability theory on frequency from probability theory on belief. These two kinds of probability are "factual," "stochastic" or "aleatory" probability, dealing with random sequences (such as coin tossing) and taking the objective world as a referent, and "epistemological" probability, measuring degrees of human belief.[18]

In his historical study of seventeenth-century probability, *The Emergence of*

Judgment," p. 652.

[17] Gerd Gigerenzer, Zeno Swijtink, Theodore Porter, Lorraine Daston, John Beatty, Lorenz Krüger, *The Empire of Chance: How probability changed science and everyday life* (Cambridge: Cambridge University Press, 1989), chap. 1 "Classical Probabilities, 1660-1840," p. 5.

[18] See generally, James Franklin, *The Science of Conjecture,* pp. 23-26; and Donald Gillies, *Philosophical Theories of Probability* (New York: Routledge, 2000), p. 2. This summary conflates much of the contested areas in current probability theory. Franklin, for example, contends that "logical" probability, concerned with the relation of partial support between propositions, and "subjective probability," referring to people's partial belief in, or uncertainty about propositions and the support they give one another,

Probability, Ian Hacking theorizes that this dual notion of probability, having to do both with stable frequencies (calculations on random chances) and with degrees of belief, emerged suddenly in the mid-seventeenth century. He contends probability's outstanding characteristic during this period is "Janus-faced," both aleatory and epistemological. "On the one side it is statistical, concerning itself with stochastic laws of chance processes. On the other side it is epistemological, dedicated to assessing reasonable degrees of belief in propositions quite devoid of statistical background."[19]

Lorraine Daston suggests that intellectual history such as Barbara Shapiro's scholarship complicates Hacking's split of probability into only two categories. Daston notes that the neat split between subjective and objective faces of probability postdates the classical probabilists (1660-1840), who instead shifted among these senses corresponding to states of the world and states of mind. Four different probability notions were circulating by the eighteenth century, according to Daston, namely the "physical construction" of things such as a fair die or coin, frequency, the measure of the strength of an argument, and the intensity of belief. Although the first two senses from a presentist perspective are "objective" and the latter two "subjective," the characteristic "philosophical insouciance" of the "classical interpretation combines an epistemic 'art of conjecture' and a frequentist 'doctrine of chances' with a cavalier—or healthy, depending on one's point of view—disregard for philosophical distinctions."[20]

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have some relation to each other but are not coextensive.

[19] Ian Hacking, *The Emergence of Probability: A Philosophical Study of Early Ideas about Probability, Induction and Statistical Inference* (Cambridge: Cambridge University Press, 1975), p. 12.

[20] Lorraine Daston, *Classical Probability in the Enlightenment* (Princeton:

The descriptions of probability coming out of this period do slide between the objective and subjective, perhaps from a lack of precision or, more charitably, from a deliberate reluctance to be reductive. Locke's own definition of probability includes all of belief, persuasion, logic, and facts as referents. "*Probability* is nothing but the appearance of such an Agreement, or Disagreement, by the intervention of Proofs, whose connexion is not constant and immutable, or at least is not perceived to be so, but is, or appears for the most part to be so, and is enough to induce the Mind to *judge* the Proposition to be true, or false, rather than the contrary."[21] Significantly for testimony and credibility, the eighteenth-century probability definitions evidence a preoccupation with belief and epistemology, to the extent that Taylor anthropomorphizes the "probable" as a thinking chooser: "[T]he probable does choose, though it considers that in the thing itself there can be no certainty."[22] The links between frequency and belief are connected to the way in which probability was constructed as a bridge between knowledge and opinion, with different steps representing different degrees of certainty and supported by different kinds of evidence and with cumulative evidence leading to higher degrees of certainty. Rational belief in this scheme is underpinned by measurement; that is, the theory posits a correlation between frequency (whether experience or accumulated evidence) and subjective belief. From this perspective, the classical probabilists' "insouciant" attitude of conflating aleatory and epistemic

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Princeton University Press, 1988), pp. 188-189.

[21] Locke, *An Essay Concerning Human Understanding*, book IV, chap. xv, "Of Probability," p. 654.

[22] Taylor, *The Rule of Conscience* [*Ductor Dubintantum*], chap. IV "Of the Probable, or Thinking Conscience," Rule I, vol. 12, pp. 31-32.

probability was predicated on epistemological grounds.

These probabilist thinkers who sought a moderate position between scepticism and dogmatism have been variously identified as "English moderate empiricists" "classical probabilists" and "constructive sceptics."[23] Writers include the theological, scientific, and philosophical: Joseph Glanvill, William Chillingworth, John Tillotson, Edward Stillingfleet, John Wilkins, Robert Boyle, and John Locke. Henry G. van Leeuwen, in his study of *The Problem of Certainty in English Thought, 1630-1690,* describes the "deliberate effort" by the "theological and scientific movements" between 1630-1690 "to avoid both dogmatism with its claim to absolute certainty and scepticism with its denial of the possibility of any knowledge whatever."[24] Probabilists were negotiating between dogmatists, including the Cartesian Rationalist tradition on the Continent and Aristotelian Scholastics, and sceptics, who radically doubted the possibility of adequate evidence for belief. Richard Popkin, in a classic study on the history of scepticism, identifies the compromise position, "constructive or mitigated scepticism," as "an attempt to find a *via media* between the completely destructive tendency of the 'Nouveau Pyrrhonisme' and a questionable dogmatism." The constructive sceptics accepted that, "*even if* the claims of the sceptics could not be refuted," we could still have a "type of knowledge which is not open to question, and

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[23] See respectively, R.M. Burns, *The Great Debate on Miracles: From Joseph Glanvill to David Hume* (Lewisburg: Bucknell University Press, 1981); Daston, *Classical Probability in the Enlightenment*; and Richard H. Popkin, *The History of Scepticism from Erasmus to Spinoza* (Berkeley: University of California Press, 1979).

[24] Henry G. Van Leeuwen, *The Problem of Certainty in English Thought, 1630-1690*, 2d. ed., pref. Richard H. Popkin (The Hague: Martinus Nijhoff, 1970), p. xiii.

which is all that is requisite for our purposes in this life."[25]

As a prefatory cautionary note, seventeenth- and eighteenth-century theory on knowledge and probability is not a monolithic tradition, and I do not want to suggest that there is a consensus on the terminology, much less the particulars. It should not be surprising that the theoretical development of ideas about what can be known, and to what level of certainty, is itself marked by uncertainties and inconsistencies. This group most characteristically subscribed to an "epistemological via media" in which the "medial point of tension between the two extremes of cognitive self-assessment" was maintained by "progress through increasingly adequate expressions of the truth," in other words, "probability judgments."[26] Certainty and knowledge are re-conceptualized as part of a spectrum that has degrees.[27] For some, such as Locke, it was important to maintain the distinction, going back to Plato, between knowledge and certainty, on the one hand, and probability and belief, on the other, while others saw the movement from possibility to probability to moral probability to certainty as insensible gradations. Locke reserved belief and assent for persuasion where one is "without certain knowledge that it is so,"[28] while George Campbell sees belief sliding imperceptibly into certainty. "Probability results from evidence, and begets belief. . . . Belief raised to the

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[25] Popkin, *The History of Scepticism from Erasmus to Spinoza,* pp. 129 and 131.

[26] Burns, *The Great Debate on Miracles*, p. 23.

[27] Barbara Shapiro diagrams knowledge, method (proof) and certainty in *Probability and Certainty in Seventeenth-Century England: A Study of the Relationships Between Natural Science, Religion, History, Law and Literature* (Princeton: Princeton University Press, 1983), p. 29.

[28] Locke, *An Essay Concerning Human Understanding*, book IV, chap. XV "Of Probability," p. 655.

highest becomes certainty."[29] Many conceptualized these categories as "ordered stages of certainty," so one could speak of a scale with "certainties" (physical, demonstrative, moral), while others envisioned a "full continuum of degrees."[30] Thomas Reid, for example, thought belief "admits of all degrees, from the slightest suspicion to the fullest assurance."[31] In another refinement, certain categories were sometimes thought of as "thresholds" of belief that functioned as gateways to concepts such as "truth," which are themselves not susceptible to gradations.[32]

However, while it cannot be claimed that there was full agreement on every point, there is a group of principles that were typical of this movement. Most prominently, the mitigated sceptics increased the types of evidence that could be considered in rational decision-making and correspondingly figured certainty as having degrees. Mitigated sceptics "interpolate[d] intermediate stages between the two stages of certainty and doubt."[33] The terminology for these stages and the number of stages in each thinker's schematic varied; but, the overall result was to incorporate a notion of "moral certainty" that was lower than the belief derived from demonstrative evidence

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[29] George Campbell, *Philosophy of Rhetoric* (1776; London: William Tegg & Co., 1850), pp. 81-82.

[30] The terms come from Lorraine Daston, but she places Glanvill, Wilkins, Boyle and other Royal Society personages in the category of "ordered stages" (*Classical Probability in the Enlightenment,* p. 39).

[31] Thomas Reid, *Essays on the Intellectual Powers of Man* (1785) *in Philosophical Works, With notes and supplementary dissertations by Sir William Hamilton*, intro. Harry M. Bracken, vol. 1 (Hildesheim: Georg Olms, 1967), p. 327.

[32] See M. Jamie Ferreira, *Scepticism and Reasonable Doubt: The British Naturalist Tradition in Wilkins, Hume, Reid and Newman* (Oxford: Clarendon Press, 1986), pp. 23, 75 and 77.

[33] Daston, *Classical Probability in the Enlightenment*, p. 63.

but sufficient and suited for everyday life and thus wide in scope. Probabilists saw the prudent person's grounds for reasonable decision in daily life as a comfortable and reasonable standard of judgment, thus legitimating and endorsing common sense reasoning and practices.

"Prudent" people compensated for imperfection by accumulating evidence, so that incremental evidence led to increasing knowledge. Butler, who lent the maxim "probabilities are the very guide of life,"[34] observes that "probable proofs, by being added, not only increase the evidence but multiply it." When judging by the "natural rules," used for "probable evidence in common matters," a "joint review" amounts to a much higher degree of proof than "considering them separately at different times."[35] Thomas Reid illustrates the strength of probable reasoning by turning to the commonplace example of a rope which can bear more stress than any single filament; likewise, "any one argument" "would be insufficient to convince," but when many arguments "unite their force, and lead to the same conclusion," the "whole taken together may have a force that is irresistible."[36] As Taylor more rustically phrased it, a "heap of probable inducements ought to prevail...when they are the best argument we have."[37]

Just as degrees of certainty were intercalated between doubt and certainty,

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[34] Joseph Butler, *The Analogy of Religion Natural and Revealed to the Constitution and the Course of Nature* (1736), intro. Henry Morley (London: Routledge, 1894), p. iii.

[35] Ibid., p. 260.

[36] Reid, *Essays on the Intellectual Powers of Man,* p. 482.

[37] Taylor, *The Rule of Conscience* [*Ductor Dubintantum*], vol. 12, p. 68.

different types of evidence were interpolated into the epistemology, expanding the sources of knowledge beyond demonstrative evidence and personal senses. The tripartite categories of demonstration, first-hand experience (senses) and testimony were the most common list of the types of evidence or sources of knowledge. The *Port-Royal Logic*, for example, identifies two ways to be convinced of something's truth. One way was reason or senses. "Conviction arises in the second way by a reliance on the authority of persons worthy of belief who assure us of the existence of a thing although we ourselves have no personal knowledge of that thing."[38]

Evidence could also be refined more precisely. Reid, for example, distinguishes "evidence of sense, evidence of memory, the evidence of consciousness, the evidence of testimony, the evidence of axioms, [and] the evidence of reasoning," and "each of these kinds of evidence may afford just ground of belief."[39] But as Locke's formulation succinctly explains, the evidence sources for probability are divided into either "the conformity of any thing with our own Knowledge, Observation and Experience" or the "testimony of others, vouching their Observation and Experience."[40] Probability theory therefore brought the promise of substantially rehabilitating the status of testimony (not just "authority" or "tradition") as a source of evidence, by expanding reasonable evidence sources beyond personal senses and the demonstrative.

Inserting additional subject matter and evidentiary proof into the epistemological scheme required a correspondingly measured way of calibrating proof, belief, and

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[38] Arnauld, *The Art of Thinking* [*Port-Royal Logic*], p. 337.

[39] Reid, *Essays on the Intellectual Powers of Man*, p. 328.

[40] Locke, *An Essay Concerning Human Understanding*, book IV, chap. XV "Of

knowledge. The probabilists' watchword was that the degree of assent to any proposition should be proportionate to the strength of the evidence (the grounds for belief) for that proposition. There were two separate concerns here, although they were not always clearly distinguished; first, one should proportion evidence to the subject matter, and second (the subjective focus), one should proportion belief and assent to the evidence. This dual notion obviously draws its lineage from Aristotle's principle from *The Nicomachean Ethics* that different subject matter has different degrees of certainty:

> Our discussion will be adequate if it has as much clearness as the subject-matter admits of, for precision is not to be sought for alike in all discussions.... We must be content, then, in speaking of such subjects and with such premisses to indicate the truth roughly and in outline, and in speaking about things which are only for the most part true, and with premisses of the same kind to reach conclusions that are no better. In the same spirit, therefore, should each type of statement be *received;* for it is the mark of an educated man to look for precision in each class of things just so far as the nature of the subject admits; it is evidently equally foolish to accept probable reasoning from a mathematician and to demand from a rhetorician demonstrative proofs.[41]

On the first strand of proportioning evidence to the subject matter, Locke faults those who insist on more evidence than the subject can bear for lacking decorum; to do otherwise than calibrate the kind and amount of evidence to the subject matter is both a

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Probability" p. 656.

[41] Aristotle, *The Nicomachean Ethics*, trans. and intro. David Ross, rvs. J.J.

moral and social failing. "[H]ow *vain*" he expostulates, "it is *to expect Demonstration* and Certainty *in things not capable of it.*"[42] On the second and subjective strand of the Aristotelian idea, Hume's version is commendably clear: "A wise man, therefore, proportions his belief to the evidence."[43] The sentiment was a mainstay of the constructive sceptics, asserted by Tillotson, Reid, Wilkins, Chillingworth, and Stillingfleet, among others.

Together the two points are the foundation of the probabilist theory: first, proportioning evidence to the subject matter, which has an inclusive effect of expanding the knowledge basis, and second, proportioning belief to the grounds of evidence, which has a restrictive effect of containing belief within the scope of what can be epistemologically underwritten. One can believe—with reason. Richard Hooker, for example, urges that to be entitled to belief, "*they must every of them from the greatest to the least be able for every severall article to showe some special reasons as strong as their perswasion therin is earnest.*"[44] Building on a similar point, Locke identifies the "one unerring mark" of "lovers of Truth for Truths sake," as "not entertaining any

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Ackrill and J.O. Urmson (Oxford: Oxford, 1980), I.3 p. 3.

[42] Locke, *An Essay Concerning Human Understanding*, book IV, chap. XI "Of our Knowledge of the Existence of Other Things", s. 10.

[43] David Hume, *An Enquiry Concerning Human Understanding* (2d ed. 1750) intro. and ed. Anthony Flew (La Salle, Ill: Open Court, 1988), chap. X, "Of Miracles," para 4, p. 144. Joseph Glanvill similarly claims to "proportion the degree of my belief to that I have of evidence..."(*Scire/I tuum nihil est: or, The Author's Defence of the Vanity of dogmatizing; Against the Exceptions of the Learned Tho. Albius In His Late Sciri* [London, 1665], p. 52).

[44] Richard Hooker, *Of the Laws of Ecclesiastical Polity* (1593), ed. Georges Edelen, vol. 1 of The Folger Library Edition of The Works of Richard Hooker, general ed. W. Speed Hill (Cambridge: Belknap Press of Harvard University Press, 1977), preface, chap. 3, p. 17.

Proposition with greater assurance than the Proofs it is built upon will warrant." "For the evidence that any Proposition is true (except such as are self-evident) lying only in the Proofs a Man has of it, whatsoever degrees of Assent he affords it beyond the degrees of that Evidence, 'tis plain all that surplusage of assurance is owing to some other Affection, and not to the Love of Truth."[45]

The compounded individualist perspective of these recommendations, that each person must individually proportion subjective belief to the "special reasons" for "every severall article," was necessitated not only by the opening up of subject matters and evidence that could lead to (at least a kind of) knowledge, but also by the subjectivity of belief. The Lockean charge of lacking decorum was mitigated by the concession, as Taylor articulates it, "That the thing be the most probable to us in our present condition: for there are summities and principalities of probation proportionable to the ages and capacities of men and women." "[W]e must do it as wisely as we may, but no man is bound to be wiser than he can. As the thing seems, either in its own light or in our position, so we are to give assent unto it."[46] Probabilism might thereby be viewed as more difficult to justify epistemologically if it was subject to the vagaries of different subjective interpretations. But while each person is limited in accountability and moral culpability was ameliorated by being calibrated to his or her capacity, probability was not correspondingly opened up to unregulated subjectivity; instead, "all probability is wholly derived from reason" and *"the Choice is wholly to be conducted by Prudence,*

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[45] Locke, *An Essay Concerning Human Understanding*, book IV, chap. XIX, "Enthusiasm" section 1, p. 697.

[46] Taylor, *The Rule of Conscience* [*Ductor Dubintantum*], vol. 12, pp. 67-68.

and according to the Subject-Matter."[47]

When discussing "certainty," the constructive sceptics "played down veracity but played up verification," as Kevin Cope has observed; or, to put it another way, they moved from knowledge toward justified belief.[48] Probability was a problem of belief and justification, of determining when to grant assent to a proposition when there is uncertainty. Leibniz complained that Aristotle gave only a bare outline and did not elucidate *how* to weigh evidence:

> Theo: I have more than once said that we need a new kind of logic, concerned with degrees of probability, since Aristotle in his *Topics* could not have been further from it: he was content to set out certain familiar rules, arranged according to the commonplaces—rules which may be useful in some contexts where a discourse has to be developed and given some likelihood—without taking the trouble to provide us with balances which are needed to weigh likelihoods and to arrive at sound judgments regarding them.[49]

The constructive sceptics struggled toward a *via media* between absolute certainty and radical uncertainty, and likewise struggled toward a *via media* between *a priori* rules and unregulated subjectivity. These theorists looked for principles that would be consistent with the spirit of relying on common sense reasoning but would

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[47] Ibid., "Rule X," p. 12.101.

[48] Kevin L. Cope, *Criteria of Certainty: Truth and Judgment in the English Enlightenment* (Lexington: University of Kentucky Press, 1990), p. 5.

[49] Gottfried Wilhelm von Leibniz, *New Essays on Human Understanding* (composed 1703-1705; published 1765), trans. and ed. Peter Remnant and Jonathan

still provide guidance. For justification and regulation of belief, the constructive sceptics emphasized several points: the content of evidence and the process of assent were both descriptive *and* prescriptive; the process required individual attention, prudence, caution and labour; and the process should weigh evidence and measure assent.

The mix between descriptive and prescriptive elements in probability judgments is a theme that will be even more prevalent in the contemporary commentary about the process of assenting to credibility evidence, but the general idea was introduced to verify any belief based on probability. Jamie Ferreira's explanation from a related context aptly clarifies how what ought to persuade and what does persuade came together so that (reasonable) common sense was safely valorized as a standard: the "description is *of* norms that have been established. We are concerned not simply with description of what is being done, but with description of the norms generated by practice. What links description and norms is that description reveals the norms that have been established in the practices we describe."[50] Theorists emphasized the normative responsibilities of the assessors and remonstrated that they should exercise prudence and caution. Joseph Glanvill's counsel, "*For the* assent *that is* difficultly *obtain'd, and sparingly bestowed, is better establish't, and longer retained,*"[51]

Bennett (Cambridge: Cambridge University Press, 1981), book IV, chap. xvi, s. 9.

[50] Ferreira, *Scepticism and Reasonable Doubt,* p. 235. Ferreira is describing the premises of "reasonable doubt naturalism," a kind of anti-sceptical naturalist response which questions the sceptics' requirements for a justification for belief.

[51] Joseph Glanvill, *"To the Learned Tho. Albius," Preface to Scire/I tuum nihil est: or, The Author's Defence of the Vanity of dogmatizing; Against the Exceptions of the Learned Tho. Albius In His Late Sciri* (London, 1665), unpaginated.

illustrates how the normative and epistemological were tied in together. People who refrained from giving their assent until they thoroughly examined the evidence were rewarded with "better" judgments.

This industrious work that people were urged to do to reach sound judgments was weighing evidence and measuring assent. Leibniz is typical in believing that "balances" to "weigh likelihoods" would lead to "sound judgments." Locke accentuates how "Diligence, Attention, and Exactness is required, to form a right Judgment, and to proportion the *Assent* to the different Evidence and Probability of the thing."[52] He further instructs:

> *the Mind if it will proceed rationally, ought to examine all the grounds of Probability,* and see how they make more or less, *for or against* any probable Proposition, before it assents to or dissents from it, and upon a due ballancing the whole, reject, or receive it, with a more or less firm assent, proportionably to the preponderancy of the greater grounds of Probability on one side or the other.[53]

The balancing exercise is a common refrain throughout the constructive sceptics' writings, each emphasizing "[e]very degree of evidence perceived by the mind, produces a proportioned degree of assent or belief," as Thomas Reid observes.[54] In that context, it is possible to interpret these directions as mild guidelines to follow common sense.

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[52] Locke, *An Essay Concerning Human Understanding*, book IV, chap. XVI "Of Degrees of Assent," section 9, p. 663.

[53] Locke, *An Essay Concerning Human Understanding*, book IV, chap. XV "Of Probability" section 5, p. 656.

[54] Reid, *Essays on the Intellectual Powers of Man,* p. 482.

But many of these instructions venture into more exacting cognitive demands. Joseph Butler, for example, in *The Analogy of Religion,* advises, "if the result of examination be, that there appears upon the whole, any the lowest presumption on one side, and none on the other, or a greater presumption on one side, though in the lowest degree greater; this determines the question even in matters of speculation; and in matters of practice, will lay us under an absolute and formal obligation, in point of prudence and of interest, to act upon that presumption or low probability, though it be so low as to leave the mind in very great doubt which is the truth."[55] Reid conceives that the mind could be in "perfect suspense" and avers that the "least preponderancy on one side inclines the judgment in proportion."[56] David Hume's description most explicitly brings forward this subtle appraisal, the "large probabilities which the mind can judge of, and the minute differences it can observe betwixt them," correctly preferring ten thousand and one from ten thousand.[57] Hume writes of "deduct[ing] the smaller number from the greater, in order to know the exact force of the superior evidence."[58] However, although these descriptions flirt with a calculus, they settle on exacting weighing and meticulous precision in proportioning assent, a probabilistic result that is epistemologically sound but not mathematically supported by demonstrative evidence. With few exceptions, the English (and Scottish) probabilists favoured exquisitely fine

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[55] Butler, *The Analogy of Religion*, "Introduction," para 4.

[56] Reid, *Essays on the Intellectual Powers of Man*, p. 482.

[57] David Hume, *A Treatise of Human Nature: Being an Attempt to introduce the experimental Method of Reasoning into Moral Subjects* (1739), ed. and analytical index by L.A. Selby-Bigge, 2d ed., ed. P.H. Nidditch (Oxford: Clarendon Press, 1978), p. 141.

[58] Hume, *An Enquiry Concerning Human Understanding*, chap. X, "Of

proportions that could still lay claim to being refined common sense rather than a quantified calculus. This methodology is characteristic as well of English theorists' recommendations for the difficult task of interpreting the fugitive evidence of testimony.

The Philosophy of Testimony

Despite its important role as a source of information on which people base belief and assent, testimony lapsed as an intellectual inquiry and until recently was neglected by philosophers as a source of evidence. If philosophers treated testimony at all, they tended to dismiss the critical assessment of testimony as something that people do passively or unconsciously. The modern era culturally neglected the large role of testimony in belief and knowledge.

A few notable scholars in recent years are proponents of the strong view that testimony is underestimated and under-theorized as a constituent of knowledge. C.A.J. Coady, in his philosophical monograph on testimony, calls testimony "a prominent and underexplored epistemological landscape" and charges that both casual and philosophical thinking has been "remarkably consistent" in thinking about testimony: "either it has ignored testimony altogether or it has been cursory and dismissive."[59] The scholarly neglect of testimony is problematic because testimony is not merely a legitimate source of information; it is one of the most important sources for knowledge

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Miracles" para 4, p. 145.

[59] C.A.J. Coady, *Testimony: A Philosophical Study* (Oxford: Clarendon Press, 1992), pp. vii and 6. The philosopher Elizabeth Fricker similarly remarks that testimony is a "fascinating and relatively neglected subject." Elizabeth Fricker, "The Epistemology of Testimony" *Proceedings of the Aristotelian Society* supp. 61 (1987): 57-83, at p. 57.

production. In an odd confluence of factors, testimony is widely relied on but widely unrecognized as a source of knowledge, so dependent are we on other people and their words as a resource that, unlike Defoe's Roxana, we do not notice how saturated in testimony our knowledge is. The use of testimony is more invisible than covert. Several of these recent scholars on testimony make their point with thought experiments in which they successively disentangle the testimonial bases of much of the information that we are habituated to think of as a first-hand observation or memory, but which, in reality, we can legitimately claim only by proxy from other people's testimony to us or to others, in order to show the extent of our cognitive reliance on testimony, not just in social and practical affairs but in theoretical research.

The philosopher H.H. Price explains of our epistemic need for testimony, "the "policy for forming beliefs" through testimony is "designed to remedy a certain sort of scarcity from which each individual person suffers, a scarcity of first-hand experiences" since one of "our misfortunes is that no human being is ubiquitous." We can choose to remain in a "state of suspended judgment," preferring to "cultivate [our] own garden, and a very, very small garden it will be," or we can accept what others say.[60]

These recent pronouncements on testimony attribute the neglect of testimony to roots that date to the period at interest here: the "individualist philosophical culture" inspired by Descartes and the "self sufficiency" of empiricism that valued personal observations and experience.[61] They contend there was then and is now a massive

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[60] H.H. Price, *Belief* (London: George Allen & Unwin, 1969), pp. 124-129.

[61] See Coady, *Testimony: A Philosophical Study*, p 13; Michael Welbourne, *Knowledge* (Montreal & Kingston: McGill-Queen's University Press, 2001), p. 76.

disconnect between the rhetoric of autonomy and individual empirical bases for knowledge and the reality of epistemic reliance on social knowledge. The history of science scholar Steven Shapin contextualizes this discussion by noting that, although the seventeenth-century rhetoric insisted on direct personal experience, the period understood that testimony had an ineradicable role in empirical practices, but needed to be carefully evaluated and controlled. "On the one hand, testimony was fully recognized as an invaluable resource for the making of knowledge and the ordering of society; on the other, there was acute anxiety that *undisciplined* reliance upon testimony would destroy both knowledge and social order."[62]

Ian Hacking, by contrast, in *The Emergence of Probability,* popularized a different view of the historical status of testimony. He theorizes a shift starting in the seventeenth century away from testimony and authority toward first-hand experience as the preferred route to knowledge. Hacking focuses on connotations circulating in the Renaissance associating "probability" with the opinions of authorities and which he contends was understood to mean not "well supported by evidence." The modern concept of probability, he states, emerged "around 1660" with the distinction, found in the *Port-Royal Logic,* between the evidence of testimony and the evidence of things. As Hacking interprets the terminology, the "primary evidence, the evidence of things, is 'internal', and thereby basic, while testimony is 'external.'"[63] He posits that the seventeenth-century "moderns" newly distinguished between testimony—the evidence of

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[62] Shapin, *A Social History of Truth: Civility and Science in Seventeenth-Century England* (Chicago: University of Chicago Press, 1994), pp. 23-27, 211.

[63] Hacking, *The Emergence of Probability,* p. 33.

witnesses and of authorities—and the evidence of things and reversed the Renaissance preference for the former evidence of testimony. Hacking then looks forward to twentieth-century epistemology and claims that by this time there is "only one fundamental kind of evidence, namely internal evidence" or the evidence of things.[64]

Hacking's philosophical history influenced literary criticism, notably in Alexander Welsh's *Strong Representations: Narrative and Circumstantial Evidence in England.* Welsh incorporates Hacking's history for the "eclipse of testimony" as part of the probability movement, linking it to later eighteenth- and nineteenth-century narrative strategies for "strong representations," that is, those strategies that "openly distrust direct testimony, insist on submitting witnesses to the test of corroborating circumstances, and claim to know many things without anyone's having seen them at all."[65] Again,

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[64] Ibid., p. 83.

[65] Alexander Welsh, *Strong Representations: Narrative and Circumstantial Evidence in England* (Baltimore: Johns Hopkins University Press, 1992), p. 8. Jan-Melissa Schramm, in her study of Victorian testimony, criticizes Welsh for his sharp theoretical distinction between circumstantial evidence and testimony, which she argues misleadingly neglects how circumstantial evidence continued to be presented in court through testimony. In her introductory chapters, she uses eighteenth-century novels' representations of trials to illustrate testimony's presence in this period (*Testimony and Advocacy in Victorian Law, Literature, and Theology* [Cambridge: Cambridge University Press, 2000], chaps. 1-2). Schramm focuses on the fictional representation of testimony, and sargues that law and literature competed to provide an authoritative reading of events.

Some of the recent work in the philosophy of testimony also is pertinent to challenging Welsh's theory that late eighteenth-century and nineteenth-century narratives turned to circumstantial evidence *rather than* testimony. Coady, for one, argues throughout his philosophical study of testimony that testimony is always present but moderns neglect it. For example, in his chapter on R.G. Collingwood, Coady illustrates how testimony saturates a detective story that Collingwood explicitly designed as a narrative that would rely on circumstantial evidence instead of testimony. In *The Ideal of History,* R.G. Collingwood highlighted the areas of evidence and testimony, albeit to disparage how the "scissors-and-paste" model of history uses

returning to the *Port-Royal Logic*'s two-fold categories for probability evidence, both Welsh and Hacking focus on the plausibility of the facts, rather than credibility, and argue that testimony's chronology shows a decline in testimony's evidentiary status after the Renaissance.

Hacking's theory has been challenged by historians, philosophers and probability theorists who critique the chronology and probability concepts.[66] Hacking's theory is criticized for ignoring pre-seventeenth-century ideas about the "evidence of things" and mis-characterizing pre-seventeenth-century ideas about the evidence of testimony. Patey asserts Hacking's timetable for the emergence of "internal evidence" is in error by two thousand years, while James Franklin, complaining of substantial lacunae in Hacking's scholarship, argues that pre-1660 ideas of probable opinions did *not* connote

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testimony. Collingwood emphasized the inferential work of historians and was sceptical of testimony in historiography. To make his point, he constructed an elaborate detective story to illustrate autonomous thinking and as a device to discredit historians who rely on testimony. Coady, in his chapter on Collingwood, agrees with Collingwood that there is theorizing in history but argues that it does not follow, as Collingwood claims, that testimony is insignificant. Coady dismantles Collingwood's detective example, showing the hidden reliance on testimony throughout the narrative and argues that these lacunae reveal "more than mere slips. They show the way in which, even in a highly artificial piece of fiction deliberately organized to eliminate reliance upon testimony from the essentials of the story, such reliance none the less persists and escapes attention since it is such a pervasive feature of the reality that the fiction is aimed at illuminating." Many of the supposed personal observations are "highly testimony-contaminated." Coady, *Testimony: A Philosophical Study*, pp. 241-242. Coady is making the larger point that Collingwood's lapse is merely typical of tendencies to neglect testimony.

[66] See James Franklin, *The Science of Conjecture,* p. 305; Franklin, "The Ancient Legal Sources Seventeenth-Century Probability," p. 133; Daston, *Classical Probability in the Enlightenment*, pp. 11-13; Coady, *Testimony: A Philosophical Study*, pp.14-16; Daniel Garber and Sandy Zabell, "On the Emergence of Probability," *Archive for History of Exact Sciences* 21 (1979): 33-53.

"not supported by the evidence."[67] Hacking's thesis, however, I wish to emphasize, in addition to these criticisms, is also vulnerable for its suggestion, taken up by Welsh, that "internal evidence" overtook "external evidence," the evidence of testimony, beginning in the seventeenth century. Instead, I argue here, seventeenth- and eighteenth-century thinkers were prepossessed with testimony and devoted considerable intellectual resources toward theorizing and refining the assessment of testimonial evidence.

This is not to suggest that testimony was unproblematic during this period, but Hacking's thesis needs to be complicated first by distinguishing the probabilists, who were receptive to testimony, from other affiliations, and next by qualifying the conditions that probabilists required of testimonial evidence.

Testimony was attacked as a source of evidence by Pyrrhonist sceptics, who distrusted sensory information, whether derived from one's own or other people's senses, and by rationalists, who privileged personal sensory evidence. However, other philosophers, who navigated a middle way between scepticism and dogmatism, repeatedly emphasized the importance of testimony given our inability to have first-hand knowledge of all subjects. These "virtuosi", who have been described by Lorraine Daston, Steven Shapin, R.M. Burns, Richard Popkin, and Barbara Shapiro, were committed to an epistemology that included probability, and recognized testimony as an important source of evidence. For some of these virtuosi, testimony, like probabilistic evidence generally, could lead at best to "belief"; for others, the evidence of testimony could lead to "knowledge."

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[67] Douglas Lane Patey, "Appendix A," in *Probability and Literary Form: Philosophic theory and literary practice in the Augustan age* (Cambridge: Cambridge

Hacking correctly observes that during the religious debates Protestants did devalue "authority" and there are numerous examples throughout the seventeenth and eighteenth centuries where philosophers cautioned against an unthinking dedication to the authority of the ancients. For example, Isaac Watts, in *Logick*, warns that "*The Authority of Men is the Spring of another Rank of Prejudices*" for, by paying "Deference to the Opinions of others, merely because they lived a thousand Years before us; and even the Trifles and Impertinencies that have a Mark of *Antiquity* upon them are reverenced for this Reason," people risk staying in "an everlasting State of infancy," with "the Antients." Watts therefore invites people to "judge for themselves... [and] examine the *Opinions of their Parents.*"[68]

Several seventeenth- and eighteenth-century writers connect the problem with tradition and historic authority to the weakening of evidence as it is transmitted through a series of witnesses. Locke in the *Essay* points to the increasing vulnerability of communications as they are transmitted through chains of witnesses; thus, while, "a credible Man vouching his Knowledge...is a good proof," "if another equally credible, do witness it from his Report, the Testimony is weaker," because "*each remove weakens the force of the proof.*" Locke reasons "no *Probability* can arise higher than its first Original," and "far from receiving any strength" from being repeated by other people, the first testimony is only rendered "the weaker," because "Passion, Interest, Inadvertency, Mistake of his Meaning, and a thousand odd Reasons, or Caprichio's, Men's Minds are

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University Press, 1984), p. 270.

[68] Isaac Watts, *Logick: or The Right Use of Reason in the Enquiry After Truth, with a Variety of Rules to guard against Error, in the Affairs of Religion and Human Life, as well as in the Sciences,* 2d ed., corr. (London: John Clark and Richard Hett,

acted by, (impossible to be discovered,), may make one Man quote another Man's Words of Meaning wrong."[69] Laplace too thought historians "do not seem... to have paid sufficient attention to this degradation of the probability of facts when seen across a great number of successive generations."[70]

Moreover, the constructive sceptics carped at "mere opinion," gossip, rumour, and unsubstantiated opinions of the crowd. For example, Montaigne curmudgeonly observes how "unfortunate to be in such a pass that the best touchstone of truth is the multitude of believers, in a crowd in which the fools so far surpass the wise in number.... For my part, in a matter on which I would believe one, I would not believe a hundred ones. And I do not judge opinions by their years."[71] Philosophers commonly distinguished between "testimony of others on fact" and "opinions." Locke argues "there cannot be a more dangerous thing to rely on, nor more likely to mislead one" than "*the Opinion of others,*" "since there is much more Falshood and Errour amongst Men, than Truth and Knowledge." However, he carefully clarifies that "opinions," as distinguished from testimony on fact, "by it self, ... be no true ground of *Probability*, yet it is often made use of for one, by which men most commonly regulate their Assent, and upon which they pin their Faith more than any thing else."[72] Locke observes even "Opinions

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1726), part II, chap. III, sect 4, pp. 221-225.

[69] Locke, *An Essay Concerning Human Understanding*, book IV, chap. XVI "Of Degrees of Assent," sections 10-11, pp. 663-664.

[70] Quoted in review of *Essai Philosophique sur les Probabilités,* by Pierre Simon Laplace, *Edinburgh Review* 46 (September 1814): 320-340, pp. 326-327.

[71] Michel de Montaigne, "Of Cripples," (1585-1588) in *The Complete Essays of Montaigne,* trans. Donald M. Frame (Stanford: Stanford UP, 1958), p. 786.

[72] Locke, *An Essay Concerning Human Understanding*, book IV, chap. XV "Of

and Perswasions of others, whom we know and think well of" are a "wrong ground of Assent," and identifies "the *giving up our Assent to the common received Opinions*, either of our Friends, or Party; Neighbourhood, or Country" as the "*wrong Measure of Probability* and which keeps in Ignorance, or Errour, more People than all the other together. . . ."[73]

What these thinkers objected to was unthinking allegiance to authority *qua* authority, without the intervention of individual decision-making and reasoning. As Taylor phrases it in *The Rule of Conscience,* "When against the common opinion, there is a strong or a very probable reason, then the common opinion is not the more probable: because a reason is an intrinsical, proper and apportioned motive to the conscience, but human authority, or citation of consenting authors, is but an extrinsical, accidental and presumptive inducement, and a mere suppletory in the destitution of reason."[74]

Taylor admonishes people to assess credibility of individual witnesses, even when they have the imprimatur of "authorities." That is, the attack on authorities that Hacking identifies is less about the suspicion of witnessing and testimony, as Hacking suggests, and more about the concern that people will *irrationally* assent to testimony without assessing the credibility of individual sources. Taylor advocates examining testimony and using judgment to discern when to believe. "[H]e that can judge who speaks best reason, or who is most fit to be trusted in the particular, must be able in

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Probability" section 6, p. 657.

[73] Ibid., book IV, chap. XX "Wrong Assent, or Errour" section 17, p. 719.

[74] Taylor, *The Rule of Conscience [Ductor Dubintantum]*, vol. 12, p.91.

himself to consider the particulars by which that judgment is to be made; if he can and does, he hath reason within him, and needs not follow authority alone; if he cannot, then he is governed by chance, and must be in the right, or in the wrong, according as it happens."[75] Locke similarly cautions, "[w]hat in [other men] was Science is in us but Opinionatrety," whenever we "blindly embraced, and confidently vented the Opinions of another" but did not "employ our own Reason to *understand* those *Truths*."[76]

Philosophers correlatively cautioned against irrationally *withholding* assent and failing to scrutinize the evidence. Thus, Joseph Butler in *The Analogy of Religion* remarks that since "[n]othing can destroy the evidence of testimony in any case, but a proof or probability that persons are not competent judges of the facts to which they give testimony...," the "natural laws of human actions require that testimony be admitted" unless this can be shown. "It can never be sufficient to overthrow direct historical evidence, indolently to say that there are so many principles from whence men are liable to be deceived themselves and disposed to deceive of others, especially in matters of religion, that one knows not what to believe."[77]

For some probabilists, then, rather than dissuading people against using testimony, they go so far as to suggest that the default should be belief where there is no *reason* to *withhold* assent. Since "an Universal Negative cannot be concluded" from a "thousand tales of forgery and imposture", one must be open to receiving the "one

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[75] Ibid., vol. 12, p. 92.

[76] Locke, *An Essay Concerning Human Understanding,* book I, chap. IV, "No Innate Principles," sec. 23, p. 101.

[77] Butler, *The Analogy of Religion,* chap. VII, "Of the Particular Evidence of Christianity," p. 236.

Relation, wherein no fallacy or fraud could be suspected for our Affirmative," according to Glanvill in one of his contributions relevant to the miracle controversies.[78] "[T]o deny evidence of Fact, because their imagination may deceive the Relators, when we have no reason to think so, but a bare presumption, *that there is no such thing as is related,* is quite to destroy the Credit of all Humane Testimony, and to make all Men liars in a larger sense than the Prophet concluded in his haste."[79] Thomas Reid's theory is most relevant here, with his two principles of veracity and credibility. Reid argues that people have a natural propensity to speak the truth and a natural propensity to believe testimony. The latter propensity is mitigated with experience but retains some force.[80] Like Heartfree, in Fielding's *Jonathan Wild,* Reid thinks us all "that sort of men whom experience only, and not their own natures, must inform that there are such things as deceit and hypocrisy in the world."[81] Hume, by comparison, thinks our confidence in human testimony is derived from experience rather than a natural propensity to believe or deductive reasoning. "The reason why we place any credit in

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[78] Joseph Glanvill, "Against Modern Sadducism in the Matter of Witches and Apparitions" in *Essays on Several Important Subjects in Philosophy and Religion* (1676) intro. Richard H. Popkin (New York: Johnson Reprint Corp, 1970), pp. 20-21.

[79] Ibid., p. 17.

[80] Thomas Reid, *Inquiry Into the Human Mind, on the Principles of Common Sense* (1764; 4th ed. 1785) in *Philosophical Works, With notes and supplementary dissertations by Sir William Hamilton. Intro. Harry M. Bracken,* vol. 1 (Hildesheim: Georg Olms, 1967), pp. 196-197. Wittgenstein pithily states, "The child learns by believing the adult. Doubt comes after belief." "The difficulty is to realize the groundlessness of believing." Ludwig Wittgenstein, *On Certainty*, ed. G.E.M. Anscombe and G.H. von Wright, trans. Denis Paul and G.E.M. Anscombe (New York: Harper & Row, 1969), No. 160 and No. 166.

[81] Henry Fielding, *Jonathan Wild* (1743) ed. David Nokes (New York: Penguin, 1982), p. 84.

witnesses and historians, is not derived from any *connexion*, which we perceive *a priori*, between testimony and reality, but because we are accustomed to find a conformity between them."[82]

The recommendation as to whether the default should be belief or disbelief was of course politically and theologically charged in this period and I do not wish to telescope the surrounding context. But the significant point is that, regardless of their position with respect to whether one should generally believe testimony or not, these theorists came together in urging people not to be "indolent", as Butler phrased it. The sceptic Montaigne, for example, while recommending that "it is better to lean toward doubt than toward assurance in things difficult to prove and dangerous to believe," grouses about the "habit of assent . . . opinion and rashness in judging."[83] The hermeneutic project being described was demanding and exacting: each person should evaluate each piece of testimony for credibility and plausibility by weighing the evidence and duly proportioning assent to that balancing.

Thus, the testimonial paradigm that I am advancing does not follow Hacking's version of testimony's history and current epistemological status, and by corollary diverges from literary critical approaches such as Welsh's treatment of circumstantial evidence and eighteenth-century narrative. Instead, it is built on the continued importance of testimony as a source of knowledge. Testimony, as Coady, Welbourne,

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[82] Hume, *An Enquiry Concerning Human Understanding*, section X, "Of Miracles" paras. 5 and 7, pp. 145-146.

[83] Montaigne, "Of Cripples," pp. 789-792.

and Shapin have argued, is under-emphasized in epistemology and under-emphasized as an intellectual inquiry. Their work emphasizing the social construction of knowledge is an important corrective to the prevailing notion that knowledge comes from individual personal experience. In philosophy and science, Richard Rorty, Ludwig Wittgenstein, Michael Polanyi, and Karl Popper have already launched trenchant critiques against the myth of autonomous knowledge, that "it isn't ... just *my* experience, but other people's that I get knowledge from."[84] There are parallel movements in law and literature acknowledging the social basis of knowledge. For example, common law evidence is increasingly more receptive to traditional knowledge, that is, explicitly social or community testimonial sources. Likewise in literature the idea of the solitary author has been interrogated, and in law, intellectual property theory is questioning whether an "author" must be identifiable or can be a community's accumulated stories over generations and across individual storytellers.[85] Further, specialization and professionalization trends are predicated on one expert borrowing from the knowledge base of another through testimony, although such derivations may not be acknowledged.

I agree with Coady and Welbourne that testimony is neglected by modern scholars. However, I also want to highlight that, by contrast to current views, the philosophy of testimony was a central concern in the seventeenth and eighteenth centuries and that this preoccupation has been overlooked by current scholars and

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[84] Wittgenstein, *On Certainty*, No. 275.

[85] See for example, Jack Stillinger, *Multiple Authorship and the Myth of Solitary Genius* (Oxford: Oxford University Press, 1991); and Rosemary J. Coombe, *The Cultural Life of Intellectual Properties: Authorship, Appropriation and the Law* (Durham: Duke University Press, 1998).

neglected in literary criticism. Reid significantly included testimony as one of the "social operations of mind," those operations which:

> necessarily suppose an intercourse with some other intelligent being. A man may understand and will; he may apprehend and judge, and reason, though he should know of no intelligent being in the universe beside himself. But, when he asks information, or receives it; when he bears testimony, or receives the testimony of another; when he asks a favour or accepts one...—these are acts of social intercourse between intelligent beings, and can have no place in solitude. They suppose understanding and will; but they suppose something more, which is neither understanding nor will; that is, society with other intelligent human beings. They may be called intellectual, because they can only be in intellectual beings; but they are neither simple apprehension, nor judgment, nor reasoning, nor are they any combination of these operations....Testimony is neither simple apprehension, nor judgment, nor reasoning.[86]

Testimony, this "social operation of the mind," was respected by probabilists as a valuable constituent of knowledge; the concern with which they were preoccupied over the long eighteenth century was rather how to provide principles for assent to help guide people to reasonable belief within imperfect knowledge.

Moreover, Hacking's statement that testimony was in conflict with empiricism in the eighteenth century is not sufficiently nuanced and overstates the tension, although,

to be fair, Hacking focuses less on England than on continental Europe where empiricism figured more weakly. Testimony in the long eighteenth century in England, I am arguing, *was* an empiricist experience.

To return to the familiar insight that we need testimony because we lack our own first hand experience for everything, when other people testify about their experience, the testimony is empirical relative to that speaker. Boyle, for example, in *The Christian Virtuoso*, calls "historical experience" that "which, though it were personal in some other man, is but by his relation or testimony, whether immediately or mediately, conveyed to us."[87] Paul Ricoeur calls testimony "quasi-empirical" because "testimony is not perception itself but the report, that is, the story, the narration of the event. It consequently transfers things seen to the level of things said." Testimony "designates the action of testifying, that is, of relating what one has seen or heard."[88] Ricoeur emphasizes the doubling of the "dual relation," first, this relation between things seen and things said and second, a relation between the testifier and the listener. "Experience" includes information from testimony and hence we borrow other people's sensed experiences and perceive them as our own. Hume, in a letter to the Reverend Hugh Blair commenting on George Campbell's manuscript for *Dissertation on*

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[86] Thomas Reid, *Essays on the Intellectual Powers of Man,* p. 244.

[87] Robert Boyle, *The Christian Virtuoso* (1690) in *The Works of the Honourable Robert Boyle in Six Volumes To which is Prefixed the Life of the Author*, ed. Thomas Birch, 6 vols. (London 1772), vol. 5, p.525.

[88] Paul Ricoeur, "The Hermeneutics of Testimony," trans. David Stewart and Charles E. Reagan, in *Essays on Biblical Interpretation,* ed. and intro. Lewis S. Mudge (Philadelphia: Fortress Press, 1980), pp. 119-154. Originally published as "L'herméneutique du témoignage," *Archivio di Filosofia*(La Testimonianza) 42 (1972): 35-61, p. 123.

Miracles, perceptively writes of the relationship between experience and testimony: "No man can have any other experience but his own. The experience of others becomes his only by the credit which he gives to their testimony; which proceeds from his own experience of human nature." [89] We use experience to judge testimony and, providing we evaluate the speaker as credible and the facts as plausible, we can make other people's experiences our own. As Coady exclaims, "How easy it is to appropriate at a very fundamental level what is known by report and what is known by personal observation." Only with testimony does knowledge explicitly take on a "social character.... Access is thus achieved to the cognitive property of others."[90]

Testimony is also empiricist at a more profound epistemological level because the recipient experiences the act of testimony itself, and thus testimony is also empirical relative to the listener. During the long eighteenth century, the *reception* of testimony was theoretically accommodated within empiricism. The conflict was thereby deflected from the tension between first-hand versus external sources of information since the experience of assessing testimony through visual and aural senses transformed testimony into a source of first-hand sensory information. Vicarious experience became direct and personal because the reception of testimony was viewed as empirical evidence.

These recent defences of testimony by Coady, Welbourne, Shapin, and others, and their focus on the social construction of knowledge recover arguments that

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[89] David Hume, Letter to the Rev. Hugh Blair [1761], Letter 188 in *The Letters of David Hume*, ed. J.Y.T. Greig, 2 vols (Oxford: Clarendon Press, 1969), vol.1, p. 349.

[90] A.M. Quinton, "Authority and Autonomy in Knowledge," *Proceedings of the*

circulated in the seventeenth and eighteenth century as a rejoinder to those who downplayed testimony as a source of evidence. George Campbell, for example, critiques Hume's supposed disparagement of testimony in the essay "On Miracles" by pointing out how "experience" and "testimony" is a false dichotomy. "[P]ray how can you, sir, or I, or any man, come to the knowledge of" other places and times?" he queries Hume. "Only I suppose by testimony oral or written." "[E]xperience is chiefly the result of testimony."[91] Richard Price likewise asserts, "the greatest part of what is commonly called experience is merely the report of testimony."[92]

Locke, Hume and other prominent eighteenth-century thinkers explicitly recognized the necessity of testimony. Yet as Hume bluntly acknowledges, "But it is nothing strange, I hope, that men should lie in all ages."[93] The need to rely on testimony was conceded but was also inevitably accompanied by anxiety. As the writers of this period were acutely aware, we do not and cannot ever know to a certainty that testimonial information is true. According to eighteenth-century philosophy, such uncertainty stems from knowledge deficiencies about two sources of information, the speaker and the subject matter. Thus, philosophers expended enormous intellectual resources to justify the use of testimony and to teach how to assess it and when assent is

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Philosophy of Education Society of Great Britain 5.2 (1972): 201-215, p. 203.

[91] George Campbell, *Dissertation on Miracles* (Edinburgh, 1762; 3d enlarged and corrected ed.) 2 vols. (Edinburgh, 1797), vol. 1, pp. 68-69, 71 (quoted by Burns, *The Great Debate on Miracles,* p. 219).

[92] Richard Price, "Dissertation Four: On the Importance of Christianity, the Nature of Historical Evidence, and Miracles" in *Four Dissertations* (1768; 2d ed. with additions) intro. by John Stephens (London: A. Millar and T. Cadell; Thoemmes Antiquarian Books, 1990), p. 400, note*.

[93] Hume, *An Enquiry Concerning Human Understanding*, section X, "Of

rational.

Locke's list of how to assess testimony is paradigmatic. His criteria were:

> 1. The Number. 2. The Integrity. 3. The Skill of the Witnesses. 4. The Design of the Author, where it is a testimony out of a Book cited. 5. The Consistency of the Parts, and Circumstances of the Relation. 6. Contrary Testimonies.[94]

Typical of these lists of criteria for testing testimony (and most probability theorists during this period compiled them), the criteria for inducements to assent were formulated not as rules but as maxims, to use contemporary terminology adopted by Bacon and others. The maxims were in the manner of refined common sense that incorporated ordinary decision-making while also purporting to instruct people.

What is striking about these lists, however, is that many of the criteria hardly advance the debate to a more objective foundation or a more practicable scheme. To borrow from Locke's criteria, "integrity" and "credibility" are equivalently evanescent and discretionary. How then does this era formalize these criteria into methods that ordinary people could use to assess character and ascribe credibility to others? How were descriptions and prescriptions combined? How did contemporary theorists suggest testimony should be assessed to determine if one should believe and assent? How reliable is testimony evidence? How could people be instructed to use their personal capabilities of perception, memory and reasoning to infer the reliability of testimony?

The standard formula subscribed to by the virtuosi in the eighteenth century held

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Miracles," para 23, p. 152.

[94] Locke, *An Essay Concerning Human Understanding*, book IV, chap. XV "Of

that testimony, as a source of probabilistic evidence, was tested by assessing the plausibility of the facts and the credibility of the source. The plausibility of the subject matter that was related and the speaker's credibility together justified assenting to the truth of the proposition, and the degree of certitude (belief) should be proportioned to the evidence. There were then two prongs to testimony evaluation. The probability (or plausibility) of the facts, which examined the internal probability of the thing or the content of the facts related, was assessed by consulting both one's own senses, including memory, as well as "experience" more broadly conceived, including other people and history. The credibility of the source was assessed by evaluating the moral and epistemic qualities of the speaker.

The Epistemology of Testimony

Lorraine Daston observes that the "two criteria of the credibility of the individual witness and the plausibility of the fact in question became the parameters that shaped the mathematical treatment of the probability of testimony."[95] However, these two criteria need to be complicated somewhat.

My Introduction calls attention to the commonplace dichotomy during the long eighteenth century between credibility and plausibility. That chapter observed that, while "probability," in the sense of factual plausibility, has been ably connected to the origins of the novel, credibility, which occupied a central position in this period's intellectual debates, curiously has not been developed in relation to the novel's history.

Probability" section 4, p. 656.

[95] Daston, *Classical Probability in the Enlightenment*, p. 311.

This loss is associated with the attendant neglect of testimony, which, like credibility, engrossed thinkers in the long eighteenth century.

The credibility versus plausibility (factual probability) dichotomy should be situated as one part of a rich epistemological framework that was developed in the eighteenth century. The credibility and plausibility pairing is embedded within a larger sophisticated theoretical matrix that takes up questions of the value, weight, and testability of personal sensory information and cultural social information, tangible things in themselves and perceptions of those things, the objective material world and testimony about the world. While other scholars have discussed various aspects of the epistemology of testimony, the categorization that I am describing to rationalize the philosophy has not been proffered before. This matrix which I am articulating is critical to the testimonial paradigm: for understanding how salient a role testimony had in the intellectual context of the eighteenth-century novel, the epistemological influences on authors, and the hermeneutic expectations for contemporary readers.

In effect, there are four two-fold schemes that I have identified. The schemes overlap in part because assessing the *facts related* in testimony is a similar exercise to assessing the facts of the *things themselves*. "Do you believe the testimony by X" slides into "Is Y (asserted in X's testimony) a fact?" There is a necessarily tight relationship between assessing testimony's internal consistency and the correspondence to the thing itself (where the reference is the material world). Paul Ricoeur clarifies of these connections between the utterance and the event, "on the first level, the things spoken by

another, and on the second, things seen by him."[96]

The first pairings look at the factual information, considering the correspondences between personal experience and other evidence (including the "experience" of others, individually or communally, and testimony) and between testimony and tangible things. Locke's factor of the "conformity of any thing with our own knowledge and testimony of others" invokes these correspondences, and the miracle debates are an extended philosophic inquiry about the inevitable uncertainties of knowing with precision what these correspondences are. The next pairing analyses testimony and considers the credibility of the witness and the plausibility of the facts related. *Port-Royal Logic's* criteria of the internal evidence (plausibility) and external evidence (credibility) fit here and measure testimonial facts relative to the referent of the world (internal) and external circumstances (credibility of the source and the internal consistency of narration). For example, Locke's factors of evaluating the consistency of the parts and circumstances of the relation are relevant here; other factors are the number of witnesses, concurrent sources, and sensory conditions. The last pairing looks at credibility itself, which is assessed by scrutinizing the moral and epistemic qualities of the witness. Credibility assessment increasingly became more refined, progressing from the credibility of one individual's general character to an applied credibility evaluation appraising the credibility of an individual with respect to the specific circumstances of the testimony in question.

I maintain these historical and discrete pairings because they are convenient and, more importantly, accurately represent the conceptual framework of the long eighteenth

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[96] Ricoeur, "The Hermeneutics of Testimony," p. 128.

century. But it is the intimate connections among these embedded matrices which are important. Steven Shapin, in *A Social History of Truth,* usefully elaborates that for knowledge making, "judgment of matters and judgment of the people who testify to these matters" are intertwined. "The condition of securing knowledge about the nature of nature was the possession of knowledge about the nature of people." "[K]knowledge of people was constitutively used to make and unmake knowledge of things."[97]

> [T]he plausibility of a claim and the trustworthiness of a claimant can appear as independent variables, which, when summed, factored, or compared together, yield a reliable judgment of credibility. Hume's argument that it was more likely that tellers of miracle-tales were deceived or deceitful than that their alleged matters of fact had really happened is perhaps the most celebrated instantiation of this binary credibility-testing scheme. . . .Our schemes of plausibility which become so naturalized that they appear wholly independent of trust, were themselves built up by crediting the relations of trusted sources. The *appearance* of plausibility as an independent criterion is the result of a massively consequential *evaluation*, splitting judgments of what is the case from the everyday relations by which knowledge is made, sustained, and transmitted. Plausibility incorporates judgments of trustworthiness *at a remove.* It is trust institutionalized.[98]

Shapin highlights how the intertwining of these matrices functions to occlude testimony,

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[97] Shapin, *A Social History of Truth*, pp. 245, 258, and 287.

and, I argue, to displace credibility and foreground plausibility and factual probability.

To return from Shapin's focus on trust and plausibility, to the terminology of credibility and plausibility in the two-fold matrices of the *Port Royal Logic* and other sources, plausibility is assessed against a background of accumulated knowledge from "experience," including one's own experience of present first-hand experience and memory, and others' testimony of personal experience and history. The modern philosopher C.A.J. Coady further explains the complicating "close mesh" between sensory perception and testimony which makes it difficult for people to separate autonomous knowledge from outside sources. The "concepts in terms of which we make perceptual judgements are socially provided" and the "judgments of others constitute an important, indeed perhaps *the* most important, test of whether my own judgements reflect a reality independent of my subjectivity." We look to "agreement with the perceptions of others" as a "prime test of the publicity of what is apparently perceived. Such an agreement can often be evidenced only by testimony."[99]

Thus, it is convenient to speak of two factors—our own experience and outside evidence, things and people—and yet there is also an artificiality in maintaining this dichotomy. There is interaction, interpenetration, and permeability among the factors and the factors are epistemologically dependent on each other. It is hard to separate the likelihood of an event, assessed relative to the outside world, from considerations based on testimony and credibility; likewise, it is difficult to disentangle testimony and credibility from considerations based on factual referents. Eighteenth-century writers

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[98] Ibid., pp. 22-23.

[99] Coady, *Testimony: A Philosophical Study*, pp. 12 and 129.

struggled to clarify how these various referents—internal consistency of a narration, the exterior world, tangible things, personal observations, experience, and common sense—should be compared, which factors had more weight when there was a conflict, and what to believe when the reference points were in doubt. A testimonial paradigm helps to keep these questions, which exercised eighteenth-century writers, to the front, and to emphasize that it is not just factual plausibility, but the interaction between plausibility and credibility, that eighteenth-century intellectuals were examining.

The first pair, separating personal experience from other evidence sources, including testimony, was influenced by empiricism. Locke repeatedly compares "experience" with "testimony" throughout the *Essay.* In his chapter "On Probability," he explains how this comparison underlies probability: "The *grounds of [probability]* are, in short, these *two* following: *First,* the conformity of any thing with our own Knowledge, Observation and Experience. *Secondly,* The Testimony of others, vouching their Observation and Experience."[100] Continuing in the next chapter on "Of Degrees of Assent," Locke observes, "The difficulty is, when Testimonies contradict common Experience, and the reports of History and Witnesses clash with the ordinary course of Nature, or with one another. . . ." Probability "rises and falls, according as these two foundations of Credibility, *viz.* Common Observation in like cases, and particular Testimonies in that particular instance, favour or contradict it."[101] John Craig, most notable for his calculus of testimonial probability, uses similar notions to Locke but

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[100] Locke, *An Essay Concerning Human Understanding*, book IV, chap. XV "Of Probability" p. 656.

[101] Ibid., book IV, chap. XVI "Of Degrees of Assent," section 9, p. 663.

different terminology. He contrasts "Natural probability . . . deduced from arguments conforming to our own observation or experience" with "Historical probability . . . deduced from the testimonies of others who are affirming their own observation or experience."[102] Some writers attacked this issue from the perspective of the "thing itself"; thus Leibniz in his dialogue prefers to assess the resemblance between the probable and the true which, his persona Theophile states, "comes either from the thing itself or from 'something extraneous'."[103]

The most familiar and defining pairing, however, is the next one describing the elements of testimony: intrinsic plausibility of the facts and extrinsic witness credibility. The *Port-Royal Logic*'s description was particularly elaborate and the most influential formulation for eighteenth-century writers. In chapters 13 and 14, Antoine Arnauld and the other authors of the *Logic* set out to answer the exegetical puzzle of when testimony warrants belief, or as the *Logic*'s chapter 13's title summarizes, to provide "Some rules for the proper use of reason in determining when to accept human authority."

> *In order to judge of the truth of some event and to decide whether or not to believe in its occurrence, the event need not be considered in isolation—such as a proposition of geometry would be; but rather all the circumstances of the event, both internal and external, should be*

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[102] John Craig, "Craig's Rules of Historical Evidence," from Joannis Craig, *Theologiae Christianae Principia Mathematica* (London 1699), reprinted in *History and Theory: Studies in the Philosophy of History* (The Hague: Mouton & Co, 1964), p. 3.

[103] Gottfried Wilhelm von Leibniz, *New Essays on Human Understanding*, book IV, chap. xv "Of Probability" s. 4. Philalethe represents Locke's views and Theophile stands in for Leibniz.

> *considered.* I call internal circumstances those which belong to the event itself; external circumstances, those which pertain to the persons by whose testimony we are led to believe in the event's occurrence.[104]

The *Logic* clearly sets forth that the demands on the interpreter were high, for they must examine "all the circumstances of the event," both internal and external, in all their particularities. Like the sentiments expressed generally in the probability literature, the *Logic* authors insist that those who listen to testimony scrutinize it carefully before assenting. They observe that the internal and external factors interact with each other complexly and interpreters must be able to appraise these refinements without relying on the assistance of *a priori* rules:

> People think it sufficient to reason from generalities, which, far from being universally true, are often not even probable when considered in connection with the particular circumstances of the events under examination. We must consider the event in relation to its circumstances, not as separate from them: Often an event which must be considered as scarcely probable when taken in connection with some one circumstance that is commonly a mark of falsehood must be considered as certain when the event occurs with other circumstances; and contrariwise, an event which may appear to us true in connection with a given circumstance that is commonly a mark of truth ought to be judged false in connection with circumstances which destroy the given

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[104] Arnauld, *The Art of Thinking* [*Port-Royal Logic*], p. 342.

circumstance.[105]

The apothegm of appraising the plausibility and credibility of testimony was a commonplace of the philosophical parlance. Indeed, Hume could assuredly say that "our assurance" comes from "no other principle" than "our observation of the veracity of human testimony, and of the usual conformity of facts to the reports of witnesses."[106] Hobbes discriminates "*belief,* both *of* the man, and *of* the truth of what he says. So that in belief are two opinions, one of the saying of the man, the other of his vertue. To *have faith in,* or *trust to*, or *believe a man,* signify the same thing, namely, an opinion of the veracity of the man; but to *believe what is said* signifieth only an opinion of the truth of the saying."[107] An early example of credibility and plausibility is from Richard Hooker's 1593 *Of the Laws of Ecclesiastical Polity* distinguishing between the statement itself and the "credite" of the speaker. This passage's early provenance is marked by the inchoate concept of credit as equivalent to social status ("knowne condition and qualitie") rather than individual character traits. "[S]ith the ground of credite is the credibilitie of thinges credited; and things are made credible, eyther by the knowne condition and qualitie of the utterer, or by the manifest likelihood of truth which they have in themselves; hereupon it riseth, that whatsoever we are perswaded of,

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[105] Ibid., p. 350.

[106] Hume, *An Enquiry Concerning Human Understanding*, section X, "Of Miracles, para 5, p. 145.

[107] Thomas Hobbes, *Leviathan [1658] with selected variants from the Latin edition of 1668,* ed. and intro. and notes Edwin Curley (Indianapolis: Hackett Publishing, 1994), part I of Man, chap. VII "Of the Ends, or Resolutions of Discourse," para 5, p. 36.

the same we are generally sayd to believe."[108] But by the eighteenth century, Richard Price in the fourth of his *Four Dissertations* can speak of apportioning particular degrees on the basis of credibility and plausibility, suggesting the individualized and particularized inquiry that the writers of the *Logic* envisioned and a more profound philosophical view of credibility. "A *given* force of testimony never wants ability to produce belief proportioned to its degree; but the situation of reporters and the circumstances of facts may be such as may render us doubtful whether that *given force* is *really* applied."[109]

Credibility, in turn, in the last of the pairings, was based on two aspects, one epistemic, to discover whether the witness is mistaken, and one moral, to search for whether the witness is lying. The last pairing, then, are the epistemic and moral traits which comprise credibility. The epistemic aspect evaluated errors such as skill, competence, intelligence, accuracy, sanity, and sensory perception. The moral aspect tested for lies and deceit by examining the witness's honesty and veracity, sincerity, integrity, probity, biases, interests, and partiality. The first tested perceptual ability, the ability to interpret what one perceives, and the ability to relay those perceptions. The second evaluated the witness's guile and mendacity. Richard Price explains, "The only causes of falsehood in testimony are the intention to deceive, and the danger of being

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[108] Richard Hooker, *Of the Laws of Ecclesiastical Polity*, book II, chap. 4.1, pp. 151-152.

[109] Richard Price, "Dissertation Four: On the Importance of Christianity, the Nature of Historical Evidence, and Miracles," in *Four Dissertations* (1768) 2d ed. with additions, intro. John Stephens (London: A. Millar and T. Cadell; Thoemmes Antiquarian Books, 1990), p. 424.

deceived."[110] Listeners had to be vigilant on both accounts, for, as the *Port Royal Logic* authors warn, "Human faith . . . is subject to error: Every man according to Scripture, is a liar; and further, even when a man tries to speak the truth, he himself may be mistaken."[111] Even if people are viewed as "naturally . . . endued with veracity," on individual "occasions they are liable to be prejudiced and biased and deceived themselves, and capable of intending to deceive others, in every different degree," such as those willing to "propagate" or failing to contradict a lie although they would not "invent" it.[112]

A true philosophical concept of credibility emerged over the seventeenth and eighteenth centuries as the idea of using categorical status to describe character types moved toward the idea of using particularized traits to describe an individual. The commentaries on credibility during this period are most remarkable for the similitude of their refrain of "integrity or fidelity" (moral) and "ability" (epistemic) as the defining tests for credibility. To sample from a number of writers, Montaigne calls the biblical writers, "wonderful in fidelity and competence,"[113] while Wilkins speaks of witnesses who may be "may be so qualified as to their *ability* and *fidelity*, that a Man must be a

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[110] Richard Price, "Dissertation Four," p. 413.

[111] Arnauld, *The Art of Thinking* [*Port-Royal Logic*], p. 337.

[112] Butler, *The Analogy of Religion,* p. 234.

[113] Michel de Montaigne, "Of Physiognomy" (1585-1588) in *The Complete Essays of Montaigne*, trans. Donald M. Frame (Stanford: Stanford University Press, 1958), p. 793.

fantastical incredulous Fool to make any doubt of them."[114] Isaac Watts in the early eighteenth-century *Logick* directs listeners to "Consider whether the Person who relates it be *capable of knowing the Truth:* Whether he be a skilful Judge in such Matters . . . . Consider whether the Narrator be *honest* and *faithful*, as well as skilful."[115] David Hartley calls the "integrity and Knowledge of the Witnesses" the "principal Restriction, or Requisite" for assent to accounts of past facts.[116] An anonymous *Philosophical Transactions* article from 1699, titled "A Calculation of the Credibility of Human Testimony," almost identically advises "The *Credibility* of any *Reporter* is to be rated (1) by his *Integrity,* or Fidelity; and (2) by his *Ability:* and a double *Ability* is to be considered; both that of *Apprehending,* what is deliver'd; and also of *Retaining* it afterwards, till it be transmitted."[117] Hume considers the extreme deficiencies in epistemic and moral criteria of "A man delirious, or noted for falsehood and villany," who "has no manner of authority with us."[118]

The examples are multiplied here, although similar, *because* they are so similar. These likenesses give a sense of how deeply credibility and testimony were part of the probability theorists' mindset and how extensively discussed. Some of the references are more bromide than considered advice, suggesting that there was an early consensus

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[114] John Wilkins, *Of the Principles and Duties of Natural Religion* (1675) 7th ed. (London, 1715), p. 9.

[115] Watts, *Logick: or The Right Use of Reason*, pp. 267-268.

[116] David Hartley, *Observations on Man, His Frame, His Duty, and His Expectations. In Two Parts* (London, 1749), p. 331.

[117] "A Calculation of the Credibility of Human Testimony," 21 *Philosophical Transactions* (London: Royal Society of London, 1699; New York 1963), p. 359.

[118] Hume, *An Enquiry Concerning Human Understanding*, section X, "Of

on the credibility criteria themselves. Other discussions move from the perfunctory recitals of the criteria to analyse the hermeneutic aspects of the process. Boyle, for example, usefully examines how the credibility criteria correspond to the degrees of assent. In *The Christian Virtuoso,* he advises that testimony, or "vicarious experience," "not personally our own, but communicated by others" is a good source of evidence "provided it be competently attested, and duly conveyed to us." "[T]he two grand requisites of a witness," are "the knowledge he has of the things he delivers, and his faithfulness in truly delivering what he knows," and "the better qualified a witness is in the capacity of a witness, the stronger assent his testimony deserves."[119]

Sophisticated versions consider the listener's repertoire of cognitive and moral skills; although the *listener's* qualities are more rarely catalogued than the *witness's*, these statements regarding the assessors' ratiocinative abilities are essential to understanding contemporary views. As an example, Thomas Sherlock in his popular *The Trial of the Witnesses of Jesus Christ* used a fictional trial format to defend the witnesses to Christ's resurrection against aspersions to their testimonies that were circulating in the miracle literature. Sherlock first defended the witnesses by reiterating the familiar moral and epistemic criteria, but also importantly calls attention to the recipient's interpretive ability to discern these criteria. One of the lawyer characters introduces a version of the King of Siam story, and draws the moral: "[F]or surely nothing is more apparently absurd, than to make one man's ability in discerning, and his

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Miracles," para. 5, p. 146.

[119] Boyle, *The Christian Virtuoso*, vol. 5, pp. 528-529.

veracity in reporting plain facts, depend on the skill or ignorance of the hearer."[120] Robert Boyle likewise sagely observes that there are "some qualifications required in the minds of them that are to be convinced. . ." and speaks of a "well-instructed wariness" which enables people to discover "the subtil cheats and collusions of impostors."[121] Not surprisingly, Boyle's paradigm is the "Christian Virtuoso" who "will examine with more strictness and skill, than ordinary men are able, . . . yet if the certain and genuine characters of truth appear in it, he will be more thoroughly convinced of it than a less skilful man, whose want of good criteria (or touch-stones) and sound judgment will incline him to be diffident, and to be still afraid of having been imposed on."[122]

By the early nineteenth century, credibility was still a major topic in logic and philosophy treatises, and of course legal ones; the epistemic and moral aspects remained a fixture but the discussion was elaborated. Passages were frequently devoted to puzzling out how the two criteria work together, and considering such quirks as witnesses who were befuddled and deceptive so in a double bluff turned out to be accurate. Richard Whately's *Elements of Rhetoric,* Richard Kirwan's *Logick,* James Gambier's *A Guide to the Study of Moral Evidence,* James Glassford's *An Essay on the Principles of Evidence,* and John Abercrombie's *Inquiries Concerning the Intellectual Powers and the Investigation* all illustrate the typical tenor of these discussions, which

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[120] Thomas Sherlock, *The Trial of the Witnesses of Jesus Christ* (London, 1729). Quoted by Burns, *The Great Debate on Miracles,* p. 123; and by Lloyd F. Bitzer, "The 'Indian Prince' in Miracle Arguments of Hume and His Predecessors and Early Critics," *Philosophy and Rhetoric* 31.3 (1998): 175-230, at p. 181.

[121] Boyle, *The Christian Virtuoso*, vol. 5, pp. 532 and 536.

[122] Ibid., vol. 5, p. 538.

moved toward more refined advice for the listener.[123]

History of the Novel Scholarship and Credibility and Epistemology of Testimony

Viewed from within this framework, history of the novel scholarship has been more devoted to *Port-Royal Logic's* "internal evidence" of the probability of the facts than to the "external evidence" of the credibility of the sources. The significant studies on eighteenth-century probability and the origins of the novel, by McKeon, Patey and Newsom for example, and scholarship interrogating the sense and fluidity of "facts" in the eighteenth-century novel, parse factual "probability" rather than witness "probability." Thus, in McKeon's striking phrasing, "Realism gathers up and sophisticates the scattered threads of verisimilitude and probability that Renaissance writers had teased out of the *Poetics.*"[124] Factual probability was of course a central preoccupation of the eighteenth-century novel, explicitly debated in the novels and by novelists. These contemporary discussions resonated with statements in the probability philosophy such as *Port-Royal Logic's* conclusion that "[b]eing accompanied by common circumstances is a ground of credibility for an event"[125] or what George Campbell in *Philosophy of Rhetoric* debated as "plausibility" or "verisimilitude."

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[123] Whately, *Elements of Rhetoric*; Richard Kirwan, *Logick; or, An Essay on the Elements, Principles, and Different Modes of Reasoning,* 2 vols. (London, 1807); James Gambier, *A Guide to the Study of Moral Evidence, or of that Species of Reasoning, which relates to Matters of Fact and Practice* (London, 1834); James Glassford, *An Essay on the Principles of Evidence and their Application to Subjects of Judicial Inquiry* (Edinburgh, 1820); and John Abercrombie, *Inquiries concerning the Intellectual Powers and the Investigation of Truth* (Edinburgh,1830).

[124] McKeon, *The Origins of the English Novel,* p. 120.

[125] Arnauld, *The Art of Thinking* [*Port-Royal Logic*], p. 351.

> [P]lausibility . . . ariseth chiefly from the consistency of the narration, from its being what is commonly called natural and feasible. This the French critics have aptly enough denominated in their language *vraisemblance,* the English critics more improperly in theirs *probability.* In order to avoid the manifest ambiguity there is in this application of the word, it had been better to retain the word *verisimilitude,* now almost obsolete.[126]

Factual probability was an integral part of the philosophy; however, "credibility probability" was equally part of the philosophical apparatus during the eighteenth century and a testimonial paradigm can help to recover this two-fold framework.

The linguistic indifference between "credibility" and "probability" terminology during this period is also instructive of how thoroughly the concept of probability having both credibility and plausibility elements had infused the culture. The *Port-Royal Logic* refers to the plausibility of the facts of the subject matter as the "intrinsic credibility" and the "credibility of things" was also a common term. Similarly, it was common to refer to the "testimony" of the senses, and of facts "speaking for themselves," as in Locke's reference to "Testimony of my Eyes," Boyle's reference to "testimony of our own senses and other faculties," Reid's use of "testimony of our senses," and Paley's famous reference to "circumstances cannot lie."[127] The fluid

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[126] George Campbell, *Philosophy of Rhetoric*, pp. 82-83.

[127] Locke, *An Essay Concerning Human Understanding*, book IV, chap XI "Of Our Knowledge of the Existence of Other Things," s. 2; Boyle, *The Christian Virtuoso,*

terminology does not indicate conceptual confusion, however, between plausibility and credibility. Moreover, the use of testimony and credibility in relation to things is not an idle metaphor, but instead the formulations of these aphorisms suggest the pervasiveness of the testimonial model. Without undermining the importance of factual probability, plausibility, verisimilitude, and internal consistency for the history of the novel, the testimonial paradigm and focus on credibility can help to recover contemporary understandings of how to interpret character, in daily life, trials, and novels, how to understand other people, and when to believe what they say, and how to guide people toward a mean between credulity and scepticism.

Philosophy and Epistemology of Testimony: the question of assent within imperfect knowledge

The philosophy of testimony was part of the zeitgeist of the long eighteenth century. There are instances of ancient and medieval writers discussing faith in testimony, but the seventeenth and eighteenth century is unusual for the sustained attention and elaboration of the philosophy of testimony. It is important to underscore testimony's salience in the intellectual culture and the overlap of epistemological assumptions informing legal evidence and other evidence-based inquiries. During this

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vol. 5, p. 525; Reid, *Essays on the Intellectual Powers of Man,* p. 445; and William Paley, *Consisting of Evidences of Christianity, Moral and Political Philosophy, Natural Theology, and Horae Paulinae* (London: Henry G. Bohn, 1860), chap. IX p. 168. Reid remarks, "There is, no doubt, an analogy between the evidence of sense and the evidence of testimony. Hence, we find, in all languages, the analogical expressions of the *testimony of sense,* of giving *credit* to our sense, and the like. But there is a real difference between the two, as well as a similitude. In believing upon testimony, we rely upon the authority of a person who testifies; but we have no such authority for believing our senses" (p. 329).

period, writers developed both an epistemology and interpretation of testimony. Testimony was seen as integral to moral judgments and history, science, religion, philosophy, and law. Novelists, historians, natural and moral philosophers, all saw testimony as a much broader category than the formal giving of evidence under oath before a legal tribunal. With the rise of empirical methods, witnesses were essential to knowledge claims of history and science, and the disputation of their role was an important part of the religious controversies between Protestants and Catholics during this period. Testimony was theorized and internalized as an important epistemological issue across a range of topics and it is an error of presentism in associating "witnesses" and "testimony" only with law during this period. Testimony was central to law but its theory was not relegated to the legal arena.

The extensive literature on the philosophy of testimony indicates an intense preoccupation with credibility. Bacon, Locke, Hume, Watts, Hartley, Stillingfleet, Wilkins, Reid, Hooke, Sprat, Tillotson, Whately, Leibniz, Boyle, Glanvill, and Wolseley, and in the nineteenth century, Mill and Bentham, deliberated about testimony. These writers considered the problem of how to instruct people on how to evaluate testimony, and importantly, how to regulate people between the extremes in degrees of belief of credulity, on the one hand, and scepticism, on the other.[128] The project sought to evaluate and not merely describe the almost evanescent process; to instruct and still be compatible with common sense intuitions; to regulate and not reduce the theory to a

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[128] The parallel extremes in degrees of knowledge (as opposed to degrees of belief) are dogmatism and scepticism.

calculus or *a priori* rules.

Punctuating testimony's salience within the culture, testimony was conceived of very broadly as referring to any person "asserting, relating, or attesting to the truth of any matter propounded."[129] By George Campbell's definition in the *Philosophy of Rhetoric,* "Testimony is a serious intimation from another, of any fact or observation, as being what he remembers to have seen or heard or experienced."[130] I will rely on this wide definition of testimony to illuminate how, beyond the expected judicial applications of formal testimony, testimony permeated ordinary decision-making and infused novels, and was perceived to do so.

One idea that garnered wide agreement among the virtuosi in England espousing

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[129] Isaac Barrow, *Works,* vol. 1, p. 449, quoted by Barbara Shapiro, *Probability and Certainty,* n. 79 p. 292.

[130] George Campbell, *Philosophy of Rhetoric,* ed. Lloyd F. Bitzer and foreword David Potter (1776; Carbondale and Edwardsville, Ill.: Southern Illinois University Press), p. 55. Those scholars who have recently advocated that testimony is neglected and under-theorized likewise adopt broad definitions in contrast to colloquial usage that associates testimony with formal judicial proceedings. Paul Ricoeur recommends a broad definition: "The term testimony should be applied to words, works, actions, and to lives which attest to an intention, an inspiration, an idea at the heart of experience and history which nonetheless transcend experience and history." "The Hermeneutics of Testimony," pp. 119-154, pp. 119-120. Elizabeth Fricker provides a formal epistemological sense of testimony: "the whole characteristic process by which a hearer, as a result of observing an assertoric utterance by a speaker, acquires a belief in what has been asserted." "The Epistemology of Testimony," p. 57, note 1. "A *speaker* believing that P, and wishing to communicate this belief, makes an utterance which constitutes his asserting that P; his audience, a *hearer,* observing and understanding it—that is to say, recognising it as the speech act that it is—as a result comes also to believe that P" (p. 69). Michael Welbourne, by comparison, writes, "What "philosophers often refer to as 'testimony',...is a rather portentous word for something ordinary and common. It is philosophicalese for telling people things" (*Knowledge*, pp. x-xi). "Telling someone what's what, whether orally or in writing, is what philosophers call 'testimony'. This is high-sounding language for something common and familiar" (p. 74).

probability theory was that testimony is a requisite constituent of knowledge production. In David Hume's well-known endorsement, "[T]here is no species of reasoning more common, more useful, and even necessary to human life, than that which is derived from the testimony of men, and the reports of eyewitnesses and spectators."[131] Reid likewise says we "receive the greatest and most important part of our knowledge by the information of others," and calls the regard for testimony a "first principle."[132] Testimony was not merely reluctantly acknowledged as necessary, but positively affirmed as being (at least sometimes) as certain (or almost as certain) a foundation to knowledge as demonstrative reasoning or personal senses, and indeed, sometimes preferable to personal experience. The *Port-Royal Logic* asserts the strong position: "knowledge based on authority . . . is often no less certain nor any less evident than knowledge based on reason."[133] Richard Price thought testimony "sometimes . . . scarcely short of demonstration. Though it often deceives, yet there are some kinds of it that have never deceived, and that cannot deceive"[134] and goes further to assert, "there is nothing which sense is capable of proving that testimony may not also prove."[135]

These sentiments were expressed across a range of fields of inquiry, including religion, science, and philosophy. Boyle goes further to describe how "the most rational men scruple not to believe, upon competent testimony, many things, whose truth did no

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[131] Hume, *An Enquiry Concerning Human Understanding*, section X "Of Miracles" para 5, p. 145.

[132] Reid, *Inquiry Into the Human Mind,* p. 196; Reid, *Essays on the Intellectual Powers of Man,* p. 450, and see p. 482.

[133] Arnauld, *The Art of Thinking* [*Port-Royal Logic*], p. 337.

[134] Price, "Dissertation Four," p. 453.

way appear to them by the consideration of the nature of the things themselves; nay, though what is thus believed upon testimony be so strange, and, setting aside that testimony, would seem so irrational, that, antecedently to that testimony, the things at last admitted as truths were actually rejected as errors, or judged altogether unfit to be believed."[136] That is, Boyle thought testimony had enough gravity and reliability that it could rationally displace preconceptions about the things in themselves and the factual plausibility. This relationship between experience and testimony, however, was one of the most vigorously debated in the testimony literature and the effort to characterize testimony as consistent with, rather than in conflict with, experience would be a key facet of the philosophy.

Thus, contrary to Hacking's theory on testimony's declining influence when "authority" and "opinion" were discredited, testimony continued to be thought of during the long eighteenth century as a vibrant part of knowledge production. Probability theorists confidently avowed that testimony could reasonably be analogized to demonstrative reasoning and personal senses and be a reliable source for (types of) knowledge and certainty.

As Hobbes observes in *The Elements of Law Natural and Politics,* "there be many things which we receive from report of others, of which it is impossible to imagine any cause of doubt: for what can be opposed against the consent of all men, in things they can know, and have no cause to report otherwise than they are (such as is a great part of our histories), unless a man would say that all the world had conspired to

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[135] Ibid., p. 420.

[136] Boyle, *The Christian Virtuoso,* vol. 5, p. 529.

deceive him."[137] These theorists repeatedly returned to the same rhetorical stratagem to emphasize this common sense position, and indeed, drew from a strangely restricted corpus to illustrate their point: no one, they argued, seriously doubts the existence of a named famous personage (for example, Queen Elizabeth or Caesar), or, a named famous city (for example, Rome), or one's own parentage, even if one has only testimony as the basis for that conviction.[138] If that gambit forced the concession that testimony is therefore at least *sometimes* evidence in which one believes and from which one gained knowledge, or at least a high probability of moral certainty, the issue could shift to determining the conditions when belief in testimony was justified. How should testimony be assessed to determine if one should assent?

From Credit to Credibility

Seventeenth- and early eighteenth-century discussions are saturated with references to testimony. Witness assessments were often conclusory and perfunctory, with prefatory appellations identifying the information source with the common locution of a "man of credit." For example, Robert Boyle in *Strange Reports* carefully prefaces

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[137] Thomas Hobbes, *The Elements of Law Natural and Politics*, ed Ferdinand Tonnies, 2d ed. intro. M.M. Goldsmith (1640; London: Frank Cass & Co, 1969), part I, chap. 6, section 9, p. 27.

[138] There are numerous examples, but representative illustrations can be found in statements by Locke, Richard Hooker, Joseph Glanvill, and Isaac Watts. See John Locke, *An Essay Concerning Human Understanding*, book IV chap. XVI, sec 8, pp. 662-663; Hooker, *Of the Laws of Ecclesiastical Polity*, book II, chap. 7, p. 177; Joseph Glanvill, "Of Scepticism and Certainty," in *Essays on Several Important Subjects in Philosophy and Religion* (1676) intro. Richard H. Popkin (New York: Johnson Reprint Corp., 1970), p. 49; and Watts, *Logick: or The Right Use of Reason,* pp. 181 and 266-267.

each person who relays something he saw or heard with descriptive phrases such as "very well worth of credit";[139] and in the *History of the Royal Society,* Thomas Sprat, labels "A Relation of the Pico Teneriffe" as "Receiv'd from some considerable Merchants and Men worthy of Credit, who went to the top of it."[140]

Credit, here, differs from the qualitative credibility that was emerging during the long eighteenth century in both the content of the character traits of the subject and in the hermeneutic processes expected of the listener. My distinction between "credit" and "credibility" represents a conceptual rather than linguistic distinction in the seventeenth and eighteenth centuries. The actual words were employed much less discriminately during this period, with "credit" often being used for the emerging qualitative weighing of character traits accompanied by evidence from which the interpretation could be verified. But, as I will develop, there was an important differentiation between the ideas of "credit," as a general character trait, and "credibility," as an individual, and temporally and spatially specific, quality. In content, "credit," as I distinguish the concepts, refers to character *type* traits, such as social status, and lacks the particularized and moment-to-moment qualities that mark later credibility notions.[141] Further, in these early

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[139] Robert Boyle, *Strange Reports* (1691) in *The Works of the Honourable Robert Boyle in Six Volumes To which is Prefixed the Life of the Author*, ed. Thomas Birch, 6 vols. (London 1772), vol. 5, p. 605.

[140] Thomas Sprat, *History of the Royal Society* (1667), ed. and critical apparatus Jackson I. Cope and Harold Whitmore Jones (St. Louis: Washington University Press, 1959), p. 200.

[141] On "credit" as simultaneously referring to authority and financial backing, see Defoe, *Complete English Tradesman*; Michael McKeon, *Origins of the English Novel 1600-1740* (Baltimore: Johns Hopkins University Press, 1987), pp. 205-206; Deidre Shauna Lynch, *The Economy of Character: Novels, Market Culture, and the Business of Inner Meaning* (Chicago: University of Chicago Press, 1998), p. 4; Simon

manifestations, writers were self-conscious about the need to assert credit, to in effect "credential" the narrative, but they had not assimilated an epistemology of credibility that would provide a means for the audience to establish credibility through ratiocinative processes. In the *New Organon*, for example, Bacon gives the flavour of the outgoing credit system, which advised how to present credit data, but the presentation was a dressing up of a hermeneutic *fait accompli*. "With regard to the credit of the things which are to be admitted into the history, they must needs be either certainly true, doubtful whether true or not, or certainly not true. Things of the first kind should be set down simply; things of the second kind with a qualifying note, such as "it is reported," "they relate," "I have heard from a person of credit," and the like."[142] That is, there is no attempt to provide the evidence for readers to make a credibility assessment for themselves, to spot-check and verify the testimonial assertion of the author or narrator. But Bacon also gives a sense of the emerging narrative apparatus for the *assessment* of credibility:

> [I]f the instance be of importance, either from its own use or because many other things may depend upon it, then certainly the name of the author should be given, and not the name merely, but it should be mentioned withal whether he took it from report, oral or written,...or rather affirmed it of his own knowledge; also whether it was a thing

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Schaffer, "Defoe's natural philosophy and the worlds of credit" in *Nature Transfigured: Science and Literature, 1700-1900,* ed. John Christie and Sally Shuttleworth (New York: Manchester University Press, 1989), pp. 13-44; and Shapin, *A Social History of Truth,* p. 95.

[142] Francis Bacon, "On Natural and Experimental History," in *The New Organon and Related Writings,* ed. and intro. Fulton H. Anderson (New York: Liberal

> which happened in his own time or earlier; and again, whether it was a thing of which, if it really happened, there must needs have been many witnesses; and finally, whether the author was a vain-speaking and light person or sober and severe; and the like points, which bear upon the weight of the evidence. Lastly, things which though certainly not true are yet current and much in men's mouths, having either through neglect or from the use of them in similitudes prevailed now many ages . . . , these it will not be enough to reject silently; they must be in express words proscribed, that the sciences may be no more troubled with them.[143]

This set of Bacon's guidelines not only structures how to evaluate evidence but gives advice on what kind of information should be included in reports in order that they can be correctly evaluated and credited by others. Increasingly, there is a shift away from providing perfunctory conclusions and toward supplying the credibility ingredients for readers to verify, a subject which Chapters Six and Seven explore more fully. With the development of this fuller sense of credibility, there is a greater attention to the ratiocinative processes of those who interpret credibility, such as jurors and readers, who will be operating within this testimonial paradigm. Significantly, the *Oxford English Dictionary* notes that the idea of "credulity" in a disparaging sense as an "*over-readiness* to believe" and a "disposition to believe on weak or insufficient grounds" is not implicitly present until the close of the seventeenth century, before that time

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Arts Press, 1960), p. 280.

[143] Bacon, *The New Organon and Related Writings,* pp. 280-281.

meaning the neutral "readiness to belief."[144] The philosophic and forensic focuses attention on, and invites judgment of, those who evaluate credibility. This premise leads to a stronger claim about the chronology of the English novel: until this fuller epistemological concept of credibility and the interpretive framework was available, the novel, and its characteristic "characterization" could not develop.

Factors for assessing testimony, including Credibility

Most of the probability theorists turned their attention to applying probability theory to assess testimony and witness credibility. A key part of that project was developing the factors for assessing testimony and compiling the indicators for appraising a source's credibility. These lists often contain residue of character traits based on group affiliation, such as gender and class. Categories continue to influence how testimony is theorized and tested through the eighteenth century. At the same time, even in the seventeenth century, some writers espouse a striking confidence that credibility permeates through a breadth of demographics. Anyone *can be* credible, and as will be discussed further on, anyone, properly instructed, *can assess* credibility. Glanvill assumes this levelling impulse in a curious essay where he "endeavours to remove the Main Prejudices against the belief of Witches and Apparitions." Glanvill admonishes that "in despising the Common Faith about Matters of Fact, and fondly adhering to it in things of Speculation, the [doubters] very grossly and absurdly mistake: For in things of Fact, the People are as much to be believ'd, as the most subtile

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[144] *Oxford English Dictionary*, 2d. ed., s.v. "credulity."

Philosophers and Speculators; since here, Sense is the Judge."[145] Robert Boyle advises experimental philosophers that, with respect to knowledge of natural things, they can learn "from the observations and practices, even of mean (and perhaps of illiterate) persons," providing they are "honest men, and had opportunity to know the truth of the things they deliver."[146]

The credibility criteria index perceptual, linguistic, memory, and reasoning abilities and distinguish between the witness's capacities to perceive and the witness's ability to report sense observations accurately. The criteria also index moral character traits. In these catalogues, the credibility criteria are usually composites that are themselves the result of an assessment process ("integrity," "honesty"), and the details of the workings of the evaluative process are left unspoken.

Steven Shapin extrapolates seven maxims for the evaluation of testimony in the seventeenth-century literature: assent to testimony which is plausible; multiple; consistent (internal to story, tested against hearer's experience and tested against other testimony); immediate; from knowledgeable or skilled sources; given in a manner which inspires a just confidence; and from sources of acknowledged integrity and disinterestedness.[147] However, as Shapin describes, "The supposedly independent assays are in fact linked in a network in which the ability to scan testimony for one

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[145] Glanvill, "Against Modern Sadducism in the Matter of Witches and Apparitions," p. 38.

[146] Boyle, *The Christian Virtuoso*, vol. 5, p. 529.

[147] Shapin, *A Social History of Truth*, p. 212.

feature depends upon the outcome of other assays."[148]

Isaac Watts's list in his early eighteenth-century *Logick* treatise, albeit remarkably detailed, is a fair exemplum of the credibility advice, with their simultaneous descriptive and prescriptive qualities and blended comfort of the commonsense with the instruction of the pedagogical. Watts begins by reciting how "*Faith,* "by which he includes all evidence from testimony of others, "is more or less firm or wavering, and the *Proposition believed* is either certain or doubtful" based on the qualities of the particular testimony and witnesses. Thus belief rises and falls proportionately to whether the witnesses are "many or few, are more or less wise, and faithful, and credible."[149] He then proposes principles through which, if followed, one can "arrive at such a *Certainty* in many Things of human Testimony, as that it is *morally* impossible we should be deceived, *i.e.* we may obtain a *moral certainty.* " One should consider, he instructs, first the internal evidence of the thing beginning with the lowest threshold of possibility, and next whether the "Thing reported" is "probable." Internal probability should be assessed separately from credibility, he advises, by looking at "*concurring Circumstances* to prove it, beside the mere Testimony of the Person that relates it." For credibility, Watts supplies the most detail:

> Consider whether the Person who relates it be *capable of knowing the Truth;* Whether he be a *skilful* Judge in such Matters, if it be a Business of Art, or a nice Appearance in Nature, or some curious Experiment in Philosophy. But if it be a mere Occurrence in Life, a plain, sensible

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[148] Ibid., p. 230.

> matter of Fact, it is enough to enquire whether he who relates were an *Eye* or *Ear-Witness,* or whether he himself had it only by *Hearsay,* or can trace it up to the Original.
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> Consider whether the Narrator be *honest* and *faithful,* as well as skilful: Whether he hath no *Bias* upon his Mind, no *peculiar Gain* or *Profit* by believing or reporting it, no *Interest* or *Principle* which might warp his own Belief aside from Truth, or which might tempt him to prevaricate, to speak falsly, or to give a Representation a little different from the naked Truth of Things. In short, whether there be no *Occasion* or *Suspicion* concerning his Report.

Watts also directs that such assays be performed on any witness with contrary testimony, "whether they are equally skilful and equally faithful, whether they are more in number, if they have a bias or influence to contradict it."[150]

Similar discussions punctuate the philosophical, theological, scientific, and historical writings in this period, whose internal evidence was by and large testimonial and as such subject to the very criteria that were being set forth. Their authors dance toward articulating more precise qualities of reliable witnessing but step back from specifying more programmatic requirements. Lord Bolingbroke, for example, advises generally, "The degree of assent, which we give to history, may be settled, in proportion

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[149] Watts, *Logick: or The Right Use of Reason,* p. 181.

[150] Ibid., pp. 268-270.

to the number, characters, and circumstances of the original witnesses."[151] George Campbell's *Philosophy of Rhetoric* warns that belief in human testimony should be confined within the proper bounds by considering the circumstances which corroborate or invalidate its evidence, to wit, "the reputation of the attester, his manner of address, the nature of the fact attested, the occasion of giving the testimony, the possible or probable design in giving it, the disposition of the hearers to whom it was given, and several other circumstances."[152] Hume cautions that suspicions should arise "when the witnesses contradict each other; when they are but few, or of a doubtful character; when they have an interest in what they affirm; when they deliver their testimony with hesitation, or on the contrary, with too violent asservations."[153] As these examples suggest, while the writers maintain that both credibility and plausibility affect testimony's reliability, they devote more attention to credibility, the more varied and complex texture of human character, motives and capabilities, and the exacerbating factor of human relationships and interactions, which describe credibility. Thomas Reid, in *Inquiry into the Human Mind*, even downplays the significance of plausibility (the "native and intrinsic authority") as "very inconsiderable," against the "character, the

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[151] Lord Bolingbroke, *Substance of Some Letters to M. de Pouilly* (1720) in *The Works of Lord Bolingbroke, With a life, prepared expressly for this edition, containing additional information relative to his personal and public character, selected from the best authorities.* 4 vols. (Philadelphia: Carey & Hart, 1841), vol. 2, p. 487, quoted by Isaac Kramnick, "Editor's Introduction" to Lord Bolingbroke, *Historical Writings,* ed. Isaac Kramnick (Chicago: University of Chicago Press, 1972), p. xxxviii. Kramnick describes these as "less than adequate guidelines" which are "a curiously naïve marriage of Bayle to Hume's later writings" (pp. xxxviii-xxxix); however, Bolingbroke's principles are completely in character for the period.

[152] Campbell, *Philosophy of Rhetoric*, p. 55.

[153] Hume, *An Enquiry Concerning Human Understanding*, section X, "Of

number, and the disinterestedness of witnesses, the impossibility of collusion, and the incredibility of their concurring in their testimony without collusion," which comparatively may give an "irresistible strength to testimony."[154]

Significantly, the credibility literature was also replete with examples of how factors could turn in on themselves, undermining the possibility of going beyond maxims to "rules," and also setting up the need for a supplemental pedagogical device (that is, the novel), beyond the philosophical and logic treatises, which could instruct people on *how* to assess credibility. To illustrate how the principles were matched with counter-principles, one recurrent example is the facility with which multiple witnesses and consistent testimonies could be turned to serve as an advantage or as a fault. Numerous thinkers point to the "uniform testimony of many people"[155] as one of the most compelling factors for assent to testimony, reasoning that "*Mankind cannot be supposed to combine to deceive, in things, wherein they can have no design or interest to do it.*"[156] The agreement of concurring testimonies has a probability "distinct from" and greater than the summed total of individual testimonies.[157] But "collusive" testimonies are negatively valued, because "[t]he usual character of human testimony is substantial truth under circumstantial variety . . . . On the contrary, a close and minute agreement induces the suspicion of confederacy and fraud. Numerous, and sometimes,

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Miracles," para 7, p. 146.

[154] Reid, *Inquiry Into the Human Mind,* p. 197.

[155] Arnauld, *The Art of Thinking* [*Port-Royal Logic*], p. 338.

[156] Glanvill, "Of Scepticism and Certainty," p. 49.

[157] Campbell, *Philosophy of Rhetoric*, pp. 55-56; and Price, "Dissertation Four," p. 418, note*.

important variations present themselves; not seldom also, absolute and final contradictions; yet neither one nor the other are deemed sufficient to shake the credibility of the main fact."[158] Having multiple concurring testimonies could suggest truth, on the one hand, or merely an ill-informed crowd, since "[f]ollowing a multitude is sometimes like the grazing or running of a herd."[159] The sheer quantity of witnesses is carefully set apart from considerations based on the integrity and veracity of individual witnesses and the relationships witnesses may have with other witnesses.

Another indicator of the complexity of these appraisals is how plausibility and credibility factors are intermingled and each evaluated with reference to the other to collate probability. Thus, testimony about factually implausible events might indicate probability because it increases the credibility of a witness who is willing to risk reputational damage. Locke and others thought miracle stories, for example, "may be the fitter to procure Belief, by how much more they are beyond, or contrary to ordinary Observation."[160] These complexities suggest contemporaries' facility and familiarity with the interpretation of testimony and credibility.

Such maxims and counter-maxims, not surprising for distilled common sense, nevertheless made it difficult to steer people toward a middle way between credulity and scepticism. There was an acute moral tinge to negotiating the golden mean between credulity and scepticism, which highlights the key role played by the interpreters'

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[158] Paley, *Consisting of Evidences of Christianity, Moral and Political Philosophy, Natural Theology, and Horae Paulinae*, part III, chap. 1, p. 137.

[159] Taylor, *The Rule of Conscience* [*Ductor Dubintantum*], chap. IV, rule IX, vol. 12, p. 90.

[160] Locke, *An Essay Concerning Human Understanding*, book IV, chap. XVI,

ratiocinative processes.[161] The probabilists were teaching people how to navigate the "opposing errors" of a "stupid simplicity" and "stupid presumptuousness," on the one hand, "believing too readily on the slightest rumor," and on the other hand, "foolishly refusing to believe the best attested things if these offend the prejudice" and "passes beyond the narrow limits of the mind."[162] This measured assent would be achieved by following the Aristotelian principles that one should not require greater proof than a subject is capable of, nor move from suspended belief to assent to a proposition on the basis of flimsier evidence than necessary. Those who believed too readily were castigated as failing to exercise discrimination and judgment. Isaac Watts thus complains those with an "*easy* and *credulous Temper*" have "so much Complaisance . . . or Weakness of Soul," they receive everything for truth on a "shadow of evidence."[163] But those who failed to believe were socially divisive because they uncharitably questioned someone else's *bona fides.* H.H. Price aptly speaks for the eighteenth-century concern with the latter point when he remarks, "credulity is a necessary condition for social co-operation." A "moral aspect" colours this question because we have a "duty to trust" unless there are "convincing reasons for mistrust." However, while "[c]redulity may be socially expedient, even socially indispensable, and it may be

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"Degrees of Assent," section 13, p. 667.

[161] That moral tinge is emphasized by novelists, as with Richardson, who includes credulity maxims in his *Collection of the Moral and Instructive Sentiments Contained in the History of Clarissa,* vol. 3 in *Samuel Richardson's Published Commentary on Clarissa, 1747-1765,* intro. John A. Dussinger, afterword Ann Jessie Van Sant (London: Pickering & Chatto, 1998), p. 19.

[162] Arnauld, *The Art of Thinking* [*Port-Royal Logic*], p. 338 and p. 346.

[163] Watts, *Logick: or The Right Use of Reason,* pp. 208-210.

charitable," "it is credulity still."[164] Doubting Thomas, as the theological archetype for a recalcitrant refusal to believe Testimony, stood for the moral: "Blessed are they that have not seen and yet have believed" (John 20:29); but that advice was not sufficiently nuanced to resolve when to believe a human witness or, more precisely, when a witness deserved to be believed. That question occupied eighteenth-century intellectuals, as the examples in this chapter illustrate, and novelists would make a critical contribution to that quandary.

With the two-part scheme of plausibility and credibility established in the literature, the debate not surprisingly turned to how to balance the internal probability of things against the external credibility of the testimony and proportion the degrees of assent when the two types of evidence disagreed. The heavily circulated King of Siam anecdote of the well-intentioned individual from a warm climate who does not believe in a visitor's testimony about ice because he has not experienced it was the backdrop for this debate. The anecdote was used not only to debate the correct answer to weighing the probability of fact versus the credibility of the witness where the interpreter has a limited empirical basis, but also to assess the moral fault of those who incorrectly choose because of their limited personal experience.[165] Although the King of Siam

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[164] Price, *Belief*, pp. 114-115, 123.

[165] See Bitzer, "The 'Indian Prince' in Miracle Arguments of Hume and His Predecessors and Early Critics" for a detailed description of this illustration in the miracle literature. The illustration can be found in Locke, *An Essay Concerning Human Understanding*, book IV, chap. XV, section 5, p. 657; and Hume, *An Enquiry Concerning Human Understanding*, section x, "Of Miracles." The essay on miracles was published in Hume's *Philosophical Essays Concerning Human Understanding* in 1748, but without the Indian Prince discussion. The Indian Prince first appeared, as paragraph 10 and its accompanying note, in the 1750 edition of the essays, which were eventually

question was inspired by religious debates between Protestants and Catholics as to the weight to be given to historic (and religious) testimony, the central question was when people should be assented to and when, if ever, testimony that conflicts with common experience can, or should, prevail. While these debates were carried on under the aegis of the miracle controversies, the contemporary writers were aware that the question was a special case of a larger epistemological question, and were sensitive that resolving when to believe reports of miracles had repercussions for questions of testimony and credibility and would likely provide criteria that could be generally applied.

Experience v. Testimony

Hume and others were addressing the issue of "the connexion between the evidence of testimony and the evidence of experience"[166] through the stock illustration of the King of Siam and, in turn, the problem of regulating oneself within a mean between credulity and skepticism. The conflict between experience and testimony was a loaded one because the empiricists had been at great pains to integrate testimony into an empirical theory of knowledge; for that effort to be successful, testimony had to be a part of individual experience.

On one level, this effort was facilitated by ambiguity in the term "experience." Experience, as used by Locke and others, already encompassed an expansive view of experience that included "our", not merely "mine," that is, a social view of knowledge that would encompass testimonial evidence. "Experience" and "testimony" were thus

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republished under the title of *An Enquiry Concerning Human Understanding.*

[166] Review of *Essai Philosophique sur les Probabilités,* pp. 328-329.

not as clearly opposing the information derived from an individual's personal senses with the information derived from other people as might be supposed. For most, the moral of the Siam story was that individual, or localized, experience can be too limited an empirical basis. On a further level, testimony, as will be described in the following chapter, became itself a type of evidence that was personally experienced, and thereby the evidence of other people's experiences could be empirically supported as one's own experience. The threads of experience and knowledge are also deeply implicated in how credibility is judged. As later chapters discuss, acquiring knowledge and experience did not necessarily correlate with having the moral and epistemic qualities to be judged credible. Some characters, especially women and individuals who lacked "creditworthy" status, could gain experience and be judged to have lost morality or, correlatively, lack experience and be judged not to have knowledge.

The following chapter explicates the credibility pairing of epistemic and moral traits and discusses credibility as an empirical phenomenon.

Chapter Three: The Epistemology of Credibility

There's no art
To find the mind's construction in the face
(*Macbeth* I.iv. 11-12)

In his essay the "Hermeneutics of Testimony," Paul Ricoeur asks, "Is a *philosophy* of testimony possible?" and answers, "such a philosophy can only be a hermeneutics, that is, a philosophy of *interpretation.*"[1] Credibility evaluation, as a philosophy of how to interpret testimony and character, can be seen as such a "hermeneutics of testimony."

Credibility, like fame, love, and reputation, is a status that is conferred and attributed by others, and thus credibility is a relational phenomenon. Credibility signifies a belief and is an interpretive procedure, leading to judgment about other people. It is a status imputed to someone and is ascribed based on subjective, transitory sensory impressions, accumulated into judgment about character, and the result of the interpretive process is an attribution representing the worthiness to be believed. Credibility represents a judgment by others but in theory it is based on someone else correctly recognizing interior qualities and making proper inferences from character evidence. It is outer-directed, since the determination is imposed by others, but it also is

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[1] Paul Ricoeur, "The Hermeneutics of Testimony," trans. David Stewart and Charles E. Reagan, in *Essays on Biblical Interpretation,* ed. and intro. Lewis S. Mudge (Philadelphia: Fortress Press, 1980), pp 119-154, at p. 143. Originally published as "L'herméneutique du témoignage," *Archivio di Filosofia* (La Testimonianza) 42 (1972): 35-61.

inner-focused on moral and intellectual qualities that are, under the optimistic version of this theory, projected and recognizable.

Credibility is about individuals—individual thought processes, character, and judgment—but it is also about individual relationships and significantly has a social aspect. Testimony by definition is statements made *to another person* and credibility by definition is an assessment by one person of *another person's* moral and cognitive character. Testimony is one of the "social operations of mind," to repeat Thomas Reid's phrase.[2]

By corollary to credibility being both individual and social, epistemology and hermeneutics are also inextricably linked. In order to increase knowledge, or at least beliefs, an individual has to have recourse to other people's knowledge that is derived from their sensory perceptions. But for each of us to know whether or not we can rely on other people we first have to assess their character. Not only are the moral and epistemic skills of the witness important, so too are the interpretive skills of the listener. Every credibility attribution puts not only the character of the speaker but the character of the listener on trial. Interpretation, from this perspective of a testimonial paradigm, is about testimony and credibility, about intellectual processes and social relationships, about an individual's judgments and about other people.

Credibility and testimony were viewed over the long eighteenth century as both deeply "individual" and troublingly "social" phenomena, since credibility is a relational

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[2] Thomas Reid, *Essays on the Intellectual Powers of Man* (1785) in *Philosophical Works, With notes and supplementary dissertations by Sir William Hamilton,* intro. Harry M. Bracken, vol. 1 (Hildesheim: Georg Olms, 1967), vol. 1, p. 244.

phenomenon that is created and confirmed by others. Credibility is predicated on the epistemic and moral qualities of both the witness and the observer. We access the resource of someone else's individual senses through testimony as an evidentiary base from which to interpret credibility. Thus, the "rationality of many of our beliefs depends not only on our own character but on the character of others as well."[3] Or, to look at this in another way, credibility evaluations reflect not only our assessment that others are credible, but also that we judge ourselves to have the moral and epistemic credentials to be interpreters of credibility. When seventeenth- and eighteenth-century authors refer to getting a report from a "person of credit," we as readers have to trust the authors' ability to assess credibility properly since we lack the evidence to verify that conclusion. By saying other people have credibility, as authors of this period frequently did, the authors indirectly ascribe to themselves the hermeneutic ability to *recognize* credibility.

In his study of *Sincerity and Authenticity,* Lionel Trilling defines sincerity as "the avoidance of being false to any man through being true to one's own self," and says we now use it primarily to refer to "congruence between avowal and actual feeling."[4] But Steven Shapin's translation of Trilling's sense into three concise criteria

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[3] John Hardwig, "The Role of Trust in Knowledge," *The Journal of Philosophy* 88 (December 1991): 693-708, at p. 700.

[4] Lionel Trilling, *Sincerity and Authenticity* (Cambridge: Harvard University Press, 1972), p. 5 and p. 2. In literary criticism, sincerity is almost exclusively used to refer to the *author's* intentions. Credibility, by comparison, as I am applying it, looks at the credibility of any speaking witness, including fictional characters, not merely authors, and refers to an attribution, rather than intentions. Both concepts relate to honesty as a value. Sincerity is defined as "freedom from dissimulation or duplicity; honesty, straighforwardness" and "genuineness" of feelings. *Oxford English Dictionary*, 2d. ed. s.v. "sincerity." Literary criticism on sincerity most often takes

brings the connections between sincerity and credibility closer: What (Shapin says) Trilling says of sincerity can be said of credibility also: credibility is "at once an attributed state of personal existence, a moral relationship between individuals, and a product of 'the most arduous effort,'"[5] an effort, I would add, by the testifier and the assessor. While "sincerity" refers to speculation about another person's actual intentions, credibility refers to another person's assessment; thus, one can say only "he *seems* sincere," but can assert the conclusion of one's attribution of another with the certainty of "he *is* credible"; and, by corollary, "I am sincere" works in a way that "I am credible" does not. Applied to novels, criticism on sincerity might consider whether a character is hypocritical or duplicitous, what Leon Guilhamet refers to as the "string correspondence of internal state and external action, stated intention and actual intention, appearance and reality."[6] An analysis of credibility, however, is not concerned with whether a character is *actually* telling the truth or lying (within the

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poetry as its subject and "Wordsworthian" sincerity as a standard. See Leon Guilhamet, *The Sincere Ideal: Studies in Sincerity in Eighteenth-Century English Literature* (Montreal and London: McGill-Queen's University Press, 1974); Patricia Meyer Spacks, "In Search of Sincerity," *College English* 29 (1967-1968): 591-602; and Herbert Read, *The Cult of Sincerity* (New York: Horizon Press, 1969). Guilhamet singles out Richardson's works as a rare example of sincerity infusing a genre other than poetry, calling them "novels of sincerity." *The Sincere Ideal*, pp. 296-297. Michael McKeon links the novel with a conundrum raised by the paradoxes of sincerity and fiction. He sees the emergence of the novel as an answer to the question, "How can an author sincerely believe that he is telling the truth if he knows that he has invented the story to whose historicity he earnestly attests?" because it is a "new literary fiction designed to engage the social and ethical problems the established literary fictions could no longer mediate—which is to say, both represent and conceal—with conviction." *The Origins of the English Novel, 1600-1740* (Baltimore: Johns Hopkins University Press, 1987), pp. 120-133.

[5] Steven Shapin, *A Social History of Truth: Civility and Science in Seventeenth-Century England* (Chicago: University of Chicago Press, 1994), p. 162.

[6] Guilhamet, *The Sincere Ideal,* p. 291.

fictional world) but with whether other characters (or readers) *believe* what that character says.

Just as the *process* for assent was seen as both descriptive and prescriptive, the *content* of credibility factors themselves are a curious amalgam of the individual and the social, the subjective and objective, and the descriptive and prescriptive. Credibility is a subjective judgment of an individual, based on the unruly and impressionistic perception of the personal impressions of the traits of another individual, compared with model character traits, which takes into consideration unavoidable weaknesses of human nature and aspirational qualities such as goodness, honesty and integrity, and moves toward a standard content for the "credibility." People can be instructed as to guidelines on the criteria but the subject of the assessment is always about a particular testimonial moment. There is no notion of "credibility" that can be detached as a standard and that can stand apart from the attributive process of assessing an individual's testimony on a specific occasion. Credibility, through an intuitive, cumulative and impressionist process, dissects individual traits, revealed on specific occasions, away from character types and from universal human nature. Further, the assessment is intractably specific to the individual interpreter. Thus as Richard Whately explains in his popular early nineteenth-century rhetoric treatise, there is "often much room for the exercise of judgment, and for difference of *opinion*, in *reference* to things which are, *themselves,* matters of fact. *E.G.* The degree of *credibility* of the *witnesses*

who attest any fact, is, itself, a matter of Opinion; and so, in respect of the degree of weight due to any other kind of probabilities."[7]

This chapter on the "Embodiment of Credibility" explores the eighteenth-century hermeneutic framework for interpreting credibility and this period's theory for incorporating credibility into empiricism: what the grounds of persuasion for credibility were and how they were used as inducements to assent to testimony; how credibility factors could be made visible and testable; how easily someone could counterfeit these outward indicia, according to this period's philosophy; and how well the testimony recipient (juror or reader or common person) can interpret these cues. The testimonial paradigm focuses on oral speech and counter-intuitively invites reader-critics to listen and to watch during the act of reading.

Empiricism and Testimony

Testimony was incorporated into empirical theory and thus supported by a contemporary epistemologically sound theory in two ways. First, a broad, or ambiguous, use of "experience" which includes social knowledge as part of individual's "experience" was common in the probability theory. The narrow view of empiricism limiting experience to personal sensory information clashed with the common sense that individuals could not be everywhere at once and at all times. The reductive idea was tenacious in principle; however, authors repeatedly make allowances for testimony as a

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[7] Richard Whately, *Elements of Rhetoric Comprising an Analysis of the Laws of Moral Evidence and of Persuasion, with Rules for Argumentative Composition and Elocution* (1828; 7th ed. 1846), ed. Douglas Ehninger, foreword David Potter (Carbondale and Edwardsville, Ill: Southern Illinois University Press, 1963), pp. 59-60.

knowledge source by a generous or ambiguous use of "experience" that conflates individual and social knowledge. This equivocal use of "experience" correlated with the tendency to claim derived experience—other people's observations transmitted to us by their testimony—as our own, but could also make it harder to detect, and assess, testimonial evidence. Notwithstanding the individualist rhetoric during the eighteenth century, testimony, or social observations, was understood to be an important element of individual knowledge.

Some authors explicitly acknowledge the conflation, as with Richard Price asserting, "the greatest part of what is commonly called experience is merely the report of testimony."[8] In *The Christian Virtuoso,* Robert Boyle observes that the word "experience" may admit of "diver senses, where one is far more comprehensive than another" and decides to define "experience" "with greater latitude, for the knowledge we have of any matter of fact, which, without owing it to ratiocination, either we acquire by the immediate testimony of our own senses and other faculties, or accrues to us by the communicated testimony of others." "Even in common acceptation," he remarks, "the word experience is not always meant of that which is immediate, but is often taken in a latitude.... learned men, as well as common use, confine not the appearance of the word experience to that which is personal, but employ it in a far

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[8] Richard Price, "Dissertation Four: On the Importance of Christianity, the Nature of Historical Evidence, and Miracles" in *Four Dissertations* (1768) 2d ed. with additions, intro. by John Stephens (London: A. Millar and T. Cadell; Thoemmes Antiquarian Books, 1990), p. 400 note *.

greater latitude."[9] John Craig, in the context of considering rules for assessing historical witnesses, gestures toward this reciprocity between observations and testimony. He defines "natural probability" as "probability which is deduced from arguments conforming to our own observation or experience," and "historical probability" as "probability which is deduced from the testimonies of others who are affirming their own observation or experience."[10]

Second, the reception of other people's experience through testimony was itself characterized as an *individual experience.* That is, testimony evaluation brought the interpreter's experience as an assessor to the foreground. Credibility is an inference from sensory facts derived from observing the witness while he or she is testifying. Richard Price in his fourth "Dissertation," observes how "Testimony is truly no more than Sense at second-hand." One interpretation is that this is merely denotative, defining testimony as other people's relations of their sensory experience. But, there is a more intriguing meaning captured by his statement that Price intimates, suggesting how the interpreter's experience of receiving testimony is equally empirical, a "second" "*Sense*" experience.[11]

As Coady explains in his 1992 study of testimony, "transmission of information via testimony usually involves perception twice over (in the witness and in the

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[9] Robert Boyle, *The Christian Virtuoso in The Works of the Honourable Robert Boyle in Six Volumes To which is Prefixed the Life of the Author*, ed. Thomas Birch, vol. 5 (London 1772), pp. 525-526.

[10] "Craig's Rules of Historical Evidence," from Joannis Craig, *Theologiae Christianae Principia Mathematica* (London 1699), reprinted in *History and Theory: Studies in the Philosophy of History* (The Hague: Mouton & Co, 1964), p. 3.

[11] Richard Price, "Dissertation Four," p. 416.

recipient)." Coady observes that this at least doubles the risks. "Not only can the witness misperceive but his audience can mishear or misread the message. Add to this the possibilities of deception and misremembering and the individual's perceptions appear much less risky epistemologically" than other people's perceptions relayed through testimony.[12] However, theorists in the long eighteenth century instead frequently see the double perception as a way to rehabilitate testimony and convert it into an epistemologically acceptable source of evidence.

These premises are incorporated into the eighteenth-century protocols for testing credibility. Philosophical discussions of this empirical basis of the *reception* of testimony are rare, even into the twentieth-first century. H.H. Price clearly and explicitly draws them out in his book on *Belief:*

> [I]t is important to notice that there is, after all, something first-hand about the acceptance of testimony itself. Testimony has to be conveyed to us by means of perceptible events or entities—audible or visible words, or sometimes visible signs or gestures; or occasionally by tangible means . . . . And the person who accepts the testimony must perceive these perceptible events or entities for himself. Unless he has this first hand experience, he cannot accept the testimony, nor even reject it. . . . How ever many hands or mouths [someone's] story has passed through before it reaches me, it will not reach me at all unless there is some first-hand perceptual experience of mine at the end. The

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[12] C.A.J. Coady, *Testimony: A Philosophical Study* (Oxford: Clarendon Press, 1992), p. 128.

> acceptance of testimony is first hand in another way as well. Testimony has to be understood by the person who receives it, and he must understand it for himself. No one else can understand it for him. . . . The conclusion we must draw is that the testimony received by a particular person can never be more reliable than the first hand experience by means of which he receives it. . . . [B]efore I am entitled to believe what someone is saying, I must make sure that it is really being said. . . . Furthermore, one is only entitled to rely on testimony if one understands it correctly. . . . The testimony which we accept can never be more reliable than our own capacity for understanding the words (or signs or gestures) by means of which it is conveyed to us. . . . It is surely undeniable that there is something first hand about the acquisition of any belief whatever, whether it is based on testimony or not. But we tend to forget this, if we lay great emphasis on the concepts of public verifiability and public knowledge. . . . Each of us has to do his verifying for himself at first hand, however important it is for each of us to learn that others have done it.[13]

The means by which the receipt of testimony was theorized during the eighteenth century into an empirical experience is answered by the idea of "embodied credibility" and this period's "grammar of credibility."

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[13] H.H. Price, *Belief* (London: George Allen & Unwin, 1969), pp. 119-123.

Embodied Credibility

A conundrum that faced seventeenth- and eighteenth-century philosophers was that contemporary epistemology highly valued individual sensory experience but the very recourse to testimony meant that personal observations were either inadequate or unavailable. Testimony was incorporated into this prevailing epistemology by making the *reception of testimony* evidence that was accessible to personal observations. People could critically sift the evidence of demeanour, countenance, gestures, tone, and mannerisms that was revealed by the act of testifying. Shapin comments of truth, and the same can be said even more strongly of credibility, that it is established "in the small, the intimate, the personal, the embodied, the emotionally textured, and often in the domains of the familiar and the face-to-face."[14] During the eighteenth century,

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[14] Steven Shapin, "Rarely Pure and Never Simple: Talking About Truth," 7.1 *Configurations* (1999): 1-14, p. 10. Shapin refers to credibility being "embodied" in *A Social History of Truth,* p. 238. In chapter five of *A Social History of Truth*, Shapin discusses testimony as one aspect of his larger argument about "truth" and gentlemanly culture. He contends that gentlemen "embodied" credibility because the culture ascribed integrity and disinterestedness to them. We both point to "embodied" credibility. However, my argument diverges from that developed by Shapin, who focuses on seventeenth-century "status" and character-trait features of a "gentlemanly culture." By contrast, I focus on the long eighteenth-century concept of credibility and argue that one of the innovative, and hermeneutically challenging aspects of credibility, as it developed in philosophy, law, and literature of this period, was to *distinguish* credibility from character. "Embodied" credibility, as I develop it here, emphasizes the visual scrutiny of pathognomic traits as a way to discern whether any individual was credible. Credibility, I argue in contrast to Shapin, theoretically could be ascribed to anyone, whether they had the social status of a "gentleman" or not. The long eighteenth-century process by which credibility was ascribed considered but did not require particular character traits or social status. Unlike Shapin's "social history of truth," this study is explicitly not a history of "truth" but of "credibility," an idea which turns precisely on the antithesis of truth, that is, on the inability to know, to a certainty, what the truth is.

credibility was literally embodied so that, to put it colloquially, people could know it when they saw it.

Francis Bacon in the second book of *The Advancement of Learning* observes that the ancient physiognomic concepts are deficient because Aristotle used only the "factures of the body but not the gestures of the body" to discover the disposition of the mind. The "gestures," Bacon advocates, are "no less comprehensible by art, and of greater use and advantage." "For the Lineaments of the body do disclose the disposition and inclination of the mind in general; but the Motions of the countenance and parts do not only so, but do further disclose the present humour and state of the mind and will." Bacon endorses a dynamic eliciting of credibility criteria from the soft portions of the body. "[S]ubtile persons," Bacon asserts, "well know the advantage of this observation" as a "great discovery of dissimulations." Bacon thus recommends a template aptly suited for the assessment of testimony: "the sinews of wisdom are slowness of belief and distrust; that more trust be given to countenances and deeds than to words; and in words, rather to sudden passages and surprised words, than to set and purposed words." Like Judge North's expostulation quoted in the introduction, Bacon suggests a testimonial paradigm in which "countenances" are preferable to only the grammatical constructions of words as indicia for credibility.[15]

Thomas Reid has one of the most detailed and comprehensive theories of embodied credibility and his philosophy was influential among legal treatise writers who were describing and explaining principles for the evaluation of legal testimony. In

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[15] Francis Bacon, *The Advancement of Learning, Book Two* (1605) in *The Major Works,* ed. and intro. and notes by Brian Vickers (Oxford: Oxford University Press, 2002), pp. 205-206 and 273-274.

his section "Of the Analogy Between Perception and the Credit We Give to Human Testimony" in *Inquiry Into the Human Mind*, Reid theorizes as a "first principle" "*That certain features of the countenance, sounds of the voice, and gestures of the body indicate certain thoughts and dispositions of mind.*" "[N]ot only [is] there . . . a connection established by Nature between certain signs in the countenance, voice, and gesture, and the thoughts and passions of the mind; but also, . . . by our constitution, we understand the meaning of those signs, and from the sign conclude the existence of the thing signified."[16] Reid urges people to "draw all the knowledge we can attain of men's characters" from these "external signs."[17] David Hume in the *Enquiry*, by comparison, talks of using experience to "mount up to the knowledge of men's inclinations and motives, from their actions, expressions and even gestures; and again, descend to the interpretation of their actions from our knowledge of their motives and inclinations."[18]

Drawing connections between the body and the mind is not unique to credibility assessment. The scholarship of Norbert Elias and Erving Goffman, in particular, has been influential in bringing forward demeanour, countenance and the "presentation of

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[16] Thomas Reid, *Inquiry Into the Human Mind, on the Principles of Common Sense* (1764; 4th ed. 1785) in *Philosophical Works, With notes and supplementary dissertations by Sir William Hamilton*, intro. Harry M. Bracken, vol. 1 (Hildesheim: Georg Olms, 1967), p. 450.

[17] Reid, *Inquiry Into the Human Mind*, p. 483.

[18] David Hume, *An Enquiry Concerning Human Understanding* (2d ed. 1750) intro. and ed. Anthony Flew (La Salle, Ill: Open Court, 1988), pp. 122-123.

self" as critical inquiries.[19] Many scholars have discussed character in terms of body language and physiognomy.[20] Other scholars have commented more specifically on the links between rhetoric, oratory, theatre, or visual arts, and character in eighteenth-century law and novels.[21] What is novel in this period, I am positing, is that credibility

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[19] Norbert Elias, *The Court Society,* trans. Edmund Jephcott (Oxford: Blackwell, 1983); Erving Goffman, *The Presentation of Self in Everyday Life* (Garden City, NY: Doubleday Anchor, 1959); and Erving Goffman, *Interaction Ritual: Essays on Face-to-Face Behavior* (Garden City, NY: Doubleday Anchor, 1967).

[20] See Barbara Korte, *Body Language in Literature* (Toronto: University of Toronto Press, 1997); Lucy Hartley, *Physiognomy and the Meaning of Expression in Nineteenth-Century Culture* (Cambridge: Cambridge University Press, 2001); Patrick Coleman, Jayne Lewis, and Jill Kowalik, eds. *Representations of the Self from the Renaissance to Romanticism* (Cambridge: Cambridge University Press, 2000); Shearer West, "Wilkes's Squint: Synechdochic Physiognomy and Political Identity in Eighteenth-Century Print Culture" *Eighteenth-Century Studies* 33 (1999): 65-84; Melissa Percival, *The Appearance of Character: Physiognomy and Facial Expression in Eighteenth-Century France* (London: W.S. Maney and Son, 1999); Paul Youngquist, "In the face of beauty: Camper, Bell, Reynolds, Blake," *Word & Image* 16 (2000): 319-334; Brewster Rogerson, "The Art of Painting the Passions," *Journal of the History of Ideas* 14 (1953): 69-94; Clorinda Donato, "Reading the Face: Lavater in the Twenty-First Century," *Lumen* 20 (2001): 83-100; Alan T. McKenzie, "The Countenance You Shew Me: Reading the Passions in the Eighteenth Century," *The Georgia Review* 32 (1978): 758-771; Jocelyn Powell, "Making Faces: Character and Physiognomy in L'Ecole Des Femmes and L'Avare," *Seventeenth-Century French Studies* 9 (1987): 94-112; Patrick Coleman, "Character in an Eighteenth-Century Context," *The Eighteenth-Century* 23 (1983): 51-63; Alexander Gelley, "Character and Person: On the Presentation of Self in Eighteenth-Century Novels," *The Eighteenth-Century* 21 (1980): 109-127; Marian Hobson, "Characteristic Violence; or, The Physiognomy of Style," in *Violence, Identity, and Self-Determination,* ed. Hent de Vries and Samuel Weber (Stanford: Stanford University Press, 1997): 58-79; Barbara M. Benedict, "Reading Faces: Physiognomy and Epistemology in Late Eighteenth-Century Sentimental Novels," *Studies in Philology* 92 (1995): 311-328; K.J.H. Berland, "The Marks of Character: Physiology and Physiognomy in *Absalom and Achitophel,*" *Philological Quarterly* 76(1997):193-218; Graeme Tytler, "Letters of Recommendation and False Vizors: Physiognomy in the Novels of Henry Fielding," *Eighteenth-Century Fiction* 2 (1990): 93-111; David Oakleaf, "Marks, Stamps, and Representations: Character in Eighteenth-Century Fiction," *Studies in the Novel* 23 (1991): 295-311.

[21] On connections between theatre and literature, see, for example, Jocelyn Harris, *Samuel Richardson* (Cambridge: Cambridge University Press, 1987); Mark

came to be differentiated from character and was situated as a context-specific inquiry that parsed testimonial information.

Physiognomy, Pathognomy, Character and Credibility

Physiognomy, pathognomy, and credibility all stem from the same problem of having limited information about other people. Knowledge about other people, whether it be about character or credibility, has to be arrived at indirectly. If one could set up a "Momus's glass," as *Tristram Shandy* explains:

> nothing more would have been wanting, in order to have taken a man's character, but to have taken a chair and gone softly, as you would to a dioptrical bee-hive, and look'd in,—view'd the soul stark naked; —observ'd all her motions, —her machinations; —traced all her maggots from their first engendering to their crawling forth; —watched her loose in her frisks, her gambols, her capricios; and after some notice of her more solemn deportment, consequent upon such frisks, &c. —then taken your pen and ink and set down nothing but what you had seen, and could

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Kinkead-Weekes, *Samuel Richardson: Dramatic* Novelist (London: Methuen & Co., 1973); Margaret Anne Doody, *A Natural Passion: A Study of the Novels of Samuel Richardson* (Oxford: Clarendon Press, 1974); Nora Nachumi, "'Those Simple Signs': The Performance of Emotion in Elizabeth Inchbald's *A Simple Story,*" *Eighteenth-Century Fiction* 11 (1999): 317-337. On connections between visual arts and literary character, see Janet E. Aikins, "Picturing 'Samuel Richardson': Francis Hayman and the Intersections of Word and Image," *Eighteenth-Century Fiction* 14 (April-July 2002): 465-505. On connections between rhetoric and law, see for example, Alessandro Giuliani, "The Influence of Rhetoric on the Law of Evidence and Pleading," *The Juridical Review* (1962): 216-251; R. J. Schoeck, "Rhetoric and Law in Sixteenth-Century England," *Studies in Philology* 50 (1953): 110-127; D.S. Bland, "Rhetoric and the Law Student in Sixteenth-Century England," *Studies in Philology* 54 (1957): 498-508.

> have sworn to: —But this is an advantage not to be had by the biographer in this planet . . . not the case of the inhabitants of this earth; —our minds shine not through the body, but are wrapt up here in a dark covering of uncrystalized flesh and blood; so that if we would come to the specifick characters of them, we must go some other way to work.[22]

My concern is with the hermeneutic challenge of credibility assessment, which differs from the character assessment of physiognomy and pathognomy. Credibility shares with physiognomy and pathognomy the idea that there is a correspondence between the somatic and conscious, interior and exterior, body and mind, appearance and essence, aesthetics and psychology, surface and depth. Barbara Maria Stafford explains in *Body Criticism,* her "history of perception," that the "hierarchical correspondences between the outer and inner of anything devolve upon the fact that the content of one (the ontologically 'higher') of the paired terms is invisible, uncertain or unclear with respect to the other (the ontologically 'lower')." Of the "myriad incarnations of this fundamental antagonism," Stafford lists as examples those between:

> the mathematical sciences and the technical arts, or between the rational (*episteme*) and the perceptual (*aisthesis*), the noumenal and the phenomenal, the mental and the manual, the theoretical and the practical, the general and the practical, the abstract and the concrete, the geometrical and the experimental, the simple and the complex, the analytical and the synthetic, the normal and the deviant, the well and the

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[22] Laurence Sterne, *The Life and Opinions of Tristram Shandy, Gentleman* (1760-1767), ed. and intro and notes Ian Campbell Ross (Oxford: Clarendon Press, 1983), vol. I, chap. 23, pp. 59-60.

> sick, physiognomy and pathognomy, soul and body, dissection and combination, sequence and simultaneity, certitude and ambiguity, stasis and mutability, cause and effect, rule and instantiation.[23]

Building on Stafford's insights, each of physiognomy, pathognomy, and credibility posits congruities between the perceptible and imperceptible, and the manifest and occult. But, whereas physiognomy appraises individuals, and pathognomy appraises individuals using dynamic indicia, credibility appraises individuals, using dynamic traits, that are both visible and aural, and is relative to specific testimonial contexts.

Physiognomy broadly conceived can encompass "a loose notion of correspondence between inner and outer, between body and soul, between physical and moral," and include "any study which establishes links between external appearance and an inner intangible 'truth.'"[24] The character assessment of physiognomy and pathognomy are marked by a "pattern of reasoning from effect to cause, from evident to nonevident" through visible signs, as Patey describes generally of probabilistic reasoning.[25] Physiognomics is a "body criticism" that "diagnose[s] unseen spiritual qualities by scrutinizing visible traits."[26]

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[23] Barbara Maria Stafford, *Body Criticism: Imaging the Unseen in Enlightenment Art and Medicine* (Cambridge: MIT Press, 1993), p. 29.

[24] Melissa Percival, *The Appearance of Character: Physiognomy and Facial Expression in Eighteenth-Century France* (London: W.S. Maney & Son), p. 3.

[25] Douglas Lane Patey, *Probability and literary form: Philosophic theory and literary practice in the Augustan age* (Cambridge: Cambridge University Press, 1984), p. 37.

[26] Stafford, *Body Criticism,* p. 84.

Connections between the outer body and inner qualities did not spring into consciousness in the eighteenth century. The physiognomic craze inspired by Johann Caspar Lavater's *Physiognomische Fragmente* (1775-1778; English translation 1789-1798) and *Essays on Physiognomy* (1789-1798), which post-dated Defoe, Richardson, and Fielding, may be the most familiar phenomenon; however, Lavater popularized, but did not originate, the physiognomic tradition that the body was an external clue to the interior character.[27] Physiognomy goes back to the pseudo-Aristotelian text *Physiognomonica*, spuriously attributed to Aristotle until recently; physiognomic ideas were informed by Platonism and Cartesianism, included in the work of Hogarth and Fielding, and theorized by Giovanni Battista della Porta, Charles Le Brun, Georg Christoph Lichtenberg, and others.

Stafford calls Enlightenment physiognomics a "graphology of character,"[28] which usefully highlights how writing and reading underwrote eighteenth-century physiognomic theory. Lavater's silhouettes in the *Fragmente* are an archetype of physiognomy's deductive and reductive iconography, which literally outline the physical body as a legible text for character. Physiognomic interpretations were based

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[27] On Lavater and literature, see Ellis Shookman, ed., *The Faces of Physiognomy: Interdisciplinary Approaches to Johann Caspar Lavater* (Columbia, SC: Camden House, 1993); Graeme Tytler, *Physiognomy in the European Novel* (Princeton: Princeton University Press, 1982), esp. chap. 2; Graeme Tytler, "Lavater and Physiognomy in English Fiction 1790-1832," *Eighteenth-Century Fiction* 7 (1995): 293-310; John Graham, "Lavater's *Physiognomy* in England," *Journal of the History of Ideas* 22 (1961): 561-572; K.J.H. Berland, "'The Air of a Porter': Lichtenberg and Lavater Test Physiognomy by Looking at Johnson," in *The Age of Johnson,* ed. Paula Korshin, vol. 10 (New York: AMS Press, 1999): 219-230; Michael Shortland, "The Power of a Thousand Eyes: Johann Caspar Lavater's Science of Physiognomical Perception," *Criticism* 28 (1986): 379-408; and Scott J. Juengel, "Godwin, Lavater, and the Pleasures of Surface," *Studies in Romanticism* 35 (Spring 1996): 73-97.

[28] Stafford, *Body Criticism*, p. 96.

primarily on interpreting individuals' fixed skeletal morphology. Striving for a universal language, physiognomists immobilized and isolated bodily features to correlate with formulaic conventions. The *Fragmente,* and other key physiognomic treatises, feature an incarnated semiotics of oddly disembodied bodily features. Physiognomy traded "heaps of probabilities" and congeries of subjective impressions for the adumbrated minimalism of indexed bodies and *a priori* interpretive codes.

Pathognomy also interprets individual character from somatic evidence but turns away from immobile skeletal morphology toward kinetic and fleeting expressions as signs of the passions. Pathognomy focuses on the dynamic soft muscular body in action as manifestations of shifting expressions and emotions. By comparison with physiognomy, pathognomy is more inductive and less ritualized, but theorists still strove for a "universal language," formed from the "natural signs of emotions, voluntary and involuntary," as Henry Howe, Lord Kames writes in his 1762 *Elements of Criticism.*[29] Thomas Reid, likewise, posits a uniform semiotics in which "the signs in the natural language of the human countenance and behaviour, as well as the signs in our original perceptions, have the same signification in all climates and in all nations," and argues that "the skill of interpreting them is not acquired, but innate."[30] Fielding shares Bacon's preference for the countenance in motion. As a "Guide to direct us to the Knowledge of Men," he favours the "Actions of Men" which seem to be the "best Index," and "justest Interpreters of their Thoughts, and the truest Standards by which

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[29] Henry Howe, Lord Kames, *Elements of Criticism* (1762), ed. Robert Voitle, 3 vols. (New York: Georg Olms, 1970), vol. 2, p. 127.

[30] Reid, *Inquiry Into the Human Mind,* p. 195.

we may judge them," indicating his proclivity toward pathognomy rather than atemporal and non-kinetic physiognomy.[31]

Credibility, as compared to these character assessments, is individual, dynamic, and also specific to the testimonial occasion, interpreting not merely passions, but epistemic and moral traits assessed against the referent of precise testimonial moments. Credibility during the eighteenth century, like physiognomy and pathognomy, was based on the presumption of consistency in character, but since people's epistemic and moral traits are evaluated relative to the demands of particular testimonial subject matter, credibility is localized. People test other people's knowledge and morality with reference to the factual probability of testimony and on the basis of fugitive pathognomic features activated by the act of testifying. The evidence is elusive and transient because it is generated and tested while a person is testifying, demanding persistent attention and recall; "words leave no traces; they pass as breath; and mingle with air," as Anna Howe reminds Clarissa (*Clarissa* 4.81). The combination of testimony and countenance distinguishes credibility from character assessment. When Clarissa, suspicious about Lovelace's profession that he intends to reform, "looked at him . . . as if I doubted my ears and my eyes," it is the consistency of words and somatic evidence which convinces her. Lovelace is famously figured as "Proteus," more "variable than the chameleon," as Clarissa struggles to judge him against the localized reference of individual testimonial moments (3.136, 7.243). On this occasion, Clarissa is satisfied because "[h]is aspect . . . became his words" (3.107); literally, Lovelace's

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[31] Henry Fielding, "An Essay on the Knowledge of Characters of Men," in *Miscellanies*, ed. Henry Knight Miller, vol. 1 (London, 1743; Middletown, Conn: Wesleyan University Press, 1979), pp. 162, 176, 178.

countenance *becomes* his words in the dual sense that his demeanour and words "combine" into probabilistic empirical evidence which support each other, and his demeanour "flatters" his words.

Credibility is a probabilistic and empirical inquiry whose theoretical bases were inconsistent with the ideas of consistency, universals and *a priori* rules which the physiognomists hoped to achieve. As a conspicuously probabilistic endeavour, credibility is theoretically and practically recalcitrant to demonstrative certainty. To be functional, credibility's indicia have to be recognized but not easily manufactured, for if people could know and emulate the traits in advance, credibility would be discredited because people could learn and fake a coded correlation between the subject's somatic evidence and the recipient's degree of belief, a situation that inheres in the theory of the civil proof system, as Chapter Four will discuss. Instruction in credibility builds facility with practices that are not controlled by such rules as the hierarchical and stylized aesthetic conventions of unities and decorums.

Physiognomy has a pronounced emphasis on the visual, and fits into broader epistemological empirical desires to render the ineffable perceptible.[32] Physiognomy, unlike credibility, is derived from a reading paradigm that cherishes legibility and textualization, and the consistency and regulated responses that clear legibility invokes. Faces can be *read* as static information and individuals categorized by status. Physiognomists primarily focused on character types and demographics and used frozen

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[32] See Stafford, *Body Criticism,* pp. 4, 21, 45, 47. Stafford discusses these Enlightenment impulses to "attain the interior of things" by "visibilizing the invisible," the "impulse to make public the inarticulable and the concealed,"and "pictorial strategies for externalizing the internal."

poses and "hard" body skeletal information from which to infer character traits. Theatre and rhetoric, while having a clear aural component in practice, were also visual both in theory and practice; static poses in conduct books and acting guides purported to represent legible facial texts that, those arts assumed, would be read by the audience as accurately representing particular emotions or moods. More extremely, in the nineteenth century, phrenology used statistics of facial proportions from which to extrapolate general credibility *predictions* on the basis of *character type* (e.g. beauty or crime). These facial readings were related to frequency-based probability theory, as opposed to epistemic probability, with inferences being drawn from statistical measurements of large numbers of people to create composites about character types.

Character evidence's legibility and textuality is fitted to emulating pre-existing forms, and indeed, theatre, the visual arts, and rhetoric depend on convincing simulations causing predictable responses from the audience. Prescriptive guides to acting, such as Thomas Wilkes' *General View of the Stage* could confidently assert, "every passion and sentiment has a proper air and appearance, stamped upon it by Nature, whereby it is easily known and distinguished."[33] Garrick's famous plasticity was celebrated for the unusual facility with which he could convey character and emotion and, importantly, invoke recognition in his audience by having them facilely read his face and body without needing to guess at the meaning. Oratorical theory, derived from Quintilian and Cicero, similarly was based on arranged movements producing agreed meanings in the audience.

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[33] Thomas Wilkes, *General View of the Stage* (London, 1759), p. 109.

From the perspective of the evaluators, credibility complicatedly depends on interpreters being able to interpret people relative to the subject of specific testimony. Everyday decision-making and the common law tackled individual witness assessment that was a dynamic process related to minute differences in the countenance and demeanour that were revealed in particular testimonial moments. Credibility was a moment-to-moment process that used fugitive transient bodily information for judgments about fleeting credibility status.

The antinomy of credibility can reconcile the dissonance that even if people were not moral by character they could still be credible on a particular testimonial occasion; and by corollary, that the virtuous may not be credible for a given piece of testimony because their opportunity and ability to observe, recollect, and narrate the facts of what they experienced may have been compromised. Thus, credibility elicits the same concerns—whether the indicia can be feigned and whether the indicia can be discerned—that exercised physiognomists and pathognomists, and heightens them; credibility also exaggerates the interpretive difficulty for interpreters who must operate within a circumscribed transient body of somatic information, assess that sensory information as evidence of cognitive and moral traits, and weigh that evidence relative to precise testimonial subject matter and the interests that testimony implicates, in order to determine what degree of belief is warranted.

My concern is not with whether there is a valid demonstrative link between demeanour and veracity, but instead with what this period thought the link was and what epistemology was used to justify that connection. In the eighteenth-century testimonial paradigm, credibility was individual, dynamic, involuntary, and accessible;

that is, credibility assessed individuals in their particularities, not category traits or groups; the process was dynamic rather than static and tested people within confined temporal and spatial parameters on the basis of limited information; the criteria were assumed not to be easily manipulated and feigned, and dissimulation could generally be detected; and the process was within the range of common ability to interpret. Although this chapter describes a paradigm, and although this paradigm is integrated into the design of the common law trial by jury, doubts about its premises circulated throughout the eighteenth century and novels were one forum in which these concerns were aired (as Chapters Six and Seven discuss).

Eighteenth-century credibility assessment was not about how a gentleman would seem gentlemanly to a listener or observer and thus benefit from the presumption of veracity that was associated with class and gender. Rather, the protocols were designed so that people could divine *any* witness's credibility by interpreting the indicia of manners, countenance, gesture, and demeanour that were elicited during the testimony. Credibility assessment was inclusive in order to be consistent with, and useful for, its application in the fields of law and literature where a wide range of people could be encountered. While the civil and canon law categories of character, such as class, gender, and age, continued to serve as indicia of credibility, these factors declined in importance as subjective credibility overtook "credit"; indeed, at times the converse of the character categories would be the best indicator that sources were credible with respect to a particular testimony because of the close relationship between the witness's personal experience and the knowledge that was sought.

Decision-makers were accorded increased latitude, given that status did not predetermine a particular quantum of credibility; but, by corollary, decision-makers had discretion to consider status categories, albeit within a larger cluster of traits. Such status categories as gender, class and race lingered on in practice and could influence judgments about an individual's credibility; after all, under a theory of "embodied credibility," we should not forget that credibility was embodied in different physical appearances.[34] However, it was a significant epistemological and hermeneutic development that the *theory* and *promise* of eighteenth-century credibility design permitted *any* person to be judged credible, at the same time that it is important to study how the practice and application of the design might have been unevenly applied. Decision-makers were supposed to be making individual and context-specific assessments of credibility.

The theoretical premise was that credibility criteria were unwittingly revealed through interior consciousness and could not simply be donned as a costume to fool an audience. The ideas that indicia are inevitably and involuntarily elicited and that beholders could access and interpret this information was a strong theoretical underpinning. Thomas Reid's first principles were a well-known version of these twin ideas. His "natural language," posits a "real connection" between "the signs in natural language . . . features of the face, gestures of the body, and modulations of the voice"

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[34] Chapter Five discusses how assumptions about class and gender complexly affected credibility attributions in the context of *Pamela* and *Clarissa*. The interaction of race and credibility in this period raises special issues, with respect to the slave trade, colonialism, witness testimony in travel literature and reactions to aboriginal peoples, which are outside the scope of this thesis, but notable examples of prose literature which raises race and credibility evaluations include Aphra Behn's *Oroonoko* and Frances Burney's *The Wanderer*.

and the "thoughts and dispositions of the mind which are signified by them," and he believed there was a human propensity for veracity, where "truth is always at the door of my lips, and goes forth spontaneously, if not held back."[35] Today's scholars sometimes refer to "leakage," where bodily indicia cannot help but be conveyed and accessible to the discerning onlooker.[36] The eighteenth century notes this same phenomenon, what Walter Shandy calls the "thousand unnoticed openings . . . which let a penetrating eye at once into a man's soul."[37] As one of the introductory letters to *Pamela* approvingly observes, "one may judge of, nay, almost see, the inmost Recesses of [Pamela's] Mind."[38] Moreover, Reid affirms the *natural* ability to interpret the *natural language:* "Nature hath taught us the interpretation of these signs; so that, previous to experience, the signs suggest the thing signified, and create the belief of it."[39]

Some, like Reid, were optimistic that all humans can interpret the "natural language" that would reveal character. Even Hume confidently thought our experience would "give us the clue of human nature, and teach us to unravel all its intricacies.

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[35] Thomas Reid, *Inquiry Into the Human Mind,* pp. 195-196.

[36] See especially Paul Ekman's scholarship, for example: "Detecting Deception from the Body or Face," *Journal of Personality and Social Psychology* 29 (1974): 288-298; Paul Ekman and Wallace V. Friesen, "The Repertoire of Nonverbal Behaviour: Categories, Origins, Usage and Coding," *Semiotica* 1 (1969): 49-98; Paul Ekman & Wallace V. Friesen, "Nonverbal Leakage and Clues to Deception," *Psychiatry* 32 (1969): 88-105.

[37] Sterne, *The Life and Opinions of Tristram Shandy,* vol. 6, chap. 5, p. 333.

[38] Richardson, *Pamela; or, Virtue Rewarded* (1741), ed with explanatory notes by Thomas Keymer and Alice Wakely and with an intro. by Thomas Keymer (Oxford: Oxford University Press, 2001), p. 8.

[39] Reid, *Inquiry into the Human Mind,* p. 195. In its pure version, Reid's theory would alleviate the need for an instructive supplement, such as the novel.

Pretexts and appearances no longer deceive us."[40] Sceptics like Montaigne were less sanguine. In a striking prosopopoeic image, Montaigne thinks we cannot interpret people because "Truth and Falsehood are alike in face, similar in bearing, taste, and movement; we look upon them with the same eye."[41]

The problem, Fielding believed, lay with the observer and not the indicia, with such flawed "experts" in physiognomy as Joseph Andrews, the Vicar of Wakefield, or Hartley who, because they have "honest and upright Heart[s]," are least able to discover dissimulation.[42] In "An Essay on the Knowledge and Characters of Men," Fielding discourses on the problems of physiognomy, which also are informative about eighteenth-century doubts regarding the more difficult hermeneutic exercise of evaluating credibility. Fielding does not harbour illusions that people will not try to dissimulate: "while the crafty and designing Part of Mankind, consulting only their own separate Advantage, endeavour to maintain one constant Imposition on others, the whole World becomes a vast Masquerade, where the greatest Part appear disguised under false Vizors and Habits; a very few only shewing their own Faces, who become, by so doing, the Astonishment and Ridicule of all the rest." But, Fielding qualifies, "however cunning the Disguise be which a Masquerader wears: however foreign to his Age, Degree, or Circumstance, yet if closely attended to, he very rarely escapes the Discovery of an accurate Observer; for Nature, which unwillingly submits to the

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[40] David Hume, *An Enquiry Concerning Human Understanding* (2d ed. 1750) intro. and ed. Anthony Flew (La Salle, Ill: Open Court, 1988), p. 123.

[41] Michel de Montaigne, "Of Cripples" (1585-1588) in *The Complete Essays of Montaigne,* trans. Donald M. Frame (Stanford: Stanford University Press, 1958), pp. 785-786.

[42] Fielding, "An Essay on the Knowledge of the Characters of Men," p. 156.

Imposture, is ever endeavouring to peep forth and shew herself."[43] Fielding doubts whether the much-bandied about "fronta nulla fides" adage was well understood, cautioning that Juvenal never intended to disparage physiognomy. Instead, "it is owing chiefly to want of Skill in the Observer, that Physiognomy is of so little Use and Credit in the World." Fielding agrees the indicia are "natural," but "we almost universally mistake the Symptoms which Nature kindly holds forth to us." Thus, while "Nature doth really imprint sufficient Marks in the Countenance," such marks that are sufficient "to inform an accurate and discerning Eye," accuracy and discernment are only "the Property of few," and therefore "the Generality of Mankind mistake the Affectation for the Reality," missing the "finer, and less glaring" symptoms, "while the grosser Appearances of Affectation are sure to attract his Eye, and deceive his Judgment."[44] However, if people "employ sufficient Diligence and Attention in the Scrutiny," they can discern the disguise masking the real character.

Smollett also suggests that good people will be vulnerable because they will be judged by ordinary people who will see them through their own flaws. In *Humphry Clinker*, Matthew Bramble reports that when Clinker is arrested, a casualty of the sometimes perverse incentives of the thieftaker reward system, the spectators misinterpret Clinker's rustic demeanour. The spectators are "sagacious enough to discern something very villainous in his aspect," Bramble sarcastically jibes, even though Clinker is the "very picture of simplicity." The magistrate too mistakenly evaluates Clinker's credibility when the latter testifies, incorrectly interpreting the

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[43] Ibid., 1.155.

[44] Ibid., pp. 157, 161-162.

confusion of this "poor country lad" as "the ambiguity and equivocation of an old offender."[45] Smollett indicates the ordinary inclination is to put "a very unfavourable construction" on testimony because the interpreter's "sagacity" is corrupted by the interpreter's own biases.

Although there were persistent worries that common sense was not well distributed—for example, worries such as those Fielding and Smollett express—probability theorists mostly demurred from suggesting codified rules for credibility indicia or assessment, consistent with the view that this was a natural language for which people would have a natural facility. "Knowing how to evaluate testimony was, therefore, *knowing one's way around a cultural system,"* as Shapin explains of the seventeenth century, a "facility ultimately derived not from formal epistemological skills but from the deployment of uncodified skills."[46] This *via media* was consistent with the efforts by probability theorists to steer between rules and unwarranted assent. They accepted that the process was difficult to systematize and difficult to articulate. In the *Essay*, Locke avers that "'tis impossible to reduce to precise Rules, the Various degrees wherein Men give their Assent" because there is so "great a variety of contrary Observations, Circumstances, Reports, different Qualifications, Tempers, Designs, Over-sights, *etc.* of the Reporters." Locke provides a general guidance for "nicely

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[45] Tobias Smollett, *Humphry Clinker* (1771), ed. James L. Thorson (New York: Norton, 1983), p. 137.

[46] Shapin, *A Social History of Truth,* pp. 231-232.

weighing every particular Circumstance."[47] Whately expostulates, "none but very general rules, . . . can be profitably laid down; and that to attempt to supersede the discretion to be exercised on each individual case, by *fixing precisely* what degree of weight is to be allowed to the testimony of such and such persons, would be, at least, useless trifling, and, if introduced in practice, a most mischievous hindrance of a right decision."[48] Fielding says he is "venturing to set down some few Rules," particularly on behalf of those of "open Disposition" who are "liable to be imposed on by Craft and Deceit, and principally disqualifie[d] . . . for this Discovery."[49] But his essay offers principles of good practice, not *a priori* rules or a calculus.

Notwithstanding the foray toward reckoning language that some philosophers, such as Hume, make, and regardless of whether these writers intended for this measurement process to be literal, none offers true "rules" and all rely on subjective criteria. Mary Poovey's description of Hume's invocation of mathematic methods in his essay, "Of the Standard of Taste," as "gestural mathemathics," depicting "evaluation as being *like* counting in involving an estimation of quantity but *unlike* counting in reaching conclusions through some method other than arithmetic," is equally telling of his methodology with respect to testimony.[50] Indeed, George Campbell complains that

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[47] John Locke, *An Essay Concerning Human Understanding* (1689) ed. and intro. Peter H. Nidditch (Oxford: Oxford University Press, 1975), book IV, chap. XVI "Of Degrees of Assent," section 9, p. 663.

[48] Whately, *Elements of Rhetoric,* p. 72.

[49] Fielding, "An Essay on the Knowledge of the Characters of Men," pp. 155-156.

[50] Mary Poovey, *A History of the Modern Fact: Problems of Knowledge in the Sciences of Wealth and Society* (Chicago: University of Chicago Press, 1998), p. 172.

Hume's nominally mathematical approach for calculating probability actually suffers from a lack of precise rules and wishes Hume were a "little more explicit in teaching us how these rare inventions must be used." "There is a metaphysical, I had almost said a magical *balance* and *arithmetic,* for the weighing and subtracting of evidence, to which he frequently recurs, and with which he seems to fancy he can perform wonders."[51]

The Grammar of Credibility

The long eighteenth century aspired toward what can be labelled as a "grammar of credibility," to borrow and modify Newman's terminology from the *Grammar of Assent.* The term "grammar" has been described as "all the enormous number of conventions which, though nowhere expressly formulated are presupposed in the understanding of everyday language. It is precisely the formulating and bringing to consciousness of these tacit conventions, the discovery of this complicated network of rules which constitutes the philosophical clarification of our ideas."[52] The "grammar of credibility" in the eighteenth century similarly blends descriptive and prescriptive elements, as was typical of classical probabilists' theory. They drew on tacit conventions and everyday practices for credibility evaluations, seeking to improve and instruct, but refraining from directing through rules. "Grammar is not simply

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[51] George Campbell, *Dissertation on Miracles* (Edinburgh, 1762; 3d enlarged and corrected ed. 2 vols. Edinburgh, 1797), vol. 1, p. 45 ff, quoted by R.M. Burns, *The Great Debate on Miracles: From Joseph Glanvill to David Hume* (Lewisburg: Bucknell University Press, 1981), p. 181.

[52] Friedrich Waismann, *Principles of Linguistic Philosophy,* ed. R. Harré (London: 1965), pp 13-14, quoted by M. Jamie Ferreira, *Scepticism and Reasonable Doubt: The British Naturalist Tradition in Wilkins, Hume, Reid, and Newman* (Oxford: Clarendon Press, 1986), p. 231.

description of practice, but description of the norms generated in practice" by ordinary decision makers. "Genuine description cannot be a priori, and prescription cannot be arrived at without regard to description."[53]

There was an undercurrent of a cultural anxiety about credibility fed by the puzzle of how to optimize discernment without abetting dissimulation. On the one hand, this period's scholars wanted people to labour and aspire toward actions and behaviour which would facilitate people being assessed as credible. The blended descriptive and prescriptive tone of the treatment of testimony implies that one goal of the project was this normative one of developing people's characters to help them to be judged as credible. On the other hand, there was little social or moral value in assisting people to master the repertoire of credibility so they could feign the desired cues and manufacture a credible persona. A lurking anxiety was that if the moral philosophy became overly accurate and prescriptive, it risked being a hornbook for those who wanted to imitate credible character traits without bothering to have the corresponding character that would justify the attribution, to cause a degree of belief that would be unsupported by evidence.

As Chapter Two described, the long eighteenth century had an entirely different intellectual relationship with credibility as a category of thought than our own time has. Testimony occupied a central role in history, religion, science, philosophy, and law, and the value, weight, and testability of other people's sensory information preoccupied intellectuals. The credibility of the sources of this evidence was likewise deliberated

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[53] M. Jamie Ferreira, *Scepticism and Reasonable Doubt: The British Naturalist Tradition in Wilkins, Hume, Reid, and Newman* (Oxford: Clarendon Press, 1986), pp. 231-233.

over. Credibility assessment logically entailed a descriptive and prescriptive methodology for character assessment, collating factors which people commonly do use and those factors which should be used.

The particularized inquiry of credibility was critical to the emerging generic possibilities of the novel. The novel followed the same generic path from general status characters to particularized credibility. "As it requires much more care and skill to draw the portraiture of some particular person and to make the copy exactly resemble the original than it does to paint a man in general, so is the task I have undertaken far more difficult than that of writing a novel only."[54] The novel was infused with particularities, as the *Port Royal Logic* advised testimony evaluation should be, and the novel was incorporating credibility principles to make characters more believable. As the "editor's" Preface to the steward's purported memoirs in *Castle Rackrent* outlines, we judge characters from testimony and demeanour: "We cannot judge either of the feelings or of the characters of men with perfect accuracy from their actions or their appearance in public; it is from their careless conversations, their half finished sentences, that we may hope with the greatest probability of success to discover their real characters."[55] The novels of Smollett, Sarah and Henry Fielding, Richardson, Burney, and Mackenzie, Godwin, and others, all instruct their readers, by educating their characters, how to judge other characters through "careless conversations" and

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[54] Preface, *The Jamaica Lady or the Life of Bavia* (London: Thomas Bickerton, 1720) rpt. in *Four Before Richardson: Selected English Novels, 1720-1727*, ed. W.H. McBurney (Lincoln: University of Nebraska Press, 1963), p. 87.

[55] Maria Edgeworth, "Preface," *Castle Rackrent: An Hibernian Tale Taken from Facts, and from the Manners of the Irish Squires, Before the Year 1782* (1800) ed. and intro. George Watson (London: Oxford University Press, 1964).

"half finished sentences," that is, to judge credibility through testimony. Especially during the seventeenth and eighteenth centuries, major thinkers conceptualized testimony as a key epistemological category and credibility as an important hermeneutic skill, which, moreover, was a teachable one.

During the eighteenth century, *reading and character* were differentiated from *testimony and credibility.* The reading paradigm emphasizes writing, legibility and consistency. These associations resonate with "character," "counting" and "plausibility," are allied with social status, and static notions of *credit*, and are aligned more closely with factual probability. The testimonial paradigm highlights other concepts from probability theory that were also influencing eighteenth-century writers, "credibility" as differentiated from "character," reticence about rules and reckoning rather than comfort with counting and drawing, "credibility" rather than "plausibility," "orality" and "testimony" rather than "print" and "written evidence." Testimony was oral, aural, visual, live, dynamic, individual, and localized. Credibility was based on sensory, kinetic evidence, elicited by the act of testifying, and assessed relative to testimony's subject matter. Credibility is both visual and aural. This theory connecting the orality in testimony with visual information goes against the grain of scholarship that links printing with visuals; oral testimony continued as an important source of knowledge, and testimony was a visual, as well as an aural, experience.

The challenge of course for historical research builds on the difficulty that eighteenth-century interpreters of credibility faced. The most essential clue to fathom character and credibility traits is evidence that is temporary and nuanced to contemporary observers and the least susceptible to being recovered historically.

Costumes, portrait paintings, conduct books, theatre manuals and rhetoric books provide insight into static- and status-based evidence about the body. The epistemology of credibility, however, is based on subtleties rendered fleetingly visible by an individual as testifying witness and the perception by others of the active, but fugitive, changes in countenance and demeanour. Credibility is about persuasion and belief, not truth. There is no way to recover past, or penetrate present, states of mind and correlate those to veracity, and this study will not attempt to try; credibility is rather about the attribution of testimonial veracity and competence to others and the belief in and willingness to assent to their testimony. The interest here is in the epistemology of testimony and the literary and legal protocols for testing and imputing credibility. In the long eighteenth century, what was the evidence for credibility, and what epistemologies underlie those criteria and the protocols which emphasize an embodiment of credibility?

The following chapter on forensic credibility examines what shape formalized credibility took, how legal credibility differed from philosophical credibility assessment because of diverging hermeneutic environments for the assessors, and how this "embodied credibility" was incorporated in the trial.

Forensic credibility was an optimistic version of this body-mind theory that counted on people usually being able to interpret testimony, and witnesses usually not being able to dissimulate without detection. In the common law trials, justice was predicated on jurors being able to interpret credibility correctly and to catch out a fake. The theory was predicated on two assumptions, neither of which required foolhardy confidence that people would not try to dissimulate: instead, people who tried to feign

the appropriate visage, gestures, and tone, could not call up the visible manifestations of sincerity on cue and, if they orchestrated some semblance, their fraud would be detected by jurors because their own countenance would betray them. However, the common law model also was designed around witnesses' unpredictability and interpreters' discretion and subjectivity as the latter weighed evidence through probability to decide belief, rather than coded *a priori* responses.

Chapter Four: Jurors, Readers, and the Architecture of Forensic Credibility

Law has an especially detailed and sustained treatment of the problem of credibility, in part because it had to develop one. The common law's decision-making process, the trial, depended on having culturally legitimate mechanisms for assessing credibility, which were consistent with contemporary epistemological assumptions. Since law is an intellectual and moral system that is tied so strongly to social order, it is at least as important that the perception of justice be as carefully maintained and publicly disseminated as that the reality should conform. As Lord Hewart's admonition reminded, it is of "fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."[1] Jurors were literally seen to be doing credibility assessments and this chapter discusses how visual the eighteenth-century credibility process was. Novels were emulating this visual model for embodied credibility assessment, making the reception of testimony a visible process as well, so that Pamela, watching her credibility assessor, could resignedly conclude, "I saw I was not likely to be believ'd."[2]

The features of England's common law trial by jury have been invested with such a patina of venerability and familiarity that comparisons between readers and

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[1] *The King v. Sussex Justices, Ex parte McCarthy*, [1924] 1 K.B. 256 at p. 259.

[2] Samuel Richardson, *Pamela; or, Virtue Rewarded* (1741), ed. with explanatory notes by Thomas Keymer and Alice Wakely and intro. Thomas Keymer (Oxford: Oxford University Press, 2001), p. 106. On the journey to Lincolnshire, Pamela stays with a farmer's family and tries to elicit their help, but Mr B, suspecting she would do that and fearing she would be believed, sent a letter ahead claiming Pamela has "deeply imbark'd in a Love Affair" that will lead to her "Ruin," but "excepting this Matter, *which she will not own,* she does not want Prudence and Discretion."

jurors, such as Ian Watt suggests, seem to pose few interpretive difficulties for a modern critic. Readers and juries, Watt assumes, perform a straightforward task and thus the ahistorical context in which Watt invites us to apply the parallel and in which literary criticism often operates seems to matter little.[3] Yet so many commonplace features of the trial that are presumed to be requisite to the trial by jury form are of neoteric origin (relative to the jury's timeline) which much of the eighteenth century would not recognize or the nineteenth century would perceive as new and controversial.[4] While it might be tempting to conclude that the older procedures are "missing" parts because they are an immature realization of the idea of trial by jury, the procedures are consistent with the theory of knowledge informing the trial during those periods. These features are "missing" not due to indifference (as Beattie notes), or one could add from malevolence or ignorance, but because the trial was informed by a different theory.[5]

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[3] Ian Watt, *The Rise of the Novel: Studies in Defoe, Richardson and Fielding* (London: Hogarth Press, 1987), p. 31.

[4] Notwithstanding the common locution, inalienable rights are neither inherent in nor original to the trial by jury form. The presumption of innocence, the beyond reasonable doubt standard, representation by counsel for defendants, the privilege against self-incrimination, the burden of proof, evidentiary rules excluding hearsay, and adversarial aspects such as cross-examination, do not predate the eighteenth century. John Beattie describes the comparatively recent date of some "immutable" trial features and outlines the different assumptions and different purposes of the eighteenth-century English criminal trial in J.M. Beattie, "Administering Justice Without Police: Criminal Trial Procedure in Eighteenth-Century England," in *The Maintenance of Order in Society: A Symposium Organized by the Centre of Criminology, University of Toronto for the Canadian Police College, Ottawa*, ed. Rita Donelan (Ottawa: Canadian Police College, 1982), pp. 12-13. See also, John Langbein, "Criminal Trial before the Lawyers," *University of Chicago Law Review* 45 (1978): 263; John H. Langbein, *The Origins of the Adversary Criminal Trial* (Oxford: Oxford University Press, 2003).

[5] Beattie, "Administering Justice Without Police," p. 13. John Beattie sees an epistemological significance to the increasing presence of lawyers in felony criminal trials. When defence lawyers become more active in the latter part of the eighteenth

Where there are new protocols, there is a new epistemology underwriting them. Since credibility has a history, the credibility indicia valued by the trial change over time in line with changes in epistemological theories and are designed to govern how individuals decide to assent to testimony. As the introduction emphasized, jurors and readers are engaged in similar interpretive processes but these need to be historically situated. This chapter will set out the jurors' development into the eighteenth century to describe with more precision what readers were doing in this period to historicize the parallel that is commonly drawn in literary criticism between readers and jurors. What jurors and readers do is historically conditioned.

Restoration and Enlightenment philosophy assumes that a previous acquaintance with other people informs how people make credibility evaluations; that precondition was not true of the eighteenth-century reader and juror facing characters and witnesses to assess. Neither enjoyed extrinsic testimonial character information, apart from "serials," such as readers coming to a series reprising characters or experienced jurors who faced a repeat criminal defendant. The hermeneutic environment for jurors and readers converged in the eighteenth century in limited paratestimonial information

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century, "all evidence was more likely to be tested and more systematically evaluated. In effect, a new method of establishing truth emerged." "Garrow for the Defence," *History Today* 42 (February 1991): 49-53, at p. 53. In another article focusing on the role of the defence counsel in the eighteenth- and nineteenth-centuries in England, Beattie theorizes that the scope of the role of the defence counsel was incendiary because it arose from fundamental conflicts about "the nature and purpose of the trial, about the evaluation of evidence and process of finding the truth." "Scales of Justice: Defence Counsel and the English Criminal trial in the Eighteenth and Nineteenth Centuries," *Law and History Review* 9 (1991): pp. 221-267, at p. 254. John Langbein also assumes that trials have histories, speaking, for example, of the "beginnings of a new theory of the trial" when defence counsel replaces the accused as the defence's testimonial resource. "The Historical Origins of the Privilege Against Self-Incrimination at Common Law," *Michigan Law Review* 92 (1994): 1069.

about character, and laid a fertile ground for the novel to explore what can be known from and about other people.

Eighteenth-century novel readers and jurors were generally of the same class, albeit diverging by gender, and as such, were perceived to have the same epistemic capacity. It is a reasonable assumption to extrapolate from eighteenth-century legal confidence in jurors, inferred from the design of legal tribunals, to the contemporary idea that ordinary people were capable of using the same procedures in their daily life, including reading practices, and indeed, were thought to be qualified as jurors because they brought these skills with them. Common sense was thought to have percolated through to inform the competence of jurors and readers.

The trial's epistemic community was of the "middling sort" drawn "mainly from the artisans, tradesmen, and small farmers who composed the lower-middling ranks of society."[6] Blackstone approves of "sensible and upright jurymen, chosen by lot from among those of the middle rank," because they "will be found the best investigators of

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[6] Thomas Andrew Green, *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury, 1200-1800* (Chicago: University of Chicago Press, 1985), p. 271. For detailed discussions of late seventeenth- and eighteenth-century jurors, see J.M. Beattie, "London Juries in the 1690s," in *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800*, ed. J.S. Cockburn and Thomas A. Green (Princeton: Princeton University Press, 1988), pp. 214-253; P.J.R. King, "'Illiterate Plebians, Easily Misled': Jury Composition, Experience and Behavior in Essex, 1735-1815," in *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800*, ed. J.S. Cockburn and Thomas A. Green (Princeton: Princeton University Press, 1988), pp. 254-304; Douglas Hay, "The Class Composition of the Palladium of Liberty: Trial Jurors in the Eighteenth Century," in *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800*, ed. J.S. Cockburn and Thomas A. Green (Princeton: Princeton University Press, 1988), pp. 305-357; Peter King, "Decision-Makers and Decision-Making in the English Criminal Law, 1750-1800," *The Historical Journal* 27 (1984): 25-58.

truth. . . ."[7] Petty (and grand jurors) were men, as is well known, into the twentieth century; women participated in the limited sphere of the special jury of matrons where they exercised circumscribed jury credibility skills to detect if female defendants were pregnant.[8] Bystanders in the crowd, or *tales de circumstantibus,* who in principle had to meet a (lower) property qualification, could sometimes be pulled in as alternatives when not enough prospective panel jurors showed up or too many were disqualified. It is fair to surmise that ordinary interpretive skills were believed to be sufficient, given the guidance that the legal theory of proof and other legal design elements, including the architecture, provided and that these formal elements could be used to guide interpretation in ordinary activities.

Novel readers, like jurors, were drawn from the "middling classes." Ian Watt, in his chapter on "The Reading Public and the Rise of the Novel," observes that the reading public expanded in the eighteenth century, but notes there were still obvious obstacles of illiteracy, and among the pool of the literate, additional obstacles of the economic cost of books, and a lack of leisure and privacy.[9] Practical limits obstructed

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[7] William Blackstone, *Commentaries on the Laws of England,* 4 vols. (Oxford, 1765-1769; rpt. London: Dawsons of Pall Mall, 1966), p. 3.380.

[8] See James C. Oldham, "On Pleading the Belly: A History of the Jury of Matrons," *Criminal Justice History* 6 (1985): 1-64. Oldham describes the special jury of matrons as not requiring special training and knowledge, only special opportunities of observation (p. 31); but, I contend that, given their limited medical knowledge, they would have been exercising credibility skills in evaluating the defendant's claim she was pregnant.

[9] Watt, *The Rise of the Novel,* pp. 35-59; and see Christopher Hill, "Clarissa Harlowe and her Times," *Essays in Criticism* 5 (1955): 315-340, discussing the "novel as a literary form [which] arose with the bourgeoisie" (p. 320); McKeon, *Origins of the Rise of the English Novel,* pp. 51-52. Watt's "triple-rise" thesis, connecting the rise of the novel with an increasing middle class and reading public, has been criticized. See,

an increase in readers, and these factors were more formally instituted in law as economic threshold for jurors, most notably with the minimum freehold requirement set by statute.[10] Petty jurors were not usually drawn from the wealthy elite and could not be drawn from the labourer poor. They were occasionally indiscriminately denigrated as "illiterate" or "ignorant" by some critics of the jury; *Humphry Clinker's* Lismahago relished deflating the "boasted institution of juries," accusing them of being "illiterate plebeians, apt to be mistaken, easily misled, and open to sinister influence," but such characterizations were generally specious and Lismahago's views are set off as part of this "original's" oddities which the gentle Matthew Bramble disapproves.[11] Jurors are at least received more warmly during this period than justices of the peace, who are frequently depicted as capricious and despotic.

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for example, J.A. Downie, "The Making of the English Novel," *Eighteenth-Century Fiction* 9 (1997): 249-266 (assessing the evidence for the rise of a middle class literate reading public). The empirical evidence is difficult to establish. Scholarly work on historical reading practices and historical work on readers is not as abundant as historical work on book production, publication, and distribution, or literary theory on reading and readers which does not explicitly address historical factors; this view is argued by James Raven, Helen Small and Naomi Tadmor in their introduction to *The Practice and Representation of Reading in England* (Cambridge: Cambridge University Press, 1996), pp. 1-21. See also Isabel Rivers, ed., *Books and their Readers in Eighteenth-Century England* (New York: St. Martin's Press, 1982).

[10] See the appendix to James Oldham, "The Origins of the Special Jury" *University of Chicago Law Review* 50 (1983): 137-221, pp. 211-221 for a comprehensive list of the extensive statutory property qualifications for jurors, in place during the period 1225-1730. From 1692 until 1825 the statutory minimum for English counties was rated at 10 pounds per annum for land or rents.

[11] See P.J.R. King, "Illiterate Plebians, Easily Misled," pp. 254-304; Tobias Smollett, *Humphry Clinker* (1771), ed. James L. Thorson (New York: Norton, 1983), p. 192.

The Development of Legal Credibility

Legal conditions are different from some of the premises that philosophers assumed would apply, and thus forensic credibility, while derived from philosophic principles, was also modified to fit this area of inquiry. First, the legal objective is not to predict the future (expectation), but to decide the past by using reasoned judgment (belief and assent to what happened and what said). The legal forum is not seeking predictive frequency or likelihood of something occurring in the future (conjecture based on subjective evaluation), but an inquiry about the facts of the past and testimony that purports to relate past facts. Unlike natural history and science, where experiments could be replicated, here the evidence is transient information sought to be recovered through the witness's recollection of sensory experience. The trial deals with disputed past facts, which can be tested but, unlike science, not replicated or verified.

Eighteenth-century jurists gravitated toward some philosophers of testimony, including Locke and the Common Sense school, while other philosophers, particularly Hume, were perceived to be less hospitable to the peculiar context of legal testimony. One conceptual difficulty with the legal problem of applying probability to determine past facts rather than predict future ones is that many common facts are intuitively unlikely to occur, when judged before the event; but testimony about their occurrence is not unbelievable. It is always unlikely that *any* one side of a die will come up, but testimony that a (fair) die fell on "three" is not unbelievable,[12] or to draw on Bishop

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[12] John Stuart Mill, *A System of Logic Ratiocinative and Inductive: Being a Connected View of the Principles of Evidence and the Methods of Scientific Investigation*, ed. J.M. Robson and intro. R.F. McRae (Toronto: University of Toronto Press, 1973), book I, chap. xxv, s. 3, p. 631. "[S]ome number which is only thrown

Butler's example in *Analogy of Religion,* there was "presumption of millions to one against the story of Caesar."[13] "If we disbelieved all facts which had the chances against them beforehand, we should believe hardly anything," as John Stuart Mill remarks in *A System of Logic.*[14] Richard Price in his fourth "Dissertation," explains, as a counter to Hume, that "previous improbabilities" do not affect the "credit of testimony," pointing for support to "particular histories which are immediately believed upon the slightest testimony," even though there appeared "previously to this testimony, an improbability of almost infinity to one against their reality. . . ." "In order to gain assent to a report, it is not necessary that there should be greater probability or odds *for* its truth, than against the happening of the event," because "[t]here is a very strong presumption against the simplest common story before any evidence for it." Testimony can "conquer" "very high improbability" of "particular facts of a common nature."[15]

This point is significant for the interpretation of trial testimonies. Court testimony is often extraordinary, especially in criminal cases, in the sense that the alleged behaviour severely breaches social norms and conventions. Jurors must

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once in six times must have been thrown if the die was thrown at all. The improbability, then, or in other words, the unusualness of any fact, is no reason for disbelieving it, if the nature of the case renders it certain that either that or something equally improbable, that is, equally unusual did happen."

[13] Quoted by Richard Price, "Dissertation Four: On the Importance of Christianity, the Nature of Historical Evidence, and Miracles" in *Four Dissertations* (1768) 2d ed. with additions, intro. John Stephens (London: A. Millar and T. Cadell; Thoemmes Antiquarian Books, 1990), p. 440, note*.

[14] J.S. Mill, *A System of Logic,* book I, chapter xxv, s. 3, p. 631.

[15] Richard Price, "Dissertation Four: On the Importance of Christianity, the Nature of Historical Evidence, and Miracles" in *Four Dissertations* (1768) 2d ed. with additions, intro. John Stephens. (London: A. Millar and T. Cadell; Thoemmes Antiquarian Books, 1990), pp. 452 note *, 407-408, 445 note *.

evaluate unusual, and sometimes novel, claims, often lying outside of mundane experience. The "end" of the trial, as Richard Price observed of news-papers, "confines it, in a great measure, to the relation of such facts as are uncommon." However, "[u]ncommon facts, *as such,* are not less subject to the cognizance of sense than the most ordinary."[16] Legal testimony, again particularly in criminal cases, was also ordinarily relatively more accessible than the testimony in some other fields of inquiry during the eighteenth century, such as science and history, because it was less taxing for jurors to imagine the place and time of recent events about people.

Trials potentially had a sounder knowledge basis than other fields such as science, according to these theories, because *testimony* to answer questions about the *past* is better evidence than *experience* used as a *predictor*. While we "trust experience, and expect that the future should resemble the past in the course of nature," Price cautions this is mere *expectation* not *knowledge*. The "greatest uniformity and frequency of experience will not afford a proper *proof* that the event will happen in the future or even render it probable that it will *always* happen in all future trials."[17]

> When any events, in the course of nature, have often happened, we are sure properly, of nothing but the past fact. Nor, I think, is there in general, antecedently to their happening, any comparison between the assurance we have that they will happen, and that which we have of many facts the knowledge of which we derive from testimony. For example; we are not so certain that the tide *will* go on to ebb and flow,

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[16] Ibid., p. 424.

[17] Ibid., pp. 391-393.

> and the sun to rise and set in the manner they have hitherto done, a year longer, as we are that there *has been* such a man as *Alexander,* or such an empire as the *Roman.*[18]

People are more likely to believe testimony about past facts than experience as a forecast of future facts, as Price suggests. When people reason from testimony, they consider the probability that a particular fact actually happened as related; when they reason from experience, even where there is uniform experience, at best there is an expectation or conjecture about what will happen in future, but the inquiry lacks anyone's observation of that event. "[I]n what regards single facts, testimony is more adequate evidence than any conclusions from experience. ... The immediate conclusions from experience are general," but "the direct conclusion from testimony is particular." Thus, "acquaintance with past ages," is derived from testimony," and is "knowledge," while the future is only "conjecture" from experience."[19]

However, credibility decisions themselves were more difficult to analyse, having elements of both future conjecture from experience and information from the past. When a person is evaluated as not being trustworthy, in other words when experience would predict that person would not be likely to tell the truth in the future, it does not follow that the same person testifying about a past event is not credible about those facts. Yet, this decision about what happened in the past (that is, whether the subject matter reported is correct) is made on the basis of the credibility assessment of a witness; and that inquiry is in part influenced by jurors' judgments about whether a

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[18] Ibid., p. 400 (some emphasis added).

[19] George Campbell, *Philosophy of Rhetoric* (1776; London: William Tegg & Co., 1850), pp. 54-55.

witness's character traits are such that the person's cognitive and moral qualities make it likely that on a given occasion the person will be both sincere (morally) and capable (epistemically) of relating true content in his or testimony. Testimony about past facts is evaluated in part by a credibility assessment that combines interpretations of the witnesses' character assembled through their past actions and behaviour, current impressions of demeanour and countenance, and predictions about how cognitive and moral character will map onto accurate testimony.

Commentators noted the similarities between these two interpretive exercises of deciding if something happened in the past or predicting a future occurrence. The *Port-Royal Logic* observes how "the judgments we make concerning the truth or falsity of human events . . . alone fall within the province of logic whether we judge concerning past events, asking whether or not we ought to believe that they happened, or whether we judge concerning future events, asking whether or not they will happen because we are hopeful or apprehensive of their occurrence."[20] "The foundation, of all moral reasoning whatever . . . [and] the basis of prudence in the management of the affairs and business of human life," comments the eighteenth-century American jurist James Wilson, "draws its rules from what we know by experience concerning the conduct and character of men. . . . We consider not so much what man ought to be, as what he really is; and from thence we make inferences concerning the part which he will probably act,

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[20] Antoine Arnauld, *The Art of Thinking* [Port-Royal Logic], trans. and intro. James Dickoff and Patricia James, foreword Charles W. Hendel (1662; New York: Bobbs-Merrill Co., 1964), p. 340. Originally published as *La Logique, ou L'art de Penser.*

in the different circumstances and situations, in which he may be placed."[21] This parallels Hume's view that evidence derived from witnesses and human testimony is always founded on past experience ("our observation of the veracity of human testimony, and of the usual conformity of facts to the reports of witnesses"), and therefore is either a full *proof* or *probability* depending on that experience, namely "according as the conjunction between any particular kind of report and any kind of object has been found to be constant or variable."[22]

It is on this point that the legal interpretive environment most directly conflicted with the preconditions that philosophy had assumed, such as Hume's premises that testimony can be evaluated according to past frequencies, or the other philosophical hints that credibility would be judged from past experience with someone else's character. That assumption conflicted with key features of the eighteenth-century common law trial. In the forensic hermeneutic context, interpreters examined individual witnesses, not general character categories; assessed the credibility of individuals on a specific occasion, not just general credibility; and lacked important information that would be available and would be used in ordinary decision-making about credibility.

Eighteenth-century jurors missed some of the information on which the philosophers of testimony had based their guidelines. Judge Francis North frames the

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[21] James Wilson, "Of the Nature and Philosophy of Evidence," in *The Works of James Wilson*, ed. Robert Green McCloskey, 2 vols. (Cambridge, Mass: Belknap Press of Harvard University Press, 1967), vol.1, p. 390.

[22] David Hume, *An Enquiry Concerning Human Understanding* (2d ed. 1750) intro. and ed. Anthony Flew (La Salle, Ill: Open Court, 1988), Section X, "Of Miracles, paras. 4-6, p. 145.

interpretive difficulty for the juror, the "stranger", who is bereft of personal knowledge: "The Question is, what is truth? In a case where witnesses swear directly contrary to one another, and wherein two great p[ar]tys are engaged on either side to support the credit of their witnesses. And by what means shall a stranger judg betwixt them to satisfie him self w[hi]ch side he should be=leev."[23] Even if records of witnesses' past veracity could somehow have been made available to supply an evidentiary pool for Hume's "experience," no easy inference could be made between that total figure and the testimony at hand. While eighteenth-century philosophers of testimony generally subscribed to the trait theory of human character, which assumed consistency of character, there was also a general realization that such consistency of character was not absolute.[24] The *Port Royal Logic* accordingly stressed that the circumstances of each testimony must be carefully scrutinized. For that reason, philosophies that relied on past frequencies, and especially the overtly mathematical models that a few English philosophers urged, which assumed fungible "reasonable persons" and large numbers to smooth over exceptions among people and supposed "deviations" within a single person's behaviour and to resolve the information gaps, at best were utopian hypotheses rather than practical instructions for forensic credibility evaluation. The "calculus" approach may have been a serviceable model for some applications but it did not have enough variables and sensitivity to be functional for legal and literary forums.

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[23] Francis North, British Library Additional MS 32518 at ff 152v -153r, reprinted M. McNair, "A Fragment on Proof by Francis North, Lord Guilford" *Seventeenth Century* 8.1 (Spring 1993): 143-148, at p. 143. Francis North was Chief Justice of Common Pleas 1675-1682 and Lord Keeper 1682-1685.

[24] For modern scholarship on trait theory, see Gordon W. Allport, *Personality: A Psychological Interpretation* (New York: Holt & Co., 1937).

A further difficulty was that many of the hermeneutic strategies that would ordinarily be used when there was uncertainty could not be applied to a dispute resolution mechanism like the trial. Steven Shapin describes the elaborate testimonial schema in "gentlemanly culture" to retreat conversationally in certain contexts to preserve the relationship. For speakers, the proper bounds of civil conversation recommended that speakers not test people's tolerance by relating something that was true if it seemed incredible; for listeners, they were advised to be reticent of accusing someone of lying.[25] By contrast, law preserved social order by deliberately provoking and pursuing truth and testing the credibility of individuals. The epistemic and moral strategies of gentlemanly decorum for eliding judgments about other people and favouring dignity over veracity did not work well in the legal forum, which pursued truth over civility, assessed credibility in public, and openly entertained the idea that people may be lying. While it was true generally that moral judgments were made in ordinary decision-making even where there was imperfect knowledge, this dilemma was exacerbated in law where decisions were completed under difficult interpretive circumstances without the benefit of alternative strategies, such as reticence and retreat.

Eighteenth-century English legal credibility ideas were remarkably innovative as compared to ideas about witnesses' characters earlier in England and ideas of other rational decision-making procedures in this period elsewhere in Europe. Rather than counting witnesses, or assessing credibility from nominally objective standards of groups, such as demographics, or assessing credibility of individuals with an overlay of

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[25] Steven Shapin, *A Social History of Truth: Civility and Science in Seventeenth-Century England* (Chicago: University of Chicago Press, 1994), pp. 350-351 and 307-309.

precise mathematical ratios, eighteenth-century English common law credibility was based on a subjective assessment, permitted juror discretion, and found precision and formalization through protocols rather than pre-determined rules about desirable witness characteristics.

Witness evaluation systems which rely on quantification and general character traits share epistemological foundations. These proof systems were used by English Chancery, admiralty, and ecclesiastical courts and justices of the peace, in addition to most civil law jurisdictions in continental Europe at this time.[26] Under the civil/canon proof system, fact finders do not weigh credibility; instead, objective standards and predetermined credibility "weights" are assigned on the basis of general categories, not particular witnesses, and there is no lay subjective assessment of credibility by jurors. This system has aptly been characterized as formalistically using "stencils fixed by law," "not trusting to the often deceptive valuation of each man's credibility, character, and the like, but finding its security in the external mark of numbers," rather than "inward qualities, motives, [and] volitions."[27] Much like the silhouettes that Lavater would later popularize as a physiognomic device, the civil proof system's stencils conceptualized character as a fixed outline. The Romano-canon system of proofs emphasized a static sense of a character's ontology with such criteria as age, class and sex; the sensory input demanded of the character assessor was minimal, more snapshot

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[26] See generally, John H. Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Régime* (Chicago: University of Chicago Press, 1977); John H. Langbein, *Prosecuting Crime in the Renaissance;* Barbara Shapiro, *Probability and Certainty*, chap. 5.

[27] Quoted by John H. Wigmore, "Required Numbers of Witnesses: A Brief History of the Numerical System in England," *Harvard Law Review* 15 (1901): 86.

than live action. Indeed the mechanical system for quantification over qualification was designed precisely to limit the decision maker's discretion. However, the civil proof system could minimize but not entirely erase subjectivity. Given a complex apparatus for ordering kinds of proofs and assigning belief levels, the professional judges still had to make inferences in order to fit witnesses within the evidentiary categories of proof. Yet, once the evidence had been characterized, each category had a fixed fraction of proof, and the summation of the proofs automatically correlated to a specific degree of certainty. The categories not only corresponded to but dictated the degree of certainty that would be a rational response for the judge to have to the evidence.[28] That is, the system did not incorporate the probabilistic exercise of individuals proportioning belief to the evidence.

Barbara Shapiro attributes the seventeenth- and eighteenth-century divergence of English and Continental legal systems to a "crisis in the technology of legal proof."[29] Both sought more rational methods of proof which would conform to developing epistemological theories; both included procedures for evaluating "credibility." But only England's new "technology of legal proof" of the common law trial by jury permitted "rationality" to include an evaluative "weighing" of credibility performed by non-professional judges of fact, exercising their decision skills.

A confluence of factors worked to foreground the issue of credibility at jury trials in the years preceding the emergence of the novel. Before the jury was established, England had modes of trial which incorporated a perfunctory character test;

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[28] The Napoleonic Code introduced free proof in 1808. See Barbara Shapiro, *Beyond Reasonable Doubt,* p. 327.

[29] Barbara Shapiro, *Probability and Certainty*, p. 173.

however, the tests could be satisfied with a punctilious regard for the prescribed form because no one was looking through the bare performance of the words to evaluate the speaker or the merits.[30] In the wager of law, or trial by oath, the party, after denying the allegation, produced compurgators who swore to the truth of the individual's oath or, under a later dilution, merely to their "belief" that the oath was true. As the oath-helpers were not required to know the facts and as this was a unilateral proof with no counter-compurgators, the trial method demanded only that the party bring the requisite number of compurgators and that they recite the oath in the proper form. In graver offenses, the procedure was more rigorous. The judge could require a larger number or higher rank of compurgators or insist that they be chosen by the court, instead of the party.[31] But the substance stayed hollow; no decision-maker assessed the credibility of the oath-supporters and there was no pretence that one should. The royal courts at Westminster were forthright about the empty formality of the character test. The procedure ceded to the difficulty that rural parties would have in finding individuals who would accompany them to the city and thus tolerated compurgators for hire who

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[30] On ancient modes of trial in England, see James Bradley Thayer, *A Preliminary Treatise on Evidence at the Common Law* (Boston: Little, Brown, 1898), chap. 1; William Holdsworth, *A History of English Law,* 7th ed. rev., 12 vols. (1903; London: Methuen, [1956-1972]), pp. 1: 299-312; Frederick Pollock and Frederick William Maitland, *The History of English Law Before the Time of Edward I*, intro. S. F. C. Milsom, 2d ed., 2 vols. (Cambridge: Cambridge University Press, 1968), vol. 2, pp. 632-641; Theodore F. T. Plucknett, *A Concise History of the Common Law*, 5th ed. (London: Butterworth, 1956), pp. 113-119. In criminal cases, trial by ordeal and battle were the main antecedents to trial by jury.

[31] Julius Stone, *Evidence: Its History and Policies*, revised by W. A. N. Wells (Sydney: Butterworths, 1991), pp. 4-5.

were strangers to the party but, for a fee, would swear to the party's character.[32] Witnesses did not need to have knowledge of someone else's character in order to warrant that they believed somebody; and the legal evaluator did not need to assess the character of these witnesses to evaluate their belief.

Hume complained of this "ridiculous practice of obliging men to bring compurgators, who, as they did not pretend to know anything of the fact, expressed upon oath, that they believed the person spoke true; and these compurgators were, in some cases, multiplied to the number of three hundred." Significantly, he connects the procedure with epistemological deficits; the practice was required, he alleges, because of the "usual want of discernment in judges, who could not discuss an intricate evidence, and were obliged to number, not weigh, the testimony of the witnesses."[33]

Likewise in the "trial by witnesses" form, the "operative thing was the oath itself, and not the probative quality of what was said, or its persuasion on a judge's mind."[34] In this mode of trial, both parties might produce witnesses to swear the oath and, unlike the trial by oath, these individuals had witnessed the event in issue. Thus two factors befitting and facilitating credibility assessment were present: witnesses had personal knowledge and they were evaluating and selecting among testimonies. But,

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[32] J. H. Baker, *An Introduction to English Legal History*, 3d ed. (London: Butterworths, 1990), pp. 87-88.

[33] Hume, "Rules of Proof," Appendix 1 in *The History of England: From the Invasion of Julius Caesar to the Revolution in 1688: by David Hume, Esq. with A Continuation From That Period to the Death of George the Second by Tobias Smollett, M.D. and Chronological Records to the Coronation of his Present Majesty, George the Fourth, by John Burke, Esq.,* 6 vols. (London, 1825), vol. 1, pp. 101-102.

[34] James Bradley Thayer, *A Preliminary Treatise on Evidence at the Common Law*, p. 17.

"weighing" the reports was literal in practice and the party with the higher head count prevailed.[35]

The early trial modes could have accommodated a credibility test. Nothing in the procedure itself barred judges from evaluating credibility on the basis of testimony, but these older forms were supplanted by trial by jury before such qualitative assessments became common practice.[36] Instead, the particular credibility tests which would provide a rich analogue for the novel developed in the trial by jury, although it took several centuries before jurors and readers were in comparable hermeneutic positions. By the eighteenth century, courtroom practices and novels posed similar interpretive challenges and incorporated a full credibility assessment. The timing, I contend, was not coincidental. The novel with its characteristic full characterization could arise only when full credibility evaluations were suffused in the culture.

A shallow parallel can be drawn between old proof methods that counted compurgators or that conspicuously credited testimony given under oath without evaluating it and the philosophical directions by Locke and others that used the number of witnesses as a criterion for evaluating testimony. However, the probabilist philosophers' reference to number of witnesses, as one factor among many, pointed to a more sophisticated epistemological theory. The number of witnesses was not simply a

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[35] William Holdsworth, *A History of English Law*, vol. 1, pp. 302-03.

[36] Maitland describes a thirteenth-century case under the trial by witnesses form which suggests that the judge was scrutinizing the substance of the testimony. Maitland argues, and Holdworth agrees, that, had the trial by witnesses form not been displaced by the trial by jury, these incipient credibility assessments would have matured to resemble the canon law inquisitory procedure, with the judge examining witnesses in succession. Pollock and Maitland, *The History of English Law*, vol. 2, pp. 638-39; Holdsworth, *A History of English Law*, vol. 1, pp. 303-05.

proxy for credibility but part of an evaluative *process* of weighing and duly proportioning assent based on individual traits. Probabilist theories of evaluating witness credibility, such as Locke's, envisioned combining evidence and the conceptually difficult cognitive process of combining different pieces of evidence into a single degree of belief about a proposition.[37] Witchcraft trials and miracle stories were a powerful context for intellectuals and acted as impetus for many to disdain popular and group ideas and to advance instead the notion that simple cumulative numbers did not necessarily suggest accuracy. "It is the cumulation of probabilities, . . . probabilities too fine to avail separately, too subtle and circuitous to be convertible into syllogisms, too numerous and various for such conversion, even were they convertible," and the idea that "not all men discriminate them in the same way,"[38] which made credibility assessments so difficult and markedly distinguished the epistemological grounds of full credibility from quantitative proof systems. The scope of subjectivity, this weighing of cumulative fine probabilities with no fixed rules, worried some who hoped to introduce more precision in credibility and a more quantified evaluation of testimony.

Locke, Hume and Reid develop the Aristotelian idea of proportioning assent and speak as if assent could be measured in such fine increments that the exercise resembled an almost literal calculation that "deducted" one tally of evidence from another. It is perhaps then not surprising that some philosophers embellish this project with a more explicit mathematical calculation, complete with formulae and ratios. There were some

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[37] On the conceptual difficulty, see James Franklin, *The Science of Conjecture: Evidence and Probability before Pascal* (Baltimore: The Johns Hopkins University Press, 2001), p. 172.

[38] John Henry Newman, *An Essay in Aid of Grammar of Assent* (1870; 8th ed. 1889), ed. and intro I.T. Ker (Oxford: Clarendon Press, 1985), pp. 187 and 190.

efforts, albeit peripheral ones, to refine the moral science of law. In *Classical Probability in the Enlightenment,* Lorraine Daston details some classical probabilists' belief in and commitment to a quantified rationality which would convert judgment and inferences into a calculus, that is, a set of mathematical rules that would yield "unique, unambiguous solutions" for qualitative ideas.[39] This "reasonable calculus" would be a "mathematical codification of the intuitive principles underlying the belief and practice of reasonable men."[40] David Hartley gives a sense of this project's blueprint: "To deduce Rules for the Ascertainment of Truth, and Advancement of Knowledge, from the Mathematical Methods of considering Quantity." He observes that the "mathematical Method of considering these Things is much more precise, and satisfactory, and differs from the common one."[41]

Two striking examples of proposals for how this blueprint could be applied toward a credibility calculus are from John Craig's *Theologiae Christianae Principia Mathematica* (1699) and an anonymous article from the same year in the Royal Society's *Philosophical Transactions* for a design for "A Calculation of the Credibility of Human Testimony."[42] Craig and the anonymous author of the *Philosophical*

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[39] Lorraine Daston, *Classical Probability in the Enlightenment* (Princeton: Princeton University Press, 1988), p. xv.

[40] Gerd Gigerenzer, Zeno Swijtink, Theodore Porter, Lorraine Daston, John Beatty, Lorenz Krüger, *The Empire of Chance: How probability changed science and everyday life* (Cambridge: Cambridge University Press, 1989), chap. 1 "Classical Probabilities, 1660-1840," p. 6.

[41] David Hartley, *Observations on Man, His Frame, His Duty, and His Expectations. In Two Parts* (London 1749), pp. 335 and 446.

[42] John Craig, "Craig's Rules of Historical Evidence," from Joannis Craig, *Theologiae Christianae Principia Mathematica* (London 1699), reprinted in *History*

Transactions article both focus on the probability of the testimony in the context of religious history rather than the legal examples which preoccupied many theorists. Craig "resolves" the evaluative difficulties of the credibility attribution by re-fashioning the insolvably individual nature of a person's testimonial qualities and the unique relationship between the testimonial witness and recipient through new assumptions that the participants are fungible and the relationships are uniform. The anonymous author of the *Philosophical Transactions* article calculates credibility using ratios; the several degrees of "moral certitude incompleat," are estimated as proportions of "moral certitude absolute," in which the mind entirely acquiesces. These English examples of a calculus of credibility were rarer than they were in continental Europe.[43]

In short, these examples illustrate supreme efforts to quantify the qualitative. These theorists were willing to translate broad intuitive strokes into artificially refined precisions. They very literally calculated the value of credibility, albeit with arbitrary

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and Theory: Studies in the Philosophy of History (The Hague: Mouton & Co, 1964); [Anon], "A Calculation of the Credibility of Human Testimony," *Philosophical Transactions* 21 (London: Royal Society of London, 1699; New York 1963), 359-365. Lorraine Daston suggests the article should be attributed to George Hooper, while Hacking proposes John Craig as the likely author. See Lorraine Daston, *Classical Probability in the Enlightenment,* p. 34 and Ian Hacking, *The Emergence of Probability,* p. 190. However, Richard Kirwan, in his 1807 *Logick: or, An Essay on The Elements, Principles, and Different Modes of Reasoning,* para. 597, p. 317, identifies the author as Edmond Halley, the English astronomer and mathematician, who was also secretary of the Royal Society and frequently published in the *Philosophical Transactions.* Hume refers to Craig's article as the "very celebrated argument against the *Christian Religion.*" David Hume, *Treatise of Human Nature,* ed. David Fate Norton and Mary J. Norton (Oxford: Oxford University Press, 2001), 1.3.13, p. 99.

[43] Nicholas Bernoulli, for example in *De usu artis conjectandi in jure*, calculates the "degree of trustworthiness" of a witness, measured by dividing the total number of times the witness's testimony is confirmed as truthful by the total number of testimonies. Nicholas Bernoulli, *De usu artis conjectandi in jure* (1709) in *Die Werke von Jakob Bernoulli,* 3 vols. (Basel: Basel Naturforschende Gesellschaft, 1969-1975), vol. 3, p. 324.

numbers which subscribed to the illusion that people have "credibility ratios." Philosophers eventually retreated from trying to express subjective credibility assessments in objective numerical terms, and jurists rebuffed the designs for a calculus of credibility, which in England did not garner a wide following. The specific solution proffered by some philosophers that used *general* character traits to determine the probability that a witness is credible, calculated to the fine percentage, was poorly adapted to the individualist and empiricist theory of the common law trial. Law was perhaps a natural site for probabilists to practice applying quantifying solutions, but quantification was not a natural application for the common law. Mathematical approaches were ill-suited for lay fact finders within the courtroom and their adoption would have limited the influence of legal practices on extra-legal contexts. Instead of quantitative proofs, the common law adopted *qualitative* and subjective probability. Quantification, at its best, could provide a collective answer on credibility—Is this *type* of witness credible?—or the comfort of a specious façade of precision, but not whether a particular witness in a particular time testifying about a particular event is credible.

Thus these exercises in precision and quantification, although seemingly a most appropriate template for the common law, since they supplied a ready-made example of applying probability to the credibility of witnesses and testimony, were not a suitable model for the common law, with its testimonial practices, to take up. Jurists were not satisfied with answering only the statistical likelihood that a person "like this" witness will tell the truth, but rather attempted to answer whether this particular person was telling the truth about this sensed experience in the past. However, quantified probability and legal hermeneutics did share an underlying aspiration. Both approaches

hoped, with as much precision as possible, to determine whether a particular witness is credible, and both are thus part of the same philosophical project, albeit using different measurements to gauge credibility. The general philosophical trend during this period that urged people to evaluate carefully each piece of testimony for credibility and factual plausibility was consistent with the common law trial's principles and necessities. The trial gave practical effect to the cautions that numerous seventeenth-century theorists had issued in guiding people between the Scylla and Charybdis of credulity and scepticism: the mere possibility of doubt is not sufficient to withhold assent and the cumulated weight of *unscrutinized* authorities' opinions is not sufficient evidence to warrant assent.

The puzzle within law, and it is the same puzzle for novels, is how to assess *any* witness as credible or not with respect to a specific instance of testimony. In this respect, the paradigmatic hermeneutic problem for eighteenth-century forensic credibility was the crown witness, accomplice, and the thieftaker, such as Jonathan Wild, the criminal who could be credible when giving testimony.[44] Eighteenth-century

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[44] See generally, Gerald Howson, *Thief-Taker General: The Rise and Fall of Jonathan Wild* (London: Hutchinson & Co., 1970); David Philips, "Good Men to Associate and Bad Men to Conspire: Associations for the Prosecution of Felons in England, 1760-1860," in *Policing and Prosecution in Britain 1750-1850,* ed. Douglas Hay and Francis Snyder (Oxford: Clarendon Press, 1989), pp. 113-170; P.J.R. King, "Prosecution Associations and Their Impact in Eighteenth-Century Essex," in *Policing and Prosecution in Britain 1750-1850,* ed. Douglas Hay and Francis Snyder (Oxford: Clarendon Press, 1989), pp. 171-210; Ruth Paley, "Thief-takers in London in the Age of the McDaniel Gang, c. 1745-1754," in *Policing and Prosecution in Britain 1750-1850,* ed. Douglas Hay and Francis Snyder (Oxford: Clarendon Press, 1989), pp. 301-342; John H. Langbein, "Shaping the Eighteenth-Century Criminal Trial: A View from the Ryder Sources," *University of Chicago Law Review* 50 (1983): pp. 84-114 (on crown witnesses and the reward system); Langbein, "The Prosecutorial Origins of Defence Counsel in the Eighteenth Century: The Appearance of Solicitors," *The Cambridge Law*

trials sometimes depended on the testimony of unsavoury elements such as thieftakers who would assuredly fail many of the credibility criteria laid out in philosophical treatises. However, since thieftakers and accomplices were pragmatically accepted as the best sources of information on criminal gangs, in many cases, forensic assessment had to diverge widely from general philosophical foundations on credibility that put a great deal of stock in "character" as an accurate proxy for "credibility." An individual's general reputation for credit and an individual's general predisposition toward scepticism or credulity with respect to testimony as a form of evidence do not help to answer whether a particular witness's testimony is true on a given occasion. Jury discernment was expected to leaven pragmatism with prudence and sift out the credible and plausible. By this period, forensic credibility was supposed to answer such questions as, is someone whom you would not trust nevertheless credible? Equally, is someone whom you consider trustworthy (or sincere) nevertheless not credible? Credibility was specific to the individual and situation, with respect to judging both knowledge and biases.

The long eighteenth-century philosophical maxims correctly highlight some general character traits, such as honesty and integrity, as being reasonable indicia of credibility; they logically advise that past experiences with an individual's character, or with individuals *like that individual*, are rational indicators for whether a person will be credible. Eighteenth-century legal reformers faced a more complicated interpretive

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Journal 58 (1999): 356-360; and Stephan Landsman, "The Rise of the Contentious Spirit: Adversary Procedure in Eighteenth-Century England," *Cornell Law Review* 75 (1990): 572-580.

problem. The legal forum had to modify the philosophical treatment in order to accommodate three distinguishing features of credibility evaluations in court: individual witnesses, testifying on specific occasions, and an absence of past character information on which the evaluators can draw.

Unlike philosophers' logical recourse to general character as an indicator of credibility and supposition that the assessor would have prior knowledge of an individual's character, the legal system had to accommodate factors which exaggerated the interpretive difficulty. Witnesses with good information were often not of good character; and the evaluators had little or no previous acquaintance with the witnesses. Jurists thus made a fine, but profound, distinction between "character" and "credibility."

> [W]here a man's testimony is impeached, this general character of credibility is no longer considered otherwise than as a circumstance, and the inquiry is changed into a scrutiny of his credibility to that particular fact. And here men of all ranks, character, and fortunes, are equally liable to the same inquiry; it is by no means a consequence that the best man should turn out to be the most *credible* witness; every day's experience proves the contrary, and a bad man is not only allowed to be a good witness, but sometimes even a better than a much better man. . . . [T]he good character of the man has been confounded with the credibility of the witness, which are two different things. . . . Nor is it strange that a bad man, in some cases, should be a *credible* witness, and a good one not credible; . . . and therefore the general character of the

> man is of no great moment in weighing the credibility of the testimony.[45]

As Lord Camden's quotation indicates, it was possible to have a witness of good character whose testimony nevertheless was not believable and, by contrast, to have a witness of bad character whose testimony would be believed. Eighteenth-century jurors were expected to make these increasingly recondite judgments, first of a person's general character; second, whether a person of good character was giving credible testimony; and most difficult, interpolating whether a person of little credit was giving credible testimony. Thus as Martin Madan reasons in his late eighteenth-century pamphlet, *Thoughts on Executive Justice,* in advocating that accomplice testimony be heard by juries, "no man can tell, what *lights* may be struck out, or what *truths* may appear, from the testimony even of the worst of men"; it "may possibly do *good,* without the least probability of doing any *harm.*"[46]

Moreover, eighteenth-century theorists realized that the "best source" in terms of access to information may very well carry few if any of civil law's class-based or the socio-cultural "gentlemanly" character traits that had been a recognized shortcut to "credibility" outside the epistemological site of the common-law trial. The legal system frequently had to incorporate testimony from sources who lacked these positive predictors of credibility but who nonetheless may have been credible sources with

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[45] John Morgan, *Essays upon 1. The Law of Evidence*... 3 vols. (Dublin, 1789), pp. 253-254, quoting Lord Camden.

[46] Martin Madan, *Thoughts on Executive Justice with respect to our Criminal Laws, particularly on the Circuits. Dedicated to the Judges of Assize; and recommended to the perusal of All magistrates; and to all Persons who are liable to serve on Crown Juries,* 2d ed. (London, 1785) p. 170.

respect to particular attested factual assertions about the past because they had first-hand knowledge and personal experience. Witnesses came from various walks of life and courts could not be as selective about witness status as the relatively hermetically closed circles of the theologians, scholars, and, to a lesser extent, the Royal Society. Thieftakers did not belong to an epistemic community which valued truth as a norm, but they could still be credible on certain occasions, if provided with incentives.

To be clear, the thieftaker was not a *typical* example of a credible eighteenth-century witness but rather the paradigmatic exception that proved the lack of a rule for the ratiocinative process of credibility evaluation. The norm was still to emphasize a witness's character traits, whether these traits were accreted by merit and effort, or by class and gender, as a strong indicator of credibility.[47] Having skill and morals potentially suggested a broad compass of qualifying witnesses, and cultural presuppositions would have been used as interpretive shortcuts to infer that these qualities were more likely to be associated with some status categories than others. But, significantly, the epistemology of the English trial entertained the idea that general credit was not a perfect match with credibility. An otherwise dissolute character could be credible on a particular testimonial occasion. People who had good character could

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[47] I am speaking here of character as a factor in credibility evaluations. Beattie discusses character evidence as an important factor in convictions and sentencing, remarking how character evidence about the parties could influence jurors to return a partial verdict or judges to recommend a pardon or a hanging. *Crime and the Courts in England, 1660-1800*, pp. 439-449. Langbein remarks the "astoundingly broad use of character evidence in Old Bailey trials" during the eighteenth century, particularly past convictions and reputation evidence, as a factor in convictions. "The Criminal Trial Before the Lawyers," pp. 304-306. Similarly, Lovelace in *Clarissa* regrets he "ought to have been a little more attentive to *character*" because "character biases and runs away with all mankind,...and in the very courts of justice, does not *character* acquit or condemn as often as facts, and sometimes in spite of facts?" (*Clarissa* 5.251).

lie or err; conversely, people of bad character could be credible reporters of specific testimony. Social status continued to be a factor, but was weighed as part of a larger cluster of traits. The innovation of distinguishing "character" from "credibility" was a lynchpin of juridical credibility theory and a predicate to literary concepts of the credibility of fictional characters, as later chapters in this thesis explain.

The forensic process of evaluating testimony and credibility thus was infused with particularities, consistent with the general guidelines for scrutinizing probability evidence that were circulating in this period, such as the *Port-Royal Logic's* advice. Speaking of the belief in miracles and the dangerous extremes of scepticism and credulity, the *Logic* authors comment that "[b]oth parties rely on generalities," and while "[a]ll this is quite good in itself," "as reasons to convince us that a particular miracle is genuine, most flimsy." "[N]othing is less reasonable than to be guided by generalities... We must examine the particular circumstance of each miracle and the faithfulness and good sense of the reporting witnesses." Instead, they recommend to "keep the mind from being carried away by generalities, which though they have some truth in them are still false on many particular occasions. Yielding to such generalities is one of the greatest sources of man's error."[48]

Likewise, Arnauld's caution was incorporated in the juridical credibility objectives. Generalities about the likelihood of particular character types telling the truth were alone insufficient evidence as to whether a particular witness is credible on any given occasion. Just as sceptics and credulists err by relying on generalities, so too would jurors and readers err if they relied on character type information instead of

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[48] Arnauld, *The Art of Thinking* [*Port-Royal Logic*], pp. 344-346, 353-354.

analysing the intrinsic and extrinsic circumstances of testimony in the particular instance. However, such insistence on immersing oneself in the "particularities" of the testimony and character was in tension with the practical scarcity of character information in the trial. By the eighteenth century, jurors, like readers coming to a novel, lacked paratextual information about character; or more precisely, to modify Gérard Genette's familiar term of "paratext" to adapt it to a testimonial rather than a reading paradigm, jurors and readers lacked *paratestimonial* information about character.[49]

The evolution of the jury explains how this hermeneutic position of little or no paratestimonial information was realized. While the jury history in broad outline is familiar, the discussion here elucidates specifically how the jury's role as *active* credibility assessors developed. The timing, and indeed, the existence of the pure self-informing jury is contentious among legal historians.[50] The jury role, at least in design at the jury's origin in the twelfth and thirteenth century, was a hybrid of pre-trial investigation and judicial decision-making. The vicinage requirement meant that sometimes jurors were eye-witnesses of the event. But a more highly valued trait which the jurors brought with them than their own direct sensory information was a sense of the community; they were witnesses to and representative of a collective knowledge.

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[49] Gérard Genette, *Paratexts: Thresholds of Interpretation,* trans. Jane E. Lewin, foreword by Richard Macksey (Cambridge: Cambridge University Press, 1997). Originally published as *Seuils* ["thresholds"](Editions du Seuil, 1987). Paratexts are "liminal devices and conventions, both within and outside the book, that form part of the complex mediation between book, author, publisher, and reader."

[50] On the history of the jury, see the collection of essays in J.S. Cockburn and Thomas A. Green, eds., *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (Princeton: Princeton University Press, 1988); and Green, *Verdict According to Conscience.*

The jury listened to the stories of parties and witnesses but did so on their own initiative, outside the confines of the courtroom and before the trial began. How juries gained knowledge was unregulated by formalized judicial procedure; it was up to the juries to select sources, to choose questions most likely to elicit the story, to identify gaps in the developing narrative and to know how to fill them. When early juries arrived in court after this investigation of a fortnight or more, they came as a resource rather than to be instructed, or "not to listen but to speak, not to hear evidence but to deliver a verdict formulated in advance."[51] Maitland's remark that the jury cobbled together information from "hearsay and floating tradition"[52] highlights two significant differences from later epistemological demands on the juries. The jury not only enjoyed a leisurely self-directed learning process but could bootstrap testimonial information from outside the framework of the courtroom proper. The congeries of character information that jurors knew on the basis of what was said about other people before the trial began was appreciated as reliable knowledge and jurors were valued for having this knowledge and were expected to use it.

Seventeenth- and eighteenth-century writers explicitly linked the neighbourhood requirement with the jury's knowledge of a witness's character and, in turn, saw prior character knowledge as giving jurors a better ability to assess credibility. William Blackstone, retrospectively summarizing the interpretive advantage that jurors enjoyed when they had a cache of character information, remarks that because jurors were

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[51] John Langbein, "Historical Foundations of the Law of Evidence: A View from the Ryder Sources," *Columbia Law Review* 96 (1996): 1170.

[52] Pollock and Maitland, *The History of English Law Before the Time of Edward I*, vol. 2, p. 624.

"living in the neighbourhood" they were "supposed to know before-hand the characters of the parties and witnesses, and therefore the better knew what credit to give to the facts alleged in evidence."[53] John Hawles, in his 1680 tract, *The English-Mans Right: A Dialogue between a Barrister at Law, and a Jury-Man,* speaks of "*neighbours* (who consequently cannot be presumed to be unacquainted either with the matters charged, the Prisoner's course of life, or the credit of the Evidence)."[54] The jurors' prior knowledge base was not only a permissible source of evidence but was systematically integrated into the trial design to shore up the formally regulated presentation of evidence in court. Thus, Hawles reasons, "[T]he Jury being of the *Neighbourhood* may, and oft-times *do know* something of their own knowledge as to the Matter it self, the Credit of the Evidence & which may justly *sway* them in delivering their Verdict, and which self knowledge of theirs is so far *countenanced* by Law, that it supposes them capable thereby to try the Matter in Issue (and so they must) though *no Evidence* were given on either side in Court."[55] William Nelson, in his 1744 treatise on *The Law of Evidence* anticipates that the jurors' character knowledge may be superior to the judges': "The Jury may know the Witnesses to be stigmatized and infamous; which may be unknown to the Parties, and consequently to the Court."[56] Matthew Hale likewise

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[53] Blackstone, *Commentaries on the Laws of England,* vol. 3, pp. 359-360.

[54] John Hawles, *The English-Mans Right: A Dialogue between a Barrister at Law, and a Jury-Man; Plainly Setting Forth, the Antiquity, the Excellent Designed Uses, the Office and Just Privileges of Juries, by the Law of England* (London, 1680; rpt. New York: Arno Press, 1972), p. 7.

[55] Ibid., p. 29.

[56] William Nelson, *The Law of Evidence,* 3d ed. corrected and enlarged ([London], 1744), p. 4.

locates "an advantage" as to "Certainty" of the Trial by Jury" in "the Jury itself," and their accumulated knowledge base about character, since they "oftentimes know the Witnesses and the Parties." The "jury are judges as well of the credibility of the witnesses, as of the truth of the fact, for possibly they might know somewhat of their own knowledge, that what was sworn was untrue, and possibly they might know the witnesses to be such as they could not believe. . . ." Thus, the jury was permitted and early on encouraged to give their verdict according to "their own Knowledge" if they "know a Thing to be false that a Witness swore to be true, or may know a Witness to be incompetent or incredible, tho' nothing be objected against him, and may give their Verdict accordingly."[57] That is, jurors' "experiences" were presupposed to contain testimonial evidence about character.

However, over time, as the witnesses' role enlarged, juries were hearing new evidence from unfamiliar witnesses at the time of the trial and jurors were under more demanding interpretive pressures to assess testimonial evidence with less

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[57] Matthew Hale, *The History of the Common Law of England* (1713) ed. and intro. Charles M. Gray (Chicago: University of Chicago Press, 1971), pp. 165-167; Hale, *Historia Placitorum Coronae. The History of the Pleas of the Crown*, vol. 2, p. 312. *Bushell's* case (1670) 1Vaughan 135, 124 Eng. Rep.1006, and the conflicts in the judge-jury relationship, should be recognized as part of this context. In *Bushell's* case, a court held that jurors could base their decisions on private knowledge extrinsic to the evidence presented in court. See Green, *Verdict According to Conscience,* pp. 236-249; John A. Phillips and Thomas C. Thompson, "Jurors v. Judges in Later Stuart England: The Penn/Mead Trial and *Bushell's Case,*" *Law and Inequality* 4 (1986): 189-229; and the eighteenth-century comments by John Morgan, *Essays upon 1. The Law of Evidence.* "This construction was probably made out of tenderness to juries, that they might escape the heavy possibilities of an *attaint*, in case they could shew by any additional proof, that their verdict was agreeable to the truth, though not according to the evidence produced; with which additional proof of the law presumed they were privately acquainted, though it did not appear in court" (p. 13).

epistemological background on character from which to make those assessments.[58] Complicating the situation, the *roles* of jury, judge, and witnesses were separated before the specific participants in those roles were precluded from carrying out more than one role. So, an early eighteenth-century evidence treatise advised that a "Juror who is a Witness must be also sworn in open Court to give Evidence, if he be call'd for a Witness; for the Court and Counsel are to hear the Evidence, as well as the Jury" and likewise a "Judge may be a Witness, and shall be sworn in Court as a Witness, where he knows any Thing of the Fact in Question' and yet shall remain in the Capacity of a Judge."[59] The epistemological and hermeneutic differences between "Jurors," as credibility assessors, and "Witnesses," as testimonial sources, were recognized before any idea of a conflict in an individual jointly exercising those roles in one proceeding was imputed.

By the eighteenth century, juries were operating in an environment with little or no paratestimonial information, and with that logistical change, the epistemological theory was duly revised and jurors were enjoined not to use extrinsic information. The philosophic advantage of accreting character information from repeated exposure to people and distilling those impressions into knowledge was transformed into a cognitive disadvantage when it was filtered through the legal system. Changing logistics of the

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[58] Langbein estimates that by the late fifteenth to sixteenth century, juries would not have been *expected* to have pre-trial knowledge of the facts of the case. "The Criminal Trial before the Lawyers," pp. 298-299 n. 105. On the de jure and de facto chronologies for the shift from a "neighbour-witness" to "judge of proofs," see John Marshall Mitnick, "From Neighbor-Witness to Judge of Proofs: The Transformation of the English Civil Juror," *American Journal of Legal History* 32 (1988): 201-235.

[59] William Nelson, *The Law of Evidence,* 3d ed. corrected and enlarged ([London], 1744), pp. 18 and 16.

trial practices meant that jurors were less familiar with parties and witnesses before the trial than the "neighbour-witnesses" of the "self-informing" jury. As urbanization and other socio-economic factors decreased the likelihood that jurors would bring specific knowledge with them, pre-existing knowledge was successively transmuted, first into an advantage, but not a necessary condition for a juror, and second into a positive disadvantage. Eighteenth-century legal procedures for lay evaluation of testimony managed epistemological doubts about imperfect information by incorporating jurors' nescience about character within the design for credibility evaluation. Blackstone thus explains that the "convenience" of juror's prior knowledge was "overballanced by another very natural and almost unavoidable inconvenience; that jurors, coming out of the immediate neighbourhood, would be apt to intermix their prejudices and partialities in the trial of right. And this our law was so sensible of, that it for a long time has been gradually relinquishing this practice. . . ."[60]

Rather than bringing "knowledge" from specific pre-existing information, jurors instead brought "disinterest" and impartiality" and general hermeneutic skills which could be exercised on specific occasions *in court* to evaluate credibility. The seepage of character or other evidentiary information from outside the controlled hermeneutic environment of the court facility, once an important epistemological aid, became a source of corruption like a Baconian Idol. In his *History of the Common Law of England* published posthumously in 1736 but reflecting late seventeenth-century conditions before Hale's death in 1676, Hale describes the tighter control of the interpretive context that was being developed. "When the Evidence is fully given, the

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[60] Blackstone, *Commentaries on the Laws of England,* vol. 3, pp. 359-360.

Jurors withdraw to a private Place, and are kept from all Speech with either of the Parties till their Verdict is delivered up, and from receiving any Evidence other than in open Court, where it may be search'd into, discuss'd and examin'd."[61] In 1701, George Stanhope in his sermon on *The Duty of Witnesses*, reflects a more stringent regulation of jurors, precluding them from using "[W]hatever light into the Cause the Tryers of it may have, by any *private* or personal knowledge of their own," for "in their *publick* Capacity, and as Jurors, they are bound ... to proceed upon such Notices only, as result from the Proofs produced upon the Tryal."[62] Jurors thus made credibility assessments "in" the court in two senses; first, they had only the information which was formally presented to them during the trial and, second, they gathered the evidentiary information that would be used to weigh credibility in the court where their own cognitive processes were themselves available to be judged by the public.

The eighteenth-century jury was expected to make qualitative, not quantitative, credibility assessment, and eighteenth-century procedures demanded that these decisions be made quickly and competently. Credibility interpretation was aided by devices which in retrospect can be characterized as easing the transition between a juror who makes a credibility assessment on the basis of leisurely accumulated personal information and a juror who would eventually be assessing credibility on the basis only of information that is formally provided to him through an orchestrated evidentiary procedure. The jurors who first began to assess credibility qualitatively rather than

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[61] Hale, *The History of the Common Law of England,* p. 165.

[62] George Stanhope, *The Duty of Witnesses. A Sermon Preach'd at the Summer Assizes Holden at Maidstone in Kent, Before the Right Honourable the Lord Chief-Justice Hold, and Mr. Justice Gould, August the 5th 1701* (London, 1701), p. 21.

quantitatively were often semi-professional jurors and experienced.[63] Jurors served in panels in repeated years and, even within a single panel, a jury heard trials in batches and delivered multiple verdicts.[64] Novice jurors therefore not only sometimes had experienced jurors with past trial experience to apprentice them in the interpretive process, but they also learned on the job through serial verdicts with similar patterns. Such interpretive aids were particularly necessary given the additional challenge that trials were frequently conducted with dispatch and verdicts were frequently rendered by jurors at a fast pace, putting a premium on credibility acumen.[65]

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[63] On experienced jurors, see Langbein, "The Criminal Trial Before the Lawyers," p. 277 (on the Old Bailey); Beattie, "Crime and the Courts in Surrey, 1736-1753," in *Crime in England, 1550-1800*, ed. J.S. Cockburn (Princeton: Princeton University Press, 1977), p. 165; Beattie, *Crime and the Courts in England,* pp. 380-394 (assize and quarter session trial juries). Beattie's research in *Crime and the Courts in England* on the assize jurors showed a "significant number were called frequently enough that some members of every trial jury in the eighteenth century had served before," experienced jurors averaging one third of each jury, and some jurors were "very experienced indeed" (p. 385). Quarter sessions jurors also saw heavy service, according to Beattie's research, but the assize and quarter sessions groups had little overlap, perhaps, Beattie speculates, because of differences in wealth and local standing (p. 394). See also, Peter Linebaugh, "(Marxist) Social History and (Conservative) Legal History: A Reply to Professor Langbein," *New York University Law Review* 60 (1985): 212-243, at p. 233, finding an average of two jurors per City panel with previous experience and an average of over 6 in Middlesex panels, and interpreting the presence of these professional jurors as a consequence of clientage.

[64] On batches and multiple verdicts, see Langbein, "The Criminal Trial Before the Lawyers," pp. 274-275; and Beattie, *Crime and the Courts in England, 1660-1800*, pp. 378-395. James Oldham reports in his study of Lord Mansfield that jury deliberations in civil cases did not need to be adapted to the high volume of the criminal case loads, so a new jury was usually impaneled for each case, but jurors typically did not take long in their deliberations and ordinarily did not retire from the courtroom before giving their verdict. James Oldham, *The Mansfield Manuscripts and the Growth of English Law in the Eighteenth Century*, 2 vols. (Chapel Hill: University of North Carolina Press, 1992), vol.1, pp. 138-139.

[65] On the speed of trials and deliberations, see John H. Langbein, "Shaping the Eighteen-Century Criminal Trial," pp. 115-123; Langbein, "The Criminal Trial Before

The encomia hailing jurors as the palladium of liberty for England often asserted that jurors were desirable precisely because they have common sense, derived from "experience." But jurists worried about how much extrinsic knowledge jurors should be allowed to draw on when appraising the credibility and probability of testimony. Jeffrey Gilbert, Lord Chief Baron of the Exchequer, in his eighteenth-century evidence treatise recommends "that which sets aside [the witness's] credit, and overthrows his testimony, is the incredibility of the fact, and the repugnancy of his evidence; for if the fact be contrary to all manner of experience and observation, it is too much to receive it upon the oath of one witness."[66] This guideline raises the same issues as the miracles debates regarding the nature of "experience" and when there can be assent to attested facts that are improbable to "experience and observation." The conceptual confusion is exacerbated here in the legal context in which the necessity of having assessors with no

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the Lawyers," pp. 277-284; Beattie, *Crime and the Courts in England, 1660-1800*, pp. 378-399; Beattie, "Crime and the Courts in Surrey, 1736-1753" in *Crime in England, 1550-1800*, ed. J.S. Cockburn (Princeton: Princeton University Press, 1977), pp. 165-167. However, several accounts in *The Complete Newgate Calendar* refer to jurors deliberating for half-an-hour, far more than the "few minutes" reported elsewhere; see reports of the trials of Henry Harrison in 1692, vol. 2, p. 82, Spencer Cowper, John Marson, Ellis Stevens, and William Rogers in 1699, vol. 2, p. 111, and the trial of Margaret Crimes at the Old Bailey where the jury retired for fifteen minutes, vol. 5, p. 38, all in G.T. Crook, ed. and collated and appendix, *The Complete Newgate Calendar, Being CAPTAIN CHARLES JOHNSON'S General History of the Lives and Adventures of the Most Famous Highwaymen, Murderers, Street-Robbers and Account of the Voyages and Plunders of the Most Notorious Pyrates,* 1734*; CAPTAIN ALEXANDER SMITH'S Compleat History of the lives and Robberies of the Most Notorious Highwaymen, Foot-Pads, Shop-Lifts and Cheats,* 1719*; The Tyburn Chronicle,* 1768*; The Malefactors' Register,* 1796; *GEORGE BORROW's Celebrated Tria*ls, 1825;*The Newgate Calendar, by ANDREW KNAPP and WILLIAM BALDWIN,* 1826; *CAMDEN PELHAM's Chronicles of Crime,* 1841; etc. (London: Privately Printed for Navarre Society Ltd., 1926).

[66] Jeffrey Gilbert, *The Law of Evidence* (1754) 6th ed. (London, 1801), pp. 131 and 133. I use the spelling of "Jeffrey" for Gilbert's first name, which was common in eighteenth-century sources; modern scholarship frequently uses "Geoffrey."

personal "experience" of the facts in issue was being positively sanctioned as an institutional norm. Baron Gilbert, for example, refers to probability arising from "a man's own thoughts and observations" but a few pages later suggests obliquely that facts are evaluated relative to "all manner of experience and observation." Thus Hume's experience versus testimony question, which punctuated the miracles debates, also colours the epistemological debate in the forensic forum.[67] Philosophy began to tackle the epistemology of testimony in the late sixteenth and seventeenth century at the same time that the jurors' transition brought this hermeneutic problem to the forefront.

Credibility was foregrounded in this period by the jury's transformation: the jury moved away from personal knowledge and accumulated character evaluations, supported by their own and the community's sense of individual reputations, toward the more difficult cognitive operation of weighing the credibility of dynamic *viva voce* testimony in the courthouse proper. The interpretive demands were relatively severe, including the threat of common hardships[68] and cognitive obstacles, as the ratio of inferences from new information to prior personal knowledge increased. The emphasis

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[67] Jeffrey Gilbert, *The Law of Evidence,* pp. 131 and 133.

[68] The "jury must be kept together without meat, drink, fire, or candle, till they are agreed." "If any of the jury eat or drink without license of the court before they have given up their verdict, they are fineable for it" as a misdemeanour. *Historia Placitorum Coronae. The History of the Pleas of the Crown,* vol. 2, pp. 296 and 306. Alexander Pope alludes to this in *The Rape of the Lock:*

> Meanwhile, declining from the noon of day,
> The sun obliquely shoots his burning ray;
> The hungry judges soon the sentence sign,
> And wretches hang that jurymen may dine
> 3.19-23

The Rape of the Lock, An Heroi-Comical Poem (1714) in *Alexander Pope*, ed. Pat Rogers (Oxford: Oxford University Press, 1993), pp. 77-101.

was firmly on jurors' hermeneutic skills applied to new character information from which credibility inferences had to be made on the spot and to the moment.

Despite the lack of paratestimonial information about witnesses' characters, many were confident that credibility evaluation was feasible. Richard Price asserted that human evaluators of credibility can competently assess credibility without the paratestimonial information that many of the philosophers assumed as an interpretive precondition. Unlike Hume who explicitly associated testimony with the frequency of experience, or Craig who mechanically modeled testimony as uniform, Price took a more realistic scenario and confidently espoused that individuals could and indeed did make decent particularized credibility evaluations on slight information. If we credited testimony only on the basis of experience, "the regard we ought to pay to testimony, would be in proportion to the number of instances, in which we have found, that it has given us right information, compared with those in which it has deceived us; and it might be calculated in the same manner with the regard due to any conclusions due from induction. But this is by no means the truth." Instead, "One action, or one conversation with a man, may convince us of his integrity and induce us to believe his testimony, though we had never, in a single instance, experienced his veracity. His manner of telling his story, its being corroborated by other testimony, and various particulars in the nature and circumstances of it, may satisfy us that it must be true."[69] As the editor says in *Castle Rackrent,* it is the "careless conversations" and "half finished sentences" by which we judge credibility.

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[69] Price, "Dissertation Four," pp. 398-399.

This kind of confidence in ordinary hermeneutic skills was a keystone for the design of credibility assessments in the legal forum, where jurors were expected to assess credibility from "one action" or "one conversation." To contextualize how exceptional this confidence was it helps to look forward to comments that Steven Shapin made in 1999. Shapin remarked, "Assessments of knowledge still importantly implicate judgements of the virtues and capacities of familiar people who represent and convey such knowledge: matter is still inferred from manner, facts from physiognomy, credibility from character."[70] We normally, as he underscores, assess people from the relative comfort of familiarity, extrapolate credibility *from* character. The novelty of the legal forum, its supreme hermeneutic test, and the reason that eighteenth-century confidence in jurors is so striking is that credibility by that time had newly become detached from the exegetical comfort of character familiarity. Jurors were expected to and were assumed to be able to judge credibility *without* former acquaintance with the specific person's character. That expectation may have been fanciful, but it was endorsed institutionally, in the design of the jury trial, and, with rare exceptions, endorsed individually, in the enthusiastic, sometimes hyperbolic, praise of the English jury's intellect and comprehension; although to some extent there was greater allegiance to the concept of the jury as an institution rather than to the practice of jurors as individuals, the infrequent critics were more likely to disparage jurors' biases and corruption than to attack their understanding. The perception that the jury had strong

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[70] Steven Shapin, "Rarely Pure and Never Simple: Talking About Truth," *Configurations* 7.1 (1999): 1-14, pp. 10-11.

hermeneutic skills helped to foster and disseminate ideas in the culture about the general capacity for appraising testimony.

Calculations of witness testimony, such as Craig's, purported to measure only proportions of total truth claims to total witness assertions, and thus their theoretical potency was based on the precondition that people act with rationality and rationality produced regularity. The trial is unlike an actuarial process in which one can be satisfied with merely knowing how predictive the predictors are in the aggregate; it is irreducibly about individuals, and particulars. The legal process had to fashion decision-making practices which were able to correlate evidence about a particular individual and specific facts with rational belief, rather than relying on expectations derived from aggregate information. Moreover, that system had to be perceived to be rational, modeled after current epistemological theories, and capable of being practiced by non-specialists using intuitive inferences about complex moral judgments. Just as there were epistemological crises of faith induced by the theological controversies, so too was there a secular equivalent in law: Are there decisions for which the everyday decision making standard of being "certain enough" is not good enough?[71] Can probability and rational belief on imperfect assent be justified in law?

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[71] "Our judges are not infallible in their judgments, yet are they certain enough that they judge aright, and that they proceed according to the evidence that is given when they condemn a thief or murderer to the gallows." William Chillingworth, *The Works of W. Chillingworth, M. A., Containing his Book, Entitled the Religion of Protestants, a Safe Way to Salvation Together with his Sermons, Letters, Discourses, Controversies, &c, &c.* (Philadelphia: Published by Rev. R. Davis, 1844), pp. 203-204, quoted by Henry G. Van Leeuwen, *The Problem of Certainty in English Thought, 1630-1690*, 2d. ed., pref. Richard H. Popkin (The Hague: Martinus Nijhoff, 1970), p. 30.

In order to have cultural currency, legal credibility must originate from a theory of knowledge. "[W]hat is absurd at the bar, is so in the philosopher's chair," Reid writes. "What would be ridiculous if delivered to a jury of honest sensible citizens, is no less so when delivered gravely in a philosophical dissertation."[72] Leibniz also detects epistemology within legal procedures. "The entire form of judicial procedures is, in fact, nothing but a kind of logic, applied to legal questions."[73] The legal theory of proof changed with the developing theories of knowledge which in turn disseminated what could be a justified belief. The idea of full credibility was integrally linked to epistemological beliefs about what could be known *from* other people (testimony) and what could be known *about* other people (character and credibility). That these concepts did have broader cultural currency is suggested by the frequency with which philosophers drew on legal examples as an example of testimony principles in practice. Hume, for example, compares the reasoning about miracles where there is conflicting testimony with a judge reasoning in a trial with conflicting witnesses. "This argument may appear subtile and refined; but is not in reality different from the reasoning of a judge, who supposes, that the credit of two witnesses, maintaining a crime against any one, is destroyed by the testimony of two others, who affirm him to have been two

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[72] Thomas Reid, *Essays on the Intellectual Powers of Man* (1785) in *Philosophical Works, With notes and supplementary dissertations by Sir William Hamilton*, intro. Harry M. Bracken, vol. 1 (Hildesheim: Georg Olms, 1967), p. 444.

[73] Gottfried Wilhelm von Leibniz, *New Essays on Human Understanding*, trans. and ed. Peter Remnant and Jonathan Bennett (Cambridge: Cambridge University Press, 1981), book IV, chap xvi "Of the Degrees of Assent," p. 465.

hundred leagues distant, at the same instant when the crime is said to have been committed."[74]

Law therefore was perceived to be amenable to being adopted as a set of practices that people could use to decide everyday questions of when to believe someone. Legal credibility was not about character types or a probability calculus, but a rational model of decision-making when there is incomplete and uncertain information about the particular fact. The legal system integrated maxims for assessing credibility to decide when to assent and believe, given our uncertain knowledge about other people. Rather than Laplace's "good sense reduced to calculus,"[75] eighteenth-century legal credibility assessment was good sense developed through principles, practices, and methods, and rules that regulated the way in which character information was relayed and received but that did not intrude to control or dictate the weighing process. From a legal perspective, good sense was indeed *reduced* when it was translated into a calculus. Instead of formalized tests, maxims of good sense were incorporated for *how* to weigh credibility. This system of allowing assessors to use discretion in order to inculcate judgment was as appropriately packaged for novel readers as it was for jurors. For at this point, the jury and the reader are situated in comparable hermeneutic positions, with both expected to make character judgments within the bounds of generic parameters and without the aid of any specific paratestimonial information.

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[74] Hume, *An Enquiry Concerning Human Understanding*, Section X, "Of Miracles," para 26, p. 155.

[75] Pierre Simon Laplace, *A Philosophical Essay on Probabilities*, trans. Frederick W. Truscott and Frederick L. Emory (New York: Dover, 1951), p. 196.

Significantly, the idea was incorporated into law that there is no regularity in credibility. Liars *can* tell the truth on specific occasions, and indeed, short of pathology, they *usually* do tell the truth. "Even the most consummate liar declares truths much more frequently than falsehoods," as the eighteenth-century United States Supreme Court Justice James Wilson remarks.[76] Even under Reid's optimistic scenario, "for where they lie once, they speak truth a hundred times," the trick was to try to detect that one time out of a hundred.[77] Correlatively, those with integrity can dissimulate and dissemble on specific occasions to serve higher purposes (as with Clarissa's "for my father's house"[78]). Every witness had to be assessed regardless of their character because "the generality of men is made up of particulars, and every particular man may deceive and be deceived."[79] Thus, while all admitted witnesses are *presumed* credible initially, *every* witness had to be scrutinized. Reid correspondingly endorses how the "upright judge" handles "a witness who has a fair character. He pays a regard to the testimony of such a witness while his character is unimpeached; but, if it can be shewn that he is suborned, or that he is influenced by malice or partial favour,

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[76] James Wilson, *The Works of James Wilson*, ed. Robert Green McCloskey, 2 vols. (Cambridge, Mass: Belknap Press of Harvard University Press, 1967), vol. 1, p. 385.

[77] Thomas Reid, *Inquiry Into the Human Mind, on the Principles of Common Sense* (1764; 4th ed. 1785) in *Philosophical Works, With notes and supplementary dissertations by Sir William Hamilton*, intro. Harry M. Bracken, vol. 1 (Hildesheim: Georg Olms, 1967), p. 196.

[78] Samuel Richardson, *The History of Clarissa Harlowe* (1748), 3d ed., intro. William Lyon Phelps, 8 vols. (New York: 1902; rpt. AMS Press, 1984), vol. 7, p. 226.

[79] Chillingworth, *The Works of W. Chillingworth,* pp. 740-741, quoted by Henry G. Van Leeuwen, *The Problem of Certainty in English Thought, 1630-1690*, 2d. ed. pref. Richard H. Popkin (The Hague: Martinus Nijhoff, 1970), p. 23.

his testimony loses all its credit, and is justly rejected."[80] Robert Boyle more expansively describes this vigilant inquiry and particularized interpretation:

> We ought to believe divers things upon the information of experience (whether immediate, or vicarious) which, without that information, we should judge unfit to be believed, or antecedently to it did actually judge contrary to reason. . . . [I]f your own observation of what occurs among mankind do not satisfy you, that we are obliged, after sufficient trial, frequently to alter the opinions, which upon probable reasons we had before entertained, of the fidelity, or prudence, or justice, or chastity, &c. of this or that person I shall refer you to the records of history, or appeal to the tribunals of judges. For both in the one, and at the other, you will find but too many instances and proofs from matters of fact, that persons looked on, even by intelligent men, as honest, virtuous, virtuous, and perhaps holy too, have proved guilty of falseness to their friends, perfidiousness to their princes, disloyalty to their husbands or wives, injustices to their neighbours, sacrilege, perjury, or other impieties to their God: and in the courts of justice, you will find a great part of the time employed to detect and punish, not only civil transgressions, as thefts, cheats, forgery, false-witness, adultery, and the like heinous crimes, perpetrated by those, that before they were thoroughly sifted, passed for honest; . . . . But it will not be necessary more solicitously to

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[80] Reid, *Essays on the Intellectual Powers of Man*, vol. 1, p. 234.

> prove, that we ought, upon the testimony of experience, to change the opinions we thought we had rationally taken up of persons. . . .[81]

The eighteenth-century English common law trial by jury then had moved from counting to a true detailed weighing, where "Sometimes one witness is better than twenty testimonies; that is, one man, good and pious, prudent and disinterested, can give a surer sentence, than many men, more crafty and less honest."[82] Not only were treatise writers confident that jurors were capable of weighing testimonies, but they castigated jurors who would shirk this task by retreating to counting methods. Hawles laments the "*too Customary*" practice of jurors who "forthwith agree *blind fold*, or else go to holding up of hands or telling of *Noses*,"[83] and Blackstone warns that if jurors "to prevent disputes . . . cast lots from whom they shall find" it will "entirely vitiate the verdict."[84]

Credibility assessment was viewed as an art, not a science, which could aspire to a methodology that would accommodate but not eliminate subjectivity. English common law in the eighteenth century eschewed the kind of formal systematized rules and mathematical precision in which some probabilists revelled, and the common law

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[81] Robert Boyle, *The Christian Virtuoso* in *The Works of the Honourable Robert Boyle in Six Volumes To which is Prefixed the Life of the Author*, ed. Thomas Birch, vol. 5 (London 1772), pp. 526-527.

[82] Jeremy Taylor, *The Rule of Conscience* [*Ductor Dubintantum*] (1660) in *The Whole Works of the Right Rev. Jeremy Taylor, D.D. Lord Bishop of Down, Connor and Dromore: with a Life of the Author, and a Critical Examination of His Writings, by the Right Rev. Reginald Heber, D.D.* 3d ed. of the *Collected Works*. 15 vols. (London: 1839), vol. 12, p. 90.

[83] Hawles, *The English-Mans Right,* p. 36.

[84] Blackstone, *Commentaries on the Laws of England,* vol.3, p. 376.

system continues still to demur from adopting such a system. Quixotically, those "calculating" philosophers in the seventeenth and eighteenth century who aspired to an objective and standardized process for credibility assessment turned to the law as a logical illustration of their models, but by emphasizing consistency they parted with the underlying principles of their touchstone. The common law trial itself pointedly did not adopt this overlay of precise rules that quantified and objectified and categorized. Whereas the continental legal system was peopled with legal professionals, who used an evidentiary method that was both complex and legally and technically specific, England used ordinary citizens, as petty and grand jurors, to be judges of facts—the "proper Judges . . . of Testimony"[85]—and incorporated evaluative methods that matched those that people used intuitively. By instead disciplining the intuitions of ordinary decision-making and using contemporary epistemological theory, credibility interpretation in the English common-law courtroom could not only be practiced by the common juror, but could be a general model to improve the art of evaluating people through testimony.

Law, in many respects, was the apotheosis of the probability credibility project during this period. But if law did not add quantification and was based on ordinary interpretive skills, what did law contribute? As Geertz observes, law is constitutive: law draws from practices that are immanent in everyday reasoning, and is, and is perceived to be, legitimate because it incorporates cultural principles. But, extending this insight, the process of formalizing those practices itself effects norms which are returned to the community.

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[85] Hawles, *The English-Mans Right,* p. 8.

Testimony and credibility are both ordinary practices that are embedded in daily knowledge production. With respect to testimony, Coady remarks how the "legal framework adapts and solemnizes an everyday phenomenon."[86] Shapin describes as mundane cognitive processes and mundane forms of social interaction "testifying about experience and receiving the testimony of others" and "retrieving routine social knowledge about the standing and identity of those making claims."[87] Moreover, "[s]ince the point of law is to order ordinary affairs, the language in which the rules are expressed must be substantially that of ordinary life."[88]

In order for the trial to be a legitimate dispute resolution mechanism, the procedures for assessing character through testimony, while subjective, could not be completely unscripted. Although law drew on mundane decision-making practices, those practices were modified and formalized. As the editor of the 1800 edition of Baron Gilbert's evidence treatise characterized this legal compromise between rules and disorder, evidence was a "system of methodized reason" with "fundamental maxims, which regulate the reception of testimony."[89] Many fields of inquiry critically evaluate testimony as an aspect of the scholarly enterprise, but the deliberate and conscious assessment of testimony is institutionally incorporated into the practice and process of legal decision-making more explicitly and purposefully. People are so acculturated to

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[86] C.A.J. Coady, *Testimony: A Philosophical Study* (Oxford: Clarendon Press, 1992), p. 26.

[87] Shapin, "Rarely Pure and Never Simple," pp. 8-9.

[88] Franklin, *The Science of Conjecture*, p. 349.

[89] James Sedgwick, "Preface" to *The Law of Evidence by Jeffrey Gilbert. Notes and Additional References by James Sedgwick,* 6th ed. (London, 1801).

acquiring information through testimony that the practice can recede into the background. In the trial by jury, however, testimony plays an integral and visible role. Whereas credibility assessment is an ordinary skill that is practiced every day, and becomes habitude, the purposefulness of jurors' evaluations helps to bring the very act of credibility evaluation into conscious decision-making.

Eighteenth-century trial procedures provided a formal set of institutional protocols that profoundly influenced how people assessed credibility and character and decided whether to assent to testimony. The credibility of witnesses, and more broadly of trial participants, is a specific instance of the general problem that probability theory concerned itself with in this period. Probability is more generally about the issue, as Daston characterizes it, of "rational decision, action, and belief under conditions of uncertainty."[90] The legal conundrum was recognized as only a more specific version of this hermeneutic problem (which novelists would examine): when should one give assent to what someone says and on what criteria can this decision to believe be justified? What are "rationally persuasive methods of reaching decisions in doubtful cases"?[91]

Although legal credibility incorporated ordinary interpretive skills, the legal idea of credibility expected that more could be known with less information. Legal credibility was based on neither Craig's fungible units of credibility, nor general traits, nor individual character traits; rather, eighteenth-century legal credibility examined specific individuals and did so, most difficultly for the assessor, in particular testimonial

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[90] Daston, *Classical Probability in the Enlightenment*, p. xi.

[91] Franklin, *The Science of Conjecture*, p. 327.

moments, and with little prior character information. Given that the common law trial used non-specialist character assessors, the interpretive demands were not beyond the ken of ordinary decision makers but they stretched those capacities; in turn, the additional legal structural parameters imposed a discipline on credibility evaluations which would improve ordinary decision making outside the courtroom.

The Jurisprudence of Testimony

It is "easy to underestimate the importance of the oral and personal aspect of trial by jury."[92] What most strikingly distinguishes the eighteenth-century version of this trial form from our own were the speaking demands on the parties;[93] but, as James Oldham notes, witness testimony in general was "by far the predominant form of evidence" and "often the exclusive form" in the eighteenth century.[94] Daniel M'Kinnon, in his 1812 treatise on *The Philosophy of Evidence,* states, "human testimony affords the only source from which . . . knowledge [for the discovery of unknown facts] is derived."[95] Contemporary writers distinguished witnesses from documents as instruments of proof with terminology, such as "living evidence",[96] or

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[92] Green, *Verdict According to Conscience,* p. 137.

[93] John Langbein, "The Historical Origins of the Privilege Against Self-Incrimination at Common Law," *Michigan Law Review* 92(March 1994): 1048, discussing the "accused speaks" trial model.

[94] James Oldham, "Truth-Telling in the Eighteenth-Century English Courtroom," *Law and History Review* 12.1 (Spring 1994): 98.

[95] Daniel M'Kinnon, *The Philosophy of Evidence* (London, 1812), p. xi.

[96] Gilbert, *The Law of Evidence,* pp. 105 and 142.

"viva,"[97] that linguistically suggests how literally animated eighteenth-century evidence was.

No doubt the seventeenth-century philosophy of testimony significantly influenced the legal treatise writers during this period. The question of how to treat evidence, including testimony, was so central to so many subject areas that it is not surprising to see shared concepts and vocabulary. Indeed, with many texts, such as Isaac Watts's *Logick*, it is hard to know whether to label the treatise as a "legal" or "philosophical" work, and terms such as "jurisprudence" are an anachronistic compromise in this era of more fluid fields of inquiry and fewer domains of the kind that Foucault describes, and for works which were self-consciously styled for a mixed legal and general readership. The language of the legal treatises closely tracked that of the contemporary writers who were engaged with questions about the use of testimony as evidence in other intellectual pursuits including history, science and religion. The "best evidence" rule, for example, which in its eighteenth-century formulation required "the best evidence that the nature of the thing is capable of," was a juridical version of the standard Aristotelian notion that different evidence corresponds to different subject matter. In its earliest incarnations the best evidence rule was intended as a permissive inclusive rule encapsulating common sense, so that inferior quality evidence, such as copies, was admissible, when the superior evidence, such as an original writing, was not available.[98] As Blackstone summarizes in language recalling Aristotle and Locke, "the

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[97] William Nelson, *The Law of Evidence,* 3d ed. corrected and enlarged ([London], 1744), p. 2.

[98] See, for example, Henry Bathurst, *The Theory of Evidence* (Dublin, 1761), p. 110. Samuel Richardson printed an edition of Bathurst's evidence treatise. See

one general rule that runs through all the doctrine of trials is this, that the best evidence the nature of the case will admit of shall always be required, if possible to be had; but, if not possible, then the best evidence that can be had shall be allowed."[99]

The earliest legal treatises to focus on evidence law explicitly link testimony with probability and knowledge theory, and legal evidence rules with the formation of belief. In several cases, evidence treatises borrowed from philosophical treatises, such as Locke, Reid, Hartley, and Whately, and borrowed symbolic authority from established epistemologies. Baron Gilbert is the most prominent example; his evidence treatise is infused with Lockean terminology.[100] He introduces evidence with the "rules of probability" by which it ought to be weighed and considered, and summarizes Locke's familiar formulation that there are several degrees of certainty and "several acts of the mind proportioned to these degrees of assent."[101]

Gilbert's *The Law of Evidence* distinguishes between "demonstration" which is "generally conversant about permanent things . . . being constantly obvious to our

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William M. Sale, Jr., *Samuel Richardson: Master Printer* (Ithaca: Cornell University Press, 1950), p. 150. The "best evidence rule" later was interpreted to be an exclusionary rule that restricted the admissibility of evidence.

[99] Blackstone, *Commentaries on the Laws of England,* vol. 3, p. 368.

[100] Jeffrey Gilbert, *The Law of Evidence* (1754; 6th ed. London, 1801). Jeffrey Gilbert's *The Law of Evidence* was the first detailed treatise on evidence law that systematized rather than merely collated cases. It was first published posthumously in 1754, but Gilbert died in 1726, and the treatise reflects early eighteenth-century understandings of probability. Gilbert had authored an abbreviated version of Locke's *Essay* in *An Abstract of John Locke's Essay on Human Understanding* (Dublin, 1752). On Baron Gilbert, see Michael Macnair, "Sir Jeffrey Gilbert and his Treatises," *Legal History* 15 (1994): 252-268 and Stephan Landsman, "From Gilbert to Bentham: The Reconceptualization of Evidence Theory," *The Wayne Law Review* 36 (1990): 1148-1186.

[101] Gilbert, *The Law of Evidence*, p. 1.

senses" and "transient things that cannot always occur to our senses, are generally more obscure, because they have no constant being, but must be retrieved by memory and recollection." According to Gilbert, "[A]ll probability is founded upon obscure and indistinct views, or upon report from the sight of others." Gilbert justifies recourse to testimony with the same reasoning that the constructive sceptics used: knowledge is uncertain because individuals, limited by time and space, cannot always have personal sensory information; individuals nevertheless must decide; and therefore we must rely on testimony. Although testimony is "one step further" from demonstrative certainty, which is "founded on the view of our senses," the "mind equally acquiesces" to testimony with certain criteria "for it cannot have any more reason to be doubted than if we ourselves had heard and seen it." "Faith and credit" are "to be given to the honesty and integrity of credible and disinterested witnesses," attesting under oath. There is an elision that is significant to Gilbert's logic. When jurors hear witnesses testify about their sensory experience, it is not merely as if the jurors sensed the same things but as if they also had the *knowledge* that the original witnesses had.[102]

> [W]hen we cannot see or hear any thing ourselves, and yet are obliged to make a judgment of it, we must see and hear by report from others; which is one step further from demonstration, which is founded upon the view of our own senses; and yet there is that faith and credit to be given to the honesty and integrity of credible and disinterested witnesses, attesting any fact under the solemnities and obligation of religion, and the dangers and penalties of perjury, that the mind equally acquiesces

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[102] Ibid., pp. 2-3.

> therein as on a knowledge by demonstration, for it cannot have any more reason to be doubted than if we ourselves had heard and seen it; and this the original of all trials, and all manner of evidence.[103]

Gilbert clearly articulates that the value of testimony is being able to borrow someone else's direct sensory experience, "for it is his knowledge that must direct the Court and jury in the judgment of the fact, and not his mere credulity, which is very uncertain and various in several persons; for testimony being but an appeal to the knowledge of another, if indeed he doth not know, he can be no evidence...."[104] Testimony that cannot be tested, however, has no value as evidence and the criteria require that the person who sensed the event directly relate it. "[N]othing can be more uncertain than the loose and wandering witnesses that are taken upon the uncertain reports of the talk and discourse of others."[105] William Nelson, another early treatise writer on evidence law, similarly avers, "Witnesses are sworn to tell the Truth of what they know, not what they believe; for they are to swear nothing but what they have heard or seen."[106] This requirement derives from the standard eighteenth-century theory that witnesses should testify from knowledge (based on what they heard or saw) and not from opinion.

Thomas Peake's 1801 *Compendium of the Law of Evidence* describes the orthodox application of how probability theory applies to testimony:

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[103] Ibid., p. 3.

[104] Ibid., p. 13.

[105] Ibid., p. 135.

[106] William Nelson, *The Law of Evidence,* 3d ed. corrected and enlarged ([London], 1744), p. 16.

> In almost every case which presents itself for the consideration of a Court of Justice, some fact is disputed by the litigating parties, and the truth being unknown to those who are to decide, recourse must be had to the testimony of others. As this is corroborated or opposed, by the good or bad character of the witnesses, by their concurrence or contradiction of each other, or by the circumstances and probabilities of the case, the mind of the hearer arrives at a greater or less degree of certainty; and weighing these considerations together, is enabled to pronounce on the truth or falsehood of the fact in dispute. As to the *weight* which may belong to any evidence which is admitted by the Court, it must ever depend more on *reason* than *authority* to decide.[107]

The legal theory also replicates the two-fold matrices from the philosophy on testimony, which provided that assent should be proportioned to factual probability and witness credibility. Matthew Hale in his standard work, *The History of the Pleas of the Crown,* articulates the received view of the "jury, who are judges of the fact, and likewise of the probability or improbability, credibility or incredibility of the witness and his testimony."[108] Gilbert's version is a Lockean derivative: "Probability arises from the agreement of any thing with a man's own thoughts and observations from the testimony of those who have seen and heard it."[109] In his 1701 *The Duty of Witnesses*

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[107] Thomas Peake, *A Compendium of the Law of Evidence* (London, 1801), pp. 1-2.

[108] Hale, *Historia Placitorum Coronae. The History of the Pleas of the Crown*, vol. 2, p. 277.

[109] Gilbert, *The Law of Evidence*, p. 131.

sermon, George Stanhope explicitly describes "a two-fold sort of Truth to be taken notice of" with respect to the "Subject of Publick Testimony." Stanhope's reference in this theological context suggests that the idea of parsing testimony by inquiring into both factual probability and credibility, best known through the *Port-Royal Logic,* had filtered into the cultural lexicon. As Stanhope is giving a sermon for witnesses and highlighting their moral accountability, his use of factual probability and credibility here slides easily into the credibility components of perceptual, linguistic, and moral capacities: "One is that, by which our Words carry an exact agreement to the things spoken of, and represent them as they are in their own nature: The Other is that, by which our Words agree with our own Sense and Opinion of things, and represent them, as We at that present time do really conceive and are perswaded of them."[110]

Credibility's treatment in the treatises shows the incremental changes in credibility, from status categories toward a more searching and individual inquiry, and the gradual differentiation of character and credibility. Gilbert's *The Law of Evidence* relies more on what I have been distinguishing as "credit," with its heavier emphasis on socio-economic status. Thus, he advises, "The credit of a witness is to be judged from his state and dignity in the world, for men of easy circumstances are supposed more hardly induced to commit a manifest perjury." But he also speaks of the "honesty and integrity of credible and disinterested witnesses."[111] Stanhope's *Duty of Witnesses* sermon from 1701, however, elaborates at length about moral and epistemic qualities, indicia for assent, and blemishes against credibility. He lectures that since the points

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[110] Stanhope, *The Duty of Witnesses*, p. 4.

[111] Gilbert, *The Law of Evidence,* p. 140 and p. 3.

"in which our Courts require Mens Evidence, are not of a subtle and abstruse nature," witnesses are "call'd to give their Sense" "in plain matters of Fact, which lye level to the Capacity of every common Man" and do not "exceed their Comprehension." Therefore, "the Qualifications requisite in such Testimonies are not Judgment, and Skill, and deep Learning, which might enable Men to make probable Conjectures in doubtful Cases; but Honesty, and Fidelity, and unbyass'd Uprightness of Heart, which may give a faithful relation of things that manifestly appear." Stanhope lists recall, consideration, and sincerity as indicia to assent, but cautions against believing witnesses who use "any method contrary to relating the naked Fact honestly and fairly, as they do in truth apprehend," such as exaggeration.[112] Stanhope elaborates further faults of witnesses when they:

> add any Circumstances, which they have no knowledge of; when they put artful flourishes or exaggerations upon those they have; when they transpose or disguise, or any other way misrepresent the matter in question; when they are positive and peremptory in that which they have only some Jealousie or doubtful Suspicion of; or give undue weight to, and lay a greater stress upon what they are certain in than the thing will naturally bear; by putting false or forced Interpretations upon what they have seen or heard; they blind the Eyes, or impose upon the Judgement, of Them, who are to make this Testimony the Rule and Measure of their Determinations. For, of all the Subjects in the World, none is so improper to exercise our Art and Eloquence upon, none where Rhetorick

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[112] Stanhope, *The Duty of Witnesses,* pp. 5-11.

> or Tricking is so absurd, so infinitely mischievous, as Disputes of Right and Wrong, of Guilt or Innocence.[113]

Legal contributions for credibility assessment also include formal protocols, or rules of procedures, for testimony. Two legal innovations regulating the jury's interpretive scope were competence exclusions and oaths. Competency requires that witnesses meet a threshold level of integrity and discernment, measured relative to the facts of the particular case, in order to have their evidence heard by the jury, whereas credibility refers to the individual weight given to a witness's admitted testimony.[114] Competency decisions, which are about selecting witnesses, are made by the judge and involve all or nothing choices, while credibility decisions, which are about sifting, balancing, and filtering testimony, are evaluations made by the jury and involve

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[113] Ibid., pp 10-11.

[114] *Black's Law Dictionary*, 6th ed., s.v. "competency": "Competency differs from credibility. The former is a question which arises before considering the evidence given by the witness; the latter concerns the degree of credit to be given to his testimony. The former denotes the personal qualification of the witness; the latter his veracity. A witness may be competent, and yet give incredible testimony; he may be incompetent, and yet his evidence, if received, be perfectly credible. Competency is for the court; credibility for the jury"; and s.v. "credit": "Worthiness of belief; that quality in a witness which renders his evidence worthy of belief. After the competence of a witness is allowed the consideration of his *credibility* arises, and not before." *Bouvier's Law Dictionary and Concise Encyclopedia*, 3rd rvs., 8th ed., s.v. "credible witness": "One who being competent to give evidence, is worthy of belief," listing as criteria to consider whether the witness "is capable of knowing thoroughly the thing about which he testifies; whether he was actually present at the transaction; whether he paid sufficient attention to qualify himself as the report of it; and whether he honestly relates the affair fully as he knows it, without any purpose or desire to deceive, or to suppress or add to the truth."

discriminating whether to accept bits of, complete, or no testimony from witnesses.[115] Where there are broader competence exclusions, as was rife during the eighteenth century, it suggests systemic uncertainty about the competence of the interpreter (the jurors) to evaluate credibility.

The distinction between competence versus credibility is related to presumptions about the propensity to belief. Because recipients of testimony are free to assess whether or not to believe, regulations introduced to govern witness testimony were at first designed to prevent the juror from ever hearing a discreditable or dubious witness at all. As the eighteenth-century American jurist James Wilson explains, "The law will not attempt that which is impracticable," so "does not say, you shall not *believe* him. To prevent this act or operation of the mind might be impracticable on hearing the witness: but it says—you shall not *hear* him" to "prevent that unavoidable, but sometimes improper" belief from forming.[116] The eighteenth-century legal treatises' sections on testimony were overwhelmingly devoted to competence rather than credibility, outlining in detail which witnesses could and could not be heard at all by the jury.[117] While this was in part due to competence being more susceptible to treatise rules than was credibility, it also suggests anxiety about *jury* discernment. If there were

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[115] In *An Enquiry into the Causes of the Law Increase of Robbers,* Fielding has an informed discussion of competency and credibility rules showing himself to be thoroughly familiar with Hale's discussion in *History of the Common Law* of the abstruse differences (Henry Fielding, *An Enquiry into the Causes of the Late Increase of Robbers and Related Writings*, (1751) ed. Malvin R. Zirker [Middletown, Conn: Wesleyan University Press, 1988], pp.160-161).

[116] Wilson, *The Works of James Wilson*, pp. 383-384.

[117] See for example, Henry Bathurst, *The Theory of Evidence,* 2nd ed. (Dublin, 1761), p. 97 chart.

a perfect faith in the ability of jurors, there would be no need for evidence rules to control their exposure to evidence or regulate the inferences that they could draw; information would be excluded only to conserve court resources and to make the dispute resolution process more efficient, and would not be predicated on fears that jurors would be susceptible to confusion or undue prejudice that could lead to improper reasoning and probability judgments.

A second formal procedure regulating testimony, oaths, were not a practice carried over into daily life; indeed, it was precisely the objective that the juridical setting should be marked differently to alert witnesses to the special circumstances of testifying in court. For that very reason, some commentators were against oaths (which in the eighteenth century were in the familiar "the Truth, the whole Truth, and nothing but the Truth" formulation).[118] Whately complains that the oaths have "an effect only on certain intermediate characters between the truly respectable and the worthless," and thinks testimony would be more trustworthy on the whole if oaths were abolished (but penalties for false-witness left unaltered) since the "chief effect" of the oath might be to "lower men's sense of the obligations to veracity on occasions when they are *not* on Oath."[119] Whately thus presumes that juridical testimony procedures would affect mundane social practices; that is, Whately thinks law is constitutive and objects when the practices diverge too widely from the expectations for ordinary testimony.

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[118] William Hawkins, *A Treatise of the Pleas of the Crown or a System of the Principal Matters relating to that Subject, digested under their proper Heads*, 2 vols. (London, [1716-1721]; rpt. London: Professional Books, 1973), vol. 2, p. 434.

[119] Richard Whately, *Elements of Rhetoric Comprising an Analysis of the Laws of Moral Evidence and of Persuasion, with Rules for Argumentative Composition and Elocution* (1828; 7th ed. 1846), ed. Douglas Ehninger, foreword David Potter (Carbondale and Edwardsville, Ill: Southern Illinois University Press, 1963), p. 73.

The competence rules, by excluding some presumptively discreditable witnesses, and the oaths, by impressing witnesses with the divine and civil sanctions for perjury, procedurally enhanced the likelihood that jurors would hear believable witnesses and probable testimony. But eighteenth-century legal writers still distinctly envisioned that juries would be engaged in the difficult hermeneutic problem of appraising witnesses and evaluating the probability of the facts in order to choose among testimonies.[120] Paradoxically, competency thresholds and oaths exacerbated the difficulty for jurors of selecting which testimonies to believe from among those witnesses who were qualified to give evidence since admitted witnesses all came to court with some imprimaturs of credibility. By the eighteenth century, oaths were no longer assumed to equate to an equivalent quantity of credibility. With the combination of these rules, the default was that the "testimony of one witness naturally obtains credit, unless there be some probability to the contrary"; that is, "every man's honesty is

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[120] Conflicts between sworn testimony of defence and prosecution witnesses occurred after 1702 when defendants were first permitted to have witnesses testify under oath. Some scholars emphasize the features of the eighteenth-century trial, which, in theory, limited credibility conflicts. George Fisher, for example, examines oaths, competency rules, and the rule of *Bethel's Case* as aspects of trial design intended to limit credibility conflicts. George Fisher, "The Jury's Rise as Lie Detector," *Yale Law Journal* 107 (1997): 575-713. Fisher and I agree that in *practice* jurors in the eighteenth century were faced with credibility conflicts. As Fisher acknowledges, despite the features he describes, the "jury's power to make credibility determinations was fundamental to the system's just operations" (p. 580). Fisher focuses on the jury's role as "lie detector," in contrast to my focus on the jury's role as "credibility evaluator." As I discussed earlier, determinations of truth and credibility are different. We differ then with respect to our interpretation of the *theory* of the trial design. With respect to lie detection, Fisher argues that the ideology of the jury trial system required that the system claim that the jury was not acting as a lie detector. With respect to credibility evaluation, I argue that the system acknowledged credibility conflicts and featured the jury's role as credibility appraisers.

presumed till the contrary is proved." Rather than "inducements to assent," Gilbert styles his criteria for evaluating testimony as reasons to "set aside credit."[121]

Thus, eighteenth-century jurors were perceived to be deciding degrees of credibility. The statement "all indifferent witnesses are *credible*," as Lord Camden clarifies, "do[es] not mean equally so, for credibility may have its degrees; his rank or character may make him more or less *credible*."[122] Judge North directs that jurors must "Consult with themselves, & weigh all Circumstances, . . . as they in their con=sciences beleev concerning [th]e testimony."[123] Jurors could "sometimes give Credit to one Witness, tho' oppos'd by more than one" and are "not bound" by witness testimony if there is a "Blemish upon their Credibility."[124] Gilbert provides detailed maxims, but as detailed as his scheme is, Gilbert does not resort to mathematical formulae or suggest that credibility can be precisely quantified, speaking instead of relative "proportions" of credit. While he provides a logical order, he does not purport to dictate the jurors' cognitive processes that assign values for credibility. In Morgan's 1789 evidence treatise, the credibility process is exquisitely fine: "a thousand circumstances in order to judge fairly of his credibility," which "depends not only upon his personal character, but likewise upon the evidence given, with many other circumstances." The treatise is quoting Lord Camden here, and his observations on credibility are particularly telling. He emphasizes that the "slightest circumstance may turn the balance" and "conspire to

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[121] Gilbert, *The Law of Evidence,* pp. 133 and 138.

[122] Morgan, *Essays upon 1. The Law of Evidence,* p. 253, quoting Lord Camden.

[123] North, "A Fragment on Proof by Francis North, Lord Guilford," p. 143.

[124] Hale, *The History of the Common Law of England,* p. 164.

create or destroy belief": "probability in the tale, collateral confirmations, or impeachment by other evidence, contrary declarations, tamperings, the confident or modest demeanor of the witness, hesitation, confusion, prevarication, self-contradiction, compared with the contrary behaviour."[125] Lord Camden's list of these "slight circumstances" is notable because he significantly includes only paratestimonial evidence, thus endorsing the idea that the jury could successfully make the fine credibility distinctions expected of them based only on the evidence generated from testimony in court.

Juridical credibility protocols

The legal treatise writers did not originate a philosophy of testimony, nor the criteria by which credibility would be assessed, but did formalize maxims and structural protocols for judgment. Forensic credibility continued with the philosophical reluctance to delineate character traits that would be more precise than "integrity" and "veracity," and a reticence to specify a formal procedure that would set out how to balance, how to weigh factors, how important each of the factors was, how to choose among maxims when they conflicted or how to decide which character traits should be emphasized for a given witness.

Steven Shapin remarks the pervasive use in the seventeenth century of the adjective "credible," but the absence of definitions. "The ascription of credibility to a knowledge-source was evidently taken—unmodified and unsupplemented—to count as

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[125] Morgan, *Essays upon 1. The Law of Evidence,* pp. 253-254, quoting Lord Camden.

an understood voucher of the thing claimed. . . . Cultural silence about the identification of the credible person was not a sign of ignorance but of immense knowledgability."[126] Thus people "just knew" who was credible. In one way, "credibility" during this period was no different from many keywords that society has a consensus on the meaning of (for example, pornography or culture),[127] but which are resistant to pithy definitions. But the cultural currency for "credibility" is more nuanced. There was a cultural consensus on the "good sense" of what credibility was qualitatively, what factors counted, what protocols to use to test for credibility, and what the legitimate ways were to justify the attribution of credibility.

"Law is local knowledge not placeless principles" and law is "constructive of social life not reflective, or anyway not just reflective," to recall Clifford Geertz's two propositions.[128] As a cultural system, law epistemically relies on its participants bringing practical decision making skills and local knowledge, such as credibility values and tests, with them. "[T]rials are based upon laws which, in a context of a given social system, were also worked out so as to correspond with the usual, probable behaviour of men."[129] But law also re-constitutes this knowledge for circulation back within the culture. With credibility, law extended the concept of what could be known about other people, tested the limits of how little character experience assessors could have in order

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[126] Shapin, *A Social History of Truth,* pp. 238-242.

[127] See Raymond Williams, *Keywords: A vocabulary of culture and society* (London: Fontana Press, 1976). Williams does not include "credibility" as a keyword.

[128] Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology*, 3d ed. (n.p.: Basic Books, 2000), p. 218.

[129] O.B. Sheynin, "On the Prehistory of the Theory of Probability" *Archive for History of Exact Sciences* 12.2 (1974): 97-141, p. 109.

to make these judgments, and formalized protocols in which the attribution process would be conducted. This juridically refined credibility attribution process then circulated within the culture.

Credibility shares the reciprocal relationship between the individual and social and the local and legal that is captured by the idea of "law as local knowledge." Credibility is in some ways an irreducibly "individual" judgment; in other ways, the attributive process is social. Credibility factors are endowed by the community, and the credibility process itself makes social relationships more effective, predictable and stable. Individuals are supplied with a methodology that allows them to depend on other people's intellectual and moral resources, and, more significantly, to justify that dependence as rational. Like the empiricism that it is founded on, credibility is a sensory experience that is both individual and communal.

Jurors' decision-making skills during this period were configured as commonplace but not disparaged as rude or coarse. Passages on testimony and credibility go against the grain of the idea that in the eighteenth century people were perceived to be passive recorders; eighteenth-century descriptions of jurors are confident about what jurors should and would be actively processing when they heard and watched testimony. Thus, even when the epistemology of testimony moves from philosophical idealism to applied contexts, it is still marked by both a complicated grammar and trust in ordinary capabilities to carry it out. In Martin Madan's popular *Thoughts on Executive Justice*, for example, he assuredly presumes that people can discern a wide scope of credibility information based on "every thing that [a witness] says." With respect to accomplice witnesses, who require special caution, "The *manner*

of giving his evidence, the *matter* of it; the consistency or inconsistency, as well as the probability or improbability, together with all circumstances relative to it, are such objects of even a common share of understanding and discretion, as leave no room for either *Judge* or *Jury* to mistake."[130] This is a striking concession and expression of confidence in what the "common share of understanding and discretion" can accomplish in a work most famous for its frequently cited anecdote describing jurors and witnesses returning drunk to the court after the dinner recess and falling asleep.[131]

The actual method of how the criteria were weighed by the jury was left to common sense, validating the notion that it was part of the common competence and that ordinary people could assess credibility. Treatises referred to grounds of persuasion, but the precise process for weighing was explicitly left to the good sense of ordinary interpreters, even though credibility attribution was a "matter of the nicest and most difficult discussion."[132] Treatises writers expressly demurred from the "impracticable" task of providing rules since the "peculiarities of character, and the combinations of circumstances, which diversify individual cases, can never be

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[130] Martin Madan, *Thoughts on Executive Justice,* pp. 161-162.

[131] Ibid., pp. 148-149.

[132] Morgan, *Essays upon 1. The Law of Evidence*, p. 254, quoting Lord Camden. Thomas Starkie in his mid-nineteenth-century evidence treatise echoes this sentiment that discriminating truth requires an "experienced and intelligent mind" rather than the "application of artificial and technical rules." Since each juror is only a part-time participant in the legal process, he has neither the "inclination nor opportunity to generalize and refine" and "unfettered" by "technicalities...decides according to the natural weight and force of the evidence." *A Practical Treatise of the Law of Evidence, and Digest of Proofs, in Civil and Criminal Proceedings*, 3rd ed. (London, 1842): vol. 1, pp. 539-540.

discriminated in rules, which must be adapted to the great majority of mankind."[133] Instead, Gilbert is typical in offering a description of the conclusions of the credibility process but not a map for how to reason: "the weight of the probability lies thus; if you think the bias is so strong upon him, as would incline a man of his disposition, figure, and rank in the world, to falsify, you are to disbelieve him; but if you think him a man of that credit and veracity, that, notwithstanding the bias upon him, would yet maintain a value for truth, and is under the force and obligation of his oath, he is to be believed."[134]

In retrospect, it is easy to comment that, of course, the weighing process can not be controlled and is not susceptible to a formalized process. But in a time when some respected philosophers, theologians, and historians thought that the credibility of historical witnesses was amenable to being expressed quantitatively into percentage points and were drawn to the seductive objectivity of the calculus of probabilities applied to witness credibility, it was less obvious that legal reformers would be content not to quantify the process. Despite some contemporary probabilists' attempts to quantify credibility through ratios, and despite the civil law's relatively formalized proof system during this period for pre-judging credibility based on general characteristics, the common law adopted maxims and principles, rather than rules that attempted to control the cognitive process itself, because exceptions to the credibility of

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[133] Daniel M'Kinnon, *The Philosophy of Evidence* (London, 1812), p. 41.

[134] Jeffrey Gilbert, *The Law of Evidence,* p. 134.

the witness "are of that great variety and multiplicity, that they cannot easily be reduced under rules or instances."[135]

The formalization came instead in the guise of architectural control, literal space and time constraints, and procedural parameters in which interpretation would be exercised. What needed to be institutionalized for the legal forum was first, the formalized procedures in which jurors would perform this exercise and apply the criteria (without specifying precisely how the assessment and weighing were to be done) and second, the architectural space to allow the empirical methods to flourish. Forensic credibility evaluation then was seen as something derived from, but which built on, ordinary interpretive skills. It was within the competence of every day decision makers to apply these skills, but jurists still believed that the skills could be refined, improved and taught. Formal parameters within which the reasoning process would operate would help to reduce the chance that prejudices—the Baconian Idols—would distort the process. Courtroom practices were part of the way that law systematized credibility assessment and provided a fertile hermeneutic context.

The legal treatises do not disguise that their provenance lay in the philosophical discussions by Locke and others, but the legal system had to modify that philosophy to find an empirical substitute for the philosophical precondition that people use their own past experience with other people's characters to judge testimony. Instead, the empirical qualities of the testimony reception experience were emphasized by seventeenth- and eighteenth-century legal writers, so that "Testimony is truly no more

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[135] Hale, *Historia Placitorum Coronae. The History of the Pleas of the Crown*, vol. 2, p. 277.

than Sense at second-hand."[136] Hawles explains "That Testimony which is delivered to induce a Jury to believe, or not to believe the matter of Fact in issue, is called in Law EVIDENCE, because thereby the Jury may out of many matters of fact, *Evidere veritatem,* that is *see clearly the truth,* of which they are proper Judges."[137] Hawles's choice to define evidence in visual terms is not just an accident of denotation or an idle turn of phrase. The sensory basis of how evidence was conveyed *and* received was understood as a defining aspect of the common law trial and as an epistemological justification. Gilbert describes the credibility weighing as a literal visible balancing: If witnesses are equal in credit, jurors choose the witness who gives "more plain and evident marks and signs of his knowledge [and memory] than the other."[138]

The interpretive theory for testimony reception was "embodied credibility." The pointillistic process for assessing credibility was integrally associated with visual and other sensory evidence elicited dynamically during the act of testifying. Repeatedly, the legal theorists connect jurors' ability to evaluate testimony with this physical display and extol the English system of live oral testimony as producing better evidence because of this sensory presentation. Hale lauds the advantages of common law trial by jury, including the "Excellency of this open Course of Evidence to the Jury in Presence of the Judge, Jury, Parties and Council, and even of the adverse Witnesses," in particular because "many times the very Manner of a Witness's delivering his Testimony will give a probable Indication whether he speaks truly or falsly; and by this

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[136] Price, "Dissertation Four," p. 416.

[137] Hawles, *The English-Mans Right,* p. 8.

[138] Gilbert, *The Law of Evidence,* p. 141.

Means also he has Opportunity to correct, amend, or explain his Testimony upon further Questioning with him. . . ."[139] Hale contends by means of "this personal Appearance" "great Opportunities are gained for the true and clear Discovery of the Truth." "The very Quality, Carriage, Age, Condition, Education, and Place of Commorance of Witnesses, is by this Means plainly and evidently set forth to the Court and the Jury, whereby the Judge and Jurors may have a full Information of them, and the Jurors, as they see Cause, may give the more or less Credit to their Testimony. . . ."[140] Blackstone celebrates the "English way of giving testimony" because "the persons who are to decide upon the evidence have an opportunity of observing the quality, age, education, understanding, behaviour, and inclinations of the witness," who otherwise "must appear alike" if their testimony is written rather than presented orally. "As much may be frequently collected from the manner in which the evidence is delivered, as from the matter of it." [141]

The "testimonial paradigm" that I am advancing comes from this notion that testimony is an essential part of knowledge production; testimony requires inquiries into both factual probability and credibility; ordinary people can evaluate credibility; credibility involves assessing individuals in context and is judged by watching witnesses during testimonial moments; and credibility and character are differentiated. As jurors would not typically have knowledge of character from which to judge credibility, since they would not ordinarily have a previous acquaintance with a given

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[139] Matthew Hale, *The History of the Common Law of England* (1713) ed. and intro. Charles M. Gray (Chicago: University of Chicago Press, 1971), p. 163.

[140] Hale, *The History of the Common Law of England,* p. 164.

[141] Blackstone, *Commentaries on the Laws of England,* vol. 3, p. 374.

speaker, the legal design compensated for this cognitive deficit by appraising credibility in court. Jurors lacked paratestimonial information, and instead relied on information generated in court to assess cognitive and moral traits. Credibility indicia were disclosed by the act of testifying, and jurors used common sense to evaluate it probabilistically.

This epistemological idea that essential credibility information was revealed when the person who had personally sensed the experience testified had deep implications for the trial's point of view. Defendants in criminal cases, excepting treason, were not allowed to have counsel relate matters of fact to the jury until 1836, with the passage of the *Prisoner's Counsel Act*.[142] The rule precluding defendants from full defence counsel was criticized; Blackstone, for example, lamented that it "seems to be not at all of a piece with the rest of the humane treatment of prisoners by

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[142] *An Act for enabling Persons indicted of Felony to make their Defence by Counsel or Attorney*, 6 & 7 Wm IV, cap. 114 (1836). Treason defendants had the benefit of full defence rights since 1696, when the Treason Act was enacted, *An Act for regulating of Trials in Cases of Treason and Misprision of Treason*. 7 & 8 Wm. III, cap. 3 (1696) (new style). The House of Lords 1689 Treason Trials draft bill would have extended the procedural rights, including full defence, to non-treason felony defendants. The Lords bill was rejected, however, and, although used as a model by the House of Commons, the latter's bill was limited to treason trials and the scope of procedural protections reduced even further, after years of debate. See James R. Phifer, "Law, Politics and Violence: The Treason Trials Act of 1696," *Albion* 12(3) (1980): 244-245; Samuel Rezneck, "The Statue of 1696: A Pioneer Measure in the Reform of Judicial Procedure in England," *Journal of Modern History* 2 (1) (1930): n. 4; John Beattie, "Scales of Justice: Defence Counsel and the English Criminal Trial in the Eighteenth and Nineteenth Centuries," *Law and History Review* 9 (2) (1991): 224. See generally, Alexander H. Shapiro, "Political Theory and the Growth of Defensive Safeguards in Criminal Procedure: The Origins of the Treason Trials Act of 1696," *Law and History Review* 11 (2) (1993): 215-255; and Langbein, *The Origins of Adversary Criminal Trial*, chap. 2 "The Treason Trials Act of 1696: The Advent of Defense Counsel."

the English law."[143] Despite misgivings, however, the rule was almost necessitated by the prevailing empirical epistemological theory, which emphasized the sensory *reception* of testimony of matters of fact; by corollary, credibility was best assessed by observing those who had personally experienced the facts relate them face to face. When one considers that Locke's *Essay* defined "fact" relative to testimony—"matter of fact . . . falling under Observation is capable of humane testimony"[144]—it is not surprising that defendants were expected to testify personally with respect to matters of fact. Since the defendant had personally sensed the facts that were the subject of the testimony, the jurors would be losing valuable credibility information if they could not see and hear the defendant testify. Several reasons have been proffered for why full legal defence was not statutorily provided until the nineteenth century;[145] but one reason that has not been developed in detail is this connection between credibility protocols and epistemology, which required face to face testimony by the defendant of the facts of the case. It was not merely that the defendant was presumed to be the best source of information about the factual subject matter; the defendant was also presumed

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[143] Blackstone, *Commentaries on the Laws of England,* vol. 4, p. 349.

[144] John Locke, *An Essay Concerning Human Understanding* (1689) ed. and intro. Peter H. Nidditch (Oxford: Oxford University Press, 1975), book IV chap. XVI, "Of Degrees of Assent," section 5, p. 661.

[145] Eighteenth-century writers rationalized that the judge acted as the defendant's advocate; no special skill was needed to tell the truth; and the prosecutor's statement of the facts was neutral. See Hawkins, *Treatise of the Pleas of the Crown,* vol. 2, p. 400; Edward Coke, *The Third Part of the Institutes of the Laws of England...*(London, 1660), p. 29; Joseph Chitty, *A Practical Treatise on the Criminal Law, Comprising the Practice, Pleadings and Evidence...* 2d ed., corr. and enl. 4 vols. (London, 1826), vol. 1, p. 623.

to be a unique source for information about his or her credibility, those epistemic and moral traits that would be revealed during the act of testifying.

Ferdinand Pulton makes this epistemological case directly: "if the partie himself defend it, peradventure his conscience will pricke him to utter the truth, or his countenance, or gesture wil shew some tokens thereof, or by his simple speeches somewhat may be drawne from him to bolt out the veritie of the cause." But "if his councell learned should plead his plea for him it may be that they would be so covert in their speeches, and so shadow the matter with words, and so attenuate the proofs and evidence, that it would be hard, or long to have the truth appeare." Pulton concludes, those "be the causes that the offendor shall answer in his owne person, and not by councell learned."[146] Likewise, William Hawkins, acknowledges "many have complained of [the rules] as very unreasonable." Yet Hawkins reasons, every one of "Common Understanding" can testify to a "Matter of Fact" in court because it requires no special cognitive skills; and "it requires no manner of Skill to make a plain and

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[146] Ferdinand Pulton, *De Pace Regis Et Regni* (London, 1609), rpt. (London : Professional Books, 1973), at pp. 192-193. See also, William Staunford, *Les Plees del Coron* (1557) (London: Professional Books, 1971), fol. 151. Staunford justifies the restriction against full representation for defendants in felony cases on the grounds that the defendant knows the facts better than a lawyer, that if a lawyer spoke, the truth would take too long to appear ("il y serroit trope longe temps devant que le verite apieroit,") and when the party defends himself his conscience will stimulate him to speak the truth or his gesture or countenance would show signs ("son conscience cas luy peut stimuler a utter la verite" or "son gesture ou countenance monstrent ascuns signes de ceo"). J.H. Baker objects that Pulton was confusing the "forensic presentation of the case with what we would regard as evidence" ("Criminal Courts and Procedure at Common Law 1550-1800," in *Crime in England*, ed. J.S. Cockburn (Princeton: Princeton University Press, 1977), p. 37). His observation that the forensic presentation was the evidence is a salient one, but I would clarify that this was not as a result of confusion; rather, this elision was the "embodied credibility" which I am arguing followed from eighteenth-century epistemology.

honest Defence." Hawkins points to how "the very Speech, Gesture, and Countenance, and Manner of Defence of those who are Guilty, when they speak for themselves, may often help to disclose the Truth, which probably would not so well be discovered from the artificial Defence of others speaking for them" to defend the rule.[147] A recent commentary brings out the sensory basis for this rule: "[F]rom the juror's perspective the defendant's answer remained the crux of the contest. The government may have therefore assumed that the truly innocent person could not be made to appear guilty, whereas the guilty might not reveal themselves without being subjected to the most searching interrogation."[148]

To elicit this credibility evidence, the judge, party, counsel and jurors were all permitted, and encouraged, to question the witnesses actively, which "beats and boults out the Truth much better" and otherwise the "Truth is choak'd and suppress'd."[149] As Thomas Smith in *De Republica Anglorum* describes, when lawyers interrogate witnesses, they "driveth them out of countenance."[150] Fielding describes in *Tom Jones* how defendants caught unaware by questions would be "obliged to give Evidence" against themselves:

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[147] Hawkins, *A Treatise of the Pleas of the Crown,* book II, pp., 400-401.

[148] Green, *Verdict According to Conscience,* p. 136.

[149] Hale, *The History of the Common Law of England*, p. 164. On jurors actively questioning witnesses, see for example Langbein, *The Origins of Adversary Criminal Trial,* pp. 319-321. Langbein notes that this practice began to wane by the last quarter of the eighteenth century, as the trial shifted from an "altercation" to "adversarial" model, and as the defence counsel assumed a greater role in the trial.

[150] Thomas Smith, *DeRepublica Anglorum* (1583; ed. Mary Dewar, Cambridge: Cambridge University Press, 1982), chap. 15, vol. 2, p. 99.

> There is nothing so dangerous as a Question which comes by Surprize on a Man, whose Business it is to conceal Truth, or to defend Falsehood. For which Reason those worthy Personages, whose noble Office it is to save the Lives of their Fellow-Creatures at the *Old-Bailey*, take the utmost Care, by frequent previous Examination, to divine every Question, which may be asked their clients on the Day of Trial, that they may be supply'd with proper and ready Answers, which the most fertile Invention cannot supply in an Instant. Besides, the sudden and violent Impulse on the Blood, occasioned by these Surprizes, causes frequently such an Alteration in the Countenance, that the Man is obliged to give Evidence against himself.[151]

The Parliamentary debates surrounding proposed legislation to allow defence counsel to present matters of fact to the jury on the defendant's behalf evinced an acute anxiety about interpretation. Could defendants fake the credibility criteria? And could jurors interpret the "embodied credibility" correctly? The trial's epistemology assumed that this testimonial information was critical to credibility assessment, could not be manipulated or feigned, and could be interpreted by people using ordinary interpretive skills. By 1836, when the *Prisoner's Counsel Act* permitted defendants to have counsel address the jury on matters of fact, a new epistemological theory was starting to displace this "embodied credibility."

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[151] Henry Fielding, *The History of Tom Jones: A Foundling* (1749), Wesleyan ed. of the Works of Henry Fielding, ed. Fredson Bowers, with an introduction and commentary by Martin C. Battestin ([Middleton, Conn.]: Wesleyan University Press, 1975), book 18, chap 5, p. 932.

The eighteenth-century architecture of credibility also included time and space procedural rules for decision-making. The actual process of deliberating, that is, weighing credibility and proportioning degrees of assent among testimonies, was increasingly performed in special locations which helped the court to restrict the jury to permissible evidence. In addition to foregrounding credibility, the trial foregrounded the act of credibility assessment as jurors both watched and were watched during the credibility evaluation process. Interestingly, court facilities were important elements of this sensory process. London's central criminal court, the Old Bailey (Sessions House), for example, was an open air courtroom on the side facing Newgate prison yard from 1673, following the destruction of the first Sessions House building in London's Great Fire of 1666 and the reconstruction of the court facility, until 1737, when the structure was enclosed, mildly alleviating the effects of inclement weather but greatly exacerbating the risks of infection.[152] Gerald Howson, who called attention to this surprising open air courthouse feature in his study of Jonathan Wild, speculates that the Old Bailey trials during this period "must have resembled nothing so much as a giant Punch and Judy show."[153] Although passersby could not have seen into the courtroom from the vantage point of the street, crowds gathered in the yard and could see the jurors within their designated partitioned space, and members of the public with the

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[152] Prints of the open air courtroom are reproduced in Donald Rumbelow, *The Triple Tree: Newgate, Tyburn, and Old Bailey* (London: Harrap, 1982), pp. 60-70; and Gerald Howson, *Thief-Taker General,* plates 2 & 3, p. 50.

[153] Gerald Howson, *Thief-Taker General,* p. 27 and a detailed description in Appendix 4, pp. 315-316. See also Allyson Nancy May, "The Old Bailey Bar, 1783-1834" (Ph.D. diss., University of Toronto, 1997), pp. 123-126.

payment of admission fees could observe from galleries from within the courtroom.[154] The architecture of Westminster Hall, which housed the Courts of King's Bench, Chancery and Common Pleas, also effectively showed off credibility evaluations in a highly public forum. Each of those courts, respectively about twenty-five feet square, opened off the central hallway, and until 1760 no interior walls enclosed them; not only could judges, counsel and parties see across to the other courts, but the witnesses, potential jurors, and the public clustered, mingled and waited together in a throng in the central hallway from where they could see the workings of each of the three courts.[155]

Another architectural feature that literally reflected credibility can be seen in sketches representing the Old Bailey in the early nineteenth century which depict the dock, "surmounted by a structure like a door frame with a mirror at the top," so that the accused, who was still an important testimonial resource for the defence until 1836, could be closely watched, and in a relatively unobstructed full body view, unlike modern witness boxes which feature a bust view.[156] Both jurors and spectators could

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[154] See Simon Devereaux, "The City and the Sessions Paper: 'Public Justice' in London, 1770-1800," *Journal of British Studies* 35 (1996): 466-503, at p. 488 n. 80 and p. 487 n. 77; "The Proceedings of the Old Bailey London, 1674-1834," online: http://www.oldbailey.online.org/history/the-old-bailey/. The courthouse was reconstructed in 1774 and a semi-circular brick wall added around the front of the building; the brick wall was higher than the wood fence that it replaced and obstructed the window view.

[155] James Oldham, *The Mansfield Manuscripts and the Growth of English Law in the Eighteenth Century*, pp. 1.119-121 and a print of the interior of Westminster Hall circa 1745 before the partitions were constructed is reproduced at p. 121.

[156] Alan Wharam, *The Treason Trials, 1794* (Leicester and London: Leicester University Press, 1992), p. 195. This print is reproduced at p. 144 and in W. Eden Hooper, *The History of Newgate and the Old Bailey* (London: Underwood Press, 1935), one of two frontispiece prints, and Bernard O'Donnell, *The Old Bailey and Its Trials* (London: Clerke & Cockeran-Publishers, 1950), p. 81. Another print depicting the

better see the evidentiary basis for credibility judgments. As almost a literal manifestation of the mirror from Addison's "Vision" in *The Tatler,* which had the "particular quality of setting fire to all forgery and falsehood," and would "banish all false appearances, and show people what they are," this mirror promised to show forth the witness's intrinsic merit to have credibility attributed to him.[157]

Law, and more specifically credibility evaluation, literally was *seen* to be done by these architectural measures. Audiences could watch the witnesses and emulate the empiricist gathering of evidence; and the audiences could watch the jury assessing credibility and deliberating over the evidence.[158] In "Law is a Bottomless Print," a 1733 print of Westminster Hall depicting the Court of King's Bench, the twelve jurors sit together on a high-backed bench, partitioning them from those in the central hallway in the foreground of the picture but allowing their heads to be seen, and directly face a four judge bench while a witness is examined. In the balcony gallery of spectators,

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interior of Old Bailey Sessions House in the nineteenth century also shows the mirror, hanging above three people in the dock. See Thomas Rogers Forbes, *Surgeons at the Bailey: English Forensic Medicine to 1878* (New Haven: Yale University Press, 1985), p. 17, and G.T. Crook, ed. and collated and appendix, *The Complete Newgate Calendar,* (London: Privately Printed for Navarre Society Ltd., 1926), next to vol. 5, p. 224. An 1824 woodcut of Old Bailey's interior again shows the doorframe-like structure over the accused, reproduced in Thomas Gretton, comp., *Murders and Moralities: English Catchpenny Prints, 1800-1860* (London: British Museum Publications, 1980), p. 47.

[157] Addison, *The Tatler*, No. 100, November 29, 1709, p. 342; Addison, *The Tatler*, No. 102, December 3, 1709, p. 355. Sarah Fielding's *David Simple*, refers to the "God of Justice's Mirror of Truth," which Cynthia remarks is "described in that beautiful Vision in the *Tatler"* (Sarah Fielding, *The Adventures of David Simple*, ed. and intro. Malcolm Kelsall [Oxford: Oxford University Press, 1994], p. 143).

[158] Beattie suggests that by the second quarter of the eighteenth century, jurors at both the Old Bailey and at the Surrey assizes sat together in the court facility and deliberated (albeit in a very abbreviated discussion) in open court, rather than retiring. Beattie, *Crime and the Courts in England, 1660-1800*, p. 397. P.J.R. King refers to the "extremely brief and highly public petty jury meeting" ("Illiterate Plebians, Easily Misled," p. 294).

several observers face away from the judges, witness and counsel, and are pointedly turned instead toward the jurors, while one in the audience raises his hand to gesture toward the jury box, focusing our attention and that of other gallery members on the jurors. The spectators were as interested in the jurors' live demonstration of credibility weighing as they were in the busy hubbub of the central hall or the judges and counsel.[159] Similarly, in Thomas Rowlandson's 1806 print illustrating famed barrister William Garrow cross-examining a nervous witness, the jury again is a focal point for the gallery, attracting attention despite the intense competition of Garrow's showmanship; credibility, more than advocacy, at this period fascinated the onlookers.[160] Almost everyone in the upper balcony chooses to face the jurors and a few lean over the balcony wall to be closer to the jurors, who, in turn, of the eleven that are visible, are illustrated as actively engaged in the credibility process, with five scrutinizing the testifying witness to gather credibility information, two intently and seriously speaking together, three watching the gallery watching them, and one perhaps trying to ask a question of the judge. These prints suggest that credibility assessment was an intriguing part of the trial that captured eighteenth-century audiences' attention and was an engrossing feature of the sensory experience of attending a trial. Credibility traits, as Chapter Three's discussion of "embodied credibility" detailed, were conceptualized as having aural and optical sensory aspects, and open public forums permitted the public to see and hear the same credibility evidence that the jurors

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[159] "Law is a Bottomless Pit," BMC 1990, c. 1733, rpt. in J.A. Sharpe, *Crime and the Law in English Satirical Prints, 1600-1832* (Cambridge: Chadwyck-Healey, 1986), pp. 96-97.

[160] Thomas Rowlandson, print BMC 10841 (1806), rpt. in J.A. Sharpe, *Crime and the Law in English Satirical Prints, 1600-1832*, pp. 236-237.

experienced. The architecture provided the audience with the actual means to test and verify credibility simultaneously for themselves, on the basis of unexpurgated and non-linguistic nuances, rather than merely reading transcripts of the words of the testimony and the recorded verdict of the jury. Further, the architecture spotlighted the *process* of the jury's credibility evaluations. With the open court facilities, the public could monitor the assessors' empirical gathering of credibility traits from testimony evidence, see and hear the jury questioning witnesses to "beat" and "boult" out changes in countenance, and watch the jury's ratiocinative processes as they took in the information and then deliberated in the open public forum.

As this chapter has emphasized, eighteenth-century law and philosophy differ in their treatment of testimony in that the contemporary philosophers often assume that individuals have previous character knowledge and that general status conditions indicate whether someone is credible or not. The jury trial model, by contrast, by the eighteenth century, required jurors to assess *individual* witnesses and to do so in a particularized testimonial context, differentiating between "character" and "credibility." In like manner to the wide social spectrum in common law trials by jury, novels typically feature a range of characters of different social status. To be able to interpret a novel, readers must be able to assess credibility of a particular character at a specific moment without recourse to status assumptions. On any single occasion, any individual *could* be credible, and the reader (and other characters) must be able to determine how to know the difference.

The problem of assessing credibility is peculiar in its origins to the English novel because the novel was preconditioned by the English common law trial's history. In practice and theory, the English common law trial displaced civil law's dependence on status- and "character"-based traits and replaced those nominally objective notions with subjective individual- and "credibility"-based traits. While decision makers under the Romano-canon proof system, from which Continental Europe generally derived their practices for witness testimony, could purport to rely on exterior character—the types of indicia that Fielding would disparagingly call "masks and vizors"—fact finders under the common law credibility system had to try to discern moral and epistemic traits of particular witnesses. Without the Momus's glass that Walter Shandy wished for, plumbing other people to assess their morality and cognition was a daunting task indeed, and placed an enormous amount of discretion, and by corollary, faith in the jury. One could legitimately wonder why England's legal policy makers would have so much confidence in a jury, which, at least in its theoretical incarnation, was lauded as the demesne of the middling classes. One facile answer is that policy makers might have thought privately that jury decisions were mere whims and vagaries but they risked little by instituting this system since, apart from treason, the upper classes were seldom exposed to prosecution in criminal felony trials. But, I contend that eighteenth-century culture actually embraced a striking confidence in ordinary people's ability to discern credibility. Juries were only one prominent example of credibility evaluation in practice and in public. Discourse about testimony, and the component elements of factual plausibility and speaker's credibility, percolated throughout the culture and throughout numerous intellectual fields, and it was by no means strange to consider that

credibility was a common aptitude. I have argued that credibility was also made theoretically palatable by being made empirical; the reception of credibility was itself figured as a sensory experience.

It may appear that legal contributions to credibility are not significant, consisting of formal protocols and architectural space. However, the symbolic authority of the trial and its ability to disseminate ideas about credibility through the culture should not be underestimated. The English common law trial by an instructed jury had an important constitutive role in the shift from credit to credibility. The trial, as a public display of credibility evaluations of witnesses, helped to circulate the view that any person *could* be credible on any given occasion, whatever their "credit" status, and to endorse the view that the "ordinary" person, as juror (or reader) could interpret credibility. Further, the combination of common sense and formal protocols was a significant innovation, which was picked up and modified by the novel, and supplemented by the novel's own formal measures for credibility evaluation.

The next three chapters explore literary credibility in the eighteenth-century novel and discuss how embodied credibility and epistemological doubts about that system influenced the novel. Chapter Five discusses the phenomenon of readers disbelieving a character who was intended to be credible. Chapter Six analyses the narrative device of point of view and the "mock trial" convention, two devices through which novelists can instruct about credibility and characters can acquire and impute credibility. In Chapter Seven, I argue that legal credibility proof, as an interpretive model designed to accommodate the noetic deficit that jurors would not have personal experience of a speaker, acquired through sustained acquaintance, was well suited to the

interpretive conditions encountered in novels and ordinary decision making. Readers and people generally faced the same hermeneutic environment as jurors. Readers, like jurors, lacked paratestimonial information and had to operate within the generic parameters of the novel. Similarly, with increasing urbanization and mobility, individuals frequently had to evaluate the credibility of strangers. Chapter Seven explores how novels represented, and taught how to make, credibility decisions about people one did not know.

Chapter Five: Credibility and the Testimonial Paradigm: Pamela and Disbelief

Scholars of the novel frequently tease out why readers knowingly suspend disbelief to invest, cognitively and emotionally, in the fictional enterprise.[1] My questions are related, and ask why we believe a character; how an author makes a character worthy of belief; and when we are justified in assenting to what a character, and to what the author, says. How was credibility represented, judged, and taught? These questions focus on the eighteenth-century novel's role in a project that was both epistemological and hermeneutic: since knowledge inevitably relies on information of social origins, how do we decide whether to believe what others say?

Testimony and the novel have not been logged together in the critical register. The textual has been emphasized too heavily over the testimonial, the qualities of being written over the qualities of being said. Literary critics, including those influenced by Marxism, deconstructionist, and feminist theories, persuasively argue that linguistic ambiguities are a playing out of identity construction, point to the text as a site for conflicts about authority and sexual power, and highlight the commodification of women as text and body. My suggestion of a testimonial paradigm is not intended to replace these semiotic analyses so much as to amplify other aspects of the eighteenth-century novel connected to testimony. Thus, while Deidre Lynch compellingly speaks

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[1] See for example, Robert Newsom, *A Likely Story: Probability and Play in Fiction* (New Brunswick, NJ: Rutgers University Press, 1988).

of the "discursive economy," an epistemology of writing and credit, or in her terms, an "economy of character," I am amplifying an epistemology of testimony and credibility.[2]

Interpretation is not only a hermeneutic act performed on writings. It includes acts of interpreting other people, and, for characters within the fictional frame and for people outside the fictional frame, the human subjects of this exegesis are not precisely approached as written texts or only with respect to a perception of their "legibility." The "new" novel in the eighteenth century brought in new readers whose experience with characters in this developing genre can almost be described as intimate, much closer to a social interaction. Clarissa is "treated like an intimate Acquaintance by all her Readers," as Miss Gibson, the discerning speaker in Sarah Fielding's *Remarks on Clarissa* contends, going on to observe how "the Authors of Cassandra, Clelia, with numberless others I could name, were never in any Danger of having their Heroines thought on, or treated like human Creatures."[3] Given this intimacy, the relationship between readers and characters can be compared to how people approach others in a social encounter, attending to the credibility cues which emanate during the act of testifying. Readers and characters are like jurors, both testing testimony. Their

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[2] Deidre Shauna Lynch, *The Economy of Character: Novels, Market Culture, and the Business of Inner Meaning* (Chicago: University of Chicago Press, 1998), p. 10. Several commentators, like Lynch, have called attention in recent work to the economics of the novel, including factors related to printing and copyright. There are some points of contact with these projects and my own, as both focus on "calculation." Credibility grows out of and outgrows credit. Facilely, one might distinguish credibility as a calculating probabilistic judgment about testimony and witnesses, and credit as a calculation of character status.

[3] Sarah Fielding, *Remarks on Clarissa, Addressed to the Author. Occasioned by some critical Conversations on the Characters and Conduct of that Work. With Some Reflections on the Character and Behaviour of Prior's Emma* (London: J. Robinson, 1749), pp. 14-15, rpt. Numbers 231-232, Augustan Reprint Society, intro. Peter Sabor (Los Angeles: William Andrews Clark Memorial Library, 1985).

hermeneutic positions converged, I argue, in the eighteenth century, with reference both to the quantity and quality of information and the evaluation methods to determine what could, with reason, be known about other people. Scholars have not analysed these testimonial features, drawn instead to focus on the printed text and to conceptualize exegesis as an act of reading writings.

Law and Literature and Interdisciplinary Scholarship

"Law and literature" studies also almost invariably emphasize how law is like *reading* literature. Particularly in its early stages, interdisciplinary work in law and literature was frequently categorized as having two branches: law *in* literature and law *as* literature. The labels were always too procrustean, as labels usually are, to reflect the variety of work done under this rubric; yet they do usefully point to how disciplinary boundaries and interests conjoined to downplay intersections of law and literature that might be closer to literature *as* law.

"Law *in* literature" focuses on the representation and description of legal actors, including judges, lawyers, magistrates, parties to civil actions, criminal accused and complainant prosecutors, and wardens; legal procedures, such as trials, hangings, confinement, and transportation; statutory laws; and general themes of justice and reform of legal institutions and procedures. Thus, "law in literature" might study the Black Act in *Tom Jones,* inheritance, marriage, rape and abduction law in *Clarissa,* or

representations of attorneys.[4] These analyses can invoke different critical frameworks and valences, including political, economic, and social interests.

"Law *as* literature," by comparison, highlights the linguistic and narrative qualities of law to argue that law and literature are parallel discourses. Drawing on the hermeneutic philosophy of Martin Heidegger and Hans-Georg Gadamer, law as literature critics assert that, with this shared textuality, the disciplines have a joint theoretical interest in representation and interpretation.[5] The insight that law and literature both are concerned with the intercession of a mediating consciousness with the text, and thus with the interplay of intention, reader response, and historical and cultural contexts, is a cogent one. Both law and literature, these scholars argue, rely on similar devices by which to manage subjectivity and indeterminacy, an assumption that underlies Stanley Fish's discussion of interpretive communities and Ronald Dworkin's

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[4] See John Allen Stevenson, "Black George and the Black Act," *Eighteenth-Century Fiction* 8 (1996): 355-382; Joan I. Schwarz, "Eighteenth-Century Abduction Law and *Clarissa*," in *Clarissa and Her Readers: New Essays for The* Clarissa *Project*, ed. and intro. by Carol Houlihan Flynn and Edward Copeland, The Clarissa Project, vol. 9 (New York: AMS Press, 1999), pp. 269-308; and Mary Vermillion, "*Clarissa* and the Marriage Act," *Eighteenth-Century Fiction* 9 (1997): 395-412. David Punter provides a good survey of legal issues in this period's fiction in "Fictional Representation of the Law in the Eighteenth Century," *Eighteenth-Century Studies* 16 (1982): 47-74.

[5] See Sanford Levinson and Steven Mailloux, ed., *Interpreting Law and Literature: A Hermeneutic Reader* (Evanston: Northwestern University Press, 1988); and Gregory Leyh, ed. *Legal Hermeneutics: History, Theory, and Practice* (Berkeley: University of California Press, 1992); Guyora Binder and Robert Weisberg, *Literary Criticisms of Law* (Princeton: Princeton University Press, 2000); and Peter Brooks and Paul Gewirtz, ed. *In Law's Stories: Narrative and Rhetoric in the Law* (New Haven: Yale University Press, 1996). See also Joel C. Weinsheimer, *Eighteenth-Century Hermeneutics: Philosophy of Interpretation in England from Locke to Burke* (New Haven: Yale University Press, 1993).

notion of legal interpretation as a "chain novel."[6] These insights are trenchant contributions to this interdisciplinary area but ultimately too limited in perspective because "law and literature scholars" focus on law as it is manifested in *written* texts. Law and literature are parallel *texts,* they argue, and thus juries and readers are performing similar interpretative roles, namely both *read texts*, interpreting and parsing the *written word.* While this appropriately links the critical activities of readers and *lawyers*, it is much less compelling and accurate as a description of what connects the epistemological and interpretive activities of readers and *jurors*. Jurors in the eighteenth century and continuing through today listen to, and watch, testifying witnesses.

Other theorists have criticized some of the foundational principles for "law and literature" scholarship because they caution that the equivalency between law and literature should not be exaggerated. Thus, the functions of the texts and objectives of the readers diverge too greatly for a unified theory, according to Richard Posner, or the practices of interpretation in law and literature will differ even where a general theory

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[6] Stanley Fish, *Is There a Text in this Class? The Authority of Interpretive Communities* (Cambridge, MA: Harvard University Press, 1980); and *Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Literary and Legal Studies* (Durham: Duke University Press, 1989); Ronald Dworkin, "How Law is Like Literature," in *A Matter of Principle* (Cambridge: Harvard University Press, 1985), pp. 146-166. In literary criticism, major contributions to theoretical approaches to reading practices include Wolfgang Iser, *The Implied Reader: Patterns of Communication in Prose Fiction from Bunyan to Beckett* (Baltimore: Johns Hopkins University Press, 1975) and *The Act of Reading: A Theory of Aesthetic Response* (Baltimore: Johns Hopkins University Press, 1978); Wayne C. Booth, *The Rhetoric of Fiction* (Chicago: University of Chicago Press, 1961); Hans Robert Jauss, *Toward an Aesthetic of Reception,* trans. Timothy Bahti and intro. Paul de Man (Minneapolis: University of Minneapolis Press, 1982); and Jerome J. McGann, *The Textual Condition* (Princeton: Princeton University Press, 1991).

of interpretation would be valid, according to Mark Kingwell.[7] In its bluntest form, as Robin West and Robert Cover articulate it, this objection asserts that "adjudication is not interpretation" because legal interpretation as a formal process resolves life, liberty and property interests, and such decisions are enforced by the state through violence and power.[8] Literature, by contrast, they point out, both in practice and in theory can tolerate more ambiguity and multiple interpretations within its interpretive communities. In short, these critics demur, the stakes are potentially much higher when there are conflicts about how law should be interpreted.

Certain equivalencies between law and literature may be overstated, as critics such as Posner, Kingwell, West and Cover rightly object. My own reservation, to add to the cautions they and others raise about some aspects of "law and literature" interdisciplinary work, approaches the weakness of "law and literature" from the other direction: that there are equivalencies between law and literature which have not been emphasized enough. As the "law as literature" term suggests, the analogy is more often posed from law's perspective with the objective of testing whether literary criticism can aptly be applied to law. This contributes to "testimony," as a concept which is popularly associated more strongly with the genre of the trial than the novel, lagging behind concepts which are associated with writings.

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[7] Richard Posner, *Law and Literature,* rvsd. ed. (Cambridge: Harvard University Press, 1998); Mark Kingwell, "Let's Ask Again: Is Law Like Literature?" *Yale Journal of Law and the Humanities* 6 (1994): 317-352.

[8] Robin L. West, "Adjudication is Not Interpretation: Some Reservations about the Law-as-Literature Movement," *Tennessee Law Review* 54 (1987): 203-278, republished in *Narrative, Authority, and Law* (Ann Arbor: University of Michigan Press, 1993), pp. 89-176; Robert Cover, "Nomos and Narrative," in *Narrative, Violence and the Law: The Essays of Robert Cover,* ed. by Martha Minow, Michael Ryan and Austin Sarat (Ann Arbor: University of Michigan Press, 1992), pp. 95-172.

Strangely, despite the common law trial by jury's overwhelmingly oral effect, which was even more pronounced in the eighteenth century, interdisciplinary work in law and literature has not especially highlighted how testimony informs both fields, and consequently has not studied how readers are like jurors in their role of evaluating speaking characters and deciding whom to believe.

A testimonial paradigm then does not correspond to the existing objectives of either branch of law and literature—"law in literature" or "law as literature"—but it suggests objectives that interdisciplinary work can pursue.

Historical epistemology can form the basis of this third branch of law and literature scholarship, one which would combine and supplement the insights of the first two, while addressing some of these limitations. Although a central claim of hermeneutic philosophy is that interpretation is always historically and linguistically conditioned, the parallels between legal and literary interpretive acts have tended to be asserted by "law and literature" scholars without situating them in their historical epistemological and hermeneutic context. I stress that there is indeed a relationship between law and literature, and it should be informed by historical and cultural factors. The testimonial paradigm contemplates incorporating cognitive and interpretive perspectives informed by the philosophical and forensic history. I am suggesting here that the history of the idea of credibility is one of the most important connections between law and literature. Belief and credibility, in short, are central to the eighteenth-century English trial and novel.

"Law and literature" scholars are not the only ones to "read out" law's orality. Historians and literary theorists also give prominence to law as a *narrative* and spotlight

written legal texts when drawing connections between law and history, or law and the novel. New historicists, such as Hayden J. White, argue that law, history, and narrative are tightly connected. Thus, White writes:

> [O]nce we have been alerted to the intimate relationship that Hegel suggests exists between law, historicality, and narrativity, we cannot but be struck by the frequency with which narrativity, whether of the fictional or the factual sort, presupposes the existence of a legal system against or on behalf of which the typical agents of a narrative account militate. And this raises the suspicion that narrative in general, from the folktale to the novel, from the annals to the fully realized "history," has to do with the topics of law, legality, legitimacy, or, more generally, *authority*. ...This permits us to speculate that the growth and development of historical consciousness, which is attended by a concomitant growth and development of narrative capability ... has something to do with the extent to which the legal system functions as a subject of concern.[9]

Literary scholars have perceptively addressed legal history and the novel with respect to some issues, in particular crime and the penal system, copyright, property and

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[9] Hayden White, "The Value of Narrativity in the Representation of Reality," in *The Content of the Form: Narrative Discourse and Historical Representation* (Baltimore: Johns Hopkins University Press, 1987), pp. 13-14. This chapter is a revised version of an essay which first appeared in *Critical Inquiry* 7 (1980): 5-29 under the same title.

women.[10] However, literary scholars are also prone, like legal scholars, to neglect testimonial aspects of the novel. Criticism typically emphasizes factual plausibility to the exclusion of testimony, and this tendency, I argue, can be seen even in those literary scholars who integrate legal history in their analyses. Thus, Michael McKeon supports his theory of the novel's origins in part with legal history, such as M.T. Clanchy's *From Memory to Written Record, 1066-1370*, which traces the development and effect of establishing written legal records; but McKeon does not cite general legal histories of testimonial features of the law such as the common law trial by jury.[11] Perhaps generalizing too far from historical accounts of legal writings, McKeon not coincidentally connects the novel and the law with print culture. He also makes strong claims on behalf of print, surprisingly contending that "[p]rint made common first the very notion of competing accounts of the same event," a view which unduly occludes testimony.[12] Surely, as an epistemological and hermeneutic concept, the idea that there could be competing accounts of the same event predates print; oral accounts may be "transient," but it does not follow that they are unheard, unchallenged, or forgotten by other speaking witnesses.

McKeon, Welsh, and other literary critics, tend to treat orality as a cultural artefact, which points to some telling interpretive differences under "reading" versus

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[10] There are numerous examples, including John Zomchick, *Family and the Law in Eighteenth-Century Fiction* (Cambridge: Cambridge University Press, 1993); and John Bender, *Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth-Century England* (Chicago: University of Chicago Press, 1987).

[11] Michael McKeon, *The Origins of the English Novel, 1600-1740* (Baltimore: Johns Hopkins University Press, 1987), p. 35; M.T. Clanchy, *From Memory to Written Record: England, 1066-1307* (Cambridge: Harvard University Press, 1979).

[12] McKeon, *The Origins of the English Novel,* p. 43.

"testimonial" paradigms. McKeon and Deidre Lynch, for example, interpret the eighteenth-century vogue of speaking objects as literary protagonists as symptomatic of a cultural preference for the "'objective' testimony" of tangible records over fallible speaking witnesses.[13] Hence Lynch posits, "character was conceptualized as *reading matter* in the most emphatic way,"[14] and finds the blend of credit, materiality and anti-orality to be most characteristic. For me, by contrast, speaking objects indicate testimony's potency in this period, so that even inanimate objects are created to "speak." In a period where the plausibility-credibility matrix infused the culture, *speaking* objects suggest testimony's allure, rather than its displacement.

The testimonial paradigm is intended to suggest that post-structuralist concerns are too acutely focused. But neither is the testimonial paradigm precisely a return to the sort of critical concerns about identity and subjectivity raised by Doody, Spacks, or Dussinger, or by Watt, who influentially defined the terms of the debate with his theory of a "rise of individualism." The testimonial paradigm is about the subjective, and always merely probable, effort to know other people (character) and to know information from them (credibility). Building on literary criticism about identity and subjectivity—inquiries about the self—and the indeterminacy of print, language, and identity, the testimonial paradigm looks at uncertainties about other people and how people evaluate and manage those uncertainties to produce knowledge. The focus of a testimonial paradigm turns to the *social* origins of knowledge and tries to recover the epistemologies of the eighteenth century. Thus, the testimonial paradigm is

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13 Ibid.; Lynch, *The Economy of Character,* esp. chap. 2.

14 Lynch, *The Economy of Character*, p. 5.

epistemological and hermeneutical, rather than psychological, focusing on knowledge as a social enterprise and the interpretation of *other people*, instead of knowledge of oneself.

The testimonial paradigm is not a substitute for the reading paradigm, so much as a supplement and refinement, and, like the reading paradigm, it is an interpretive model. We are of course *reading* a printed text and not *in fact* watching or listening to witnesses. The testimonial paradigm is always about the act of reading. The testimonial paradigm is not intended to erase this fact, but instead to explain the epistemological and hermeneutic acts which make up an eighteenth-century reading process.

Eighteenth-century reading practices would be more likely to include experiences of reading novels aloud than we are likely to have. Aaron Hill writes, in one of the puff pieces Richardson included in his introductory defence to the second edition of *Pamela*, he has "done nothing but read [*Pamela*] to others, and hear others again read it, to me, ever since it came into my Hands."[15] William Beatty Warner, interpreting artistic representations of readers reading, tells us, "In the eighteenth century, reading was not always silent and solitary; it was also oral and collective."[16] With such practices, novel reading was more obviously perceived as about "testimony" than our silent and solitary reading practices and heightened the visual and aural

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[15] Aaron Hill, Letter to the Editor of *Pamela,* 1741, quoted in Samuel Richardson, Introduction to *Pamela; or Virtue Rewarded*, 2d ed., Appendix 1 of *Pamela,* ed. Thomas Keymer and Alice Wakely (Oxford: Oxford University Press, 2001), p. 506 and see excerpts from a second letter by Hill at p. 514. Fielding mocks this line by incorporating it in the letter from Parson Tickletext which starts off *Shamela.*

[16] William Beatty Warner, "Staging Readers Reading," Special Issue Reconsidering the Rise of the Novel, *Eighteenth-Century Fiction* 12 (January-April 2000): p. 395.

elements of credibility. At the same time, reading aloud also complicates "credibility," since listeners would be hearing substitute voices testify and would receive proxy pathognomic information that was mediated between author, character, reader and reader's listener. While a testimonial paradigm does not require any specific kind of reading practice, these additional dimensions to testimony are important considerations for its application.

As the late seventeenth- and eighteenth-century philosophic discussions of credibility illustrate, with their general criteria, philosophers could only go so far in trying to explain the ineffable. Novelists, I contend, brought their readers, then and now, closer to understanding credibility by applying the criteria philosophers identified and by using the formal protocols jurists established. Novelists had to figure out how to make characters credible, which in turn could make the author credible, and how to teach credibility, so readers would better recognize and test credibility in novels and in their lives. But for novelists too it is extremely difficult to represent that cluster of cues which make a character "credible" and at least as difficult to represent the process by which a character is judged as credible.

Pamela and Disbelief

Pamela, Samuel Richardson's story of "Virtue Rewarded," is an instructive example of how difficult it is to represent credibility and for readers to interpret it. Richardson intended Pamela to be a credible character, as his prefaces and editorial material insist. And yet, Richardson's creation, both character and novel, was lambasted by some of his contemporaries who took her lack of credibility as their target. The

Pamela satires attacked Pamela as a scheming social climber, whose virginity and virtue were instrumentally applied toward wealth and status. What went wrong with the representation and interpretation of credibility?

Pamela's and *Pamela*'s afterlife were memorable. The *Pamela* craze, however much fired by Richardson's astute marketing, is an astonishing example of fictional character celebrity. Pamela was reincarnated in fans, paintings, waxworks, displays, spurious sequels, poetry and theatrical productions, the literary productions alone a veritable "Grub Street grabfest," as Thomas Keymer and Peter Sabor dub the phenomenon.[17] William Beatty Warner calls the Pamela craze a "media event" and Terry Eagleton refers to *Pamela* semiotically as the "name for a diverse set of social practices, an emblem encountered at every turn, a domestic talking-point and public declaration of faith."[18]

As remarkable as the Pamela vogue was the Pamela controversy, the anti-Pamelists and their Shamelas, Pamelas Censured, and Mock-Pamelas.[19] Henry

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[17] Thomas Keymer and Peter Sabor, "General Introduction" to *The Pamela Controversy: Criticisms and adaptations of Samuel Richardson's* Pamela *1740-1750*, Thomas Keymer and Peter Sabor, eds., 6 vols. (London: Pickering & Chatto, 2001), vol. 1, p. xiii.

[18] William Beatty Warner, "*The Pamela* Media Event," chap. 2 of *Licensing Entertainment: The Elevation of Novel Reading in Britain, 1684-1750* (Berkeley: University of California Press, 1998), pp. 176-230; Terry Eagleton, *The Rape of Clarissa: Writing, Sexuality and Class Struggle in Samuel Richardson* (Oxford: Basil Blackwell, 1982), p. 5.

[19] A full chronology and list of contributions to the Pamela controversy are included in Keymer and Sabor, *The Pamela Controversy,* vol. 1, pp. xxi-xxix. In addition to *The Pamela Controversy,* see Bernard Kreissman, *Pamela-Shamela: A Study of the criticisms, burlesques, parodies, and adaptations of Richardson's "Pamela"* (Lincoln: University of Nebraska Press, 1960); T.C. Duncan Eaves and Ben D. Kimpel, "The *Pamela* Vogue; *Pamela* Part II, 1740-1742, " chap. vii of *Samuel Richardson: A*

Fielding's 1741 *Shamela* is the best known of the surviving parodies, where, as the title page promises, the "many notorious Falshoods and Misrepresentations of a Book called *Pamela* Are exposed and refuted; and all the matchless Arts of that young Politician, set in a true and just Light."[20] Shamela explicitly represents the disbelieved Pamela, she who "thought once of making a little Fortune by my Person" but now "intend[s] to make a great one by my Vartue" (95). *Shamela* publishes the "authentic" letters from the "real" figure behind the Pamela phenomenon, Shamela Andrews, who writes so forthrightly to her mother that she provokes an outraged Mrs Andrews to reveal her daughter's true character. In those letters, Shamela candidly reports how she counterfeits swoons, pretends to tremble, and enthuses about marriage to Booby because she will be "Mistress of a great Estate" (77, 96, 88). According to Fielding, Richardson is teaching that the reward for virtue is a better financial and social living, not a spiritual afterlife.

Keymer and Sabor, in their introduction to the *Pamela Controversy,* rightly argue that Richardson's contemporaries were playing "for serious ideological stakes," explicitly concerning themselves with Pamela's "motivation, her veracity, her piety," while revealing a "whole culture and its discontents." Modern criticism, they continue, has been "excavating the deeper ideological structures and bones of contention beneath

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Biography (Oxford: Clarendon Press, 1971); Margaret Anne Doody, "*Pamela* Continued: Or, The Sequel that Failed," chap. iv of *A Natural Passion: A Study of the Novels of Samuel Richardson* (Oxford: Clarendon Press, 1974), pp. 71-98; Mark Kinkead-Weekes, "The Assault on the World," chap. 3 of *Samuel Richardson: Dramatic Novelist* (London: Methuen & Co., 1973), pp. 58-87; Warner, *Licensing Entertainment*, chap. 5.

[20] Henry Fielding, *An Apology for the Life of Mrs Shamela Andrews* (London: A. Dodd, 1741), in *The Pamela Controversy,* vol. 1, pp. 47-117.

these debating points" to plumb virtue, class, gender, and faith.[21] The Pamela attacks have been explained as reactions against a more fluid class system and changing gender roles. Feminist and Marxist scholars argue that the anti-Pamela fury comes from anxieties about class mobility and unstable gender relations, the novel's "revolutionary message."[22] These explanations resonate with the internal and external audience's treatment of the plot as a social and economic transgressive account of a gentleman marrying his mother's maid. I suggest in the following pages that the controversy was a credibility conflict: the novel depicted and was caught in a transition between notions of credit and credibility; the narrative evidence and presentation could not convey adequately why Pamela was credible because the act of providing evidence within the context of a single first person narrative undercut the credibility of the character it was intended to support; and epistemic and cognitive traits for the "credible" witness were in tension with the kind of character and situation Pamela was in.

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[21] Keymer and Sabor, General Introduction to *The Pamela Controversy,* vol. 1, p. xix.

[22] Margaret Anne Doody, "Samuel Richardson: fiction and knowledge," in *The Cambridge Companion to the Eighteenth-Century Novel,* ed. John Richetti (Cambridge: Cambridge University Press, 1996), p. 104. In *A Natural Passion,* Doody argues Fielding was "really bothered" because *Pamela* was "subversive,...making a low, ungrammatical female its heroine; [and] presenting a misalliance as not only possible but in given circumstances desirable," p. 74. Terry Castle also observes how eighteenth-century readers would find Pamela's story "revolutionary" because it "demystified supposed natural distinctions and categories." Castle calls *Pamela* "one of the great carnivalesque plots in literature...with the violation of taxonomic boundaries, with the unprecedented (and gratifying) coupling of things that should remain apart: high and low, masters and servants, rakes and virgins." The novel "celebrates a world of fluid human relations; its impulses are insistently, even convulsively, antihierarchical." (*Masquerade and Civilization: The Carnivalesque in Eighteenth-Century English Culture and Fiction* [Stanford: Stanford University Press, 1986], pp. 134-136).

Richardson is a good example of an eighteenth-century observer, reporter and creator of credibility norms. According to Eaves and Kimpel, Richardson read English philosophers, and among the list they cite are several of the major contributors to the epistemology of testimony: Locke (whom he read "carefully and critically"), Hume, Hartley, and Bolingbroke.[23] William Sale's list of books printed by Richardson includes Hartley's *Observations on Man*, other philosophical titles, and numerous legal works, not surprisingly given Richardon's position as law printer to the King.[24] Beyond this exposure, the philosophy of testimony, probability, and credibility, as I have been developing, permeated eighteenth-century culture. The figures of Pamela and Antipamela illustrate how cultural preconceptions about character, testimony and credibility were played out in the early novel and why this effort to represent credibility backfired—for some readers—because of conflicts in the epistemologies and their application in narrative form. I am returning to re-consider what the contemporary participants in the Pamela controversy focused on—motivation, veracity, piety—but in doing so, I suggest that this controversy about a character's credibility was playing out a cultural epistemological and hermeneutic debate about credibility: was Pamela the

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[23] Eaves and Kimpel, *Samuel Richardson: A Biography*, p. 571.

[24] William M. Sale, Jr., *Samuel Richardson: Master Printer* (Ithaca: Cornell University Press, 1950). Further, Keith Maslen's research shows that Sale's list significantly underestimates Richardson's printing output. See K.I.D. Maslen, *Samuel Richardson of London, Printer: a study of his printing based on ornament use and business accounts* (Dunedin, New Zealand: Department of English, University of Otago, 2001); Keith Maslen, "Samuel Richardson as Printer: Expanding the Canon," in *Order and Connexion: Studies in Bibliography and Book History*, ed. R.C. Alston (Cambridge: D.S. Brewer, 1997), pp. 1-16; and "Samuel Richardson's Books," *The Bibliographical Society of Australia & New Zealand* 12 (1988): pp. 85-89.

fictional character and would a living Pamela be worthy of belief and can we believe what she says on particular occasions?

The *Pamela* controversy was partly a symptom of a transition from credit to full qualitative credibility. In *Pamela*, Richardson depicts a world in which "credit" is disintegrating and "credibility" is only rudimentarily emerging.[25] Mr B is accustomed to being believed because of what he is, rather than who he is. Or, perhaps more precisely, Mr. B is accustomed to being treated as the type of person who is worthy of belief. The epistemological distinction between general "worthiness of belief" and actual belief and the conscious decision to "assent to believe" makes sense for a credibility system, but not for a status-oriented credit culture. In a "credit" world, people are creditable based on their social and economic status. Once a "creditable" person was situated within a category of credit, other people were not acculturated to study them further to determine if they were actually believable on a given occasion. To scrutinize the word of someone with "credit" easily turned into a social affront. Thus, Falkland in *Caleb Williams* is a credit figure who balks at credibility proofs: "what sort of a character is that which must be supported by witnesses?"[26] A credit system positively encourages a "too easy faith in the testimony" of certain kinds of

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[25] Samuel Richardson, *Pamela; or, Virtue Rewarded,* ed. with explanatory notes by Thomas Keymer and Alice Wakely and with an introduction by Thomas Keymer (Oxford: Oxford University Press, 2001). I am using the first edition of *Pamela* (1740, title page dated 1741) because the credibility controversy was sparked by Pamela's more unpolished appearance in the first edition. On Richardson's changes to the first edition see T.C. Duncan Eaves and Ben D. Kimpel, "Richardson's Revisions of *Pamela,*" *Studies in Bibliography* 20 (1967): 61-88.

[26] William Godwin, *Caleb Williams* (1794), ed. and intro. David McCracken (Oxford: Oxford University Press, 1982), p. 101.

people, as Hume remarks in *A Treatise of Human Nature*.[27] That facile willingness to believe and to suspend individual interrogation was a target for those like Hume, who railed against credulity, and a worry for those like Richardson, who wondered how to combine the searching evaluation required in credibility with a due regard to propriety.

Pamela destabilizes these credit assumptions by directly questioning whether she *does* believe Mr B, asking explicitly of him, "What should I believe...what can I believe?" (84). Her interrogations confound Mr B who struggles to understand how his "Pride of Birth and Fortune . . . cannot obtain Credit with [Pamela], but must add to [her] suspicions" (84). "Strange, damn'd Fate," he curses, "that when I speak so solemnly, I can't be believed" (84). Credit, for the gentry and nobility, was a natural attribute, an aspect of character that was neither acquired nor questioned. As Steven Shapin details for the seventeenth century when the credit system had a stronger hold than in the succeeding century, there were complex social practices regulating truth telling. Gentlemen were expected to know this "epistemological decorum," and to signal true testimony to others.[28] Mr B was responsible to mark a statement that was to be given credit, to "speak so solemnly," as he says, so as to be recognized as giving testimony. Credit was linked to status and reputation; thus, Pamela is wrong when she writes her parents, "For such a Thing would ruin his Credit as well as mine," (17), for there is no single "such a Thing" which unites their disparately situated reputations,

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[27] David Hume, *A Treatise of Human Nature* (1739-1740), ed. L.A. Selby-Bigge, 2d ed. rvsd. by P.H. Nidditch (Oxford: Clarendon Press, 1978), book I, part III, sec. 9, p. 112.

[28] Steven Shapin, *A Social History of Truth: Civility and Science in Seventeenth-Century England* (Chicago: University of Chicago Press, 1994), esp. chaps. 3 and 5.

divided as they are by class and gender. Her "credit" rises and falls with her chastity; his credit rises and falls with his marriage partner. As the editor steps in to declaim, it is a morality tale of "Riches and Power conspir[ing] against Innocence and a low Estate" (92).

Mr B "takes power to consist in the ability to make others accept one's version of events as authoritative," as McKeon trenchantly observes.[29] But Mr B's willingness to insist that he merits credit also signals that credit was in decline. Once gentleman needed to school others that they were worthy of belief, recognized that need, and implemented measures to convince others, socio-economic status was waning as an imprimatur of credit. To Pamela's father, Mr B begins by rhetorically demanding "am I to be doubted," only then to take seriously his own question, pleading rather than dogmatically asserting, "May I not have my word taken?" (96). As if to explain the credit system and the consequences of its demise to Mr Andrews, B states, "consider a little who I am; and if I am not to be believ'd, what signifies talking?" (96). With credit, the category of "who I am" produces a presumption of belief or disbelief. But B forsakes the subtle cues in the gentleman's repertoire of signals for "testimony" that was to be taken seriously. His overt avowals or demands that he speaks with sincerity suggest the declining symbolic authority of the credit system to command assent without scrutiny. Hence, Mr B disrupts the conventions himself by, on the one hand, asserting, "if you doubt me, I have no obligation to your Confidence or Opinion," so as to demand credit, and immediately after protesting, "I am really sincere in what I say" (215), suggesting his own wavering faith in status as a claim to be believed.

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[29] McKeon, *Origins of the English Novel,* p. 359.

Pamela illustrates the uneasy transition from credit to credibility. The *Pamela* satires, however, arise principally out of a credibility misfire, in presentation, evidence, and character. Richardson wanted and attempted to represent a credible character, but a significant number of his readers interpreted that character as not worthy of belief. It was not simply that anti-Pamelists did not like Pamela, as a character; they did not believe some of what she said. When Pamela exclaims she was "struck all of a Heap" on hearing Mr B proclaim they cannot marry at the end of the first half of the novel, readers can be forgiven for thinking there is something economic motivating her shock, despite the insistence that a virtuous celibacy is a desirable option; and when she claims that she cannot escape Mr B's house to seek refuge at her parents until she finishes sewing his waistcoast, the excuse has not inspired conviction in readers. By contrast, Clarissa was more consistently interpreted as credible, from the eighteenth century forward to today, with rare exceptions, such as in Warner's criticism.[30] Readers lobbied Richardson to change the tragedy to a comedy because they wanted more time for Clarissa and a "better" end for *Clarissa.*[31]

What went wrong in *Pamela*—for the anti-Pamelists, Pamela, or Richardson—and what went right in *Clarissa*? Why did so many readers, but by no means all, doubt that Pamela was worthy of belief? Why wasn't Pamela's testimony about herself and her motives believed more consistently? The Pamela controversy is about belief and credibility.

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[30] Warner, *Reading Clarissa: The Struggles of Interpretation* (New Haven: Yale University Press, 1979).

[31] On reader reaction to *Clarissa* as it serially appeared, see Tom Keymer, *Richardson's* Clarissa *and the Eighteenth-Century Reader* (Cambridge: Cambridge University Press, 1992).

Pamela, character and novel, is a confusing admixture. She can *reasonably* be interpreted as a scheming, too-knowing, coarse vixen or a virtuous, ingenuous, refined naïf. Mr B snidely calls her a "subtle artful Gypsey" (29), whereas his neighbours in Bedfordshire can hardly contain themselves in extolling her. She is pert, bold, vocal, precocious, and disarmingly candid, admitting when she "would a little dissemble" (87). Terry Eagleton contends that how "'bold' or 'devious' Pamela is is finally undecidable." Pamela, he remarks, is "neither 'naturally' saucy nor a straitlaced girl driven desperately to impudence; she is neither deliberately scheming nor in the least blind to self-interest, neither initially high-minded nor a hypocrite."[32] *Pamela*, the novel, meanwhile, as Watt memorably remarked, manages to offer the "combined attractions of a sermon and a striptease," a pornography of prudence, or as Leslie Fieldler calls it, "at once practical, prurient, and edifying."[33] The "epistemological status of *Pamela* is difficult to disentangle from that of Pamela—from her claims to, and her capacity for, credibility," which McKeon has astutely pointed out.[34] Although McKeon does not go on to explore credibility in the context of testimony, highlighting instead the novel's internal readers and textual documents, Pamela's credibility, and the novel's and author's reputation, in my terminology, are inseparable from testimony and this period's maxims on how probability tests to determine whether to believe what other people say should be conducted.

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[32] Eagleton, *The Rape of Clarissa*, p. 35.

[33] Ian Watt, *The Rise of the Novel: Studies in Defoe, Richardson and Fielding.* (London: Hogarth Press, 1987), p. 173; Leslie A. Fieldler, *Love and Death in the American Novel,* with a new afterword by the author (New York: Anchor Books, 1992), p. 63.

[34] McKeon, *The Origins of the English Novel*, p. 358.

In Richardson's novels, readers engage in credibility exercises which closely track the kind of judgments about other people's words that characters must make. Readers often have more information and access more perspectives than any single character, but their role is "more analogous to the partial, prejudiced activities of interpretation in which the characters are engaged," than the "privileged place of authority" of the implied author.[35]

Before attributing credibility to someone else, eighteenth-century maxims intoned that it was necessary to judge their cognitive and moral character. "Consider whether the Person who relates it be *capable of knowing the Truth*," as Isaac Watts instructed. For "plain, sensible matter of Fact," Watts allowed that to be an "*Eye* or *Ear-Witness*" sufficed. But if the matter required skill, consider "whether a man by his profession, [be] in a capacity probable, to judge of the truth of those things."[36]

Pamela sends decidedly mixed signals as to whether she is *capable of knowing* the truth and satisfying epistemic requirements. Testimony was successfully integrated into empiricist theory in the eighteenth century based on two reasons: the speaker had personal experience with the matters related and the listener had personal experience with the act of the testimony. Consequently, one person's direct experience of the testimony of another person's direct experience could produce knowledge (or a probability that approached knowledge which can be called belief) for the first person. Testimony troubled an empirical age because knowledge and experience were

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[35] Siobhan Kilfeather, "The Rise of Richardson Criticism," in *Samuel Richardson: Tercentenary Essays,* ed. Margaret Anne Doody and Peter Sabor (Cambridge: Cambridge University Press, 1989), p. 254.

[36] Meric Casauban, *Of Credulity and Incredulity, In things Natural, Civil, and Divine* ... (1668), p. 159, quoted in McKeon, *The Origins of the English Novel*, p. 84.

seemingly disconnected. The philosophy (and law) of testimony was devoted to accommodating empiricism by re-connecting knowledge and experience and designating which factors—the speaker's integrity, indifference, honesty, probity, and practical experience and the listener's ability to understand and evaluate those words—would be reliable components of that bridge between experience and knowledge.

Richardson, however, with Pamela, and to some lesser degree with Clarissa, endows the purported moral centers of the novels with dubitable and contradictory cognitive claims. If they could claim *knowledge* of what they talk about, their *experiences* would be expected to undercut their moral claims; if they had morality (chastity), they would not have knowledge enough for their cognitive claims. These often irreconcilable character traits plague Richardson's heroines and account for the contradictory ways that other characters and readers evaluate their credibility. The conflict between knowledge and experience was significantly influenced by preconceptions as to what women should and could know and experience. Clarissa, for example, has "knowledge *speculative*, . . . but no *experience*.—How should she?" (5.125). Lovelace here points to the problem of female virtue in an empirical world, where real experience is unthinkable for an unmarried female paragon of morality, but without it the speaking witness always has merely a controvertible claim to the epistemic traits a credible witness needs. She has only a "knowledge speculative," which preserves her virtue at the same time that it endangers her credibility, given the subject matter these two heroines must relate. Thus, Richardson is careful to have other characters attest to Pamela's and Clarissa's discernment and acuity. More actively, Richardson tries to ameliorate the problem of "knowledge speculative" by providing

experience without risk to each of these characters' virtue. He imperils his heroines with sexual dangers but protects them by allowing them to be unconscious (Pamela faints and Clarissa is drugged) in the attempted and completed rape scenes in *Pamela* and *Clarissa* respectively. Pamela, alluding to her confusion over the facts of one of Mr B's attempts, wonders, "what can I think, who was in a Fit, and knew nothing of the Matter?" (64), but "God . . . disabling me in my Faculties, enabled me to preserve my Innocence" (205). Thus, in order to preserve her morality, her epistemic capacity to narrate the facts is compromised.

John Allen Stevenson identifies the precarious way that Richardson tried to accommodate this paradox of knowledge and experience. "Richardson not only lends his heroines knowledge that they have not experientially earned, he also gives them experiences that they do not really know.... [T]hey know how much they have not experienced, but they have also experienced much that they do not know."[37] Stevenson calls this yoking "naïve wisdom" and "ignorantly experienced,"[38] but these phrases do not quite capture the epistemic and moral alloy which Richardson achieves in their character traits. As Mrs Jewkes snidely accuses, Pamela is as "innocent as a Dove, yet...as cunning as a Serpent" (138). Lovelace, a thoroughly "experienced" libertine, recognizes and concedes Clarissa has "quick apprehension" (6.191), accrediting her knowledge even though she lacks direct sensory experience, that is to say, *his* kind of experience, which he had previously thought to be the exclusive source of knowledge.

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[37] John Allen Stevenson, "'Never in a Vile House': Knowledge and Experience in Richardson," *Literature and Psychology* 34 (1988): pp. 7-8.

[38] Ibid. p. 7.

It is significant that even the anti-Pamelists seem to recognize the character's epistemic qualities. The joke of a Shamela turns on the conceit that the "real" Pamela is artful, greedy, and, as Lady Davers would say, slutty. That is, among the detractors who doubt her credibility, she falls short on moral, not cognitive, grounds. There are a few pointed incidents in *Pamela* in which Pamela is portrayed as *almost* a flighty female *Quixote,* who imagines terrors which do not exist, as for example when she aborts her escape because she sees bulls which turn out to be cows. Yet, it is Pamela who realizes her own mistake and confesses it. On the big issues, such as Mr B's intentions on the sexual and marital fronts, his own monologue here and again in *Pamela II* confirms Pamela's version of events as to his motives and plans (268-270, 316).[39] Mr B. insists on his authority but does not challenge Pamela's ability to see and comprehend facts and to narrate them into a reliable version of events. Further, on those occasions when Pamela repeats her story, she meets the philosophic criteria that subsequent tellings should be consistent with the first (408-409). Pamela is generally reliable in relaying sensory factual information, and generally astute when interpreting other people.

Indeed, Pamela's own abilities as an evaluator of other people's credibility are strong. She tells herself, "Things that we wish, are apt to gain a too ready Credence with us," and worries how the world will regard her "credulity" (252), but her concern seems misdirected. Pamela sounds markedly unconvincing to Mr B, and probably many readers, when she urgently tells Mr B she fears he will "take advantage of my

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[39] Richardson, *Pamela, or Virtue Rewarded* (1741), 4 vols. intro. William Lyon Phelps (1902; rpt. New York: AMS Press, 1970), vol. 3, letter xxx [*Pamela II*].

Credulity" (218), because she appears to be shrewd and discerning, and, for the anti-Pamelists, *too* knowing. Whereas Clarissa's goodness makes credulity at least a plausible moral failing in her character, Pamela does not seem susceptible to that mistake. Judged as an assessor of *other people's* credibility, Pamela excels; she has a knack of knowing whose words to believe, providing she has enough information by which to judge them. Although Pamela demurs she has had so "many Tricks, and Plots, and Surprizes, that I know not what to think," her letters belie this and suggest she knows just what to think. For example, when the "Gypsey" woman comes to the gate to give Pamela a message, she has only to look "most earnestly" at Pamela "as if she had Meaning" and Pamela divines the clue (223). It is more fitting to blame her for casuistry than gullibility. But, as if to penalize her for those cognitive skills, she is open to charges that she is herself not moral enough to be believed. In this context, especially for women and those outside the gentry, epistemic and moral qualities are integrally linked but not necessarily positively correlated.

For the moral component, the speaker should be "*honest* and *faithful*," but more troublingly for Pamela, the credibility apothegms directed that a speaker should have no "*Bias* upon his Mind, no *peculiar Gain* or *Profit* by believing or reporting it, no *Interest* or *Principle*, which might warp his own Belief aside from Truth, or which might tempt him to prevaricate, to speak falsly, or to give a Representation a little different from the naked Truth of Things."[40] These instructions from Isaac Watts, quoted in Chapter

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[40] Isaac Watts, *Logick: or The Right Use of Reason in the Enquiry After Truth, with a Variety of Rules to guard against Error, in the Affairs of Religion and Human Life, as well as in the Sciences*, 2d ed., corrected (London: John Clark and Richard Hett, 1726), pp. 268-270.

Two, are worth repeating here as a gloss on the Pamela controversy. Credibility ideas were complex, and the warnings here against speakers with an "interest in what they affirm,"[41] as Hume cautioned, could often be in tension with the advice, issued simultaneously, to believe a speaker more readily who has experience of the subject matter. Knowledge and experience not unreasonably result in the speaker having particular viewpoints. But it is only the "warping" presuppositions, through economic gains more than any other interest, which are targeted, suggesting how residual credit categories lingered on. Predispositions based on rational principles were good; biases and interests based on "gain or profit" were significant marks against credibility. Economical stability did not guarantee credibility, and was not synonymous with credibility, unlike the old credit system; however, the lack of economic independence could negatively affect whether a speaker was believed, providing the testimony's subject matter was one in which they could gain financially by convincing others what they said was true. The Shamela-esque casting of aspersions on a speaker's character by ascribing profit motives to her, with respect to the particular subject matter of the individual testimony being judged, therefore seriously undercuts the probability of others believing that person's word. Creditworthiness, in the economic and status sense, tenaciously lingers as one factor for assessing credibility.

Richardson is not able to capitalize on the credibility currency of a first-person point of view because it forces Pamela to attest to her own credibility credentials, which does more to undermine her worthiness to be believed than to enhance it. Actually

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[41] David Hume, *An Enquiry Concerning Human Understanding*, 2d ed. (1750), intro. and ed. Anthony Flew (La Salle, Ill: Open Court, 1988), section x, "Of Miracles," para 7, p. 146.

credible individuals, one might think, do not protest they are believable, and, since credibility is an attributive state, an individual's belief in his or her own truth or competence matters little. Unlike *Clarissa,* in which multiple correspondents write letters which circulate among many people, so that we can collate many people's viewpoints on a character's probity and honesty, and learn about credibility traits from other people, *Pamela* is almost entirely composed of Pamela's letters and an extended journal. Hence, the character Pamela has the awkward assignment of relating others' compliments about her beauty and wit and reporting her speeches asserting her lack of bias and her abundance of integrity, all the while that she is supposed to be unaffected by flattery and unreservedly pure in motive. So, we hear, *from Pamela*, that she has "put on no Disguise" (57), that she did fine needlework, according to her Mistress, who was a "good Judge of such Matters," (76), that she was paid fawning compliments from the lecherous Sir Simon, and how the rest of the party was "full of my Praises; so that they could hardly talk of any thing else" (287); how she has "every Accomplishment of her Sex" (298); and was a "sweet Exemplar" (410). Kinkead-Weekes calls the jarring combination of an apparently humble character complacently relating her own praise a "technical failure." The technical failure, he appropriately concludes, arises from the single narrative focus, which put Richardson's technique and intention at odds.[42]

These "flatulent compliments . . . blandly report[ed]," as Eagleton phrases it,[43] could be passed off as the youthful exuberance or insecurities of a young teenager rather than narcissism or greed; nevertheless, it makes it more difficult to affirm her integrity

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[42] Kinkead-Weekes, *Samuel Richardson: Dramatic Novelist*, pp. 64-65.

[43] Eagleton, *The Rape of Clarissa*, pp. 35-36.

and prudence. With the first-person narrative structure, this kind of information cannot be put in front of the reader without resorting to having the character sing her own praises. Further, in order for Pamela to learn the information, she reports things people "let [her] hear to say" (456), which calls up unflattering images of Pamela stooping to eavesdrop and lingering in doorways unannounced. Richardson's attempts to include credible testimony of Pamela's positive attributes have trouble getting past the reader's self-consciousness that it is *Pamela* who tell us about herself. Thus, when the newly married Pamela savours "the Pleasure of hearing many Commendations, as well of my Person, as my Dress and Behaviour, and not one Reflection, or Mark, of Disrespect" (488) by the congregants at two church services, the church setting does less to increase the (reported) speaker's credibility and more to raise questions as to how Pamela hears it and why she reports it. That she is vain and proud is a rational response for internal and external readers to have to the presentation of this information, forcing Pamela to acknowledge the potential accusations so that she can deny them (497).

Pamela readily admits she dissembles and dissimulates, on occasion, but, as she defends herself, her "Deceit intended no Hurt to any body" (122). By contrast with Clarissa, whose "my father's house" lie is so memorable because so rare, Pamela's commitment to veracity is much less absolute. Yet, since this story is entirely in her "own words," we paradoxically know she lies because she tells us and we believe her. Readers follow her through all her dissimulations, then hear her protest how it is so "hard I can neither stir, nor speak, but I must be suspected" (138). Rather clumsily, Pamela's credibility is hurriedly shored up by Mr B who attests she has a "great Regard to Truth" despites all her "Arts, Shifts, and Stratagems," and "in all your little Pieces of

Deceit, told very few wilful *Fibs*" (233) . Such testimonials, supposedly on Pamela's behalf by people who are less than credible and whose statements we learn only *through Pamela*, contribute to how potently persuasive a figure Shamela was.

Pamela is such a puzzling character to assess credibility for because of the perplexing status of the evidence and presentation in *Pamela.* Pamela is not a romantic character who suffers from delusions like the *Female Quixote*. It would be *possible* to argue we should doubt whether anything of what she tells us can be used to support her credibility since almost all the evidence we have comes from her; but that would not be faithful to the tenor of the novel. The editor, after all, proclaims her "signal *Veracity*, which she never forfeited . . . and the Innocence she preserved throughout all her Strategems and Contrivances" (502). This last minute appeal is not entirely convincing of her credibility, yet it does indicate Richardson's *intentions*. Bernard Kreissman remarks, there is "no other way of explaining Pamela completely and consistently," except to accept the "strange idea" that Richardson wrote the opposite of what he intended.[44]

Maybe more precisely, the credibility evidence that Richardson imparts probably came close to his intentions, since it states, often too baldly, how capable and moral Pamela is; however, the presentation of this evidence undermines how this credibility information is received and evaluated, especially by readers. The first-person point of view, as the following chapter addresses in more detail, was valued in the eighteenth century because it presented people's testimony in their "own words." But in *Pamela*, the first-person technique actually *filters* information through additional

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[44] Kreissman, *Pamela-Shamela*, p. 44.

speakers. Pamela reports a good deal of testimony that is not her own, but to which she does claim to be an ear-witness. In addition to the epistemological problems that this introduces, it also undermines Pamela's own credibility when she comes to reporting speech that is her own. The moral character flaws introduced by the narrative necessity that she attest to her own morality end up decreasing her morality and makes us less likely to believe what she says.

Pamela is not *The Good Soldier* or *The Turn of the Screw*, which take the *inability* to know about other people as their subject and tease the reader with unreliable narrators or narrators whose uncertain and unknowable credibility is the *raison d'être* of the novel. Pamela was supposed to be a credible character. The credibility problem stoking the Shamela controversy is less catastrophic but in many respects more problematic for the realist first-person point of view novel. *Pamela* is a sincere but partially flawed attempt to represent through first-person point of view a character who is credible. One can generalize that we believe what Pamela reports she sees and believe her interpretations of other people, but we are less willing to assent to what she says about her own motives. There is not enough, or at least not the right kind, of evidence to believe Pamela—with reason. Leslie Fieldler's observation of the "*almost* unconscious duplicity" fits Pamela so well that it is easy to miss that he is referring here to *Pamela*, the *story's* duplicity: "The 'almost' is the secret of Richardson's deepest appeal: he knows really what Pamela is after all along, knows her for the female Ben Franklin that she is, though he does not quite know how he knows it; this happy state of quasi-insight (he never falsifies the hidden motivations of his protagonists) he shares

with his heroines and the readers who identify with them."[45] Pamela is "forced by … textual exigencies to act suspiciously," as Eagleton astutely notes; whereas he points to class ideologies as the culprit, and defends Pamela by asserting she is "both realist character and bearer of Richardson's ideological project of integration with the gentry," I point to the fact that she is both realist character and part of a larger cultural epistemological and hermeneutic project on credibility norms.[46] To return to McKeon's insight, Pamela's credibility and the novel's epistemological status are entangled. Pamela was supposed to be credible, and, as the next chapter discusses, the first-person point of view should have carried a powerful cultural currency. Narratives "in your own words" were set up, both by empiricism and law, to be marked with cultural indicia of credibility. But Pamela's credibility was undone by the single point of view which forces this character to attest to her own character.

By *Pamela II*, or *Pamela; . . . In Her Exalted Condition,* Pamela's credibility issues are more stable. Richardson relies on more epistolary correspondents' points of view, as he does in *Clarissa*, to convey Pamela's moral and epistemic qualities. The following chapters further examine how point of view and other formal measures were used to convey evidence about credibility and increase facility with interpretation. Eighteenth-century novelists turned to formal devices such as point of view and forensically-inspired "trials" of characters' credibility. These efforts, I argue, distinguished the eighteenth-century novel from preceding prose narratives by courting rather than coercing readers' assent, in the same way that the shift from credit to a full

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[45] Leslie A. Fieldler, *Love and Death in the American Novel,* pp. 63-64.

[46] Eagleton, *The Rape of Clarissa,* p. 35.

qualitative credibility system allowed the instructed jury to evaluate individual witnesses rather than coerce witness into existing category types. Whereas this chapter has focused on whether a character is interpreted *as* credible, the following chapters also turn to the issue of the character as an interpreter *of* credibility. Characters function in part as proxy readers who interpret other characters' credibility and, like readers, are seeking a golden mean between credulity and censoriousness in their judgments of other's credibility. Characters are both objects of belief as well as subjects interpreting belief.

Chapter Six: In Your Own Words: Legal and Literary Point of View and the Technology of Credibility

During the eighteenth century, criminal defendants typically served as their own advocates and factual witnesses, victims served as prosecutors, and lawyers were restricted to cross-examination and points of law. In 1836, England's Parliament passed the *Prisoners' Counsel Act*, which granted felony defendants the right to have a "full" defence at their trials (6 & 7 Wm. 4, c. 114).[1] Before this legislative reform, felony defendants had been restricted in their use of counsel at trial. Over the course of the eighteenth century, judges had gradually permitted lawyers to assist defendants by arguing points of law and examining and cross-examining witnesses, but the testimonial function of relating the facts directly to the jury had to be done personally by the defendant. The 1836 reform was preceded by lengthy Parliamentary debates beginning in the 1820s, but the rule had been attacked as being unjust from the eighteenth century.

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[1] Legal historians have focused primarily on how this legislation affected the lawyers' role in the courts and advocacy and adversarial practices. My interest is in how this legislation affected the public's perception of the value of testimony and credibility testing practices. On the *Prisoner's Counsel Act*, see J.M. Beattie, "Scales of Justice: Defence Counsel and the English Criminal trial in the Eighteenth and Nineteenth Centuries," *Law and History Review* 9 (1991): pp. 221-267; David J.A. Cairns, *Advocacy and the Making of the Adversarial Criminal Trial* (Oxford: Clarendon Press, 1998); J.B. Post, "The Admissibility of Defence Counsel in English Criminal Procedure," *Journal of Legal History* 5 (1984): 23-32; J.A. Hostetler, "Counsel for the Defence," *Anglo-American Law Review* 11 (1982): 74-88; Allyson N. May, *The Bar and the Old Bailey, 1750-1850* (Chapel Hill: University of North Carolina Press, 2003), esp. chaps. 7 and 8. In literary criticism, Jan-Melissa Schramm studies the *Prisoner's Counsel Act* in relation to Victorian fiction and compares the Victorian author's storytelling and advocacy roles to the professional legal advocate's. *Testimony and Advocacy in Victorian Law, Literature, and Theology* (Cambridge: Cambridge University Press, 2000).

Partridge in *Tom Jones* (1749) "thought [it] a little hard, that the Prisoner's Counsel was not suffered to speak for him" while the prosecutor's counsel could speak against him.[2] Only defendants in a specific range of criminal offenses were prohibited from having lawyers tell the facts of their experiences to the jury: defendants in trials for civil disputes, and in criminal trials for misdemeanors, less serious than felonies, and treason, the most serious felony, did not have that disadvantage. Moreover, neighboring countries' procedure did not impose this same limitation on their defendants. In the description of Effie's trial in Scott's *Heart of Midlothian*, the narrator commends the "humanity of the Scottish law" in this respect because it "not only permits, but enjoins," lawyers "to appear and assist with their advice and skill all persons under trial."[3] Those in favor of full representation for felony defendants argued that truth and fairness were undermined by these procedural discrepancies between courts and crimes.

After the *Prisoner's Counsel Act* legislation passed in 1836, defence counsel took up the defendant's former responsibility of addressing the jury on the facts and the defendant's own speaking role, for those who could afford counsel, virtually disappeared. A garrulous Moll Flanders in the Old Bailey, who "insisted" and "pleaded" with the court, corrected witnesses, and had "time to say all that [she]

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[2] Henry Fielding, *The History of Tom Jones: A Foundling* (1749), Wesleyan ed. of the Works of Henry Fielding, ed. Fredson Bowers, with an introduction and commentary by Martin C. Battestin ([Middleton, Conn.]: Wesleyan University Press, 1975), book I, chap. 11, p. 459.

[3] Walter Scott, *The Heart of Midlothian* (1818), ed. Claire Lamont (Oxford: Oxford University Press, 1982), chap. 21, pp. 213-214.

would,"[4] contrasts sharply with a taciturn Fagin, a century later, standing in the Old Bailey courtroom like a "marble figure," who looks at his counsel in "mute appeal" and breaks his silence only to mutter three times in a whisper that he was an old man when asked if had "anything to say."[5]

In *Caleb Williams*, Forester alludes to these heavy testimonial demands on eighteenth-century defendants, advising Caleb to "[r]eserve what you have to say to the proper time...This is what self-defence requires from every man where, as it always happens to man upon his trial, he has the whole world against him, and has his own battle to fight against the world."[6] At the home trial, Forester calls it the "privilege of the party accused to say whatever he thinks proper" and promises Caleb will "enjoy that privilege in its utmost extent."[7] Godwin not surprisingly suggests the inequity in this system of justice. The speaking demands on the parties throughout the eighteenth century are more realistically cast as presenting defendants, and to a lesser extent, complainant-prosecutors, with a Hobson's choice to speak or leave the facts of their story untold, rather than a "privilege" that parties would "enjoy." Godwin cynically identifies the sly invitation held out to defendants who were forced to speak for themselves, with Mr. Forester's sage advice to Caleb to "Make the best story you can

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[4] Daniel Defoe, *Moll Flanders* (1722) ed. and intro. David Blewett (London: Penguin, 1989), pp. 361-363.

[5] Charles Dickens, *Oliver Twist* (1838) ed. Kathleen Tillotson (Oxford: Clarendon, 1966), chap. 52, pp. 358-360.

[6] Godwin, *Caleb Williams,* 162-163.

[7] Ibid., p. 169.

for yourself; true, if truth, as I hope, will serve your purpose; but, if not, the most plausible and ingenious you can invent."[8]

But eighteenth-century trial procedures which relied on the parties to tell their own facts were epistemologically driven by a credibility appraisal system that was built on conveying sensory information from the person who experienced the facts of the testimony. The *Prisoner's Counsel Act* is usually addressed as one chapter in the story of increasingly adversarial trials, thus as an issue of lawyers and advocacy, rather than juries and credibility. But "full defence" raises issues of cultural confidence in juries, readers, and people generally to interpret testimony and witnesses, and of the epistemological reasons for maintaining allegiance to a system that prefers testimony in "your own words."

The proposal to allow defence counsel to present the facts to the jury, vetted and debated in the first quarter of the nineteenth century, was provocative because it threatened to undermine an established design of the trial by jury and one that was central to validating the jury. As Staunford in the sixteenth century, Pulton in the seventeenth century, and Hawkins in the eighteenth century insisted, when the defendant speaks on his own behalf, his "gesture wil shew some tokens thereof, or by his simple speeches somewhat may be drawne from him to bolt out the veritie of the cause," and "the very Speech, Gesture, and Countenance, and Manner of Defence of those who are Guilty, when they speak for themselves, may often help to disclose the

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[8] Ibid., pp. 162-163.

Truth."[9] Indeed, as Hale said of all witnesses, jurors have "full information" only through live testimony because there are "great opportunities" to discover truth in a testifying witness's "appearance".[10] The defendant reveals information that is essential for the jury to see and hear in order to evaluate credibility and that could not be discovered from the "artificial Defence of others speaking for them."[11] Demeanour information was assumed to be, as Thomas Reid would theorize, involuntary, inevitable, and uncontrollable.

In the eighteenth century, the trial system was theoretically committed to this relationship between the physical and the internal, and the idea that this relationship could be appreciated by jurors; the theory was that somatic information could not help but be leaked by the defendant and the jurors could penetrate this meaning, not merely as an indicator of the witness's *character*, but of the witness's *credibility,* evaluating both epistemic and moral traits in a localized context. The trial design, by the eighteenth century, had incorporated pathognomic ideas for assessing character and extended, and modified them, to apply to credibility. The effect of this theory of knowledge and interpretation was to privilege the norm of "speaking for yourself," both

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[9] Ferdinand Pulton, *De Pace Regis Et Regni* (London, 1609; rpt. London: Professional Books, 1973), pp. 192-193; William Hawkins, *A Treatise of the Pleas of the Crown or a System of the Principal Matters relating to that Subject, digested under their proper Heads,* 2 vols. (London, [1716-21]; rpt. London: Professional Books, 1973), vol., p. 401. Hawkins's explanation still had resonance in 1835 when it was cited by the committee writers for the *Second Report from His Majesty's Commissioners on Criminal Law* as the paradigmatic reasoning of those who were in favour of continuing to require defendants to present their own facts to the jury. *Second Report from His Majesty's Commissioners on Criminal Law: Parliamentary Papers* (1836), 36: 192 [6].

[10] Matthew Hale, *The History of the Common Law of England* (1713) ed. and intro. Charles M. Gray (Chicago: University of Chicago Press, 1971), pp. 163-164.

[11] Hawkins, *A Treatise of the Pleas of the Crown,* vol. 2, p. 401.

from the recipient's perspective, because it elicited valuable information relative to judging, and from the subject's perspective, because first-person testimony could be verified as credible.

However, doubts circulated in the eighteenth century questioning demeanour's accuracy as an indicator of credibility and people's ability to interpret demeanour correctly. Murphy, Fielding's attorney in *Amelia*, predicts "Beauty will go a great way with the Judge and the Jury too," intimating that fact finders are hermeneutically blinded by physical appearance.[12] Sceptics wondered whether the signals defendants sent out while testifying might be corrupt: eloquent, and practised, guilty criminals could seem innocent, and the sputtering, fear-struck, innocent accused could seem guilty. The conceit that the defendant was his own best spokesperson was attacked as early as the Parliamentary debates over the 1696 Treason Trials Act, which extended full defence to defendants accused of treason, with a dramatically enacted and premeditated performance by one lord who stuttered through a speech before Parliament and then cited his own falterings as evidence for the even greater paralysis that would impair an anxious defendant.[13] By the first quarter of the nineteenth

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[12] Henry Fielding, *Amelia* (1752), ed. Martin C. Battestin, Wesleyan ed. of the Works of Henry Fielding, (Oxford: Clarendon Press, 1983), p. 64.

[13] Thomas B. Macaulay, 8 *The History of England* (Leipzig, 1855), pp. 106-107, quoted in Felix Rackow, "The Right to Counsel: English and American Precedents," *William and Mary Quarterly*, 3d ser., 11 (1954): 10-11. "'How can I, Sir,' said the young orator, recovering himself, 'produce a stronger argument in favour of this bill than my own failure? My fortune, my character, my life, are not at stake. And yet, from mere nervousness, from mere want of practice in addressing large assemblies, I have lost my recollection: I am unable to go on with my argument. How helpless, then must be a poor man who, never having opened his lips in public, is called upon to reply, without a moment's preparation, to the ablest and most experienced advocates in the kingdom, whose faculties are paralyzed by the thought that, if he fails to convince

century, sentiments such as those advocated in an 1827 *Edinburgh Review* article, complaining defendants are "utterly unable to tell his own story from want of words and want of confidence," were prevalent: "can an ignorant man find words?—can a low man find confidence?—can he believe that his expressions will be understood?"[14] Attacks coalesced around both the epistemological and interpretive grounds that had supported the requirement for defendants to speak for themselves. Hawkins's models of an open scrutable defendant and a capable explicating juror were undermined by suspicions that defendants could cheat and fail and that jurors would not know the difference. Thus, as part of the 1820s round of Parliamentary debates, one member speculated "an innocent man, without talents, without address, without so much ability as would enable him to make that innocence clear and manifest to a jury, might be convicted; whilst the plausible, crafty, clever delinquent, by the force of his ingenuity and his talents, might hope to escape the punishment due to his crime."[15] If, as Lovelace contends, the "guilty…in every case, less patiently bear the detecting truth, than the innocent do the degrading falsehood" (2.389), then jurors receive a confusing array of credibility indicia.

The accuracy of the body-mind connection that supported credibility evaluations was explicitly discussed in this legal policy context of debating whether defendants

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his hearers, he will in a few hours die on a gallows, and leave beggary and infamy to those who are dearest to him.'" See also, Beattie, *Crime and the Courts in England*, p. 358, giving additional examples of late seventeenth-century derision of the idea that amateur self-defences were tenable and concluding the opinions were advanced, but the sentiment was widely shared in 1689.

[14] [Sydney Smith], "Stockton on the Practice of not allowing Counsel to Prisoners accused of Felony," *Edinburgh Review* 45 (1827): pp. 77, 85-86.

[15] *Hansard Parliamentary Debates,* 2d ser., vol. 11 (1824), col. 202-203.

should continue to be required to address the jury personally or should be able to have a lawyer present a more eloquent, but potentially, too artful, version. Interestingly, both sides of the debate were trying to resolve the same hermeneutic problem: jurists and Parliamentarians were worried that the feint could be played either by defendants who might bluff the jury with an artificial spontaneity *or* by lawyers who might seduce the jurors with their professional arts of eloquence. Where these concerns converged was in similarly worrying that jurors would be fooled.

Whether untrustworthy people could assume indicia of credibility and trick others into imputing credibility to them was a nagging question pertinent to any inquiry that relied on testimony. Although the nineteenth century debated the epistemological and hermeneutic questions explicitly as applied legal issues, in the context of deciding whether to allow defendants to have professionally mediated testimony, the eighteenth century debated these questions in part as applied literary issues, in the context of defining the generic parameters for the novel, and how well readers could interpret characters' credibility. Jurors and readers were tightly linked, as Chapter Four discusses, serving as two representatives for the "middling class's" abilities to evaluate other people, when testifying, and to weigh whether their own experience could be enlarged by other people's experiences and knowledge.

Simon Schaffer remarks how there "seems to be an important connexion between changes in the concept of evidence and that of the person capable of giving evidence."[16] His insight can be applied to the connections between legal and literary credibility strategies formalized through point of view devices. The novel, like the trial,

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[16] Simon Schaffer, "Self Evidence," *Critical Inquiry* 18 (1992), p. 327.

has technologies of proof, which reflect the era's epistemology, in particular the narrative device of point of view, which favors perspectives that allow speaking characters to be evaluated. The novel incorporated the idea that receiving testimony from live speakers, as one does in court, is a good source of information and allows the reception of testimony to be an empirical experience.

First-person point of view, because it was theorized to elicit more clues to credibility, was perceived as more believable.[17] Novels played out the complicated wishes of "good characters" to tell their own story but fears that they would not be interpreted correctly (that anxiety is doubled by the authors warily watching readers), and of "bad characters" who revel in telling their own story and anticipate that they will fool their audience (that wish is exploited by authors). Ingenuous and scheming characters alike want to tell their own stories to conform to, or capitalize on, the cultural capital that forensic procedures had invested in the first-person norm. Clarissa genuinely pays homage to the norm, thanking Anna for the "opportunity" to "tell my own story" (*Clarissa* 1.25), and pleads to speak to her father because she suspects that traps are laid "on purpose to make a handle of my words against me when I am not permitted to speak in my own defence" (1.146). She alludes to the accused's "opportunity of defending myself," not only recalling the forensic choice to speak or have the defence left unsaid but also endorsing the epistemological theory (2.21). The other characters support this preference for first-person narratives, clamouring like Mrs Norton to hear Clarissa's story "from [Clarissa's] own lips" (8.33). By contrast, in the

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[17] This view can also be seen as a context for Richardson's earnest attack (through the Reverend Brand character) and Pope's and Swift's satirical attacks on those works in the eighteenth century that were still fulsomely quoting authorities.

preface to *Roxana* Defoe exploits this epistemology, while ironically undermining it, by claiming that as Roxana "told it herself, we have the less Reason to question the truth."[18] Thus when Lovelace aphoristically recommends, "It is much better to tell your own story when it must be known than to have an adversary tell it for you" (6.215), there are hints of the strength and weakness of this mode of preferring first-person points of view. Those who speak for themselves benefit from an established correlation between first-person point of view and credible testimony, but first-person narratives are not alone enough to warrant assent. When people relayed their own story they were peculiarly able to give information about their credibility, according to the prevailing theory of knowledge; but people were also peculiarly partial to colouring their own story favourably, "glossing over one part of a story, and omitting another" (*Clarissa* 7.314). Accordingly, readers had to be vigilant to parse first-person narratives and carefully assess characters' credibility and characters have to be careful when evaluating other people's testimony. Fielding, similarly to North's caution to jurors to "try not the grammatical construction" but "persons," observes one of the two causes of our mistakes in forming "very erroneous Judgments of Men, even while their Actions stare us in the Face, . . . is when we take their own Words against their Actions. . . . [M]any a credulous Person hath been ruined by trusting to the Assertions of another, who must have preserved himself, had he placed a wiser Confidence in his Actions" because "Actions are their own best Expositors" when we "take the Colour of a Man's

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[18] Daniel Defoe, "Preface," *Roxana, or the Fortunate Mistress* (1724).

Actions . . . from their own visible Tendency."[19] Likewise, people must carefully evaluate credibility and not be satisfied with the words alone.

Readers were facing the same challenge that jurors newly faced, selecting among witnesses who speak with some institutional imprimaturs of credibility (oaths, first-person point of view), leaving jurors and readers to select among witnesses who all claim a threshold of credit and to assign *degrees* of credibility. With multiple first-person narrators, witnesses can conflict, just as in the trial, and readers (and characters), like jurors, must be able to assess whether a speaker is credible, without relying merely on the fact that the point of view is in first person. Multiple first-person testimony is unlikely to all be true, and any single narrator could be telling at least a partial truth, placing readers and jurors in the position of deciding whether to accept parts of narratives and combine bits from several narrators.[20]

Every witness's story is selective and self-interested. Judge North, at a late seventeenth-century treason trial, exhorted that "no man would ever be guilty, if his own purgation by words were to be believed," "[f]or every man will say he is an honest man."[21] As the narrator in *Tom Jones* phrases this weakness:

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[19] Fielding, "An Essay on the Knowledge of the Characters of Men," p. 163.

[20] One of the best examples of an epistolary novel which actually exploits the possibility that only some of what multiple correspondents say should be credited is *Humphry Clinker*. On epistolary fiction and point of view, see generally, Thomas O. Beebee, *Epistolary Fiction in Europe 1500-1800* (Cambridge: Cambridge University Press, 1999); Janet Gurkin Altman, *Epistolarity: Approaches to a Form* (Columbus: Ohio State University Press, 1982). On point of view generally see, Wayne Booth, *The Rhetoric of Fiction* (Chicago: University of Chicago Press, 1961); Booth, "Distance and Point-of-View: An Essay in Classification," *Essays in Criticism* 11 (1961): 60-79.

[21] *Rex v. Stephen Colledge*, 8 Howell's State Trials (1681), pp. 625 and 681.

> For let a Man be never so honest, the Account of his own Conduct will, in Spite of himself, be so very favourable, that his Vices will come purified through his Lips, and, like foul Liquors well strained, will leave all their Foulness behind. For tho' the Facts themselves may appear, yet so different will be the Motives, Circumstances, and Consequences, when a Man tell his own Story, and when his Enemy tells it, that we scarce can recognize the Facts to be one and the same.[22]

Clarissa likewise ruefully remarks, "I fancy, my dear, however, that there would hardly be a guilty person in the world, were each suspected or accused person to tell his or her own story and be allowed any degree of credit" (1.227), and Anna wryly agrees that while Lovelace "tells his own story....who can say that the man is in the *least* blameworthy?" (1.228). Clarissa's strategy for this flaw, when she oversees what will be the posthumous collection of letters telling her story, is to seek out first-person testimony from multiple witnesses, including Lovelace, so that readers can weigh the limited experiences and perspectives, assess degrees of credibility, and judge the facts. Lovelace's strategy, by contrast, is to monopolize the story, reasoning, "But yet I am as good a man as he, were I to tell my own story, and have equal credit given to it" (4.276); he recognizes the two parts of the equation: telling his story *and* having "equal credit" attributed to him as to any other witness, but is confident he will be interpreted as credible.

First-person point of view, by requiring people to speak on their own behalf, not only raises the potential for listeners to be duped but also for speakers to be

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[22] Fielding, *The History of Tom Jones*, p. 420.

misunderstood. Clarissa anticipates the concerns that would be vocalized decades later by Sydney Smith in the *Edinburgh Review*— "can he believe that his expressions will be understood"—worrying whether credibility attributions will be reasonable. She is disquieted to consider the "many truly modest persons (putting myself out of the question) who, by blushes at an injurious charge, have been suspected by those who cannot distinguish between the confusion which guilt will be attended with, and the noble consciousness that overspreads the face of a fine spirit, to be thought but capable of an imputed evil" (3.284). Clarissa frets about all the permutations this problem might assume: other people might not attribute credibility to her, and she could too credulously or too censoriously judge others. Just as the witness is inevitably compromised by self-interest and partiality, so too is the interpreter compromised by partiality and imperfect knowledge; "every man and woman judges by what each knows of him or herself" (4.57), caught, like the King of Siam, by the limits of personal experience, and "are all very ready . . . to believe what we like" (4.290). Miss Gibson, Sarah Fielding's representative speaker in *Remarks on Clarissa*, regrets how the "Characters even of those Persons who do not endeavour to wear any Disguise are so very liable to be mistaken; for Partiality or Prejudice generally sit as Judges." As she details, credulity and censoriousness haunt credibility evaluations because when "Partiality . . . mount[s] the Judgment-seat," we "express that Goodness in another, which our own fluctuating imaginations only have erected," and when Prejudice judges, we "vary Expressions to paint that Wickedness which we are resolve to prove inhabits the Mind we think proper to condemn."[23]

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[23] Sarah Fielding, *Remarks on Clarissa, Addressed to the Author. Occasioned*

Those who "art adept in the pretended science of reading men" will scrutinize "every motion and action, and every word and sentiment," as the philosophy of testimony guides them to do (*Clarissa* 7.80). But Lovelace cynically accuses them of doing so only for the misguided reason of confirming their first facile unfavourable impressions, and both Lovelace and Clarissa predict these negative judgments usually will be right (7.80, 8.275-276). Clarissa agrees that "prejudices in *disfavour* of a person . . . fix deeper, and are much more difficult to be removed *when* fixed" (7.276). She clarifies that people are limited by their own character, by pointing to the evidence, the opposite of what Lovelace fixes on, of an innocent person who is apt to judge of the "integrity of others' hearts by its own" (7.133), a Heartfree, Clarissa, or Hartley. One could also point to how good characters are vulnerable to the biases negatively colouring others' perspectives and may be misjudged as an object of credibility evaluation. These examples of Lovelace's and Clarissa's, whether from the perspective of a paragon or cad, idealist or cynic, or credibility's subject or object, highlight the dangers of credulity and censoriousness.

There was a great deal of anxiety about jurors' discretion and their interpretive abilities to resolve this hermeneutic puzzle of weighing and selecting among testimonies. "Hereby it appears there is a great Latitude for a Jury, they may say they beleev or doe not beleev in any Case, & concerning any Witnesses," judge Francis North explained. "Therefore it is not to be wondred at, where they are p[re]possessed or have any partiality, whether it be for gaine for fear or upon any other score [tha]t

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by some critical Conversations on the Characters and Conduct of that Work. With Some Reflections on the Character and Behaviour of Prior's Emma (London: J. Robinson, 1749), p. 14, rpt. Numbers 231-232, Augustan Reprint Society, intro. Peter Sabor (Los Angeles: William Andrews Clark Memorial Library, 1985).

Innocent men are sometimes Condem=ned & Guilty Men escape. Facile credimus quod volumus. This shews [th]e Great danger of fals Witnesses, for if [th]e p[ar]ty accused be not of a good Name, if he has Enemys, if he be antipopular, he will be in great danger."[24] That same concern underlay characters' own uncertainties about their abilities to evaluate other characters.

Characters (and readers) are being calibrated, through this credibility process, to a mean between credulity and scepticism. Clarissa wavers between confidence in, and doubt of, her ability to evaluate other people. While at Harlowe Place, Clarissa concludes she "should easily, I think, detect an hypocrite" (1.221), but also vows to "construe everything that happens, *capable* of a good construction, in that person's favour" (3.289), moderating perspicacity to avoid censoriousness. She can be said to be following Joseph Butler's advice to evaluate credibility carefully but to default in belief, and Jeffrey Gilbert's legal guideline that "every body should be supposed to swear the truth, and no man shall be intended to swear a manifest perjury; therefore that construction shall be taken that would make [conflicting witnesses] agree."[25] Aware that this balancing is a probabilistic rather than flawless heuristic process, Clarissa is concerned to find a *via media* between censoriousness and credulity. She blames herself for her "readiness to give severe censures" and vows to "make it a rule . . . never to judge peremptorily on first appearances" (3.311). Clarissa's concerns are

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[24] Francis North, British Library Additional MS 32518 at ff 152v -153r, reprinted M. McNair "A Fragment on Proof by Francis North, Lord Guilford," 8.1 *Seventeenth Century* (Spring 1993): 143-148, at p. 143.

[25] Joseph Butler, *The Analogy of Religion Natural and Revealed to the Constitution and the Course of Nature* (1736) intro. Henry Morley (London: Routledge, 1894), p. 236; Gilbert, *The Law of Evidence*, p. 140.

characteristic of this period; she sounds, for example, as if she were very much aware of the philosopher's Edward Stillingfleet's caution in *Origins Sacrae* (1662), that "few in the world look after truth with their own eyes," and instead "make use of spectacles of others making, which makes them so seldom behold the proper lineaments in the face of truth; which the several tinctures from education, authority, custom and predisposition do exceedingly hinder men from discerning of."[26] Similarly, Clarissa promises herself that she will make allowance for the surface deception of differences in education and constitutions. To borrow Stillingfleet's apt language, Clarissa could be described as vowing to keep credibility's personified image of the "face of truth" foremost, preferring to be mistakenly credulous than mistakenly censorious. She defers accusing Lovelace because, like Heartfree, "[c]ensoriousness...is not *naturally* my fault," and she delights to "draw favourable rather than unfavourable conclusions" (5.198), as Gilbert had advised. Lovelace, too, endorses, indeed, indulges in, the juristic guideline for evaluating credibility by directing Belford, "if two constructions may be made of my actions thou wilt afford me the most favourable" (5.307).

This balancing act between the propensity to believe too quickly or too slowly is the same balancing act that Richardson sees as between knowledge and experience. Knowledge and experience affect both the ability to have one's testimony believed and the ability to interpret whether other people's testimony merits belief. Lovelace asserts Clarissa has "knowledge *speculative*...Knowledge by theory only," which "as often misleads the doubting mind as puts it right" (5.125-126), and Clarissa chastises herself for not being "wise in time" (7.138) and learning from the vicarious experience of

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[26] Edward Stillingfleet, *Origins Sacrae* (London, 1662), p. 7.

others. But too much personal experience, the novel suggests, can tip a Clarissa into a Sally or Polly. Lovelace intimates as much by threatening that those who rail against rakes should do so with "*judgment* and *knowledge,*" and targeting the "*precept-givers* and *example-setters*" whose "whipped-syllabub knowledge" lacks "experience" (5.308-309).[27]

Lovelace credits Clarissa with being a "most penetrating lady" (3.302), wonders at her "quick apprehension" on "hints so dark" (6.191), and concludes simply, "CREDULITY, she has none" (4.50); Anna concurs, noting Clarissa's "penetrating and vigilant eye" (4.80); and Belford remarks Clarissa is "not to be made to suffer from credulity, nor for want of wit and discernment" (4.315). Clarissa, with experience and knowledge, grows more assertive about her credibility evaluations, but the increased confidence does not necessarily suggest that Richardson thought experience heightened Clarissa's *ability,* or would have been necessary but for the extraordinary perfidy to which she was exposed (although Anna is subtly sceptical that the situation is distinguishable in any way from expected courtship and seduction strategies except in Clarissa's refusal to capitulate [6.175-176]). It is better to be prudent by "*constitution* than *experience,*" as Morden distinguishes (7.302). Clarissa intuits Lovelace's impersonators' false characters, notwithstanding their artfulness, if we believe her retrospective letter that they fell short of her expectations (6.151-154). She astutely doubts the syllogism that appearance is an *infallible* indicator of internals. Clarissa restrains her suspicions only because she is more afraid of being censorious than

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[27] On knowledge and experience as moral rather than epistemological issues in Richardson's novels, see John Allen Stevenson, "'Never in a Vile House': Knowledge and Experience in Richardson," *Literature and Psychology* 34(1988): 4-16.

credulous, and ultimately absolves herself, concluding she did not suffer from a want of "credulity" (6.127 and 7.260).

Character and character concerns, which replicate the defendant and jury concerns, also ramify out to destabilize the reader and novelist relationship. Eighteenth-century authors not uncommonly worried that people would not be able to interpret character, and were plagued by the corollary anxiety that their readers would not be able to interpret their novels' characters (as happened with Pamela). Richardson's increasingly pedantic and frantic footnotes from the 1747 to the 1751 editions instructing readers how to read his characters, and Fielding's controlling narrator in *Tom Jones*, are more elaborate hand wringing about readers' credibility abilities applied directly to the novel and are typical of this period's cultural anxiety about credibility.[28]

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[28] On Richardson's revisions of *Clarissa,* the effect of contemporary readers' reactions, and publishing history, see T.C. Duncan Eaves and Ben D. Kimpel, "The Composition of *Clarissa* and Its Revision Before Publication," *PMLA* 83 (1968): 416-428; Shirley van Marter, "Richardson's Revisions of *Clarissa* in the Second Edition," *Studies in Bibliography* 26 (1973): 107-132; van Marter, "Richardson's Revisions of *Clarissa* in the Third and Fourth Editions," *Studies in Bibliography* 28 (1975): 119-152; M. Kinkead-Weekes, "*Clarissa* Restored?" *The Review of English Studies* 10 (1959): 156-171; Florian Stuber, "On Original and Final Intentions, or Can There Be an Authoritative *Clarissa*?" *TEXT* 2 (1985): 229-244; Tom Keymer, "Clarissa's Death, *Clarissa*'s Sale, and the Text of the Second Edition," *The Review of English Studies* 45 (1994): 389-396; Peter Sabor, "Introduction: 'Above All Fears of Prolixity,'" to *Letters and Passages Restored from the Original Manuscripts of the History of Clarissa, 1751*, intro. Peter Sabor and bibliographic essay by O M Brack, vol. 2 of *Samuel Richardson's Published Commentary on Clarissa, 1747-1765,* ed. Florian Stuber (London: Pickering & Chatto, 1998), pp. vii-xxxvii; O M Brack, "A Bibliographic Essay: *Clarissa*'s Bibliography: Problems and Challenges," in *Samuel Richardson's Published Commentary on Clarissa,* pp. 2.305-324; William Beatty Warner, *Reading* Clarissa: *The Struggles of Interpretation* (New Haven: Yale University Press, 1979), esp. chap. 6; and Tom Keymer, *Richardson's* Clarissa *and the Eighteenth-Century Reader* (Cambridge: Cambridge University Press, 1992).

Fielding, in "An Essay on the Knowledge of the Characters of Men," questions observers' reliability and attention, but not human *ability* to interpret; this confidence in human capacity opens the way for the eighteenth-century novel to help people improve their expertise in discerning credibility. Looking ahead to the nineteenth century, however, some are less sanguine about ordinary abilities. The editor of Gambier's *Guide to the Study of Moral Evidence* (1834) adopts the Augustan mission of inculcating judgment by helping jurors to know and apply evidence rules. "In order, therefore, to be a skilful moral reasoner, it is necessary that the judgment be trained to accuracy, in estimating the relative worth of different kinds of evidence; to discern amidst intricate and distracting inquiries, where the commanding probability appears, and to submit to it as readily as to mathematical certainty."[29] While this nineteenth-century preface expresses confidence that people *can* learn credibility, there are increasingly overt worries that the skill needs to be taught from basics and not merely refined. This view runs counter to optimists such as Reid, who thought credibility skills were natural, to the design and practice of the common law trial, which assumed that ordinary people were innately able to evaluate witnesses, and to authors, like Fielding, who were committed to improving credibility at the same time that they counted on readers bringing credibility aptitude with them to the novel.

Point of view was tied into the epistemological framework and hermeneutic problems of evaluating credibility. Credibility could be conveyed through first-person narratives that emulated the empiricist protocols for assessing credibility. First-person

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[29] William Hague, "Introductory Essay on Moral Reasoning" to *A Guide to the Study of Moral Evidence, or of that Species of Reasoning, which relates to Matters of Fact and Practice,* by James Gambier (London, 1834), p. 17.

point of view in the novel suggests not merely a preference for the immediacy of eye- and ear-witnesses as narrators; point of view was more deeply related to epistemology and the empiricist philosophy of testimony that associated watching witnesses testify with the production of superior credibility indicia. When the "persons, who bear a part in the action, are themselves the relaters of it,"[30] to quote James Beattie's "On Fable and Romance," credibility is particularly open to being scrutinized.

Point of view has been trenchantly linked with "character" by history of science scholars who analyse the predilection of seventeenth-century scientists for first-person point of view.[31] Narrative conventions by the Royal Society luminaries, for example, used first-person point of view even when others actually performed the experiment.[32] There is epistemological significance underlying this impulse toward first-person point of view. Lorraine Daston observes how reports of findings in the empirical sciences

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[30] James Beattie, "On Fable and Romance" in *Dissertations Moral and Critical* (1783).

[31] Peter Dear, *Literary Structure of Scientific Argument: Historical Studies* (Philadelphia, PA: University of Pennsylvania Press, 1991); Peter Dear, "Totius in Verba: Rhetoric and Authority in the Early Royal Society," *Isis* 76 (1985):145-161; Steven Shapin, "Pump and Circumstance: Robert Boyle's Literary Technology," *Social Studies of Science* 14 (1984): 481-520; Steven Shapin and Simon Schaffer, *Leviathan and the Air-Pump: Hobbes, Boyle, and the Experimental* Life (Princeton: Princeton University Press, 1985); Mary Poovey, *A History of the Modern Fact: Problems of Knowledge in the Sciences of Wealth and Society* (Chicago: University of Chicago Press, 1998), pp. 98 and 111.

[32] This "virtual witnessing" has been discussed in Steven Shapin, *A Social History of Truth: Civility and Science in Seventeenth-Century England* (Chicago: University of Chicago Press, 1994), pp. 379 and 384-385.

were "emphatically cast in the first-person singular, for the skill and character (and occasionally social status) of the reporter" were critical to judging the contents.[33]

However, the early literary technology in use in these seventeenth-century science reports is more closely affiliated with "character," "credit," and status traits, rather than credibility and particularized individual inquiries, which eighteenth-century jury developments newly made possible and which shifted the hermeneutic burden to the reader. In these earlier examples of narrative "crediting," first-person point of view was insisted on, but more as a form than as a content epistemologically freighted with credibility evaluation. The narrator in Aphra Behn's *Oroonoko* begins with the self-credit that "I was myself an Eye-witness,"[34] as a seemingly self-evident indicator of reliability. Behn likewise credits the narrative of *The Unfortunate Happy Lady* (1698) by crediting the testimonial source, "attested to me by one who lived in the family and from whom I had the whole truth of the story."[35] In *The Fair Jilt* that "every circumstance, to a tittle, is truth" follows because to "a great part of the main" the narrator was "an eye-witness; and what I did not see, I was confirmed by actors in the intrigue."[36]

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[33] Lorraine Daston, "Objectivity and the Escape from Perspective," *Social Studies of Science* 22 (1992): 597-618, p. 610.

[34] A[phra] Behn, *Oroonoko: or, the Royal Slave. A True History* (London, 1688), p. 1.

[35] Aphra Behn, *The Unfortunate Happy Lady. A True History* (1698) in *An Anthology of Seventeenth-Century Fiction*, ed. and intro. Paul Salzman (Oxford: Oxford University Press), pp. 527-553, at p. 529.

[36] Aphra Behn, *The Fair Jilt; or The History of Prince Tarquin and Miranda* (1688) in *Oroonoko, the Rover and Other Works,* ed. Janet Todd (New York: Penguin, 1992), pp. 30-31.

A seventeenth-century case suggests how the trial first internalized the linkage between the form of credibility and point of view, so that the narrative device was insisted on even where the epistemological foundation for granting such an attribution was candidly acknowledged to be missing. In the *Trial of Stephen Colledge*, in 1681, Colledge asked to have the use of "my papers" after the judges had perused them, causing Lord Chief Justice North to fulminate, "for the ... instructions in point of law, if they had been written in the first person, in your own name, that we might believe it was your writing, it would have been something; but when it is written in the second person, you should do so and so, by which it appears to be written by another person, it is an ill precedent to permit such things."[37] *If* the notes were in first-person of view, then "we might believe." The significance of first-person point of view was more for form than for content, like the civil proof systems' stencilled witnesses whose quantitative proof and corresponding degree of belief were predetermined. Even under a recognizable charade of having pretend first-person point of view, North LCJ insisted on formal allegiance to the point of view that conformed to the canons of credit and was supported by the prevailing empirical theory. By corollary, in the novel one can point to the formal allegiance to the writing-to-the-moment style that is sustained alongside the forthright acknowledgment of the façade, as with Lovelace in *Clarissa* pointing out "this was written afterwards, yet (as in other places) I write it as it was spoken and happened, as if I had retired to put down every sentence as spoken" (3.195), as if to say, I write it this way so "we might believe." As Anna Laetitia Barbauld perceptively advised, "a novel writer must violate probability somewhere, and a reader ought to

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[37] *Rex v. Stephen Colledge*, 8 *State Trials* 585 (1681).

make handsome and generous allowance for it." Following on that insight, she concluded that epistolary narratives manage to be both the "most natural and the least probable way of telling a story."[38]

Crediting the Narrative

The early examples of the novel (or what retrospectively fits into the genre) from the seventeenth and early eighteenth century commonly include assertions that the first person narrator is a person of "credit."[39] Similarly to the strange sightings in the publications associated with the Royal Society, such as the *Philosophical Transactions* and Boyle's *Strange Reports*, which dutifully give tag lines identifying the witness as a person of "very good credit", these appellations are shortcuts to credit the narrative by grading character status and extracting the goodwill in first-person point of view that forensic procedures had built up. These tags are denotative appellations, loyal to the form rather than the epistemology. Neither the evidence which the reader could use to verify that determination nor even the process that the author or narrator performed to reach that conclusion is supplied to the reader. The ubiquitous device of "authentic" documents in early English novels likewise coerces the reader's assignation of

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[38] Anna Laetitia Barbauld, "A Biographical Account of Samuel Richardson," in *The Correspondence of Samuel Richardson, selected from the original manuscripts bequeathed by him to his family to which are prefixed, a biographical account of the author and observations on his writings by Anna Laetitia Barbauld,* vol. 1 (London: R. Phillips, 1804; New York; AMS Press, 1966), pp. cvi and xxvii.

[39] Adrian Johns discusses early reading and publishing practices and how readers credited the identity of *books,* as opposed to my focus on people (characters or real people), with reference to status, purpose, identity, piracy, and reliability of printed materials (*The Nature of the Book: Print and Knowledge in the Making* [Chicago: University of Chicago Press, 1998], pp. 31-33).

credibility. In late eighteenth-century sentimental and gothic novels, narratives are "credited" with authentic documents, as with the convoluted opening to Henry Mackenzie's *The Man of Feeling* (1771), where the curate tells the narrator about an odd man who left a package of papers behind when he moved away from the parish and which the curate carries around as gun wadding, to explain why the novel begins with "Chapter XI," or the papers supposed to be printed in 1529 which were "found in the library of an ancient family in the north of England," and purportedly translated into the first edition of *The Castle of Otranto,* until Horace Walpole dropped the pose and claimed authorship for the second edition.[40] Similarly, facile conventions, derived from neo-Platonism, to draw connections between virtue and beauty, or between vice and unsightliness, bypass readers making their own evaluations; even in 1751, Fielding's disruption of these conventions with Amelia's scarred nose perplexed contemporary readers, and of course Lovelace's "specious appearances" (*Clarissa* 3.318) undermined easy physiognomic relationships between goodness and countenance, as on a more surface level, Pamela's pre-marital donning of her late mistress's clothes, disrupted "credit" connections between class and "honour" to draw links between virtue and "honesty."[41]

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[40] Henry Mackenzie, Introduction to *The Man of Feeling* (1771) intro. by Kenneth C. Slagle (New York: Norton, 1958); Horace Walpole, *The Castle of Otranto: A Gothic Story* (1768), ed. and intro. by W.S. Lewis, explanatory notes and note on the text by Joseph W. Reed, Jr. (1798; Oxford: Oxford University Press, 1969), pp. 3 and 7.

[41] Review of *Amelia* in *London Magazine*, April 1751, complaining Amelia's nose could have been "so compleately cured, and set to rights, ...by the help of some eminent surgeon." See also, George E. Haggerty, "Amelia's Nose; or, Sensibility and Its Symptoms" *The Eighteenth Century: Theory and Interpretation* 32:2 (1995), pp. 139-156; and Alison Conway, "Fielding's *Amelia* and the Aesthetics of Virtue," *Eighteenth-Century Fiction* 8 (1995): 35-50.

The respective techniques of early prose narratives are perfunctory. They assert the conclusion of the decision-making process but are shorn of the evidence by which readers could rationally appraise the proffered witness and determine whether to ascribe credibility. Readers are offered no way to test the character witness's epistemic or moral skills, or verify the narrator's or editor's hermeneutic ability to assess someone else's credibility. These devices exploit trust instead of credibility, relying on passive assignation rather than promoting the active exercise of verifying credibility. However, the care authors take to assert, albeit not prove, that their character witnesses should be believed, points ahead to the emergence of probabilistic credibility judgments based on literary evidence.

By the eighteenth century, forensic developments in full qualitative credibility, and the discrimination of credibility from character, were influencing point of view choices, and novels were incorporating testimonially-activated and situation-specific criteria to permit live assessments, rather than assertions, of credibility. The novel was borrowing symbolic capital from legal tests, which in turn had borrowed the cultural capital of ordinary credibility practices.[42] McKeon and Davis have analysed how factual culture was borrowed by the novel.[43] Shapiro argues that the "technology of proof" for legal facts was incorporated into the novel through the familiar panoply of devices, including the pose of "eyewitnesses" and "authentic" documentary evidence,

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[42] In *Cultural Capital*, John Guillory imports Pierre Bourdieu's concept of symbolic capital, developed for sociology, into literary debates about the canon (*Cultural Capital: The Problem of Literary Canon Formation* [Chicago: University of Chicago Press, 1993]).

[43] Michael McKeon, *The Origins of the English Novel, 1600-1740* (Baltimore: Johns Hopkins University Press, 1987); Lennard Davis, *Factual Fictions: The Origins of the English Novel* (Philadelphia: University of Pennsylvania Press, 1983).

and that legal concepts are instrumental in developing a "culture of fact."[44] I share Shapiro's view that law and literature has an epistemology with respect to testimony, but am looking at *how* credibility assessments are made, and what indicia and pedagogy were available to readers. The novel moved from a simple conceit of literary devices of eyewitnesses and authentic documentary evidence toward methods that would present credibility evidence to readers so that they could verify credibility for themselves, witness acts of credibility evaluation, and manage as best they could with imperfect knowledge.

Point of view is integrally linked to theories of knowledge and the means to test credibility. As eighteenth-century novels illustrate, however, the particular point of view that novelists choose is less important than that novelists provide readers with the evidence and means to assess credibility. Epistolary novels, with multiple first-person points of view, are particularly suited to credibility tests because the first-person point of view "obliges a man to tell of himself, what perhaps no man would tell," as Barbauld observed in her biography of Richardson,[45] and the multiple perspectives provide an opportunity to observe other characters at the time they are speaking and hear the letter writer's view, as the recipient of testimony, of that person's credibility. First-person point of view carried empirical weight, since the speaker's own words were the most unmediated way to get knowledge from other people's direct personal experience. Hence, the congratulatory letter to the "Editor of Pamela," is thankful to "have *Pamela*

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[44] See Barbara J. Shapiro, *A Culture of Fact: England, 1550-1720* (Ithaca: Cornell University Press, 2000), pp. 197-207.

[45] Barbauld, "A Biographical Account of Samuel Richardson," p. xxvii.

as *Pamela* wrote it; in her own Words, without Amputation, or Addition,"[46] and (therefore) it "carries Conviction in every Part of it." Multiple speakers also allow the most immediate experience of testimony to be rendered.

Moreover, within the fictional frame, characters privilege testimony about personal experience and regret when they are not heard in their "own defence."[47] But, there is no simple identification between first-person point of view and credibility. Other narrative devices were employed to thrust forward the speaking witness within a third-person narrative, including interpolated tales, which allow readers to have the immediacy of live testimony before them, so that they can hear and see relevant evidence of credibility elicited while the person is speaking. Additionally, the demands of a single first-person point of view counter-intuitively could work to undermine a character's credibility, as the *Pamela* controversy suggests, despite the epistemological weight that first-person testimony "in your own words" had. In the trial, there are usually multiple witnesses who testify, analogous to the epistolary form of *Clarissa.* Where there is a single witness telling his own story, and few witnesses to corroborate his impressions, interpreters rightly worry that the words selected might be judiciously pruned to advantage and the flattering impressions he relates are misleading. As K.G. Simpson remarked of Fielding, his "'plot' of narrative-reader relations leads to the conclusion that any fixed and single view-point is necessarily inadequate to cope with

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[46] Letter, "To my worthy Friend, the Editor of Pamela, &," in *Pamela; or, Virtue Rewarded* (1741), ed. with explanatory notes by Thomas Keymer and Alice Wakely and with an intro by Thomas Keymer (Oxford: Oxford University Press, 2001), pp. 9 and 7. Keymer and Wakely think the letter is likely the work of William Webster, editor of the *Weekly Miscellany*, but note that some, including Fielding, have suggested Richardson authored it.

[47] For example, Richardson, *Pamela; or, Virtue Rewarded*, pp. 194, 270, 400.

the judgment of the complexity and flux of experience."[48] Extending this insight, the plots which isolate characters and limit the source of their information to one, or a few characters, resonate with anxieties about credibility and point of view. When Clarissa and Pamela are confined and their testimonial sources circumscribed, their ability to evaluate credibility is compromised. The epistemology of testimony contemplates that people will have testimony from several different people and will collate the impressions they glean from these sources to judge plausibility and credibility. Credibility judgments become exponentially more difficult when testimony has to be scrutinized with just internal evidence.

The narrative strategies to foreground the speaking witnesses telling the story in their own words alleviate the credibility problems associated with transmission chains of witnesses, which Locke warned against, by instead having witnesses tell their own story directly to the characters and, at the same time, to the readers. The eighteenth-century evidence treatises articulated several reasons against hearsay evidence, which are informative of why eighteenth-century authors would foreground first-person narratives. Preserving the ability of jurors to *see* credibility evidence was not listed as one of the reasons for this evidentiary restriction in the English treatises; but, Laplace interestingly turned to the image of visual obstructions when he explained the problem with hearsay, comparing multiple witnesses to many pieces of glass: "'The diminution of evidence by this sort of transmission may . . . be compared to the extinction of light by the interposition of several pieces of glass; a small number of pieces will be

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[48] K.G. Simpson, "Technique as Judgment in *Tom Jones*," in *Henry Fielding: Justice Observed,* ed. K.G. Simpson (London and Totowa, NJ: Vision Press and Barnes and Noble Books, 1985), p. 169.

sufficient to render an object entirely invisible which a single piece allowed to be seen very distinctly.'"[49] The problem with hearsay, then, is that it undermines the theory of "embodied credibility"; if people cannot *see* the witness who has directly experienced the facts of the story, then they cannot adequately assess credibility. Thus, those characters like Brand in *Clarissa*, who rely on "mere hearsay . . . conjectural scandal without fact, or the appearance of fact, to support it" will themselves be condemned for diverging from approved testimonial evidence of credibility (7.318).

When novelists included evidence from which to assess, not merely concur, in judgments about credibility, then novelists also had a pedagogical objective to improve readers' ability to interpret this evidence through active exercises of credibility evaluations. This chapter discusses character to character, and character to reader, credibility appraisal, and how the novel used forensic credibility protocols to entertain, depict, and teach credibility evaluation. In exaggerated testimonial moments, characters within the novel assess the credibility of other characters by deploying the repertoire of juror's skills for determining whether to attribute credibility to someone else. These "mock trials," or "mock encounters in the art of necessary defence," to borrow Samuel Johnson's phrasing from *Rambler* No. 4, that were enacted between characters, serve to educate readers how to assess the credibility of characters within the novel, and more significantly, instruct readers how to judge credibility and judge whether to assent to testimony as evidence in their own decisions, when one can no longer count on

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[49] Quoted in review of *Essai Philosophique sur les Probabilités,* by Pierre Simon Laplace, *Edinburgh Review* 46 (September 1814): 320-340, pp. 325-326.

"hearsay and floating tradition" about character to inform judgments. Literary mock trials are not mere assertions that "witnesses" are credible but the methods to prove it.

In *Pamela II*, Pamela begs to "have my trial" (4.116) and sets up an architectural space that meets contemporary conventions for credibility evaluations, showing Mr. B the backs of three chairs in her closet as "the bar" at which she would "take [her] trial" (4.125). Like Moll Flanders at the Old Bailey, who had "time to say all that [she] would," Mr. B. promises to give Pamela a "fair hearing" by following forensic procedures which placed the testimonial burden on the defendant, telling Pamela she should prepare "to speak all that is upon [her] mind" (4.115).[50] The curious mock trial device shows up in *A Simple Story, Tom Jones, Pamela II, Clarissa, Caleb Williams,* and the allied device of "mocked trials" in *Roderick Random, Humphry Clinker,* and *Caleb Williams.* This chapter closely studies the mock trial in *Clarissa*, the most elaborate of the eighteenth-century literary treatments, and its role in eighteenth-century literary credibility.

In mock trials, characters turn to face-to-face confrontation to resolve important credibility issues. Despite the materiality of the letters in *Clarissa*, orality and the kinetic body is used as evidence, just as the eighteenth-century common law trial by jury likewise favoured oral testimony instead of written evidence. Mock trials are a mechanism to impart information about characters, to allow characters to test each other, and to teach readers how to assess credibility. The trial's methodology for

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[50] Samuel Richardson, *Pamela, or Virtue Rewarded* (1740) 4 vols., intro. William Lyon Phelps (1902; rpt. New York: AMS Press, 1970).

assessing testimonial narratives formalized the epistemology of credibility, and novelists presupposed that readers would apply the jurors' hermeneutics of credibility to interpret characters appropriately.

Instruction

In "An Essay on Knowledge of Characters of Men," Fielding remarks how instruction on character may be of use to "the young and unexperienced" who, "either from Ignorance or Inattention," are exposed daily to "Hypocrisy."[51] While Fielding does not connect instruction with the novel here, the instructive mission of the novel, its dual role of instructing and entertaining, was explicitly outlined by advocates of the novel, and, in particular, the novels' ability to teach through vicarious experience. Novels, as the anonymous preface to *Constantia* described, offer "a sort of artificial experience, by which the nature of mankind and an acquaintance with the world may be infused imperceptibly without fatigue and without danger."[52] Samuel Johnson, in *Rambler* no. 4 (1750), stressed the pedagogical purpose of the novel, "to initiate youth by mock encounters in the art of necessary defence."[53] Realism was essential because "what we cannot credit we shall never imitate." Similarly lauding mock examples as a teaching vehicle, John Hawkesworth in *The Adventurer* writes, "by example the passions are roused; we approve, we emulate, . . . as fit objects are successively held up

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[51] Fielding, "An Essay on Knowledge of Characters of Men," p. 156.

[52] Anonymous, Preface to *Constantia; or, A True Picture of Human Life* (1751).

[53] Samuel Johnson, "The Rambler, No. 4" March 31, 1750, in *Samuel Johnson*, ed. Donald Greene (Oxford: Oxford University Press, 1986), pp. 175-179, at p. 177.

to the mind: the affections are, as it were, drawn out into the field: they learn their exercise in a mock fight, and are trained for the service of virtue."[54] Through these mock encounters, Johnson observes, we can learn "what we can perform."

Richardson was thoroughly familiar with *Rambler* no. 4, published in between Richardson's first and third editions of *Clarissa,* including the idea of novels as "mock encounters," and he advocated that idea in his postscripts and prefaces.[55] He also, however, advocated that idea through the device of "mock trials," those "mock encounters in the art of necessary defence" in which the characters, and through them the readers, learn to assess credibility by simulating forensic procedures in domestic settings. This conflation is particularly fitting since trials too blended instruction in forensic credibility with the entertainment of watching jurors assess credibility. The novels, in turn, modelled the practice of credibility through vicarious experience.

Such a pedagogical supplement to the trial was necessary because the English common law trial did not pursue a mathematical and abstract interpretation of credibility, of the kind that the mathematician John Craig had proffered in his calculus of credibility. Thus, legal credibility was an easy model to adopt for everyday decision-making about character and credibility; ordinary decision-making likewise resists quantification and is better reflected in gestalt judgments. Had the English system retained a juridical model based on an overly rigid classification scheme, of the kind that the civil law system imposed on professional judges, it would have been much less

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[54] John Hawkesworth, No. 16, *The Adventurer,* 30 December 1752.

[55] See Tom Keymer, *Richardson's* Clarissa *and the Eighteenth-Century Reader*, p. 195; Jocelyn Harris, "Introduction" to *Prefaces, Postscripts and Related Writings,* vol. 1. of *Samuel Richardson's Published Commentary on Clarissa, 1747-65,* 3 vols. (London: Pickering & Chatto, 1998), pp. xxii-xxvi.

likely to be adopted as a model for literary credibility, and incorporated back into eighteenth-century culture as a set of protocols to refine ordinary intuitions. The common law trial design avoided reductive quantification by incorporating qualitative criteria and subjective assessment processes. But since the problem of uncertainty was not addressed by limiting discretion, there remained a problem of how to deal with subjectivity in methodology and how to teach others to accommodate uncertainty about other people in their decision-making practices. The novels instructed readers how to practice credibility to arrive at warranted belief, and to manage subjectivity and discretion.

Numerous scholars have addressed the interactions of judgment, character and reading in eighteenth-century literature. Many studies have demonstrated how Fielding explicitly teaches judgment and, specifically the interpretive acts involved in reading, by recapitulating legal forms as models for his fiction. John Bender, in speaking of Fielding's "Juridical Novel," remarks how Fielding "extended and reinforced the possibility of judicial inference, projected in the narrative form of indictment."[56] Meanwhile, several scholars have developed how Richardson uses theatrical imagery and posed body language in frozen tableaux of silent gazes, Foucauldian and theatrical, to read character.[57] These examples suggest how character is analysed within a

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[56] John Bender, *Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth-Century England* (Chicago: University of Chicago Press, 1987), p. 169

[57] See Mark Kinkead-Weekes, *Samuel Richardson: Dramatic Novelist*(London: Methuen & Co., 1973); Margaret Anne Doody, *A Natural Passion: A Study of the Novels of Samuel Richardson* (Oxford: Clarendon Press, 1974); Janet E. Aikins, "Richardson's Speaking Pictures," in *Samuel Richardson: Tercentenary Essays*, ed. Margaret Anne Doody and Peter Sabor (Cambridge: Cambridge University Press,

reading paradigm. My purpose here is to highlight how judgment works as a critical concept in a testimonial paradigm. This chapter shows how credibility evaluated through *testimony* was figured, interpreted and taught, taking the mock trials in *Clarissa* as my illustrations. I also suggest that, notwithstanding the critical tendency to treat Fielding's work as more actively about judgment, epistemology, and hermeneutics than Richardson's or other authors', eighteenth-century authors were alike aligned in the credibility project; indeed the genre required that authors and readers be committed to figuring out how to interpret characters' credibility if novels were to be understood. In a related issue, Fielding and Richardson are sometimes distinguished as having respectively a focus on epistemological *or* moral concerns to the exclusion of the other. John Preston in *The Created Self*, for example, analyses Fielding's "pursuit of true judgment" as having an epistemological—rather than moral—effect, while Richardson's interests are more often said to be virtue and prudence.[58] With credibility, however, both epistemic and moral dimensions are part of the critical horizon.

Literary scholars have shown how Richardson's and Fielding's novels follow the Augustan model of teaching judgment and interpretation, and do so by using a trial model. Fielding, as many scholars have shown, uses the legal trial as a model for

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1989), pp. 146-166; Kristina Straub, "Reconstructing the Gaze: Voyeurism in Richardson's *Pamela*," *Studies in Eighteenth-Century Culture* 18 (1988): 419-431; James Grantham Turner, "Novel Panic: Picture and Performance in the Reception of Richardson's *Pamela*," *Representations* 48 (1994): 70-96; and Harris, Introduction to *Prefaces, Postscripts and Related Writings,* vol. 1. of *Samuel Richardson's Published Commentary on Clarissa 1747-1765,* pp.xxxiv-lxxxvi.

[58] See, for example, the anthology *Passion & Virtue: Essays on the Novels of Samuel Richardson,* ed. David Blewett (Toronto: University of Toronto Press, 2001).

judgment, and especially readers' judgment in exercising critical interpretation.[59] In William Empson's frequently cited description, Fielding is "always ready to consider what he would do if one of his characters came before him when he was on the bench."[60] Tom Keymer characterizes *Clarissa* as the "literary equivalent of a trial," which he develops by focusing on parallels between the narrative structure, especially the pattern of pleading in the written letters, and trial procedures.[61] What I would like to bring out are the deliberate parallels between the ratiocinative processes of readers and jurors evaluating witness *credibility* and receiving *testimony*.

The reader and jury parallel would easily come to mind in the eighteenth century. Richardson confided to Lady Bradshaigh he was arranging "Trials of the Readers Judgment," and would "leave it to my Sovereign Judges the Readers...which to blame, which to acquit" in *Sir Charles Grandison.*[62] William Hazlitt credits Richardson's success in explicitly forensic terms, elucidating that "he sets about describing every object and transaction, as if the whole had been given in on evidence by an eye-witness."[63]

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[59] See for example, Raymond Stephanson, "Fielding's 'Courts': The Legal Paradigm in *Tom Jones*," *English Studies in Canada* 24 (1988): 152-169; and Ellen Gardiner, *Regulating Readers: Gender and Literary Criticism in the Eighteenth-Century Novel* (Newark: University of Delaware Press, 1999), chap. 3, "No Jury of his Peers; Reading *Tom Jones.*"

[60] William Empson, "Tom Jones," *The Kenyon Review* 20 (1958): p. 249.

[61] Keymer, *Richardson's* Clarissa *and the Eighteenth-Century Reader*, p. 221.

[62] Letter to Lady Bradshaigh, 8 February 1754, in John Carroll, ed. *Selected Letters of Samuel Richardson* (Oxford: Oxford University Press, 1964), p. 280.

[63] William Hazlitt, *Lectures on English Comic Writers* (New York: Dolphin Books [Doubleday]: 1860), p. 168 on Richardson, quoted by Watt, *The Rise of the Novel,* p. 34.

The spiritual tradition of the "court of conscience" already prompted people to think of moral judgments through legal analogies and use legal reasoning and rhetoric. In his 1660 treatise on *The Rule of Conscience [Ductor Dubintantum],* Jeremy Taylor, the Anglican divine, expounded on the application of probability theory to moral philosophy, in contrast to Jesuitical casuistry. *Foro Conscientiae* is one of many alternative courts (Court of Honour, *Foro Literario)* in *Tom Jones* where "knotty points" (Book 6, chap. 13) are discussed outside legal tribunals. But the trial motifs that coloured these discussions refer to internal debates for evaluating one's own character. The court of conscience is a "trial between *you* and *yourself"* (4.110), as Anna characterizes Clarissa's internal struggle, and Clarissa describes the objective of the court of conscience (3.192) as to "acquit myself to *myself*" (7.70).

A new literary development associated with the origins of the novel, I argue, is mock trials that enact the *attributive* function that was so central to the long eighteenth-century common law trial by jury and credibility evaluation. The emulation of trial procedures for assessing *other people's* character, as contrasted with the spriritual tradition of self-examination, was prompted by the development of the jury and the incorporation of subjective credibility weighing in common law trials. Mock trials show how legal protocols for an attributive exercise were domesticated and facilitated the practical application of moral evidence and philosophy. Rather than the author's or narrator's conclusions that a character is a person of "credit," mock trials provide the evidentiary grounds and an experiment of the credibility exercise, leading characters and readers through the probabilistic exercise of scrutinizing the testimony for credibility clues and apportioning their assent and certainty according to degrees of

credibility. By enacting mock trials, eighteenth-century novelists concentrate on the most difficult of interpretive assignments of assessing credibility from testimony on the basis of little or no background character information. If characters (and readers) can master this risky but potentially profitable practice, then they can fill lacunae in their knowledge that depended on testimonial evidence. Mock trials as an instructional device would make characters at once receptive to, but careful about, accepting factual claims from unsavoury personages, whose character traits assessed in the gross would claim them little good character but who could be credible and necessary sources for discrete information.

Paul Ricoeur explains that, while testimony is intimately related to the trial, the trial is peculiarly "susceptible to an analogical generalization which contributes to establishing the meaning of the words 'witness' and 'testimony' in ordinary language. In fact legal discourse serves as a model for situations less codified by social ritual but in which we can recognize the fundamental traits of the trial."[64] Expanding from Ricoeur's insight, I am highlighting here that instruction about credibility assessment and attribution was carried out through legal discourse, and that the specific conveyance by which credibility protocols travelled in the eighteenth century was a characteristically juridical and testimonial one—the mock trial. Ricoeur identifies the historical method as a "characteristic and instructive transposition of an eminently

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[64] Paul Ricoeur, "The Hermeneutics of Testimony," trans. David Stewart and Charles E. Reagan, in *Essays on Biblical Interpretation,* ed. and intro. Lewis S. Mudge. (Philadelphia: Fortress Press, 1980), pp. 119-154 at p. 124. Originally published as "L'herméneutique du témoignage," *Archivio di Filosofia*(La Testimonianza) 42 (1972): 35-61.

juridical concept which here attests to [testimony's] power of generalization."[65] Another overlooked site of a transposition of an "eminently juridical concept," I argue, is the novel.

"[I]n principle there is but one mode of searching out the truth," as Jeremy Bentham reasoned in the nineteenth century,

> and (bating the corruptions introduced by superstition, or fraud, or folly, under the mask of science) this mode, in so far as truth has been searched out and brought to light, is, and ever has been, and ever will be, the same, in all times, and in all places—in all cottages, and in all palaces—in every family, and in every court of justice. Be the dispute what it may, —see everything that is to be seen; hear everybody who is likely to know anything about the matter: hear everybody, but most attentively of all, and first of all, those who are likely to know most about it—the parties.[66]

Bentham's description accurately captures both the mindset and the procedures of the eighteenth century, and his nineteenth-century insight would hardly have needed to be articulated to the eighteenth century since the practices of the domestic and forensic settings, especially with respect to credibility, overlapped.

The remarkable ease with which forensic and domestic venues can be transposed in credibility trials was facilitated by the relatively unmediated way that

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[65] Ibid., p. 125.

[66] Jeremy Bentham, *An Introductory View of the Rationale of Evidence; for the use of Non-Lawyers as well as Lawyers* (1827) in *The Works of Jeremy Bentham* (New York: Russell & Russell, 1962), vol. 7, p. 599.

facts were conveyed in English eighteenth-century common law trials and the relative absence of professionals or experts. Trials were amateur, face-to-face conversational altercations where, in criminal trials, the complainant and defendant would usually speak on their own behalf. William Eden in his 1771 *Principles of the Penal Law* remarked of this distinctive trial characteristic that the eighteenth-century juries' experience is "rather in the nature of a discussion between the parties."[67]

> It was, in its essentials, a brief, sharp, oral confrontation between these two unprepared amateurs, one asserting the guilt of the other and supporting his assertions with the testimony of witnesses, and the other, the defendant, countering that evidence with his own explanations and proving his innocence, if indeed he were innocent, by the force and sincerity of his denials.[68]

The confrontation between amateur speakers was a settled practice by the eighteenth century. Sir Thomas Smith's account of Elizabethan government, *De Republica Anglorum*, penned from 1562-1565 while he was serving as ambassador in France, prefigures Eden's with his famous description of the criminal trial as an oral "altercation." In Smith's depiction of a representative felony trial, the only surviving pre-sixteenth century description, the informal exchange of accusation and denial began when the judge prompted the victim to identify and accuse the defendant, continued

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[67] William Eden, *Principles of Penal Law* (London, 1771), p. 219.

[68] J. M. Beattie, "Administering Justice Without Police: Criminal Trial Procedure in Eighteenth-Century England," in *The Maintenance of Order in Society: A Symposium Organized by the Centre of Criminology, University of Toronto for the Canadian Police College, Ottawa*, ed. Rita Donelan (Ottawa: Canadian Police College, 1982), p. 13.

until "he telleth al that he can say" and ended when the judge "hath heard them say inough,"[69] differing little from how a family dispute might be resolved.

Eighteenth-century trials were highly personal and saturated with testimony that resembled a conversation in its unstructured exchange and the familiar way that the trial gallery watched the witnesses and jurors. Testimony from parties dominated the proceedings, which was a logical outgrowth of the epistemological assumptions that testimony should be evaluated by watching and listening to the person who most closely experienced the facts related. This phenomenon of face-to-face litigation was easily transposed to domestic venues in this period's novels. The juxtaposition of forensic credibility with literary credibility would not seem forced when conversational tribunals aptly described either the court setting or the domestic home as host to a justice of the peace or family assembly.

Novelists could also draw on ambiguities between formal legal and informal familial procedures which were already present in eighteenth-century culture and eased the task of domesticating formal forensic processes and transposing them to the novel. Novelists could play on the uncertainties made possible because gentlemen might also be justices of the peace. Men were appointed as magistrates based on status, wealth, and party affiliation; the commission was actively sought for the prestige which came from holding the position, even if the commitment to assuming the duties was less zealously pursued. Gentlemen magistrates had summary jurisdiction over petty

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[69] Thomas Smith, *De Republica Anglorum* (1583), ed. Mary Dewar (Cambridge: Cambridge University Press, 1982), pp. 113-14.

disputes and crimes, and these proceedings were typically handled in their homes.[70] Family members, servants, and neighbours would have been accustomed to seeing miniaturized trials conducted in living space. Just as court proceedings were coloured by familial overtones, given the conversational and personal nature of how testimony was exchanged, so too were family disagreements coloured by legal overtones, since forensic proceedings already leaked into the domestic space. Thus, the "line between mock trial and represented trial is indistinct," as Alexander Welsh remarks of the literary consequences for these hybrid domestic and forensic proceedings, neither formal court proceedings nor "mere" social conversations.[71] Similarly, John Bender notes how literary texts blur the line between magistrates and formal court proceedings, referring to the narrator of *Tom Jones* as combining the traits of an Old Bailey trial judge with an investigative justice of the peace.[72] In *Tom Jones*, Tom and Sophia, like Clarissa, are "tried" in family courts by paternal-magistrate figures, and in *A Simple Story*, Miss Milner is "tried" by Dorriforth.[73] Given the historical cultural and legal conditions, the highly ordered disagreement between Clarissa and the Harlowes, which is structured to mimic a trial, is assertively, but not artificially or gratuitously, forensic. It was not curious to represent private conversations as legal testimony because the

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[70] Norma Landau, *The Justices of the Peace, 1669-1760* (Berkeley: University of California Press, 1984); and J.M. Beattie, *Crime and the Courts in England, 1660-1800* (Princeton: Princeton University Press, 1986), pp. 59-67.

[71] Alexander Welsh, *Strong Representations: Narrative and Circumstantial Evidence in England* (Baltimore: Johns Hopkins University Press, 1992), p. 51.

[72] Bender, *Imagining the Penitentiary,* p. 178.

[73] Elizabeth Inchbald, *A Simple Story* (1791), ed. J.M.S. Tompkins and new intro. Jane Spencer (Oxford: Oxford University Press, 1988).

overlap between the personal and the forensic was already present culturally and epistemologically. "Mock trials," magistrates judging in the home, and trials by jury are thus three settings which incorporated formal epistemological protocols for credibility tests.

The literary mock trials in family tribunals emulate legal procedures, importing epistemologically sound formal procedures and architecture to recreate settings which would elicit credibility information. Legal reasoning, however, was based on ordinary reasoning and formalized customary procedures already immanent in the culture. The trial distilled the views that were circulating in philosophy, theology, history, and science on witnessing and testimony. Eighteenth-century novelists' use of mock trials indicates that the novel was not merely borrowing philosophical principles about testimony and credibility, but more directly was influenced by how those principles had been formalized into protocols for trial jurors. Legal credibility and the public assessment of credibility captured novelists' imaginations. Legal procedures packaged the epistemology already immanent in cultural practices into formal procedures, with spatial and temporal parameters, that could be mimicked in ordinary decision making practices, and this re-packaging was analogically generalized, as Ricoeur puts it, to the novel.

Mocked Trials

The representation of "mocked trials" in novels suggests eighteenth-century familiarity with forensic credibility and the ease with which legal credibility procedures were generalized to other tribunals and settings. *Caleb Williams* describes how "[i]t

was a custom among thieves to constitute a sort of mock tribunal of their own body, from whose decision every one is informed whether he shall be acquitted, respited or pardoned, as well as respecting the supposed most skilful way of conducting his defence."[74] Humphry Clinker explains the same phenomenon when, in Clerkenwell prison, he guilelessly attributes expertise in his fellow prisoners' self-taught legal abilities, being "pretty well rid of all apprehensions of being hanged" because he "had been the night before solemnly tried and acquitted by his fellow prisoners."[75] Caleb and Humphry describe an actual phenomenon of mocked trials. Douglas Hay recounts the "most striking case" of "popular justice," the "elaborate aping of state criminal procedure," which "took place among groups contaminated by very direct contact with the courts—prisoners holding mock trials in gaols, barristers doing the same in their circuit messes."[76]

The architecture of the Old Bailey, as described in Chapter Four, was eminently suited to schooling Newgate prisoners in trial procedures as they could see the inside of the court and participate as spectators while waiting in the "bail dock," the yard where the prisoners stood pending their trials.[77] Bernard Mandeville published his pamphlet, *An Enquiry into the Causes of the Frequent Executions at Tyburn* (1725), the same year

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[74] William Godwin, *Caleb Williams* (1794), ed. and intro. David McCracken (Oxford: Oxford University Press, 1982), p. 178.

[75] Tobias Smollett, *Humphry Clinker* (1771), ed. James L. Thorson (New York: Norton, 1983), p. 142.

[76] Douglas Hay, "The Criminal Prosecution in England and its Historians," *Modern Law Review* 47(1984): pp. 11-12.

[77] See Gerald Howson, *Thief-Taker General: The Rise and Fall of Jonathan Wild* (London: Hutchinson & Co., 1970), p. 27.

that Jonathan Wild occupied Newgate prison, and he was especially exercised by the pretend trials, such as the one that educated Humphry Clinker. Mandeville illustrates the licentiousness that resulted from having large numbers of prisoners promiscuously milling about Newgate, and, as part of this catalogue, picks out mock trials for particular condemnations. He scolds the prisoners for spending their "most serious Hours...in mock Tryals, and instructing one another in cross Questions, to confound Witnesses; and all the Strategems and Evasions that can be of Service, to elude the Charge that shall be made against them."[78]

Lord Mansfield, the Chief Justice of the Court of King's Bench from 1765-1788, received a "bill of particulars" in 1779 drawn up by inmates of King's Bench complaining of unjust treatment from other prisoners who had "fashioned a Court of King's Bench" mock tribunal within the prison walls and were issuing orders, summons, and executions against prisoners and their property, extorting sums for prison rooms, and inflicting corporal punishment and taking personal items from those who failed to comply.[79] Joanna Innes, in her study of the social environment of the King's Bench prison in the eighteenth century, from the perspective of inmates housed in that largest of London debtors' prisons, describes the complex self-government which was a

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[78] Bernard Mandeville, *An Enquiry into the Causes of the Frequent Executions at Tyburn* (1725) intro. Malvin R. Zirker (Los Angeles: William Andrews Clark Memorial Library, 1964), p. 17.

[79] James Oldham, *The Mansfield Manuscripts and the Growth of English Law in the Eighteenth Century*, 2 vols. (Chapel Hill: University of North Carolina Press, 1992), vol. 1, pp.111-112. Oldham's legal history of Lord Mansfield is based on Mansfield's surviving trial notebooks.

necessary adjunct of these simulated tribunals.[80] The "King's Bench college" prisoners' self-government was operating by the late seventeenth century and its duties included formal dispute resolution, complete with prison "jurors" to mete out fines and shame. Innes describes the prisoners' tribunal as doing "much the same work as any court leet or petty borough court" during the eighteenth century.[81] Innes contends that prisoners accepted the internal tribunals as contributing to social order and, if so, such incidents as Chief Justice Mansfield reports of a small group of prisoners filing grievances against the "college" would have been unusual. Judicial procedures, including lay evaluators of testimony, infused the culture and, as these historic examples suggest, were perceived as epistemologically sound methods to resolve disputes. The prison participants in the mocked trials were sometimes perceived as subverting the system, scornfully aping established legal procedures, and sometimes perceived as being subverted by the system, complacently copying approved dispute resolution mechanisms.

The mocked trials give a sense of how conscious eighteenth-century culture was of legal protocols; as Blackstone pointed out of English culture, knowledge of law was common. Fielding's legal knowledge and experience has been well documented.[82]

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[80] Joanna Innes, "The King's Bench prison in the later eighteenth century," in *An Ungovernable People: The English and their law in the seventeenth and eighteenth centuries,* ed. John Brewer and John Styles (New Brunswick, NJ: Rutgers University Press, 1980), pp. 250-298.

[81] Innes, "The King's Bench Prison," pp. 282-284. See also W.J. Sheehan, "Finding Solace in Eighteenth-Century Newgate," in *Crime in England, 1550-1800*, ed. J.S. Cockburn (Princeton: Princeton University Press, 1977), p. 234.

[82] See for example, Martin C. Battestin with Ruthe R. Battestin, *Henry Fielding: A Life* (Routledge, Chapman & Hall, 1990), Part III; Ronald Paulson, *The Life*

Richardson, too, was acculturated in legal issues and procedures; he printed editions of the *State Trials*, the House of Commons debates, and attended many debates.[83] The replication of legal dispute resolution, and the fact that these simulated trials incorporated the process of having jurors evaluate evidence, indicate that formalized legal procedures infiltrated the culture and influenced cultural practices. Trials served as both public education and entertainment and, like novels, were struggling with the Horatian balance between instruction and entertainment. The prisoners were not the only ones being schooled in trial procedures and on what faces would present themselves as credible. Legal historians have documented how pervasive was the amount of legal reporting in eighteenth-century printed material, such as newspapers, indicating that trials were subjects of interest to the public.[84] Significantly, however, the public had the opportunity not only to read about trials but also to watch them. The public outside the open air courtroom and those who paid to view the trials from the gallery saw these live exercises of witnesses being scrutinized and their credibility being parsed.

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of Henry Fielding: A Critical Biography (Malden, MA: Blackwell Publishers, 2000), esp. pp. 105-108, 261-285; Allen D. Boyer, "Justice Fielding, the Novel, and the Law," review of Martin C. Battestin with Ruthe R. Battestin, *Henry Fielding: A Life*, *Yale Journal of Law & the Humanities* 4 (1992): 187-207; Lance C. Bertelsen, "Committed by Justice Fielding: Judicial and Journalistic Representation in the Bow Street Magistrate's Office January 3-November 24, 1752," *Eighteenth-Century Studies* 30 (1997): 337-363.

[83] See William M. Sale, Jr., *Samuel Richardson: Master Printer* (Ithaca: Cornell University Press, 1950), chap. 7.

[84] See for example, James Oldham, "Law Reporting in the London Newspapers 1756-1786," *American Journal of Legal History* 31 (1987): 177-206.

The seminal studies of Foucault, Hay, Linebaugh, and Thompson[85] emphasize trials' theatricality and pageantry. But the pomp and majesty can be over-emphasized.[86] Accounts of the "theatre" and pageantry should be tempered.[87] Trials were unrehearsed and conducted with dispatch; contrary to the axiom, eighteenth-century wheels of justice did not grind slowly. Spectacle and solicitude for participants were undermined by the speed, noise, smells, and public open court facilities, as Chapter 4 detailed. It is not surprising, given the atmosphere and their exposure, that eighteenth-century heroines like Clarissa, Evelina, and Adeline would all be reluctant to

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[85] Douglas Hay, Peter Linebaugh, John G. Rule, E.P. Thompson, and Cal Winslow, eds., *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (London: Allen Lane, 1975), esp. chap 1; Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (London: Penguin, 1991), p. 75; Douglas Hay, "Property, Authority and the Criminal Law," pp. 17-63; Beattie, *Crime and the Courts in England,* p. 316; Douglas Hay, "The Criminal Prosecution in England and its Historians," *Modern Law Review 47* (1984): 1-29. On theatricality in punishment, see Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage Books, 1979); V.A. Gatrell, *The Hanging Tree: Execution and the English People, 1770-1868* (Oxford: Oxford University Press, 1994); John Bender, *Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth-Century England* (Chicago: University of Chicago Press, 1987); Steven Wilf, "Imagining Justice: Aesthetics and Public Executions in Late Eighteenth-Century England," *Yale Journal of Law and the Humanities* 5 (1993): 51-78; Randall McGowen, "The Changing Face of God's Justice: The Debates over Divine and Human Punishment in Eighteenth-Century England," *Criminal Justice History* 9 (1998): 63-98; Randall McGowen, "The Image of Justice and Reform of the Criminal Law in Early Nineteenth-Century England," *Buffalo Law Review* 32 (1983): 89-125.

[86] See Allyson N. May, "The Old Bailey Bar, 1783-1834" (Ph.D. diss. University of Toronto, 1997), pp. 126-129.

[87] I am suggesting further, by these links between testimony and credibility, that orality's presence in the novel also might not be as "theatrical" or only "theatrical," and that the trial—with its orality and credibility—is an important generic precedent for the novel. Forensic credibility is not mere play or the assumption of a role; instead, characters are attempting to discern epistemic and moral qualities, not personated ones. The trial differs from the theatre in that it seeks real, not feigned emotions and moods; and the novel likewise depicts characters trying to discern true epistemic and moral qualities and is teaching readers how to do that in their daily lives.

testify and participate in the courts. Each of those heroines explicitly and passionately refuses to seek recourse through the law courts. Fielding, in his *Enquiry into the Causes of the Late Increases of Robbers,* makes allowances for women's delicacy, tender-heartedness or penury dissuading them from prosecuting, and Mandeville, years earlier in his *Enquiry into the Causes of the Frequent Executions at Tyburn,* a bit less sympathetically, acknowledges "Human Frailties" and grudgingly excuses the "Backwardness of a meek home-bred Person" lacking "Strength of Mind and Resolution enough to perform Duties that are repugnant to his Nature," which makes appearing and speaking in open court "terrible Things."[88] Lovelace certainly plans to exploit women's reluctance to appear and speak in court, confessing in his rape fantasy about Anna and Mrs. Howe there "will be greater likelihood that these women will *not* prosecute, than that they *will*" (4.239), and consoling himself after Clarissa's rape with the thought of "what a modest woman will suffer rather than become a *viva voce* accuser" (5.307).

Clarissa indeed refuses the pleas of Anna, Mrs. Howe, and Dr. Lewen to prosecute Lovelace, querying Anna, "how do you think I could bear" having to appear, preferring to "suffer every evil" than to "appear publicly in court to do myself justice," and predicting she would not survive her first appearance at the bar (6.172, 6.181, 6.186). She has little faith that a jury would convict, noting that the pleas, which "*out of court*, and to a *private* and *serious* audience would have carried the greatest weight,"

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[88] Henry Fielding, *An Enquiry into the Causes of the Late Increase of Robbers and Related Writings* (1751), ed. Malvin R. Zirker (Middletown, Conn: Wesleyan University Press, 1988), p. 154; Bernard Mandeville, *An Enquiry into the Causes of the Frequent Executions at Tyburn* (1725) intro. Malvin R. Zirker (Los Angeles: William Andrews Clark Memorial Library, 1964), pp. 2-3.

might be "bandied about and jested profligately with" in a court (7.259). Richardson in several footnotes pointedly emphasizes the chronology, by emphasizing the city's architectural changes, leaving the exact year unidentified, but precisely following actual calendar dates that would fit 1721, 1727 or 1732.[89] If then, *Clarissa* is set during the 1720s to1730s period, the Old Bailey Sessions House in London was still open air, criminal trials were dominated by the testimony of the defendant and complainant and there was little sign of counsel alleviating the parties' burden, or opportunity, to confront each other face to face. Tellingly, Lovelace predicates women's reluctance to testify on the fact that the system of credibility can be gamed: "the sufferers cannot put half so good a face upon the matter as we" (4.240). He predicts that Clarissa would have a made "poor hand" in court against him "who had so much to *say* and to *show* for himself" (7.314). Lovelace understands the testimonial model for combining words and visual evidence, and knows how to exploit actual and perceived jury fallibility.

Clarissa seeks an alternative venue to secular legal procedures, invoking the (spiritual) LAW and the Protestant tradition of a court of conscience. However, Clarissa is far from dismissing the epistemological and interpretive protocols that are

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[89] Tom Keymer puts the time period of the novel "toward the close" of the period between 1675-1735 (Tom Keymer, *Richardson's* Clarissa *and the Eighteenth-Century Reader* [Cambridge: Cambridge University Press, 1992], n. 92 p. 230); Angus Ross extrapolates from the dating of "Wednesday March 1" that the relevant years are 1721, 1727, and 1732 and thinks 1732 most likely to be consistent with the changes to Grosvenor Square, which Lovelace mentions as recent and which occurred from 1725 (Angus Ross, "Introduction" to *Clarissa*, ed. Angus Ross [New York: Penguin, 85], p. 23. See also, Joan Ilse Schwarz, "'Clarissa' and the law: Inheritance, abduction and rape" (Ph.D. diss, University of Wisconsin-Madison, 1992), p. 61, taking the period from the mid-1720s to the later 1740s as the relevant legal context. Henry Fielding's *Amelia* is set in a similar time frame, which has been posited to be 1733. See "The Time-Scheme of *Amelia*," appendix 1 to Henry Fielding, *Amelia,* ed. Martin C. Battestin (Oxford: Oxford University Press, 1983), pp. 535-539.

part of the common law trial design. Indeed, when she instructs her circle of acquaintances how to improve their credibility skills, to correct them in their hasty censuring of a friend without adequate proof, she uses a mock character trial format. She assumes the role of the "defendant" so that they can "hear what the poor culprit can say to it in her own defence," answers the questioning accusations in person before the circle, and, as if schooled at Newgate, conforms to the protocols to be assessed as credible and convinces them (8.275). Although she anticipates her own "trial" in front of the assembled Harlowe judges with some trepidation, she also positively looks forward to participating in a mock forensic proceeding which ensures that she will be heard in her own words. Clarissa further contrives to set up mock trials with Lovelace, trusting face-to-face testimony as the best way to allow her to discern whether Lovelace is credible. Clarissa is one character, among many in eighteenth-century novels, who validates the epistemological and legal procedures for testing credibility.

Mock Trials

It is true that many literary critics and history of the novel scholars invoke forensic language and rely on "the trial" or "readers as jurors" as an analytical framework. But they frequently do so loosely, without insisting on a consistent and sustained epistemological and hermeneutic application of the legal model, and without appealing to the testimonial traits that mark the trial and link jurors and readers. Legal subjects and language offer powerful and comprehensible metaphors and their appeal to critics from outside law is not surprising. Legal terminology and analogies infuse common parlance as well as formal philosophical inquiry, in eighteenth-century and

current contexts. But the very ease with which legal terms and concepts can be applied to non-legal contexts also undermines their precision as critical constructs.[90] Criticism is rife with references to literary acts of interpretation that are self-consciously styled as legal "judgments" and which are said to take place in "courtrooms."

Such ambiguous and ambivalent uses of legal language are latent in eighteenth-century sources and practices. People were literally closer to the legal process, enabled by the architecture of common law trials by jury, detailed in Chapter Four, and the practice of magistrates conducting some legal processes in the home, to share the same physical space as the "law." By corollary, people also shared a close epistemological space with legal concepts in the eighteenth century. Thus, although not a phenomenon unique to this period or to the eighteenth-century novel, legal words like "trial," "courts," "judgment," "testimony," "witness," and "accused" are invoked in contradictory ways in this periods' novels, sometimes in a formal forensic sense, sometimes unambiguously domestic, sometimes as a mild legal metaphor, but frequently complicatedly ambiguous. Doody has remarked Richardson's penchant for "using words with ambiguous meaning";[91] but, at least with respect to the valences of forensic terms, this tendency to exploit ambiguities was more widespread than in the fiction of Richardson alone. That said, to draw an example, one can profitably look to Richardson's novels where a legal term such as "trial" is used to describe religious or moral trials, and also applied to proceedings that are more formal and forensic,

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[90] See, for example, Warner, *Reading* Clarissa*: The Struggles of Interpretation*, describing Clarissa's struggle as being "worked out in the courtroom—the place of judgment" (17), and that her letter "reads like a legal brief" (28).

[91] Margaret Anne Doody, "Samuel Richardson: fiction and knowledge," p. 100.

including domestic discussions, magistrate proceedings, or full trials. With the conduct between Mr B and Pamela, by illustration, Richardson might intend "trials" to refer to Mr B's actual powers as justice of the peace and his authority to discipline his servants or might be drawing on Mr B's legal authority as a metaphor for the power relations in his romantic and sexual relationship. Pamela blurts out to Mr B, "Why then you are a Justice of Peace and may send me to Gaol, if you please, and bring me to a Tryal for my Life!" (58), and yet that lurking, and real, possibility does not convert every disagreement they have into a magistrate's proceeding. Her "trials," also refer to physical and sexual tests, like Mr B's assaults, and credibility tests, such as their meeting after he reads her letters (230).

Yet Richardson also frequently and deliberately invokes detailed forensic procedures of "mock trials" as epistemological constructs associated with testimony and credibility. That is, while legal language is sometimes used loosely, reflecting contemporary and modern conventions, at other times legal language is part of a consciously constructed metaphor of the type that Ricoeur describes, which signals and teaches probability judgments about credibility.

In *Pamela II,* Mr B tries Pamela, but like Moll Flanders, Pamela is markedly voluble and either steals control of the proceedings from Mr B or conspires to bring herself to justice. Always loquacious, Pamela seizes opportunities to be heard in her own words and seems to relish the formal forensic model for credibility testing at the same time that she denudes the formality by domesticating it. In the first scene, B writes Sir Simon that he "charged" Pamela as a criminal "before a judge," and she read

the "heavy charge."[92] B. and Pamela are not true adversaries in this scene, both colluding to placate Sir Simon. In this mock forum, Pamela is aware that pathognomy is a source of information by which credibility is judged, first playfully hiding her "guilty face" and then facing Mr. B directly.

With Pamela's second major mock trial, Pamela and Mr B are at odds. Pamela painstakingly fixes her own architecture, setting up her "whimsical Bar, and Apparatus for her Trial," as Richardson's epitome of *Pamela II* describes in explicit forensic terms.[93] Pamela constructs her own court facility which conforms to contemporary epistemological theory and she instructs Mr. B, step by step, in credibility evaluation: "here I'll stand to answer all your questions,...you must begin first; you must be my accuser, as well as my judge" (4.126-127). The hybridity of the first volume is gone, with Pamela now controlling the credibility tests and the credibility evidence by which she is judged, but within the formal forensic test she no longer compromises her credibility by asserting it. The forensic "in your own words" procedure is combined with a literary narrative which employs multiple points of view. This technique conforms to the epistemological preference for first-person point of view, while also enhancing the credibility of its own heroine by exposing readers to multiple character witnesses, as in the trial.

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[92] *Pamela, or Virtue Rewarded* (1741), 4 vols., intro.William Lyon Phelps, (1902; Rpt.New York: AMS Press, 1970), vol. 3, pp. 62-70.

[93] Richardson, "An Epitome of the Work," *Pamela*, 6th ed. (1742), in *The Pamela Controversy: Criticisms and adaptations of Samuel Richardson's* Pamela *1740-1750,* ed. Thomas Keymer and Peter Sabor, 6 vols. (London: Pickering & Chatto, 2001), vol. 1, p. 169.

As he would do in *Clarissa*, Richardson pairs Pamela's trials with Mr B's by his friends and family, and similarly to Lovelace, B's crime is his treatment of the heroine for which he is required to "undertake his own Defence," as Richardson's epitome puts it.[94] Indeed, Mr. B is "tried" for his "trials" of Pamela. This mock trial gives further evidence that Richardson deliberately invokes formal legal procedures, the "analogical generalization of the trial," to recall Ricoeur's phrasing. His legal discourse and legal architecture are neither casually nor ambiguously included but are rather freighted with epistemological significance, marking to readers the presence of a critical credibility test and the procedures by which credibility should be judged. Mr. B refers to reading a "transcript of the charge" against him, standing at the "insolent bar of [his] sister, answering her interrogatories," and his trial at his family's "dread tribunal" (215-230).

With this sequel, Richardson attempts to shore up Pamela's credibility by providing proof in B's "own words," which attests to the version of events that Pamela related. However, as I argued in Chapter Five, readers who disbelieved Pamela's character were troubled by moral, rather than cognitive, aspects of her character, which were not as easily fixed, retroactively, by proof of the factual plausibility of her story, or her ability to discern the credibility of other people.

Interestingly, all three mock trials are depicted in the engravings by Hubert Gravelot and Francis Hayman for the sixth edition of *Pamela* (1742), indicating that credibility trials had a strong visual appeal for contemporary readers.[95]

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[94] Richardson, "An Epitome of the Work," vol. 1, p.163.

[95] Hubert Gravelot and Francis Hayman, engravings facing vol. 3, pp. 161 and 228 and vol. 4, p. 210 of Samuel Richardson, *Pamela; or, Virtue Rewarded. In a Series of Familiar Letters From a Beautiful Young Damsel to her Parents...And Embellish'd*

Clarissa, *Credibility and Mock Trials: Character at Face Value*

Numerous mock trials in *Clarissa* bring the action forward through testimony that tests characters' credibility. My interpretation, which emphasizes orality, is juxtaposed against criticism by scholars such as Terry Castle, Terry Eagleton, and William Beatty Warner, who emphasize the sheer physicality and materiality of the written word in deconstructive and post-structuralist readings;[96] as I have been stressing, the testimonial paradigm brings out orality, sensory, and dynamic evidence, to supplement the reading paradigm of "Reading Clarissa," as Warner titles it. Further, the testimonial paradigm posits that characters are best able to be discerning when they see and hear another character in the act of testifying; Belford, for example, avers it was not until he "heard [Clarissa] speak" that he properly assessed her cognitive and moral abilities (4.316). While other scholars have illustrated the silent gaze in the novel, I wish to highlight the scrutinizing gaze on the speaking witness.

The mock trials are placed symmetrically in the narrative in an architectural fashion more usually attributed to Fielding's narrative methods. Clarissa is tried by the Harlowes, Lovelace and Clarissa are tried by each other, and Lovelace is tried by his family, punctuating the novel with relatively even distribution. The first trial highlights

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with Copper Plates, Design'd and Engrav'd by Mr. Hayman, and Mr. Gravelot, 6th ed. corr. 4 vols. (London: S. Richardson, J. Osborn, and John Rivington, 1742), rpt. in Thomas Keymer and Peter Sabor, ed. *Prose criticism and Visual representations*, vol. 2 of *The Pamela Controversy: Criticisms and Adaptations of Samuel Richardson's* Pamela *1740-1750* (London: Pickering & Chatto, 2001), vol. 2, pp. 307, 309, and 325.

[96] Terry Castle, *Clarissa's Ciphers: Meaning and Disruption in Richardson's Clarissa* (Ithaca: Cornell University Press, 1982); Warner, *Reading Clarissa: The Struggles of Interpretation*; Terry Eagleton, *The Rape of Clarissa: Writing, Sexuality and Class Struggle in Samuel Richardson* (Minneapolis: University of Minnesota Press, 1982).

the dilemma of first-person point of view, the second elaborately follows Clarissa applying forensic credibility protocols in an instructive exercise, and the third riddles the convention as Lovelace, like Pamela, turns the trial topsy-turvy, and foreshadows increasing anxiety about the defendant usurping trial procedures. The explicit simulations of judicial procedures and endorsement of judicial epistemology in these mock trials run counter to Lovelace's rape of Clarissa, which he repeatedly and callously characterizes as a "fair trial," warning that "no appeals lie from his tribunal" (5.22).

The Harlowes' "trial" of Clarissa, which is the impetus for Clarissa's escape with Lovelace, replicates court procedures even in architectural details. The "judges" arrive in chariots that "rattle through the courtyard," reminiscent of the stone courtyard in front of the Old Bailey, and take their places assembled together on the "awful bench" (2.2). At the next "session," the family tribunal congregates in one parlour in surveillance of the orchestrated meeting between Clarissa and Solmes in the other. Christina Marsden Gillis, in her monograph on architecture, privacy, and epistolary space, notes the design of the "wainscot partition" dividing Clarissa's parlour from the adjoining one for Arabella; as Gillis describes, the wainscot partition "does not really insure privacy" because it was only a partial wall from which the family assembled in one room and "remained as audience" to Clarissa's meeting with Solmes in the other room.[97] One feature which Gillis does not mention is that the "wainscot partition" bears a striking resemblance to the partitions depicted in the eighteenth-century prints of

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[97] Christina Marsden Gillis, *The Paradox of Privacy: Epistolary Form in* Clarissa (Gainesville: University Presses of Florida, 1984), p. 32.

courtrooms, by which the jurors were separated but visible, engaged in public monitoring of speaking witnesses' credibility. The same architectural configuration allows the Harlowe assembly and Clarissa to monitor each other during Clarissa's "trial," making credibility visible.

Richardson exaggerates the visible elements of this domestic trial, with Clarissa anxious about how she shall "look upon my awful judges," but, as significantly, how the judges will look upon her. Clarissa is not entirely persuaded of the model of "embodied credibility," and, indeed, "practised at [her] glass for a look more cheerful than [her] heart" (2.2) before appearing before her judges. Clarissa's jarringly innocent recounting of a manipulative strategy that seems more consistent with Moll Flanders's shrewd pre-trial preparation suggests, if we are not to agree with William Warner that Clarissa is generally cunning, a widespread cultural questioning whether the defendant's indicia would be involuntarily and unavoidably manifested, and whether juries could reliably detect credibility indicia. She worries that credibility is *too* localized, later wondering why she was not "credited" by her mother when she had "never told her mamma a wilful falsehood" (7.140). Although Clarissa later states she has an "open and free … countenance" (3.284) and that her "countenance is indeed an honest picture of [her] heart," (7.9-10), Lovelace too, she thinks, has "an open and …an honest countenance," (3.318) and "so much meaning and penetration in his face" (7.67). "Specious appearances," such as his, complicate people's ability to appraise credibility, and diminish their confidence that their own unmanaged demeanour will be persuasive. Lovelace exclaims at the foolishness of those who would "neglect to cultivate the opinions of individuals, when the whole world is governed by appearance!" (5.125).

Thus, it is perhaps less surprising that Clarissa also "practised" her demeanour, contravening the maxim she later challenges Tomlinson with, that a "worthy heart . . . need not fear an examination—need not fear being looked into" (5.200); this threat causes Tomlinson to want to "*unlook* his own looks" (5.200), like people running from the "Tatler mirror," but even the virtuous fear an unprepared examination. Clarissa is like her pointed allusion to the Roman Scipio, who blushed with indignation at a false scandalous charge and chooses exile rather than being questioned in public on it; that is, both doubt the ability of their evaluators to discriminate when apparently similar somatic evidence elicited from a testifying witness is derived from an innocent or a guilty conscience (3.284, 3.285, 6.304), and thus are wary of juror's, and reader's, and people's ability generally, to discern credibility.

The middle trials, reciprocal tests of Lovelace and Clarissa, show Clarissa actively seeking to put Lovelace through the juristic protocols of credibility tested in live testimony, trusting that questioning Lovelace, as parties would do in an eighteenth-century common law trial, will "beat" and "boult out" reliable evidence of his credibility. Before an audience of Mrs. Moore and Miss Rawlins, who simultaneously judge the proceedings, Clarissa cross-examines Lovelace, with the trapping "cursed thrust" of her question inquiring whether they are married (5.133). While the gambit is an effective one, and allows Clarissa to appraise Lovelace, Clarissa's ersatz jury is less adept and, as Lovelace prophesied in his rape fantasy, the women are susceptible to Lovelace's eloquent appeal and unable to evaluate the testimony (5.140-141). In a mock trial staged with Tomlinson as a proxy for Lovelace, Clarissa asks "*sifting questions*" (5.214), so accurately penetrating that Tomlinson wishes to "unlook his

looks", enabling her to gather information from the evidence elicited by the testimony which she later uses against Lovelace, resulting in his uncharacteristically discomposed demeanour. Like a flustered (guilty) defendant, Lovelace answers in broken sentences and with "confusion visible" in his whole person (5.314), so Clarissa can importantly "see . . . what credit" to give to his testimony (5.319).

In the most elaborate of the mock trials, Clarissa extensively examines Lovelace in a series of trials at the Sinclair brothel, to "sift [him] thoroughly," in order to "judge" his "new professions" by the answers to her questions regarding "[his] pretended declarations" (5.330). She precisely follows the philosophy of testimony, as formalized through legal protocols, to evaluate the probability of testimony according to both factual plausibility and the credibility of the witness, and to appraise the latter's moral and epistemic traits by a sensory process using indicia that are elicited in the act of testifying. When Clarissa wants to decide whether to believe Lovelace's professions, she arranges to see and hear him speak; notwithstanding the epistolary narrative's emphasis on the written word, the characters evaluate credibility through the spoken word, and readers learn to emulate these procedures for discerning facts. At the same time, she defiantly repels Lovelace's attempts to corrupt the testimonial process, reflecting a cultural undercurrent that queried whether a wily defendant might not through trickery and too-expert eloquence usurp the criminal process: "Ask me no questions that may ensnare me. I am too sincere for the company I am in" (6.44). In the penknife scheme, Lovelace schemes a simulated treason trial with the Sinclair mother and sisterhood "all sitting in judgment" of false evidence against Clarissa (6.55), but Clarissa, as defendant, herself inverts the trial process, seeking refuge in the purer

spiritual forum of the "LAW," and, as she did with the Harlowes, ultimately resisting false procedures that distort the credibility evaluation process.

Richardson is at pains to recuperate the credibility evaluation process by substantiating the somatic evidence as reliable and dismissing the suspicion that witnesses can commandeer credibility indicia to suit their whims. When Clarissa wonders how Lovelace could "command a blush at his pleasure,...unstrained for, and natural, as I thought" and attributes it to his acting, the editorial footnote steps in to clarify that Lovelace's blush *was* natural, invoked by the false Lady Betty mistaking her cue. The "natural" blush restores the credibility process, and validates Clarissa's interpretive abilities and her lack of credulity (6.154-155). The "natural" blush conforms to the legal assumption that bodily indicia cannot be fully controlled and that if someone tries to feign these indicia there will be a telltale for others to see.

Finally, Lovelace is tried by his own family. Lovelace dubs this his "TRIAL" (6.195), which term is carried over into the abstracted index to emphasize the forensic procedures, at the same time that they are undermined by the qualification, "His trial, as he calls it" (6.xii). Lovelace controls the proceedings through his volubility, and like the Newgate prisoners, subverts and usurps the purported solemnity of the proceedings and his mock gaggle of judges, rhetorically asking at the conclusion, if ever comedy "end[ed] more happily" (6.218), penultimately concluding with him "rang[ing] about" freely in a kind of mock prison while the family is imprisoned (7.144). Lovelace is the archetype of the dangerously eloquent defendant who can beguile a jury that the proponents of the *Prisoner's Counsel Act* will hold up decades later to change the trial's epistemology, and, in turn, expectations about credibility, as the conclusion discusses.

Richardson extends his treatment of credibility beyond mock trials and explicit forensic procedures. Indeed, *Clarissa* is a meta-credibility discourse. Instead of merely teaching how to evaluate whether other people are credible, readers, and other characters, are also taught how to judge other people's ability to discern credibility, and whether they succeed in calibrating themselves to a golden mean between censoriousness and credulity.

As many readers have wondered, for what is Clarissa morally culpable? Clarissa's credibility test is extraordinary: forged letters, impersonations, disguises, architectural sets. Richardson confusingly seems both to insist that Clarissa is a moral paragon and to maintain that she erred. Until the end of the novel, Clarissa blames herself for her troubles, attributing the cause of her failing to her credulity, and both readers and the other characters are invited to share this perspective. Richardson is careful, however, to place the blame more obliquely. Clarissa is not culpable on the grounds of credulity; that is, she cannot be blamed for failing to observe and interpret credibility evidence. The novel's particular application of the epistolary narrative facilitates Clarissa and Lovelace corresponding frequently through written communications, which are devoid of the visual and other sensory cues revealed through *viva voce* testimony. With the resolution of the novel, she, the other characters, and readers correct their impression that Clarissa is too credulous or has ineptly interpreted the credibility evidence before her. Clarissa fails not because she is too gullible but because she exits the elaborate social and familial conventions that were erected as a bulwark—sometimes clumsy and over-wrought—to compensate for absent

character information and occluded credibility cues. The public search for credibility norms to shore up lost character information and its effect on narrative strategies to represent credibility is discussed in the following chapter.

Chapter Seven: Pedagogy and Practice: Novels and the Teaching of Credibility

Novelists taught credibility in ways that extended beyond the overt application of forensic procedure and simulation of mock trials. Eighteenth-century novels contributed to credibility discourse by integrating quotidian evidence and drawing on methods which would be accessible to ordinary people in their daily routines, at the same time that the novels were faithful to philosophic theory and legal procedures. Philosophy, law, and literature highlighted different kinds of evidence that were appropriate to their respective fields of inquiry. Eighteenth-century literature was engrossed in the same problem of the philosophic lacuna that was preoccupying legal reformers: how can credibility be evaluated when little is known about character? I am arguing the novel and the trial are engaged in the same eighteenth-century hermeneutic project of setting norms for credibility: defining and describing kinds of evidence and the empirical procedures for appraising and weighing credibility. By conveying credibility practices and showing how they could be applied in ordinary life, outside the constraints of formal legal processes and spaces, the eighteenth-century novel could help teach people to compensate for lost character information.

The novels which I treat here are representative of many novels during this period which focus on the psycho-social and hermeneutic problems wrought by urbanization, specifically how estrangement from other people's characters complicated the evaluation of their credibility. As earlier chapters developed, credibility inquiries gained prominence in the public consciousness once credibility was discriminated from character, at the same time that urbanization and mobility made character information

more inaccessible. Social interactions in the urban environment could be fleeting and transient. Knowledge of other people was unmoored from the cluster of familial, social, and geographic histories that had grounded social interactions and stabilized them through ties and character knowledge accumulated over generations. Eighteenth-century culture, in other words, was struggling to establish procedures and evidence by which to interpret the credibility of a speaker in particular testimonial moments. In interactions between relative strangers, such philosophic criteria as Locke put forward of the number of witnesses, their integrity, skill, and design, consistency of the relation, and contrary testimonies were all more complicated for a person to apply who might not know the speakers' histories enough to assess their integrity and experience, might have limited resources and cross-references, and might have little factual information to use as a lodestone. Credibility was situated more explicitly as a social inquiry instead of merely, or only, a private lesson. The novel was one forum, along with philosophy and law, where this critical public inquiry was discussed and the practical means of setting norms and training people to apply them could be developed. The novel then explored what other information from everyday routines could be relied on to test a stranger's or new acquaintance's word, and novelists explored what literary evidence could be used to show credibility in practice, where philosophy had discoursed on its theory.

It hardly needs to be pointed out that the novel has a pedagogical purpose; eighteenth-century novelists explicitly adopted that mission in their prefaces and postscripts, and contemporary critics like Johnson, in *Rambler* no. 4 and elsewhere, broadly disseminated that idea in this period. One of the educational projects with which eighteenth-century novelists were engaged, I am arguing, was the teaching of

credibility. Numerous critics have discussed how eighteenth-century novelists use the novel as a pedagogical vehicle to teach readers to read novels.[1] I am arguing that the novel was also teaching people to interpret credibility through testimony. That objective is less transparent to modern readers, relative for example to factual probability, because its context of the epistemology of testimony has receded. This thesis seeks to recuperate the interpretive environment in which contemporary readers would have been steeped. The long eighteenth-century, as earlier chapters examine, was familiar with the epistemology of testimony, and its two-part focus on credibility as well as plausibility, and was familiar with the law court's protocols for testing credibility. That theory and praxis would have been part of the interpretive framework with which readers would approach the reading experience of a novel.

David Simple, *Evelina*, and *Amelia* all probe the difficulty of discerning credibility when little is known about character and all attribute the loss of character information to urbanization. These novels were set forth by their authors as teaching aids that would instruct how to penetrate and to understand whether other people have moral and cognitive traits that comprise credibility. Henry Fielding identifies the virtue

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[1] See for example, William Beatty Warner, *Licensing Entertainment: The Elevation of Novel Reading in Britain, 1684-1750* (Berkeley: University of California Press, 1998), esp. pp. 186-192 (referring to an "allegory of novel reading"); Robert W. Uphaus, *The Impossible Observer: Reason and the Reader in 18th-Century Prose* (Louisville: University Press of Kentucky, 1979) (using term "reading paradigms"); Douglas Lane Patey, *Probability and literary form: Philosophic theory and literary practice in the Augustan Age* (Cambridge: Cambridge University Press, 1984), pp. xii, 179, 184, 195-201, 209, 212; and Terry Castle, *Clarissa's Cyphers: Meaning and Disruption in Richardson's "Clarissa"* (Ithaca: Cornell University Press, 1982)("act of reading is a paradigm for the way in which characters interpret the world," and they "characteristically ... like to confuse the textual and the experiential in their own discourse," pp. 48-49).

of his sister's *David Simple* as its "vast Penetration into human Nature, a deep and profound Discernment of all the Mazes, Windings, and Labyrinths, which perplex the heart of Man to such a degree, that he is himself often incapable of seeing through them."[2] Readers learn by following innocents who must learn credibility skills. In each of these novels, the naïve protagonist learns to fathom credibility in the midst of conflicting signals and opaque character clues. Success comes when the characters are willing to do the hard work of this probabilistic enterprise, to learn to discern more information from testimony, and to weigh that fine cluster of subjective impressions. Characters and readers are taught how to believe only those characters who can *reasonably* be inferred to be credible, to measure their belief and proportion their assent to deserving subjects. Readers learned what evidence could be expected and was normatively desirable to seek and how to acquire and test such reliable information.

Each of these novels incorporates the distinction developing in the law courts between persons who tell the truth on a particular occasion and persons who are truthful; that is, characters and readers are taught to discriminate between veracity or sincerity and credibility. Veracity is a character trait which makes it more probable that a character will tell the truth on any occasion, and sincerity is a character trait which makes it more probable that a character intends to tell the truth, but neither character trait fully answers whether a person is both cognitively and morally likely to attest the truth and is credible with respect to any given statement.

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[2] Sarah Fielding, *The Adventures of David Simple, Containing an Account of His Travels Through the Cities of London and Westminster in the Search of a Real Friend,* ed. and intro. Malcolm Kelsall, 2d. ed. 1744 (Oxford: Oxford University Press, 1994), p. 5.

Although readers have frequently censured David Simple, Evelina, and Booth for their purported credulity and simple-mindedness, their authors suggest credibility problems are as indicative of a social phenomenon as they are symptomatic of individual failings. In general, the mistaken naïf characters are portrayed as good characters who need to learn credibility rather than flawed characters who are morally complicit in their gullibility. That is, the authors distinguish between isolated individual gullibility, which is a private limitation hindering one-to-one personal relationships, and common cultural inexperience, which is a public limitation hindering the establishment of new social networks. By focusing on cultural inexperience, characters and readers are alike implicated in the need to learn credibility skills that can be applied in an environment where there is little or no personal knowledge of character. When characters like David Simple are morally culpable, their moral failing is attributable less to their individual credulity and initial inability to judge, and more to their unwillingness to judge, to knowing credibility practices but failing to apply them. "It is Idleness of Mind oftener than Incapacity that bars Men from worldly Knowledge," Sarah Fielding observes in *David Simple* (371).

That distinction, between capacity and application, helps to affirm the message that credibility can be mastered by ordinary people using the restricted evidentiary corpus of daily testimonial information. The faulty lesson David absorbs from his brother's perfidy over their father's will is that, "it would be hard for him ever to believe any one sincere, having been so much deceived" (26). David, Sarah Fielding suggests, errs as greatly by sweeping scepticism, his committed reluctance to judge, as he would by unmitigated credulity. This quiet confidence that people can assess other

people's moral and epistemic skills, I argue, was central to a widely held view circulating in the eighteenth century and underlying both the trial's and novel's design: people have credibility aptitude, and can, if they wish, apply themselves to refine those skills. Again, philosophic, legal and literary theory largely concurred that the ordinary decision-making skills and common sense of jurors, readers, and people generally, are adequate to evaluate credibility, and that by exercising those skills in the trial's and novel's hermeneutic sites they could enhance their abilities for application both within and outside those interpretive forums.

These novels, characteristically for the eighteenth-century Augustan novel, also affirm the importance of testimony for quotidian knowledge-making. Each book teaches credibility by a process of cumulating testimony and credibility evidence and teaching individuals to probe and interpret more deeply the evidence that is available in the testimonial process. These eighteenth-century novels typically follow a set model: characters first trust another character's words based on their initial efforts to find and interpret the credibility evidence therein. Following disappointments, characters and readers are then taught to re-assess credibility through additional testimony and credibility evidence that is provided for retrospective analysis, but which, the authors indicate, might have been discovered in the original testimony by a skilled interpreter. The internal evidence selected by the author indicates what information people can draw on from their everyday routine to decide if a stranger's, or new acquaintance's, word should be trusted. These lessons largely comport with philosophic advice, such as Locke's epistemology of testimony, that people should examine the integrity and skill of the witness, surrounding circumstances, and the number and quality of

concurring and dissenting witnesses and their stories, but at the same time try to guide readers, and characters, toward ways to negotiate personal encounters in which little character information is known about another person, and the observer nevertheless must decide whether to assent to the speaker's words.

Given the conventions of realism for the novels described here, characters and readers are not often faced with the philosophers' hermeneutic dilemma, developed in the miracles literature, of how to balance factual implausibility and credible witnesses. Instead, characters and readers must discern whether people can be believed when they attest to the factually plausible. In the paradigmatic scenario, represented by Henry and Sarah Fielding, and Smollett, among others, characters are promised a patronage position or a loan by a new acquaintance in the city and, believing these promises, the characters re-arrange their affairs, as it turns out to their detriment when the new acquaintances betray or, at least, disappoint, their expectations. The credibility question posed by the authors, and debated by characters within the book, is whether these characters are more sinned against than sinning? When they believe these promises, are they culpably credulous because they negligently failed to follow credibility protocols and scrutinize the evidence carefully, or were their purported patrons "credible," given the evidence and procedures available, and their unfulfilled promises can be attributable to the imperfect knowledge that even a properly conducted probabilistic inquiry can never fully accommodate? After all, credible is not the same as truthful, and credibility remains a probabilistic inquiry.

David Simple

David Simple's journey is overtly styled as "the Search of a Real Friend," but it is as accurate, and perhaps a more telling characterization of all seven books of the novel, to label his journey as an education in interpreting credibility.[3]

Fielding cleverly tests David Simple by having him "enter into the Characters of Men in the great Metropolis where he lived" (27) because, as Simple reasons, "if he went into foreign Countries; where, [he did] not understand[ ] the Languages so readily," it would be more difficult to find out other people's sentiments. By this plot device, Fielding recognizes first, that a journey into one's own city, where one is immersed in ordinary relationships and social interactions, is itself an arduous and true test of discernment, and second, that *testimony* (and hence the reference to language), the ordinary experience of speaking to strangers or friends, forms the evidentiary corpus from which people draw their most important information about other people. Indeed, where "there is no sort of Conversation," David understandably wonders "how is it possible I should come at [other people's] Sentiments, or enter into their Characters"(78)? Fielding validates testimony as the most penetrating means to know the moral and cognitive capabilities of people with whom one does not have a previous acquaintance.

David recognizes that knowledge about other people is a probabilistic exercise which is ineluctably contextual, since character traits of "Good-nature and Generosity were always the same, tho' the Power to exert those Qualities are more or less

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[3] Sarah Fielding, *The Adventures of David Simple.* In this section, "Fielding" refers to Sarah Fielding.

according to the Variation of outward Circumstances" (28). Hence character, according to the novel, must be distinguished from the circumstantial and particular evidence of credibility, which manifests itself in "outward circumstances," including testimonial moments.

Fielding endorses the idea of embodied credibility, in which visible bodily cues elicited during the act of testifying help observers to ascertain the speaker's credibility. She is much more circumspect, however, about the success of physiognomy to reveal character information; for, as the epigraph to Chapter 4 of Book IV observes, with an ironic wink to people's sagacity, "Characters in the World are not always suited to their Merit, notwithstanding the great Penetration and Candour of Mankind" (256). David remarks the "Countenances of most of the People" he passes (28), strangers he encounters during his journey, and confidently attributes to them various complicated moods and emotions from anxiety to fear. Fielding gives us no way to gauge whether he correctly characterizes them, and this lack of a noetic measuring stick is precisely the point. Neither David nor readers can accurately *read the character* of strangers from these visible signs detached from conversation, but the novel's message encouragingly maintains we can learn the hermeneutic skill of *interpreting credibility* from particularized testimonial moments. Although "in Conversation, the real thoughts are often disguised," Sarah Fielding echoes her brother, from "An Essay on the Knowledge of Characters of Men," in contending that credibility can be detected from testimony

because "Nature breaks out and shews herself, without that Disguise" in certain moments, such as when the "Passions are actuated" (78, 68).[4]

David's initial attempts to assess testimony are misbegotten, vacillating from trusting too readily to censuring too severely and making these judgments from too limited acquaintance and sparse words. He begins "to suspect every thing about him, of some ill Design" (29), seeking solace in scepticism instead of the comfort of calibrated judgement. While he congratulates himself that he is "not quite so credulous to take [his landlords'] Words" as truth when they snipe at their neighbours, he too hastily concurs with their second-hand reports by relying merely on "the Generality of Scenes" he glimpses as he peripatetically moves from house to house instead of probing the particularized evidence to which he is witness (46). Without parsing the testimonial evidence in order to make probabilistic inferences, and thus failing to do the hard labour on which the long eighteenth-century philosophers insisted, David's early journey is punctuated by continuous unfounded conclusions. The early credibility failures are curiously self-reflexive adventures, as David faults people, such as Orgueil and Spatter, for condemning others for their faults, but is a "social critic" himself, attesting to David and Orgueil's insight that "every one ... expressed the greatest Aversion for the Vices they were more particularly guilty of" (66).

However, David begins to judge credibility more astutely with the introduction of the narrative device of digressive life stories of Cynthia, and the paired brother and sister stories of Camilla and Valentine, and Isabelle and her brother, the Marquis de

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[4] See Henry Fielding, "An Essay on the Knowledge of Characters of Men," in *Miscellanies*, ed. Henry Knight Miller, 3 vols. (London, 1743; Middletown, Conn: Weslayan University Press, 1979), vol. 1, p.155.

Stainville. The first-person tales permit David, and the exterior readers, sustained conversational evidence from which the new acquaintances can be judged. Although David is still wary that he will suffer from "too forward a Credulity" (133), and seems inclined to maintain his instinctive sceptical stance, he begins to be willing to probe testimonial evidence, and to focus on the "Manner of talking" (105).

Throughout the novel, Fielding repeats the motif that empirical eye-witness information is more reliable than ear-witness information and that both direct personal sources of evidence are preferable to relying on hearsay, reputation, and gossip, which the landlords inappropriately savoured; as Laplace recognized, with hearsay, one can only see through a glass darkly. There is "nothing so false," Fielding counsels, "as the Characters which are given to most People" (262), since their judges do not form their opinions from credibility indicia. But credibility can be discerned from the demeanour of a speaking witness. Thus, for example, "the Innocence of David's Looks, and the Sincerity which was visible in his Manner of expressing himself," prevail on Cynthia to share her life story with David (101), and readers are invited to agree with her decision. Meanwhile, Isabelle's brother's tragic tale of killing his best friend Dumont, after mistakenly accusing him more than once on the insufficient basis of aural evidence and hearsay, is one of several object lessons Fielding includes to caution characters and readers against trusting what one learns as a mere ear witness, rather than eye witness.

In these examples, Fielding illustrates what types of evidence should be preferred; but, she more rigorously focuses on how people balance, or more frequently fail to scrutinize, credibility evidence. She gives us many instances of people who wrongly judge credibility because they do not examine the credibility evidence of the

speaker before them, resolved instead to trust or suspect another based on hazy intuitions about character. Thus, Camilla's step-mother, Livia, can take advantage of Camilla's father's undisciplined partiality and his attention only to "bare Words," with mere "pretended Opennness" (163), knowing "there was no danger but she should be believed" (163). Fielding invokes a trial metaphor to underscore the risks of such ungrounded belief, or disbelief, pointing to Camilla and Valentine's aunt, who, like a rogue juror, "condemned [them] unheard" and "thought [them] guilty without any Proof" because she stubbornly "resolved to believe" whatever managed to first convince her (164). The aunt's tendency not to judge was facilitated by the siblings being struck "like Statues" and unable to speak when she looks at them, and hence the aunt cannot access the crucial source of testimonial information. Fielding suggests Camilla's father and aunt both ignore protocols for credibility and their intemperate recourse to scattered character impressions cannot produce a measured defensible judgment.

By contrast, Camilla correctly models credibility judgments when she "narrowly examined all [David's] Words and Actions" and concludes that his "outward Profession" is matched by his internal honour (155). Later, and similarly, the novel endorses Camilla and David's use of a "poor Man's Language" and "his meagre Looks" as proof enough to "give him Credit" (396), rightly combining testimony and the dynamic and fleeting bodily information elicited by the act of testifying. Camilla and David correctly rely on visible but subtle traces of demeanour manifested while testifying as proof to believe these respective speakers; at the same time, they also accurately proportion their assent to the quality of the evidence that they have, with

David, for example, recollecting "Caution in his Dealings with his Fellow Creatures was absolutely necessary . . . and dared not so far trust a Stranger" (397). David scrupled to comply with the man's requests until he had an opportunity of "strictly observing this poor Man's every Word and Look" (397).

Readers, Fielding suggests, should follow David and Camilla's lead in these instances, carefully parsing words and the credibility cues they carry and proportioning assent according to the evidence; readers should not rest content, as Orgueil, Spatter, the Marquis de Stainville, and Camilla's aunt and father do, with unexamined inclinations about the trustworthiness or suspiciousness of a given character until those intuitions can be grounded in full testimonial evidence. As these passages emphasize, the pathognomic indicia of a testifying countenance provide important credibility information which must be attended to in order properly to appraise credibility, and as a corollary, people are warned they should present a scrutable demeanour to abet other people's assessment of their words.

In the 1753 sequel to the novel, *Volume the Last,* Fielding explicates this theme further with a salutary warning against contenting oneself with credibility acumen unless one practices that aptitude. The romantic ending of the first volumes sees David to an apparently successful conclusion of his journey for a true friend, and seems to point to his having accomplished this when he acquired a proper education in credibility practices. However, the final volume subverts the triumphalism of "the highest Happiness that Warmth of Friendship" and "the highest Pleasure than even his Imagination could ever have formed from the Union of two Hearts" (322), which David enjoys at the beginning of the sequel. David's felicity unravels, Fielding cautions,

because he "resolved to believe" others without evaluating their testimony. David is educated in, but not inculcated with, credibility practices.

While his family ties stay strong, he nevertheless is vulnerable to the treachery of strangers and acquaintances because "his Inclination blinded his Judgment, till he in a manner forced himself to fancy he believed that *Ratcliff* and *Orgueil* would be his Friends, against that almost infallible Proof to the contrary, that the true Words of Kindness never fell from their Lips" (352). While Fielding admits David is sympathetic to some degree, ripe to be exploited by Ratcliff and Orgueil because his mind was "weakened" by familial distress, she also stresses he is at least partially accountable since he could be "imposed on by the Appearance of friendly Colours" *even though* "the most certain Knowledge, Experience itself, had given him great Reason to believe those Colours" were specious and hid a "hardness of heart" (353). Ratcliff and Orgueil promise David patronage positions, and Fielding indicates David is wrong to assent to their word. David lacks resolve (357), which leads him to give faith to promises of friendship that he should not have believed had he applied the normative standards and procedures for credibility that he has been taught. David is imposed upon by the perfidy of Ratcliff, who, "with great Professions of Kindness, pretended he would solicit" a lucrative position for David (382), but instead takes possession of it for himself, and upbraids David for supposed ingratitude for Ratcliff's unfulfilled promises to educate David's son. David can still be "greatly astonished" when Orgueil discloses this secret, even though David had been well prepared to be able to detect dissimulation.

Fielding uses Ratcliff's and the Orgueils' betrayals of David to distinguish between "sincerity" and "credibility." Ratcliff, the narrator acknowledges, at first

intended to keep his promise to secure the position for David, and the Orgueils at times want to be charitable; but Ratcliff's intent (albeit here, only a "faint Image" of intent (387)), and the Orgueils' inconsistent pleasantries and gifts are not enough to make these speakers actually credible with respect to their promises, since credibility requires concurring epistemic and moral traits. David's mis-interpretations are exacerbated because his judgment should be facilitated by his lengthy acquaintance with Orgueil. The "judicious Reader," Fielding warns, should take pains not to be as vulnerable to characters' false professions as David was.

But Fielding allows that social norms are shifting, and that the anxiety about finding a golden mean between credulity and scepticism signals a wider discontent about shifting public expectations and virtues. *Failing* to believe someone's word could have serious implications for the speaker's reputation, a caveat which suggested one should err toward credulity. *Assenting* to believe someone's word could have serious implications for the observer's character if he or she were deemed a gull. There was little safe normative ground to occupy, and an abstract allegiance to scepticism or credulity was not a neutral, or moral, resolution to adopt. David, in his personal choices about family, judges credibility, and character, well. In his straitened financial situation, and burdened with the distress of his family's declining health, Fielding indicates that David is only mildly culpable for believing the word of people, like the Orgueils, who sometimes did merit belief.

In *David Simple,* Fielding teaches more by exemplar than practice and conveys more knowledge than experience for readers. She provides relatively less empirical evidence by which readers can participate actively as eye witnesses in making their own

credibility judgments than is found in either *Amelia* or *Clarissa*, but much greater empirical evidence than can be found in many earlier efforts to credit narratives. Fielding somewhat peremptorily endorses certain characters' credibility methods while warning against others, presenting readers with tableaux to show the effects of mistaken credibility judgments on wronged victims, such as Cynthia, Camilla, and Isabelle, without fully explicating the evidentiary context for corrective judgments. Readers and characters, Fielding warns, must not become a snare to the innocent which "*wise Heads*, who fancy they prove their *Judgments* by being *suspicious,*" are (259). Characters, and readers, are advised that they must labour, like Camilla, to "narrowly examine all words" to infer credibility. To decide instead to "resolve to believe" or to "suspect everything," to choose therefore credulity or scepticism as a single philosophic stance, is wrongly to defer the private pleasure of new friends and abdicate the public responsibility of social intercourse. Fielding's protagonist learns that to find a new friend in the city, loosed from the character evidence that long familiarity would provide, he must work hard to scrutinize the testifying speaker, and readers learn that same lesson with him.

But given the allegorical and romantic inflections of *David Simple,* readers are relegated to a narrow evidentiary pool to practice making credibility judgments themselves; no doubt, readers have more latitude to assess credibility independently and to diverge, with reason, from the internal character's judgments, than readers did under many late seventeenth-century prose narratives' peremptory pronouncements that a character is credible because that character professed it. Fielding divulges relatively few visual cues at the same time that she insists that such evidence is necessary to

evaluate credibility. She commends her characters for their scrutinizing, sifting, parsing approaches to appraising credibility by watching the speaker, but those speakers nevertheless remain largely shrouded to the readers, obfuscating the readers' ability to verify and practice the same approaches. In her double wedding chapter (IV.9), Fielding slyly calls attention to her narrative's sparse visual information, by mocking the expectation that the author should describe the characters' persons, demurring that romances "already exhausted all the Beauties of Nature to adorn their Heroes and Heroines" (303). Fielding here deliberately undermines what she considers a too facile association between physiognomy and character, but she does not disrupt the association between testimony and credibility. Fielding embraced the Augustan model that literary credibility was about judgment and probabilistic inferences. In *David Simple,* characters and readers are taken successively through similar credibility scenarios and incrementally exposed to more experiences in order to inculcate judgment; and, while often lacking descriptions of the evidence, readers are told what they should be looking for so that they can apply those lessons to their quotidian credibility practices.

Evelina

Like *David Simple*, Frances Burney's *Evelina* is a credibility *bildungsroman* with a protagonist naïf in the role of the reader's surrogate for credibility instruction.[5] The story plays out against the backdrop that Evelina's mother's "credulity had been no

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[5] Frances Burney, *Evelina, or the History of a Young Lady's Entrance into the World* (1778), ed. with an intro. and notes by Edward A. Bloom, with the assistance of Lillian D. Bloom (Oxford: Oxford University Press, 1998).

match for [the] art" of Sir John Belmont" (15), similarly to how *David Simple* plays out against the backdrop of David's credulity and Daniel's treachery. However, the two characters of David and Evelina negotiate the lurking threat of credulity quite differently. I have argued David initially compensates for his purported credulity by defaulting to scepticism whenever he is uncertain, and thus he errs in his early efforts by failing to judge. Evelina, by contrast, not only judges credibility but judges well, in the golden mean between credulity and censoriousness.

According to Villars, who introduces her, Evelina is "quite a little rustic, and knows nothing of the world" (19). Villars worries that Evelina's "guileless and innocent soul fancied all the world to be pure and disinterested as herself," and that her heart would therefore be "open to every impression which...art might assail it" (126). But Evelina, apart from requiring schooling in society decorum, turns out to be a sure-footed guide for readers to follow to be instructed in credibility; readers are as much instructed *by* her as *with* her. Burney works against the expectations for a rustic ingénue, using Evelina's perspicacity as a foil to the "worldly" but foolish Madame Duval and Captain Mirvan. Readers learn to make sound judgments about credibility at least in part by learning to appraise Evelina, against type, as a credible first-person narrator who is perceptive and sagacious, at the same time that she is guileless, with an "air of openness in [her] countenance" (319). Readers can do this because Burney provides the kind and quality of evidence that enables readers to verify Evelina's judgments about other characters.

For example, Evelina astutely detects Captain Mirvan's ruse, in which he successfully tricks Madame Duval into thinking that M. Du Bois has been imprisoned.

Madame Duval is easily duped because "little does she reflect upon circumstances, or probability" of this legal action (141); meanwhile, Evelina correctly divines the feint by considering a complicated cluster of factors to assess the testimony, from the logical legal improbability of a country justice of peace handling a felony (factual implausibility), to Lady Howard's looks, manner, character, and her words, even the pregnant negative of those words that Lady Howard considerately does *not* say which could implicate the Captain, and herself (credibility) (141-142). "[I]t is wonderful," Evelina later descants, "to see how easily and how frequently [Madame Duval] is deceived" (236), while other characters and readers see how competently and prudently Evelina discerns others.

Evelina proves to be both a talented evaluator and trusted *reporter* of other people's credibility; that is, she is a credible witness because she relays evidence by which others, inside readers such as Villars and outside readers, can check her credibility evaluations. These readers are invited to judge Evelina, not entirely, but largely, on the basis of the evidence that Evelina herself conveys.

For instance, Evelina pointedly disbelieves Sir Clement Willoughby on several occasions. He sinks in Evelina's opinion when his probing questions cross from solicitousness to "unrestrained curiosity" because she knows that he can be "well-bred" when he pleases (201). The facts of this kind of social encounter, considered in the abstract, could plausibly be due to a young woman perceiving condescension where no slight was intended. But readers *believe* Evelina's testimony and assent to her version of the meeting, in which she characterizes his conversation to her as "disrespectful" and taking "uncommon freedom" (201). The narrative allows readers to accumulate enough

examples of Sir Clement's duplicity, from his own words reported by Evelina, to concur with Evelina's appraisal with little hesitation. Sir Clement, in short, is not believable when he claims his driver misunderstood him and that he did not wilfully misdirect his servant to take a circuitous route to drive Evelina back to her lodgings, and he is not believable when he claims the hackney-coach that Evelina and Madame Duval are seated in is the one he ordered for himself. Evelina rightly refuses to assent to these statements, to the first, "disdain[ing] to confirm a tale in which [she] had [herself] no belief" (100), and to the second, having "no doubt" that the scheme occurred to Willoughby at the last moment "for there is not the least probability that the accident really happened" (205).

Orville stands in as the reader's witness, observing and evaluating Evelina. Orville worries that, as "credulity is the sister of innocence," she "might be deceived," and remarks she has been largely "left to her own direction" (240-241, 346). Although grateful for his consideration, Evelina, unlike the *Female Quixote*'s Arabella, is relatively impervious to deception and, contrary to expectations, requires little schooling on how to judge strangers. She quickly realizes, for example, that the female escorts she seeks refuge with in Marybone-gardens when she is accosted by young officers are themselves of ill-repute (233). Her troubles are induced more by situation than by her credulity. Her most significant misjudgement is to believe Orville actually authored the letter Willoughby forged. But, even this situation doubles back to affirm Evelina's ability to judge others, since she already independently discerned Orville as the exemplar of the Christian Gentleman, and returns to this assessment, even in the face of seemingly incontrovertible written evidence otherwise, when her own

observations sustain that opinion; as Evelina consoles herself, she "is no longer sunk in her own opinion" (278) when her credibility abilities are restored. Although she temporarily suspends her good opinion, in order to consider Villars's advice not to "trust to appearances" imprudently (309), and, needlessly, castigates herself for "heedless indiscretion" (341), she soon recuperates her good opinion of Orville, and her good opinion of her own abilities to judge others. Like Clarissa, Evelina is victimized by deliberately orchestrated fraud, but only because she "find[s] [herself] in a world so deceitful, where we must suspect what we see, distrust what we hear, and doubt even what we feel!" (259). Both novels restore our opinions of the heroines by restoring their opinion of their own ability to assess credibility.

Readers must make constant judgments about characters' credibility, and this is especially so with respect to first-person narrators. Readers must be able to discern whose words to believe, before they can understand the story; and, for narratives that play off unreliable narrators, readers must be able to evaluate when authors deliberately have not given them enough evidence, or have given them conflicting evidence, to subvert such judgments. An epistolary narrator is judged by a reader based on the same cognitive and epistemic qualities by which a juror judges a witness. Does she accurately perceive, remember, and communicate her impressions to her readers (internal and external), knowing which contribute to clarity, which are required so as not to mislead, and which are within the observer's discretion to convey, and is she sincere in her relations? Evelina is credible as witness and narrator because she can judge credibility; readers and characters *believe* her when she *tells* us about other people *and* when she *reports* what they say. As Orville concludes, her novelty is that she is "so

unhackneyed in the world, as not to be yet influenced by custom to forget the use of reason" and her mind has not "naturally accommodate[d] itself even to the most ridiculous improprieties" just because they "occur frequently" (295). The everyman, that is, can be good at judging credibility and need not be worldly, or world weary, to appraise others accurately; rather, as Orville catalogues of Evelina's virtues, the good credibility judge is "well educated, and accustomed to good company . . . has a natural love of virtue, . . . informed, sensible, and intelligent" (346-347).

Amelia

In *Amelia*, Fielding instructs his readers by having them experience the seeming antitype of a competent credible assessor, Booth, while also ensuring that Booth's impressions are filtered through a third-person narrator or tempered by other characters' reactions to him.[6] Fielding inculcates judgment by forcing readers to decide, on each occasion that they hear testimony, whether to concur or dissent with Booth's judgments. Readers are given ample evidence to practice actively judging whether to assent to the words of new acquaintances whom Booth meets.

Booth is a poor physiognomist. Almost immediately on his introduction, he remarks the "great Innocence in [the] Countenance" of a woman in prison who, Robinson promptly corrects him, has been committed for street-walking, an indictment which she accents by volleying indecencies at Booth (33). Fielding uses Booth's ineptitude more to satirize unmerited physiognomic pretensions than to condemn Booth

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[6] Henry Fielding, *Amelia* (1752), ed. Martin C. Battestin, Wesleyan ed. of the Works of Henry Fielding, (Oxford: Clarendon Press, 1983). In this section, Fielding refers to Henry Fielding.

personally, for Fielding agrees appearances are deceptive, describing characters who "put on" and "wear" countenances and "assume characters"(103), and, by contrast, describing the hidden beauty Amelia "unmasks" after her surgery (68).

But Fielding suggests at least some of Booth's weaknesses in credibility skills are individual failings. Booth does not follow credibility protocols: he makes quick decisions, then "begins to waver in his Opinion" whether what people say of themselves or what others say about them is more believable (41). He is undisciplined but not unfailingly fallible, which makes Amelia's and the reader's job of verifying his judgments more difficult since his conclusions cannot be dismissed in total. Sometimes, albeit erratically, he acts correctly, for example in urging Miss Mathews to tell her own story, rather than crediting the hearsay, or what he calls "imperfect stories" about her.

Yet, Fielding also implies that Booth can be perceptive. He astutely divines Amelia's sister's lies, and, of course, Amelia's honest words. Booth, like David, is disappointed when he believes various patrons' promises to loan him money and secure him regimental positions. But it is not clear that Booth is wrong to assent to their promises or that his credibility skills are to blame. Instead, Fielding uses Booth as a foil, like Sarah Fielding's Camilla and Valentine, who is more wronged than culpable. Booth believes the lord's promises. However, it might be fairer to say that Booth willingly suspends disbelief. Booth's faulty interpretation is ameliorated by the fact that the lord is an expert in the "Art of promising [to] cheat poor Men of their Thanks, without ever designing to deserve them at all" (203).

Booth also misjudges Colonel James, believing him "the last Person [he] could suspect" and utterly assenting to what James attests, because "no Man's Honour is . . . more sacred" (118). There is a kind of merit in his loyalty, however, with Booth trying to preserve the friendship, and enduring repeated snubs, all the while that he is "discerning enough" to comprehend the slight in the porter's dismissive words (191). If Booth trusts too long, Colonel James does not trust enough, and his failure of reason is exacerbated by a failure of honour. Seduced by his "Interest in giving [his mistress] credit," who does not deserve it and has related a false account, Colonel James fails to impute credit to Booth (186). "Had the Colonel made a proper Use of his Reason, and fairly examined the Probability of the Fact, he could scarce have been imposed to believe a Matter so inconsistent with all he knew of *Booth*," and particularly where Booth had no motive to dishonour him (186). Even Miss Mathews curses him for "believing a Story so improbable, . . . [she] could scarce be thought in earnest" (225). Colonel James is too sceptical of Booth because he is too credulous of Miss Mathews.

Evaluated as a pedagogical instrument, the lesson here seems more consciously moral if pointedly targeted at a nascent Colonel James who might betray his friend in order to sustain his belief in a discreditable person he wishes to believe in order to further his self-interest. But, readers instead will identify with Amelia and, to a lesser extent, Booth, who are left without an *éclaircissement.* Booth is imbricated in a social network of public corruption and private vices, from which improved credibility skills may help him to negotiate but cannot fully extricate him. Fielding does not counsel that Booth should meet duplicity with hypocrisy. The public tragedy is that Booth's

problems (while conceding he could improve *character* traits such as frugality and probity) are not entirely attributable to personal failures in evaluating credibility.

Fielding permits readers to catch glimpses of the internal audience's response to testimony, so as to provide incremental evidence and resting points for readers to assess the speaking character's credibility and the observer's aptitude in appraising it. The most elaborate version of this technique is in the turns that Booth and Miss Mathews take to tell their life stories to each other. As the internal audience for Miss Mathews's story, Booth turns out to be a useful guide for readers, adeptly signalling when the external audience should be cautious, by stifling laughter and smiling whenever she crosses the bounds of credulity, all the while ensuring that she does not perceive his responses (52, 56). The device of using the internal observers to comment and react to the other character's words is effective, relieving some of the critical burden that Fielding's third-person narrators usually assume in his novels, and, by corollary, giving readers more information about the internal observer's competence to judge. Readers continue to get evidence about the speaking character, and acquire more evidence about the observing characters.

For example, Miss Mathews launches sarcastic jibes throughout Booth's story, and cannot help but sneeringly impute credulity, rather than honesty, to Amelia (71) and laugh at Booth's gravity (109). These asides prepare the reader to indict Miss Mathews for censoriousness, especially as "there is . . . something so outrageously suspicious in the Nature of all Vice" (161). On the other hand, her frank character assessments of people, like Miss Betty, whom Booth more gingerly handles, are shrewd (89). Miss Mathews identifies holes and digressions in Booth's story, alerting readers to potential

problems in the source, complaining he "raised more Curiosity than [he has] satisfied" (88).

Fielding repeats this technique when Amelia similarly stands in as an observer to Mrs Bennet's story. Mrs Bennet's testimony is a studied attempt to make herself appear credible. "[D]esirous of inculcating a good Opinion of herself" with Amelia, she lengthens her autobiography to leaven the "suspicious Part of her Character" with a prelude of "unexceptionable" Conduct" (268). The monologue itself is rife with instances of other people's faulty assent to hearsay, an ironic exercise in teaching credibility through a discreditable speaker. Amelia is a particularly effective foil for this testimony. As a character with prudence and probity, and who does not begrudge others her assent when merited, her scepticism is more arresting. She reminds the reader to conduct probabilistic inquiries into testimony, to believe only with reason.

Fielding's narrator retreats during these first-person narratives, creating what Eric Rothstein calls "epistemological empathy"[7] by readers of characters, as these interpreters similarly face uncertainty and must rely on "unaided wits" to try to draw inferences. Both John Bender and Alison Conway argue that the "judicial" voice recedes in these scenes;[8] however, I argue that the legal influence is even more marked in these scenes which take testimony and its evaluation as their subject. As Fielding's narrator recedes, the surrogate listeners are accorded more prominence, and with these

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[7] Eric Rothstein, *Systems of Order and Inquiry in Later Eighteenth-Century Fiction* (Berkeley: University of California Press, 1975), p. 155.

[8] John Bender, *Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth-Century England* (Chicago: University of Chicago Press, 1987), pp. 182-183; Alison Conway, "'Fielding's *Amelia* and the Aesthetics of Virtue," *Eighteenth-Century Fiction* 8 (1995): 38-39.

characters, the act of credibility judgment itself is punctuated. The readers are more transparently aligned with characters who are engaged in credibility decisions. Unlike in *Tom Jones,* where readers, courtesy of the narrator's communications, enjoy an epistemological advantage over the characters, and are constantly reminded by the narrator that this sets them apart from the characters, in *Amelia*, readers and characters are more similarly situated and in an epistemological environment where commonplace decisions are conducted in conditions of uncertainty and other people cannot be known. With the narrator in the background, both testimony and credibility come forward. Just as the prints of eighteenth-century trials frequently focus attention on the jurors as they assess credibility, so too here does Fielding direct the reader to their analogues within the novel.

Fielding uses interpolated tales elsewhere in his novels to the same advantage of having an audience who can provide "to the moment" critiques while a character is testifying. In *Jonathan Wild,* for example, Fielding similarly includes a prison tale, in which Mrs Heartfree, on Heartfree's invitation, relishingly relates to Heartfree and the magistrate how she saves two treasured jewels, her chastity and the stolen jewelry.[9] But the interpolated tale here teaches credibility to a different effect than *Amelia* by making readers want to "dissociate ourselves from the credulity of our surrogate audience," as McKeon aptly observes of Heartfree.[10] We are apt to detach ourselves from Heartfree not only because he seems to believe too readily and too warmly, but also because we

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[9] Henry Fielding, *Jonathan Wild* (1743), ed. and intro. by David Nokes (New York: Penguin, 1982), vol. 4, chaps. vii-xi.

[10] Michael McKeon, *The Origins of the English Novel, 1600-1740* (Baltimore: Johns Hopkins University Press, 1987), p. 391.

are not provided with enough evidence to monitor his reactions as directly as we do Amelia, Miss Mathews, and Booth, to see the credibility assessor evaluating credibility. Instead, Heartfree is swept into his wife's sea-tale, his reactions unwittingly incorporated into her performance, so that we learn his reactions through Mrs Heartfree's references to them. Heartfree passively fails as an internal listener (and assessor) because, judging from the speeches reported to us, he never probes the plausibility or credibility of the tale.

In both *Amelia* and *Jonathan Wild*, Fielding depicts characters who try to seize the first-person form in order to "disguise[e] ...confession as a vindication," as George E. Haggarty describes of Miss Mathews and Mrs Bennet.[11] Their emotive testimony both represents and warns against the seductive appeal of first-person narratives, which selectively colour each person's relation in the most advantageous terms. The internal listeners serve an important role in these scenes because they allow the reader to be exposed directly to the power of a first-person narrative at the same time that the listeners as surrogate credibility evaluators instruct readers to scrutinize the testimony so they do not assent too hastily. The listeners instruct, whether they serve an anti-type of a too credulous audience, like Heartfree, or as model figures who suitably combine scepticism with interest. In either case, Fielding provides the reader with a surrogate listener who offers additional credibility information, shows credibility in action, and serves as a guidepost for readers to measure whether their own willingness to believe is credulity or censoriousness. That device can be equally effective whether the novelist uses the internal listener to cultivate a distaste for credulity or emulate a commitment to

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[11] George E. Haggerty, "Fielding's Novel of Atonement: Confessional Form in *Amelia*," *Eighteenth-Century Fiction* 8 (1996): 388.

assent with care. These internal credibility evaluators illustrate knowledge as a social process.

In *Amelia,* Fielding provides neither the reader nor characters with a faultless interpreter, which further helps to teach how credibility should be independently and actively evaluated. Neither readers nor characters can safely adapt someone else's inferences about credibility. Dr. Harrison, like Allworthy, is cognitively and morally capable, with "great Penetration into the human Mind, ... great Experience," and well-intentioned; but, by making him fallible, Fielding emphasizes the merely probabilistic nature of credibility, given the inevitably imperfect knowledge we have about each other, and the fundamentally subjective and personal character of credibility judgments. Dr. Harrison decries unsubstantiated rumours, writing Booth and Amelia that "when No man knows what the Truth is, every Man thinks himself at Liberty to report what he pleases" (136), yet he criticizes them about the equipage purchase without receiving first-hand testimony as to their situation (165-166).

Fielding dwells on ignoble haunts—prisons, debtor houses, masquerades. These venues help to emphasize that credibility must be judged relative to individual testimonial occasions; the discreditable, on a given occasion, can be credible. In *Jonathan Wild,* Fielding developed the ambiguous and subtle credibility bargain inherent in the concept of the thieftaker, which the legal system was exploiting; criminals, as Chapter 4 developed, are sometimes the best source of information. But the narrator of *Amelia* condemns representatives of the legal system for failing to effect the terms of this bargain; triers of fact promise to weigh testimony individually, and not to succumb to the temptation to dismiss testimony based on preconceptions about

character. In Book One of *Amelia*, the narrator carps at a magistrate who instead has "too great an Honour for Truth to suspect that she ever appeared in sordid Apparel" or to "sully his sublime Notions of that Virtue, by uniting them with the mean Ideas of Poverty and Distress," and hence dismisses an offender's defence, though it be "delivered with such an Air of Truth and Sincerity" that a sagacious examiner would have investigated further (24-25). Fielding develops this theme throughout the novel, cautioning readers that truth—and lies—do not necessarily come in the guise that one expects, and hence complacency in judging other people, he warns, will lead to errors. Booth sagely wonders "why we should be more surprised to see Greatness of Mind discover itself in one Degree, or Rank of Life, than in another" (123); and, certainly Fielding does not suggest that credibility is reserved for a particular social rank, liberally finding examples from all walks of life who do not attribute credibility successfully or who should not have credibility imputed to them.

Fielding treats credibility as a public inquiry and uses Booth to highlight how lost character information, and other problems wrought by urbanization and mobility, cannot always be remedied by facility in credibility. Booth has character failings, to be sure; but, his mistakes with credibility, Fielding suggests, are at least partially attributable to problems that are public. It was just as important that the novel teach the inevitably probabilistic nature of credibility, the uncertainties and concomitant need for vigilance, as that it teach how to refine credibility skills and apply them to quotidian activity.

Caleb Williams

In the novels discussed thus far, eighteenth-century novelists are investigating how credibility is domesticated and evaluated in mundane interactions. In his 1794 *Caleb Williams*, Godwin magnifies the effects of disbelief by trapping the reader into a series of claustrophobic credibility tests.[12] The novel gloomily predicts that few people correctly exercise credibility skills and that most people are compromised by self-interest from being able to evaluate other people's testimony. *Caleb Williams* is most frequently interpreted in light of Godwin's political theory and *Enquiry Concerning Political Justice.* I would like to suggest here that credibility was tied into Godwin's views on the possibility of justice and the problems he identified in law and its relationship to authority and power. The novel is rife with mock trials and magistrate proceeding, but notably Caleb is never formally tried in court. He never speaks in his own defence at court. *Caleb Williams* is a critical commentary on the epistemological construct which preferred "one's own words."

Caleb Williams in part serves as a primer on credibility, teaching how to sift evidence and apply the philosophic criteria. Significantly, the tragedy is precipitated when testimony is suppressed; rather than ask Falkland of the circumstances of Tyrrel's death, Caleb parses circumstantial evidence and partially heard hearsay and gossip. Fittingly, Caleb's words are not believed, even when he deserves assent, because Caleb cannot comply with credibility conventions. His testimony fails to have typical cultural indicia of credibility such that it is candid, consistent, and complete. Moreover, subject

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[12] William Godwin, *Things as They Are: or, The Adventures of Caleb Williams*, ed. David McCracken (Oxford: Oxford University Press, 1982).

to the accumulating evidence from Falkland's project to discredit Caleb, he is forced to hide in disguise and consequently is unable to secure other people's assent. When Caleb, for example, tries to elicit Forester's support, after he has left Falkland's house, Caleb deliberately reserves part of the facts, in a commendable or misguided effort to protect Falkland, but succeeds only in implicating himself. His half-told story is too unconventional to be accepted. "[W]here there is mystery," Forester preaches, "there is always something at bottom that will not bear the telling.... To pretend to make a confidence, and then tell him a disjointed story that has not common sense in it!" (148-149). Forester catechizes Caleb on credible narrations, appealing to criteria that could have been borrowed from Locke's "Consistency of the Parts, and Circumstances of the Relation."

Again, when Caleb is formally examined by Forester in his role as magistrate, on the charge that he stole from Falkland, Forester reiterates that he must make his story "consistent and complete" (170). Falkland controls this presentation by citing evidence that conforms to the orthodox view of credible testimony, at the same time that he raises doubts against Caleb by suggesting that a "sincere" defendant is "truly" the disguise of a practised and guilty one who convinces by his art. Hence, Falkland says Caleb was using his imaginative powers to construct a plausible tale (166). Falkland plays to anxieties sparked by the contemporary legal debates on whether defendants should continue to tell their own story in their own words. Caleb is variously accused of being artful, specious, voluble, dexterous, engaged in sophistry, ingenious, and intrepid (II. x), the same terminology that infused the policy debates on speaking defendants which

circulated through the eighteenth century in the run-up to the passage of the *Prisoner's Counsel Act* in 1836.

Caleb's appeal to physiognomic criteria unwittingly supports Falkland's argument. Caleb argues how he "appears" innocent, asks if a "man of penetration" could "see any of the marks of guilt" on him and wonders how the guilty could ever appear so "unabashed, composed and firm" as he (171). But that was exactly the argument of those who wanted to silence defendants, who were suspicious of the power and duplicity inherent in first-person narratives as "true histories." Caleb at this point still confidently asserts he "will never believe that a man conscious of innocence, cannot make other men perceive that he has that thought" (171); by contrast, Falkland asserts that a guilty man can appear innocent. Falkland's rhetoric slyly suggests that a speaking guilty man is more dangerous still because he can falsely persuade people by the pathognomic power of combining testimony with an expressive countenance. Caleb's optimism that testimony and somatic cues are good evidence of cognitive and moral qualities is outmatched by Falkland's rhetorical authority propounding that the guilty can lie convincingly and that art outwits innocence. Instead, as Caleb also comes to believe and which Falkland was already exploiting, most people do "not ha[ve] penetration enough to distinguish from falsehood what [is] uttered with the entire conviction of a full fraught heart!" (210). Most people, including the gang of thieves, fail to be convinced even by "unpremeditated eloquence" (212).

Caleb has only an "imperfect and mutilated story to tell," even if it is "plain and unadulterated" (325), as he ruefully says toward the close of the novel (306). Forester (at least explicitly) and Laura refuse to believe Caleb because his story is uneven and

half-told, contravening credibility criteria, and Collins refuses to listen at all to Caleb in his own defence. On the other hand, the only ones who believe Caleb are Falkland (who knows the truth), Brightwel (a moral center), Mrs Manley (who excels at discernment), and Raymond (who has a self-interest in believing Caleb). Godwin incrementally negates the possibility that anyone except the moral or favourably biased will listen to Caleb or believe in his credibility, or even that "good people" will disrupt their delusions. Laura is not disparaged when she refuses to believe; instead, she simply stands for Godwin's view that people tend not to credit testimony that would disturb their contentment and complacency with the established world view, their commitment with "things as they are." Although Falkland and Raymond arrive at the same conclusion as morally and epistemically reliable characters such as Brightwel and Mrs Manley, they nevertheless serve as another kind of warning. Falkland believes only because he knows the truth. Further, Caleb's optimism that Falkland would truly listen to him if they had a private interview, because Falkland could not be sure that Caleb would "obtain no credit," seems overblown (323). Falkland "listens" to his testimony in the trial only because he was attracted to the opportunity to participate in, and exploit, that formal legal mechanism.

Raymond is described as comporting with and mastering credibility protocols. Caleb reports, "He heard my story, as far as I thought proper to disclose it, with interest, he examined it with sincere impartiality, and, if at first any doubt remained upon his mind, a frequent observation of me in my most unguarded moments taught him in no long time to place an unreserved confidence in my innocence" (192). Unlike Forester, Raymond does not deduce unfavourable conclusions from "the obscurity which flowed

from [Caleb's] reserve" (220) because he fully considers other evidence of Caleb's "simplicity and integrity" which "carried conviction to his mind" (220). Yet, it is also true that Raymond is predisposed to favour people who, like the fugitive Caleb, support his counter-legal vision. In Godwin's dystopian credibility world, those who listen "with interest," that is, with bias, and who *calculatedly* examine it for self-profit, are more likely to believe with reason. Godwin effectively flips credibility outside of the contemporary system, at the same time that he suggests that credibility and *justice*, albeit not *law*, are normatively associated.

Caleb worries that his testimony has convinced only people who were "already prepossessed in my favour by personal intercourse; but could it succeed with strangers?" (306). Neither he, nor Godwin, are confident that people can adequately assess others when they know little about them, or even want to when they have little invested in those relationships. Godwin suggests that the trial's epistemology is flawed, and with it, any literary form based on that epistemology. People do not interpret the particular testimony of relative strangers well. Caleb concludes "that innocence when involved in suspicion can scarcely ever make out a demonstration of its purity, and guilt can often make us feel an insurmounting reluctance to the pronouncing it guilt" (310). People are prepossessed to judge credibility according to their own self-interest.

Moreover, Godwin suggests, the system, represented by the magistrates, does not care about the truth enough to evaluate credibility; instead, they rely on presumptions, so that tricky credibility decisions involving the testimony of an accused accusing his or her accuser, an accomplice, thief in a gang, plea bargains, or crown witnesses are predetermined. The magistrate refuses even to hear Caleb's testimony

against Falkland because, the magistrate contends, a suspected person charging their accuser can not be believed.

In the process of having characters set out these indicia for testimony, the book also lays out a foundation for how the novel, especially one in first-person point of view, is believable, how narrators and a narrative can be made worthy of belief, and what traits characters should be invested with. Through the interplay between testimonial and reading paradigms, Godwin lays out credibility indicia for oral and written narratives. But with the novel's two endings, it is hard to know if the book is intended as a primer on credibility, teaching how to sift evidence and vindicating the just by crediting their words, or if it is a lesson in whom not to believe. When Falkland is tried for murder, the published ending has Falkland confessing and the epistemology of physiognomic norms and first-person narrative power restored. Caleb is sure that Falkland "saw my sincerity," and Falkland, indeed, soon confesses, saying he "saw that the artless and manly story you have told has carried conviction to every hearer" (324). In the original manuscript ending, Godwin's prognostication that an "imperfect and mutilated story" will not be believed holds, Falkland goes free and Caleb is confined, perhaps mad or drugged.

Each of these novels shows the working out of narrative strategies to represent credibility, compensate for developing norms, and teach readers how to interpret credibility when only local information is known. Godwin's novel is distinctly pessimistic about credibility, consistent with his pessimistic view of justice. His novel points to developments in the nineteenth century as legal controversy over the

defendant's speaking role continued. That debate continued the concerns which novelists were addressing: with limited information and short acquaintance, can people adequately assess other individual's particular words? what strategies can be used to test credibility if the pathognomic link between somatic cues and consciousness is undermined? The controversy then was an epistemological and hermeneutic one. If credibility was detached from empiricism because the sensory experience of watching people testify did not provide enough, or good, evidence to assess them, then another epistemology and another formal protocol would be needed to shore up credibility. Credibility attributions continue to be made in the nineteenth century, in trials and novels, but the formal mechanisms and evidence for testing them would change in line with a new epistemology.

Chapter Eight: Conclusion

> Button-holes!...I'll make merry work with my button-holes--I shall have 'em all to myself--'tis a maiden subject--I shall run foul of no man's wisdom or fine sayings in it.[1]

This thesis has been developing the argument that, as stated in the introduction, the criteria and protocols for credibility have epistemological significance and hermeneutic consequence and are historically conditioned. Philosophy, law, and literature were influential in creating and articulating credibility norms: philosophy contributed the theoretical framework of the epistemology of testimony; law contributed formalized protocols, distinguished between credibility and character, and raised the public consciousness of credibility; and the novel modeled credibility tests, illustrated the credibility evidence that was available in quotidian social encounters, and promoted the active exercise of credibility judgments. The convention of a two-fold inquiry into the factual plausibility and the speaker's credibility was a familiar and expected formula for testing the probability of testimony. This thesis recuperates that tradition by suggesting a testimonial paradigm for literary criticism. A key aspect of that testimonial paradigm is to re-think the parallel between readers and jurors, by highlighting how readers were like jurors watching and listening to witnesses to assess their testimony and to weigh the pointillist impressions of embodied credibility. This

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[1] Laurence Sterne. *The Life and Opinions of Tristram Shandy, Gentleman* (1760-1767), edited and introduction and notes by Ian Campbell Ross (Oxford: Clarendon Press, 1983), vol. 4, chap. xv, p. 230.

approach calls attention to the evidence in novels that helps readers to interpret characters, and in turn helps readers to apply similar evidence and interpretive strategies to their routine activities. The long eighteenth century was working out the implications of distinguishing credibility from character and setting protocols for determining whether to believe, and assent, to other people's words.

Novelists, I argue, assumed a key role in domesticating the credibility exercise, and transposing the philosophical theory and formalized forensic tests into a practicable scheme that could be applied both to explicit interpretive endeavours, such as reading, and also to ordinary personal encounters. Novelists incorporated the broad view of testimony that circulated in eighteenth-century culture, expecting that readers would bring that cultural knowledge and credibility acumen with them to the novel. At the same time, eighteenth-century novelists, this thesis argues, promoted the active exercise of credibility judgments and figured credibility decisions as a moral imperative. Eighteenth-century novels criticized credulity and censoriousness, resolutions to believe (or not to believe) that were made without a careful weighing of the evidence. Literary critics have drawn attention to how eighteenth-century novels take interpretation and judgment as their subject. This thesis argues that eighteenth-century novels are about testifying and judging testimony, teaching how to acquire information *from* other people when there is imperfect information *about* other people.

It is curious, in many respects, that credibility has not been taken up explicitly by literary critics, and in particular, by historians of the novel. I have proffered some suggestions to explain this lack—that modern theory, including post-structuralism, is more receptive to materiality and printing, that orality and testimony is neglected

generally as a field of intellectual inquiry, and that therefore by corollary the philosophical foundations for such an enquiry have been missing—while also emphasizing that the testimonial focus is congruent with the eighteenth-century mindset. The recent scholarship by meta-epistemologists on related areas such as the history of probability has helped to set the stage for my own interest in the history of credibility, and in turn how such an historical perspective on credibility might influence literary scholarship on the novel through a testimonial paradigm.

The history of the novel is part of this meta-historical epistemology of the history of testimony and credibility because such extended prose narratives could not be satisfactorily understood or appreciated by readers unless they brought with them an aptitude for credibility. Generically, the novel relies on readers being able to decide which characters, including narrators, to believe, and when the narrative deliberately interrogates the idea of credibility. The characters, with whom readers are supposed to identify, have to be credible, but also have to be good evaluators of credibility, neither credulous nor censorious.

The early novel struggled with tensions between narrative form and epistemological premises. First-person point of view carried a strong cultural currency but could also make it difficult to show that a character had moral and epistemic qualities to comprise her credibility. Representing and teaching credibility was extremely difficult since the philosophic criteria stayed in the register of recommending traits, such as honesty, sincerity, integrity, probity, and prudence, which are conglomerates of simpler traits and interpreted through transient impressions. Novelists had to show these traits without undermining characters by having them narrate their

own good qualities. The novel incorporated formal techniques which keyed off the trial's methods for evaluating credibility, while also innovatively modifying them to suit the new domestic genre. Devices such as multiple first-person point of view narratives and emulating the formal protocols of law through mock trials helped to provide literary evidence for readers to judge characters and to represent characters judging speaking characters.

I have suggested another reason why credibility and testimony have not been taken up by literary criticism. The eighteenth-century mindset was more attuned than ours to testimony and the social origins of knowledge, and hence credibility, as an attribution evaluating the human source of such knowledge, was also more consistent with eighteenth-century interpretative approaches. Credibility and testimony are part of the more fluid epistemology that characterizes the eighteenth century. In *Eighteenth-Century Studies*'s special issue on interdisciplinary scholarship, "Eighteenth-Century Culture and the Disciplines," Michael McKeon argues that the "modern disciplinary categories of knowledge are ostensibly integral entities that conceal a heterogeneous historicity. Our familiar disciplines have secret histories, their apparently monolithic integrity sometimes obscuring a radically disparate and interdisciplinary core."[2] This thesis has argued that credibility and testimony permeated eighteenth-century culture and that philosophy, law and literature all contributed to the project of creating and teaching credibility norms. The idea of social knowledge, receiving information from other people, was a familiar and accepted epistemological one, at the same time that the

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[2] Michael McKeon, "Origins of Interdisciplinary Studies" *Eighteenth-Century Studies* 28 (1994): 25.

idea of evaluating the sources of that information was a troubling hermeneutic one. I have drawn on interdisciplinary resources to develop this testimonial paradigm and illustrate how it applies to the eighteenth-century novel.

An interdisciplinary study is a vexed proposition. In that same special issue of *Eighteenth-Century Studies*, Linda Hunt defends disciplines at the same time as she recommends conversation across the disciplinary boundaries. Each group, she writes, must be committed to learn the language of the other, and the "best interdisciplinary work produces its effects back in the various disciplines that it crosses rather than creating an altogether new and different interstitial space."[3] I would like to extend her insight and suggest that interdisciplinary work is made more challenging because, in addition to having its own language, each discipline also has its own set of questions, and its own way of approaching answers. Thus, as Garrett Hardin warns in his "final word about interdisciplinary work...do not underestimate its difficulties. The more specialties we try to stitch together, the greater are our opportunities to make mistakes—and the more numerous are our willing critics."[4] The questions that I have asked are about credibility, again, a quality attributed to an individual which assesses individuals with reference to particular testimonial moments: what makes a fictional character worthy of belief and why would readers assent to believe a character's testimony? How would an eighteenth-century author represent a novel character as

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[3] Linda Hunt, "Virtues of Disciplinarity," *Eighteenth-Century Studies* 28 (1994): 6.

[4] Garrett Hardin, "Extensions of the 'Tragedy of the Commons'" n.s. vol. 280, no. 5364 *Science*, 1 May 1998, p. 683.

"credible," show characters making credibility evaluations of each other and teach credibility? How would contemporary readers interpret credibility?

A key idea underlying this thesis is that every hermeneutics presupposes an epistemology, and that new epistemologies bring new technologies of proof, so that credibility is historically conditioned. Credibility evaluation is signalled in a different way as the epistemology changes. Eighteenth-century credibility indicia and testing corresponded with an empiricist theory of knowledge. The history of the novel, I have argued, is tightly connected with the history of testimony and credibility. In the novels of this period, character was intended to be measured according to the trial's procedures for evaluating the credibility of witness testimony and those trial procedures are weighted toward the testimonial means of proof. The idea that testimony has to be tested was established when testimony was differentiated from "authority" or "tradition"; paradoxically, when testimony was separated from the tradition of trust, credibility was freed to be evidentially supported, and then questioned. Credibility thus prominently figures in philosophy, law, and literature, with each inquiry adding to its history. Seventeenth- and early eighteenth-century philosophy developed principles for inferences from credibility evidence. The eighteenth-century trial by jury extended what can be known about credibility when little was known about character and the legal contribution to credibility included formalizing protocols and heightening consciousness of the ordinary practice of testimony appraisal. The novel's contribution was to model and refine forensic credibility procedures and apply them to ordinary decision-making involving conjectures about future facts and character. In the history of credibility, philosophy and law are prolegomena to the novel.

To answer those questions, I have drawn on eighteenth-century philosophy of testimony, looked at how credibility was treated as an epistemological and interpretive concept, and how the law, as a public manifestation of credibility evaluations, formalized credibility to justify an instructed jury evaluating strangers' credibility with little extrinsic, or paratestimonial, information. I have suggested that eighteenth-century novels represented characters assessing each other's credibility and, in so doing, instructed readers how better to assess credibility for ordinary decision making. The novel and trial shared the same epistemology for assessing credibility and interpretive devices and to accommodate and formalize the subjectivity of interpreting testimony within a context of inevitably limited knowledge. This dissertation examined the protocols and devices institutionalized by the trial and novel for testing credibility and the underlying epistemological theories for how credibility should be tested; and, it advanced a testimonial paradigm, emphasizing testimony and credibility, which indicated what should be and can be known about others and how to test for this range of information.

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