

*The Law**Simon Stern*

Richardson was engaged with the law in various ways during the course of his career: as a printer of bills and committee reports for the House of Commons (starting in 1733), as a printer of the *Commons Journals* (starting in 1742) and the *State Trials* series (1742), as a victim of corporate fraud (1731) and of what he characterised as literary piracy (1741–2, 1753), and as part owner of the exclusive patent to print law books (starting in 1760). Richardson's acquisition of the law patent came late in his career, but any of these other events might have informed his thinking about the law and legal modes of argument, and indeed scholars have explored numerous contexts in which his novels address legal issues including marriage, rape, inheritance, citizenship, copyright, and liability for accidents.

Another important legal dimension of his work – and one that has received less attention – involves the forensic mentality revealed in his novels, and that he displayed in defending them against critics. His characters often seem aware of their status as exemplars, as participants in the logic of the case, understood both as a unit of meaning and as an invitation to interpretation. The case is, as Conrad van Dijk observes, one of the primary 'forms through which law becomes legible', and one that differs from the exemplum because 'a case is offered up for judgment and interpretation, whereas an exemplum is simply meant to be imitated'.¹ This distinction nicely captures the ambivalence that Richardson displays when responding to critics, using language that moves between case and exemplum. The conception of the literary character as a kind of case recalls Henry Fielding's claim, in *Joseph Andrews*, to describe 'not an Individual, but a Species', and this is one of the formulations that Catherine Gallagher cites when observing that the novel form gives a 'special turn ... [to] empiricist logic by invoking both a knowledge that *types* are induced from persons in the world and a further awareness that *characters* are deduced from types'.²

Because of Fielding's legislative pronouncements on the rules of the novelist's art (as well as his many references to legal doctrine), his work has often been associated with a forensic mentality; in what follows, I will suggest that similar resonances appear in Richardson's work. If, in Ian Watt's famous analogy, the novel's readers resemble jurors in 'want[ing] to know "all the particulars" of a given case',³ many of Richardson's letter-writers resemble trial lawyers because of their efforts to yoke particular and plausible details to an interpretation that countermands the one their epistolary opponent seeks to advance. Richardson himself adopts the same approach, also cast in legal terms, as for example when he observes, in one of the 'hints' towards a preface for *Clarissa*, that 'the Probability of all Stories told, or of Narrations given, depends upon small Circumstances; as may be observed, that in all Tryals for Life and Property, the Merits of the Cause are more determinable by such [details], than by the greater Facts; which usually are so laid, and taken care of, as to seem to authenticate themselves'.⁴ The careful citation of specific details would thus serve the novelist as aiding in a forensic defence, when he views his characters and his approach to fiction itself as being on trial.

The legal decision was increasingly becoming a print genre in the eighteenth century. The conventions that govern the genre today had barely started to take root (such as the practice of commencing with a recitation of the facts before turning to the legal analysis they support), but the reports of that era nevertheless assume that a case must be a case *of something* – such as an area of law, or a doctrine, or an exception to a doctrine. The case is at once specific and generic, and its specific features are adduced insofar as they illuminate its generic nature. Even a letter-writing manual can reflect this logic, by treating the occasion for the letter as an opportunity to supply a template proper for occasions like the one at hand. Thus Richardson explains in the preface to his *Familiar Letters* that he presents 'Arguments ... [that are] *new* and *uncommon*' as model responses 'in a Variety of Cases', exposing among other things 'the Folly of a *litigious Spirit*' (EW, p. 325).

While the volume does not treat every occasion as an adversarial one, at several points Richardson captures the effect of a legal debate between opposing counsels by offering a series of mutually antagonistic letters, written in succession. Indeed, the language of the 'case' permeates the volume as a whole, frequently appearing in a quasi-forensic sense ('the strict Inquiry which ... [this] Case demands'; 'I will ... put the Case that you have no *Proof*'; 'I will suppose two Cases' (EW, pp. 354, 382, 466)). In these examples, Richardson seems to take it for granted that

the letters can readily serve the exemplary purpose for which they are offered. By contrast, the tension between the individual and the general becomes more pronounced in some of his defences of his novels. Indeed, his tendency is usually to begin by imagining his characters as typical instances of some category, only to refer with increasing determination to their individual features, while still insisting that they serve a generic function.

Richardson is notable, among eighteenth-century novelists, for his sensitivity to the problems of expressly assigning his work to the category of the fictional. He proclaims, on the title page of *Pamela*, that the narrative has its 'foundation in truth and nature'. Explaining his ambivalence about the preface that William Warburton wrote for *Clarissa*, Richardson observes that by acknowledging the book's status openly as fiction, the preface risks compromising the exemplary potential associated with factual narratives:

I could wish that the *Air* of Genuineness had been kept up, tho' I want not the letters to be *thought* genuine; only so far kept up, I mean, as that they should not prefatically be owned *not* to be genuine: and this for fear of weakening their influence where any of them are aimed to be exemplary, as well as to avoid hurting that kind of Historical Faith which Fiction itself is generally read with, tho' we know it to be Fiction. (Richardson to William Warburton, 19 April 1748)

Richardson's use of the double negative puts the novel in a murky area between fiction and truth, preserving the possibility of the letters' exemplary effect where they aim for that kind of influence, while refraining from an active affirmation of their historical accuracy.

By holding open this middle ground, Richardson aims for the imitative force of the exemplum, while effectively conceding that readers might instead engage with the novels by treating the characters as cases. The difficulty of opting for either alternative is evident in Richardson's response to the critics of *Pamela*. Although Pamela and her creator were charged with many offences, perhaps the most frequent objection was that the novel would encourage young women to aspire to 'marry up'. Richardson answers this charge in *Pamela in Her Exalted Condition*, when Mr B is asked whether he would have to consider himself responsible 'if this Practice of Gentlemen marrying their Mothers Waiting-maids ... should come into Vogue' (*PE*, p. 219). He responds that 'those Persons who are afraid the Example should be taken, [and] those who are inclin'd to follow it, should take *all* the material Parts of it into their Consideration: Otherwise ... the Precedent may be justly cleared' (*PE*, p. 221). The material parts, as he

explains, include the following considerations: 'That the Object of [the gentleman's] Wish should be a Girl of exquisite Beauty (and that, not only in their blinded and partial Judgments, but in the Opinion of *every one* who sees her, Friend or Foe)'; 'that she be descended of honest and conscientious, tho' poor and obscure Parents; who ... [have] laid deep in the Girl's Mind the Foundations of Piety and Virtue'; that she have 'an humble, teachable Mind, fine natural Parts, a sprightly, yet inoffensive Wit, a Temper so excellent, and a Judgment so solid, as should promise ... that she would become an higher Station, and be respected in it' (*PE*, p. 221).

Richardson continues in this vein for several more paragraphs, adding among other details that the girl must possess 'an Attention, Assiduity, and Diligence almost peculiar to herself, at her Time of Life, insomuch as, at Fifteen or Sixteen years of Age, to be able to vie with any young Lady of Rank' (*PE*, p. 222). He finishes with a similarly detailed set of specifications for the would-be Mr B. To conclude, the reader must '*reflect and compare, and take the Case with all its Circumstances together*' (*PE*, p. 223). In listing these requirements, Richardson in effect asserts that Pamela is a unique paragon whose traits ('almost peculiar to herself') ensure that no else should be able to take the example. Whereas Richardson had announced, in *Pamela's* subtitle ('*Virtue Rewarded*'), that the book was designed to promote 'the principles of virtue and religion', he now undercuts this exemplary thrust by doubting whether there is any reader capable of taking the example, in the sense of applying the 'Precedent' to herself.

It is apparent, since Richardson himself draws the analogy, that this model of reflecting, comparing, and taking cases with all their circumstances resembles the practice of limiting a doctrine's application by distinguishing prior judgments. The criticisms that Richardson sought to fend off were formulated cynically, in terms of self-advancement (treating the novel as a how-to-do-it guide for female connivers), and while they may not appear to target questions of plausibility, that issue remains essential to the accusations against Pamela. The critics treated her concern with her virtue as a convenient cover story, and insisted that her behaviour throughout bespeaks the mentality of a self-interested schemer. In short, they contested her veracity, insisting that no one would behave as Pamela does out of pure motives, and neither would a Mr B restrain himself and ultimately reward her with an offer of marriage. The less cynical version of the criticism was that *Pamela* misleadingly encourages young women to think they can rise socially by protecting their virtue, which is to say that the book portrays the world unrealistically. One critic, for example, objected that

Pamela's highly emotional and frequently self-abasing behaviour could be met with 'no where ... except amongst the *Pamelas* ... of [Richardson's] own making'.⁵ Quoting this passage, Bernard Kreissman observes that in characterising the novel as 'unreal and unlikelike', the complaint typifies a widespread criticism of Richardson's so-called realism.⁶

Richardson's response in *Pamela in Her Exalted Condition* is that the portrayal is realistic enough, if the two persons involved are just like Pamela and Mr B. Is it reasonable for the young female reader to hope for Pamela's good fortune? Does *Pamela* offer a plausible picture of what happens in the world? Yes, if the young woman has the same background, personality, and physical appearance as Pamela. Richardson maintains that such a combination of traits would be extremely rare, but the novel's plot is no less plausible for that. While the subtitle seems to insist on the generic application of the book's lesson, Richardson's defence qualifies and modifies the lesson to the point where it seems that no reader could expect to be rewarded in the same fashion as Pamela. The difficulty of negotiating between the two positions is apparent from Richardson's refusal to abandon the subtitle in later editions, even after having qualified the book's lesson so emphatically.

The same difficulty resurfaces in the discussions between Richardson and his critics about *Clarissa*. Albrecht von Haller, a Swiss physiologist and philosopher of 'common sense', praised *Clarissa* but wondered 'whether probability is preserved' in some of the actions performed by Lovelace, the novel's aristocratic villain. Specifically, von Haller doubted that someone who is 'not deficient in understanding, and who expect[s] to be a peer of the realm', as Lovelace does, would risk 'expos[ing] himself to the persecution' of Clarissa's family by kidnapping her, drugging her, locking her in a brothel, and raping her. Richardson responded by appealing to worldly experience and Lovelace's character. It must be recalled, the author insists, that Lovelace is too far gone to take account of practical considerations: 'He defie[s] the laws of his country, as too many of his cast do'; he is so angry at the Harlowes for keeping him away that 'in one place [he] vows revenge upon [them], altho', for the sake of it, he were to become an exile from his native country for ever ... Are there not such men in all nations? ... Need we refer to public executions for crimes the most atrocious?'⁷ The appeals to experience ring hollow, however, because ultimately they are grounded in Lovelace's unique characteristics.

Summarising this exchange, Robert Newsom observes that 'von Haller drew evidence from the real world ... [which] functions to determine the probabilities associated with a set of young men to which Lovelace

belongs ... while Richardson's evidence particularizes the individual case and so defines precisely which set Lovelace belongs to'. Once again, the treatment of a character as typical of a certain class, as an instance of a recognisable case, turns into a highly specific case whose features are not easily generalised. Such arguments, Newsom adds, almost inevitably end by specifying a unique instance: as Richardson continues to accumulate evidence from the novel, 'the set of real young men that determines the probability of Lovelace's behavior becomes ever smaller', while 'detail upon detail about the fictional Lovelace is added ... Inevitably, the set of "real" young men becomes a set with only one member and the question ultimately posed is a circular one: How probable is it that a young man exactly like Lovelace would behave exactly like Lovelace?'⁸ By implication, if the dialogue were to continue, Richardson's answers would soon turn into another version of the defence of *Pamela in Her Exalted Condition*.

The most significant difference between Richardson's responses to the criticisms of *Pamela* and of *Clarissa* is that in the latter case, Richardson speaks expressly in probabilistic terms – because von Haller had used that language in formulating his objections. In other respects, however, the arguments about the two novels are fundamentally similar. Both examples show that from the outset of the debate over the novel's ability to use made-up people and events to convey the truth about human personality, participants in this discussion were concerned with how generally applicable those representations needed to be, if readers were to rely on them as accurate pictures of behaviour likely to be encountered in the real world. Richardson's frequent resort to the language and methods of the trial lawyer, when pressed on these questions, suggests that he understood novelistic representation itself as a fundamentally forensic activity.

The same forensic mentality would reappear, displayed in a factual register, when Richardson criticised the Dublin booksellers who printed *Sir Charles Grandison* without authorisation. He initially outlined his grievances in *The Case of Samuel Richardson ... with Regard to the Invasion of His Property* (dated 14 September 1753), which he followed up seven weeks later with a longer *Address to the Public*, recapitulating the whole affair in detail and reprinting his correspondence with George Faulkner. For present purposes, one of the most significant aspects of the *Address* involves the double-entry form in which one column quotes 'Mr. Faulkner's Defence' of his own conduct, while the column next to it gives the 'Genuine History of the Transaction'. The document's typographical form thus reproduces a

pair of arguments for the defence and (implicitly) for the prosecution, while soliciting the reader's belief, or 'historical faith', in the novelist's version of the events.

In a series of gestures that once again raise questions about the logic of exemplarity, Richardson insists that the case stands for a much larger set of concerns – involving the need for legislation to 'secure to Authors the Benefit of their own Labours' (*Case*, p. 3), and the dangers posed by 'these Booksellers of Dublin, [who] think themselves intitled to prey upon the property of every other man in every nation round them'. For those reasons, he concludes, 'this Cause is the Cause of Literature, in general'.⁹ At the same time, Richardson suggests that his case is unique: 'never was Work more the Property of any Man, than *this* is' (*Case*, p. 2), because Richardson, by combining the roles of author and printer, can lay claim at once to both the ideational and the material aspects of the published text. That unusual combination allows him to embody, in a single person, the different parts of the literary economy that piracy threatens, with the result that he takes for granted a unity of purpose otherwise rarely seen among the various participants in this economy. The underhanded conduct of the Dublin booksellers would indeed be an attack on the cause of literature in general – if all members of the industry were just like Richardson. Among historians of publishing and authorship, Richardson's *Case* has become famous as an illustration of an emerging view in which conceptions of authorial originality and literary property were interdependent. Reading the *Case* alongside some of Richardson's novelistic defences may cast some doubt on the force of that illustration, by highlighting the tensions between exemplarity and individuality that run through many of his cases.

Notes

- 1 Conrad van Dijk, *Gower and the Limits of the Law* (Brewer, 2013), pp. 16–17.
- 2 Henry Fielding, *Joseph Andrews* and *'Shamela'*, ed. Douglas Brooks-Davies, rev. Thomas Keymer (Oxford University Press, 1999), p. 164; Catherine Gallagher, 'George Eliot: Immanent Victorian', *Representations*, 90.1 (2005), 61–74 (p. 62; emphasis added).
- 3 Ian Watt, *The Rise of the Novel* (University of California Press, 1957), 31.
- 4 Samuel Richardson, *'Clarissa': Preface, Hints of Prefaces and Postscripts*, ed. R. F. Brissenden (Augustan Reprint Society, 1964), p. 5.
- 5 Francis Plumer, *A Candid Examination of the History of Sir Charles Grandison*, 3rd edn (London, 1755), p. 11, quoted in Bernard Kreissman, *Pamela-Shamela: A Study of the Criticisms, Burlesques, Parodies, and Adaptations of Richardson's 'Pamela'* (University of Nebraska Press, 1960), p. 45.

- 6 Kreissman writes that Plumer's objection is just one example of '[a] damaging criticism ... which provoked ... much discussion'. Kreissman, *Pamela-Shamela*, p. 45.
- 7 Albrecht von Haller, 'An Account of *Clarissa* and Richardson's Reply', *Gentleman's Magazine*, 19 (June and July 1749), repr. in Ioan Williams (ed.), *Novel and Romance, 1700–1800: A Documentary Record* (Routledge and Kegan Paul, 1970), pp. 130–41 (pp. 130, 139–40 n. 7).
- 8 Robert Newsom, *A Probable Story: Probability and Play in Fiction* (Rutgers University Press, 1988), pp. 92–3.
- 9 Richardson, 'Samuel Richardson, "Address to the Public"', in Betty A. Schellenberg (ed.), *Correspondence Primarily on 'Sir Charles Grandison' (1750–1754)*, CECSR, Vol. x, pp. 101–29 (pp. 126, 128).