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TRIAL SCENES AND THE CONCEPT OF JUSTICE IN IAN MCEWAN'S *ATONEMENT*

1. Introduction

This paper aims at analysing McEwan's novel *Atonement* from the point of view of the legal issues embedded in the novel. It will focus in particular on an issue which at a first reading appears as a side-element in the text and remains on the background, but which nonetheless, constitutes a main element of the plot, and the one upon which the whole question of atonement actually relies: the trials, real ones and symbolic ones.

According to Ian Ward the relationship between law and literature can be considered from two perspectives: law *in* literature and law *as* literature. The former supports "the possible relevance of literary texts, particularly those which present themselves as telling a legal story, as texts appropriate for study by legal scholars" and the latter - on the other hand - supports the application of the techniques of literary criticism to legal texts" (Ward 1995, 3). Scholars such as Richard Posner pronounce themselves in favour of the latter perspective of analysis, due to its investigation on more concrete matters of everyday life. He sustains that in order for law *in* literature to be fruitful, its aim should be that of instructing the reader on legal elements of the represented society or community² (Ward 1995, 3-27). Other critics, vice versa, state that 'law in literature' could provide the readership with a critique of power(s) and therefore provide a reflection on the human condition.³ Analysed within this context, McEwan's novel does not provide an overview on legal proceedings during the 1930s and 40s in Britain (the time when the novel is set), however, its focus on legal issues does provide images of the human condition.

A linking point between the two disciplines is rhetoric, equally used and powerful both in law and in literature: persuasion is at stake in both fields as "law *is* already literature"⁴ (Ward 1995, 20). Jurisprudence, in fact, uses rhetoric, which in turn is what persuades the reader into believing in what is written in the book; as it will be demonstrated in the present paper, Briony's fault is all about persuasion. Finally, the shared aim of both law and literature is to reveal ethical issues at stake, and investigate upon law as morality (Ward 1994, 389-400), again a fundamental topic present throughout *Atonement*.

The novel's plot might suggest a similarity to detective fiction novels as the main issue arises with a search for the culprit of Lola's rape, and later provides us with legal scenes as such (i.e. crime, witnessing, punishment, etc.). Moreover, its narrative technique is a storytelling that "is (also) a central component of legal practice and thinking" (Brooks and Gewirtz 16). I shall maintain that McEwan's book appears as a series of storytellings, or reports, that are similar to legal storytelling during a trial. In fact, "the study of the modalities of narrative presentation" induces "an awareness of how narrative is never innocent, but always presentational, a way of working on story events that is also a way of working on the listener or reader" (Gewirtz 17). Just as law has its own narration, so need *Atonement* be "lawfully" heard and read.

McEwan's literary and narrative technique actually resembles witnesses' deposition in a trial. Therefore I would like to consider what is meant to be regarded as Briony's novel as, in fact, Briony's confession, which may on the whole resemble both the literary genre of the autobiography and a religious confession, as suggested by the very term "atonement." All these possibilities considered, Briony's confession is also a legal one, provided as if in a courtroom, where we readers are her audience, or jurors. Religious judgment/legal judgment is in fact a constant parallel throughout the novel.

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² Ward reports many scholars' opinions and in particular focuses on Posner's view who claims that law is a subject matter rather than a technique and that for its purposes law needs the legal rather than the literary method (12).

³ As a sum Ward maintains that "Once a narrative text is understood to be a piece of fiction, (...) then the narrative can be understood as contributing to the general debate on the nature of human condition. (...) There is no requirement that a narrative text should present a determination of any concept. It for us to 'create' our interpretation, and in doing so to enjoin a participatory dialogue" (1995, 154).

⁴ Author's emphasis.



Last, my thesis is that Briony's writing of the novel is an act of equity, presently an attempt at atoning through equity: Briony invents a new ending to the story as an act of sparing her sister and her lover eternal punishment, granting them a chance of a new beginning.

2. Narration as Evidence, Narration as Confession

Part I of the book is made up of several points of view all tending towards the reconstruction of a crucial passage in the plot: the fountain scene involving Robbie Turner, Cecilia Tallis and the breaking of an antique vase belonging to Cecilia's family. Much is at stake in this scene: Robbie and Cecilia argue, however, this discloses the fact that they are in love, while the same scene represents for Briony the evidence that Robbie annoys and harms Cecilia. The readership gets two different "versions" of this event: according to the narrator (who is ultimately to be revealed as Briony herself), and according to Briony.⁵ The same scene is recalled by Robbie while he is alone in his room. The reader therefore learns what happened, and then reads it again through Briony's eyes and Robbie's. In addition to being a postmodern narrative technique that recalls cinematographic shooting, this three-point-of-view scene could be framed within a legal context as the giving of evidence by three witnesses: Robbie, Briony and Cecilia, who lived the event in the first person. Part I chapter Two begins with Cecilia looking for a vase to put the flowers in and there follows the explanation of the breaking of the vase and her subsequent immersion in the fountain after stripping off her clothes. Chapter Three has Briony's mind recording what she sees through her room's window pane: she sees Cecilia stripping in front of Robbie (she does not know the reason, she does not know that a piece of the vase has fallen into the fountain) and assumes Cecilia is totally subjected to Robbie, who is asking her to undress. In Briony's mind Robbie is threatening Cecilia, and his stretched hand represents an order. On the contrary, Robbie's hand was stretched out to prevent Cecilia from wounding her naked foot by stepping on the fragment of the vase. Cecilia, however, gets angry and runs away. The scene is therefore totally misunderstood as it appears from the storytelling. In a parallel with the context of trials, one side's narrative is (...) met by the other side's counternarrative (or sidestepping narrative), so that "reality" is (...) disassembled into multiple, conflicting, and partly overlapping versions, each version presented as true, each fighting to be declared "what really happened" (Gewirtz 8).

In McEwan's novel the multiple versions of the scene represent of course part of the postmodernist narrative heritage but, undeniably, of legal practice too, all the more because Briony's continuous misunderstanding events leads to a crime.

In order to atone for her behaviour, Briony writes a novel to tell the truth and this novel is the text the reader has just read when reaching the end of Part III, which, in fact, reads "BT London 1999;" in a metafictional twist, the reader understands that the previous pages are not by McEwan but by Briony Tallis, now seventy-seven and a successful novelist. Part I, II and III are therefore to be considered "a final act of kindness" (McEwan, 372) or "an attempt" (371) to atone for her sins. May we call it a confession as well as atonement? It is indeed a gift Briony gives to Cecilia and Robbie to pay her debt but a confession too, with all its therapeutic effects. I will try to explain why this atonement, despite the religious meaning embedded in the word, is also and truly a confession, almost an autobiography.

According to Elke D'hoker, Ian McEwan's novel is a secular confession, since, unlike the religious one, "it has no authorities empowered to absolve," however, "just as in a religious confession, literary confession reveals not just what the author has known all along but has kept secret for reasons of guilt and shame." Philippe Lejeune in his *Le pacte autobiographique* defines an autobiography as a "récit rétrospectif en prose qu'une personne réelle fait de sa propre existence, lorsqu'elle met l'accent sur sa vie individuelle, en particulier sur l'histoire de sa personnalité" (14). Briony's confession seems to be neither actually autobiographical nor completely fictional, due to the metafictional twist of the novel which ascribes the novel to her. Although Briony's manuscript could claim the status of autobiography, according to Lejeune's definition the person must be a real one, an existing one (or one that had existed): Briony is a fictional character, yet, by writing "BT London 1999" McEwan elevates her to the status of a real person, so real that she wrote the book the reader has just finished. Thus the autobiography becomes an autobiographical novel:

⁵ Brian Finney states that the "focal character is first Briony, then Cecilia, then Robbie and so on. McEwan employs this particular 'modal determination' partly to distinguish his narrative from the classic realist novel's association with an omniscient narrator" (75).



“(a)insi défini, le roman autobiographique englobe aussi bien des récits personnels (identité du narrateur et du personnage)” (25) but only as long as we consider Briony Tallis as the author and not McEwan. In conclusion, Briony’s novel resembles an autobiography but it is a novel since, after all - and in spite of its metafictional nature - the pact is “romanesque” (29) and not autobiographical and the name of the character is not the name of the author (the real one). Exactly as the autobiographer implicitly swears to tell the truth to his readers, Briony swore to tell the truth as if she were a witness in front of a judge, being *Atonement* essentially a confession, an act of penance.

The title chosen by McEwan for his novel posits a series of questions, “atonement” being a term whose religious nature is no mystery. Entailing the act of undergoing repentance and penance in order to pay for one’s sins, it is widely recognised as an act of non-demanding benevolence⁶, and though some people even reject seeing God as a judge and discard any parallel with secular law, the Bible acts as a sort of law to the believer. Thus, the act of atonement could also undergo a legal treatment and be considered a sort of (moral) judgment that binds to pay back for bad behaviour. Jerome Hall, in fact, quoting Anselm of Canterbury, proves that the comparison with secular law has always been there: “what is the debt which we owe to God? Whoever does not pay to God this honor due Him dishonors Him and removes Him from what belongs to Him” (282). It is evident that the terms used to describe one’s relationship with God belong to the legal realm too. In spite of every fundamentalism, religious atonement is strongly resemblant of a legal repayment of debts.

The religious implications of the term are present in the novel and in Briony’s intentions: old Briony seeks a reconciliation with her sister (even if only a fictional one) and asks herself:

(H)ow can a novelist achieve atonement when, with her absolute power of deciding outcomes, she is also God? There is no one, no entity or higher form that she can appeal to, or be reconciled with, or that can forgive her. There is nothing outside her. (...) No atonement for God, or novelists, even if they are atheist. (McEwan 371)

The mentioning of God is massive in the above-quoted passage but still, it is reasonable to assume that McEwan had a secular atonement in mind, for Briony’s atonement is sought not via religious means but through the process of writing, and the novel which is its ultimate product. However we consider it - whether a religious or a secular one – Briony delivers her confession, her evidence and the ultimate truth to us, who are her readers but also her audience in the courtroom.⁷

3. Trial Scenes and Legal Issues

The novel’s plot is actually built upon a crime, an investigation occurs, formal interviews are carried out, then Robbie’s imprisonment, and Briony’s fictional withdrawal of her evidence. Although Briony’s witnessing Lola’s rape and her subsequent evidence delivery is at the core of the book, such legal elements remain in the background and are not supported and complemented by the presence of lawyers, a courtroom, a trial, a judge and a sentence. However, their role proves as much important as the role played by the novel’s metafictional outcome.

According to Garapon law’s authority draws its power from its rituals, from a well-established and well-rooted pattern of actors, places and statements. *Atonement* is not set in a legal context but when Briony faces the senior inspector to collect her evidence, her gaze records the inspector’s power:

(t)he senior inspector had a heavy face, rich in seams, as though carved from folded granite. Briony was fearful of him as she told her story to this watchful unmoving mask (...). It was like love, a sudden love for this watchful man who stood unquestioningly for the cause of goodness, who came out at all hours to do battle in its name, and who was backed by all the human powers and wisdom that existed. (McEwan 174)

⁶ See for example Gunn (268-91), Radzik (141-54), Wyschogrod (157-68), Vaughan (297-308) and Martin (382-405).

⁷ For deeper insights about the process of atonement and its practice in legal procedures, see Bibas and Bierschabch (85-148) and Sweet (219-260).



And when she is to formally confer her evidence it is not in the living room that she speaks but in the house's library which is transfigured into a courtroom: "Briony went with her mother to the library to have the first of her *formal* interviews with the police. Mrs Tallis remained standing while Briony sat on one side of the writing desk and the inspectors sat on the other" (179). Briony thereby recognises she is facing public authority and in order for this authority to work with effectiveness it has to have a formal place. Garapon writes: "(l)es mots, pur avoir une certaine efficacité, doivent être prononcés par la personne habilitée, au bon endroit et au bon moment" (140). In this context there also emerges the importance of words' utterance: "(c)e qui est ainsi demandé avec insistance par la justice, c'est plus qu'un aveu de culpabilité mais un acte de soumission au langage, l'institution des institutions. Le première acte d'allégeance à l'égard d'un ordre juridique est d'en reconnaître le vocabulaire" (137-37). Actually, the inspector demands the exactness of Briony's statements:

'You saw him then.'
'I know it was him.'
'Let's forget what you know. You're saying you saw him.'
'Yes, I saw him.'
'Just as you see me.'
'Yes.'
'You saw him with your own eyes.'
'Yes. I saw him. I saw him.' (McEwan 181)

This, in turn, is exactly what Briony had demanded of Lola to seal the deed:

'Lola' she whispered, and could not deny the strange elation she felt. 'Lola. Who was it?' (...)
'It was Robbie, wasn't it?'
The maniac. She wanted to say the word.
Lola said nothing and did not move.
Briony said it again, this time without the trace of question. It was a statement of fact. 'It was Robbie.' (165-66)

To utter the word "maniac" and the name "Robbie" - in spite of Lola's claiming "(b)ecause I couldn't say for sure" (167) - is to bring assumptions into being: "Briony wanted her (Lola) to say his name. To seal the crime, frame it with the victim's curse, close his fate with *the magic of naming*" (165).⁸

Legally, the inspector's insistence and Briony's questioning Lola are both forms of misrepresentation.⁹ In the case of the inspector, he wants Briony to utter a name, regardless of the possibility of other suspects. As a matter of fact he immediately accepts Robbie's name without even contemplating he might need to consider anyone else. Briony, on the other hand, is willing to give credit to her fantasies and wanted Lola to say Robbie's name in order to eventually gain credibility. Misrepresentation occurs when the defendant acts with "actual malice," or with the knowledge that the information was probably false" (Cowan 157). Interestingly, in the above-quoted passage the inspector does not even ask questions, but utters statements which Briony is supposed to simply confirm or deny. "(P)atterns of use emerge in the court-room: *yes-no* questions tend to be used when lawyers wish to word evidence in a particular way or control the number of possible responses, for example, and checking tags when they wish to coerce a witness" (Archer 7). This happens both with the inspector interviewing Briony and with Briony plying Lola.

The same occurs with the gaze: to see is to bring into being. Costas Douzinas explains that

I come to existence and subjectivity through the image you now have of me and the gaze, this photographic and ubiquitous look that targets me from everywhere and nowhere. (...) The image (...) inhabits the gap between the thing and the subject it brings into being. (21)

⁸ My emphasis.

⁹ In Contract Law misrepresentation refers to the situation in which one party induces the other into a deal with the use of false statements.



When Briony sees Robbie and Cecilia making love in the library, she frames Robbie as maniac since she thinks she is witnessing an attack.

Though they were immobile, her immediate understanding was that she had interrupted an attack, a hand-to-hand fight. The scene was entirely a realisation of her worst fears that she sensed that her over-anxious imagination had projected the figures onto the packed spines of books. This illusion, or hope of one, was dispelled as her eyes adjusted to the gloom. (McEwan 123)

She sees what she believes in,¹⁰ and judges what her eyes met, but “I am my image for the other but this image is not who I am” adds Douzinas (21).

A key point of the novel is Briony’s giving evidence and her unreliability. Robbie’s tragic destiny is informed by Briony’s misunderstanding, by her biases, by her misunderstood witnessing of the library scene and her persuasion. It all stems from her believing in the evocative power of words (she is a young would-be writer) and her inability to fully grasp the depth of reality. She witnesses some of Robbie’s actions that she judges to be bad, projects her judgment and persuasion that come from her recollection and when Lola gets raped she projects them all on Robbie, again. She is eventually asked to provide evidence, the term indicates “what can be legitimately said, what degree of certainty can be legitimately expressed, and what level of assent to what one says can be reasonably expected” (Wierzbicka 127). The concept of evidence, therefore, does stem from empirical basis for judgment. It is about “things that people can know because of what has happened to their bodies (and not *solely*¹¹ because of what they arrived at by thinking)” (97). In other words,

(b)y its salient presence in English discourse, the word *evidence*¹² seems to constantly send the message that “thinking” is not enough for “knowing” and that something else is needed: either seeing or something similar to it (sensory perception). (97)

Therefore, did Briony see Robbie, or does she just think she saw him? Thinking is not enough. Nonetheless she goes on, and repeats the word again and again, eventually believing what she is saying. Briony is a child, a witness, and an unreliable one, as Cecilia says years later: “(i)f you were lying then, why should a court believe you now? There are no new facts, and you’re an unreliable witness” (McEwan 336).¹³ As it is well known, law is based on evidence, and the collection of evidence through interviews. In *Atonement*, Briony’s unreliability is what determines the tragic twist in the novel’s plot: Robbie is unjustly accused, sent to prison, sent to fight in the Second World War.

Legally, Briony’s fault lies in that she delivers false evidence; her behaviour is legally punishable in that she delivers a confession which is different from her actual and personal knowledge of the facts: she is therefore committing the crime of false evidence, or perjury. Moreover, she induces Lola into stating Robbie’s name, even though none of the two girls actually saw the rapist. Legally, Briony’s induction is hard to be proven in front of a judge, that is why the only provable offence in the novel’s context is her false evidence, even though she intentionally delivers her false testimony. Lola, on the other hand, cannot be legally prosecuted as she did not confirm Briony’s evidence in front of a public authority (McEwan does not portray Lola being interviewed) and because even if she did, she would not do it with criminal intent but only under Briony’s influence. Together with the false evidence offence, it might be noticed that the conspiracy offence occurs, as Briony’s perjury is wilful. Conspiracy in fact

¹⁰ “The truth instructed her eyes. So when she said, over and over again, I saw him, she meant it, and was perfectly honest, as well as passionate” (McEwan 169).

¹¹ My emphasis.

¹² Author’s emphasis.

¹³ The character of Cecilia in the novel’s adaptation stresses this point even more by adding: “I wouldn’t necessarily believe everything Briony tells you, she’s rather fanciful.” See the film *Atonement* directed by Joe Wright (2007).



was defined at common law as an agreement to do an unlawful act (Briony's plying Lola to witness Robbie is the rapist) or to do a lawful act by unlawful means; and the word 'unlawful' included not only all crimes but also some torts, fraud, the corruption of public morals and the outraging of public decency, whether or not the acts in question amounted to crimes when done by an individual. (Smith and Hogan 370)

It appears evident, therefore, that the crimes committed by Briony are false evidence, perjury or fraud, conspiracy and misrepresentation. Witness credibility and witness reliability are basic issues in a trial during the phase of witness testimony, especially within those contexts lacking other forms of evidence (because too much time has gone by or because mathematical calculations simply will not apply). Witness testimony:

is a useful kind of argument, even though it is defeasible, in a situation of inexact or incomplete knowledge, but where an investigation is required. In other words, the situation is one where a decision has to be made, or at least an investigation has to be made, under conditions of uncertainty. (Walton 22)

Yet, to undercut a testimony, Walton adds, it is important to consider the character of the person testifying. There are three kinds of attacks, and they are called *argumenta ad hominem*, that is, they are directed to the person itself. There are "the abusive *ad hominem*, the circumstantial *ad hominem* and the bias type" (22). In the first one it is the person's bad character which is stressed, in the second it is the person's inconsistency with what she/he has said with respect to what she/he now says; thirdly it might happen that the person's witnessing is deceiving because of his/her bias. The case with Briony's testimony seems to be that she has a bad character and she is easily persuaded: her brother Leon defines her actions as stemming from "hot-headed decisions" (McEwan 130). And she is unreliable as she lives in her world of fantasies: "the baby of the family possessed a strange mind and a facility with words"(6) which is to state that the family knows well her attitude. On top of this, Briony is being biased more and more by Robbie's strange behaviour towards her sister Cecilia, as she mistakes their love with sexual harassment: the scene by the fountain, the letter with the word "cunt" printed black on white, and their making love in the library. She misunderstands this love affair, and her biases overwhelm her when Lola is found raped in the garden and eventually it all climaxes in her false evidence. Walton: "as the witness sees the suspect again and again, he becomes more and more convinced that this suspect is indeed the same person who committed the crime" (26). Moreover, Briony is supported in her false witness by Emily, her mother, who has never believed in Robbie in the first place.¹⁴ Evidence of Briony's unreliability is therefore disseminated throughout the text. She finds the scene by the fountain "illogical" (39) but yet she is sure it is an attack towards Cecilia; or as McEwan-Briony Tallis writes "Briony herself had no clear idea of what she meant" (141) which is a hint for the reader about her statements' implausibility. Or again: "the glazed surface of conviction was not without its blemishes and hairline cracks" (168).

In fact, in the case of child witnessing, the legal system regards "children as inferior to adult eye-witnesses" and reports "age differences in suggestibility but also that children are capable of recalling forensically relevant information" (Pozzulo and Lindsay 180). McEwan's fictional interview in the novel seems to be carried out in a "supportive and neutral" way (Bruck, Ceci, and Hembrooke 95): "(a)t this early stage, the inspector was careful not to oppress the young girl with probing questions, and within this sensitively created space she was able to build and shape her narrative in her own words and establish the key facts" (McEwan 180). Yet Briony, though put at ease by the inspector's tactful manners undergoes a certain pressure of exactness by his questioning and proves unwilling to tell her doubts: "she became anxious to please, and learned quickly that the minor qualifications she might have added would disrupt the process that she herself had set in train" (169). This behaviour is due to her desire to reach maturity: "the way she was listened to, deferred to and gently prompted seemed at one with her *new*¹⁵ maturity" (173). Her being the only witness

¹⁴ "She (Briony) was there being consoled by her mother" (McEwan 174); "Nothing good will come of it' was the phrase she (Emily) often used" (152); "If she (Briony) had resentments of her own, Emily sympathised" (152).

¹⁵ My emphasis.



and only source of information gratifies her and makes her think she eventually entered the adults' world. Ironically enough, Briony's fault lies in her reliability rather than her credibility: "the term *reliability* simply refers to the accuracy of the report. *Credibility*,¹⁶ on the other hand, refers to the believability that one assigns to a witness's testimony" (Bruck, Ceci, and Hembrooke 103). Briony is believed, actually she is not lying, her fault is stating false belief, (105) as she believes what she is saying. From a literary point of view she is also revealed to be an unreliable narrator, as Albers and Caeners point out

(t)he Briony we meet at the end, who turns out to be the most unreliable of narrators for a number of reasons (...) Among the reasons is her mental condition. No one can be sure how far this has affected the narrative. Then there is the long span of time between the events and the final version of the story, which may have caused loss or alteration of events in Briony's memory. Also, there is her agenda of atonement which has to be taken into consideration. (712)

In *Atonement* we may not want to talk of interviewers' bias because actual biases come directly from the witness herself and her self-persuasion. Persuasion is her strength, and the reason why she believes and is believed: "to Briony, aesthetic experience *is*¹⁷ ordinary experience and the equation of the two in her case illustrate the way she perceives the world, namely as a classic literary ideal that is in fact-outdated" (Albers and Caeners 715).

Guilt plays as well a crucial role within the novel: it is in fact guilt that digs into Briony's conscience from the very first hours following Robbie's imprisonment and throughout her life. It is guilt which pushes Briony into her never-ending, never-to-be-fulfilled atonement which is the writing of her first and last novel, the novel of her life, of Robbie and Cecilia's ruined lives, of her greatest sin.

Guilt and punishment stem from her responsibility; "to deserve punishment, two things are necessary: one must have done a wrongful action, and one must have done so culpably" writes Alan Norrie (96). Norrie defines culpability as involving "the responsible subject as an *intentional, choosing* being in *control*¹⁸ of her choices, whatever those choices may be" later on adding that emotions have nothing to do with it, as "character is not an appropriate culpability base" (108). In other words, Briony's character is not involved or to blame in relation to her crime, since she accused Robbie by means of intention and choice, she is responsible for her conscious actions, not for her attitudes. She did not mean to hurt Robbie but she intentionally did it, she acted under condition of free will: "nevertheless, she regards her false testimony as an act of will: *I can. And I will*¹⁹ (...). It is her self-image of being her sister's protector and the advocate of justice – and not her environment – which pressures her to give her evidence" (Puschmann-Nalenz 194). In the novel there is no lawyer figure, as the role is in fact taken on by Briony herself for Cecilia: "Briony stared at her (Cecilia), amazed. Attacked, betrayed, by the one she only longed to protect" (McEwan 140).

Briony's guilt, which actually occupies the entire length of Parts I and III, is countered in Part II by a higher guilt, one which is shared by the whole humanity and that Robbie reflects upon, alone, during the war:

Briony would change her evidence, she would rewrite the past so that the guilty became the innocent. But what was guilt these days? It was cheap. Everyone was guilty, and no one was. No one would be redeemed by a change of evidence, for there weren't enough people, enough paper and pens, enough patience and peace, to take down the statements of all the witnesses and gather the facts. The witnesses were guilty too. All day we've witnessed each other's crime. You killed no one today? But how many did you leave to die? (McEwan 261)

Robbie draws a parallel between Second World War and Briony's crime, where witnesses are as guilty as the actual culprits. However, the author of Robbie's speculations is Briony herself: "(t)hus Briony's war writing, in effect, allows her 'crime to be subsumed in – and overshadowed by – the larger movements of the twentieth-century history' – or by larger scales of guilt" Helga Schwalm points out (179), considering that

¹⁶ Authors' emphasis.

¹⁷ Authors' emphasis.

¹⁸ Author's emphasis.

¹⁹ Author's emphasis.



compared to such greater evil, Briony's looks so much smaller.

4. *Atonement* as Equity

The discourse of evidence leads us directly to another, final discourse which is the interpretation of Briony's writing as a particular form of equity.

To change her evidence is what Briony will seek to do throughout her life and "atonement" is both the object we read - the product of her effort – and the life-long process of publicly changing her evidence. The reader learns from Part II that Briony has undergone a process of penance by means of training as a nurse in a London hospital during Second World War, where the scrubbing of her hands²⁰ symbolises her effort to wash off the terrible consequences of her false testimony, of what she painstakingly calls her crime.²¹ Thus, she sticks to the favourite activity of her infancy, writing, through which she carries on the changing of evidence, even if only via a fictional work. We are told by the narrator (in the part dedicated to Cecilia's perspective) that Briony wants to see a solicitor to change her evidence but that this might not be possible, Cecilia therefore informs Robbie, who has gone to war, by writing a letter:

She wants to meet. She's beginning to get the full grasp of what she did and what it has meant. (...) I think she wants to change her evidence and do it officially or legally. This might not even be possible, given that your (Robbie's) appeal was dismissed. We need to know more about the law. Perhaps I should see a solicitor. (212)

Therefore, writing her new evidence is the only way she can achieve her purpose, and "at a time when she was cut off from everything she knew – family, home, friends – writing was the thread of continuity. It was what she had always done" (280).²² Thus, she tasks herself with reproducing the facts of that summer day in which her life, Robbie's and Cecilia's, have been ruined forever, trying to reconstruct "the clear light of a summer's morning, the sensations of a child standing at a window, the curve and dip of a swallow's flight over a pool of water" (282).

Eventually, in the final section of the novel - "London 1999" - the reader learns that Briony has been going through the writing of her childish crime for all her life: she was thirteen at the time, she is now seventy-seven. In the meanwhile she has become a famous novelist and has written many novels, but her last novel has been her burden, the writing of which has always been nothing but an attempt.

I've been thinking about my last novel, which should have been my first. The earliest version, January 1940, the latest, March 1999, and in between, half a dozen different drafts. The second draft, June 1947, the third... who cares to know? My fifty-nine-year assignment is over. There was our crime – Lola's, Marshall's, mine – and from the second version onwards, I set out to describe it. I've regarded it as my duty to disguise nothing – the names, the places, the exact circumstances – I put it all there as a matter of historical record. (369)

Interestingly enough, in the next page Briony defines her novel a "forensic memoir" (370), a definition which not only takes us back to autobiography but that draws an important connection, once again, with law. Briony's novel is not just a novel, not only a sort of autobiography or memoir as she labels it, but most importantly, new, true and ultimate *evidence*. It is her ultimate testimony, before she dies, before death silences her forever and truth can no longer be stated.

Within a legal framework Briony is, at the same time, a witness, her sister's lawyer, the plaintiff, Robbie's only judge, and once again Robbie and Cecilia's judge in that she makes up their lives through the use of fiction. Having – as a writer – the power and the authority to decide their outcomes she applies equity in giving them

²⁰ "She scrubbed down the vacated lockers, helped wash bedframes in carbolic, swept and polished the floors (...). All she wanted to do was work, then bathe and sleep until it was time to work again. But it was useless, she knew. (...) she would never undo the damage. She was unforgivable" (McEwan 285).

²¹ "There was our crime" (369), "There was a crime" (370).

²² Actually, in the first pages of the novel Briony is described as "one of those children possessed by a desire to have the world just so" (4); in fact as a young playwright she made up playlets featuring members of her family and mainly her brother Leon.



a second chance to happily reunite:

Who would want to believe that they never met again, never fulfilled their love? (...) I like to think that it isn't weakness or evasion, but a final act of kindness, a stand against oblivion and despair, to let my lovers live and unite them at the end. I gave them happiness but I was not so self-serving to let them forgive me. (371-72)

She could have been truthful but as she admits to herself:

I can no longer think what purpose would be served if, say, I tried to persuade my reader, by direct or indirect means, that Robbie Turner died of septicaemia at Bray Dunes on 1 June 1940, or that Cecilia was killed in September of the same year by the bomb that destroyed Balham Underground station. (370)

Daniela Carpi defines equity "as an emergency resource in cases when the law seems to have failed" (23) and in *Atonement* law did fail, justice is not achieved, neither at the moment of the crime nor at the end of the novel. Equity sees where justice – blindfolded – cannot see: Briony at thirteen saw the world in black and white, as if she were blindfolded herself, while at seventy-seven equity enables her, once more in the role of a judge, to decide for Robbie's destiny even though "(t)he sentence had already been served. The debt was paid. The verdict stood" (McEwan 325).

What could save Robbie and Cecilia, who in fact are already dead? As a judge who once failed to give justice, what could Briony do if not spare the lovers another failure? As a writer, as a judge, she can just give them a new life, if anything on the written page. In this way, the novel brings the function of the literary in legal thought and practice to the fore. Since the Greek and Roman tradition, the notion of equity has been "linked to the concepts of imagination, perspective or point of view, narrative, attention to detail and particularity, sympathy, identification and understanding, and all these concepts link the legal process to that of story-telling and of reading" (157). Novels "provide us with all the details and all the particulars of its protagonists' lives that enable us to identify with them, to see the world through their eyes, to become lodged within their lives and thus judge them as concerned readers."

Briony believes no one can save her, no higher entity, yet the reader is such higher entity, the ultimate judge, who is implicitly called to judge her equitable act. Briony's role, in fact, is thoroughly and inseparably intertwined with that of the reader, who will ultimately grant Briony atonement for her mistakes, precisely by acknowledging her narrative in the equitable act of reading.

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