'Corpus Juris, Habeas corpus, and the "corporeal turn" in the humanities'

Martin A. Kayman, Cardiff University

Abstract

The article identifies a "corporeal turn" in the humanities and locates its implications for the politics of reading within the postmodern crisis in the legitimacy of traditional humanities approaches to culture. The powerful language of the "corpus" is also found during the same period in the staging of a confrontation over liberty between British and European legal systems. Using this as a political framework, the article traces the metaphysical resonance of the "corpus" to its origins in a theological ecology and examines the contrasting ecology revealed by the "monuments" of the unwritten English law, sustained not by faith but by fiction. Central to belief in the justice of the verdicts of this law is the separation of literal fact from legal significance and their allocation in the jury trial to different readers. The challenge of the corporeal turn to traditional approaches is the critique of the "close" human reader as the determiner of the facts in favour of a "distant" digital reader. Rather than simply asserting the superiority of the human reader, however, the essay argues that, despite their opposition, the traditional jury and corpus humanities both work institutionally to elide fictionality in their critical judgments. Nonetheless, fictionality persists in the possibility that things could be imagined otherwise, be they verdicts of law or laws of cultural history.

Keywords

Digital humanities – critical methodologies – distant reading – culturomics – jury trial – unwritten law – transubstantiation – corpus vs body

> "the Forensic Linguistics Research Group in Birmingham is … setting up a corpus of forensic texts in English, whimsically entitled the *Habeas Corpus*."[1]

FROM TEXTUAL TO CORPOREAL TURN

In one of the many conflicts over jurisdiction that have taken place between the UK and the European Union since the late twentieth century, the defenders of English law staged the danger, as they saw it, of the expansion of European legislation in terms of a threat to *habeas corpus* from a *corpus juris*: the liberty of the human body put in peril by a written body of law. "Corpus" is a term that resonates in various registers – in this case polemically opposing the primacy of the subject in law to that of the text. The power of that resonance has been heard elsewhere during the

same period in what I characterize here as a "corporeal turn."[2] In the case of the humanities, the move began with the emergence of corpus linguistics in the early 1990s and has expanded into a central component of what since the early 2000s has termed itself "the digital humanities": the construction and manipulation of massive textual corpora as new approaches to understanding language, literature, and culture.[3] This article starts from the position that these developments go beyond questions of methodology, as they are most frequently treated: the increasing adoption of corpus-based methodologies raises fundamental issues in the politics of reading. Further, the confrontation of human and textual corpus provoked in Britain by the internationalization of legal systems can assist in constructing a framework through which to understand those politics.

Although, to my knowledge, it has not hitherto been referred to as such, the notion of a "turn" is warranted by the corpus's radical reconfiguration of textuality and the consequent challenge to existing assumptions regarding the ontology of the text and how it should be read.[4] It was, after all, the "textual turn" and the constructivist view associated with it that, by opening the full field of culture to techniques and theories from the study of literature, authorized a new politics of reading the law in the late twentieth century. Approaches to "law *as* literature" have hence varied in relation to the interplay between theories of textuality and the practices of literary and cultural criticism. In the main, two types of approach have been applied here: on the one hand, various forms of "close reading" from the new critical to the deconstructionist; on the other, a range of theoretical methodologies for relating texts to their cultural and political contexts, commonly designated as "symptomatic" reading.[5] Now, with the rise of the digital humanities, new modes of reading are being developed through which, it is claimed, massive corpora can generate substantially more robust and persuasive grounds for determining textual and cultural meanings and practices than traditional approaches based on the individual reading of series of singular works. A combination of techniques of data mining, statistical analysis and graphic visualization that Franco Moretti denominated "distant reading" has come to dispute the dominance, if not the very legitimacy, of both what N. Katherine Hayles terms the "sacred icon of literary studies, close reading" and what Alan Liu refers to as "the basic assumptions of cultural criticism as a method of reading."[6]

Given the history of the discipline, the critique of close reading has, for Hayles, put at risk the "[e]ssence of [English Literature's] disciplinary identity," in Liu's words its "soul" or "bedrock."[7] Whether, among other threats to the discipline, the digital humanities do in truth go quite that far or not, the hyperbole is a measure of the stakes for many. Such language equally responds to the powerful metaphysical resonance of the corpus itself. For example, even when Andrew Piper argues for the integration of close reading within an iterative process of model construction, he does so in relation to a conception of the novel as possessing a "conversional force," a capacity for eliciting what he calls "devotionality."[8] And it is just this process of revisiting, change and allegiance, Piper argues, that a combination of distant and close reading can

reproduce, owing to what he terms "the conversional nature of computational reading" – a model indeed for an evangelism of the corpus that wishes to convince us of the superiority of its methods.[9] While concerns about the digital humanities normally present themselves as a reaction to its scientific style, I shall argue that an important dimension of the power of the corpus can be traced to its theological origins.

But we should note too that the perception of the digital humanities as a threat to the discipline of English Literature – as the contrary perception that they may be its salvation – arises in the context of the broader crisis for the humanities within the "postmodern condition."[10] In the circumstances in which the humanities feel themselves to be under existential pressure to perform according to criteria traditionally deemed more suitable to the social and natural sciences, Gary Hall asks whether the substantial investment in digital corpora and their methodologies is not equally "a response on the part of the humanities to the perceived lack of credibility, if not obsolescence, of their metanarratives of legitimation: the life of the spirit and the Enlightenment but also Marxism, psychoanalysis, and so forth."[11] My return to the theological roots of the corpus is not intended to point to a creeping religiosity in the digital humanities, but to a desire for a new source of confidence in the statements made by the humanities about the world.[12] In an earlier article, I diagnosed a "neo-foundationalist" reaction to the constructivist uncertainties of the textual turn in the wake of the 2001 attack on the World Trade Centre.[13] The present essay moves on from that initial diagnosis to examine the specific rhetorical force of the corpus and the implications of two of its manifestations at the present cultural moment, one drawn from law, the other from literature: the representation of a conflict between the national and international legal orders in terms of a tension between the written and human *corpus*; and the distant reading of literary corpora as a challenge to the legitimacy of cultural statements based on close and symptomatic reading of individual texts.

The essay proposes that an analysis of the first can help us understand the politics of reading in the second. The legal polemics establish a network of tensions around the corpus and fabricated stories, connecting writing, nation, and the freedom of the subject. I shall explain this by tracing the ontological force of the corpus to its roots in a religious ecology of corpora. In contrast, as the subsequent part of the essay will demonstrate, English law resists the absolutist threat it attributes to the *corpus juris* through an alternative, but no less powerful, ecology of fictional corpora. The ecology is anchored by the complement to *habeas corpus* in the narrative of English freedoms: what Sir William Blackstone famously celebrated as "the glory of the English law," trial by jury.[14] The two ecologies, religious and common-law, elide their fictionality by supporting and relying on distinct configurations of the order of the literally existing and that of figurative truth: respectively, the identification of word and flesh, and the integration of fact and law. When, in the fourth section, we turn to the textuality of massive digital corpora, we will find that the superiority claimed for digital reading is based on an inversion of the politics of

reading associated with the jury trial. This is what troubles the humanist tradition: the use of non-human readers, rather than the figure of a body of peers, to determine facts whose significance it is then the task of the textual scholar to interpret. My point is not merely to invoke the primacy of the human reader against the machine. As I shall explain, what ensures confidence in either the jury or the distant reader does not have to do solely with their own positions and capacities, or with the nature of the objects they read, but, decisively, with the institutional constraints that govern their deliberations. It is here, then, that we will find the politics of reading, the conditions under which, in each case, a shared sense is constructed from narratives for individuals. Despite their differences, the identifications that constitute the politics of reading in the corporeal turn and the traditional narrative of English law each elide the contingencies that turn fabricated stories into truth. Readings of two fictional attempts to assassinate Margaret Thatcher will suggest the possibility of an alternative – or at least the necessity that, especially in the context of the ontological force of the corpus, an alternative must always be recognized to exist.

CORPUS JURIS & CORPUS CHRISTI

We begin then with the turn-of-the-century reaction provoked in the traditional narrative of English law by the expansion of Europe-wide jurisdiction. In 1997, a group of academics was commissioned by the European Parliament to come up with a legal framework to combat the growing problem of financial fraud. Their report, to which they gave the title *Corpus Juris*, proposed the creation of a single judicial area to address financial malpractice in the EU, with a single European Public Prosecutor's Office (EPPO).[15] Importantly, the conditions of detention would be determined not by the procedures of *habeas corpus* but by a professional "judge of freedoms."[16] Although the *Corpus Juris* met with a "lukewarm" reception in a number of member states, it was supported by the European Parliament and the Commission, and provision for the creation of an EPPO was eventually included in the Lisbon Treaty.[17]

The *Corpus Juris* produced an outcry in the UK. It was represented from the start as the first step in an attempt to impose a single criminal code across EU member states. Headlines in the right-wing press gave voice to fears of an imminent threat to British justice. Ben Taylor's warning in the *Daily Mail* was typical: "The spectre of the centuries-old British tradition of trial by jury being abolished in favour of a Europe-wide justice system was raised last night."[18] *Corpus Juris*, Taylor went on to say, "would mark an end to the historic British courts system which is envied and imitated across the world. It includes the principles of habeas corpus … and trial by jury." Likewise Michael Shrimpton proclaimed in the *Times*: 'Trial by jury would be shut out entirely, as would habeas corpus."[19] Similar concerns were expressed in Parliament on a number

of occasions, consistently invoking the risk the *Corpus Juris* represented to jury trial and *habeas corpus*. Thus, for example, Desmond Swayne, later to be private parliamentary secretary to the Leader of the Conservative Party, argued on 19 May 1999 against "introducing corpus juris into our own system, alien as it is to habeas corpus."[20] A year later, on 16 June, the former Conservative Chancellor, Lord Lamont, decried "proposals relating to corpus juris, which appeared to threaten habeas corpus in a certain area."[21] What, then, is at stake in the opposition of the *corpus juris* on the one hand, and *habeas corpus* and the jury on the other?

A *corpus juris* articulates the norms that govern society in the form of a comprehensive written body of law. On the other hand, the "unwritten" English Law cannot be said to have a "corpus" in the same sense as Continental legal systems do. For Jeremy Bentham, for whom only a written body of law could be said to have a real existence, the English Common Law was a "counterfeit" – a fraud like what the modern *Corpus Juris* was designed to combat.[22] Although implicit throughout, it was not the "fictitious" "unwritten" corpus that English law fervently invoked here, but the bodies of the citizen and the jury of his or her peers. In the case of a *corpus juris*, individuals answer to the text of the law for their actions; with a writ of *habeas corpus*, the state answers for the legality of its practice in relation to the individual's body. The opposition echoes what Anthony Easthope, writing at this time, identified as the "discourse of empiricism" that historically defined the national culture of Englishness.[23] Easthope scarcely touches on the question of legal culture here, but privileging individual concrete experience in an adversarial posture towards the abstractions of theory associated with "scholasticism, Roman Catholicism, metaphysics … rationalism [and] 'theory'," has been as fundamental to the national narrative of British liberty as, one might argue, the written constitution is to the republic.[24]

The quarrel over the proposal has rumbled on intermittently for many years, despite the fact that the Prime Minister had been driven to declare in October 1999: "I have made it absolutely clear that we do not want a corpus juris across the whole of Europe."[25] Tony Blair went on to observe: "As far as I am aware, no one has suggested that we have a corpus juris… I have already said that we would oppose any such attempt; what is more, no such attempt has ever been made. Why do these people raise these scare stories?" No matter how unequivocal ministers were in their opposition, the scare stories continued to have currency.[26] Obviously, on one level, this represents no more than political opportunism around British membership of the EU. Yet the rhetoric went well beyond the level of policy. The *Corpus Juris* fueled powerful fantasies in Britain about competing narratives of law and the liberty of the individual. In a debate on 25 November 1999, Lord Cope commented: "I do not wholly subscribe to the views … about the question of a "plot" to start with the *Corpus Juris* and open it up," but, he observed, "If the authors of the report did not wish it to be perceived that way, they should not have given it such a grandiose name."[27] Cope has a point. The "grandiose name" gave occasion for a limited proposal to combat fraud to become an opportunity for making up "stories" about a threat to the bastions of

English liberty – which the latter combatted with its own "centuries-old" narrative of its care for the human "corpus." What, then, is so "grandiose" about the corpus that it so easily became the center of fabricated stories designed to scare people with the specter of a despotic body of writing and, on the other hand, to summon against that the equally resonant narrative of the British subject before the law?

The answer, I suggest, is to be found in the difference that exists between the corpus and the empirical body, and the theological origins that support that difference. Cognate as the respective words are in Romance languages, "corpus" is commonly taken in English as a synonym of "body" that has been applied and adapted to various phenomena with no apparent further purpose in mind. But the use of the Latin term instead of the English begs the question of the difference between the two. At one level, it may just be that a word from the first global language of learning is used to signal that one is in the realm of scholarship or law, where the usage has a long history. However, the revived use of the archaic term in the context of the virtual world of electronic databases draws attention to the fact that while the language of the corpus brings with it rhetorically valuable ideas of substantiality associated with the body, a corpus is not reducible to a literal body. Read as descriptive of something that simply *is*, the something in question is, potentially at least, both beyond our grasp and yet, as it were, to hand. *Hoc est enim corpus meum*. As Jean-Luc Nancy says of the Eucharistic sacrament: "we're obsessed with showing a *this*, and with showing (ourselves) that this *this*, here, *is* the thing we can't see or touch, either here or anywhere else – and that *this* is *that*, not just in any way, but *as its body*."[28] A corpus figures a living presence, a "this is" that endows the order of the literal with significance and virtual entities with a language of substantiality.

Corpora are thus bodies that are more than the sum of their parts. The mere presence of the body of the accused is inseparable from the spirit of liberty it figures; the words of the legal text, the capacity for justice; the bytes in the database, cultural knowledge. The potential for meaning enfolded within the corpus take the concept beyond the mere existentiality of the literal body, giving it what might be called an ontological excess. The corpus, I am suggesting, is a "body plus" – an uncanny identification of the literal and the figurative and the inert and the vital. The rhetorical grounding offered by the language of the body derives in some instances from its reference to the physical organism that supports life; in others, from its reference to dead bio-matter. However, the two cannot be overlaid on the body like the literal and figurative senses of a metaphor. Unlike the "living dead" or Schrödinger's Cat, the body cannot be *both* the one and the other, alive and dead. In that sense, it is always more *or* less than itself: animated matter or its mortal remainder. The corpus, on the other hand, breaks down the binary; it is both less *and* more than a body.

The complex of meanings can be teased out of the etymology of the term in English, where its modern sense has emerged out of the separation of two sets of cognate words: "corpus"

and "cors" or "corps," and "cors/corps" and "corpse." According to the OED, in Middle English, "corpus" was used to refer principally to a dead body, the remains of absent life, as "corpse" does today. On the other hand, "corps" (with or without the "p" pronounced) could refer to a body living or dead. Both "corpus" and "cor(p)s" were also used to refer to a body of law (*corpus juris*) or a body of knowledge. By the nineteenth century, however, English orthography had cemented a distinction between the living and the dead body. The word "corpse" took over the meaning of the lifeless body, while "corps" was constrained to its modern sense of the identity of a military or other group of individuals existing as a cohesive whole, as in "esprit de corps." In the course of this differentiation, "corpus" itself lost its association with the human body and retained only its meaning as a body of writings. Thus, while the two exclusive meanings of "body" – living or dead – are now distributed between the "corps" on the one hand and the "corpse" on the other, the corpus sits between them. It has the capacity to be *both* dead and alive, both literal and figurative.

While propitious, then, to the persuasiveness of fabricated stories, especially scary ones, in another register this unique condition is what defines the *corpus Christi*. If, as we have seen, the confrontation of legal corpora raises the problematic question of the primacy of human and textual bodies, the *corpus Christi* represents their ideal identity with each other, "the Word … made Flesh" that is the basis for true human freedom.[29] In contrast to the body as either corps or corpse, Christ can only ever be both less *and* more than a literal, human body. The *corpus Christi* is less than a living body in that it is broken and sacrificed; it is the body of the crucified Christ. And it is more than dead matter in its divine character as the glorious body of the Resurrection. The Eucharistic sacrament performs this double quality. Through the consecration *hoc est enim corpus meum*, the literal sustenance of life, bread and wine, is transubstantiated into the body and blood of Christ, the means to eternal life. Through ingesting the corpus, the individual partakes in the promise of that life, "though he were dead."[30]

Thus the Mystery of transubstantiation. There is furthermore no anxiety here about false stories, of course; the *corpus Christi* is the unquestioned truth of Scripture, a discourse in which fabrication is guaranteed as truth through allegorical figuration.[31] However, the important feature of the Eucharistic origin from the point of view of the non-theological corpus is that its efficacy does not derive from the unique qualities of the Host itself or from a direct transaction between the Host and the individual alone; crucially, I am arguing, it is realized within a *network* of corpora. When in 1215 the Fourth Lateran Council confirmed the doctrine of transubstantiation, it designated the Host the *corpus verum*, thereby signaling the resolution of a long-standing debate around the literal or figurative presence of Christ's body in the Eucharist.[32] As a consequence, Ernst H. Kantorowicz explains, the expression *corpus mysticum*, which had previously denoted the figurative character of the Host, came to be attached to "the Church as the organized body of Christian society united in the Sacrament of the Altar."[33] Hence, if the *corpus verum* brings together the body of Christ and that of the individual, the Eucharist gives body to the *corpus*

mysticum of the Church as institution by aligning it with a community of participants. As Kantorowicz further notes, the exchange of "*verum*" for "*mysticum*" and the attribution of the latter to the Church occurred at a time when "doctrines of corporational and organic structure of society began to pervade anew the political theories of the West."[34] In sum, besides the object and its mode of consumption, the transformative power of the corpus requires a communal and corporate supplement, united in a *corpus mysticum*, or, as institutional bodies are described elsewhere in medieval law, a *corpus fictum*, the legal fiction of corporate personhood.

These elements, I propose, provide us with a framework with which to understand the "grandiosity" of the corpus beyond the religious context; how it is capable of evoking devotion and thereby compelling allegiance, political or epistemological, to its narrative of freedom and truth, or, alternatively, of provoking fear or revulsion at its uncanny existence. First, the ontological excess of the corpus derives from the way it claims to configure virtual and literal bodies of meaning and matter, grounding the former and animating the latter. Secondly, the powerful effect is realized through the individual's personal experience. Thirdly, the efficacy of that experience relies on a network of relationships between the locus of the configuration of the inert and the vital, the individual who experiences it, the community that also participates in the rite, and the institution that validates the corpus and its scripture as a living truth (*Hoc est*). Lastly, then, what in this case gives meaning to both the real (*verum*) and the fictive (*mysterium* or *fictum*) corpus and sustains the entire ecology of bodies as supporting a life of freedom is the religious faith of the subject aligned with the authority of the institution. Belief in the *corpus verum* is not only a matter of personal faith in the Word of God, but equally of allegiance to the Church as institution and membership in a community of fellow believers whose vitality is itself regularly renewed by the Eucharistic ritual.

MONUMENTS OF THE UNWRITTEN, HABEAS CORPUS AND THE JURY

If the framework holds true for the religious corpus, what can turn a legal corpus into a living body of justice, rather than a "dead letter"? Certainly it requires something that articulates the "word" of law with the "flesh" of citizens within an ecology involving the individual, the community, and the institutions of the law. That ecology can surely be maintained by religious faith in the scripture and the universal authority of the institution; indeed, this is what scared English liberals about the *corpus juris* as they conceived it, as likewise, more recently, the reception of sharia law. So what takes the place of religious faith in supporting the ecology of a secular corpus? In the Continental tradition, one might argue, the ecology is sustained by a combination of confidence in the equity of the foundational text, in the constitutional organs of

the Republic, and in the probity and scientific ethos of the legal institution that interprets and applies the *Corpus*. But, as the invocation of the *habeas corpus* against the *Corpus Juris* indicates, while defining itself against laws primarily created by writing, English law does not simply eschew the ontological force of the *corpus*; to do so would risk exposing the Common Law as no more than either a literal-minded network of formal processes or a merely imaginary law, as Bentham had claimed.

What, then, nourishes the ecology of the English "unwritten law" so that the spirit of this invisible justice retains its powerful being in the nation's imagination and ensures the identification of the free subject with the legal institution? Certainly, there is no absolute conflation of "word" and "flesh" here; indeed, there is nothing less literal than the expression "unwritten law." As Matthew Hale explained using a suitably corporeal term in an expression also adopted by Blackstone: "when I call those Parts of our Laws *Leges non Scriptae*, I do not mean as if all those Laws were only Oral …. For all those Laws have their several Monuments in Writing."[35] This is the landscape within which the talismanic bodies of the *habeas corpus* and the jury are embedded. If the narrative of the Common Law is a fiction, then what sustains it can, I propose, helpfully be understood in terms of the sort of fictional life that animates monuments. By defining this as "fiction" rather than "faith," I do not mean to suggest that the Common Law is any less commanding (or any more just) than a system based on a *Corpus Juris*. Indeed, the ecology of the republic relies on its monuments too. On the other hand, in the absence of a systematic foundational text and a scientific approach of the sort promoted by Bentham, the Common Law relies heavily on a diffused and naturalized *nomos*. In that sense, the fictional ontology of the Common Law is less akin to that of a religious or scientific law than to an element of what Jacques Rancière describes as the field of politics itself: the "distribution of the sensible," or "the system of self-evident facts of sense perception that simultaneously discloses the existence of something in common and the delimitations that define the respective parts and positions within it. A distribution of the sensible therefore establishes at one and the same time something in common that is shared and exclusive parts."[36] The life of the common law depends then on how the common sense of its fictions is disseminated and engrained across the culture.

Literal monuments serve as an exemplary instance of this process. A monument or sculpture can be considered as a low-intensity species of corpus inasmuch as it is both an inert body of material and at the same time a vehicle for social and political values – most evidently in the tradition of heroic or civic statuary that populates our cities. Indeed, at a time when law is becoming less visible as law and more pervasive as bio-power, there has been a notable revival of interest in public sculpture in the UK during the period we are discussing, particularly a taste for monuments representing human bodies, historic or imagined.[37] As Igor Toronyi-Lalic complained in 2012 on behalf of the right-wing think-tank, the New Culture Forum: "The past two decades have seen an unprecedented boom in public art. More unsolicited installations and sculptures rose

up in the 1990s and 2000s than in the entire century before."[38] The Forum was not objecting to the existence of public art as such, merely to the sort of work that had been commissioned over the period by state and civic bodies for particular social and economic purposes.[39] On the contrary, Peter Whittle, the Forum's founder, has been involved in a business commercializing statues of Queen Elizabeth with the aim of promoting "social cohesion" in the UK and the Commonwealth.[40] The first of these, funded by private sponsorship, was unveiled at Runnymede on the eve of the anniversary of the sealing of Magna Carta in June 2015.[41] The following day, a very different work by Hew Locke entitled *The Jurors*, sponsored by a public body, was inaugurated.[42] Two monuments, two ecologies, two narratives of law and liberty in the UK.

Like the religious corpus, public monuments achieve their effects through their interaction with the body of the spectator in the context of spaces shared by other members of the community, with the aim of promoting the values of their corporate sponsor, be the latter state or civic agencies or private or community bodies.[43] However, to treat a sculpture as a *corpus verum* would be to turn it into an idol. In contrast, sculptures are animated by an essentially fictitious life, motivated by an aesthetic, rather than a religious, experience. Although the appearance of vitality is perhaps most recognizable in figurative sculpture, the liveliness of a monument does not depend on its resemblance to a human body but on the movement engendered in the spectator and the illusion of internal animation or the effect of surface envisaged by viewers as they move in its space. The fictionality of corporeal life remains in the awareness that, even if one physically touches the stone, the imagined experience of liveliness still outlives the confirmation of its inertness. Put another way, in contrast to the experience of transubstantiation, the double interaction with sculpture as haptic animation and tactile inertness reinforces one's awareness of the monumental body as artefact. It demonstrates that as we maneuver between them, the vitality of the values that the monument remembers or figures depends on our personal participation in the fiction that they have the form of life they appear to. Furthermore, the experience is also contingent on the interaction of the monument with other subjects whose movement forms part of our visual field – as one does for them. In sum, the success of monuments as vehicles for narratives fabricated by state, corporate or communal bodies is contingent on public participation to bring them to life. In many cases, of course, monuments may no longer do their work, having reverted to the dead weights they otherwise are. Generally, though, unless new or particularly distinguished, sculptures achieve their effect without drama, fading into the visual fabric of the architecture of civic life as part of the urban and ideological landscape.

Taking the physical monument as an illustration of its ecology, then, the figure of the unwritten common law as a network of "monuments" offers an alternative identification of literal matter and figurative meaning to that of the corpus based on religious scripture, naturalized rather than ritualized, pervasive rather than sacred, and animated by a fiction whose conditionality is rendered invisible by aesthetic experience disguised as a common sense/ consensus around its

values. So when, in 2002, Paul Kelleher decapitated Neil Simmons's marble statue of Margaret Thatcher at the Guildhall Art Gallery in the City of London he literally "broke the law" in a way that goes beyond the criminal damage with which he was charged.[44] He violently exceeded the aesthetic bounds of the haptic and shattered the fiction of the monument's shared space, introducing a radical dissensus into its meaning and into the respect due to public works of art and to law-makers. Furthermore, as attested by the three trials to which his "monumental" crime gave rise, Kelleher's action appears to have provoked the law if not into "breaking" itself, then at least into revealing a stress fracture in the very foundations on which Blackstone's "glory of the English law" rests, the jury trial.

Like his attack on Thatcher, Kelleher's first gesture in court was a defiant form of nominalism: although he admitted smashing the statue, when asked to enter a plea he is reported to have replied: "With the greatest respect to the court ma'am I'm unable to enter a plea of guilty due to the fact it is criminal damage. I'm not a criminal so I will have to enter a plea of not guilty."[45] But, besides a number of other subversive "obiter dicta" of this sort, the accused's real challenge was the claim that he had a statutory "lawful excuse" for the destruction he admitted causing.[46] Kelleher's defense relied on his reading the statue not as simply a literal piece of property but as a living monument to political values and measures which, he claimed, had the power to threaten the property and future prospects of his children. Under the terms of the statute, Kelleher needed only to persuade the jury of his honest belief that this was the case, not that the belief was justified. In the first trial, Justice Aikens left the question to the jury as a matter of fact; but they were unable to reach even a majority verdict. The judge in the re-trial, Justice George Bathurst-Norman, took a different view, determining that the defense was not admissible as a matter of law. Consequently, he directed the jury "that there can only be one verdict in this case and that is one of guilty."[47] Here, then, Kelleher's eccentric position appears to have driven the judge into overstepping his responsibilities and transgressing the line between himself and the jury. The appeal court confirmed that Bathurst-Norman had been wrong in directing the verdict; a judge may tell a jury to find a defendant not guilty, but not guilty as charged. However, the court avoided what one might call the literary question contained within the trial: the accused's reading of the monument's figurative meaning. Lord Justice Mantell agreed that the judge had been correct in not admitting the defense on the grounds that the law required the identification of a specific piece of property that was under threat, and this Kelleher had failed to do. The safety of the conviction was thus upheld on the grounds of the overwhelming evidence against the defendant, who was sentenced to three years in prison. Nonetheless, in provoking a hesitation over the line between fact and law and pressuring the court into seeking to superimpose its judgement over that of the jury, Kelleher's attack on the monument to Thatcher revealed a vulnerability in the politics of reading at the heart of the ecology of English corpora: its

dependence on a clear distinction between matters of fact and matters of law, and the court's respect for that distinction.

The foundational nature of the distinction in the procedure of the trial and the just articulation of fact with law in its verdict is celebrated in one of the most significant of those "monuments in writing" of the Common Law that Hale classes under "Records of … Judicial Decisions."[48] The landmark *Bushell's Case* lies at the origin of the incantation of "*habeas corpus* and trial by jury" raised in our original polemics. In 1670, Edward Bushell petitioned for a writ of *habeas corpus* against his imprisonment for refusing to pay a fine that had been levied on him and his fellow jurors for contempt of court. Bushell had been punished for acquitting the Quakers William Penn and William Mead of the charge of unlawful assembly, but the judge had overruled the jury's verdict in the case on the grounds that it was "*contra plenam et manifestum evidentiam.*"[49] Granting Bushell's petition, Chief Justice Vaughn saw that if courts were to overrule the jury's interpretation of the facts this would imperil public confidence in jury trial itself.[50] Contrary to the trial judge's sense of the self-evidence of the truth, he pointed out that it was normal for individuals to interpret witness testimony differently.[51] Judges disagreed with each other over interpretations of the law, and so too "the Judge and jury might honestly differ in the result from the evidence."[52] Further, as if in illustration of Easthope's diagnosis of the English "discourse of empiricism," Vaughn maintained that the establishment of the facts by the jury takes precedence over rulings on the law because "Without a fact agreed, it is as impossible for a Judge, or any other, to know the law relating to that fact, or direct concerning it."[53]

As Blackstone had proclaimed, and as Locke's sculpture for Magna Carta now literalizes, the jury trial is the most splendid monument to the Common Law as the defender of human liberties. If literal monuments offer a figure that illustrates the ecology of corpora in English Law, jury trials occupy the place of the Eucharistic ritual as they regularly invigorate the law and its institutions with the life of justice. They do so, however, according to a distinct politics of reading. In place of the scriptural identification of word and flesh in the *corpus Christi*, jury trials sustain belief in the unwritten law by producing for each case a true finding, its *verdict*. Verdicts are arrived at in the first place by the jury reading the evidence narrated by witnesses critically, sifting its plausibility and truth from the potential misprisions and fabrications it contains so as to establish a reliable narrative of the facts. They are completed when the jury, guided by the judge learned in the texts of the law, attributes a legal significance to their account of the historical events, causation and motivation. In sum, then, the "glory" of the jury trial is to ensure confidence, beyond reasonable doubt, in the reliability of its verdicts as something other than fabrications of power or error. The capacity to convert narratives into truth derives ultimately from belief in their reconfiguration into matters of fact and of law which the jury trial brings, corpus-like, into a just and reliable articulation. Confidence in the justice of the configuration is

ensured by the distribution of reading responsibilities for each component between different bodies: the representatives of the community and of the institution.

In this way, the performance of jury duty by members of the public and, more commonly, their consumption of newspaper reports and fictional stories of criminal trials regularly enact and invigorate popular belief in English law's care for the human subject, allegiance to the institution which consensually administers it, and, at the same time the ecology of empirical fact and theoretical (legal) meaning that aligns with the primacy given to the freedom of the human subject, the judgement of the jury of peers, and hence the justice of the unwritten law in relation to the written corpus juris.

THE DIGITAL CORPUS
Facts and Fictions

In his classic account of *The Rise of the Novel*, Ian Watt proposed the jury as an analogue to the reader of the emerging modern genre of fictional narratives.[54] By "the novel" Watt meant the *English* novel, as opposed to French.[55] The novel has traditionally been celebrated alongside English law as an expression of the national culture of liberty first developed in Britain following the "Glorious Revolution." The "formal realism" that, for Watt, defined eighteenth-century fiction correlates with the empiricist commitment to individual experience in relation to written authority that Easthope identified with the discourse of "Englishness." Watt's construction of the modern novel as a fundamentally English (and masculine) genre was based on a restricted canon which much literary history since has been devoted to unpicking. In this context, Moretti takes up the metaphysical stakes again by claiming that devotion to a canon is the inevitable corollary of close reading. It is this that makes the practice "a theological exercise: you invest so much in individual texts *only if* you think that very few of them really matter."[56] Likewise, reminding us of the role of internationalization in the politics of the corpus in law, Moretti traces the origin of his theory of distant reading to a contribution he was invited to make in 1991 to a history of Europe, at a time when, he confessed, he still relied on an "idea of literature as a collection of masterpieces."[57] By 2004, Moretti had expanded the horizon, calling for a "return to that old ambition of *Weltliteratur*" on the grounds that, "after all, the literature around us is now unmistakably a planetary system."[58] Decisively, he now made the point that "world literature cannot be literature, bigger"; it requires "a new critical method," one which does not rely on "direct textual reading."[59]

In pursuing his "Conjectures on World Literature," Moretti's ambition was to raise an "insight" regarding the development of the novel from the leading exponent of "symptomatic reading," Frederic Jameson, to the status of "a law of literary evolution."[60] In developing a non-

theological, anti-canonical approach, Moretti's first step was to adopt a model explicitly drawn from the social sciences (Immanuel Wallerstein's world systems theory) in which he positioned himself at the top of a pyramid of national studies by different experts, synthesizing the data they provided into a global system.[61] The second step, announced in 2005, was to move from this mode of production to the use of digitally-enabled quantitative methods capable of generating "a large mass of facts … a type of data which is ideally independent of interpretations."[62]

The possibility of "facts" that are not the result of subjective constructions is a consequence of the reconfigured textuality that constitutes the corpus and is at the heart of its neo-foundationalist promise. Size and robustness of evidence go together here, by way of the elision of the individual reader. The "corpus" is of course long established as a term for a complete extant body of writing or, as it was defined in *Chamber's Cyclopedia* (1728): "several Works of the same Nature, collected, join'd, and bound together." At the beginning of the mass market in printed books, the written corpus thus designated an extensive set of writings with multiple parts that shared a common identity and could be conveniently handled.[63] In contrast, in the late twentieth-century digital revolution, the electronic corpus results from an expansion and material transformation of texts that takes their content by definition beyond the grasp of human readers. The traditional collection of manuscripts or printed texts and its ideal of completeness is refigured as a massive digital virtuality, in theory universally accessible on-line but, paywall or not, containing too much material for any individual human subject to read. The notion of the corpus gives substance, then, to this otherwise unimaginable universe of texts.

While unreadable by individual human subjects, the corpus as a digital being can be made to reveal its content in new ways by other than human readers. The individual text is reconceived ideally, in Michael Witmore's words, "as a vector through a metatable of all possible words": "a text is a text," he explains, "because it is *massively addressable at different levels of scale*."[64] An individual text, *oeuvre*, canon, or other grouping of texts are thus different conventional "levels of address" constructed conceptually out of linguistic material by the author or, in a reader-centered approach, by the reader. On the other hand, translated into digital bytes and massed together, the component items of any individual text or group of texts can be released from those constraints and "read" in a distribution beyond individual human control across the entire corpus or a sub-set thereof. Witmore seizes upon this neo-foundationalist potential, concluding: "as objects of massive and variable address, texts are 'handled' in precisely the ways usually reserved for nonlinguistic entities"; in this sense texts become potentially "more like objects in nature" whose qualities are not therefore necessarily reducible to the constructions of thought.[65]

One of the chief characteristics of neo-foundationalism has been the application of digital technologies to otherwise unreadable bodies or body-like entities in areas traditionally the preserve of the humanities in ways that inflect the textual turn away from its constructivist tendencies towards the establishment of robust facts based on the highest levels of probability.

Examples include the triumph of DNA evidence over forensic rhetoric in determining guilt beyond any reasonable doubt in courts of law and correcting mistaken verdicts through Innocence Projects; growing reliance on genetic predictions of medical pathologies in place of the diagnostic skills of individual physicians; the use of eye-tracking technology, magnetic resonance imaging and the like to provide neuroscientific rather than phenomenological accounts of human cognition, language and behavior; and the establishment of corpus linguistics as "indispensable" to all forms of linguistic knowledge.[66] The most extreme manifestation of the distant reading of a massive digital corpus has been christened by its inventors "culturomics," in explicit reference to the most foundational of the new sciences, genomics, the source of the famed "book of life," assembled over this same period.[67]

For Moretti, then, in dealing with the scale of world literature or the digital corpus, "distance … *is a condition of knowledge,*" particularly since, methodologically, "it allows you to focus on units that are much smaller or much larger than the text."[68] In Witmore's terms, it makes it possible to attend to levels of address at a scale beyond individual human perception. In this case, the texts of world narrative fiction can be reconfigured as encounters of "devices" and "genres."[69] Applying distant methods based in the social sciences and digital technologies to the distribution of these units across a massive corpus generates fundamental facts, independent of the subjective constructions and judgements of human readers. Using the facts to inform cultural narratives, Moretti is hence able to "bring to light [the] hidden tempo" of the history of the novel and the "larger patterns that are [the] necessary preconditions" for the reading of particular texts.[70] Confidence in the process is reinforced by the result that, in this case, the larger patterns contradict established sense, going "against the grain of national historiography."[71] Indeed, in relation to the nineteenth-century novel they evidence a system of "variations" that successfully defy attempts by "the Anglo-French" core of narrative fiction to "make it uniform."[72] The conclusion to be drawn from this period of high imperialism was no doubt a reassuring message at a time of expanding globalization.

Moretti's engagement with corpus reading appears then to be motivated by, and to endorse a scientific dichotomy between linguistic "facts" and the literary or cultural equivalent of descriptive "laws." As we have just seen, when applied in the judicial realm, this politics of reading sustained a narrative of liberty, so long as the jury were free to determine the facts contained within the potentially fictional narratives without interference from the learned judge. While distant reading thus effectively reproduces the dichotomy, what is clearly revolutionary here is the inversion of the role of the human reader within that binary. The robustness of the facts derives from their not being constructed by the closely-attentive empirical reader but by algorithms; human interpretation appears to come in only when the scholar codifies those facts within a literary historical narrative, which, of course, can then be submitted to new experimental validation using refined inquiries.

My purpose in drawing the inverse parallel between the two instances is not to denounce the distant reading of digital corpora in the name of the liberty of the English law and its discourse of empiricism, but rather to use the framework for corpus ecologies that we have developed to examine further the politics of reading on which both, in their different ways and realms, depend. Fundamental as the law/fact binary is to traditional narratives of Anglo-American law, "if one leans on the distinction between law and fact," as Kim Lane Scheppele has observed, "it collapses under a bit of pressure."[73] The issue is not just a matter of "fuzzy boundaries": "Law and fact are mutually constituting – not simply hard to tell apart."[74] That is the sort of insight, of course, that, by reducing both law and fact to constructions of language, the textual turn was all about. However, our analysis suggests that the ontological power of the corpus can be understood as neither just the unique property of a scripture nor merely a construction of the reader nor even the result of a "close encounter" between the two, but the consequence of an ecology of corpora in which both are embedded, whether the corpus in question is written or "unwritten." In the case of Common Law, then, as Scheppele puts it, "the law/fact distinction is not a matter of logic but instead an institutional convention."[75] The emphasis to take here is not so much "convention," as "institution." If the theoretical distinction between fact and law is fundamental to the ecology of English law, then, the actual power of the institution – the governing "corpus fictum" – to manage that distinction is equally so.

The history of legal practice indicates that, even after Bushell, there are still many ways in which, while honoring the letter of the distinction, judges are able to intervene in the decisions of juries, including, as we observed in the Kelleher case, shifting the line that separates matters of fact and matters of law.[76] Most of all, however, what is frequently neglected in the narrative of the "glory of the English law" is that the apparent independence of juries over the realm of facts in the British justice system is not a straightforward empiricist encounter between narratives and readers. Rather, it has always been conditioned by strict technical rules constraining the kinds of evidence that juries are allowed to consider and the protocols under which that evidence may be interrogated. In drawing his analogy with the reader of the novel, Watt was writing about the very period in which, along with the affirmation of the independence of the jury, the modern rules of evidence in England were under development.[77] Theoretically, of course, these criteria are epistemologically motivated, intended to protect jurors from evidence that by its nature or source is deemed potentially unreliable or misleading. Nonetheless, the rules regarding admissibility are fundamental institutional decisions regarding the politics of reading: in Rancièrian terms, by their inclusions and exclusions they condition what is sayable and visible in constructing the common sense of the facts at trial.

In short, then, as we saw in our analysis of the corpus, there is no *corpus verum* without allegiance to a *corpus fictum* or *mysticum*, no confidence in the truth of verdicts without belief in the fictitious monuments of the unwritten law and the institutions they sustain. The identification

between Flesh and Word, fact and law, between the realm of the literal, the "this is" of the sensible world and the "this is" of its life as meaning, is neither a mystery nor a datum, but a fabrication, experienced by human subjects individually and as communities, that is *managed* within a hierarchy to elide its fictionality. There are a number of ways, both institutional and technological, in which this applies to the ecology of digital corpora.

Not least of these is globalization, that qualitative shift in the dynamics of internationalization that has been historically and conceptually bound up with the development of the digital. If the "action at a distance" of electromagnetic phenomena and technologies like radio and radar animated Modernist fantasies of new forms of mental, social and poetic communication, that of the Internet has been central to the postmodern collapse of space and time.[78] Although, barring paywalls, the globalized world of the digital appears open, accessible, smooth, borderless and pervasive, in fact, like "Google Earth" it obviously has its places, borders, layers, levels, labels, views, highlights, and hierarchies. In his account of the development of the digital humanities, Steven E. Jones claims the latter came into being in the context of Web 2.0, not least the Google Books Library project announced in 2004.[79] Indeed, "The Google Books Team" are named co-authors of the culturomics project, which uses around a third of their digitized archive as its corpus.[80] In this sense, to state an obvious fact that often disappears in the sheer scale of the new corpora in the humanities, the data that is made available and the forms in which it is compiled depend on the priorities and motivations of institutions and research funders within what, in the case of Google, is a stated mission "to organize the world's information and make it universally accessible and useful." I am not crudely suggesting that Google is in fact doing the opposite of its slogan: "don't be evil."[81] The issue is the inevitability of organization by corporate bodies, whatever the institutional context in which the corpus is produced, be it commercial, academic, or, as is most frequently the case in these large-scale investments, on the interface between the two.[82] The role of institutions is decisive at more than one level – both within and between the texts accumulated in the corpus.

Thus, while, four years after the publication of the culturomics essay, Eitan Pechenik and his co-authors acknowledge Google Books' "beguiling power to immediately quantify a vast range of linguistic trends" through algorithmic operations on the "half a trillion words" contained in its eight million books, they also urge caution as to the conclusions regarding cultural trends to be drawn from quantitative analysis of even such a massive collection.[83] They point out that rather than reflecting the reality of a cultural moment, the data is the result of a complex chain of institutional options: "the Google Books library has ultimately been furnished by the efforts and choices of authors, editors, and publishing houses, who collectively aim to anticipate or dictate what people will read."[84] They reflect not the culture but the efforts of cultural agents. Pechenik and his fellow statisticians also make the similarly obvious point that, since the collection contains one copy of each book, in supposedly assessing trends, "the Google Books corpus

encodes only a small-scale kind of popularity."[85] Nonetheless, the ontological force of the corpus tends to elide these material contingencies in the face of the volume of facts generated by the massive body of texts.

The point is that, although it is presented with the metaphysical qualities of a corpus, the Google Books project, like many other massive humanities databases, is not technically a corpus but an archive. The distinction, however, only emphasizes the role of organization and management in the construction of corpora, their artefactual existence. What makes a corpus a corpus is its design and design, as the doyen of corpus linguistics, John Sinclair, makes clear, is strictly related to purpose.[86] The purpose of the corpus, along with the theoretical assumptions of the designer, will evidently determine the metadata with which elements are identified and the genres within which they are organized. Further, as Sinclair points out, "However unsteady is the notion of *representativeness*, it is an unavoidable one in corpus design." From a first moment, then, when the relative size of the new corpora seemed to release the digital humanities from the reactionary constraints of traditional approaches, the pressures on design experienced owing to the continued growth of available material leads to the recognition that the digital humanities have always in fact been, to adopt the title of a 2015 pamphlet by Moretti's colleagues at the Stanford Literary Lab, Mark Algee-Hewitt and Mark McClurl, "Between Corpus and Canon."[87]

In addition, not only does a digital corpus already contain a series of inclusions and exclusions determined by choices regarding its purpose, the facts it produces are further conditioned by a complex set of rules of admissibility in the form of technological constraints on the design. The ways in which data are admitted, configured and made to work in the corpus – what can be recorded digitally, the "devices" or units the distant reader can be programmed to recognize, and the correlations it is designed to pursue – are contingent on the material and conceptual constraints of software design as well as institutional purpose.[88] There is a tension in digital humanities between the questions that drive software development and those the software itself prompts. On the one hand, while the complexity of outcomes increases with that of the software, what can count (or be counted) as a "fact" will depend in the end on what the software is capable of capturing, segmenting and organizing. At this stage, for example, digital humanities have hitherto been largely constrained to manipulating digitized text, within which individual words or lemmas continue to be favored over syntax.[89] As a result, one might argue, meaning becomes disproportionately dependent on the relative frequency and density of particular lemmas and groups of lemmas organized according to semantic or other assumptions. In order to move beyond these constraints, considerable work is being done on the ideologically sensitive matter of semantic metadata, via crowd sourcing and/or automated tagging. Further, while the growing capacity of scholars to develop bespoke software that can implement sophisticated linguistic and cultural theories is one of the undoubted strengths of humanities computing, many of the underlying opportunities for development derive from tools that are driven by other disciplines

and teleologies and informed by the elements considered salient for those purposes. These may not be the most robust categories in literary analysis, but they will push us to envisage facts and laws of their making.[90]

In short, then, the world of digital corpora is not immune from its own "distributions of the sensible." While the best work in digital humanities recognizes the contingencies that condition the status of its readings, this is not always the case, and certainly does not, in my experience, compromise a fundamental belief in the promise that, with more and more representative data, more complex algorithms, and a more developed mastery of mathematical probability, robust facts can be produced on which to base descriptive laws. My purpose here is not to critique either digital humanities or the *Corpus Juris*, or, for that matter, the different corpora of English law, *per se*. At one level, there is actually not much of an issue here: distant reading of massive digital corpora can no doubt provide a technical adjunct to traditional practices or enable new kinds of interpretation – in the same way as, while there are real differences between them, a *Corpus Juris* can no doubt offer the same or better protections in principle (or lack of them in practice) as *habeas corpus*, as the US Constitution illustrates, and trials without juries can obviously get it right, as jury trials sometimes get it wrong.[91] Further, there is much more of interest in the digital humanities beyond its engagement with the construction and manipulation of corpora. This essay is not concerned, as I stated at the outset, with digital humanities as methodological innovation, but with wider claims made, explicitly or implicitly, on its behalf in the context of what I designated a "corporeal turn." What I have hence sought to do is to identify and challenge the ontological claims that accompany the corpus as a new form of textuality requiring a new type of reading that is capable of generating qualitatively more robust statements about culture than forms of close and symptomatic reading. I have likewise sought to locate the force of these claims in an ecology of text, individual experience, community and institutional authority, the identity of which is animated by forms of belief and results in diverse politics of reading: different forms of inclusion and exclusion and distinctive identities that transform fabricated narratives into common meanings for specific communities.

In a word, then, enthusiasm for the corpus – of whatever kind – tends to elide its own fictionality, its artefactual character and consequent dependence on a set of identities between individuals, communities and institutions. The problem remains, as ever, the place of fiction in cultural narratives, including those of law. I refer here not so much to the reading of fictions from the past in order to identify literary or cultural trends or with an eye to the sifting of false evidence at trial, but to the status of the readings themselves. While Kelleher went to prison in 2002 for his attack on a monument to Thatcher, there were also those who felt that Hilary Mantel should have been investigated by the police in 2014 for her first-person story entitled "The Assassination of Margaret Thatcher: August 6th 1983."[92] In contrast to the phony war over *corpus juris/ habeas corpus*, this story takes place against an international background characterized by violent conflict

between visions of sovereignty. The narrator's own revulsion at Thatcher creates a quiet bond with the IRA sniper who is planning to shoot the Prime Minister from a window in her flat. The narrator tries to persuade the sniper to escape via an entry into the neighboring property. As they descend the stairs, the story opens a door for us, as for the killer: "It is the same, but not. You can step out of that frame and into this."[93] Mantel's story recalls that it is in the character of fiction that "History could always have been otherwise."[94] Rather than eliding fiction in the pursuit of facts and their laws, it is, I would suggest, in the pursuit of the ways in which narratives can be "otherwise" that the case for cultural criticism needs to be made.[95]

The case is familiar in poststructuralist criticism, no doubt. A possibility that digital humanities significantly amplifies for us is that there may be other ways in which "otherwise" might be imagined. In a lecture given in 2011 on "Close, Distant, and Unexpected Readings," Alan Liu spoke of teaching distant reading techniques to students. While the postgraduates responded "obediently," successfully producing Moretti-like diagrams, he tells us, when it came to the undergraduates he couldn't "seem to get the idea of data orientation into their heads." Instead, he explains, these students used new digital media to produce "alternative aesthetic performances" of the texts that he found "entertaining, magical."[96] If not another "turn," at least a "twist" may be discernible here, to a form of "creative criticism" in which proximity and distance and bodily and virtual realities are mediated in other ways than in a corporeal turn – through the narratives and performances of "otherwise" across different media.

[1] Malcolm Coulthard, "On the Use of Corpora in the Analysis of Forensic Texts," *Forensic Linguistics: The International Journal of Language and the Law* 1, no. 1 (1994): 29.

[2] I use the term as an adjective derived from "corpus," rather than, as has occasionally been the case during the period, to refer to "body and bodily life," to cite Maxine Sheets-Johnstone's gloss in the collection of essays she edited under the title, *The Corporeal Turn: An Interdisciplinary Reader* (Exeter; Charlottesville, VA: Imprint Academic, 2009), 1. I discuss the distinction between corpus and body below.

[3] Important markers in each instance are: John Sinclair, *Corpus, Concordance, Collocation* (Oxford: Oxford University Press, 1991); Susan Schreibman, Ray Siemens, and John Unsworth, eds., *A Companion to Digital Humanities* (Oxford: Blackwell Publishing, 2004).

[4] Some of the specific challenges are reviewed in Johanna Drucker, "Humanistic Theory and Digital Scholarship," in *Debates in the Digital Humanities*, ed. Matthew K. Gold (Minneapolis ; London: University of Minnesota Press, 2012), 85-95.

[5] "Symptomatic reading" is usually associated with Louis Althusser and Frederic Jameson. For a critique, see Sharon Marcus and Stephen Best (eds), "Special Issue: The Way We Read Now," *Representations* 108, no. 1 (2009): 1-21.

[6] Franco Moretti, *Distant Reading* (London: Verso, 2013); N. Katherine Hayles, "How We Read: Close, Hyper, Machine," *ADE Bulletin* 150 (2010): 62-79; Alan Liu, *Local Transcendence: Essays on Postmodern Historicism and the Database* (Chicago, Ill. ; London: University of Chicago Press, 2008).

[7] Katherine Hayles, "How We Read: Close, Hyper, Machine," 63; Alan Liu, "Close, Distant, and Unexpected Readings" (paper presented at the *HUMLab seminars*, Umea Universitet, 10 May 2011), available at http://stream.humlab.umu.se/index.php?streamName=closedistant.

[8] Andrew Piper, "Novel Devotions: Conversional Reading, Computational Modeling, and the Modern Novel," *New Literary History* 46, no. 1 (2015): 63-64.

[9] Ibid., 69. Piper's "conversional" reading might contrast with a self-image of close reading as a "conversational" mode.

[10] Jean-Francois Lyotard, *The Postmodern Condition: A Report on Knowledge* (Manchester: University of Minnesota Press, 1984). Examples of cases promoting the digital humanities in this context include Matthew Kirschenbaum, "What Is Digital Humanities and What's It Doing in English Departments?," *ADE Bulletin* 150 (2010): 55-61; and Cathy N. Davidson, "Humanities 2.0: Promise, Perils, Predictions," in *Debates in the Digital Humanities*, ed. Matthew K. Gold (Minneapolis ; London: University of Minnesota Press, 2012), 476-89. For a critique of the project from a professional point of view in the context of the North American academy, see David Golumbia, "Death of a Discipline," *differences* 25, no. 1 (2014): 156-76.

[11] Gary Hall, "There Are No Digital Humanities," in *Debates in the Digital Humanities*, ed. Matthew K. Gold (Minneapolis ; London: University of Minnesota Press, 2012), 134.

[12] Unfortunately, the substance of Stanley Fish's accusation that the digital humanities are both "theological" and "political" is submerged by the reactionary tone and curmudgeonly irony regarding "the likes of me and … the kind of criticism I practice." See Stanley Fish, "The Digital Humanities and the Transcending of Mortality," *The Opinionator*, 9 January, 2012, http://opinionator.blogs.nytimes.com/2012/01/09/the-digital-humanities-and-the-transcending-of-mortality/; "Mind Your P's and B's: The Digital Humanities and Interpretation," *The Opinionator*, 23 January, 2012, http://opinionator.blogs.nytimes.com/2012/01/23/mind-your-ps-and-bs-the-digital-humanities-and-interpretation/.

[13] See Martin A. Kayman, "Bodies of Law and Sculptural Bodies: Writing, Art, and the Real," *Textual Practice* 24, no. 5 (2010): 791-817.

[14] Sir William Blackstone, *Commentaries on the Laws of England*, 4 vols. (Chicago: Chicago University Press, 1979 [1765-69]), III. 379.

[15] Mireille Delmas-Marty, ed. *Corpus Juris Introducing Penal Provisions for the Purpose of the Financial Interests of the European Union* (Paris: Economica, 1997).

[16] Commission of the European Communities, *Green Paper on Criminal-Law Protection of the Financial Interests of the Community and the Establishment of a European Prosecutor* (Brussels: European Commission, 2001), 61.

[17] Ladislav Hamran and Eva Szabova "European Public Prosecutor's Office – *Cui Bono*?" *New Journal of European Criminal Law* 4, no. 1-2 (2013): 42. The Coalition Government in Britain (2010-15) chose to opt out of this provision.

[18] Ben Taylor, "Does Brussels Have Our Courts in Its Sights?," *Daily Mail*, 30 November 1998.

[19] Michael Shrimpton, "Freedom's Flame Flickers," *Times*, 23 March 1999.

[20] HC Deb (1999) 331 col. 1086.

[21] HL Deb (2000) 613 col. 1860.

[22] Jeremy Bentham, *'Legislator of the World': Writings on Codification, Law, and Education*, ed. Philip Schofield & Jonathan Harris (Oxford: Clarendon Press, 1998), 124.

[23] Anthony Easthope, *Englishness and National Culture* (London: Routledge, 1999), 61 et seq.

[24] Ibid., 89.

[25] HC Deb (1999) 336 col 263.

[26] See, for example, Nigel Farage, "Innocent until Proven Guilty? Not under the Eu's Justice System," *The Independent*, 10 November 2013; Philip Johnston, "British Justice: We Can't Allow Brussels to Lay Down the Law," *The Telegraph*, 21 October 2013.

[27] HL Deb (1999) col. 644.

[28] Jean-Luc Nancy, *Corpus*, trans. Richard A. Rand (New York: Fordham University Press, 2008), 3.

[29] *The Gospel according to St John*, 1: 14.

[30] *The Gospel according to St John*, 11: 25.

[31] For a discussion of figuration, representation, and theories of the novel, see Jacques Rancière, *The Flesh of Words: The Politics of Writing*, trans. Charlotte Mandell (Stanford, Calif.: Stanford UP, 2004 [French ed. 1998]).

[32] Miri Rubin, *Corpus Christi: The Eucharist in Late Medieval Culture* (Cambridge: Cambridge University Press, 1991), 15-24.

[33] Ernst Hartwig Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton: Princeton University Press, 1997 [1957]), 196.

[34] Ibid., 199.

[35] Sir Matthew Hale, *The History of the Common Law of England. Written by a Learned Hand* (London, 1713), 23. Blackstone uses the same expression in *Commentaries*, III. 379.

[36] Jacques Rancière, "The Distribution of the Sensible: Politics and Aesthetics," in *The Politics of Aesthetics: The Distribution of the Sensible*, ed. Gabriel Rockhill (London: Continuum, 2004), 12.

[37] See Kayman, "Bodies of Law and Sculptural Bodies: Writing, Art, and the Real," 799-801.

[38] Igor Toronyi-Lalic, *What's That Thing? A Report on Public Art* (London: New Culture Forum, 2012), 4.

[39] See the following discussion, from one of the figures of American law-and-literature: Sanford Levinson, *Written in Stone: Public Monuments in Changing Societies* (Durham; London: Duke University Press, 1998).

[40] See http://www.queenjubileestatue.co.uk/aim/. for the UK Independence Party

[41] See http://www.runnymedemagnacartalegacy.org.uk/sponsorship/.

[42] See http://artatrunnymede.com/ .

[43] See my earlier discussion of sculpture and law – Martin A. Kayman, "The Law and the Statuesque," *Law and Critique* 24, no. 1 (2013): 1-22.

[44] The work had been commissioned by the Speaker's Advisory Committee on Works of Art for placement in the Members' Lobby of the House of Commons and was privately funded.

[45] "Man Denies Thatcher Statue Charge," *BBC News* (4 July 2002), http://news.bbc.co.uk/1/hi/england/2091660.stm.

[46] *R v Kelleher*, EWCA Crim, 2846 (2003). For further comments from Kelleher, see Chris Marsden, "Britain: Jury Fails to Convict Man for Beheading Thatcher Statue," *World Socialist Web Site: wsws.org*, 21 December 2002.

[47] *R v Kelleher*, 43.

[48] Hale, *The History of the Common Law of England*, 25. For an analysis and discussion of the historical significance of the case, see Simon Stern, "Between Local Knowledge and National Politics: Debating Rationales for Jury Nullification after *Bushell's Case*," *Yale Law Journal* 111 (2002): 1815-59.

[49] *Bushell's Case*, 124 Eng. Rep., 1006, 1007 (1670).

[50] Ibid., 1010.

[51] Ibid., 1009.

[52] Ibid., 1012.

[53] Ibid.

[54] Ian Watt, *The Rise of the Novel: Studies in Defoe, Richardson and Fielding* (Harmondsworth: Penguin [1957]), 32.

[55] Ibid., 31.

[56] Franco Moretti, "Conjectures on World Literature," in *Debating World Literature*, ed. Christopher Prendergast (London: Verso, 2004), 151.

[57] Moretti, *Distant Reading*, 2.

[58] Moretti, "Conjectures on World Literature," 148.

[59] Ibid., 149, 51.

[60] Ibid., 152.

[61] Ibid., 151.

[62] *Graphs, Maps, Trees: Abstract Models for Literary History* (London: Verso, 2005), 3, 9.

[63] Ephraim Chambers, *Cyclopedia: Or, an Universal Dictionary of Arts and Sciences* (1728), On-line edition.

[64] Michael Witmore, "Text: A Massively Addressable Object," in *Debates in the Digital Humanities*, ed. Matthew K. Gold (Minneapolis ; London: University of Minnesota Press, 2012), 325. Italics in the original.

[65] "The Ancestral Text," in *Debates in the Digital Humanities*, ed. Matthew K. Gold (Minneapolis ; London: University of Minnesota Press, 2012), 328-31.

[66] Tony McEnery and Andrew Hardie, *Corpus Linguistics: Method, Theory and Practice* (Cambridge: Cambridge UP, 2012), 226.

[67] The term "culturomics" was introduced in Jean-Baptiste Michel et al., "Quantitative Analysis of Culture Using Millions of Digitized Books," *Science* 331 (2011): 176-82. For the parallel with genomics, see Eric Hand, "Culturomics: Word Play," *Nature* 474 (2011): 438. The Human Genome Project began in 1990 and was declared complete in 2003.

[68] Moretti, "Conjectures on World Literature," 151.

[69] Moretti, *Distant Reading*, 77.

[70] *Graphs, Maps, Trees*, 29, 91.

[71] Moretti, "Conjectures on World Literature," 154.

[72] Ibid., 157.

[73] Kim Lane Scheppele, "Facing Facts in Legal Interpretation," *Representations* 30 (1990): 43.

[74] Ibid., 62.

[75] Ibid., 42.

[76] John H. Langbein, "Bifurcation and the Bench: The Influence of the Jury on English Conceptions of the Judiciary," in *Judges and Judging in the History of the Common Law and Civil Law: From Antiquity to Modern Times*, ed. Paul Brand and Joshua Getzle (Cambridge: Cambridge University Press, 2012), 77. To take a pertinent example in contemporary Britain which parallels the question of Kelleher's beliefs, when the Criminal Procedure (Insanity and Unfitness to Plead) Act of 1991 introduced the figure of a "trial of the facts" in the case of the accused being found unfit to plead (sec. 4A), the decision about fitness to plead remained, as it had been under the 1964 Criminal Procedure (Insanity) Act, with the jury; however, in 2004 the decision was made the responsibility of the court (sec. 22).

[77] Thomas P. Gallanis, "The Rise of Modern Evidence Law," *Iowa Law Review* 84, no. 3 (1999): 499-560.

[78] Martin A. Kayman, *The Modernism of Ezra Pound: The Science of Poetry* (New York: St. Martin's Press, 1986); Brian McHale, *Constructing Postmodernism* (New York: Routledge, 1992).

[79] Steven E. Jones, *The Emergence of the Digital Humanities* (London: Routledge, 2013), 8.

[80] Michel et al., "Quantitative Analysis of Culture Using Millions of Digitized Books."

[81] See http://www.google.co.uk/about/company/.

[82] Classically, the collaboration between Birmingham University and Collins publishers that produced the COBUILD corpus (later the "Bank of English") and the pioneering *Collins Cobuild English Language Dictionary* in 1987.

[83] Eitan Adam Pechenick, Christopher M. Danforth, and Peter Sheridan Dodds, "Characterizing the Google Books Corpus: Strong Limits to Inferences of Socio-Cultural and Linguistic Evolution," *PLoS ONE* 10, no. 10 (2015): 23.

[84] Ibid., 2.

[85] Ibid. They also point out that the corpus plays no attention to lags in publication – and also to the distorting effects of the progressive increase in scientific literature which might have only a specialized readership.

[86] John Sinclair, "Corpus and Text - Basic Principles," in *Developing Linguistic Corpora: A Guide to Good Practice*, ed. Martin Wynne (Oxford: Oxbow Books, 2005), 1-16; available at http://www.ahds.ac.uk/creating/guides/linguistic-corpora/chapter1.htm.

[87] Mark Algee-Hewitt and Mark McGurl, *Between Canon and Corpus: Six Perspectives on 20th-Century Novels* (Stanford, Conn.: Stanford Literary Lab (Pamphlet 8), 2015), available at http://litlab.stanford.edu/LiteraryLabPamphlet8.pdf.

[88] The most conspicuous issue here for a corpus linguistics devoted to language as a means of communication has been its historical dependence on text. For a description of the state of the art in addressing this limitation, see Dawn Knight, *Multimodality and Active Listenership* (London: Continuum, 2011). I should here acknowledge Dawn's assistance in refining my ideas on the corpus, although with a

more than usually strong declaration that the persistence of error remains entirely my own responsibility. Gratitude is also due to Silvana Colella and Ralf Grütemeier, with the same qualification.

[89] For an enthusiastic example of the latter, cf. Fabian M. Suchanek and Nicoleta Preda, "Semantic Culturomics (Vision Paper)" (paper presented at the *40th International Conference on Very Large Data Bases*, Hangzhou, China, 2014), available at http://www.vldb.org/pvldb/vol7/p1215-suchanek.pdf.

[90] For example, a recent study of the detective fiction of Agatha Christie decided to "assess[…] the sentiment of the first mentions of the culprit in each work, using a sentiment analysis programme, Semantria, to unmask themes in Christie's word patterns and choices when mentioning the culprit" – Dominique Jeannerod, senior research fellow at the Institute for Collaborative Research in the Humanities at Queen's University Belfast, quoted in Ian Johnson, "Agatha Christie: Experts Discover Secret Formula to Unmask Killers in Author's Books," *Independent*, 4 August 2015. For Semantria and other tools developed by "the industry leader in translating text into profitable decisions", see http://www.lexalytics.com/about.

[91] In the case of *habeas corpus,* most notorious, of course, were the attempts to deny the detainees of Guantanamo Bay access to the courts. More generally, see Larry W. Yackle, "The Habeas Hagioscope," *California Law Review* 66 (1993): 2331-430. For the erosion of jury trial in the USA through the growth of plea bargaining, see John H. Langbein, "On the Myth of Written Constitutions: The Disappearance of Criminal Jury Trial," *Harvard Journal of Law & Public Policy* 15, no. 1 (1992): 119-27.

[92] Zachary Davies Boren, "Hilary Mantel 'Should Be Investigated by Police' over Margaret Thatcher Assassination Story, Says Lord Bell," *Independent*, 21 September 2014; Hilary Mantel, *The Assassination of Margaret Thatcher and Other Stories* (London: Fourth Estate, 2014).

[93] Mantel, *The Assassination of Margaret Thatcher*, 237.

[94] Ibid., 240.

[95] For an eloquent articulation of a similar position in a critical engagement with traditional approaches against the background in the crisis in English in the UK, see Catherine Belsey, "Does the Study of English Matter? Fiction and Customary Knowledge," *SubStance #131* 42, no. 2 (2013): 114-27.

[96] Liu, "Close, Distant, and Unexpected Readings."

Martin A. Kayman [note on contributor]

Martin A. Kayman works in the Cardiff School of English, Communication and Philosophy, which he joined in 2000 having spent his career thereto in the Department of Anglo-American Studies at the University of Coimbra, Portugal. He has published on law and literature in the eighteenth century; nineteenth-century mystery and detective fiction; Ezra Pound and modernist poetics; and the cultural politics of English in the world. His most recent publications have focused on contemporary theoretical issues relating to law, religion, and the visual. He is a general editor of *The European Journal of English Studies*.