

Is He Popenjoy? *Deciding to Know and the Presumption of Realism*

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Making Believe

As evident in its title and like many other realist novels of its period, Anthony Trollope's *Is He Popenjoy?* (1877–78) is permeated with doubt. Even before the novel introduces the uncertainty of illegitimacy that fuels the plot, the text is filled with characters who doubt each other's actions and words, their ability to read the world around them correctly, and the stability of their social setting and what the future has to offer them. For example, at the novel's outset Mary is engaged, but not yet married, to Lord George Brotherton: "During all those three months she strove very hard to be in love, and sometimes she thought that she had succeeded. . . . She tried to make herself believe that he was profoundly wise. And then, when she failed in other things, she fell back upon his beauty. Certainly she had never seen a handsomer face, either on a man's shoulders or in a picture. And so they were married" (19; pt. 1).

Mary needs to be in love with Lord George because she knows it is expected of her, and yet she fears that she is not. She attempts to counter the doubt that permeates this passage—but tellingly is not voiced—by various epistemological remedies. In the first sentence she strives to be in love, that is, to change reality; her failure is revealed by the fact that she "thought" she had succeeded, and even so only "sometimes." In the second step she no longer tries to change the reality, only her perception of it, "to make believe." Like many before her, she wants to presume that his lack of conversation is a sign of depth and intelligence, but this too fails—not only can she not make him wise, she cannot make-believe he is wise. When all else fails, she remembers his beauty, which—the novel repeatedly insists—is his only true feature and indeed the only source of certainty in this passage. Mary seizes on this certainty and triples the epistemological work it does for her: first, this certainty rests on secure empirical proof—"she had never seen." Also she is not only relying on her own experience but also on that of others': not only had she not ever seen a more handsome face herself ("on a man's shoulder"), she has never even seen a representation of one ("in a picture"). In her final desperate attempt to be in love, Mary reaches for what might be called the transitive property of certainty, where certainty about one aspect lends itself to the whole. The causal connection that ends this passage, "and so they were married," makes painfully clear the shaky affective and epistemological grounds on which this marriage rests, even when it is legally and socially stable and sanctioned.

Mary's mental exercise leads readers to consider the novel's own epistemological grounds. How, one might wonder, does this transitive property of certainty work in realist fiction? How does the novel represent the difficulty of knowing? And more conceptually, how does the novel form itself know? All this

foregrounding of doubt in the novel might seem antithetical to its realism, a genre that famously presents the world as inherently knowable. But as Catherine Gallagher has shown, doubt is a common feature of the Victorian novel, which fosters a culture of critical disbelief by highlighting its fictionality rather than its realism.¹ In other words, and as theorists of the realist novel have repeatedly argued, realism does not simply assume the ability to know “the real” but rather—in its insistence on doing so in varied forms—troubles those assumptions.² Indeed, the reality represented and generated by novelistic realism is unstable and never fully knowable and yet rests on a presumption of knowing. Working through this epistemological tension was one of the difficult social and cultural challenges of the ever-expanding Victorian world, evident in many of its discursive arenas and—not surprisingly—in its most prominent literary form.

Against this larger background of epistemological difficulty, Trollope tells a story of suspected illegitimacy: having spent most of his life in Italy, Lord George’s debauched and ill-tempered older brother, the Marquis of Brotherton, returns to England with a woman he claims to be his wife and a son, who he claims to be his heir, Lord Popenjoy. The rest of the family, having much to gain from the Marquis’s permanent absence, is dismayed at the return of the reprobate head of the family and, in various ways that I shall presently discuss, sets out to inquire after the child’s legitimacy: is he or is he not the real Popenjoy? The plot hinges on the presumption of legitimacy, the legal solution to such situations of radical doubt. Novelistic epistemology encounters legal epistemology and brings to the fore the nature of presumptions and presuming. In placing the legal presumption of legitimacy at the center of its plot, in complementing it—as I will presently show—with another plot raising questions of fidelity and trust, in having the two complicate each other and yet be ultimately immaterial, Trollope interrogates the culture of presumption: what we assume about the world to make it knowable.

The “we” here is advised: I claim that these ways of knowing are always conventional and communal. Indeed, one of the most interesting—if undervalued—aspects of the realist novel and of legal structures is their conventionality, which I will here regard as a common commitment to “the normal mode of things.”³ One of

¹ Indeed, Mary’s conundrum above exemplifies her need for a forum for “affective speculation”—a safe place in which she can experiment with being in love—which Gallagher recognizes as one of the functions of fictionality in the eighteenth century (346).

² The epistemology of realism—and the difficulties that it raises—seems to become ever more central to the study of the novel: “[T]he novel raises more sharply than any other literary form . . . the problem of correspondence between the literary work and the reality which it imitates,” writes Ian Watt in his seminal definition of formal realism (11). Indeed, George L. Levine sees this problem as constitutive of the realist form, arguing that the Victorians “wrote *against* the very indeterminacy they tended to reveal” (4). For Fredric Jameson, realism is essentially an epistemological category, masquerading as aesthetic ideal (5). In this article I wish to historicize and “world” these claims further, understanding their stakes by reading them in the context of legal epistemological structures.

³ I have argued elsewhere that the realist novel’s success in creating a sense of commonality made it work as an epistemology and prompted its unanticipated prominence in the nineteenth century (Ben-Yishai, “Walking the Boundaries”).

the problems in writing about conventionality is its invisibility. Like ideology, it is the purloined letter—everywhere in plain sight, understood by “everyone”—and yet inscrutable. But some writers—and often those dismissed as unexciting or conventional—have the ability to defamiliarize the conventionality they deploy and to open it up for scrutiny. I have found the novels of Anthony Trollope to be especially good at doing so.⁴ As Ramón Saldívar has noted, Trollope deploys his realism “not so much to signify Victorian England as to represent certain of Victorian England’s ways of signifying itself,” adding, “in his work [Trollope] often seems interested not so much in ‘reality’ as in the Victorian conventions of representing reality” (177, 166). Thus, the nature of conventionality—being, as it is, the intersection of the communal and the epistemological—stands at the center of my article, which asks: how do we know that which we cannot know? Or better put in this context: how do we *presume* to know that which we cannot know? Thinking about realism through the legal structure of presumption, I will argue that this genre—oft-derided for its unsophisticated empiricism and yet repeatedly shown to be unusually reflective about its own epistemological conventions—knows by *deciding to know*. “Worlding” literary forms of knowing with legal/philosophical ones, I will attempt to understand the complex and historically specific ways in which Victorian culture addressed doubt and chose to know its reality.

Through my reading of *Popenjoy* below, I first present the legal history and structure of the presumption of legitimacy in the Victorian period. By tracing the shifts in the novel’s engagements with the presumption and with its underlying concerns, I then show that the legal presumption is not an abstract or universal form or rule but that its epistemology is in itself conventionally and historically determined. Finally, I will argue that the legal presumption is in dialogue with other Victorian conventions of knowing an ever-shifting world, most prominently novelistic realism. I will show that whatever else realism is, it is also always a historically contingent reflection of and on how we choose (knowingly or unknowingly, but always communally) to know our world and—in our current discussion—to make it known. Reading *Is He Popenjoy?* in this way allows us not only to discover surprising affinities between legal conventions and literary ones but to understand the social and cultural work of conventionality itself, allowing us to reconsider knowing as a collective or communal endeavor. I thus suggest that the inherent commonality of epistemological structure—the way it is collectively and contingently “worlded”—offers an explanation for realism’s persistence as a world phenomenon.

The Presumption of Legitimacy

At the center of the plot of *Popenjoy* is a baby boy born in Italy, who may or may not be the son of the dissolute Marquis of Brotherton, who may or may not have been

⁴ Moreover, this scrutiny is often coupled with the law. Trollope’s novels often present a keen awareness of Victorian legal plurality and its dynamic nature as well as a sophisticated and consistent reevaluation of their own epistemological premises. See, among others, Marc Arkin; Ayelet Ben-Yishai (“Trollope and the Law”); Valentine Cunningham; Coral Lansbury; Rowland D. McMaster; Deborah Denenholz Morse; Albert D. Pionke.

properly married to the baby's Italian mother at the time of the baby's birth, and thus the baby may or may not be Popenjoy (title of the Brotherton heir). Significantly, while these three characters (the Marquis, the baby, and the mother) provide the novel's plot, they rarely appear in it and are of little concern to the readers—they largely remain at its geographical and narrative periphery. Instead, at the center of the novel and at stake in all this uncertainty is the English manorial home: the future of Brotherton's staid and proper younger brother, Lord George; his lovely and virtuous wife, Mary (daughter of the ambitious, social-climbing local clergyman, the Dean of Brotherton); and their yet unborn (but highly anticipated) son who would—according to the laws of primogeniture—be Popenjoy, if the Italian baby were not.

The identity of the next Lord Popenjoy rests on several different laws and jurisdictions, though only some of them are expressly legal. To see how these interact, we need only turn to the consternation experienced and voiced by the Marquis's aged mother, the Marchioness, upon being told that her eldest son has had a child who might be a bastard: "The Marchioness, when she found that an Italian baby had been born twelve months before the time which she had been made to believe was the date of the marriage, took at once to her bed. What a mass of horrors was coming on them! Was she to go and see a woman who had had a baby under such circumstances? Or was her own eldest son, the very, very Marquis of Brotherton, to be there with his wife, and was she not to go and see them?" (135; pt. 1). A whole world of jurisdictions are at work here to create this "mass of horrors." The most obvious are those of private international law: which legal system—Italian or common law—governs the marriage of the Marquis to his Italian wife? Which bastardy laws determine whether a child is legitimate or illegitimate? And for which purposes? Does legitimacy under Italian law satisfy the various laws (common law, custom, statutes) governing primogeniture and the inheritance of title and property in England? The Marchioness's response indicates that what matters here is their very plurality—their sheer "mass." All of this is further destabilized by yet another legal order, the Victorian etiquette of paying social calls: "Was she to go and see a woman who had had a baby under such circumstances?" The two questions—the legal and the social—are inextricable, underlining their common reliance on a need to know or, more precisely, a desperation to *make things knowable*, made ever more acute in the face of shifting social, global, and economic institutions whose borders and commonalities are constantly redrawn.⁵

⁵ While the legal plurality that characterizes marriage is unusually apparent, it is certainly not unique in its density. Recent legal scholarship has shown that "the law" is but a collection of disparate practices, ideas, doctrines, texts, genres, structures, prescriptions, and descriptions, only some expressly legal. These come together in a dynamic, historically contingent relationship and are often incompatible with each other, if not in outright contradiction. For example, David Sugarman and Gerry R. Rubin emphasize the divergences between legal prescription and actual legal practice and the flexibility and plurality of legal culture and legal institutions. This phenomenon has come to be called "legal pluralism" (Merry), and the best scholarship on law and the humanities has realized the potential of this plurality to challenge both a monolithic understanding of the law and of culture (Pettitt 75). See also Margot Finn ("Victorian Law") and Christine L. Krueger.

Enter the presumption: logical construct, legal device, epistemological help-mate. A presumption (in this case the presumption of paternity) is an assumption made in advance; it deems that in order to make our world knowable, we must sometimes simply *decide* to know—that is, to presume. In the legal world, a presumption is a rule of law that allows a court to assume a fact is true unless it is rebutted by evidence against it. (It is a fact that does not need to be proven.) A conclusive or “strong” presumption is a presumption of law that may not be rebutted by evidence and must be taken to be the case whatever the evidence to the contrary.⁶ Presumptions—both legal and nonlegal—have a long history because of their unique structure, which can negotiate epistemological complexity. As philosopher Edna Ullmann-Margalit argues, a presumption “offer[s] a way out” of an epistemologically difficult situation (148). It is “suggestive . . . of a supposition not fully justified, yet not quite rash either. There is in presumption a sense of an unquestioned *taking for granted*, but at the same time of some tentativeness, overturnability . . . [a] fertile soil of gently contrasting connotations” (143; emphasis added). It is also forward-looking and pragmatic: knowledge, truth, facts, all of these are “prescribed rather than ascertained” (146).

The specific presumption that is at the heart of Popenjoy’s plot is the common-law presumption of legitimacy. The significance of illegitimacy—the indelible status of a child born to unmarried parents—and its complexity as a nexus of the social and the cultural, the economic and the legal, is easy to discern: illegitimacy brings the most intimate family and kinship relations to bear on the wider social and economic spheres and is key to the regulation, construction, and preservation of gender norms and of sexuality. Moreover, because it is central to the transfer of title and property, it figures largely in Victorian society’s understanding of itself over time and generations. Indeed, illegitimacy has a long history of legal regulation precisely because it brings together the moral and religious concerns of celibacy and infidelity with the social and economic issues of inheritance and succession.⁷

Since paternity has largely been defined biologically, establishing illegitimacy and legitimacy before the age of genetic testing necessitated an investigation of the most private realm, namely the sexual relationship between men and women. How else could one determine a child’s biological father and thus his or her status? Historically, this problem was solved by transposing the question to the institution that already governed the realm of sexual relations, namely, marriage and the complex web of laws, practices, mores, and customs within which it is regulated and that give it meaning. Legitimacy was predicated on marriage, sealed by the common-law rule of evidence—known as the presumption of legitimacy—which

⁶ Another important but far murkier distinction between “presumptions of law” and “presumptions of fact” need not concern us here, since we are only concerned with the former. For a brilliant and comprehensive history of the latter, see Barbara Shapiro (“Presumptions”). On circumstantial evidence and the realist novel, see Alexander Welsh; Watt; Shapiro (“Circumstantial Evidence”).

⁷ In the nineteenth century, as Lauren M. E. Goodlad points out, these concerns were shaped by capitalist globalization, taking form in what she calls the “adulterous geopolitical aesthetic”: novels in which adultery figures as the sign of heirloom collapse, commodified exile, and threat of contamination from elsewhere (172).

stated that a child born within the subsistence of a marriage is deemed to be the child of the husband. Illegitimacy (or bastardy, as it was still largely called during the Victorian period) was thus an integral part of the legal culture of marriage.

Existing in one form or another since feudal times, the presumption (also known as the presumption of paternity or the marital presumption) was articulated by Sir Edward Coke as follows: “If the husband be within the foure seas, that is, within the jurisdiction of the king of England, if the Wife hath issue, no prooffe is to be admitted to prove the childe a bastard” (2 *Commentary upon Littleton*, ch. 6 § 399; qtd. in McDuff 232). The presumption was a “strong,” or conclusive, one, meaning that it could not be rebutted even if direct proof existed to the contrary: the Latin proscription *filiatio non potest probari* (filiation cannot be proved) ascertained that children born to a married woman were always legitimate. The common law accepted only two exceptions to this rule: if the husband was out of the country (out of the realm of the king) or if he was *apparently* incapable of procreation. The former accentuates the geographical boundedness of the limits of knowledge: when a subject is out of the king’s realm he is not only out of its jurisdiction but also loses the ability to be known, even under presumption. Moreover, under the common law, neither husband nor wife could testify to prove access or nonaccess, thus making it almost impossible to prove.⁸ Underlying the severity of this presumption was the need to protect children from the extreme consequences of illegitimacy (which made them children of no one, stripping them of all rights of inheritance and succession) and a public interest in the preservation of the institution of marriage and the social stability that it putatively engendered. However, following the concerns of aristocratic families that their fortunes and titles might end up in the hands of “spurious issue” and the successful challenge of the presumption in the Banbury Peerage case in 1811, the presumption was weakened to widen gradually the acceptable range of evidence that could be offered by spouses (Finn, Lobban, and Taylor 7). And yet, the law retained—and retains to this day—a strong bias in favor of this presumption and against ruling the children of married women illegitimate.⁹

The marital presumption is indeed predicated on marriage and not on biological progeny. Within marriage, all children are effectively legitimate; outside of marriage, none is, even if the parents married after the birth of their child. In *Popenjoy*, for example, the baby’s paternity is never in doubt, only his legitimacy: the doubt is not that he is the Marquis’s biological son but only that his parents may not have been married at the time of his conception. The presumption thus further consolidates the power of marriage as a social and legal institution governing not only intimate relations but also those of title and property. Its most powerful effect—ontologically speaking—is that the legal determination of legitimacy trumps the

⁸ This evidentiary rule was known as Lord Mansfield’s Rule (McDuff 232). For more on the modern history of this presumption, see *Michael H. vs. Gerald D.* and the case law that followed it, as well as Harry Krause.

⁹ On the often surprising provenance of this presumption today, even in the age of incontrovertible DNA evidence, see Brie Rogers; Laurence J. McDuff; Theresa Glennon.

biological, in which name it was initially constructed.¹⁰ The solution to an epistemological difficulty—how illegitimacy *is known*—begets an ontological one, that is, changing what illegitimacy *is*. This difficulty is compounded when we ask what, exactly, is being presumed. Even though one of the names for this presumption is the presumption of paternity, what is presumed is not a fact (paternity) but rather a legal construction of that fact—legitimacy, “prove the childe a bastard.” Following the courts’ ruling in the Banbury Peerage case, this ontology became further confusing when the court changed the nature of the presumption from legal to factual (i.e., one that could be dislodged by evidence), which oddly gave legitimacy to the status of fact (Finn, Lobban, and Taylor 7).

The different names by which this presumption is called—presumption of paternity, the marital presumption, presumption of legitimacy—point to the elisions between the different kinds of things that are being presumed and different understandings of the presumption. And indeed, in describing the changes to the presumption of legitimacy over the nineteenth century, Margot Finn, Michael Lobban, and Jenny Bourne Taylor emphasize the historical specificity of Victorian illegitimacy, showing how its meanings and stakes are determined by other historical events and discourses predicated on trust and stability. Most centrally, they show how adjacent phenomena such as the rise of paper money and the credit economy in the late eighteenth century; the emergence of finance capitalism; increasing social mobility; and changes in affective gender relationships and norms all engaged with and constructed the changing meanings of illegitimacy.¹¹

Informed by these essays, my work here takes a different tack, addressing the presumption of legitimacy not to inquire into the status of illegitimate children or the consequences of being one, nor to trace its historical developments or meanings, but rather to ask the epistemological questions that the presumption raises, questions that undergird the way Victorians knew and understood their world.

Shifting Presumptions

As I have already noted above, the horror experienced by the Marchioness as she huddles under her covers originates not only in the tangles of international law, but

¹⁰ Janet L. Dolgin explains, “The presumption elided the biological facts in an era in which they were unknowable” (527). But in US law in recent decades (after DNA testing), she states, “[o]ften, the presumption has manifestly become a substitute for, rather than a presumption about, some underlying biological reality” (529). Of special interest is Dolgin’s analysis of the shifting weight given to morality, social stability, the affective, and choice.

¹¹ The collection of essays in their *Legitimacy and Illegitimacy in Nineteenth-Century Law, Literature and History* mines illegitimacy’s fascinating interdisciplinary nexus and its centrality to regulating and reifying Victorian (and other periods’) social, economic, and cultural concerns. They raise questions about individual identity and the family, about truth, deception, and imposture, and about social belonging and stability, questions that are obviously of relevance far beyond what is commonly regarded as “the law.” Similarly, in my own reading of Wilkie Collins’s *The Woman in White* I discuss the misalignment between legal and social forms of illegitimacy and their attendant temporalities (*Common Precedents* 145–76). Catherine Frank has written about a related concern—wills and testaments—as not only a way of transmitting material property between generations, but also a way of transmitting culture.

also in laws determining the Victorian etiquette of paying social calls: “Was she to go and see a woman who had had a baby under such circumstances?” The question might seem ridiculous, if we do not realize that the rules of social calls were central to creating, maintaining, and regulating an exclusionary elite social sphere and that the identity of this sphere and its members was not an inconsequential parlor game but one that upheld and regulated the entire way of life—with its material consequences—that was at stake in the debate over legitimacy. Most important for our discussion here, the point of regulating these exclusions is to make one’s immediate community stable and knowable in the face of shifting social and economic institutions, especially when these take the form of interloping foreigners.¹²

The elderly Marchioness’s claim that since “[h]e was her eldest son—the very Marquis—[he] ought to be allowed to do almost anything he pleased” (a claim that every other character, including her children, finds abhorrent and irrelevant) points with great precision to the historically changing nature of the aristocracy and the normative world within which it functions and gains meaning (149; pt. 1). Ostensibly, the answer to the question of calling on her Italian daughter-in-law lies in the realm of social etiquette, while the one to “Is he Popenjoy?” is in the legal arena. But the fact that the two questions—the legal and the social—are also inextricable undermines the purported separateness of their realms. They work together, as Rohan McWilliam has noted, to negotiate the questions produced by illegitimacy “about the aristocratic principle, the law, property and possession. Who should own the land? How did they get it? How sound are the contracts on which land ownership is based?” (69).¹³

The legal presumption that is supposed to settle the question of illegitimacy (by not allowing it to be raised) appears at the end of the Marchioness’s long rumination:

And, even now, it was not against her son that her heart was bitter, but against the woman, who, being an Italian, and having been married, if married, without the knowledge of the family, presumed to say that her child was legitimate. Had her eldest son brought over with him to the halls of his ancestors an Italian mistress, that would, of course, have been very bad, but it would not have been so bad as this. Nothing could be so bad as this. “Are we to call him Popenjoy?” she asked with a gurgling voice from amidst the bed-clothes. Now the eldest son of the Marquis of Brotherton would, as a

¹² Writing about Trollope’s *The Prime Minister*, Helena Michie notes the “epistemological breakdown” when the upper-class system by which male relatives evaluate potential suitors encounters a foreign interloper: “Wharton’s questioning of Lopez involves a system of class codes so delicately calibrated that they result in the loss of crucial information” (191). Lopez is not only unknown but unknowable.

¹³ The novel was written in the aftermath of the infamous Tichborne case, in which a carpenter claimed to be Roger Tichborne, heir to the Tichborne baronetcy and fortune, long presumed dead. While it does not follow the facts of the case, *Is He Popenjoy?* was but one of the many literary works—in different genres and forms—intrigued and inspired by the anxiety the case created within people regarding the social and political stability of the world around them. As McWilliam argues in his essay—following Natalie Zemon Davis—while impostor narratives are found throughout history, they “gain their resonance and texture from their immediate context” (68).

matter of course, be Lord Popenjoy, if legitimate. "Certainly we must," said Lady Sarah, authoritatively, "unless the marriage should be disproved." (136; pt. 1)

Once again, the Marchioness distills the myriad questions she has just raised to the one on social etiquette: not "Is he Popenjoy?" but rather a plaintive "Are we to call him Popenjoy?" uttered beneath the bedclothes. The response voiced authoritatively by her daughter, "Certainly we must," is immediately hedged by invoking the legal presumption: "unless the marriage should be disproved." But in her response, Lady Sarah also twists the structure of this presumption. After all, the common law presumption had determined that legitimacy *need not* be proved and that—so strong was the presumption—illegitimacy *could not* be proved. By questioning the foundation of marriage, she manages to circumvent the presumption, admitting suspicion where the law would have none.

Moreover, once doubt is admitted and becomes legitimate, it gains a hold and is easily manipulated to serve the various sides of the controversy. It also spreads beyond the family to its larger social circle; allegiances constantly shift during the novel, according to the prejudices and the quality and quantity of people taking one stance or the other:

Lady Brabazon, whose sister had married a Germain, was there, and a Colonel Ansley, who was a nephew of Lady Brotherton's; so that the party was very much a Germain party. All these people had been a good deal exercised of late on the great Popenjoy question. So immense is the power of possession that the Marquis, on his arrival in town, had been asked to all the Germain houses in spite of his sins, and had been visited with considerable family affection and regard; for was he not the head of them all? But he had not received these offers graciously, and now the current of Germain opinion was running against him. Of the general propriety of Lord George's conduct ever since his birth there had never been a doubt, and the Greens, and Brabazons, and Ansleys were gradually coming round to the opinion that he was right to make enquiries as to the little Popenjoy's antecedents. They had all taken kindly to Mary, though they were, perhaps, beginning to think that she was a little too frivolous, too fond of pleasure for Lord George. Mrs. Patmore Green, who was the wife of a very rich man, and the mother of a very large family, and altogether a very worthy woman, almost at once began to whisper to Mary: "Well, my dear, what news from Italy?" (19; pt. 2)

The shifting social alliances also shift the presumption. "It is not for your sake nor for our sake that this is to be done, but for the sake of the family at large, and to prevent the necessity of future lawsuits which would be ruinous to the property," writes Lady Sarah to her brother George, though she immediately flips that presumption: "If the child be legitimate, let that, in God's name, be proclaimed so loud that no one shall hereafter be able to cast a doubt upon the fact." According to this, legitimacy needs to be proclaimed, rather than presumed (288; pt. 1).

Mary's father, the lowborn but ambitious Dean of Brotherton, is desperate to secure his daughter's aristocratic future and joins the fray. He too fuels doubt, until the presumption is effectively overturned and the Marquis must prove his son's

legitimacy. Trollope makes explicit that the Dean knows exactly what the presumption is: “he had determined that he would ask after the new Lady Brotherton, and speak of the child as Lord Popenjoy, the presumption being that a man is married when he says so himself, and that his child is legitimate when declared to be so” (210; pt. 1). And yet, the Dean immediately follows this by consciously reserving the right to “future proceedings”:

“He is quite entitled to have a son and heir,—one may almost say more entitled than anyone else, seeing that he has got so much to leave to him,—but on that very account he is more bound than anyone else to let all the world feel sure that his declared son and heir is absolutely his son and heir.”

“He couldn’t be so vile as that, papa!”

“God forbid that I should say that he could. It may be that he considers himself married, though the marriage would not be valid here. Maybe he is married, and that yet the child is not legitimate. . . . All we do know is that he wrote to his own brother declaring that he was about to be married twelve months after the birth of the child whom he now expects us to recognise as the heir to the title. I for one am not prepared to accept his word without evidence, and I shall have no scruple in letting him know that such evidence will be wanted.” (138; pt. 1)

By the end of the Dean’s argument, the presumption has been weakened to the point that it actually goes against the common law (which states that *illegitimacy cannot be proved*) by requiring that *legitimacy must be proved*. What sleight of hand or rhetoric enables him to turn the presumption on its head or, in legal terms, to shift the burden of proof? I would argue that the answer lies in another order of presumption also included in the Marchioness’s wailing in the quotation above. While her son was “the very Marquis” and therefore “allowed to do almost anything he pleased,” his wife, “the woman,” was at fault, because “being an Italian, and having been married, if married, without the knowledge of the family, presumed to say that her child was legitimate” (136; pt. 1). In this quotation, *presumed* means to undertake without authority, to take liberty, to dare (OED). And yet, one would assume (presume?) that of all the people in the world, a child’s mother would be best poised to attest to his legitimacy. Luckily, the Marchioness is explicit as to what shifts the burden of proof: the mother is Italian and has married without the family’s knowledge. The presumption is overturned only by this much prejudice: no foreigner will be allowed to presume to rely on the presumption meant to bolster and stabilize the English culture of heredity and succession. Once again, to be foreign is to be not only unknown but unknowable.

Indeed, as Ullmann-Margalit notes, outside the law, shifting the burden of proof in a presumption is more diffuse. “Anyone or anything that provides the deliberating agent with the appropriate reason for belief rebuts the presumption for him (or for her)” (151). In our context of plural jurisdictions—where the expressly legal intersects with the social—racial or class prejudice or even mundane social rivalry amount to this much evidence. This should come as no surprise since, as Jenny Bourne Taylor has already shown, “legitimacy is always an effect of an essentially illusory symbolic power” (57). The legal question is but a nexus of the perceived

plight of the waning aristocracy, of the ability of money to buy rank, and of the Victorian social anxiety about the infiltration of the foreign and different.

And indeed, one of the greatest specters offered by the putative Popenjoy was his foreignness, made apparent by his “swarthy” (230; pt. 1). His dark skin is repeatedly invoked in the most disparaging ways, always to cast doubt as to his legitimacy. “‘Dark, is he?’ asked the Marchioness. Lord George replied that the child was very swarthy. ‘Dear me! That isn’t like the Germans. The Germans were never light, but they’re not swarthy’” (230; pt. 1). Later, when the Dean asks him directly, “Did he look like a Popenjoy?” Lord George’s response is even more explicit: “He is a nasty little black thing” (233; pt. 2). The Dean’s retort, “I shouldn’t wonder,” reaffirms the prejudice, especially because the Marquis’s paternity is never, in fact, questioned, only the status of his marriage. The explicit presumption of paternity thus seems to rest on an implicit presumption of Englishness and whiteness.

The legal question “is he Popenjoy?” thus makes adversaries of the infant foreign child and the Dean, both of whom demand recognition and admission from the family ensconced, almost barricaded, within the ancestral estate. The family members try to figure out which of the two outsiders is more threatening to them, the foreign Popenjoy or the clergyman son of a stable keeper: “[T]he daughters, though they had at first been very strong in their aversion to the foreign mother and the foreign boy, were now averse to [the Dean] also, on other grounds” (84; pt. 2). In trying to solve their legal conundrum, the family also figures out (or at least makes apparent) their social, racial, and national prejudices.

The Presumption of Realism

As I have already hinted, *Popenjoy’s* preoccupation with presuming may also stem from the fact that the structure of presumption—the decision to proceed as if a certain set of unverifiable circumstances is in fact true—is strikingly similar to the “as if” structure that undergirds realist fiction. Moreover, and uniquely among other genres that demand a willing suspension of disbelief, realism—like presumption—is invested in plausibility and in the way things normally are. The formal foundation of illegitimacy and the realist novel are thus similar: both are based on a presumption of the way things are, of taking things for granted in the interest of practical deliberation. “I think one always does take things for granted until somebody proves that it is not so,” says Mrs. Houghton (200; pt. 2). She is speaking about the presumption of legitimacy of her nephew but might as well be talking about the novel. For this presumption, like other legal presumptions, like prejudice and like realist fiction, marks the normal mode of things, the way things could be and most probably are.

By showing the way that different characters at different points in the novel adhere (or not) to the legal presumption, the novel reveals the inherent instability of taking things for granted. And yet the social order depends on these legal conventions, if only to mark a deviation that reinforces its norm, just as the realist novel depends on conjecture and probability to establish the truthfulness of its fiction. The ongoing shifts in the presumption betray the slippery foundation on which

these questions of status stand, even in this highly conservative novel. They also point to an obvious—but often undervalued—fact, that the legal world is no less in flux than the social world it aims to govern. Moreover, their interface—the ways in which the social and legal interact and depend on each other—is shifting at the same time. In other words, the “as if” that undergirds realist fiction—and is akin to legal presumption—is also a social epistemological strategy, a way of making the world knowable, stable, and common. What the shifting allegiances in the novel betray is thus that both legal and fictional constructs are communally sanctioned ways of mediating between a constantly shifting reality that was radically unknowable and the often paradoxical if pragmatic need to know it. Understanding this tension means understanding how presumption arguably comes to anchor the foundations of stability in the legal and textual culture of the novel.

I now want to take an even closer look at this structure of presumption and its foundations, and more specifically at its rationale. There are two main reasons or motivations to decide to take something for granted, that is, to establish a presumption. The first reason is normative or prescriptive: we presume things are the way we would like them to be or think they should be. In our context—of the presumption of legitimacy—we would argue that by stating that a child of a married woman is her husband’s, the law reinforces the institution of marriage and the control of the husband over his wife. The second reason to establish a presumption is empirical and probabilistic: we assume that things are *the way they usually are*. For example, the Talmudic presumption of paternity states that “most copulations are by the husband”; ergo, since a husband is the most likely father of a married woman’s child, we presume *all* married women’s children are their husbands’ (B.T. Hullin 11b). Obviously, these two motivations are not mutually exclusive, and in fact, they feed off of each other.

In other words, what the presumption manifests is a decision to know in a certain way, and this way is predicated both on how things are (the empirical and probabilistic) and how we would like them to be (the normative). Indeed for a presumption to work, these must be cumulative: only when both conditions are met can the presumption be socially sanctioned. Think for example of the presumption of innocence: it is predicated on the fact that most people are innocent (probabilistic) and that as a society we wish to avoid wrongful conviction, even at the price of some mistaken acquittals (normative). Because both of these are widely accepted, this proposition can harden into the epistemological convention we call presumption, offering a way to engage with reality—whatever it may mean—in a way that is as pragmatically motivated as it is idealistic. The unknowable becomes known through convention.

Note that despite being figured as methodological antinomies, both the probabilistic and the normative in a presumption are in fact communally determined. While evidence can be used to rebut the presumption (i.e., show that the condition for its activation does not apply), it cannot rebut the presumption rule. Since it is decided, rather than ascertained, the presumption rule is not based on evidence or knowledge and therefore cannot be disproven, only revised (Ullmann-Margalit 150). The presumption rule, like any norm, is communally generated since it based on a convention (legal, social, or cultural), that is, a communal decision to make the

unknowable known. And yet, despite its conventional—rather than empirical—truth status, presumption, I argue, comes to anchor the foundations of stability in the legal and textual culture of the novel. It is a socially sanctioned form of taking things for granted, much like the reality of realist fiction is in itself an aggregate of mutually—if implicitly—agreed-upon assumptions about what reality is.¹⁴ Thus, if we agree that the structure of realism is homologous to that of presumption, then we can argue that presumption makes more explicit that which in realism remains largely implicit: the complex relationship between the normative and the probabilistic that marks realism's relationship with the reality it purports to represent.

To tease this out further, we need to look away from illegitimacy and its accompanying scandals to the novel's more commonplace aspects. After all, the illegitimacy plot turns out, as Taylor has shown, to be spurious in itself.¹⁵ Both the Italian baby and his father, the Marquis, die before the novel's end, bequeathing, uncontested, the title of Popenjoy to the newborn son of Lord George and Lady Mary (now the Marquis and Marchioness of Brotherton). Everyone in the novel is relieved: no vulgar legal action need be taken to ensure that legal, social, and cultural propriety are reunited. However, putting the illegitimacy plot to rest only serves to make more conspicuous the role of another plot that echoes and accompanies it, wherein Lord George suspects and accuses his faithful wife of infidelity while, ironically, being unfaithful himself.

While infidelity is that which most often gives rise to questions of illegitimacy, in this novel the two are separate: the plot of Lord George's marital jealousy and suspicion does not lead to illegitimacy, and the illegitimacy plot does not stem from infidelity. But despite their separation, the two plots bear on each other, both in altering each other's course and in their juxtaposition. The separation of infidelity and illegitimacy in this novel defamiliarizes (and thus questions) the possibility of stability and truth in intimate and social relations and, above all, challenges our ability to know what is true and what is real.

Refracted through the structure of presumption, this double plot illuminates realism's mediation of the normative and the probable. As long as the two modes align with each other—most children born to married women are indeed the biological progeny of their (respective) husbands *and* we want to preserve the institution of marriage—then the presumption functions smoothly. But if one of these modes is refuted or altered—if we discover that it is not so rare for children to be fathered by men who are not married to their mothers, or, in the present case, if the marriage in question is not the kind of marriage normatively sanctioned by the proposition (i.e., foreign and racially marked), then the presumption falls apart, as is evident in the novel.

¹⁴ Following the work of Kathy Eden, Robert Newsom, Catherine Gallagher, and especially Irene Tucker (who sees probability not as an empirical tool but as a conscious way of *reflecting on* the empirical), I have argued that the probable of realist fictionality is indebted to a communal as well as an empiricist epistemology (*Common Precedents* 16).

¹⁵ “[P]aradoxically, the baby's legitimacy is absolutely central and completely supplementary” (Taylor 58).

That the problematic marriages in the novel both admit foreigners into the aristocratic fold is key. If knowledge is communal (through convention), then a breach in the community—a foreign wife and “swarthy” heir in one plot or a social climbing clergyman’s daughter in the other—constitutes a breach in the way we know. In other words, the novel makes clear that its epistemological crisis erupts not because we cannot know who fathered the child but because we cannot trust men to marry appropriately: within their social realm, within the realm of the crown, within the realm of the knowable. The double plot is based on two marriages, both of them epistemological failures. The validity of the Marquis’s marriage is in doubt from without: was he married before his son was conceived or born, according to the law’s strict formal demands? At the same time, his brother George’s marriage is in doubt from within: he cannot trust his wife; their marriage does not guarantee her fidelity to him nor his to her. The normative base of the presumption—marriage—thus falters twice over: not only does the Marquis marry inappropriately, but, the novel insists, marriage is itself epistemologically suspect in failing to guarantee anything, empirically or normatively.¹⁶

But marriage as a social institution is too big to fail. An entire social order rests upon it: status, money, land, inheritance, and an epistemology too. So rather than marriage working for epistemology (by guaranteeing a way of knowing), epistemology comes to work for marriage (securing that which is in doubt). Like Mary’s transitive certainty with which I opened this article, presumption comes to buttress marriage’s shaky foundations. That all of this happens in a realist novel in which convention is negotiated and upheld is of course to the point. The convention of marriage is upheld in this novel not despite its shaky epistemological foundations but because of them. Foregrounding doubt, realism calls on its participants to counter it by upholding epistemological conventions.

Like realism, presumption acknowledges doubt by disavowing it, by preemptively deciding rather than ascertaining after the fact. The principle of transitive certainty, established early on in the novel by Mary’s decision to know she was in love, is how the novel moves from one plot to the next, from one moment of doubt to another. The novel (like the law) borrows certainty from one context to ascertain something in another. The ensuing chain of metonymical certainties constitutes the way we move—conventionally and communally—from the known to the unknowable and back again. Read in this way, realism lays out the historically contingent ways by which we collectively presume to know our changing world and the changing stakes in our doing so. I have written elsewhere that “realism is a cultural practice through which a commonality—society—converges around what it considers real and, in so doing, constitutes itself” (“Walking the Boundaries” 210). In this essay, I have explored the structure of presumption—mediating between the normative and the probable—as a way of explaining how and why this is done. The “fertile tentativeness” of the presumptive structure, its malleability coupled with its pragmatism, allows realism to remain a pertinent strategy of representation,

¹⁶ In her discussion of Victorian honeymoons and Trollope, Helena Michie recognizes marriage as a location where “characterological knowledge” (who is the man that I married?) can turn into an “epistemological emergency,” undermining the forms of knowledge (185).

even and especially when the reality to which it is oriented is constantly shifting. Most important, perhaps, presumption thus explains not only how the world shapes realism, but also how and why realism persists in our world.

* * *

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