

ACCIDENT

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Accidents befall us, eluding our attempts to navigate the world with foresight, reason, or care and offering instead the sudden collision with unpredictable agencies, heedless of our concerns. Law tends to be wary of accident, segmenting unruly events into rules, standards, and categories while consigning what it cannot explain to the realm of “mere” or “pure” accident. Literature, by contrast, can be alert to accident’s potential for revealing shades of agency and affect that are less straightforward, more formally compelling, than determinations of liability or fault. In what follows, I explore some legal and literary ramifications of “accident,” understanding this term in the context of changing ideas about civil liability rather than in its related sense as an extenuating category in criminal law.

For British law and society from the late eighteenth through the early twentieth century, “accident” was a category in flux.¹ As risky industrial occupations and rapid modes of transport brought concerns about public safety, especially in crowded urban areas, changes in both common law and legislation attempted to manage escalating cases of accidental injury and death. This period witnessed the crucial emergence of negligence as a distinct tort, alongside statutory provisions for employer liability and accident compensation in the workplace and beyond. On one side of Victoria’s reign, roughly speaking, accidental injury and death formed occasional

¹ For work on parallel developments in nineteenth- and twentieth-century America, see “Further Reading.”

episodes in the rhythm of working life and tragic outcomes were borne however inadequately by local support systems like the family or parish. On the other, the ravages of modern misadventure were referred to a convoluted system of legal actions for (and hedges against) individual negligence and employer liability, shaped in no small part by the compensation schemes of a growing insurance industry.

At the end of the nineteenth century, jurists reflecting on the historical development of liability could see a trend from supposedly backward ways of thinking about civil wrongs to the enlightened space of tort law, which received its first standalone treatments in this period.² Amid these social developments and legal innovations, a curious institution of common law was made to disappear. From the middle ages through the mid-nineteenth century, nonhuman animals or objects that accidentally caused the death of a human could be declared “deodand”—“givable to God.” Offending entities—horses and oxen, boats and carts, mill-wheels and hay-ricks, cauldrons and pits, tree branches and church bells—would be forfeited to the crown or, in what quickly became the typical scenario, assessed a fine payable by their owners.³ In 1846, after such entities began to include steam boilers and railway engines, the deodand was abolished by Parliament and replaced by liability regimes apparently more attuned to a machine-driven, accident-prone industrial society. Accidental deaths were no longer compensable through coroners’ courts and the deodand’s possibility of monetary relief. One relied instead on the

² In England, C. G. Addison, *Wrongs and their Remedies* (1860); in America, Francis Hilliard, *The Law of Torts* (1859); see Lawrence M. Friedman and Jack Ladinsky, “Social Change and the Law of Industrial Accidents,” *Columbia Law Review* 67.1 (1967): 52.

³ I draw these examples from Frederick Pollock and Frederic William Maitland, *The History of English Law* (Cambridge: Cambridge University Press, 1895), 2:471-2 and Matthew Hale, *The History of the Pleas of the Crown* (London, 1800 [1736]), 1:419-23.

costly and indirect route of civil suits and claims in insurance, the period's "new social authority on death."⁴

The instrument of the deodand makes visible how accidents can emerge from an extraneous nonhuman world with which humans are entangled and over which our control sometimes lapses. Accidents are often used as a cover for human duties enshrined in such a world—deflected onto animals, vehicles, tools, or machines. I propose, to the contrary, that we can furnish fuller accounts of the responsibilities entailed in cases of accidental injury and death by attending to such entities as more than fungible bearers of human value or concern. Examining legal-historical cases and norms alongside literary-cultural representations, I argue that the disappearance of the deodand, and concurrent transition to fault liability regimes, actually marked a loss in the understanding of accident, particularly its affective entailments and object dimensions.

In the first section, I give a synopsis of the deodand's medieval origins, industrial-era heyday, and sudden demise. I claim that the nineteenth-century emergence of what could be seen as the modern law of accident—standards to assess liability (fault or otherwise) and mechanisms for compensation—tended to simplify accidents into surrogates for exclusively human interaction. What the institution of the deodand grasped, and what such standards started to disband, was how reckoning with accidents demands an alertness to our entanglement with nonhuman causality. It requires seeing material objects as "legal actants" rather than simply

⁴ William Pietz, "Death of the Deodand: Accursed Objects and the Money Value of Human Life," *Res* 31 (1997): 107. On the decisive role played by insurance in contemporary tort law see Peter Cane, *Atiyah's Accidents, Compensation and the Law*, 8th ed. (Cambridge: Cambridge University Press, 2013), 245-54.

transposing events into human rubrics of intention, liability, or fault.⁵ It necessitates an openness to the affective energies and expiatory desires that also fall out of accidents, and not only to solutions that end by assigning (or abjuring) blame and awarding pecuniary compensation. In the second section, I suggest that literature might reveal what is at stake in these divergent ways of accounting for accident. In three examples coterminous with the legal developments, literary representations of vehicular accidents afford a glimpse of what was coming to be lost in a changing legal-cultural dispensation. From Thomas De Quincey's "The English Mail-Coach" (1849) to Thomas Hardy's *Tess of the d'Urbervilles* (1891) and E. M. Forster's *Howards End* (1910), the complex nonhuman, material, and affective dimensions of accident dissipate into the background, where they continue to supply narrative and formal motivation even as they leave human obligations and institutions in the light.

Accidents at Law: Medieval Devices to Industrial Tools

Legal provisions for assigning liability to animals and objects can be found in classical and biblical texts. These include standards governing the "goring ox" that injures or kills other animals or humans, found in Hebrew scriptures and roughly parallel Mesopotamian codes; Greek rites that took place at the Prytaneion, where inanimate objects were called to account for their crimes; and the Roman law practice of forfeiting a harmful object in what was known as "noxal surrender" (*noxae deditio*).⁶ In European societies from the middle ages until as late as the

⁵ In Jane Bennett's terms, alluding to the deodand: *Vibrant Matter: A Political Ecology of Things* (Durham: Duke University Press, 2010), 8-10. The concept of (legal) personhood is often enmeshed with, and extended to, nonhuman animals and things (see John Frow in this volume).

⁶ Oliver Wendell Holmes, Jr., *The Common Law* (Cambridge: Harvard University Press, 2009 [1881]), 3-36 and J. J. Finkelstein, "The Ox That Gored," *Transactions of the American Philosophical Society* 71.2 (1981): 1-89 and "The Goring Ox: Some Historical Perspectives on Deodands, Forfeitures, Wrongful Death and the Western Notion of Sovereignty," *Temple Law Quarterly* 46.2 (1973):169-290.

nineteenth century, juridical and ecclesiastical proceedings against or involving animals fulfilled a range of social functions.⁷ The institution of the deodand shares elements with these traditions.

The deodand's essential mechanism is that an object or animal is held liable when it causes the death of a human being.⁸ If movement was typically required, according to a formula characterizing that which "moves to the death" (*omnia quae movent ad mortem*), there are nevertheless cases in which a stationary object could count: a falling branch and falling out of a tree might both, in principle, elicit the deodand.⁹ Further, a distinction (perhaps adumbrating commercial needs) was observed between freely moving objects and fixtures: a wheel or door might be deodand, but not usually the attached vehicle or building, nor its contents or merchandise. If the early law appeared to mandate the actual confiscation of the offending nonhuman, later a monetary penalty sufficed, a fine proportional to the entity's value levied by the crown or its local representatives.

"Any culture," reasons the anthropologist William Pietz, "must establish some procedure of compensation, expiation, or punishment to settle the debt created by unintended human deaths whose direct cause is not a morally accountable person, but a nonhuman material object."¹⁰ Yet the deodand, at least in its medieval origins, seems to have kept two such functions distinct: the

⁷ See E. P. Evans, *The Criminal Prosecution and Capital Punishment of Animals* (London: Heinemann, 1906). Analytical accounts include Finkelstein, "Ox That Gored," 48-86, Esther Cohen, "Law, Folklore and Animal Lore," *Past and Present* 110 (1986): 6-37, and Peter Dinzelsbacher, "Animal Trials: A Multidisciplinary Approach," *Journal of Interdisciplinary History* 32.3 (2002): 405-21.

⁸ On the deodand's function and history, I rely on Harry Smith, "From Deodand to Dependency," *American Journal of Legal History* 11.4 (1967): 389-403, Elizabeth A. Cawthon, "New Life for the Deodand: Coroners' Inquests and Occupational Deaths in England, 1830-46," *American Journal of Legal History* 33.2 (1989): 137-47, Teresa Sutton, "The Nature of the Early Law of Deodand," *The Cambrian Law Review* 30 (1999): 9-20 and "The Deodand and Responsibility for Death," *Journal of Legal History* 18.3 (1997): 44-55, and Anna Pervukhin, "Deodands: A Study in the Creation of Common Law Rules," *American Journal of Legal History* 47.3 (2005): 237-56.

⁹ Sutton, "Early Law" 13-14 and Pervukhin, "Deodands," 251-52.

¹⁰ Pietz, "Death," 97.

expiatory (or psychological); and the retaliatory (or compensatory).¹¹ The deodand was an efficient way to assign a cause of death, deflect blame, seek atonement, and assuage guilt. It worked as “a means of explaining away and justifying events” in the face of superstition and moral confusion, and perhaps also of banishing malevolent spirits that might be thought to reside in animals or objects.¹² Yet the medieval deodand also converted a desire for retaliation into compensation, sometimes directly for families of accidental death victims, even if it thence “gradually developed into pure forfeiture.”¹³ As a mode of converting accident into order, the deodand displaced responsibility into object causality (as if making humans vicariously liable for their animals or objects without necessarily appealing to a concept of fault) and thereby restored social norms. As an “early form of liability for death,” it could be strategically deployed to avoid or mitigate felony (homicide) charges.¹⁴

In the 1830s, this obscure common law notion came to be wielded as a compensatory device of wide, controversial, and finally self-defeating application.¹⁵ Given industrialized workspaces and mechanized modes of transport, the objects that might “move to the death” were rapidly becoming greater in size, number, and hazard. There were more occasions to die, in the coroner’s formula, “accidentally, casually, and by misfortune.”¹⁶ The scope for accidental death

¹¹ Sutton, “Early Law,” 11-12.

¹² *Ibid.*, 12.

¹³ *Ibid.* On the influence of such early notions on Anglo-American forfeiture law see Paul Schiff Berman, “An Anthropological Approach to Modern Forfeiture Law: The Symbolic Function of Legal Actions Against Objects,” *Yale Journal of Law & the Humanities* 11 (1999): 1-45. One intriguing example of civil forfeiture, *in rem* actions against obscene books, preserves the early law’s expiatory dimension: see Robert Spoo, “*Ulysses* as Deodand: Books, Automobiles, and the Law of Forfeiture,” in *Joyce and the Law*, ed. Jonathan Goldman (Gainesville: University Press of Florida, 2017), 246-61.

¹⁴ Sutton, “Early Law,” 9.

¹⁵ See especially Cawthon, “New Life” and Pietz, “Death.”

¹⁶ Cawthon, *Job Accidents and the Law in England’s Early Railway Age* (Lewiston: Edwin Mellen Press, 1997), 10. The deodand scholarship’s reliance on coroners’ reports provides another instance of the variable uses to which legal documentation was put prior to mid-nineteenth-century standardization (see Andrew Benjamin Bricker in this volume).

having expanded along with the money value of the dangerous entities, attributions of fault became at once unavoidable and hard to discern: “we have surrounded ourselves with lethal engines,” wrote Frederic Maitland, “so that one careless act may slay its thousands” without any obvious perpetrator.¹⁷ In response, courts led by “activist coroners” in some areas of Britain started to use the deodand to combat lax safety provisions.¹⁸ For accidental deaths on roads, railways, and steamships, and occasionally in factories and mines, inquest juries “began to levy deodands in a more sophisticated manner—to indicate quite specifically the ‘sense of the misconduct’ of a negligent party to an accident.”¹⁹

In this updated usage, the combined function of retaliation and compensation clearly gained traction, in line with the growing prominence of fault by the late eighteenth century.²⁰ What might have functioned in earlier periods as a deflection of possible human fault into a nonhuman sequence of causal (and so, in some sense, strict) liability was now used more openly to hold individuals responsible, often at great remove, for high-speed vehicles and machines. More proximately, the deodand could at the same time still be deployed as “a less severe alternative to manslaughter verdicts,” which might have been warranted in the frequent industrial episodes of grievous injury and fatality.²¹ The compensatory dimension enabled deodands to operate, albeit unevenly, “both as chastisement and inducement to greater caution”—exactng fines from modern industry while exhorting its captains “to exhibit greater humanity toward

¹⁷ Maitland, *History of English Law*, 2:473. On accidents, industrialism, and the law in nineteenth-century Britain see P. W. J. Bartrip and S. B. Burman, *The Wounded Soldiers of Industry: Industrial Compensation Policy, 1833–1897* (Oxford: Clarendon Press, 1983), Cawthon, *Job Accidents*, and Jamie L. Bronstein, *Caught in the Machinery: Workplace Accidents and Injured Workers in Nineteenth-Century Britain* (Stanford: Stanford University Press, 2007).

¹⁸ Cawthon, *Job Accidents*, ii; on Victorian coroners’ shifting medico-legal status see 95-110.

¹⁹ Cawthon, “New Life,” 138 (quoting a phrase habitually used in coroners’ inquests).

²⁰ Sutton, “Early Law,” 17-20.

²¹ Cawthon, “New Life,” 140.

workers.”²² Using the deodand to stipulate “standards of care,” with monetary values sometimes tailored to a specific “degree of negligence,” coroners and their juries were providing a sort of ad hoc action in tort, a bootstrapped remedy when the “law afforded almost no other means of relief for the victims of workplace accidents and their families.”²³

In 1830, an accident on the inaugural trip of the Liverpool and Manchester line ushered in the publicity eventually to result in the deodand’s downfall, although the inquest jury did not levy a fine in this case. The accident involved the death of William Huskisson, a member of Parliament in whom the first number of *The Economist* recalled “an ardent, warm, and able echo” of Adam Smith, a free-trade visionary who “saw that our interests and commerce had far out-grown the narrow limits which ignorant legislation had assigned them.”²⁴ As deodands levied against railway engines in the 1830s and 1840s climbed into thousands of pounds, it is thus unsurprising to find a backlash from the legal and political establishment against such arbitrary overreach. Higher courts dismissed the verdicts of inquest juries, often on technicalities, and railway companies and industrialists exerted pressure on Parliament to banish the deodand.²⁵ “Coroners’ courts,” Elizabeth Cawthon writes, “had grown too vehement in their denunciation of employers’ callousness, too prominent in the public’s view, [...] and too reluctant to depend on the civil process to deal with the problem of occupational accidents.”²⁶ Enacted in the same session as the Abolition of Deodands Act, the Fatal Accidents Act (1846) became the standard for that process.²⁷ It required the expense of bringing a civil suit and the burden of proving liability, and it allocated compensation in proportion to one’s pre-accident means, preserving the

²² Ibid., 138, 141.

²³ Ibid., 140, 141, 137-38.

²⁴ “Introductory Article,” *The Economist* (1 August 1843): 4. See Pietz, “Death,” 97-99.

²⁵ Cawthon, *Job Accidents*, 141-44 and Pietz, “Death,” 106.

²⁶ Cawthon, “New Life,” 147.

²⁷ The statutes are 9 & 10 Vict. (1846) c. 62 and c. 93 (the latter known as Lord Campbell’s Act).

socio-economic status quo.²⁸ If families of workers or third-class railway passengers were unlikely to afford or benefit from such remedies, relations of Huskisson's ilk stood to collect hefty awards.²⁹

In its sudden recrudescence and swift demise, the deodand sits at the fulcrum of other developments that adjusted the law of accident for a crowded urban world, where acting without reasonable foresight had a higher likelihood of causing damage. The mid-nineteenth century gave rise to “legal structures better suited to capitalist enterprise and liberal society,” including the use of insurance to delineate accidental liability in advance and the “institutional production of a new kind of (legally) immoral person: the modern limited liability corporation.”³⁰ It was thus by means of a rapprochement between legal innovation and liberal-economic ideology that Victorian Britain attempted to manage accidents that occurred overwhelmingly on capitalist premises and conveyances—to ensure the safety and, failing that, the modest pecuniary compensation of those on whose “lives and limbs” it depended for the production of profit.

At common law, these structures included negligence, which early in the nineteenth century acquired its characteristic features as an independent tort—namely, the “duty of care” concept and the “reasonable man” standard—and was soon applied in cases of workplace injury and fatality.³¹ Certain liabilities akin to negligence had been familiar well before the nineteenth

²⁸ Michael Ashley Stein, “Victorian Tort Liability for Workplace Injuries,” *University of Illinois Law Review*, 2008, no. 3 (2008): 956-7, 974-5 and Cawthon, *Job Accidents*, 75-6, 144-5.

²⁹ For a comprehensive overview of passenger litigation see R. W. Kostal, *Law and English Railway Capitalism, 1825–1875*, rev. ed. (Oxford: Clarendon Press, 1997), 279-311. *Pym v. Great Northern Railway Co.* (1862) initially awarded an astronomical £13,000 to a wealthy passenger's family (295). Donal Nolan offers a more favorable account in “The Fatal Accidents Act 1846,” in *Tort Law and the Legislature: Common Law, Statute and the Dynamics of Legal Change*, ed. T. T. Arvind and Jenny Steele (Oxford: Hart, 2013), 131-57.

³⁰ Pietz, “Death,” 97, 106.

³¹ The emergence argument was first articulated by Percy H. Winfield, “The History of Negligence in the Law of Torts,” *Law Quarterly Review* 42 (1926): 184-201, and qualified by C. H. S. Fifoot, M. J. Prichard, and J. H. Baker: see Stein, “*Priestley v. Fowler* (1837) and the Emerging Tort of

century: the strict liability of innkeepers and so-called common carriers (of goods or people); the vicarious liability of employers “for the inattentive acts their servants committed against third parties in the ordinary course of employment.”³² Wider applications now became visible with the first case of a worker suing his employer (unsuccessfully) for injury caused by the negligence of another worker, *Priestley v. Fowler* (1837).³³ Yet novel actions for workplace negligence were almost immediately eroded or compromised by a trifecta of legal defenses: contributory negligence (which made less actionable any accidental harm brought about partly through a victim’s own fault); the doctrine of common employment (which deprived workers injured by the negligence of other workers, including supervisors and subcontractors, from any action against the employer they shared); and *volenti non fit injuria* (which held work contracts to include an implicit “assumption of risk,” priced into wages, for other workers’ negligence).³⁴ In some cases these doctrines lasted until the mid-twentieth century.³⁵ They tended to shield employers and adhered to prevailing liberal-economic ideas.³⁶ If the courts saw their “new society in its dangerous world” as “willing to compromise safety for economic advantage, [...]”

Negligence,” *Boston College Law Review* 44 (2003): 701-8. On negligence’s current elements see Cane, *Atiyah’s Accidents*, 32-50, 66-90.

³² Stein, “Victorian Tort Liability,” 941; see 939-42, Winfield, “History of Negligence,” 185-90, W. R. Cornish and G. de N. Clark, *Law and Society in England 1750–1950* (London: Sweet and Maxwell, 1989), 489-93, and Kostal, *Law and English Railway Capitalism*, 284-7.

³³ Stein, “*Priestley v. Fowler*.”

³⁴ See Bartrip and Burman, *Wounded Soldiers*, 24-25, 97-125, Cornish and Clark, *Law and Society*, 494-500, 508-12, Kostal, *Law and English Railway Capitalism*, 257-79, Stein, “*Priestley v. Fowler*,” 712-16 and “Victorian Tort Liability.”

³⁵ The Law Reform (Personal Injuries) Act (1948) abolished the doctrine of common employment and the Law Reform (Contributory Negligence) Act (1945) afforded (partial) remedy in situations of contributory negligence (Cane, *Atiyah’s Accidents*, 32, 50-2).

³⁶ Bartrip and Burman, *Wounded Soldiers*, 123-24, Stein, “Victorian Tort Liability,” 964-82, and Kostal, *Law and English Railway Capitalism*, 311-21 (distinguishing “liberal contractarianism” [318] in work-related cases from costlier public safety decisions in passenger cases). See generally A. W. B. Simpson, *Victorian Law and the Industrial Spirit* (London: Selden Society, 1995).

negligence afforded the means whereby concessions could be made.”³⁷ It is hardly accidental that these principles were honed through cases—*Hutchinson v. York, Newcastle & Berwick Railway* (1850) and *Wigmore v. Jay* (1850)—brought under the Fatal Accidents Act, whose author was the son-in-law of the judge who blocked the initial workplace negligence case.³⁸

On the statutory side, the slow acknowledgment that Victorian society had to reckon with the problem of accidents—first visible in debates about the Factory Acts—eventually produced legislation hedged with qualifications favoring industrial employers and financial institutions like insurance. With the Fatal Accidents Act, “reform of the law was dominated by parliamentarians’ fear that employers might find themselves liable for very large compensation bills,” and “both judges and MPs failed to take into account how far poverty and other social factors [...] constrained people to take dangerous jobs.”³⁹ The later legislative measures—the Employer’s Liability Act (1880) and more significant Workmen’s Compensation Acts (1897, 1906)—have been taken to foreshadow Britain’s twentieth-century welfare state, but despite the trend towards viewing workplace accidents in terms of strict liability, these statutes nonetheless included many concessions to political economy.⁴⁰ Whatever the subsequent differences in characterizing vehicular and industrial accidents, the nineteenth-century legal narrative thus leads in the direction of a system of liability and compensation adherent to a “fault principle” that has been

³⁷ Wex S. Malone, “Ruminations on the Role of Fault in the History of the Common Law of Torts,” *Louisiana Law Review* 31 (1970): 40.

³⁸ On these cases see Kostal, *Law and English Railway Capitalism*, 271-73 and Stein, “Victorian Tort Liability,” 958, 944-48.

³⁹ Bartrip and Burman, *Wounded Soldiers*, 115.

⁴⁰ The statutes are 43 & 44 Vict. c. 42, 60 & 61 Vict. c. 37, and 6 Edw. 7 c. 58. For the legislative debates see Bartrip and Burman, *Wounded Soldiers*, 126-206 and Cornish and Clark, *Law and Society*, 520-38. For a medico-legal account, reading these developments largely in relation to (breach of) contract, see Karl Figlio, “What is an Accident?” in *The Social History of Occupational Health*, ed. Paul Weindling (London: Croom Helm, 1985), 180-206. Accident’s occupational dimensions are key to later disability studies approaches to law (see Rabia Belt and Doron Dorfman in this volume).

the target of critique ever since, most trenchantly in Patrick Atiyah's frequently updated *Accidents, Compensation, and the Law* (1970).⁴¹

But what happened to the expiatory and psychological aspects of reckoning with accidents? By the late nineteenth century, the legal personification or animation of the nonhuman world was acknowledged only as a vestigial impulse to be superseded by wise legislation. Adopting the survivalist dogmas of late Victorian anthropology, jurists writing about the law's historical development saw the vengeful dimensions of early liability as "primitive," the impulse to (fault-based) compensation as "civilized."⁴² Maitland describes the deodand as a residue of "a sacral element which Christianity could not wholly suppress," its survival into the nineteenth century wryly chalked up to "that unreasoning instinct that impels the civilized man to kick, or by voice consign to eternal perdition, the chair over which he has stumbled."⁴³ Oliver Wendell Holmes argues that legal standards responsive to the "customs, beliefs, or needs of a primitive time" persist for reasons of expediency, acquiring a new rationale or "ground of policy."⁴⁴ However sensible the resulting promotion of a "mean" between "absolute liability for all harm done, and liability only for harm that is both done and intended," these legal genealogies characterize harm principally on a spectrum of fault.⁴⁵ In the nineteenth-century judicial setting, this meant silencing modes of emotional adjudication for which accidents cry out, blocking off narrative or affective avenues for expiation, and precluding recognition or compensation (called *solatium*) for merely non-pecuniary losses ("injured feelings").⁴⁶

⁴¹ Cane, *Atiyah's Accidents*, 29-65.

⁴² Finkelstein, "Ox That Gored," 48-51.

⁴³ Maitland, *History of English Law*, 2:472-73.

⁴⁴ Holmes, *Common Law*, 7. On Holmes and the deodand see Pietz, "Death," 99-101.

⁴⁵ Maitland, *History of English Law*, 2:473.

⁴⁶ Nolan, "Fatal Accidents Act 1846," 151-52 (quoting an 1849 opinion of Pollock).

Victorian periodical and journalistic discourses, where accident reporting was rife, were more open to the affective charge of accidents and often deployed animistic language to represent the nonhuman causes of death across Britain.⁴⁷ Once such events were no longer remediable by the deodand provision, however, a more common response became an objectless affect like shock or melancholy (both frequent Victorian epithets for accidents) without any subsequent inquiry.⁴⁸ In the 1850s, Charles Dickens's *Household Words* carried a regular "Narrative of Accident and Disaster," less a narrative than a synopsis of catastrophes that addressed mine, factory, or railway proprietors with weak meliorist formulas: issuing admonitions for "want of proper caution"; exhorting employers to "make provision for the widow and family of the deceased"; voicing "surprise and regret that so little care and attention is paid to the safety of persons."⁴⁹ In a companion series about preventable accidents, Henry Morley describes casualties in horrifying detail and sarcastically praises "the results of the administrative kindness so abundant in this country," where working deaths are "a sacrifice to [...] commercial prosperity" and "accounts [are] squared with society by a matter-of-fact verdict: 'Accidental death.'⁵⁰ While castigating owners for not following the rules established by the Factory Acts for unfenced machinery, Morley seems unaware of legal shifts that were making accidents more fundamentally non-remediable.

Finally, novels where notable mishaps occur, although legible as productive sites for understanding accident and its ideological significance in Victorian society and print culture,

⁴⁷ Cawthon, *Job Accidents*, 84. On accidental genres in Victorian newspapers see Paul Fyfe, *By Accident or Design: Writing the Victorian Metropolis* (Oxford: Oxford University Press, 2015), 31-66.

⁴⁸ See Allison Fieldberg, "1834: 'Melancholy and Affecting Accident: Eleven Persons Drowned,'" *Victorian Review* 40.2 (2014): 14-17.

⁴⁹ "Narrative of Accident and Disaster," *Household Words* (June 1850): 134, (August 1854): 184, (August 1852): 177.

⁵⁰ "Ground in the Mill," *Household Words* 213 (1854): 224; "Deadly Shafts," *Household Words* 274 (1855): 495.

generally limit narrative draw to the catastrophic scene. Dickens's *Dombey and Son* (1846-8) (which began serialization a month after the deodand's abolition) and *Hard Times* (1854); Elizabeth Gaskell's *Mary Barton* (1848), *Cranford* (1851-53), and *North and South* (1854-55); Anthony Trollope's *The Prime Minister* (1876)—all bear insight into industrial or railway accidents while affording scant attention to the environing legal processes, in contrast to their more sensational cases of one character's direct or intentional culpability for another's death.⁵¹ In the next section, I consider literary instances that make more sustained use of accident, rendering visible the affective and nonhuman aspects that the modern legal dispensation slowly moved out of sight.⁵²

Literary Accidents: Coach, Cart, Car

De Quincey's "The English Mail-Coach" muses on the vanished world of coach travel during the Napoleonic Wars while laboriously describing the events leading up to a "sudden death."⁵³ In his nostalgia for the days of the mail against the encroaching railways, De Quincey also hearkens back, I argue, to a prior legal dispensation that dealt more frankly with the entanglements of accident. He braids together the deodand's conjunction of legal remedy and

⁵¹ On these topics and novels see Mike Sanders, "Manufacturing Accident: Industrialism and the Worker's Body in Early Victorian Fiction," *Victorian Literature and Culture* 28.2 (2000): 313-29 and Fyfe, *By Accident or Design*, 100-31, 184-90, 203-10.

⁵² For a compelling account of accident in the eighteenth-century novel, which also makes use of the deodand, see Sandra Macpherson, *Harm's Way: Tragic Responsibility and the Novel Form* (Baltimore: Johns Hopkins University Press, 2010), especially 42-44, 137-45. Although I am sympathetic to Macpherson's emphasis on "the centrality of accident and injury to the realist novel" (4), I would dispute her identification of the deodand with strict liability and the claim that it "made persons responsible for the actions of things [...] by turning them *into* things" (15). Further, the developments in negligence sketched above warrant, I believe, a more shaded account than a shift from the eighteenth-century novel as, "like tragedy, a form of strict liability" (10) to the nineteenth-century novel as, like comedy, a form of understanding suited to an "era of exculpation" (190), as Macpherson's discussion of Dickens implies (175-77, 189-90).

⁵³ "The English Mail-Coach," in *Confessions of an English Opium-Eater and Other Writings*, ed. Robert Morrison (Oxford: Oxford University Press, 2013), 198.

object causality and diffuses responsibility among human and nonhuman actors, or what he suggestively terms “inter-agencies.”⁵⁴

De Quincey had a desultory engagement with the legal profession. He saturates this text with jargon, citing recent statutes and Roman law, bantering about capital punishment, and characterizing mundane features of coach travel—especially the fractious relations between inside and outside passengers—according to rubrics of national sedition and international conflict. Further, De Quincey compasses an array of legal topics touching on the relationship between the state and its subjects. Often, he treats these matters satirically. A sailor “making light of the law” sits at the back smoking a pipe and almost sets the mail-coach aflame: “it was treason, it was *laesa majestas*, it was by tendency arson.”⁵⁵ At other moments, the reach of juridical power is cast in darker terms. The mail-coach, De Quincey surmises, demands reverence because the “exact legal limits” of its power are “imperfectly ascertained.”⁵⁶ “Treason they feel to be their crime,” he notes of those blocking its path: “each individual carter feels himself under the ban of confiscation and attainder [...] and nothing is wanting but the headsman and his axe, the block and the sawdust, to close up the vista of his horrors.”⁵⁷ This rhetoric, both comical and chilling, affords an excuse for the mail-coach’s path of casual destruction. “Huge was the affliction and dismay, awful was the smash” when the mail accidentally toppled other vehicles, but such costs will be covered, De Quincey assumes, by local jurisdictions, “levied upon the hundred.”⁵⁸ Acting as an advocate on behalf of state power and communicative efficiency, he steps in “to represent the conscience and moral sensibilities of the mail”: “Tied to

⁵⁴ Ibid., 184.

⁵⁵ Ibid., 179.

⁵⁶ Ibid.

⁵⁷ Ibid., 180.

⁵⁸ Ibid.

post-office time [...] could the royal mail [...] be expected to provide tears for the accidents of the road? If even it seemed to trample on humanity, it did so, I contended, in discharge of its own more peremptory duties.”⁵⁹

A legal characterization of the mail-coach system and its provisions, statutes, and uncodified protections dovetails with an advance justification of the accidents it causes. Various legal allusions thus frame De Quincey’s reference to the deodand—a sardonic fantasy about his own unremarked death, contrasted with that of an upper-class insider:

this other creature, in the case of dropping out of the coach, will enjoy a coroner’s inquest; consequently he will enjoy an epitaph. [...] “Died through the visitation of intense stupidity, by impinging on a moonlight night against the off hind wheel of the Glasgow mail! Deodand upon the said wheel—two-pence.” What a simple lapidary inscription! Nobody much in the wrong but an off-wheel.⁶⁰

Mocking the coroner’s formula for accidents caused “by the visitation of God” while adverting to a legal remedy for accidental death that had vanished along with his beloved mail, De Quincey could actually be describing the differential compensation that obtained under the Fatal Accidents Act, where the insider would be likelier to receive a lump sum.

With this gesture towards the deodand, De Quincey opens another, more serious dimension of “The English Mail-Coach”: its attention to the dispersal of agency and liability across human and nonhuman entities, underlined in the extended contrast between mail and rail. The former is celebrated for conveying the sensation of movement in a way that registers as a sympathetic conjunction of human passenger and nonhuman carrier, the latter disdained as an inert vehicle: a “vital experience of the glad animal sensibilities” against “the product of blind insensate agencies, that had no sympathy to give.”⁶¹ The mail’s vitalism, in contrast to the

⁵⁹ Ibid., 180-1.

⁶⁰ Ibid., 203.

⁶¹ Ibid., 183.

railway's mechanism, enables a living network of coaches emanating from London, carrying the agencies and "heart of man" through and into the "electric sensibility of the horse."⁶² By the same token, the passengers are reified: insiders are "a porcelain variety of the human race"; outsiders mere "delf ware"; the driver a "bronze equestrian statue."⁶³

In keeping with this vitalism of objects, the accident scene abridges human agency even as it spotlights legal concerns—an interlocking sequence of responsibilities, duties to warn, and degrees of negligence—in ways that make the setting itself complicit. De Quincey finds himself at the helm, his one-eyed coachman fast asleep with the reins wedged between his legs, as they bear down on the "human freightage" of a smaller gig occupied by young lovers.⁶⁴ "What made this negligence less criminal than else it must have been thought," De Quincey explains as if already putting the case before a court, "was the condition of the roads at night during the assizes."⁶⁵ The legal system of traveling assizes is the reason for both the empty roads and the fatigue of the coachman, who dozes because his days are taken up with "an interest at stake in a suit-at-law pending at Lancaster."⁶⁶ The object world sets the conditions for an accident by conspiring through the different qualities of the road—"soft-beaten sand," "paved centre"—to drift both vehicles to the same side.⁶⁷ Thus "the stage where the collision must be accomplished" is a legal space, with "parties that seemed summoned to the trial."⁶⁸

After the mail-coach careens past, De Quincey asks us to imagine "the elements of the case," again in the manipulative rhetoric of the advocate: "suffer me to recal before your mind

⁶² *Ibid.*, 183-84.

⁶³ *Ibid.*, 209.

⁶⁴ *Ibid.*, 212.

⁶⁵ *Ibid.*, 207.

⁶⁶ *Ibid.*, 205.

⁶⁷ *Ibid.*, 209.

⁶⁸ *Ibid.*, 210.

the circumstances of the unparalleled situation.”⁶⁹ The earlier riff on the deodand turns out to be proleptic of the accident’s climax: “we had struck the off-wheel of the little gig.”⁷⁰ Although the wheel is the object damaged rather than the cause of death, the parallel underlines how De Quincey deals with legal responsibility through the oblique means of object “inter-agencies.” Human casualty is only gradually and ambiguously disclosed: we see first the horse; then the gig that, “as if it sympathized with human horror, was all alive with tremblings and shiverings”; next the young man who “sat like a rock” and “stirred not at all”; and finally the young woman, flailing and distraught, on the verge of death.⁷¹ The human negligence occasioning these events slips out of sight as quickly as the scene, its victim converted from tangible reality to the intangible future of De Quincey’s “dreams.”

“The English Mail-Coach” has often been read as peddling nostalgia: for national unity and wartime patriotism, as against an atomized Victorian political public; for more grounded modes of transport, as against “the new system of travelling, [where] iron tubes and boilers have disconnected man’s heart from the ministers of his locomotion.”⁷² Further, it has been taken to dramatize the midcentury reforms that consolidated the Post Office as an agent of British imperial and commercial progress, centralizing delivery networks through London, curtailing potentially seditious or “incendiary” networks of private correspondence, and enabling the institution to offer “personal financial services, including public welfare distribution, life

⁶⁹ Ibid., 213.

⁷⁰ Ibid., 212.

⁷¹ Ibid., 212-13.

⁷² Ibid., 183. See John Plotz, *The Crowd: British Literature and Public Politics* (Berkeley: University of California Press, 2000), 101-26 and Ruth Livesey, *Writing the Stage Coach Nation: Locality on the Move in Nineteenth-Century British Literature* (Oxford: Oxford University Press, 2016), 16-17.

insurance and a savings bank.”⁷³ Along similar lines, we might detect in De Quincey an equally prominent legal nostalgia. In light of the Fatal Accidents Act, “The English Mail-Coach” remembers a regime open to the affective entailments and object entanglements of accidental death—a regime that disappeared with an industrial (specifically railway) capitalism predicated not only on speed but on devaluing the human cost of unceasing velocity. The “glory of motion” is haunted by death, in the missives announcing tolls from the battlefields of Europe and in the representative casualty at the narrative’s heart.⁷⁴ The whimsical reference to the deodand could be read as resigned to a world where such charges can no longer be levied against objects that “move to the death,” especially when they are vectors of the imperial nation and its high-speed commercial networks.

The normative shift underway at the time of De Quincey’s text can be brought into focus by comparison to later fictional accidents that take place in a changed legal world. In Hardy’s *Tess of the d’Urbervilles*, the culprit is not the glorious mail-coach but the lowlier mail-cart, which participates in the first devastating event of the protagonist’s story. Despite Hardy’s broader fascination with cultural “survivals” and quasi-animate objects, the deodand’s psychological possibilities—expiation and the restoration of order—are all but forgotten here, leaving human fault as the principal domain of explanation for accident.

The object elements in this scene are initially akin to De Quincey’s descriptions. Tess Durbeyfield is in charge of a “rickety little waggon,” driven by a horse named Prince, “only a degree less rickety.”⁷⁵ As her brother dozes, she takes the reins and drifts into a reverie wherein

⁷³ Mary A. Favret, *Romantic Correspondence: Women, Politics, and the Fiction of Letters* (Cambridge: Cambridge University Press, 1993), 206; see 203-13.

⁷⁴ “English Mail-Coach,” 173.

⁷⁵ Hardy, *Tess of the d’Urbervilles*, ed. Juliet Grindle and Simon Gatrell (Oxford: Clarendon Press, 1983), 41.

the “mute procession past her shoulders of trees and hedges became attached to fantastic scenes outside reality.”⁷⁶ She is awoken by a “sudden jerk” revealing that their “harness was entangled with an object which blocked the way.”⁷⁷ “The morning mail-cart,” Hardy writes, “with its two noiseless wheels, speeding along these lanes like an arrow, [...] had driven into her slow and unlighted equipage. The pointed shaft of the cart had entered the breast of the unhappy Prince like a sword, and from the wound his life’s blood was spouting in a stream, and falling with a hiss into the road.”⁷⁸ In the gathering light around the accident, the surrounding objects are most vivid: “The atmosphere turned pale, the birds shook themselves in the hedges, arose, and twittered; the lane showed all its white features, and Tess showed hers, still whiter. The huge pool of blood in front of her was already assuming the iridescence of coagulation.”⁷⁹

Yet the nonhuman world simply stands as witness; responsibility can only inhere in the human parties to the scene. ““You was on the wrong side,”” is the coachman’s matter-of-fact accusation: ““I am bound to go on with the mail-bags, so that the best thing for you to do is bide here with your load. I’ll send somebody to help you as soon as I can.””⁸⁰ This sequence of duties and requirements is as entirely human as the affective charge that follows: ““’Tis all my doing—all mine!’ the girl cried, gazing at the spectacle. ‘No excuse for me—none.’”⁸¹ The “self-reproach which [Tess] continued to heap upon herself for her negligence” severs the potential legal domain of this event from its object ensemble.⁸² To be sure, deodand could never have

⁷⁶ Ibid., 43.

⁷⁷ Ibid., 43-4.

⁷⁸ Ibid., 44.

⁷⁹ Ibid.

⁸⁰ Ibid. Discussing *Leame v. Bray* (1803) in *The Law of Torts: A Treatise on the Principles of Obligations Arising from Civil Wrongs in the Common Law*, 4th ed. (London: Stevens and Sons, 1895 [1887]), Pollock notes that “driving on the wrong side of the road [...] of itself is want of due care” (132), but his illustrative examples of negligence might (partly) exonerate Tess if the other driver had not exercised reasonable precaution (592, 594-5).

⁸¹ *Tess of the d’Urbervilles*, 44.

⁸² Ibid., 45.

applied here (the death is not human). It is intriguing nonetheless that the event involves a disavowal of the fetishism that underwrote this longstanding instrument of common law.⁸³ Instead of responsible objects converted into monetary fines to deflect the possibility of human guilt, a faultless animal receives an honorable burial and is not sold for a pittance to the knacker's yard. When Prince is buried near the Durbeyfield home, Tess continues to feel "as though she regarded herself in the light of a murderess," accentuating the sense of human fault.⁸⁴

It is not too much to say that a lack of object displacement for this early event dictates the rest of the plot. Assuming the mantle of a guilt that cannot be assuaged by fine or forfeiture, Tess tells Alec d'Urberville that she "killed" the horse and confesses the need to do something "on account of it."⁸⁵ After this first visit with her future assailant she poignantly fields questions from her family while walking near Prince's grave. Henceforth she accedes to the type of aversive timidity that could be held more at fault than the negligence it would avoid.⁸⁶ "Ever since the accident with her father's horse," Hardy writes, "courageous as she naturally was, [Tess] had been exceedingly timid on wheels," and with Alec she "began to get uneasy at a certain recklessness in her conductor's driving."⁸⁷ The shared vehicular theme suggests that a drama of human accountability must follow from the earlier inability to deal with nonhuman casualty.

In Forster's *Howards End*, finally, the socio-technological shifts alluded to in De Quincey and Hardy have fully arrived. With the "craze for motion," one flies everywhere in "the

⁸³ If unfamiliar with deodand earlier, Hardy encountered it when transcribing a review of Grant Allen, *The Evolution of the Idea of God* (1897), which describes the survival of "barbaric conceptions [that] extend life and intelligence of some sort to phenomena"; *The Literary Notebooks of Thomas Hardy*, ed. Lennart A. Björk (New York: NYU Press, 1985), 2:367.

⁸⁴ *Tess of the d'Urbervilles*, 46.

⁸⁵ *Ibid.*, 56.

⁸⁶ On the modest negligence that "consists merely in a want of [...] [t]hat timid circumspection which is afraid of every thing, [and] is never regarded as a virtue," see Adam Smith, *The Theory of Moral Sentiments*, ed. D. D. Raphael and A. L. Macfie (Indianapolis: Liberty Fund, 1982), 103-04.

⁸⁷ *Tess of the d'Urbervilles*, 70.

motor” and thinks nothing of taking the train from London to forestall an ill-advised flirtation in the countryside.⁸⁸ If Forster’s novel addresses the “chance collisions of human beings,” its serendipitous plots and relationships are nevertheless marked by accidents that confirm how legal dispensations have entirely circumscribed the aleatory and the nonhuman, marking a melancholy separation between human institutions of legal and financial liability and the concrete world.⁸⁹

The novel’s first “motor smash” is not witnessed but reported when Henry Wilcox, coincidentally happening upon his wife and her new acquaintance Margaret Schlegel at King’s Cross, assures them that he and their daughter are fine:

“So are we and so was our car, which ran A1 as far as Ripon, but there a wretched horse and cart which a fool of a driver—” [...]

“I was saying that this fool of a driver, as the policeman himself admits—” [...]

“—But as we’re insured against third party risks, it won’t so much matter—”⁹⁰

The breathless fragments of Henry’s account focus, as in Hardy, on aspects of human liability; the nonhuman elements are merely insignificant components in the legal ledger. A year after legal decisions adopted fault rather than strict liability for motor-vehicle accidents in 1909, Forster’s scene hovers between intimating fault and retreating to insurance, which dampens both consequence and affect.⁹¹ A later accident likewise screens the human from the nonhuman. On a drive through the countryside near Oniton, one of the cars suddenly halts. As the women are ushered into another vehicle and driven away, Charles Wilcox’s blithe comment—“It’s all right.

⁸⁸ Forster, *Howards End* (London: Penguin, 2000), 290, 18.

⁸⁹ *Ibid.*, 21.

⁹⁰ *Ibid.*, 74.

⁹¹ *Wing v. L.G.O.C* and *Parker v. L.G.O.C* (both 1909): see J. R. Spencer, “Motor-Cars and the Rule in *Rylands v. Fletcher*: A Chapter of Accidents in the History of Law and Motoring,” *Cambridge Law Journal* 42.1 (1983): 69-73, who also notes that the Road Traffic Act (1930) made compulsory the type of liability insurance Forster mentions (77).

Your car just touched a dog”—muffles the details of the casualty (actually they killed a cat).⁹²

Again, legal and monetary norms are expected to simplify matters, to forestall fault:

“I expect a little of”—Mrs. Warrington scratched her palm—“will be more to the point than one of us!”

“The insurance company will see to that,” remarked Charles [...].⁹³

Even Margaret’s horror at these arrangements—“Ladies sheltering behind men, men sheltering behind servants—the whole system’s wrong”—hardly restores concreteness to the accident, and she is left with a vague sentiment that “the girl whose cat had been killed had lived more deeply than they.”⁹⁴

Forster juxtaposes the first accident, across a chapter break, with the “rapid death” of Ruth Wilcox: an insurable, inconsequential accident set against a momentous, irreparable loss.⁹⁵ Accident, though the word never appears in *Howards End*, threads these plots together. The word “smash” marks domestic mishaps like breaking a picture frame, the mistakenly predicted collapse of the Porphyryon fire insurance firm, and the eventual ruin of the lower-class Basts.⁹⁶ More generally, these accidents might be taken to highlight wider thematic contrasts. On one hand, we have the Wilcoxes, with their brusque classism and belief in the inalienable rights of capital and property, who trust in “that ‘bit of luck’ by which all successes and failures are explained” even as they hedge against misfortune through novel instruments like liability insurance, siding with “national morality” in “assum[ing] that preparation against danger is in itself a good, and that men, like nations, are the better for staggering through life fully armed.”⁹⁷ On the other, the Schlegels, with their sentimental paternalism and discomfort about the sources

⁹² *Howards End*, 181.

⁹³ *Ibid.*

⁹⁴ *Ibid.*, 182, 183.

⁹⁵ *Ibid.*, 75.

⁹⁶ *Ibid.*, 41, 114, 271.

⁹⁷ *Ibid.*, 43, 91.

of their wealth and leisure, who defend the virtues of unpreparedness in the face of “all the emergencies of life” even as they are acutely aware that “there’s never any great risk as long as you have money,” which “pads the edges of things” and allows certain people to “stand [...] as upon islands.”⁹⁸ From a financial base made comfortable by Consols and similar investments, they see themselves as lodging “a protest against the inner darkness in high places that comes with a commercial age.”⁹⁹

Yet if the law of accident provides a schema for the contest between the Wilcoxes’ isolating, unromantic commercialism and the Schlegels’ “Only connect!” ethos, it does so by shielding both from a mysterious nonhuman realm.¹⁰⁰ In the novel’s climax, the accidental death of Leonard Bast at Howards End, the object background plays a symbolic part: Leonard “entered a garden, steadied himself against a motor-car that he found in it, found a door open and entered a house,” encountering there “a man whom he had never seen”: “A stick, very bright, descended. It hurt him, not where it descended, but in the heart. Books fell over him in a shower. Nothing had sense.”¹⁰¹ The sequence of indefinite articles that appear to flatten object and human actors, however, immediately gives way to human activities and ascriptions of fault: “murder’s enough,” comments a servant, presaging the eventual inquest verdict in this case, “manslaughter.”¹⁰² This event fulfills an earlier thought of Mr. Wilcox’s, that Leonard “must pay heavily for his misconduct” in seducing Helen Schlegel.¹⁰³ So although “it did not seem to [Charles] that he had used violence” and “[i]t was against all reason that he should be punished,” “the law, being made

⁹⁸ Ibid., 51.

⁹⁹ Ibid., 283.

¹⁰⁰ Ibid., 159.

¹⁰¹ Ibid., 277.

¹⁰² Ibid., 277, 285.

¹⁰³ Ibid., 260.

in his image, sentenced him to three years' imprisonment."¹⁰⁴ His image is that of a fault-based system that converts all manner of social infractions into grounds for retaliation and compensation but not expiation, seeing human terms (financial or carceral) where the law once, however inchoately, captured affective and nonhuman interactions. "It is those that cannot connect who hasten to cast the first stone."¹⁰⁵

Conclusion

A sea change in Victorian legal conventions thus left its mark, however elliptically, in literary-cultural representations. What might be characterized as a victory for assigning responsibility to persons (human or corporate), for restoring social order through systems of fault-based liability and insurance, is also conceivably a loss of intimacy and complexity, a simplification that omits the intermingled agencies of humans and nonhumans in any given accidental constellation—a loss of the sense of loss. De Quincey treats accidental death as an occasion for melancholy, displacing the occasions of loss into reverie. Hardy makes his heroine experience calamity in solitary fashion, the birth of a short-lived child named Sorrow a fitting symbol for Tess's tragic inability to grapple with accident. Forster's characters are not quite sure what they are missing even as the laws of accident pattern their experiences. Accidents in this period, in life as in literature, elicited aesthetic or generic responses—prominently what has been called the "catastrophic picturesque"—even as legal or procedural consequences ran aground.¹⁰⁶ People grappled with human tragedies, as we still do, precisely in the calculative terms that modern insurance and accident law encourage: someone at fault would "pay"; somehow the loss

¹⁰⁴ Ibid., 279, 285.

¹⁰⁵ Ibid., 266.

¹⁰⁶ Fyfe, "Illustrating the Accident: Railways and the Catastrophic Picturesque in the *Illustrated London News*," *Victorian Periodicals Review* 46.1 (2013): 61-91.

would be “accounted for.” “It is impossible to see life steadily and see it whole,” writes Forster.¹⁰⁷ If *steadily* is how the modern legal-financial dispensation aims to characterize accident, are there ways to see it *whole* again, to maintain the connections among agency and liability, grief and remorse, which since ancient times have been worked out in the terms of our unpredictable entanglements with animals and things?

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¹⁰⁷ *Howards End*, 138.