

2022

Mysterious Ways

Lawrence M. Friedman
Stanford Law School, lmf@stanford.edu

Follow this and additional works at: <https://ecollections.law.fiu.edu/lawreview>



Part of the [Criminal Law Commons](#), [Law and Society Commons](#), [Legal History Commons](#), and the [Other Law Commons](#)

Online ISSN: 2643-7759

Recommended Citation

Lawrence M. Friedman, *Mysterious Ways*, 16 FIU L. Rev. 233 (2022).
DOI: <https://dx.doi.org/10.25148/lawrev.16.2.5>

This Article is brought to you for free and open access by eCollections. It has been accepted for inclusion in FIU Law Review by an authorized editor of eCollections. For more information, please contact lisdavis@fiu.edu.

MYSTERIOUS WAYS

*Lawrence M. Friedman**

FORM AND SUBSTANCE	235
REAL AND FICTIONAL DETECTIVES.....	240
WHO DID IT?.....	242
THE MYSTERY AND ITS RIVALS	248
SPIES AND COUNTERSPIES	251
HARD-BOILED.....	252

The first half of the 19th century was a period of rapid social change. This was the age of the railroad, an age in which big cities grew explosively; an age in which factories began to dot the countryside. It was also an age in which a new literary form developed: the detective story or mystery. It is possible to dredge up examples from long ago, here and there, in this or that society; tales that might be described as “mystery stories,” from Rome or ancient China or some other civilization. But as a field, a genre, a type, it cannot be realistically traced further back than the first half of the 19th century. Once it came into the world, it exploded very soon in popularity. Needless to say, it is still popular today. Hundreds, maybe thousands, of novels and short stories, which at least more or less conform to the rules of the “mystery” or “detective novel,” pour out of the presses.¹ The taste for “mysteries” is global. People talk about a Scandinavian school of mysteries. There is a huge audience in Japan, in Germany, in Latin America.

Edgar Allan Poe is often credited with inventing the detective story. His short story, “The Murders in the Rue Morgue” appeared in 1841; this,

* Marion Rice Kirkwood Professor, Stanford University School of Law. I want to thank my colleague, Robert W. Gordon, for his helpful comments on an earlier draft.

¹ There is a considerable literature on the history of the genre. See T. J. BINYON, ‘MURDER WILL OUT:’ THE DETECTIVE IN FICTION (Oxford Univ. Press, 1989); CHARLES J. RZEPKA, DETECTIVE FICTION (Wiley, 2005); JULIAN SYMONS, BLOODY MURDER: FROM THE DETECTIVE STORY TO THE CRIME NOVEL (3d ed. 1972); see also JUDITH FLANDERS, THE INVENTION OF MURDER: HOW THE VICTORIANS REVELED IN DEATH AND DETECTION AND CREATED MODERN CRIME (St. Martin’s Press, 2011); IAN OUSBY, BLOODHOUNDS OF HEAVEN: THE DETECTIVE IN ENGLISH FICTIONS FROM GODWIN TO DOYLE (Harvard Univ. Press, 1976); LUCY WORSLEY, THE ART OF THE ENGLISH MURDER (2015). Full disclosure: I myself have given in to the temptation of writing mysteries; about a dozen of these are in print as of 2021. They are told in the first person by a (fictional) lawyer, Frank May, who practices law in San Mateo, California. May’s everyday work mostly concerns wills, trusts, and estate matters, but he somehow gets entangled in one mysterious murder after another.

supposedly, was the first true instance of this form of fiction.² The story takes place in Paris. The neighborhood is horrified by the savage murder of a woman and her daughter. The daughter's body was found stuffed into a chimney, the mother's body had been tossed out the window. The crime baffles the police. Witnesses, however, heard strange sounds, in a language none of them could understand. The mystery is solved, however, by C. Auguste Dupin, a "young gentlemen." Dupin, though living in genteel poverty, has a good family background. He has, moreover, extraordinary powers of deduction. Dupin sifts the known facts, and comes to the conclusion that no human being could have committed the crime. In fact, the "killer" was not a person at all: it was an ape—an orangutan. A sailor, it turns out, had caught the animal in Borneo, and brought it back to Paris. It escaped, and ended up in the Rue Morgue, where it killed the mother and daughter.

A year later, Poe published another story, "The Mystery of Marie Roget." This was based on a real, and somewhat sensational case. A young and attractive woman, Mary Rogers, disappeared in 1841. Later, some men found a body, floating in the Hudson River, near Hoboken, New Jersey. It was the body of the missing girl, Mary Rogers, "the beautiful cigar girl."³ Here too, the police were unable to solve the crime. Mary's boyfriend, who was a suspect in the crime, turned out to have an unshakeable alibi. This young man, however, soon died under mysterious circumstances—very possibly he committed suicide. Poe was enthralled by the case; and saw a chance to make money out of it. He claimed he knew the solution to the mystery, which he would demonstrate in a short story. Once again, he would attribute the solution to the great Auguste Dupin, the Frenchman with almost magical brain power. Poe transferred the story to Paris, changed the name of the victim, but kept many details of the case. Unfortunately, his solution was almost certainly wrong, at least as far as the real Mary Rogers was concerned. It seems likely that Rogers died as a result of a botched abortion; and that her boyfriend, the father of her unborn child, killed himself out of a sense of guilt.⁴

² A novel by William Godwin, *Things As They Are or The Adventures of Caleb Williams* (1794), is sometimes claimed to be the first mystery novel; see P. D. JAMES, TALKING ABOUT DETECTIVE FICTION 19–20 (2009); CHARLES J. RZEPKA, DETECTIVE FICTION 54–56 (2005). Most experts on the history of the mystery do give the credit to Poe.

³ On the case, and Poe's story, see DANIEL STASHOWER, THE BEAUTIFUL CIGAR GIRL: MARY ROGERS, EDGAR ALLAN POE, AND THE INVENTION OF MURDER (2006).

⁴ Dupin also figures in "The Purloined Letter" (1844). Here the mystery is where the letter in question has been hidden; the man who stole the letter, which was of great political importance, was known. The authorities were sure the letter was hidden in his house. They searched and searched every corner, every nook and cranny of the place. No success. Dupin's great powers of deduction led him to solve the mystery: the letter, somewhat altered in appearance, was right under the noses of the investigators.

Poe may have been the first detective writer; he certainly had no way of knowing that these rather overblown short stories were only the beginning of a vast new form of literature. *The Notting Hill Mystery*, published in 1862 by Charles Warren Adams, is supposedly the first full length mystery novel. The plot is fairly thin. More and better examples were soon to come.⁵ In Mary Elizabeth Braddon's novel, *Henry Dunbar* (1864), a murder is the pivotal event; and though any reader with a grain of sense will guess the identity of the culprit, in the novel a detective named Carter solves the mystery.⁶ In France, Emile Gaboriau wrote a series of successful mysteries. His first major novel in this genre was *The Lerouge Case: the Widow Lerouge* (1866). An amateur detective, Tabaret, plays an important role in this book. Someone had murdered the widow Lerouge in her own home. Only in the final pages of the book do we learn who did the crime.⁷

The mystery or detective story took off rather quickly. Willkie Collins, a friend and colleague of Charles Dickens, and a novelist of real distinction, published *The Moonstone* in 1868. This novel is a genuine classic, rich in humor, with a well-constructed plot and an interesting set of characters. The story pivots on the theft of a fabulous gem, a diamond stolen from India, and brought to England. There were elements of the mystery story in a number of Dickens' work as well: in *Bleak House*, for example, published in 1852-1853. Charles Dicken's last novel has the word "mystery" in its title. In this book, *The Mystery of Edwin Drood* (1870), the word "mystery" has, in a way, an ironic double sense. In the 19th century, authors often published their novels as serials, in magazines, before bringing them out as complete books. Half-way through serial publication of *Edwin Drood*, Dickens died. He left hints, but no definite word on how the book would actually end. Thus, the world was left with two mysteries: first, who killed Edwin Drood, the character who gave his name to the book, and second, how did Dickens plan to unravel the mystery, and bring the novel to an end. The answer to both questions is a matter of sheer speculation.

FORM AND SUBSTANCE

Not only did the "mystery" become extremely popular, it also become somewhat stylized. Most practitioners followed norms and conventions—

⁵ A modern edition was published by the Poisoned Pen Press in 2015. The book originally appeared as a serial in a magazine; and the author wrote under the name of Charles Felix.

⁶ Mary Elizabeth Braddon was one of the most famous and successful of the "sensation" novelists; a new edition of *Henry Dunbar* was published in 2010, with an introduction by Anne-Marie Beller. Braddon's novel, *Lady Audley's Secret* (1862) was wildly popular and helped launch her career.

⁷ An English translation was recently published by First Rate Publishers. The book still repays reading; it has a cleverly convoluted plot, twisting and turning in various ways. The identity of the killer struck me as fairly obvious; but it is, as I said, not officially revealed until the end.

rules of the game. Each of these norms and conventions is sociologically interesting. Nonetheless, one can ask an overarching question: why did this precise form of literature arise, and at precisely this point of time? What aspect of the social context provided the soil in which this genre would grow?

To begin with, the 19th century public found crime endlessly fascinating. This was an age of pamphlets, broadsides, and mass-market newspapers, oceans of print given over to blood, gore, vile murders, executions, and great and horrifying crimes.⁸ Cheap and accessible, printed media fought each other for circulation and the attention of readers. Sensational crimes, especially murder, described in a flamboyant (and wildly inaccurate) way, brought them their readers. Periodicals like the *National Police Gazette*, founded in 1845, emphasized crime and punishment; and the more lurid the better. The appetite for what we would today call true-crime stories was enormous. Crime was also a feature of the theater in London. Dozens of stage versions of famous crimes were mounted in the bigger theaters; for example, *Jonathan Bradford, or The Murder at the Roadside Inn*, appeared on the stage in 1833, and was a smash hit; it derived its plot from a notorious 18th century case. It ran for some 160 performances.⁹ Also, as early as the 1830's, "gaffs," cheap, improvised, sometimes temporary theaters, usually costing a penny, seating some 100 to 150 people, often showed scenes from local accounts of horrible crimes. Accuracy was rarely a criterion. There were also puppet shows along these lines.¹⁰

This thirst for blood and gore was certainly a factor in the popularity of mystery writing. But, significantly, the invention of the detective story coincided with the invention of the detective himself: the person, and the profession. Modes of law enforcement changed dramatically in the first half of the 19th century. At one time, a crude system of constables and night watchmen were the main tools in England and the United States. This system probably worked, more or less, in small towns. But as the cities grew, they became more violent and unruly. London in the 19th century was a gigantic metropolis. In the United States, New York, Philadelphia, Boston, and other

⁸ See FLANDERS, *supra* note 1. For the United States, see ANDIE TUCHER, FROTH AND SCUM: TRUTH, BEAUTY, AND THE AX MURDER IN AMERICA'S FIRST MASS MEDIUM (1994). Lucy Worsley, in *The Art of the English Murder*, argues that the development of "sensational journalism... and the whole body of detective fiction" can be connected to the rise of "civilization," which made people feel safe. "Barricaded behind locked doors, sitting by the fire ... people living in the late Georgian age" almost felt nostalgia for the days of violence, death, and rampant crime: these had "once been all too much part of daily life," but now were "recast in the category of entertainment," *op. cit.*, p. 17. To me it seems more likely that, if anything, it was the anonymity and insecurity of city life that fed the appetite for this form of "entertainment."

⁹ See FLANDERS, *supra* note 1, at 125-26; see also AMNON KABATCHNIK, BLOOD ON THE STAGE 1800 TO 1900: MILESTONE PLAYS OF MURDER, MYSTERY, AND MAYHEM 153-62 (2017). The playwright was Edward Fitzball (1792-1873).

¹⁰ See FLANDERS, *supra* note 1, at 57.

cities grew rapidly. All of these cities were unruly places. In the 1830's and 1840's, riots erupted in city after city. Mobs ran wild in the urban slums. Anti-Catholic mobs burned the Ursuline Convent, near Boston, in 1834.

The old system was pathetically inadequate to cope with urban crime. The police force replaced it: a more or less professional, uniformed, paramilitary outfit, on duty every day and all night long. London was the first city in the English-speaking world to organize such a force. The London Metropolitan Police dates from 1829, under the Home Secretary, Sir Robert Peel (hence the nickname, "peelers," or, more commonly, "bobbies"). New York City established a police department in 1844; soon there were departments in Baltimore (1853), Philadelphia (1854), and other cities as well.¹¹

Police officers wore uniforms and badges; they advertised exactly who they were. This was deliberate. Police departments were meant to control and prevent urban crimes and disorders. The more obvious the presence of police, the better for crowd control and riot prevention. A corps of *detectives* was soon added to the regular police force. In England, in 1842, the first such squad consisted of eight men. American cities soon followed: Boston in 1846, New York in 1857. The invention of the detective thus roughly coincides with the invention of the detective story. There are detective stories without "detectives" in the official sense; but the profession grew out of the same soil that produced the literary versions of the detective, as we shall see.¹² And real-life detectives, like Jonathan Whicher in England (one of the original eight detectives of 1842), served at least in part as inspiration for the genre.¹³

What was the essential role of the detective, and why was it important and necessary? The detective's job was different from the policeman's. The policeman was the man on the street, the man on the beat; uniformed, obvious, a visible deterrent. Detectives never wore uniforms; never sported badges. The detective worked, in fact, in the shadows. He was not concerned with rioters, with barroom brawls, or gangs of street hoodlums. His job was to ferret out secret violators, the men who worked with tricks and scams, whose weapon was not fists, but malevolent brains.

In a sense, the detective was the upside-down version of the *confidence man*¹⁴—another type of character that flourished in the first half of the 19th

11 There is a sizeable literature on the history of the police. See WILBUR R. MILLER, *COPS AND BOBBIES: POLICE AUTHORITY IN NEW YORK AND LONDON, 1830-1870* (1977). Boston authorized a police force in 1838, but the department was not formally recognized until the 1850's.

12 JAMES, *supra* note 2, at 13.

13 See, on Whicher, KATE SUMMERSCALE, *THE SUSPICIONS OF MR. WHICHER* (2008).

14 The term may owe its name to the doings of one William Thompson, a swindler of the 1840's. He would pose as a rich merchant; he convinced people to lend him money—to have confidence in him.

century. Life in the cities was fundamentally different from village life—places where everybody knew everybody and everybody knew everybody's business. In big cities, and in raw new towns full of strangers, people could easily change identities, could easily chart new lives; could easily pretend to be something or somebody they were not. It was a situation made to order for clever crooks. Confidence men were skilled swindlers, men who knew how to worm money out of foolish and gullible people. They were poles apart from big city rioters, thugs, armed robbers, barroom brawlers. They were men like "Hungry Joe," a "personally remarkable" man, a college graduate who apparently spoke seven languages. Joe was "always well-dressed . . . about the last man in New York that anyone would take for a swindler."¹⁵ Confidence men (and the occasional confidence woman) were adept at passing themselves off as members of high society; they worked all sorts of scams, covering themselves with a veneer of respectable behavior. The confidence game was a line of criminal work that "an unpolished man cannot successfully follow;" it was a skilled trade. Its practitioners were out for the money, of course; but they also may have taken "fiendish delight in outwitting men illustrious in the higher walks of life."¹⁶ A half-literate brawler could never be a successful con-man. He could not, for example, pass himself off as "Norman LaGrange," supposedly a member of Queen Victoria's elite guard; "Norman" frequented the Waldorf hotel in 1894 (but of course never paid his bill).¹⁷

Like the confidence man, the detective was also "undercover." He too hid his true identity. The detective's work made him a kind of spy, whose target was the underworld. Through clever tactics, through secrecy and stealth, and a thorough knowledge of the tricks and schemes of the confidence man, he was able to fight against the crew of fraudsters and impostors. The detective, in a sense, was a kind of confidence man himself: working, however, on the other side. His key job was to expose secret identities: to catch the smooth-talking, clever men who preyed on members of respectable (and well-to-do) society.

Of course, they never got their money back. The oldest use of the term, according to the Oxford Dictionary, is from 1849. Herman Melville published his novel, *The Confidence Man*, in 1857; see Robert E. Mensel, *A Diddle at Brodningnag: Confidence and Caveat Emptor During the Market Revolution*, 38 U. MEM. L. REV. 97, 112 (2007).

¹⁵ A Celebrated Detective, *The Man-Traps of New York: What They Are and Who Work Them*, NAT'L POLICE GAZETTE (Oct. 1, 1881) at 10.

¹⁶ HELEN CAMPBELL, THOMAS W. KNOX & THOMAS BYRNES, DARKNESS AND DAYLIGHT: LIGHTS AND SHADOWS OF NEW YORK LIFE 729 (1891). Confidence men, as Byrnes put it in *Professional Criminals of America*, are "men of education, possessed of plenty of assurance, gifted with a good knowledge of human nature, and a fair amount of ingenuity;" they "find no difficulty in helping themselves to other people's money." THOMAS BYRNES, PROFESSIONAL CRIMINALS OF AMERICA 40 (1886).

¹⁷ *Spoiled The Colonel's Game*, N.Y. TIMES (Mar. 21, 1894).

Detectives of course did more than this. Their knowledge of criminals and of crime made them experts at detecting pickpockets, at sensing who, in a crowd, was really a sneak thief. They also played a role in developing a kind of technology of detection. Detectives were engaged in a kind of arms race against their enemies on the other side. Since hidden identity was an aspect of crime in the period, there was an eager search for new and better ways to detect and fight crime. Societies had become more mobile, in the geographical sense. People moved from villages to cities; and from country to country. Confidence men, and criminals in general, also took advantage of this kind of mobility. They could easily transfer, from places where people knew them, to places where they were strangers. This posed a problem for law enforcement; and the structure of criminal justice, which was radically decentralized in the United States, made matters worse.

There were new and useful tools at hand: photography, for example. As early as 1857, one Sergeant Lefferts, at the headquarters of the "Detective Police" of New York City, put together a "Rogue's gallery," a "gallery of daguerreotype portraits" in which the "likenesses" of known criminals were displayed.¹⁸ This proved invaluable for the criminal justice system. Photographs could be shared; and photographs (at that time anyway) did not lie. In the late 19th century (from around 1880), police departments also began to use a new technique, the so-called Bertillon system, named after a young clerk in the Paris police department, Alphonse Bertillon. This system used photographs, as well as precise physical measurements: the length of a middle finger, or a left foot; the color of eyes, the dimensions of the head. Bertillon even devised a special chair, in which his subjects were forced to sit; and he standardized the camera which photographed them, in the interests of exactness and comparability.¹⁹ Then, as early as the beginning of the 20th century, fingerprints came into use. The fingerprint ultimately made the Bertillon system obsolete. Fingerprints were unique, and soon became an essential tool of crime detection: the "ultimate achievement in transforming the body into a text."²⁰ Modern police labs, of course, have many other tricks up their sleeves; moreover, forensic information can be shared across state and national borders, in a society which is, if anything, even more mobile than the society of the 19th century.

¹⁸ *Daguerreotype Gallery of Criminals at the Detective Police Office*, N.Y. TIMES (Dec. 5, 1857). This newspaper article is, according to the Oxford English Dictionary, the first instance of the phrase "Rogue's Gallery" in print.

¹⁹ RONALD R. THOMAS, *DETECTIVE FICTION AND THE RISE OF FORENSIC SCIENCE* 121 (Cambridge University Press 1999).

²⁰ *Id.* at 203.

REAL AND FICTIONAL DETECTIVES

Fascination with crime led to fascination with the enemies of crime: police and detectives. Real detectives were not necessarily shy about their exploits. A small but interesting literature consists of the memoirs of detectives: books in which they puffed up their accomplishments, and explained how they caught sly and slippery crooks.²¹ As mystery stories and novels became popular, they often included (fictional) detectives. A detective inspector, Bucket, plays a role in Dickens' *Bleak House*, published only a few years after the creation of the first detective squad in London. Gaboriau's later novels featured a police officer, LeCoq.²² In *The Moonstone*, one Sergeant Cuff is an important character—portrayed as a working detective, and modeled, apparently, on an actual detective. The mystery is not solved until the final pages of the novel.²³

In many novels in the 1860's, especially so-called "sensation" novels, a detective has a hand in solving (or not solving) a mystery; but the detective was rarely the hero of the novel.²⁴ Thus, in Mary Ellen Braddon's novel, *Henry Dunbar*, the detective, Carter, enters the picture very late in the novel. Novels then and later made use of professional detectives and police officers; but gradually amateur sleuths and private eyes came to outnumber them in the literature. A private detective figures in what was supposedly the first mystery novel published in the United States, *The Dead Letter* (1866). The book is credited to one "Seely Register," but was actually written by a woman named Metta Victoria Fuller Victor. She was the first of a long and distinguished line of women who wrote detective fiction. In the novel, young Henry Moreland is murdered; Burton, the private detective, solves the mystery. As became standard, the reader has to wait until the end of the book to learn who is responsible for the crime (frankly, it is not much of a surprise).²⁵ In the late 19th century, Anna Katherine Green (1846-1935) was the most notable mystery writer in the United States.²⁶ *The Leavenworth*

21 For England, see Haia Shpayer-Makov, *Explaining the Rise and Success of Detective Memoirs in Britain*, in *POLICE DETECTIVES IN HISTORY, 1750-1950*, at 103 (Clive Emsley & Haia Shpayer-Makov eds., Routledge 2017); for an American example, see GEORGE S. MCWATTERS, *KNOTS UNTIED: OR, WAYS AND BY-WAYS IN THE HIDDEN LIFE OF AMERICAN DETECTIVES* (Hartford, J.B. Burr & Hyde 1871).

22 LeCoq first appeared in *The Lerouge Case*, but he only played a minor role in that novel. EMILE GABORIAU, *THE LEROUGE CASE* (1866).

23 On this detective, Jack Whicher, see SUMMERSCALE, *supra* note 13.

24 R.F. Stewart, ...AND ALWAYS A DETECTIVE: CHAPTERS ON THE HISTORY OF DETECTIVE FICTION 180 (David & Charles 1980).

25 A reprint edition appeared in 2018, brought out by Neo Books.

26 Many of the most popular mystery writers have been women; Agatha Christie is probably the most famous. In the late 19th century, and the early 20th century, Mary Roberts Rinehart (1846-1935) was an extremely popular writer of detective fiction.

Case: A Lawyer's Story (1878) was a huge success. The plot conforms to a pattern which had already become fairly standard. There is a murder—in this case old man Leavenworth. No one knows who committed the crime. Suspicion falls on his two nieces, who lived in his household. In the end, they turn out to be totally innocent (we knew they would be); and the true culprit is unmasked. As in *The Moonstone*, a working detective plays an important role in the novel: Ebenezer Gryce, of New York. Green went on to write dozens of detective novels; Ebenezer Gryce figured in many of them.

The greatest or at least the best-known “detective” of them all, Sherlock Holmes, first appeared in print a decade later. Holmes, very definitely, was not a marginal character in the works of Conan Doyle; he occupied center stage. *A Study in Scarlet*, published in 1887, introduced Holmes to the world, along with his faithful friend, Dr. Watson, who narrates the story. All of the Holmes stories are still in print; and in an important sense, Sherlock Holmes has never died. He remains a kind of star. The genre too has never died. Quite the contrary. Since the 19th century, tens of thousands of mysteries have flooded the world’s presses; billions of copies have been sold, and the popularity of the genre is pretty much global. Very little of it is “literature” in the usual sense; probably none of it matches up to *The Moonstone*, but the fans do not care. They come from all walks of life; and for many of them, this is one of life’s great (though somewhat guilty) pleasures.²⁷ W.H. Auden called the “reading of detective stories” an “addiction like tobacco or alcohol.”²⁸ It is obviously an addiction shared by many people. The “mystery,” in the world of printed books, has achieved the same kind of astonishing success that ants and beetles have achieved in the natural world.

The “detective” (the person who solves the case) is sometimes, as we said, portrayed as an actual detective; sometimes as a private detective (or “private eye”). Professional private detectives came into existence shortly after the invention of the public detective. Allan Pinkerton was among the first; his agency, the “eye that never sleeps,” protected Abraham Lincoln from assassination plots early in Lincoln’s presidency, and operated a network of spies for the Union forces. The Pinkerton agency grew into a big

²⁷ The critic Edmund Wilson, in 1945, in a well-known essay, called the habit of reading mysteries “a kind of vice . . . somewhere between crossword puzzles and smoking.” Edmund Wilson, *Who Cares Who Killed Roger Ackroyd: A Second Report on Detective Fiction* 59 NEW YORKER (Jan. 20, 1945). The reference in the title is to a novel by Agatha Christie. AGATHA CHRISTIE, *THE MURDER OF ROGER ACKROYD* (William Collins 1926). In “The Detective Novel,” by Willard Huntington Wright, published in the same year as Christie’s novel, the author calls the detective novel “a complicated and extended puzzle cast in fictional form,” and claims its popularity is due “at bottom and in essence to the same factors that give popularity and interest to the cross-word puzzle.” Willard Huntington Wright, *The Detective Novel*, in SCRIBNERS 532, 534 (1926). The irony is that Wright was himself a famous and successful writer of detective novels, under the pseudonym of S. S. Van Dine.

²⁸ W.H. Auden, *The Guilty Vicarage*, in *DETECTIVE FICTION: A COLLECTION OF CRITICAL ESSAYS* 15 (Robin W. Winks ed., 1988), <https://harpers.org/archive/1948/05/the-guilty-vicarage/>.

business, though it gained a dubious reputation in the later 19th century as a source of strike-breakers.²⁹ There were many other agencies, too, which became fairly large businesses.³⁰

Private but professional detectives do appear in crime fiction, and continue to do so, but usually as lone wolves. And, far more often, the “detective” is something entirely different; in many cases, someone unexpected and improbable. Mostly, the “detective” is a man; but in the literature there have also been plenty of women as well.³¹ The range of “detectives” is quite awesome: in this endless array of pages, we can find almost anything imaginable. Thus the “detective” can be a mute, a blind man, a priest, a rabbi, an accountant, an English lord, a village spinster, a college professor, a stockbroker, a member of a tribe of Native Americans: in short, anybody. He or she can grow orchids, play the violin, or pursue some other hobby or avocation. He or she can represent any nationality and race. The thousands and thousands of “mysteries” have explored almost any situation a person can think of. Within this gargantuan mass of books and stories, you can find whatever patterns, twists, or gimmicks you might want, whatever possible variation there might be on whatever possible theme.

WHO DID IT?

One might think, then, that these millions of pages cannot possibly have anything in common. And in a sense, this is true. There are, of course, patterns, and a kind of standard plot. In a deeper sense, though, the majority of these books and stories *do* share a significant feature: they turn on the problem of *personal identity*. If we can describe any mystery as typical, it would be something along the lines of *The Leavenworth Case*; or the novels of Agatha Christie and other popular novelists. In the beginning of the novel, someone is murdered; we meet characters who are, or could be, suspects—they have, perhaps, both motive and opportunity. There are twists and turns along the way. The path is strewn with red herrings, although real clues can be scattered here and there in the text. Suspicion falls now on this person, now on that. Finally, in the last chapter, the true killer is unmasked. In any event, if the work has been skillfully done, the solution comes as a great surprise. Agatha Christie is perhaps the most successful mystery writer ever,

²⁹ On the private detective, and private detective agencies, JAMES MACKAY, ALLAN PINKERTON: THE FIRST PRIVATE EYE (John Wiley & Sons, Inc. 1997); see FRANK MORN, “THE EYE THAT NEVER SLEEPS:” A HISTORY OF THE PINKERTON NATIONAL DETECTIVE AGENCY (Indiana Univ. Press 1982); JOHN WALTON, THE LEGENDARY DETECTIVE: THE PRIVATE EYE IN FACT AND FICTION (Univ. of Chicago Press 2015).

³⁰ See WALTON, *supra* note 29, at 33; and in general.

³¹ See JOSEPH A. KESTNER, SHERLOCK’S SISTERS: THE BRITISH FEMALE DETECTIVE, 1864-1913 (Ashgate Publishing Ltd. 2003).

with the possible exception of Arthur Conan Doyle and his creation, Sherlock Holmes. Apparently, more than two billion copies of Christie's books have been sold. She has been translated into more than 100 languages, including Icelandic and Sinhalese. Her novels have been turned into wildly successful movies; they have spawned popular television programs; a Christie play, *The Mousetrap*, ran on the stage in London longer than any other play in history.

Christie's success is due, at least in part, to her talent for fooling the reader; her ability to provide an ingenious twist at the end. In Agatha Christie's novels, the guilty party is almost sure to be somebody you never suspected at all. In one of her novels, the narrator himself turns out to be the killer (some people think this breaks an unwritten rule). In another one, *all* of the suspects are guilty; and in yet another novel, *And Then There Were None*, a group of people are trapped on an island; they die one by one, until it appears that all of them are dead, and hence nobody could be guilty, since the island is otherwise totally empty. In this book, as in all the others, there *is* a solution; just not an expected one. A startling ending has been an abiding trait of mysteries. This was true as early as *The Moonstone*: most readers of the novel will be surprised to find out who really stole this fabulous jewel.

But *why* does the solution surprise us—as it should, if the book is successful? Why is it so hard to guess, so hard to unravel the mystery, even when the author drops certain clues along the way? Because the author *wants* to deceive us. She wants to lead us astray. The author wants us to think that X, who had a powerful motive, was the actual murderer. He very likely is the one who killed X's crusty old uncle, the skinflint, because the uncle was about to change his will, cutting X off without a penny. It turns out, though, that X was not the killer at all. The killer was Y, somebody we never suspected, whose guilt we never guessed. The author has kept us uncertain and confused; we turn the pages eagerly, until we get to the final chapter, and the mystery is solved: it was Y, in the end, a surprising turn of events. It was someone, in other words, whose true *identity* eluded us. A person we thought was innocent turns out to be the opposite. In many mysteries, to be sure, there is more than one hidden identity. In fact, in many books, we keep getting surprises—suspect after suspect turns out to have a motive, turns out to have some unexpected secret, something dark in their past. Piling up such surprises makes the novel more and more intriguing as the story unfolds. The murder victim, perhaps, was a blackmailer, who knew many secrets; perhaps this is why he was killed. A guilty secret characterized, for example, all of the victims in Agatha Christie's great puzzle, *And Then There Were None*. In many successful novels, the plot gets more and more complicated as we go along. At the outset, the situation seemed to be quite simple; but it turns out not to be simple at all: it is more like a Russian *matryoshka* doll; wheels within wheels.

The general pattern was set as early as *The Moonstone*. Another notable mystery of the 19th century was *The Mystery of the Hansom Cab* (1886), by Fergus Hume. Hume, mostly forgotten today, sets the scene in Melbourne, Australia. The writing is sharp, the plot quite ingenious. In the book, a man named Oliver Whyte, dead drunk, is chloroformed to death in a horse-drawn cab one evening. Suspicion falls on a young man, Brian Fitzgerald, an Irish immigrant. Brian is engaged to the daughter of one of Melbourne's richest men. The evidence seems quite overwhelming. Brian claims he is innocent, but he refuses to cooperate with the defense, for reasons he will not divulge. A clever detective, Kilsip, comes to the rescue. Brian is put on trial; but in the middle of the trial, a surprise witness appears, providing Brian with an alibi. The jury acquits him. But if not Brian, then who? From then on, the plot weaves in and out; with more surprises at the end. (Again, it would be cheating to give away the secret). Australia, where the book is set, was a raw, new country (relatively speaking); the characters were virtually all immigrants or had immigrant backgrounds. They came to Australia and created new identities for themselves. Dark secrets and old identities, buried deep in the past lives of the character, turn out to be the key to the solution.

This, as we said, is a frequent trope of mystery stories: hidden identity. False identity. Characters hiding some vital fact in their past. A prospective bridegroom is actually already married. A married woman is not in fact really married. One or more characters pretending to be somebody else.³² Characters covering up a secret past. In short, characters who present a self which is not what it seems to be. Above all, the characters (or at least one key character) pretend to be innocent; they "pass" for innocent; and indeed, pass successfully, until Miss Marple or Sherlock Holmes or Perry Mason or Nero Wolfe or some other "detective" pierces through the lies and the disguises, and unveils their true identity.

In many English mysteries, starting from the early days of the genre, the characters were drawn from the English landed gentry. This was the case in *The Moonstone*. It was a common feature of mysteries, as late as what has been called the "golden age" of the English mystery (the period between the two world wars). In Agatha Christie's novel, *The Murder at the Vicarage* (1930), one of Christie's most famous "detectives," Miss Marple, the village spinster, makes her first appearance. In novel after novel, Miss Marple solves mysteries which baffle the bumbling authorities. A country vicarage seems totally harmless, and in general, Miss Marple's (fictional) village, St. Mary Mead, appears to be the ultimate in genteel, quiet respectability. But even this haven is not immune from outside influence—and from dark secrets. In Agatha Christie's world, village life is changing, subtly at times, more overtly

³² For example, identity theft was a key element in Mary Elizabeth Braddon's "sensation" novel, *Henry Dunbar*. MARY ELIZABETH BRADDON, *HENRY DUNBAR* (John Maxwell 1864).

at other times. The problems that bedevil modern life are oozing into the pores of traditional England.

In the “golden age,” characters were often, as we said, rich and well-bred, drawn from the elite, the landed gentry, country squires, men and women of fashion, or members of the rising middle class. Lord Peter Wimsey, a member of the English nobility, is the “detective” in the works of Dorothy Sayers, written in the 1920’s, and considered among the finest of the period.³³ Even in more recent periods, elite households are the locus of the mystery in English detective novels; murders occur in the quiet precincts of Oxford, among other unlikely places.³⁴ P.D. James is one of the leading mystery writers of the late 20th century. Her debut novel (*Cover Her Face*, 1962), takes place in an elegant home; the victim, Sally Jupp, is a housemaid, part of the staff.

Yet in some ways the *identity* issue is even more starkly present in these neat and oddly bloodless stories of the golden age. Despite the genteel surroundings, the very form of the mystery novel demands something discordant: at least one character must have a skeleton in the closet; and, as we pointed out, there are often many closets, and many skeletons. In the end, the most germane of the skeletons lurks in the closet of the least likely character. The principle of the detective story suggests that everybody “is acting a part;” that things “are not what they seem.”³⁵ The killer or thief who is revealed to be the true criminal, at the end of the novel, has indeed been “acting a part;” and is most definitely not what he or she seems.

Sherlock Holmes, the brainchild of Arthur Conan Doyle, remains king of the fictional “detectives.” Holmes, who (supposedly) lived at 221B Baker Street in London, was eccentric, played the violin, and was addicted to cocaine. His powers of analysis were legendary (and scarcely believable). He could look at a hat, a cane, a pipe, and (without seeing or talking to the owner), “deduce” an incredible array of facts about the owners. In his first book, *A Study in Scarlet*, Holmes looks at a corpse, and tells the representatives of Scotland Yard, that the murderer was a man six feet tall, that his feet were small, that his complexion was ruddy, that he had long

³³ See RZEPKA, *supra* note 1, at 161.

³⁴ In one of Dorothy Sayers’ novels, *The Unpleasantness at the Bellona Club*, the setting is an exclusive London club; the victim is an old ex-General, who dies of an apparent heart attack. DOROTHY L. SAYER, *THE UNPLEASANTNESS AT THE BELLONA CLUB* (Harper & Row, Publishers 1928).

³⁵ Ian Patterson, *The Body in the Library is Never Our Own*, 42 LONDON REV. BOOKS (2020). Patterson’s essay is chiefly about Ngaio Marsh, a well-known writer of mysteries (and a native of New Zealand). Patterson argues that the “golden age” of the British mystery—the period between the two World Wars—reflected the “unprecedented” social changes of the period; detective fiction “was a symptom of the need to reassert... conventional social order;” but the solution to the mystery, the unmasking of the “murderer’s identity may conceal a more troubling and less detectable subtext,” <https://www.lrb.co.uk/the-paper/v42/n21/ian-patterson/the-body-in-the-library-is-never-our-own>.

fingerprints on one hand, and that he smoked a particular brand of cigar. Scotland Yard is, of course, amazed (and skeptical); but Holmes always turns out to be right.

The “detectives” in mystery stories often have this kind of ability, or something close to it. Indeed, Poe’s Dupin, the first “detective” of them all, had a mind that could “look right through a man’s body into his soul, and uncover his deepest thoughts,” as we are told in “The Murders in the Rue Morgue.” Agatha Christie’s Miss Marple, the village spinster, has an intimate knowledge of village life; she knows all the quirks of character in her little town. An inordinate number of murders take place there; but Miss Marple, with her unerring insight into the foibles of the villagers, has no problem solving them. Christie’s other “detective,” Hercule Poirot, an eccentric Belgian, solves even the most impenetrable mystery through the use of his “little gray cells.” Rex Stout created his fictional “detective,” Nero Wolfe, in the 1930’s. Wolfe is seriously obese; he rarely leaves his luxurious home in New York City, where he grows orchids and eats gourmet meals prepared by his cook. Clients come to see him; his assistants, notably Archie Goodwin, bring him the information he needs; Wolfe’s extraordinary brain does the rest. G.K. Chesterton created the short, dumpy figure of Father Brown, the Catholic priest, carrying an umbrella at all times; Father Brown, featured in a series of stories from 1910 to the 1930’s, has an instinctive grasp of human nature. This leads him unerringly to the surprising solution to various puzzling mysteries. The Father Brown stories often have a religious twist, or convey a religious (Catholic) message; Father Brown is more interested in saving souls than in solving crimes; in any event, he has an uncanny ability to see through the plots and schemes of the godless.

Sherlock Holmes, and the other brilliant fictional detectives, conveyed an implicit message. In modern life, true identity was ambiguous; class lines were blurred; in a shifting, mobile, rapidly changing society, there were many hidden mysteries of character and personality. People were not necessarily what they seemed to be. Only a shrewd “detective” could penetrate all veneers, see through all disguises, read the secret signs, and expose the “real” identities that lay underneath. The fictional detectives were mostly not themselves members of police or detective squads. Indeed, professionals are often shown as incompetent, or ineffective. Still, fictional detectives mirror the skills that real-life detectives were supposed to have, the ability to see through the surfaces, to go down deep, no matter how thick the disguise, how deceptive the surface behavior.

The mystery story, in a way, reflects the dichotomy expressed in Robert Louis Stevenson’s famous novella, “The Strange Case of Dr. Jekyll and Mr. Hyde” (1886). Dr. Henry Jekyll, the leading character, is a member of the upper class, a man with servants, a man who travels in genteel circles.

Dr. Jekyll, however, is convinced that man has a “dual nature;” a respectable outer self, and an inner, evil self. Dr. Jekyll finds a way (through drugs) to release this inner, evil self. This converts him into a dwarfish and sinister creature, Edward Hyde, who prowls through London, committing terrible crimes. The story ends tragically, of course. But in a way, Stevenson’s duality is at the heart of the mystery story. Miss Marple’s village, and English society generally, harbor something like the dichotomy between Jekyll and Hyde, something like this clash of identities, which lurks hidden even in circles that on the surface seem totally respectable.³⁶ False presentation of self; false identities: these are the unspoken premises of the mystery story.

In Poe’s “Rue Morgue,” at the very dawn of the genre, the “murderer” turns out to be an ape: a wild creature of the jungle, let loose in Paris, where he proceeds to destroy the lives of two innocent women. The evil Mr. Hyde, in Stevenson’s novella, is in his own way a kind of savage, let loose in polite society. Agatha Christie’s tale of murder in a village vicarage seems worlds apart: yet it too depends upon a secret savage, a person with evil intent, hiding behind a mask of respectable behavior: a kind of village Mr. Hyde. And the fictional examples mirror in many ways the real-life world of high crime. Famous murder trials were sensational and fascinating to the public, precisely because they asked the same question as a mystery novel, though about a single person, the defendant: who is he really? Is he Jekyll or Hyde?

The Lizzie Borden case, in the 1890’s, one of the most famous criminal trials in American history, a trial that enthralled and fascinated the public, posed this question in a stark and naked form. On a hot August day, a brutal crime destroyed the peace and quiet of Fall River, Massachusetts. Mr. and Mrs. Borden, leading citizens of the town, were brutally murdered with an axe. Suspicion fell on Lizzie, their unmarried, church-going daughter; she was arrested, charged, and put on trial.³⁷ No person could have seemed a less likely killer than Lizzie Borden. In the end, the jury could not bring itself to find her guilty; could not decide that this woman, so outwardly respectable, so well-connected, was a murderous devil underneath, a person capable of slaughtering her stepmother and her father. Lizzie Borden went free. But the Borden case, and other notorious trials, seemed to demonstrate that things were not always what they seemed; or rather, that people were not always what they seemed; that there were skeletons even in the most respectable closets.

³⁶ As Robert W. Gordon (private communication) has pointed out, one could even invoke the Freudian idea of the unconscious: the notion that strange and non-Victorian motives and tendencies lie deep inside people who otherwise seem, on the surface, to be the very soul of bourgeois respectability.

³⁷ There is a huge literature on the Lizzie Borden case. For a recent study, see CARA ROBERTSON, *THE TRIAL OF LIZZIE BORDEN: A TRUE STORY* (Simon & Schuster ed., 2019); see also JOSEPH A. CONFORTI, *LIZZIE BORDEN ON TRIAL: MURDER, ETHNICITY, AND GENDER* (Univ. Press of Kansas 2015).

A notorious English case in the 1860's raised a similar issue. In Road Hill House, in the English countryside, young Saville Kent, three years old, was abducted and murdered; his body was tossed into an outdoor privy. It was almost certainly an inside job: the killer was either a member of the family, or one of the live-in servants. Suspicion fell on Saville's half-sister Constance, a girl of sixteen. Here too, it seemed "almost inconceivable that a respectable girl could be possessed of enough fury and emotion to kill, and enough cool to cover it."³⁸ Like the Borden case, the crime threatened to tear off (as it were), the façade of a comfortable country house; it implied a vicious skeleton in the closet of a respectable family. This was the underlying ethos of the mystery novel; it was also the reality that detectives in real life coped with every day. In fact, Constance was guilty of this "inconceivable" crime. Years later, apparently after a religious conversion, she confessed.

THE MYSTERY AND ITS RIVALS

Detective fiction, the fiction of Sherlock Holmes, Miss Marple, and Father Brown, stood in sharp contrast to other forms of popular fiction; among them, stories with ghosts, magic, and non-human spirits. While the detective story is basically a product of the 19th century, ghost stories, legends, and tales of the supernatural go back much further in time. There are folk tales in most cultures, tales of black and white magic; frogs that turn into princes; sleeping beauties that a kiss can awaken; Cinderella transformed by a fairy godmother; haunted houses; ghosts that walk about at night. Science and rationality were on the march in the 19th century; but children still found delight in fairy tales, while adults believed in magic, in miracles, in many meta-human events. Religious faith was one of the strongest bonds in society. Waves of religious passion periodically swept over the United States. If the 19th century was an age of science, it was also an age of resistance to science, resistance to rationality; millions clung tenaciously to old beliefs; the Bible was still the holiest of books. If the theories of Charles Darwin contradicted or seemed to contradict the Bible, believers would choose the Bible over Darwinian heresy. The 19th century was rich in new technology, but also in new religions: Christian Science, for example, or the religion of the Latter-Day Saints, founded by Joseph Smith.

Most people in developed societies believed in the afterlife; they believed, or hoped, that the living might be able to speak to the dead. Death was a constant presence: children died of childhood illnesses; plagues carried off adults; Civil War battles and battlefield diseases slaughtered thousands

³⁸ SUMMERSCALE, *supra* note 13, at 156. Kate Summerscale's book is a full-length exposition of this sensational case.

and thousands of young men, North and South. Grieving families craved the comfort of the afterlife—heaven as “an eternal family reunion,” where they would see their sons, brothers, husbands again. Spiritualism promised something here and now, rather than later: a way to speak to the dead. The “planchette,” a wooden board (later known as the Ouija board), was the vehicle to convey messages to and from the beyond.³⁹ Ironically, Arthur Conan Doyle, who created Sherlock Holmes, that most calculating of (fictional) men, firmly believed in the spirit world; in reaching across the barrier and talking to lost souls.

Doyle’s belief was ironic, precisely because the detective story was and is the very opposite of the ghost story, the opposite of tales that played on ancient beliefs in ghosts and demons, in the magical and the supernatural.⁴⁰ The detective story is almost obsessively rational; it depends for its very life on rationality. The mystery has to be solved in the end; and solved in a way that makes sense here on earth. It cannot fall back on the supernatural, on magic. For a mystery writer, it would definitely count as cheating to pull a magical rabbit out of the hat.⁴¹

This point is powerfully illustrated by one sub-genre: the so-called locked room or locked door mystery. In these stories, the puzzle is not only *who* did it, but how on earth was it done. The crime itself seems utterly impossible. How, for example, could anybody shoot X to death in his locked and sealed room; suicide is ruled out; in any event, when they break down the door, and search the room, no gun can be found. It’s as if the killer, and the gun, somehow walked through the walls and escaped. The locked-room mystery teases the reader: how can we explain what happened? Is there a ghost here, or some ancient curse playing out? No: in the end, there is a rational explanation; and what seemed to be magic is shown to be ordinary human crime.

³⁹ DREW GILPIN FAUST, *THIS REPUBLIC OF SUFFERING: DEATH AND THE AMERICAN CIVIL WAR* 180 (1st ed., 2008).

⁴⁰ Ghost stories, and similar forms of literature, remained prominent in the 19th and 20th centuries, though probably never as popular as mysteries. A few notable writers specialized in this form of literature. See SHERIDAN LE FANU, *IN A GLASS DARKLY* (Oxford World Classics 2008); M.R. JAMES, *COLLECTED GHOST STORIES* (Wordsworth Editions 2007).

⁴¹ Judith Flanders, *THE INVENTION OF MURDER: HOW THE VICTORIANS REVELLED IN DEATH AND DETECTION AND CREATED MODERN CRIME* 295 (2011). Flanders sees a distinction between “sensation-fiction,” and “crime fiction” (that is, the mystery story): “Sensation-fiction implied a world in which every respectable person had a potentially unrespectable secret life, while crime fiction reassured the reader that only one person did;” the identity of that person would be revealed at the end. True enough: but crime fiction was not totally “reassuring;” yes, quite possibly only one person in some particular group had a secret life and had committed a secret crime. But, without the skill of Miss Marple or Lord Peter Wimsey or Sherlock Holmes or Father Brown, it was impossible to find out who this was. Moreover, in a great many novels and stories, we learn that *many* of the characters in fact had a secret life; indeed, this is one of the ways in which the author can strew false clues about, and create that tantalizing confusion which draws the reader on page after page.

One of the first examples of this tantalizing art-form was *The Big Bow Mystery* (1895), by Israel Zangwill.⁴² The victim, Arthur Constant, a young lodger in London, is found dead. He fails to appear at breakfast; this worries his landlady; she is convinced that something is awry; she pounds on the door, but he does not answer. The room is locked and bolted from the inside. The landlady, in a panic, calls in a neighbor; they smash down the door. Inside, poor Arthur is dead—murdered. His throat has been cut, apparently with a razor. Young Constant had no reason to kill himself. Moreover, no trace of the razor or any other weapon can be found in the room. And all the windows, and the chimney, are either locked, or too small to permit anyone to come in and go out.

In John Dickson Carr's novel, *The Hollow Man* (1935), his detective, Gideon Fell, provides the reader with a lecture on locked room mysteries; Dr. Fell lists various modes of solving these puzzles, some of them rather far-fetched: a dagger made of ice (which kills, then melts, leaving no trace behind); or an "ingenious grandfather clock," which, at one point, starts making a hideous clanging noise; when someone in the room touches the clock to turn it off, his touch releases a blade.⁴³ Zangwill's ingenious solution in *The Big Bow Mystery* was another method (in keeping with a well-known convention, I will not give the secret away). In every case, a solution does emerge. And one that makes sense (more or less). Mystery novels, after all, claim to take place in the real world; they recount events that may be a bit far-fetched, but are at least possible. In these novels, too, the mystery is always solved: the killer is unmasked, and the guilty suffer while the innocent escape. The real world too has its mysteries, including mysteries of identity. In the real world, some of these are never solved, identities are never unmasked, the killer is never found out and arrested. The identity of "Jack the Ripper" is still unknown. In other cases, we are left in a state of uncertainty: was Lizzie Borden guilty of the crime? In the world of detective fiction, on the other hand, the knots are always untied. Hence, although the classical mystery novel reflects the disorders of a changing society, and thrives on those disorders, on dry-rot underneath a calm and deceptive surface, in the end, in the final chapter, the loose ends get neatly tied up. Indeed, detective stories in a way "commonly provide that particular sort of

⁴² There are elements of the locked door mystery in Poe's *Murders in the Rue Morgue* as well. EDGAR ALLAN POE, *THE MURDERS IN THE RUE MORGUE* (1841).

⁴³ Quoted in MARTIN EDWARDS, *THE GOLDEN AGE OF MURDER: THE MYSTERY OF THE WRITERS WHO INVENTED THE MODERN DETECTIVE STORY* 316 (2015). For a good example of a locked door mystery, with an ingenious (and to me unconvincing) solution, see RUPERT PENNY, *SEALED ROOM MURDER* (2007) (1941). Gaston Leroux, a French author most well-known for *The Phantom of the Opera*, published a locked room mystery, GASTON LEROUX, *THE MYSTERY OF THE YELLOW ROOM* (2021), with a particularly clever solution.

happy ending which is the most perfect of all and which may be described as ‘justice triumphant.’”⁴⁴

The story of Jekyll and Hyde is not a mystery in the sense of Sherlock Holmes or Edgar Allan Poe. Whatever claim it makes of “science”—a strange drug turns Jekyll into Hyde—is in fact completely bogus. Nonetheless, the novella poses in stark form the puzzle of identity: who are we really? This person on the street: is he Jekyll or Hyde? In the anonymity of the city, no one can be sure. Behavior, mode of dress, speech habits: these are valuable clues. But, as the rise of the con man tells us, the clues can play false.

The mystery story shares this puzzle of identity. It conveys the same sense of surprise. Not to the reader of Stevenson’s novella, to be sure: the reader knows all along that Jekyll and Hyde are one and the same. But nobody on the street, who passes them by, could possibly know. And, as we mentioned, the puzzle of personal identity is also at the core of many famous and sensational trials, including the Lizzie Borden trial; it is the puzzle that gives them their fascination, their excitement. The mystery of identity is the thread that binds together countless real and fictional “mysteries.”

SPIES AND COUNTERSPIES

Simulated identity is at the root of another branch of popular literature that developed in the 19th century: the spy novel. The spy, unlike the detective, practices a profession with a very long history; spies are mentioned in the Bible. Medieval and renaissance kings had spies who reported on foreign enemies. But spy novels as a genre came into its own in the late 19th century. In this period, real spies were becoming more important. The technological revolution gave us the railroad, the telegraph, the telephone: it also advanced the toys and instruments of war. This made spying especially vital. A successful spy might be able to gather information about secret war plans, and information, too, about new and developing weapons of war.

There is a huge literature about spies, and the exploits of spies, especially during the various wars of the twentieth century. Spies who worked for the Allies; spies who worked for the Nazis; double agents; spies of every sort. Spying has made a real difference in the conduct of modern wars. Fictional spies, like fictional detectives, no doubt reflect a distorted picture of espionage; but that has been perhaps part of their attraction. Eric Ambler (1909-1998) made a name for himself in this field, starting with his first novel, *A Coffin for Demetrios*, published in 1939. An earlier example

⁴⁴ Joseph Wood Krutch, *Only a Detective Story*, in *DETECTIVE FICTION: A COLLECTION OF CRITICAL ESSAYS* 45 (Robin W. Winks ed., 1988).

was *The Scarlet Pimpernel* (1905), by Baroness Orczy. The action in this novel took place during the French Revolution. The main character, Sir Percy Blakeney, presented himself to the world as a kind of fop, a mindless fool. Meanwhile, in France, the guillotine was devouring its victims, among them members of the French nobility. The notorious “scarlet pimpernel” manages to save many lives, through his daring exploits. Nobody was able to uncover his real identity. In fact, it was Sir Percy himself. Like the detective novel, the spy novel plays on hidden identities—and surprising ones. Who could have guessed that Sir Percy was a bold and notorious spy? More recently, John le Carré’s spy novels have been enormously popular. In *Tinker Tailor Soldier Spy* (1974), the main character, George Smiley, searches for a “mole” deeply imbedded in the highest circles of the British intelligence service. (Of course, he succeeds in uncovering the “mole”).⁴⁵ Like the characters in many spy novels, the “mole’s” success, like Sir Percy’s, and the success of all spies, real and fictional, depends at least in part on their ability to hide who they are, to deceive the whole world as to their true identity.

This duality binds together the spy novel and the mystery novel; both forms flourished under the same background conditions: mobility and restlessness; the explosive growth of cities, the mass migrations from village to city, and from country to country; also the blurring of markers of class and background; all of these made personal identity more ambiguous, more problematic. Some real-world spies, like the notorious “Cambridge five,” who spied on England in the service of the Soviet Union, were men of culture and social position—unlikely traitors, it would seem. They, like the spies who spied *for* England and against the Soviet Union, lived double lives; and many of them got away with their double lives for years.

HARD-BOILED

Agatha Christie’s small towns and vicarages, and the British mysteries positioned in the comfortable world of the well-to-do, had their American counterparts. Mary Roberts Rinehart was an American writer on the Christie model: very popular, very successful. The narrator of her most famous novel, *The Circular Staircase* (1908), describes herself in the opening sentence as a “middle-aged spinster;” she has money, has a personal maid; and the action takes place in an elegant country house with “extensive” grounds and a staff of servants. The world of the American “hard-boiled” mystery is radically different. The “golden age” of this type of mystery began in the 1920’s. This

⁴⁵ For the exploits of a modern “mole,” this time on the British side, see BEN MACINTYRE, *THE SPY AND THE TRAITOR* (2018); the book deals with the career of Oleg Gordievsky, a high-ranking member of the KGB who spied, out of conviction, for the British. The subtitle of the book is “The Greatest Espionage Story of the Cold War.”

golden age was very different from the classic (English) golden age, although roughly contemporary. Raymond Chandler and Dashiell Hammett were the two most noted “hard-boiled” writers. In Agatha Christie and Mary Roberts Rinehart there is violence to be sure; indeed, a murder is what usually sets the plot in motion. But in a way, this happens, as it were, off-stage; and one cannot imagine Miss Marple or Lord Peter Wimsey or Father Brown ever indulging in violence themselves. Nor is there overt and graphic sex in these novels: certainly not for Miss Marple or Father Brown; and Sherlock Holmes, Nero Wolfe, and others of the tribe, strike the reader as peculiarly sexless. Occasional “detectives” were (we are told) married and some even had children; but for the most part, nothing much hinged on their personal lives.

The world of Chandler or Hammett is different: darker, more corrupt, more violent; and more overtly sexual. In an Agatha Christie novel, the police may be incompetent; and they fail to solve the mystery. But their honesty is unquestioned. In Chandler’s novels, on the other hand, the police can be brutal and corrupt. Sex and violence suffuse the pages of these books. The general shape may resemble the English novels: a crime is committed, usually a murder, and it is solved at the end of the book, after many twists and turns. But the tone is very different. Even the landscape is different. In a typical passage in Chandler’s novel, *The Lady in the Lake* (1943), Philip Marlowe, the narrator (a private eye) describes what he sees as he drives: “Behind wooden fences the decomposing carcasses of old automobiles lay in grotesque designs, like a modern battlefield. Piles of rusted parts looked lumpy under the moon.”⁴⁶ Chandler’s characters get drunk, attack each other, take drugs, and have sex with this one and that one, almost at random. In books like *The Lady in the Lake*, or *The Big Sleep* (1939), it is hard to find a decent, upright character. The key family in *The Big Sleep* is rich and lives in a mansion; the two daughters who are key players in the drama are sex-mad and addicted to drugs. Everyone in the book is dark and corrupted, women as well as men. Nobody can be trusted. Dead bodies pile up. Women throw themselves at Philip Marlowe. He himself has a certain amount of dogged integrity; but he conceals it under a tough exterior. And, of course, he carries a gun.

Agatha Christie, and the English (and American) mysteries of her type, imply a specific image of society. It is smooth on the surface, but there are skeletons in the closet and dirty secrets, carefully hidden from view. Society is rapidly changing; but the process of decay is subterranean. People in your circle of society, whatever it is, are not always what they seem. Modern life, and in particular city life, has made identity problematic. This is the era that gave rise to the detective squad. It was also the age of the detective’s enemy:

46 RAYMOND CHANDLER, *THE LADY IN THE LAKE* 137 (1943).

the confidence man, and the age of all the guilty people, the thousands and thousands of them, that come to grief in the last chapter of mysteries, the thousands and thousands of books in this genre. Rot has set in, quietly, even in the genteel precincts of the landed gentry and the homes of the upper middle class. Some of it is invisible to the naked eye. It takes a Miss Marple or a Sherlock Holmes to turn over the stones and reveal the vermin crawling underneath. Yet, for all that, the ultimate message is (implicitly) hopeful: Sherlock Holmes or Miss Marple can restore social order, at least temporarily.⁴⁷ Crime in Agatha Christie definitely does not pay. The murderer is exposed; and will be duly punished for his crimes.

America in the 20th century was more like Raymond Chandler's world, than Agatha Christie's world. To a degree, reality was masked by prudery and self-censorship. But this was an America of red-light districts, police brutality, municipal corruption, and politicians who were creatures of the mob and entangled with the mob. Reform movements, in the late 19th century, and the first part of the twentieth century, struggled to clean up the cities, to destroy the red-light districts, to get rid of bars and saloons, and to replace corrupt city machines. Yet national Prohibition, the jewel in the crown of this movement, was in the end a political failure; it lasted only a decade or so. Corruption was deep-seated, and so was vice. The Prohibition years struck many observers as years of rank lawlessness; the decade of the 20's was followed by years of depression and despair.

In Chandler's world, and in the hard-boiled school in general, traditional society has died, along with the traditional values of traditional society. Chandler parades before the reader drunks, crooked businessmen, predatory women, drug addicts, brutal and dishonest policemen. Private detectives, like Marlowe or Hammett's Sam Spade succeed because of their cynical grasp of reality, their awareness that they live in an ugly world. The killers in these novels may have motives not unlike the killers in Agatha Christie: greed, jealousy, lust for revenge, thwarted love, escape from blackmail. But the motives are rawer, cruder now. In these books, one man alone is guilty, perhaps, of the crime that sets the plot in motion. Yet all the rest are guilty too—not of that particular crime, but of something else no doubt. Guilt, violence, and corruption pervade every page of Chandler's books.

Today, among the thousands of mysteries published each year, there are mysteries of the Christie type and the Chandler type, and every possible

⁴⁷ In JOHN SCAGGS, *CRIME FICTION* 46 (2005), John Scaggs claims that in Golden Age fiction the "threat of social disruption comes from within;" arguably, then, when Miss Marple unmasks the killer who has disturbed the peace of her village, she is in fact restoring a kind of order. And this is in fact true: at least for the particular situation. But in a wider sense, order can never be restored, because society has changed too much; personal identity will remain ambiguous and uncertain, and thousands of closets will contain their hidden skeletons.

variation in between. The old forms persist; but the “gritty realities of today” are inevitably reflected in the genre: the “reality and the uncertainties” of the time we live in find their echoes in many of these books; an age in which people feel “threatened by crime and disorder,” by a “constant awareness of the dark undercurrents of society and of human personality.”⁴⁸ Mysteries appear in language after language; and they reflect, necessarily, the local culture.⁴⁹ One can even speak of national “schools” of mystery writing. Today, Scandinavian crime fiction is so popular it almost constitutes a genre of its own: “Scandinavian noir.”⁵⁰ Scandinavia may be a “beacon of social democracy,” but, as one reviewer put it, the “reality of life is darker and more complicated,” at least in the novels.⁵¹ “Scandinavian noir” is like the hard-boiled school, and perhaps even more so. These books seem to come out of grim, dark, northern winters. They are suffused with sex and violence; women are raped, children are abused and murdered. Yet, like the more genteel mysteries, they illustrate themes that run through the works of every school: the ambiguity of identity, the duality of modern life. Every society, even rich, tranquil Scandinavian society, is both Jekyll and Hyde.

One more theme is worth mentioning: thrillers which feature the hunt for serial killers. In some very popular novels of today, the villain is a serial killer; this is true, for example, in the work of Patricia Cornwell.⁵² Serial killers are almost always men. They are psychopaths who commit motiveless crimes. They form an irrational and murderous fringe of society. Serial killers, perhaps, have been around for centuries; there may be more of them today—or perhaps we are simply more aware. The modern serial killer, like the con man, thrives on anonymity, on the ability to move from place to place; he needs this mobility, and the cover of darkness that city life affords.⁵³ The serial killer is hard to trace and to catch. Sometimes he hides in plain sight, as it were: his daytime identity, his surface life, seems routine, respectable, nothing out of the ordinary; the wild pathology is hidden underneath: these

48 JAMES, *supra* note 2, at 193–94.

49 See, for an example of a Japanese mystery which is quintessentially Japanese, and yet deeply reflects the influence of Western mysteries, SEISHI YOKOMIZO, *THE HONJIN MURDERS* (2019), which is, in fact, a classic “locked room” mystery.

50 WENDY LESSER, *SCANDINAVIAN NOIR: IN PURSUIT OF A MYSTERY* (Farrar, Straus, and Giroux eds., 2020).

51 *Investigating the Mysterious Appeal of Scandi Noir*, *THE ECONOMIST* (May 21, 2020), <https://www.economist.com/books-and-arts/2020/05/21/investigating-the-mysterious-appeal-of-scandi-noir>.

52 See, e.g., PATRICIA CORNWELL, *POSTMORTEM* (1990); her protagonist is Dr. Kay Scarpetta, a medical examiner.

53 *Id.* at 3, concerns the search for a serial killer in Virginia, who has killed (at the beginning of the book) four women, in a brutal and torturous way. Dr. Scarpetta (the narrator), says of the (unknown) killer: “He could be anybody . . . He is ordinary by most standards He could be anybody and he was nobody. Mr. Nobody. The kind of guy you don’t remember”

killers are people who “hid their true selves from those around them as they perpetrated . . . crimes.”⁵⁴ The serial killer, too, has no obvious reason to kill; he may have no connection of any kind with his unlucky victims; they are simply people in the wrong place at the wrong time.

Serial killers are rare; but, like urban terrorists, they inspire a fear far beyond the actual danger they pose. H.H. Holmes, the killer who haunted the Chicago World’s Fair of the 1890’s, was a notable example from the nineteenth century.⁵⁵ The most famous of all serial killers, nick-named Jack the Ripper,⁵⁶ prowled the dark, fog-shrouded streets of London in the late Victorian period. His career began (apparently) in 1888, when he murdered and mutilated a prostitute, Mary Ann Nichols, in Whitechapel, London. Other murders followed, probably by the same killer. These crimes were never solved. Jack the Ripper was never identified. No Sherlock Holmes, no Hercule Poirot, ever stepped out from the pages of books, to unravel the mystery. Jack the Ripper was probably a real-life Jekyll and Hyde: a man who, on the surface, appeared both normal and respectable, but underneath harbored a vicious and pathological instinct for murder.

Jack the Ripper’s murders are now the coldest of cold cases. A modern Jack the Ripper might not so easily elude detection. Late Victorian England had no forensic laboratories, no database of fingerprints, no ways to analyze hairs, fibers, and other residues of crime. There were no surveillance cameras—tools that led to the arrest of two men who set off a bomb during the Boston Marathon (2013). DNA testing (sometimes combined with genealogical records) has been used to expose serial killers. Tools of this kind identified the “Golden State Killer,” whose crimes were very cold cases. The “Golden State Killer” was responsible for more than a dozen murders, and dozens of rapes and burglaries, between 1973 and 1986. In 2018, thanks to DNA, the police made an arrest; the killer was by then seventy-two years old, and long retired from crime.⁵⁷ He later pleaded guilty to some of the crimes and was sentenced to life in prison.

⁵⁴ ERIC BRACH, *DOUBLE LIVES: TRUE TALES OF THE CRIMINALS NEXT DOOR* 11 (2018).

⁵⁵ See, on his career, ERIK LARSON, *DEVIL IN THE WHITE CITY: MURDER, MAGIC, AND MADNESS AT THE FAIR THAT CHANGED AMERICA* (2003); see also ROSEANNE MONTILLO, *THE WILDERNESS OF RUIN: A TALE OF MADNESS, FIRE, AND THE HUNT FOR AMERICA’S YOUNGEST SERIAL KILLER* (2015), which recounts the career of Jesse Pomeroy, “America’s youngest serial killer,” in the middle of the 19th century.

⁵⁶ The nickname came from a letter, received by the Central News Agency in London, which claimed to be from the killer, and was signed “Jack the Ripper.” The letter was “in all probability penned by a deceitful journalist with one eye on newspaper sales;” but the name stuck and has gone down in history. JOHN BENNETT, *MOB TOWN: A HISTORY OF CRIME AND DISORDER IN THE EAST END* 146 (Yale Univ. Press 2017).

⁵⁷ Thomas Fuller & Christine Hauser, *Search for ‘Golden State Killer’ Leads to Arrest of Ex-Cop*, N.Y. TIMES (Apr. 25, 2018), <https://www.nytimes.com/2018/04/25/us/golden-state-killer-serial.html> (“We Found the Needle in the Haystack”).

There is a kind of arms race between criminals and the authorities. Modern crimes, like Victorian crimes, thrive on the fog of anonymity; they thrive on conditions of life that make it possible to hide a corrupt and evil identity, at least for a while. They thrive, in short, on anonymity. But anonymity becomes less and less viable in an age of forensic science, data mining, and massive surveillance. Modern detective literature sometimes features science and technology, in ways that would have astonished Miss Marple, and even Sherlock Holmes. Dr. Kay Scarpetta, Patricia Cornwell's "detective," is an M.D.; she is a medical examiner, and Cornwell's books feature issues of medical science, autopsies, and elaborate descriptions of the condition of dead bodies.

Similarly, the "police procedural," another common subgenre, emphasizes the way real police and detectives go about their work. Agatha Christie paid no attention to the actual work of the police. Nor was she concerned with the actual system of criminal justice. Law, science, and forensic habits have bludgeoned their way into the modern "mystery." The "procedural" is a form in which the "actual methods and procedures of the police are central to the structure, themes, and action;" these novels are more "realistic" than other forms of the genre.⁵⁸ Here, at times, the individual "detective" is replaced or supplemented by the team of police workers. Still, in many of these novels, the basic structure remains: the search for a perpetrator whose identity is hidden (at least from the reader). In other novels, it is the criminal lawyer himself who occupies center stage. Erle Stanley Gardner (1889–1970) practiced law before he turned to detective literature. His novels, starting in the 1930's, featured Perry Mason, a lawyer whose clients, accused of murder, invariably turned out to be innocent (a rarity in real life). In the typical Mason novel, the climax comes during a dramatic criminal trial, in which Mason's client is the defendant. In the midst of the trial, Perry Mason surprises everybody; he proves that his client is completely innocent; he also exposes the person who actually did the dirty deed. Scott Turow, also a practicing lawyer, scored a huge success in *Presumed Innocent* (1987), and set off a trend, in which trials and legal practice are at the core of the novel, treated in a way that is legally accurate (generally speaking), and reflects the skills and knowledge of criminal lawyers. The "mystery," now almost two hundred years old, shows no signs of losing its grip on its vast and enthusiastic audience; its form keeps mutating, but certain core aspects remain.

The argument here has been a simple one: fact and fiction are social cousins. The "mystery," in its classic sense, seemed to spring up out of nowhere; then it spread like wildfire. But its origins lay in the very nature of

⁵⁸ SCAGGS, *supra* note 47, at 91.

nineteenth century society. Mysteries, together with spy novels, and (more recently) novels haunted by serial killers, have reflected certain basic facts of the world we live in today. They also have reflected the revolution in crime-fighting that began in Victorian times, and especially the invention of the detective squad. Crime-fighting is also the theme of police procedurals. At the base of all these developments has been the sheer ambiguity of identity, which a mobile, restless, urban society fostered. This was a product of the industrial revolution, the growth of big cities, the blurring of class differences, the flowering of science and technology. The world has changed enormously since Edgar Allan Poe, and even since Sherlock Holmes and Agatha Christie; but the main causes and effects are still with us.