

ENCOUNTERS WITH BOOKS FROM OTHER DISCIPLINES

M – Son of the Century

By Antonio Scurati, London: 4th Estate, 2022. 784 pp. ISBN: 9780008363239 £10.99 (paperback); translated by Anne Milano Appel, first published in Italian 2018

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doi:10.1017/S1744552324000053

During the Spanish Civil War, George Orwell had gone early one morning ‘to snipe at Fascists in the trenches’. As dawn broke, he saw a man run across the top of the opposite trench, ‘half-dressed and holding up his trousers with both hands’. Orwell did not take a shot at him. He had come ‘to shoot at “Fascists”; but a man who is holding up his trousers isn’t a “Fascist”, he is visibly a fellow creature, similar to yourself, and you don’t feel like shooting at him’ (Orwell, 1942). With this recollection, Orwell captures the horrid ambiguity that fascism presents to us. On the one hand, there is the violence that all fascist movements glorify and crave, and if they achieve little else, they usually do succeed in realizing their belligerent dreams. The organised force of fascist governments, exercised through state institutions, is notoriously brutal in its operation and destructive in its human consequences. On the other hand, fascists *are* human beings, with the commonalities and frailties, as Orwell observed, recognisable to us all. The movement does not succeed without the participation or complicity of countless ordinary people, ‘fellow creatures . . . similar to yourself’. How fascism and its supporters came to power in twentieth century Europe, and what they did with it when they got it, are thus questions that have fascinated scholars and the public alike. Lawyers have a particular interest in this, not only since they too are ‘fellow creatures’, but because legal forms and parts of the profession played important roles in the organisation, legitimation and exercise of fascist power.

For all its rhetoric to the contrary, fascism’s rise and rule were never assured: the path to power in any particular country was not the realisation of some national destiny. This matters, both historically and because the possibility of its resurgence today is being observed by those who see parallels – in economic conditions, rising nationalisms and militarism – with the 1920s. The upsurge of right-wing parties in Europe – in Italy, Spain, even Germany – and the rising power of authoritarian states elsewhere give these observations credibility. Which is why Antonio Scurati’s *M – Son of the Century* is a historical novel of striking contemporary resonance. Tracing Mussolini’s rise to power it weaves historical and personal narratives to detail the tactics, ideologies and violence of the movement’s emergence in Italy. ‘Fascism cannot die’, says M and maybe he’s right. After all, one *can* shoot fascists; fascism, on the other hand, is a harder target to hit.

One of the striking features of *M*, the novel, is that M the man’s rise to power is so improbable; fragile, daring, dependent on bluffing, risk-taking and a million decisions and acts and failures to act that show there was nothing inevitable about it. This alone serves as a cautionary tale for our own times. *M* ends with M’s coming to power, but it is clear how unexpected and unpredicted this was. For most of the book, M is not yet Italy’s leader, its Duce. He is still trying, often desperately, to organise his ragged party, its followers, factions and sympathisers in his efforts to achieve

power. He is also in the thick of talks with a whole range of other political and economic constituencies: political adversaries, the sceptics, the establishment, the opportunists, the church. He is (writes Scurati), 'dealing with everyone . . . betting at more than one table' (p. 497). But his method is consistent, consistent in its inconsistency: 'Negotiate, threaten, deceive . . . Negotiate with everybody, betray everybody' (p. 499).

This is arguably a better definition of 'the political' in action than the posturing machismo of Carl Schmitt – the infamous Nazi legal theorist – who described it as the elementary conflict between friend and enemy. Watching fascism's rise in Italy it is clear that Schmitt's distinction is best seen as propaganda for the masses and a justification for what will turn out to be (as it did in Germany as well) short-lived brutality. Scurati's careful presentation of the malleability and instability of political power and tactics provides a legal theoretical cure for Schmitt's lack of subtlety. 'Negotiate, threaten, deceive' is the more accurate triplet for what counts as political under fascism. This is the method that M has been perfecting for years, while at the same time he condones the terror-tactics of the movement's thugs.

If there are certain echoes with the 1920s to be heard today then we can hear them more clearly through attending to Scurati's account. Consider just a few of the political styles in which M showed remarkable prowess. First, there is a repudiation of the distinction between truth and falsehood. M is already trading in allegations of 'fake news' and cares not at all for the pedants who would 'fact check' the claims he makes. He is a newspaper editor, highly aware of the power of the media, but it is a power that need not be restrained in its exercise by verification. He knows how to play the politics of distraction, using techniques easily amplified across different forms of media. Then there is the reinvigoration of the politics of them and us. This is not the reductionist Schmittian friend/enemy but is more subtle, strategic and attuned to minor and shifting differences. So, while on the grand stage M can call out foreign powers for scheming against the national interests, he can work with them as it suits. Domestically, he is willing to switch his own allegiances amongst different constituencies, especially business groups and sectors of the working class. And there are floating categories who come in and out of view as appropriate to his ends; the poor and the already vulnerable as well as the victims he is never afraid to blame or exalt as tactics demand.

Across all these fields of operation, one constant is that Italy's past provides an inexhaustible reservoir of grievances to be drawn on. For example, the valiance, then betrayal of the armed forces post-World War One, or the injustices visited on the nation by foreign powers in contested territories, are constantly invoked to energise fascism's mentality and message. These grievances are a source of both victimhood and destiny, for it is M's movement alone, he declaims, which is capable of restoring national pride. Only he can deliver what all would-be demagogues promise: to make the nation great again.

To achieve this, M is committed to doing whatever works to secure power. It is this principle, if such it is, that is manifest throughout Scurati's portrayal of M and his dealings with everyone. It is, we might say, the emergence of a law of rule that has little care for the rule of law except to the extent that the latter might assist in the fascists' goal. What that goal is, was brilliantly captured in Ernst Fraenkel's contemporaneous account of the fate of law in Nazi Germany, *The Dual State* ([1941] 2017), when he reports a Nazi being asked by a journalist, 'What do you intend to do if you get power?'. 'Keep it', he replied. This seems to be as good an indicator of the fascist attitude to governance as anything else, and it runs like a thread through Scurati's book.

Given these sophisticated and pragmatic modes of operating, it is perhaps not so surprising that what the word 'fascism' actually connotes is not a straightforward question to answer. Having spent much time explaining the difficulties with definitions, Robert Paxton in his important study, *The Anatomy of Fascism* (2005) eventually succumbs and identifies nine markers of fascism, among which are: 'a sense of overwhelming crisis beyond the reach of any traditional solutions'; 'the primacy of the group'; that any actions are, without legal limit, justified against enemies of the group; the transcendence of the (male) leader; and 'the beauty of violence and the efficacy of will'

(Paxton, 2005, pp. 219–220). But since each of these can appear as ‘more or less’, and since they can also exist within political forms that are not necessarily fascist, great care is required, says Paxton, to contextualise the appearance of each of them in the assessment of fascism. Even George Orwell, a participant observer (as we have seen), and no slouch when it came to championing linguistic accuracy, admits to problems in defining fascism. The problem is, he writes, that the term has been abused by over-extension: all kinds of groups, from shopkeepers to church ministers to women, have been accused of being fascist. But fascism proper requires a ‘political and economic system’, under which, he suggests, there is a ‘kind of buried meaning’ that includes ‘something cruel, unscrupulous, arrogant, obscurantist, anti-liberal’. If this description does not necessarily constrain the term’s over-extension, perhaps ultimately, he says, it might just come down to this: ‘almost any English person would accept “bully” as a synonym for “Fascist”. That is about as near to a definition as this much-abused word has come’ (Orwell, 1944).

Not all bullies are fascists, of course; but all fascists are bullies. For that reason they are also insecure and they can never – despite their rhetoric – be entirely at ease. *M* brings this out well in the early stages of Italian fascism. *M* is constantly restless, fretting and aware, more than others around him, of the risks he is taking in betting at different tables. Yet as he comes closer to power, having taken brinksmanship to the edge in the debacle that was the ‘March on Rome’ it will be precisely this insecurity that provides the fuel to keep the engine of state revved up. And with an organised security apparatus at his disposal he knows he will be able to channel all these energies through the institutional hardware of state power. This is why the gamble is worth it.

It is the emergence of these styles of behaviour and the mentalities that drive them that become so vivid in Scurati’s novel. The details about daily tactics and challenges, tensions and opportunities, are dramatised in ways that allow readers insight into how institutional power is achieved and operates and in this respect the novel will potentially have another kind of interest for legal scholars. Scurati’s book has been called (by himself), ‘*fictual* (a mixture of fictional and factual)’ (Prezioso, 2022). But if he is committed to factual accuracy, it is only fair to ask what work narrative fiction does here, and what could legal scholars learn from that? On the first question, here is one suggestion; it comes from the late Martin Amis:

The trouble with life (the novelist will feel) is its amorphousness, its ridiculous fluidity. Look at it: thinly plotted, largely themeless, sentimental and ineluctably trite. The dialogue is poor, or at least violently uneven. The twists are either predictable or sensationalist. And it’s always the same beginning; and the same ending . . . (Amis, 2000, p. 7)

We know of course how *M* ends up; but it is the minutiae of quotidian life brought to the surface in narrative fictional form that helps us see what it takes for him to get into the position that will enable him and his movement to rule on a large scale. The writer’s imagination and narrative prowess compensate for life’s ‘amorphousness’ but they also fill in important details about how a fascist regime emerges. And this is where legal scholars may be prompted to think about the nature of law’s work. For what academic legal analysis often misses – perhaps because students are taught to ignore it when they ‘learn the law’, perhaps because it is sidelined in the canons of ‘proper’ legal scholarship – is not only the precariousness of establishing power but more poignantly what it takes to maintain it in institutional forms. The flesh and blood of human commitments and conflicts, the negotiations and setbacks, the dynamics of institutional virtues and vices, expectations and disappointments, and generally all the shifting accommodations and complicities within and across each of these, are central to how law and legal institutions in fact operate as real practices.

As we travel with *M* from his newspaper office to his home, to cafes, hotel rooms, restaurants, podiums, parliament, with telegrams, letters and press releases, we realise that this style of fiction offers a similar register to that which Actor Network Theory would have us focus on. On this account, law and political power – which present grand facades of solidity and reliability – depend

fundamentally on the myriad tiny components, the material intricacies of objects in relation, to do their work. The success of law relies on its passage through files and reports, along electric cables and walls, in the signs and symbols that must be navigated to produce legal meaning (Latour, 2009). Without all of these, legislation will never leave the parliamentary chamber, the judge's pronouncement will evaporate in the courtroom air. To go beyond these institutional places, the law's power is dependent on its material consociates to *carry* its messages – of authorised force, of normativity – just as molecules bump against each other to transmit sound, and thereby, under the right conditions, human meaning (see McGee, 2014).

Legislators and political agents know the importance of these material and symbolic elements, and practicing lawyers and judges participate in and with these techniques each day of their professional lives. They know that politics and law would be nothing at all without them. It is this landscape that Scurati brings into view, and it is here that conventional legal analysis might benefit from engaging with this style. Indeed, there is a powerful reason why it *should* do so: is it not a failure of legal scholarship to engage with all this integral, if less grand, activity that results in *it* providing a false – even *fictitious* – account of law? Conventional legal analysis, along with much jurisprudential work that focuses on thinking about the conditions of legal validity or the nature of law might ironically turn out to be more fiction than fact. And yet, is it not such fictions that much legal education and scholarship propagate and rely on?

Scurati's 'fictual' work offers access to all these details that together carry the reality of legal authority and political governance in action. If law is not in fact 'fact' but 'institutional fact' (as Neil MacCormick described it) then it would seem wise to pay attention to how these institutions are made effective – how they are made *possible* – through their detailed human and material enabling. If not, conceptual accounts of law risk perpetuating fictions *as real* while remaining divorced from the real world of the institution itself.

M is not fiction, but a combination of fact and fiction. It takes well-documented historical events, makes selections, connections, adds narrative, suspense, inner dialogue. This brings to life much that might remain beyond the grasp of the historian as well as the legal academic. But there are risks with this too. Perhaps the most serious is enjoining the very characteristic that fascism operationalises: obliterating the distinction between truth and falsehood. Are there any restraints that documented facts put upon what can be written as historical fiction? Isn't there a risk of history, or at least historical understanding, being revised in light, say, of contemporary interests? Such interests may be well-meaning, but they need not be. Conversely, isn't the process of re-writing what everyone has to do all the time, historians and lawyers included: read, and write, and re-write, the past from the present? What else *could* we do? And as we also know, re-reading and re-writing narratives with a view to the present and future are core to reasoning with precedent. Ronald Dworkin's analogy of the 'chain novel' for thinking about constructive interpretation has more than rhetorical force. Selection, narrative, plot twists, judicial dialogue are of the essence of legal reasoning and practice, as law and literature scholars have urged us to see for many decades now. But these are just one part of the legal process: the material conditions and hidden intrigues of legal and political power are vital elements too.

If *M* inclines legal scholars to think about these methodological points then good, although the book is highly recommended anyway. (It now forms the first in a trilogy, the last published in Italian in 2022, following *M*'s life up to 1940. Another one or two are reportedly planned.) But one also cannot help think about the larger questions that the emergence of fascism raises, both then and, possibly, now. With this in mind, let me conclude with another observation drawn from *M* that echoes strongly down to our time: the role of technology.

For all that *M* will appear in famous images on horseback, he is also a lover of new technology. In 1922 *M* flies his open-cockpit 150 horsepower bi-plane, complete with leather goggles, up the spine of Italy and imagines himself becoming the first leader in history to fly his own plane. For the airplane – not this airplane, *the* airplane – is at that point less than 20 years old. Already at this young age it has been coopted for military use, carrying out bombing raids on people and property

since the First War. But what a difference another couple of decades will make. By the time *M* is swinging from a girder upside down by his feet in a half-built service station in Milan's Piazzale Loreto another plane, *Enola Gay*, will be preparing to deliver its load – 'Little Boy', the first atomic bomb – on Hiroshima. More than 100,000 people will die as a result of this single aerial attack. But enormous as this number is, it will add only a small fraction to the total number of deaths that will have resulted from fascism's European rise and global extinguishment. The scale of destructive power unleashed is unprecedented in human history. As yet unimagined in 1922, and largely due to technological 'advances', more than 50 million humans will have been killed in a global war in which civilian casualties will dwarf the number of soldiers who fight and kill each other on the battlefield. Millions more innocents will die across Europe in the Jewish genocide, many taken from Italy's streets and ghettos. Technologically supercharged, from bi-plane to atomic bomb in twenty years, fascism brought inhumanity to a new level.

M grasped the potential of modern technology and communications early on. In our time new forms offer capacities that he, or any previous authoritarian ruler, could only dream of. The digital world, the internet of things, the web, the net – are these not perfect metaphors for that which captures people within them? – carry out surveillance and manipulation as part of their ordinary operation. The disinformation campaigns that *M* pursued with such relish and success would have been even more effective in the era of AI-generated text, images and speech. Large Language Models like chat-GPT are also dissociated from reality, and they too work without groundings in truth. *M* shows how fascist discourse operates with these elementary parameters; but now digital forms multiply their potential exponentially.

Scurati's novel tells how fascism grows, mutates, infiltrates and succeeds to power. Its rise is not at all inevitable but it does rely on ordinary people who enjoy or can be trained to inflict suffering and for whom cruelty is not the worst vice, as Judith Shklar called it, but rather the way in which some – the vulnerable, the different, the disloyal – deserve to be treated. As well as this, there is the damage it will inflict on the institutions and values that are core to most citizens', and lawyers', principles in democracies. Paying attention (in Felix Guattari's apt term) to how the 'fascist machine' *infiltrates* through the cooptation of the willing and the complicities of the non-committal remains a worthwhile and even necessary activity for citizens (Guattari, 2007). For if the 'F-word' is hard to define, finding its social and psychological tendencies among ordinary populations is, sadly, a less elusive undertaking. *M* invites us to think about the hardware and software available at any particular stage of social, legal, and political development. The only risk in such a thought-provoking book is that it will not provoke enough thought, nor, accordingly, enough action for society to defend itself from what might be coming its way, again.

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