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THE WOMAN IN WHITE, FELIX HOLT

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WAYS OF THINKING ABOUT LAW
IN FOUR NINETEENTH-CENTURY BRITISH NOVELS:
ORLEY FARM, PAUL CLIFFORD, THE WOMAN IN WHITE, FELIX HOLT

By
Deborah B. Luyster

AN ABSTRACT OF A DISSERTATION

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ABSTRACT

WAYS OF THINKING ABOUT LAW

IN FOUR NINETEENTH-CENTURY BRITISH NOVELS:

ORLEY FARM, PAUL CLIFFORD, THE WOMAN IN WHITE, FELIX HOLT

By

Deborah B. Luyster

Novels participated in the intellectual debate over reform of the laws and the legal system in nineteenth-century Britain. From a law and literature perspective, they are most informative for the humanitarian and political concepts the characters and the narrators express about how the law operates in society, how the law and the legal system should be changed, and the influence of history upon representations of the law. These expressions of the law “as it is” and the law “as it ought to be,” the real and the ideal, incorporate thinking that includes the influence of Sir William Blackstone’s *Commentaries on the Law of England* and Jeremy Bentham’s arguments for radical reform. They also reveal thinking about the law that connects to natural law theory, legal realism, positivism, and theories of evidence.

Two of the novels, Anthony Trollope’s *Orley Farm* and George Eliot’s *Felix Holt, The Radical*, are novels written in the literary tradition of realism. Wilkie Collin’s *The Woman in White* stretches the expectations of the realistic novel that its representations will be of the law as it is to the sensation novel subgenre that includes aspects of the underworld of Victorian society including crime, deceit, treachery, and near anarchy.

Collin's use of a legal framework demonstrates a closer account of the law as it is and its limitations than Trollope and Eliot. *Paul Clifford* by Bulwer-Lytton also attempts to demonstrate the law "as it is," while using an idealistic style to underscore his message that includes thinking about the law as it "ought to be."

Finally, because they are written by artists dependent on their imaginations, each novel urges a similar dependence on the imagination in law. Thus, thinking about law progresses to imagining about law as the novelists imagine an improved legal system, methods in which the imagination should work in the system's daily operation, and ways to circumvent the legal judgment rendered in each novel.

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To Tinkerbell who supplied the energy to make dreams come true.

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TABLE OF CONTENTS

INTRODUCTION	1
CHAPTER 1 THINKING ABOUT LAW IN ANTHONY TROLLOPE'S <i>ORLEY FARM</i>	14
CHAPTER 2 THINKING ABOUT LAW AS A UTILITARIAN PHILANTHROPIST: BULWER-LYTTON'S <i>PAUL CLIFFORD</i>	90
CHAPTER 3 THINKING ABOUT PROOF IN WILKIE COLLINS' <i>THE WOMAN IN WHITE</i>	148
CHAPTER 4 THINKING ABOUT LAW'S HERITAGE AND LAW AND MORALITY IN GEORGE ELIOT'S <i>FELIX HOLT, THE RADICAL</i>	226
CONCLUSION	307
WORKS CITED	330

Introduction

Thinking about Law Through Literature

The focus of this study can be reduced to what I call metathinking or thinking about the thinking about law revealed in four nineteenth-century British novels. This thinking about law within the novels is distinguished, at least for my purposes, from what we might consider what the law or legal system does in the novel. To me, these novels are working texts that in their various expressions of thinking about law raise more issues and ask more questions about what the law and the legal system are and what they ought to be than a textbook. The expected progression of this thinking presented in a work of the imagination is to extend the thinking about the thinking about law exhibited in the novels to imagining something beyond the present to another way of thinking about law.

Members of the public have more thoughts about the legal system and lawyers than any other government institution or profession. Everyone has an opinion about lawyers and what the law and courts should do. The reasons for this public involvement are too extensive for this discussion, but a fundamental reason must be because the law and the legal system are so pervasive in their lives. The Anglo-American system of jurisprudence exists in a paradoxical relationship with public opinion. On the one hand, the system protects an exoteric language and maze of complicated procedures not that dissimilar from what Dickens described in *Bleak House* (1853). The legal profession represents its educational institutions and bar membership as exclusive communities. The public sustains this elitism through its susceptibility to what appears to be the mystery and tricks of the law and the awe, respect, and perhaps intimidation its courtrooms, customs, and traditions intentionally impose. Therefore, the public adopts a view like Tommy Tounsem's

in George Eliot's *Felix Holt, The Radical* that "you'd better not be meddling wi' things belonging to the law, else you'll be caught up in a big wheel and fly to bits." No one and nothing is immune from the inescapable force of the law. "[I]t's no use being deep," Tommy says, "cause you can never know the law. And there's times when the deepest fellow's worst frightened" (379).

On the other hand, most people are amateur lawyers, thinking they know almost as much about law and the courts as those trained in the profession. These impressions are unavoidable considering the appropriation of legal education by nonlawyers in high school civics classes, college political science classes, and the news media. The ubiquitous new breed of lawyers subsisting as talking heads on television and radio talk shows and attempting to condense the complexities and intricacies of the law to a few minutes of commentary contribute to this impression as well. The popularity of the legal system and lawyers as a framework or as subjects in fiction and film and television dramatizations also shapes the public impression about the law and the legal system.

Conspicuous for its absence on both sides of this paradox is an identification or sorting out from public opinion and other impressions of the law of the reality and meaning they manifest. Using law in literature to sort out and name the thinking about law the literature depicts, exposes varying and sometimes contradictory ways of thinking about law and prompts comparisons to the readers' own thoughts about law and the legal system.¹ Reading these "legal fictions" helps readers discover different ways of thinking about law and to think more about their own thinking. Our expectations of the law and the legal system and our efforts to improve them so they are more accessible, comprehensible, and more capable of rendering justice from both a legal and a substantive view will

be more viable if instead of becoming lawyers or amateur lawyers we become more like amateur legal philosophers. We can make the law and the legal system more our own if we figure out what our thoughts and comments about the law indicate about our views of the law or what we think the law is and what we think it should be.² This does not mean that everyone must associate themselves with some school of legal philosophy. It means contemplating about what law means to each of us, understanding that meaning, and thinking about how it fits into what the law is and what the law could be.

The law and literature movement encompasses both law in literature and law as literature.³ Very simply and briefly stated, the former analyzes literary texts for what they say about law, how legal issues work the plot, or how the legal system and the text interact in manipulating people's lives and perspectives. The latter division of this interdisciplinary study, among other things, applies literary analysis to legal discourse and texts or demonstrates how literary techniques can take part in legal interpretation.⁴ Additionally, an appreciation of the literary tradition arguably seeps through the disciplinary line to introduce another point of view in legal thinking, writing, and decision-making.

Nineteenth-century British novels are rich mines for law and literature explorations. The obvious predominance in the texts of law, as a subtle undercurrent in the characters' lives and as a controlling force and an instrumental vehicle, perhaps is unmatched in the literature of any other period or country—the contemporary explosion of unrealistic portrayals of lawyers and trials in American popular fiction included. The place of law in British literature during its rise as an empire affirms the argument of many scholars that law and literature are in many ways intertwined human activities. Although the works of Charles Dickens are the comparative models for so many inquiries into aspects

of all nineteenth-century novels including his depiction of the legal system, I intend to examine some works of his contemporaries whose novels are not considered so frequently for what they say about the interaction of law and literature or for their depiction of ways of thinking about law.

I will examine *Paul Clifford* (1830) by Edward Bulwer-Lytton, Anthony Trollope's *Orley Farm* (1860), *The Woman in White* by Wilkie Collins (1860), and George Eliot's *Felix Holt, The Radical* (1866). My interest is mainly in the ways the characters, which includes the narrator in some instances, think about law and where the novel places the legal system in the hierarchy of social institutions. Additionally, I intend to explore how the texts treat legal reform proposals (both changes in the law and changes within the legal system), which dominated so much of England's intellectual climate from the 1820s to the 1860s. Finally, these texts of literary fiction have something to say about the imagination and the role it can play in law.

Trollope and George Eliot are novelists in the realist tradition. *The Woman in White* is also a realistic novel but of a subgenre known as the sensation novel. In contrast, *Paul Clifford* is an idealistic novel with elements of the romantic. These differing categories allow for some comment on the limits and potential in imagining the real and ideal when literature integrates thinking about law. Sometimes the orientation to the present of realism leaves us with thinking about law as an inflexible force that must be contended with as it is. However, the looking ahead of idealism sometimes cannot persuasively imagine an improved legal system without bordering on a utopia or fantasy.

My study begins with Trollope's *Orley Farm* because of the four novels included in this study it is the most patently about law, lawyers, the trial process, those who are subject to the law, and those who use the law for their benefit. Additionally, more than any other novel discussed herein, it illustrates different modes of legal thought—its place in the characters' lives, its purpose in society, its role in the national structure. It most comprehensively incorporates many ways of thinking about law, including the valorization in Anglo-American jurisprudence of its ties to the early days of civilized England. These many views about the law and the legal system are significant not only for what they tell us about nineteenth-century thinking about law and the ways the Victorians approached reform; they are equally important in thinking about law and resistance to change in the legal system today.

The realistic strength and power in *Orley Farm* is the novel's realistic portrayal of the operation of law and the legal system and its delineation of different approaches to thinking about law and the legal system—what it is or ought to be, what it does accomplish, and what possibly it should accomplish according to society's expectations. Some of the characters in the novel are representative of specific modes of legal thought or certain aspects of such thinking—natural law theory, positivism, realism, and utilitarianism. My treatment of *Orley Farm* is not only an approach in accordance with the three foci previously listed, but also a foundational explanation of some different ways of thinking about English jurisprudence for reference in the subsequent novel studies.

In *Orley Farm*, the narrator's confession of sympathy for the deceitful Lady Mason and his appeal to temper tendencies for harsh judgment leads to thinking about the role of sympathy in legal judgments. In doing so, we must consider first whether triers of

fact and law can reposition their thinking beyond their own experiences to imagine realistically the consequences of their decisions on others considering the pluralistic experiences of the members of society they judge. If so, we must consider whether a sympathetic imagination combined with legal reasoning results in just legal determinations equitably applied or whether it inserts an additional risk of arbitrary decision-making into the judicial process.

As the first Newgate novel the significance of Bulwer-Lytton's *Paul Clifford* appears obvious. We anticipate the novel's attack on the English criminal laws and penal system since the subgenre's title refers to a House of Correction, and we are not disappointed in that respect, although the penal system is not the major focus. The novel also parallels many of Jeremy Bentham's criminal law reform proposals and evinces the enduring influence of that lawyer and philosopher on the legal reforms of the nineteenth century. More importantly, we also find a complex and thoughtful explication of the affect of the laws upon the lower classes and of the reasons for crime and an argument supporting Benthamite legal reforms.

Unlike many of the social reform novels that followed *Paul Clifford*, which as novels of realism could not extend beyond the real of the present, Bulwer-Lytton's idealistic novel imaginatively presents the future implementation of the solutions to the present problems depicted. The problems the novel defines and describes are the reactionary upper class legislating harsh sentences—particularly the death penalty—for an increasing number of criminal offenses and the lower class living in what seem to be circumstances over which they have little control. The solutions the novel presents are changes in the laws and individual benevolence. Then the novel describes a world in which those solu-

tions operate. We also find in *Paul Clifford* an admission of the harmful influence of imaginative literature on certain impressionable readers. Nevertheless, the novel itself counters this admission by becoming an example of how literature can direct readers to self-improvement and good conduct. The novel is significant for considering possible sociological reasons for criminal conduct, proposing means of rectifying the causes of criminal activity, and attempting to imagine how the joint cooperation of law reform and individual benevolence as an ideal works when implemented.

Although published at the same time as Trollope's *Orley Farm* and only a few years before Eliot's *Felix Holt*, *The Radical*, Wilkie Collins' *The Woman in White* does not directly address legal reform. However, its emphasis on legal determinations of factual proof is certainly an observation on the soundness of existing theories of evidence and the legal system's burden of proof. As a sensation novel, it presents a secret underworld of crime and anarchy thriving in Victorian society. To make the unthinkable appear real it supposedly mimics the method of presenting evidence at a trial. The motivating factor behind the form of the narrative and the resort to several forms of self-help by the narrator derive from his inability to obtain legal recourse against the novel's villains. He alleges his story was not told in the courtroom because of the law's strict rules of factual proof and the excessive costs to pursue a claim, which prompts thinking about the factors that deny many individuals access to legal remedies. Additionally, *The Woman in White* raises questions about whether the legal process is capable of determining truth. That thinking incorporates theories of evidence including the part imagination can play in accumulating and presenting evidence, the presentation of testimony like a story and other forms of legal narrative, and the self-authenticating devices relied upon by writers of both

literary and legal texts. In its claim to truthfulness, *The Woman in White* mocks the cause/effect connections of Enlightenment thinking. Because the novel demonstrates that the representation of truth remains elusive in law and in literature, it effectively moves closer to the real than novels in the tradition of realism. The novel also raises questions about self-help as a viable alternative to the legal process.

George Eliot's *Felix Holt, The Radical* invokes thinking about law's relationship to social change and whether law should reflect social change or become its catalyst. It also is a curious blend of the humanistic and political concepts of law. *Felix Holt, The Radical* is a novel wrapped around legal issues, not focused on them. Those legal issues include the law of real property and inheritance, the extension of the franchise through the first reform bill, and Felix's trial for homicide. In looking back to the past and inheritance, the novel, like *Orley Farm*, initiates thinking about the Anglo-American legal system's reliance on its heritage and its resistance to change that is so much the message of Sir William Blackstone's *Commentaries on the Laws of England*. Nineteenth-century reformers challenged this adherence to continuity, arguing that reform was necessary to correct injustices, not an organic gradual progress through time. Bentham and John Austin also challenged that part of the inherited tradition that assumed Christian natural law was a necessary part of manmade or positive law. Though not a reformer, Eliot removes God from natural law and makes it secular. Her novel suggests that natural law is external to and precedes positive law formation. In fact, despite law's prominence in the novel's setting and the novel's criticism of lawyers, the legal system is ultimately inconsequential. Human beings must improve themselves through the law-like conduct of morality, the results of which will be reflected in a slow-growing improvement and development.

As the novel suggests, the conscience of natural law thinking produces a consciousness of others exhibited through a sympathetic imagination about what others think and feel. That imagination looks beyond the present to thinking about the future consequences of individual acts upon others. Esther Lyon, who represents this realistic novel's attempt to imagine and represent the ideal, possesses this sympathetic imagination. Her acts for the welfare of others inspire similar conduct in her community. The sympathetic imagining of consequences would naturally become a part of the legal system under this ideal because the legal system would reflect the improved society attained through Eliot's version of secular natural law.

Consistent with what we have seen in the previous novels, the novelist comments on the participation of the imagination in the novel. According to Eliot's novel, the imaginative process of writing a realistic novel requires a sympathetic imagination. Otherwise, the imagination of the author does not correspond to daily life. A realist must write with a sympathetic imagination both to depict what is real and to inspire good conduct in others.

The cautious approach to legal reform in both *Orley Farm* and *Felix Holt* coincides with the movement of thinking from the early part of the century to the mid-Victorians. The early decades of the century witnessed sharp class distinctions and hostility toward the upper class. Political power rested in the upper class despite the rise of the middle class. In addition, a faceless mass of uneducated workers in industry, agriculture, mines, and domestic service survived on meager incomes in harsh living conditions. The 1832 Reform Bill, amendments to the Poor Laws, and repeal of the Corn Laws pacified and dissipated some discontent, while the failure of Chartism evinced the inability of the

workers and the poor to mount an effective, result-producing protest. Optimism about reform from the 1830s became disenchantment or disillusionment in the 1860s. Simultaneously, economic prosperity, resulting in higher wages and better food, stilled the complaining voices of the workers and the poor (though not eliminating the disparities and living conditions they had complained about) and the receptivity toward reform in society. Without any significant change in the political dominance of the nobility and gentry and the inequalities of class structure, a culmination of factors stifled more extensive reform to the legal system. In this way, Trollope and Eliot's novels realistically represent Victorian society's current thinking about legal reform.

In selecting these novels I knew I would find thinking about similar areas of the law in each novel, the trial process, the laws of inheritance and real property, reform of the laws and the legal system, and other points of view about law from the novels' appropriations of law and the legal system in various degrees as a framework or background. I did not expect to find even more significant integration of law and literature in each novel in addition to the obvious connections. I am referring first, to what appears as connections between the legal and literary imagination in the novels, and secondly, to the novelists' imaginative assumption of authority beyond the law and the legal system.

As I will discuss in the concluding chapter, successful lawyers and judges know the valuable role the imagination plays in law from constructing pleadings and arguments to styling statements of fact.⁵ What I have found most interesting is the ways in which each novel in varying degrees attaches the literary imagination to the legal imagination.

In Trollope's *Orley Farm*, the narrator appeals to readers to moderate their judgment against Lady Mason by imagining themselves in a similar situation. The novel's

conclusion extends that judicial leniency to the society of the novel and, by implication, to judging the narrator's representation of reality. Bulwer-Lytton's brief description of Paul Clifford's life in America helps readers imagine a future world in which law reform has reduced some of the circumstances that turn men to crime. The novel also becomes an example of how imaginative productions, such as the novel, can be used for persuasive purposes or to positively inspire the imagination of others. Collins shows how receptivity to the inferences drawn from the imagination leads to provable facts capable of meeting the legal system's burden of proof. His novel also shows how the conditioning of the imagination through narrative can influence the way the recreation of actual events are told like a story during the presentation of evidence at a trial. Eliot's appeal is for an imagination that continues what the slow growth of nature and history has demonstrated. It envisions an improved legal system consistent with social improvements that occur in an "organic" social progression. Just as the imagination of a novelist in the realist tradition must portray reality, so should the legal imagination, according to Eliot's argument. It should not be based on romantic ideals that contain false expectations and result in reforms that cause social disruption rather than improvement.

In each novel, we also see how the disposition of each criminal's case extends beyond the law. In other words, the novelist assumes the legal judgment normally reserved for the courts.⁶ Lady Mason is acquitted at her trial even though she is clearly guilty. The sympathy the reader is asked to extend her is supposed to soften the fact that she and her lawyers have twice made a sham of the trial process. Paul Clifford, the good-hearted and longtime leader of a gang of highwaymen, is saved from the gallows by a petition for leniency. Then he subsequently escapes from his transportation colony. His criminal com-

panions avoid imprisonment as well. *The Woman is White* is a bit more complicated, but the two individuals the narrator seeks to inflict revenge upon do receive what he perceives as their just deserts, although outside the legal system. Those responsible for their deaths, the Italian Brotherhood and Hartright, are unpunished. A third party credited for these dispositions, Providence, is untouchable. Unlike the previous two novels, in Collins' novel we do not see basically good people who through circumstance and poor judgment find themselves tried for criminal offences. We find instead three near lawless individuals in a test of endurance and wit. Hartright, who as the narrator presents himself superficially as morally superior, emerges victorious. The reward for his efforts is upward mobility and financial security. In *Felix Holt, The Radical*, a four-year prison term for manslaughter is commuted through a pardon, although Felix's guilt is clearly proven.

The existence of these two factors, the merger of the legal and literary imagination and the assumption of an imaginative authority that supplants the legal judgment, takes thinking about the thinking about law in these novels to another level. The first level contains the obvious explications from the characters or narrator on the law and legal system previously mentioned. The second level is the artistic or imaginative thinking about the law from the novel itself. In my conclusion, I will discuss what I see as parts of this second level. The first part of that second level, the merger of the legal and literary imaginations, pushes thinking about the thinking about law I have identified in the novels to imagining about law. Thus, ways of thinking about law moves to methods of imagining about law. The second part of the second level concerns the authority of the imagination over law revealed in each novel's blatant overturning of the legal depositions depicted in each novel and the implications these imaginary successions to the law raise.

Notes

¹ Throughout this discussion, the terms “law” and “legal system” will be used interchangeably to refer to the system of positive or manmade laws under which the English nation is governed and the process under which the laws are administered through the courts.

² I refer to some of the ways of thinking about law as legal movements or schools, branches of legal philosophy, legal theory, or jurisprudence studies. The terms increasingly seem to overlap and are used synonymously rather than within distinct definitions. Though this discussion uses these categories to explain ways of thinking about law, their use does not imply that the title restricts the identification to theory or philosophy or schools of jurisprudence.

³ Gary Minda includes law and literature as one of the interdisciplinary movements of the late twentieth century in *Postmodern Legal Movements: Law and Jurisprudence at Century's End*.

⁴ This is in addition to the close reading and critical thinking skills that are the obligatory tools of both students of law and of literature of every age and stage of development.

⁵ James Boyd White in *The Legal Imagination* describes judges as determining what the stories they hear legally mean (243). One of the best discussions on imagination in law is found in White's book.

⁶ This argument derives from Alexander Pettit's “Sympathetic Criminality in the Mid-Victorian Novel” and will be discussed more extensively in the following chapters.

Chapter 1

Thinking About Law in Anthony Trollope's *Orley Farm*

In its extended, behind-the-scenes treatment of “The Great Orley Farm Case” (1; ch. 1)¹ Anthony Trollope's *Orley Farm* (1862) becomes a complex and multifaceted account about the different ways in which individuals think law or the legal system functions in society and about their expectations of the adjudicatory process. Following the mid-Victorian realistic literary tradition, the novel attempts to detail the legal system's operation through a criminal proceeding and the events surrounding it. In doing so, the novel also represents the legal and extralegal factors influencing the process of adjudication. Through the lawyers and judges and other participants in the case and those drawn into its widening circle for other reasons, the text demonstrates the many ways people perceive law and the legal system. In fact, the intensity of the novel and its framework thrives on the various ways of thinking about law rather than the plot's conflicts and succession of events.

During a time of rapid political, social, and economic change, *Orley Farm* appropriately engages in the continuous debate about the modern application of law's heritage of traditions and customs, about its association with natural law, about legal reform, and about legal empiricism versus legal theory. Its participation is not through philosophical thinking, but through the characters from a range of social, political, and economic levels, who, without labeling their perceptions of the legal system, show in their words and actions their views about law in their society. By examining these perceptions and the nature of the characters who propound them, we find that the law and the legal system do not sit securely on a pedestal of authority and neutral autonomy and that their roles of de-

termining truth and rendering justice can be negotiated by extralegal influences.

Lady Mason, whose isolated and late night act of forgery so that her son would become a landed gentleman and the two trials that followed provide the framework for thinking about law, embodies the novel's often repeated version of the warning, "He that touched pitch shall be defiled therewith."² The quotation prescribes against consorting with evildoers for fear of committing wrong as well (Mullen 400).³ The phrase's negative application in *Orley Farm* applies to maintaining reputation by avoiding those who are from a lower class or those thought disreputable. Its positive application is that exposure to experience forces self-questioning and changes long-ingrained beliefs. In other words, as George Levine states in *The Realistic Imagination*, as a mimetic writer, Trollope describes the effect of experience on individuals (10). The novel's multiple subplots, all shadowed by the pending trial, support the realism of the saying. After this a posteriori emphasis, the narrator encourages a reconciliation of the legal and moral experiences of the novel through the abstract principles of sympathy and mercy. This reconciliation merges the gentleness of "tempering" with the harshness of "shorn" in the narrator's reference to the tempering of the wind for the shorn lamb. It derives from a feeling of sympathy for Lady Mason's desperation so that judgment against her is moderated. That temperance in judgment extends to those she has affected and to the novel's narrator for his realistic representation. Furthermore, it foreshadows some contemporary proposals for implementing justice.

The narrator states on the opening page of the novel that the case is "intimately connected with certain legal questions which made a considerable stir in our courts of law" (1. ch. 1). The reference is to Lady Mason's legal difficulties, but the questions ex-

tend beyond the Orley Farm case as the identification of some of these legal questions herein will show. The novel identifies three primary approaches to thinking about law with some related variations: Von Bauhr and Felix Graham's reform utopia derived from the abstractions of logic or "great endeavors for the amelioration of [the world's] laws and the perfection of its judicial proceedings" (136; ch. 17) with its aspects of Jeremy Bentham's utilitarianism, Sir Peregrine Orme's simple absolutism and idealism combining positive law, natural law or morality, and national heritage, and the realism and empiricism of the practitioners Mr. Furnival, Mr. Chaffanbrass and Mr. Dockwrath who, contend with the complexities and contradictions of the law and all the social, political, and ideological factors influencing its operation. The latter three men also introduce a resituating of lawyers from elite gentlemen of letters to hardworking businessmen intent on earning a living.

That we can paint today a similar picture of the conflicts and questions about lawyers and the legal system as Trollope did almost a century and a half ago is a factor in evaluating the novel's realistic success. As Andrew Wright states in *Anthony Trollope: Dream and Art*, "Trollope the high Victorian has gradually given way to Trollope the novelist for our time—more modern than he could have foreseen, more pertinent to the way we live now than many readers have understood" (1). Novelistic realism means that fictional representations are plausible or conceivable to readers' frames of reference, their experiences, and observations. As if forgetting the motivation of realism to portray life as accurately as possible, critics mistakenly cite Trollope's details of the world of law as indicia that he viewed the legal system as terribly flawed and its lawyers blinkered advocates seeking only their clients' interests and their own fees without restraint.⁴ Reading

the novel closely and critically with strict attention to the multiple narrative voices, reveals the overall depiction of the operation of law as descriptive, not evaluative. Speculations on the novelist's views of the legal system and lawyers should be confined to Trollope's nonfiction, including *The New Zealander*, an emulation of Carlyle's Condition of England pronouncement, and Trollope's *Autobiography*, rather than drawing them from his fiction, particularly the treatment of law and lawyers in *Orley Farm*.⁵ The countering and mix of positions in legal thought as well as the interrogative nature of the narrator provide insufficient evidence to argue that *Orley Farm* is Trollope's indictment of law and lawyers in whole or in part.⁶ The text is the best evidence to discuss the representation of both the operation of law and methods of thinking about it. From this observation and weighing of the textual evidence, which becomes for readers their experiential view or their touching of pitch, the readers, like the characters in the novel, gain a realistic and ultimately troubling perspective on law's position as an authority in the hierarchy of social institutions.

The early pages of *Orley Farm* signal that the novel's focus is neither Lady Mason's guilt or innocence of forging a codicil to a will nor her conviction or acquittal of a charge of perjury. A much greater issue underpinning all thinking about law in the novel is the failure of a verdict to represent the truth. In the initial chapters of the novel the narrator briefly summarizes the events leading up to the present time of the novel when Lady Mason learns that a local solicitor, Samuel Dockwrath, has discovered evidence disputing the codicil that gave her son, Lucius Mason, title to the property known as Orley Farm.

Next, the novel delves into the diversity of thinking about law. The novel's prominent members of the bar attend an international congress on law reform in Bir-

mingham. Nineteenth-century Britain was a time of many legal reform movements. The various examples of thinking about law are in effect different attitudes about law reform. Although reform is the catalyst for the conference, the legal representatives from the prominent countries tend to expound upon the worth of their own systems as examples of reform for other countries, whose representatives, in turn, defend the merits of their legal establishments. Most prominent are: the French codification that in its logic supposedly justly answers all legal problems; the abstract reasoning of German idealism; the American criticism of the English system as outdated with ineffectual practices and traditions; and the British bar who are undisturbed by what is perceived to be a discrepancy between the moral sanctions of their private lives and the lack of any moral restraints in the practice of law. Additionally, the conference juxtaposes its theoretical emphasis against the practical experience of the English bar in attendance, some of whom will participate in Lady Mason's trial. According to James Kincaid in *The Novels of Anthony Trollope*, the novel shows law reform as having "two equally ineffective stances against the decay of a civilized community," abstract principles or theory and relativistic empiricism emphasizing practice, vicious opportunism, and the commercial (80).

The only speaker at the conference described in detail is the German Von Bauhr, whose reform proposals are inaccessible because the English bar members do not understand German;⁷ but one describes it as "The old story, going to show that the same man might be judge, advocate, and jury" (131; ch. 17). Nevertheless, the German lawyer, sitting alone in his room smoking a pipe, reflects on what he perceives as a great success. His pipe dreams "seemed to lift him lightly from the earth into an elysium of justice and mercy at the end of which is a bust of himself on the tallest pedestal with an inscription

stating ‘To Von Bauhr, who reformed the laws of nations.’” His elysium was “not wild in its beauty, but trim and orderly in its gracefulness” (136; ch. 17).

A young barrister attending the conference, Felix Graham, is the English Von Bauhr. Instead of practicing law, he writes “poetry for periodicals and politics for the penny papers” (138; ch. 18). Admitting that he found Von Bauhr unintelligible and sleep inducing, Graham says such speakers “must be endured before any improvement is made in anything” (135; ch. 17). He claims to have felt some essence of meaning in the German’s lecture. Graham left Oxford without a degree because of his unpopular opinions on religious subjects and, after being called to the bar, “he would not labor on the same terms with other men, or make himself subject to the same conventional rules.” Instead, he believes “general great rules of the world” should govern (138; ch. 18) because “laws and their management have nothing to do with making people honest” (140, ch. 18). Although, as Mr. Chaffanbrass, the star of the Old Bailey, says, Graham rejects belief in the Bible (131; ch. 17), his great rules echo the Ten Commandments.

Graham’s great rules theory also contrasts the spirit of the Enlightenment to the British common law system. The young barrister’s individual effort at improvement such as walking before breakfast which “proves that the man can make an effort” (140; ch. 17) and his benevolent work at “moulding”⁸ an ideal wife from a girl he has supported since she was young represents the first step in the Enlightenment belief in “human beings’ ability to perfect themselves and their society” (Holman 175). His rejection of the conventional for great rules reflects the “Enlightenment faith in human rationality and the existence of discernable and universally valid principles governing human beings, nature, and society.” And his disbelief in the Bible follows the Enlightenment’s opposition to

“spiritual authority and revealed religion” (Holman 176). Graham’s biggest complaint is the common law’s protection of the accused through a presumption of innocence that allows defendants and their attorneys to hide behind a front of innocence until a verdict determines otherwise. He argues that lawyers should protect the innocent client and defend the guilty client from “possible innocence” and “not [become] the protector of his probable guilt” (141; ch. 18). However, he does not explain how lawyers can practice his theory by determining a client’s guilt or innocence short of a direct question, an anathema to the British bar, “men very unlike their German brethren, men who thought that guilt never should be asked to tell of itself” (91; ch. 12). Although Graham could not understand Von Bauhr’s speech, he is sure that they share a common bond “though it may not yet have reached our sublime understandings” (141, ch. 18).

German legal thinking in the nineteenth century consisted of two movements: German Historicism and Von Bauhr’s abstract logical reasoning, which argued for codification of laws like the code developed in France (Walker 521). Friedrich Savigny, the most prominent of the German Historians, argued that if law is the spirit of the people, then the spirit was reflected in their customs. Looking backward to historical precedents and explanations identified these customs and traced law’s evolution in society (Lloyd 252). This derivation of law from customs and traditions is very similar to Sir William Blackstone’s theory on the common law described in his *Commentaries on the Laws of England* (1765-69).⁹ Abstract logical reasoning relates to the legal reform proposals of philosopher and lawyer Jeremy Bentham (1748-1832)¹⁰ whose works created “a solid juridical foundation” for much of law reform in the early nineteenth century (Lloyd 99). His thinking also stemmed from Enlightenment philosophy. Bentham’s utilitarian code is

the equivalent of Von Bauhr's trim and orderly elysium as opposed to the wild garden of the English legal system.

Legal scholar Thomas Grey argues that in the nineteenth century, British law, or the "tangle of customary English common law," was "a jungle of irrational customs, prejudice, and superstition hidden behind a false front of pretended reason [. . .] epitomized by the *Commentaries* of Sir William Blackstone" (808). Bentham, Grey says, "sought to clear away the tangle of customary English common law and construct in its place a code designed on the Principle of Utility, every provision of which was rationally aimed at attaining the greatest happiness of the greatest number" (808). Graham's reform arguments resemble Grey's description: "Those practices in which we most widely depart from the broad and recognized morality of all civilized ages and countries are to us the Palladiums of our jurisprudence" (141; ch. 18). He also thinks a systematic approach based on his conventional rules would eliminate injustice and create perfection. Nevertheless, the conference's reform missions fail to pierce the English barristers' resistance to change. They are defended in the conference's concluding speech by the "divine wrath" (142; ch. 19) of Thomas Furnival, a barrister known for his depth and expertise in common law litigation of all kinds.

Mr. Furnival will lead the defense for Lady Mason. For practical Englishmen like Mr. Furnival, who have ploddingly and tirelessly worked their way up from poverty to prosperity and professional prominence, the conference is *Vox et praeterer nihil* (130; ch. 17) or voice and nothing else (Mullen 39). The Greek translation of the conference leader's surname, Boanerges, is a loud-voiced orator and is the same surname Jesus gave to James and John, as the sons of thunder (Mullen 49).¹¹ Mr. Furnival says the German

abstractions ignore the element of human nature. His response to Von Bauhr's suggestion of one man possessing all three elements of justice's checks and balances—judge, advocate, and jury—is, “If men were machines, and if you could find such machines perfect at all points in their machinery. [. . .] Machines don't have hearts” (131; ch. 17).¹²

Knowing his own long hours making a living as a barrister, he agrees with another lawyer that in the past members of the profession would not shame themselves attending such lengthy lectures on theories and would have remained at work.

However, Mr. Furnival is working in Birmingham on Lady Mason's case as well as defending the English Bar. Twenty years previously, he represented Mrs. Mason in a civil action contesting a codicil to the will of Sir Joseph Mason, Lady Mason's deceased husband. That contest was initiated by Joseph Mason, Esq. of Groby Park, the son of Sir Joseph's first marriage. At stake was the property that Lady Mason and her son must surrender if Joseph Mason prevailed. The young widow testified that she wrote both the will and the codicil as her husband's attorney, the gout-ridden Jonathan Usbech, dictated the document to her in her husband's presence. She also said that the since deceased attorney along with two others witnessed Sir Joseph's signature. Joseph Mason was never satisfied with the verdict against his interest; the loss of additional land and income became his persistent affliction.

In Birmingham, Mr. Furnival tries to deflect a second trial by convincing his colleague Mr. Round, who represented Joseph Mason during the first controversy, to continue that representation in the second rather than hand it over to his more ambitious son: “Mr. Round was a good-natured old fellow, and if the case could be inveigled out of his son's hands and into his own, it might be possible that even the real merits should avail

nothing” (135; ch. 17).

Mr. Furnival’s “constan[cy] at his work in season and out of season” (75; ch. 10) despite obtaining financial security and social standing and even though it risks the stability of his marriage reflects his view of his occupation as does his compliment to Mr. Round’s son as “an exceedingly good man of business” (133; ch. 17). Though Mr. Furnival would not recognize him as such, his compatriot in this belief is Mr. Dockwrath who is less discreet about making money and does not euphemize his intent with Mr. Furnival’s phrase, “man of business.” Instead, Dockwrath says frankly to Matthew Round, “As a professional man, of course I expect to be paid for my work;—and I have no doubt that you expect the same” (127; ch. 16).

Mr. Dockwrath’s less than subtle pragmatic view of the profession as a means to earn an income is most obvious during a confrontation with a group of traveling salesmen at an inn. Expanding the meaning of commercial, Mr. Dockwrath insists he is entitled to benefit from the accommodations of an inn’s commercial room, specifically provided for the comfort of traveling salesmen who are the bulk of the inn’s business. The word ‘commercial’ is “extremely difficult to define” he says. But “in the broadest, strictest, and most intelligible sense,” he is a commercial gentleman because “[i]n this enterprising country all men are more or less commercial.” (43; ch. 6).

The senior of the commercial men, Mr. Moulder, declares Mr. Dockwrath’s interpretive strategies “gammon” (43; ch. 6). Mr. Moulder is “a stickler for the rights and privileges of his class” (41; ch. 6) defined by a commercial code that mimics and parodies the legal system in its references to “the custom of the country” and “the rule of the case” of past disputes (42; ch. 6). David Skilton writes in the introduction to the Oxford

edition of *Orley Farm*: “Once the world of the ‘commercial gentlemen’ has been set up, with its own rules, conventions and morality, it can be used for comparison with the legal world. The standards of commercialism, which the ideal Trollopian reader and most of the well-to-do characters in the novel must regard as ‘vulgar’, are subsequently seen to underline the practice of advocacy as well” (xii).

After winning a begrudging admission to the group, Mr. Dockwrath challenges their rule of equally dividing the dinner bill among them because he does not want to pay for wine he did not consume. As if the commercial men were lawyers like himself, “his legal mind could not bear to be beaten: and “[t]he spirit of litigation within him told him that the point was to be carried.” For authority, Mr. Dockwrath cites the “law of the land” which supercedes “the laws of any special room” (69; ch. 9). The solicitor, who now calls himself “a commercial lawyer” (73; ch. 9), prevails in the dispute because the innkeeper forces a compromise, knowing “it would be a dangerous and probably an expensive proceeding to thrust out the attorney by violence” (73; ch. 9). In other words, Mr. Dockwrath succeeds because of the fear of the law rather than through his legal skills in convincing the commercial men or the innkeeper of the merits of his position.

Mr. Furnival and Mr. Dockwrath represent a tension between the lingering traces of lawyers as gentlemen trained in the law as part of their duty as members of the upper class so they could serve in Parliament and act as county magistrates and the men for whom the practice of law was a means to support their families. Although earning money has been the common struggle of both men, Mr. Furnival, as a well-known London barrister, has successfully mimicked the upper class and gained admission to their homes. In contrast, Mr. Dockwrath, though “a very sharp attorney” (38; ch. 6) who succeeds finan-

cially and professionally as a solicitor in a small town, has not obtained gentleman status. Both men contribute to the uncertainty about whether the profession belongs to the world of business or the world of the upper class. Despite Mr. Furnival's years of sacrifice to obtain financial security and social acceptance that to a born gentleman would have been automatically granted, he willingly defends at the conference that historical tradition that arbitrarily made his climb more arduous. Later, suppressing his own superior legal abilities and extensive experience, he treads gingerly around the condescension and legal ineptness of Sir Peregrine Orme, a county magistrate and head of an upper-class family who befriends Lady Mason. However, he eagerly fans any sentiment from Mr. Round's firm that Mr. Dockwrath is beneath their respect. Although, Mr. Dockwrath insists he is entitled to the privileges of a commercial man at the inn, he intimidates them as a lawyer when a confrontation arises and breaks down the blurring of the business and legal worlds he previously established.

Mr. Dockwrath confronts this hierarchy of class within his own profession during a meeting with young Mr. Round in his office to discuss the evidence supporting Joseph Mason's claim. Round and Crook, a prestigious firm despite a feeling among the professionals that their skills were not the highest during the first Orley Farm case, "in the ordinary course of business would have had no personal dealings with a man as Mr. Dockwrath" (123; ch. 16). To them he is pitch. Again, Mr. Dockwrath is determined that "he would transact business only on equal terms" (124; ch. 16). Nevertheless, Matthew Round maintains the distinction to his professional detriment, antagonizing one who could be helpful to his client's case, by speaking rudely and refusing to shake hands. Even so, Mr. Dockwrath forces Mr. Round's acknowledgement that the country solicitor

is “every bit as much an attorney” as he is (127; 16).

Mr. Chaffanbrass, the renowned criminal lawyer, combines the commercial aspect of the profession with an ethical obligation. His duty to the client paying his fee is as inflexible as Sir Peregrine’s code of honor as a gentleman from a long line of honorable men. On the one hand, this duty coincides with assuring that the checks and balances of the legal system properly function despite any opinion of the client’s guilt or innocence. One of the two judges in the novel, Judge Staveley, tells Graham that once he takes a case, even if he changes his opinion about his client’s innocence, he “must go on [. . .] as a matter of course” (59; ch. 48). Even with this advice, Chaffanbrass feared Graham’s self-righteousness would result in turning Lady Mason over to the prosecution. On the other hand, this duty is tied to an obligation to render the results paid to obtain and therefore, on law as a business. “If you’re paid to bring a man off not guilty, can’t you bring him off if you can?” Mr. Moulder asks (165; ch. 61). No clients would retain an attorney who did not represent them enthusiastically or return for future representation after discovering that the attorney gives up their cause during the trial. Inevitably, Chaffanbrass and Graham clash. At the trial’s end, Mr. Chaffanbrass tells Graham that he “is too great for this kind of work” and that Graham should leave the profession. After Graham agrees and says nothing more Chaffanbrass continues: “If a man undertakes a duty, he should do it [. . .][E]specially if he takes money for it” (290; ch. 75). He shares the same position as Mr. Moulder, who says after applying an Adam Smith or Benthamite *laissez faire* template to the legal system: “They’re paid for it; it’s their duties; just as it’s my duty to sell Hubbles and Grease’s sugar. It’s not for me to say the sugar’s bad, or the samples not equal to the last. My duty is to sell, and I sell;--and it’s their duty to get a verdict” (165;

ch. 61). Mr. Moulder, as Geoffrey Harvey writes, applauds the “commercial underpinning of the law” (102).

Ethics have little consequence in determining the placement of the legal profession on the social ladder. Mr. Chaffanbrass and Mr. Dockwrath are guilty of no ethical misconduct; yet they are not admitted into fashionable homes and the narrator calls Mr. Chaffanbrass the guardian of the “not-guiltiness of the public” (267 ch. 34) and “a dirty little man” (267, 268 ch. 34). In contrast to the veiled damnation of Mr. Chaffanbrass, the narrator takes pains to point out that Mr. Dockwrath’s chief motive is not revenge, even though his anger led him to explore the records of Lady Mason’s previous attorney after Lucius Mason ended his long-term tenancy of some of the Orley Farm land. Instead, the narrator says the attorney possessed “professional energy, and an ambition to win a cause that ought to be won—especially a cause which others had failed to win” (121; ch. 16). Later, Mr. Dockwrath refuses a bribe, initiated by Mr. Furnival, to misplace or destroy the evidence, and he declines to bet with Mr. Moulder upon the outcome of the case. He is no more manipulative in generating pre-trial publicity against Lady Mason than Mr. Furnival is in creating appearances favorable to her. In fact, Mr. Furnival exhibits more questionable conduct than Mr. Dockwrath. In addition to the bribe attempt, Mr. Furnival’s talent is so formidable that he engages in a lucrative system that bought up the best attorneys for one side to prevent their neutralizing each other as opponents: “Legal gentlemen are [. . .] quite as often bought off as bought up” (75; ch. 10). Furthermore, he has no compulsion against helping Lady Mason rob Joseph Mason of Orley Farm: “In the way of his profession he could do many a thing at which [. . .] an honest man might be scandalized if it became beneath his judgment unprofessionally” (316; ch. 40). And he

lies to the jury. "You know as well as I do," he tells them, "that she [Lady Mason] has not been guilty of this terrible crime" (256; ch. 72).

This discussion of the lawyers, Graham, Furnival, Chaffanbrass and Dockwrath reflects a movement from lawyers as gentlemen and as men of letters to lawyers as actively involved in earning an income in the same way as middle-class tradesman and commercial men. Compared to the other three lawyers, Graham retains more remnants of a man of letters with his professional writing and his scholarly nature. However, by the end of the novel his future father-in-law is urging him to give up his writing and think more about being a better lawyer so he can increase his income. The other three men demonstrate few literary or scholarly tendencies. In fact, the narrator mentions several times Mr. Furnival's lack of time to read the classics and suggests that if he had it would have helped him resolve his domestic difficulties. Whereas the gentlemen lawyers of the upper-class worked within and for the community in which they resided, the commercial men/lawyers form a community in themselves that is separate from the community in which they live and of their clients. Thus, their clients are not friends and neighbors, but customers of their services and sources of income.¹³

According to Carol Lansbury in *The Reasonable Man: Trollope's Legal Fictions*, in the eighteenth century law and the classics were valuable "in the making of a gentleman" (14) and that Blackstone enforced this concept when he wrote in the *Commentaries* that "a competent knowledge of the laws of that society, in which we live, is the proper accomplishment of every gentleman and scholar; an highly useful [. . .] part of liberal and polite education" (1. Intro. 5-6). "The country gentleman," Lansbury writes "knew it was as much his duty to serve as a magistrate as it was to preserve foxes" (14).¹⁴ By the nine-

teenth century, as Trollope's lawyers evince, not only was knowledge of the law no longer vested in an elite group, it had established ties to a repugnant group, that of commerce.

One of the strongest adherents to the old system because of the ideal he attributes to it, not because of any proven merits, is Sir Peregrine Orme, Lady Mason's neighbor and friend. Sir Peregrine Orme, Edith Orme, his daughter-in-law and the widow of Sir Peregrine's only child, and Perry Orme, Mrs. Orme's son, live near-by at The Cleeve, the family's fifteenth-century ancestral home. While Felix Graham seeks a secular utopia of inflexible universal rules in law, Sir Peregrine considers universal rules of religious morality as ensconced in law. Furthermore, the many references to his chivalrous behavior and code of honor make him a throwback to the Arthurian legend. His thinking about law and reliance on the past creates his greatest challenge to his concept of proper conduct when he learns of Lady Mason's guilt, much as when King Arthur learned of Guinevere's adultery.¹⁵

Sir Peregrine is proud of his heritage and a gentleman in his eye must have equally traceable ancestry in the "world's history" (22; ch. 3). Wealth and land ownership without antecedents are insufficient for his gentlemanly standards, so his former neighbor, Sir Joseph Mason, "did not rank high" in his estimation (22; ch. 3). His first concern is protecting the purity and sacredness of his son's widow from the touch of any of life's pitch. She is his ideal of womanhood. At past seventy, Sir Peregrine, like Mr. Moulder, "was a little old fashioned" (23; ch. 3) and resists the science-based reforms in farming methods Lucius Mason supports, even though it would increase the productivity of his land.

The knight's strict practice of accepting the word of another until "full proof had come home to him that it was entirely unworthy of credit" (23; ch. 3) and never trusting the offender again reflects his inflexibility. Learning of the pending charge against Lady Mason, the idealist abstractions of the conservative traditionalist and the radical reformist, Sir Peregrine and Graham, find themselves allies in arguing that the legal system should protect such an innocent and that no lawyer as a gentleman would advise Joseph Mason to prosecute her. "All that is moonshine," counters the voice of experience, Mr. Furnival. Judge Staveley adds that no such "professional chivalry" exists (149; ch. 14). Sir Peregrine's astonishment "that an innocent person can [. . .] be in danger in this country" is to Mr. Furnival "poetic chivalry" and "not the way of the world" (203; ch. 26). In other words, protected from the reality of the world and experience by his fixed ideas, heritage, isolated estate, and social position, Sir Peregrine has no concept of the actual operation of law.

Without Mr. Furnival's critical and experiential perspective, Sir Peregrine responds with his conservative conventions and engrained faith. He is confident of Lady Mason's innocence simply because she is such a proper woman, beautiful in demeanor and appearance, and in need of help, while her persecutors are so foul and unseemly. So he "might be her knight and bear her scathless through the fury of this battle," he decides to marry her despite her lower social status. "With God's help he would put on his armour at once for the fight" (279; ch. 36). As Dennis Lloyd writes in *The Idea of Law*, "for the medieval knight war and fighting represented the only worthwhile activity of the ruling order of society" (113). To himself and others Sir Peregrine stood on "a noble pedestal" (278, ch. 36). A nineteenth-century Don Quixote who thinks he is competent to

advise both Lady Mason and her legal counsel, his interference in Lady Mason's case hampers Mr. Furnival's work and almost jeopardizes her defense. Sir Peregrine believes that "[a]n English judge and an English jury [. . .] [are] the Palladium of discerning truth" (122; ch. 56) and that morality, law, and nationalism all combine to determine right from wrong.

Such thinking about law and morality derives from natural law theory, the idea that morality must be an essential part of law. To Sir Peregrine, natural law principles govern the British legal system and determine the truth.¹⁶ According to Conrad Johnson in the *Philosophy of Law* traditional natural law doctrines support an "immutable order of justice, of right and wrong and of good and evil" that everyone is capable of knowing. Most natural law theorists would argue that man-made law must be derived from natural law and include the "necessary connection thesis" between law and justice. At first Sir Peregrine excludes any thinking other than his own about law, resisting with an air of superiority any attempt by lawyers such as Mr. Furnival and Judge Staveley to explain how the law actually operates. As Sir Peregrine learns, natural law most often describes how some believe the law ought to be, not how the law is. When he must accept Lady Mason's guilt, Sir Peregrine turns to the natural law claim that through reason he can discover right conduct and apply it to concrete problems (Johnson 3). He spends much time alone in the latter part of the novel in rational reflection on the quandary imposed by Lady Mason's deceit, his love for her, and her goodness in saving him from a disgraceful marriage.¹⁷

Sir Joseph Mason, the late "city-knight," as Sir Peregrine refers to the non-inherited title (279, ch. 35) incorporated the thinking of the upper class as a member of

the rising middle class of merchants. Knowing the benefits accrued to established families with extensive and known ancestry, he “was burdened with an ambition to establish a family as the result of his success in life” (11, ch. 2). His elements of chivalry and a respect for history and tradition derive from this burden. In his rise from poverty to wealth, Sir Joseph adopted the ways of an English country gentleman and established his first family, most specifically his son, Joseph Mason, in the style of the upper-class children. He promised his first son to leave him Orley Farm and he intended to honor his word as he knew, like Sir Peregrine, a gentleman should. Though Joseph Mason spoke ill of his father, he recognized him as “not a man to break his word” (13; ch. 2). In distributing through his will his property to his oldest son, Sir Joseph followed the practice of landed families since the law of primogeniture centuries ago. Although Sir Joseph’s thinking about law was as an instrument for him to do with his property as he wished, his last will and testament showed that he used the law to support the customs and traditions of the country that the upper class revered and protected.

According to Blackstone’s *Commentaries*, primogeniture began in England in the eleventh century to preserve titles of nobility as well as to prevent the splitting of estates. Dividing estates among heirs impaired the division of military services and duties among tenants. Furthermore, if younger sons could live off their inherited lands, they would not enter other employments required for the strength of the country, such as the military, trade, and the church (2.14.3 215). Primogeniture established a system of continuity, stability, and order thought necessary for maintaining a nation. By the nineteenth century, it coexisted with other laws that recognized a landowner’s right to distribute his property as he saw fit and allowed landowners to avoid primogeniture by providing for other forms

of property distribution in a will. In 1905 while holding the same post as Blackstone at Oxford as Vinerian Professor of English law, A. V. Dicey wrote: “The paradox of the modern English land law may be thus summed up; the constitution of England has, whilst preserving monarchical forms, become a democracy, but the land law of England remains the land law appropriate to an aristocratic state” (qtd. in McMaster 15).

Joseph Mason’s views are not that different from Sir Peregrine’s in his revengeful attitude of “never forget and never forgive” (49; ch. 7), his inflexibility, and his perception that the law and morality are enmeshed with nationalism: “It is dreadful to think that in this free and enlightened country so abject an offender should have been able to hold her head up for so long without punishment and without disgrace” (251; ch. 32). Blood feuds still thrive in Joseph Mason’s mind, but he uses the courtroom as the modern place for battle and to obtain revenge. Civilized societies form laws to end the settling of disputes through violent self-help and to maintain stability and order. A nineteenth-century Shylock, Mason, as the text twice says, must have his pound of flesh. In an oblique reference to legal reforms that have reduced the sentences for criminal offenses, he longs for the former stricter penalties so that Lady Mason if convicted would serve more than twelve months in prison (215; ch. 67). Mason cannot understand that obtaining just deserts for the offender and returning to the injured what is owed as he defines justice, is not legal justice. When he is asked to take possession of the property and waive any claim to the twenty years of lost profits to which he is entitled he tells the lawyers “Nothing shall make me tamper with justice” (302; ch. 78).

These descriptions of affiliations to the past in thinking about law and land ownership indicate how at the time Lady Mason forged the codicil inherited traditions extend

the implications of her act beyond breaking the law. Lady Mason's action is four-pronged in its implications: it violates a criminal law against forgery; it interferes with the legal right of a property owner to dispose of his property freely; it breaks the conservative chain of continuity sought to be established through Sir Joseph Mason's disposition; and threatens the authority and domination of the landed gentry and their heritage because the upper class are the main adherents to that practice not only because of their status, but because they are the majority landowners. Her twenty years of possession shatters the presumptions of obedience to law imposed by that class and its unwritten presumptions of honor and truth. Joseph Mason sometimes appears angrier at the theft of his class-centered birthright than he is at being displaced from possession. In her threat to the dominant class, Lady Mason ranks with Mr. Dockwrath and with Felix Graham.

Certainly, an element of fairness argues on Lady Mason's behalf. She was the young daughter of a bankrupt tradesman when the wealthy Sir Joseph Mason, who was 45 years older, married her while settling her family's debts. The only point of contention in their three-year marriage was Sir Joseph's refusal to more than moderately provide for their infant son, Lucius. Sir Joseph's first-born son, was already wealthy and in possession of the larger Groby Park property. He did not need Orley Farm to make a living. Though she was acting to benefit her son and not herself directly, the law allowed Lady Mason no participation in ownership or distribution of her husband's property, just as it gave none to her son as the second-born son.¹⁸ Both primogeniture and the freedom landowners had to dispose of their property were patriarchal constructs; the reason for the former had ceased to exist and the latter caused much inequity. Lady Mason resorted to her own form of self-help in forging the codicil to obtain some element of equality in the

division of property and, ironically, to insure herself and her son a place, though among its lower ranks, in the class that perpetuated these inequities.

Instead of breaking down class boundaries as Mr. Dockwrath tries to do, Lady Mason seeks security in the upper class. But, unlike the members of the upper class who are reticent to discuss money, she shares with Mr. Dockwrath, the commercial man Mr. Moulder, Mr. Furnival, Mr. Chaffanbrass, and even the respected Judge Staveley a pragmatic understanding of money. In what appears a denial of personal responsibility, Lady Mason blames her tradesman family for teaching her “to love money, wealth, and property” rather than people and elements of life less tangible. Even though she grew up thinking “money and riches [. . .] were everything,” she claims not to have sought it out, accepting Sir Joseph’s generosity to her but not asking for more until her son was born and she learned to love something else. “What could I do for the only thing that I had ever called my own?” she asks Mrs. Orme. (157-58; ch. 60). The answer to the young mother was to provide for him financially, the something that was “everything” in her mind however she could.

Dennis Lloyd’s warning about linking law and morality describes the thinking about law of first Sir Peregrine and then Lady Mason: “when the law contain[s] a mass of meaningless archaisms and was a machine of harsh repression, a theory identifying law and morals in this close manner [is] liable to lead either to a reactionary claim by those it benefited that the law was the acme of reason and perfection, [as epitomized in Sir Peregrine] or to its total rejection by the oppressed on the grounds that it offended the first principles of natural justice [as demonstrated by Lady Mason]” (102). The law impedes Lady Mason’s purpose, the success and social standing of her son. Her actions

throughout the novel accord with her conviction that the law can be thwarted by deceit: first the forgery, then the pretense of innocence and the false statements at the first trial, followed by twenty years of maintaining the deceit. Up to and through the second trial that deceit actively continues and it is actively rewarded. As the defendant in a criminal trial, Lady Mason is entitled to the prosecution's burden of proof. In England, at the time of the novel, defendants did not testify on their own behalf, so she could not swear falsely again. However, she intends to counter the prosecution's evidence through another kind of testimony, her continued deceitful appearance of victimized innocence, a passive countenance aggressively maintained. The narrator describes early in the novel her adeptness at not allowing "her countenance to be a true index of her mind" (36; ch. 5). Moreover, she has many supporters in this façade, some willing, others unsuspecting of their complicity, but all blackened from this encounter with pitch.

As the second trial approaches, Lady Mason never proclaims her innocence or denies her guilt except when she pleads not guilty in court, which is a formality, a statement not made under oath, and represents an assertion that the prosecution must prove the charge or charges more than a protest of innocence. She simply maintains a quiet, though anxious, innocent demeanor, building upon her reputation and her association with the best people in the neighborhood. From the judge's statements following her first trial, she knows that her courtroom conduct contributed to her success, she vows to "still fight against her foes—still show to that court, and to the world that would then gaze at her, a front on which guilt should not seem to have laid its hideous defacing hand" (179; ch. 63). When at the trial, she removes her veil and stares down Joseph Mason with "a look of modest but yet conscious intelligence, those around her hardly dared to think that

she could be guilty” (192; ch. 64). She encourages the collusion of her supporters. During a break in the trial, she knows that “to maintain by her demeanor the idea in men’s minds that she might still possibly be innocent—that was her work. And therefore, in order that those two young men [her son and young Peregrine Orme] might still think so, she ate and drank as she was bidden” (218; ch. 68).

Although Lady Mason needed no instructions on the significance of extralegal factors, Mr. Furnival “told her [. . .] that she was so to carry herself as not to let people think that she was doubtful about the trial” (8; ch. 41). The barrister is not beyond deceit of his own to frustrate the law. When his attempts at convincing Mr. Round not to take the case are unsuccessful, he tries to convince young Round that the case is without merit. In addition to the bribery attempt of Mr. Dockwrath, he considers pretrial publicity to influence the jurymen: “[I]t might be possible they should be imbued with a favorable bias on the subject [. . .].” He thinks of spreading the word that Lady Mason “was an injured woman” and that “the great people of the neighborhood” support her (198; ch. 25).

Others attempt to influence public opinion as well. Mr. Dockwrath “was not slack in propagating his view” (162; ch. 61). Lady Staveley, Judge Staveley’s wife and one of Furnival’s great people of the neighborhood, visits Orley Farm because “[she] well understood [. . .] that the greater part of the advantage to be received from her kindness would be derived from its being known at Hamworth that the Staveley carriage had been driven up to Lady Mason’s door” (150; ch. 20). When attending Christmas church services, Sir Peregrine’s attention to Lady Mason as she entered The Cleeve pew in view of the Hamworth community was “with as much deference as though she had been a duch-

ess” [. . .] (193; ch. 25). Others also understand extralegal influence during the trial. Dockwrath “knew also how men’s minds are unconsciously swayed by small appearances” (222; ch. 68). Judge Staveley, referring to Graham’s recovery from a hunting accident, jokes, “I almost think I should keep my arm in the sling till the assizes were over, by way of exciting a little pity” (144; ch. 58). Lady Mason’s solicitor, Mr. Solomon Aram, investigates the potential jury panel to eliminate any men from Hamworth because “a prophet is never a prophet in his own country” (171; ch. 62).

The energy of these manipulations to sway public opinion and the jury offers another view of thinking about law—that trial results and judicial decisions are not completely based on the law or evidence presented in a neutral, objective atmosphere. Instead, subjective appearances, though having nothing to do with guilt or innocence, are a powerful force. Mr. Moulder wants to bet on the verdict because he knows that no jury will rule against “a handsome woman like Lady Mason” over “such a low scoundrel as Dockwrath” (289; 77). Contrary to Graham and Sir Peregrine’s arguments, decisions of the court and verdicts of the jury do not correlate to truth or moral notions of right and wrong. One of the elements of the legal philosophy called legal realism is that extralegal influences, especially those upon judges, determine the outcome of cases. In his chapter on legal realism in *A Companion to Philosophy of Law and Legal Theory*, Brian Leiter explains that adherents of legal realism emphasize the impact of personal bias, social and cultural heritage, psychology, and other factors on judges. The same factors influence juries. Legal realism is closely related to behavioral psychology in that it considers “the causal relations between input (facts and rules of law) and output (judicial decisions).” Realists eschew a priori theories and are rule skeptical because they argue that the stimu-

lus of facts and observations in the context of the adjudicator's other influences such as psychology, personality, and social determinants decide the result not rules (Leiter 261-279). Mr. Chaffanbrass, who certainly knew the way of the world in trial matters, says he is more concerned about judges than juries and jokes that the best judge is one who is tired or deaf. The influence of extralegal elements in legal decision making, as L. J. Swingle suggests in *Romanticism and Anthony Trollope*, show that "truth and value may be merely human constructs rather than objective entities that lie waiting to be discovered by human beings" (15).

Despite the efforts to sway public opinion, support for Lady Mason cools after her engagement to Sir Peregrine because the upper-class community thinks she is opportunistically taking advantage of his goodness. An additional implication is that though she may be acceptable as a friend to the upper strata of society, she is not acceptable to marry into it. The engagement is so abhorrent that the upper-class members of the community begin to question the wisdom of associating themselves with a woman who could become a convicted felon. Even Mr. Furnival, who says he can tolerate and do much questionable conduct, decides he cannot allow Lady Mason to disgrace Sir Peregrine. Sir Peregrine and Lady Orme are left to be most touched by Lady Mason's pitch. They eventually must contend with having publicly befriended and supported a fraud and with the challenge the experience brings to their upper-class self-confidence and standards. The variety and number of references from so many speakers to this biblical maxim, especially from Sir Peregrine, certifies its significance to the text. Lady Mason referred to the saying in admonishing Lucius that it would be dangerous to try to silence Mr. Dockwrath's public campaign and he ironically responds, "the pitch had already touched him and that he was

defiled" (155; ch. 20). Sir Joseph's children "in every turn and twist which they took, looked to do something towards washing themselves clean from the dirt of the counting house" (11; ch. 2) of their father. Felix Graham can join with the criminal defense team of Mr. Chaffanbrass and Mr. Aram and not be blackened if he is confident of having "justice and truth" on his side (58; ch. 48). After joining with the two Old Bailey men and determining with more certainty Lady Mason's deceit, Mr. Furnival "felt he was soiling his hands by dirty work" (301; ch. 38). Dockwrath tells young Peregrine Orme not to let his family "be too thick with Lady Mason [. . .]" (157; ch. 20). Lady Staveley honors her husband particularly because he had not "dabble[d] with Parliament, politics, and dirt" (144; ch. 19). Sir Peregrine's most prized achievement is his reputation as a man "who had lived with clean hands and with clean people around him" (151; ch. 59).

But toward Mrs. Orme the dictum is directed most often, if not excessively, and its application to her most interesting. For Sir Peregrine, she is "a sacred thing to be guarded by a shrine,—to be protected from all contact with the pollutions of the outer world" (47; ch. 47) and he must "save his daughter from further contact with a woman such as this" (36; ch. 45). Mrs. Orme's only allusions to the biblical warning are to deny that association with Lady Mason will "stain her" (45; ch. 47) 171; ch. 62). With such declarations Mrs. Orme assumes a much more active role in the novel as she manipulates her father-in-law and Lady Mason's fates. Although Sir Peregrine agrees with Mrs. Orme that they should not become informers, his "conscience told him that in taking such a line of conduct, he himself would be guilty of some outrage against the law by aiding a criminal in her escape. He had heard of misprision of felony; but nevertheless, he allowed his daughter-in-law to prevail" (46; ch. 47).¹⁹ The emphasis here is on the old man's submis-

sion to Mrs. Orme. The baronet consents to Mrs. Orme's plan that they would work toward Lady Mason's acquittal if she would show her repentance by telling Lucius he must give up Orley Farm after the trial. With "cunning" (47; ch. 47), Mrs. Orme keeps from the servants Lady Mason's distress after her confession and limits all intercourse between the former lovers to messages passed through her. She furthers the deceit by orchestrating a scene upon Lady Mason's departure from The Cleeve after a lengthy visit in which Sir Peregrine escorts Lady Mason from the house and places her in the carriage to show the servants that, in Mrs. Orme's words, "he still respects and esteems" her (102; ch. 53). She accompanies Lady Mason during the three days of trial to emphasize the high regard in which the community's great people hold the accused.

In the name of love, friendship, and Lady Mason's Christian salvation and because they feel an obligation to her for withdrawing from what would have been a disgraceful marriage, the Ormes act according to their own code of laws. Without Lady Mason's permission or knowledge, Sir Peregrine offers to the senior Mr. Round a compromise, the property in exchange for the dismissal of the charge.²⁰ Furthermore, in relation to Orley Farm, Joseph Mason and Sir Peregrine both contend that to deprive a man from what was his own was robbery and "justice must be done" (36; ch. 45). Mrs. Orme's conviction that Lady Mason must tell Lucius and make him give up the property even if she is acquitted becomes constant harping. Like Lady Mason, Sir Peregrine and Mrs. Orme want to thwart the law through deceit and win Lady Mason's acquittal. But they are also Von Bauhr's three parts in one—the judge, advocate, and jury—orchestrating as much as they can the outcome of the trial, the life of Lady Mason and her son after the trial, and, most importantly, the property's surrender.

From the time Lady Mason enlists his help, Mr. Furnival also is Von Bauhr's disciple. Mr. Furnival acts beyond his usual barrister's duty because he has become the machine of judge, advocate, and jury, much like Mrs. Orme. But his heart prevents him from being the perfect machine discussed at the conference. The problem Mr. Furnival epitomizes is the ambiguity of the word "heart." He prides himself on his loyalty to his clients and the enthusiasm of his battles in court for causes that gained his sympathy. Such is the heart that a perfect machine lacks. However, representing a client with whom one's heart is involved romantically impairs professional judgment and should be absent in the attorney/client relationship. That Furnival's marriage has become dull and his wife a recluse and near virago, who will not enjoy the material benefits of his prosperity or learn the social skills to join him in the society he now frequents, facilitates the situation. Lady Mason's unusual charms and beauty are no secret, and those with a discerning eye know of Mr. Furnival's crush. In consenting that Mr. Furnival should be the lead attorney Mr. Chaffanbrass says subtly, "My heart is not in it, as yours is" (268; ch. 34). This is not to say Mr. Chaffanbrass lacks energy in litigation; his zeal is well known. He means that he does not have Mr. Furnival's personal feeling. Those emotions for Lady Mason skewer Mr. Furnival's thinking in all of the roles of Von Bauhr's trinity. As the jury, Mr. Furnival's extralegal manipulations are motivated by his desire to obtain more than an acquittal. He wants the world to believe in Lady Mason's innocence after the trial is over. As an advocate, he worries that his growing belief in Lady Mason's guilt diminishes his ability to represent her enthusiastically. As a judge, he resists or answers falsely any question regarding his opinion of her guilt, because if he answered it honestly he would then be lying if he said in court that she was innocent.

Contrary to usual procedure in which a barrister is briefed by a solicitor and simply appears to try the case on the day of trial, Mr. Furnival “was to undertake the whole legal management” (266; ch. 34) of Lady Mason’s case and “giving to it time that otherwise would have turned itself into heaps of gold” (301; ch. 38). After listing the extralegal factors that should support an acquittal—the lack of public sympathy for Joseph Mason, the support of the best people in the neighborhood, the public opinion of Lady Mason, her innocent demeanor, and her twenty years of possession—Furnival organizes the “legal phalanx” (193, ch. 65) that will represent Lady Mason. Mr. Chaffanbrass and Mr. Aram are the strongest among the barristers and solicitors respectively in criminal defense work. Felix Graham also joins the team. Mr. Furnival thinks Mr. Chaffanbrass can “know almost by instinct, whether an accused person was or was not guilty” (270; ch. 85). Mr. Chaffanbrass and Mr. Aram know that Mr. Furnival has hired them because Lady Mason is guilty.

Yet, unlike Mr. Furnival, their belief in guilt or innocence has no bearing on their representation. Mr. Chaffanbrass’ most effective answer to criticism of his zealous defenses of the guilty is that he has “made the Crown lawyers very careful as to what sort of evidence they would send up to the Old Bailey” (170; ch. 62). In doing so, he serves an important part in the system of checks and balances inherent in the trial process. He keeps Von Bauhr’s trinity separate so the judge, advocates, and attorney can monitor each other and not succumb to Furnival’s confusion of loyalties. Judge Staveley’s question to the sanctimonious Graham indicates Mr. Chaffanbrass’ importance, “Does it not occur to you that we should be very badly off without such men as Chaffanbrass and Aram?” (95; ch. 53).

Mr. Chaffanbrass' thinking about law centers on procedural due process, most particularly the confrontation of one's accusers through examination of the witnesses. This process is most aptly described by Mr. Moulder to his friends: "There'll be one fellow that will make you tell it his way first, and another fellow'll make you tell it his way afterwards" (165; ch. 61). As part of the triumvirate, the judge can comment on the evidence in closing instructions as he did in Lady Mason's case "blowing aside the froth of Mr. Furnival's eloquence, and upsetting the sophistry and false deductions of Mr. Chaffanbrass"(279; ch. 76). The judge also can curtail abusive lawyers during their examinations. Finally, the jury acts as a check in their ability to observe and understand the tactics of the advocates. "The jury are not such fools as to take all that for gospel," Mr. Dockwraith tells Joseph Mason (277; ch. 75). When all parts of the system function properly—competency of counsel for both sides, no judicial error, and no jury misconduct—legal or procedural justice results.

For others, reliance on procedural due process avoids taking responsibility for the faults of the system. Graham thinks more like some nonprofessionals than a lawyer. Nonlawyers think in substantive terms or "right results" which may not equate to procedural justice (Friedman 1603). Their concentration is on the verdict, not the process. If a guilty defendant in a criminal trial such as Lady Mason were acquitted, Graham would argue that justice lost. To Chaffanbrass, the acquittal of a guilty person does not mean the system failed as long as procedural due process or procedural fairness succeeded. In fact, the fairness of the process may actually prevent the coinciding of the guilt or innocence of the accused with the verdict, particularly where the evidentiary rules may exclude incriminating, but tainted because improperly obtained, proof. R. E. Megarry, writing about

legal justice or perfect law and substantial justice or perfect justice in *Lawyer and Liti-gant in England* says that “Perfect justice would demand an inquisition into the whole life and behavior of each party that would leave each crippled financially and the court ex-hausted. Perfect law would rigorously exclude all save the subject matter of the suit” (qtd. in McMaster 60).

The three-tiered system of checks and balances and perhaps a questionable extra-legal influence contributes more to Lady Mason’s acquittal than vigorous trial performances. The question never asked during the trial certainly had bearing on the verdict. Although, the narrator frequently mentions the strict rule against asking clients directly about their guilt or innocence, that question is not the most significant question never posed in the novel. Instead, the question never asked during the trial is of the witness Bridget Bolster. She is not questioned about whether the single document she remembers signing was a will.²¹ While a servant-girl to the Masons, she was one of three witnesses to the signature of Sir Joseph. Matthew Round tells Mr. Dockwrath and Joseph Mason that her statement is that Mr. Usbech told her that the document was about a partnership. That would confirm Mr. Dockwrath’s argument that only one document was signed and that it was not a codicil, but the partnership agreement he found in Mr. Usbech’s papers. Her statements provided Mr. Round with confirming evidence to pursue Joseph Mason’s case. Even Mr. Furnival knows that “Round would not go on with it if that were not all true” (269; ch. 35). At the trial Bolster says Mr. Usbech explained the “nature of the document,” but it was not significant to a young girl (247; ch. 71). Later, at a gathering in the Moulder’s home she says she knows what she signed “wasn’t the old gentleman’s will” (291; ch. 78). When an outraged Mr. Moulder challenges her present statement

against her prior testimony, she answers, “I wasn’t asked” (292; ch. 79). That Mr. Us-
bech’s explanation was not significant to her does not mean she is ignorant of what she
did and did not sign. This line of questioning was not pursued during her testimony. The
direct questions should have been phrased, subject to the rules of evidence, to elicit what
she did know.

The prosecution bears the responsibility of eliciting these details from this witness
during the prosecution’s case in chief. The defense attorneys would not ask this question
unless they were assured her reply would help their case. Another question never asked is
one of which the examiner does not know the answer before it is asked. A cross-examiner
should know the answer to every question before asking it. Mr. Chaffanbrass, who ques-
tioned Bolster, had every reason to believe that if she were asked if the document she
signed were a will that she would say no. That answer would harm, not help, his client’s
interests. Only Graham would support the defense posing the question because it com-
plies with his idea of defense attorneys contributing to the determination of truth and the
exposure of guilt. Why the junior counsel for the prosecution, Mr. Steelyard, who ques-
tioned Bolster for the prosecution, did not ask the question is unclear. It would be the
duty of Matthew Round as the solicitor in the case to instruct him on the testimony of
each witness, and Mr. Round clearly knew that Bolster could testify that the document
was not a will.

To pursue this mystery requires a backward look to the first trial, the civil action
contesting the will brought by Joseph Mason against Lady Mason. We know that much of
Lady Mason’s success was in the “manner in which she gave her evidence” (13: ch. 2)
prompting the judge to remark “that there could be no possible reason for doubting her

word” (4; ch. 1). Remembering the case twenty years before the second trial, Mr. Furnival recalls that even then he had suppressed a passing thought that Lady Mason was guilty. But he had defended Lady Mason and triumphed in her victory while “through it all, he had felt that Round and Crook had not made the most of their case” (93; ch. 12). Crook and Round in the first trial also were Joseph Mason’s solicitors and had briefed the case to the barrister who represented him at the trial, Mr. Bennet.

At the international conference, the elder Mr. Round tells Mr. Furnival that after the first trial he overrode his partner, Mr. Crook, who was managing the case, saying he would not waste the firm’s time or his client’s money in pursuing an appeal. He tells Mr. Furnival no evidence impugned the will and the property was not that valuable for such a contest anyway. His decision was in direct opposition to his client’s wishes, but not necessarily unethical since lawyers have a duty not to pursue frivolous law suits and are duty bound to advise their clients against pursuing actions in which chances of succeeding are slim. Mr. Round also objects to what appeared to him as Joseph Mason’s seeking revenge against Lady Mason in the first case as well as the second: “We should have nothing to do with such as matter as that, you know,” he says to Mr. Furnival. “It’s not our line” (133; ch. 17). Mr. Furnival thinks if the older attorney handled the second case and not his son, once more the firm might not “make the most of their case.” Both Joseph Mason and Mr. Dockwrath also think something was amiss in Round and Crook’s first representation of Joseph Mason. Mr. Chaffanbrass also says he remembers thinking that “Round and Crook were rather slow” (269; ch. 35).

Young Round accepts the case even though he dislikes Mr. Dockwrath and, like his father, finds Joseph Mason distasteful. From his first contact with Mr. Dockwrath,

Matthew Round objects to any co-counsel arrangement and insists that the country solicitor refrain from any work on the case. Neither will he discuss the firm's work in the first case as if he fears what else Mr. Dockwrath might discover. The younger Round makes it clear to Mr. Furnival that he would be happy if Bolster's testimony favored Lady Mason's innocence. After talking with Bolster and learning that her testimony supports Joseph Mason's position, "His feelings were on that side (Lady Mason's), though his duty lay on the other" (255; ch. 33). Furthermore, Matthew Round assists in arrangements favorable to Lady Mason's comfort at the arraignment to avoid "all publicity or outward scandal" (97; ch. 53).

Lady Mason receives help from other unexpected sources as well. The chief prosecutor's opening statements "did not seem to lean very heavily upon Lady Mason" (217; ch. 68), as if lacking the heart or energy needed for a strong prosecution. Sir Richard Leatherham, the solicitor-general, did show another kind of heart as he "with apparent mercy [. . .] attempted to mitigate the iniquity of the deed" (218; ch. 68) by referring to Lady Mason's circumstances at the time of the offense and while mentioning the young baby Lucius Mason, now a man in the courtroom, a tear stood in his eye. The case turned on the testimony of John Kenneby and Bridget Bolster—"It is a case that depends altogether on evidence; one young lawyer said to another" (240; ch. 71)—and whether Mr. Furnival and Mr. Chaffanbrass can weaken their testimony. The defense had no witnesses to contradict the prosecution's witnesses. But Sir Richard's performance is described as "his very second-rate part of eliciting the evidence in chief" (241; ch. 71). The absence of the details of Sir Richard's closing arguments restricts evaluation of his performance completely.

Furthermore, Sir Peregrine's visit to the senior Mr. Round offering to arrange a settlement places Mr. Round in a very precarious ethical situation. We also find Mr. Round, the lawyer who allegedly kept the secret of Sir Peregrine's visit, and Mr. Furnival, the lawyer who had said he did not mind if his assistance of Lady Mason meant "robbing Joseph Mason of his estate" (316; ch. 40), after the trial working together in the surrender of the property to Joseph Mason "desirous of having the matter quietly arranged and with this view were willing to put up with much" (301; ch. 78).

Even if the question were asked, we cannot state with certainty that the verdict would have been different if the question had been asked or if the prosecutors appeared more eager for a conviction. The text provides no conclusive evidence that prosecutorial leniency interfered with their zeal or that their conduct was part of any collusion or that the question intentionally was never asked of Bolster. Still, enough information exists to argue that the verdict in opposition to the truth was not entirely the result of her dream team of lawyers. At least in part, it stemmed from the prosecution not meeting its burden of proof for some inexplicable reason and the operation of procedural due process. This episode reveals how easily the truth can be frustrated during a trial and how erroneous it is to suppose, knowing the rules of evidence and both the legal and extralegal contributions to the rendering of a verdict, that a court of law determines truth.

Still, trust in the truth of legal verdicts is pervasive as evidenced in the shock of Mr. Moulder and his friends when they learn Lucius Mason has relinquished Orley Farm. The subplot of Mr. Moulder and his associates is one concentric circle in the rippling effect of Lady Mason's legal difficulties in the community. It also provides a simplistic view of positivistic legal thinking. Mr. Moulder's connection to the case, other than his

confrontation with Mr. Dockwrath, is through his brother-in-law, Kenneby, who was employed as Sir Joseph's clerk and whose name appears on the disputed document as a witness to its signing. He was so shaken as a witness during the first trial that the judge commented on his lack of credibility. Mr. Moulder is a bit of an epicurean, concerned about the proper preparation of his food and drink and enjoying the little group of friends and business associates that visit his home, where the discussion is frequently about the latest news of Lady Mason. Considering the group the narrator refers to "the modern philosophy of the Moulders, pigs out of the sty of Epicurus" (192, ch. 24).

Trollope is prone to demonstrate his classical readings, but not gratuitously. The stout Mr. Moulder's inclinations to the immediate pleasure of food and drink and his unconcern about an afterlife are two of the better known points of Epicurean philosophy (Honderich 240). The narrator's comment refers to those disciples of Epicurus who after the Greek philosopher's death ignored his tenets of moderation and overindulged in sensual enjoyment. According to Lloyd, the Epicurean method of thinking also "might be regarded in modern terminology as a positivist approach" (95). Both share secular, antiteleological, and rational humanistic views. Jeremy Bentham's utilitarianism, an early form of positivism, might be viewed as incorporating the Epicurean pursuit of happiness. However, Bentham objected to the association of utilitarianism with Epicurus. In *An Introduction to the Principles of Morals and Legislation* (1789),²² he accused the enemies of his radical philosophy, the moralists and the religionists, as uniting against a "common enemy, the partisan of the principle of utility, whom they joined in branding with the odious name of Epicurean" (19). Lucius Mason's intent to apply his scientific learning toward increased agricultural production so that more of the population could be fed and,

according to his argument, increase their intellectual development also coincides with utilitarian notions of maximizing human happiness.²³

Bentham's utilitarian philosophy provided the appropriate climate for legal positivism, not the logical foundation (Lloyd 99-100). Two aspects of utilitarian thinking emerge in legal positivism: the distinction between natural law's "law as it ought to be" and positive law's "law as it is," and the treatment of law as a science (Lloyd 100). Like natural law theory, legal positivism broadly includes many theories, but all focus on law as a composition of man-made rules without any necessary connection to morality. (Coleman and Leiter 234, 241). Instead, positivist thinking adheres to a 'separation thesis' (Johnson 5). It also provides a neutral analysis of law without considering what is good, right, or just (Johnson 5). However, legal positivism insists upon an agreed-upon method of validation of law. Laws must be anchored by a legislative organ which can trace its authority to something that legitimates it and the legal system such as a constitution accepted by the people through their continued adherence to it (Fletcher 33). John Austin's nineteenth-century definition in *A Positivist Conception of Law* followed Bentham's preliminary thinking. He wrote that positive law is a command or duty the violation of which results in sanctions (Feinberg 32).

With his simplistic, but positivist, view of law and law-like social forms, Mr. Moulder acts according to what he sees as a duty and he does not question the rightness or wrongness of the law concerning the cross-examination of witnesses or his silence about the quality of his employer's goods in the commercial world. He defines a jury trial as "the fairest thing that is" and validates it as "the bulwark of the British Constitution" (168, ch. 61). As indication of the public's acceptance, his fellow commercial man

Snengkeld says “Nobody needn’t care for what’s said to them in a court” (291; ch. 78).

However, Mr. Moulder’s thinking strays from legal due process thinking in his exaltation over Lady Mason’s verdict and resembles more closely Sir Peregrine’s idealism: “If a jury of her countrymen don’t make a woman innocent, what does?” (290, ch. 78). That neither he nor his friend Snengkeld could accept the subsequent news that Lady Mason was guilty after Lucius relinquished Orley Farm exposes the paradox. The equation of truth to the disposition of a case is a continuing issue in the novel and recalls the previous discussion about Bridget Bolster’s testimony. According to Coral Lansbury, the failure to ask Bridget Bolster the most important question indicates that “lawyers could provide only partial truths” but the more powerful narrator can “reveal the whole truth to the reader” (83). Her statement requires a caveat. She is correct in recognizing that the rules of evidence exclude certain evidence that may assist in determining truth. Additionally, not properly phrasing a question can prevent the introduction of facts that lead to the truth. However, no promise exists that narrators of novels in the tradition of realism provide the whole truth or all the facts needed by the reader to fully judge the accuracy and objectivity of the realistic depiction. Lansbury’s statement ignores narrative manipulation or assumes that literary realism is not subject to the bias and prejudices of the narrator, just as opponents of legal realism assume that judges are capable of rendering objective truth. Neither is the assumption valid that the more facts and details realist novelists provide makes them greater expositors of the truth. Trial attorneys contend with the tension between their duty to clients and an adherence to truth in presenting or excluding facts. Realist narrators contend with a duty to the art of fictional reality or the appearance of truth in telling the story and the limitless boundaries of the imagination. The objective of

both legal advocates and literary advocates of realism is to persuade readers of their veracity so that readers, judges, and juries accept the advocates' versions of reality. That objective necessitates decisions regarding the use or omission of facts and skillfully concealing or justifying their manipulative choices.

Lansbury also argues that "the law establishes a society that bears only passing resemblance to reality but retains the power to impose this fictitious version of reality upon people" (84-85). However, those who view the law realistically reject this notion of imposition and do not expect the legal process to realistically represent reality. The reality presented during litigation is a different pursuit from literary realism. Litigation does not intend to represent every detail but only the elements necessary to meet or counter the burden of proof. Furthermore, although determining truth and rectitude of decision is the ideal sought, the law is not a failsafe method of convicting the guilty and acquitting the innocent. A verdict of guilty means that a jury has found that the prosecution has met its burden of proof, not that the defendant in fact committed the crime. That is why at one time early in the case Mr. Furnival not only sought an acquittal, he also wanted the world to know Lady Mason's innocence. He understood the difference between a legal verdict and the verdict of public opinion. Similarly, as Sir Peregrine loses faith in the system, he wants the world to know of Lady Mason's guilt despite the verdict. Only if Lucius relinquished the property would this be accomplished. Mr. Furnival and Sir Peregrine recognize the distinction between the realities of both worlds. The reality of the legal system, as the novel shows, is that a verdict should not be assumed to correspond with a reality external to the system.

Graham objects to the rules of procedure, evidence, and ethics that to him conceal

the truth. His connection to Bentham is not so much as a positivist, but as a reformer of the confusion of the common law and archaic practices. They share the formalist belief that the law can be systematized and answers derived from logical reasoning. Bentham ridiculed the state of English law and attacked the complacency of the legal profession and the ruling class in England (Lloyd 101). Furthermore, Graham is unable to view the legal system realistically or to condone any part of it that does not meet his idealistic standards. He does not think he has “omitted any duty which he owed to his client” by not vigorously cross-examining a witness because he finds such browbeating abhorrent and counter to eliciting truth. Although he terms himself “unfit” for the duty he has undertaken in defending Lady Mason (225; ch. 69), he really means he considers himself above the duties of trial practice. His hypocritical rationalization is that he could not “put his heart to the proof of an assertion in the truth of which he had no belief” (225; ch. 69). That his successful arguments on Lady Mason’s behalf on the admission of testimony from the first trial and his successful cross-examination of a prosecution witness about Lady Mason’s testimony at the first trial equally contribute to concealing the truth do not trouble him. He differentiates the latter as “referring to facts which had really occurred” even though those facts, the contents of the sworn statements of Lady Mason, were false and the belief in her credibility at the first trial was based on her counterfeit countenance.

The young barrister not only prefers rationalization and logic to experience and empirical evidence, he ignores experience. At this point, he differs from Bentham, whose “work combined an empiricist approach with a rationalism that emphasized conceptual clarity and deductive argument”(Sweet 2). Graham disparages Mr. Chaffanbrass while admitting he has never seen the lawyer at work in the Old Bailey. Judge Staveley says

Graham's admission is shameful because one intending to succeed "cannot have too wide an experience in such matters" (200, ch. 66). Graham's quest to determine Lady Mason's guilt concentrates on extralegal inference, the opinions of others and hearsay, which during the course of the novel change from unreserved support to restraint. Graham ends his project of "moulding" an ideal wife, not because he learns the inadequacy of theory unsupported by experience, but because he finds a woman, Judge Staveley's daughter, even closer to his ideal. He thinks the reformists' position is strengthened by the absence of any argument that effectively concludes the reform debate, an example of his reliance on the endless words of the conference debating a priori theories and his continued failure to look for objective, empirical proof. But he finds an opponent in Baron Maltby, the judge hearing Lady Mason's case, who tells him:

Arguments on such a matter [law reform] are worth nothing at all. A man with what is called a logical turn of mind may prove anything or disprove anything; but he never convinces anybody. On any matter that is near to a man's heart, he is convinced by the tenour of his own thoughts as he goes on living, not by the arguments of a logician, or even by the eloquence of an orator. (229; ch. 69)

Almost twenty years later one of America's greatest jurists, Oliver Wendell Holmes wrote, "The life of the law has not been logic: it has been experience" (5). Holmes partly was responding to the conceptualism method Dean Christopher Columbus Langdell introduced at Harvard University Law School in the early 1870s. Langdell also introduced the casebook method still dominating law school education that emphasizes finding "logically correct answers through the application of abstract principles derived

from cases or precedents” (Minda 13). The dean viewed law as “a transcendental object or transcendental subject unaffected by social and economic context” (Minda 14). Langdell’s conceptualism also countered the “darkness of the ancient common law” and adhered to “the spirit of Enlightenment [. . .] in the omnipotence and liberating potential of reason and science to penetrate the essential truths of legal relations (Minda 16).

Conceptual legal thought included logical positivism among its many jurisprudential themes to develop a less political and more objective understanding of law and culture. The significance of the baron and Holmes’ criticism of abstract theorizing centers on theory’s lack of an experiential basis or, as Graham demonstrates, its unwillingness to buttress or commingle philosophical speculation with empirical observation (Lloyd 95). Unlike realism, positivism fails to consider what Lloyd calls “‘first order’ or primary facts consisting of the actual behavior of legal officials, judges and others (including ordinary private citizens) in relation to these complex legal rules” (110). Holmes’ thinking was a precursor to legal realism. In the sentence before the previous quote he stated: “The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed” (5). Realists likewise are hostile to “systematic theorizing” (Leiter 261) and argue “theorizing ought to be continuous with and dependent upon empirical inquiry in the natural and social sciences” (Leiter 264).

Legal realism never received the prominence in Great Britain it did in the United States during the 1920s and 1930s (Duxbury 94), but the debate between Graham and the baron indicate legal realist thinking was not absent from English jurisprudence. By mid-

century its presence was minimal in America, yet realism never completely retired to the shelves of legal history. Significantly, recent postmodern legal thinking, such as Critical Legal Studies and the Law and Literature movement, have incorporated elements of legal realism in support of their arguments. In reviewing *Minding the Law*, a recent book by Anthony Amsterdam and Jerome Bruner on how culture shapes legal discursive practices, Chris Rideout comments on the authors' efforts "to demonstrate that more is at work in lawyering and judicial processes than anyone would have ever thought" (n. pag.). Amsterdam and Bruner argue legal results "are influenced by how people think, categorize, tell stories, deploy rhetorics, and make cultural sense as they go about interpreting and applying rules, requirements and theories" (qtd. in Rideout n. pag.). Trollope's *Orley Farm* successfully demonstrated this proposition almost a century and a half ago.

Although the baron dismisses Graham's theoretical abstractions, he uses verbal abstractions in his charge to the jury, particularly regarding the testimony of the witnesses: "He never spoke of them as though they had been live men and women [. . .]" (278; ch. 75),²⁴ but resembled more a scientist talking about the objects of his research. This dehumanization distances the law and evidence from human activity. The narrator intrudes to criticize such ill treatment of men and women who give their time without pay to tell what they know about the case. A distant, impersonal discourse, although thought by some as more authoritative, situates law as an autonomous activity that adjudicates from a position of neutrality and objectivity. At the same time, the baron reminds the jury to rely on the evidence, the empirical, as presented to them and not the rhetorical diversions of the lawyers and other extralegal influences such as the attack on Mr. Dockwrath as revengeful and having an interest in the outcome of the case, which was irrelevant to

the issue of Lady Mason's credibility at the previous trial. Thus using neutral word choice, the baron imposes on the jury a method of thinking so that they can render a judgment based on their neutral and objective determination of the facts and not subjective emotions and biases. Bentham's legal reform proposals included an examination of legal language. According to British legal scholar H. L. A. Hart, Bentham "insisted on a precise, morally, neutral vocabulary for use in the discussion of law" (lxxiv). Bentham's separation of the descriptive from the evaluative in language coincided with his application of a scientific method to law. Hart says that Bentham's concern about legal language "is perhaps the central feature of his thought which has led to his classification as a legal positivist" (lxxxv).

The brief picture of Baron Maltby and the more enlarged picture of his fellow member of the bench, Judge Staveley, show two men who simultaneously juggle in their careers elements of both abstract and empirical thinking which seems to coincide with what Bentham supported. According to Bentham scholar F. Rosen, Bentham's "writings combine in a distinctive way a critical rationalism and empiricism with a conception of gradual reform [. . .] (xxxi). As James Kincaid suggests, neither form of thinking alone is sufficient: "The abstractions of law violate the very basics of life by treating what is complex, dynamic, and intuitive as if it were simple, fixed, and rational" (80). On the other hand, the men of experience who rely on empiricism, Chaffanbrass, Aram, and Furnival, show that it can be vicious, motivated by fee and duty to the payer, and not concerned with guilt or innocence but with obtaining what the client wants (81).

Absolutism in either way of thinking brings the heartbreak and disenchantment of Sir Peregrine, the ineffectiveness and lack of respect from the legal community of Gra-

ham, and the mental and marital discord of Mr. Furnival. The scorn for Mr. Chaffanbrass' heartlessness and Mr. Moulder's gluttony are also reflections of their too narrow visions. Sir Peregrine's idealism is a sad parody that mocks the chivalric myth. Even though Lady Mason saves him from the ultimate disgrace of marriage, the public still knows about the engagement from his own crowing: "his own disgrace sat very heavy on him" (123; ch. 56). At first, instead of rising from the experience of the fall from his pedestal, he clings to his mythic code, embittered at her dishonesty, but fixated on his promise to help and his obligation to her. From his fallen view, the world or the pitch, is "too hard for him" (103; ch. 53) because it destroys all the simple, lofty abstractions of right and wrong and the authority of the law and its truth finding that he unwaveringly adhered to without testing or reflection. "It was strange," the narrator says, "how that old man should have lived so near the world for seventy years, should have taken his place in Parliament and on the bench, should have rubbed his shoulders so constantly against those of his neighbors, and yet have retrained so strong a reliance on the purity of the world in general" (122; ch. 56). Theories that claim a necessary connection to law and morality like Sir Peregrine's natural law cannot "demonstrate that their moral judgments are validated by an objective moral order" according to Conrad Johnson. "Instead they leave us with vague and often conflicting general precepts such as 'Do good and avoid evil,' and then base the validity of these precepts on nothing more than an appeal to our institutions" (4).

The world's intervention also curbs Graham's reform enthusiasm, though his experience is certainly not as tragic. No one shares his view other than perhaps Von Bauhr. In his talk and thinking on reform, he stops short of explaining how his theories can be implemented in practice. He cannot move beyond criticism of the existing system to fea-

sible solutions and his responses to disapproval of his reformist attitude are without depth. After the baron's lecture, Graham can only reply "Some one will have a mission to reform our courts of law, and will do it" (229; 69). Most importantly, when the epitome of experience, Mr. Chaffanbrass, confronts him, he remains mute and rationalizes that "his answer would have been ready enough had there been time or place in which to give it" (280, ch. 75). The conflict between theory and practice "paralyzes him," according to Robert Polhemus in *The Changing World of Anthony Trollope* (86). Graham's eloquence is in his writing from which he obtained "considerable success and sufficient pecuniary results" (138; ch. 18). Judge Staveley threatens even this achievement because the judge wants him to spend less time writing and more time developing a law practice so Graham can improve his legal reputation, expertise, and ability to make a living as a future son-in-law. His union with the Staveley family changes Graham from the "moulder" to one whom others attempt to "mould." Graham is marrying the judge's daughter who lets Graham know she respects her father's judgment, but adds that Graham can do as he likes. The novel's ending leaves to speculation whether Graham manages to earn a living practicing law as well as persisting in his reform writing.²⁵ Judge Staveley suggests he "take the world as he finds it" and learn to live in it while he is mending it (142; ch. 61).²⁶

Felix Graham and Sir Peregrine may agree on certain standards of right and wrong about the law, "an implied affiliation between the reformers' dreams and inherited ideals" (Dolin 115), but their consensus comes from different arguments. Sir Peregrine exhibits a "conservative fear of change" and Graham a "liberal recognition that all is not well in the present system" (Dolin 116). But Sir Peregrine's stagnancy and obsession with an unblemished existence indicates an underlying "anxiety to repeat the greatness of

the past,” while Graham’s paralysis and silence represents “mistrust of abstract models of the future state” (Dolin 116). As such, both remain ineffectively locked in the present.

Although Mr. Furnival stands at the other end of the theory/practice debate, he too is locked in the present, thinking little of history represented in his past attachment to his wife or of the future represented in his questionable domestic living arrangements and personal reputation or in his professional standing resulting from his increased laxity toward ethical conduct. His professional commitment and reliance on experience without reflection or self-examination serve him well until he becomes “dreadfully buffeted about both as regards his outer man and his inner conscience” by Lady Mason’s case and marital discord. In addition to his work habits, he is immoderate in his temper, his alcohol consumption at his club, and his flirtations with women. Using another classical reference, the narrator twice refers to lines from *Odes II. iii* of the Roman poet Horace reminding Delius that “the equal mind should be sedulously maintained when things run well, as well as when they run hardly.” He says Mr. Furnival “might also have remembered had time been allowed him to cultivate the classics” (78 ch. 10). Ultimately, Mr. Furnival reconciles with his wife, saying he will spend more of his time at home with her, and professionally his reputation survives Lady Mason’s case. Unlike at the conclusion of the first trial twenty years ago when he celebrated her victory and commiserated with her on Joseph Mason’s greed, he avoids Lady Mason during and after the trial.

The narrator reconciles Lady Mason’s successful forgery and compounding of the deceit by distancing her from mainstream society as well. Her ability to avoid the law’s consequences for more than twenty years and through two trials strikes many as otherworldly—a dark world not publicly acknowledged, but inspiring private fascination and

amazement. Far from an ordinary Victorian woman, she dresses fastidiously in black and impresses others as “clever” and “uncommonly pretty” (269; ch. 35). Her chameleon-like countenance and manipulations, described by the narrator and unobserved by those around her, enforce her connections to a supernatural force. The possibility that Lady Mason is guilty and what her accomplishment entailed awes Mr. Furnival and the narrator pushes his thoughts of Lady Mason’s forgery from “terrible” to “wonderful “ (126; ch. 13). Mr. Dockwrath refers to the discovery of her guilt as “wonderful facts” (126; ch. 16).

Mrs. Orme considers Lady Mason’s endurance and unfaltering innocent pretense during the second trial “almost awful” (154; ch. 60). Joseph Mason’s face is “almost black with horror” (60; ch. 8) when he learns about the newly discovered evidence from Mr. Dockwrath. After Lady Mason’s confession to Sir Peregrine “the fact itself was so wonderful, that he had hardly as yet made even that all his own” (37; ch. 45). The narrator says Mrs. Orme, whose hand is offered to help Lady Mason, “might not know how imminent, how close the danger” (154; ch. 60). The group in Mr. Moulder’s home, upon learning of the transfer of Orley Farm to Joseph Mason, is struck “as the conviction grew upon them that a great and mysterious crime had been committed” (295; ch. 77).

Victorian society and the narrator cannot couch Lady Mason’s deed in terms other than an aberration or the sensational. Her actions must be viewed as abnormal. No other explanation exists to reconcile their acceptance of a criminal among them and prevent their submitting to the realization that monsters resembling themselves and their manners exist and thrive in their safe and tidy world. To honestly face what she has done threatens the visible world of order and stability since it demonstrates how easily society can be

shammed, illustrates the elusiveness of truth, and exposes the legal system's inability to enforce its laws, protect the continuity of family inheritance, and insure landowners' independence to convey their property. Unlike the sensation novel subgenre of the same period as *Orley Farm* in mid-Victorian England, which confronts the unthinkable and shows it actively engaged at all levels of society, realism exposes the unthinkable and then suppresses it through isolating it as something uncommon or anomalous.

The sense of the supernatural attributed to Lady Mason becomes associated with the demonic. After threatening to transfer Orley Farm herself to their son the dying Sir Joseph, according to Lady Mason, "bade me beware of my soul" (153; ch. 60). In the development of the novel, Lady Mason's act seems to grow from a crime to a Faustian pact with the devil committed in the blackness of night while her husband is dying. Even for her "It was a matter of wonder [. . .] that her guilt had sat so lightly on her shoulders" (105; ch. 53). Before Mrs. Orme, Lady Mason drops her pretense and withers to a wretched and tormented figure. Ever since the forgery "a black unwelcome guest, the spectre of coming evil" (105; ch. 53) had haunted her. After her confession, the spectre is "Nearer to her, and still nears" (105; ch. Ch. 53), imposing upon her mentally and physically. To redeem herself she says she "would now give away her existence;--ay her very body and soul" (105; ch. 53).

A spectre does come to Lady Mason in daily visits and twenty-four hour shadowing of her every movement during the days of the trial. Mrs. Orme, another woman dressed in black, intends to exorcize the evil from Lady Mason. She demands that Lady Mason repent and confess to Lucius so that he will give up Orley Farm. Forgiveness and Lady Mason's salvation are conditional on releasing the property. Mrs. Orme's body lan-

guage near Lady Mason is intimidating and suffocating. She sits “so close that that she might look into her face and watch every movement of her eyes (152, ch. 60). On her knees before Lady Mason, she holds her with both hands, then begins “pressing Lady Mason’s hand, pressing against her knees” (158; ch. 60) while urging repentance. The battle for Lady Mason’s soul is with Mrs. Orme: “She whose life had been so innocent, so pure, and so good, could look into the inmost heart and soul of the other woman whose career had been supported by the proceeds of one terrible life-long inequity” (153: ch. 60). Lady Mason’s pact was not with the devil twenty years previously, but with Mrs. Orme before the trial.

The narrator repeatedly refers to Mrs. Orme as a better woman and to her purity and innocence during her increased association with Lady Mason before the trial. The repetitions are as obtrusive as Sir Peregrine’s allusions to his daughter-in-law as an angel and his fears that she be tainted by pitch. Her dismissal of his concerns and her actions defy what the narrator and Sir Peregrine say about her. She cannot be stained by her contacts with the outside world because, notwithstanding her isolation since her widowhood twenty years before, her actions reveal she is as worldly, if not more so, than Lady Mason. Both women are implicated in insinuations to the wisdom of the serpent and the innocence of the dove. No secrets exist between the two women; any barriers to conduct because of Mrs. Orme’s elevated social stature are eliminated by “equal friendship” (154; ch. 60).

The terms of the pact are the preservation of Lady Mason’s secret and assistance in her pretense of innocence so that she has a chance at acquittal, provided Lady Mason tells Lucius of her guilt and he gives up the property. Mrs. Orme becomes Lady Mason’s

guard to insure Lady Mason does not breach the agreement. We are told that Mrs. Orme's word to Sir Peregrine "has been law to him" (24; ch. 3), and she obviously expects that same homage from everyone else. Her justification for her concentration on the other woman's conduct is Lady Mason's salvation. Forgiveness must be withheld until Lady Mason repents and complies with the agreement. Lucius Mason must be told before the trial ends because, should it end in an acquittal, Lady Mason might continue the deceit. On the night before the last day of the trial Mrs. Orme "declared that the story should be told at once" (261; ch. 73) and she "was sufficiently anxious to perform the task [. . .]" (260; ch. 73). After its completion and the total annihilation of the young man's past, present, and future and his removal from the gentlemanly Orme world, Mrs. Orme "could now wish for an acquittal with a clear conscience; and could as it were absolve the sinner with her own heart, seeing that there was no longer any doubt as to the giving up of the property" (264; ch. 73). The act of restitution accomplishes what the trial did not. "Even should the jury acquit her," Sir Peregrine says, "she must declare her guilt to the world" (236; ch. 70) via the conveyance. Two of the highest members of the community selectively determine the dissemination of truth—Lady Mason's fraud is exposed; their knowledge concealed.

Later, Mrs. Orme blocks a forgiving Sir Peregrine's renewed desire to marry Lady Mason: "It would be wrong to yourself, sir. [. . .] It is the fact she did that thing. We may forgive her, but others will not do so on that account. It would not be right, that you should bring her here" (307; ch. 79).²⁷ Sir Peregrine is willing to violate the social laws and return to the fold the birthright thief with unconditional forgiveness as Esau forgave his brother in the story of Rebekah. Here his Christian natural law moral code gained

through his self-reflection has overcome his social prejudices and conventions. At his farewell Sir Peregrine would take Lady Mason home with him but says it cannot be, “She who loves you so well, has told me so” (310; ch. 79). Mrs. Orme’s unshakeable law interferes. Robert Polhemus writes that “the security of a fixed moral code” comes with a price because it “inhibits the freedom of the individual to act independently and to be his own judge of human circumstances” (81). Sir Peregrine succumbs to Mrs. Orme’s confusion of morality with social prudery and self-interest. It “condemn[s] him to utter misery for the rest of his life” knowing that the “same conventions and laws which he had always before accepted without question” now destroyed him as they had others in the past (Polhemus 81).

Mrs. Orme operates from mixed motives, all of which reduce the law to a secondary status. She is attractive, has an unblemished reputation since her widowhood, and possesses the esteem of anyone of any importance in her community. She is also very spoiled, and narrow-minded. The law and its lawyers are beneath her. The narrator says she is “a good churchwoman, but not strong, individually, in points of doctrine” (41; ch. 45). Instead, she follows what she thinks is her conscience and “her own dealings with her Savior” (41; ch. 45). She maintains an impregnable self-confidence and engages in little self-reflection that might lead her to modifying her conduct toward Lady Mason. Bentham wrote in *An Introduction* that such standards of right and wrong signify only the adherent’s disposition unsupported by an external standard: “the mischief common to all these ways of thinking and arguing [. . .] is their serving as a cloak and pretense, and alimment, to despotism” (28)²⁸ Mrs. Orme’s claims of Christian compassion, love, and charity may be sincere, but she is too intolerant, ignorant, and selfish to comprehend how she

hypocritically enacts them. She shuns the Jewish lawyer Aram by ignoring the offer of his arm as assistance and refuses to show the greatness of The Cleeve carriage outside the courtroom. Moreover, her claims do not correspond to her unconcern about the exiled mother and her son with little means of support. Her so-called Christian benevolence has strict parameters. She exhibits what Polhemus says is “the human tendency to throw a cloak of morality around self-interest, to become oblivious to the connection between what one thinks is right and what will benefit one” (87). Referring to what he labels as “pious cant” in some of Trollope’s novels, Patrick Brantlinger says “it allows for an unblinking acknowledgment of injustice which neither affirms it nor seeks to change it” (209).

These interests are first exposed when Lady Mason before her confession to Sir Peregrine tells Mrs. Orme she must break her engagement. Mrs. Orme does not try to change Lady Mason’s mind even though she knows the pain it will bring to her father-in-law. Her son opposes the marriage, she always yields to his wishes, and she thinks first of her son, as Lady Mason thought first of hers. As a protective mother, Mrs. Orme must prevent a marriage between Sir Peregrine and Lady Mason because it would taint the purity of the class Sir Peregrine represents and leads, and it would impair young Peregrine’s own marriage prospects. “[H]ow would it affect his hopes if it were known that you at the time had married a lady whose misfortune made it necessary that she should stand at the bar in a criminal court?” Lord Alston, Sir Peregrine’s friend, asked (25; ch. 43). Harvey also suggests that Mrs. Orme’s acts are more than class preservation because they protect her son’s financial interests. Sir Peregrine does not intend to benefit Lady Mason financially through marriage. However, his grandfather was not an extremely wealthy man and

did not use his lands to their ultimate potential. A successful marriage for young Peregrine must be a woman with money. In fact, his grandfather already has calculated the money gained if Peregrine married into the Staveley family. The reputation of Lady Mason in his family tree might prohibit such chances. Excluding Lady Mason preserves young Peregrine's opportunity and his birthright.

Additionally, Lucius' continued occupation of Orley Farm after the trial would condone Lady Mason's disregard for the traditions of the upper class and for the law. As Dolin explains the situation, "the law of inheritance [. . .] seeks to reconcile continuity and change, for the inevitable changes in the constitution of family and society caused by death are addressed with a view to preventing the breakdown of order and custom." Dolin interprets the laws of inheritance as minimizing change, because even though a person dies, his property lives on. Lady Mason's appropriation of Orley Farm interferes with this continued life and breaks down order and custom (116-17). If Lucius remained in possession of the farm, it also would condone an act that the law has failed in two opportunities to rectify. Moreover, it would permit one without proper antecedents as well as property to be a gentleman in a gentlemen's world. Lucius Mason's standing as a gentleman already was tenuous because his father's wealth and title were not inherited but acquired. Once he loses the material indicia of status, nothing remains to support his position.

Acting mainly alone, Mrs. Orme confronts the subversive, not necessarily evil, force that Lady Mason represents and succeeds at preventing any pitch from blackening the partitions of her social class or jeopardizing any laws that it has created for its protection and continued domination. Harvey argues that Mrs. Orme capitulates to commercialism. However, it is more than a financial concern that we see in the lawyers and the

commercial men. This commercialism leagues with social Darwinism, acted out in a card game called commerce played in the Staveley household, in which the winner must kill off all competitors and in Mr. Furnival's statement that "in a combat with the devil one must use the devil's weapons" (302; ch. 33). In the same way, the social status quo in the novel disposes of any threats or renders them ineffective. The subversive Lady Mason and her son, who wants to revolutionize agriculture production, are exiled. Similarly, the new bendable iron furniture of one of Mr. Moulder's associates, Mr. Kantwise, is not durable and those who respect quality wooden furniture shun it. Mr. Dockwrath suffers defeat and financial devastation in his own subsequent litigation with Joseph Mason over what Mr. Dockwrath claimed was a contract to lease Orley Farm. Graham's reform enthusiasm is restrained by love and his father-in-law's demand that he support his wife.

Harvey also says that Mrs. Orme's demeanor cloaks a "squalid self-interest" (106). According to George Levine in "Can You Forgive Him? Trollope's *Can You Forgive Her?* and the Myth of Realism," Trollope's fiction "is dominated by a social myth: even if one knows society's rules of decorum, gentlemanliness, and order to be wrong and repressive in any given situation, those rules are essential to society's survival." Furthermore, as Mrs. Orme's actions indicate and as Levine argues, "that survival is the ultimate value because the well-being, even the identity of all people is dependent upon it" (8). In effect, all classes are complicit in this survival policy because as Harvey writes, it protects "their cherished illusions" which "rest upon a fragile social consensus" (16) clearly identified in *Orley Farm*. Mr. Moulder's satisfaction with his nation as the best that is, not the best possible, and his greatcoat story based on the purchasing power of his commercial class epitomizes this adoption of the upper-class ideology. He claims that it

is not injustice that he can afford to buy a greatcoat against the winter and others perish because they cannot: "I say it's a grand thing to live in a country where one can buy a greatcoat" (166; ch. 61). Whether the social illusions Mrs. Orme has preserved will continue depends on the inheritors of the upper-class tradition who at the conclusion of the novel exhibit little potential for thinking beyond their own immediate needs. Augustus Staveley and Peregrine Orme show scant promise of success. Augustus as a lawyer and the heir of a rich man has not demonstrated the work ethic of his father, and spends much of his time in flirtations. Young Orme at the conclusion of the novel reacts childishly to Madeline Staveley's rejection of his marriage proposal by ignoring his duties in taking over as manager of The Cleeve for Sir Peregrine and leaving for big game hunting in foreign lands.

Mrs. Orme's actions in one respect demonstrate society's response to reality's exposure of threatening forces to the "light of day," a phrase the narrator and other characters frequently use referring to law's ability to expose truth. Yet other factors, not law, forced Lady Mason's revelation of guilt. Once exposed, as in many other Victorian novels, the perpetrator of darkness must be alienated. She leaves with her son to a foreign country. At the same time, the reality of this expulsion identifies another monster, one much more life threatening and powerful because of its social acceptance. That monster is the upper class denial of individual independence, inflexible adherence to empty statements of right and wrong, unwillingness to compromise, harsh pragmatism, and deceptive masquerade of righteousness and benevolence. Some might argue that the Anglo-American legal systems have been appropriated for the same purposes.

Nevertheless, the narrator's depiction of experience's stark reality does not end

with a pessimistic and frightening view of this Methuselah-like Goliath's survival. The narrator articulates a theory, using the transcendental abstraction and mediating experience of sympathy. The narrator has laid the groundwork for this emotion in the characterizations of the individuals in the novel and in the involvement of the narrator as a character as well.

Few writers on Trollope fail to mention the novelist's multi-dimensional characters. His characters are "mixed" according to David Skilton, "neither wholly good nor wholly bad" (139, *Anthony Trollope and His Contemporaries*). The appearance of inconsistency in characterization is proof of these mixed characters. Mrs. Orme's conduct stems from the ruthlessness of self-interest and the kindness of Christian charity despite its misinterpretation. Graham's strict idealism is countered by his love for Madeline Staveley. Sir Peregrine releases himself from his inherited conventions but cannot deprive his daughter-in-law and grandson of their benefits. Mr. Dockwraith is ambitiously aggressive and brash. He also is sincere in wanting the Orley Farm case ended in favor of the innocent victim. Joseph Mason's fixation for Lady Mason's punishment is juxtaposed against his genuine sense of being wronged and the narrator's statement that "he was not a bad man" (49; ch. 7). The characters' mixed motives are the products of the mixed elements of their identities. As a narrative intrusion in the novel states, "All our motives are mixed" (121; ch. 16). The novel's mixed characters with mixed motives contribute to the novel's realism. True to the realist literary tradition, the novel contains no single-minded heroes.

In addition, we learn to appreciate the multi-sided aspect of events from the different perspectives the various characters bring to it, most obviously in the varying inter-

pretations of Lady Mason's forgery. The diverse perspectives coincide with the manner in which a trial might present more than one version of an incident. As Mr. Moulder explains to his brother-in-law on his pending testimony, "You'll have to tell your story in their way; that is, in two different ways" (165: ch. 61).²⁹ Throughout the novel, the narrator is a good advocate, knowing the details of the client's case and working to learn or imagine the opposition's story equally as well.

As L. J. Swingle writes, the narrator is "a dramatic character" and "an active participant" (109) who "becomes one sort of character or another, as occasion warrants" (107). As an active participant in the novel, the narrator is no different from the other characters in exhibiting mixed motives and contradictions. Swingle argues that the narrator goads the reader "into thinking about things in unfamiliar ways" (107). Truly, the narrator's comments on the legal system and lawyers provoke reassessments of assumptions about them. The narrator is realistic and participates as a realistic storyteller subject to extra-narrative influences. The narrator's reminder that the account is fiction in the reference to "all persistent novel readers" (10; ch. 2) and use of multiple perspectives and narrative voices argue against any assumptions that the narrator represents Trollope's views because readers have no way of knowing which of these views and voices belong to the novelist.

Sometimes the authoritative third person distant and supposedly impartial storyteller pauses as another voice intrudes and attempts to weight one side of the evidence. These intrusions are subjective opinions beyond the scope of the evidence which readers should reject from factual considerations, such as this comment on the international congress: "I am inclined, myself, to agree with Felix Graham that such efforts are seldom

absolutely wasted" (136; ch. 18). The direct aside here seems harmless because it is easily identifiable, using honestly the first-person pronoun and obviously changing voice. Swingle writes that this type of intrusion recognizes that others might think differently (109). Its subtle danger is its persuasiveness for this statement and others to come based on the relationship of trust and credibility developed between the narrator and reader through such an aside. Although it admits the narrator's subjectivity, it should be taken as a warning about the narration's objectivity. More dangerous is rhetoric that creates diversionary red herrings, an example of which is the bracketing of Mr. Chaffanbrass together with a hired assassin "for truth and honesty to their customers" (278; ch. 76). The comparison of the tensions and ethical demands in a lawyer/client relationship to criminal hired killers is unfair and ignores the professional responsibilities of a barrister. It is inflammatory and easily absorbed into readers' psyches without reflection and directs thought, rather than provokes thought in the manner that Swingle identifies. Even more dangerous are the rhetorical questions that assume its contents are proven and undisputable facts: "How long will it be before we shall recognize that the other kind of torture [cross-examination] is equally opposed to truth and civilization?" (245; ch. 71). Finally, indirect intrusions sometimes blend so subtly into the text that they are unnoticed. Readers are unable to distinguish when the thoughts of a character end and the thoughts of the narrator begin. For example, after Lady Mason's first visit to Mr. Furnival's chambers he sits alone thinking about what she had told him. He already suspects her guilt and thinks "How terrible that would be" (102; ch. 13). With that thought and in the same paragraph, the speculations seem to leave Mr. Furnival and become the voice of another escalating on these thoughts so that terrible becomes "wonderful" (102; ch. 13).

If the best evidence for judgment of the realistic representation is the text, the narrator's participation must be included in the evaluation. Like lawyers, the narrator recognizes the effectiveness of rhetorical language. The rhetorical persuasiveness of Trollope's literary realism lessens the distance between literary discourse and legal discourse. Significantly, the narrator adapts in part similar deceitful devices used to shade the truth that the lawyers in the novel are condemned for using. Employing the devices does not diminish the novel's realism; it emphasizes the realism of the evasiveness of truth and the skillful art of concealing or shaping it. Dolin points out how the narrator's reference to Millais' illustration of Lady Mason is equivalent to a barrister asking the jury to look upon the person charged (111). That request may be to provoke scorn, or, in Lady Mason's case, sympathy. Swingle writes that reading the novel becomes a cognitive experience for the reader because it "provoke[s] serious and skeptical meditation upon the question of judging things accurately" (15). According to Swingle, the "Trollopian narrator [. . .] is an artistic construct" (95). That construct is an advocate intent on persuading through marshalling narrative and commentary and manipulating evidence and action (111). The advocate is so intent because, as James Kincaid argues, "The reader is the final judge. He must be convinced of the reality of the art, whatever reality in fact may be" (48). Determiners of guilt or innocence in a trial also must be persuaded of the reality of the advocate's position whatever the reality in fact may be.

Although the narrator has devoted much persuasive energy toward the realism of his art, the narrator supplies a sort of cushioning factor in case there are doubters. The plea for sympathy in the concluding pages looks backward to the preceding incidents and characters and is a manipulative tool to reduce any harsh judgment against the novel's

attempt at realism. Because for the narrator reality includes mediating sympathy, all the narrator's persuasive devices work toward convincing readers of that integration. In the concluding pages of the novel, the narrator confesses that as he has "told her story" sympathy for Lady Mason "has grown upon myself till I have learned to forgive her, and to feel that I too could have regarded her as a friend." The implication is that in the process of reading sympathy should grow within the reader as well. The narrator gently eases Lady Mason from community ostracism to community inclusion, beginning with an apology for what is "perhaps [. . .] a fault" in asking readers for sympathy toward "a woman who had sinned as to have placed her beyond the general sympathy of the world at large." The narrator enforces this appeal to sympathy, reminding readers they are not so different from Lady Mason by turning their thoughts to themselves and their own experiences when it seemed "that all was over" and "there was nothing left but to die" (312; ch. 79). Readers must be irretrievably captured when he invokes the image used at least twice before in the novel and underlying much of its developmental techniques: "God does temper the wind to the shorn lamb" (312; ch. 79).³⁰

Only the most cynical and heartless reader could turn away from such an appeal. Tempering or mercy becomes the soothing ointment to cruel experience, not only for Lady Mason, but equally desired by readers. The narrator deftly defuses Lady Mason's otherness and relocates her as one sharing the same world as the readers who are susceptible to the same desperation. The realism of the artist, apRoberts argues, "maintains our sense of fellow-feeling with his characters" so that the readers/observers recognize their commonality with the characters and "pity follows as an extension of self-pity" (191). Furthermore, the narrator's appeal for readers' sympathy and reflection produces such a

tolerant and reflective atmosphere that it avoidably participates in readers' judgment of the novel's realism.

The reference to God's involvement in the tempering of the wind can be viewed in several ways. It reminds readers of divine mercy in judgment, something they seek as well. It is also something they wish to be like, to show the godliness within them. As the narrator moves from the tempering to asking readers to remember or imagine themselves in a like experience, the concept of sympathy becomes earthly and places the responsibility of judgment on readers. That judgment extends from the events of the novel to the novel itself and its narrator. In effect, the narrator makes it almost impossible for readers to judge the story harshly. The insertion of the sympathetic appeal effectively calls upon the emotions, and away from any objective evaluation of the narrative for its realism.

A second view of the divine reference is that the narrator relies on intervention or *deus ex machina* to ease the harsh earthly existence of human beings rather than imposes the responsibility on them to make things better. In this sense, readers may feel sympathy, as the narrator does, but do not have to do or perhaps are powerless to do anything about the conditions that ultimately provoked their sympathetic emotions because only a transcendental force can or should rectify them. With this view, sympathy is merely something that reminds readers of their humanity. It lessens the acuteness of experience, and, as Patrick Brantlinger suggests, contributes to injustice because sympathy becomes another factor masking injustice. It does not initiate human action to cure the injustice.

In a third way of considering the narrator's invocation of sympathy, Alexander Pettit explains in his article, "Sympathetic Criminality in the Mid-Victorian Novel," that literary portrayals until the mid-nineteenth century severely punished their criminal char-

acter in accordance with “the dominant punitive ideology of early Hanoverian England” (281). In contrast, mid-Victorian literature tended to present a “sympathetic criminal” evincing an “authorial assumption of the once-sovereign right to judge and to punish criminal behavior in a manner not strictly answerable to the existing legal code” (Pettit 281). The relationship between the mid-century author and reader makes this divergence possible according to Pettit. That relationship depends on the successful use of the imagination by the author in activating the imagination of the reader through the realistic novel tradition. Without this relationship, the trust in and credibility of the narrator in attempting truthful representation, the reader would not accept this lenity (281-282). This shared sympathy also is facilitated by “the Victorian infatuation with the ‘psychology’ of the offender” (Pettit 282) in the same way that legal realists are concerned with behavioral psychology of participants in the legal system. Pettit argues that because of the social science approach the criminal became a statistic whose crime was a product of the environment that produced it. Mid-Victorian novels described the commission of a crime as antithetical, not endemic, to the dramatic world. For this reason, criminal acts are sensational and, as Pettit points out, descriptions of crimes occur in the past or off stage (287). The particulars of the actual deed become less important than the circumstances surrounding it, often showing the criminal as victimized, not “incorrigibly deviant” (Pettit 290). *Orley Farm* exhibits this in Lady Mason’s account of her victimization by her family and husband. She is not a complete reprobate. In fact, the suggestion is that under different circumstances she would have been a much different person. The criminal as victim inspires sympathy as demonstrated by the narrator’s confession.

Pettit also argues that, “the dynamic of sympathetic criminality offered by the

novel [. . .] carries the implication of communal and individual rehabilitation: the stuff of final chapters and epilogues” (296). Trollope’s final pages do not offer a sense of rehabilitation, just a sense of restoration, though not necessarily unscathed, after a threatening upheaval conquered at an enormous expense of energy. The social hierarchy survives after uniting to expunge the offenders (Mr. Dockwrath and Lady Mason) or to neutralize them (Graham). The descriptions of broken hearts—both Peregrines, of lost members of the community—Lucius and Lady Mason and Mr. Dockwrath, of the possible rendering ineffective any reformist thinking—Graham, of isolation and despotism—Mrs. Orme, of continued sense of injustice—Joseph Mason, of simply accepting the alleged bounties of one’s plate without reflection—the Moulders, and resigned moderation—Mr. Furnival resemble more the debris remaining after a battle than rehabilitation. This conclusion extends the sympathy the narrator felt for Lady Mason to the community she as pitch has touched.

The movement from the single lamb to an entire flock takes the reader back to Pettit’s statement of treating criminal behavior outside of the existing laws. In this way, Lady Mason’s acquittal despite her guilt does not shock the reader because of the sympathy aroused for her. The novel does not subvert the law without an excuse for doing so. In the same way readers look with more leniency upon those upholding the injustices of the existing property and inheritance laws and the injustices imposed by class structures and religious tyrants. Without denying Lady Mason’s responsibility for her deception, readers are conscience free to judge her less severely. Without lessening distain for the self-righteousness, power, and manipulation of the upper class, readers can feel sympathy for their struggles, stasis, and decay. Similarly, the struggles of the other characters warrant

sympathy. The narrator's arousal of sympathy from this interpretation directs thinking away from change to acceptance with sympathy of the way life must be.³¹

Pettit identifies the arousal of sympathy through the criminal as pointing toward juridical reform (282). Certainly the sympathy aroused in *Orley Farm* for the struggles of many of the characters, not just Lady Mason, could prompt considerations of legal reform in combating class discrimination and patriarchal constructs. This is a fourth view of the implications of sympathy which has more positive consequences so long as sympathy does not cloud judgment or blunt sensitivity to injustice and reminds readers of their accountability for injustices and their duty to rectify them. Thus, using a delineation from Robin West's *Caring for Justice*, the humanistic improvement of the existing system becomes the political changing and reforming of the existing system.

The narrator's intrusions identify some specific areas where reform is necessary. The narrator attacks the process of cross-examining witnesses so that like Kenneby, they are completely confused about what they remember and they are humiliated in court and ridiculed by the judges. The narrator also argues that witnesses in general need more respect and should be treated as human beings rather than scientific objects. Through Graham, the narrator criticizes the legal system for protecting the guilty and allowing them to avoid the truth.

Following one of Mr. Moulder's statements of national pride and praise for the legal system, the narrator admonishes the commercial man's uncritical stance: "I would have it of the best if that be possible" (168; ch. 61). Dolin suggests that the narrator's encouragement to strive for something greater "is to temper idealism with pragmatism" or in other words, "to regard Von Bauhr's dream with suspicion while recognizing as com-

placent the English Bar's defence of its 'bread and butter'" (119). Dolin's tempering implies negotiating the extremes of radical reform and maintaining the status quo to something in the mediating middle. Brantlinger argues that the mid-Victorian contentment with the best that was currently possible rather than achieving the best possible (224) made them reluctant to consider reform. His view suggests the continuing merit of Bentham's attack in *Fragment on Government* (1776) "which challenged the complacent view of the eighteenth century that British society, government, and law had attained as great a perfection as could be hoped for" (Prall 588). Viewed this way, the narrator seems to adopt Bentham's position in criticizing Mr. Moulder and incorporates a political element into the novel.

Reform and a desire for the best instead of the best possible at the time can be motivated by sympathy. At the least, the continued appeals to readers' emotions of some social reform novels dispel to some extent the feelings of complacency while simultaneously arousing indignation. Trollope's novel is not a novel of social reform. However, as Swingle correctly stated, it provokes a re-examination of a reader's thinking and that aspect gives it increased value as a realistic novel. Ideally, readers could develop some of its statements about law and the legal system into thinking about what might make the trial process more able to determine truth while still protecting the rights of the accused, what a justice that mediates both procedural and substantial justice might look like, and what might make the laws of property and inheritance more equitable for wives and children.

The narrator's introduction of a sympathetic element in judging if extended to legal judging also forces more thinking about legal decision-making. Bentham detailed

how judges were obligated “to impersonate the parties’ expectations” and “role play” (Polloczek 100). Judges, according to Bentham in *Comment on the Commentaries*, should consider both precedents and their personification of the parties’ expectations when reaching a decision (Polloczek 98). Judges cannot perform these personifications without a form of sympathy for the parties in which judges place themselves imaginatively in the position of each party and allow themselves to reflect on that imaginative view when they make decisions.

Some current legal scholars in fact advocate an overt infusion of sympathy into the legal system, particularly at adjudication. In *Poetic Justice: The Literary Imagination and Public Life*, Martha Nussbaum argues that reading realistic literature teaches “the ability to imagine the concrete ways in which people grapple with disadvantage” (xvi). Her argument includes linking Bentham’s utilitarianism as illustrated in Charles Dickens’ *Hard Times* to the current cost-benefit analysis approach of the law and economics movement. Both ways of thinking, she says, fail to incorporate human emotions into their foundations and evaluations. This thinking treats human activity as predictable like Mr. Furnival’s machines without hearts. Nussbaum argues that in addition to summoning powerful emotions, good literature “inspires distrust of conventional pieties and exacts a frequently painful confrontation with one’s own thoughts and intentions” (5). It also reveals, as Trollope makes clear, “a more complex vision of human life” (8). Nussbaum suggests that the result of the sympathetic or empathic perspective obtained from the imaginative association through reading, is better judging within the restraints of legal reasoning (82). While legal realists argue that extralegal factors unknowingly affect decision-making, Nussbaum argues that judges should actively take into account extralegal

factors and consider the social realities of their cases. She proposes that the imaginative perspective formed from reading literature contributes to the ability to imagine what those social realities are like and the consequences of reformed justice. In short, the experience of reading realistic literature substitutes for actual experience. Sympathy is not associated with reminders of past actual experiences, which Trollope provokes in readers, but of past literary experiences. This might be one way of moving outside of one's cultural limitations in attempting to imagine what the lives of others might be and what the consequences of judgment might be.

Reviewing Nussbaum's book, law professor Robin West in effect argues that Nussbaum's a priori logic is unsupported by empirical facts. Despite the merits of Nussbaum's assertions, she claims it is not obviously true that "reading realistic novels hones the capacity for imaginative fancy [sympathy]" or that "the capacity for imaginative fancy improves" the sense of justice (1863). One of West's fears is that excessive sympathy may privilege the individual over the group (1858). This would be counter to utilitarian arguments and what some view as the premise of the law and economics movement. However, West wrote in an article titled "Economic Man and Literary Woman" that "knowledge of the subjectivity of others, gained and pursued through metaphor, allegory, narrative, literature, and culture—is a peculiar sort of knowledge, but it is absolutely essential to any meaningful quest for justice, legal or otherwise" (133). This knowledge of the heart she argues leads to a sense of self, of the other, and of union with the community necessary to attain meaningful justice. One of the premise's of West's book *Caring for Justice*, is that "justice must be caring if it is to be just, and that caring must be just if it is to be caring" (24). Her discussion refers to actual cases in which she identifies

missed opportunities for caring and just decisions. She also imagines situations in legal problem solving where she attempts to show that applying caring obtains justice.

However, the theory of both scholars is not for institutional changes based on sympathy, empathy, and justice, but individual changes within the institution. Supposedly, a sufficient amount of individual changes influences the institution. But such reformist theories to thinking about law and justice will come only after strong persuasive arguments that extend beyond individual acts of sympathy or caring to group consensus and active cooperation and it must begin in legal education, not after lawyers have passed the bar or ascended to the bench. Law and literature studies as part of all law school curricula, among other things, could facilitate such thinking. Furthermore, to accept the premise that literature can positively affect legal thinking, must by necessity accept that some literature can negatively affect legal thinking as well. Lawyers and law students must read their novels as critically as they read their cases.

Yet, we need not rely solely on scholarly theories to reform the legal system. More concrete examples currently operate as indicia of thinking about law with sympathy and caring. For example, the movement toward mediating conflicts and alternative dispute resolution programs that recognize the human and social factors of the parties works toward legal and personal closure rather than supposedly neutral and objective decisions achieved after the trauma of adversarial courtroom battle. Another recent development that allows caring into the judicial process is a trend by some courts to decide that an apology to those injured is not an admission of liability. These rulings allow parties in personal injury or wrongful death cases to treat each other with compassion and sensitivity without fear of jeopardizing their case (Keeva 64). The increase in Access to Justice

programs acknowledges the inequities and inaccessibility of the legal system to minorities and those of limited income and education. In court opportunities for victim impact statements and witness support programs give voice to those who until recently received little official notice because crimes were against the state and witnesses were simply parts of the trial machine, sometimes without a heart, manipulated by advocates. The Plain English movement seeks to make legal language a discourse understandable outside as well as within the legal community. Reconsiderations of theories supporting capital punishment laws and mandatory sentencing structures, now that practice has shown them deficient, signify the system's sometimes willingness for self-examination particularly when public support demands it.

These are examples of theory and practice working together within the legal system to improve the legal system. Although they are far from radical reform and actually perpetuate the existing system, they still struggle for broad acceptance. They also do not delve deeper into the sources of the problem they address. However, in their intent, they accept the touching of pitch in its positive aspect of the interconnectedness of individual experience with the community. That acceptance of the interconnectedness of the individual to others incorporates the human emotions of sympathy and caring. They verify thinking about law as both a human activity and about human activity.

Notes

¹ Page numbers refer to the 1981 Dover edition. Chapter numbers are included to facilitate reference to other editions and are cumulative rather than restarting at the beginning of the second volume. The novel was published originally as two volumes of forty chapters each in December 1861, and September 1862, after release in twenty monthly installments from March 1861, to October 1862 (Mullen 367).

² Apocrypha, Ecclesiasticus 13:1.

³ John W. Clark in *The Language and Style of Anthony Trollope* notes the frequency of Trollope's use of this Biblical maxim in his novels (167).

⁴ See John N. Hall, *Trollope A Biography* (246, 332); R. D. McMaster *Trollope and the Law* (8, 10, 30, 49, 67, 158); Coral Lansbury, *The Reasonable Man: Trollope's Legal Fiction* (157); David Skilton, Introduction, *Orley Farm*, Oxford ed. x; Geoffrey Harvey, *The Art of Anthony Trollope* (15); Keiran Dolin, *Fiction and the Law: Legal Discourse in Victorian and Modernist Literature* (100).

⁵ Trollope was the son of a failed barrister. John N. Hall states in his biography of Trollope that *Orley Farm* is "Trollope's most extended treatment of the law in a long list of solicitors and barristers (214). Trollope's novels describe eleven jury trials and more than one hundred lawyers, according to Hall (156).

⁶ *Orley Farm*, Trollope's eleventh novel, vies with *The Eustace Diamonds* (1873) and *Mr. Scarborough's Family* (1883) in claiming the most legal characters and legal issues.

⁷ German philosophers adhered self-consciously to the German language in their writings thinking it possessed a particular affinity to philosophical thinking (Honderich 308).

⁸ This is Trollope's spelling.

⁹ Hereinafter the *Commentaries*.

¹⁰ We might speculate that Bentham is the model for Von Bauhr. His writing style is thought by some to be difficult to understand and at his death he directed that his body be embalmed, dressed, and placed in a chair. It is now on view at University College, London.

¹¹ Trollope's reference to Lord Boanerges is thought to be an allusion to Lord Henry Brougham (1778-1868) a legal reformer and promoter of similar conferences. He also gained fame for his zealous representation of Queen Caroline in 1820 during which he threatened to expose the king's prior marriage to a Catholic and for his statements about the inflexible duty of advocates to their clients (McMaster 11, 60-1; Mullen 49, 370). Brougham also was a Bentham disciple (Sweet 1).

¹² This statement appears to be a reference to the criticism of utilitarian thinking for treating human beings as if they were machines without emotions.

¹³ My thanks to Dr. Judith Stoddart for inspiring this thinking about the changing legal profession.

¹⁴ Lansbury also mentions, without citing a source, that in the nineteenth-century lawyers thought less of Blackstone and more of protection against civil servants, "who seemed bent on being more lawyerlike than the lawyers" (15).

¹⁵ Margaret King in “Trollope’s *Orley Farm*: Chivalry Versus Commercialism” discusses the novel as a conflict between the rapidly emerging commercial world seen through the materialism of Lady Mason, her family, Sir Joseph, and others and the established British tradition with its remnants of feudalism and medieval practices most obvious in Sir Peregrine, but in Felix Graham and others as well.

¹⁶ Sir Peregrine recalls eighteenth-century thinking in which, according to Lansbury, “Blackstone and the Bible protected a man from the dangers of this world and the fears of the next” (14).

¹⁷ Most of this discussion of natural law is explained in more detail in Joe Feinberg and Hyman Gross *Philosophy of Law* and Conrad Johnson *Philosophy of Law*.

¹⁸ Her precedent is not law, but a misinterpretation of the biblical story of Rebekah in the book of Genesis, who helps her son Jacob steal the birthright of his brother, Esau. Ironically, the prosecutor also recalls this story to Lady Mason’s favor in his opening statements.

¹⁹ Misprision of a felony is concealing a felony committed by another but without any previous concert that would make the concealer an accessory before or after the criminal act (Black 1015).

²⁰ Sir Peregrine’s visit to Mr. Round also places the attorney in ethical jeopardy by discussing the case outside of the presence of Lady Mason’s attorneys and by making the offer which is an indirect admission of Lady Mason’s guilt. Mr. Round’s promise that their words will remain confidential because of his “esteem and respect” for Sir Peregrine’s character also is in direct contradiction to his client’s best interest. Sir Peregrine, though a man of character and high standing willingly accepts that promise without con-

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sidering the jeopardy to Mr. Round's reputation or the unfairness to the real property owner.

²¹ Trollope uses will and codicil synonymously even though the latter is actually an addition or revision of the former executed at a subsequent time. It does not succeed or revoke the will, but becomes part of the will.

²² Hereinafter *An Introduction*.

²³ Interestingly, according to Fred Rosen in his introduction to *An Introduction* John Stuart Mill's version of utilitarianism considered the association with Epicurus a positive aspect and "sought to link utilitarianism with a larger philosophical tradition including Epicurus, Socrates, Plato, and Aristotle" (lxiv).

²⁴ Minda writes that this third person "way of talking and thinking about law is known as the 'formal style of conceptual legal thought' predominant in Langdell's writings (14).

²⁵ For an optimistic view of Graham's future as a reformer see Dolin at 119-20.

²⁶ According to Dolin, "To mend the world while living in it is to acknowledge the need to balance the aspiration for improvement with the desire for continuity" (115).

²⁷ Of this denial, Harvey writes that "after a great inner struggle, Sir Peregrine has courageously succeeded in revaluing the moral outlook of a whole lifetime and has broken free of the imprisoning attitudes of Victorian mythology" but Mrs. Orme "strenuously invokes them afresh" (106).

²⁸ See also Conrad Johnson, *Philosophy of Law*

²⁹ The mixed characterizations and multiple perspectives demonstrate "a lack of faith in universal predetermined rules" according to Lansbury (42).

³⁰ This quote from Lawrence Sterne's *A Sentimental Journey* appears in two other Trollope novels, *Barchester Towers* and *The Last Chronicle of Barset* (Clark 167).

³¹ Many Trollope scholars have identified the sympathetic currents in his novels and the devices that move them. R. D. McMaster writes that sympathy is the impetus for presenting all sides of an issue (6). The narrative and commenting narrator provoke sympathy by forcing readers to imagine, according to James Kincaid (43). Geoffrey Harvey states that Trollope's mixed characters demand sympathy and judgment and inspire compassion (94). Writing about a tradition of compassion in novels, James Gindin defines compassion as "a matter of emphasis, an attitude that kills the void left by all the codes, guides, and formulae that are inadequate for human experience" (154). *Orley Farm* fulfills Gindin's description of "the novel of compassion" in its reliance on "a density of social characterization, a completeness in describing man and his environment, both to demonstrate the world's complexity and to fill the space left by the lack of a universal truth" (155). Pettit wisely cites Janice Carlisle's references to the lessons of sympathy in mid-century novels in the first chapter of *The Sense of an Audience*.

Chapter 2

Thinking about Law as a Utilitarian Philanthropist:

Bulwer-Lytton's *Paul Clifford*:

Some of Jeremy Bentham's most prominent criticisms about the law are depicted through the characters and rhetoric of Edward Bulwer-Lytton's *Paul Clifford* (1830). The Benthamite affinities include: criticisms of the harshness of the criminal laws inherited from the eighteenth century, the circumstances and environmental influences that motivate criminal behavior, the parallels between society's elite—politicians, government officials, and lawyers—and a gang of thieves, and indictments of society's rampant deceit and fraud, especially in the charade of public conduct and language abuse. Bulwer-Lytton attempts through Paul, who is a victim of circumstances and the law, to present a humanistic picture of Bentham's complaints. In order to present convincingly Bentham's arguments for legal reform, the novelist must first expose the upper class whose members make and enforce the laws. Attacking the legal system means also denouncing its reliance on custom, tradition, and the Common Law, its inherited thinking from Sir William Blackstone, and urging legislative reform.

Additionally, *Paul Clifford* mixes thinking about Benthamite law reform with an undercurrent of thinking about an evaluative theory of the novel. This creates an interesting interchange that moves from the real or the "as is" to the ideal or the "ought to be" in both law and literature. Furthermore, the novel's format—first describing problems and then proposing practical solutions—borrows from Bentham's expository strategy. The harsh laws and strict sentencing, which seem clearly to be for the benefit of the wealthy, are defined. Utilitarian legal reform is the proposed solution. Novel reading becomes a

problem when it glorifies crime and influences vulnerable minds. Paul copied in his career as a highwayman behavior he had read about as a boy in a novel. The answer to concerns about the novel's negative influence is utilitarian as well. If novels can negatively influence, they can positively influence. The solution to the problem of the novel's influence is to ensure that it is put to its best use. However, just as Bulwer-Lytton's novel shows that legislative reform is not the complete solution to the problem because it must be combined with acts of individual benevolence, the novel itself must become more like a book of jurisprudence that merges the "what is" or the real with the ideal or "what ought to be."

In this discussion I intend to show how closely the novelist followed Bentham's thinking and incorporated it into his fictional account. The novel works at showing why Bentham thought legal reforms necessary and how he intended they should be implemented. The extensiveness of the incorporation of Bentham philosophy into the novel indicates that Bulwer-Lytton knew and attempted to understand the philosopher's message regarding legal reform. The value of this study is discovering how the novelist successfully and convincingly incorporated Benthamite thinking into a fictional text and the methods in which Bulwer-Lytton adopted Bentham's writing style and rhetorical strategy to heighten that incorporation.

Much has been said about two apparently anti-Benthamite novels, Dickens' *Oliver Twist* (1838) and *Hard Times* (1854) that followed Bulwer-Lytton's Benthamite novel, *Paul Clifford*. The much later *Felix Holt, The Radical* (1866) is also an anti-Benthamite novel. Although this discussion is not a comparison of what Bulwer-Lytton said in favor of utilitarian legal reform versus what Dickens said against utilitarianism in

general, the inevitable comparisons between the two necessitate a few comments. I venture to speculate that even Dickens, who never ceased in his appeals for reform, would agree with Bulwer-Lytton's emphasis on changes in the criminal laws, as did many other reformers of his time even though they did not share Bentham's intensity in radical reform. Dickens' picture of Oliver Twist before the police magistrate is an expansion of the scene when the young Paul Clifford is first brought to court. The shadow of the gallows is strong in both *Oliver Twist* and *Paul Clifford*. Although Dickens far exceeds Bulwer-Lytton in artistry, both recognize the value of idealism in conveying an impressionable message. Dickens' novels do not focus on criminal law legislative reform as narrowly as Bulwer-Lytton does in *Paul Clifford*. His two novels criticize the broad concepts of utilitarianism. I also speculate that Dickens was not as well read in Bentham's works as Bulwer-Lytton's novel indicates he was and that Dickens' criticism was directed more at the form of utilitarianism expounded by James Mill than by Jeremy Bentham. We risk confusion by attributing all criticism of utilitarianism to Bentham when other radical philosophers wrote their own versions of utilitarianism as well.

Many scholars consider *Paul Clifford* the first of the Newgate novels.¹ Patrick Brantlinger in *The Spirit of Reform* calls it the "prototype" of Newgate novels and of the later social reform novels (35). Keith Hollingsworth defines Newgate novels as a series of novels between 1830 and 1840 that differed from previous novels about crime and criminality because of their interest in the criminal himself, rather than in a great criminal character (15). Nineteenth-century critics opposed the Newgate novels "on the ground of morality or taste" and feared their influence because "they familiarized their readers with vice and crime, perhaps to a degree socially dangerous" (Hollingsworth 14). According to

Hollingsworth, “The literary war they occasioned gives evidence not only of the reaction against Regency looseness [. . .], but also of a pervasive fear that crude manners and crude morals might flood upward with a rising populace whose education was a problem still doubtful of solution” (16). Regarding *Paul Clifford*, critics objected to Bulwer-Lytton’s sympathetic treatment of the criminal and his willingness to blame society instead of the criminal (Hollingsworth 81).

Some scholars disagree with the inclusion of *Paul Clifford* among other Newgate novels because it gives short shrift to prison and prison conditions.² The gallows located on the prison site is the pending threat in the novel, not the notorious prison. In 1830, two hundred and twenty-three offenses were punishable by death in England according to Louis Cazamian in *The Social Novel in England 1830-1850* (46). Although we can detect in the novel reasons for penal reform—boredom, close confinement, threat of assault, indiscriminate punishment inflicted by lazy turnkeys—its emphasis is not on the prison itself, but, first, on the harsh criminal laws that send people to the corrupting influence of prison and sometimes to their execution and, secondly, on the circumstances contributing to criminal activity. “The laws themselves caused me to break the laws,” Paul says to the judge at his final trial, “first, by implanting within me the goading sense of injustice; secondly by submitting me to the corruption of example.” As if his message is not clear, he repeats it: “Your legislation made me what I am, and it now destroys me, as it has destroyed thousands for being what it made me!” (440; ch. 35).

Paul’s attack on the state of the criminal laws is not without merit. Criminal laws in the early nineteenth century were relatively unchanged from the preceding century, which, according to Gerard Postema in *Bentham and the Common Law Tradition*:

saw an enormous increase in criminal legislation, especially capital statutes, mostly for crimes against property. Parliamentary action was rash, unsystematic, and blindly reactionary, both in the sense that the statutes were designed to protect the ruling social hierarchy against perceived threats of the masses, and in the sense that they reacted episodically and violently to each newly perceived threat in all its particularity. (263-64)

Noting the disparity between the nature of the crime and its punishment, Sir James Fitzjames Stephen, the nineteenth-century historian of the criminal law, wrote that the “extraordinary lenity [. . .] towards the most atrocious acts of personal violence forms a remarkable contrast to its extraordinary severity with regard to offenses against property” (qtd. in Hollingsworth 20). Even William Blackstone, whose *Commentaries on the Laws of England* (1765-69)³ Bentham dared to attack, stated that within the criminal law existed “some particulars, that seem to want revision and amendment” (4.1. 3)⁴ including the extensive use of capital punishment (4.1. 9). But Blackstone blamed the problem on “the irresponsible exercise of parliamentary sovereignty” in disregard of the Common Law (Postema 265; Blackstone 4.1. 3).

Bentham countered that the maturing of the ‘art- and-science’ of legislation would correct law’s defects. In “Indirect Legislation” (1802)⁵ Bentham argued that the science of legislation had not developed or “been cultivated” to the extent of some of the other sciences. The existing method of combating offenses was through punishment that he called “direct legislation.” The next method, indirect legislation, or “combating offences by preventive means” was “a refinement of the art, and its transcendental branch” (171). In contrast to Blackstone, Bentham said the defects in the law had their basis in the “con-

trol by terror and enforced ignorance” of the Common Law (Postema 266). In *An Introduction to Principles of Morality and Legislation* (1789),⁶ Bentham proposed his extensive theory of proportionment between crimes and punishments: “The punishment for the greater offense must be sufficient to induce a man to prefer the less” (15.5.177). Bentham also argued against capital punishment in “Indirect” saying: “Death is almost always a remedy which is unnecessary or inefficacious. It is not necessary as to those whom imprisonment might restrain [. . .] (186). Furthermore, he proposed that criminals should compensate the victims of crime in lieu of severe punishments (188). Finally, Bentham explained in *An Introduction* that laws creating an offense and laws commanding a punishment were two distinct laws, not parts of one law (Concluding Note 6 302).

In its time, *Paul Clifford* was “a daring propaganda novel that boldly attacked the criminal laws for the brutal frequency of capital punishment” (Campbell 38). The shadow of the gallows accompanies every thought and action of the highwaymen. “I thought I saw Jack Ketch⁷ at my heels,” Augustus Tomlinson, one of the gang members says (277; ch. 9). Nevertheless, confirming Bentham, fear of death does not deter the gang from crime. They do not limit their activities. If caught, they face almost certain death no matter what the charge against them. The narrator at the novel’s conclusion compares the moral of Paul’s rehabilitation to “the moral which is extorted from the gibbet and the hulks which makes scarecrows, not beacons; terrifies our weakness, not warns our reason” (452; ch. 36). Hanging is so common that the prominent lawyer who becomes a judge in the novel, William Brandon, and his friend, Lord Mauleverer, are desensitized to the loss of life and speak lightly of it. “[Y]ou know one treats these gentlemen highway-

men with a certain consideration, and hangs them with all due respect to their feelings,” Lord Mauleverer says (410-11; ch. 32).

The laws, as Paul well knows, are merely the expression of the ruling class in which: “[m]en embody their worst prejudices, their most evil passions, in a heterogeneous and contradictory code” (339; ch. 18). Regarding the meting out of punishment for offences, he tells Brandon’s beautiful niece, Lucy, that “[T]hey make no distinction in the penalty [. . .] awarded both to murder and to a petty theft imposed on the weak will by famine [. . .] (339; ch. 18). Facing death, Paul argues that he never “committed one sanguinary action, or one ruinous and deliberate fraud” but only “lived by the plunder of the rich” (440; ch. 35). Establishing another bond to Bentham through his reference to restitution at the end of his final trial, Paul says that if he could live, he could make atonement for his wrongs but that capital punishment “calls for repentance while it forbids redress” (439; ch. 35). The narrator’s intrusion at the conclusion asks: “Who does not allow that it is better, to repair than to perish,—better to atone as the citizen than to repent as the hermit?” (452; ch. 36). After Paul escapes from the transportation colony, many of those who suffered losses at his hand mysteriously receive packets of restitution. Paul, like Bentham, describes the dual nature of the criminal laws when he tells the judge: “Your laws are but of two classes; the one makes criminals, the other punishes them. I have suffered by the one—I am about to perish by the other” (440; ch. 35).

Paul’s statements about the criminal law are more than outraged attacks from one who is lawless. They raise questions about the death penalty and what it accomplishes versus what it is supposed to accomplish. They also expose the reactionary motivation of the upper class behind much legislation. Furthermore, the novel’s attachment of criminal

activity to circumstantial and environmental factors represents an important turn to sociology for its exploration of the causes of crime.⁸ J. S. Mill wrote that his father and Bentham's associate, James Mill, adhered to "his fundamental doctrine" of the "formation of all human character by circumstances through the universal Principle of Association and the consequent unlimited possibility of improving the moral and intellectual condition of mankind by education" (*Autobiography* 65). According to Bentham, "circumstances must be taken into the account before any thing can be determined relative to the consequences" and that "criminative circumstances," which he says can be "extenuative," "exculpatory," or "aggravative," are pertinent to both the criminal acts and their consequences (*An Introduction*; 7. 21-27. 79-83). Bentham theorized that "institutions determine conduct, and that to change conduct one must first change the institutions" (Brantlinger 46).⁹ He developed the concept of an ideal prison known as the panopticon to both punish and rehabilitate offenders. Although his emphasis was prison reform, according to James Steintrager, Bentham also intended to apply his strategy of influencing impressionable young minds by bringing children to the prison so they could see the price paid for criminal activity (80).

In the 1848 Preface to the novel, Bulwer-Lytton referred to a "Philosophy of Circumstance" whose victims are without conscience due to ignorance and whose schoolmaster is the felon of the academy of the House of Correction (233). He also cites the "example of parents," an "atmosphere in which virtue is poisoned" and the absence of religion as factors that lead a child to become "less a responsible and reasoning human being than a wild beast" (233). Bulwer-Lytton writes that his novel is "a loud cry to society to amend the circumstance—to redeem the victim" (233). The novel presents Paul as

an example of the corrupting influence of the injustice of the laws and the prison experience. It offers no proof that he suffered from growing up in an alehouse among those evading detection. Paul turned to crime after he was convicted as a sixteen-year-old boy for something he did not do and imprisoned with repeat offenders of more serious offenses. The bitterness stemming from his incarceration and the persuasiveness of his cellmate Tomlinson's influence provoke in Paul "the thoughts that lead to crime" (270; ch. 8). He tells the woman who raised him, Mrs. Lobkins, who is also the alcoholic landlady of an alehouse, that he must get out of prison "before I am quite corrupted" (272; ch. 8). Even the victim of the pick pocketing who pressed the charge against Paul, the wealthy lawyer William Brandon, knows the teenager is going "to a place where, let him be ever so innocent at present, he was certain to come out as much inclined to be guilty as his friends could desire [. . .]" (269; ch. 7). The lawyer also anticipates the gallows' shadow once Paul experiences prison, thinking "if ever he lived to be a judge, he should also live to pass a very different description of sentence on the offender" (269; ch. 7). Until that turning point, the narrator says that "even in his destitution, when driven from the abode of his childhood [. . .] instead of resorting to some more pleasurable or libertine road of life he betook himself at once to the dull roof and insipid employments of Mac Grawler, and preferred honestly earning his substance by the sweat of his brain to recurring to any of the numerous ways of living on others [. . .]" (271; ch. 8). He entered jail a "boy who had never infringed a single law" (440; ch. 35).

In addition to his own sense of injustice, Paul witnesses at his first trial the judge's refusal to release an innocent woman who has five days remaining in a seven-day sentence, even though he has subsequently obtained proof of her innocence. Paul also

witnesses a little boy, who was “found guilty of sleeping under a colonnade” (269; ch. 7), confined with recidivists. These injustices prompt the narrator to mockingly praise the legal system: “[I]t being the especial beauty of the English law to make no fine-drawn and nonsensical shades of difference between vice and misfortune, and its peculiar method of protecting the honest being to make as many rogues as possible in as short a space of time” (269; ch. 7).

Later in the novel, Lord Mauleverer sarcastically refers to Paul’s final arrest as “his ‘present unfortunate circumstances’” (411; ch. 22). The irony of his joke is that he says it to the man who thrives on his own claim about the influence of circumstances. In a letter Brandon once wrote to his wife and Paul’s mother, he claimed that “had it not been for that fund of obstinate and iron hardness, which nature,—I beg pardon, there is no nature,—circumstance bestowed upon me” (415; ch. 22), he would have succumbed to despair rather than thrived on bitterness at what he knew of “the real consequences of rank” (414; ch. 22) or money and power rather than intelligence and virtue. As the younger son of a decaying aristocratic family, his father did not prepare him to assume the family’s title and properties by sending him away as a boy to study like his older brother, Joseph, who is Lucy’s father. Instead, William remained at the family estate, Warlock Manor, with his alcoholic father “[a]mong harlots, and gamblers, and lords, and sharpers, and gentlemen of the guards, together with their frequent accompaniments—guards of the gentlemen—biz bailiffs” (289; ch. 11) who ridiculed their host. When he finally reached Oxford, though impoverished and at first shunned by the wealthier students, William learned with growing embitterment to become their “parasite and the flatterer.” Lord Mauleverer was his “chief prey” (414-15; ch. 22). Brandon subsequently established

himself as a wealthy barrister whose two goals were to re-establish the prominence of his family and to find the son his estranged wife stole from him as an infant.

In their stress upon the influence of circumstances, Bentham and Bulwer-Lytton position themselves on the side of experiential education popularized in the *Bildungsroman*. If identity is created from environmental and circumstantial influences then the proper influences can stimulate upward class mobility or moral improvement. Counter to this position is the conservative concept that identity stems from birth.¹⁰ In his 1848 preface Bulwer-Lytton writes of the “masses of our fellow-creatures—the victims of circumstances over which they had no control—contaminated in infancy” (233). This statement implies that everyone is naturally virtuous. In the novel, Bulwer-Lytton approaches this argument from an unusual angle. Instead of focusing on individuals of lower-class birth, he focuses on how circumstances negatively influenced two men of upper-class birth. Circumstances squelch William Brandon and Paul Clifford's inherent virtues.¹¹ Although his father is disreputable, wasting the family's name and wealth, Brandon is raised among the upper class. Embittered at slights and unkind treatment he received at Oxford because he had no money or title and at the conduct of the upper class, Brandon “no longer resolved to be virtuous” (414; ch. 32). He also becomes convinced of the natural depravity of humankind. Paul, who was raised in a lower-class environment by petty thieves, is so embittered by injustice and influenced by his prison associates that he turns to crime. He believes humankind can change if their circumstances are different.

Neither the father nor the son's circumstances and subsequent embitterment are entirely exculpatory. The author intrudes to mock Paul's self-pity and indulgence: “the ingenious occupation of cheating himself into the belief that, if he was a highwayman, it

was altogether the fault of the highways” (353-54; ch. 20). At first consideration, this intrusion appears to undercut the novel’s argument about the influence of circumstances in forming criminals. However, this intrusion makes the argument more convincing and less one-sided in its placement of blame on society. It adds reason to the argument about circumstances and recognizes that criminal offenders are not without choice and accountability. Paul’s cohort, Tomlinson, dismisses any “romantic visions” that impart “the glory of our career” for its “attack [on] the rich solely from consideration for the poor” because “we grow more hardened [. . .] peasant or prince fares equally at our impartial hands [. . .] (402; ch. 31).

Both Paul and his father make choices based on the passion and embitterment they allowed to grow after circumstances set forces in motion. They chose to use their exceptional talents to nonutilitarian ends. That circumstances negatively influenced the two men raised in different class environments brings all classes into the Philosophy of Circumstance argument. The same depraved society that undermines the morals of the lower class undermines the morals of the upper class. As Brantlinger states, “[I]n a corrupt society everyone is corrupt together.” The difference, he explains, is that some can succeed better than others in fraud and corruption because of their wealth and social status (38). Similarly, the narrator refers to his story as one “designed to show, in the depravities of character, the depravities of the social state wherein characters are formed” (393; ch. 29). Paul catalogues society’s evils at the trial’s conclusion: “cheateries of trade,” “falsehoods of a profession,” “[t]he canting and prejudging part of the press,” and widespread bribery and fraud (440; ch. 35).¹² The legal system reflects the degeneracy of society, but it is also the battleground between the two groups and the source of power

both seek. Law is considered a powerful weapon. One band of criminals with money and power competes through law with another band of criminals who have less money and power.

Bentham's repeated references to "sinister interests" blame those who make the law and govern solely for their own benefit for the state of the legal system.¹³ In his introduction to Bentham's *An Introduction*, Fred Rosen writes that the greatest obstacle to reform was "the vested interests of ruling elites which could only be shifted by a combination of persuasion and compulsion." Bentham's persuasion was detailed attacks on current political arrangements and his compulsion was "the force of public opinion" (xxxix). Furthermore, Rosen observes that Bentham's "writing on monarchy, aristocracy, the legal profession, and other institutions opposed to reform became increasingly sharp and highly critical as he revealed example after example of a ruling class taking increasing amounts of power and wealth to itself and governing without accountability to the people in general" (xliv). British philosopher and legal scholar, H. L. A. Hart, one of the most prolific writers on the radical philosopher, explains that Bentham's view of government was "as a gang of potential criminals, tempted like robbers to pursue their own interests at the expense of those over whom they had power [. . .]" ("Utilitarianism" 185). In "Indications Respecting Lord Eldon" (1825),¹⁴ Bentham wrote: "Of those who, because unsuccessful, poor, and powerless, men are in the habit of calling *swindlers*, the seat—that of many of them at least—is in the hulks: of those hereby supposed swindlers, whom because rich and powerful, no man till now has ever called *swindlers*—the seat [. . .] is in the *House of Lords*." He then lists the criteria establishing the superiority in the art of swindling of the swindlers in Parliament over those in the hulks. They can produce more

mischief because they have the power of the House of Lords. Their acts are premeditated, and they make more profit. Additionally they operate under fewer extenuating circumstances such as indigence and lack of education (14.4. 246-47). This is the same argument found in *Paul Clifford*.

Bentham's condemnation of the Court of Chancery in "Indications"¹⁵ preceded Dickens' portrayal of the court in *Bleak House* (1852-53) by more than a quarter of a century. Lord Eldon or John Scott (1751-1838) was Lord Chancellor from 1801 to 1827 except for a one-year interval in 1806. Strongly conservative, he opposed reform. As a judge he sought thoroughly to investigate the preceding legal authorities and issue a decision that would "settle the principle for the future," a process which resulted in many delays (Walker 1120-21). For Bentham, Lord Eldon committed almost every offense possible to make the court what law reformer and Bentham's friend Samuel Romilly (1757-1818) called "the disgrace of a civilized society" (qtd. in "Indications" 19.259). He was "[t]he determinate opposer of everything good; the zealous, able, and indefatigable supporter of everything evil, from which, to the ruling one or the ruling few, reputed good, in any the smallest quantity, at the expense of the many, appeared derivable" (19.259). Bentham accused Lord Eldon, as head of "Judge and Company," of extorting excessive filing, appearance, and copying fees for his own and others' benefit. Lord Eldon, Bentham said, took advantage of an act of Parliament enabling judges to set fees (12.252-54), participated in a system of non appearances and delays in which he was the "Grand Master" (8.223), engaged in buying and selling positions (4.213-14), and served on the commission investigating his own court (12.237). Bentham also accused Lord Eldon of denying

the people what little support they might find in parliamentary debate through judge-made law, a conscious subversion of Parliament law-making powers.

Bulwer-Lytton also uses criticism of Lord Eldon to introduce what the novelist called the “second and a lighter object in the novel” which “was to show that there is nothing essentially different between vulgar vice and fashionable vice” (Preface 1840 232). In the 1848 Preface the novelist wrote again of the fine line between the enforcer and the subject of laws: “make what laws we please, the man who lives within the pale can be as bad as the man without” (233).¹⁶ In *Paul Clifford*, one of the gang members shares with Lord Eldon the same nickname, Old Bags. His fellow gang members enliven this thesis of common vice in their parody of Bentham’s “Judge and Company.” Accordingly, Bagshot or Old Bags refuses to leave behind any goods during a robbery: “tis not my way—I be’s slow about my work, but I does it thoroughly” (304; ch. 8). According to the words of a ditty, “Old Bag’s Song,” “Slow was old Bags, but he never ceased / ‘Till the whole was grabbed” (286; ch. 10). Maintaining judicial neutrality, the highwayman does not discriminate in the source of his income and “had done in one town more towards effecting an equality of goods among different ranks than all the reformers from Cornwall to Carlisle” (326; ch. 16). Conservative like his namesake and seeking to protect his own interests, Bagshot objects to the cultivation of common lands. “Every blade of corn in a common is an encroachment on the constitution and rights of the gemmen highwaymen,” he complains (285’ ch. 10).¹⁷

The ultimate villain in the novel is class inequality. Its repeated libelous parallels between the upper class and criminals serve two functions. First, it establishes the humanity of the lower class. Secondly, it lays the foundation for a threat of class war. In an

oblique way, placing the two groups on an equal footing introduces the criminal into society rather than distances the criminal from society. Referring to an old ballad about a famous criminal, Lucy asks if Paul believes “that one so lawless, and eager for bloodshed and strife, as this robber is described to be, could be so capable of soft affections.” Paul responds that “many that the world load with their opprobrium are capable of acts—nay, have committed acts, which in others the world would reverence and adore” (339; ch. 18). Paradoxically, he is echoing his mother’s words to the two petty criminals of the alehouse attending her deathbed as she places her son in their care: “I have found that those whom the world calls the worst are often the most human” (237; ch. 1).

Hollingsworth writes that Bulwer-Lytton and Dickens “examined the criminal as one who, however perverted, must be recognized as belonging to the human family” (27) and praises the overall “humanitarian intention” in *Paul Clifford* (77). Bulwer-Lytton wrote in *England* that “There has grown up among us a sympathy with the great mass of mankind” (289). He defines his novel in the 1848 Preface as an “appeal from Humanity to Law” (233) thereby connecting to Bentham’s argument that a legal system should consider human motivation especially “in order to pass a judgment on any means that may be proposed for combating offences in their source” (*An Introduction* 10.5.46.124).

Yet, establishing parallels between the classes and giving a human face to the lower-class criminal element also highlights the distance between two groups with so many similarities, emphasizes the unfairness of the lower class disparate existence, and recalls its cause. This combination can lead to social protest.¹⁸ Bentham recognized the threat of unrest in “Indications”: “As between the one class [of swindlers] and the other, would you know in which, when the *principle of legitimacy* has given way to the *greatest*

happiness principle public indignation will press with severest weight?” (14 247). However, Bentham did not advocate resistance through revolution. It disrupted security and brought unnecessary pain to everyone. An informed public could initiate change within legal boundaries. With this in mind, he objected to Blackstone’s acceptance of disobedience to laws considered contrary to divine will (*An Introduction* 4.1-26.482-86).

Bulwer-Lytton’s novel reminds readers of Bentham’s threat of public indignation and echoes Godwin’s prediction of a class war in *An Enquiry Concerning Political Justice*. It is a persuasive threat because of the fear it arouses so near in time to the turmoil in France and it provides an additional reason for the passage of legislative reform. The upper class might support reform to save themselves and their property whatever their position on correcting wrongs. In a single paragraph Paul tells Tomlinson that “openly I war against” society’s customs and laws and that “the conditions of war” exist between him and “a body of laws hostile to the friendless and the poor” (335; ch. 18).¹⁹ Tomlinson identifies the law as perpetuating the class system. Objecting to the absence of class segregation in prison he asks, “Where’s your boasted British Constitution?” (273; ch. 9). In another scene, he mocks Blackstone, stating “O ancient constitution always to be questioned” (428; ch. 34). Even Lord Mauleverer understands that the Constitution means “laws for the rich” (318; ch. 15). A subtler reminder of unrest is the rumor after Paul’s transportation that Lucy went to France where she became a victim of the revolution. The narrator also establishes the tension in a scene before Paul’s statement to the court in which “a freezing anxiety numbing the pulse, and stirring through the air, made every man in that various crowd feel a sympathy of awe with his neighbor, excepting only the hardened judge and the hackneyed lawyers, and one spectator, an idiot [. . .]” (439; ch.

35). At the statement's conclusion the crowd sits in awed silence before releasing "a murmur of vague applause" (442; ch. 35).

Initially, the mob before and during most of Paul's trial substitutes for the circus atmosphere mob at the public spectacle of the gallows. They expect entertainment. Eventually, the trial watchers change from their group levity at a celebrity trial to a force that is fearful and to be feared. Only the crowd seems to appreciate the power of the law, the law's impact that extends to them as well as the defendant, and that the proceedings taking place are an extended metaphor for the state of their society. Public executions occurred because "[i]t was the theory of officialdom that seeing criminals in the last extremity would frighten spectators from evil courses" (Hollingsworth 3). Supposedly, a public trial would reap the same benefits. What those in power wanted through law to happen at executions happens at Paul's trial. It happens because his words are not the standard defenses and he courageously exposes the system that brought him to trial. His circumstances remind the crowd how easily they could stand where he stands. It is not the law they fear as much as their own circumstances that could bring them before the power of the law. To continue their levity would be to laugh at their own predicament. At the same time, his criticism empowers the crowd. They share his contempt. As the narrator says, Clifford's accusations in his statement to the court "reversed the order of things and merged the petitioner in the accuser" (444 ch. 35).

The crowd's behavior contrasts with that of the court and its officers and the upper class in attendance. Lord Mauleverer sends a note to the judge during the trial reminding him of Brandon's future elevation to a peerage, inviting him to dinner with some nobles after the trial, and encouraging him to "Make haste and hang this poor fellow" so the party will not have to wait long for their meal (439; ch. 35). In

the party will not have to wait long for their meal (439; ch. 35). In "Indications," Bentham cites Alexander Pope's lines from *The Rape of the Lock*: "The hungry judges soon the sentence sign / And wretches hang that jurymen may dine"(3.21-22) in his diatribe against Lord Eldon for leaving court so early during the afternoons (Postscript 4.3n2 281). Hollingsworth says that Pope's lines refer to the custom limiting criminal trials to one day (22).

During the trial, the prosecutor, Mr. Dyebright, mocks the judicial system, via exaggerated claims that he "would rather fifty of the wretched inmates of the county jail were to escape unharmed, than that a hair of the prisoner you behold at the bar should be unjustly touched" (437; ch. 35). His hyperbolics deride an ancient debate on the presumption of innocence in which Sir John Fortescue stated in the fifteenth century that "twentie evill doers" should go free than convict an innocent man, and Lord Stafford at his own trial in 1680 used the number 1000. (Twining 95). Blackstone thought it better that "ten guilty persons escape" (4.27.352). Archdeacon Paley in *The Principles of Moral and Political Philosophy* (1809) opposed Blackstone's statement, saying that the courts should not shy away from their duties for fear of making a mistake and Bentham's friend Romilly issued a devastating reply in 1810 (Twining 96). Bentham obliquely supported Romilly, saying the "pain of victims of crime is more widespread and more serious than the pains of occasional punishment of the innocent," while acknowledging "good reasons for treating the conviction of one innocent man as a worse evil than the acquittal of one guilty man" (Twining 97). Bentham's concern was the "artificial device" or legal fiction of the presumption of innocence that he said was contrary to the way the courts and its officers in truth treated defendants (Twining 97).

Mr. Dyebright's language embellishments are one of many demonstrations in the novel of the manipulation and abuse of language. Bentham thought lawyers' "jargon and jargonization" [. . .] a superior form of thieves' cant hiding the defects of the law." To Bentham, "language had so often been used as an instrument of mystification and oppression to deceive men as to the true character of their social life and institutions, including above all, their laws, and to conceal from men the possibilities of reform" (Hart; *Essays on Bentham* 2).²⁰ And the esoteric cant of legalese, like the flash language of the criminal underworld, bonded the legal profession, setting it apart from the rest of society (Hart; "The Demystification" 29). For Bentham, Common Law was a flash language word which meant in plain English judge-made law and was used either to subvert Parliament or as an instrument of Parliament to do its "dirty work" ("Indications" 19.11a 268). Legal fictions, which Blackstone praised as "highly beneficial and useful" (3.4.6 43) in their creating out of the imagination or an untruth a legal reality or truth, were "a willful falsehood, having for its object the stealing of legislative power, by and for hands, which could not, or durst not, openly claim it,--and, but for the delusion thus produced, could not exercise it" (*A Fragment On Government*, Preface to 2nd ed. (1823) 509).²¹ Bentham's *Handbook of Political Fallacies* (1824) more fully states his broadside on society's widespread verbal mendacity.

Regarding legal discourse, Bentham recommended that "law-books must be made up into sentences of moderate length, such as men use in common conversation, and such as the laws are written in France, with no more words than necessary; not like the present statutes [. . .] which are suffered with repetitions and words that are of no use [. . .] (*Truth versus Ashhurst* 236). Bentham was consistent in his campaign against duplicity and am-

biguity in language.²² After presenting examples illustrating confusing language, Bentham said his purpose was “that men may be aware of the ambiguity of language; and neither harass themselves with unsolvable doubt, nor one another with interminable disputes” (*An Introduction* 7.20 79). In this way, Bentham sought to avoid the interpretation debates over wording and terms in statutes, the Constitution, and judicial opinions that have prevailed to the present. Bentham’s classification of offences in *An Introduction* was an attempt to categorize and impose order over the “tyranny of language” (16.4.56 271) enumerating criminal offenses or the “Acts which possess such properties as seem to indicate them fit to be constituted offences.” His purpose was “to enable men to understand the things that are the subject of it” (16.i.1a 187)

Bentham did not define factual terms with a synonym, but with a phrase or paraphrase. In abstract conclusions of law, such as right or duty, a paraphrase was insufficient, so he would make “a different kind of remark, in order to elucidate these words” (Hart, “Definition and Theory in Jurisprudence” 34). He called this exposition paraphrasis: “when not that word alone is translated into other words, but some whole sentence of which it forms a part is translated into another sentence, the words of which latter are expressive of such ideas as are simple, or are more immediately resolvable into simple ones than those of the former” (*A Fragment* 5.6b.6 495). Mill wrote that Bentham’s style became “heavy and cumbersome, from the excess of a good quality, the love of precision, which made him introduce clause within clause into the heart of every sentence, that the reader might receive into his mind all the modifications and qualifications simultaneously with the main proposition [. . .]” (*Autobiography* 71).

As must be evident from this discussion on language, Bentham recognized the inadequacy of language in expressing ideas, meaning, and intent and that “confining himself to the language most in use, a man can scarce avoid running, in appearance, into perpetual contradictions.” Short of inventing new words, as Bentham sometimes did, the equally unsatisfactory alternative was “to enter into a long discussion, to state the whole matter at large” (*An Introduction* 10.2.13 102, 16.i.1a 187). However, Bentham demonstrated that putting together two words in common use would “frame the neutral intention” rather than using words connoting bias. His examples include substituting “sexual desire” for lust or “pecuniary interest” for “avarice” (*An Introduction* 10.2.13h 102). Coinciding with Bentham’s attention to giving examples to his ideas, he also extensively used imagery, metaphor, and analogy.

Paul Clifford was the first novel to use criminal slang or “flash” (Cazamian 49). The esotericism of that slang within a community has a counterpart in legal discourse. Language in the novel becomes like an entrance ticket to certain communities. The highwaymen can successfully pretend to be gentlemen by emulating high society language. Speech frequently identified class ranking. Therefore, high society could be fooled easily by adopting their speech habits. Knowing this shallowness of society, Mrs. Lobkins tells the twelve-year-old Paul to style his speech [not his deeds or thoughts] by reading the Bible because “People goes more by your words than your actions” (241; ch. 2). Her view of the Bible was not for its moral teachings, but its style and word choice. The meaning of words, contrary to Bentham’s concerns, was unimportant. Additionally, Mrs. Lobkins’ direction to Paul to assume a form of speech that is inimical to his community would limit his ability to communicate in that community, just as legal language is most

accessible to those of the profession and appears obscure to those outside the legal community. Moreover, Paul's recommended guide is nonexistent in a community that ignores both moral and positive law.

A noteworthy point regarding how texts as well as people assume false identities occurs at the beginning of the novel. Paul's mother asks one of the alehouse's regulars, Dummie Dunnaker, to swear on a Bible to preserve the secret that she stole Paul from his father. Dunnaker could not find a Bible in the community. He swore to the dying woman on a book he said was the Bible knowing it was actually a collection of plays. Thus, the novel begins with a deceit of words stated contrary to the actions performed and the fraudulent use of a written text as well as a written text pretending to be something it was not. For Bentham, Blackstone's *Commentaries* also was an impostor in its representation of the laws of England as something they were not, especially in its statement "that the system of our jurisprudence is, in the whole and every part of it, the very quintessence of perfection" (*A Fragment* Preface 408). Similarly, the reactionary laws and severe punishments for their violations are represented as worthy of respect by those who know them to be something else.

Ultimately, Paul learns a language outside that common in the den of thieves through his tutor, Peter Mac Grawler. Through Mac Grawler's short course on the art of literary criticism, he also becomes proficient in the methods of manipulation and abuse of language using the methods of "slash," "tickle," and "plaster" (256; ch. 5). As explained in the novel, to "slash" is to cut up through accusation, to "plaster" is to praise with all available superlatives, to "tickle" is to adopt ambiguous language that appears to say one thing while suggesting another. Christensen considers how Paul "uses the sword and pis-

tol not only in his exciting adventures as swashbuckling highwayman [the passion of his youthful readings] but also in an interestingly figurative sense as a man of letters. His career properly speaking begins when Mac Grawler, the Scottish literary critic and editor of the *Asinaeum*, teaches him about the three branches of criticism [. . .]” (60). Paul develops a reputation for “an innovating method of applying words to meanings which they never were meant to denote” and “[h]e not only put old words to a new sense, but he used words which had never, among the general run of writers, been used before” (258; ch. 7). The latter were reversions to the language of his community, the flash, “enigmatical words and recondite phrases” which “imparted a great air of learning to the style of the new critic” and an unintelligible sublimity” to his diction (258; ch. 7). Because his language is so remote and mysterious, the new critic becomes, though incognito, the subject of tea parties and praise. Yet, his criticism contributes nothing to the literary world and seemingly, like legal language and flash, exists in an inexplicable realm of its own.²³

Paul’s education continues with Tomlinson, “a dangerous and subtle persuader” (278; ch. 9), who explains “how the forceful cavalier use of words can enable one to emerge victorious over the most intransigent of moral realities” (Christensen 60). In his mentoring of Paul, Tomlinson passes on “the value of words” (285; ch. 10) that he learned from other gang members. “All crime and all excellence depend upon a good choice of words” Tomlinson says. Under his theory, robbery becomes “relieving the necessities of the poor” while sharing booty becomes “sharing with your friends the gains of your industry.” Tomlinson relies on language alone, inverting Bentham’s emphasis on motives, shared properties, the act itself, and consequences. “To knock a man on the head is neither virtuous nor guilty,” Tomlinson says, “but it depends upon the language applied

to the action to make it murder or glory.” With this statement, the narrator provides another example in a footnote and claims it to be “a better illustration of verbal fallacies than all Bentham’s treatises put together” (282; ch. 10).²⁴

After all, Tomlinson tells Paul, “[W]e only do what all other legislators do. We are never rogues so long as we call ourselves honest fellows, and we never commit a crime so long as we can term it a virtue” (282; ch. 10). Furthermore, Paul’s gang holds meetings, conducting themselves as if they were speaking as members of Parliament on behalf of their political parties (327-28; ch. 16). The narrator’s comparison of the gang members’ language to that of cabinet ministers highlights their joint occupation: “So nice was their language, and so honest their enthusiasm for their own interests, you might have imagined you were listening to a coterie of cabinet ministers conferring on taxes, or debating on perquisites” (285; ch. 10). The parallel continues in their parsing of words and fraudulent language. They speak of the sums they had “levied on the public,” explain their thefts as for “the good of the community,” and refer to themselves as “the established order” (285; ch. 10). Allan Conrad Christensen in *Edward Bulwer-Lytton: The Fiction of New Regions* describes the environment of the novel as a “world of ethical relativism and lawlessness that have made everyone an unprincipled adventurer and desperado in the realms of language” (60).

Thus, Paul’s labeling as “knavery” Ned Pepper’s abandonment of Paul and escape after picking Brandon’s pocket “to let [Paul] be caged in his stead” is “a misapplication of terms” to Tomlinson, who suggests the word, “prudence” (283 ch. 10). Lucy tells her uncle that he has “been bred to that trade in which, as you say yourself, men tell untruths for others, till they lose all truth for themselves” (318; ch. 15). Brandon teaches Lucy the

social acceptance of word twisting and inversion: "I at the bar; the minister in parliament; friend to friend; lover to mistress; mistress to lover; half of us are employed in saying white is black, and the other half in swearing that black is white" (330; ch. 13). Lord Mauleverer tells Brandon that "[Y]ou and I [. . .] who know men, and who have lived all our lives in the world, must laugh behind the scenes at the cant we wrap in tinsel, and sent [sic] out to stalk across the stage" (312; ch. 14). Eventually, a wiser Paul terms Tomlinson's word twisting, such as "genius for intrigue" instead of "deceit," as "sophisms" (330; ch. 16). Unlike Bentham's, Tomlinson's word substitutions do not seek neutrality but more subjectively favorable connotations.

The one man in the novel who does attempt to speak the truth and accurately say what he means is Joseph Brandon, Lucy's kindly and gracious father and William's well-intentioned brother. Joseph's "confused and parenthetical habit of speech, by which he very often appeared to those who did not profit by long experience, or close observation, to say exactly, and somewhat ludicrously, that which he did not mean to convey" (291; ch. 11) parodies Bentham's sometimes excessive clauses. For instance, in discussing the news of the local paper he tells Lucy that "corn has fallen—think of that, girl, think of that! These times, in my opinion, (ay, and in the opinion of wiser heads than mine, though I do not mean to say that I have not some experience in these matters, which is more than can be said of all our neighbors), are very curious, and even dangerous" (291; ch. 11). Lord Mauleverer ridicules Joseph's mannerism as "linked speeches long drawn out" (315; ch. 15). Yet, when he must confront more serious matters, Joseph's words are "less involved and equivocal than they were wont to be" (362; ch. 21). The novel's suggestion that Bentham's style in his later writings is like that of a good-hearted elderly

gentleman perhaps indicates a measure of respect for Bentham's sincerity as well as a kindly and gracious view of Bentham's excesses. Joseph Brandon's manner of speaking also becomes an example of Bentham's identification of the inadequacy of language to someone who wants to explain himself well but, in doing so, extends the explanation beyond practical reason. However, Brandon's manner of speaking is not the paraphrasis Bentham described. Bentham's idea in paraphrasis is not parenthetical commentary within a sentence, but a restatement of the idea in another sentence that is simpler to understand (Harrison 86).

Bentham frequently used medical metaphors, describing society as sick and proposing methods of cure through legislation. In "Parliamentary Reform Catechism" (1817), he referred to the "mortal disease of misrule" (310) that will develop into convulsion without the remedy of radical reform. He also described the country's misrule as a "plague" (321). Direct legislation was a remedy applied to existing evil, but indirect legislation is preventative or therapeutic to future evil. Bentham chose physical terms related to pain and sickness such as cure, injury, suffering, and hurtful to reinforce his description of a "body of political morals" and a "body of law" ("Indirect" 183). In some instances, he wrote, "the policy of the legislator may be compared to that of a nurse" ("Indirect" 174).

The novel both appropriates and reverses Bentham's medical metaphor. Tomlinson's strengths from a Benthamite point of view are his appropriation of Bentham's medical analogy. For Tomlinson, the law is an apothecary giving bad drugs to the poor or "speedy refuges from life" and "pills to stimulate the appetite" or "premiums for luxury" to the rich." The scientist of legislation to Tomlinson is either a "quack or his

science itself is but in its cradle” because the apothecary only “relieves you [. . .] of your money, not your malady” (337; ch. 18). On the one hand, his use of the phrase “science of legislation” recalls Blackstone who called “the science of legislation, the noblest and most difficult of any” occupation, art, or science (Introduction 1. 9). Yet, his statement also references Bentham’s words in “Indirect” on the immaturity of the science of legislation that must develop into the art-and-science of legislation to accomplish legal reform. Tomlinson’s farewell to London as he boards a boat on the Thames to avoid transportation or hanging is a catalogue of society’s ills (428; ch. 34).²⁵

Lord Mauleverer, who is adept at using words, is “slightly afflicted by the aristocratic complaint of deafness” (305; ch. 13), an affliction that impairs communication and becomes a metaphor for not hearing or ignoring the censure of his class and their conduct. He also has a fetish for exotic epicurean dishes but is a hypochondriac and attributes all pains to a digestive disorder that revolts against the common fare of the people. His “digestive organs [. . .] stood proxy for a heart” (448; ch. 37).

While Lord Mauleverer is emblematic of a sick society, William Brandon seeks to control and use society’s sickness. While Paul speaks for Bentham, Brandon acts like a Blackstone devotee. However, he is more of a perversion of the worst interpretation of the jurist’s writings. A mysterious disease torments Brandon. Its most visible symptom is that it distorts his false countenance of benign self-control revealing his natural countenance of a sneer. The sneer represents his misanthropic feelings toward society with the exception of his brother and Lucy. His disease eventually destroys him, but not before he resorts to taking the most powerful and possibly deadly medicine a doctor will prescribe to prevent exposure of his precarious health and of his true expression. He simultaneously

tries to manipulate and control one disease for his own mortality and the disease of society for his own gain. He tells Lucy “they who beget it [a metaphor], always get the worst of it” (316; ch. 15).

Eventually, because of the disease, his demeanor becomes “the mask to the agony then gnawing at his nerves” (321; ch. 15). At his death, the disease prevails and his face clearly shows a sneer of derision. The adult Brandon has always been a masked figure. He chose to enter a profession because he considers “[p]rofessions [. . .] the masks to your pauper-rogue; they give respectability to cheating, and a diploma to feed upon others” (415; ch. 32). Brandon is a mystery to those who know him, “baffl[ing] in great measure the rancor of party hostility” (290; ch. 11) and the subject of gossip because he reveals so little about himself. He hides his true self, a “wily and aspiring schemer” (371; ch. 24) with an intimidating persona as a lawyer and his excellent manners at social appearances. His reputation is “of unblemished integrity” and he is esteemed as “the most honorable, the most moral, even the most austere of men” (290; ch. 11). At his death, the narrator labels him an “unwavering hypocrite” (447; ch. 35).

Literally Brandon refers to his health when he tells the Prince of Wales, who is about to make him a peer, that “it is the interest of my rivals to exaggerate the little ailments of a weak constitution.” However, as the novel’s representative of the British legal system, and of Blackstone for this discussion, his statement figuratively means much more. The prince’s response indicates his understanding of that meaning: “The times are those in which many occasions occur, that oblige all true friends of the constitution to quit minor employment for that great constitutional one that concerns us all, the highest and the meanest [. . .]” (321; ch. 15).

For Blackstone, the sovereignty of the British Constitution was “lodged as beneficially as is possible for society” and he described the constitutional government as “admirably tempered” (1.2.51). In his concluding paragraph to the *Commentaries*, Blackstone wrote: “Of a constitution, so wisely contrived, so strongly raised, and so highly finished, it is hard to speak with that praise, which is justly and severely it’s [sic] due: the thorough and attentive contemplation of it will furnish it’s [sic] best panegyric.” Its only faults, he said, are those stemming from external forces, the “decays of time or the rage of unskilful [sic] improvements in later ages.” Finally Blackstone exhorted “To sustain, to repair, to beautify this noble pile, is a charge intrusted principally to the nobility, and such gentlemen of the kingdom, as are delegated by their country to parliament. The protection of THE LIBERTY OF BRITAIN is a duty which they owe to themselves, who enjoy it; to their ancestors, who transmitted it down; and to their posterity [. . .]” (4.33.436).

Using terms paralleling Brandon’s mask before society, Bentham in the preface to the second edition of *A Fragment* accused Blackstone of masking the Constitution: “this pretended product of matchless wisdom—this object of veneration to the deluded multitude—had never been any thing better than a cover for rascality” (511). He called the Constitution “the imaginary matchless one” (“Indications” 19.11 268). Mill, who called Bentham “the great questioner of things established,” said that before Bentham no one “dared to speak disrespectfully, in express terms, of the British Constitution or the English law” (“Bentham” 5). According to William Twining in *Theories of Evidence: Bentham and Wigmore*, Bentham thought “the true nature of the law, and in particular of the technical system of procedure, was hidden by a collection of masks, screens, veils, pretences, pretexts and fallacies which were all the creature of interest, operating as often as

not through folly and delusion as through the deliberate deception of others” (79). Bentham also derided Blackstone for his “scorn upon those beneficent Legislators, whose care it has been to pluck the mask of Mystery from the face of Jurisprudence” (*A Fragment* 410).

Brandon pursues and glorifies the past both in his heritage and in the law. Brandon has vowed to “restore a sunken name” to its glory before “the present degeneracy” (413 ch. 32). During a visit to Warlock Manor, the family seat, he lingers over the remnants of the family’s past fortunes still visible with “a feudal solemnity” (373; ch. 24). He talks with Lucy about “ancestral pride” and tells her she is “sprung from a once noble, but a fallen race” (376 ch. 25). He intends to buy a large estate formerly possessed by his family in the neighborhood of Warlock and views his pending appointment to a peerage and Lucy’s possible marriage to Lord Mauleverer as success in his efforts “to regild a fallen name” (332; ch. 17). Brandon says he became a lawyer because “I analyzed my talents, and looked to the customs of my country: the result was my resolution to take to the bar” (415; ch. 32). Christensen writes that Brandon “believes firmly—as does the vengeful old law of the traditional penal philosophy, which the novel is out to attack—in man’s innate depravity.” He “makes the new generation bear the weight of hereditary crime and injustice” (65).

Brandon’s veneration of history epitomizes what Bentham viewed as the worst influence of the *Commentaries* in its reliance on custom, precedent, and the Common Law. Blackstone advised adherence to what has “been well considered and settled by the wisdom of successive ages” (2.20.298) because “we owe such a deference to former times” (1.3.70) He cited the “great confusion [. . .] in overturning long-established forms, and

new-modeling a course of proceedings that has now prevailed for seven centuries” (3.7.99). He objected to statutory changes of the Common Law saying “it hath been an ancient observation in the laws of England, that whenever a standing rule of law, of which the reason perhaps could not be remembered or discerned, hath been wantonly broke in upon by statutes or new resolutions, the wisdom of the rule hath in the end appeared from the inconveniences that have followed the innovation” (1.3.70). The *Commentaries* overflow with words of praise for the British legal system such as, “our admirable system of laws [. . .] built upon the soundest foundations and approved by the experience of ages” and “our own immemorial customs” (1.1.5). Blackstone called the laws of England “the best birthright, and noblest inheritance of mankind” (4.33.436). Blackstone’s references to the disruption of the Anglo-Saxon law after the Norman Conquest and the eventual restoration of the ancient law are evident in Brandon’s need to restore the disruption to his family’s greatness.²⁶

Bentham’s proposed reform was “to substitute statute law, made by democratic parliaments, and founded on reason. The reasons would be independent of history and would be in terms of future benefits” (Harrison 88).²⁷ In his *Autobiography*, Mill credited Bentham and his father as sole critics “against that most peccant part of English institutions and of their administration. It was the almost universal creed of Englishmen, that the law of England, the judicature of England, the unpaid magistracy of England, were models of excellence” (55). Bentham viewed the inheritance of Blackstone’s *Commentaries* as a major obstacle to “the interests of reformation” (*A Fragment* Preface 394). Bentham also wrote in his “Early Memoranda”: “Barristers are so called [. . .] a Barrando, from barring against reformation the entrances of the law” (40).

Brandon seeks to return to the past and to maintain the character of the English Constitution. His brother is satisfied with things as they are. Lord Mauleverer hides his past as a goldsmith's son. Paul, however, lives without an inheritance or a sense of the past beyond growing up in an alehouse. Viewing himself as independent of any historical allegiances, Paul says no parents give him advice that will make him wretched if he obeys or disinherited if he ignores (279: ch. 9). His personal freedom symbolizes his lack of national ties. Paul tells Tomlinson, "We have not for so many years discarded all the servile laws of others, to be the abject slaves of our own weaknesses. [. . .] But let us not be cravens, and suffer fate to drown us rather than swim" (388; ch. 27).

Unlike many of his fellow citizens, Paul does not complacently accept the "what is" of the law. He both criticizes the law and in his own actions effectuates change. If Paul has any ties to the past, it is to his own criminal prosecution in England. By living in America after his escape from a penal colony, Paul divests himself of British law's entanglements, so that in effect he has no ties to the past or no inheritance to burden him. He can radically reform himself. In America, he finds a country that in the nineteenth century is not so entrenched in ancient custom and class imbalance. Another country equally young in formation might have served the novel's purposes as well. Similarly, Lucy divests herself of the past by selling off the family estate that she inherited at her father's death, although to "the nearest relation of the family" (449; ch. 36), and leaving England.²⁸ Their lives together in America demonstrate that radical reform—a fresh break from custom, tradition, and the Common Law—that Bentham argued in "Parliamentary Reform Catechism" was the only means possible to implement reform.

The novel's conclusion in which Paul and Lucy's break from the past of England and Paul's benevolent activism in America raises questions about the novel's persuasiveness in promoting Bentham's idea of legal reform in England. Part of the answer resides in the nature of *Paul Clifford* as a novel. The novel is noteworthy for its identification, more so than depiction, of the corrupted and corrupting condition of society and the functioning for some and malfunctioning for others institutional infrastructure of which the legal system was a part. It is not a work in the later tradition of realism. The omniscient narrator tells how things actually are, rather than showing reality through detailed scene description and dialogue indicating how the characters respond to each other and their situations both verbally and in their actions. Additionally, the characters make speeches about the state of society and the gang members satirize society in ballads. The novel uses episodes of love, adventure, and confrontation—the escapism elements of the Romantic novel (Holman 438)—to exemplify its argument. A clearly defined hero and heroine, figures absent in most realistic novels, star in most of these episodes. The hero and heroine, the melodrama, and the exaggerated details transcend the ordinary day-to-day experiences of most people. The benefit of this idealism is that readers have no doubt about the role of each character or of the significance of each scene. This idealism does not cater to ambiguity and most characters are one-dimensional.

Bulwer-Lytton's word choice while discussing the purpose of the novel in his 1848 Preface to *Paul Clifford* hints at the technique of the later realistic novelists. He writes that "the heart of an author is the *mirror* of its age," that "it is precisely those *offenses* which society cannot interfere with that society requires fiction to *expose*," and *that* "fiction follows *truth* into all the strongholds of convention; strikes through the dis-

guise, lifts the *mask*, bares the heart, and leaves a moral whenever it brands a falsehood” [emphasis added] (233-234). Later, in the same preface, he writes that “the author rather observes than imagines; rather deals with the ordinary surfaces of human life, than attempts, however humbly, to soar above it or to dive beneath” (234). Yet, the observations and dealing with the ordinary in the narrative are not what we would consider mimesis. The novelist’s method is to expound and explain the real more than paint a picture of his observations. He presents the real using romantic idealism. Moreover, in working with his concepts of the future ideal that the novel works toward, Bulwer-Lytton had no observations to relate. The ideal has yet to occur. His idealism forces Bulwer-Lytton into an anti-mimetic stance. He must imagine that ideal. However, to impose believability Bulwer-Lytton said: “[T]he narrator of a fiction must be as thoroughly in earnest as if he were the narrator of facts. One could not tell the most extravagant fairy-tale so as to rouse and sustain the attention of the most infantine listener, if the tale were told as if the tale-teller did not believe it” (qtd. in Stang 13).²⁹

Idealism’s earnestness in the telling differs from the plausibility or believability in realism. The believability of Bulwer-Lytton’s romantic idealism is not through imitation of reality but through an ability to initiate what Coleridge described as a willingness to suspend disbelief and imagine what could be, even though we are unable to establish a correspondence with that imaginative view to our own lives. The revelation or exposure of truth in *Paul Clifford* is not realism’s “fidelity to actuality” (Holman 413) in representation. In *The Theory of the Novel in England: 1850-1870*, Richard Stang describes Bulwer-Lytton’s writing as “giving the reader inflated rhetoric and very conventional melodrama” (14). The melodrama explains the rhetoric or gives life to the rhetoric. According

to Stang, "The critical term most often opposed to realism was idealism and the most articulate advocate of the latter was Bulwer-Lytton" (153). Both techniques claim to expose the truth, but vary in the manner of presentation or representation.

The melodrama and rhetoric of the novel support its depiction of the social problems the novel addresses. Its rhetoric also proposes how these problems should be solved. These transcending the immediate-idealist solutions directly contrast with the pragmatic empiricism of realism. Because idealism is not bound by the limits of verisimilitude, it can move beyond here and now problems, which Bulwer-Lytton did try to illustrate in ordinary situations, to imaginary episodes demonstrating the successful future implementation of proposed solutions to present problems. At one point in the novel, the narrator describes Tomlinson as a "perilous companion" and attributes Tomlinson's persuasiveness over young Paul to "showy theories [. . .] more seductive to the young and clever than suasive examples [. . .] (279; ch. 9). *Paul Clifford* moves toward a fictional demonstration of the practical operation of previously established theory. Bulwer-Lytton writes in the 1848 Preface, "the author at least seeks to escape where the man may not, and look on the practical world through the serener one of the ideal" (234). Thus, the *dénouement* of *Paul Clifford* suggests, albeit very briefly, that the theory of the ideal is workable in real life, that it can be something experienced. This optimistic conclusion gives a sense of closure and determinacy to the novel rather than what seems to be the indeterminacy of an on-going process that ends the realistic novel.

At the conclusion of a novel in the realistic tradition, the reader must judge its realistic success only from the reading experience. In effect the charge to the reader is to consider only the details as given in the novel. The imagination participates only in con-

sidering whether the novel presents a plausible correspondence to actual life. To summarize Stang's discussion on realism and idealism, realism is external, drawing from the without and the objective, while idealism is the internal or subjective that draws from within (187-88). At the conclusion of a trial, the judge instructs a jury to limit their deliberations to the facts presented at trial. They should not imagine anything beyond that presented at trial. Their imagination is limited to the factual situations presented to them, what they objectively imagine as true or most probable within the standard of the burden of proof. Bulwer-Lytton's idealism is not so limited. It asks the reader to subjectively imagine something beyond correspondence to actuality with the only standard of proof being the earnestness of the narrator. In its abbreviated picture of how idealism can operate at the conclusion of the novel, the ideal becomes part of the fictional real or perhaps on par with the real. Something once seemingly unobtainable in one present becomes the obtained and plausible in another.

Realism and idealism vary the novel's form as well. In order to imitate life the realistic novel appears to lack form, supposedly "fragmentary and unmethodical" (Stang 151).³⁰ Through its statement of problems and solutions, *Paul Clifford* not only corresponded to Bentham's expository strategies, it adopted a form of representation that complied with the doctrine of utility in its usefulness and its aim of maximizing happiness.³¹ The organization coincides with the development of the ideas of the mind or with thinking, a progression from identifying a problem and imagining its rectification. Hart says in the introduction to *Essays on Bentham* that Bentham "thought the criticism of existing institutions unaccompanied by demonstrably practical alternatives was worthless; [. . .] because hatred of anarchy and disorder was as strong a passion with him as hatred of

blind custom and conservatism” (7).³² In addition, Bentham exhibited his “practical alternatives,” the ideal, in excruciating categorization and detail. “Bentham’s attention to detail,” according to Rosen “was part of his method of reform where an alternative arrangement might be seen as plausible and realistic” (xli).

The novel’s hero develops in his idealism from anger at the injustices he experiences to ideas about alleviating them. In this respect, he unites the attributes of his associates—Pepper “the acting knave” and Tomlinson, “the reasoning one” (279; ch. 9). The shortcoming of the novel is its lack of development of the idealistic solution in greater detail. It need not be as minute as Bentham’s work but enough to envision more of the ideal as a workable experience. The danger of such an exercise is converting the novel from idealism to utopian fantasy.³³ Additionally, that the hero and heroine must leave the source of the identified problems, rather than work against them where they originated, distracts from the persuasive force of the idealist solution. However, the idealist solution is impossible on English soil in view of the factual circumstances of the narrative.³⁴ For Paul to remain in England and avoid prosecution would circumvent the authority of the law and encourage anarchy. He cannot instigate legislative reform and perform benevolent acts while a fugitive from justice in England. In practical and political terms, such a view of a convicted felon leading a radical reform movement that was very hostile to the upper class could actually impair the reform processes that were underway at the time Bulwer-Lytton wrote the novel. On the other hand, the multiple factors of Paul’s repentance, the fear the novel arouses in its allusions to social protest, and the encouragement to legislators to make the best use of their authority might actually promote the reform process contemporary to the novel. The novel helps readers understand why reform is

necessary and to imagine the benefits of reform. The alternative of somehow pardoning Paul for his offenses might be possible considering his repentance and restitution and the novel seems to effectuate a form of a pardon anyway in his life in America.³⁵ Perhaps the reference to Paul's continued disturbance at his recollection of his English past while living in America is to turn readers' thinking back to England where reform at the time of the novel was being debated.

Literary realism, like legal realism, highlights the "what is" and as such is near-visioned monocular. George Eliot's *Middlemarch*, Elizabeth Gaskell's *Mary Barton*, and the *The Mayor of Casterbridge* by Thomas Hardy, all of which were written after *Paul Clifford*, are examples of novels that emphasize depiction of life as it actually is and living life as it actually is rather than seeking something higher. Bulwer-Lytton's novel is bifocular, inclusive of the near of the "what is" and the far of the "what ought to be." The irony of the realist tradition in literature, and sometimes in legal realism when it fails to take its attack on the existing system beyond exposure and criticism, is that, despite its reputation as indeterminate and process-oriented, its focus on "the what is" leads to closure. Readers retain no sense of a continuing conversation or ongoing interaction between the text and the reader beyond the final page. They may think of the characters' lives as advancing in time because of the popularity of ending novels in the realistic tradition with a marriage or several marriages provides a sense of linearity or continuity and the expectation of future generations. However, novels in the realistic tradition do not contain substantial anticipation of hope, change, or improvement in either the here and now of the present or what becomes the here and now in the future. George Eliot's *Felix Holt, The Radical* is an exception with its dependence on organic slow growth and its use of his-

torical progression as an example. The boundaries of realism prevent the realist novelist from pushing the imagination beyond the present or the “what is.” Readers have more of a sense of the passing of the crisis or resolution of the focus of the novel from which the characters have recouped and regrouped. The future is a blank space of speculation. In *Paul Clifford*, the real of the “what is” purposefully moves to the ideal of what “ought to be.” Bulwer-Lytton wrote in an 1838 essay that the evaluative question for any work is not “how far it resembles what we have seen so much as how far it embodies what we can imagine” (qtd. in Stang 153).

In law the terms “is” and “ought” are employed to differentiate legal positivism and natural law theory. Positivists look at law neutrally for what it is. Natural law theorists, on the other hand, insist that neutrality is impossible because some principles of morals and justice encompass the very concept of law and that what the law is must be considered in functional and teleological—the ought and the ideal—terms.³⁶ Based on this explanation, Bentham and Bulwer-Lytton’s legal reformism should be more aligned to natural law theory and the inseparability of the is and ought than the Benthamites would admit. Moreover, the “is” of literary realism seems related to positivism, for which the utilitarians laid the foundation.

One way of working with this possible inconsistency is that the positivists’ view of law does not foreclose the improvement of laws. Positivism does not preclude the ability to imagine and work for a better system of laws. But a better system cannot be devised without knowing well the fundamentals of the existing system. Actually, Blackstone’s *Commentaries* described his vision of the law as he believed it to be. It also was the popularly disseminated version of the law as is notwithstanding the discrepancies Ben-

tham and others saw in that version. Bentham decried the presentness of Blackstone inspired-British views of the laws and Constitution as the best of all systems, because they ignored obvious faults and inequities and excluded the possibility of obtaining something better. Blackstone fused “the is” and “the ought,” the real and the ideal, in the existing British laws and Constitution. Any changes, he wrote, would come gradually in an evolutionary progressive process over time in accordance with society’s slowly changing customs and traditions from which laws should be modeled. “Between these two points, indeed, the is, and ought to be, so opposite as they frequently are in the eyes of other men, that spirit of obsequious quietism that seems constitutional in our Author [Blackstone] will scarce ever let him recognize a difference” Bentham complained (*A Fragment* 498).

Secondly, Blackstone equated “the is” and “the ought” in his adherence to divine will, which he said no manmade law could contravene. Therefore, positive law was inseparable from morality and Christian moral teachings.³⁷ In “Positivism and the Separation of Law and Morals,” Hart writes that “Bentham and [John] Austin constantly insisted on the need to distinguish, firmly and with the maximum of clarity, law as it is from law as it ought to be [. . .]” (50). Bentham blamed the confusion between law and morals on two immediate threats: the anarchist who argued that evil laws could be disregarded, [reflected also in civil disobedience leanings], and the reactionary whose acceptance of the law as it is stifled criticism (53). One sought to ignore laws they considered unjust. The other sought to maintain the existing system and use severe measures against those whose questioning of it jeopardized its authority.

The utilitarians combined a passion for reform with respect for law, epitomized in Bentham’s statement that the motto of a good citizen is “To obey punctually; to censure

freely” (A *Fragment* Preface. 16. 399). Thus, one can respect the authority of the law underlying the “what is,” while questioning it and aiming for the required reform as it “ought to be.” Unlike some natural law theorists, Bentham and Austin adhered to two ideas: “in the absence of an expressed constitutional or legal provision, it could not follow from the mere fact that a rule of law violated standards of morality that it was not a rule of law; and conversely, it could not follow from the mere fact that a rule was morally desirable that it was a rule of law” (Hart 55).

Therefore, the law as it is for Bentham is first a realistic view of its flawed operations while not diminishing its authority. Equally realistic is the view of the law in the novel, though not presented in the tradition of the realistic novel. The jury rightfully convicts Paul Clifford at his second trial. He did violate the law. Secondly, reform or the law as it ought to be is not the intersection of law and morals, but the censure within the existing and still authoritative, though not ideal, system to achieve the ought to be. As Bentham says in *An Introduction*, “A book of jurisprudence can have one or the other of two objects: 1. to ascertain what the law is: 2. to ascertain what it ought to be. In the former case it may be styled a book of *expository* jurisprudence; in the latter, a book of *censorial* jurisprudence: or, in other words, a book on the *art of legislation*” (294; ch. 17.2.21). Accordingly, the ideal is “the ought to be” obtained through legislation. *Paul Clifford* meets both of Bentham’s objects for a book of jurisprudence. The novel is devoted to explaining and inquiring about what the law is. Interspersed within the depiction of “the what is are suggestions of what the law ought to be and the reasons why.

In her introduction to *The Bentham Reader*, Mary Peter Mack suggests that Bentham’s bridge of the gap between what is and what ought comes from *The Advancement*

of Learning, in which Bacon described lawyers as working with the “is” and philosophers with the “ought” and statesmen as the rulers of the world between (xiv). With this in mind we can understand the “intellectual energy” Bentham gave to the maturation of “the art and science” of legislation (Postema 266). Even a cursory reading of Bentham’s works reveal his persistent looking forward to the “ought” and his recurrent use of the word. And, as Mack says, “Bentham’s subject was always the law; his audience was always the legislator; and the legislator’s discourse always began with a question, that is, with the collection of evidence, and ended with a command, that is, a substantive law, an act of legislation” (xii). Bentham established in his earliest publication, *A Fragment*, his method of working with the empirical facts of the what is to the normative judgments that are, as Mack says “its end or justification” (xi). Bentham wrote in his first preface to *The Fragment* that anyone speaking about the law could become an Expositor who explains what the law is and inquires after facts or a Censor who explains what he thinks the law ought to be and discusses reasons. The realm of the Expositor is limited to the law of the country he reviews, but the realm of the Censor is the world because the ought to be is universal. Thus, “To the Expositor it belongs to show what the Legislator and his under-workman the Judge have done already; to the Censor it belongs to suggest what the Legislator ought to do in the future. To the Censor, in short, it belongs to teach that science, which when by change of hands converted into an art, the LEGISLATOR practices” (397).³⁸

Thus, the ideal for Bentham became statute law in a code, a “workable utopia” from “infinitely laborious detailed, empirical experience, observations, and experiment” that filled in the chasm separating the is and the ought (Mack xix). Bentham created the

neologism, “codification,” using it for the first time in 1815. He also created another word, “pannomion,” to refer to this comprehensive system of statutory laws that would exclude reliance on precedent and custom of the Common Law (Weiss 449, 478). Its success in criminal law depended upon the cultivation of the art-and-science of legislation from direct legislation or combating offenses by punishment to indirect legislation, the transcendental branch of legislation, which combated offenses by preventive means (“Indirect” 171). Perhaps, as Mack suggests, too much of our thinking about Bentham stems from the thinking of James Mill, whose utilitarianism supports the commonly used pejorative adjectives of “rationalist, deductive, [and] mechanical” (xxviii). Bentham, Mack says, “was no rationalist laying down rigid mechanical laws, but a self-styled romantic frankly chasing an admitted mirage” (x). Bentham’s utilitarian vision may be as Mack says, “an unattainable Utopia,” but it would “nevertheless draw men by education and new habit ever closer to it and ultimately transform their minds and hearts” (xix). Blackstone said changes in the law were indistinguishable as it adapted to the slow progress of history not through human intervention, a process he compared to “the changes in the bed of a river” (4.33.402). He implies that aggressive interference would actually impair progress. Bentham and others like him disagreed. According to Hollingsworth, “They wrote for a public which was every year larger and more concerned, and they gave their age something really new—a sense of confidence that old custom could be changed for the better” (9).³⁹ The change they sought was not dependent on the passage of time and some natural correcting of defects.

Certainly, the obvious references to Bentham and his thinking in *Paul Clifford* indicate that the novel shares an intellectual affinity with Bentham. Paul urges “indulgence

to the faults of others” and, paraphrasing Bentham in “Indirect,” he declares, in support of legislative reform or indirect legislation: “Circumstances make guilt, [. . .] let us endeavor to correct the circumstances, before we rail against the guilt” (452; ch. 36).

Equally tied to Bentham is Christensen’s statement that “*Paul Clifford* even hints that if the legal system founded itself upon man’s perfectibility rather than his innate depravity, a utopia might result” (72).

The focus upon the human potential for self-improvement emerges in the second part of the novel’s ideal that operates in conjunction with legislation. In *An Introduction*, Bentham discussed the motive of good-will: “In a good sense, it is styled benevolence: and in certain cases, philanthropy; and, in a figurative way, brotherly love; in others, humanity; in others, charity; in others, pity and compassion; in others, mercy; in others, gratitude; in others, tenderness, in others, patriotism, in others, public spirit” (10.25 109). He said the “the dictates of utility [. . .] are the most extensive and enlightened (that is well-advised) benevolence” (10.36 117). According to Postema, Bentham believed that “it is possible to arrange the circumstances within which a person lives and works such that benevolence and semi-social motives can be cultivated and given an opportunity genuinely to determine action” (383). Bentham wrote in *An Introduction* that private ethics were “the art of self government” (17.3 282) and go “hand in hand” with legislation in its concern with the “happiness and actions of every member of any community” (17.8 285). However, private ethics should govern the rules of beneficence, not self-regarding motives coerced by legislation (17.19 292), but, as Steintrager points out, the legislator can indirectly “educate the people to the benefits of acting benevolently, to show them

how it is in their own interest to pursue the interest of others” (39). Mack summarizes Bentham’s application of law and ethics as:

one subject, law or ethics (for ethics is the general art-and-science, divided under his bifurcate system into private ethics or morals and public, or legislation), the all-comprehensive art-and-science of morals and legislation; one audience, the legislature; one set of values, the greatest happiness of the greatest number. (xxi)

Bulwer-Lytton’s period as a Benthamite was brief, and he did not write another novel about “the immediate imperfections of contemporary society” (Cazamian 50). In *England*, Bulwer-Lytton admitted he did not agree with all of Bentham’s utilitarian points, but said because of him, “the prevailing spirit of the age” is “the spirit of examination and questioning” (319). Furthermore, Bulwer-Lytton included in *England* an appendix written by Mill in which Mill credited Bentham with setting the example “of treating law as no peculiar mystery, but a simple piece of practical business, wherein means were to be adapted to ends, as in any other arts of life” (Appendix B 411). Bulwer-Lytton recognized Bentham for his principle of philanthropy, “a paramount regard for the multitudes rather than for sectarian interests” (318) and for “combin[ing] what had not yet been done, the spirit of the Philanthropic with that of the Practical” (318). In *England* he described benevolence as “the great prevailing characteristic of the present intellectual spirit [. . .]” (289).

Cazamian writes that after 1830 the “exertions of the philanthropists (like those of the utilitarians) were to bear fruit”(49). *Paul Clifford* is significant as a utilitarian novel, Cazamian argues, because it “marks the point when utilitarianism became genuinely influential in literature [. . .]” (41). He also questions whether “philanthropic utilitarianism

would have been better expounded by some other novelist” because “the literary mediocrity of *Paul Clifford* is closely akin to the psychological character we found to be prevalent in the weaker hangers-on of Bentham and the utilitarian temperament” (50). Still, Cazamian points out, the novel ends on a “Utilitarian note” with a quote from the eighteenth-century radical John Wilkes: “The very worst use to which you can put a man is to hang him” (46; *Paul Clifford* 452; ch. 26). Granted, the novel does not inspire the readers’ emotional attachment that Dickens inspires or the intellectual depth of Eliot’s later novels. The novelist’s style is ornate, the action melodramatic, and his characters make speeches instead of conversation. Even so, its problem/solution reform message and affinities to Bentham is clear. Nineteenth-century readers would not miss the novel’s message. It is significant more for what it says and its attempts to implement reform rather than for the ways in which it is said.

Although the reference is to *England*, Peter Graham’s praise of Bulwer-Lytton for giving life to the ideas of “dry Utilitarian prose” and presenting argument through example (157) equally applies to *Paul Clifford*. The utilitarian note at the novel’s conclusion is more than a reference to usefulness of things or deeds because utility extends to how much these things or acts contribute to the maximization of happiness. “The science of which the basis has been investigated in this work can be pleasing only to elevated souls who are warmed with a passion for the public good,” (“Indirect” 188) Bentham wrote referring to legislation. “Passion,” Tomlinson responds to Paul’s vow that he always will resist laws that discriminate against the friendless and the poor, “is the usual enemy of reason—in your case it is the friend” (335; ch. 18). Twenty years after Lucy’s departure from England to meet Paul, they are financially secure and safe in a new country that will

not prosecute Paul for his past offenses; yet, his passion survives. The community respects him for establishing a hospital, redressing public grievances, ⁴⁰obtaining popular and public benefits, and using his wealth for “the most kindly benevolence” (452: ch. 36).

The Newgate novel, as previously discussed, was controversial because of its perceived potential to influence conduct. *Paul Clifford* employs a tradition established in seventeenth and eighteenth-century novels about criminals and criminality. As Lennard Davis writes in *Factual Fictions: The Origins of the English Novel*, “The formula for creating a criminal in the eighteenth century was to take a youth, have him read novels, which action leads him to crime, prison, and the gallows” (125). However, Bulwer-Lytton’s novel cites instances of both the negative and positive influences of reading novels. As a child, Paul Clifford was absorbed in reading about the “great highway man” Richard Turpin (239–40; ch. 2). Even when Mac Grawler introduces him to more formal studies, the life of the famous criminal is “an ominous affection [. . .] a study by day, and a dream by night” (244; ch. 3). After Paul quarrels with his foster mother his teenage imagination is a mix of thinking he can find and live in a cave like Dick Turpin (something he actually emulated as a highwayman) and a desire to “seek his fortunes alone, after the manner of the ingenious Gil Blas, or the enterprising Roderick Random” (250; ch. 4).

Paul threw down his Turpin stories and took up novels, drama, and poetry only after Tomlinson impressed him with his dress, skill with words, lifestyle, and, significantly, praise of learning: “Know that in this country, genius and learning carry everything before them. [. . .] Learning is better than house and land.” (246; ch. 3). Although the narrator says sarcastically, mocking the novel’s critics, that Paul’s new literary pursuits “were

scarcely of that nature which a prudent preceptor would have greatly recommended” (246; ch. 3) and that “literary avocations” seemed “profitless,” he suggests Paul would gain “a refinement in his tastes,” and “a tone of enterprise and of thoughtless generosity” (247; ch. 3). Later, when Paul naively expected Pepper to do the right thing and appear and confess his guilt to obtain Paul’s release, the narrator attributes it to his education: “the same fine theories of your ‘moral rogue’ that possess the minds of young patriots when they first leave college for the House of Commons, and think integrity a prettier thing than office” (266; ch. 7).

One way to prevent the novel’s negative influence was to limit the reading public by censorship or through limiting educational opportunities for the lower classes. Bentham wrote in “Indirect” that one of the means to influence the will was to provide examples that would “strengthen the impression of punishment upon the imagination” (178; ch. 3). Bentham also encouraged the cultivation of literature as one of the “innocent amusements” which gives pleasure and weakens “dangerous inclinations” (180; ch. 4). He opposed government censorship because it “is impossible to measure it, because it is impossible to tell where it ends. It is nothing less than the danger of stopping the whole progress of the human mind in all its paths” (176; ch. 2). The only censorship Bentham condoned was “that of the enlightened public, which discountenances false and dangerous opinions, and encourages useful discoveries” (177; ch. 2) and in domestic households by the head of the family (184; ch. 22). In “Indirect” Bentham also called for government intervention in education “in order to direct the course of the inclinations towards those tastes most conformable to the public interest” when the parents could or did not provide

for their children (184-85; ch. 22). *Chresomathia* (1815) is Bentham's proposal for a system of education.

Paul Clifford also participated in the nineteenth-century debate about the literacy of the poor. When Paul turned to gambling, Mrs. Lobkins blamed it on his education and "grievously upbraided herself for her former folly, in seeking for a superior education for her *protégé*." According to the narrator, "In like manner, when a man who can spell comes to be hanged, the anti-educationists accuse the spelling-book of his murder" (253-54; ch. 5). A minister Paul meets tells him that crime "comes of educating the poor." He fears the critical thinking skills some learn from education: "The moment they pretend to judge the conduct of their betters—there's an end of all order? [sic] They see nothing sacred in the laws, though we hang the dogs ever so fast; and the very peers of the land, spiritual and temporal cease to be venerable in their eyes" (294; ch. 11).

As Davis points out, seventeenth and eighteenth-century novels about crime and criminals possess two forms of doubleness. Although the criminal is an "example of sinfulness, evil, and degeneration" to be avoided, the criminal's repentance was to be imitated (Davis 126). Similarly, although criminal activity may be interpreted as social protest, the hanging and/or repentance of the criminal support that repressive social control protested against. In other words, the novels threatened the established order by fueling protest and inspiring a lower-class sympathetic alliance with the criminal, but they also legitimized the established order by disposing of the criminal in accordance with the controlling powers (Davis 136). Bulwer-Lytton's utilitarian view works a bit differently. Paul is a sympathetic criminal. He encourages social protest through blaming circumstances and the harsh laws for his fate as demonstrated in the final trial scene. He atones

through restitution to his victims, something much more utilitarian than execution or life in a transportation colony. He never repents for his indignation, just his way of expressing it. Neither Paul nor the novel legitimates the established class order or the existing laws. The legislative process remains intact, but the process itself has not been the subject of criticism. Paul's indignation and the novel's complaints about the laws and social imbalance remain unchanged. Paul, in accordance with Benthamite philosophy, converts his indignation to its best use. In America, Paul is respected "not only for the rectitude of his conduct, but for the energies of his mind, and the purposes to which they were directed" (451; ch. 36). This is the pleasure of the best use as opposed to the pain of the gallows.

Similarly, the answer to the critics of the novel form and the message to novel writers is one of best use. The narrator presents a case for an evaluative theory of the novel that should be premised on whether its influence directs readers toward vice or virtue. The illustrations of how Paul's early readings had "so strong a hold" (383; ch. 4) upon him buttress the text's argument for the persuasive energies of the novel and *Paul Clifford* as a novel is an attempt to demonstrate how those energies should be best applied. By doing so, the text makes itself an example of its own argument.

Bulwer-Lytton used idealism to argue for Bentham's concept of the ideal. He also highlighted Bentham's ideas using characteristics of idealism in fiction while borrowing from Bentham's writing style, medical metaphors, and rhetorical strategy as well. Significantly, he expanded Bentham's words on writing about jurisprudence to transform the novel into a book of jurisprudence that is both an expositor describing problems or the "what is" about law and novels and a censor presenting solutions or the "ought to be" for both legal reform and novel writing. In this way, the novel becomes authoritative and

persuasive in the manner of a book of jurisprudence. Its mix of rhetoric inserted like mini essays within the fictional account combines the impression left by storytelling with the argumentative strategies of nonfiction exposition to insure that its message is unmistakable. The novel pushes the process another step by depicting the operative ideal of the “ought to be.” In other words, the imaginary depiction of the “ought to be,” the ideal, enables readers to imagine the ideal as something workable and practical, closer to the actual and the “what is” than something only in a utopia or the distant future. In *Paul Clifford*, the novel becomes even something more than a book of jurisprudence because it includes within its jurisprudential functions considerations of private ethics and, most particularly for Bentham and Bulwer-Lytton, of benevolent acts for the community.

Notes

¹ *Paul Clifford* was Bulwer-Lytton's fifth novel and "an immediate commercial success," selling out all copies on the first day of publication, April 30, 1830. Recognized sources for the novel are William Godwin's *An Essay Concerning Political Justice* (1793) and Bentham's "Indications Respecting Lord Eldon" (1825) (Campbell 38).

² See Margaret King and Elliot Engel, "The Emerging Carlylean Hero in Bulwer's Novels of the 1830s."

³ Hereinafter *Commentaries*.

⁴ When possible, I cite first volume then chapter and section or paragraph number followed by the page number of the edition used for the works of Blackstone and Bentham.

⁵ Hereinafter "Indirect."

⁶ Hereinafter *An Introduction*.

⁷ Name used for hangmen. The original served during the time of Charles II (Hollingsworth 7-8).

⁸ Robert Owen (1771-1858), one of the founders of British socialism "believed that people's characters are formed by hereditary and environmental forces" (Prall 590).

⁹ In George Eliot's *Felix Holt, The Radical*, this argument is reversed in favor of individual improvement that will eventually result in improvement of the institution.

¹⁰ My thanks to Dr. James Hill for pointing out this debate to me.

¹¹ The author also appears to be reluctant to give up the argument that gentleman are born by showing that despite the environment in which he was raised Paul bears the

demeanor and manners of a gentleman: “[h]e was especially formed for that brilliant world from which his circumstances tended to exclude him” (340; ch; 18).

¹² See Ned Pepper’s song : “Commerce and law have a method of thieving / Worse than a stand at the outlaw’s tree” (387; ch. 29). See also “the painful comparisons” in “The Libellous (sic) Parallel of Augustus Tomlinson” introduced as “A wonderful likeness between the life of the gentlemen adorning his Majesty’s senate and the life of the gentlemen whom you are conducting to his Majesty’s jail” (402-03; ch. 31).

¹³ Postema writes that Bentham’s approach to the Common Law was not “merely a detached philosophical assessment of a jurisprudential theory. It was a direct challenge to the ruling political ideology” (311).

¹⁴ Hereinafter “Indications.”

¹⁵ See also “Truth versus Ashhurst” (1792) for similar attacks on the court’s delays and fee requirements.

¹⁶ These comments also tie to the novel’s inheritance from John Gay’s *The Beggar’s Opera* and Henry Fielding’s *Jonathan Wild*, “which use[s] a criminal career to illustrate the thesis that only social circumstances and our mental prejudices make any real difference between a great rogue and a great conqueror” (Cazamian 45).

¹⁷ Other gang members also caricature government officials that the public would recognize and the king. Bulwer-Lytton’s wife actually provided a key for the depictions (Campbell 3; Hollingsworth 79). Bulwer-Lytton mainly sketched “Old Tories, Canningite Tories, and men who accept none of the duties of their rank” (Hollingsworth 74).

¹⁸ In *Factual Fictions: The Origins of the English Novel*, Lennard J. Davis discusses the influence of sympathy for the criminal upon lower class social protest.

¹⁹ At Paul's talk of more violent social protest, the narrator places a footnote to remind readers that "these sentiments are Mr. Paul Clifford's—not his" (335; ch. 18).

²⁰ For a concurrence, see Gerald J. Postema *Bentham and the Common Law Tradition* 311.

²¹ Hereinafter *A Fragment*.

²² According to Fred Rosen, "In all his writings Bentham emphasized the importance of the careful use of language and paid great attention to the definition of terms" (xxxiv).

²³ Interestingly, as an additional comment on the degeneracy of literary critics, Paul's former teacher, Mac Grawler, robs Paul of the fees owed him as a literary critic, becomes a cook for his gang after Paul saves him from arrest for pickpocketing, informs on Paul to the police, and testifies against him. At the end of the novel the former editor of the literary magazine earns his living as a hangman.

²⁴ Bulwer-Lytton obviously was familiar with Bentham's writings. He refers to Bentham's influence on the intellectual climate in *England and the English*. He also refers to Bentham in his third novel, *Pelham* (1828) The hero, Pelham, reads Bentham and Mill at the direction of his uncle who want to show him "how inseparably allied is the great science of public policy with that of private morality" (144; Vol. 1, ch. 36).

²⁵ In some respects, Tomlinson is Bentham's antithesis. Tomlinson's moral philosophizing appears indicative of Bentham's complaint against those who base moral decisions on their own sense of right and wrong (*An Introduction* 2.14d 24). The highwayman, relying only on theory, denounces democracy, another Benthamite cause, and describes a scoundrel who cheated him as reading Sir Francis Bacon's *On the Advancement*

of Learning, an influential source of Bentham's thinking. In Bulwer-Lytton's social history, *England and the English*,²⁵ written three years after *Paul Clifford*, Bulwer-Lytton states significant disagreements with Bentham's moral philosophy. His treatment of Tomlinson as a comment on Bentham's moral philosophy and systematics, though closely allied to Bentham's legislative philosophy, is a subject for a study beyond the focus of this endeavor.

²⁶ This disruption and restoration argument in British legal history is discussed more extensively in the chapter on George Eliot's *Felix Holt, The Radical*.

²⁷ For a different approach to the role of the past in the novel see Allan Conrad Christensen's *Edward Bulwer-Lytton: The Fiction of New Regions*.

²⁸ The way Bulwer-Lytton manages Lucy's conduct after she has inherited both William Brandon's and Joseph Brandon's estates is interesting. First, the novelist found it necessary to say that because so few people knew that William Brandon was Paul's legitimate son, Lucy inherited his estate. She circumvented Paul's right, but avoided the legal complexities of proving that William was Paul's father and that Paul was legitimate, and the possible complications of a convicted felon inheriting substantial sums. The novelist risks no impropriety, legal or otherwise, by depicting a convicted felon sent to a transportation colony as a rich man which we see later in Dickens' *Great Expectations*. Secondly, she sells the family estate to the nearest relative instead of just any buyer. Through this sale, the novelist continues the tradition of keeping property in the family as if trying to ease the break she and Clifford are making from England.

²⁹ Bulwer-Lytton, like the later Henry James, according to Stang, considered the novelist/narrator an historian and would object to Trollope's intrusions reminding the reader that the narrative is fiction (13).

³⁰ True imitation would be closer to the experimentations of the modernists through stream of consciousness and attempts at simultaneous representation.

³¹ Christensen correctly identifies a pattern in some of Bulwer-Lytton's novels in which "his Romantic idealism sought [. . .] to assimilate Benthamism" (xiii). Christensen considers the idealism of Bulwer-Lytton's heroes a tragedy, and the union of utilitarianism and idealism a contradiction in which "there can be no stable reconciliation" (74). Brantlinger's suggestion that Bulwer-Lytton's "romantic realism [. . .] is superficially opposed to, but still related to, the reform idealism of the Benthamites" (280 n21) is closer to the position of this chapter.

³² See also Mary Peter Mack's Introduction to *A Bentham Reader*: "There is no knowing without doing, theory without practice, science without art" (xi).

³³ However, a utopia might be more consistent with Bentham's imagination. In addition to constructing plans for the perfect prison, the panopticon, Bentham designed perfect villages in lieu of workhouses, which he called Panopticon Hill Villages. However, he was not successful in persuading the enactment of these innovative schemes (Mack xix-xx).

³⁴ For some additional thoughts on emigration as an ending to social reform novels see *Culture and Society: 1780-1950*, Raymond Williams (98, 103).

³⁵ All of Paul's compatriots escape prosecution. The legal disposition of the criminal cases versus the literary disposition is discussed in the concluding chapter.

³⁶ For more on these distinctions see Joel Feinberg and Hyman Gross, *Philosophy of Law* and H. L. Hart “Positivism and the Separation of Law and Morals,” *Essays in Jurisprudence and Philosophy*.

³⁷ For Bentham the question of morality was not its tie to Christianity. He possessed a “deep-seated hostility to religion in general and toward the Church of England in particular” (Steintrager 16). For him, morality is obtained through the principle of utility. Religions he said “inspire doom” (“Indirect” 182).

³⁸ This division appears in Trollope’s *Orley Farm*. Von Bauhr is the Censor with his view of universal reform, while the representatives of the other countries are the Expositors with their presentations of the operations of their legal systems.

³⁹ For a less enthusiastic view of Bentham’s thoughts and influence see Richard A. Cosgrove, “Jeremy Bentham: The Light of Utility,” *Scholars of the Law: English Jurisprudence from Blackstone to Hart* and Michael Oakeshott, “The New Bentham,” *Rationalism in Politics and Other Essays*.

⁴⁰ Critics considered other subgenres as well as novels about crime capable of corrupting readers. The Romance and Gothic novels supposedly implanted frivolous and dangerous thoughts in young women.

Chapter 3

Thinking About Proof in Wilkie Collins' *The Woman in White*

Walter Hartright, the narrator of Wilkie Collins' *The Woman in White* (1860), begins the Preamble of the novel with the words, "This is a story of what a Woman's patience can endure, and what a Man's resolution can achieve." He also states that the events in the story "might have claimed their share of the public attention in a Court of Justice" but did not because of the law's standards of proof and the required expenses. Consequently, he intends to tell it in the manner that "the story of an offence against the laws is told in Court" (33). His statement contends that the legal system has denied him assistance and that he intends to tell a story of self-help to obtain justice.

This discussion of *The Woman in White* focuses on three aspects of the novel borrowed from the legal system: its method of proof, its presentation of proof "like a story," and the historically necessitated consequences of facts proven or the concept that a chronological collection of causally connected past facts necessitate certain consequences or a universal conclusion. They are devices intended in both the world of Collins' novel and the world of the law to make accounts of past events factual and probable. Hartright appropriates the rules regarding legal proof and claims to make them the rules of the novel, a twist on the more common approach of the law and literature method in which literary theory is more likely to be applied to legal texts. The product of Hartright's efforts is a self-authenticating literary/legal text that simultaneously provokes suspicions about its claims of factuality and truthfulness. At the same time, the novel realistically represents the uncertainty of facts and truth.

Incorporating a legal model into a novel supposedly adds legitimacy to what the novel says. It presupposes a higher standard of proof and attention to facts in the fictional form than the text normally might use. *The Woman in White* as a sensation novel depicts events in the Victorian world that the contemporary literary realists ignore, kill, or deport as the atypical or the other. To counter realism's claim of plausible depiction of actual ordinary events, the sensation novel argues that what the realistic novels ignore or expel is equally real. To prove that position it must meet a higher standard of representation. That representation in *The Woman in White* depends on adherence to the legal model of telling stories and its burdens of proof. The legal model also assists the position of the sensation novel's limited narrator.

However, instead of a story ending with the sense that the truth emerges, the novel concludes with a sense that the truth remains unknown and that the reason and logic of the rationalist tradition of evidence as a vehicle of objective reality is a product of class and power, vulnerable to manipulation and misuse, and incapable of determining a probability of truth. Therefore, the legal framework lessens the legitimacy or realism of Hartright's story because the model is defective. Yet it does not lessen the novel's position as a sensation novel because in demonstrating weakness in one of society's highest institutions, which is near unthinkable, the novel becomes a realistic depiction of the legal system's operation. This realistic depiction of what lies beneath the surface of the legal world is one of the sensational elements of the novel, as is the lingering sense of truth untold. Thus, the defeat of the legal model adds to the sensational element of the novel as well as to its claim to be more realistic than realistic novels.

More specifically, the narrator's analogue to the legal framework in presenting a series of narrators to tell their part of the story in the chronological order in which the events occurred, as if they were witnesses testifying at a trial, is supposed to establish in a progressive format logical connections, using the rationalist tradition of evidence, that lead to the truth. Hartright's selection of narrative testimony and his very direct opening announcement/statement of what the story is about activates preconceived notions about stories and raises expectations of what Hartright's story will prove. It conceals the manipulation and artificiality of linear narrative order and ignores the actual disorderly events in human lives, including the intervention of unrelated and unconnected accidents and coincidences. Hartright's strategy contributes to the unreliability of his story because his connections appear too well fitted to accept. His free proof, or excluding few details in the storytelling, provides information raising inferences counter to what Hartright would have readers believe and therefore exposes his narratives and overall story to challenge. Yet again, the defects of Hartright's strategy buttress the sensation novel's iconoclastic attitude to the Victorian world and its favored novels of realism by demonstrating that narrative detail does not depict objective reality, but subjective reality, and is framed by partiality, prejudices, and self-interest. The transparency, in the sense of being easily challenged, of both the individual narratives and the overall story they compose actually renders a realistic account of their world and demonstrates one way in which narrators/novelists construct stories.

Hartright's opening statement about patience and personal resolution implies in the former a teleological attitude and in the latter individual independence and self-confidence. As such, it establishes an a priori theory which raises expectations of the

conclusions readers should form at the end of the novel because it draws upon their literary sense of how stories go together to form meaning. Patience ties to the narrative method of gradual progression toward the right conclusion. Resolution relates to the fixity of intent, the purposefulness toward guaranteeing that the conclusion sought will be obtained. Combined, they imply that self-control, persistence, and steadfastness toward a goal will ultimately bring success or just ends. They also imply personal responsibility and self-help that may or may not be within the boundaries of conventional rules. The story is about Marian Halcombe's patience in obtaining revenge against Count Fosco's liberties toward her and Hartright's resolve to punish the conspirators and obtain a form of justice. It becomes an account of several people involved in various methods of self-help that either are on the edge of violence or do erupt into violence and how they justify their actions or remain indifferent to any moral justification.

Hartright's multiple self-help devices self-authenticate his text in the same way the devices work in legal texts. The devices are auxiliary texts within the text. They are the source of textual authority, not the author of the text. The written words represent the truth because of external forces acting within and upon them. While pursuing the conspirators, Hartright regards himself as the agent of divine law, suggesting that his quest is morally worthy, sanctioned by the highest law, and toward a righteous end. Adopting the form of a legal text for authenticity associates his story with authority and power. Yet, despite an overwhelming dependence on these devices in law, literature, and life, the story proves that they are not indicators of truth or reality. Therefore, Hartright's text becomes unreliable because the authoritative systems he employs for self-authentication and, most importantly, their texts are unreliable.

As a quasi-legal document and a fictional text, *The Woman in White* is a unique text from a law and literature perspective because it encompasses both law in literature and law as literature, the two branches of law and literature. Collins' novel incorporates a legal method as a joint literary and interpretative device that is a trope on both approaches of this interdisciplinary movement. The importance of the text lies not in what it says about law, but how it uses law and how legal methods and analysis authenticate the story or sway its interpretation. It applies legal analysis to a literary text instead of applying literary analysis to legal texts—something that is more often the work of law as literature. The introduction of facts as if presenting evidence at a trial, the multiple narratives like a string of witnesses in a case, and the narrative form of testimony all mimic to some degree the legal method of proof.¹ The text becomes a legal document similar to the transcript of a legal process—a confession, an inquest, a part of a trial. It narrows the distinction between the fiction of a novel and the nonfiction of legal texts and the devices they employ to prove their authority, to speak with an authoritative voice, and to appear real or truthful.

Walter Hartright, the main narrator and editor of the other narratives that comprise the novel, is a young drawing teacher from London who is hired to teach two half-sisters, Laura Fairlie and Marian Halcombe, at their home in Cumberland, Limmeridge House, where they live with Laura's eccentric and self-obsessed uncle, Frederick Fairlie. Marian is poor, but Laura is heir to the Fairlie fortune. Laura has reluctantly agreed to marry the older Sir Percival Glyde because it was what her dead father wanted. The night before his departure for his new job while walking in north London, Hartright meets a young woman dressed in white who has escaped from an asylum and who refers to the

kindness of Laura and Marian's mother, who is also deceased, to her as a child. That incident begins a series of incidents that raise suspicions of a connection between the woman in white, Anne Catherick, and Sir Percival. The woman, who resembles Laura, appears in Limmeridge and attempts to prevent the wedding. After Hartright leaves his position because he has committed the mistake of falling in love with Laura and following the wedding when Laura and Marian move to live at Sir Percival's home, Blackwater Park in Hampshire, the suspicions continue. Complicating the situation is the discovery of Sir Percival's indebtedness, his ill temper, and his intent to obtain Laura's fortune, something that requires her consent or her death. Furthermore, the household is dominated by the presence of a mysterious Count Fosco from Italy to whom Sir Percival is attached and whose wife is Laura's aunt. While Marian is recovering from an extended illness, Laura is reported dead in London and a woman identified as Anne Catherick is returned to the asylum. First Marian and then Hartright attempt to prove that the woman Marian finds in the asylum is not Anne, but Laura, and that Sir Percival and Count Fosco have conspired to steal Laura's identity and her fortune.

The mainstream legal framework Hartright adopts to tell the story supposedly enforces his promise to present the truth directly and intelligibly. In its claim to truth and therefore, reality, the novel adopts the assertion of the realistic novel tradition while simultaneously expanding that assertion to include an additional real element, the sensational.² The sensation novel shows that the correspondence to life of the realistic tradition is something more than the observations of ordinary daily life. The appearance of the mysterious lady in white, Anne Catherick, to the narrator as he is walking late one night at once introduces the sensation aspect and suggests that such events, though extraordi-

nary, can and do happen. Thus, the sensation novel is, as Winifred Hughes states in *The Maniac in the Cellar: Sensation Novels of the 1860s*, a “mixture of different ‘realities’” (17). But, the sensational realities are earthbound, levels of the natural, not the supernatural. Jenny Bourne Taylor writes in the introduction to another Collins’ novel, *The Law and the Lady* (1875), that the sensation novels “blurred the boundaries between the strange and the familiar [. . .]. They transposed the disturbing and exotic elements of Gothic fiction, the sinister city underworld of the crime, or ‘Newgate’, novel, and the excesses of high melodrama into the everyday domestic, familiar world of the majority of their readers, exploiting the undercurrents of anxiety that lurked behind the doors of the apparently secure middle-class home” (Intro. viii).

Hughes and other scholars³ note how Victorian fiction typically rejects the underworld or “counterworld” (144) through death and destruction, or, as seen in the exile of Lady Mason and her son in Anthony Trollope’s *Orley Farm*, through forms of emigration or transportation. Yet *The Woman in White* demonstrates that in the sensation novel the subversive actively participates beneath the surface of and sometimes within Victorian life despite attempts to conceal, destroy, exclude, or ignore it. Although the villains Count Fosco and Sir Percival are dead at the novel’s conclusion, the Italian Brotherhood remains in existence, the count’s cohorts are still in London, the legal system remains susceptible to abuse and its methods of proof fallible, fallen women like Mrs. Catherick still receive the clergyman’s bow, and perhaps the most subversive character of all in the novel, the narrator, becomes a member of the “landed gentry of England” (645).

Not only did the sensation novel disturb middle-class images of home and hearth, Patrick Brantlinger writes that it “broke down the conventions of realistic fiction” (27). In

doing so, sensation novels eroded the perceived reality presented in the contemporary realistic novel. Sensation novels revealed that the realistic tradition did not portray life plausibly or as it actually was. According to Brantlinger, "They stripped the veils from Victorian respectability and prudery, exposing bigamists and adulterers, vampires and murderers" (26). The numerous references in the novel to Sir Percival Glyde's exemplary public behavior and to his friend, Count Fosco, as a nobleman, are countered by their private conspiracy to prevent Anne Catherick from publishing Sir Percival's secret and to obtain Laura Fairlie's wealth.

Hughes considers the sensational novel "an uncomfortable challenge to the underlying assumptions of both realism and idealism" (70). Realism actually participates in suppressing an ever-present reality. If realism is "the official ideal" (Hughes 190) or what might be called the best there is, the sensational iconoclastically scoffs at perceived tradition. Moreover, the vitality, persistence, and perhaps immunity of the sensational counterworld and its moral ambiguities preclude any concept of the ideal as something exalted or even achievable. In other words, the sensation novel exposes what has proclaimed itself as the "what is," or the real, as fraudulent by utilizing another form of the "what is," or the sensational, that effectively disallows for any "ought to be," or the ideal. More significantly, the legal framework, which should have purged the subversive and brought a return to the perceived ideal, actually increases the lurking anxiety.⁴ Not only is the legal system inaccessible, as Hartright discovers, its methods are easily misappropriated. The English bulwark and ultimate ideal of the legal system once it becomes earthbound, or is taken into human hands, becomes malleable. The realism of the sensation novel cannot tolerate any form of the ideal.

The sensation novel competed with novelistic realism, but, as Lonoff discusses, it also looked backward to Romanticism and Coleridge's willing suspension of disbelief (23-24). The events and characters of the novel seem to be real. Peter Harvey Sucksmith writes that Collins achieves that suspension "with regard to himself in his creation of an imaginary world because he can assume a poetic faith in its existence; while he can express this faith with an infectious confidence precisely because he is confident of its similarity to the real world and his own experience" (xii).

The subgenre of the sensation novel flourished for only about "a decade or two" (Brantlinger 1), perhaps because of its subversiveness to the perceived "as is" and absence of the "ought to be." Hughes attributes the subgenre's demise to mainstream novelists accommodating "the more troublesome elements" of the sensation novel (190). Notwithstanding its anachronistic elements, the sensational novel was prophetic. Its trust in the internal, the imagination, the consciousness founded on something besides the empirical inherited from the Romantics, becomes the consciousness of the modern British novel.⁵ The willing release to internal consciousness of intuition, suspicion, and irrational feeling in the sensation novel bears traces of the stream of consciousness and varying points of view later developed by Virginia Woolf and Ford Madox Ford. Its exposure of the shadows and obscurity both within each individual and the external world anticipates Joseph Conrad's *Heart of Darkness*.

Critics of this subgenre railed against its moral ambiguities and "inappropriate subjects" presented in a sensational manner rather than in the serious tones of moral condemnation such subjects deserved. Just as critics attacked the romance, the Gothic, and the Newgate novels, they considered the sensation novel dangerous as well because of its

potential influence on readers (Brantlinger 5-7). According to Hughes, the sensation novels brought the extreme too close to the everyday instead of keeping it remote or distant from the real: “[T]he terrible or the improbable is something that happens to somebody else in some other era. To let it happen to oneself, or to one’s peers or contemporaries, is simply unthinkable” (54).

Despite the critics’ protests, Collins, along with Charles Reade, another writer of the sensation novel, needed only to look to the “modern urban experience” around them (Hughes 53) for their subject matter. They made fiction out of what was in the newspaper daily and “on one level they could even claim that to sensationalize was to be realistic” (Brantlinger 9). Hughes argues that Reade and Collins “in particular, profess to challenge the realists on their own ground and to surpass them according to their own standard. What, after all, could be more ‘real’ than literal fact?” (50). In his novel *Hard Cash*, Reade includes “reports of trials at law” in a list of narratives dwelling on interesting facts (qtd. in Hughes 53). Sucksmith suggests that Collins selected the form of this novel because of “the influence of the sensational trials of mid-Victorian England” which newspapers reported and “frequently illustrated” (xii). This public reporting positioned crime and criminals on a different level from that of the earlier crime novels and the Newgate novels. Hughes argues that the sensationalists were alert to this movement: “As part of their juxtaposition of realistic and romantic elements, the sensationalists of the 1860s not only raise crime from its recent Newgate origins, but also remove it from the traditional realm of kings and chieftains and grandiose villains” (32-33). Furthermore, as Count Fosco demonstrates in his lecture on crime and criminals, crime becomes a question of whether the criminal is clever enough to avoid detection. That ability to outsmart

the police or to avoid detection for an extended time period increases the sensational aspect.

Because the subject matter of much courtroom action often gives the impression of the extreme and extraordinary, the legal framework of the novel increases the sensation atmosphere. Lawsuits and criminal prosecutions often derive from what seem to be unbelievable events and conduct in ordinary people's lives. The sensational lure of trials emerges in the disclosure of private lives and secrets in a public atmosphere just as the sensation novel publicized the underworld. That aspect attracts the public's attention to the legal system for the same reason the public is attracted to supermarket tabloid stories and explains the popularity of legal settings in literature, film, and television.

However, another reason for the public's fascination is the sense that the distance between the acts leading parties to litigation and their own lives is very small indeed. The unthinkable about which the critics of sensation novels complained presents itself in the courtroom. For this reason, spectators, who have no personal interest in the outcome of a particular case, attend trials or view them on television, and the news media report on trials because of the public's interest. One of the reasons victims of crime seek more participation in trials and one of the consequences of victim impact statements is to counter the impression of disbelief in the criminal act, to reduce the perspective of the crime and its aftermath as an aberration, an isolated incident that injures a distant or remote person. This lessening of the distance mediates the absurdity for the victims and their families as well as for those who hear their statements.

Hartright's story is in a sense a statement of the impact of crime on victims, their friends, and families. In line with the sensation novel's unmasking of the extraordinary in

the ordinary, it shows that no one is immune from committing crimes or becoming victims. It also can be viewed as an account of frustration at an inability to obtain justice and the ways frustration can escalate into taking the law into one's own hands.

In addition to the sensational subjects of the legal system that make a legal framework an appropriate atmosphere for a sensation novel, the law operates within a strict standard of proof that is more demanding than what most individuals use in their daily decision making. The consequences of the decisions triers of fact make regarding peoples' lives and property necessitates these standards. In an introduction to the novel, Julian Symons describes Collins' shifts in narrative viewpoint as "an ingenious way out of some problems involved in a serial publication" and as a means to comply with the demand of serial publication "that each installment should end on a note of suspense" (12).⁶ D. A. Miller in *The Novel and the Police* dismisses the narrator's "organizational device" as "curious" and "obvious gimmickry" because "nothing in the story ever appears to motivate it" (156). However, the legal method as an organizational process connects to the novel's status within the sensation subgenre in two aspects. First, the narrative format recognizes the standard of proof that the sensation novel must meet in order to appear real. Secondly, it shores up the reliability of the limited narrator.

In order to present convincingly the counterworld of Victorian fiction, what Hughes calls "the extremes of human experience" (52), as part of the ordinary and of everyday life, the text must meet a higher standard of proof than the novel in the realistic tradition. The nature of the material of the sensation novel imposes a greater risk of failure to meet the requirements of credibility than the attempts at correspondence to life, the plausibility to actual events, of the more restricted form of realism. To fail reduces the

sensation novel to the mystery and terror of Gothic fiction. If *The Woman in White* is to meet its standard of what Sucksmith defines as the “completely convincing nature of the events, characters, and world of the novel,” then “a certain degree of verisimilitude [. . .] is all the more crucial as a literary strategy [. . .]” (xi). Thus, Reade and Collins “brandish their documentation and their expert testimony” (Hughes 50). Additionally, Sucksmith explains, “a steady accumulation of particulars, of circumstantial detail derived from the real world” presented through the multiple narratives/testimonies encourages belief (xii). The “detail added to detail” and the “finely conceived portraits [. . .] have the effect of helping us to accept what might otherwise seem too implausible” (Symons 21). Setting up the presentation of the story as an analogy to a trial, as if it were the presentation of facts through testimony to prove a contested case, colors the evidence with a higher probative value. In addition, it provides an additional attachment of the sensational to the mainstream world, instead of fantasy or the supernatural, because even though sensational elements are topics of legal proceedings, the legal system itself is a conservative, historically bound, unchanging institution of society.

Thus, the standard of proof varies in novel subgenres in respect to their correspondence to life. Similarly, the standard of proof is not the same degree in all kinds of litigation because, as John Jackson and Sean Doran explain in their article on evidence, “it should take account of the magnitude of the harm that will be caused if a decision is wrong” or what might be called a correspondence to life’s consequences. The legal system considers the degree of exposure “to risks of error.” In civil cases, which are usually disputes between private parties, the risk of error is “allocated as evenly as possible” and judgment is determined from a preponderance of the evidence. Some civil cases, such as

those involving change of child custody, possess a greater risk of error so the evidence requiring such a drastic change must be clear and convincing. In criminal cases, it is “preferable to allocate the risk of error in favour of the defendant because the risk of a person being wrongfully convicted is considered much graver than the risk of a person being wrongly acquitted” (Jackson and Doran 175). This stems from the ancient debate about presumption of innocence and the adage that it is better to let a guilty man go free than to convict an innocent man. Thus, the standard of proof in a criminal case is a higher degree of probability or beyond a reasonable doubt.⁷

Since the narrator’s Preamble refers to “an offense against the law,” his story must be a form of criminal prosecution. Hartright’s reference to obtaining justice and punishing the conspirators throughout the novel supports this conjecture. That is what Hartright’s story accomplishes though not through the legal process. Despite the impression that the novel is a story of Hartright’s prosecution of the conspirators, the novel also hints that Hartright is offering a defense to charges of his culpability in the deaths of two men. Thus the story of Hartright’s pursuit of the conspirators, his prosecution of Sir Percival and Count Fosco, becomes as if it were a part of Hartright’s defense to an action attempting to hold him accountable for his self-help. From either point of view, the standard would be one of beyond a reasonable doubt.

The legalistic narrative device also combats, in part, what Brantlinger sees in many sensation novels as a “difficulty in claiming authority” because of their blend of “romance with realism, the sensational with the domestic and contemporary, [and] improbable or at least infrequent events with probable settings and characters [. . .]” (11). Furthermore, Brantlinger explains that the mystery and secretive nature of the narrative

limits narrators in sensation novels. The narrator is not omniscient or all knowing if telling a story in which the narrator acknowledges being without full possession of the facts in the novel's world and explains how that knowledge eventually became known. At the same time, because the narrator knows the key to the mystery and is withholding that information in order to maintain suspense, the narrator's trustworthiness or reliability is diminished (15). Inherent within the sensation novel is the sense of something held back while the story progresses. If the narrator has by his own admission and method of narration withheld information, no guarantee exists that he has ceased doing so at the story's conclusion. The multiple narrative/testimonial devices Hartright adopts relieve him of some of that lack of credibility. They distract attention from him as the sole narrator. Lonoff says the devices "efface the real author by producing the illusion that the persons in the story were responsible for writing it" (128). The device also connotes that others besides the narrator certify the truth of the story, by their cumulative weight where the facts in each story correspond to the facts in other stories.⁸ In much the same way, an attorney presenting a case does not claim omniscience. The witnesses, not the attorney, are the source of the evidence. Credibility or trustworthiness rests on the witnesses as they testify, and, is a question for the trier of fact.⁹

Simply by stating in the Preamble, "This is a story," Hartright draws on certain expectations about what a story does and says. Narrative or story denotes an account with a beginning, middle, and end from which the reader will form some interpretation or attribution of meaning. Furthermore, the Preamble subtly implants several theories about how stories are structured, what they do, and what they accomplish: the linear method of storytelling is the most easily understood and is a legal technique; personal narratives are

truthful, and patience and resolution result in justice for offences against the laws. Hartright's chain of narratives of accumulated facts uniting as a complete story dictate what seems to be a certain outcome, a decision that his resolution and morality have prevailed over the evil villains. Unlike Count Fosco, who writes in his confession: "One of the rarest of all the intellectual accomplishments that a man can possess is the grand faculty of arranging his ideas" (613), Hartright uses the temporal framework. Instead of a more complex arrangement that looks backward and forward and deviates for subplots, he plays upon the perceived human inclination to sort out events in an orderly manner.

Hartright inserts continued reminders of his story's fitting together in an uninterrupted series—"the course of the narrative steadily flowing on" (585), "the tangled web will be most speedily and most intelligibly unrolled" (435), "the progress of the narrative" (586). Even Mr. Gilmore, the Fairlie family lawyer, says Hartright's plan "for presenting the story to others in the most truthful and most vivid manner, requires that it should be told, at each successive stage in the march of events, [. . .] (150). Finally, Hartright refers to "the necessary law of such a story as mine" (585) that each person's narration is presented in the order of his or her connection to the events.

The narrative order analogy to a trial is weak because the presentation of witnesses may not follow chronologically the events and witnesses do not testify in uninterrupted narratives. The accurate story image is that attorneys will fashion a story from the piecemeal evidence presented during the trial while making closing arguments. Additionally, advocates, like Hartright, will attempt to plant a theory or predisposition for thinking about the case at their first opportunity in front of the trier of fact during opening statements before the presentation of evidence. Then as the evidence is introduced, the trier of

fact supposedly fits it into this predesigned scheme that in the novel Hartright has so helpfully labeled. A chronological presentation of evidence during a trial might not be the best method of determining truth or of meeting the burden of proof. The sequencing of testimony in the order of witnesses should be determined by the nature of the evidence, its impact upon the jury, and other factors. For instance, particularly complicated, tedious, and boring evidence might be followed by testimony that is more emotional or interesting or something that establishes the human impact of the scientific evidence. For example, parts of Hartright's narratives are dry in the section titled "The Story Continued in Several Narratives" in the second epoch, and Mrs. Michelson's account rambles and inserts extensive opinion. But, because of Hartright's commitment to narrative testimony and linear arrangement, he can do nothing to insert something more interesting. Another effective maneuver is arranging the testimony so that a particularly strong witness is the last to testify at the end of a party's case so the words of that witness or the evidence that witness presents is the last thing the jury has in their minds of that party's presentation of evidence.

Witnesses often are called "out of order" so that expert witnesses can be released and the time clocks on which they are basing their fee stopped or so that law enforcement personnel can return to their work. The Federal Rules of Evidence only restrict the order of the presentation of evidence to effective interrogation and presentation for determining truth, to efficiency, and to protecting witnesses from harassment or embarrassment (McCormick 1:12). A situation in which the evidence lines up and can be presented strictly chronologically, as the narrator does, is unusual. While those in the legal system recognize that choices should be made about the best way of presenting a case, Hartright

does not. His insistence upon his method becomes an attempt to impose certainty upon its result. Significantly, he does move away from the strict linear presentation of witness narratives as the novel progresses and when the readers might be so engrossed that they do not notice the deviation.¹⁰

Narrative in legal proceedings usually refers to the narratives in opening statements and closing arguments, the statement of facts in judicial opinions, victim impact statements, confessions, and the defendant's presentation during the sentencing phase of capital offense cases. Another area, and the area that generates the most controversy, is the use of narrative to present views in legal scholarship. Catharine MacKinnon attributes "much of the contemporary storytelling impulse" to a resistance to "the claim of exclusivity of the single dominant version of social reality [. . .] (234). Enlightenment concepts of truth, she says flatten the many dimensions of reality. Testifying in the narrative form or quasi-narrative form as seen in the novel always has been one method of presenting evidence; however, it is not the usual subject in narratology of law discussions.

Narrative testimony differs from testimony elicited by a questioner about specific facts. It begins with a general question establishing the witness' personal knowledge and opportunity to observe and whatever else is necessary to establish the narrative and the narrator to the case being heard. Next, the witness is asked for a recount of what was seen and heard. This kind of testimony can be more persuasive than specific questions because it appears more naturally presented, and belonging to the witness rather than the questioner. Furthermore, it best uses those witnesses who have good memory, personality, and effectiveness in speaking. Their narration may be more interesting and impressive and provide a better opportunity to display their honesty and intelligence than if the witnesses

were simply responding to questions. The risk of such a form of testimony is rambling, confused, and incompetent testimony. Another hazard of narrative testimony is that it becomes privileged over what should be the more persuasive presentation of mathematics or statistics and scientific data.¹¹ Judges have the discretion to limit or prohibit narrative testimony.

Specific interrogation testimony, though sometimes dull, is a better method for introducing complicated evidence and for keeping the witness with the boundaries of admissible testimony and what the questioner seeks to prove. Some authorities argue that narrative testimony is more accurate because less susceptible to the questioner's suggestion, while the fully interrogated testimony tends to be more complete. Nevertheless, even during narrative testimony, the examiner may interrupt with specific questions and at the conclusion of the testimony ask specific questions so a witness presenting narrative testimony does not provide a smooth uninterrupted account.¹²

Finally, narrative testimony is not to be confused with the open-ended questions or specific question/response type testimony used during direct examination, which calls for more detailed answers than the closed-ended questioning or leading questions used during cross-examination that often require a yes or no. For example, Marian's note to Mrs. Catherick intending to seek validation of Sir Percival's account of their acquaintance was posed in a manner that requested neither a narrative nor specific information. Unfortunately, for purposes of fact-finding, it was two closed-ended questions requiring only an affirmation or denial.

Despite Hartright's stress on narrative testimony, he also appreciates the art of interrogation. At the coroner's inquest of Sir Percival's death, he adopts the same tactics as

Mrs. Catherick in her first letter, answering only the questions put to him and not volunteering any information obtained from his own investigation. During his exchange with Mrs. Catherick in her home, he is very attentive to her reactions to his specific questions and statements and skillfully orders and phrases what he says to her: "I pressed the point farther and farther home, I went on without allowing her a moment of delay" (509). But when Hartright meets with Mrs. Clements, he tries to induce the flow of information in another manner: "Knowing by experience that the plainest narrative attainable from persons who are not accustomed to arrange their ideas, is the narrative which goes far enough back at the beginning to avoid all impediments of retrospection in its course, I asked Mrs. Clements to tell me first what had happened after she had left Limmeridge, and so, by watchful questioning, carried her on from point to point [. . .] (479).¹³ He gently encourages Mrs. Clements to reconstruct the past: "I felt the necessity of trying to awaken her recollections of other times, persons, and events than those on which her memory had hitherto been employed [. . .]" (485).

Hartright's narratives are not transcripts of oral testimony although it is easy to be drawn into thinking they are. They are written accounts Marian and Hartright solicited both during and after the story's conclusion. Writing their stories allowed witnesses to choose their words carefully and to revise and edit their accounts. An attorney's preparation of witnesses in order to gain familiarity with their testimonies and in order to discourage irrelevant, superfluous, and inadmissible testimony is a form of editing. Witnesses seldom have an opportunity to correct their statements made from the witness stand. Some of the narrators do not know the nature of Hartright's investigation and others, like Mr. Gilmore, know the story's outcome. In contrast, witnesses on the stand know

why they are there, the reason for their testimony, and usually the ending of the events of which they were a part or witnessed. Some of them, such as expert witnesses, receive payment for their time.

Hartright also deletes some of the testimony from parts of Marian's diary, excluding an entire week of the chronological account between the second and third epochs, the title Hartright gives to the novel's three sections. His failure to obtain accounts from Professor Pesca, Laura, one of the servants from Blackwater Park named Margaret Porcher, and others is conspicuous and raises suspicions that their narratives might not have coincided with the plan of his story. Despite his assertions of its necessity to tell the truth, Hartright allows a gap in the linearity. However, a series of testimony at trial is interrupted and may have gaps especially when the judge rules certain evidence inadmissible. What is important is the nature of the gaps. Gaps regarding irrelevant material are insignificant. Gaps in the elements of proof or that give the impression that something is kept secret are significant.

Narrative testimony, like all narrative, contains inherent credibility hazards. Even Hartright does not accept them fully: "there was one point in the narrative which made me doubt the propriety of accepting it unreservedly and which suggested the idea of something hidden below the surface" (491). According to Peter Brooks in "The Law as Narrative and Rhetoric:"

"The legal storytelling movement has tended to valorize narrative as more authentic, concrete and embodied than traditional legal syllogism. But [. . .] storytelling is a moral chameleon, capable of promoting the worse as well as the better cause every bit as much as legal sophistry. It can make no superior ethical claim. It is

not, to be sure, morally neutral, for it always seeks to induce a point of view. Storytelling [. . .] is never innocent” (16).

The weakness of narrative is its reconstruction of past events. As Jackson and Doran explain, “Present knowledge about past facts, which is what much adjudication is concerned with, is possible, but because it is based on incomplete knowledge, evidence establishing the truth about the past is typically a matter of probabilities and the characteristic mode of reasoning is inductive by which one starts with certain basic data and moves by way of inductive generalization toward a probable conclusion” (173). This rationalist method of reasoning naturally fits into the orderly linear narrative assumption that if things happen in sequence, then a casual connection exists.

When the reconstruction of past events is presented in narrative form instead of in response to specific questions, witnesses tend to give a sense of order to past experience, however disorderly they may have been. They impose a causal connection through what they perceive as links in a chain of events. Jurors willingly accept a party’s argument that all the evidence comes together like a story for the same reason. As Richard Sherwin explains in “Law Frames: Historical Truth and Narrative Necessity in a Criminal Case” a temporal memory or desire is “so embedded in our mental representations of events” that it “influences the way we make sense of things” (51). We make sense of things by converting those things—our perceptions and multiple impressions—into orderly narrative. The linear story frame in collusion with rationalist thinking becomes an imperative according to Sherwin because “a particular historical truth mandates a particular legal outcome” (67). Without contradiction or disruption of its logical progression, a succession of perceived facts necessitates a particular conclusion.

In contrast to Hartright's style, Count Fosco's narrative tends not to arrange events and makes no claim at doing so. Instead, the count talks before beginning to write of arranging ideas that his narrative shows is something different from arranging occurrences. The complete composition possesses a temporal movement, but not a dependency upon the chronological. It digresses for commentary and reflection on the past before the events of Hartright's story. Count Fosco does not attempt to make inferential connections from fact to fact, event to event, or inference to fact. He acknowledges the simultaneous occurrence of events and thoughts without forcing an order out of them. In fact, his composition becomes more of a playful synchronic representation of his present thoughts about past events and his consciousness at the time than a diachronic representation. As a chemist familiar with the simultaneity of chemical reactions, perhaps the count tolerates spontaneity of events and ideas more easily than an historian. His composition's disorderliness, in comparison to what Hartright presents as events in a more tightly organized account, does not make his writing any less accessible or less credible.

The use of narrative testimony in the presentation of evidence and a fully connected narrative as the goal of the presentation of evidence has its detractors. In an article titled "Law is not a Dramatic Narrative," reminiscent of Virginia Woolf's statement that "Life is not a series of gig lamps symmetrically arranged" (154), noted attorney and law professor Alan Dershowitz labels the use of narrative thinking in trials a prosecutorial device that is counter to justice. "When we import the narrative form of storytelling into our legal system," Dershowitz says, "we confuse fiction with fact and endanger the truth-finding function of the adjudicative process" (101). He convincingly argues that to persuade a jury to decide in favor of a party because the evidence fits together in story form

takes advantage of society's immersion in the fictional form of beginning, middle, and end. While Sherwin is concerned about the necessary conclusion of historical truth, Der-showitz is concerned about the importance attributed to each piece fitted temporally and causally within historical reconstruction.¹⁴

The common narrative structure of literature, film, and television drama creates in listeners and viewers the conception that every element in a story has meaning and that all action is teleologically oriented. Paraphrasing a statement by Chekhov that "if you hang a gun on the wall in the first act, you had better use it by the third act" (99), Der-showitz shows that the emphasis on storytelling imposes a way of thinking that expects every element to have some bearing within the linear movement of the fictional action. Readers and viewers expect the purpose of each element in the story to be developed as the story progresses; nothing is gratuitous or without meaning. This expectation transforms random, accidental, and coincidental incidents, which have no bearing on proof, into elements in the chain of connections establishing proof.¹⁵ It forces meaning out of unrelated events or facts. Under this way of thinking the litigating attorney, at least the one bringing the legal action, must be like Hartright and fashion a story based totally on cause and effect that stubbornly resists thinking in any other way.¹⁶

Hartright's stress on establishing linear causal connections extends to using Providence when he is unable to fashion a logical inference or connection otherwise. Divine intervention substitutes for the logical connection.¹⁷ He attributes his survival from three deadly incidents in Central America to divine purpose in making him an instrument of Providence. He says that "the hand of God" pointed Marian and Laura to visit their mother's grave before leaving Limmeridge House so that they would find Hartright re-

turned from Central America and mourning for Laura. He proclaims “the Hand that leads men on the dark road to the future had led me [. . .]” (435). When Hartright wants to deflect any causal connection to his own actions, he again cites divine intervention. Assuming no responsibility for Sir Percival’s death, not even the relentless tracking down of the baron’s secret, Hartright stands outside the burned church and reflects that “the visitation of God ruled it that he and I should meet” (541). Incorporating Providence into a series of connecting links naturally leads to assuming a divine purpose in the ultimate outcome and affects the interpretation to be placed upon it. The outcome must be what God intended. If God intended it, it must be justice. Providence adds an additional teleological dimension to Hartright’s story as well as a theological one. The deaths of the conspirators then become not only legally just because of Hartright’s legal model, but also morally just and the product of divine will with the infusion of Providence into the legal model.¹⁸ Conversely, Hartright provides no explanation, providential or otherwise, for the series of coincidences that make it near impossible to prove the date of Laura’s arrival in London after her reported death: the destruction of the envelope bearing the postmark of the date she left Blackwater Park and mailed it to her former governess, Mrs. Vesey; the failure of Marian’s doctor to record a date in his treatment book; and the inability of any of the staff at Blackwater Park to place Laura’s departure to any more definite time than within a certain week of July.

The teleological aspect of narrative also implies a final resolution that in law becomes the verdict or justice. The resolution is not the story’s conclusion, but the interpretation of the story and the consequences of that interpretation. Yet if the verdict stems from reliance on narrative that erroneously forces elements into a linear causal pattern,

that resolution is unjust. To demonstrate the hazard of relying upon storytelling and the mindset it imposes, Dershowitz paraphrases the words of Justice Oliver Wendell Holmes, Jr. from *The Common Law*: “the life of the law should not be teleo-logic or theo-logic [. . .]; it should be human experience.” And, he continues, law must “develop its own rules of structure and editing—of evidence, relevance, and prejudice—by looking to the vagaries of real human experience” (105). That experience is very different from the rationalist tradition exalted in theory but defeated in practice as a subsequent discussion herein of the narratives of lawyer Gilmore and others will show.

The analogy of narrative to presenting evidence in a trial also is flawed in the story’s exclusion of cross-examination. Linear storytellers do not pause for challenging inquiries about what they said or to account for discrepancies. To an extent, some narratives compensate for these defects. The narrators’ biases, failure to observe, self-interest, submission under coercion, and other factors discrediting what they say are so transparent that cross-examination becomes unnecessary. In others, nothing raises questions of truthfulness and their narrative/testimony must stand unchallenged and uncontradicted. Secondly, the novel provides no opportunity for confrontation of the accusers or testimony on behalf of the conspirators/defendants unless Count Fosco’s coerced confession is a statement in his defense and his wife’s biography of her husband a statement of his character, and unless parts of Mrs. Catherick’s story referring to Sir Percival’s motives are exculpatory evidence on Sir Percival’s behalf.

This is not to imply that a competing story exists to Hartright’s story. It does imply that the conspirators might have a point of view different from Hartright’s interpretation or his storyline or, thinking in terms of Dershowitz’s fear of the coherent narrative,

that the reconstruction of past events erroneously converts the extralegal into connected inferences that become or lead to facts in the story.¹⁹ Not all trials are competing stories in the sense that the defense must offer a narrative that counters that of the moving party, although in some cases the opposing party does present its own reconstruction of the past.²⁰ Particularly in a criminal case in which the prosecution bears the burden of proof beyond a reasonable doubt, the defense need only raise questions of reasonable doubt during cross-examination, through witnesses testifying on behalf of the defendant, and during closing argument. Since the defense has no burden in most criminal cases to present evidence and the defendant can remain silent with immunity, a trial in all cases is not an issue of competing stories. Instead, “the criminal trial is often a battle between a prosecutorial narrative and a defense strategy of disrupting the coherence of that narrative [. . .] (Binder and Weisberg 262). In other words, the defense, in both civil and criminal cases, can respond with a variety of strategies to the plaintiff or prosecution’s evidence. To state that a trial is a process of competing narratives is misleading. In the majority of cases, the opposing party’s energies are devoted to confusing and disrupting the moving party’s attempt at a linear, coherent narrative “until it is transformed into a nonsensical, incredible tale too full of inconsistencies and loose ends to establish the onslaught of reasonable doubt” or whatever standard of proof required (Sherwin 68). In effect, the defense attempts to disrupt the expectations established in the jury by the opponent’s reliance on the narrative method. At the same time, the defense uses the expectations raised by storytelling by demonstrating that the opponent’s facts do not fit within the standard storytelling form and therefore cannot be used against the defendant.

The point here is not that the conspiracy to obtain Laura's fortune did not occur or that Hartright did not search out Sir Percival's secret and Count Fosco's involvement in Anne's death and Laura's commitment to an asylum. Rather it is to identify Hartright's story as only one version of the events that may not be complete or totally accurate. Hartright's insistence on proof and accuracy should alert readers to unanswered questions. As evidence scholar Kenneth W. Graham makes clear, "a litigant's insistence on the purely factual nature of the dispute often masks a weak position on the normative aspects in issue" (1211). Like a good trial attorney, Hartright has developed a strategy based on his theory of the case, a pre-existing pattern intended to convince and insure an interpretation that coincides with his purpose. That strategy cannot tolerate contradiction or uncertainty.

The narrator's claim to exclude hearsay evidence regarding any "circumstance of importance" (33) is another use of legal methods to impose legitimacy on his story. Hartright's words imply that he excludes from his own narrative and those of the other narrators what he calls hearsay because he wants the narrators to "speak to the circumstances under notice from their own knowledge" (33). Hearsay is a statement other than one made by the speaker while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. The reasons for excluding such statements, either written or oral, are threefold: the declaration is not made under oath, the declarant's absence at trial prohibits the jury's observance of demeanor, and the declarant's absence prevents cross-examination. The hearsay exception differs from the exception regarding knowledge from personal observation or firsthand knowledge, which provides that a witness to a fact which can be perceived by the senses must have had an opportunity to observe and

must have actually observed the fact. Therefore, personal knowledge cannot rest on statements of others.²¹

Since Hartright and his many narrators assert the statements of others for their truth, it would appear that what Hartright means is that he and the other narrators will limit themselves to narrating what they personally saw and heard others do and say. The narrators breach even this prohibition when they repeat what someone else tells them they heard another person say or saw another person do. Marian writes what Laura tells her Sir Percival did and said on their honeymoon. Hartright writes what Marian tells him Count Fosco said and did when he visited her in London. Moreover, it is noteworthy that Hartright's judgment of Sir Percival and Count Fosco stem from sources other than his own observation. He never met Sir Percival and only saw Count Fosco near the end of the novel. He forms an opinion and builds a case against them based on the knowledge of others and what they say the count and baron said and did. Prosecutors and triers of fact are similarly situated. Ironically, one of the exceptions to the hearsay rule occurs when the out-of-court statements of another are not used to prove the truth of the matter asserted. Hartright could claim that he repeats the statements not for their truth, but to show why he, the recipient of the information, acted as he did.²²

Hartright's attempt to order events through narrative, whether in testimony or by marshalling testimonies so that they come together like a story, goes hand in hand with the rationalist tradition of evidence.²³ Rationalist thinkers "assumed that it was possible to start with certain basic items of evidence which correspond with reality and then reason from these toward a probability judgment of a past event" (Jackson and Doran 178).

Thus, items of evidence connect to each other and build upon themselves just as parts of a story.

Current thinking about determining probabilities of truth replaced medieval reliance on “methods of proof such as ordeal, battle, or compurgation, which did not require a tribunal of fact to come to conclusions on the basis of evidence” and the “highly technical rules of proof based on the authority of the church” that followed the Middle Ages (Jackson and Doran 172). The publication of *The Woman in White* followed by several decades Jeremy Bentham’s *Rationale of Judicial Evidence* (1827), one of many treatises on evidence in the late eighteenth and early nineteenth centuries. Bentham’s work “articulated a cognitivist, empirical epistemology which laid the foundation for many of the epistemological and logical assumptions of standard evidence discourse in the Anglo-American world” ((Jackson and Doran 173). In 1872, legal historian and nineteenth-century jurist James Fitzjames Stephen wrote that evidence was a subject “which reaches far beyond the law” and explained that “the law of evidence is nothing unless it is founded upon a rational conception of the manner in which truth as to all matters of fact whatever ought to be investigated” (qtd. in Welsh 153).²⁴ According to William Twining, a theorist in the intellectual history of evidence scholarship, the dominant tradition of evidence discourse “has largely taken for granted a set of assumptions that bear the hallmark of the eighteenth-century enlightenment [. . .] one seeks the truth by observation and reason and if one seeks long enough the truth will out—most of the time” (“Evidence and Legal Theory” 70).²⁵

Despite the prominence and longevity of rationalism in legal thinking, its detractors point out that the “uncontrollability of events and human actions dissipates, in rather

short order, the complacent 'all's right with the world because truth and justice will out in the end' attitude that the linear story would have us believe" (Sherwin 52-53).²⁶ Count Fosco exhibits similar thinking when he explains how "a little bit of clap-trap" justifies the "shortcomings" in nineteenth-century crime detection methods: "[O]nly invent a moral epigram, say that it works well, and you blind everybody to its blunders from that moment. Crimes cause their own detection, do they" And murder will out (another moral epigram), will it?" (255).

Rationalist thinking may be maligned unfairly for promoting the potentially dangerous pattern of linear narrative testimony. The logical, progressive thinking of narratives is not so enticing as their seductive tendencies that suspend analytic faculties and judgment.²⁷ Stories defer critical thinking, rather than activate rational reason as the reader or listener is absorbed into capturing each detail, relishing the suspense, and anxiously awaiting the ending. Add to the account elements of the sensation novel and the entrapment is complete. Additionally, the storyteller wants to be a good storyteller and to meet the audience's expectations. The desire to entertain and to account coherently for all parts in the whole generates the potential for fabrication and forced connections. Narrative, after all, is artificial and artifice; no matter how committed it is to truth and the real, it is still a product of the imagination.²⁸

The alternative to the simplicity of linear resolutions is nonlinear complexity and disorder. That Hartright cannot impose a completely unbroken linear order to the events in the story verifies this alternative's participation in the story. Nevertheless, disorder is much more difficult to comprehend and integrate into human thinking. From Hughes' view, "the sensational novel is moving toward an absurdist perspective, in which both the

universe and human conduct are irrational and frequently determined by accident. For both heroes and villains, the final nightmare is a loss of control, not only over external events but even over their own actions” (71). Sherwin concludes that: “our conventional knowledge about causation and meaning may not be sufficient.” Continued adherence to the conventional narrative method of establishing clues or inferences and developing facts is dangerous because as Sherwin says, it “may not do justice to what is going on in the world. As distasteful as it may be, it suggests that it may not be possible for us to wholly account for truth and justice within a conventional, causally sequenced storyline” (53).

Methods of proof are important because before triers of fact, the judge or jury, can apply legal rules to the facts of the case, the facts first must be established or proved. Evidence, according to Twining, is “the means of proving or disproving facts, or of testing the truth of allegations of fact” (“Evidence and Legal Theory,” 66). Judge Jerome Frank explained in *Courts on Trial*: “a court [meaning here the trier of fact] is supposed to determine the actual, objective acts of the parties, to find out just what they did or did not do, before the law-suit began, so far as those facts bear on the compliance with, or the violation of, some legal rule. [. . .]. No matter how certain the legal rules may be, the decision remains at the mercy of the courts’ fact-finding” (15).

Knowing the legal system’s emphasis on proof, it is not surprising that the lawyer who represented the Fairlie family interests during Mr. Gilmore’s illness, Mr. Kyrle, responds to Hartright’s initial presentation of what he thinks proves Laura’s identity with a question, “[W]here are your proofs?” (463). What Hartright considered “facts,” were suspicions and inferential links from those suspicions of how Laura arrived at the asylum.

Hartright's facts cannot dispute the existing evidence of Laura's death that conformed to the perceived tradition of the rational and logical establishment of legal proof. Mr. Kyrle does not dismiss Hartright as much as he reminds him of the standards of proof the legal world demands.²⁹ The attorney is not condemning circumstantial evidence or indirect evidence, which is evidence based on inference and not on personal knowledge or observation, but Hartright's reliance on suspicion to form inference instead of relying on facts that raise inferences. An example of properly working with circumstantial evidence in the novel occurs during Sir Percival's preparation for a trip. Marian and Count Fosco return from a walk to discover the baron's dog-cart with a horse attached and the groom standing by. The count asks the boy if the baron is going to drive the pretty horse far. The boy replies that he does not know. He adds that the horse, a mare named Brown Molly, is used for long distances, while the baron usually takes another horse, Isaac of York, for the short distances. Hearing this the Count says, "Logical inference [. . .], Sir Percival is going a long distance today" (263). The count has no personal knowledge of the baron's plans, but he can infer the distance of the trip from the horse Sir Percival plans to use. Of course, his inference can be disputed by other evidence. This inference is different from Hartright's method.

Marian and Hartright seem to be creating a new category of circumstantial evidence in which inferences are formed from suspicions. After hearing Count Fosco's inference, Marian reflects, "I had my own inferences to draw, from what I knew through the housekeeper and from what I saw before me [. . .] (263). Marian infers from the mysterious appearance of Mrs. Catherick at Blackwater Park searching for Anne while Sir Percival and Laura were still on their honeymoon, Sir Percival's later agitation at learning

of the visit, and his unexplained urgency to take a journey upon receiving the information, that Sir Percival's trip is to Mrs. Catherick, who lives a long distance from Sir Percival. In contrast to circumstantial evidence is direct evidence, which is based on "personal knowledge or observation that, if true, proves a fact without inference or presumption."³⁰

Mr. Gilmore and Mr. Kyrle represent the pervasiveness of rationalist thinking in decision-making. However, what for them is reason has become unreasonable adherence to rules under the auspices of the rationalist tradition. The novel does not attack the legal profession; it positively pictures the four lawyers in the novel as courteous men concerned about their clients rather than the fees they will obtain from them.³¹ They are subject to rule-based thinking that often counters their personal opinion. Mr. Gilmore, as will be further discussed herein, makes decisions about events in life using the same process as he would in considering the probability of evidence. Even though Mr. Kyrle personally believes Hartright's account, he must express his legal opinion that the story Hartright initially tells him does not meet the rules of legal proof.

The rules that confine the lawyers mirror the structure of the legal system. Hartright's words in the Preamble about the "machinery of the law" not responding to "every case of suspicion, and to conduct every process of Inquiry" (33) initially appear as negative criticism, but actually positively illustrate the jurisdictional limits of the legal system. A legal system responding to every suspicion and process of inquiry is incapable of performing the purposes for which it was formed. Such dependency would overburden it and suffocate any effectiveness. A broad jurisdiction also risks a legal system out of control as it interferes in and regulates all aspects of people's lives. Before a legal case can pro-

ceed through the process of litigation, it must allege a minimum of facts that support a cause of action. In other words, the moving party must possess the ability to establish a claim in a civil action or probable cause in a criminal action that entitles the party to present evidence during trial toward meeting the standard of proof. This is what Mr. Kyrle told Hartright. Parties initiating a lawsuit present a story in the pleadings “that is told tentatively” and “consists of allegations that must still be proven” according to Peter Tiersma in *Legal Language* (4). Although arguments that the standards required to initiate legal claims do deny some access to the courts and for that reason should be re-examined are meritorious, any reduction of the limitations must reflect on the risk of exposure to frivolous suits and harassment—the constant threat of intrusion and interrogation by the government and by private parties acting under the legal system’s sanction and possible abuse of the legal process.³²

The distinction between Hartright and the lawyers is one of imagination versus reason. In attempting to convince Hartright that a logical explanation exists for Sir Percival’s connection to Anne Catherick, Mr. Gilmore cites as authority his “practical view,” saying that as a young man Hartright takes the “romantic view” (142). Hartright, an artist, counters reason with imagination: “Judging by the ordinary rules of evidence, I had not the shadow of a reason, thus far, for connecting Sir Percival Glyde with the suspicious words of inquiry that had been spoken to me by the woman in white” (101), yet he cannot divest himself of his suspicions that Anne and the baron are connected. The intensity of his reservations about the baron is most aptly stated when Hartright declares: “If the recording angel had come down from heaven [. . .] and had opened his book to my mortal eyes, the recording angel would not have convinced me” (107). He is so at the mercy of

his imagination that he wonders if he “was at the mercy of any delusion which common chances and common coincidences might suggest to my imagination?” (101). Hartright describes his thinking as “almost like a monomania to be tracing back everything strange that happened, everything unexpected that was said, always to the same hidden source and the same sinister influence” (105).

Extralegal elements alone have no place in logical thinking or legal determinations. Marian does not mention Anne Catherick in a letter she sends to Mr. Kyrle asking for advice because “that topic was connected with a mystery, which we could not yet explain, and which it would therefore be useless to write about to a professional man” (329). Even if Hartright and Marion had the opportunity to dissect and defeat the proof of Laura’s death, Mr. Kyrle says, “[w]hen an English jury has to choose between a plain fact on the surface and a long explanation under the surface, it always takes the fact in preference to the explanation” (463). And Hartright admits: “In the eye of reason and of law, in the estimation of relatives and friends, according to every received formality of civilized society, ‘Laura, Lady Glyde,’ lay buried with her mother in Limmeridge churchyard” (434). Mr. Kyrle tells Marian after he investigated the circumstances of Laura’s death and before she finds Laura in the asylum that “the shocking suspicion to which she had alluded in his presence was in his opinion destitute of the smallest fragment of foundation in truth” (436-37).

An example of how insistence on logic and reason actually prevents the discovery of truth and Hartright’s determination to pursue extralegal elements to discover facts occurs during Hartright and Marian’s visit to the local school, where they find the schoolmaster punishing a pupil who has told a story about seeing the ghost of Marian and

Laura's mother by her tombstone. The schoolmaster says to "believe in what can't possibly be" is "against reason and discipline" (108). He calls the boy "too obstinate to listen to reason" (109). Marian expresses surprise that "any of the boys had imagination enough to see a ghost" (109). She mocks the child's expertise of the world of ghosts: "As a 'ghaist' should be—where a 'ghaist' ought to be—why, you little fool, you talk as if the manners and customs of ghosts had been familiar to you from your infancy!" (110). Instead of dismissing the boy's story, Hartright follows his suspicions that something lies behind the boy's imagination. He progressively accumulates facts, which lead to the discovery that Anne Catherick, dressed in white, had been cleaning the stone.

The lawyers and Hartright represent two extremes—imagination and reason, romanticism and practicality. Hartright, however, does merge the imagination with reason. After Mr. Kyle introduces Hartright to the legal system's forms of proof, Hartright considers "the terrible obstacles that lay across our path [. . .] in their true character" (463). To succeed he must comply with the legal system's requirements, which means to learn a different way of thinking. But that does not mean he discards his imagination. The novel shows Hartright using his imagination as he searches to find the necessary facts for legal proof. The novel suggests that extralegal evidence can point to admissible evidence. In the process of discovering evidence, a release of the imagination can become a valuable tool. Additionally, imaginative scrutiny helps to reconsider what is accepted as factual.³³ However, Hartright personifies Dershowitz's fears by reifying or factualizing coincidences, accidents, fate, and chance as permissible links in his path toward proof: "The events have a meaning, these events must lead to a result" (205). He risks allowing his

imagination to reach conclusions to the exclusion of other possibilities and then inserts facts as he finds them to fit his conclusion.

Not only do Hartright and Marian use extralegal elements of instinct, intuition, imagination, suspicion, accident, and coincidence in searching for facts to build a case against the conspirators, or so they can reconstruct history in a way that proves the conspiracy, all the narrators insert opinion and draw conclusions in their narratives. They also insert irrelevant and superfluous information. The narratives do not comply with the rules of evidence in limiting information to that which is relevant and factual, but include extraneous details. These details add to the sense of realism, but are not consistent with the novel's adherence to a legal model.³⁴ According to Twining, "the modern tendency has been to see the law of evidence largely as a collection of disparate constraints in freedom of proof and free evaluation of evidence" (*Theories of Evidence* 12-13). Hartright's contention that the narratives conform to the rules of evidence can have no other purpose than to give the appearance of the probative value of his proof because the narratives themselves extend the rules of admissible evidence rather than adhere to them. Even so, Hartright limits the presentation of too much evidence during the coroner's inquest and at the mock legal proceeding at Limmeridge House.³⁵ At the first, he says he resisted including his unsupported opinion during the coroner's inquest. At the second, he says he "avoid[ed] complicating my statement by unnecessary reference to Sir Percival's secret" (638).³⁶ Nevertheless, after the inquest Hartright says that "In these pages, however, and after the time that has now elapsed no such cautions and restraints [. . .] need fetter the free expression of my opinion" (543). He adhered to the rules when they worked for his benefit, but he disregards them in order to insert all available information to present the

story as he wants it to be heard. The effect of these lapses in the rules of evidence actually eliminates all exclusionary rules that would apply in the presentation of narrative testimony in a trial court.³⁷

The extent to which the rules of evidence should exclude information from the trier of fact was a topic of debate among nineteenth-century legal scholars and it continues to the present. According to Graham, Bentham advocated limiting admissibility restrictions because “enforcement of the substantive law was frequently frustrated by an inability to reconstruct historical facts—a failing fostered by the exclusionary rules of evidence.” Bentham believed in the “curative powers of information” (1211). He argued that the vulnerability to false testimony through limiting the scope of rules would be overcome in cross-examination and inconsistency with other evidence (Twining, “Theories of Evidence” 45).

Jackson and Doran write that the contemporary limiting of the scope of rules and the relaxing of exclusionary rules “reflect a heightened faith in the capacity of the lay tribunal to weigh certain forms of evidential material which was traditionally excluded from its sphere of deliberation” (177). Under this argument, hearsay, which plays a major part in most people’s decision making and learning, could be admissible. If people retain and discard figments of hearsay to determine that which they consider believable in decisions affecting their daily lives, they would apply the same standards as triers of fact. Regarding testimony, Gewirtz writes of “increasing pressures to let ordinary life in, to allow people to tell the stories they tell in ordinary life in the way they usually tell them” (“Victims and Voyeurs” 136).

Hartright 's fictional implementation of free proof exemplifies two real opposing positions in modern debate over the extent of the rules of evidence: the potential to confuse and the philosophy that more is good. Proponents of both positions cite truth finding as the premise of their position. On the one hand, the seductive overload of information and details can obscure facts rather than assist in their determination. A framework of excessive information and details gives the impression of credibility that does not exist or confuses when the evidence does not convince. On the other hand, the tendency of some of the narrators, especially Hartright and Marian, to tell more than is necessary even to sustain the progressive movement of the narrative, provides the clues that begin to disintegrate the alleged certainties of the story and in this way actually facilitate speculation that another story exists that is closer to the truth. Furthermore, under this more is good philosophy, facts are not extracted piecemeal from the context surrounding them, but received by the triers of fact in a less artificial, holistic, presentation.

Truth in law means probability, not certainty; the foundation of the rationalist tradition is weighing probabilities. Resolution of the free proof debate depends upon what view prevails about adjudication's purpose. According to law professor Laurie Kadoch, the tension of adjudication's purpose is between "a process that uncovers accuracy and truth and is at the same time fair." Justice can be "a search for truth, a search for justice, or the upholding of valuable social or moral principles" (95).³⁸ Despite what litigants may say about truth, they seek legal redress for many other motives than determining truth, such as an acknowledgment of wrong, an opportunity to express their grievances and indignation, revenge when justice equates to an eye for an eye philosophy, and recovery of financial damages and restitution, as Hartright's vagaries of motive indicate.³⁹ Hartright's

free proof, more revealing than it would have been if his story actually had been restricted by the rules of evidence, has planted a persistent seed of doubt that resists attaching probable truth to many parts of his story. At the same time, Hartright's excessive information clouds his motive for telling the story and his purpose for acting as he did in the story. In obtaining facts, presenting the facts, and directing the conclusions to be drawn from them, Hartright uses legal methods that simultaneously support his story's credibility and undercut the legitimacy of the legal methods.

Whatever the boundaries of the scope of evidence, it functions on the premise that "experience is the basis of belief; making inferences from evidence and reasoning about disputed questions of fact involve a straightforward application of ordinary common sense or practical reasoning" (Twining, "Evidence and Legal Theory" 70). Underlying Bentham's theory of evidence is the premise that "we form judgments about the truth of statements about the real world on the basis of evidence which we evaluate in terms of general experience" so that "experience is the basis of all knowledge" (Twining, *Theories of Evidence* 20). Mr. Gilmore bases his consideration of himself as a practical man upon his adherence to experience and the repetitions of those experiences as an evaluative tool. At the arrival of the mysterious letter to Limmeridge House denouncing Sir Percival, Mr. Gilmore says, "Things of this sort happen constantly in my experience [. . .]. I don't deny that there are peculiar complications in this case; but the case itself is, most unhappily, common, common-common" (142). After Sir Percival's offer to withdraw from the engagement Mr. Gilmore says, "As to my experience, few men in his situation would have said as much" (161).

However, the text's references to experience indicate that it is an illusive concept and that the value of experience is only when conflicting experiences of the same kind reveal the weakness of expectations of experiential consistency. The tension between reliance on experience and intuition is played out several times in the novel between Marian and Mr. Gilmore. Marian's intuition counters both her own and Mr. Gilmore's experience. Before Laura's official engagement to Sir Percival, Marian questions his suitability even though her reason and experience tell her that Sir Percival has explained satisfactorily his connections to Mrs. Catherick. Marian dismisses her doubts telling Mr. Gilmore, "Your experience ought to be, and is, the best guide I can desire" (158). In turn, Mr. Gilmore says "my long experience made me attach an importance to her hesitation" and even though he saw "no cause for any uneasiness or any doubt" she made him "a little uneasy, and a little doubtful, nevertheless" (159). However, the lawyer ignores his personal experience of Marian and dismisses the discomfort he experienced because he cannot attribute it to reason, saying, "In my youth, I should have chafed and fretted under the irritation of my own unreasonable state of mind. In my age, I knew better, and went out philosophically to walk it off" (159). After Laura's inexplicable emotional distress about her marriage sways him from supporting the marriage to hoping it will not occur, the lawyer condemns himself for allowing his emotions to prevail: "A man of my age and experience ought to have known better than to vacillate in this unreasonable manner" (168).

The sentient governs experience because the assumption of the dominant tradition of evidence is that one seeks the truth through "observation, experience and experiment" (Twining, *Theories of Evidence* 52). In trials the observations of both witnesses and triers

of fact are vital. Reliance on observations assumes an ability to observe and that those with the opportunity to observe take advantage of it. Missed and incomplete observations on the part of the observer in the novel diminish their credibility. Though in the same room, Mr. Gilmore fails to notice Laura's distress at her separation from Hartright and Marian's intervention to sooth it. Marian initially does not observe her sister's attachment to Hartright that was growing daily in her presence.

Furthermore, the novel also depicts how forming generalizations based on the experience of past observations cannot be trusted. Hartright's experience of the female figure led him to believe that Marian was a beautiful woman until she turned around and he saw her face. Experience would argue that favoring the dimwitted Anne Catherick's strange conduct against Sir Percival's reputation and impeccable conduct is unreasonable. The appearance and conduct of the recalled to life Laura, who more resembles Anne Catherick mentally and physically than the person known as Laura, Lady Glyde, supports those who conclude that Marian and Hartright are "at once the dupes and the agents of a daring imposture" (434). Based on her observations of Count Fosco's manners, considerate inquiries about the welfare of others from a lady in distress to a humble servant girl, and devoted attention to his pets, Sir Percival's Blackwater Park housekeeper, Mrs. Michelson, concludes that the count meets her expectations of a nobleman of high character.

Inherent trust in social conventions and rules of propriety also limits the legitimacy of observations as well as blocks the observer from any interpretation counter to what is expected.⁴⁰ Those who view the conduct of Sir Percival and Count Fosco favorably are conditioned to accept good manners and rank as proof of trustworthy conduct. Mr.

Gilmore tells Hartright “that every explanation which can be expected from a gentleman and a man of honour, he [Sir Percival] will readily give” (142). After hearing the men tell a policeman that Anne escaped from an asylum, Hartright’s adherence to conventional authority causes him to fear that he is guilty of wrongfully helping an inmate escape and that he has allowed loose in London someone with limited capacity to care for herself even though he “had seen nothing, in her language or her actions to justify it [. . .] (55). Hartright also finds “[I]n external appearance Mr. Gilmore was the exact opposite of the conventional idea of an old lawyer” (139).⁴¹

Count Fosco is the most significant and professional observer in the novel. Laura aptly labels him “a miserable Spy” (381), someone whose duty is to observe others on behalf of the enemy of the Italian Brotherhood and inform on his observations to “the government which he secretly served” (585). He also becomes a spy for Sir Percival of Laura and Marian’s activities. The count is successful because he discards the baggage of cultural constructs such as social epigrams or moral codes. He masks himself, unmasking everyone else.

Unfortunately, the underlying operation of the rationalist tradition permits the subjects of observation to destabilize the experiential perspective with which they are observed. As Twining explains, “every step in inferential reasoning about questions of fact requires justification by reference to one or more background generalizations” which “are typically left implicit,” are seldom “value free” and “postulate a relatively high degree of ‘cognitive consensus’ in a given society” (“Hot Air” 1540). Because the subjects of the observations, such as Sir Percival and Count Fosco, have faith in the observer’s bondage to the rational tradition of determining what is supposedly objective truth, they succeed in

deceiving the observer. In other words, they purposely distort that which is being observed because they correctly understand how their observers will interpret what they see. They will judge or interpret their observations based on their own and society's heritage of cumulative experience from repeated observations and adherence to conventional generalizations of what certain observed conduct means.

Perhaps the most successful example of this faith is Sir Percival's conditioning Mrs. Catherick's financial support on her remaining in the village of Wellington where the scandalous combination of the two seen together at the church, Mrs. Catherick's husband's desertion, and Mrs. Catherick's pregnancy that could not have been conceived during the period of the marriage resulted in the village people's conclusion that she and Sir Percival were lovers. Hartright almost reaches the same conclusion until he realizes the incidents were only "guilty appearances" from which were drawn a "superficial conclusion," and what Sir Percival expected and wanted in order to preserve his real secrets (492).

Mr. Gilmore also demonstrates how triers of fact are susceptible to distortions from preconceived notions. He calls his role "the purely judicial kind" (155) when weighing Sir Percival's explanation of the Anne Catherick affair. Accordingly, he "was to allow all due force to the high reputation of the gentleman [. . .] and to decide honestly whether the probabilities [. . .] were plainly with him or plainly against him" (155). His presumption of deference owed a gentleman clouds his evaluation of the man. Mr. Kyrle tells Hartright that juries are "bound to take facts as they reasonably appear" (463). In other words, triers of fact are not expected to look beneath the surface of appearances or to recognize appeals to their predispositions.

Certainly, those who organize legal narrative for triers of fact do so relying upon certain expectations. They need not distort as much as design the narrative so that it ignites certain expectations. For instance, something as simple as the dress and occupation of a witness will raise suppositions of truth and, more seriously, racial stereotyping will raise expectations of certain behavior.⁴²

The text also works with the interpretation of individual faces to determine honesty or guilt. The baronet comments that the count looks curious. Count Fosco jokes that “an immense foundation of good there must be in the nature of a man who arrives at my age, and whose face has not yet lost the habit of speaking the truth” (351). Hartright watches his sister and thinks he knows her thoughts because “[f]aces sometimes tell truth” (42). In the graveyard beside Mrs. Fairlie’s tomb Hartright says Anne’s face “betrayed every other emotion with transparent clearness” (124). Mrs. Catherick’s sudden change in demeanor to a “paroxysm of terror” at his mention of the vestry convinces Hartright that “she had been more than the mere witness of it [Sir Percival’s forgery]—she was also the accomplice beyond a doubt” (514). Marian writes that Sir Percival during his rage looked “more like a prisoner at the bar than a gentleman in his own house” (266).

Faith in detecting truth from the speaker’s countenance is ingrained in the law’s method of proof as well. One of the reasons for the prohibition during a trial against hearsay evidence is that jury members are unable to judge the credibility of the speaker’s demeanor. Nevertheless, the events of the text show how easily demeanor deceives even when the observers use the full opportunity to observe. Frederick Fairlie admits that Count Fosco “had certainly taken me in” (371). The count’s congeniality is “his deadly smile that hides everything” (327).

Despite observation's esteemed position in establishing facts and thereby truth, the text and the law undermine that stance by the numerous devices to increase the reliability of observations. Observations are reinforced so that the facts to be proved are substantiated through corroborating cumulative evidence. In other instances, observations require propping, something to make them more substantial or worthy of belief, especially when conflicting observations exist. Increasing the quantity and quality of evidence increases the level of certainty of the proof (Shapiro 192). Seeking corroboration, Hartright wonders: "Was it possible to strengthen the evidence by discovering any conclusive facts in relation to the lives of Mrs. Catherick and Sir Percival before either of them appeared in Old Welmingham?" (493). A coincidence persuasively validates the livery driver's memory of a woman named Lady Glyde because Glyde was his wife's maiden name. One text recording observations substantiates another text of observations in Count Fosco's postscript to Marian's last entry in her journal praising "the wonderful power of memory, the accurate observation of character" (358) and "the fidelity of the portrait" (359). He repeats these certifications in his confession.

In the absence of corroboration, the narrators in the novel, like witnesses on the stand, insert information intended to authenticate their observations. Marian provides an extensive description of her position on the rooftop and her ability to overhear the conspirators clearly and adds that her "attention was ready enough to measure exactly as it was spoken" and that her "whole interest fixed breathlessly on the conversation" as she "followed it word for word" (344). Laura tells her sister: "My powers of memory, Marian, are not like yours. But I was so strongly impressed, so deeply interested, that nothing of any importance can possibly have escaped me" (304). Hartright frequently at-

tempts to show his fairness and thereby credibility by reminders of his veracity: "I must not now attempt to deceive others" (106). Marian verifies the trustworthiness of her journal entries by referring to earlier entries to support her memory and reminders that the entries were made in close proximity to the time of the events they recorded.

Some witnesses think evidence of their Christian faith and therefore fear of punishment if they "bear false witness" inspires the impression that their observations are related accurately. Mrs. Michelson tempers her entire narrative with religious extremism, announcing in the second paragraph of her narrative that she is the "widow of a clergyman of the Church of England" and has "been taught to place the claims of truth above all other considerations" (379). Hester Pinhorn, the cook in Count Fosco's London home, states in the beginning of her narrative: "I know that it is a sin and wickedness to say the thing which is not, and I will truly beware of doing so on this occasion" (420). She concludes the narrative with "my oath as a Christian woman, this is the truth" (425). In describing herself as a "hard-working woman" (420), the cook draws upon the Christian work ethic to verify her character. She takes "no heed" of the days of the week except Sunday. Hartright also incorporates this device in his references to Providence and "my own conscience" (479).

On the other hand, limited mental capacity completely destroys a witness' competency because witnesses must not only have the ability and opportunity to observe, they must have cognitive competence, according to the rationalist tradition (Twining, *Theories of Evidence* 52). The rationalists dismiss Anne Catherick because she is dimwitted. Laura's lack of memory and her adherence to a story of visiting her former governess' house in London that Mrs. Vesey denies make it impossible for Laura to help herself le-

gally. Sir Percival's servant who was at the scene of the fire cannot testify at the coroner's inquest or identify his master because of the effect of the fiery scene on his mind.

Identifications of individuals also demand cumulative support. "Questions of identity, where instances of personal resemblance are concerned," Mr. Kyrle tells Hartright, "are, in themselves, the hardest of all questions to settle" (464). Laura's longer acquaintance with her aunt than with Hartright bolsters the aunt's identification testimony according to Mr. Kyrle. That the aunt benefits financially from her niece's death does not concern him. Marian's testimony is discredited as an aider and abettor to an asylum escapee and her own financial benefit from Laura's restoration.

Writings can supplement and strengthen observations or stand alone as factual evidence. The stable records show when Laura arrived in London from Blackwater Park, a date known only by the conspirators. Hartright discovers the falseness of one writing, Sir Percival's forgery, because of its discrepancy with another writing, a copy kept elsewhere, and thinks he can prove that discrepancy by another writing, "the necessary extract from the register" he would copy not knowing that still another form of writing "a legally-certified copy was necessary, and that no document merely drawn out by myself could claim the proper importance as a proof" (530-31).

The rationalist tradition thinkers in the novel give credence to the doctor's death certificate even though he was only writing information someone else had told him. The narrative on Laura's tombstone becomes proof of her death even though it was made from information supplied by another. These two quasi-government/official documents seem to be self-authenticating. Twining explains that church and government records or other evidence "created or preserved with a view to being used as evidence at some fu-

ture time' is called preappointed evidence and is "a particularly clear example of 'constructing' facts" (*Theories of Evidence* 31 n35). In addition, the novel shows the unreliability of the custom of the church as the record keeper of births, marriages, and funerals.⁴³ Despite harsh punishments for tampering with the records that acted as some security for their reliability, the dependency upon a church ceremony limited what was recorded in the registers. The registers recorded church ceremonies, not the actual events of birth, marriage, and death (Twining, *Theories of Evidence* 31-32, 87).

Marian and Hartright are inclined to believe Anne Catherick's letter to Laura even though it is anonymous and indicates mental instability, while the rational thinkers like Mr. Gilmore find little substantiation in it and expect an explanation. A similar division of credibility occurs at the receipt of a brief letter from Mrs. Catherick substantiating Sir Percival's logical explanation. Later, when Mrs. Catherick writes to Hartright after Sir Percival's death and reveals Sir Percival's secret and her actions as an accomplice, Hartright accepts most of the contents. An arbitrary standard regarding the truth of written texts persists throughout the novel that depends on whether the writing coincides with a pre-existing theory of those seeking to use them as proof.

Writing is most privileged in the novel when used as proof of identity. Writings on bodies prove identity—the name and crest on a watch found on Sir Percival's burned body, the name of Anne Catherick on the clothes on Laura's body when she entered the asylum, the identity of the dead by a writing on a stone over their bodies. To destroy the proof, destroys the identity.⁴⁴ Sir Percival intends to destroy the forged marriage records that had established his false identity in order to preserve that false identity, not recognizing that destroying the proof of his identity would figuratively and literally destroy him.

The Brotherhood assassinates Count Fosco and obliterates what identifies him as a member, leaving him without any identification.⁴⁵

Hartright orchestrates a public spectacle erasing evidence of Laura's death—her name from the tombstone—and replacing it with another name to resurrect his wife's identity and entomb Anne's. His action signifies more than the connection of writings to identity. The erasure deletes a story that Hartright includes among the narratives at the end of the second epoch as "The Narrative of the Tombstone" containing a name, and dates of birth, marriage, and death or the beginning, middle, and end of Laura's life. He explains that he obtained that narrative "by taking a copy of the false inscription on the grave before it was erased" (637). This scene acknowledges that Hartright is collecting information for subsequent publication and that he intends to place this narrative among the other narratives knowing it to be false.

He replaces the original writing on the tombstone once thought to be real, with another writing now thought to be real. Hartright replaces Laura's story with an incomplete narrative for Anne—"One line only was afterwards engraved in its place" (639)—containing only Anne's name and a date, July 25, 1850, that is neither designated as her beginning or date of birth nor her ending or date of death. Although it is the date Anne actually died, it is also the clue that caused Marian to search for her sister and Hartright to pursue the count and the baronet. Anne's story is then incomplete or nonexistent. Her life dissolves into nothing more than a clue to the conspiracy.

While writings on and above bodies have significance in the novel, the identity of authorship or signatures on writings bear little consequence. Mrs. Catherick's letter to Hartright is unsigned. Anne's suspicion-inciting letter to Laura is unsigned. Hartright

writes under an assumed name. These examples protect the author's anonymity. Therefore, the writing's content or something else, not the authorship, must provide the text's authority. What the text says, what externally endorses the text, and how the text presents itself such as its format and invocations to higher powers, not the credentials of the author, convey the import of the document. The narrator/author, as Hartright claims to be, diminishes, but at the same time finds safety, as an instrument for something else.

When a text is anonymous or its claim to authority comes from something external to the author, such as a legal framework or Providential endorsement, then nothing is accountable for the contents except the texts of these external authorities. The resolution of the text is the consequence of its inheritance from past texts. Hartright is not accountable for his text because it is built upon the texts of others both within and outside the novel. He simply put them in order, relying on the precedent of the dominant narrative format and legal and biblical texts. The deaths of Count Fosco and Sir Percival coincide with what biblical and legal texts would mandate against the sinner and those who commit offenses against the laws. Significantly, Hartright's rise to the landed English gentry is the result of a past legal text of inheritance, an external authority unconnected to him, from which he indirectly benefits as the husband of the beneficiary.

Several of the writings in the novel are confessions. Confessions denote statements of accountability; however, the confessions in the novel attempt to deny or limit personal blame. Count Fosco's confession is both compelled and self-interested. When declaring his intent to battle with the count, Hartright speaks of "force" (47), "forcing" (579), and "wrest from" (579). At their only confrontation, Hartright acts from a superior bargaining position because the Count fears for his life. Count Fosco's most significant

exculpating declaration is that he committed no gratuitous crime: “Have I not carefully avoided exposing myself to the odium of committing unnecessary crime?” (632). He is not “worthy of any serious blame” he says, because he only took Laura’s identity, not her life, and asks Hartright to “[j]udge me by what I might have done” (632).

The scene in which Hartright presents himself late at night at Count Fosco’s home is comparable to images of suspects in custodial interrogation who are deprived of sleep and confess under threat of fear that something much worse awaits them than punishment for their crime. Although Count Fosco, not Hartright, initiates the custodial locked room and threatens Hartright with a gun, the count is at a disadvantage because the Brotherhood is closing in on him. Hartright obtains the information he seeks after bargaining with the count to allow him to escape London—another analogy to criminal prosecution in which suspects provide information police or prosecutors need in exchange for leniency.

Two men alone in a locked room of Count Fosco’s house create a setting similar to an interrogation room “cut off from the outside world” that Chief Justice Earl Warren described in *Miranda v Arizona* (445). “Interrogation still takes place in privacy,” Warren wrote for the majority. “Privacy results in secrecy and this in turn results in a gap in our knowledge as to what in fact goes on in the interrogation rooms” (448). The reader of the account only knows what the interrogator Hartright reveals. Chief Justice Warren wrote that during interrogation the police force the suspect to confirm the “preconceived story the police seek to have him describe” (445). Hartright tells Count Fosco that the results of his months of investigations make “any attempted denial of plain facts [. . .] quite useless” and that he knows the count is “guilty of an infamous conspiracy” (609). Hartright

expects and asks Count Fosco to corroborate Hartright's theory that Laura did not arrive in London until the day after she reportedly died there. The count's response accords with Hartright's hypothesis, "[Y]ou can lay your finger, I see, on the weak place" (610).⁴⁶

In her confessional letter to Hartright, Mrs. Catherick admits her greed for Sir Percival's gifts and her role as his accomplice. Although Hartright during his visit to her asked some of the questions she answers in the letter, she apparently voluntarily writes to him with a sense of obligation because he has "served the hatred and wreaked the vengeance of three-and-twenty years" (548). To repay her debt, she tells him what he wants to know. At the same time her letter defends her actions, listing her inclination not to interfere in the baron's affairs, her desire for presents her husband could not provide, and her ignorance of the law as reasons for assisting Sir Percival. Her defense incorporates an excuse for Sir Percival as well. Although she calls herself a "fool" for doing so, she says she sympathized with his situation caused by no fault of his own and that other women of higher scruples would have done the same. She now thinks he tricked her, taking advantage of her greed and her sympathy, which she implies replaces her culpability with victimhood.

Frederick Fairlie's narrative is equally confessional and defensive. He tries to explain away his being duped by Count's Fosco's lies and he tries to excuse any causal connection between his acts and omissions and Laura's injuries. A reluctant witness, Mr. Fairlie asks, "Is a man in my state of nervous wretchedness capable of writing narratives?" (360). But he says he is told "that I am a fit person" (360) to describe experiences. He also writes under duress, having been threatened by Marian at Hartright's instructions: "Tell him that the statement you request will, sooner or later, be insisted on, if he

shows any reluctance to furnish you with it of his own accord" (501). Therefore, he supplies what they want. The narrative is not completely Fairlie's own because his valet inserts what Fairlie cannot remember. Their accuracy is doubtful because the two of them "are likely to make all sorts of mistakes" (360), according to Mr. Fairlie.

The weakness of confessional as evidence stems from the interrogative atmosphere that coerces, passively or aggressively, the suspect to satisfy the interrogators. What the interrogators think they want may not be the truth if the interrogators are operating on a wrong theory. Brooks cites what he sees as the "deep-seated suspicions of confession" in the majority opinion of *Miranda*. According to Brooks, "There is something inherently unstable, and unreliable about the speech act of confession, about its meaning and its motives" (125). Even when a confession may be voluntary, a product of choice, Brooks says, "circumstances may make the confessional utterance false rather than true" (126) because of the reasons motivating the confession. Furthermore, interrogators ignore aspects of the confession that raise suspicions of unreliability and fix on the information that fits their preconceived theory. Hartright never questions that the count was merely conceding to Hartright's wishes and lost nothing in telling Hartright what he wanted to know. The count was operating under stress and needed only to pacify Hartright so he could escape London. Although Hartright describes her letter as "hardened shameless depravity" from one with an "atrocious perversity of mind" (361), it does not deter him from accepting Mrs. Catherick's account of her relationship with Sir Percival because it confirmed his theory. He does not question her motive for writing or refusing to admit that Anne's father was anyone else than her husband. Hartright dismisses her inference that he caused Sir Percival's death because he denies it.

“Given the obscurity of the motives for confession,” Brooks explains, “that mode of discourse seems to be capable of producing both the deepest truth and the most damaging untruth” (132). Recognizing the narrative nature of a confession, Brooks worries that the process of interrogation and confession “always leaves us uneasy, as do so many modern narratives proffered by ‘unreliable narrators,’ narratives, indeed, that give us no basis for judging what ‘reliability’ might mean” (134).

Despite the absence of a dark room and an overt interrogator, Hartright maintains a confessional tone on the one hand and provides clues on the other that he is not telling the entire story.⁴⁷ His protestations of fairness, admissions of his own weaknesses, and insistence on his veracity—“I have disguised nothing relating to myself in these pages” (601)—are excessive and as if Hartright is trying to convince an interrogator who does not trust him. His reproduction of words of praise from Marian, Mr. Gilbert, and others for his exemplary conduct equate to the ritual of compurgation, which would release him from any accusations against him. While acknowledging his “vindictive motive” and “instinct for revenge” (475), he claims “speculations on the future relations of Laura and myself, and on the private and personal concessions which I might force from Sir Percival if I once had him at my mercy, never entered my mind” (475). He imagines himself in moral dilemmas and describes how he would act appropriately. An example is his statement that if Sir Percival had lived he would not have blackmailed the baron.

These self-serving statements by their excess become claims of innocence to allegations of guilt not overtly made in his story and actually prompt suspicions that he was more responsible for the deaths of the two men than he admits. Hartright initiates the “suspicion” and “inquiry” that he refers to in the Preamble into his own culpability:

“These words are written under no prompting of idle self-contemplation. Passages in this narrative are soon to come which will set the minds of others in judgment of my conduct” (475). He also states at the beginning of the Third Epoch that the stories to come next are not of the speakers themselves. They are “in the words of the brief, plain, studiously simple abstract which I committed to writing for my own guidance, and for the guidance of my legal adviser” (435). He offers no explanation why he needs a legal adviser. We cannot be certain if he is referring to Mr. Kyrle whom he later contacted as the Fairlie family lawyer or if this account was prepared for someone else and for another reason. Hartright’s subsequent question about Sir Percival could be directed at himself: “Was it possible that appearance in this case had pointed one way while the truth lay all the while unsuspected in another direction?” (492). We begin to think that he is like Sir Percival who “courted the suspicion that was wrong for the sake of diverting from himself some other suspicion that was right” (492). Hartright concludes, “here was the approach to the Secret, hidden deep under the surface of the apparently unpromising story which I had just heard” (492).

The suspicions from which we can raise inferences of Hartright’s guilt begin with the motives for his conduct. He has an inexplicable hatred for Sir Percival fueled by their rivalry for Laura’s hand in marriage and fortune. Hartright has mismanaged his money. Hartright condemns the deceit and trickery of rank and power. He speaks less of marrying for love and more of marrying to obtain legal standing to represent Laura’s claim.

Causal connections can be traced both directly and indirectly, raising suspicions of Hartright’s involvement in the two deaths. Hartright returns from Central America to find Laura and Marian preparing to hide themselves in London from the conspirators who

would return Laura to the asylum and bring proceedings against Marian for implementing Laura's escape. Hartright, in a more offensive attitude, threatens that "those two men shall answer for their crime to ME, though the justice that sits in tribunals is powerless to pursue them" (466). Although the answer Hartright sought may not initially have been the death of two men, his narrative at once denies and confirms his culpability. Responding to the man's calls for help, he claims to have forgotten all the injury Sir Percival inflicted and his "own oath in my own heart to summon him to the terrible reckoning that he deserved" (535). He describes in detail his attempt to rescue Sir Percival from the fire by climbing on to the roof to "break the skylight, and give him some air" (535), an act which gave the fire more air as well. Then, with a crowd watching, he orchestrates a frantic attempt to break down the door. Later, to absolve himself, he gratuitously offers his assurance that Sir Percival "must have dropped in his death-swoon, he must have sunk in the place where he was found, just as I got on the roof to break the skylight window" (544). Outraged that Mrs. Catherick considers him an instrument in Sir Percival's death because his "inquiries frightened him into the vestry" (548), Hartright interprets the incident as divine intervention and "a calamity for which I was in no sense answerable" (561) because retribution against Sir Percival had "been snatched from my feeble hands" (611).

Similarly, Hartright glosses over his involvement in alerting the Italian Brotherhood to Count Fosco's masquerade in London and his threatening the force of the Brotherhood in his confrontation with the count: "Other vengeance than mine had followed that fated man from the theatre to his own door—from his own door to his refuge in Paris. Other vengeance than mine had called him to the day of reckoning, and had exacted from him the penalty of his life" (642). In effect, he says he intended to kill and

would have killed Count Fosco, but he did not. The count's escape was Hartright's "sacrifice" (611). In disowning any responsibility, he places the conspirators' deaths beyond his control. Hartright turns on his own method of narrative links and establishing causal connections in denying his association to the deaths, while actually supplying the suspicious inferences.

The purpose of identifying Hartright's possible culpability, his motive and opportunity, is to suggest that these suspicions are too obvious in the novel. They compare to Sir Percival's courting of wrong suspicions to divert attention to another suspicion that is closer to the truth. Since readers cannot go beyond what the text tells them, they are left only with the suspicion that something else remains to be told.

For instance, some inferences exist to implicate Marian as a more active accomplice in the deaths. She describes herself as being the opposite of her "angel" (61) half sister in fortune, disposition, and appearance. A temper, which Mr. Gilmore mistakenly perceives as "indignation" instead of malice (162), undermines her attempts at maintaining decorum. She resents and ridicules the restrictions society places on women: "Being, however, nothing but a woman, condemned to patience, propriety, and petticoats for life, I must [. . .] try to compose myself in some feeble and feminine way" (221). She also has her own resentments about rank and power. Marian must depend on Laura, who was born into a privileged family, for a home. Most importantly, she is outraged and terrorized at Count Fosco's penetration of her camouflage and identification of her as his own kind. Her irreverent "careless way of talking" (60) establishes a "similar sensibility" (360) to Count Fosco and his definition of a smart criminal as well as a shared abhorrence for moral clap-trap speeches, a connection she does not deny. Before Hartright returns from

Central America and takes over, Marian exhibits cunning and courage against Sir Percival and the count, but she also stifles much outrage and insult.⁴⁸ With Hartright to help her, she wants to get even with the count. "I try to be patient, Walter," she tells Hartright, who is preparing to force confessions from the conspirators. "But I have a little of my old temper still left, and it will get the better of me when I think of the Count." (471). She also tells Hartright, "if ever those men are at your mercy and if you are obliged to spare one of them, don't let it be the Count" (469). His promise to remember includes "when the time comes" (469). Hartright has to physically restrain her from accompanying him on the confrontation with Count Fosco.

Hartright could admit more involvement in the deaths. Both the form of the sensation novel and its Victorian readers would tolerate it.⁴⁹ However, to admit his participation in murder goes against the theory of the interrogators, the novel's audience, who are also the triers of fact. Even though the first page of the text seeded that theory of patience, resolution, and justice and Hartright has nourished it throughout the text, it becomes the interrogators' own by virtue of their meeting the text's imposed cognitive expectations. His audience is reading under the expectations that truth and justice will out because that is what Hartright has said the story will show. He established an a priori theory for the interrogators and triers of fact to fit the facts to in their deliberations. If Hartright becomes a murderer as well as becoming a member of the landed gentry of England, then truth and justice or poetic justice, the imperative of this historical reconstruction, disintegrates in mockery of the legal and biblical authority he claims. Readers have only a string of suspicious inferences that, according to the rationalist tradition, are insufficient to charge Hartright.

Count Fosco's obvious murder and the unprovable suspicions that the text raises of Hartright's participation in the two deaths do meet the required elements of the sensation novel—mystery, murder, and exposure of the underworld. These are the surface of the story, intentionally developed as skillful diversions from what remains beneath the story's surface. In this sense, Hartright's text is no different from Madame Fosco's biography of her husband. Hartright's evaluation of the work sounds a bit like Hartright's own story: "The work throws no light whatever on the name that was really his own or on the secret history of his life—it is almost entirely devoted to the praise of his domestic virtues, the assertion of his rare abilities, and the enumeration of the honours conferred on him" (644).

Hartright's resolve and denial of committing any wrong is better understood after considering a parable by Franz Kafka included in his novel *The Trial*, and previously published as "Before the Law." The story tells of a man from the country who "begs for admittance to the Law" but the doorkeeper says "he cannot admit the man at the moment." The man from the country is surprised because "the Law, he thinks, should be accessible to every man and at all times [. . .]." But the doorkeeper is imposing and the law appears in the far distance so the man from the country "decides that he had better wait until he gets permission to enter" (213). The man from the country persistently waits outside the doors, repeating his request until he becomes an old man. As he is dying he asks the doorkeeper: "Everyone strives to attain the Law [. . .] how does it come about, then, that in all these years no one has come seeking admittance but me?" The doorkeeper responds "No one but you could gain admittance through this door, since this door was intended for you. I am now going to shut it." (Kafka 214-15).

One interpretation of Kafka's parable is that the law is something remote and unobtainable except with permission. In Hartright's story permission means the ability to pay and the accumulation of facts. Otherwise, the law remains distant because it is steadfastly glued to the rational tradition of proof and demands high fees and costs. "[T]he legal remedy lies, in every sense of the word beyond our means," Hartright says. "We cannot produce the law proof, and we are not rich enough to pay the law expenses" (466). Furthermore, as Marian says, "Even if we had the means of paying all the law expenses, even if we succeeded at the end, the delays would be unendurable, the perpetual suspense, after what we have suffered already, would be heartbreaking" (581).

These factors do deter many valid complainants from pursuing their rightful claims within the legal system. Bentham and other evidence scholars since have complained that the rules of evidence serve the interest of the material class and powerful interests. Only the rich and the powerful have the money to prepare a case that will meet the standards of proof. Furthermore, despite the prominence of law in fiction and the media, few people understand the mechanics of legal proof. In *The Woman in White* only people of a certain social, educational, and economic level, who have contact with lawyers, know the necessity of proof. For example, Marian, who had known Mr. Gilmore since childhood, knew to observe the marks Sir Percival inflicted on Laura's arm so she can speak from her own knowledge of their existence: "I may have to swear to it at some future time" (321).

In contrast, Hartright is surprised at the lawyers he meets in the novel because they are counter to his preconceptions. After he hears for the first time the story of Laura and Marian from "a stranger's point of view" when he meets with Mr. Kyrle, he at first

cannot accept the legal obstacles in the case and appeals to Mr. Kyrle to look more favorably upon it. Following Mr. Kyrle's gentle rebuff, Hartright tells Marian, "All I have done today is to ask another man to act for me. I count from tomorrow. [. . .] Because tomorrow I mean to act for myself" (469). The rationalist tradition assumes "a shared stock of knowledge" or a "cognitive consensus" (Twining "Evidence and Legal Theory" 70). Additionally thinking about evidence presupposes homogeneity not only about the general experience from which everyone supposedly reasons, but that everyone shares the same conceptions of "truth, reason and justice under the law" (Twining, *Theories of Evidence* viii). However, society's pluralism means that not everyone approaches the bench with the same point of view, the same experiences, the same deliberative process, or through the same door.

As Kafka's parable makes clear, both the legal system and those who seek entry to it are guilty for the interpretation of inaccessibility. The legal system promotes a formidable doorkeeper through, among other things, its conservative adherence to tradition and ancient customs, exorbitant costs, and flawed methods of proof. Those who seek access complain of inaccessibility before turning the doorknob of the door meant for them or taking responsibility and ownership of their legal system. In addition, both should be troubled that an institution formed to benefit society has become inaccessible to a large number of its members. Otherwise, the door remains shut.

But, unlike the man from the country who never takes some responsibility for the interpretation of the legal system that contributes to its inaccessibility, Hartright does take responsibility so that the law ultimately works for him to the extent that its scope allows. Hartright's confessional mix exhibits a pride at his success through self-help.⁵⁰ The pov-

erty that had prevented legal assistance was a blessing in “forcing me to act for myself” and that he thinks he actually achieved more than the law possibly could: “The law would never have obtained me my interview with Mrs. Catherick. The law would never have made Pesca the means of forcing a confession from the Count” (640). He implies that the law is ineffective and, because of its ineffectiveness, individuals must act for themselves. If he committed any wrong, the failures of the legal system made him do it. Similarly, he is unconcerned that the Brotherhood’s object was “anarchy and revolution” (596), and that it considered itself beyond the reach of the law.

The forgery motivating Sir Percival’s actions also was an act of self-help because the unfairness of the laws prohibiting intestate inheritance by illegitimate children would have left him penniless and without the social standing to which he was accustomed. “The son (who can blame him?) wisely provided for himself” (550), Mrs. Catherick says.⁵¹ As a revolutionary political society, the Brotherhood is the extreme example of self-help by those who find the law an ineffective resource. However, its object “the destruction of tyranny and the assertion of the rights of the people” (595) is not that far removed from Hartright’s condemnation of rank and power. Neither is Pesca’s vow that once a member betrays the Brotherhood “No human laws can protect him” (598) that dissimilar from Hartright’s vow to obtain justice against the conspirators. For Pesca, the Victorian underworld is the refugee finding shelter in England’s midst: “Laugh at him, distrust him, open your eyes in wonder at that secret self which smoulders in him, sometimes under the every-day respectability and tranquility of a man like me—sometimes under the grinding poverty, the fierce squalor, of men less lucky, less pliable, less patient than I am—but judge us not!” (595-96).⁵²

This image of restrained force patiently waiting for an opportunity is frightening in its reminder of the explosive potential within Victorian society. Yet, it merely expresses the rage Hartright and Marian stifle sometimes unsuccessfully. Hartright speaks of his tendencies to physical violence: "If I had been free to follow my own instincts, I should probably have begun by speaking to the man, and have ended by knocking him down" (467). Later, losing control and pushing a man away "smartly with my open hand" (524) causes his arrest and confinement. Marian says that if she had been a man "I would have knocked him (Sir Percival) down on the threshold of his own door" (268). Marian considers her self-control "degrading" (328). She wants to exhibit her anger: "My tongue burns to tell your uncle that he and Sir Percival are not to have it all their own way" (202) she complains to Laura. Sir Percival's many exhibitions of rage against his wife, kicking a dog, and struggling to control his temper also coincides with the image of a society's smoldering anger fragily contained by conventions, proprieties, and unreasonable reason.

Pesca's terror at his own fraternity and his warning also emphasize self-help's latent trait of lawlessness and abuse of the law. Hartright reduces the supposedly urbane refinement of Victorian society to a delusion when he employs the strategies adopted "against suspected treachery in the wilds of Central America [. . .] in the heart of civilized London" (474). Hartright's self-help became a regression to the time before the law when truth was determined by ordeal—Sir Percival's trial by fire—and inquisition—Hartright's confrontation with Count Fosco—and by combat—Count Fosco's demand that the men eventually meet in a duel, Hartright and Marian's references to a "single-handed" (501) meeting between Sir Percival and Hartright.⁵³ It is also a regression in interpretation to

past times when self-help meant vindication and revenge, words Hartright frequently uses in his tracking down of the conspirators, and to the “deadly certainty” (601) of the Brotherhood that if a man “inflicts injury on the well-being of his fellow-men, from that moment he forfeits the right, and it is not only no crime, but a positive merit, to deprive him of it” (595).

Count Fosco “who snaps his big fingers at the laws and conventions of society” (568), represents the most obvious individual example of lawlessness.⁵⁴ He epitomizes the smart criminal he describes who escapes while the foolish criminal is captured. The hiding of a crime or its detection is merely “[a] trial of skill between the police on one side, and the individual on the other” (256). Virtue is something the count cannot define because it is a cultural construct. He ridicules English society’s blinding moral epigrams. “I say what other people only think,” he says, “and when all the rest of the world is in a conspiracy to accept the mask for the true face, mine is the rash hand that tears off the plump pasteboard and shows the bare bones beneath” (259). Hartright’s statement that he has “no choice but to oppose cunning by cunning” (467) places him on equal footing with the count’s views.⁵⁵

Because they are smart, Sir Percival, Count Fosco, and Hartright can use or abuse the legal system for their benefit. Sir Percival’s thugs provoke Hartright into an assault so they can press charges and delay his investigation of the baron. The magistrate unwittingly helps the thugs by requesting more proof—a witness who observed the incident—and jailing Hartright in the interim. Count Fosco planned to use the law by exposing Laura’s whereabouts in order to involve Hartright “in interminable legal disputes and difficulties” (567). Sir Percival uses the threat of prosecution to silence Mrs. Catherick. Har-

tright threatens Frederick Fairlie with “a choice between doing his niece justice on my terms, or facing the consequence of a public assertion of her existence in a court of law” (636). Sir Percival uses legal discourse, “my plain statement of facts” and “proof of the truth of my assertion” (155) to support his contrived explanation of his acquaintance with Mrs. Catherick.

Hartright’s attempt to gain credibility and legitimacy by associating his story through analogy with the legal system in his choice of format and legal discourse also exploits the legal system. Those working outside the law because it is ineffective or because they have contemptuously denounced it, hypocritically call upon the legal system as if it meant something worthy of respect and they considered it powerful. The narrator is successful because his narrative technique appeals to readers’ expectations of what a story does and his mimicking of legal methods invokes readers’ expectations that the law will render truth and justice. Other words both internal and external to the text—legal and biblical discourses and the inherent predispositions they provoke—become auxiliary enforcement to the words of the text, or the text’s testimony or narrative. A combination of words and their auxiliaries creates a text that stands alone as objective facts. It is the living authority, not its author. Readers of the text are prohibited from looking behind the words of the text to any influential prejudices and cultural predispositions of the author. Legal texts, most particularly judicial opinions, legislation, and the Constitution make the same claim as anonymous texts and enlist the same self-help techniques. Although their authorship is not unknown, the authority and power of these texts comes not from their authors, but from the overriding framework that sanctions the words and from their own forms of auxiliary word enforcement within the text.

The self-help, self-authenticating devices Hartright employs are supposed to contribute to his burden of proof, but they are nothing more than artificial constructs that do not make his story any more real or credible except superficially. However, the novel itself succeeds as a sensation novel on two levels. It succeeds in fulfilling the elements of a sensation novel in imposing the underworld beneath Victorian conventions and propriety and it concludes with a mystery about Hartright's endorsement and participation in that world. At a second level, its undermining of traditional institutions of authority, particularly the legal system's methods of proof, further shakes complacent faith in the legal system's ability to render justice.

But the novel carries its point another step in its questioning of the weight given to written proof. As Walter Kendrick points out, "Villainy and heroism alike operate on the assumption that there is such a thing as a transparent text, an ordered arrangement of words and spaces which can be taken as proof of events in the real world and even as a substitute for them" (31). The assumption that Kendrick refers to is not peculiar to the events of the novel. Historically written documents have assumed a privileged status. The novel of the realist tradition was, in part, an attempt to bring fiction to that status. By demonstrating how writings that claim to be real or true are arbitrarily accepted, discarded, or subsequently displaced by other writings with a similar claim, Collins' novel disputes the ability of a writing to represent truth or reality. It questions the perceived allegiance to written documents by evaluating how that allegiance is practiced. Writings are accepted as factual until a subsequent writing successfully disputes the facts of the previous one. The latter nullifies or destroys the former. Hartright erases Laura's narrative on the tombstone and replaces it with another. The characters accept or denounce the

veracity of writings depending on whether they coincide with their predispositions. In the legal system, a decision is reversed and replaced by another, but during the time of its existence, the first is no less authoritative than its successor, as was the belief in Laura's death before Hartright's proof convinced otherwise. Authors of texts make them what they want them to be employing a multitude of self-authenticating devices to prove them and relying on an expectation that the text will be unreasonably valorized.

Notes

¹ Interestingly, law professor Roger C. Park writes in “Evidence Scholarship, Old and New” that evidence scholarship has remained apart from any of the interdisciplinary movements in law, what are called “the law and” movements such as law and literature, law and economics, law and sociology, and others. According to Park, “no member of the law and literature movement sought to apply theories of literary criticism to a critique of evidence law” (850). His statement is significant for purposes of this discussion because in Collins’ *The Woman in White*, a text written almost 150 years before Park’s observation, we find the narrator working with and subtly commenting on theories of evidence in a literary text.

² Philip O’Neill in *Wilkie Collins: Women, Property and Propriety* ranks *The Woman in White* “as one of the better examples of the sensational genre, a popular literary form which flourished for a brief while in the 1860s” (1). In *Wilkie Collins and His Victorian Readers*, Sue Lonoff credits Collins with founding the school of sensation fiction (22).

³ U. C. Knoepfelmacher, “The Counterworld of Victorian Fiction and *The Woman in White*” 366-367; George Levine, “Realism Reconsidered” 248-249.

⁴ My thanks to Dr. James Hill for pointing this out to me.

⁵ “Collins’ bold narrative method,” Sucksmith explains, “removes the external world of action to an inner stage within the minds of his characters and the action is coloured, often quite subtly, by their consciousness” (xv).

⁶ Symons writes that *The Woman in White* was serialized in Dickens’ *All the Year Round* from November 1859 to August 1869 and then published in three volumes (15).

The novel begins in 1849 and continues through the following two years preceding the Crystal Palace Exhibition in 1851. This was a time of revolutionary activity across much of Europe as Tamar Heller points out in *Dead Secrets: Wilkie Collins and the Female Gothic* (122).

⁷ As Barbara Shapiro points out in “‘To a Moral Certainty’ Theories of Knowledge and Anglo-American Juries 1600-1850,” some jurisdictions suffix “and to a moral certainty” to this standard (153).

⁸ According to O’Neill, “Narrative authority is democratized” by the device of multiple narratives “ostensibly in the interests of veracity.” But, as he correctly points out, “not all the characters see events in the same way and the truth itself is relativised” (101).

⁹ Considerations of the influence of Collins’ legal education on his fiction writing are speculative, but the novel indicates more than a layman’s familiarity with the legal system. Although he never practiced law, Collins entered Lincoln’s Inn in 1846 according to Catherine Peters in *The King of Inventors* (68).

¹⁰ For example, a review of the trial scene in Trollope’s *Orley Farm* shows Dockwrath called as the first witness although his testimony is about the most recent event, his finding of a document bearing the same date as the disputed codicil. The next witness is the other party to the deed.

¹¹ See Catherine A. MacKinnon, “Law’s Stories as Reality and Politics” for more discussion on this point.

¹² See *McCormick on Evidence* 1:16-17 for more on these topics.

¹³ Interestingly, Hartright's words here about arranging ideas echo Count Fosco's statement before preparing his confession that the ability to organize ideas is a rare privilege. Furthermore, we see how Hartright recognizes the effectiveness of a form of questioning that combines narrative with specific questioning.

¹⁴ See also Walter M. Kendrick, "The Sensationalism of *The Woman in White*," 25.

¹⁵ For example, Hartright argues that had he not rescued the drowning Pesca long before the story takes place, which instilled in Pesca a sense of obligation so that he recommended Hartright for the position at Limmeridge House, "I should in all human probability never have been connected with the story which these pages will relate" (37).

¹⁶ See Peter Tillers "Prejudice, Politics, and Proof," on "the constructed character of evidence and reality" (772) and how we alter reality in our attempts to perceive it and Paul Gewirtz "Narrative and Rhetoric in the Law" on "Narrative [. . .] is seen as the social construction of reality" (13). Both evidence and narrative are attempts to construct reality.

¹⁷ Hartright's turns to Providence are an exception to Jenny Bourne Taylor's statement in *In the Secret Theatre of Home*: "He seems to be replacing divine judgement with empirical evidence that emerges as both reliable and relative; absolute morality with contingent experience, wherein the corruption of the Law is replaced by the analysis of the Reader, but within the framework of credibility which the Law confers" (110).

¹⁸ The legal system does make allowances for what it terms acts of God, particularly in tort actions as shown in the legal maxim "*Actus Dei nemini facit injuriam*"—an act of God does wrong to no one. Therefore, no one is responsible in damages for inevi-

table accidents. However, the cause must be exclusively the forces of nature and the event overwhelmingly unpreventable. See *Black's Law Dictionary* 34, 1616.

¹⁹ Winifred Hughes states in *The Maniac in the Cellar: Sensation Novels of the 1860s*, “the conflicting opinions advanced by some of the minor narrators and accomplices” are “suggestions, as yet fleeting and indirect, that the same facts or events will bear opposing interpretations, according to the different perspectives from which they are evaluated” (140).

²⁰ Because of the adversarial nature of litigation, we tend to think of competing stories during a trial. See Paul Gewirtz “Narrative and Rhetoric in the Law” 2-13, for a view of a trial as “struggle over narratives” (7) and Peter Brooks “The Law as Narrative and Rhetoric” 14-22, for the suggestion that “the law is in a very important sense all about competing stories” (16).

²¹ See *McCormick on Evidence* 2:93-6.

²² Collins applied this same hearsay prohibition, confused with firsthand knowledge, in his later novel *The Moonstone* (1868).

²³ Paul Gewirtz argues in “Victims and Voyeurs: Two Narrative Problems at the Criminal Trial” that “the entire law of evidence and much of the law of procedure is really a law of narrative—a law of narrative transactions” (136).

²⁴ For an extensive discussion of the role of circumstantial evidence or evidence based on inference, not personal knowledge, that includes a discussion of Collins’ *The Moonstone*, see Alexander Welsh, *Strong Representations: Narrative and Circumstantial Evidence in England*.

²⁵ Twining developed the label ‘Rationalist Tradition of Evidence Scholarship’ to incorporate the “remarkably homogeneous set of assumptions about evidence and adjudication” of Anglo-American scholars” (“Hot Air” 1531).

²⁶ See Jerome Frank, *Courts on Trial* disputing the “Truth-Will-Out axiom” because that “ ‘axiom’ does not jibe with reality” (17).

²⁷ See Harlon L. Dalton “Storytelling on Its Own Terms” 57-60 and Catharine A. MacKinnon “Law’s Stories as Reality and Politics” 232-238.

²⁸ Guyora Binder and Robert Weisberg argue in *Literary Criticisms of Law* that narrative is not “more authentic, spontaneous, or sincere” and “is not intrinsically free of the pressures of self-interest and social norms that influence all cultural practices, including law” (208).

²⁹ Lynne DeCicco discusses in *Women and Lawyers in the Mid-Nineteenth Century English Novel* the depiction of the legal system’s exclusive reliance on “surface details,” which scrutinizes only the facts, “while the bizarre and unfathomable portions are discounted” (156). Her discussion includes an unjustly harsh account of Mr. Gilmore’s involvement with the marriage contract that fails to consider his adherence to rules of professional responsibility and attempts to link his physical breakdown to a breakdown of the law.

³⁰ For more detailed descriptions of evidence, see “Evidence,” *Black’s Law Dictionary*, 576-77.

³¹ In fact, the lawyers in the novel are among the few characters not subject to suspicion and who do not appear to be something they are not. However, they are the least suspicious of others and most unimaginative of all the characters. Even Sir Per-

cival's lawyer, Mr. Merriman, though not a favorite of Mr. Gilmore, is sharp and able to "overreach you under the disguise of inveterate good-humor" (175) during bargaining, according to Mr. Gilmore. Although Sir Percival bids Mr. Merriman as he rushes by dog-cart to catch a train, "Hold fast, [. . .] if you are upset trust to the devil to save his own" (249), no one accuses Mr. Merriman of knowledge about or participation in the conspiracy or suggests that his vigor in representing the baronet in the marriage settlement was illegal or unethical. Mr. Gilmore and Mr. Merriman both were bound to follow the instructions of their clients within the confines of the law. Importantly, Mr. Gilmore admits that "[i]n the case of any other client I should have acted on my instructions" (177) before making once last argument against accepting Sir Percival's demands. Marian overhears Mr. Merriman explain over Sir Percival's objections that as a lawyer he must look at both alternatives in all transactions.. However, Mr. Merriman was duped by his client into having Hartright followed under the pretense that he had assisted Anne's escape from the asylum.

³² D. A. Miller touches upon these concerns in *The Novel and the Police*, 157.

³³ Tillers concedes "that there are things at work in inference that are hard to understand and that we are usually or always better off in letting our common intuitions guide our factfinding rather than in trying to construct a priori factfinding techniques that are supposedly more logical" (774).

³⁴ In *The Novel and the Police* D. A. Miller's criticizes the narrator's Preamble that "utopically envisions" an extension of the law to include cases of suspicion and processes of inquiry because it supercedes the legal model to which the novel "nominally clings" (157). This criticism can be extended to include within the novel's vision an ideal

evidentiary state in which anything possibly related to the legal action is admitted for deliberation. Both visions undercut the legitimacy the legal framework supposedly provides.

³⁵ The novel as a legal proceeding includes three legal hearings within the overall proceeding: the mock presentation of proof at Limmeridge House, the coroner's inquest, and Hartright's arraignment on the assault charge.

³⁶ The presentation of proof at the Limmeridge House proceeding and its sanction by Mr. Kyrle is another example of using legal format to impose legitimacy.

³⁷ The phrase exclusionary rule here broadly refers to all rules prohibiting the admission of certain information, not the Exclusionary Rule that in American law suppresses tainted evidence in accordance with the fruit-of-the-poisonous-tree doctrine because obtained in violation of the accused's constitutional rights.

³⁸ Jackson and Doran note that litigation's emphasis on truth or rectitude or decision discourages alternative dispute settlement and lessens important procedural rights ("173-74).

³⁹ According to law professor and evidence scholar Peter Tillers in his article "Prejudice, Politics, and Proof," the truism is "that litigation is not just a search for the truth" (773).

⁴⁰ O'Neill writes that in these instances "convention dominates interpretation" (109).

⁴¹ Jenny Bourne Taylor writes that Hartright "projects meaning into figures and events in the light of his own preconceived expectations, and has his own identity under-

mined when they are undercut by his sense of the strange and anomalous [. . .] (*In the Secret* 112).

⁴² As society and juries become more diverse, this assumption of cognitive consensus I hope will be weakened and litigants will be unable to manipulate it for their benefit.

⁴³ Significantly, a lawyer's insistence on preserving a copy of the church records provides the proof of Sir Percival's secret.

⁴⁴ For more on this argument see Kendrick, 30-31).

⁴⁵ Knoephlmacher describes this aspect of the novel as "a collision between a lawful order in which identities are fixed and an anarchic lawlessness in which these social identities can be erased and destroyed" (362).

⁴⁶ The idea for this comparison of Count Fosco's confession scene derived from Peter Brooks' discussion in "Storytelling Without Fear" on confessions and Chief Justice Warren's decision in *Miranda*.

⁴⁷ Lonoff writes that all of Collins' narrative devices "operate in two conflicting directions. On the one hand, they have an air of authenticity that persuades the reader to suspend his distrust and accept the facts they convey; on the other, they may caution him that they are devices within a narrational framework, and they may reveal the calculating presence of their author between the lines" (129). Donaghy and Perkins suggest "A more attentive reading of the text, one informed by the very hermeneutics of suspicion and surveillance characteristic of every narrative in the novel, raises the possibility that Walter, far from being objective, is in fact manipulating the narrative for his own ends" (392).

⁴⁸ For more on Marian's role in the novel see Richard Barickman et al *Corrupt Relations*, 114-120.

⁴⁹ Richard Altick's *Victorian Studies in Scarlet* demonstrates that "Popular taste required that the plot of the sensation novel, in addition to being set in the present, be complicated by [. . .] above almost all else—murder achieved, contemplated, or merely suspected" (76). For a fuller discussion of the domestication of murder and the sensation novel, see 67-85.

⁵⁰ Although not meant in the same manner here as Samuel Smiles in his book *Self-Help* (1859), analogies exist to Hartright's self-help such as Smiles' creed that success comes from application and persistence and the theme of "God helps those who help themselves." See Asa Briggs article on Smiles in *Victorian People*.

⁵¹ The defects of the inheritance laws and of the property rights of women are other legal subjects of this novel and subjects Collins obliquely implies require reform.

⁵² A worthy study in this and other Victorian novels is the obvious xenophobia.

⁵³ Significantly, Shapiro calls these ancient forms of proof "irrational proofs" (155).

⁵⁴ Taylor writes that "it is in the paradoxically 'carnavalesque' figure of the upper-class villain that the dominant codes both of the narrative and the social order are displayed and overturned" (*In the Secret* 121).

⁵⁵ According to Hughes, "Divested of its gothic trappings and conventional moralizing, the central action of *The Woman in White*, is nothing more nor less than a trial of skill between cunning adversaries" (142).

Chapter 4

Thinking about Law's Heritage and Law and Morality in

George Eliot's *Felix Holt, The Radical*

Legal issues superficially occupy a major role in George Eliot's novel *Felix Holt, The Radical* (1866).¹ Most obviously, the law operates in the title dispute over Transome Court, in the trial of Felix Holt, and in the extension of the franchise under the first Reform Bill. Perhaps less distinct is the question of positive law's association with morality in the novel: the blend of church and state in government, the politics of reform, and the conduct of the lawyers and opinions expressed about them. However, despite their prominence in the background and setting of the novel, manmade laws and the legal system are not the focus of the novel. Positive law and the legal system are so placed as if to minimize their part in the course of individual lives. Legislation and the legal system serve merely as a framework for the novel's argument about another more important system of law-like conduct expressed as secular natural law. Although one of the essentials of moral behavior, sympathy for others, becomes intertwined in the novel's legal issues, individual moral consciousness supercedes positive law as a means to social reform. Ultimately the imagination inspired by sympathy becomes an evaluative model for determining the accuracy of representation in a social problem novel.

Much of the scholarship about the novel looks to Eliot's other writings, such as letters and essays in which she discusses her own and others' opinions on novel writing, political reform and the religion of humanism. I do not intend to speculate on how the novel integrates these extensively explicated writings. Many scholars already have extensively explored the possible connections.² This discussion will work with what the "Au-

thor's Introduction," the fifty-five chapters and epilogue of the novel itself, and Felix Holt's "Address to the Working Man" (1868) reveal about the thinking about law in the novel.³ However, I will look outside the literary text to some legal texts, not to suggest their influence on the novel, but to demonstrate an intellectual, political, and religious affinity between the novelist and the legal texts in thinking about law.

The first section of this discussion concerns law as an inherited tradition and its participation in the disposition of property through inheritance. Within Anglo-American legal thinking thrives a reverence for its ageless traditions and customs and pride in the ability to trace its language, procedures, and thought to past centuries. This reverence and pride sustains a sense of universal, permanent rectitude and implies that the legal system stands on sound and unshakeable foundations that have remained continuous and stable despite the passage of time. Similarly, the novel presents a society enmeshed in ancestral worship and inheritance, the past, and continuity, particularly when juxtaposed beside legal mechanisms of inheritance and legal reform. Both the Anglo-American legal system, the novel's narrator, and Felix Holt consider change with skepticism and advocate a gradual progressive change that coincides with an organic or natural development over time instead of drastic or more quickly enacted reform.

Coinciding with the former position is the novel's moral argument, which shares many elements of natural law theory. Before the nineteenth century when jurists such as Jeremy Bentham and John Austin began to advocate the separation of positive law from natural law, natural law was treated as unquestionably within the inherited tradition. The second part of this discussion examines the novel's arguments as secular natural law theory. Although Felix Holt rejects the Christian religion (as did George Eliot), his argu-

ments borrow from natural law theory, both classical and functional. His statements to the workingmen, his teaching of Esther Lyon, and his conduct regarding his arrest and prosecution display elements of natural law thinking—a law-like prescription. Esther's development and corresponding deeds describe the application of these prescriptions in daily life.

The natural progression from the discussion of Felix's affinities to natural law is a review of what the novel says about the fusion of law and morality. To the rectors of the Anglican Church, religion and politics are naturally and nationally inseparable. But the Dissenting minister suffers criticism for his political exhortations from the pulpit from conservatives and his own congregation alike. The two lawyers most prominent in the novel, Matthew Jermyn and John Johnson, connive and manipulate in a moral vacuum. Thoughts of right and wrong do not govern their legal intrigues. The judge and jury in Felix's trial are unswayed by Esther's attribution of high moral standards to Felix and convict him of the criminal charges against him.

One of the arguments for the incorporation of moral considerations into law, which for purposes of this discussion includes politics and reform, may be what the novel shows as the consequence of a moral life. According to the novel, the self-knowledge and internal reflection of a moral way of thinking results in a consciousness of the lives of others and a corresponding sympathy for fellow human beings. This sympathy supposedly inspires conduct that reflects a shared humanity and better understanding of others. Felix Holt and Esther devote themselves to helping the working class improve itself through education. Their energies concentrate on changing and improving the lower class, not in reform of institutions or the upper classes who comprise them.

Supposedly, as a social problem novel or a novel of social reform, *Felix Holt, The Radical* shares with other members of the subgenre the intent to expose the social problems of and injustices inflicted upon the working class and through that depiction, or through a moral argument, arouse sympathy and indignation that would prompt legislative reform. Examples of such novels include Charlotte Brontë's *Shirley* (1849), Elizabeth Gaskell's *North and South* (1855), *Alton Locke* by Charles Kingsley, and *Hard Times* by Charles Dickens. However, the novel contains no tear-jerking emotions from pictures of the lives of the working class of the sort that some of these novelists, particularly Dickens, described. As F. R. Leavis wrote in *The Great Tradition*, Eliot portrays "human mediocrity" with "compassion," not sentimentality (76). Unlike other social problem novels, Eliot's novel, through its demonstration of the development of sympathy, most particularly in Esther, and the actions her deeds inspire, does not advocate legislative reform. Instead, its emphasis rests on individual moral acts, so that change comes not from legislation but from individual moral deeds. The novel implies that change, at least radical change, makes things worse instead of better and is unnecessary as long as people adopt moral standards and its component of sympathy from which they gain an imagination of what the lives of others must be like. Alternatively, moral standards must be improved so they can support a structure of reform.

A novelist in the realist tradition must be able to imagine what the lives of others are like if the novel is to present a depiction that corresponds to actual life. The implied statement about novel writing in *Felix Holt* is that to create a realistic social problem novel, the writer must possess sympathy for humanity from which derives the requisite imagination to make the representation of the fictional characters' lives true to actual life.

An imaginative depiction of life cannot correspond to actual life unless it derives from sympathy and the real imagination that it produces in the possessor. Since sympathy derives from maintaining a moral life, morality, or a moral element, becomes part of the evaluative process of realistic novels. Therefore, the strong element of morality in *Felix Holt* elevates it to a higher realistic level.⁴

This moral emphasis, or emphasis on law-like conduct leads thinking away from changing laws to changing individuals so they are more moral. Laws gradually will reflect these moral changes. Social change then precedes legal change and the laws of society directly correspond to its moral standards. At the time of the novel, many laws, such as limiting the franchise, appeared to be unfair to the working class and to work in favor of the upper class. At the same time, the limited earning capacity of the working class and their limited education places property ownership and material wealth out of their reach. According to Felix's proposal, until the people, particularly the workingmen who are subject to much vice and corruption, improve morally, reform giving them more representation in government and making their lives better will not occur or will not occur without negative disruption. Following the reasoning of the novel, a more sympathetic society will be less resistant to change or will bring about a better life without a need for restructuring established institutions. The moral discipline of the natural law precedes and is part of the positive law's inheritance.

The lessons of the past and of nature inherently rule against radical change, according to the novel. Henry Auster writes in "George Eliot and the Modern Temper" that one of the crucial strands in all of Eliot's works is an "acute sense of the erosion in society of long established traditions" (77). In fact, as most studies of the novel point out, the

beginning of the novel in September 1832 follows the passage of the Reform Bill of 1832 that expanded the franchise. The period covered by the novel is very short. It ends in May of the following year. Interestingly, the author's lengthy introduction to the novel refers to a simpler time before the passage of the first bill while Eliot wrote the novel in the year before the passage of the Reform Bill of 1867.

As Peter Coveney explains in his introduction to the novel "*Felix Holt* is very much about the past and its organic relationship with the present [. . .]" (9). A legal document from the past governs the present possession of Transome Court, home of the gentrified Transome family. An ancestor, a lawyer named Durfey, obtained possession of the property in 1729 when he purchased the entailed interest of the then owner's oldest son, Thomas Transome. That meant the Durfeys, who changed their name to Transome, held the property subject to the entail, which, in this instance, was to Thomas Transome and his heirs-male. When Thomas Transome's line expired, the estate would become the property of the Bycliffe family according to the document of entailment. The Durfey-Transome and Bycliffe families fought numerous lawsuits, the last in 1811 or twenty years before the time of the novel, because the Bycliffes claimed the male line of Thomas Transome was extinct and they were entitled to possession of the property. The last suit ended when the plaintiff, Maurice Christian Bycliffe died. Supposedly, he left no heirs to continue the suit. However, unbeknownst to anyone but the conniving lawyers, a member of the Transome line remained alive in the form of a drunken bill-sticker, Tommy Trounsem. What no one knows, not even the lawyers, is that Bycliffe did leave a child. She is the beautiful and sophisticated Esther Lyon who thinks her father is a poor minister to a Dissenting congregation, Rufus Lyon.

At the time of the novel, the Transomes do not know that the possession of their estate hinges on the life of a drunken misfit and that the rightful heir to their property is living in the same community. Tommy's subsequent death and a series of coincidences that lead to Esther's exposure as the heir makes their possession precarious. Harold Transome, who was to inherit the property as part of the Durfey-Transome line, and his mother invite Esther to live with them while they attempt to work out the ramifications of this discovery. During her visit at Transome Court, Esther moves from imagining "what it would be to abandon her own past, and what she would enter into exchange for it" (496). When Harold says she is the "empress of her own fortunes," she responds that she does not "know very well what to do with [her] empire" (501). Eventually, she decides neither to dispossess the Transomes nor join their world through accepting Harold in marriage.

A brief review of the responses Esther's disposition of her inheritance has prompted in contemporary scholarship indicates the various interpretative strains this important aspect of the novel has produced. Her decision has been described as:

- an absolution "of the dead past as a restriction, a determinant, or a source of guilt and punishment" (Meckier 230),
- an emancipation of "the constraints imposed upon her by the body of the paterfamilias buried in the will" (Milton 4),
- an explosion of "the illusion that inheritance is grounded in nature" (Gallagher 262),

- a recognition of “the potentially tragic consequences of her inherited destiny” and the discovery of “the power to resist and escape” (Coveney 51),
- a proof that “the endless contingencies of the claim [. . .] make it clear that the line of inheritance based on land and law is nothing more than a messy web of politics, based on choice and circumstances” (Bodenheimer 226),
- an end of the fee tail in which “only the Bycliffe heir can break the control of the past and dispose of the estate according to the needs of the present situation” (Horowitz 138-39).

These literary interpretations, although strong for what they show us of the interactions of law and literature within a text, attribute symbolic meaning to Esther's inheritance that does not completely concur with the legal meaning. Esther is the beneficiary of a century-old legal document that gives her the property in fee simple by virtue of her being the only Bycliffe in existence at the death of Tommy Trounsem.⁵ She does not end the fee tail or the control of the past; it ended with Tommy's death. The only control on the property was that the Transomes could not sell it with a clear title. Esther, on the other hand, like any other Bycliffe owner had they prevailed in their earlier claims, becomes an owner without an entailment and can dispose of her inheritance in any way she desires free of any restrictions or duties once the encumbrances on the property, the mortgages and annuities, are released. No constraints on her or her father's family ever existed regarding the property other than delayed ownership. As her case signifies, an inheritance does not always coincide with one's past. The father and the Bycliffe family

she never knew are not part of her past any more than the child of insemination from a sperm bank has any experiential past with the sperm donor. For some reason, which the text does not reveal, John Justus Transome entailed Transome Court with the remainder to a Bycliffe. No Bycliffe had a vested interest in the property until Tommy Trounsem died, so Esther is not taking over a property that has been in her family for generations. The only constraints known are the entailment of the original Transome interest (not the Durfey-Transome interest) and the restrictions that the Durfey-Transomes would have in disposing of the property because they only purchased a limited interest in the property. The text does not disclose if the Durfey-Transomes strictly followed a distribution of their interest to the oldest son but makes clear that Harold Transome, treated by all as the only surviving son of the current possessor, stood to inherit the Durfey-Transome interest until Tommy's death.⁶

Catherine Gallagher is correct in stating the obvious, that inheritance is not grounded in nature, although it can be associated with nature if "nature" is synonymous with family lineage as the English custom of keeping property ownership within a family implies. The grounds upon which inheritance rests in the nineteenth century are legal in "nature" as inheritance of real property has been since the beginning of English law. As far as the text reveals, the Bycliffe v Transome lawsuit derives totally from legal claims based on the original Transome document with no extralegal appeals to centuries of ancestral ownership. The Durfeys purchased their interest in the property to self-construct a past. Obtaining land was a move upward in social standing for the lawyer Durfey-Transome. The text does not indicate that the Bycliffes had any previous connection to the property or explain why the creator of the entailment designated them as remainder

men. Neither nature nor politics are behind their disputed claims for the property.⁷ Esther does not inherit a destiny, but only legal rights that entitle her to certain choices. She in effect complies with the terms of the past in the sense that her entitlement or rights are the product of ancient English laws of real property. The legal past, though not her past, has empowered Esther as the “empress” she and Harold refer to, with a disposable title to real estate which she can keep for her own use or dispose of in part or in whole. Tommy Trounsem correctly summarizes the situation when he says, “It’s the law—that’s what it is. [. . .] There’s folks born to property, and there’s folks catch hold on it; and the law’s made for them as catch hold” (377). Esther was not born to the property. Until Tommy died which member of the Bycliffe family would inherit was not known. She did catch hold of it.

Another point of clarification regarding Esther’s handling of the estate is that she did not reject her inheritance or one past for another. She elected not to take possession of the property to the exclusion of the Transomes and to negotiate a settlement with the Transomes. This can be the only inference from the statement that “she resigned all claim to the Transome estates” (599) and the source of her subsequent disbursement of incomes for Mrs. Holt, Mr. Lyon and herself. Esther, Mr. Lyon, and Harold anticipate this arrangement at their first meeting over Esther’s inheritance. Mr. Lyon refers to his belief that “one Christian brother should not go to law with another” and “would extend this rule to all my fellow-men.” Esther says “there is nothing that would be more repugnant to me than any struggle on such a subject.”⁸ Harold proposes that he and Esther can “thwart” the lawyers “by determining not to quarrel” (480).⁹ Although laws are binding, they do not leave individuals completely without choice. Esther’s decision is her own,

although influenced by Felix's teachings.¹⁰ Instead of a drastic change that could have disrupted the Durfey-Transomes who have occupied the property for more than a century as well as her own life, she chooses, based on her inherited right, to extend the continuity that the past allows by taking a regular income from the property while she returns to the continuity of her actual past. The continuity of the past also is maintained in Transome Court's continued possession by the upper class. Although she could have married Harold and accomplished the same purpose of not disturbing the Transomes, Esther's continuity or her past would have been drastically altered by this alliance. She also continues the past in another way in the legal arrangements between her and the Transomes. She adds another link to Transome Court's legal history. As Florence Sandler points out in "The Unity of *Felix Holt*," "The legal maneuverings in the nineteenth century reveal an earlier set of legal maneuverings and so back [. . .]. As long as land, property, and power have been maintained, it has been by means of such manipulation [. . .] (145).

The past jeopardized in Esther's choice was the only past that Esther knew in the sense of having experienced it, that of her life with the minister.¹¹ Though she does not reject her stepfather, she does reject his faith as a Dissenter. Similarly, Felix picks the parts of his inheritance he will carry forward into the future. He rejects his father's inheritance of a quack medicine business but not his family's standing as artisans. The Holts were a family of weavers. Felix becomes a watchmaker. As a Radical, Harold rejects the Tory allegiance of the Transome family but not their notions of upper-class property ownership that began with the lawyer Durfey. Harold "was addicted at once to rebellion and to conformity" and possessed "a pride that was moulded in an individual rather than an hereditary form" (197). After his discovery that his real father is Jermyn, he realizes

that he has been fighting with his past throughout the novel. This realization harkens back to the early warnings from his uncle not to quarrel with Jermyn. At the same time, Harold gains a better perspective about the past in his relationship with his mother. Jerome Thale correctly states in *The Novels of George Eliot* that “[The] consequences of the past cannot be rejected. Each of the three finds himself where he is as a result of what his parents have done [. . .]” (104). However, he erroneously states that the three individuals are severely limited in choices because of those consequences. The three clearly choose the role of the past in their futures.

The person most affected by the past is Mrs. Transome. She lives in silent suffering because of a choice she made as a young woman, her affair with Jermyn, about which she is constantly reminded with Harold’s return. Her conduct reveals her inability to reconcile the past to her present. She prematurely buries herself in the past of her “Lingon heraldry,” her family stories to Esther among portraits of long dead Transomes—“in the midst of desecrated sanctities” (494). Mrs. Transome is embarrassed and angry that Harold would break the tradition of Tory allegiance among the landed gentry. She enjoys riding out among her tenants like a feudal lord so that they must express their subservience to her and follow her orders above anyone else’s. She contradicts the doctor’s prescriptions with her own remedies. That at her death “throughout that neighborhood there was silence about the past” (605) signifies how prominent it was in everyone’s thoughts. She is, as Terry Eagleton writes in *Criticism and Ideology*, “pictured as a pathetically outdated feudalist [. . .]” (117).

Countering Mrs. Transome’s cruel feudalism are the dreamy and heroic feudal images that Harold, Felix, and Esther conjure. Esther, who reads the works of the Roman-

tic poet Byron imagines a lover who will admire her from a distance. That lover's chivalry prevents his ever "adopt[ing] a scolding tone towards a woman" in the manner that Felix does because he "had no chivalry in him" (264). At Transome Court, Harold's behavior so clearly coincides with her imagination when he kneels on one knee to help her with her netting that she proclaims, "Ah, how chivalrous you are." She finds him paying "homage" to her and talking to her of how a woman should always have a man to "guard her from trouble" (499). Harold has returned from his personal crusade to the home of the infidels with bounty and a son born from a slave wife. He is intent on "rooting out abuses" (121). Harold wants to make life comfortable and effortless for his mother while she sits on satin cushions. When he learns that he is not the eligible suitor he had presented himself to be while wooing Esther, he intends "to do what perfect honour demanded" (587). Even the entailment on the property derives from a medieval statute (633).

Although Felix is not chivalrous, his characterization also borrows from the past. He has a "great Gothic head" (561) and he recalls the medieval guilds when he talks of returning to the artisanship of his ancestors and maintaining class boundaries, duties, and functions. He undertakes an Arthurian quest that includes self-sacrifice and near asceticism for the good of others: "This thing can never come twice over. It is my knighthood. That was always a business of great cost" (419).¹² After knocking down Constable Tucker during the riot on election day, he rises up wielding a sabre to lead the drunken crowd.¹³ Eventually he accepts Esther as Sancho Panza to his Don Quixote. Sandler argues that Felix strikes associations to a past "norm against which to judge the tyranny and

servility of the present age, and by which to purge the Constitution of the abuses inherited from the invader William and his feudal lords” (144).¹⁴

These references to inheritance and associations to the historical and mythological past represent on a small scale the countering stable force of the known in England’s national inheritance and history existing during a time of social, economic and political change.¹⁵ Privileging the past has successfully delayed change and legitimated the existing legal system, although some scholars consider the emphasis on traditions and customs a mythology of English jurisprudence. English jurist Sir Edward Coke (1552-1634), who wrote the first textbooks on the modern common law, was influential in “fixing the form and development of modern English law,” particularly in its preservation of ancient forms (Walker 240). According to Christopher Hill in *Intellectual Origins of the English Revolution*, Coke “gave Englishmen an historical myth of the English constitution” (257). That myth, Hill says, was that the good laws and continuous enjoyment of them by the primitive English had been broken by William the Conqueror and his successors, but that the English had fought back and eventually restored them.¹⁶ In fact, the influence of the Normans did contribute to the development of English law much more than the jurists would admit. For example, the many legal terms now common in Anglo-American law derived from the law French of the Normans show their continued influence.

Even so, the myth was propagated. Sir William Blackstone supported it in his *Commentaries on the Laws of England* (1765-69)¹⁷ through repeated references to the interruption of the good laws by the Normans and blaming their influence for any defects in the laws of England: “That ancient collection of unwritten maxims and customs, which is called the common law, however compounded or from whatever fountains derived, had

subsisted immemorially in this kingdom, and though somewhat altered and impaired by the violence of the times, had in great measure weathered the rude shock of the Norman conquest” (1.1. 17; see also 4.33. 435). In his concluding essay, Blackstone refers to the “ancestors” who transmitted English liberties to “posterity” (4.33. 436). Soon after Blackstone, Edmund Burke, in his *Reflections on the Revolution in France* (1790), credited both Coke and Blackstone as “industrious to prove the pedigree of our liberties” by looking behind the Magna Carta to establish the genealogy in “the still more ancient standing law of the kingdom” (117-18). Burke wrote that their work “demonstrates the powerful prepossession towards antiquity, with which the minds of all our lawyers and legislators, and of all the people whom they wish to influence, have been always filled; and the stationary policy of this kingdom in considering their most sacred rights and franchises as an *inheritance*” (118).¹⁸ In the nineteenth century Walter Bagehot wrote in *The English Constitution* (1867) that the “semi-filial feelings” the British have for their government “are inherited just as the true filial feelings in common life” (60) and that “yesterday’s institutions are by far the best for to-day; they are the most ready, the most influential, the most easy to get obeyed, the most likely to retain the reverence which they alone inherit” (64-65).

Eliot shows many of the major characters in the novel also experiencing breaks in their development associated with other countries. Mr. Lyon left the ministry for five years to live with and marry Esther’s French mother. Felix lived in Glasgow studying medicine and intending to rise in the social hierarchy. Harold left Transome Court for fifteen years in Smyrna. Esther’s break, though not associated with another country, occurs during the novel when she lives briefly at Transome Court.¹⁹ However, the interrup-

tions in their lives are learning experiences that contribute to and are incorporated into their development instead of a destructive period requiring restoration.²⁰

As Franco Moretti points out in *The Way of the World*, this view of English history gave the word “revolution” an unusual political meaning. Revolution became for the English “a return back, ‘full circle’ to the original spot” because its purpose was to eliminate the disruptions in historical continuity (207). Once the idea of inheritance and continuity is established, the movement is a gradual progression forward in time. Blackstone explains how after the conquest “it has been the work of generations for our ancestors, to redeem themselves and their posterity into that state of liberty, which we now enjoy [. . .] [to] a gradual restoration of that ancient constitution, whereof our Saxon forefathers had been unjustly deprived, partly by policy, and partly by the force of the Norman.” After so deftly tying liberty to the ancients, he attaches its restoration to “a long series of years [. . .] step by step effected” (4.33. 413). He implies that to proceed differently would risk the cherished liberties. If the development of the law and its accompanying liberties had been otherwise, then he could not have “delineate[d] some rude outlines of a plan for the history of our laws and liberties from their first rise, and gradual progress” which “have been and are every day improving, and are now fraught with the accumulated wisdom of the ages” (4.33. 435).²¹

Eliot’s introduction also looks to the heritage of the past, allowing much “departed evil” due to progress, but “some pleasant things too, which have also departed” leaving to the elderly “enviable memories” (75). This theme continues in Felix’s address with its emphasis on the “old institutions,” that along with “the various distinctions and inherited advantages of classes, which have shaped themselves along with all the wonder-

ful slow-growing system of things made up of our laws, our commerce, and our stores of all sorts" (616).²² He reminds his audience of their duty to leave an inheritance to their children and those who come after them because of "the law by which human lives are linked together" (613). Felix refers to "that treasure of knowledge, science, poetry, refinement of thought, feeling, and manners, great memories and the interpretation of great records, which is carried on from the minds of one generation to the minds of another" (621). He buttresses his argument with repeated reminders of the "preservation of order" (620-21), which, as with continuity, would be disrupted without "a certain patience on our part with many institutions" (621).

Corresponding to the belief in the slow development of English laws, Felix says that solutions to problems "come slowly, because men collectively can only be made to embrace principles, and to act on them by the slow stupendous teaching of the world's events" (625). Associating the negative with the cutting of timber and the positive with the growth or preservation of trees in the novel sustains the slow-growth argument. Mrs. Transome tells Harold that she had "held every tree sacred on the demesne" as part of preserving the property for his "getting the estate some time, and releasing it." Without the ancient trees the property would lose its worth. "A park without fine timber," she says, "is no better than a beauty without teeth and hair" (95). But the self-interested lawyer Jermyn has no regard for the posterity exhibited in trees. "Not a door in his big house but what was the finest polished oak, all got off the Transome estate," Sampson the coachman says (83). Harold discovers that, with the exception of the demesne, Jermyn had recklessly thinned the existing trees and failed to plan for the future by planting new ones. Harold equally ignores the slow growth of nature when he describes his radical ap-

proach to laws with a metaphor: “I remove the rotten timbers and substitute fresh oak, that’s all” (121). Though the former is commendable in ridding abusive and outdated laws, the latter does not consider the time necessary to grow a quality oak or for society to be willing to accept change according to the novel’s message.²³ In another organic reference, Mr. Lyon recalls the association of radicalism with destruction, citing the nonconformists in the Long Parliament of 1640 who wanted to eliminate root-and-branch the system of Church government by bishops (368, 665 n3).

Moretti argues that the revivalist view of British history that looks backward to restore and maintain the past has resulted in a “fatal immaturity that has nipped in the bud the full modernity of English political institutions and culture and which has gradually emasculated the hegemonic potential of the industrial bourgeoisie and the cultural autonomy of the workers’ movement” (207). Thinning may be reckless as Harold notes, but it also allows for the full development of the remaining plants. Because of this immaturity, according to Moretti, the law became the symbol of the nation’s legitimacy encouraging “the growth of a culture of justice, of a pride in the intangibility of one’s rights, and in the guarantees they provide against the abuses of political power” (207).

In *Whigs and Hunters*, E. P. Thompson described how eighteenth-century law legitimized class power and was the authority of the gentry and the aristocracy: “[T]he law [. . .] may be seen instrumentally as mediating and reinforcing existent class relations and, ideologically, as offering to these a legitimization” (262). Blackstone’s writings on the law of that century confirm Thompson’s analysis. The jurist wrote that to repair and uphold the laws was “a charge intrusted principally to the nobility, and such gentlemen of the kingdom, as are delegated by their country to parliament” (4.33. 436). In his introduc-

tion to the *Commentaries* in which he discusses the study of law, Blackstone refers to the “English nobility and gentry,” “persons of rank and distinction,” and “those of noblest birth and most ample patrimony” as those who will benefit from the introduction of legal studies at Oxford (1.1. 12). The reason some go to Oxford and some work in the fields or factories perhaps is due to what Bagehot described in the nineteenth century as “the most strange fact, though the most certain in nature” (62). The unequal development of the human race he said shows “the relative steps of our long and gradual progress” (62). “Great communities are like great mountains,” he says, “they have in them the primary, secondary, and tertiary strata of human progress [. . .] (63).

While Blackstone glorified the aristocracy to set them apart, Bagehot looked at the bottom rung of the hierarchical ladder. The lower class he says is “scarcely more civilized than the majority of two thousand years ago (62). In *Felix Holt, The Radical*, the novel’s narrator describes the crowd on election day as resembling “oxen and pigs” (421) in their uncalculated actions. When the militia arrived, they “ran confusedly, like terrified sheep” (432) and were driven along by the flats of the soldiers’ swords.²⁴ Felix tells the workingmen in his address that they cannot take matters into their own hands but must accept class distinctions: “No society ever stood long in the world without getting to be composed of different classes” (615). Leisure and instruction make the upper class more “likely to be aware of” the “many precious benefits” of the nation (621). Although the workers should “resolutely declare against the wickedness in high places,” he urges them to “set ourselves also against the wickedness in low places” (624). While the workers concentrate on their own improvement, the upper class must “remember that they hold it [the treasure of knowledge] in trust, and that with them lies the task of searching for new

remedies, and finding the right methods of applying them” (625). He refers to how “the labours and earnings of the past have been preserved and handed down” and that without “the precious material” inherited from the past, “no worthy, noble future can be moulded” (626). In other words, as Fred C. Thomson summarizes Felix’s address in “Politics and Society in *Felix Holt*,” “For people unaccustomed to the proper uses of the precious cultural heritage to seize rashly the alluring prerogative of material wealth, refinement, and leisure, trampling down their traditional custodians, would mean the debasement of the nation” (107). Felix’s message, Thompson says, is that “[h]istory and the collective wisdom of the nation are on the side of the ruling classes” (108). It is also the message of Blackstone and Bagehot.

Moreover, that side is supported by the law and is in control of the law. Blackstone and others promised a universal ideal epitomized in the title of the concluding essay to the *Commentaries*, “Of the Rise, Progress, and Gradual Improvements, of the Laws of England.” E. P. Thompson argues that the eighteenth-century “provides a text-book illustration of the employment of law, as instrument and as ideology, in serving the interests of the ruling class.” The gentry “were content to be subject to the rule of law only because this law was serviceable and afforded to their hegemony the rhetoric of legitimacy.” But, as Thompson explains, the “struggles of 1790-1832” forced the gentry to decide whether to “dispense with the rule of law and exercise force” or “submit to their own rules and surrender their hegemony.” By surrendering to the law, “they threw retrospective light back on the history of their class” and sustained the institution that maintained their position. If reforms were to occur, then they should occur within the framework historically vested by and in the upper class (Thompson 269).

The class-based rationalization of Mrs. Transome's brother, Reverend John Lingon, depicts this theory. Still smarting from the Catholic Emancipation Bill and the expansion of the franchise, he firmly adheres to the old traditions of his county. For example, no sport equates to the now abolished cock-fighting, "under which Old England had been prosperous and glorious, while so far as he could see, it had gained little by the abolition" (109).²⁵ He tolerates Harold's radicalism because "nothing was left to men of sense and good family but to retard the national ruin by declaring themselves Radical, and take the inevitable process of changing everything out of the hands of beggarly demagogues and purse-proud tradesmen" (110). This doubleness of the upper class on the one hand concedes to the necessity of reform while, on the other hand, places them in positions to control reform and protect their interests. "If a mob can't be turned back," Rev. Lingon says, "a man of family must try and head the mob, and save a few homes and hearths, and keep the country up on its last legs as long as he can" (111). The rector looks back to the country's former leaders like William Pitt to justify his means for the saving of the country's ends and warns Harold not to "be attacking the church and the institutions of the country [. . .] you'll keep up the bulwarks and so on, eh?" (121). When Harold publicly announces his candidacy for North Loamshire, Rev. Lingon's introduction carries the crowd over the hump of skepticism about a man from a stalwart Tory family becoming a Liberal by reminding them that the wisdom of the "best Tories" leaves them no alternative but to become the "best Liberals" (295). "There isn't a nastier Horse than your horse that'll jib and back and turn round when there is but one road for him to go, and that's the road before him," he says (295). Rev. Lingon reconstructs radicalism so

that its purpose becomes keeping reform in check, allowing for just enough change to prevent revolution, and preserving the nation in much the same way that Felix does.

Felix and the narrator also speak for the upper-class interest regarding reform by arguing that ignorant power cannot make wise laws because such power would bring “mischief.” In a statement recalling the symbolism of timber cutting, Felix says for the workingman to act with power now would “undo what has been done with great expense and labour, to waste and destroy, to be cruel to the weak” (399). Even “a justifiable resistance” (615), Felix says in his address can “become a damaging convulsion” when the resisters are stupid, narrow, and greedy—the human nature of the workingmen.²⁶ Felix’s “Address to the Working Men” is directed to an audience after the passage of the second reform bill. In fact, he mentions his involvement in the election riot after the first reform bill. Much of the address recapitulates and excerpts his statements in the novel and many of the novel’s events support his later words. At the trial of one of the mob’s participants, a miner named Dredge represents how the lower class is unready to assume power or to change. He blames others and his circumstances for his actions. His behavior moves “most observers” to “the melancholy conviction that there had been no enhancement of public spirit and faith in progress from that wave of political agitation which had reached the Sproxton Pits” (560). Felix’s emphasis on law and order that he urged upon the workingmen in the novel continues in his address. He tells the workingmen to join with the upper class as “guardians of order.” This would actually distinguish them he says, because the workers, unlike the upper class, are not motivated by protection of wealth, property, and comfort. He and the workers, Felix says, “must act as if we understood that the fundamental duty of a government is to preserve order, to enforce obedience of the

laws" (619), rather than as if they were the unthinking beasts described during the novel's riot scene.

According to the novel, no one adapts well to rapid change because it is unnatural. After the election, the rector analogizes Harold's "racing speed" in implementing agricultural improvements to Transome Court with political reform, telling his nephew that the mob's riot has shown that "a Radical won't do for the country." Reform, like nature, cannot be hurried. "The wheat must have time to grow, even when you've reformed all us old Tories off the face of the ground," he says (529). For a similar reason the debate between the Dissenting minister and Anglican rector Augustus Debarry never occurs because it gives credibility to religious sects, something the country is not ready to face. The "fight with a dialectic short-sword," (259) as Mr. Lyon considered it, between the two denominations would be equivalent to lowering a drawbridge and allowing the separations of class, politics, and religious beliefs to mingle.²⁷

The premise of the novel is that although change is inevitable, it is an organic force not to be forced by humans. Whatever the powers behind it, change proceeds at its own speed for the good of the country and without human assistance. Rev. Lingon has faith in the workings of another power: "as if Providence couldn't take care of the country without my quarrelling with my own sister's son" (122). Mr. Wace, the brewer, who is also a member of the Established Church, is leery of the Radicals because, "if we can't trust the government just now, there's providence and the good sense of the country [. . .] there's a right in things. [. . .] And if church and king, and every man being sure of his own, are things good for this country, there's a God above will take care of 'em" (301-02). Although Eliot did not accept a divine force her language in novel imports, as

Bodenheimer writes, that “there is another history above and beyond the one in which we are enmeshed; that it is a history that knows where it is going, and that actions in politics mean something different when they are taken in its light” (228). That force connects also to the novel’s concluding sentence that the young Felix “has a great deal more science than his father” (606).

Similarly, Blackstone’s treatise on the development of English law relies on history that seemed to have been guided by an “extensive plan” (4.33. 436) that acts independently of human intervention “however compounded or from whatever fountains derived” (1.1. 17). Daniel J. Boorstin writes in *The Mysterious Science of the Law* of Blackstone’s organic and providential view of law:

Blackstone held out to the student of law the unsatisfying certainty of being a powerless spectator of a happy story. [. . .] The student thus had to feel humble and reverent toward the tendency of history, for that tendency was no less a part of the laws of nature than was the prohibition of murder. Though he might be sincere in his desire to hasten progress, man had to be aware that he was treading sacred ground and had better leave the laws of nature and of history to work themselves out. (82-83)

However, the novel also suggests that during the process of gradual progress the individual can improve both his internal and domestic well-being. Before they can assume any power, the workingmen must convert their energy from violent self-help that is ineffective and destructive to moral and intellectual improvement. According to Bodenheimer, the novel argues that “genuine change occurs in the understanding of individual persons, which can only then shape new social orderings” (222).

Felix's emphasis on self-knowledge, individual improvement, and individuals helping each other contains many ideas similar to natural law thinking.²⁸ Felix's moral rhetoric adapts religious thinking to the nineteenth-century question of faith and what J. Hillis Miller labeled the disappearance of God by excluding the natural law's Christian and teleological aspect.²⁹ The historical continuity of the natural law tradition survives in the novel through a secular form. According to K. M. Newton in *George Eliot: Romantic Humanist*, Eliot shows that "even if the moral and social values associated with the Christian tradition could no longer find metaphysical justification, these values could be justified in purely humanist and non-metaphysical terms" (50). In the sixteenth-century, Dutch jurist Hugo Grotius asserted what had been hinted at for centuries, that natural law would hold "even if it should [. . .] wickedly be supposed that God does not exist, or takes no concern in human affairs" (qtd. in Sterne xiv; Bix 227). A disbelief in Christianity does not exclude individuals from what Richard Sterne calls in *Dark Mirror*, "secularization of the ethical law of nature" (xiv). The Bible speaks of Gentiles "who have not the law" but "do by nature what the law requires." They will not be excluded from salvation because "[t]hey show that what the law requires is written on their hearts, while their conscience also bears witness [. . .]" (Romans 2:14-16).

Law professor Brian Bix in his essay summarizing natural law theory explains that the literal meaning of the higher law of natural law for some is "that there are law-like standards that have been stated in or can be derived from divine relation, religious texts, a careful study of human nature, or consideration of nature" (223). These standards involve moral or ethical conduct. This traditional natural law theory has been most influenced by Thomas Aquinas' thirteenth-century *Summa Theologica*. Aquinas wrote that

positive law is derived from natural law which means that in some instances natural law “dictates what the positive law should be” while in other instances, it allows for “human choice” (Bix 225). Blackstone incorporates the belief that positive laws derive from natural law in the first volume of the *Commentaries*. Two of the most critical distinctions between positive law and natural law have to do with the moral duty to obey or disobey unjust laws and the extent that natural law participates in positive law.

Because of the novel’s organic orientation and numerous references to nature, it is important to review how nature or the natural participates in natural law theory. According to Bix, this participation can be traced as far back as ancient Greek writers, including Plato and Aristotle, but the Roman orator Cicero’s interpretation is best known. Although, as Bix points out, the combination of natural with law is ambiguous, it can be delineated in three ways: “because they derived from ‘human nature’ (our ‘essence’ or ‘purpose’), because they were accessible by our natural faculties (that is, by human reason or conscience), because they derived from or were expressed in nature, that is, in the physical world about us, or some combination of all three” (224). For classical writers, according to Bix, the source of the higher standard is said to be (or implied as being) inherent in the nature of things” (224). Although for Christian writers the source was a divine being, they “referr[ed] to the rules of nature which express divine will” and spoke of “higher standards inherent in human nature or in the nature of things” (224-25).

The introduction of the minister of the Independent Chapel in the novel and his introduction to the philosophy of Felix Holt through the intermediary of Mrs. Holt, Felix’s mother, presage the passage of Christian natural law thinking to its secular form. Lyon is a devout man who is so absorbed in questions of Biblical interpretations and

scholarship and most importantly, in salvation for another life, that he too often is unaware of the immediate world around him. The inescapable repetition of “short-sighted” to describe him indicates he has too little perspective on the present world to be very effective. He is distinguished from Felix Holt in age, philosophy, and physical appearance. Coinciding with the narrator’s frequent subtle indication of character evaluation through the language of physical appearance in the novel, Mr. Lyon is unkempt in his old clothes. Despite “the purity of his character and a quickness of intellect,” he is easily distracted and disorganized so that Esther must monitor his activities. His “unworldliness and simplicity in small matters (for he was keenly awake to the larger affairs of this world) gave a certain oddity to his manners and appearance” (163).

When Mrs. Holt is announced as a visitor, Mr. Lyon thinks of his inability to “deal with these weak sisters” because “their needs lie too much out of the track of my meditations, and take me often unawares. Mistress Holt [. . .] angers the reason of natural man” (133). The minister receives Mrs. Holt’s complaints about her rebellious son who has demanded that she cease the sale of quack medicines on which she and her deceased husband made their living and unsuccessfully attempts to temper her harshness and self-absorption. When she leaves, Mr. Lyon again refers to “the natural man” whose “ready scorn” is checked by his duty to the “weaker vessel” (138). The natural man of Christian natural law as symbolized in Mr. Lyon, though good at heart, is incapable of contending with the daily world’s details and the needs of his congregation or to persuade them in moral thinking.

Mrs. Holt’s farewell shows her resentment at the minister’s implication that perhaps the wrong thinker is before him rather than her son, “I wish you good-morning, Mr.

Lyon, and thank you, though I well know it's your duty to act as you're doing. And I never troubled you about my own soul [. . .]" (138). She, along with many of the other parishioners, does not hesitate to criticize the minister. His congregation members reject his spiritual teaching for their own and do not treat him with respect. His previous congregation in another town objected to his suggestion that "salvation [. . .] might extend to unconscious recipients of mercy" (174), an allusion to Paul's message to the Romans previously cited. In Treby his church members' "reverence was often mixed with growling, and was apt to be given chiefly to an abstract parson who was what a parson ought to be, so the good Dissenter sometimes mixed his approval of ministerial gifts with considerable criticism and cheapening of the human vessel which contained these treasures" (158). Mr. Lyon is not served the best tea in their homes or provided with the best accommodations during out of town visits, and he is laughed at behind his back. He is accused of laxity in raising a daughter, Esther, who appears to lack the humility of one from a household beneath the "substantial householders who kept him" (158). More importantly, though Esther attended some of his sermons, to his sorrow she maintains a distance from his teachings and declines to become a member of the congregation.

At fifty-eight Mr. Lyon's reputation is declining, having failed to meet the reputation and aspirations he and others had for his career before he met Esther's mother. The leaders of the Anglican Church, Rev. Lingon and Rev. Debarry, are kindly, but neither intent on nor effective in winning converts. Like Mr. Lyon, they are men near the end of their careers. Neither rector is pictured in his church. Privately, both talk more about politics than they do about religion. Their public appearances are political or in their capacities as magistrates of their respective communities. As officials in local government, their

attempts to disperse the election day crowd are ignored. Rev. Lingon, though a community favorite, is “[a] clergyman thoroughly unclerical in his habits [who] had a piquancy about him which made him a sort of a practical joke” (294). He usually hides his cravat with a colored bandana.

Rev. August Debarry, “much respected for his affability” (124) is “a fine specimen of the old-fashioned aristocratic clergyman, preaching short sermons, understanding business, and acting liberally about his tithe” (127). He dismisses the Reformation as the nonconformists making scruples about trifles. Like Rev. Lingon, the narrator associates him with protecting and preserving the English heritage. His rectory is “among the bulwarks of our venerable institutions—which arrest disintegrating doubt [and] serve as a double embankment against Popery and Dissent [. . .] (329). He refuses to debate Mr. Lyon on “the constitution of the true church” and “their bearing thereupon of the English Reformation” (261) because, in words that reflect the spirit epitomized in Blackstone, “[t]here can be nothing more retrograde—losing all the result of civilization, all the lessons of Providence—letting the windlass run down after men have been turning at it painfully for generations” (330). But he agrees to substitute a young curate as an action “the least compromising to the church” (346). That substitute, Sherlock, fails miserably as a representative of the established church in his lack of confidence and flight from the town. Neither he nor Rev. Lingon can publicly defend the church when asked for more substance than repeated platitudes, meaningless phrases, and abstractions on matters such as the debate on baptism by sprinkling rather than immersion that are the trivia for which Rev. Debarry criticized the nonconformists of the Reformation. The Anglicans thus are ineffective as purveyors of moral conduct.

Continuing to exclude any possibility of Christianity as a source of moral guidance, Eliot removes the one character who appears unencumbered by the past or questions of parenthood and whose integrity, public acceptance, respect for others, and political ability establishes him as a potential leader intent on doing the public and country good. Instead of remaining as this hope for the future, Philip Debarry converts to Catholicism. His conversion and subsequent death in Rome become a literal and figurative desertion of his family and country and a rejection of his inheritance and duties as a member of the upper class.³⁰ Unlike other characters in Victorian novels who are exiled because their violence or otherness threatens the conventional order, his threat is subtler but equally undermining of established conventions. He is “one of the new Conservatives”³¹ whom his father cannot understand. He also willingly breaks down barriers of class and religion by treating a servant “more deferentially than an equal” (308) and acknowledging in Mr. Lyon a “worth in the man beyond his class” (332). He “defend[s] the casuists” (331). Contrary to his uncle’s wishes, Philip facilitates Mr. Lyon’s request for the public debate. The debate is dangerous because it would open a dialogue between the two denominations and give more standing to the Dissenters than the Anglicans concede. Indeed, old friends who had been separated by religious differences use the meeting as an opportunity to be with each other again.

Philip’s exemplary conduct and wisdom affects his father, Sir Maximus, and his uncle, Augustus Debarry, who defer to and depend upon the younger man for guidance. His uncle says his “character [is] a possession to all of us” (332). But his voice is “modulated by delicate health and a visitation of self-doubt” (249). When Augustus Debarry joins with his brother to obtain Felix’s pardon, he knows he is following his nephew’s

wishes—"Phil would be on that side"—as if the young Debarry were no longer of the same world instead of in London for his duties in Parliament. Despite the necessity of eliminating Philip as a threat to convention, his character is not developed perhaps less because of his threatening tendencies³² than because he is a literary device to include Catholicism in the novel's argument for the ineffectiveness of Christianity and its leaders.³³

Even though the narrator seems intent on neutralizing any representative of Christianity, Martin J. Svaglic correctly points out in "Religion in the Novels of George Eliot," that in portraying Christianity, Eliot is "usually respectful and often, especially with dissent [. . .] warm and affectionate, since dissent was more actively benevolent than the Established Church [. . .]" (289). The gentle disarming of any religious obstacle to Felix's secularism and the introduction of Felix and Mr. Lyon prepares the way for what Jerome Meckier calls a "cultural transmission" from Mr. Lyon to Felix that indicates "an operation previously spiritual and sacred has become physical and secular, although it retains its religious aura" (229). In their perspectives on their fellow human beings, Felix replaces the spiritual life of the future propounded by Mr. Lyon and his Milton with the Caliban of Shakespeare and the earthly physical present (369). "I care for the people who live now," Felix says, "and will not be living when the long-run comes" (362). Felix, who abstains from church attendance and refers to Mr. Lyon's "awful creed" (156), is young, healthy, intelligent, and self-confident. He possesses above average physical strength and towers above most men. The "peculiar stamp of culture" on his face made "a very roughly-cut face worthy to be called 'the human face divine'" according to the narrator (398). Everything about his appearance is exceptional and worthy of respect and attention. He is like a human god, and Esther provokes biblical overtones when she thinks,

“[h]e was like no one else for her: he had seemed to bring at once a law, and the love that gave strength to obey the law” (369). Esther eventually decides that to turn her back on him would be equivalent to turning her back on heaven (591).

Felix is not a man of God whose duty it is to spread God’s word, but the god himself, speaking his own word. This does not mean he is an earthly divinity entitled to worship despite Esther’s love and enthusiasm. His portrayal directs the perspective of religion in this novel to humanity and the physical, actual world, not any transcendental element. It differentiates Felix from the Dissenting minister who says, “our powers are being trained not only for the transmission of an improved heritage, as I have heard you insist, but also for our own entrance into a higher initiation in the divine scheme” (342). The transmission Meckier cites concludes at Felix’s trial when Mr. Lyon admits that he wished Felix were a member of his congregation because “I should then feel that the great virtues and the pure life I have beheld in him were a witness to the efficacy of the faith I believe in and the discipline of the church whereunto I belong” (567). However, that cannot occur in the novel; its secular orientation is on the present and on individual moral worth.

The present world for Felix “is not a very fine place for a good many of the people in it” (143). He says he is “a man of this generation” and he intends “to make life less bitter for a few within my reach” (367). Instead of ending pain in a life hereafter, he focuses on a better world on earth bordering on a utopia for future generations. He thinks he is one of those “called to subject themselves to a harder discipline, and renounce things voluntarily which are lawful for others” (363). Unlike Philip, his calling requires not a withdrawal from the community, but an aggressive involvement in it with no antici-

pation of an earthly or heavenly reward. In effect, Felix personifies what Sterne defines as “the heart of the natural law tradition [. . .] a concern for the common weal [. . .]” (258). Still, in accepting the torch from Mr. Lyon, he simply replaces the pacification of expectation of an afterlife through salvation with the distant hope of a better earthly world for future generations.

Aquinas wrote that through reason human beings learn the natural order of things—“a natural inclination to its due act and end” and to discern what is good and evil. The norms of natural law are “the rational creature’s participation in the natural order” (2.1.93.2 208-09). In this respect, natural law is concerned with functionality. Blackstone states that justice and happiness derives from following the natural law precepts of “fitness or unfitness of things” (Intro. 2 41). Felix’s address displays this functionality: “a society, to be well off, must be made up chiefly of men who consider the general good as well as their own” (614). The classes of society, he says, are like “the human body, with all its various parts depending on one another” (614-15). Thinking of class functions instead of interests, he says is “the only safe way by which society can be steadily improved and our worst evils reduced” (616-17). This is “taking the world as it is,” he tells the workingmen (616) or working with “human nature” (616) so as to “shape our means more and more reasonably towards the least harmful, and therefore the speediest, attainment of our end” (619). In his speech to the crowd gathered for nomination day, Felix emphasizes the “nature of things.” He argues that “[t]he way to get rid of folly is to get rid of vain expectations, and of thoughts that don’t agree with the nature of things” (400). He tells Esther that he wants “to stand up for the lot of the handicraftsmen as a good lot, in which a man should be better trained to all the best functions of his nature” (366).³⁴

Others in the novel also adopt the idea of functionality and working together toward a common end, although more with an idea of pragmatic self-preservation than of self-improvement. Because “the whole duty of a Tory was a matter of conscience with him,” Sir Maximus argues, “We are bound to regard every man of our party as a public instrument, and to pull it all together” (180). Harold’s defection to the Radicals has extensive ramifications beyond the political. Sir Maximus pronounces that “he’s got neither religion nor morals left” and “can’t know anything about English politics” (182). Furthermore, the baron, not knowing how prophetic he is, claims Harold jeopardizes his position as a landowner. Similarly, one of the local newspapers equates Harold’s candidacy to the disassociation of his family from its “attachment to right principle, and with the maintenance of our constitution in Church and State” as well as a “laxity of feeling towards Protestantism” (195). To assault conventional Tory politics is equivalent to blasphemy.

In the same way that the historical-inheritance argument of slow growth retards rapid change, so do claims of functional morality. Both use the organic process to buttress their position and rest their call for order upon a natural foundation that ties to nationalism. In a society in which similar language has been praised for centuries, as Blackstone and others attest, these arguments are irresistible, despite their questionable ethics in enclosing the lower class within strict boundaries and depriving them of power. For Felix, Sir Maximus, and the writer for the newspaper, the established national order is so encompassed within their concepts of reason, common sense, and good conduct that to resist it is against nature, absurd, and immoral.

Felix proposes educating the lower class so that resisters will use right reason and know their function.³⁵ Esther and the working class require an education, not in order to become questioning critical thinkers, but “in order to bring them into the national fold” (Lesjak 95). Felix’s arguments work at shaming both Esther and the workingmen. This is the technique he urged in his speech on the stump after the nomination process in which he says that “the greatest power under heaven [. . .] is public opinion—the ruling belief in society about what is right and what is wrong, what is honourable and what is shameful” (401). He begins his address with rightly placed criticism of politicians and government but moves swiftly to embarrassing the working class for their insobriety and irresponsibility toward their families. He also humiliates Esther into thinking she is selfish, interested only in trifles, and inconsiderate of her stepfather’s virtues. The working class through the franchise and Esther through her refined good taste, beauty, and eligibility for marriage seek upward mobility. Additionally, Esther is half-French with a foreign aspect to her. If Esther and the workingmen are to be enfolded into English society, they must be tamed and dissuaded from unnatural behavior. Felix views his Glasgow experience as a lesson in the futility of rising above one’s class. Education, he argues, enlightens individuals about who they are and guides them to their function. Felix’s second argument from natural law concepts about the best self and functionality directs thinking away from external benefits, which he thinks can lead to danger and disruption, to a fixation on internal examination.

The only scenes of Felix’s teaching of the working class in the novel are through his speeches and school for some neighborhood boys. His teachings of Esther, though sometimes like speeches, are less political but a one on one exhibit of what he wants to

be, “a demagogue [. . .] who will tell the people they are blind and foolish, and neither flatter them nor fatten on them” (366). While her stepfather’s attempts at Esther’s conversion were based on his fear of her unfitness for heaven, Felix’s words attack her “self-respect and self-satisfaction” because they infer that she accepts the “trivial, narrow, [and] selfish” when her best self is capable of a higher function” (214) though not of a higher class. “I distinctly see that I can do something better,” Felix says. “I have other principles, and should sink myself by doing what I don’t recognize as the best” (210). This is what he wants Esther to understand, and his words burn into her consciousness as “self-criticism” and “inward questions” previously unknown to her. Her continued associations with Felix convince her that there was “something greater and better in him,” and she absorbs his words because, as the narrator says, “so incalculable is the effect of one personality on another” (327).

As she becomes more subject to Felix’s influence, the text reveals a slight tension between the characterizations of Esther and Felix. Although she is part of the transmission from the religious Mr. Lyon to the secular Felix, she emerges as separate and distinct from Felix in her implementation of natural law concepts, while he remains behind with only his preaching.³⁶ The natural law concepts have passed from the prescriptive in Felix to the descriptive in Esther. Her character seems to take over the novel. She becomes more likeable and appears superior to Felix. During several parallel scenes, she and Felix respond differently to similar situations and she undoubtedly emerges more aware of herself and others and more efficient in inspiring others to adopt moral conduct.

The first indication of her participation in the transition from Mr. Lyon to Felix occurs in the exchange between Mr. Lyon and Esther after Mr. Lyon revealed the circum-

stances of his marriage to Esther's mother. Esther recognizes that the life of a woman raised in luxury reduced to living in poverty with a Dissenting minister because in her own way she knew that it was the right thing to do "must be the best life" (355). Annette reciprocated Mr. Lyon's sacrifice in her change of heart and willingness to help him. Esther is pleased with this discovery because it is "where one bears and does everything because of some great and strong feeling—so this and that in one's circumstances don't signify" (356). She is thinking of Felix's renunciation and perhaps her own eventually. From a natural law perspective, this best life represents the perfect juncture of will and right reason with function. Her stepfather's unresponsive reply that "the feeling that should be thus supreme is devotedness to the Divine Will" disturbingly "did not fit on to the impressions wrought in her" (356). Soon after this incident, Felix expands on Esther's discovery in telling her that "the finest fellow of all would be the one who could be glad to have lived because the world was chiefly miserable, and his life had come to help some one who needed it" (361). Another example of the transmission from Mr. Lyon to Felix is the different approach Mr. Lyon and Esther take to her inheritance. Esther's view of her inheritance is infused with concern for the disruption of the Transomes. Her stepfather's opinion is that it represents a "providential arrangement not to be wholly set aside" (504) so that it can be used as "a means of honouring and illustrating a purer form of Christianity" (506)

The final example of the transmission, after which Mr. Lyon recedes into the background of the novel and Felix is only slightly less visible, occurs during Felix's trial. The novel's practice session for Esther's testimony occurs at Transome Court after Mrs. Holt appears uninvited and demands that the gentry intervene on behalf of her son. Her

rantings expose to Harold the close relationship between Esther and Felix. As a result, Esther's conscience forces her "to speak the truth about the man" to Harold. She describes Felix's "nobleness" (537), as she will later at the trial. Harold's response is that her "testimony to any one is enough for me" (538). In this scene, Esther felt "her own words were bringing her a clearer revelation" (537). That revelation emerges as her testimony. Her appearance before the court is the commitment Mr. Lyon prayed for, but it is not to the church: "Her clear voice sounded as if it might have done if she had been making a confession of faith." In the courtroom, "[e]very face looked grave and respectful" in recognition of the sacredness of her action (572).³⁷ Not only does she supply valuable testimony in accounting for Felix's conduct before the riot, but she also tells of his "kind feeling towards others," that his character was not one "to join in a riot or to hurt any man," and that his noble nature and tender-heartedness prevented "any intention that was not brave and good" (573).³⁸

Even though her action is not the profession of faith her Christian stepfather sought, it rings of traditional natural law theory. The references to "necessity," "one irresistible impulse for her heart," and the union of her "passion and her reverence for rarest goodness" (571) represent the aim and function of natural law thinking. It is self-knowledge and conscience spontaneously merging so that the response of the individual is not after choice, mediation, or considering alternatives but according to an incontestable awareness of what is right. Esther's synthesis is the culmination of Felix's teachings from "the first self-questioning, the first voluntary subjection, the first longing to acquire the strength of greater motives and obey the more strenuous" (369). Overcoming her lifelong "dread of being ridiculous" (573) in public, Esther speaks because "the voice of

right and truth had not been strong enough" (571). The narrator's identification of Esther's surprise testimony as "a necessity for action, rather than a resolve to act" (571) clearly distinguishes Esther's immediate necessity from Felix's deliberated necessity with which he justifies his renunciation: "It is the old word—'necessity is laid upon me'" (363).³⁹ However, Esther would not have acted upon her internal synthesis if Felix's teaching had not opened her vision to a denial of her ego and a receptiveness to her conscience.

The same deliberation and resolution separates Felix's earlier actions during the riot from Esther's action at the trial. Felix was first "swayed by the crowd." Then he could no longer be an observer when the crowd reached the inn and he decided to "counteract" the outrages. "His mind was busy with possible devices" to prevent injury and destruction. He acted "towards a plan he was bent on" (426) using his "rapid senses and quick thoughts" (427) so that he "chose between two evils" when he struggled with and disarmed Constable Tucker. Clearly, the narrator presents Felix, although "his blood was up," (427) as calculating and planning his actions rather than subject to an overwhelming synthesis of his consciousness and conscience. Another difference in the two actions is the intent of the actors. Esther is not thinking of the consequences of her deed as much as a sense of the only right thing that can be done in the situation so that whatever the concrete consequences, the abstractions of truth and right are satisfied. Felix seeks concrete results, the control of the mob, and the prevention of physical injury and damage to property. It is an ends justify the means kind of reasoning. The final distinction is the consequences of Esther and Felix's acts. In attempting to prevent the death of Spratt, the hated manager of the coal-pits, and property damage, Felix implements the same results on a

different person and different property. In performing the only right thing, Esther shows the courtroom spectators the consequences of her synthesis.

In yet another comparison between Esther and Felix, their speeches before the court evince Esther's development and Felix's stasis. The judge might understand Felix's intellectual explanation, but not the jury. Instead of talking to the community of jurors, he becomes didactic and unsuccessfully attempts to elevate their thinking to the superior level he asserts. The narrator approves of his enthusiasm and stamina in speech making: "The sublime delight of truthful speech to one who has the great gift of uttering it, will make itself felt even through the pangs of sorrow" (564).⁴⁰ His conduct appears contrived. In contrast, Esther's testimony was briefer and spoken very clearly in a manner that everyone, at all levels, understood and knew was sincere without her saying so. Both her spontaneous conduct and her speech create a moving impression. Although they do affect the legal verdict either, as Harold later tells her, "You made all the men wish what you wished" (589). That wish results in Felix's pardon. Felix's intentions are good, but he fails. Esther succeeds, not in influencing the legal verdict, but in affecting Felix's prized public opinion that leads to his pardon.

Another aspect of natural law present in the trial is Felix's assertion of the right to disobey unjust laws. Aquinas, relying on Augustine, explains in the *Summa Theologica* the instances in which laws are not binding in conscience (2.1.4 233). These are what Felix calls "sacred feelings" that make it "a sacred duty" to resist (565). Similarly, Blackstone told his audience that they were bound to transgress any human law that violated the law of nature or else they would "offend both the natural and divine" (Intro.2 43). Importantly, for purposes of the novel's criticism of resistance, to detail specifically when

and only when the law must be disobeyed implies an equal moral obligation otherwise to uphold the law as an institution of society.

Mr. Lyon, once more acting as a sort of nineteenth-century Milton,⁴¹ first introduces the concept of civil disobedience when he instructs Felix that “the right to rebellion is the right to seek a higher rule, and not to wander in mere lawlessness” and warns Felix “not to say that liberty is licence.” The minister says that, “[T]rue liberty can be nought but the transfer of obedience from the will of one or of a few men to that will which is the norm or rule for all men” (242). Although Mr. Lyon considers church-rates an injustice, he does not support “that passive resistance to a legal imposition which had been adopted by the Friends (whose heroism in this regard was nevertheless worthy of all honour)” (270). Felix’s secular natural law views emerge during the trial in his statement that although his excuse for attacking Tucker was to prevent the constable’s disabling him from his drive to save lives and property, he does not want the court to think that he would never assault a constable “if I saw him doing anything that made my blood boil.” Felix explains that, “I reverence the law, but not where it is a pretext for wrong, which it should be the very object of law to hinder. [. . .] I hold it blasphemy to say that a man ought not to fight against authority; there is no great religion and no great freedom that has not done it, in the beginning” (565). Considering Felix’s position as a defendant his gratuitous and confusing introduction of a statement about civil disobedience seems misplaced. He specifically says his action against Tucker was not in response to an unjust law. He is making the statement to prevent any inference that he is relying on civil disobedience as a defense. Harold describes “that whole peroration of his, which he ought to have left unsaid”

(566) as a “blunder” (565). He tells Esther that the jury “won’t understand it, or rather will misunderstand it” and “it has soured the judge” (566).

Esther surpasses Felix from a natural law aspect in her reliance on the synthesis of the right reason of her thinking and the conscience in her heart. Felix too often relies on his mental faculties while unnaturally denying his heart. He cannot profess his love for Esther because it does not fit with an intellectual concept of how he must function. He speaks of “cleaving to a purpose he sees to be best” (558) even after his actions at the riot failed. Esther’s inheritance is “a fitting lot” for her from his perspective because he does not consider that the best self and true functionalism must combine right reason and conscience. Esther cannot consider the fitness of her purpose exclusive of what Felix would call “the lot” of others.

Esther’s ultimate test concerns her inheritance. Contrary to its argument for slow external change, the novel depicts internal change as occurring quickly: “life is measured by the rapidity of change, the succession of influences that modify the being; and Esther had undergone something little short of an inward revolution. The revolutionary struggle, however, was not quite at an end” (591). Rapid internal change occurs also in Mr. Lyon’s leaving the church for Esther’s mother and Harold’s gaining understanding after learning the identity of his true father.⁴² Esther was tempted to marry Harold because it would resolve the hesitation she felt at turning out the Transomes: “if something would come and urge itself strongly as pleasure, and save her from the effort to find a clue of principle amid the labyrinthine confusions of right and possession, the promise could not but seem alluring” (524). She finds a “dullness” in the ease of Transome Court and Harold seemed “an air of moral mediocrity to all her prospects.” Both seem to nullify “the higher ambi-

tion which had begun to spring in her" (524). She cannot shake the voice of her conscience that reminds her of something higher. However, if Felix's renunciation of his love for Esther is a necessity for him to accomplish his work, what he sees as following his best self's function, then Esther's renunciation of her love for Felix and accepting a life at Transome Court, less austere but equally difficult, might also be a necessity in Felix's terms. Further complicating, the "repugnance" (592) she felt at turning the Transomes out, is a desire to stay with them in the hopes of bringing them some comfort. Accepting Harold would parallel the revitalization he wants to bring to the property through a revitalization of the Transome family in their children. Converting the property to another good use as something that follows her stepfather's belief in its providential implications could equally be a necessity. Either approach counters the text's message against upward mobility and gradual change. These options provide a function for her without her determining her own fitness for purpose and "without paying a heavy price" (591) that the narrator and Felix argue must encumber "the best thing that life could give" or "all that is greatly good" (591).⁴³ She has no promise that if she returned to her stepfather's home Felix would marry her. Even if Felix fulfills her hopes, "she knew that she pledged herself to meet high demands" (592). Although the novel has been building toward Esther's ultimate confrontation with herself, the narrator takes pains from a literary position to make Esther's internal turmoil not only realistic, but also consistent.

Mrs. Transome's misery and her coming to Esther for mercy tilt the decision: "The dimly-suggested tragedy of this woman's life, the dreary waste of years empty of sweet trust and affection, afflicted her even to horror. It seemed to have come as a last vision to urge her towards the life where the draughts of joy sprang from the unchanging

fountains of reverence and devout love" (597). The implied assumption, though not entirely credible, is that despite Esther's enlightenment, her life at Transome Court would be as tragic as Mrs. Transome's. Esther's decision is not prompted by a sympathetic imagination in which she considers the consequences of her acts on others. Her decision is based on what she sees in the present of Mrs. Transome's life and her imagining herself in the same position. Her sympathetic imagination has turned inward to herself. The text is unclear why she fears, knowing the different environments in which she and Mrs. Transome had been raised, that she would be susceptible to the same character faults as Mrs. Transome.

The text also is unclear why Felix, upon his release from prison, no longer adheres to his resolution to never marry. His surprise at seeing Esther back in the Dissenting minister's home provides Felix another opportunity to lecture his best pupil and question her thinking even as he proposes marriage. He touches the curls he wanted to cut off when they first met; at his implication that they are extravagant, Esther tells him they are natural. With "a grave look of appealing submission" (602), she reminds him that her plans to distribute her income require his approval. In this way, Felix wins back temporarily the center stage in the novel that he lost while in prison. His lack of appreciation and praise for her strength in court and the disposition of her inheritance is conspicuous as he doubts her sincerity and understanding of what a life with him will be like. Finally, at Esther's words that her husband must be "greater and nobler than I am," he admits that he will "be forced to be a much better fellow than I ever thought of being" (603). Esther's moral conduct has touched him now and the novel can move smoothly from the last

chapter to the epilogue that opens with Esther the center of attention once again at their wedding.⁴⁴

Elizabeth Ermarth notes that many scholars conclude that Eliot “derives the notion of moral imperative from Christianity while she otherwise rejects Christian beliefs” (274).⁴⁵ As previously stated, one of the conflicts between natural law and positive law theorists is the extent to which natural law should participate as a prescriptive and descriptive guide to positive law. In a broad perspective, the text presents this issue in the relationship of church and state, its portrayal of lawyers and the public opinion of law and lawyers. The novel’s statement about the infusion of morality into these legal perspectives coincides with what in *The Art of George Eliot*, W. J. Harvey calls her concern “solely with man’s moral struggle in this world” (47).

Membership in the Established Church and affiliation with the Tory party unites religion and politics for purposes of the status quo. Both Anglican rectors are magistrates, a position only open to members of the Church of England (Moylan 340). Their position entitles them to dispense the law on some occasions. Rev. Lingon speaks publicly on behalf of Harold’s candidacy after some soul-searching about how to justify his change of political endorsement and then later retracts his acceptance of radicalism. Both rectors are actively involved in the election day activities. A humorous example of the blend of religion and law is the definition of excommunication offered by Sir Maximus Debarry’s butler who calls it “a law term [. . .] meaning that a Radical was no gentleman” (187). Rev. Debarry considers the political sermons of the Dissenting minister “as pernicious sources of intoxication as the beerhouses” (127) and teaching “hucksters and tape-weavers that it’s their business to dictate to statesmen” (248). He wishes in his position as

a magistrate that the law entitled him to censor Mr. Lyon's politics from the pulpit. Rev. Debarry is not a hypocrite in seeking to silence Mr. Lyon while being himself actively involved in law and politics. His criticism is the content of the Dissenting minister's words which challenge the established alliance, causing "mischief" by "mak[ing] the ignorant multitude the judges of the largest questions, both political and religious, till we shall soon have no institution left that is not on a level with the comprehension of a huckster or a drayman" (330). He views a lessening of class divisions as a dumbing down of society's institution or making them subject to society's lowest common denominator.

While the Anglicans view law and religion without question as blended along with government into a concept that establishes their nation's identity, some Dissenters, most prominently Mr. Lyon with his traces of Milton, consider the fusion of politics or the law with religion or morality a vehicle for "the cause of truth and freedom" (127) and a means to obtain political and religious liberties. Harold, as the Radical candidate, visits Mr. Lyon seeking his endorsement but not the other candidates or their representatives. Despite criticism from even some of his own congregation, Mr. Lyon disputes the contention that "the pulpit is no place for teaching men their duties as members of the commonwealth" (146). He is against the ballot because "it would be futile as a preservative from bribery and illegitimate influence" and because it prevents voters from having to experience a test of conscience in publicly indicating their preference.⁴⁶

However, Mr. Lyon opposes the part of law that litigates disputes explaining that "the practice of our courts is little consistent with the simplicity that is in Christ" (481). Disputes should be resolved through dialectic between the parties, another similarity to Milton, as shown in Mr. Lyon's request for a debate on the differences between the reli-

gious philosophies. His one consultation with a lawyer, asking Jermyn to find information about Esther's father, jeopardizes Esther's inheritance because it gives the lawyer information to blackmail Harold. Although the public opinion of lawyers in the novel says little for their integrity, it has not shamed the lawyers into modifying their conduct. As the narrator says, "A provincial lawyer in those old-fashioned days was as independent of personal esteem as if he had been a Lord Chancellor" (307). The narrator refers to the legal profession as "a profession where much that is noxious may be done without disgrace [. . .]" (317). In explaining why Felix does not want the assistance of counsel, Mr. Lyon says he has "an averseness to a profession wherein a man may without shame seek to justify the wicked for reward and take away the righteousness of the righteous from him" (482). In fact, as the coachman Sampson says, "It was not so well for a lawyer to be over-honest, else he might not be up to other people's tricks" (83). It was such behavior of a lawyer named Durfey that began the dispute over Transome Court: "As for right or wrong, if the truth were known, the very possession of the estate by the Durfey-Transomes was owing to law tricks that took place nearly a century ago, when the original old Durfey got his base fee," according to the Transome's current lawyer, Jermyn (317).⁴⁷

Other than the narrator, the main moral voice describing lawyers comes from Philip Debarry's valet, a man with a mysterious background whose surname is Christian. The butler at Treby Manor jokes about "a party [. . .] calling himself a Christian and being anything but it" (189). Christian exhibits few moral attributes, was once the subject of many legal difficulties himself, and holds the key to Esther's identity. Christian attributes lawyers' lack of civility to "this cursed conjuring secret of theirs called Law" that makes

them “think everybody’s frightened at them” (310). For Christian, “secrets were often a source of profit [. . .] (347), and he intends to gain from what he knows about Esther’s father. His patient and intelligent behind the scenes work is for his own benefit, yet he does stymie the evil of Jermyn’s blackmail and Johnson’s financial gain and brings good to Esther and Harold. He warns Mr. Lyon to avoid Jermyn’s help in finding Esther’s father: “I am much mistaken if there isn’t a lawyer who’ll take precious good care to keep the law hoodwinked. And that lawyer is Mat Jermyn” (351). He tells Harold “where the lawyers are on the scent you can never be sure of anything long together” (454).

Jermyn receives the brunt of negative opinion of lawyers in the novel. One of Debarry’s tenants jokes that Jermyn could win a contest against the devil. Sir Maximus’ butler retorts to the statement that the Transomes always won their lawsuits, “And always lost. [. . .] I think we all know the nature of law” (186). His listeners share the public opinion that Jermyn’s wealth came from his self-interest in managing the Transome properties. The lawyer, impervious to public opinion, exhibits no humiliation that would modify his conduct or prompt any regret for his past acts. According to the narrator, “[m]oral vulgarity cleaved to him like an hereditary odour” (202). Jermyn “had had to do many things in law and in daily life which in the abstract, he would have condemned; and indeed he had never been tempted by them in the abstract” (205). He commits adultery with Mrs. Transome, a client, which results in Harold’s birth. Through blackmail he obtains Mrs. Transome’s silence about that past for more than thirty years while he takes timber from the property for his own use and encumbers the property with mortgages and annuities ultimately payable to him. Because of Jermyn, Esther’s real father is wrongfully imprisoned. His death in prison ends the last of the Bycliffe v Transome litigation. Fi-

nally, Jermyn attempts to continue the blackmail of the Transomes by threatening to reveal the heir to the property if Harold does not drop the suit he has filed against Jermyn.⁴⁸ Although he admits to having “stretched my conscience” (515), Jermyn justifies his actions as for the benefit of the Transomes whom he thinks are forever indebted to him literally and figuratively in the papers he holds against the property and for the extent of his efforts at keeping Transome Court in their possession. Jermyn thought only of his “own freedom from obligation and the indebtedness of others towards him” (513).

John Johnson, Jermyn’s subordinate who worked as an electioneering agent in Harold’s campaign and was responsible for inciting the Sproxton miners, is equally adept at turning situations into his own advantage. He also works for Harold’s opponent, Garstin, using Tommy Trounsem to paste up some handbills that support Harold and others that hint at his true parentage. Because Felix has repeatedly and publicly attacked Johnson’s bribery of the miners, the revengeful Johnson tampers with the witnesses against Felix “so that “their strong perception and memory” in their testimony “was due to a fourth mind, namely, that of Mr. John Johnson” (563). He extends his “doubleness” (385) by countering Jermyn’s plan to use his knowledge of Esther’s identity to control Harold. After he obtains the necessary facts from Christian, he enlists a law firm other than the one he knows handled the Bycliffe’s claim in the past to notify Esther of her inheritance and to solicit her as a client. In this way, Johnson defeats Jermyn, and he will receive a commission from the firm’s profits if they represent Esther’s claim.

The only lawyer in Treby to escape ill repute is Mr. Labron, who handles the Debarry affairs, and is mentioned only occasionally as representing their interests during the election. Perhaps the Debarry power and wealth protect him, but he is not associated with

any of the selfish practices that occupy Jermyn and Johnson. Mr. Labron may have no more higher moral standards than the other lawyers, but he is not shown as part of the “push and scramble for money and position” (362) that Felix mentions as part of the upward mobility climb from one class to another. The Treby merchants appreciate that lawyers are part of a new professional/business class who participate not only in politics, but are part of the new economy. When one of the townspeople suggests that lawyers seem to have a hand in everything, another responds “that lawyers must live.” The original speaker returns that he “did not see that so many of them need live, or that babies were born lawyers.” His associate “felt that this speculation was complicated by the ordering of side-saddles for lawyers’ daughters” (371).

Significantly, the upper class figures in the novel do not disparage Jermyn for his vices. For them, the concept of what it means to be a gentleman has replaced what it means to be virtuous, or they confuse virtue with gentlemanly conduct and social position. Jermyn is an outsider who arrived in Treby to make money by developing a spa. His vocabulary is not the tongue learned from his family and class but something he taught himself. He “knew the dictionary by heart, and was probably an illegitimate son of somebody or other” according to the narrator (125). Rev. Lingon says Jermyn is “one of your middle-class upstarts who want to rank with gentleman, and think they’ll do it with kid gloves and new furniture” (109). Harold recalls that the Lingons, Transomes, and Debarrys always considered Jermyn “a man of business” and “did not regard him as a gentleman or their equal” (112). Jermyn’s moral vices as a lawyer are tolerated like the silence that surrounds his past with Mrs. Transom. However, his attempt at upward mobility cannot be tolerated. His representation of a Radical ends all expectations of ever winning Sir

Maximus' favor because it is so ungentlemanly. For this reason, some of the invited guests shun his daughter's birthday party and he is pushed out of the meeting about Felix's pardon, not because of his professed immorality, but because, as Sir Maximus says, "This is a meeting of gentlemen" (581).

Both Jermyn and Johnson, though handsome and well dressed, are reviled by the narrator and other characters for their appearance in variations of the word "sleek," as if they physically indicate their newness to prosperity and the absence of depth from a family heritage.⁴⁹ Jermyn and Johnson convert their gains into emulating the upper class in splendid homes and material goods, conduct, dress, and education for their children. Johnson "wished his children to be more unquestionably genteel than their father [. . .]" (384). According to the novel's epilogue, the disgraced Jermyn exiles himself to the continent. However, the novel is silent regarding what public opinion attributed to his ruin, his personal or his professional misconduct or both. Johnson's prosperity continues and remains a puzzle to moralists who won't mention his wealth and London home with two drawing rooms because it contradicts the maxim that Divine Providence rewards virtue. His misconduct does not disturb them as much as its consequences in material success.

This review of the clergy, politicians, and lawyers makes several points about the participation of morality in their affairs. The rectors only refer to natural law in their nationalistic blend of church and government. Although the rectors are an active force in politics, there is no indication that they exert natural law thinking either prescriptively or descriptively in their political participation or contact with law makers. Their church is not a source of moral conduct, but a part of the nation's bulwarks. The novel depicts Jermyn and Johnson, the lawyers, as completely void of any integrity that would result from

natural law thinking. Thus, the representatives of the church and the representatives of the law, both lawyers and lawmakers with the exception of Philip Debarry, are relatively destitute of considerations of morality, and it is to no one's great concern except Felix and Mr. Lyon.⁵⁰ Of the clergy, only Mr. Lyon considers natural law as a prescriptive force in law.

Ironically, a novel centered around a time of extensive changes in the laws, actively situates positive law as secondary to a moral code of conduct. While framed around the complexities of inheritance and real property laws, the novel makes no comment on their moral content or effect. The only comment on Felix's trial is about the judge's severity. The trial serves mainly as a vehicle for Esther's public confirmation and a demonstration of the widening circle of sympathy.

The moral laxity or amorality of many of the characters representing the nation's institutions—the law, the church, the aristocracy—supports the overall implication of Felix's teaching, raising the moral standards of the people beginning with the working class. When that happens, as seen in the novel mainly through Esther, individuals not only think about themselves but others. Esther rejects what the narrator calls "a little code of her own about scents and colours, textures and behavior, by which she secretly condemned or sanctioned all things and persons" (159) for another code that moves from centering on herself to thinking about others. That sympathy for the welfare and happiness of others inspires in return exhibitions of similar good conduct.⁵¹ Thus, Esther's conduct inspires others in the courtroom. They "felt a thrill of surprise mingling with their admiration" because it was as if "some hand had touched the chords, and there came forth music that brought tears" (573). Because of her actions, Sir Maximus "was wrought

into a state of sympathetic ardour that needed no fanning,” and he decided to work for Felix’s pardon so that he could “gratify her feelings.” He is assured that Felix must be a “good fellow if she thinks so” (576). His brother, the rector, and “the co-operation of similar movements in the minds of other men whose names were of weight” support Felix’s pardon.⁵² Esther’s sympathy brings people together and inspires them to act—Harold and Sir Maximus, Harold and his mother.⁵³ When Esther and Felix are married “[e]ven great people, like Sir Maximus and his family, went to the church to look at this bride, who had renounced wealth and chosen to be the wife of a man who said he would always be poor” (604). Mr. Wace, the narrator says, reflected the feeling of most everyone who attended: “I feel somehow as if I believed more in everything that’s good” (604).

Esther’s sympathy diverts her imagination from herself—her seeing herself as some sort of beautiful heroine waiting for homage from a handsome and chivalrous suitor—to others—the Transomes and her stepfather. Instead of a daydream of and for her own enhancement, she imagines the future impact of present conduct for both herself and others. At Transome Court she was daily “getting more clearly into her imagination what it would be to abandon her own past, and what she would enter into in exchange for it; what it would be to disturb a long possession, and how difficult it was to fix a point at which the disturbance might begin, so as to be contemplated without pain” (496). This looking into the future is what Felix, who says he is “warned by visions,” meant when he told her, “we are saved by making the future present to ourselves” (365). When Esther wishes for her own vision, Felix says he wants her “to have such a vision of the future that you may never lose your best self” (366).

The contrasting imaginative thoughts of Esther and Mrs. Transome as they look from their bedrooms upon the same scene of the river and trees in Transome Court's park is noteworthy. For Esther, the "for-ever running river, and the bending movement of the black trees" supply "the largeness of the world" that she requires "to help her thought" (590). For Mrs. Transome, "the black boundary of trees and the long line of the river seemed only part of the loneliness and monotony of her life" (596). The novel shows that those who do not imagine or cannot see what their conduct may produce in the future are bound to suffer. The youthful Mrs. Transome and Jermyn are the prime examples of those who look no further than to "indulge their passion and their vanity" thinking they can "determine for themselves how their lives should be made delightful in spite of unalterable external conditions" (318). Jermyn's "selfish insensitivity" in not anticipating the impact of his words urging Mrs. Transome to tell Harold their secret brings the full weight of Mrs. Transome's wrath upon him, and consequently denies him her assistance. Their son, Harold, is "unspeculative" or has no imagination and is "unsympathetic" (127). Others have limited sight, like the short-sighted Mr. Lyon, who can only vision a predestined future in another world and Rev. Lingon whose "first impressions quickly became traditions" and "saw nothing but what his easy disposition inclined him to see" (526). Felix in his address acknowledges, "any large body of men is likely to have more of stupidity, narrowness, and greed than of farsightedness and generosity" (615). In the same scene that presents Rev. Lingon's way of seeing, Esther says to Harold who is thinking of cutting some trees so that the view from the park extends beyond them that "[o]ne likes a 'beyond' everywhere" (527).⁵⁴

Similarly, the novel shows the legal system, with its extensive bonds to the past, as not looking beyond the immediate and incapable of including in legal judgments the imagination that derives from sympathy. The judge hearing Felix's case is "a severe man, and one nourishing a prejudice against the bolder spirits who stand not in the old paths" (548). The judge mistakenly considers Felix a dangerous reformer seeking drastic change. During the trial, worrying that not all has been said on Felix's behalf, Esther thinks, "it was the jury who were to be acted on" and "there might have been an impression made on their feeling which would determine their verdict" (570). She erroneously thinks, according to the narrator, that juries pronounced verdicts "from sympathy for or against the accused" (570). The narrator says because of Esther's inexperience she did not know how the object of the prosecution's reply and the judge's summary was "cooling down sympathy into deliberation" (571). These thoughts precede Esther's testimony that eventually had an effect, "but the effect was not visible in the rigid necessities of legal procedure" (573). The judge, as well as many in the courtroom, thought that "killing a constable was not the less an offence to be regarded without leniency" (574).

Even though legal justice condemns Felix to prison, the meeting of the "magistrates and other county gentlemen" the day after the trial is not from outrage over an abuse of justice in Felix's conviction. The narrator very carefully manages that meeting and its ties to the law so as not to offend an audience of differing opinions about the law. Readers are reminded that the members of the group are normally "just-spirited men" (575). To present the meeting of this mixture of gentlemen as intended to override the court and jury and overturn the verdict locates these men too closely to the mob and reform. It also implies that their power is stronger than one of the institutional bulwarks or

that they are above the law. The scene accomplishes a subtle juggling to meet opposing interests. It first placates those who would argue that the members of the upper class think themselves above the law by showing the gentlemen working within the law. Secondly, it compliments the members of the upper class, who just might agree that they are above the law of the common man, by providing them with a legal vehicle that they can use to circumvent the law. The meeting affronts neither view and keeps the legal system as an institution intact.

The scene incorporates the law and class in three ways. First, it conforms to Mrs. Holt's perception that the upper class could rescue her son despite the law, a request she made to the Transomes in an earlier scene that submitted her to total ridicule, particularly when she addresses the mentally deficient, elderly Mr. Transome. Yet, it is the class Mr. Transome represents, Sir Maximus and others, who, despite their deficiencies, prepare a memorial to the Home Secretary for Felix's pardon that no one doubts will succeed. Secondly, their motive, responding to, "the necessary impulse" that "had been raised to a high pitch of emotion" when Esther stirred their hearts" (575) is another positive reflection on the upper class. Rev. Debarry, with less "ardour" than his brother, but more representative of the other men, fittingly characterizes the god in man element of the high emotion in his determination that Felix is entitled to "mercy" (576). The scene appropriately ties to Felix's address because without breaking down class barriers the upper class extends sympathy and generosity to someone outside their class.⁵⁵ Finally, the scene depicts class unity in the gentlemen rallying around Harold and expelling Jermyn. Neither Harold's paternity nor his candidacy as a Radical denies him their protection. Despite Sir Maximus' complaints about Harold as a Radical candidate, he cannot reject one who has

grown up and been accepted in their midst since his birth. Sir Maximus must remain silent about Jermyn's adultery, but he can exclude Jermyn for what appears to be a much greater sin in trying to place himself in a class to which he was not born through entrepreneurship and the acquisition of a gentleman's accoutrements.

The concept of a pardon, like an appeal, is a legal vehicle through which the law can supercede itself, but unlike an appeal of a lower court's decision to an upper court it operates on what might be seen as the margins of positive law and without the requisite objective findings of error that are the basis of an appeal.⁵⁶ The concept of an extrajudicial procedure in which certain individuals have the power to modify the orders of courts of law raises questions regarding the certainty, justice, and permanency of judicial decisions and the criteria that should be used to exercise the authority of granting pardons. It also prompts considerations about the function of this separate process, such as whether it is to correct abuses of justice, and therefore acts within the system of checks and balances, or whether it is a process which actually invites subjective review of the legal system and the offenders who pass through it so that in instances when the law does not or cannot achieve the morally right outcome, this separate procedure can. The provision for pardons in the legal system may be a process created for sympathetic perspectives. Another consideration is whether the pardon process functions as an instrument for those with power to dispense their own law for whatever reason and function outside the laws' confines while possessed of its sanctions.

Even though sympathy may have motivated Felix's pardon, the novel selectively applies it. At the same time that sympathy grows for Felix Holt and mercy is extended, the narrator and others in the novel work against any similar emotion for the dead Con-

stable Tucker and his family and Felix's co-defendants. The narrator portrays the constable as acting with his brawn and not his head: "any discrimination of Tucker's lay in his muscles rather than his eyes" (427). The community opinion is that his wife and family will be provided with more in his death through a pension and charities than he provided during his life (464). Mr. Lyon says after visiting the radical in prison that Felix has "no grief save for the poor man Tucker" (467). But at his trial Felix asserts that the constable was at fault because he was "under a mistake about my intentions" (565). The implication is that if the constable had possessed more mental strength than muscular, he would be worthy of more sympathy or that if he had possessed faultless judgment in a crisis, he would be entitled to sympathy. Both Felix and the constable use poor judgment and more physical force than necessary, but readers are asked to find one exculpable and the other culpable.

Three of the colliers are sentenced to a year's imprisonment while another, "who stole the Debarrys' plate" (560) is sentenced to transportation for life. Felix, who committed homicide, is sentenced to four years' imprisonment. A single paragraph relates the disposition of their crimes and the future of these men who were urged to their actions by drink and Johnson. Nothing explains the disparity in sentencing. It is difficult to determine whether this disparity reflects upon the legal system or the novelist. We might say that Felix deserves special consideration because he acted with good intentions and poor judgment; after all, he is the hero of the novel. On the other hand, the colliers, who must be seen as complying with Felix's description of their ignorance, acted with bad intentions and no judgment. They are held accountable for bad intentions planted in their ignorance by the electioneering agent and inflamed by intoxication. The narrator twice de-

scribes one of the men as “poor,” particularly in mentioning his tears at the sentencing and uses this behavior to show how unready the lower class is for the franchise.⁵⁷

Despite this confusion, the treatment of the colliers and Felix’s conviction contradicts any argument that the novel supports an infusion of sympathy into deliberations at trial and the rendering of punishment. Apparently, sympathy is something that works outside the courtroom. But even then, it is selective. Although Felix obtains leniency, the miners receive no leniency, even though the community knows they were taken advantage of and incited by those who knew the potential for violence words and drink would generate. Not only does sympathy have no place in the objective world of the law, the novel’s unequal application of sympathy outside the courtroom appears relative and subjective. The text seems to say that the miners, whom the narrator compares to domestic beasts, are not worthy of sympathy because their uncalculated violence is worse than Felix’s calculated violence. However, if the novel treated them sympathetically, it would condone such disruptions, rendering worthless Felix’s philosophy of self-improvement in order to abolish resistance. The working class would not require education if society treated them sympathetically when they erred. Even Felix, exemplary character with a temper that he may be, is not absolved totally. His leaving the community, though voluntary, distances him from the scene of his violence. The text indirectly punishes his violence by excluding him from the community which he, and Esther in a positive way, disrupted. These intricacies and subjective applications of sympathy weaken the novel’s focus on sympathy as a concept under which individuals can make fair and realistic decisions.

Even Jermyn, the most morally degenerate character in the novel with the exception of Johnson, accepts that the court does not render justice with sympathy, or the justice he thinks he is owed morally. Threatened by Harold's lawsuit after years of what he considers self-sacrifice, denial of other means of advancement, and unethical and illegal conduct that jeopardize his career, Jermyn says to Mrs. Transome, "Of course the law in this case can't in the least represent the justice of the matter" (515). That he knows in court his moral justification will not exculpate his acts, indicates he recognizes a separation of, at least, his version of morality and positive law. Jermyn does not believe he has done anything unjustifiably wrong. His defense is not that dissimilar from Felix's. He claims he acted as he did to save others even though it was against the law. He also had to choose between two evils. Furthermore, and unlike Felix, he claims he only took what he was owed. His reasoning also perverts civil disobedience arguments in its implications that he was bound by conscience to break the law to save others. Therefore, Jermyn acknowledges breaking the law, but not without moral justification, no matter how thin: "If it came to a question of right and wrong instead of law, the least justifiable things he had ever done had been done on behalf of the Transomes" (317). Nevertheless, the novel's argument is not about justice or institutional reform except as the ultimate result of individual reform. Jermyn's error is his version of morality. His selfishness blocks any self-examination that according to the application of sympathy in the novel would move him from thinking about himself, to honestly thinking about others and imagining the consequences of his conduct upon them. He is on par with many others in the novel, Mrs. Transome, Mrs. Holt, Harold, and even Esther until, as Norman Vance writes in "Law,

Religion, and the Unity of *Felix Holt*, “her moral education in sympathetic insight and social responsibility [. . .] liberates her” (120).

The novel shrinks the early- and mid-nineteenth-century debate on the Condition of England about “social, material, and social well-being” (Gallagher xi) to a Condition of the Individual Debate. Its theory of gradual progression suggests that individual improvement slowly will reflect itself in institutional improvement without any aggressive intervention or change within the institutions.⁵⁸ Eventually, legal justice and moral rightness would be synonymous. The novel actually does not address the question of the extent to which natural law prescriptively and descriptively should participate in positive law because that misses or avoids the “heart” of the issue. In fact, it is no longer an issue when, according to the novel’s implications, the individuals who make the law and work with it are morally enlightened and possess the imagination of concern for others and of looking into the future.

The novel also speaks to how the imagination inspired by sympathy contributes to the imaginative representation of reality. Esther, who previously read the imaginative products of writers, begins to write her own novel. Her imagination before meeting Felix centered on herself as a romantic heroine like those in the literature she reads. The narrator describes her in the early pages of the novel as “a remarkable Cinderella” (208), referring to the conditions in which she lived as compared to the sophistication and taste she possessed and her dreams of eventually being recognized for her worth by a man above her class. After meeting Felix, “she had felt unable to read when she was alone, being obliged, in spite of herself, to think of Felix Holt—to imagine what he would like her to be” (263). And at Transome Court where she begins to compose a different story in

which she is no longer a heroine waiting to be rescued, she also is unable to read. Her imagination takes a different course as she takes a more active role in her future: “her life was a book which she seemed herself to be constructing trying to make character clear before her and looking into the ways of destiny” (498). The text shows her moving beyond herself, imagining what the lives of others, such as the women in the full-length portraits that decorate Transome Court, were like. Any lingering adherence to the imagination prompted by her previous readings is eliminated during a playful exchange with Harold about literary genres and what genre he fits as a hero, when he tells her that his dead wife “had been a slave—was bought in fact” (541). His words shock Esther’s imagination of Oriental love and her imagination turns to the “what is,” the realities that correspond to actual life.⁵⁹

The movement of Esther’s sympathy and imaginative insight almost imperceptibly shifts to a position on the moral imagination necessary to write a social problem novel. The character that emerges from her development is a model of appealing and superior qualities, more good and noble than Felix Holt. She becomes an evaluative standard for imaginative depiction in the nineteenth-century social problem or reform novel. The inference is that sympathy and insight nourish an inspired and realistic imagination in a writer, as it did for the author Esther, and that inspired imagination can only create realistic representation. An additional inference is that if novels of one sort can influence the imagination as they did at one time for Esther, then novels of another sort with a higher standard of social responsibility and sympathetic imagination can influence readers as well.

If we examine *Felix Holt, The Radical* using that criterion, Eliot deserves credit for portraying the ideal the novel suggests. The novel does not overwhelmingly dwell on defining the problems that must be addressed, although it does ask the reader to confront the “what is” in the nature of things. Its emphasis is offering the initial steps of what could lead to an ideal through sympathetic imagination. The novel attempts to show those steps in real terms through Esther. It works with the “ought to be” within the “what is.” Because the novel’s scope is limited to individual improvement, the ideal and ought to be are more workable, requiring only the cooperation of the individual to reappraise internal values rather than something more extensive, such as changes in the laws or legal system. It is a change or reform that does not drastically or too rapidly disrupt the existing society so it is easier to both comprehend and accept. That aspect makes the ideal more realistic. *Felix Holt, The Radical* describes a means of working toward solutions for social problems with a perception, right or wrong, of the consequences of its implementation. Esther’s development represents what can happen to those who follow the ideal of Felix’s teachings. The novel seemingly follows its dictates of using the imagination to look ahead to the future as a gage of present conduct.

The true ideal underlying the novel is that Felix and Esther’s work in their new community will inspire the same development in others as Felix’s teachings did in Esther.⁶⁰ Slowly, those they inspire, and more particularly their descendants, should begin to feel the benefits of their teachings in their ability, as Felix says in his address, “[t]o discern between the evils that energy can remove and the evils that patience must bear” (627). Felix’s success depends upon whether his teachings can be effective beyond a very susceptible subject—a woman who was “not contented with her life” (159) which was “a

heap of fragments,” who sought “some great energy to bind them together,” and thinking of chivalrous lovers believed that “[l]ife would be much easier in the presence of such a love” (264). Furthermore, Esther is an educated and intelligent woman capable of following Felix’s manner of speech. The workingmen and their families may not be able to so easily follow his intellectualizations. Although her statement was made during an early confrontation between the two, Esther refers to herself as “an audience of one” (213).

If Eliot’s social problem novel is to be persuasive, then the nature of her audience and the ability of the novel to reach it must be a factor for examination as well. Few working-class families, many of whom were illiterate, could afford to purchase novels or have access to Blackwood’s *Magazine*, which published the “Address to the Working Man.” In addition to problems of access to the writings is the problem of understanding the intellectual argument. The novel, like Felix’s speech, is not written in the language of the community it supposedly addresses. It is written for the educated reader and appears intentionally to demonstrate the educational depth of the writer. Considering these inherent problems of access and comprehension, the novel’s ability to reach and persuade those it supposedly addresses is limited. Felix’s address is not realistic because it is not presented to the audience to which it is addressed.

Eliot’s audience then can come only from the middle and upper classes. Although it points out their faults, the novel does not shame them, particularly the middle-class, as Felix did Esther or as he intends to do the working class. The novel tends to coincide with public opinion at least from a Tory and Anglican Church perspective. This may be saying more than the novel warrants, but at the most, to this audience it simply argues for the benefit of self-examination and right reason so that their consciences will direct them to

their best selves and to right conduct that will ultimately improve the lives of and bring happiness to others.⁶¹ The novel leaves unanswered the question of what to do about working class conditions and the injustices they experience while they learn moral improvement and class functionality. In the meantime, the status quo is unthreatened and the country's institutions, ineffective and vice ridden as they may be, remain intact.

Oddly, the novel's conclusion provides little hope for the continued existence of the upper class as custodians of the nation's treasures or for their self-improvement. It implies they are extinguishing themselves and their power without any external interference through imbecility, affairs outside their class, marriage to slave women, and conversion to Catholicism. The Debarry family is left without an heir with Philip's death. The ungovernable Transome heir, Harold's son, is physically violent, undeveloped in speech, and unresponsive to most human contact with the exception of a foreign servant and a mentally paralyzed old man. This concluding view supports the novel's notions that change will occur organically. The upper class overtime will self-destruct its authority and power. Hope remains in the members of the middle class who the novel shows as actively involved in their community and interested in its welfare. Jermyn and Johnson seem to be exceptions to the general good impression the novel presents of its merchants, manufacturers, and farmers.

The problem with the novel's faith in slow growth is that legal reforms of any type "naturally" work slowly. They do not need to be retarded by other means. The novel operates on the erroneous assumption that legislative reforms differ from individual reforms in the sense that the former works with speed and the latter with temperance. It presents the problems of the first election after the passage of the Reform Bill of 1832 as

a realistic representation of the consequences of reform implemented too quickly, a representation that is unwilling to give society time to become comfortable with implemented reforms. Just as Esther slowly adjusted to new ways of thinking, so can society while reform is operating in their midst. In other words, the novel's proposition for slow growth before reform could equally apply after the passage of reform bills. The second erroneous assumption is that legislative reform causes some sort of disruption while individual reform does not. Any change meets some degree of resistance. Esther at first resisted Felix's teachings. On two occasions, she strongly resisted his criticism of her reading selections and her sophisticated tastes. That change at first is met with opposition, sometimes violent, is not evidence that the change is too rapid or its implementation imprudent.

Furthermore, Felix's proposal of self-improvement or self-reform at times cannot succeed within certain individuals because it lacks enforcement power over those who are not so enlightened. He claims public opinion will shame individuals into correct action, but it did not shame the lawyers, who represent the negative side of the scrambling upward middle class. Felix cannot argue realistically the nature of things without knowing that some individuals will not convert or be shamed. It may be impossible to legislate morality in the sense of changed thinking, but legislation can enforce right conduct. In some instances legislation prohibiting and penalizing conduct coincides with morality such as the prohibition against murder and other offenses considered *mala in se* or wrong in themselves whether prohibited by law or not. Unfortunately, in other instances of right conduct not everyone agrees on what is moral conduct. Mr. Lyon could not persuade his congregation to accept many of his moral tenets despite his sincerity, devoutness, pa-

tience, and kindness. In some instances, law's coercive force can accomplish more than shame and reason. A more contemporary example is that without legal enforcement public school integration and the civil rights movement would have been irrevocably stalled. The consciousness of a need for change could not have been implemented against a history and tradition of opposition, discrimination, and segregation without authoritative support. And, whether the reform was implemented through individuals or legal enforcement, violence would have accompanied every step.

Felix Holt, The Radical appropriates an argument premised on morality and shame to retard the desire for a voice in government and changed circumstances of a certain group and offers to them an abstract concept involving patience and self-improvement. It uses history or the past as an example of slow growth to support the novel's message against drastic reform. This view of history, although not shared by everyone, certainly had an historical and strong intellectual basis of authority in nineteenth-century England. Eliot's development of a law-like system of individual conduct drawn from Christian natural law theory is worthy and an objective for everyone to follow. The novel dismisses organized religion's ability to accomplish the same purposes. However, I am not sure Eliot persuasively demonstrates why personal development through secular natural law cannot work for the individual at the same time that activism in reform and law works for the community. In other words, Eliot does not convincingly justify why reformists must be patient while moral development is working toward a certain personal standard. This view appears to be equally "shortsighted" as Mr. Lyon because it does not employ Esther's looking beyond to the consequences of this position. Those consequences maintain the lower class in their present condition. It does improve their present

quality of life. Perhaps one of the reasons Eliot does not describe that life in much detail stems from her intent to direct attention away from that issue and the sympathy it would inspire and from the omission in the novel's message of something that confronts the workers' immediate physical needs.

The narrator says of the judge's summation to the jury at Felix's trial that "[e]ven the bare discernment of facts, much more their arrangement with a view to inferences, must carry a bias: human impartiality, whether judicial or not, can hardly escape being more or less loaded" (574). Similarly, the facts within this realistic novel are not arranged impartially. The message of the novel is loaded. Nonetheless, it is a loaded message that many shared during Eliot's time. My comments on some parts of the novel's message throughout this chapter have been concerned with the novel's persuasiveness. A rule of persuasive argument that lawyers know well requires imagining the points of the opposition, addressing them, and either defeating and discounting them or showing why on some evaluative scale the opposition's arguments are less worthy. Eliot does not take advantage of both the rhetorical and descriptive opportunities in the novel to address more of the counter arguments to the novel's message in the same way that she showed why secular natural law should replace religion.

Notes

¹ Published in three volumes June 1866 (Coveney 37).

² For extensive discussions of the influence in Eliot's novels of Positivism, the religion of humanism and the philosophies of the French philosopher Auguste Comte, German philosophers Ludwig Feuerbach and David Friedrich Strauss, and German historian Wilhelm Riehl see: U. K. Knoepfelmacher *Religious Humanism and the Victorian Novel*, Bernard Semmel *George Eliot and the Politics of National Inheritance*, Martha S. Vogeler "George Eliot and the Positivists," and Bernard J. Paris "George Eliot's Religion of Humanity" and *Experiments in Life: George Eliot's Quest for Values* among others.

³ Most discussions of this "novel" include three different texts written at different times. Although it is not a topic of this paper, this factor of three texts written at separate times but together referred to as one text raises questions about our assumptions of the status of extratextual or complementary, or supplemental texts in making statements about a novel and the need to delineate what is meant when using the phrase "the novel" or referring to the title of a text. The risk involves, among other things, exporting into the novel what the author wrote in essays, letters and other texts, and inadvertently making them part of the text studied. See Peter Coveney's discussion on the timeframes for the writing of the Author's Introduction and Felix's address (1867) at pages 639-40 and 607 of the Penguin Classics edition.

⁴ Implied within this paragraph's argument is that the person making this argument possesses the requisite moral position.

⁵ Since we do not know the exact wording of the entailment, we do not know the particulars of the Bycliffe family, such as whether the remainder is to be distributed to the heir or heirs of a particular Bycliffe. Obviously, it was not restricted to males or Esther would not be considered an heir. But, if other Bycliffes had been in existence at the time of Trounsem's death, the distribution would be more complicated.

⁶ In truth, Harold is not the son of the present owner, Mr. Transome; he is the son of an affair between Mrs. Transome and the lawyer Jermyn. Until the first and only son of the Transome marriage, Durfey, died, Harold was not considered the heir by anyone but his mother, who wished for the death of the reckless and wayward imbecile Durfey.

⁷ Considering the thinking about real property in England's early days, it would be difficult to argue that inheritance is "natural." Originally, the monarch owned all property and allowed the feudal lords its use. As Blackstone wrote, "We are apt to conceive at first view that it [the right of inheritance to descendants] has nature on it's [sic] side; yet we often mistake for nature what we find established by long and inveterate custom. It is certainly a wise and effectual, but clearly a political, establishment; since the permanent right of property, vested in the ancestor himself, was no natural, but merely a civil, right" (2.1. 11). Rights to individual private property and its distribution derived from the common law. Nonrelatives, or those who are not related by blood to the decedent, frequently inherit. See also A. W. Brian Simpson's Introduction to Volume 2 of Blackstone's *Commentaries on the Laws of England* and chapter 1 of volume 1 at 135.

⁸ Her statement must be an unintentional slight coming from the lowly minister's stepdaughter to the aristocratic Mrs. Transome who is sitting in the same room and has spent much of her adult life in legal struggles to save the property for the Transomes.

Esther's faux pas is a subtle commentary on the ranking of positive and natural law in the novel.

⁹ His action is a real thwarting of lawyers because he is preventing both Jermyn's blackmail and Johnson's profit from setting other lawyers on Esther's claim.

¹⁰ Many scholars explore the conjunction of determinism and choice in the novel, but that is not a topic of this discussion.

¹¹ Thomas Pinney writes in "The Authority of the Past in George Eliot's Novels" that "the abstract and legal conception of the past" is not the guide in *Felix Holt*, but "the affections that grow out of personal experience" (143). Esther certainly possessed affection for her stepfather and for Felix, but the main motivation was the self-awareness and sympathy that Felix's teachings had inspired in her.

¹² Franco Moretti writes in *The Way of the World: The Bildungsroman in European Culture* that Felix's resolution not to marry "is the sign of an exacting nature, aware of its own worth and devoted to a solitary dream which, in one way or another, will make it hard to come to terms with reality" (214).

¹³ See Judith Wilt's "Felix Holt, The Killer: A Reconstruction" for a much harsher view of Felix's medieval characteristics

¹⁴ Esther's stepfather, Mr. Lyon, looks back to the English Revolution and Milton's "liberal air" (369). Additionally, the text establishes a connection between the blind poet and the short-sighted minister.

¹⁵ Thomas Pinney writes that "the chief values of the novels are on the whole conservative, cherishing what is known and familiar, seeking the good in outmoded forms, and remaining skeptical of all hopes for swift and inevitable progress" (133).

¹⁶ Seventeenth-century jurist Sir Matthew Hale also participated in the development of this mythology according to Norman Vance in “Law, Religion and the Unity of Felix Holt” (115).

¹⁷ Hereinafter *Commentaries*.

¹⁸ Franco Moretti suggested these readings of Hill, Burke, and Thompson.

¹⁹ Rosemarie Bodenheimer also discusses the “breaks” in the lives of Mr. Lyon and Esther in *The Politics of Story in Victorian Social Fiction* (218-19).

²⁰ Thomas Pinney thinks that Felix’s philosophy is actually a restoration or “moral regeneration” of the working men” (133).

²¹ As Moretti points out the concept of continuity ties into the “desire that the realm of the law be certain, universalistic, and provided with mechanisms for correction and control” which enhances the sense of justice in the laws (213).

²² Coveney says that the novel projects the danger of a society “severing itself from the nourishment of its past” (23). Bodenheimer refers to “the obsession of this text: belief in change is blindness to continuity; things seem to change, but people stay the same” (209).

²³ The cutting of timber on an entailed estate also has legal implications as explained in Anthony Trollope’s *Ralph the Heir* and may require permission of the remainder man. Therefore, Jermyn’s cutting the trees for his own benefit may have been legally improper as well. During Esther’s stay at Transome Court, Harold asks her opinion about thinning some trees. As the heir to the property, she should be consulted.

²⁴ As Fred C. Thomson explains in “The Genesis of *Felix Holt*” this depiction distinguishes Eliot’s novel from the “strain of social protest” found in the fiction of Gaskell

and Kingsley: "She gives us no scarifying pictures of slums or inhuman working conditions. The Sproxtton colliers and the barflies at the Cross Keys are brutish and stupid, but there is none of the stench and filth of real degradation about them. Their ignorance and a childish docility to evil counsel are emphasized above their squalor" (576).

²⁵ Coveney notes that this is an anachronism since the sport was not abolished until 1849, but it is effective to demonstrate the thinking of this gentleman (649 n1).

²⁶ Felix himself was aware "that this angry haste of his about evils that could only be remedied slowly, could be nothing else than obstructive, and might some day [. . .] be obstructive of his own work" (393).

²⁷ Both W. J. Harvey in *The Art of George Eliot* and Arnold Kettle in an essay titled "*Felix Holt The Radical*" mention what Kettle calls "the rather odd abandonment, [. . .] of the projected debate [. . .]" (108-09). Harvey writes that Eliot leads the reader into "a cul-de-sac" and "thwarts expectations after "a great deal of elaborate preparation" (134).

²⁸ Richard Sterne writes in *Dark Mirror: The Sense of Injustice in Modern European and American Literature* that *Felix Holt* "can be read as a kind of elegy for natural law for a writer strongly influenced by Darwinism" (xvii).

²⁹ Martin J. Svaglic in "Religion in the Novels of George Eliot," sees the portrayal of Felix in terms of a substitute, because without faith in God to help them, human beings turn to one another for help. This portrayal coincides with Bernard Paris' account in "George Eliot's Religion of Humanity" as "a religion not of God, but of man, a religion of humanity" (420).

³⁰ In another sense we might consider Philip's conversion another looking to the past. The parish church of Treby Magna includes a side-chapel for the tombs of the Debarrys: "For when the black Benedictines ceased to pray and chant in this church, when the Blessed Virgin and St. Gregory were expelled, the Debarrys, as lords of the manor, naturally came next to Providence and took the place of the saints" (123). Philip's behavior makes him a pseudo-saint in the community and to his family that is legitimatised by his conversion and death in Rome where "a fine bust of him" is displayed.

³¹ Fred C. Thomson in "Politics and Society in *Felix Holt*" connects Philip's new conservatism to the later "Young Englanders" of Disraeli, a group whose enthusiasm was kindled by the Church revival at Oxford. Thomson concludes that "[t]he subsequent conversion of Philip to Catholicism is therefore historically consistent with his politics. [. . .] Though the idea was left in embryonic condition, he seems partly designed to illustrate the type of personality on whom the Oxford Movement [. . .] made its impact" (120 n14).

³² In a brief reference to Philip Debarry, Rosemarie Bodenheimer describes him as "the novel's only shadow of a hope for leaders who combine power with disinterested sensibility. [. . .] Philip Debarry is praised by the narrative at each of his appearances. He is a moral aristocrat who represents the possibility of rising standards made possible by a stable class hierarchy" (103). She does not address the issue of his alienation and subsequent demise, but using her argument, the text defeats the possibility of his potential accomplishments through his removal from participation in society.

³³ The narrator eliminates any interference from a non-Christian religion in her brief reference to Baruch Nolan. Although the narrator raises the suspicion that the retired London hosier is Jewish, in the community, "[n]o question had ever been raised as to Mr.

Nolan's extraction on the strength of his hooked nose, or of his name being Baruch." He completely assimilates into the community through his congeniality, wealth, and marriage to the daughter of local family. Because he attends church irregularly and grumbles about the sermons along with everyone else, "there was no ground for classing him otherwise than with good Trebian Churchmen" (300).

³⁴ This same nature of things and natural function element of natural law has been cited to support legal arguments against a woman's right to choose abortion and to support discrimination against homosexuals. As Sterne points out, in the nineteenth century the U. S. Supreme Court cited "the nature of things" to deny a woman's application to become a lawyer and to support segregation (257).

³⁵ Carolyn Lesjak writes in "A Modern Odyssey: Realism, the Masses, and Nationalism in George Eliot," that Felix's views show that "the working class must be domesticated with the confines of national English culture" (94).

³⁶ Coveney distinguishes Felix from Esther in describing the former as "more often a moral assertion" (14) and the latter as "the moral heart of the novel" (38).

³⁷ This scene is one of several in which a religious link is obvious. In "George Eliot and the Modern Temper," Henry Auster writes that the function of imaginative power "finds expression and thus a way of giving shape and direction to life. It is that function that is sacred and not particular forms, which explains the borrowing of religious terminology to describe the imagination at work [. . .] (89).

³⁸ Arnold Kettle calls Esther's testimony "a high-grade character-reference" (108). Catherine Gallagher considers Esther "the defense's most important witness" who "instead of filling in the facts of Felix's case [. . .] simply sweeps them aside" (242). Both

forget that Esther explained where Felix had been before the riot and his state of mind because, as Eliot writes, Mrs. Holt could not be relied upon to supply the same information without making it an “inevitable farce” (561).

³⁹ Henry Auster cites a similar moment from *Middlemarch* when Dorothea and Will profess their love for each other. He calls it “the imagination at its synthesizing, dialectical, creative work of bringing mind and world, subject and object, into relationship with one another” (93).

⁴⁰ Ian Milner in *The Structure of Values in George Eliot* describes Felix’s speech throughout the novel as “for the most part a Latinized vocabulary (with frequent abstract nouns), a lengthy and often involved sentence structure (ill according with his supposedly ‘brusque’ manner) and rhetorical or high-fallutin’ flourishes that betray the author’s desire to show how well-educated he is. [. . .] Normally it weighs down his speech with a stilted bookishness and pedantry” (49). Milner considers Felix’s trial scene “a certain forceful and dignified eloquence” (49) despite Harold’s evaluation, Esther’s fear that all has not been said on Felix’s behalf, and its being beyond the scope of most of his audience.

⁴¹ F. R. Leavis in *The Great Tradition* calls Mr. Lyon a “heroically quaint reminder of the heroic age of Puritanism” (67).

⁴² According to Jerome Meckier in “Hidden Rivalries in Victorian Fictions: The Case of the Two Esthers,” Eliot shows that “the most meaningful kind of social change begins quietly and internally, though not without prodding from an outside agent” (234).

⁴³ Interestingly, unlike Esther who does not consider her marriage to Harold as a given, Felix in two references to the marriage during Esther’s visit at the jail erroneously

calls it “a fitting lot in reserve for you” (558) and “a case of fitness” (557). And, as Ruth Bernard Yeazell points out in “Why Political Novels Have Heroines,” to comply with the theological aspect of her internal revolution, her choice must reinforce continuity and coherence. Her choice could not result in a drastic change (142), which is what Felix expects of her.

⁴⁴ Meckier says that though Felix “awakens her to the beauties of a life of purposefulness,” she teaches him “that purposiveness increases in power when suffused with love” (234).

⁴⁵ However, Ermarth does not accept this argument, which is similar to that adopted in this discussion. In “Incarnations: George Eliot’s Conception of ‘Undeviating Law,’ ” which does not include a discussion of *Felix Holt* but briefly mentions Rufus Lyon, she argues instead that Eliot’s work define two realms of law that determine consequences, “the cultural (or moral) and the natural (or material)” and that within the realm of culture the only law is the embodied presence of the world itself” (275).

⁴⁶ Though Mr. Lyon and Felix have much to say about voting, neither qualifies as a voter.

⁴⁷ As Norman Vance suggests, the continuity of landownership by the Transomes is both morally and legally undermined in the novel and that the implication extends to all ancestral ownership in England so that political legitimacy is located “in responsibility to society in general and in moral principle rather than in land-ownership [. . .]” (106-08).

⁴⁸ For a more extensive discussion on blackmail in the novel, see chapter 10 of *George Eliot and Blackmail* by Alexander Welsh. Bodenheimer also briefly mentions the blackmail in her discussion of the novel at page 215.

⁴⁹ According to Bodenheimer, “George Eliot attacks the entrepreneurial ideal with a vehemence” and “links business malpractice with sexual violation” (100). In the same way, Eliot attaches sexual darkness to radicalism in Harold’s purchase of a slave woman and making her his wife.

⁵⁰ Harold Transome straddles this generalization. Despite his “moral mediocrity” and his claim that he cannot “keep the conscience of the party (275), he exhibits high standards when confronted with ethical dilemmas as evidenced in his refusal to pay Christian “to suppress evidence or remove a witness” (451). Realizing that even if he does not pay Christian to suppress evidence it will appear that he did, Harold insists that Christian remain in Treby. The narrator writes, “the outside conscience came in aid of the inner” (451). Additionally, Harold resists Jermyn’s blackmail that would require destroying evidence or concealing a witness, he will testify for Felix even though it means exposing his own knowledge of the bribery of the colliers, and he informs Esther so she is not deceived when he learns that he is an ineligible suitor for her. The narrator says he is “attached as a healthy, clear-sighted person, to all conventional morality, construed with a certain freedom [. . .] (197). Harold cannot be a completely valueless character or Esther would appear ridiculous in receiving his attentions.

⁵¹ Esther’s explanation of sympathy is found in her description of Harold whose “very good-nature was unsympathetic: it never came from any thorough understanding or deep respect for what was in the mind of the person he obliged or indulged [. . .] (528).

Walter Houghton writes in *The Victorian Frame of Mind 1830-1870* that “George Eliot’s benevolence presupposes a forgetfulness of self in the recognition of our common humanity. The distinction meant a reemphasis on sympathy as the power of entering into the feelings of another, especially in sorrow or trouble; and consequently experiencing not only pity and love but also patience, tolerance, and forbearance” (278).

⁵² Catherine Gallagher says Felix is saved because he was good, not because of Esther (242), but her position goes against the public opinion argument of the novel unless we combine Gallagher’s statement with Rosemarie Bodenheimer’s statement that Esther “exemplifies that power of public opinion on the side of right” (106) and conclude that first Esther convinced public opinion that Felix was good and then because those in power believe he is good they save him. Up until the time of Esther’s courtroom testimony, little exists to indicate that very many people thought Felix was good.

⁵³ It was an act of caring for another, Mr. Lyon’s taking in a poor woman and her child and his devotion to her that resulted in Annette understanding Mr. Lyon’s love and returning it, spending the rest of her life with him, and leaving her daughter in his care. Esther repeats her mother’s act when after Mr. Lyon tells her he is not her real father, “but had only striven to cherish her as a father, had only longed to be loved as a father,” he “became the object of a new sympathy in which Esther felt herself exalted” (354).

⁵⁴ This “beyond” of the sympathetic imagination contrasts to Trollope’s presentness in his appeal for sympathy to temper judgment. Eliot’s sympathy looks to the consequences of present actions on the feelings and lives of others. Trollope’s sympathy is based on readers imagining themselves in similar situations and imagining how they would feel and how they would like to be treated.

⁵⁵ See Bernard Semmel who quotes Eliot's friend and English Comtist Frederic Harrison on how after the publication of the novel everyone of all political affiliations, class, schools of thought, and other factions were "all quite convinced that it has been conceived from their own point of view" (59).

⁵⁶ It might help us reflect upon the merits of this legal vehicle if we consider the recent controversy over the use of his authority to grant pardons by the 42nd President of the United States.

⁵⁷ Also, the contrast between the overt attachment of sympathy to Mrs. Transome and none to Mrs. Holt is troublesome.

⁵⁸ Nicholas Rance in *Wilkie Collins and Other Sensation Novelists: Walking the Moral Hospital* goes so far as to propose that "[t]o Felix Holt [. . .] while men remain morally corrupt, corrupt statutes will be corruptly administered. If men were not corrupt, there would be no need for legislation" (139).

⁵⁹ Lesjak says that Esther's "personal development can be read as a microcosm of modern narrative of 'inevitable progress' as she learns to discard the Romantic texts she initially identifies with in favor of the 'realism' Felix embodies [. . .]" (92).

⁶⁰ Gallagher presents a different, though not totally contradictory view of Eliot's working with the what is and what ought to be. She argues that the novel does not show "the ought" as growing out of "the is" because Eliot is purposely disconnected by her "politically inspired attempt to escape from the web of metonymic associations" (225). Bodenheimer considers *Felix Holt* one of a different kind of social problem novels that "in their emphases on the moral power of narrative, they implicitly revise the status of

social-problem fictions as instruments of social intervention: in these works the novel form itself become a recuperation and a repository of history” (10).

⁶¹ W. J. Harvey takes another position on this point. He says of Eliot’s novels in general that if a reader “closes the book with his vision enlarged and his sympathy extended through an imaginative participation in, or contemplation of, the particular destinies portrayed, then the novel has been morally successful” (40). Furthermore, Harvey argues the Eliot’s novels extend readers beyond themselves “by controlling our vision of her fictional world so that we see it through a series of interconnected but ever-enlarging perspectives which demand of us greater knowledge, sympathy and insight” (41).

Conclusion

Thinking Becomes Imagination

Looking at these four nineteenth-century British novels in their entirety and thinking about their thinking about law from a holistic view, rather than for the thinking about law revealed within each of the novels, suggests several inquiries lingering in the background of each of the previous chapters. The first question addresses the message of the texts and the quality of the texts. What are the connections between the literary quality of each novel and its value as an instrument of reform or the persuasiveness of its message? More specifically, how might the literary quality of a text prompt or impair thinking about law? Inversely, might the nature of the literary message affect the quality or persuasiveness of the literary imagination? For purposes of this discussion, this inquiry must consider whether the self-imposed limits of the realistic literary tradition qualify in some way the persuasive powers of the novels written in that tradition. If a realistic novel is bound to represent imaginatively only the presentness of daily life, can it effectively convince readers of the need for change or of the potential for something better than what is represented in the novel? Might a novel of romantic idealism be more effective in imaginatively demonstrating something other than the legal status quo?

The next grouping of questions concerns the connections between literary and legal imaginations. What message does an increased understanding of the uses of the literary imagination have for the legal imagination? In what situations might the imaginative processes of literary endeavors be applied to legal ones? What might be the additional issues raised regarding the legal system's pursuit of rectitude of decision and justice when literary imagination becomes legal imagination?

Lastly, thinking about the overall or broad view of the thinking about law in the novel progresses to thinking about the imaginary legal and imaginary literary dispositions of the legal disputes in each novel. What are the implications demonstrated in each of the novels of this study in which the authors' literary imaginations assume a literary judgment that reworks the legal judgment? Is this assumption of authority over law's judgment indicative of another operative code of law-like conduct external to positive law? What are the implications in thinking about the thinking about law and the legal system of each novel's successful thwarting in some form or degree legal determinations?

To discuss the first grouping of questions we should recall the nature of the novels within this study. Trollope's *Orley Farm* and Eliot's *Felix Holt, The Radical* are two realistic novels. That means, very briefly and simply, that they attempt to represent actual present life by accurately depicting the details of ordinary life. Their correspondence to life is to be judged not according to whether the events they illustrate actually occur but whether they are probable or possible. *The Woman in White* by Wilkie Collins also is realistic, but it is a sensation novel. Its details of life include a world of secrecy, mystery, and crime—events that appeared in the newspapers. The world of the sensation novel is more extensive because it includes more aspects of life, but it is no less realistic than a novel in the tradition of realism. Bulwer-Lytton's *Paul Clifford* works with idealism, the ideal in depiction and an ideal in its message. The characters are extraordinary individuals, almost caricatures, and nearly one-dimensional. They represent consistently what they are intended to represent, such as a villain or a hero. Their lives are filled with melodrama and romance. The narrator and characters tell the "what is" in life rather than showing it through description and the actions of the characters. *Paul Clifford* also con-

cludes with an ideal attained through a better world or a higher standard in its brief description of what the world “ought to be.”

Since each of these novels complains of one or more problems in varying degrees of intensity and focus, I will address the first questions with an analogy to a rhetorical exposition in which a problem is defined and a solution proposed. My resistance to the world “as it is” conclusions of the novels of realism—*Orley Farm* and *Felix Holt, The Radical*—has been obvious throughout this discussion. At the same time, the value of the ability to describe or define a problem as Eliot does, and Trollope as well to a lesser extent, cannot be dismissed. A problem must be defined and its causes explored before their effects can be modified or eliminated. For Eliot the problems are the focus of the novel—the disruption caused by reform before the people are ready for change and how to address the complaints of the working class. For Trollope the problems are not the main focus of the novel but an important subplot—the shortcomings of some aspects of the trial process, the possibilities of legal reform, and the speed at which it should be enacted. Interestingly, within the realistic descriptions of these problems or the “what is” Trollope and Eliot seem to harbor a stifled desire to burst out with a picture of the world as it “ought to be.” To do so requires more imagination than the boundaries of the realistic tradition allow. Although the novels hint at some resistance to the boundaries of realism, it is definitely restrained. To some extent, these allusions to a concept of the world as it “ought to be,” the ideal in each novel, are extractable. In an understated sense, they do look to the future. In contrast, Bulwer-Lytton clearly and repeatedly defines the problems that are the focus of the novel—the impact of circumstances and harsh laws on increased criminal activity which are all the product of class imbalance—and proposes solutions

that he attempts to describe in operation. Collins does not define a problem in specific terms, but the novel clearly recognizes and utilizes a weakness in the legal system and in Enlightenment thinking that is evidenced through the narrator's ability to manipulate that weakness and the law for his own benefit.

Orley Farm is not a social problem novel or a novel of social reform according to the standard definition which emphasized focusing on the living and working conditions of industrial workers. Its complaint about the legal system is what the narrator and some of the other characters view as the unfairness of rigorous cross-examination during trials and the legal system's procedural methods that protect the guilty and conceal truth. Additionally, the novel considers the most appropriate approach to bringing about legal reform.

Not only does the narrator effectively depict what is seen as faults in the system—for example, Mr. Chaffanbrass' browbeating cross-examination of John Kenneby—the narrator yearns for change. "I would have it of the best if that be possible" (168), the narrator says in an intrusion after Mr. Moulder has praised the trial by jury process. Trollope's descriptions of the conference on legal reform convey a sense of both the possibility of something else and the absence of a sense of what that might be. His brief list of the legal systems in other countries at the congress on legal reform accomplishes two things. It reminds readers that not everyone thinks as highly of the English system as the English do. That reminder that representatives of other countries think their legal systems are superior to England's in the same way that Blackstone praises the English system over others dims Blackstone's hyperboles. Secondly, the list demonstrates the existence of working legal systems that could be examined for their usefulness in improving the English

system if the English considered reform. Furthermore, the German jurist, Von Bauhr, presents an extensive reform proposal with global implications. The examples from the congress show that legal reform is, despite the English bar's resistance, something in the air. Significantly, the narrator in another intrusion remarks that such conferences and efforts like Bon Bauhr's "are seldom absolutely wasted" (136; ch. 17). However, the novel never moves beyond that point. Readers are taken to the edge and then told to step back. The narrator undercuts his own criticisms of the system by the unintelligibility of Von Bauhr's reform proposals, Judge Staveley's cautions of moderation to Graham, and the judge's strong urgings to the young barrister that he devote more time working on his law practice than on his reform writings so he can live in the world while trying to change it.

As a writer in the realist tradition, Trollope is limited to criticizing the "what is" or defining a problem. He cannot depict a world that does not exist. He does not attempt to approach the "ought to be" as Eliot does in *Felix Holt, The Radical*. Although Trollope does not discourage readers from pushing their imaginations to something that does not exist, he dilutes his convincing criticism through his consistent narrative moderation and balance and reminders that the story is fictional so that the complaints become less urgent. Conversely, his introduction of sympathy for Lady Mason, his transference of that sympathy to society at large, and his mastery at including readers by asking them to recall situations when they too were desperate are more immediate and incline readers to reexamine their perspectives in forming judgments. At the same time, this safe abstraction of sympathetic tolerant judgment does not violate the boundaries of the literary tradition of realism. Trollope straddles between depicting the legal criticisms persuasively and remaining consistent with his message of temperance. Because the latter message is so

much a part of his artistic and narrative style and because moderation is the ultimate message of the novel, it supercedes and mitigates the persuasiveness of his criticisms about the legal system. However, the artistic quality of the novel works effectively toward the persuasiveness of the novel's overall message. Simultaneously, that message is reflected in the artistic style itself. The message has determined the artistic quality, or at least its tone, because the author cannot urge tolerance without using tolerance in the vehicle he has chosen to make his statement.

Eliot's *Felix Holt, The Radical* also skirts the traditional definition of a social problem novel. It tells about the lives of the English workers but does not show their living or working conditions and makes few attempts to arouse any sympathy for their ignorance and conduct only slightly above that of domestic beasts. The narrator of the novel is no less a demagogue in shaming the workers than its hero, Felix. Eliot attempts to implement the beginnings of an ideal through an exceptional student, Esther Lyon, and her teacher, Felix, who is subject to bouts of not facing reality. The recurrence in the novel of the caution to make present decisions with a sense of the consequences looks to the future. So does the argument that acts based on a sympathetic imagination seed similar acts from others. These examples are intimations of the "ought to be." Unlike Trollope who does not suggest an ideal, Eliot's *Felix Holt* does detail his visionary steps toward an ideal.

Although the epilogue moves from the time of the novel's end, 1833, to the time of writing the novel, 1866, Eliot does not use the opportunity to describe much of the present. She provides little information of the married couple's life in another town or of the reception of Felix's teachings there through his school and lending books to the lower

class. According to Felix's argument, the results of self-improvement in the working class families would emerge in future generations, not the present generation. Eliot could not extend her novel or her imagination that far in time and continue writing in the realistic tradition because it would move beyond the presentness of realism. Neither does she describe change in Treby Magna. Other than prosperity and "more enlightenment," which she says is "doubtless," she cannot describe any personal improvements in the people because she has no knowledge of them, "not having correspondence in those parts" (605). She does know that North Loamshire has not returned a Radical candidate.

Eliot's silence regarding change is persuasively consistent with her slow growth argument. The slower the change the less obvious it becomes. Drastic change is more visible. The novel's argument, coinciding with a time when reform enthusiasm was decreasing, may have been the perfect rationalization to those whose energies were spent in working for reform. Her views also provided additional fuel to those who feared future reforms might be more drastic. The author's recalling of the past and Blackstone's simplicity and faith in eventual progress to restore the nation after the disturbances over reforms is persuasive and appealing. When Eliot wrote *Felix Holt, The Radical*, Jeremy Bentham had been dead more than thirty years. That she felt it worthy to continue the Blackstone-Bentham debate on Blackstone's behalf in her novel indicates the lasting influence of both men. It also exploits fears of reform and adds to the persuasiveness of the novel's message. Furthermore, the novel's emphasis on the improvement through secular natural law of the moral well being of the individual rather than the group is, as Claude Bissell writes in "Social Analysis in the Novels of George Eliot," "pointing out and heavily underlining the moral inadequacies of philosophical radicalism" (154). Eliot's de-

scription of the working men and of the riot on election day are persuasive reminders of two points in the novel's message. The working class is not ready for reform because, as Blackstone said, changes in the laws contrary to social norms or customs or in advance of social change caused disruptions, not improvements. The utilitarian principle of pleasure and pain, as seen in Dickens' *Hard Times*, did not establish norms of right and wrong conduct in individuals.

Critics attacked both of the two remaining novels for their potential negative influence upon vulnerable readers. Obviously, they thought these stories were persuasive, or they would not have expressed this criticism. In Collins' novel, an undercurrent of crime, deceit, and anarchists beneath Victorian respectability threatens perceptions of stability. Although it was the subject of newspaper stories, such material was not the appropriate subject for novels. Collins' realistic depiction of free proof—the more than necessary details to meet the burden of proof—and authenticating devices, which included a legal framework for legitimization and providential intervention, make the sensational appear real and persuades readers to recognize the reality of the sensational as more than something they read about in newspapers that happens to others. Collins' novel, with its multiple layers of reality and its cunning iconoclasm, is persuasive, drawing resolute readers into their own pursuit of the slippery truth. Its message chips away at British complacency, because it provokes an uncomfortable vision of society residing on the fringe of moral and legal anarchy through its examples of the effortless deconstruction of the institutions and conventions that were acceptable means of discovering the truth.

Although *The Woman in White* is not a problem/solution exposition or even the definition or statement of a problem, it does present a case against the logical assump-

tions of Enlightenment thinking. For the legal system, this is a problem since law's rules of evidence for determining truth are based upon this rational thinking. The novel indirectly encourages a re-examination of legal methods to discover facts and reconstruct past events so that judgments and verdicts might be closer to the ideal of the truth or what really happened. Even though offering no direction toward what might be a better method, to its credit the novel identifies some areas worthy of examination: the use of the imagination in the process of discovering facts for presentation as evidence, the use of narrative testimony to present evidence, and the reduction of the scope of the exclusionary rules of evidence. The novel itself is an imaginative exploration of both positive and negative consequences from different ways of thinking about evidence to establish facts.

Concerns about the influence of novel reading existed before Bulwer-Lytton wrote *Paul Clifford*. The author incorporates that concern in his depiction of Paul's copying of the activities of a famous highwayman he had read about as a child. At the same time, Bulwer-Lytton shows how the novel can be used for other purposes, particularly to influence legal reform. Although the novel exposes injustice and the disparity between the classes, it does so through the narrator and the rhetoric of the characters. It does not illustrate social conditions as a realistic novel would; it makes them the subject of extended speeches. These speeches are mini essays inserted within fictional prose that easily could be set inside Bulwer-Lytton's nonfiction prose, *England and the English*. In this way, readers have no doubt about what problems the novel addresses and of the solutions proposed to solve them.

Felix Holt's speeches and some of his lessons to Esther are examples of this same rhetorical technique. In fact, Paul and Felix share a common earnestness and sincerity,

especially in their courtroom statements. The narrator describes Paul when he rises to speak as “noble” (439; ch. 36), a word Esther Lyon also attributes to Felix (573). Paul’s speech is emotional and appeals to the pity of his listeners at his victimhood and their own. He denounces harsh laws, places accountability on social circumstances, and reminds his listeners of the absence of bloodshed during his raids that were only against the rich who have the power to make and enforce the harsh laws. Felix’s statement to the court is less emotional. He defends the consequences of his assault on the constable as unintentional, and he attempts to place blame upon the victim. He inserts a digression about civil disobedience that few understand. He asserts his intellectual superiority and higher moral standards over his audience. Paul’s statement connects him to the crowd in the courtroom because of their common circumstances. Even the harsh Judge William Brandon agrees with Paul’s social criticism. In contrast, Felix’s statement enforces the line between him and his audience and angers the judge. Esther’s testimony more resembles Paul’s statement for its inclusiveness of the audience. While Paul’s statement and Esther’s actions unite them with their audience, Felix affronts them for not being equal to his standards. The responses to the emotions and drama of idealism within the novels themselves attest to idealism’s persuasiveness over Felix’s harsh, intellectual pragmatism. Bulwer-Lytton’s imaginary implication that an ideal is possible through Paul’s work in America also adds to the persuasiveness of the novel. The ideal within the novel supports the message of the ideal of the novel.

Bulwer-Lytton’s writing style is full of flourish, complicated syntax, and excessive punctuation. He builds a story around extraordinary events, coincidences, high emotion, and a symbolic mysterious disease. Instead of showing social problems through de-

scription, his characters and narrator give speeches in which their complaints about society are repeated and exaggerated for emphasis. If an artist cannot or does not choose to create lasting pictures in the mind, as Dickens would later, this is an effective way to make an impression. Exceptions to the speech scenes are the brief attempt to describe the harsh conditions of prison life and the two fleeting scenes at Paul's first trial depicting the imprisonment of a child and the judge's refusal to release a woman whose innocence has been determined through subsequently found evidence. The novelist's artistic weaknesses, if they are weaknesses, do not impair the conveyance of the novel's message, especially considering how closely Bulwer-Lytton seems to be following Bentham's problem/solution or censure/expositor format. Significantly, Bulwer-Lytton's writing style in the novel is similar to Bentham's style, particularly in its excessiveness, metaphors, and bombastic tone. It complements and identifies the Benthamite message of the novel.

This discussion already has alluded to traces of Bulwer-Lytton's idealism in Trollope and Eliot's novels. In *Paul Clifford*, which does not attempt a realistic depiction, these elements contribute to the persuasiveness of the novel because they are consistent with the idealistic proposition of the novel. However, characteristics of the ideal appear out of place in a novel in the realistic tradition. Despite a movement away from the unreal of the ideal in their imaginary depictions, novelists in the realist tradition must have understood that some elements of the earlier tradition had persuasive merit. One obvious element is the characterization of the major characters. Felix Holt and Esther Lyon are no less the perfect hero and heroine in *Felix Holt* than Paul Clifford and Lucy Brandon are in *Paul Clifford*. Both men are ideal physical specimens who surpass other men in physical strength and size. They also are uncommonly intelligent and educated, considering the

class in which they spent their boyhoods. Both women are beautiful in every way imaginable, naïve and unworldly but willing to be taught, and both are motherless daughters of kindly, eccentric, and slightly misguided men. Heroes and heroines are not the ordinary people that supposedly make realistic novels. Eliot's depiction of two such extraordinary individuals, although pretty and nearly sentimental when Felix and Esther are together, impairs the believability of Felix's ability to be a teacher of working men and the credibility of Esther's learning/conversion. He is a figure that appears too exalted to work effectively with the lower class. Felix's classlessness—too high for the lower class and too principled for the middle class—impairs his position on class functionality. Felix only connects from a human standpoint with the eccentric Mr. Lyon and the woman who loves him. While the ideal in Bulwer-Lytton's novel contributes to its value, in Eliot's realistic novel its lingering traces appear incongruous because they weaken the plausibility of its major characters.

Trollope's characters are less physically perfect; in fact, Felix Graham is described as a bit ugly. Lady Mason's uncommon retention of her good looks as an older woman is less the attribute of a heroine or ideal than a symbol of her otherness in relation to society and her ability to entice and seduce. However, Trollope does employ occasionally the emotional extremes that are typical in idealistic fiction. The author's characteristic moderation and balance in most aspects of the novel are set-aside in the melodramatic scenes of Lady Mason's physical collapses and hysterical tears. Knowing her adeptness at deceit, readers can never be convinced of the sincerity of the remorse these episodes are intended to convey, and they make Lady Mason less the sympathetic figure that the

narrator subsequently tries to make her. Again, elements of the ideal when incorporated into a novel of the realistic tradition tend to vitiate the credibility of realism.

Unlike the two other realistic novels, *The Woman in White* does not contain characteristics of idealism, even in its portrayal of the sensational, wronged women, and villains. The contest of wits that takes place in the novel is not a struggle between the perfect good hero and the perfect evil villain. Collins is interested in the strengths and weaknesses of the mind. Critics cite Collins' intricate plots and the attention he paid to outlining them as his artistic achievement. The intricate way he incorporated Hartright as the general narrator with the multiple narratives of the other characters into a legal model without losing the continuity of the story exemplifies his mastery in plot construction. The novel is long, but it never fails to maintain suspense. Its force lies in its multiple demonstrations of the persuasiveness of design. Hartright first announces his legal design in the Preamble, subtly controlling the readers' expectations. He pretends to be working with the official ideal, a legal method. Readers have no reason at that time to discount his credibility. The First Epoch of the novel tends to follow that design, while inserting clues that on the one hand, this design may consume itself and, on the other hand, that one or several more powerful designs operate beneath the surface design. Throughout the novel the narrator frequently comments on his design. He mentions or explains a deviation from his original plan. The designs are indicia of the narrator's intentions and multiple motives, not one of which is fully understood at the novel's end. Thus the plotting, the artistic design, is as important to the novel's force as its content. The design enforces the novel's message about the difficulty of determining truth and the legal method's limitations in that function.

The praise for Collins' plotting in the novel should not minimize the strength of Collins' characterizations. Marian Halcombe's uncertain identity and struggles with her anger, tendency toward physical aggression, and frustration at the subservient role society inflicts on women coincide with the elements of maleness in her physical appearance. Count Fosco is an equally unforgettable character. His greater than life appearance coincides with the greater than life homage his wife pays him, the honors supposedly bestowed upon him for his scientific achievements, and his unshakeable mental and emotional strength in meeting crisis situations with equanimity and reserve. Mrs. Catherick's self-control, fed by hatred of Sir Percival and Frederick Fairlie's reclusive self-obsession are also characterizations that create lasting impressions. We know, or imagine we know, too much of these characters to consider them the caricatures of idealism. Yet each of them carries secrets that the novel never reveals. Fittingly, the person readers know the least about in physical appearance or internal development and motivation is the narrator. These omissions, particularly regarding Hartright, effectively coincide with the novel's message of the truth unknown.

Sometimes when a writer is bound to a specific form, such as a sonnet, that exercise requires more imaginative powers than if the writer did not have to follow established rules. Fitting one's imaginative powers into certain literary rules or on to something as if it were a template as the writers in the tradition of realism did requires control and mental directness. Bulwer-Lytton's idealism was not so bound to a tradition, and his imagination could soar a bit more. Lawyers as writers most often must be more like the realists. They are bound to legal forms. Like the realists, their imaginations are limited to the form but not limited in what they can imaginatively produce with what they must

work with. Their imaginations also are determined by the focus of their message. Like Trollope, their imagination must remain appropriate to the focus.

When legal thinking progresses to legal imagination the experience obtained from a familiarity with the literary imagination provides choices for the legal imagination. At times lawyers can release themselves to the “unbridled thoughts” that Hartright indulged himself with in *The Woman in White* (88). These are the times when lawyers and others thinking about law can exalt the profession to a more transcendental height and imagine how law could provide “equal justice under law”¹ unfettered by Felix Holt’s pragmatic “the nature of things” (400) yet within the realms of practical applicability instead of the incomprehensible abstractions of Von Bauhr’s elysium in *Orley Farm*. The legal imagination here looks toward an ideal. That imagination is the first step toward reaching the ideal. Reform and improvement come from imagining what is possible under Trollope’s “the best” rather than accepting the best that is. As we learn from Trollope, though the pinnacle sought may be unachievable, “such efforts are seldom absolutely wasted” (136; ch. 17). This imagination persuades because it touches a common chord, a desire to feel good about things as Mr. Wace does in *Felix Holt, The Radical* after seeing Esther at her wedding. It results in change when that emotion is grasped and acted on in the context of realistic empiricism.

However, the imagination is important in law in other ways than imagining what the law “ought to be.” As James Boyd White correctly states in *The Legal Imagination*, “the activities which make up the professional life of the lawyer and judge constitute an enterprise of the imagination” (208). White suggests that lawyers can determine their own style of self-expression or establish their own imaginary limits, just as the novelists

within this discussion established their individuality. Like novelists, much, but not all, imaginative creativity of a lawyer is intended specifically to persuade. Persuasion is not exclusive to the courtroom. Lawyers need to be able to persuade their opponents and sometimes their clients, especially during settlement and contract negotiations or during mediation proceedings.

White says that the legal imagination begins when a lawyer first interviews a new client and begins to imagine who the person is. In words reminiscent of Eliot's looking to the beyond through the sympathetic imagination, White says the lawyer adopts "a social and narrative imagination, a capacity to envision different versions of the future" (208). Much as we saw in Esther Lyon, White says "[t]he lawyer must be able to tell himself imaginary stories about the future" (209). That future covers a broad range. For example, in preparing a civil claim the lawyer needs to imagine the response of the opposing party to the form and content of the initial pleadings. The selection of a cause of action must meet the remedy the client seeks as well as be able to withstand pretrial motions attacking the claim. Lawyers also have a responsibility to prompt their clients' imaginations before they make decisions such as whether to proceed to trial or to settle. That means imagining the realistic consequences of a trial: the toll on expenses, time, and emotion that extends beyond clients to their families; the uncertainty of a favorable verdict; the response and possible counter-claims of the opposing party; the reliability and persuasiveness of witnesses; the impact of an unfavorable verdict on themselves as well as on their opponent. All of these activities of the imagination form choices and lead to decisions in the practice of law and each activity can be compared to the decisions and choices based on the imagination of a writer of realistic fiction.

Like Collins' *Hartright*, a lawyer is what White calls the "auditor" of other people's stories so that the lawyer reconstructs the past imaginatively with a view to the future. As we saw in the *Woman in White*, the lawyer/auditor, according to White, "organizes what is seen and claims a meaning for it." Collins' novel is also a demonstration of how the imagination assists in the discovery of admissible facts that eventually form a story reconstructing past events. But the reconstruction is misleading when the facts are found to fit into a story the imagination has created a priori before the facts are known. White points out that trial preparation is an art that imaginatively creates from the facts a version of past events so that it results in a meaning consistent with the client's claims, withstands comparisons with other possible meanings, and convinces the trier of fact (209). The trier of fact, like a reader of a novel in the realistic tradition, imagines the reality of that version and of the sometimes-competing versions in reaching a verdict.

When thinking about law moves to imagining about law, lawyers can look to literature for ideas on persuasiveness or effectiveness. The version of the client's story they present in argument may be more effective if they can raise the thinking of the jury to an imaginative ideal. Sometimes, as Esther Lyon thought, a jury can be swayed to a certain verdict through appeals to the members' sympathetic imaginations. In determining punishment, an appeal for leniency produced from sympathy, as we saw suggested in *Orley Farm*, may lessen the harshness of punishment. Appeals to sympathy have a tendency to manipulate or cloud the facts and reduce the neutral and objective decision making the legal system is suppose to render.

The legal imagination works in other ways as well. It was the imagination of the original Dufey, a lawyer, that conceived the "law tricks" which first obtained possession

of Transome Court for the Durfey-Transomes. Someone else's imagination produced the law of entailment. Different imaginations applied to statutes and case law result in conflicts of interpretation as well as law's uncertainty and indeterminacy. Lawmakers, both legislative and judicial, must imagine these potential interpretative disagreements when making law. They also have to use their imaginations to consider the consequences of their legislation and rulings. Throughout all their use of legal imagination, lawyers must direct their imaginative choices toward the nature of the message they want to convey or the results they want to obtain. Simultaneously, the message to be conveyed or results obtained should determine their imaginary limits.

Progressing from thinking about law to imagining about law shows how so many aspects of law and the legal system may rise or fall on the limits of imagination. The legal imagination must always contend with the influence of cultural heritage and the boundaries that influence inherently imposes when judges or lawyers are attempting to imagine how someone from a different cultural heritage may respond to what a lawyer or judge says or does. A lawyer who cannot imagine what it would be like to be a victim of spousal abuse cannot imagine why the victim continues to live with the abuser and consequently may not be able to offer the appropriate legal assistance. In one sense, it is disconcerting to think that something like the law that can have such a powerful impact on human lives can be subject to something so impermanent, intangible, and abstract as imagination. Rather than a contest over competing stories, litigation becomes a tournament of imaginations. In another sense, recognizing the imaginative aspect of law pierces the concept of law as fixed and impenetrable, so that law and the legal system appear to

be more related to human activities and susceptible to change when imaginatively persuaded.

The judicial imagination works several ways in law. It is subject to the persuasion of the imagination of lawyers who argue before it. In that sense, judges are like readers. Judges also must imagine a statement of facts that supports their decision. Another possible use of the judicial imagination is that judges may be able to render more meaningful and just decisions if they can imagine future consequences of their decisions on the parties and perhaps on society at large.

Despite these affinities of the legal and literary imaginations, the novels discussed herein possess a disconnect. Each novelist imaginatively overturns the legal disposition or consequences of its criminal trial or legal position. Lady Mason is acquitted and avoids imprisonment, but she surrenders Orley Farm, which would have been one of the consequences if she had been found guilty. The loss of the property, her friendless exile, and the sympathy readers are asked to feel for her relieve any qualms readers might feel over her success in twice confounding the legal system. Paul Clifford's hanging is commuted to transportation. He escapes the colony and becomes successful in America. The circumstances that led him to crime, his work to recover from financial losses in America, and his exemplary conduct, including community activism and benevolence in his new home, seem to atone for his avoidance of legal punishment. Sir Percival Glyde and Count Fosco avoid legal prosecution. Hartright would have readers believe that Providence and the Italian Brotherhood assumed responsibility when the law's position was that there was insufficient evidence to prosecute. Hartright avoids accountability for any culpability in the deaths of the two men. His marriage to Laura and financial security seem to reward

him for his self-help beyond the sanction of the law. Felix Holt receives a pardon that releases him from prison and from any accountability for the death of a constable.

In each instance, the authority of the literary imagination weakens the authority of the law and the legal system. The literary imagination imposes its own punishment, combined with forgiveness, upon Lady Mason. The literary imagination allows for unexpected mercy in Paul's sentencing, makes life briefly difficult for Paul, and then allows him to succeed on his own merits. He creates himself in a new land without the intervention of circumstances or the stereotyping of birth or environment. Felix Holt receives a pardon because Esther's moral synthesis inspired those in power to render mercy. No mercy or leniency occurs in *The Woman in White*. Hartright neither gives nor receives it. He obtains his revenge and reward extralegally.

These resolutions are something else than the sympathetic treatment toward a criminal that Alexander Pettit correctly identified in mid-Victorian novels. In one respect, they do indicate the operation of a moral judgment over legal judgment that Pettit notes. They imply that a realistic portrayal of the "what is" of the legal system is incapable of rendering justice that satisfies the authorial imagination or the author's "ought to be." So the author must imagine beyond the legal determinations to depict, not necessarily an ideal but what ought to be in the disposition of these legal cases. Even Bulwer-Lytton's idealism resists stretching the limits on what the law can do. If Bulwer-Lytton changed the tenor of the legal system's operation at Paul's sentencing, he would undercut the novel's criticism of the criminal law. Judge William Brandon must instruct the jury to find Paul guilty because the facts show him guilty. Paul's victimization from circumstances and his claim to benefit only from the rich do not legally absolve him. The jury

follows the judge's instructions. To do otherwise would be jury nullification. However, in finding Paul guilty, they recommend mercy. The judge's sentence reflects that recommendation. It alone is such an out-of-character qualification that it surprises the lawyers. A recommendation of mercy is the best the law can provide. It takes the extralegal maneuverings of Lord Mauleverer to execute it. With the sentence modified from hanging to transportation, Bulwer-Lytton is free to usurp imaginatively the legal judgment with an authorial and moral judgment in the same way as the other three novelists.

Two processes are at work here. These extralegal dispositions coincide with the focus of the novels in which they are depicted. In order to proceed with their focus and to conclude persuasively, the legal disposition cannot stand in the novels. The realists and even the idealists cannot realistically and persuasively imagine a legal disposition that concurs with their focus. They must add a second disposition from other sources. Each novel's conclusion condones another system of law-like conduct that acts outside the law based on individual concepts of right and wrong and justice.

Realistically, the legal system cannot do the right thing according to this second code. These second dispositions imply that the legal system cannot render justice, at least not in the cases depicted, so other forces must intercede. That force is the individual or the community. In only one novel, *The Woman in White*, is this force providential, and that attribution is questionable. In *Orley Farm*, Providence does intervene for purposes of sympathy, not for Lady Mason's acquittal or subsequent punishment. The intervening force in Trollope's novel is purely human in the form of Mrs. Orme on behalf of herself and the community. Some of Eliot's characters indicate they believe, like Blackstone, that Providence will take care of the country without their intervention. However, the in-

tervening force in *Felix Holt, The Radical* is the response of the most prominent men of the community to Esther's actions. An external intercession is a rather drastic concept to incorporate in our thinking about the thinking about law and the legal system as depicted in the novels. Its message is that in their imaginations the authors depict an existing operative system among individuals external to the legal system. If realism is accepted for its representation of the "what is," then this system, as depicted by Trollope, Eliot, and Collins, is probable and plausible. In addition, it is part of the movement toward Bulwer-Lytton's idea of the ideal. We might consider this system another lingering trace of idealism in realism and argue that the authors must exceed the limits of realism in order to be persuasive and satisfy their focuses. Either way of thinking takes us to an overturning of the legal disposition.

Readers accept this system external to and superceding the legal system because each novelist has imaginatively persuaded them of its plausibility or its participation in reaching the ideal. Each novelist has persuaded the readers that the extralegal disposition is the right thing to do or that it is the appropriate way to resolve the legal conflicts of the novel. Their persuasiveness sanctions its existence. This acceptance is the strongest indicia of each writer's imaginative force and the enduring force of each novel.

Notes

¹ The inscription over the entrance to the U. S. Supreme Court.

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