IN CONTEMPT
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Nineteenth-Century Women, Law, and Literature

Kristin Kalsem
For Cole and Andrew
Mom and Dad
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My own history explains my fascination with the stories of the nineteenth-century women writer advocates whose texts and experiences are the keynotes of this book. After studying literature as an undergraduate, I went to law school and practiced law for several years before returning to graduate school in English, only to find myself studying law again but from a different perspective. I first had the idea for this book when I was a doctoral student in the Department of English at the University of Iowa. At its completion, I am a law professor at the University of Cincinnati College of Law. I also co-direct a joint degree program in Law and Women’s, Gender, and Sexuality Studies. My scholarly life is at the intersection of law, literature, and feminism, and it is my hope that this book finds readership across disciplines. As I remind my joint degree students as they struggle to satisfy all of the members of their Master of Arts committees, truly interdisciplinary work is hard to do.

Fortunately, I have had help and encouragement from literary scholars, law scholars, and a few, like me, who are both—all of whom have embraced the promise of interdisciplinary study. This book reflects much early input from my amazing dissertation director, Garrett Stewart. I am deeply grateful to him for encouraging me at every turn and inspiring me with his eloquence. Two other Victorianists at the University of Iowa, Teresa Mangum and Florence Boos, were extremely influential in my studies. Teresa is an outstanding teacher and remains a special mentor and friend. Florence’s vast knowledge of noncanonical texts and lesser-known women writers greatly enriched this study.
I came to the University of Cincinnati College of Law ten years ago with a different scholarly agenda than most law faculty. I wanted to write about law, but also about Frances Trollope, George Eliot, and many women whom my colleagues had never heard anything about. Always, they have been supportive, and I am so appreciative of their genuine enthusiasm for my work. I especially would like to thank the two deans whom I have worked with since coming to the College of Law, Joe Tomain and Louis Bilionis, and my colleagues Emily Houh, Betsy Malloy, Michael Solimine, and Verna Williams for their always-stimulating intellectual engagement, but mostly for their friendship.

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On a personal note, I wish to thank my two boys, Cole and Andrew, for all the joy that they bring to my life. They also have been especially supportive and cooperative in connection with the completion of this book, and for that I owe a debt of gratitude to my own first-grade teacher, and now dear friend, Anne Driscoll. A few months before the sabbatical year during which I planned to finish this manuscript began, she offered me two wonderful pieces of advice. First, create a writing space of my own in my home, one filled with lovely and meaningful things. Inspired by this idea, I purchased a beautiful cherry-wood Victorian writing table, set it in front of a picture window overlooking my small garden, and sat down every day to write on a comfortable chair, upholstered in a finely detailed William Morris fabric. Her second suggestion was to involve my boys in the writing process—and I did. I talked to them about the writing; they asked me about the writing; one of them even started to write a book of his own. “Make
them proud to have a mom who is a woman writer advocate herself,” Anne had encouraged—and that, I hope, I also did.

Other important people in my life contributed to this book’s completion by helping me with other of life’s responsibilities, particularly Shirley Anderson and Vona Ann and Wendell Burbank. Lastly, I want to take this opportunity to thank my parents, Ken and June Kalsem, for simply being who they are. Dad is a quiet, caring man who loves anything I do because I’m doing it. Mom, a retired librarian, gifted me with her love of books. Her favorite sweatshirt quotes Jorge Luis Borges, “I have always imagined that Paradise will be a kind of library.” It is my great pleasure to present her with one more book to catalogue.

Alice, in her final adventure in Wonderland, becomes increasingly bold during the trial to determine who stole the tarts of the Queen of Hearts. She knows she is growing back to her true size; she has experienced that “curious sensation” telling her that she is gaining her full personhood (94). Despite the Dormouse’s warning that she has “no right to grow here,” in this court of law, Alice decides to stay (94). And what a spectacle she makes of herself. She is loud; she literally upsets the jury; she interrupts and talks back to the judge. In fact, she shows no respect for the “stuff and nonsense” of the law itself or for any of its representatives: “Who cares for you?” said Alice (she had grown to her full size by this time.) ’You’re nothing but a pack of cards!’ At this the whole pack rose up into the air, and came flying down upon her” (101). As Alice comes into herself, chaos becomes the order of the day, and one senses that Wonderland’s system of justice will never be quite the same.
The Performance of Feminist Jurisprudence in a Century of Legal Reform

In this closing episode of Alice’s Adventures in Wonderland, Lewis Carroll dramatizes what, by 1865, was to become an increasingly popular Victorian scene: a woman questioning and critiquing the law and claiming a place for herself within its institutions. The first half of the reign of Queen Victoria witnessed Caroline Norton agitating for a mother’s right to custody of her children and making minor inroads into a father’s absolute rights with passage of The Infant Custody Act of 1839 (2 & 3 Vict., c. 54). In 1854, Norton put the harsh realities of coverture—the legal fiction that, upon marriage, the wife’s legal identity was subsumed into that of her husband—on public display in her pamphlet English Laws for Women in the Nineteenth Century, arguing that the law did not sufficiently protect women. Barbara Leigh Smith went much further in her 1854 publication, A Brief Summary in Plain English of the Most Important Laws of England Concerning Women, making clear that coverture must be completely abolished for there to be any possibility of equality between men and women. Norton, Smith, Bessie Parkes, and Mary Howitt were among a group of women active in the mid-1850s debates concerning the reform of married women’s property and divorce laws. All were greatly distressed by the Divorce and Matrimonial Causes Act of 1857 (20 & 21 Vict., c. 85). Although the Act made it possible to obtain a divorce in England without a special Act of Parliament, it also legislated a double standard by allowing a man to obtain a divorce upon proof of his wife’s infidelity, whereas a woman had to prove her husband’s infidelity plus incest, bigamy, gross physical cruelty, or desertion. Rape, sodomy, and bestiality, on the part of the husband, also were included as grounds for divorce.

In the 1870s and 1880s, despite numerous setbacks, feminists such as Elizabeth Wolstenholme, Elizabeth Gloyne, Lydia Becker, Jessie Boucherett, Frances Power Cobbe, and Josephine Butler worked tirelessly to reform the laws affecting married women’s property. They achieved limited success with the Married Women’s Property Act of 1870 (33 & 34 Vict., c. 93), followed more than a decade later by the much more comprehensive Married Women’s Property Act of 1882 (45 & 46 Vict., c. 75). Cobbe was also very instrumental in the passage of the Matrimonial Causes Act of 1878 (41 & 42 Vict., c. 19), which offered much-needed protection for women from domestic abuse. From 1869 to 1886, Butler devoted most of her seemingly unlimited energy to the campaign to repeal the Contagious Diseases Acts (legislation to control the spread of venereal disease that allowed any...
woman suspected of being a prostitute to be apprehended and subject to a genital examination). 7

Victorian women were exerting much political influence, and they were fortunate in being helped by male members of Parliament such as John Stuart Mill, Richard Monkton Milnes, and Jacob Bright. 8 As the century progressed, however, efforts were made to eliminate the need for exclusive reliance on these “middlemen” as women strove to impact the law more directly—by voting, by being elected to public offices, and by becoming members of the legal profession itself. 9

In 1892, Charles M. Beaumont wrote a paper encouraging women to attend legal proceedings in the law courts “to see that their interests are properly cared for by Government” (1). In this paper, later published as a pamphlet entitled Women and the Law Courts, he explained:

Not many years ago such conduct as I advise would have resulted in certain defeat. Then woman was generally regarded as a sort of domestic animal, on whose part any claim to political rights or to an opinion on questions of morality would be held as ridiculous as similar claims advanced by a tabby cat, though by a curious anomaly they were made to bear all responsibility for immorality. Then their intrusion into the courts would have been resented with merciless severity by the judges, who would have been supported by the public, including the majority of the female sex, whose ideas of female advocates of women’s rights were fairly represented by the caricatures of Artemus Ward. Now all these things have changed. Women have become an acknowledged political force, welcomed by some, dreaded by others, but despised only by the ignorant, and a political force, in our growing democracy, is always treated with respect. The more general education of women has made the sex more restless under bondage, and the example of many of their heroine champions has roused them to some sense of the value of political and social rights. Lady advocates, lady politicians, lady lecturers, have taught the world that it is neither safe nor reasonable to treat women as a class with contempt. (4)

In Contempt: Nineteenth-Century Women, Law, and Literature focuses on women who facilitated and participated in this “intrusion” into the legal realm. In England, the nineteenth century was a period of unprecedented reform in laws affecting the everyday lives of women. Significant improvements were made, not only in the areas of child custody and support, divorce, and married women’s property, but also with respect to reproductive rights, lunacy law reform, women’s admission into law and politics, and domestic abuse. Women’s contributions to these changes in the law,
however, have been largely ignored because their work, stories, and perspectives are not recorded in law books or other authoritative sources of legal history, but rather in texts of a different kind. This book explores the legal advocacy of nineteenth-century women writers in essays, autobiographies, and other nonfiction publications, as well as in courts of law. As is more fully developed in chapter 1, this book also emphasizes the important legal forum to women that was provided by the novel form.

Specifically, this study of women, law, and literature analyzes the work of women writers who performed what today we would characterize as “feminist jurisprudence.” While feminist jurisprudence encompasses multiple approaches and methodologies, broadly speaking it includes “an analysis and critique of law as a patriarchal institution” (Smith, Introduction 3). Moreover, it insists on the importance to law of taking into account the voices and experiences of women and other legal “outgroups.”

**Resistance through Narrative in Outlaw Texts**

While women remained in a subordinate legal position throughout the nineteenth century, the nature and extent of that position under the law changed significantly over that period. Austin Sarat and Jonathan Simon, in exploring how the mutually constitutive relationship between law and culture affects the process of legal change, explain:

Legal meanings are not . . . invented and communicated in a unidirectional process. Litigants, clients, consumers of culture, and others bring their own understandings to bear: they deploy and use meanings strategically to advance interests and goals. They press their understandings in and on law, and, in doing so, invite adaptation and change in legal practices. (19–20)

Legal scholars such as Richard Delgado and Kathryn Abrams have made compelling arguments that narratives offer particularly rich insights into the meanings of law from the perspectives of those who resist having the law passed down in a unidirectional fashion. In “Storytelling For Oppositionists and Others: A Plea For Narrative,” Delgado describes the historical practice of resistance through narrative:

Subordinated groups have always told stories. Black slaves told, in song, letters, verse, about their own pain and oppression. They described the terrible wrongs they had experienced at the hands of whites. . . . Mexican-
Americans in the Southwest composed *corridos* (ballads) and stories, passed on from generation to generation, of abuse at the hands of gringo justice. . . . Feminist consciousness-raising consists, in part, of the sharing of stories, of tales from personal experience, on the basis of which the group constructs a shared reality about women’s status vis-à-vis men. (2435–36)

Specifically with respect to the value of women’s narratives to an understanding of law, Abrams writes, “Experiential narratives are significant not only for the substantive message they convey but for the way they claim to know what they know. Feminist narratives present experience as a way of knowing that which should occupy a respected, or in some cases a privileged position, in analysis and argumentation” (975–76).

This book examines nineteenth-century women’s stories and experiences recorded in what I will characterize as “outlaw” texts. I use the word “outlaw” to emphasize that, while these texts are not considered official legal texts and thus “out” of the purview of much legal inquiry, they are texts with respect to which “law” is an integral signifying system. Moreover, this study aims to raise awareness of nineteenth-century women’s critique of unjust laws, including narrative resistance in texts that would not necessarily be characterized as legal in nature. There are no courtroom scenes in Emily Brontë’s 1847 *Wuthering Heights*, for example, but, as described more fully in chapter 1, coverture and the laws relating to married women’s property both underlie Heathcliff’s statements and actions with respect to marriage and illuminate how he ultimately ends up owning *everything*. Similarly, an understanding of a father’s absolute right to custody of his children (even if he loathes and abuses them) underscores the gravity of Heathcliff’s ravings, “I’ll have it [his child Linton] . . . when I want it” (178), and makes the situation of Isabella (the child’s mother) all the more tragic.

In analyzing the importance of looking beyond traditional legal sources to gain understandings of law, Rosemary Coombe argues, “Rather than stress isolated decisions, statutes, or treatises, we need to attend to the social life of law’s textuality and the legal life of cultural forms as it is expressed in the specific practices of socially situated subjects” (478). Outlaw texts narrate these practices, exploring the effects of law on everyday life, illustrating a primary form of nineteenth-century women’s engagement with the law by examining, for example, how “[l]egal rules and practices daily influence how people act by affecting the expectations they hold and the risks they take” (Minow, “Forming Underneath” 822).

One of the primary goals of this study is to provide legal, historical, and cultural material on a selection of topics such as infanticide, birth con-
trol, and domestic violence such that readers have the context to identify moments of feminist jurisprudence in nineteenth-century writings for what they are. This approach to women’s narrative advocacy facilitates the critical examination of what those moments might signify inside the text (with respect to novels, for example, in relation to narrative elements such as plot, character, and point of view) as well as outside the text—as they “press their understandings in and on law, and, in so doing, invite adaptation and change in legal practices” (Sarat and Simon 20). In this way, my study also responds to Christine Krueger’s call in her 1999 article, “Victorian Narrative Jurisprudence,” for the need to historicize narrative jurisprudence and attend to its complexities.

I feel fortunate that my own book was early enough in the publication process that I had the opportunity to read Krueger’s recent book on this subject, Reading for the Law: British Literary History and Gender Advocacy, and to incorporate discussion of the ways in which our historicized law and literature studies complement each other. In her book, Krueger argues for the importance of literary history to an understanding of the connections between law and literature. Concerned that some law and literature scholarship presents narratives as always critiquing legal discourse, creating an “ahistorical opposition,” her book illustrates that literary history “demonstrates the historically contingent political impact of legal and literary texts for outsider advocacy” (2). While arguing that “literary history presents serious challenges to the celebration of narrative—even autobiography—as intrinsically suited to outsider advocacy,” she shows that “historical scholarship can also provide viable accounts of literary advocacy that, under specific circumstances, moved forward legal recognition for excluded groups” (3). It is this type of literary advocacy, performed in narratives that are “outlaw texts,” that is central to In Contempt, a study grounded in literary, as well as legal, history.

In this book, because I wish to emphasize women’s important, but much overlooked, role in legal history, I have focused primarily on outlaw texts written by women. But just as Krueger cautions against too facile an association of narrative with progressive movements, I also want to clarify that not all legal writings by women critiqued the patriarchal nature of the law and that many texts written by men, such as George Moore’s 1894 novel Esther Waters, did. Moore’s story of Esther, an unmarried mother who is forced to support herself and her much-loved infant by going into service as a wet nurse, poignantly illustrates the desperate situations of young women with infants to support and no way to pay for their food and care. Esther has no choice but to put her own child in the keeping of an elderly woman, but she is not at all interested in the babyminder’s suggestion that
she might prefer to pay five pounds to have the child “adopted” (the idea being that the infant would die under the woman’s “care”). When Esther’s boy becomes ill at the babyminder’s and her employer will not let her leave to see him, Esther ponders:

By what right, by what law, was she separated from her child? ... It was then a life for a life. It was more. For the children of two poor girls had been sacrificed so that this rich woman’s child might be saved. Even that was not enough: the life of her beautiful boy was called for. And then other memories swept by. She remembered vague hints, allusions that Mrs. Spires [the babyminder] had thrown out; and, as in a dream darkly, it seemed to this ignorant girl that she was the victim of a far-reaching conspiracy. ... (146)

The famous baby farmer case of Mrs. Waters in the 1870s (Waters was convicted of murdering one child and suspected of being responsible for the deaths of some forty others) fueled beliefs that illegitimate children were dying because their mothers were uncaring or irresponsible. Narratives such as Moore’s—outlaw texts that provided a different context, that insisted on the relevance of factual information such as poverty and women’s sole responsibility for “immorality”—shifted the blame from individual women to a set of cultural values that conspired against unmarried women who had breached the laws of society.

Finally, certain of the texts presented in this book also are “outlaw” in that they imagine new possibilities for law and justice. Judith Resnik, in discussing the value of the interdisciplinary study of law and literature, explains, “I bring literature to law students to show them what lawyers cannot yet imagine: stories that law has yet to invent, rights yet to be seen, and how to cope with problems seen but that stymie us by their pain” (350). In the nineteenth century, writers such as Jane Hume Clapperton in Margaret Dunmore; or, A Socialist Home invented families that were not organized as patriarchies; novels such as Florence Dixie’s Gloriana included women with rights to vote and sit in Parliament; A Writer of Books by George Paston confronts the unspeakable pain of a mother’s forced (and perfectly legal) separation from her child. Literature also imagined legal advocates of a different kind. For example, Shakespeare’s sixteenth-century archetypal legal woman, Portia, in the nineteenth century was given several stories all her own. Engaging in what Julie Hankey terms the “novelizing of Shakespeare’s plays,” women writers embellished on the positive representation of Portia from The Merchant of Venice, narrating her childhood, family history, education, beliefs, and desires (436). They worked to make this imagined character—the woman advocate—real.
Nineteenth-Century Portias

Making the Character Real

In *The Merchant of Venice*, Portia argues as a lawyer and presides as a judge over one of the most famous trials of all time, the proceeding to determine whether Shylock will be allowed to enforce a contractual remedy of a pound of flesh. It is Portia who tries to persuade Shylock to be merciful, and when he refuses, who articulates the fatal flaw in his desired remedy:

This bond doth give thee here no jot of blood;
The words expressly are “a pound of flesh.”
Take then thy bond, take thou thy pound of flesh;
But in the cutting of it, if thou dost shed
One drop of Christian blood, thy lands and goods
Are by the laws of Venice confiscate
Unto the state of Venice. (4.1.305–11)

While there was disagreement as to whether Portia or Bellario, the learned doctor of laws she had consulted, had identified this legal loophole, there was overwhelming nineteenth-century consensus about the strength of character of this “[m]ost learned judge” (4.1.303).17 Anna Jameson, in her 1832 *Characteristics of Women, Moral, Poetical, and Historical*, was the first to analyze Shakespeare’s female characters as individuals worthy of critical attention. Prior to Jameson, critics such as William Richardson and Samuel Coleridge had dismissed the women in Shakespeare’s plays as almost without character (Hankey 426–28). Richardson argued that this reflected the social inferiority of real women, explaining that “uniformity of conduct [is] frequently occasioned by uniformity of condition” (qtd. in Hankey 426).18 Jameson disputes the uniformity of these characters, seeing them as much more realistic than the unidimensional historical representations of real women. She argues that Shakespeare’s women “are complete individuals, whose hearts and souls are laid open before us—all may behold and all judge for themselves” (xvi–xvii).

Giving pre-eminence to the “characters of intellect,” Jameson’s first character portrait is of Portia, “a perfect model of an intellectual woman, in whom wit is tempered by sensibility, and fancy regulated by strong reflection” (xxix). However, the kind of woman Portia represents, Jameson concludes, would not thrive in the nineteenth century: “A woman constituted like Portia, and placed in this age, and in the actual state of society, would find society armed against her. . . . With her, the world without would be
at war with the world within” (76). In a culture in which the legal fiction of coverture determined the plot of women’s lives, Jameson lamented that either Portia’s vivacious nature would be subdued or her resistance would make her proud and rigid.19

The nineteenth-century critic Charles Cowden Clarke noted that Portia’s association with the law was particularly troubling: “There is a class of my own sex who never fail to manifest an uneasiness, if not a jealousy, when they perceive a woman verging towards the manly prerogative; and with such, the part that Shakespeare has assigned to Portia in the trial-scene would induce this prejudice against her.”20 His wife Mary Cowden Clarke, however, suggests in her collection of stories, The Girlhood of Shakespeare’s Heroines, that her own sex found Portia’s successful foray into legal territory particularly appealing. Like Jameson, Clarke begins her series of tales with Portia. In this very popular collection, Clarke traces “the probable antecedents in the history of some of Shakespeare’s women” and tries “to imagine the possible circumstances and influences of scene, event, and associate, surrounding the infant life of his heroines, which might have conduced to originate and foster those germs of character recognized in their maturity . . .” (iii). For Portia, Clarke imagines that Bellario, the learned doctor of laws whom she consults prior to the trial, is the uncle who raised her after her mother’s death in childbirth and her father’s disappearance.21 As a child, Portia sits with Bellario as he studies his law books and reviews his cases. He educates her himself, and “he would often laughingly tell her, that though she had no regular schooling, no masters, no accomplishments, no womanly teaching,—no set education in short, yet that he should in no time make her an excellent scholar, and a most capital lawyer” (48–49).

As Bellario’s laughter suggests, he does not offer this as a serious course of action; he believes women “would make but poor lawyers,” as Clarke has him say:

In the exercise of their [women’s] discernment, they will frequently triumph too early in the discovery of an advantage; and it is the part of a clever lawyer not to betray his own strength and his adversary’s weakness too soon. To skillfully treasure up each point successively gained, and by a tardy unmasking of your own plan of action, to lead your opponent on to other and more sure committals of himself, is more consonant with the operation of a man’s mind, than suited to the eager, impulsive nature of woman. (52)

Of course, the strategy Bellario accuses women of being unable to execute is precisely the one Portia adopts in the play. When Portia smilingly retorts
that “one day or other you may be brought to acknowledge that I could make a profound lawyer,” the readers (who are familiar with the play) know she is right (52).

Nineteenth-century women found much to admire in Portia. The actress Fanny Kemble designated Portia as her “favouritest of all Shakespeare’s women” (Kemble 106); the novelist Geraldine Jewsbury named Portia as “one of [her] great heroines.”22 Also, when the Girls’ Own Paper sponsored a contest for the best essay on “My favourite Heroine from Shakespeare,” Portia was the most popular character, being the subject of more than a third of the essays submitted (Marshall 41). Manifesting some of the uneasiness noted by Charles Cowden Clarke, the Girls’ Own Paper specifically published an admonishment of the girls whose essays suggested that Portia would be a proponent of women’s rights: “Could anything be more inapropos than this? . . . How foolish girls are to become so exercised about one idea that they must fain ‘drag it in,’ when it has nothing to do with the subject they are writing about.”23 Clearly, some women were insisting on the contemporary relevance of “Lady Lawyer, Portia.”24

In sharp contrast to the literary criticism that had emphasized the limited roles embodied by Shakespeare’s female characters, M. L. Elliott’s sketch on Portia in her 1885 collection Shakespeare’s Garden of Girls presents the fullness of this character:

Portia is a judge upon the bench, an advocate at the bar, a preacher at the pulpit, a wit in company, a student when alone, a philosopher in thought, a poet in expression, and, above all, a tender and romantic girl growing up into the truest of women and the sweetest of wives. (128)

While the “above all” characteristics seem to reify the ideal of Victorian womanhood, Elliott is making the case that Portia is not “strong-minded” in the derogatory nineteenth-century sense that would make her a “hard-featured, loud talking, forbidding-looking being in semi-masculine or dowdy attire”; she instead substantiates that “the possession of the highest intellectual endowments is compatible with the age and susceptibilities for tender and romantic love” (117). For Elliott, Portia is much more than a representation of women’s limitless possibilities; she is a judge and an advocate. The references to her as a girl, woman, and wife at the end of Elliott’s compiled résumé are cumulative roles, not replacement roles, and indeed, these latter “womanly” descriptions emphasize that the roles first and foremost associated with Portia are not manly prerogatives.25

Portia is an intellectual woman who can more than hold her own in the public sphere, in the male worlds of law and commerce. As Elliott notes,
she can “stand side by side with learned doctors and shrewd practical men of business” (117). And while she has to dress as a man in order to gain admittance and have a voice in the courtroom, her audience knows who she is at all times. She is under the cover of a male disguise, but she is speaking her own mind.

It took until 1919, when Helena Florence Normanton and Gwyneth Marjory Thompson were admitted as law students to the English bar, for fact to catch up with fiction and for newspapers to announce, “Portia Arrives” (“Portia Arrives” 2). Reporting the admission of Normanton as a student to Middle Temple and of Thompson to Lincoln’s Inn, the Evening News stated, “Portia is to have leave to plead, in her proper person, without disguise or simulation or dissimulation of any kind” (“Sister Buzfuz” 4). Alice, at long last, had gained the right to be, speak, and even argue in a court of law.

In the following chapters, I present the feminist jurisprudence of numerous nineteenth-century women writers whose literal and figurative representations of women forever changed the British legal landscape. Working in real-life courtrooms, nonfiction publications, and a variety of types of novel (including Gothic, social-problem, utopian, and New Woman novels), these feminist thinkers addressed a wide array of legal issues that were central to women’s lives. In the broad study of nineteenth-century women, law, and literature, choices must necessarily be made with respect to which texts to include and which aspects of law to cover. In making my selections, I have been guided by certain tenets of feminist jurisprudence. First, feminist legal scholars have developed theoretical approaches and methodologies for analyzing law that take as a central point of departure women’s experiences of exclusion from the law. This study takes as its primary focus works of nonfiction and fiction that, for the most part, have not been considered in legal histories or in studies of law and literature. Second, women’s experiences have been moved from the margins to the center of the analysis. Thus, substantive areas of the law are examined that were of particular importance to women in the nineteenth century, and specific consideration is given to “how the law fails to take into account the experiences and values that seem more typical of women than of men, for whatever reason, or how existing legal standards and concepts might disadvantage women” (Bartlett, “Feminist Legal Methods” 837).

The chapters are organized to broadly follow a legal progression in an effort to explore the myriad ways in which law—as it is drafted, enacted,
adjudicated, interpreted, executed, and reformed—intersects with women's lives. Thus, after chapter 1 more specifically develops the analysis of novels as outlaw texts and more fully sets forth the state of the law with respect to women at the beginning of the nineteenth century, chapter 2 emphasizes the law as legislated, chapter 3 focuses on the trial stage, chapter 4 considers judgments, and chapter 5 addresses legal appeals. In this way, *In Contempt: Nineteenth-Century Women, Law, and Literature* takes a broad view, not only of legal texts, but also of legal actors, voices, participants, and experiences. As Judith Resnik explains, feminism can bring to law an emphasis on the importance of not limiting the study of law to texts “authored by a very few actors: Supreme Court justices in particular, appellate judges in general, and sometimes members of Congress or their staff” (351). Because such a “choice of text assumes, reiterates, and affirms the primacy of those who are currently hierarchically superior and further assumes that the hierarchy is itself fixed—and appropriate,” she encourages looking beyond “a singular set of actors, positioned by class, race, ethnicity, and gender” to the work of a wider range of legal participants (351–52). Throughout the book, this study weaves larger thematic strands, such as the gradual erosion of coverture, women's ongoing struggle for legal and literary identities of their own, and the increasingly contested control of women's bodies.

More specifically, chapter 1 focuses on Mary Wollstonecraft's late-eighteenth-century unfinished novel, *The Wrongs of Woman; or Maria: A Fragment* (1897), to introduce the legal fiction of coverture, the basis for “the partial laws and customs of society” (*Wollstonecraft, Maria* 73). Also, while the concept of outlaw texts generally is described in this Introduction, chapter 1 turns more specifically to “outlaw novels,” using *Maria* to illustrate the ways in which novelistic discourse and feminist jurisprudence are ideologically allied. Analyzing the imagery of “protection” in the passages on coverture in William Blackstone's *Commentaries on the Laws of England* (1765), for example, I explore the ways in which Wollstonecraft's novel revises this legal text, exposing and metaphorically reconstituting the law's cover as capture. Moreover, focusing on *Maria* as a Gothic novel, I examine how Wollstonecraft's text employs Gothic conventions such as subterranean spaces, live burial, doubles, unintelligible writings, and the unspeakable to literalize and symbolically reconfigure the buried (but very much alive) tropes of legal discourse that kept women defined, confined, and silenced within a Gothic reality. This chapter concludes with a re-examination of critical conclusions about the policing role of the novel in light of the feminist jurisprudence performed in novels that are “outlaw texts.” Responding to influential studies of nineteenth-century law and lit-
erature, I also consider how other law–novel connections may be differentially understood when “how gender matters” is seriously considered.29

The legal focus of chapter 2 is the law of infanticide and the bastardy clauses of the Poor Law Amendment Act of 1834 (the New Poor Law). The outlaw texts examined in this chapter, ones that provide her stories of infanticide, include The Broad Arrow (1859) by Caroline Leakey (Oliné Keese), The Last Sentence (1891) by Gray Maxwell (Mary Tuttiet) and, most specifically, Frances Trollope’s 1843 novel Jessie Phillips: A Tale of the Present Day. Jessie Phillips is a novel about an unmarried working-class woman who is wrongly accused of murdering her child. I contrast the novels of Trollope, Leakey, and Tuttiet to literary and legal narratives that reinforced the law’s “truth” that infanticide was a problem of deviant women. Specifically, I consider the ways in which George Eliot’s novel Adam Bede indicted the character of Hetty Sorrel. Then I turn to an examination of the legal narrative of infanticide that begins with a 1623 English statute that applied only to “lewd women that have been delivered of bastard children” (21 James 1, c. 27). After briefly tracing the character of the “lewd woman” through two centuries of legal plotting, I provide a close analysis of the intertextual relationship between Jessie Phillips and narratives that emerged during the legislative debates over the bastardy clauses of the New Poor Law. An exploration of these narrative connections illuminates how Trollope’s novel exposes the law’s “cover” to be surveillance, its “protection” to be for the “fondly protected man,” and women’s “madness” to be genuine anger, particularly about their subordinate position under the law.

Chapter 3 examines the topic of birth control in the nineteenth-century contexts of law, literature, and libel. In 1877, Annie Besant and her partner Charles Bradlaugh published a tract on birth control and sold it for sixpence so that it would be available to the poor. They were arrested and charged with obscene libel for publishing an “indecent, lewd, filthy, bawdy, and obscene book” (Freethought 322). At the trial, the defendants served as their own attorneys, with Besant arguing her own case in open court. Taking the 1877 trial transcript as my primary legal text, I examine Besant’s strategy of playing upon the cultural meanings of “woman.” An analysis of Besant’s narrative strategy shows how she used the very ideal of Victorian womanhood to subvert it. In what proved to be a stunning obfuscation of societal norms, Besant revised traditional narratives of female sexuality and good mothering to momentarily open up the possibility of a sexualized domestic ideal of womanhood. I then turn to an examination of the literary legacies of this pathbreaking trial, focusing on the first British novel to advocate openly for the use of artificial birth control, Jane Clapperton’s utopian novel Margaret Dunmore; or A Socialist Home (1888).
I argue that Margaret Dunmore was a site for the reconstruction of the cultural meanings of family and the duties of women; this novel displaced representations in works such as Jane Austen’s *Mansfield Park* (1814) and Charles Dickens’s *David Copperfield* (1850) that ignored women’s debilitating confinements or treated them as comic. I also discuss more subtle literary treatments of birth control in novels such as Thomas Hardy’s 1895 *Jude the Obscure*. In the last part of the chapter, I briefly present the feminist jurisprudence of Marie Stopes, who carried the dialogue on this taboo subject into the twentieth century with her runaway bestsellers *Married Love* (1918) and *Wise Parenthood* (1918) and who sued a vocal opponent of birth control for libeling her. Stopes made the hitherto utopian idea of widespread access to contraception a reality when she opened the first birth-control clinic in Britain in 1921.

In the fourth chapter, I shift from a focus on the performance of feminist jurisprudence in legal and literary narratives to an analysis of the representations of two women who embodied the power of the law in their roles as judges: the fictional character Ayesha, from H. Rider Haggard’s imperialist 1887 novel *She*, and the real-life Mary Slessor, who was the first woman appointed as a magistrate in the British Empire. In this chapter, because I am not looking at direct testimony of women’s legal advocacy, but rather representations of women in the legal arena, I employ a theoretical approach that I term “cross-examination.” The texts in which these representations appear, the sources of direct testimony, include fictional descriptions and iconographic images of Ayesha in her capacity as judge and written accounts of Slessor’s courtroom persona. Reading these texts against the backdrop of legal proceedings in England in which women sought (and continued to be “lawfully” denied) entry into law and politics (the legal issue in these “pronoun” cases being whether a “she” was entitled to the statutory rights granted to a “person”), I discuss the negotiations at the level of narrative to keep these “Portias” within the confines of their “proper” womanly roles. Through cross-examination, one can see the chaotic attempts in these narratives of white women exercising legal power in Africa to control the disruptions to traditional roles and stereotypes that resulted from the complex negotiations of gender, racial, and national hierarchies that were endemic to the British Empire in the late nineteenth century.

Chapter 5 examines the legal and literary “appeals” of women writer advocates in the context of several late-century legal reform movements, including reform of the lunacy laws and repeal of the Contagious Diseases Acts. The first part of the chapter focuses on Georgina Weldon and Emily
Jackson. Weldon was a leader in the campaign for lunacy-law reform who wrote *How I Escaped the Mad Doctors* in 1879 and represented herself in court as a plaintiff-in-person in the 1880s in more than a hundred legal proceedings. Jackson was a quiet 42-year-old woman from a small village who found herself at the center of a national controversy when, in 1891, she was seized by a masked man (who turned out to be her estranged husband) as she was coming out of church and kept locked away in his house. She successfully appealed for a writ of *habeas corpus* to set her free and, in response to public retaliation against her by those who believed her case had dealt an irreparable blow to the institution of marriage, she wrote a four-part “Vindication,” published in the *London Times*. In the second part of this chapter, I read the self-authored stories of Weldon and Jackson in the context of popular New Woman novels of the 1890s that took the intersections of law, literature, and activism as central themes. Sarah Grand's *The Beth Book* (1898), for example, explores the related roles of women writers and political activists in the context of the campaign to repeal the Contagious Diseases Acts. In *A Writer of Books* (1899) by George Paston, the woman writer heroine confronts myriad legal issues, including domestic violence and sexual harassment. Finally, Florence Dixie's *Gloriana* (1890) celebrates the possibilities of feminist jurisprudence with its representation of a woman writer elected to Parliament and, ultimately (after a revolution), to the office of Prime Minister.

*In Contempt: Nineteenth-Century Women, Law, and Literature* is a study of the interrelationships between legal and literary narratives in the contexts of specific chapters in nineteenth-century British women's legal history. Exploring the practice of feminist jurisprudence in certain nineteenth-century women's writing, as well as in the lives and politics of Victorian women who fought for legal reform, this book testifies to the important but much overlooked role that women have played in legal history.
A Novel Approach to Feminist Jurisprudence

Narrating the Gothic Reality of Coverture

precedent
2. a. A previous instance or case which is or may be taken as an example or rule for subsequent cases, or by which some similar act or circumstance may be supported or justified. . . . b. Law. A previous judicial decision, method of proceeding, or draft of document which serves as an authoritative rule or patterns in similar or analogous cases. . . .

—Oxford English Dictionary

In the advertisement to her landmark work *A Vindication of the Rights of Woman* (1792), Mary Wollstonecraft stated her intention to publish a second volume, one that would specifically address “the laws relative to women” (7). While she did not write this second political treatise, she did follow through with her proposal: she critiqued the oppression of women under the law in *The Wrongs of Woman: or, Maria* (1797)—a novel.

Wollstonecraft’s purpose in writing *Maria* is unambiguously set forth in her author's preface: “the desire of exhibiting the misery and oppression, peculiar to women, that arise out of the partial laws and customs of society” (73). Her husband William Godwin, in his editor's preface to *Maria*, emphasizes her conscientious choice of the novel form in which to deliver her message: “The purpose and structure of the following work, had long formed a favourite subject of meditation with its author, and she judged them capable of producing an important effect” (71; emphasis added).1 This chapter will illustrate how Wollstonecraft, with her outlaw novel *Maria*, performed feminist jurisprudence. Revolutionary thinker that she was, it is
not surprising that Wollstonecraft recognized early on that the novel form was particularly suited to a feminist critique of the law.

On a practical level, the novel’s accessibility to and its popularity with women made it an ideal forum for the exploration of women’s lived experiences (on the part of both writers and readers). Gary Kelly argues that Maria was a fictionalization of the arguments in A Vindication of the Rights of Woman (xv–xvii), and Mary Poovey has noted that Wollstonecraft recognized that, in writing a political treatise like the Vindication, she had limited the number of women who would be reading her ideas (“Mary Wollstonecraft” 111).2 Women’s stories were able to call into question the law’s version of reality, or its “truth,” and to create new knowledge “by exploring common experiences and patterns that emerge from shared tellings of life events” (Bender 9). In Maria, for example, the “telling” of Maria’s story, which is interwoven with the experiences of diverse and multiple other women in the novel, presents women’s complex realities in resistance to the law’s limiting definitions and categorizations.

But the novel also, on a formal basis, was fitting for Wollstonecraft’s purpose. Specifically, the polyphonic structure of the novel form made it a fruitful site to explore the oppression inherent in legal language. In her essay “Word, Dialogue and Novel,” Julia Kristeva identifies the novel’s potential to “disapprove of the very structures of official thought founded on formal logic” (55) by its participation in a Bakhtinian dialogism that “situates philosophical problems within language; more precisely, within language as a correlation of texts” (58–59). One might say that the novel is able to engage the law in a dialogue. Kristeva clarifies that this “intertextuality” is not to be understood “in the banal sense of ‘study of sources,’” but rather as the “transposition of one (or several) sign-system(s) into another” (Revolution 111). Words, for example, mean in different ways in different contexts. Explaining Mikhail Bakhtin’s conception of the “literary word” as “an intersection of textual surfaces rather than a point (a fixed meaning), as a dialogue among several writings: that of the writer, the addressee (or the character) and the contemporary or earlier cultural context,” Kristeva proposes the following “translinguistic” procedure for describing the word’s specific operation within different texts:

First, we must think of literary genres as imperfect semiological systems “signifying beneath the surface of language but never without it”: and secondly, discover relations among larger narrative units such as sentences, questions-and-answers, dialogues, etc., not necessarily on the basis of linguistic models—justified by the principle of semantic expansion. . . . The
novel in particular exteriorizes linguistic dialogue. ("Word, Dialogue and Novel" 36–37)

An exploration of one of the law’s key words for women—“protected” for example—within the larger narrative units of the novel Maria and the legal texts with which that novel is in dialogue illustrates how legal discourse would be markedly different if women were allowed to participate in a meaningful way.

Finally, whereas the law is an epic discourse in many respects, feminist jurisprudence is ideologically allied with the novel form. Bakhtin’s distinctions between the epic and the novel provide a useful paradigm for exploring these legal and literary connections. Bakhtin characterizes the literary epic as one in which “‘beginning,’ ‘first,’ ‘founder,’ ‘ancestor,’ ‘that which occurred earlier’ and so forth are not merely temporal categories but valorized temporal categories, and valorized to an extreme degree” ("Epic and Novel" 15); the language of the epic is “unitary, completely finished-off and indisputable” ("Prehistory of Novelistic Discourse" 49). The law shares many of these epic qualities. Its authority is bolstered by its celebrated reliance on precedent, that is, that which has been decided in the past, and the requirements of legal language mean that to be heard in the legal world, one must “speak with the voice of dispassionate reason; be simple, direct, and certain; avoid the complexity of varying, interacting perspectives and overlapping multi-textured explanations” (Finley 905). Epic discourses are more about preservation than change.

In contrast to the epic, Bakhtin describes the novel as “structured not in the distanced image of the absolute past but in the zone of direct contact with inconclusive present-day reality” ("Epic and Novel" 39); the language of the novel is “a living mix of varied and opposing voices . . . developing and renewing itself” ("Prehistory of Novelistic Discourse" 49). Similarly, feminist jurisprudence is all about questioning absolutes, “especially the norms and assumptions implicit in received doctrine [precedent]”; it is about accepting and encouraging “diversity, complexity, and contradiction” (Finley 905). Like novelistic discourse, feminist jurisprudence embraces heteroglossia, which “insures the primacy of context over text” and acknowledges that “[a]t any given time, in any given place, there will be a set of conditions—social, historical, meteorological, physiological—that will insure that a word uttered in that place and at that time will have a meaning different than it would have under any other conditions” (Holquist 428). In thus exposing the oppression in the law’s epic and monologic claims to be “unitary, completely finished-off and indisputable” or, more
traditionally, “universal and objective,” feminist jurisprudence represents a “novel” reconception of the law.

Several critics have argued that Maria, as a novel, does not accomplish its intended political purpose. Claire Tomalin comments that “it is probably a pity she [Wollstonecraft] allowed herself to be sidetracked from writing a second volume of polemics and chose instead to embody her ideas in fiction” (202). Harriet Jump concludes that Maria “cannot be called anything but a failure as it stands” because it is too didactic and lacks “any imaginative vision” (145). Mary Poovey, who characterizes Maria as a sentimental novel, sees this genre as “dangerously at odds” with Wollstonecraft’s political insights (“Mary Wollstonecraft” 112). Poovey argues that the problem with the novel is “the difficulty Wollstonecraft had in reconciling her intended ‘purpose’ with the genre, which shapes the ‘structure,’ of the work” (112). For Poovey, “It is Wollstonecraft’s recognition of this incompatibility and—equally to the point—her resistance to this recognition that account for both the hesitations of composition and the contradictions that mark the text” (112). From Godwin’s preface we know that Wollstonecraft had been working on the novel for twelve months, and that she had “recommenced and revised the manuscript several different times” (71). Considering how quickly she wrote her other works (the Vindication was written in three months), Poovey contends that Wollstonecraft was suffering from writer’s block and that “[a]lmost any passage from the text of this much belabored first part reveals that the hesitation which afflicted Maria’s composition haunts its prose as well. Syntax is frequently disjunctive, narratives are broken off literally in mid-sentence, and, most troubling of all, the relationship between the narrative consciousness and that of the heroine Maria is inconsistent” (111). Because I agree with critics who have characterized Maria as a Gothic novel, I see these hesitations and contradictions, not as flaws, but as purposeful and integral aspects of Wollstonecraft’s project.3

Hesitations and contradictions are salient features of the Gothic, whose characteristic narrative form is “designed to create a sense of formlessness and refuses to obey our assumptions about narrative as a meaningful sequence of action” (Day 49). One expects the narratives to break off in mid-sentence because, in the Gothic, “narrators tell stories that are somehow incomplete, that lose their coherence in a jumble of other narrators telling other stories or in the muffled voices of speakers trying to tell stories we cannot hear” (Day 49).4 The formlessness and incoherence of the narrative complement one of the Gothic’s primary themes: the loss of the self. As William Patrick Day explains, the “Gothic fantasy is a fable of identity fragmented and destroyed beyond repair, a fable of the impos-
sibility of identity” (6). It is my contention that the Gothic’s preoccupation with fractured and lost identities made this genre of the novel an especially appropriate forum for Wollstonecraft to display the dissonant effects that the laws governing marriage had on women’s everyday lives.

**Buried Alive under Coverture**

Wollstonecraft critiques various laws affecting women in *Maria*; however, she primarily attacks the “matrimonial despotism” that results from the law of coverture (Wollstonecraft, Preface 74). Coverture is a legal fiction that takes as its basic premise the idea that, by marriage, the husband and wife become one person. As William Blackstone’s definition in the *Commentaries on the Laws of England* makes clear, the “one” that remains is the husband:

> By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband, under whose wing, protection, and *cover*, she performs every thing . . . and her condition during her marriage is called her *coverture*. (430)

Thus, for a woman, coverture imposed a very Gothic reality. Upon marriage, her identity was fragmented and destroyed beyond repair as her self was subsumed into the identity of another.

In her book *The Coherence of Gothic Conventions*, Eve Kosofsky Sedgwick identifies a specific set of Gothic conventions—literal, thematic, and structural associations—that continually recur in Gothic novels. Three of Sedgwick’s categories are particularly helpful in examining the Gothic aspects of coverture: (i) subterranean spaces and live burial; (ii) doubles; and (iii) unnatural echoes or silences, unintelligible writings, and the unspeakable.

In Gothic novels, characters (usually heroines) often find themselves blocked off from something to which they ought to have access. They may be held captive in subterranean spaces, for example, or possibly even be buried alive (literally or metaphorically). As Sedgwick explains, “The self and whatever it is that is outside have a proper, natural, necessary connection to each other, but one that the self is suddenly incapable of making. The inside life and the outside life have to continue separately, becoming counterparts rather than partners . . .” (13). Such was the experience of a nineteenth-century woman upon marriage, when she suddenly was denied
access to rights that society had determined to be proper, natural, and necessary to all but married women.\textsuperscript{7}

A wife’s \textit{condition} (with the word itself implying an unnatural or diseased state) of coverture came with specific disabilities. Specifically, she had no right to enter into a contract, to make a will, or to sue on her own behalf in court. She also had no right to control her own property, and no right to her own wages.\textsuperscript{8} The patriarchal ideology that informed coverture, the belief that women were inferior to and had to be controlled by men, however, was masked by language suggesting that the law protected and benefited women. In fact, Blackstone explicitly states that “[e]ven the disabilities, which the wife lies under, are for the most part intended for her protection and benefit. So great a favourite is the female sex of the laws of England” (433).

The benefits that women “enjoyed” under coverture included the right to maintenance. Also, the husband was deemed responsible for the wife’s debts, as well as for any civil wrongs that she committed. The realities of these protections, however, were more imaginary than real. If her husband failed to maintain her, the wife, because she had no legal identity, had no remedy at law; her protection was unenforceable. Also, because the husband was deemed responsible for his wife’s behavior, the law provided him with the power to restrain her by domestic chastisement (Holcombe 29–30).\textsuperscript{9} Under coverture, a woman exchanged her freedom for a life of protective cover. Individual circumstances and personalities determined whether that cover was more akin to live burial.

Coverture also resulted in a Gothic doubleness. A woman’s own thoughts, feelings, and beliefs (especially as they differed from her husband’s) were part of her inside life, separate from the outside life in which it was deemed that she thought, felt, and believed the same as her husband. The law imposed a separation between her inner life and the outside life that, under coverture, she performed. Such a separation is “a fundamental reorganization, creating a doubleness where singleness should be” (Sedgwick 13). In a Gothic novel, much of the plot is devoted to attempts at reunification, to escape from this doubleness. That original oneness, however, proves impossible to retrieve. Such was the case with the condition of coverture. For many women, marriage represented a fundamental reorganization, a separation of their performing from their true selves, and in all but extraordinary circumstances, it was irrevocable. Divorce was available only by an Act of Parliament, which was prohibitively expensive for all but a select few. At the time when Wollstonecraft wrote \textit{Maria}, no woman had successfully sued for a petition of divorce.\textsuperscript{10}

Legal separations were available in extreme circumstances, but as an
1811 court iterated, “nothing short of actual terror and violence” would justify a wife’s separation from her husband (Perkin, *Women and Marriage* 24). And if a wife left her husband without obtaining a divorce or legal separation, he could capture her, force her to return, and keep her confined so that she would be unable to leave. Her body, her very being, belonged to her husband. Therefore, a Gothic novel was ideal for a textual rehearsal of the fears and terrors of a loss of identity and the anguish of an inescapable life of doubleness that also were conditions of coverture.

Finally, coverture is about unnatural echoes or silences, unintelligible writings, and the unspeakable. The unnatural echoes and silences are those of the women who had no voice to speak out against coverture. Coverture was maintained by a political system that excluded women from all aspects of the legal process. In 1797, when *Maria* was written, women were not permitted to be legislators, lawyers, jurors, or judges. They were expected to accept laws and legal language that made no sense because they spoke of control and abuse in the language of protection; it was women’s condition to live with the horror of the loss of self under coverture.

It is on the level of the unutterable that I see a direct link between Wollstonecraft’s theme (Gothic laws) and her structure (the Gothic novel). Sedgwick explains, “Of all the Gothic conventions dealing with the sudden, mysterious, seemingly arbitrary, but massive inaccessibility of those things that should normally be most accessible, the difficulty the story has in getting itself told is of the most obvious structural significance” (13). She clarifies that this does not mean that the story doesn’t get told, but rather that it gets through “in a muffled form, with a distorted sense, and accompanied by a kind of despair about any direct use of language” (14). In *Maria*, a Gothic novel, Wollstonecraft searches for a way to speak effectively to women about a topic that, on many levels, was unspeakable.

**Wollstonecraft’s Prosecution of Gothic Laws**

*The Wrongs of Woman: or, Maria* is subtitled “a fragment.” Wollstonecraft died before the novel was completed, leaving only the first volume, three chapters of a second volume, and some brief sketches of possible continuations of the story. While she could not have intended her work to be presented in this particular form, it is ironically in keeping with the fragmentary nature of the portion of the text she had completed. Typical of the Gothic form, *Maria* is a series of stories within stories. Some narratives are provided piecemeal throughout the novel; others are abruptly cut short. Day suggests that Gothic narratives resemble dreams in their lack of mean-
ingful sequence and that such orderlessness is a way of subverting not only the narrative conventions of sentimental novels, but also the realities and values that such novels affirmed (43–45).

*Maria* begins *in medias res* with its heroine in a madhouse. Maria has been confined there, in her terms “buried alive,” by her husband (185). The connection between the Gothic realm and the real world is made explicit in the first paragraph of the novel as the narrator draws on the reader’s knowledge of “[a]bodes of horror . . . conjured up by the magic spell of genius to harrow the soul, and absorb the wondering mind” to explain the “mansion of despair” in which Maria finds herself (75).

Maria befriends the woman assigned to guard her, Jemima, and a fellow inmate Darnford, and much of the completed portion of the novel is composed of their three life stories. Darnford and Jemima narrate their stories aloud; Maria presents her two friends and the reader with her written memoirs. These memoirs describe Maria’s life from her childhood to the time of her imprisonment in the madhouse, with the focus being on her disastrous marriage to George Venables. Venables gambles and drinks away all of the money that Maria receives from a benevolent uncle, has mistresses, and, ultimately, tries to prostitute Maria to a friend from whom he wishes to borrow money. When Maria finally walks out, he hunts her down like an animal, drugs her, takes her infant daughter (who, she later learns, dies shortly thereafter), and sends her to the asylum. Maria’s memoirs of her past break off abruptly, and returning to her present life in the “mansion of despair,” the readers learn that Maria and Darnford have become lovers; she receives him “as her husband” (188).

With the help of Jemima, Maria escapes from the madhouse and returns to London, where Darnford soon joins her. When Darnford is sued by Venables for seduction and adultery, he leaves for France, and Maria stays to take charge of his defense. Wollstonecraft’s narrative culminates in a trial scene, in which the future course of Maria’s life will be determined. As a conclusion, Godwin appended several of Wollstonecraft’s outlines for completion of the novel, all but one of which portend tragedy.

This novel, however, is much more than its Gothic plot summary suggests. It is not the story of a sentimental woman who tries to escape a bad marriage for true love and suffers as a result of her passion. Maria is not on trial here, but rather a system that, under the guise of protecting women, keeps them totally dependent on men. Rhetoric of “protection” abounds in *Maria* just as it does in the legal discourse on coverture. In the novel, the word “protection” is what Kristeva would characterize as an “ambivalent” word, one that “introduces a signification opposed to that of the other’s [the Law’s] word” (“Word, Dialogue and Novel” 44). Working
with Bakhtin’s concept of “ambivalence,” Kristeva explains that the term “implies the insertion of history (society) into a text and of this text into history” (“Word, Dialogue and Novel” 39). Maria explores (from a woman’s point of view) how this abstract legal language translates in society into something very different from protection—real-life misery and oppression.

To illustrate, in an early letter to Maria in the madhouse, before they have met in person, Darnford writes, “Whoever you are, who partake my fate, accept my commiseration—I would have said protection; but the privilege of man is denied me” (91). With this passage, the novel clarifies that “protection” is not a benefit to women, but rather a privilege of men. The plot reinforces this assessment as Maria’s situation worsens every time she turns to a man for protection. As a young woman, she seeks the protection of her genuinely caring uncle against the absolute authority of a tyrannical father and elder brother. Her uncle sees marriage as her only means of escape and encourages her to marry Venables. She soon learns the folly of her actions, commenting, “Marriage has bastilled me for life. I discovered in myself a capacity for the enjoyment of the various pleasures existence affords; yet, fettered by the partial laws of society, this fair globe was to me an universal blank” (154–55; emphasis added) and “I could not sometimes help regretting my early marriage; and that, in my haste to escape from a temporary dependence, and expand my newly fledged wings, in an unknown sky, I had been caught in a trap, and caged for life” (144). In these passages, Wollstonecraft linguistically signals the intertextuality between her novel and Blackstone’s definition of coverture as Maria longs for “existence” and looks back on a time when “wings” signified freedom, not cover. Revising the legal text, Wollstonecraft articulates the “universal blank” that more accurately describes a woman’s condition under coverture, and exposes and metaphorically reconstitutes the law’s “cover” as capture. In this way, situating the wrongs of women within the very language of the law, Wollstonecraft presses new “understandings in and on law, and, in doing so, invite[s] adaptation and change” (Sarat and Simon 20). As the novel makes clear, Maria needs protection from her protector, but as she bitterly reflects, “the laws of her country—if women have a country—afford her no protection or redress from the oppressor” (159; emphasis added).

Finally, she turns to Darnford for protection, and while “he solemnly pledged himself as her protector—and eternal friend” (188), she soon discovers that “there was a volatility in his manner which often distressed her,” and she does not taste the “uninterrupted felicity” for which she had hoped (192). The hints provided in the sketched endings of the novel suggest that Darnford is unfaithful and possibly abandons her. While Poovey reads the Darnford episode as indicative of Wollstonecraft’s inability to
escape from romantic sentiments, I think the fact that the novel doesn’t anticipate ending with Maria and Darnford living happily ever after is very much in keeping with its Gothic nature. The Darnford story line illustrates that a woman’s institutionalized dependence on any man is problematic. Maria’s husband may be a tyrant, but even the more attractive choice leaves her trapped in a Gothic reality.

Unambiguously clear in the novel is that women need to help themselves. Maria’s memoirs are written with the express purpose of educating and exposing her daughter to the subtleties and harms of patriarchy. She hopes her life story “might perhaps instruct her daughter, and shield her from the misery, the tyranny, her mother knew not how to avoid” (82). While Maria is writing to her daughter, Wollstonecraft is writing to her female readers, who can become that daughter as they read the memoirs over Darnford’s shoulder (Maurer 50). Wollstonecraft is thus able to encourage her readers “to form your grand principle of action. . . . Gain experience—ah! gain it—while experience is worth having, and acquire sufficient fortitude to pursue your own happiness” (125; emphasis added). At the same time that Maria encourages her daughter and the reader to be “mistress of your own actions” (149), however, the novel acknowledges that the laws that kept women buried alive, and in complete economic dependence on men, presented almost insurmountable barriers to the freedoms to which women should have had access. Maria’s story illustrates the ramifications of a husband’s absolute control over all family finances (and the lawful methods of coercion he could employ to gain control over any sources of funds available to his wife). The working-class Jemima, whose story relates how she has been treated as “a slave, a bastard, a common property,” tells of her harrowing efforts to feed and shelter herself through prostitution and physically debilitating labor (109). These narratives show how limited employment opportunities made it next to impossible for a woman to support—and thus protect—herself.

The novel also presents examples of women both increasing and alleviating each other’s suffering. Maria’s mother makes her childhood miserable by so preferentially treating her older brother. Jemima’s stepmother is physically and emotionally abusive, and Jemima laments her own heartlessness in having a pregnant young servant girl turned out into the streets (the girl consequently commits suicide). The novel doesn’t excuse these cruelties practiced by women against women; however, it does identify society as the root of the problem. As Maria explains in her memoirs, “By allowing women but one way of rising in the world, the fostering the libertinism of men, society makes monsters of them” (137).

Set against these monstrous behaviors, however, are examples of
women protecting each other, most notably in the relationship between Maria and Jemima, a friendship that transcends class boundaries. Jemima is Maria’s protector in the madhouse, keeping her company and saving her from an idleness that threatens to drive her mad. She also ensures Maria’s escape, literally protecting her as she is running from the asylum from the “being, with a visage that would have suited one possessed by a devil” who seizes Maria (190). Jemima is the only person in Maria’s life to respond effectively to her desperate plea of “Save me” (190).

Early in the novel, when Maria offers Jemima compensation for helping her to escape, the worldly-wise and prudent Jemima ponders what would happen if Venables successfully substantiated Maria’s “madness” and gained control of her estate. In such circumstances, Jemima wonders “from whence would come the promised annuity, or more desired protection?” (83). This more desired protection seems to allude to respectability, a place in society. Later, in London, Jemima accepts Maria’s protection, which then also encompasses human affection and companionship. Moreover, in the only hopeful proposed ending (and also the one that is most developed), Jemima finds Maria’s daughter, who is not really dead, and arrives in time to save Maria from an attempted suicide. This ending suggests an alternative to the existing system under coverture—a society in which women do not have to be dependent on men and in which they are free to work together to cope with, and possibly transform, their own Gothic realities.

The trial at the end of Maria displays the irrelevance of women’s stories to the patriarchal legal system that Wollstonecraft was indicting. Maria has no voice at the trial; rather, a paper she has written is presented for her. With statements such as “I wish my country to approve my conduct; but, if laws exist, made by the strong to oppress the weak, I appeal to my own sense of justice, and declare that I will not live with the individual, who has violated every moral obligation which binds man to man” (197), Maria willfully contravenes the authority of the court, claiming she will follow her own sense of right as opposed to prejudicial laws. Inviting charges of contempt, she declares that she will refuse to comply if the court orders her to return to her husband. She then appeals to the jury’s humanity and sense of justice, urging them to modify the law as appropriate to her circumstances. After her heartfelt plea, the judge summarily dismisses her arguments and condemns the practice of allowing women to “plead their feelings,” emphasizing that emotion has no place in legal discourse (198). In the courtroom, the judge treats rather than charges Maria with contempt.

While there may be little hope that “the jury—a body of men” (198) will override the deeply entrenched ideology of the law on marriage as summarized by the judge—“It was her duty to love and obey the man chosen
by her parents and relations, who were qualified by their experience to judge better for her, than she could for herself . . .” (199)—the chapter ends without this jury pronouncing its verdict. In this way, Wollstonecraft’s narrative opens up a space for the deliberations of a differently constituted body—her readers. For those who have been presented with the Gothic tale of Maria’s life experiences, it is unambivalent that a truly just decision would free her from the fetters imposed by the impartial laws of society.

A *mise en abyme*, this final trial scene is an internal duplication of the feminist jurisprudence Wollstonecraft performs in and with her novel. The substance of Maria’s contemptuous speech (which she writes because she has no authority to speak in the courtroom) is a summary of the law’s oppression of women that she has been illustrating throughout *Maria*. Wollstonecraft’s novel, like the courtroom she presents within it, is a public forum in which she interrogates the law through her writing. Also, the way the novel progresses, with the reader moving from the private pages of Maria’s memoirs to the public reading of her words, enacts a method of progress that feminists increasingly embraced over the course of the nineteenth century: making generally known or *publishing* the wrongs of woman.

In *Maria*, Wollstonecraft put coverture on trial, exposing the Gothic realities of women’s lives. The various women who were imprisoned, raped, beaten, and abandoned in the novel were innocent victims of a society that failed to offer them any real protection and that frustrated all efforts they made to protect themselves. Godwin writes in his *Memoirs of Mary Wollstonecraft* that all her previous works “were produced with a rapidity, that did not give her powers time fully to expand. But [Maria] was written slowly and with mature consideration” (111). It appears that in Wollstonecraft’s considered opinion, a Gothic novel was the most appropriate form, structurally and thematically, to effect her political purpose.

**Outlaw Texts**

*Novels That Don’t Police*

Since Ian Watt first noted connections between strategies of representation in courtrooms and novels and the expectations of juries and novel readers, scholars have explored a wide array of fascinating interplays between the novel and the law.17 For example, specifically with respect to the nineteenth century, Alexander Welsh has examined changes in the construction of the novel in the context of eighteenth- and nineteenth-century developments in the laws of evidence, particularly an increased reliance on circumstantial
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Evidence; Jan-Melissa Schramm has traced the effects on literary narratives of changes in legal trial procedures such as those brought about by the Prisoners’ Counsel Act of 1836 that allowed professional lawyers to represent defendants in court; and Jonathan Grossman has explored how “the law courts crucially shaped the formal structures and political aims of the novel” (5).

Analyzing the cultural role of the novel, D. A. Miller has argued that the novel often participated in the general economy of policing power that it purported to critique. In his Foucauldian analysis of Bleak House, for example, Miller reads Dickens’s promotion and representation of the family as “an undeclared defense of the status quo” because, Miller explains, Dickens’s advice to society to “police for the family” and his advice to the family to police itself, in effect, cancel each other out:

For if society reformed itself so that state institutions [such as Chancery] would, if not wither away, become minimal and humane, then there would no longer exist an outside threat to consolidate the family in the face of its internal dangers; and to the extent that the family could successfully repress these dangers itself, it would only reproduce such institutions in their worst aspects. (104)

Concluding that the novel’s overt disavowal of “police practices” only rendered it a more discreet form of social discipline, Miller recharacterizes the so-called lawlessness of the novel as an effective cover for its power to police everyday life (16).

Similarly, Edward Said has identified the nineteenth-century novel as “a cultural form consolidating but also refining and articulating the authority of the status quo” (77). With respect to law, Said also cites Dickens as an example of an author who “stirs up his readers against the legal system” but whose novels such as Bleak House ultimately achieve resolution, most frequently figured in “the reunification of the family, which in Dickens’ case always serves as a microcosm of society” (77). It is Said’s contention that the novel, “whose central continuous presence is not comparably to be found elsewhere,” reinscribed rather than questioned existing institutions such as the legal system (73).

The claims of both Miller and Said are supported by thoughtful and discerning analyses of canonical or well-known nineteenth-century novels. However, I believe that taking into account novels that truly are “outlaw” alters landmark literary decisions about the Victorian novel’s role as aider and abettor of a patriarchal legal institution.

Novels that are most obviously outlaw texts are those like Maria that
criticize the legal institution explicitly and that include direct statements by
the author of an intention to do so. Another example of this type of outlaw
novel is Florence Dixie’s New Woman utopian novel Gloriana (1890), dis-
cussed in detail in chapter 5. In her preface, Dixie states:

“Gloriana” pleads woman’s cause, pleads for her freedom, for the just
acknowledgment of her rights. It pleads that her equal humanity with man
shall be recognized, and therefore that her claim to share with what he has
arrogated to himself shall be considered. “Gloriana” pleads that in women’s
degradation man shall no longer be debased, that in her elevation he shall
be upraised and ennobled. (xi)

This preface concludes with an explicit statement of the novel’s purpose:
“If, therefore, the following story should help men to be generous and just,
should awaken the sluggards amongst women to a sense of their position,
and should thus lead to a rapid revolution, it will not have been written in
vain” (xii).

Closely related to these outlaw novels are those that include equally
sharp and specific critiques of the law or some aspect of it, but that are
not introduced with a specific statement of authorial intention. In these
novels, the law is indicted within and by the fiction itself. Frances Trol-
lope’s Jessie Phillips: A Tale of the Present Day (1843), discussed in
chapter 2, is an example of this type of outlaw novel. In this novel,
an unmarried woman is falsely accused of infanticide. The reader (who
knows who really murdered the child) witnesses the power of legal dis-
course to shape the understanding of Jessie’s character and to (mis)inter-
pret her situation. By presenting the life experiences of a “fallen woman”
(her seduction, her betrayal, her loss of employment upon the discovery
of her pregnancy, her unsuccessful attempts to seek help from the child’s
father and a lawyer, and her time in the workhouse), the novel also offers
a scathing critique of the bastardy clauses of the 1834 New Poor Law
which made an unmarried mother solely responsible for the maintenance
of her “bastard” child.

Finally, there are those novels that are less obviously in contempt of
the law because they are not overtly about the law. Wuthering Heights is
such an outlaw novel. This novel has no explicitly legal scenes; however,
it would be difficult to imagine a novel in which the law of coverture and
its implications with respect to married women’s property, child custody,
and the power relationships within marriage were more integral to the
plot. In Wuthering Heights, in a scene that takes place a few weeks after
Heathcliff marries Isabella, Heathcliff boasts to Ellen Dean (“Nelly,” who
at that time was a servant to Isabella’s brother Edgar Linton) of his cruelties to his wife:

Tell your master, Nelly, that I never, in all my life, met with such an abject thing as she is. She even disgraces the name of Linton; and I’ve sometimes relented, from pure lack of invention, in my experiments on what she could endure, and still creep shamefully cringing back. But tell him, also, to set his fraternal and magisterial heart at ease: that I keep strictly within the limits of the law. (187)

Fearing that knowledge of Heathcliff’s words and actions might provoke her brother in such a way as to give Heathcliff even greater control over the Linton family, Isabella fires back:

He’s a lying fiend! a monster, and not a human being! I’ve been told I might leave him before; and I’ve made the attempt, but I dare not repeat it! Only, Ellen, promise you’ll not mention a syllable of his infamous conversation to my brother or Catherine. Whatever he may pretend, he wishes to provoke Edgar to desperation: he says he has married me on purpose to obtain power over him, and he shan’t obtain it—I’ll die first! I just hope, I pray, that he may forget his diabolical prudence and kill me! The single pleasure I can imagine is to die or to see him dead! (188)

Heathcliff silences Isabella, “There—that will do for the present!” (188) and then impresses on her that the law would interpret her madness (rage) as madness—an all-too-typical diagnosis for nineteenth-century women:23

If you are called upon in a court of law you’ll remember her language, Nelly! And take a good look at that countenance: she’s near the point which would suit me. No; you’re not fit to be your own guardian, Isabella, now; and I, being your legal protector, must retain you in my custody, however distasteful the obligation may be. (188–89)

The law is fully on Heathcliff’s side and he knows it. He is careful to act within “the limits of the law” (187), which, as this scene dramatically exposes, are really no limits at all. The emotional abuse is explicit, and the intensity of Isabella’s hatred of Heathcliff suggests that his “experiments” have very likely included the completely legal act of marital rape, as well as any force that was necessary to keep her from leaving. Her rage works only to make her appear more in need of his “protection.” In its presentation of speakable and unspeakable acts of this husband’s cruelty, this outlaw novel
shows the “protection” of coverture to be far from anything anyone could ever desire. 

Feminist legal theory and methods provide a different lens than has been used in previous law and literature scholarship through which to view interrelationships between the novel and the law. For example, such a perspective brings to the center questions such as these: When studying the impact on novelistic discourse of changing rules of evidence or trial procedures in the nineteenth century, how might it matter that women were not allowed to study or practice law? Are connections between juries and novel readers at all affected by the fact that, at the time, many women read novels but no women sat on juries? What does it say about the interplays between legal proceedings and the novel that women often were not welcome in law courts and that popular and influential women writers, such as Frances Trollope, were chided in literary reviews for daring to write about such an unfit topic as the law? In her recent book, *Riding the Black Ram: Law, Literature, and Gender*, Susan Sage Heinzelman brings gender to the center of the analysis and examines the impact that this change of focus has on the traditional telling of the rise of the English novel in the eighteenth century. For the nineteenth century, a particularly relevant inquiry that *In Contempt* addresses is how taking into account “outlaw” novels by women might call into question long-standing judgments that have been made about the cultural role of the Victorian novel, especially as these conclusions have been based primarily on studies of texts that have been deemed acceptable as literary precedents. Among the outlaw texts analyzed in the following chapters, many are outlaw novels that were “in contempt” of the law. The performances of feminist jurisprudence in these novels cast more than reasonable doubt on conclusions about the normalizing and policing effects of novels on nineteenth-century readers.
In George Eliot’s novel *Adam Bede* (1859), Hetty Sorrel sits in the prisoner’s dock, dwarfed in the huge, intimidating hall in which her trial for infanticide takes place. One of the characters describes her as “white as a sheet” and “seeming neither to hear nor see anything” (473). For the readers, who have no idea what has happened to Hetty since the narrative left her pregnant and alone on the road to Stoniton, the tension and suspense are palpable.

In 1800, the year in which Eliot sets this trial, Hetty would have been tried pursuant to the following English statute, dating from 1623, which applied only to “lewd women that have been delivered of bastard children”:

> [I]f any woman . . . be delivered of any issue of her body, male or female, which being born alive, should by the laws of this realm be a bastard, and that she endeavor privately, either by drowning or secret burying thereof, or any other way, either by herself or the procuring of others, so to conceal the death thereof, as that it may not come to light, whether it were born alive or not, but be concealed: in every such case the said mother so offending shall suffer death as in case of murther, except such mother make proof by one
witness at the least, that the child (whose death was by her so intended to be concealed) was born dead.¹

This first English statute to specifically address infanticide shifted the burden of proof such that the accused mother was presumed guilty unless she could produce a witness to swear that her child had been born dead. Thus, while any man (including the father) or any woman (except the mother) accused of killing a child would be tried for murder and presumed innocent unless proven guilty, the “lewd mother” of a “bastard,” if she attempted to conceal its birth and death, was guilty under the statute regardless of how the child died. If a woman delivered a stillborn child alone, for example, she would be prima facie guilty of murder under the statute because she would be unable to produce any witnesses.²

Hetty did attempt to conceal the birth and death of her infant, as the schoolmaster Bartle Massey reports, “denying she’s had a child from first to last” (474). At the trial, Sarah Stone’s testimony that she helped deliver Hetty’s baby is offered as proof that Hetty did indeed bear a child.³ No doubt Hetty’s attorney, who “puts a spoke in the wheel whenever he can, and makes a deal to do with cross-examining the witnesses, and quarrelling with the other lawyers” (473), makes the argument that this same evidence should exclude Hetty from the draconian provisions of the 1623 statute because, if Stone’s testimony is accepted as proof that Hetty has borne a child, at the same time it demonstrates that there was no actual concealment of birth—somebody besides Hetty knew about it. If this argument is successful, the burden shifts to the prosecution to prove that Hetty intentionally murdered her child.

The testimony of the prosecution’s witness John Olding seems intended to do just that. Olding testifies that he had seen Hetty the previous Monday sitting by a haystack in one of the nearby fields. Upon seeing him, Hetty got up and walked away. He describes her as having looked white and scared. He also had heard a strange cry but had found nothing when he went to investigate. Returning about an hour later, however, he found the body of a child: “And just as I was stooping and laying down the stakes, I saw something odd and round and whitish lying on the ground under a nut-bush by the side of me. And I stooped down on hands and knees to pick it up. And I saw it was a little baby’s hand” (480).

At these words, “a thrill ran through the court” (480) and Hetty begins to tremble visibly. The man goes on to explain that the body had not been entirely covered, but the baby was dead. The next day he had gone back to the same spot with the constable and they had found Hetty sitting by the nut-bush.⁴ Olding’s testimony works to establish that the baby was alive
when Hetty placed it under the nut-bush, and that she knew it was alive. It is offered as proof that the child did not die naturally, but rather as a result of Hetty's purposeful burial of it under the nut-bush.

Things move quickly after Olding testifies. Adam is now certain that Hetty is guilty of infanticide. We are told that Mr. Irwine gives evidence of Hetty's virtuous upbringing as part of a plea for mercy. The jury retires; the lawyers talk among themselves; a mere fifteen minutes later, the jury returns. There is a sublime silence: “Deeper and deeper the silence seemed to become, like deepening night, while the jurymen’s names were called over, and the prisoner was made to hold up her hand, and the jury were asked for their verdict. ‘Guilty’” (481–82). The judge, after ceremonially putting on his black cap, calls out the name “Hester Sorrel.” Hetty, wide-eyed, stares at the judge “as if fascinated by fear” (482). When he pronounces that she is “to be hanged by the neck till you be dead” (482), Hetty's piercing shriek echoes through the hall.

This courtroom scene has the potential to be the site for a powerful performance of feminist jurisprudence. So many questions go unasked and unanswered at this trial: Were there other reasons Hetty might have left the child under the nut-bush? Why did she come back? Does she understand the nature of the strange proceedings going on around her? How many of the gaps in the prosecutor's narrative are filled in by the “knowledge” that the law has helped to constitute that “lewd women” are inclined to dispose of their “bastard” children?

While the novel sets up the possibility for this type of gender and class critique of the law's condemnation of Hetty, other aspects of the narrative are at odds with this reading. Specifically, readers bring to Hetty's trial prior knowledge of “deviant” aspects of her character. So while it is true that Hetty's circumstances have made her vulnerable and that she is presented as childlike in many respects, the narrator also has emphasized since the early pages of the novel that she is vain, selfish, cold-hearted, and—most disturbing in connection with the accusation of infanticide—not maternal. As I will discuss more fully below, this prior characterization of Hetty as deviant, supplemented by a prosecuting narrative voice, results in a trial scene that does not call into question and critique the law's association between “lewd women” and infanticide. Rather, as Rosemary Gould concludes, “though the tragic outcome of Hetty's story exists to create sympathy for her, the concept that she is the kind of woman who would commit infanticide remains” (266).

Feminist legal scholars have explored the impacts of “causal attribution,” a cognitive mechanism by which people assign causes to outcomes, in a wide array of legal contexts. Research on causal attribution has shown
ways in which group stereotypes affect decision makers, specifically suggesting that

when behavior appears to confirm a stereotype about the group, we tend to attribute that behavior to a dispositional factor, that is, one within the control of the actor. Only if the behavior is inconsistent with our stereotype about the group are we apt to seek out an external explanation and then attribute the behavior to situational factors. (Chamallas 185)\(^7\)

Thus, in many respects, when women come to law, character carries more weight than circumstances in explaining outcomes. In this chapter, I contrast legal and literary texts that helped to constitute the causal attribution in law between the character of the “lewd woman” and the outcome of infanticide with alternative herstories that unequivocally problematize and discredit stereotypes and dominant narratives about “fallen women.”

**The Law’s “Truth” about Infanticide and the Literary Judgment of Hetty Sorrel**

Under no possible system of police, however elaborate, could all working mothers in England be watched in order to make certain that they should not murder their own children. We could, perhaps, prevent their eating them, or burying them secretly for children can be counted; but their killing them is not preventable. . . . There is, in fact, no defence for young children, and can be none except the mother's feeling for them; and when that is absent, or has been changed into abhorrence, they must, as far as society can help it, just die at their mothers' discretion. The only cure worth anything is a change in the women's hearts.

—“The Judges' Opinion Upon Child-Murder,” Spectator 1890

Studies of real nineteenth-century women who were accused of criminal acts confirm that the law tended to judge the woman rather than the crime. In *Women, Crime, and Custody in Victorian England*, Lucia Zedner reports that “[d]escriptions of women's crime frequently referred to past conduct, marital status, protestations of regret, or shamelessness, and even to the woman's physical appearance” (30). Virginia Morris’s research shows that women’s crimes often were explained in terms of natural feminine traits gone awry: “[T]he perception that violent women acted from individual rather than environmentally produced motives and that there was something wrong with them as women if they chose aggression rather than
acquiescence run as constant themes through the journal articles, charges to juries, and crime histories of the century” (27). Specifically with respect to infanticide prosecutions, Ann Higginbotham’s examination of actual child-murder cases tried in the Central Criminal Court in London reveals a “surprising leniency” on the part of judges and juries, with few women being convicted and those found guilty being pardoned (323). However, her research also shows that the “more unconventional the woman’s behavior and background, the more likely she was to lose the sympathy of the court” (333). Regardless of actual conviction rates, Higginbotham reports that many Victorians were all too ready to suspect unmarried women of murdering their infants, to make the connection between “lewd women” and infanticide. These assumptions about unmarried mothers “may have sent women to the dock even when their infants died naturally or accidentally” (329). It is my contention that the narrator of Adam Bede presents Hetty Sorrel in ways that worked to reinforce cultural ideas about sexuality, deviance, and crime.

The reader is first introduced to Hetty as she is trying to catch a glimpse of “the pleasing reflection of herself” (117) in the polished surface of an oak table. The narrator makes clear that he has access to what other characters cannot see, reporting that Hetty looks at her reflection in the table, the round pewter dishes, and the hobs of the grate only “when her aunt’s back was turned” (117). Moreover, as Lisa Rodensky explores in her study, The Crime in Mind: Criminal Responsibility and the Victorian Novel, third-person narrators “can hold themselves out as representing thoughts directly” (6), which is the case with the narrator in Adam Bede. So when Hetty’s seducer Arthur Donnithorne visits her in the dairy and she is described as tossing and patting her butter with a “self-possessed, coquettish air,” we also are told that she is “slyly conscious that no turn of her head was lost” (127). Such information works to undermine the characterization of Hetty as an “innocent” victim of seduction. Indeed, at times, the narrator implies that Hetty’s innocence is feigned, that her nature is cunning:

Hetty’s was a springtide beauty; it was the beauty of young frisking things, round-limbed, gambolling, circumventing you by a false air of innocence—the innocence of a young star-browed calf, for example, that, being inclined for a promenade out of bounds, leads you a severe steeplechase over hedge and ditch, and only comes to a stand in the middle of a bog. (128–29)

While the novel clearly places much censure and responsibility on Donnithorne, Hetty’s “false air of innocence” also is blamed for Hetty’s and
Arthur’s “promenade out of bounds.” As this passage suggests, Hetty has played a significant role in leading them into the quagmire that their story becomes.

Moreover, it is difficult to feel compassion for Hetty when she is presented as seemingly incapable of feeling for anyone else. Portrayed by the narrator as callous and completely self-absorbed, Hetty is indifferent to Adam’s pain when his father drowns, and she cares little about her uncle, who has welcomed her into his family. In fact, we are told that “Hetty did not understand how anybody could be very fond of middle-aged people” (199–200). Moreover, the narrator records that, while she has no intention of marrying “a poor man,” Hetty exercised a “coquettish tyranny” over Adam, enjoying the “cold triumph of knowing that he loved her” (144).

Most damning, however, may be Hetty’s attitude toward children. Far from nurturing, she is presented as actively hostile toward them:

Hetty would have been glad to hear that she should never see a child again; they were worse than the nasty little lambs that the shepherd was always bringing in to be taken special care of in lambing time; for the lambs were got rid of sooner or later. As for the young chickens and turkeys, Hetty would have hated the very word “hatching,” if her aunt had not bribed her to attend to the young poultry by promising her the proceeds of one of every brood. (200)

In a novel in which the “good women” are loved by and loving toward children, this passage portrays Hetty as far outside that norm. To her, children are a burden; young things needing care and attention are hateful. In light of how her story will unfold, Hetty’s line that the lambs at least “were got rid of sooner or later” is particularly chilling.

Even when Hetty is on the road to Stoniton, the narrative voice is constantly interrupting the reader’s burgeoning feelings of sympathy. Thus, as we commiserate with Hetty on her desperate wanderings, as she makes her “toilsome way in loneliness, her peaceful home left behind for ever, and nothing but a tremulous hope of distant refuge before her,” the narrator reminds us that Hetty “thought of all she had left behind with yearning regret for her own sake: her own misery filled her heart: there was no room in it for other people’s sorrow” (417).

The same is true during Hetty’s trial. From the description of the courtroom scene with which I opened this chapter, I purposely omitted the comments of the narrator—and thus there was the potential for sympathy for this young, terrified girl. The same scene, however, viewed in light of the information that the narrator already has imparted about Hetty’s character,
and including his courtroom commentary, shows the condemning effect of this narrator/prosecutor.  

Rather than characterizing Hetty as frightened and silent at the trial, the narrator tells us that she is in a state of “blank hard indifference” (481). The following description of Adam’s response when he first sees Hetty in the courtroom emphasizes her deviance from any feminine norm:

Others thought she looked as if some demon had cast a blighting glance upon her, withered up the woman’s soul in her, and left only a hard despairing obstinacy. But the mother’s yearning, that completest type of the life in another life which is the essence of real human love, feels the presence of the cherished child even in the debased, degraded man; and to Adam, this pale hard-looking culprit was the Hetty who had smiled at him in the garden under the apple-tree boughs—she was that Hetty’s corpse, which he had trembled to look at the first time, and then was unwilling to turn away his eyes from. (477)

While “objective” others see that Hetty is monstrous, demonized, with a withered soul, Adam, in his blind devotion, views her differently. With the maternal metaphor, the narrator accentuates Hetty’s crime. Hetty, given the opportunity to feel that mother’s yearning, the essence of real human love, felt nothing. In this passage, Adam is the loving, nurturing mother, while Hetty is a pale, hard-looking culprit; unwomaned, she is the equivalent of a “debased, degraded man.” The language itself suggests guilt by association because if Hetty is capable of “killing” her previously innocent self (she is now that Hetty’s corpse), she also could have murdered another innocent. In this passage, Hetty is so far removed from the ideal of Victorian womanhood that she becomes a “realistic” representation of a woman capable of killing her child.

After the trial, through the intervention of Eliot’s strong woman preacher Dinah Morris, Hetty is able to voice her story. Krueger, who sees Hetty as “too terrified to defend herself” when “she is accused in man’s court of law” (Reader’s Repentence 253), argues that “Dinah empowers the fallen woman’s voice, which in turn obliquely indicts patriarchal sins” (253). I agree that Hetty’s own narrative does soften her portrayal somewhat by suggesting that she had hoped the baby would be found, as well as by emphasizing the ways in which her crime was motivated by her (well-founded) fear of severe judgment by her family and community. However, at the same time, her story also reflects “a startling rejection of the role of motherhood which was so sanctified during the Victorian era” (Hancock 305). Moreover, her descriptions of the baby as “like a heavy weight
hanging round my neck” (499) and her confession that “I seemed to hate it” (499) echo her earlier troubling sentiments toward children, never letting Hetty “escape from her culture’s underlying main assumption about the ‘infanticidal woman’: that she is not made of the same stuff as you and I” (M. Jones 323).

With its characterization of Hetty, the novel does little to disrupt legal discourse about “lewd women” and infanticide. Several critics have argued that Eliot actually was more harsh with Hetty than was the law, with Miriam Jones suggesting that the strength of the argument that the novel is a critique of a legal system that silences women like Hetty is lessened by the fact that Hetty is “shut out from the narrative as surely as she is from testifying at the trial” (312). Indeed, the law, by sending Hetty away, is instrumental in bringing about reunification of the community.12

Unlike the outlaw novels discussed below, Adam Bede concludes with more of a sense of resolution than of grave injustice. Arthur is allowed to return after being appropriately diminished in health and esteem. Adam finds true happiness with Dinah and benefits from the “fuller life which had come to him from his acquaintance with deep sorrow” (574). Dinah, overindulgent of her children and no longer preaching, represents an appropriate feminine ideal. The memory of Hetty is present and there is a “tinge of sadness” (Creager 238), but Creeger argues that this “hint of sorrow” is most appropriate to the resolution of this novel because “in the world which George Eliot reveals to us, life not only contains sorrow, it needs sorrow in order that there may be love” (238).13 Gould describes, at the end of the novel, “a perfected Hayslope/England, perfected not because the unmarried mother and child are accepted and cared for, but because they no longer exist” (275).

Thus, in its portrayal of Hetty, the novel serves as a reinscription of what feminist legal scholar Carol Smart describes as law’s claim to “Truth,” its authoritative claim to ultimate correctness (“Law’s Truth/women’s experience” 2). As Schramm notes, Hetty’s confession is “a tentative confirmation of the court’s finding that her intent to harm her child could be inferred from her actions” (138). The novel, in fact, makes the explicit connection between law and truth in an early passage in which the narrator “pauses a little” to inform the readers that he will be giving a “faithful account of men and things as they have mirrored themselves in my mind” (221). Offering something akin to a narrative oath, bolstering his credibility, the narrator avers, “I feel as much bound to tell you, as precisely as I can, what that reflection is, as if I were in the witness-box narrating my experiences on oath” (221). This passage is exemplary of the shift in novels that Alexander Welsh has identified toward a preference for “making strong representa-
tions,” which “can be reduced to the idea of telling stories, but only stories of a particular kind: the representation purports to be true, for one thing, and therefore in literature the expression is generally appropriate to realism” (8). While representations “should appear to be dispassionately devoted to the facts” (9), Welsh explains that they are, by definition, of a particular view:

To make a representation in practice means to subordinate the facts to a conclusion that makes a difference one way or another. In other words, the representation is conclusive: if it purports to review all the facts that is because, in the opinion of the person making the representation, the facts when considered rightly all point in one direction. . . . People need not go about telling their stories and hoping for the best; instead, the stories should be managed with a careful view of the consequences. This management obviously takes ability and experience and, above all, hard work and therefore can best be left to professionals—and professional representation is thought to be an impressive performance in its own right. (9)

Eliot’s narrator in Adam Bede gives just that kind of impressive professional performance, and with his crafted presentation of the narrative facts, he makes strong representations in support of the law’s “truth” about deviant women and infanticide. A review of Adam Bede in the Athenaeum testifies to the effectiveness of his performance: “the story is not a story, but a true account of a place and people who have really lived . . . but that everything happened as here set down we have no doubt in the world” (284). In this way, the representation of Hetty Sorrel helped to constitute lasting ideas about infanticide as a problem of deviant women, and the enduring critical acclaim of Adam Bede has ensured that literature’s “truth” about infanticide in the nineteenth century is strongly represented by Hetty Sorrel.

Evidence to the Contrary

Infanticide in Outlaw Texts

Other literary texts such as Frances Trollope’s Jessie Phillips: A Tale of the Present Day (1843), Caroline Leakey’s The Broad Arrow (1859), and Mary Tuttiet’s The Last Sentence (1891), however, are resolutely “outlaw” in their resistance to the law’s causal attribution between unmarried mothers and infanticide. In The Broad Arrow, for example, the heroine Maida
Gwynnham is discovered burying her illegitimate child, who the reader knows has died of natural causes, most likely malnourishment. Gwynnham subsequently is convicted of child-murder and transported to Australia. Published the same year as *Adam Bede*, Maida's story begins where Hetty's leaves off. After Hetty's dramatic reprieve from the scaffold, we hear no more of her story. Narrative concern shifts to those people who will continue to be a part of the community, away from the one who has disrupted it. In contrast, *The Broad Arrow*, which was the first major novel to address convict life in Australia and the only convict novel to concern itself with female transportees, takes up the story of the “fallen woman,” exploring the realities of her “pardon.”

The literary criticism of *The Broad Arrow*, not surprisingly, has focused on its account of life in Van Dieman's Land (Tasmania), Australia, the place where Leakey lived and observed the convict system from 1848 to 1853. At the same time, however, this criticism dismisses the seduction and infanticide narratives in the novel as nothing more than “an irrelevant frame around the main narrative” (Hergenhan 142). I disagree with the consensus that Maida's early trials are unimportant, instead seeing them as integral to an understanding of Maida's “guilt.”

While Maida is innocent of infanticide, she was tricked by her seducer, Captain Norwell, into committing forgery. Sacrificing herself to protect Norwell (although unable to repress completely her own anger), she tells him, “your hand did not commit the forgery, your fame must not be touched, it stands too high: but Maida Gwynnham, that outcast! it matters not how low her fall” (Leakey 16). Thus, she offers no protest when wrongly accused of infanticide because she knows this more serious charge likely will forestall any inquiry into the forgery.

Having for many months suffered society's judgment of her as an unmarried mother, Maida knows how the law will read her story. She is not at all surprised when proofs such as the sudden start she made when the constables examined her baby's body for signs of violence and the bottle of poison found in her cupboard (she had contemplated suicide when first abandoned by Norwell) are produced in such a way as to make her guilt “unquestionable”—“The dreadful crime could, without doubt, be traced” (21). Whereas in *Adam Bede* the readers wonder whether a crime has been committed, there is no such suspense during Maida's trial. It has been made clear to the reader that Maida did not commit infanticide. Thus, the trial only goes to prove that, try as it might, the law does not get it right. While Maida is escorted to her cell, where a “doubly-locked door swings itself solemnly back, and there is silence, darkness, despair” (4), we are told that the truly guilty party, Norwell, left the courtroom and “gladly crept out of
the loophole opened by circumstance (Providence, he said), and still wider opened by the fair law of England; he crept but into—The ball-room! No harm either—it was the assize ball” (21). In this scene, the law’s claim to “truth” (and fairness) is severely undermined.

As Maida is not guilty of infanticide and only technically (not morally, since Norwell had deceived her) guilty of forgery, what she is punished for, in effect, is her sexual fall. Through transportation, she literally becomes the outcast she has been made to feel in England. While Leakey’s descriptions of the degradations of convict life—particularly female convict life—provide important historical information, they also serve metaphorically to show the overly severe societal and legal judgment and punishment of “fallen women.”

Another woman wrongly accused of infanticide appears in the late-century novel The Last Sentence by Mary Tuttiet (who wrote under the pseudonym Maxwell Gray). In this novel, the judge who erroneously sentences Cicely Rennie to death is her own father Cecil Marlowe. Marlowe had refused to acknowledge Cicely’s peasant mother Renée as his wife and, when Renée died outside his window frozen in the snow, Marlowe left the infant Cicely with a stranger and later lost track of her completely. How to judge his own abandonment of the child and the misjudgment of his and her characters are among the many questions posed in this novel’s feminist interrogation of the rules of law and society.

In this chapter, however, in order to elaborate on how novels perform feminist jurisprudence, I will be focusing on Frances Trollope’s Jessie Phillips. Whereas Eliot, Leakey, and Tuttiet portray legal trials and sentences, Trollope reproves the law as legislated. In her literary narrative, she critiques and exposes the presumptions and biases involved in the production of legal texts.

**Frances Trollope’s Jessie Phillips**

*What about Her Story?*

The particular clause of the Act which [Mrs. Trollope] has selected for reprobation is the bastardy clause—not perhaps the very best subject for a female pen. And then, in order to give dramatic effect to this subject, we have the seduction of Jessie Phillips, her pregnancy, the birth of the child, and its supposed murder by the guilty mother, discussed by two young ladies (Ellen Dalton and Martha Maxwell), of which discussion, the discovery of the body, the probabilities of Jessie being in a condition, just after parturition, to be able to
destroy the child, and the enormity of the crime, are the prominent points. We admit that Mrs. Trollope manages these details with as much delicacy and reserve as their nature would admit of, but they are essentially unfit materials. They are, of necessity, suggestive of circumstances which are always repulsive in their character, and peculiarly so when made the subject of lengthened conversation between two young, artless, and inexperienced girls.

—Review of Jessie Phillips, in John Bull 1843

Frances Trollope, one of the most prolific and popular British authors of the 1830s and 40s, unacceptably breached legal, literary, and gender boundaries when she entered the dialogue on infanticide with her serial novel *Jessie Phillips: A Tale of the Present Day* (1843). Contemporary reviews of this social-problem novel, while couched in terms of literary impropriety and writerly disabilities, betray anxieties about Trollope’s choice of subject matter. The review of the novel in *John Bull* announced that “for the sake of thus having a Poor Law story with which to blend heavy accusations against the Poor Law itself, Mrs. Trollope has sinned grievously against good taste and decorum” (732), and *The Athenaeum* cites as one of the novel’s flagrant faults that in “illustrating the iniquity of ‘the law,’ Mrs. Trollope could not turn away from so tempting a subject as its dealings with Woman and her Seducer; and ‘Jessie Phillips’ is accordingly the old tale of the Lamb and the Wolf” (956).

I would argue, however, that *Jessie Phillips* was pronounced such a “bad book” because it unapologetically is not that same old tale, but rather a “novel” forum in which Trollope puts into practice feminist jurisprudence. Published serially from December 1842 to November 1843, *Jessie Phillips* is peopled with needlewomen, clergymen, dukes and duchesses, fashionable young ladies, squires, and lawyers, all participating in a variety of subplots. Unlike her literary competitor Dickens, however, who delights in making a mystery of the relationships among his characters, Trollope emphasizes her characters’ interconnectedness. Her narrative strategy of weaving together the story of Ellen Dalton, the eldest daughter of the parish squire; the tale of Jessie who is seduced by Frederic (Ellen’s brother); and the narrative of Martha Maxwell, a friend to both Jessie and Ellen and “engaged” to Frederic, accentuates how the law’s regulation of a “deviant” woman such as Jessie is premised upon and authorized by its institutional control of the behavior of all women.

When Jessie Phillips, a beautiful and talented seamstress, is seduced by the charming (but diabolical) Frederic Dalton, he convinces her that they must keep their relationship a secret and wait a few years before marrying
(allegedly so he will not lose an inheritance). The two of them exchange vows, and Jessie believes that, while the public ceremony has to be delayed, “she was in spirit and in truth his wedded wife” (2: 20). True to the conventional Lamb and Wolf plot, Frederic abandons a pregnant Jessie, who after losing her reputation, and hence her livelihood, disappears behind the walls of one of the Union workhouses established pursuant to the New Poor Law. While not literally dead, she is presumed literally so. With Jessie seduced and abandoned, the Lamb’s story is supposed to be over. In Trollope’s “bad” novel, however, Jessie’s tale is just beginning.

Breaking out of the traditional story, transgressing barriers separating fact from fiction, politics from aesthetics, and law from literature, Trollope’s narrator follows Jessie into the workhouse and reports on the conditions inside. The descriptions emphasize the isolation and dehumanizing aspects of the workhouse where families are separated, no visitors are allowed, and the “inmates,” who must wear prescribed uniforms and their hair cut short, are not permitted to exercise or engage in any type of productive activity. Whereas Dickens’s 1837 novel *Oliver Twist*, which also critiqued the conditions within the workhouses, considered those “regulations having reference to ladies . . . not necessary to repeat” (55), Trollope’s text focuses on women and their concerns within this space. In her novel, the workhouse stands as a physical manifestation of the law’s otherwise tacit regulation of women’s bodies.

Not wanting her child to suffer the miseries of the workhouse, Jessie escapes to seek support from Frederic, who not only refuses to help her, but also solicits Mr. Lewis, the village lawyer, to impress upon her that she has no legal remedy. Desperately wandering after her confrontations with Frederic and the lawyer, she gives birth to a baby girl alone in a shed. While Jessie is unconscious after the birth, Sally, “one of those harmless, imbecile unfortunates of which almost every parish can show a specimen” (1: 228), finds the mother and child and goes in search of milk, taking the crying baby with her. When Jessie is discovered without the baby, she is arrested for infanticide. Meanwhile, through a series of crossed paths, Frederic chances upon the child where Sally has temporarily placed her and forever silences the infant’s piercing cries with his booted foot. When the body is found near the shed, Jessie’s fate seems sealed. She, of course, has no idea what happened while she was unconscious, and grieves the horrible possibility that she may have killed her child unknowingly.

Ellen and Martha, however, suspect Frederic of the murder. So strong is Ellen’s belief in her brother’s treachery that she calls off her marriage to Lord Pemberton (their romance being one of the primary subplots) to avoid involving him and his family in the scandal. She then slips in and out
of delirium for much of the last part of the novel. Martha, appearing more than a decade before the allegedly “first” fictional female detective and almost a century before women practiced law, has been investigating the Phillips/Dalton case since her suspicions had been aroused by Frederic’s unexpected marriage proposal to her.24 Throughout Jessie’s trials, Martha serves as her counselor and advocate, although, as a woman, she is unable to represent Jessie in any official capacity. Trollope, like Martha, had no access to the authoritative language of law. Having much to say about legal issues, however, she entered the dialogue through literary language.

If, as studies such as Said’s and Miller’s suggest, nineteenth-century novels typically achieve resolution through reunification of the family, and if the family plays a vital role in social discipline, then what is the cultural meaning of a novel such as Jessie Phillips that stirs its readers up against the legal system and sustains the challenge by presenting a familial “microcosm of society” as a murderous father, a dead infant, and an angry mother? Such an outlaw novel demonstrates that what Miller describes as the “fully panoptic view” of the omniscient narrator may indeed not support the status quo and its institutions but instead be lawless in the way that it shifts the perspective to show the innocence of a “fallen woman” and to make a spectacle of the law.

A HAUNTING PRESENCE: THE “LEWD WOMAN” AND THE LAW

WHEREAS many lewd women that have been delivered of bastard children, to avoid their shame, and to escape punishment, do secretly bury or conceal the death of their children . . . whereas it falleth out sometimes (although hardly it is to be proved) that the said child or children were murthered by the said women, their lewd mothers . . .

—21 James 1, c. 27, 1623

In Jessie Phillips, when Frederic visits Lawyer Lewis to explain that “a young hussy” is threatening to swear a child to him in order to extort money, Lewis confirms that all such efforts have been rendered “utterly harmless and abortive” by “the admirable clause” in the new act. In a protective, fatherly manner, Lewis makes his assurances palpable by producing the act itself: “[H]ere we have it, safe and sound’ (laying his hand upon the act, which made part of the furniture of his table), ‘and as completely the law of the land as that which awards hanging for murder’ (3: 61). In this passage, Trollope signals the intertextuality between Jessie Phillips and the legal text that furnishes her novel’s pages and dialogue. While Lewis’s
further comment, “We have nothing to do with facts now in cases of this sort; the law is comprehensive enough without them” (3: 61), suggests that the law may be mere text—completely removed from lived experiences—the allusion to capital punishment reminds of the killing authority of legal language.

The “act” referred to is the Poor Law Amendment Act of 1834 (the New Poor Law), which includes the “admirable” bastardy clause(s) that made an unmarried mother solely responsible for the maintenance of her child. The debate over these clauses is the particular legal moment in which Trollope’s “tale of the present day” is situated, and the connections between the bastardy clauses and the law of infanticide are implicit in Lewis’s seemingly random allusion to “hanging for murder,” the legal sentence for infanticide. In *Jessie Phillips*, Trollope actualizes the law’s potential infanticide—“the lewd woman”—who historically and thematically informs and haunts the legislative text of the 1834 bastardy clauses.

While the crime of infanticide itself is no part of these bastardy clauses, that same woman who needed to be prevented from murdering her children is also the subject of this legal narrative. This time she is preying on innocent men. According to a report prepared by a nine-man Royal Commission to Investigate the Poor Laws (a source of the legislative history of the New Poor Law), the old system’s attempts to regulate morality by forcing a woman to publicly declare her infamy and to name the father of her child were instead empowering women to force men into marriage: “a woman of dissolute character may pitch upon any unfortunate young man whom she has inveigled into her net, and swear that child to him; and the effect of the law, as it now stands, will be to oblige the man to marry her” (Commissioners’ Report 176, evidence of Mr. Simeon). Still trying to capture and punish these “deviant” women, the new strategy was to silence them and make them solely responsible for the maintenance of their illegitimate children. All laws enabling a woman to charge a man with being the father of her child and collecting maintenance from him were repealed to ensure that “a bastard will be, what Providence appears to have ordained that it should be, a burthen on its mother . . .” (Commissioners’ Report 350).

The Commissioners’ Report makes passing reference to concerns about the seduction of young girls and infanticide only to write them off as irrelevant. The Commissioners’ final word on seduction is that “[c]ases will no doubt occur of much hardship and cruelty, and it will often be regretted that these are not punishable, at least by fine upon the offender. But the object of law is not to punish, but to prevent” (351). The suggestion that the incidence of infanticide might increase is dismissed with moral indignation: “We believe that in no civilized country, and scarcely in any barbarous
country, has such a thing ever been heard of as a mother’s killing her child in order to save the expense of feeding it” (351). The actual welfare of a “bastard child”—how it is to be fed—is of no concern in this text.

In *Jessie Phillips*, Lawyer Lewis “had carefully read, and commented upon at length, every page of every report from the select committee on the Poor Law Amendment Act, with the whole body of the evidence produced before them” (1: 218). His notes and comments on the Commissioners’ Report had furnished him with “a very neat sort of bird’s eye view of the *leanings* of the honourable committee themselves” (1: 218–19). Lewis, as close reader and interpreter of the legal text, sees it in a way that exposes the leanings or subjectivity of the lawmakers. Sycophant that he is, Lewis hopes to use this “secret fund of authority” to ingratiate himself with the assistant commissioner who has come to Deepbrook to oversee the enforcement of these leanings (1: 219). The novel itself makes different use of this “secret fund of authority” identified within it, this recognition and understanding of the Commissioners’ Report as a crafted narrative that presented the body of evidence in a particular way. In the legal text, the “evidence” (the voice) is exclusively male and “the body” is female. Trollope’s revisionary novel gives “the body” a story of its own and a voice to change the tenor of the legal dialogue.

In the discussion of the bastardy clauses in the Commissioners’ Report, the evidence of twenty-two men is presented as if they were engaged in a casual conversation. One anecdotal story follows another. Mr. Tweedy tells of an “instance in Carleton of a woman who is now receiving 4s. for two children, and is about to have a third; and she said, if she had a third, she could live as well as anybody,” which seems to remind Mr. Cowell of a woman “in receipt of 18s. per week, the produce of successful bastardy adventures” (171). Colonel A’Court’s comment, “Middle-aged women will sometimes unblushingly swear mere lads to be the fathers of their bastard children; lads whom they have perhaps enticed to the commission of the offense” (168), apparently rings true to Mr. Power, who concurs, “the female in very many cases becomes the corrupter; and boys, much under the age of twenty, are continually converted by this process into husbands” (173). Only the footnotes to the Commissioners’ Report reveal that these pieces of conversation have been selected from reports from different parishes and that it is highly unlikely, for example, that Mr. Tweedy and Mr. Cowell have ever met each other, let alone participated in a dialogue on bastardy. This presentation of the evidence has the effect of neutralizing the role of the Commissioners, who appear merely to be summarizing the “facts” and making the only recommendations that make sense in light of the evidence.

The following story from the Commissioners’ Report, told by a “Captain
Chapman,” is a typical example of the “proof” offered of the “oppression” under the Old Poor Law:

At Exeter, an apprentice under eighteen years of age, was recently committed to the house of correction for want of security [to indemnify the parish for providing for an unborn child]. It was admitted that there was no chance of his absconding, but the overseers said he had been brought for punishment. The woman stated that she was only three months gone with child; and thus the boy is taken from his work, is confined five or six months among persons of all classes, and probably ruined for ever, on the oath of a person with whom he was not confronted, and with whom he denied having had any intercourse. (167)

What lies at the heart of this and all of the other testimony in the Commissioners’ Report is the threat to men posed by women’s bodies. In the above passage, not only is there the suggestion that the woman may be swearing her child to the wrong man; there is also the concern that she may not be pregnant at all (she “states” that she is three months gone with child). Her unruly and, more importantly, unknowable body puts her in an unacceptable position of power, which is emphasized by the stress laid on the “boy’s” youth. That women’s bodies were the focus of the bastardy clauses is tellingly revealed by the interesting piece of “evidence” offered by a solicitor at Nuneaton parish, who reports “that his house looked into the churchyard; that he was in the habit purposely of watching persons resorting to the church for marriage, and that he could confidently say, that seventeen out of every twenty of the female poor who went there to be married were far advanced in pregnancy” (173).

In Jessie Phillips, it is the young woman who is under eighteen, unable to work, confined for months among persons of all classes and more than probably ruined forever, all because of a false oath of marriage sworn to her by a person who denies having had any intercourse with her. In Trollope’s novel, the watched bodies of women talk back.

“THE MISCHIEF THAT AN OLD WOMAN MAY DO”:
TROLLOPE OPENS A DIALOGUE

While Jessie Phillips is situated within this broad legal context, Trollope chooses, as a literary setting, the small, rural village of Deepbrook. She creates a sense of interconnectedness by introducing her characters as neighbors, moving from the tranquil, gentleman-like dwelling of Reverend
Rimmington, to the attractive house and grounds of Lady Mary Weyland, to the large, though not picturesque, mansion of the squire, Mr. Dalton. What is most striking about this initial scene, however, is the abundance of lawyers and the paucity of wives. The lawyer who lives next to Mr. Dalton, Ferdinand Lewis, is a widower and the father of two daughters. Henry Mortimer, the lawyer whose house stands next to Lewis Lodge, is also a widower and lives with his sister, his daughter, and his son, who is studying to be a lawyer. Reverend Rimmington is a bachelor, Lady Weyland is not the wife but the widow of a baronet, and Mr. Dalton (although his wife is alive and well) is described as having a family consisting of ten daughters and one son.

The absence of wives from the narrator's descriptions of the traditional and patriarchal “leading families” who reside in Trollope’s “legal landscape” introduces one of her central themes—the “non-existence” of wives under the law. Literalizing how Mrs. Dalton, for example, lives in Deepbrook—under the legal condition of coverture—Trollope describes her (by not describing her at all) as covered (by the description of the large mansion she inhabits) and as having her identity subsumed into that of her husband.

Mrs. Dalton soon appears on the scene, however, as Trollope abandons her legal world view for a more intimate look. The second chapter of Jessie Phillips opens in the middle of a dialogue between Mr. and Mrs. Dalton about the new poor law commissioner. Mrs. Dalton is “perseveringly pursuing her occupation of putting sugar into ten breakfast-cups” (1: 12), and while her “occupation” at the tea table may seem trivial, the enormity of her labor in producing eleven children is accentuated by her need to rest before pouring cream into each of their cups. Described as immoderately fat and suffering from *vis inertiae* of mind as well as matter, Mrs. Dalton answers most of her husband’s inquiries about a dinner party for the commissioner with her signature line, “I am sure I don’t care a single straw about it” (1: 24). Her general apathy may be symptomatic of her wifely condition of coverture, a condition that encourages silence and discourages any thoughts of her own. The law worked to ensure the domestication of a wife and then relied on her husband to “keep her covered.” One might say that, having delegated its surveillance responsibilities, the law reciprocated Mrs. Dalton’s sentiments—it didn’t care a straw about her either. In light of Mrs. Dalton’s condition, the lack of respect displayed by Mr. Dalton’s “hastening out of the room in time to escape ‘the straw’ that sometimes almost overwhelmed him” (1: 26) appears more sad than comic, and we can read Mrs. Dalton’s preferred pastime of “doing nothing” as a tragic but real consequence of the law’s fiction. With Mrs. Dalton, Trollope’s narrator begins tellings of the life experiences of several women whose “varied and
opposing voices” problematize legal constructions of women, specifically those of “wife” and “mother.”

Of course, to be a wife and “protected” in both legal and social discourse, a woman had to be legally constituted as such. Since the passage of Lord Hardwicke’s Marriage Act in 1753, to be a lawfully wedded wife, a woman had to be married in a church, have her marriage entered in the parish register and signed by both “contracting” parties, and have the consent of her parents or guardians if she was under the age of 21. The Act, although requiring the ceremony to be performed in a church, in fact secularized marriage by providing that a religious ceremony was not valid unless it also complied with the legal requirements. The Act also provided that verbal spousals, that is, oral contracts of marriage, were no longer binding.

The primary purpose of this Act was to protect wealthy families from the consequences of “unfortunate” marriages, and it was enacted despite objections that it facilitated the seduction of young girls by making promises of marriage unenforceable, and that it would result in a rise in concubinage, bastardy, and infanticide by making legal marriage too expensive for the poor. To the upper- and middle-class men who were debating this issue in Parliament, the Marriage Act was really about the wealthy. The seduced young women and “the poor” who would suffer because of this Act were irrelevant; their legally sanctioned absence and silence made them as abstract as the terms “bastardy” and “infanticide” when removed from lived experience.

In the novel, Jessie believes she has entered into a valid marriage contract with Frederic. Prior to the passage of the Marriage Act, their agreement would have been a contract per verba de futuro, an oral promise to marry in the future which, if witnessed and if followed by consummation, would have been legally binding for life. Jessie’s thoughts and actions upon discovering that she is pregnant, however, reveal that she not only is ignorant of her vulnerable position under the law but also has little sexual knowledge. She had thought it “impossible” that her connection with Frederic should be known, suggesting that pregnancy had never crossed her mind. The narrative voice is quick to defend Jessie’s ignorance, implicating instead “our theories of popular education” that erroneously equate innocence with virtue (2: 24). While Jessie may not have realized how she came to be with child, she is not unaware of the social judgment of a pregnant woman whose union has not been proclaimed to the world. She hastens to tell Frederic her news, with “such perfect and entire confidence in him, that the idea of his refusing to ratify the promise so repeatedly and so solemnly given, when she should demand its performance, never entered her head for a single moment” (2: 25; emphasis added). Jessie has
taken Frederic at his word; to her, his solemn avowal of marriage was fully performative of the act. Describing the thought she doesn’t have in terms of legal language, however, the narrative voice emphasizes that the law matters, that words spoken outside its purview, in effect, are meaningless.

To the surprise of no one but Jessie, Frederic refuses to acknowledge what she has considered to be a valid marriage contract. If the story had taken place before the passage of the Marriage Act, it would have been lamentable that Jessie could produce no witnesses to his promises, and that in agreeing to protect his interests through concealment, she had left herself unprotected. In Trollope’s novel, this was of no matter, however, because after passage of the Marriage Act, it was easy for the Frederics of the world to escape on any number of technicalities. To Jessie’s desperate entreaties that he acknowledge her position in front of his sister Ellen, “Tell her at once, Frederic Dalton—tell her, without subterfuge or delay, what and who I am,” he replies with a loud laugh (2: 56). From Jessie’s point of view, she is Frederic’s wife and the mother of “an unborn treasure” (2: 22). When Frederic laughs off his responsibilities, she becomes a fallen woman, and, in legal terms, the lewd mother of a bastard.

A “wife,” by definition, is secured within the confines of the law’s construction; a “mother” is a more “unruly body.” In the context of nineteenth-century legal discourse, which Carol Smart argues constructs Woman as “a problematic and unruly body; whose sexual and reproductive capacities need constant surveillance and regulation because of the threat that this supposedly ‘natural’ woman would otherwise pose to the moral and social order,” the unmarried mother is the most dangerous body of all (“Disruptive Bodies” 8, 24). Outside the protective cover of any man, the law distinguished the “lewd” mother from the “wife” mother, and constructed her as someone to be protected against.

Martha Fineman, in her analysis of twentieth-century discourses of poverty, remarks that the label “mother” is still modified by the woman’s legal relationship (or lack thereof) to a man, with single motherhood being constructed as a deviant family form (285). Citing legal rhetoric, Fineman demonstrates how single motherhood has been constructed as a primary cause of poverty, as well as implicated in the degeneration and destruction of society as a whole. She explains that the representation of single mothers as “bad mothers,” with corresponding “good mothers” being those situated within traditional, patriarchal families, is possible because motherhood is “a colonized concept—an event physically practiced and experienced by women, but occupied and defined, given content and value, by the core concepts of patriarchal ideology” (287–88).

In Jessie Phillips, Trollope explores the usurped concept of mother-
hood by doing what is notably rare in literature: presenting the subjective experiences of mothers. While focusing on a “murderous mother,” she presents Jessie’s narrative in dialogue with the experiences and voices of multiple mothers in a way that disrupts attempts to label them, as well as exposes the class bias inherent in the law’s categorizations. I will focus this part of my discussion around the two women in the novel who “go to law” as mothers in the novel, Widow Greenhill and Jessie Phillips, both of whom as “uncovered” women have a legal identity. The tellings of their stories uncomfortably challenge notions of what constitutes good and bad mothering.

Early in the novel, Mrs. Greenhill, a well-respected former servant of the Duke of Rochdale, is forced to appear before the Board of Guardians for the local Union workhouse to seek financial relief for her son’s family. More successful in sport than in business, her son Tom had accumulated such a vast amount of debt that even the pledge of his mother’s generous annuity from the Duke was insufficient to keep him from prison. While Tom was in jail, his wife worked in the fields to feed the family while Mrs. Greenhill minded her five grandchildren. As the birth of their sixth child approached, however, Tom’s wife was no longer able to work, and Mrs. Greenhill had no choice but to apply to the parish for relief. Greenhill and her daughter-in-law are “good mothers,” both from a legal perspective—all of their children are “legitimate”—and from the perspective that they are loving caretakers. When they are no longer able to support themselves, however, they are stripped of “good mother” status.

Appalled by the daughter-in-law’s “profligate maternity,” one of the louder members of the Board berates a stunned Mrs. Greenhill:

> Are you not ashamed—a woman of decent appearance as you are, to come and ask the active, honest, intelligent, thrifty part of the population to rob themselves and their own children (honesty brought into the world, with the consciousness that there was power to maintain them)—are you not ashamed, old woman, to come here to take their money out of their pockets, in order to feed this litter of brats, that you know in your own heart and conscience ought never to have been born at all? (1: 66)

As his reiteration of the word “woman” accentuates, Mrs. Greenhill (not her son) is implicated in the “profligate maternity” of her daughter-in-law; it appears that “brats,” like “bastards,” are a female problem. Of course, other related “female problems” are irrelevant to this representative of the law. Another interpretation of young Mrs. Greenhill’s “annual accouche-ment,” for example, is that she is fulfilling her legal obligations as a wife;
she always is sexually available to the sporting young Tom. Moreover, this Board member doesn’t take into consideration how higher wages for women, different childcare arrangements, or the accessibility of information about birth control might alter the Greenhills’ situation. From his perspective, considerations such as these would unnecessarily involve and implicate “the active, honest, intelligent, thrifty part of the population” in problems that really were about “bad mothers.”

Mrs. Dalton further disrupts the good mother/bad mother dichotomy. As the mother of eleven children, almost twice the number as the young Mrs. Greenhill, is she guilty of profligate maternity? If not, is that because her husband is the acting head of the household, because of her family’s status as gentry, or because she needs no funds from the parish? Would she still be a “good mother” if the family lost all of their money (which happened to the Trollope family twice)? What about the fact that she is described as incapable of performing domestic duties (Ellen supervises the servants and writes letters for Mr. Dalton), and that the children’s favorite on an affectionate level is none other than Jessie Phillips? The narrative itself suggests these questions in the way it moves back and forth between the stories of the Dalton and Greenhill families, putting these two tellings in dialogue across class boundaries. It is only after calling into question the norms and assumptions implicit in the cultural meanings of a “good mother” that Trollope presents Jessie, a “bad mother,” in confrontation with the law.

Jessie appeals to the Board to seek admittance into the workhouse when she is no longer able to support herself by sewing because the young women in the parish refuse to associate with someone in her condition. The male Board members, however, despite much looking, fail to notice Jessie’s pregnancy:

Every eye (and in consequence of the previous business [a proposal to dismiss the workhouse medical attendant whose drunken behavior had resulted in the death of one child and the near fatality of another] there were many persons present)—every eye was fixed upon her; but, contrary to what was usually the case among the many busy individuals there assembled, none seemed anxious to undertake the customary task of examining her, relative to the business which brought her there. (2: 183)

The text emphasizes Jessie’s body as the focal point of these eyes, describing how she was “without visible tremor in any limb or fibre,” although her “fluttering pulse throbbed, stopped, and throbbed again” (2: 183). At length, Jessie “brought this silent examination to a close by raising her eyes to
those of the reverend chairman, with a look that seemed to beseech his attention for her case” (2: 183–84; emphasis added). The examination relative to the business that brought her there—her life experiences—begins only when Jessie is able to meet the gaze of the Board.

As she stands before this group of men, with every eye fixed upon the “sedate stillness of her look and manner, joined to the pale beauty of her marble features” (2: 183), the fawn-like Jessie Phillips bears no resemblance to the seductress of the Commissioners’ Report, out to inveigle innocent men in her net. She “was more likely to suggest the idea of a being rising supernaturally from the tomb” (2: 183). In fact, Jessie is the embodiment of the seduced young woman whose haunting presence is only barely visible in the legal texts of the Marriage Act and the Commissioners’ Report. This scene in the novel is also haunted by the “idea” of infanticide that was “the previous business” that textually interrupts the Board’s consideration of Jessie.

While she struggles to explain, “my health is gone; I have not a shilling in the world, and I must perish if I am refused shelter here,” Jessie becomes unable to control her “unruly” body and faints (2: 185). The accompanying illustration shows her collapsed on the floor before the Board. Jessie is uncovered (her bonnet lies beside her on the floor) and in need of protection (from starvation, from the elements), and these men—all unmoving, some unmoved—can only stare as she literally becomes a fallen woman before their collective eyes. This portrait of ten administrators of the law, looking on with a mixture of shock, perplexity, and indifference, not only depicts women’s subjected position under the law, but also shows that the law is unable, if not unwilling, to “see” in a way that takes women’s experiences into account. (See figure 1.)

Once Jessie is visibly pregnant, however, the law does know how to view her. As she “goes to law” for a second time, with the law this time represented by Lawyer Lewis, she is described as a “strange-looking figure, half-ghostly, half-grotesque, slowly but decisively approaching the lawyer’s door” (3: 62). To Lewis, she is ghostly in a ghastly way, figuring that dangerous conniving seductress, preying on innocent men such as his friend Frederic. She is grotesque in that she has dragged her pregnant body out into the open to have her say. In his article “Patriarchal Territories: The Body Enclosed,” Peter Stallybrass discusses legal and cultural assumptions that a woman’s body is “naturally” grotesque, necessitating constant scrutiny: “The surveillance of women concentrated upon three specific areas: the mouth, chastity, and the threshold of the house. These three areas frequently were collapsed into each other. The connection between speaking and wantonness was common to legal discourse and conduct books” (126).
Faced in this passage with a breach of all these boundaries, Lewis is outraged that Jessie has appeared at the threshold of his house, in an obviously unchaste condition, and is particularly interested in silencing her. Interrupting her story, he assures her that “you may stand all day swearing that one man or another is the father of your child, and no more notice will be taken of it than if you whistled” (3: 65) and “Let the father be a king or a cobbler, it will not make the slightest difference, so you need not trouble yourself to say any thing about that” (3: 66). This time Jessie has approached the law seeking protection for her unborn child, only to discover that the purpose of the new legislation was “to spare the pocket of

Figure 1 “Jessie before the Board.” Illustration by Leech taken from the first one-volume edition of Jessie Phillips (1844). This illustration also appeared in the first three-volume series (1843).
the fondly *protected* man" (3: 67; emphasis added). When she dares to utter the name of Frederic Dalton, the embodiment of that "fondly protected man," Lewis flies into a rage, seething as he verbally assaults her, "How dare you come to me, of all men living, in the hope of having your impudent way in the very teeth of the statute?" (3: 68). As Jessie races from his house, she is filled "with a feeling of terror, such as she might have experienced if an angry bulldog had been let loose upon her" (3: 68). In this scene, the law is presented as what Jessie and her child need to be protected against.

It is through the character of Martha that Trollope envisions a law of a different kind. Described as having "a shrewdness of observation and character," Martha knows Jessie and rejects the conflation of sexuality and monstrosity implicit in the legal and social judgment of her character. A self-described "lawyer," Martha shares a business-like way of doing things with Lawyer Lewis. They go about their business, however, in a most dissimilar way. When Martha learns of Jessie’s pregnancy, rather than judging and condemning her, undeterred by boundaries of class and propriety, she seeks her out to offer counsel. Instead of looking first to the law (which she, in fact, knows very well), Martha begins with Jessie’s experiences: "Jessie Phillips, I wish I could persuade you to open your heart to me fully and completely. . . . Without knowing exactly how matters stand between you and Mr. Frederic Dalton, it is impossible I can be of any real service to you; but if you would trust me entirely, it is possible I might be" (2: 141–42). In Jessie’s "telling" to Martha, “the part of her story which she dwelt longest upon was that which related to the solemn promises of marriage she had received” (2: 144). Martha is well aware, however, that what seems most important to Jessie, the law has “objectively” deemed irrelevant.

While some of Martha’s legal work for Jessie (who is referred to as Martha’s “client”) is presented almost playfully, the vilification of Martha in nineteenth-century literary reviews of the novel illuminates the real threat she posed. One review was particularly worried about a promise of marriage that Martha drafted and persuaded Frederic to sign. Purposefully leaving the woman’s name blank, Martha hoped that the document would in some way prove useful to Jessie. It was most important to this reviewer to recast Martha’s “male” acts of lawyering as “female” scheming (*Athenaeum* 956–57). As the review accuses, Martha does enjoy keeping “the villain on the rack” (957), but that is because she is angry about his attempts to dupe her into marriage, as well as outraged by his behavior toward Jessie. Once Jessie is accused of infanticide, however, there is nothing at all playful about Martha’s advocacy.

For Lewis, it was the most natural of things that a socially deviant woman, monstrous in her sexuality as evidenced by her pregnant body,
would act monstrously toward her child. After Jessie is arrested for infanticide, Lewis brags, “I won’t deny that I do feel a little proud of my own sagacity . . . I saw at once that there was something desperately bad about that hussy” (3: 159). The similar reactions of other characters prove the power of legal discourse to shape how things are seen. The farmer who discovers an unconscious Jessie in his shed “felt not the shadow of a doubt that she had given birth to a child, destroyed and concealed it” (3: 87), and he is afraid to be at all associated with the “horrible infanticide” (3: 86). The same verdict is reached by the village doctor and the caretakers of the workhouse, who feed and care for Jessie simply to ensure that she doesn’t cheat the hangman, “horrid monster as she is” (3: 93). Even the clergyman who is sent to Jessie believes that she is guilty, “for who but yourself could find benefit or profit of any kind from the deed?” (3: 123). When Jessie claims to have no knowledge of what happened, she is told that no jury will believe “any such worn-out story,” for all women in her condition say the same thing (3: 274). The law has constructed its own knowledge about fallen women and infanticide, and Jessie’s experiences must be made to fit that epic narrative.

Refusing to accept the law’s “truth,” Martha cannot believe that Jessie murdered her child and visits Jessie in prison to see for herself. During their meeting, Martha learns that Jessie has no recollection of what happened after the baby’s birth. She asks Jessie why she has led everyone to believe she is guilty:

> Then why is it that you have suffered more than one friend, who was disposed to believe you innocent, why have you suffered such to leave you, Jessie, with the persuasion that you had murdered your child? Surely they could not have left you with such an idea if you had spoken to them as you have now spoken to me! (3: 270)

Jessie’s response illustrates how the law’s claim to knowledge authorizes itself and disqualifies alternative accounts:

> “There was no difference,” returned Jessie, calmly, “in what I said to them and what I have said to you, Miss Maxwell, except what came from the difference of their questions. You asked me what I remembered, and I could safely tell you that I remembered nothing; but, when they told me that my child was murdered, and that nobody could have done the deed but myself, how could I help believing that I had done it?” (3: 270)

Jessie is the victim of legal discourse that “tells us how we should under-
stand a problem and which explanations are acceptable and which are not” (Finley 905). Free to unravel outside the purview of the legal narrative, Jessie’s own story reveals the machinations of the law’s “truth.”

While the readers know Jessie is innocent, suspense builds as Trollope whittles away at the possible infanticide defenses that are acceptable in legal terms. Much is made of the fact that Jessie admits to having heard the baby cry, making any defense based on the child being stillborn impossible. A skilled needlewoman, Jessie also cannot claim the popular and successful benefit-of-linen defense. A woman who could show that she had done sewing for the baby before its birth usually was acquitted. Having spent the last few months of her pregnancy confined in the workhouse, however, where no labor of any kind was allowed, Jessie had neither the opportunity nor the materials to prepare linen. Sally, in fact, had procured clothes for the infant, but Frederic is careful to strip the baby of these garments prior to his concealment of its body. The extreme violence of Frederic’s murderous act also forecloses the broadly interpreted want-of-help defense, which was based on arguments that the infant had died from causes such as failure to tie off the umbilical cord or a fall into a basin of water because the mother lacked skill or self-possession or was medically incapacitated.35

The most popular defense, temporary insanity, is the one pled for Jessie at her trial. (Martha, who has been convinced by Lewis and Reverend Rimmington that her suspicions about Frederic are unfounded, in fact, comes to believe that Jessie did kill her child when she was out of her senses.) While not specified in the text, the “causes” of her insanity most likely would have been explained in terms of her morality and her biology. James Pritchard in 1833 had introduced the term “moral insanity” to describe deviant behavior, and this could account not only for her murderous act, but also for the excessive sexuality that led to Jessie’s fall in the first place. Correspondingly, her female body, especially after childbirth, also made her susceptible to madness and moral perversion.36 While a defense of temporary insanity may have saved certain women from being held accountable for their actions, it is a problematic defense because it reinforces ideas of madness as essentially female. Jessie Phillips is subversive in that, while Jessie is determined to be “not guilty by virtue of temporary insanity,” the readers know she is simply “not guilty.” I would argue, however, that Trollope goes much further than this by reconfiguring the discourse of madness to show her female characters, particularly Jessie and Ellen, to be “not mad (insane) but mad (angry)” in a justifiable and politically powerful way.37

Madness is introduced in the novel in the figure of Sally. Sally lives in the workhouse; however, she is granted the singular privilege of being
allowed to come and go as she pleases, making her position as the local madwoman the envy of the other inmates. She is known for two qualities, her tenderness toward infants and her truthfulness. She always spoke the truth and “there was nobody in the parish who, if they wanted to ascertain a fact about which she knew any thing, but would have taken her testimony in preference to all others” (1: 229). For Sally, truth was not an abstract principle. She simply told things as she saw them—hers was a truth grounded in lived experience. In a pictorial representation of Sally, she looms large as the central figure in a group of women—her associations with madness, the maternal, and truth situate her as an important character in Trollope’s revised narrative of infanticide. (See figure 2.)

Jessie is first described as mad when she goes to demand that Frederic acknowledge her as his wife. Refusing to accept a docile and silent role, Jessie boldly asserts her rights. Frederic can fathom her unexpected pluck only as a form of madness: “By your mad conduct you have, of course, banished yourself from the house,” the whole and horrible truth of which she is just beginning to grasp (2: 63). For her, the mad conduct has been to believe his false promises of marriage; for him, it is to suggest he suffer the consequences. Playing the role of the innocent and betrayed man of the Commissioners’ report, Frederic asks Jessie, “Is it your purpose mad woman, as you are, to drive me mad too?” (2: 61). Repositioning women to have agency and a voice, Jessie Phillips is threatening because it suggests an affirmative answer to this rhetorical question.

Once she realizes the extent of Frederic’s perfidy, Jessie truly is mad (angry), declaring, “I would not be the wife of Mr. Frederic Dalton if doing so would make me a crowned queen!” (2: 168). Jessie (and the reader) know that she and the child would be better off without this particular father, whom the narrative has shown to be hateful and violent. Single motherhood is the preferable choice; however, societal attitudes toward “uncovered” mothers have made it impossible for Jessie to find work. Given her limited economic choices, her decision to seek maintenance from Frederic makes practical sense. Because the bastardy clauses were legislated with the “reasonable” view being that of the “fondly protected man,” however, Jessie’s sound determination “much more resembled the dominating idea of a maniac” than “the steady resolution of a rational being” (3: 42). In this passage, the text exteriorizes the oppression in the law’s appropriation of words such as “reasonable” and “rational” to describe itself. Legal language, by its very terms, protects itself from criticism. Any perspective other than the law’s may be dismissed as unreasonable or irrational or, when that perspective is female, as “emotional” or “mad.” Frederic is quick to point out that the law is on his side, taunting her with “Where did you get
your law from, Jessie Phillips?” (3: 48). His thoughts, however, reveal what his cruel words try to mask—he is beginning to crack under pressure.

Unable to conceive that Jessie could be so bold, he becomes paranoid that she is “acting upon orders” (3: 49), specifically those of that villainous Martha Maxwell. Frederic is so self-absorbed that Jessie’s story is nothing more to him than a devious plot by Martha to destroy him. Confronted with Jessie’s pregnant body, he visualizes his own fall:

All his greatness, all his fashion, all his pre-eminence, were seen crumbling into ashes before the blasting eyes of the miserable object before him; while a phantom of Martha Maxwell appeared peeping over her shoulder, showing its white teeth from ear to ear in delighted laughter, while its head nodded and its finger pointed to himself. (3: 52)
Frederic’s terror in the face of female power (Jessie’s blasting eyes create a genuine castration anxiety) mirrors the tacit fear of women’s bodies evidenced in the testimony in the Commissioners’ Report. At the same time, this passage displays the threatening possibility of a shift in perspective. Seeing (eyes), hearing (ears), voicing (laughter), and thinking (head) in a different way, this “strange-looking figure, half-ghostly, half-grotesque” (3:52) (an apt description of the law’s construction of Woman—non-existent or Other) is empowered by an accusatory phallic finger.

In this confrontational scene, Jessie symbolically manipulates legal terminology by going under cover and performing madness in order to speak the truth as she sees it and to stop protecting Frederic from the consequences of his false promises. In order to escape detection (from the workhouse officials), Jessie has covered herself with the well-known oversize bonnet belonging to Sally. As she is speaking with Frederic, the unfastened bonnet falls to the ground and an “uncovered” Jessie angrily declares:

Well may you tremble now. . . . At a day not long ago, I think I would have crept into a hole that a dog would have turned from, so I might have hid my shame and its wretched fruit. . . . But that is all gone together now: I care not for my shame—I care only for my child, though it has such a wretch as you are for its father, and I will not die without telling the whole world what you are. (3: 52)

While the law may place all shame and blame on Jessie, her voice of resistance is empowered by the context of her narrative. She no longer seeks the law’s degrading and silencing cover (the “hole” that represents the workhouse and marriage to Frederic); she will take cover only as necessary to protect herself and her child. Moreover, the fallen bonnet serves to remind that her anger is not madness. Linguistically reconfiguring the law’s way of seeing, Jessie’s anger exposes, or one might say uncovers, the “madness” that Frederic, wretch that he is, is the “fondly protected” favourite of the law. Having taken him under its protective wing, the law becomes implicated in his infanticide.

It is Ellen’s suspicions of her brother’s murderous act that drive her “crazy.” Reading fear and guilt in Frederic’s face when he learns that the child’s body has been found, she collapses, suffering from a paroxysm of fever that “threatened her life as well as her reason” (3: 262). When her fever abates, Ellen informs Frederic of her decision that he is to go abroad, leaving behind a declaration of his guilt. Justifiably furious, she then orders him out of her sick room. Frederic, shaken but sufficiently recovering himself to leave the room, announces that Ellen is worse than people think,
“for every word she has uttered to me was as mad as Bedlam” (3: 295). The doctor, after examining her, however, responds, “take my word for it, Mr. Frederic, she is more in her right senses than you are” (3: 299), which is more insightful than the doctor realizes. While the law would go far to cover Frederic, to make sure he was the subject of no undue suspicion of infanticide, considering he actually committed the crime, he no longer is privy to the law’s protection. Occupying the position of Other, he feels constantly under surveillance; he is described as increasingly irrational, and indeed as feminized.

When he hears that the child’s body has been found, for example, he turns “ghastly pale” and rushes from the room calling for “Water! Water!” He darts through the parlor to where he “was presently sheltered from every eye by the thick plantations of shrubbery” (3: 177). The announcement had “unmanned” him (177–78). Later, misinterpreting the doctor’s innocent comment about Ellen being in her right mind to mean that he was about “to be seized upon and conveyed to prison,” Frederic, “too thoroughly bewildered by terror to have any judgment left,” rehearses the earlier scene and rushes out of the room to escape “the spot where he then stood and the eyes that were then gazing on him” (3: 300). Seeking shelter among the copses, Lear-like in his ravings, Frederic passionately curses the women who have “wronged” him:

“They have not hunted me to death yet,” he murmured, with a ghastly laugh; “the game is not yet up with me, most beauteous Martha! . . . Hideous, spiteful fiend, and fury as thou art! thou shall not conquer me! There is much more to do, my lovely duchess sister, and my most peerless promised wife, before you succeed in your amiable schemes against me.” (3: 302)

It is at this juncture that madness approaches in the figure of Sally, and Frederic’s misbelief that she has witnessed his crime causes him to rush “madly forward to the steep bank” and plunge headlong into the stream to his death (3: 305). It is what Sally represents—the power of women, when angry (mad) to find a voice to speak the truth as they see it, not as it has been constructed for and about them—that ultimately brings about “justice.”

Weakened from physical hardships and mental suffering, Jessie dies in the courtroom when she learns of “the death of her destroyer” (3: 313). Frederic has “destroyed” both Jessie and her baby girl, so we can read this comment to mean that Jessie realizes her own innocence and Frederic’s guilt before her death. Still, it is disappointing that Jessie has lived through her trial only to die at the end of it. This conclusion, however, is in keeping with the legal and social critique that the novel performs. Not
only does Trollope’s plot expose the injustice of nineteenth-century legal “truths” about women accused of infanticide, but it also dramatizes that, while technically acquitted, Jessie has no place to go.

Having read the story of Jessie’s experiences—her education, her seduction, her betrayal, her loss of employment, her suffering upon the death of her child, and her futile attempt to make the legal system work for her—the readers know she is neither deviant nor insane. She also is not “lewd” in that she sincerely believed in the validity of the marriage vows she had exchanged with Frederic. Unlike the prosecuting narrator in Adam Bede, the narrator of Jessie Phillips has made strong representations in support of Jessie, judged a fallen woman because of a class-based legal technicality. Thus, the law itself is indicted when it pays no heed to Jessie’s experiences and when it insists on its own version of her story. The irony in the narrative’s closing statement on Jessie barely masks a bitter indictment of “the law,” which has misjudged Jessie in every respect:

Jessie Phillips—too weak, too erring, to be remembered with respect, yet not so bad but that some may feel it a thing to wonder at that she, and the terribly tempted class of which she is the type, should seem so very decidedly to be selected by the Solons of our day as a sacrifice for all the sins of all their sex. . . . I will not venture any protest against this seemingly one-sided justice, beyond the expression of a wish that the unhappy class thus selected for victims were not so very decidedlly and so very inevitably the weakest, and in all ways the least protected portion of society. There is no chivalry in the selection, and to the eyes of ignorance, like mine, there is no justice. (3: 316–17)

After the novel had engaged the British reading public in a dialogue on this issue for more than a year through serial publication, this belittlement of the narrative’s protest is comic, and its “ignorance” is belied by the knowledge of the law demonstrated in the novel itself. Trollope may have been nodding to the policers of the circulating libraries with these duplicitous comments, as well as with the “humble” statement of the wise widow Buckhurst (who most likely sits in and speaks for Trollope in Jessie Phillips), “I would recommend no man to judge of the danger of rash legislation, by estimating the mischief that an old woman may do” (1: 306). More likely, however, these were clever responses to reviews of early installments of Jessie Phillips such as the following:

It is [her] extreme view of principles, and her hard, exaggerated painting, which render Mrs. Trollope so utterly powerless upon public opinion, not-
withstanding her shrewdness, cleverness, and constant activity. Whilst the notice of an abuse by Boz [Dickens] will excite general attention, and probably induce some movement towards a reform, Mrs. Trollope’s exertions have no effect; for she has no influence except upon folly and ignorance, which have no influence upon affairs till a case is ripe for counting polls, and not much even then. (“New Fictions” 18; emphasis added)

In its efforts to distinguish Dickens from Trollope (implying that characters such as Mr. Bumble and Mrs. Corney are not caricatured), this review acknowledges the power of fiction to effect social change. This makes its anxious qualifications about Trollope’s potential political influence particularly telling, and, indeed, Jessie Phillips may have played a role in changing the bastardy clauses. While much of the New Poor Law remained intact into the twentieth century, in 1844, one year after the publication of Jessie Phillips, the “Little Poor Law” was enacted, reinstating the right of unwed mothers to sue putative fathers for maintenance in Petty Sessions. Heineman suggests that it can be surmised that Trollope, “as the only novelist who dramatized the disastrous implications of this law for women,” in some way contributed to this statutory amendment (“Sexual Politics” 102).

Regardless of whether there is any direct connection between this novel and the change in the law, it is important to acknowledge this lost voice that spoke in resistance to the law’s “truth” that infanticide was a problem of “deviant” women. By focusing on a woman’s experience, Jessie Phillips raised questions about infanticide that were not being discussed in other forums: Was the woman really the guilty party? How was a woman to support a child if she couldn’t find work? What role should education play in addressing this issue? Later in the Victorian period, the dialogue Trollope opened with Jessie Phillips was continued by The Committee for Amending the Law in Points Wherein It Is Injurious to Women (CALPIW). This Committee, formed in 1871 by Elizabeth Wolstenholme, Josephine Butler, and Lydia Becker, questioned the law’s one-sided narrative about infanticide and attempted to make women’s views legally relevant. In a pamphlet entitled “Infant Mortality: Its Causes and Remedies,” CALPIW offered a well-documented, compelling critique of proposals that had been suggested to curb the incidence of infanticide. Specifically, the Committee condemned proposals involving compulsory registration, licensing, and supervision of all infant caretakers (including daycare providers), arguing that they interfered with women’s employment opportunities and involved inappropriate surveillance, “increasing officialism, police interference, and espionage” (7). The Committee also expressed its conviction that “direct infanticide has little to do with the terribly high death-rate prevailing among young chil-
dren” (24), and accused lawmakers of diverting attention away from the real causes of infant mortality, specifically low wages for women, seduction, lack of education, a wife’s conjugal duties, male sexual and financial irresponsibility, the difficulty of unmarried mothers in finding work, and unjust laws resulting from “the natural inclination to regard every question from an exclusively masculine point of view” (24)—all problems that had been foregrounded thirty years earlier in *Jessie Phillips*.

Immediately upon the novel’s publication, *The Athenaeum* assured that “‘Jessie Phillips’ will be no sooner ‘out of sight’ than it will be ‘out of mind,’” reiterating warnings to its authoress about “the dangerous responsibility of such one-sided appeals to passion and prejudice” (956). Prescient and self-fulfilling, this literary review accurately portended the fate of this daring and unconventional novel. The name of Jessie Phillips has been all but erased from literary history; only a few copies of the novel are known to exist. What is shocking is that Frances Trollope, who published thirty-six novels and six books of travel and of whom *The New Monthly Magazine* wrote in 1839, “No other author of the present day has been at once so much read, so much admired and so much abused,” similarly has been forgotten. I would suggest, however, that “Jessie Phillips” (both the character and the novel) help to illuminate why Trollope shares their obscurity—because her “subjectivities” were so troubling.

First, her own subjectivity as a wife/mother made her public activity of writing suspect. Unwilling to confine her activities to the domestic sphere, she was “called amazonian, a ‘man-woman,’ and the connotations of her name were used against her” (Heineman, *Frances Trollope* 10). Moreover, Kissel suggests that, through critical interpretations of her son Anthony’s writings, Frances is remembered as ambitious, selfish, thoughtless, and the mother who loved Anthony least of her children (20–23). In other words, Trollope has been categorized as a “bad mother,” which has silenced her voice and sharply curtailed the inquiry into her own experiences. Also, widowed in 1835, as an “uncovered” woman she dared to write about such controversial subjects as slavery in *Jonathan Jefferson Whitlaw* (1836), evangelical excesses in *The Vicar of Wrenchill* (1837), child-labor laws in *The Life and Adventures of Michael Armstrong, The Factory Boy* (1840), and bastardy and infanticide in *Jessie Phillips*, topics considered most inappropriate for “a female pen.”

It is interesting that while Anthony’s literary engagement with the law accounts for much of the critical attention he receives today, Frances’s feminist jurisprudence has almost ensured her oblivion. Yet, any history/narrative of nineteenth-century infanticide law would be misleadingly monological if it failed to take into account the voices of resistance such
as Trollope’s, Leakey’s, and Tuttiet’s. Attempts to analyze and understand these laws by looking only to the statutes, the legislative debates and reports, and voices that support law’s “truth” (such as the writer of *The Spectator* epigraph and the narrator in *Adam Bede*) would only perpetuate what Robin West describes as “masculine jurisprudence”:

Jurisprudence is “masculine” because jurisprudence is about the relationship between human beings and the laws we actually have, and the laws we have are “masculine” both in terms of their intended beneficiaries and in authorship. Women are absent from jurisprudence because women as *human beings* are absent from the law’s protection: jurisprudence does not recognize us because law does not protect us. (“Jurisprudence and Gender” 60; emphasis in original)

Peter Fitzpatrick argues that it is possible to think about the law differently if more emphasis is placed on the connection between law and context. To do this, it is necessary to “evoke those otherwise suppressed, disregarded or marginalized perspectives” so as to avoid “the protective and premature closure around law which jurisprudence continually seeks to effect” (2).

*Jessie Phillips* evokes suppressed, disregarded, and marginalized (women’s) perspectives on infanticide, as well as on the larger issue of women’s subordinate position under the law. Moreover, its resistance to the protective and premature closure typically effected in nineteenth-century novels by scenes of familial bliss sheds light on women’s “maddening” position within that legally constituted and socially sanctioned domestic setting. In its focus on women as *human beings* and its thematic exploration of the law’s failure to protect them, *Jessie Phillips* calls into question legal and literary precedents in the true spirit of feminist jurisprudence. *That* is the kind of “mischief” Trollope’s novel performs.
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