



# *Victorian Network*

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Victorians and the Law



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*Victorian Network* Volume 5, Number 2 (Winter 2013)

## TABLE OF CONTENTS

1

Victorians and the Law: Literature and Legal Culture

*Cathrine O. Frank*

12

‘Horred Murders’, ‘Int’resting Partic’lars’ and ‘Confessions!’: Constructing Criminal  
Identities in the Early Victorian Broadside

*Cécile Bertrand*

35

Reformative Sympathy in Nineteenth-Century Crime Fiction

*Erica McCrystal*

51

Legal Questions and Literary Answers: Poor Law Taxonomies and Realist Narrative  
Technique in Harriet Martineau’s *The Town*

*M. Colleen Willenbring*

67

The Female Witness and the Melodramatic Mode in Elizabeth Gaskell’s *Mary Barton*

*Alison Moulds*

## VICTORIANS AND THE LAW: LITERATURE AND LEGAL CULTURE

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‘Notwithstanding the seeming incongruity, there subsists a very intimate connection between law and literature’.<sup>1</sup>

Edward Said changed the way readers approached Jane Austen when he argued that *Mansfield Park*, indeed all nineteenth-century novels, could only be understood in the context of imperialism.<sup>2</sup> How else did Sir Bertram make his money, and why was he absent from his estate for so long, otherwise? The idea that the culture of imperialism was so ingrained in writers and readers alike meant that the colonies and their far-flung subjects could be in the novel even when they weren’t, apparently, *in* the novel. A similar point can be made about the pervasiveness of law in Victorian fiction: there is a kind of legalism at work that makes it possible to read for the law even when legal matters don’t appear to be part of the novel’s immediate subject. ‘Legal Culture’ in this sense might mean the assumed structure that invisibly, or at least unquestioningly, supports social relationships, individual aspirations, and expressive forms, for example, the way coverture informed the structure of the novel’s marriage plot.<sup>3</sup> It might mean a way of thinking or reasoning, such as Ayelet Ben Yishai describes in her recent book on precedent, i.e. the way legal attitudes towards the past were used to accommodate change and create a ‘commonality’ outside recognisably legal venues or processes.<sup>4</sup> To appreciate and understand the reach of law’s cultural network, a cultural critique of law is needed, one that, as Christine Krueger has argued, works best when it strives for historical specificity and applies multidisciplinary tools of analysis to the material conditions of its working.<sup>5</sup>

This issue of *Victorian Network* focuses on Victorians and the Law—two subjects that, daunting in their breadth, draw our attention to an only slightly less formidable pair, law and literature. Legal scholars, particularly those whose institutional home is in the law school, will recognise ‘law and literature’ as the

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<sup>1</sup> JCS, ‘Law and Literature’, *The St. James Magazine*, 14 (1865), pp. 194-8 (p. 194). Further references are given after quotations in the text.

<sup>2</sup> See Edward Said, *Culture and Imperialism* (New York: Vintage, 1993).

<sup>3</sup> See Tim Dolin, *Mistress of the House: Women of Property in the Victorian Novel* (Aldershot: Ashgate, 1997).

<sup>4</sup> Ayelet Ben Yishai, *Common Precedents: The Presentness of the Past in Victorian Law and Fiction* (Oxford: Oxford University Press, 2013), p. 5.

<sup>5</sup> Christine L. Krueger, *Reading for the Law: British Literary History and Gender Advocacy* (Charlottesville: University of Virginia Press, 2010), p. 3. Further references are given after quotations in the text.

movement that began in U.S. law schools in the 1970s, and they will appreciate the extent to which law and literature, still a vibrant area of study, has given rise to the larger field of law and humanities.<sup>6</sup> Victorian literary critics, however, don't seem to have adopted the moniker for their own studies. One explanation, perhaps the simplest, is that Victorian Studies already encompasses the substantive breadth, disciplinary representation, and range of analytic tools that law and humanities calls for. It did for literary criticism what law and humanities has relatively recently undertaken *vis à vis* law and literature: a broadening of what ought to be included under the rubric of literature that has led to studies of popular culture, film, and other visual arts, cultural events, and artefacts.

A second, slightly different version of what might be thought of as the superfluity of the term law and literature has to do, ironically, with the dominance of Victorian literature – and of the novel – in the movement's canon. Scholars of law *in* literature have had to think about why their reading list has been so heavily populated by the Victorians, and by the novel, but Victorianists haven't had to explain why they study law.<sup>7</sup> If law and humanities scholars wrestle with problems of definition, some of their questions are ones that many Victorianists resolved in the turn towards Cultural Studies and later New Historicism, so that it is no more remarkable to study law, legal culture and literature's relationship to them than it is to treat of medical, scientific, religious or political discourses in interdisciplinary ways.<sup>8</sup>

What does remain, however, is to think about the place of literature, and in particular the novel, in this conception of legal culture, for although this issue is

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<sup>6</sup> See Austin Sarat, Matthew Anderson, and Cathrine O. Frank, ed., *Law and the Humanities: An Introduction* (Cambridge: Cambridge University Press, 2009), pp. 1-46.

<sup>7</sup> It would be wrong to suggest that other periods, authors, and literatures, are missing from this list: think Shakespeare and drama; or Kafka, Camus and the modernist novel, for example. What is true is that Western, and in particular Anglo-American literature, has dominated the field, and that narrative fiction has received more attention than other genres in the study of periods following the development of the novel.

<sup>8</sup> A more complicated explanation is that, ironically, 'Victorian Studies' doesn't struggle in quite the same way with anxiety about its relevance as 'law and literature' has. I base this generalisation on a single anecdote: A panel I presented on – comprised of papers on 18th and 19th century novels – was asked to comment on the relationship between law and literature, and the premise for this question was the observation that other speakers at the same conference had discussed poetic responses to the September 11<sup>th</sup> attacks on the World Trade Center. The question implied a particular function for literature (perhaps that it does, or ought to, enable people to process traumatic events or to create communities out of personal accounts of tragedy). Like the trope of rescue, this expressive or cathartic framework relies on a particular conception of the function of literature that could be historicised itself. However, I mention this example because it points up a concern not just with the relevance of literature, but with literary history. If literary concerns are felt to be remote from the practical everyday with which law, and certainly legal training is concerned, then that feeling seems likely to increase with the remoteness of the period. No good Victorianist, however, would doubt the importance of that era.

about Victorians and the law, its attention to printed, verbal texts makes it more specifically about how Victorians *read* the law in their own. Christine Krueger reminds us that the phrase ‘reading for the law’ is the British locution for studying law and calls on scholars to approach ‘law as literary history’ (p. 1). Rather than reading law as literature, in the sense that either is transcendent, she argues, we should situate law’s forms and assumptions alongside literary forms and conventions in an historically sensitive way, using whatever tools are necessary to illuminate their relationship. And although thus far I have suggested that we might find the law at work in unobvious ways, I’d be remiss to gloss over the ways law entered the collective Victorian *conscious*.<sup>9</sup>

The attraction of the law for writers and readers alike is readily visible, after all, in the novels which *do* take legal practice and procedure, the profession, professionals, and their texts, for their subjects (e.g., to drive their plots, supply their realism, influence characterisation, and to experiment with form). George Eliot consulting Frederic Harrison, Collins playing with narrative and testimony, Dickens’ depictions of lawyers and the business of law, as well as the trials and testaments that spilled from Victorian periodicals and courtrooms alike: these are among the most familiar images of Victorians and the law. The nature of both the legal and literary professions goes some way to explain this preponderance of legal matter. John Sutherland, for example, puts the number of male Victorian novelists at 411 with one out of every five having failed as barristers: What else to do with all that free time and insider knowledge but narrate it?<sup>10</sup> Yet even for those who succeeded, literature and literary pursuits retained some fascination.

American jurist John H. Wigmore’s catalogue of ‘legal novels’, first printed in 1900, is perhaps the most familiar jumping-off point for studies of law in literature, just as Benjamin Cardozo’s 1931 essay ‘Law and Literature’ outlined a program for improving legal writing by treating it *as* literature.<sup>11</sup> However, long before Wigmore made his list and Cardozo reflected on the literariness of law, writers for a variety of nineteenth-century periodicals were already referring to law and literature as a familiar conjunction of terms. ‘JCS’, writing for *The St. James Magazine* in 1865, remarked on ‘the seeming incongruity’ of their relationship, but was quick to point out (in an amazing feat of professional hubris, or nineteenth-century exaggeration, or both) that the ‘magnitude and splendor’ of literature was owed to the legal profession (p. 194). Thirty years after *The St. James Magazine* had formalised their union,

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<sup>9</sup> For an historical analysis of the way literary criticism has, at particular historical moments, characterised the relationship between the novel and law, see Susan Sage Heinzelman, ‘Imagining the Law: The Novel’ in Austin Sarat, Matthew Anderson, and Cathrine O. Frank, ed., *Law and the Humanities: An Introduction* (Cambridge: Cambridge University Press, 2009), pp. 213-40.

<sup>10</sup> John Sutherland, *Victorian Fiction* (London: Macmillan, 1995), p. 162.

<sup>11</sup> See John H. Wigmore, ‘A List of Legal Novels’, *The Brief* (2 Jan 1900), pp. 124-7, and Benjamin Cardozo, ‘Law and Literature’, in *Law and Literature and Other Essays and Addresses* (New York: Harcourt, Brace, and Company, 1931).

Ernest W. Huffcut, Dean of the Cornell University Faculty of Law, sought to halt ‘the divorce of law and literature’ he feared was imminent.<sup>12</sup> In an essay for *The Green Bag*, that ‘Useless but Entertaining Magazine for Lawyers’, he treated readers to some very useful musings on law, legal writing, and the scope of legal culture. Focusing on the dramatic elements of legal procedure and the historic use of poetic form to convey substantive law, Huffcut acknowledged that no ‘professor of literature in our polite schools of learning’ was likely to point to ‘legal literature’ for examples of good writing, but it was this very oversight – their failure to appreciate that law *was* literature – that he wanted to correct (p. 52).

Both writers start from the assumption that law and literature somehow belong together (whether by affinity or through competition), but they part ways when defining literature. JCS means everything from history and biography, philosophy and theology, to the aesthetic forms of poetry, drama, and fiction and maintains that literary study, when ‘made subservient to the business of his profession’ (p. 194), might well benefit the lawyer, perhaps through extra income. His more capacious sense meets its inverse in Huffcut’s narrow view. For though Huffcut observes that ‘law touches at some point every conceivable human interest, and that its study is, perhaps above all others, precisely the one which leads straight to the humanities’, for him, the humanities are literature, and literature means poetry and fiction (p. 54). If there is a history or trajectory of shaping disciplinary boundaries discernible in these early examples, it anticipates that broadening out from literature to other cultural forms, artefacts, and practices characteristic of the move from law and literature to law and the humanities. Yet in their focus on literature, both commentators draw attention to the way law is imagined (unfavourably and inaccurately, if we attend to JCS) as well as acknowledge the institutional processes – the trials, judgments, and punishments – through which law organises its legal subjects.

Essays like Huffcut’s and JCS’s introduce propositions which scholars of law and literature have been pursuing somewhat more systematically for the past forty years and which speak to the present issue’s focus on Victorians and the law in many ways. What do we designate ‘law’ and what ‘literature’? What are their points of connection and departure? How does thinking about law as literature affect our attention to the relationship between style, substance, and meaning in legal writing; but also how does thinking about the conventions of literature draw our attention to those aspects of the novel (e.g. evidence, testimony, representation, motive, character) and those social functions (e.g. of describing and organising human relationships) which are more typically attributed to law? Scholarship in these areas, perhaps taking its cue from Ian Watt’s analogy of the novel reader and jury member,

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<sup>12</sup> Ernest W. Huffcut, ‘The Literature of Law’, *The Green Bag: A Useless but Entertaining Magazine for Lawyers*, 4 (1892), pp. 52-54 (p. 52). Further references are given after quotations in the text.

was initially concerned with trial procedure, the criminal trial, and punishment.<sup>13</sup> More recent studies have moved outside of the courtroom proper to explore aspects of substantive law, including civil law and doctrinal issues, such as those concerning property, women's legal status, and illegitimacy among many others.<sup>14</sup>

The essays collected here continue this tradition. All focus on literary texts and offer careful readings of narrative strategy and the formal conventions of genre to explain the way these works work. More specifically, they examine techniques of subject formation. They consider the relationship between speech and space, and they analyze the effect modes of representation such as the broadside, treatise, and novel have on readers, particularly in a bid to use sympathy as a tool of narrative jurisprudence and institutional reform. These are the broad strokes. To examine these issues, however, the contributors have focused chiefly on just two decades – the 1830s and 40s – in a way that allows us to build a chronology, trace the shifting function of literature in relation to legal categories and codes, and to preserve the historical specificity of these relationships.

In “‘Horred Murders’, ‘Int’resting Partic’lars’, and “Confessions!’”: Constructing Criminal Identities in the Early Victorian Broadside’, Cécile Bertrand musters a rich array of primary materials, both verbal and visual, to chart the relationship between criminal identities formed via popular media and the way criminality was defined in official legal discourse. Situating genres such as the ballad and execution sheet alongside the forms of capital punishment they usually described – and the scaffold around which they circulated – Bertrand shows how the broadside’s creation of criminality neither uniformly endorsed nor critiqued official versions. Rather, changing sites of punishment and altered modes of publicity evoked different responses from spectators and effected changes in the perception of criminality itself. If the earliest forms of broadside representation seconded the law’s

<sup>13</sup> See Ian Watt, *The Rise of the Novel: Studies in Defoe, Richardson, and Fielding* (Berkeley: University of California Press, 1957), p. 31. See also Alexander Welsh, *Strong Representations: Narrative and Circumstantial Evidence in England* (Baltimore: Johns Hopkins University Press, 1992); Jan-Melissa Schramm, *Testimony and Advocacy in the Victorian Law, Literature, and Theology* (Cambridge: Cambridge University Press, 2000); Lisa Rodensky, *The Crime in Mind: Criminal Responsibility and the Victorian Novel* (Oxford, Oxford University Press, 2003), and Jonathan Grossman *The Art of Alibi: English Law Courts and the Novel* (Baltimore: Johns Hopkins University Press, 2002).

<sup>14</sup> Even if I confine examples to studies of nineteenth-century British literature, this sample, like the one above, will under-represent the field. Nevertheless, see Hilary Schor, *Dickens and the Daughter of the House* (Cambridge: Cambridge University Press, 1999); Kieran Dolin, *Fiction and the Law: Legal Discourse in Victorian and Modernist Literature* (Cambridge: Cambridge University Press, 1999); Dieter Polloczek, *Literature and Legal Discourse: Equity and Ethics from Sterne to Conrad* (Cambridge: Cambridge University Press, 1999); Margot Finn, Michael Lobban and Jenny Bourne-Taylor, ed., *Legitimacy and Illegitimacy in Nineteenth Century Law, Literature and History* (New York: Palgrave, 2010) and my *Law, Literature and the Transmission of Culture in England, 1837-1925* (Aldershot: Ashgate, 2010).



didactic use of punishment, for instance, later aestheticised accounts produced a more heroic figure to thrill the reading audience. Yet as Bertrand shows, the outsized criminal of the broadside represented a relatively small percentage of those actually condemned to die. Instead, the broadside created a generic criminal to distract the crowd from the petty criminals that died with him under the Bloody Code.

Bertrand's inclusion of a range of media ('prose, verse, and illustration', p. 13) moves us outside the novel form and its increasingly private consumption into what can be thought of as Victorian tabloid writing. Noting that the development of 'courtroom narratives' pushed the broadside closer towards criminal news reporting, Bertrand argues that the outlaw who formerly might evoke the crowd's sympathy was replaced by the 'monster' who shocked and stimulated them. Where anonymity, or the lack of particulars, could make the early broadside criminal into an Everyman spectators might identify with, the monstrous criminal was a distinct persona whose exceptionality countered the representativeness by which didacticism worked.

Bertrand introduces readers to various forms of gallows' literature and their differing effects on audience. Against this background, Erica McCrystal's essay on crime fiction, notably the Newgate novel, reconsiders Victorian critiques that their lionised heroes made crime attractive and posed a threat to readers. In contrast, in 'Reformative Sympathy in Nineteenth-Century Crime Fiction', McCrystal shows how writers such as Edward Bulwer-Lytton and Harrison Ainsworth cast their characters as victims of their environment, principally of a flawed penal system that mechanised rather than reformed criminals. Drawing on the eighteenth-century discourse of sympathy and the influence of political reformer William Godwin, McCrystal examines the discursive interplay of infection/affection as ways of characterising criminality *and* of defining a concomitant social responsibility. She suggests that the political agenda was advanced through fiction as opposed to straightforward political treatises or prefatory comments, which Godwin and Bulwer-Lytton had written, 1) precisely because of the heightened affective appeal fiction could make, and 2) because novels would reach a broader audience.

These two essays are about the formation of a criminal subject, the way different genres configure that identity, and about their different audiences. Bertrand's point that the Newgate novels were out of reach of most gallows spectators reminds us that the reformist agenda McCrystal identifies in the novels was directed at a different, middle-class audience better able to pursue institutional reforms, whereas the conservative moralising and admonitory tone of the early broadside condescended to curb the masses. Alongside their depiction of the criminal subject, a version of the poor emerges as well in which susceptibility – both real and projected – is the dominant characteristic. McCrystal shows how even in the 1830s (i.e. before criminality was pathologised in medical discourse), the language of moral contagion was deployed by the critics, to describe the dangers of reading crime fiction, but also by the novelists, to castigate the institutional practices that defined criminality. In this

sense, the essays call readers to consider how the literary text intervenes in legal categories of deviance and marginality and their association with class.

McCrystal's essay connects Bertrand's discussion of criminality and Colleen Willenbring's explicit concern with the category of the poor in terms of their social construction as well as in the requisite social response. In McCrystal's reading of Ainsworth and Bulwer-Lytton, the infection of criminality could be ameliorated through the discourse of affection, or sympathy. For Willenbring, this sympathy could be created through specific narrative conventions that, in the case of Harriet Martineau's *The Town* (1834), sought to evoke affective support for scientific solutions to legal and social problems. In 'Legal Questions and Literary Answers: Poor Law Taxonomies and Realist Narrative Technique in Harriet Martineau's *The Town*', Willenbring shows how Martineau used narrative point of view to voice theories of political economy in a novel written purposely to 'popularize[e] legal reform' (p. 54). This infusion of political theory into the novel highlights an important question about the function of the novel that is particularly apt for analysis of social problem fiction: in what way is an aesthetic response to social problems an effective mode of critique? What does it 'do', and how does Martineau's novel in particular stage opportunities and provide criteria for judgment that would lead to a better administered Poor Law or system of social welfare? For Martineau, political economy had to pass through literature in order to work its reforms, which highlights the importance of the opportunity literature may give readers to see and hear the poor, as well as the officers charged with allocating relief.

By examining these issues, Willenbring's essay takes readers to the beginning of a long history in which the economy and, following Robin West, law were in one sense disentangled from morality and feeling, the better to judge law with.<sup>15</sup> Redefined as social utility in a rationalising legal system, 'morality' became the province of other domains of culture, but the problem of subjectivity, of applying the rules and of deciding what was the social good, remained, as the analysis of Martineau makes clear. Further, to the extent that Willenbring entertains the trope of rescue, or the idea that literature acts as a humanising corrective of legal mechanisation, her analysis reveals an ambivalence at the root of this argument. On the one hand, that is, she shows how Martineau's novels made the economy, not morality, the primary determinant of behaviour so that characters stand in as 'arguments' (p. 39) in a way that might make them seem more typological than well developed, and hence might compromise claims for literature as a clear route to justice. On the other hand, Martineau's self-conscious experimentation with character as a narratological construct, her 'focalization' on different characters and layering of their perspectives, suggests that Martineau practised a form of narrative jurisprudence

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<sup>15</sup> See Robin West, *Narrative, Authority, and Law* (Ann Arbor: University of Michigan Press, 1993), especially her critique of this supposed distinction in her discussion of the 'critical dilemma' (p. 2).

*avant la lettre*. In this way, Willenbring offers an historically specific version of the way literature, political science and law circulate through the figure of 'the poor' that offsets the abstraction to which discussions of law and literature are sometimes susceptible.

Alison Moulds anchors the issue with her essay on the female witness and the place of melodrama in otherwise realist fiction. 'The Female Witness and the Melodramatic Mode in Elizabeth Gaskell's *Mary Barton*' offers a re-reading of the eponymous heroine's testimony that promises to restore its significance in critical discussion of the novel by showing how Gaskell drew from the genre of melodrama, relying on her readers' familiarity with and interest in its tropes, to stage Mary's performance in a way that merges divisions in the novel's so-called public and private narratives. Further, by pointing out the way the court could compel women's speech by calling them to give evidence, Moulds complicates perceptions of its androcentricity and the broader logic of separate spheres, a logic that applied equally to women novelists. Thus, Moulds argues that Mary's performance as a storyteller parallels Gaskell's own practices as a first-time novelist as both assume that conceptually puzzling role of 'public woman' (p. 68).

Moulds's carefully contextualised reading of Gaskell's novel brings together examples of the public appetite for sensation (as evidenced by the press's coverage of trials) with contemporary accounts of the potential value, as well as the liabilities, that attended women's appearance in court. Her essay's attention to the development of the adversarial trial and to the conventions of melodrama is especially illuminating insofar as melodrama conditioned readers' expectations of women's stories (those they starred in and those they told) and, she suggests, was responsible for the prominent role the trial itself assumed in the popular imagination, structured as it was on a similar contest of good and evil.

Moulds's attention to the space of the courtroom complements Bertrand's focus on the gallows that opens this issue. As Moulds notes, *Mary Barton* is set in the 1830s, shortly after passage of legislation that allowed defence counsel to prisoners, which heightened the adversarial aspect of trial procedure and contributed to the shift from the scaffold to the dock as the symbolic locus of justice. At the same time, references to the persistent, mass appeal of salacious detail confirms the legacy of broadside literature even as it mutates into tabloid journalism and as its dramatic elements, in the shape of melodrama, maintain a place in serious realism. What further unites these essays is their attention to the relationship between the Victorian audience and the specific social function of the literary works they discuss. Whether that purpose is disciplinary, as imagined in the early broadside's didacticism, or critical as in the Newgate novel's critique of the penal system, or propagandistic as in Martineau's use of poor law fiction to popularise legal reform, or discursive and analytical, as in the way Gaskell called on cultural narratives that conditioned the reception of women's speech, these essays amply testify to Victorian writers'

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understanding that their audience was already – and wanted to continue – reading for the law.

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## **‘HORRED MURDERS’, ‘INT’RESTING PARTIC’LARS’ AND ‘CONFESSIONS!’: CONSTRUCTING CRIMINAL IDENTITIES IN THE EARLY VICTORIAN BROADSIDE**

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### *Abstract*

This article explores the creation of criminal identities in early nineteenth-century England, and more precisely examines the law’s construction of the subject in the light of the competing constructions of the criminal subject in popular discourse. This article focuses on the ambivalent discourse of the popular broadside ballads and execution sheets, and their early evolution into the police news. Particular attention will be devoted to the popular construction of a criminal subject from ‘direct’ experience, namely through the whole legal process leading from crime to sentence: the investigation and the trial, and, in some cases, the execution. The broadside will be seen to constitute a first step in the creation of a distinctive aesthetic of the criminal subject. But that process was not without its contradictions: the popular narrative often reinforced dominant attitudes towards the law, but at times also reflected alternative discourses, with its portrayal of the heroic criminal rebel. Indeed, the popular discourse is competing with other constructions of the crime, news reporting and the legal discourse itself, through the trial. Those narratives influence the broadside greatly, and we shall see how legal changes together with shifts in the circulation of criminal news later in the century transformed both the criminal subject and popular discourses and practices.

You tender hearted Christians all, I pray unto these lines give ear,  
And of a cruel murder now you quickly shall hear<sup>1</sup>

In the nineteenth century, the different media concerned with criminal verisimilitude and true crime were central to the creation of criminal identities in popular discourse.<sup>2</sup> As the imprecise boundaries of the term ‘true crime’ would suggest, the aesthetics of crime were grounded in reality, and the intention here is to examine the law’s construction of the criminal subject in the light of the construction of that same subject in popular discourse, or what we might call fictional news.<sup>3</sup> Before

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<sup>1</sup> Anon., ‘The Murdered Boy’ (York: C. Croshaw, 1820). Oxford: Bodleian Library, John Johnson Collection of Printed Ephemera.

<sup>2</sup> ‘True crime stories’ ranged from newspaper reports and the popular press to more popular literary forms such as the criminal broadside and some successful novelizations like the Newgate novels.

<sup>3</sup> Jonathan H. Grossman in his study *The Art of Alibi: English Law Courts and the Novel* (Baltimore: Johns Hopkins University Press, 2008) identified a ‘change’ in the print industry starting from the mid-eighteenth century, which ‘established the separate cultural categories of fiction, in the shape of the novel, and fact, in the shape of news’ (p. 26). I intend to focus on the popular narratives which essentially combined those two elements.

executions became private in 1868, the popular literary construction of a criminal subject was essentially dominated by capital punishment. It operated largely as a result of direct experience provided by the spectacle of the gallows, but was also gradually provided by trial narratives as courtrooms opened to the public gaze. Jonathan Grossman notes how popular print was immersed in a 'trial-oriented culture' and 'shaped by the complementary and competing storytelling structure of the law courts'.<sup>4</sup> This article aims to define the extent of that influence on the broadside genre (comprising the sister forms of the broadside ballad and the execution sheet) as a medium which constituted a first step in the process of creation of an aesthetics of the criminal subject, before being replaced by the newspaper industry and the novel.

Early crime stories transmitted by the broadside produced a criminal subject in accordance with the definition of the law. But major penal reforms, together with developments in the circulation of criminal news, would change the public perception of the criminal. This article traces the gradual shift from conventional didacticism to the aesthetic of sensation and exceptionality in the broadside, or the 'aesthetics of astonishment' as described by Ellen O'Brien.<sup>5</sup> V. A. C. Gatrell's examination of the popular masses' experience of the scaffold calls for an investigation of the specifics of the broadside genre in relation to its readership.<sup>6</sup> O'Brien's extensive study of the criminal ballad questions the traditional binary interpretation of those popular discourses as either morally conservative productions or bold transgressions of the established law. She looks almost exclusively into the 'counterdiscursive stance'<sup>7</sup> of the ballad discourse and its narrative strategies to produce resistance to the hegemonic discourse on crime. I intend to look into the broadside form as a whole – prose, verse and illustration – and investigate how the criminal subject is produced through a variety of potentially competing discourses.

Traditional criticism on the broadside has focused on a commonly accepted dichotomy between conservatism and transgression. That outlook (and its contestation) is closely linked to the legal changes of the early nineteenth century. And yet the most important feature of the genre is its integration of the sensational mode of immediate reporting that new courtroom narratives, relayed by the press, offered. My purpose in this paper is to investigate what kind of criminal subject was produced by those complex renovated discourses on crime and the criminal.

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<sup>4</sup> Jonathan Grossman, *The Art of Alibi, English Law Courts and the Novel* (Baltimore and London: The Johns Hopkins University Press, 2002), p. 1.

<sup>5</sup> Ellen L. O'Brien, *Crime in Verse: The Poetics of Murder in the Victorian Era* (Columbus: Ohio State University Press, 2008), p. 53.

<sup>6</sup> V. A. C. Gatrell, *The Hanging Tree: Execution and the English People 1770-1868* (Oxford: Oxford University Press, 1994).

<sup>7</sup> O'Brien, *Crime in Verse*, p. 39.



## Criminal Proximity in Early Victorian ‘Scaffold’ Literature

British law remained largely unchanged for several decades and the nature of the crowds on and off the scaffold in the 1820s and '30s was broadly the same as in the late eighteenth century. Statute law – infamously known as the ‘Bloody code’ – imposed the death penalty for a wide array of offences, with 222 crimes theoretically punishable by death. The punitive system was ruled by a logic of generality with little classification of crimes as far as their punishment was concerned. Early nineteenth-century scaffold fodder was an indistinct mixture of a great many poor petty offenders and a few murderers, as most capital crimes concerned property thefts (robbery, burglary, pickpocketing, cattle-theft, etc.). As shown by Gatrell in *The Hanging Tree*, that contiguity between common criminals and the middling classes attending their execution produced a sense of community and provoked various reactions: condemnation of the criminal who had transgressed the communal laws and consent with the coercive justice, or alternatively a commiserative gaze directed at the poor wretch seen as one of their own. The Georgian and early Victorian popular discourses produced by and around the spectacle of the scaffold enable us to investigate these competing attitudes and question the validity of any such radical distinction.

The official voice of the law reverberates in the proto-literary discourse of ‘gallows’ literature.<sup>8</sup> The series of early criminal biographies known as the *Newgate Calendar* established a clear correspondence between the legal criminal and the literary criminal subject. They invited the popular crowds to condemn unanimously those whom the law punished and to legitimate the law with a celebration of the public execution. The popularity of the *Newgate Calendar* reflected its ambiguous status: a form of entertainment for the masses and a moral lesson serving the deterrent purpose of the law better than any sermon with its stories of familiar criminals. Those records of real criminal cases (and their rightful punishment by the law) were an invention of the eighteenth century but enjoyed great popularity well into the nineteenth century, with various re-editions and additions provided by Knapp and Baldwin or George Theodore Wilkinson in the late 1820s and early 1830s, or variations on the same successful formula.<sup>9</sup> Those ‘Holy Criminal Scriptures’ (some

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<sup>8</sup> The term is used by Henry Mayhew: ‘Under this head I class all the street-sold publications which relate to the hanging of malefactors’. Henry Mayhew, *London Labour and the London Poor*, 4 vols (London: Griffin, Bohn, and Company, 1861), I, p. 280. It can be extended to all the literary productions dealing with criminals’ feats and punishment mentioned here.

<sup>9</sup> Camden Pelham’s *The Chronicles of Crime, Or, The New Newgate Calendar* (London: Thomas Tegg, 1841), which include engravings from original drawings by Phiz, were successful enough to be reprinted several times until the early 1890s. See also George Theodore Wilkinson, *The Newgate Calendar Improved; Being Interesting Memoirs of Notorious Characters, Who Have Been Convicted of Offences Against the Laws of England, During the Seventeenth Century, and*

said the *Newgate Calendar* was as popular as the Bible), intended to be read by the father of the family by the fireside to his children, aimed to correct criminal tendencies in the lower classes by eliciting a fear of punishment just as much as by instilling moral values.

Yet the popularity of such colourful tales of daring highwaymen and bold robbers also came from their entertaining value. Some of the criminals featuring repeatedly in the *Newgate Calendars* became highly popular figures who would find great posterity in other narrative forms of the period and later, such as the famous eighteenth-century thief Jack Sheppard. And as the century progressed, the new editions would include alongside the stories of crimes past the accounts of contemporary sensational crimes. Knapp and Baldwin's *Newgate Calendar* detailed the murder of William Weare by John Thurtell and Joseph Hunt in 1823 only a few years later.<sup>10</sup> The case was an exceptionally sensational one and the reader who had maybe joined the large crowds at Thurtell's execution could be reminded of the minute details of the murder, investigation and subsequent sentencing of the criminals. The account ends with comments on the various reactions to Thurtell's execution:

The different accounts of this execution given at the time agreed in stating that the crowd present showed more than an ordinary degree of sympathy on the occasion, as if there was something in Thurtell's case, that entitled him to peculiar commiseration [sic]. It is difficult to account for such extraordinary sensibility, for never was there so foul a deed committed. Some of the public prints joined in the strange lamentations for his fate, as if he was hardly dealt with, and had a claim on public compassion. He was compassionated by some, because he was a man of talent and education, but this was an aggravation of his guilt; because, from the respectability of his connexions, he might have mixed in respectable company. Every movement of Thurtell was commented upon, as if he had in fact been a martyr to some good cause; and he was spoken of, as if he were a hero, and not a great delinquent. These observations arise from the evil effects which such morbid sensibility may have on society at large, and young minds in particular; as if the more horrible the crime, the more entitled to compassion is the person by whom it was committed, when he becomes an object of public example, and falls by the hand of retributive justice.<sup>11</sup>

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*Continued to the Present Time, Chronologically Arranged*, 6 vols (London: Thomas Kelly, 1836).

<sup>10</sup> Andrew Knapp and William Baldwin, *Newgate Calendar*, 4 vols (London: J. Robins & Co, 1824-8), IV, pp. 353-74.

<sup>11</sup> Knapp and Baldwin, *Newgate Calendar*, p. 374.

The editors of the *Newgate Calendar* provided a straightforward lesson: the proximity between the criminal and the scaffold audience was dangerous. That perverse feeling of sympathy was sustained (and maybe induced) by the more popular forms of literary discourse produced around sensational murders and executions. The purpose of the *Newgate Calendar* was to educate the populace: their editors were themselves from the educated classes (Knapp and Baldwin were both lawyers), and the lively accounts of the daring feats of those rogues were always shadowed by a harsh condemnation of ‘vices’ such as prostitution, drunkenness, idleness and any form of dissipation. The moral lesson of the *Newgate Calendar* was echoed in other instructional morality literature such as a pamphlet on the criminal consequences of gambling published in 1824, using the Thurtell and Weare case as a handy illustration for its didactic purpose.<sup>12</sup>

Such works reinforced the discourse of the law and aimed at ensuring official control over the population, but they remained beyond the reach of those whom they addressed. Bound in several volumes, they were expensive and the didactic morality they professed mostly found its way into the homes of polite society. Execution sheets, being shorter forms of ‘gallows’ literature, were more readily accessible for the masses. They were single or double sheets of cheap paper circulated on the day and at the place of execution by street-sellers for a penny or less. They were the only affordable *criminal* texts read by the masses and consequently their circulation far exceeded that of the expensive *Newgate Calendar*. In those *libretti* for the impending execution, ‘the trial [was only to be] a brief dramatic scene preceding the tableau of the scaffold’,<sup>13</sup> as Grossman pointed out. The production of a discourse appending to the execution and its visual representation necessarily had an entertaining value but mostly worked as what Gatrell identified as a ‘totemic artefact’ with a symbolic value, or ‘mementoes’<sup>14</sup> for the classes most susceptible to the temptations of crime to fear and admire. Grossman considers the ‘contradictory nature of the broadsheet’s two functions as both souvenir and report’<sup>15</sup> but it seems that their mundane representation of the criminal, based on a codified composition that had little altered in the early Victorian period from its original eighteenth-century form, signified more than reported. In Gatrell’s own words, the broadsheets were ‘repetitive and their moralizing intrusive and formulaic’.<sup>16</sup>

They were usually composed of a short text in prose offering the particulars of the crime, trial and/or execution; a warning was often added in the shape of a ballad to be sung to famous tunes; sometimes an illustrated plate presented the suffering

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<sup>12</sup> Anon., *The Fatal Effects of Gambling Exemplified in the Murder of Wm. Weare and the Trial and Fate of John Thurtell* (London: Thomas Kelly, 1824).

<sup>13</sup> Grossman, *The Art of Alibi*, pp. 23-24.

<sup>14</sup> Gatrell, *The Hanging Tree*, p. 175.

<sup>15</sup> Grossman, *The Art of Alibi*, p. 27.

<sup>16</sup> Gatrell, *The Hanging Tree*, p. 175.

criminals at the end of their rope for visual support (Fig.1).<sup>17</sup> Grossman gives a practical explanation for their lengthy titles: they are 'long in part because they advertise which components of the overall rigid schema are included in that particular text'.<sup>18</sup> The simplicity and uniformity of composition constituted the most adequate form to call upon the audience's compassion, as noted by Mayhew:

[Those verses] seem to me to contain all the elements which made the old ballads popular – the rushing at once into the subject – and the homely reflections, though crude to all educated persons, are, nevertheless, well adapted to enlist the sympathy and appreciation of the class of hearers to whom they are addressed.<sup>19</sup>

Usually written in the first person singular, the ballad traditionally opened with a direct address to the reader/spectator:

Good people all, both young and old,  
A dreadful tale I will unfold;  
Will make your warm life blood run cold,  
When you the same shall hear.<sup>20</sup>

The address varied in form, but little in intent, the 'good people' theme being echoed alternatively in 'maidens dear', 'thoughtless young men' or 'tender hearted Christians'. Creating proximity was pretty much *de rigueur* for the spectacle to be considered edifying. In 1837, John Pegsworth was executed for the wilful murder of one Mr Ready. The broadside issued by the publisher T. Burt included a remorseful lament of the condemned which produced deterrence through the construction of a community of sinners:

It was also stated that I did not show the last remorse for the horrid act that I had done, which I fear may have an effect on the minds of the public at large, & particularly young persons, by thinking that murder is not so

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<sup>17</sup> This study is based on the extensive John Johnson collection of printed ephemera, Harding collection and Firth collection held at the Bodleian Library, Oxford.

<sup>18</sup> Grossman, *The Art of Alibi*, p. 27.

<sup>19</sup> Mayhew, *London Labour and the London Poor*, p. 282.

<sup>20</sup> Anon., 'Trial of Good for the Murder of Jane Jones at Putney' (London: E. Lloyd, [c.1842]). Oxford: Bodleian Library, John Johnson Collection of Printed Ephemera.



Fig. 1: Anon., 'Life, Trial, Confession, and Execution of F. B. Courvoisier, for the Murder of Lord W. Russell', 6 July 1840

monstrous a crime as it appears. I should wish them to know that I feel it very deeply, and do sincerely hope, by the assistance of my Redeemer, that Almighty God will pour upon me the spirit of prayer and true repentance for the innumerable sins I have committed, and hope that he will, by his divine grace, abundantly pardon me, without which I shall be a lost man to all eternity.<sup>21</sup>

The same broadside featured a 'copy of a letter sent to his wife before his execution':

<sup>21</sup> Anon., 'Particulars of the Confession and Execution of John Pegsworth, for the Wilful Murder of Mr. Ready' (London: T. Burt, 1837). Oxford: Bodleian Library, John Johnson Collection of Printed Ephemera.

My dear Wife, – Before you receive this, my soul will have left its earthly frame, and in the presence of my Maker, I hope to receive his pardon for the crimes with which I was burthened ... For the sake of our children, persevere against grief and instill into their minds the paths of honesty; teaching them to avoid a passionate and hasty temper, and by praying to their Heavenly Father, he will not forsake them in the hour of trial. Check all growing evil, and by perseverance in the paths of sobriety, they will become a blessing to their friends, and useful members of society.<sup>22</sup>

The text introduces morality where the facts of the case might suggest a very different interpretation. The first excerpt shows that newspaper accounts noted the absence of remorse of the murderer, an attitude that might construct the criminal as a heroic figure who held the knife bravely. But the criminal broadside could not bear the blunt truth, and was there to correct it, representing crime as always shameful and pathetic. Its discourse of feigned repentance restored the Christian values of order and respect among those who might be tempted to stray from the path of righteousness.

The lamentation of the suffering man sometimes took on a more subtle didactic value when the criminal would reflect on his own crimes; he would bear bravely the consequences of his horrendous acts and even call for a public condemnation. On 17 November 1862, Robert Cooper was executed for the murder of his dear ‘cruel-hearted’ Annie, his deceitful sweetheart. The broadside includes a long letter in which the man confesses to the murder and gives the reasons for his desperate act: the love he held for the young lady, her lies and falsehood, her deceit and her mother’s faults (‘You really did love me but your mother was the serpent’). While that section of the broadsheet seeks excuses for the crime, the verses that are included in the middle of the page guarantee a proper perception of the man as a criminal and the law as just.<sup>23</sup> The man’s murderous intents (‘I was resolved my wife to murder, | My Ann to kill was my intent’; ‘At Isleworth I was determined, | My darling wife I would slay’; ‘Murder I premeditated, | That day on murder I was bent, | To murder her I had sworn to cherish, | That fatal day was my intent’) are voiced through guilty remorse and torment. While Cooper’s confession dwelt at length on her unfaithfulness and treachery, Annie is restored as innocent and loveable by the verses. Ultimately, the verse directs our interpretation towards the condemnation institutionalised by the law. The murder is constructed as bloody (‘I was resolved her blood to spill’) and barbaric (‘slay’), and the criminal portrayed as a pathetic ‘wretched and [...] dreadful murderer’. Now the first-person singular legitimises the law’s sanction that was already stated in the short opening account of the trial (‘Mr. Baron Martin said the evidence was quite irresistible, and that it would have been impossible for the jury to have found any other verdict.’).

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<sup>22</sup> Anon., ‘Particulars of the Confession and Execution of John Pegsworth’.

<sup>23</sup> Appendix A.

Finally, the writer of the ballad could substitute his voice for that of the criminal and provide an unmediated moral lesson, such as in those printed on the occasion of the sensational Greenacre case in 1837:<sup>24</sup>

He with a saw cut off each limb, as you have heard it said,  
And the monster, full of sin, did sever off her head,  
To a separate place each part he took – what fiend of deadly spite!  
And then foul conscience pierc'd his soul with anguish day and night.  
In Edgeware Road the body was found as we have heard tell,  
The head also down Mile End Road. In the Regent's Canal,  
The legs were found at Brixton – O monster of disgrace!  
Whose harden'd heart could take each part thus to a separate place.<sup>25</sup>

No oblique condemnation here. The gory details aim to shock and disgust, and the narrator's comments (seen in his choice of adjectives and exclamatory asides) seem to leave no place for misinterpretation – although I shall argue later that such visual description participates in the production of sensationalism (the 'aesthetics of astonishment' in O'Brien's terms). Exceptional criminal barbarity would also paradoxically be envisioned in its relevance in relation to a criminal tradition. Daniel Good's infamous murder and mutilation of Jane Jones in 1842 was quite naturally compared with Greenacre's similar atrocities five years earlier:

On Wednesday night, a murder of the most appalling nature, and which, in the annals of crime, has only been equalled in atrocity by that of Hannah Brown, by Greenacre, and that of Mr. Pass, at Leicester, was discovered to have been committed in Surrey.<sup>26</sup>

The exceptional crime, one in a long line of monstrous deeds, is left for the 'murder tale aficionados' to enjoy.<sup>27</sup> The broadside invests the individual stories with a criminal heritage, quite like De Quincey's devotees to the annals of crime tracing the family tree of the criminal arts:<sup>28</sup> Daniel Good is an heir to Greenacre; William

<sup>24</sup> James Greenacre killed Hannah Brown when he felt he had been deceived into agreeing to marry her without knowing that she was penniless. He killed her and cut her into pieces, disposing of the various body parts in different locations around London.

<sup>25</sup> Anon., 'The Edgeware-Road Tragedy. Life, Trial, and Execution of James Greenacre' (London: J. Catnach, 1837). Oxford: Bodleian Library, John Johnson Collection of Printed Ephemera

<sup>26</sup> Anon., 'The Full Account and Latest Particulars of the Awful, Inhuman, & Barbarous Murder of a Female' (London: Paul & Co, 1842). Oxford: Bodleian Library, John Johnson Collection of Printed Ephemera.

<sup>27</sup> O'Brien, *Crime in Verse*, p. 52.

<sup>28</sup> Thomas De Quincey, 'On Murder Considered As One of the Fine Arts' in *On Murder*, ed. by Robert Morrison (Oxford: Oxford University Press, 2006), pp. 8-34.

Corder's murder of Maria Marten in 1828 was reminiscent of John Thurtell and Joseph Hunt's barbarous murder perpetrated in 1824, etc.<sup>29</sup>

### Subversive Meanings<sup>30</sup>

The uniformity of criminal broadsides guaranteed a monotone discourse through which justice was celebrated and the criminal represented as invariably suffering for his misdeeds: 'their very repetitiveness inculcated only one "right" response to the punishment of vastly different people and crimes'.<sup>31</sup> Yet dismissing the large array of broadsides as conservative would be an oversimplification. Ellen O'Brien investigates the 'aesthetic diversity and ethical nuance' of the criminal broadsides and questions the habitual reading of the ballad as 'a simple advisory against bad behaviour', a conservative discourse 'capitulat[ing] to state authority'.<sup>32</sup> The broadside served the ideologically dominant discourse that was merely imposed from above. However, it also found oblique paths to voice social and political contestations of the punitive system, from boisterous banter to melancholy denunciation. O'Brien dissects quite convincingly the criminal ballad's political charge whereas I wish to interrogate how the construction of a heroic criminal subject constructs this political charge through an ambivalent discourse.

Only murderers forced their way into the current affairs section of newspapers, yet the everyday experience of crime was quite a different one. The reality of the capital statutes in the 1820s and early 1830s was that murder was *not* the principal capital crime. Under the Bloody Code, the prisons and the gallows were peopled by swarms of common criminals and death sentences were passed for a great number of crimes, from thieving to murder. The Old Bailey proceedings (accessible online) record that between 120 and 200 death sentences were passed every year in the 1820s. An overwhelming majority of those condemned to hang were guilty of theft (70,65%) and violent theft (14,41%). Only 0.42% of those convictions were for murder.<sup>33</sup> Murderers were yet indeed more likely to be hanged eventually, considering the executions that effectively took place, but still represented a minority: with a total of 2303 executions in England and Wales for the 1800-1827 period, only 16.5% were of murderers, with the majority being property offences (burglary and

<sup>29</sup> 'A murder, rivalling in cold-blooded atrocity that of Weare, has been brought to light'. Anon., 'Horrible Murder' (London: John Muir, 30 April 1828). Oxford: Bodleian Library, John Johnson Collection of Printed Ephemera.

<sup>30</sup> The title of this section is inspired by O'Brien's phrase in *Crime in Verse*, p. 46.

<sup>31</sup> Grossman, *The Art of Alibi*, p. 29.

<sup>32</sup> O'Brien, *Crime in Verse*, pp. 44, 86.

<sup>33</sup> *Old Bailey Proceedings Online, 1674-1913* <<http://www.oldbaileyonline.org>>. Tabulating decade against offence category where punishment category is death, between 1810 and 1840. Counting by punishment.



house-breaking: 22.5%, robbery: 14.5%; and horse-, sheep- and cattle-theft: 13%).<sup>34</sup> Even in the following decade, and before the major reforms of penal law, the proportion of murderers led to the gallows never exceeded 30%. The execution sheet did not represent the reality of the gallows in those days as they almost exclusively gave voice to sensational criminals. Consequently, the petty criminals were not differentiated in representation from murderers. That voice which condones the sentence of the law is sustained by giving a uniform face to the multitude of criminals: the murderer is constructed as the *standard* criminal subject and serves as a justification for the law's lack of discrimination between crimes and punishments.

Repetition and universality were the rules and instruments of the moral lesson the execution sheet carried. Those narratives teemed with little dark shadows with no name or face, generic figures committing generic crimes and subsequently facing the generic punishment of the rope. The woodcut embellishments often added to the broadside (see Fig. 1) and resonating in people's imagination with 'totemic meaning'<sup>35</sup> gave a figurative echo to the uniform punishment of the law. As Gatrell argues, the rough engravings of scaffolds, generic and mostly inaccurate, were loaded with an 'affective charge and value' that ensured the efficacy of the representation.<sup>36</sup> They were often worn out with decades of use, with only slight alterations to fit the circumstances, mostly in the number and sex of the hanging figures pasted on the frame plate. But they worked as 'ideograms' suggesting the inexorability of the law; 'image magic' working on the people's minds just as the codified composition functioned to reinforce the inflexible sanction of the law.<sup>37</sup> Yet such representation created a bond between the crowd and the condemned which might ultimately be read differently. Anonymity narrowed the distance between the criminal other and the 'consensual we' which the spectacle of punishment and hegemonic discourses on crime aimed to produce.<sup>38</sup> It provided a disruptive note in the mechanisms of capital punishment.

O'Brien argues that the ballads in criminal broadsides 'encouraged public reflection and political scepticism while expressing collective anxieties, regrets, and fears'.<sup>39</sup> This function can indeed be traced back to the older tradition of 'rough

<sup>34</sup> Those are the numbers provided by Richard Clark on his well-documented website <<http://www.capitalpunishmentuk.org>>. Gatrell's numbers are noticeably similar: based on a slightly different period extending from 1805 to 1832, he calculates that 19% of executions were for murder, 21% for burglary and house-breaking, 14% for robbery and 9% for horse-, sheep- and cattle-theft.

<sup>35</sup> Gatrell, *The Hanging Tree*, p. 177.

<sup>36</sup> Gatrell, *The Hanging Tree*, p. 177.

<sup>37</sup> Gatrell, *The Hanging Tree*, p. 177.

<sup>38</sup> O'Brien, *Crime in Verse*, p. 38. O'Brien refers to Marie-Christine Leps's identification of a 'consensual we' largely produced through the communal feeling of a criminal threat that only the law can bridle.

<sup>39</sup> O'Brien, *Crime in Verse*, p. 77.

songs' in the ballad trade. They sang of the everyday life of the labouring classes. Many were concerned with love, labour and comedy; others with the political and social situation; some with crime and famous murders. With no editorial addition to the song itself, the reader was left to enjoy and endow it with a meaning that was independent of the authoritarian voice of the law-makers and their supporters. The ballad trade thus evaded to some extent political control and censorship and was free to convey a straightforward and down-to-earth representation of the criminal. Gatrell talks about the various ways people sought to deal with the reality, pain, suffering and shame of execution. They may have challenged authority, denied it or displaced it with 'bantering facetiousness'.<sup>40</sup> The ballad was a handy tool for expressing those ambivalent feelings, an ironic yet melancholy outlook on life which made things acceptable. Usually printed without any specific context, the ballads provided, like the execution sheet, general warnings against criminality and political denunciation.

The rhetoric of repetition was key to the popular lesson also. The sad fate of the 'young apprentice' was a publishers' favourite.<sup>41</sup> But unlike William Hogarth's 'idle apprentice', those poor lads were neither necessarily idle nor truly criminal. Typically, the apprentice would be led to vice by a woman, so his sad song of warning needed not be one of repentance. His lament and the acceptance of his fate were rooted in a clear-sighted knowledge of the severity of a legal code based on the principle of the uniform nature of criminals. The 'London Prentice Boy' published by J. Catnach shows the young boy's resistance to the sinful temptress and the unjust punishment he has to face –transportation:

Come all you wild young chaps who live both far and near,  
Pray listen with attention to these few lines you'll hear;  
I once in ease did ramble, but sin did me decoy  
So now upon Van Dieman's Land, is the London 'prentice boy.

It was on the 14<sup>th</sup> of July, a girl to me did say.  
Keep up your heart – from me depart, your master for to slay;  
A knife she gave me in my hand my master to destroy,  
But I said no! that I will not do, I'm a London 'prentice boy.

She scorn'd and said begone from me – you know what you have done  
If gold you do not bring to me, your race will soon be run  
[...]  
I took 100 sovereigns, the knife I threw away,  
He was a master good and kind to the London 'prentice boy

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<sup>40</sup> Gatrell, *The Hanging Tree*, p. 114.

<sup>41</sup> Variations on that theme are to be found in the 'wild and wicked youth' and the 'George Barnwell' ballads, for example in 'Georgy Barnwell' (London: H. P. Such).

[...]

My sentence it was passed for life – I caused the court to cry,  
A scornful dame had caused the same to the London ‘prentice boy.’<sup>42</sup>

The ballad restores the true morality of the condemned and the injustice of the law: the young apprentice, whom common prejudice would brand a criminal, is an example of moral rectitude, and merely brought to his downfall by a wicked lady.

Even more than a demonstration of the inevitability of punishment, rough ballads have traditionally been the means to denounce social injustice: the Poor Laws of the 1830s suffered harsh blows; the police was a frequent subject of mockery; transportation and the prison system often inspired melancholy songs.<sup>43</sup> Dominant ideology on crime reflected only one set of attitudes to crime, and popular discourses envisioned the construction of an alternative criminal subject. In the ballad bluntly named ‘The Scaffold’ the criminal subject is no longer defined by his crime, which remains unspoken, but as a ‘human life’ mercilessly cut down by ‘man’s vengeance’.<sup>44</sup> The sound of the hammer, relentlessly heard in the background, drowns the complaint of the voiceless condemned. The clattering is a ticking clock for the last moments of the felon, and punctuates the song with its dark notes. Death is not heroic. The man’s agony is a testimony to the suffering inflicted by the spectacle. The crowd universally weeps for his fate; even the hangman almost sheds a tear.

If a sardonic tone largely dominated the ballad trade – a playful derision enabling dissociation from the act of punishment – a few songs voiced the nightmarish pain that the spectacle of the law inflicted on the families and friends of those suffering on the gallows or in gaol. O’Brien demonstrates quite convincingly that the ballad in the criminal broadside depended largely on those same strategies of contestation of the legal system and punishment mechanisms. ‘Rough songs’ most frequently dealt with lesser crimes, and yet they opened up a new vision of the way people perceived crime and punishment.

The execution sheet and its first-person ballads deployed the same strategies: the criminal poetic voice calls for the public’s sympathy for the condemned. As shown by O’Brien, ‘this fictional affective voice enabled the condemned criminal to seize speech at the moment of official silencing by the state’, providing a competing

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<sup>42</sup> Anon., ‘London Prentice Boy’, (London: J. Catnach [c.1842-1855]). Oxford: Bodleian Library, Broadside Ballads Online.

<sup>43</sup> To name but a few: ‘Famed Bow Street’ (publisher and date unknown), ‘The returned convict; Or the horrors of transportation’ (Manchester: publisher and date unknown), ‘The Transport’s Lamentations’ (Preston: John Harkness) or ‘Brixton Tread Mill’ (Birmingham: T. King, date unknown).

<sup>44</sup> See Appendix B.

voice in the spectacle of state punishment.<sup>45</sup> The broadside criminal is rendered as heroic when he voices protest against an indeterminate and unfair judicial course. The tradition of criminal heroism invented in the broadside gained a new lease of life in the Newgate novels of the 1830s and later in the sensation novels. The Newgate novels still envisaged the punishment of the criminal, but the familiar criminal capitalised on the crowd's sympathy to the end, casting a shadow on the righteousness of the punitive system.<sup>46</sup>

### **'A horrible crime has been committed': Aesthetics of the Unusual and the Atrocious**

The heroic criminal subject invented by the literary discourse of the broadside ballad and the Newgate novels was born out of a defensive reaction against the brutality of legal punishment. With penal reforms came a change in the cast of criminals visible on the scaffold scene. The expanding media also offered new forms for the expression of the Victorian obsession with crime. The popularity of the broadside may have been in decline from mid-century onwards, but the genre survived in the expanding police news format. The criminal stepped off the gallows to occupy a new cultural space. In the wake of the sensational execution sheet, the criminal 'hot news' offered a new, more picturesque criminal subject which redefined exceptionality not as heroism but as atrocious monstrosity.

From 1832 to 1837, Robert Peel's government introduced many bills to rationalise the law, repealing obsolete capital statutes. The number of crimes subject to capital punishment was reduced from more than 200 in the early decades of the nineteenth century to around 60 in 1832; it fell to 16 in 1837 and only four in 1861.<sup>47</sup> The Old Bailey archives record a radical drop of the number of executions after 1838 (from a yearly average of 100 to around 5), corresponding to the much smaller number of convictions for murder. This reduction of capital crimes decriminalised the working class to some extent, as the criminal on the scaffold, no longer convicted for property crimes, was almost exclusively a murderer.<sup>48</sup> And as the 'poor' crimes – those crimes committed by the most destitute (mostly petty property crimes) –

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<sup>45</sup> O'Brien, *Crime in Verse*, p. 77.

<sup>46</sup> Jack Sheppard is the best example of the steadfast popular hero. In the last chapter, he is seen still bravely haranguing the crowd a few minutes before the drop with heart-rending speeches, 'exchang[ing] kindly glances' with the sympathetic crowd gathered to bid him farewell. William Harrison Ainsworth, *Jack Sheppard* (Paris: A. and W. Galignani and Co., 1840), p. 372.

<sup>47</sup> *The Punishment of Death, etc. Act* (1832); *The Offences against the Person Act* (1861) reduced capital offences to murder, piracy, arson in Royal Dockyards and high treason.

<sup>48</sup> In practice indeed, after 1837, only murderers were actually hanged. From the list of the public executions in England and Wales provided by Richard Clark, it appears that out of 350 people hanged between 1837 and 1868 only five executions were not for murder (but attempted murder).

disappeared from the public space of the scaffold, their visibility was proportionately reduced in popular discourses on the criminal. Along with the disappearance of petty criminals, the necessity to contest the unfairness of the mechanisms of punishment was muted in popular discourse.

The practice of public execution as a means of deterrence and edification was replaced by a universally accepted spectacle of the exceptional and monstrous criminal, and the function of the broadside accordingly changed. Only the criminal identified by Foucault as the ‘monster’<sup>49</sup> was now being hanged; the codified and repetitive representation of an indistinct criminal jostled with the exceptionality of an individual monstrous case. The execution sheet had always been based on seemingly truthful facts, but for the first time Victorian society was showered with immediate, unedited news. The public became greedy for real crime stories, first-hand accounts from eye-witnesses and investigators, court reports, and execution reports. As Grossman notes, shifts in the discourse of the courtroom enabled a new outlook on the crime which allowed the production of the criminal subject as exceptional in popular discourses. ‘The coming of the lawyers’ – that is, legal representation – gave a voice to those formerly mute criminals.<sup>50</sup> Grossman sees the law courts as a ‘storytelling forum’ which produced ‘individualized narratives’ that were retailed in the streets by the burgeoning popular news industry and by the broadside market (although this latter market was struggling at the time).<sup>51</sup> Poor apprentices naturally disappeared when capital statutes were revised and the literary criminal space overflowed with the graphic, sensational representation of uniquely violent crimes.

The confession and the repenting ballad competed with the individualised story, with original plates and a heightened focus on the gruesome particulars of the crime. Some notorious cases had already had a specific treatment before the Peel reforms, but the rise of the press clearly led to some alterations in the genre. The traditional format survived until the disappearance of the broadside altogether at the end of the nineteenth century, but it largely mutated into a less formulaic format. The atrocious mutilations inflicted by John Greenacre (1837) and Daniel Good (1842) on their female victims were very graphically represented by woodcuts showing violent stabbing, dismembered bodies thrown in the fire and blood gushing forth from the wounds.<sup>52</sup> Good’s crime was reported as the trial proceeded but it also retained some of the characteristic aspects of the genre with its ‘copy of verses’.

That hybridisation of the broadside under the influence of the ‘hot news’ press is even more evident with the example of the Greenacre case: the traditional form of the execution sheet, with its distinctive generic engraving of the gallows, is

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<sup>49</sup> Michel Foucault, *Les anormaux: Cours au Collège de France, 1974-1975* (Paris: Seuil/Gallimard, 1999).

<sup>50</sup> Grossman, *The Art of Alibi*, p. 18, quoting the legal historian John H. Langbein.

<sup>51</sup> Grossman, *The Art of Alibi*, p. 20.

<sup>52</sup> Appendix C, Fig. 1.

supplemented with the lively visual reporting of the barbarous crime.<sup>53</sup> The original plate here exemplifies the birth of a rhetoric of the exceptional – what O'Brien calls an 'aesthetics of astonishment' – in popular discourse, leaving objectivity and truth to serious newspapers. The spectacular and the barbaric certainly did not replace altogether the representation of indistinct crowds of criminals, but rather created a distance between the criminal about to hang and the public. The patronising tone of the broadside ballad made no more sense, as practices of the criminal news turned from moral lesson to sensational reporting and astonished fascination with the monstrous exception; the criminal broadside was reinvented as *fait divers*, or astonishing news.

Barthes sees the *fait divers* as immanent news, '*information totale*', and in that respect as quite similar to the genre of the short story or the tale.<sup>54</sup> It has neither precedent nor context, and is only enjoyed as interesting particulars as it is 'hot', 'new' and 'aberrant' (it challenges traditional causality). Violent crimes were the hallmark of such mysterious haps, and naturally ranked first in the 'hot news' market which expanded rapidly with the development of the 'police news' in the 1860s.<sup>55</sup> The criminal 'hot news' directs the Victorians' interest in crime from fear, defiance and warning to an obsessive consumption of an imagined criminal subject. Morality was not relevant here, only causality and surprise created the criminal news. The broadside turned from one-shot execution sheet to serial reporting, providing the day-to-day details of a murder investigation and trial. And so the Greenacre case kept people busy for weeks. Such publications were highly dependent on a rhetoric of the mysterious and the unusual, and they were based on the principle of exceptionality, not repetition. As O'Brien notes, aesthetic enjoyment of crime came to replace the anxious morality of earlier popular publications: 'As stylized violence proliferates in these songs of murder, aesthetic astonishment overtakes moral outrage as the genre's epistemological mode'.<sup>56</sup>

Old and new practices enabled the dissemination of criminal news through various media and different forms of narrative. As a guidebook for respectable behaviour, the early-Victorian execution sheet upheld the legitimacy of capital punishment and sought to educate the crowds. Before the advent of mass-circulation print, its warning tropes and edifying voices served the legal apparatus for the masses. But more complex and ambiguous voices gradually emerged with the development of print and literacy. From passive spectators, the scaffold crowd was turned into a multiplicity of individual readers who were eager to buy those

<sup>53</sup> Appendix C, Fig. 2.

<sup>54</sup> Roland Barthes, 'Structure du Fait Divers', in *Essais Critiques* (Paris: Seuil, 1991).

<sup>55</sup> The booming market for news briefs about crime was marked by the creation of specialised popular publications such as *The Penny Illustrated Paper* in 1861 and the *Illustrated Police News* in 1864.

<sup>56</sup> O'Brien, *Crime in Verse*, p. 54.

‘interesting’ stories. From overt defiance to the distance offered by monstrous murders, the literary aesthetics of the criminal claimed an ironical dissociation from the spectacle of legal execution.

Confessions and last lamentations inscribed the criminal broadside with the original voice of the condemned: ‘they restored and often rehabilitated the personal identities of murderers, they presented criminals as psychological subjects rather than spectacular objects’.<sup>57</sup> The criminal ‘hot news’ later in the century built on this tradition and developed a new form of reportage with a focus on a criminal embedded in a complex array of fear, disgust, pity and fascination, stirring up curiosity and anxieties.

The abolition of public executions in 1868 would provide a further development of the criminal narrative with the expansion of the focus on the detection process, filling in the gap created by the lack of representation of the scene of execution.

All that was agreed in 1868 was that executions would work upon plebeian imaginations more terribly by being hidden. As Fielding had written a century before: ‘a murder behind the scenes, if the poet knows how to manage it, will affect the audience with greater terror than if it was acted before their eyes’.<sup>58</sup>

Press coverage continued to be strongly influenced by the criminal narratives that the courtroom produced. The ‘murder behind the scenes’ cemented the press’s position as the most influential retailer of criminal news. As a consequence, the execution sheet was no longer required.

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<sup>57</sup> O’Brien, *Crime in Verse*, p. 102.

<sup>58</sup> Gatrell, *The Hanging Tree*, p. 23.

### Appendix A: Execution sheet verses

Extracts from the verses in 'Life, Trial, Confession & Execution of R. Cooper, who was Executed at Newgate, on Monday, November 17<sup>th</sup>, for the Murder of Anne Barnham, at Isleworth, Middlesex', (London, 1862). Oxford: Bodleian Library, John Johnson Collection of Printed Ephemera, Broad-sides : Murder and Executions folder 5 (8).

Behold a man in health and vigour,  
Doom'd upon the gallows high,  
I must end my days in horror,  
For murder I am doomed to die;  
At Isleworth I killed my Annie,  
My own, my dear and lawful wife.  
And with a dreadful loaded pistol,  
I took away her precious life.

A murderer, in health and vigour,  
An awful spectacle to view,  
I must die in dread November,  
In eighteen hundred and sixty-two.

It was on the seventh day of August,  
To Isleworth my way I bent,  
I was resolved my wife to murder,  
My Ann to kill was my intent;  
I shot her on that fatal evening.  
I took her precious life away,  
At Isleworth I was determined,  
My darling wife I would slay

Oh, whatever could possess me,  
My darling Annie for to slay,  
Oh, whatever could possess me,  
For to take her life away:

Murder I premeditated,  
That day on murder I was bent,  
To murder her I had sworn to cherish,  
That fatal day was my intent.

Oh! Yes, I had the pistol loaded,  
I determined was my wife to kill,  
In the dark lanes of Isleworth,  
I was resolved her blood to spill,  
Poor creature, she was not expecting,  
Her days on earth, so near, was past,  
She little thought that fatal evening  
I killed her, was to be her last.

When I had killed my own dear Annie,  
From the fatal spot I strayed away.  
And her innocent spirit, haunted me  
From that time by night and day;  
I was both wretched and distracted,  
I wander'd through the world forlorn  
Justice closely did pursue me,  
And I must die a death of scorn.

... I am doomed to die at Newgate,  
Nothing in this world can me save,  
A wretched and a dreadful murderer,  
Who will soon lie in a murderer's grave.



## Appendix B: 'The Scaffold'

(London: British Library, Baring-Gould collection)

Hark to the clinking of hammers,  
Hark to the driving of nails,  
The men are erecting a gallows,  
In one of her Majesty's gaols,  
A life, a human life's to be taken,  
Which the crowd and the hangman hail  
For the men are erecting a scaffold,  
In one of her Majesty's gaols.

'Tis midnight – without is dead silence,  
The doomed wretch in agony moans,  
But the clattering din of the hammer,  
Is drowning the poor wretches groan.  
The chaplain now earnestly prayeth,  
To the God of all mercy for him,  
But his mind on his misery stayeth,  
For his cup his full up to the brim.

O pray while you may to your maker,  
His mercy, not justice implore,  
Said the priest while tears filled his eyes,  
And his choked voice could utter no more.  
You asked me to pray, said the felon,  
But no one e'er showed me the way,  
'Tis too late, 'tis too late not to teach me,  
I can't understand what you say.  
Hark! Hark! The death bell is tolling,

The gallows at last is in view,  
The prisoner, pale, ghastly and sinking,  
To the chaplain has waved an adieu.  
His strong frame in agony quivers,  
His breast – how wildly it heaves,  
His arms closely are pinioned,  
The hangman himself almost grieves.

Hush! Hark! The death bell is tolling,  
Dragoons with drawn swords are below,  
The prisoner appears to be praying,  
'Tis a scene of heart-anguish and woe;  
There are crowds in the streets, men and women,  
The war steeds are prancing about,  
The windows are thronged with spectators,  
Hark! A buzz, a wave, and a shout.

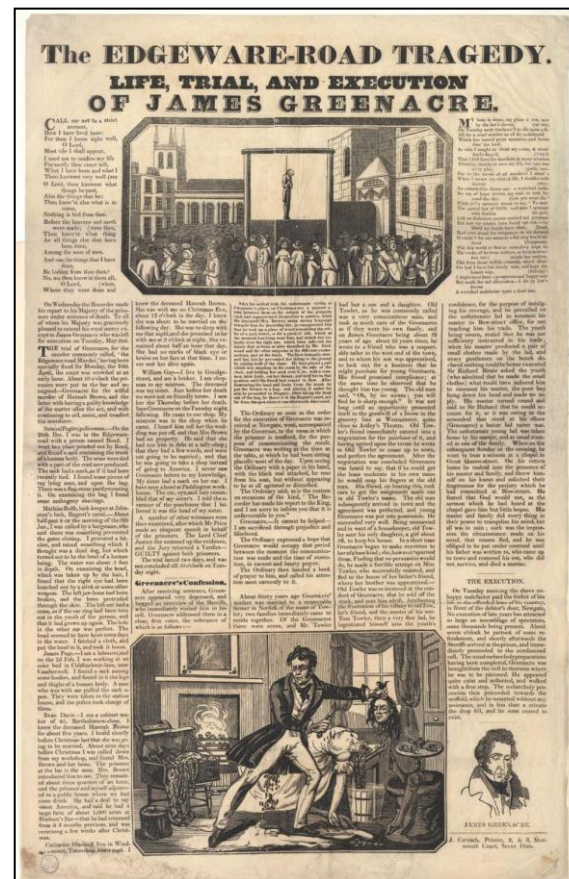
The rope round his neck is adjusted,  
Man's vengeance how fearful thou art,  
His head is covered, and horror  
Strike every man to the heart,  
The dead bolt is drawn, he plunging  
In air, what a terrible tale,  
His soul has gone to its maker,  
His corpse taken back to the goal.

## Appendix C: Graphic sensation in criminal broadsides



Fig. 2: 'The full account and latest particulars of the awful, inhuman, & barbarous murder of a female, by cutting off her head, arms, and legs, and burning them, with the proceedings of the coroner's inquest' (London: Paul & Co, 1842).

Fig. 3: Anon., 'The Edgeware-Road Tragedy. Life, Trial, and Execution of James Greenacre' (London: J. Catnach, 2 May 1837)



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## REFORMATIVE SYMPATHY IN NINETEENTH-CENTURY CRIME FICTION

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*Abstract*

Nineteenth-century British crime novels whose heroes were criminals redefined criminality, alerting readers to the moral failures of the criminal justice system and arguing for institutional reform. My research on this topic begins with William Godwin's novel *Caleb Williams* (1794) as a social reform project that exposes hypocrisy and inconsistency of governing institutions. I then assess how contemporary social criticism of crime novels contrasts with the authors' reformatory intentions. Critics argued the 'Newgate novels', like those of Edward Bulwer-Lytton and William Harrison Ainsworth, glorified criminality and were therefore a danger to readers. However, Bulwer-Lytton's *Paul Clifford* (1830) and William Harrison Ainsworth's *Jack Sheppard* (1839) serve, like *Caleb Williams*, as social reform efforts to alert readers to the moral failings of the criminal justice and penal institutions. They do so, I argue, through the use of sympathy. By making the criminal the victim of a contradictory society, Godwin, Bulwer-Lytton, and Ainsworth draw upon the sympathies of imagined readers. I apply contemporary and modern notions of sympathy to the texts to demonstrate how the authors use sympathy to humanise the title characters in societies that have subjected them to baseless mechanisation.

The emergence of crime fiction in nineteenth-century Britain provided readers with imaginative access to a criminal's perspective and history as they conflicted with the criminal justice system and its punitive power. Novelists working within the genre re-examined criminality, morality, and justice, often delivering powerful social critiques of extant institutions. As a late eighteenth-century influence on future crime novelists, William Godwin wrote *Caleb Williams* (1794) as a social reform effort, exposing inherent flaws in the criminal and penal systems. Godwin's novel serves as an exposé of how a man with power, Falkland, could escape conviction for murder and use his power to destroy the life of the innocent Caleb. Godwin wrote *Caleb Williams* to reach an audience who would not read his *Political Justice* (1793), thus exposing a wider network to social injustice. His work asks readers to question the infrastructure of the criminal and penal institutions, suggesting their immorality and capability to corrupt an individual rather than reform him. Later, novels whose heroes were criminals, such as Edward Bulwer-Lytton's *Paul Clifford* (1830) and William Harrison Ainsworth's *Jack Sheppard* (1839), gained popularity, but also drew criticism for glorifying criminality. These 'Newgate' narratives, following Godwin's lead, redefined criminality and focused attention on the faults of society rather than those of the individual. Alerting readers to the moral failures of the justice system,

they argued for the necessity of institutional reform.<sup>1</sup> This paper considers how Godwin, Bulwer-Lytton, and Ainsworth present this argument. Expanding on Godwin's social critiquing methods, Bulwer-Lytton and Ainsworth expose the hypocrisies of governing institutions while identifying environmental rather than innate factors that lead to criminal behaviour. Further, because these institutions offer up contradictions rather than coherent moral values, they fail to rehabilitate the criminals they create. Finally, I argue that rehabilitation becomes possible in all three novels by means of sympathetic identification: it is the criminal's capacity to feel for others and the capacity of readers to feel for the criminal that represents triumph over a broken legal and penal system.<sup>2</sup>

### Public Morality and Man's 'Most Evil Passions'

Nineteenth-century morality is established first by the public institutions who desire to maintain a particular order. In *Reconstructing the Criminal* Martin J. Wiener describes a Victorian concern for moralisation: 'most crime thus signalled not only a generalised social disorder, but one particularly linked to defective self-management'.<sup>3</sup> This 'defective self-management' indicates a lapse in moral judgement and accuses the individual rather than extenuating factors as responsible for the social disorder he describes. Therefore, it is up to the established institutions to instil a policy for maintaining proper moral behaviour and social control: 'criminal policy – as other fields of social policy – was enlisted in the effort to advance the civilizing process by fostering personal discipline and foresight'.<sup>4</sup> By accepting the

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<sup>1</sup> For Martin J. Wiener, the Newgate novels 'suggest[ed] anxiety about the very values of individual self-shaping and assertion of will against circumstance that were constantly upheld by contemporary moralists'. Martin J. Wiener, *Reconstructing the Criminal: Culture, Law, and Policy in England, 1830-1914* (Cambridge: Cambridge University Press, 1990), p. 22. As the novels accuse the environment for its influence on an individual's behaviour, they contrast with the publicly accepted idea that morality and immorality are rooted within the individual.

<sup>2</sup> While Wiener suggests the most crucial contemporary issue with the Newgate novels was that they 'glamorized' crime (p. 22), I focus my argument on sympathy, its connection with morality, and its influence as a means to deliver a social critique. Though the glorification of crime expanded the readership, sympathetic identification allows for potential social reform. Monika Fludernik's 'Spectacle, Theatre, and Sympathy in *Caleb Williams*', *Eighteenth-Century Fiction*, 14.1 (2001), pp. 1-30, provides a useful context, describing Godwin's use of sympathy, and providing a model of sympathetic identification that, I argue, Bulwer-Lytton and Ainsworth expand on by using the Newgate model.

<sup>3</sup> Wiener, *Reconstructing the Criminal*, p. 49.

<sup>4</sup> Wiener, *Reconstructing the Criminal*, p. 49. For a Victorian view of the moral obligations of the criminal and penal systems Wiener looks at Leslie Stephen's *The Life of James Fitzjames Stephen* (1895), which argues that 'no social institution [...] "can have a greater moral significance or be more closely connected with broad principles of morality and politics than those by which men

criminal and penal systems, the members of the public were also accepting their notions of appropriate morality and adherence to such a 'civilizing process'. Those who debased these systems, like Godwin, Bulwer-Lytton, and Ainsworth, were critically chastised as threatening proper moral order.

Contemporary critics further establish a definition of morality by discrediting the fiction they believe threatens it. A reviewer for *The British Critic* writes of *Caleb Williams*: 'This piece is a striking example of the evil use which may be made of considerable talents connected with such a degree of intrepidity as inspire the author with resolution to attack religion, virtue, government, laws, and above all, the desire (hitherto accounted laudable) of leaving a good name to posterity'.<sup>5</sup> In a similar vein, an early review of Ainsworth's *Jack Sheppard* claims that 'public morality and public decency have rarely been more endangered than by the trumpeted exploits of Jack Sheppard'.<sup>6</sup> And, the *Christian Examiner and General Review* says of *Paul Clifford*, 'No one, we think, can read the work before us, without reprobation and disgust; no one we mean, who is properly impressed with the importance of moral duty and religious obligation, or who feels sensible that the regulations of society, in regard to property, industry, and personal security, are entitled to any respect'.<sup>7</sup> 'Public morality and decency', these reviews suggest, depend upon preserving the institutions that novels 'attack'. The morally diligent reader, who adheres to and has faith in religious, political, and legal institutions, therefore, ought to dismiss such novels, which threaten to spread 'evil' across society. Society, then, functions best if it is an environment of proper moral order. The critics further claim the reader who does not regard the novel as filth has no respect for such society and even 'personal security', as the novel threatens the reader's productive role as a member of society.

The reception of these novels reflects the very prejudices that Godwin, Bulwer-Lytton, and Ainsworth write against. The authors are not mitigating morality, but asking readers to re-examine and scrutinise the social mechanisms that have created the publicly accepted notions of both morality and criminality. They do this by exposing contradictions embedded in the institutions themselves. In *Caleb Williams*, for example, Caleb's experience in prison after a false conviction leads him to think, 'I could never believe that all this was the fair result of institutions inseparable from the general good'.<sup>8</sup> He questions not only the morality of the institutions, but also the 'fairness' of the system. Likewise, in *Paul Clifford*, Paul is incarcerated for a crime

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rightfully, deliberately and in cold blood, kill, enslave or otherwise torment their fellow creatures''' (qtd. in Wiener, *Reconstructing the Criminal*, p. 54). The accepted public responsibilities of the criminal and penal institutions at this time were to maintain moral order.

<sup>5</sup> Anon., *The British Critic: A New Review*, 40 vols (London: F. and C. Rivington, 1794), III, pp. 70-71 (p. 70).

<sup>6</sup> John Forster, 'Review of *Jack Sheppard*', *The Examiner*, 1657 (1839) in *Jack Sheppard* (Ontario: Broadview Editions, 2007), p. 510.

<sup>7</sup> Anon., 'ART. III. – *Paul Clifford*', *Christian Examiner and General Review*, 9.1 (1830), p. 46.

<sup>8</sup> William Godwin, *Caleb Williams* (London: Penguin, 2005), p. 190.



he did not commit, and, upon escaping prison, becomes a highwayman alongside a gang of robbers. Paul's definition of crime exposes faults in the institution when he says to his love, Lucy, 'crime, – what is crime? Men embody their worst prejudices, their most evil passions, in a heterogeneous and contradictory code; and whatever breaks this code they term a crime'.<sup>9</sup> Paul's definition of crime accuses the present social and moral codes of being 'heterogeneous and contradictory', which exposes the inconsistencies and hypocrisy of the legal system itself. For Paul, these codes are not only irrational, but also immoral, based on prejudice and 'evil passions'. Godwin initiates a critique of the self-contradictory nature of dominant moral codes that Bulwer-Lytton echoes and even expands upon by using a criminal hero. Thus the corrupt system can not only harm an innocent man, but also instigate social deviance and create the very criminal it reproves. The novel itself thereby is used as a social reform proposal as it asks readers to question the publicly accepted notions of morality and criminality.<sup>10</sup>

Problems defining criminality further arise when narratives expose the analogous parallels between criminal characters and upper class individuals, thus exhibiting the class-based prejudice inherent to the 'heterogeneous and contradictory code'. This critique is visible, for example, in *Caleb Williams*, where Falkland's high status and power protect him from the truth of his past crimes. Instead, an innocent, lower class individual is convicted and harassed. Godwin demonstrates that power and class negate culpability in a faulty society. As Caleb observes, 'Six thousand a year shall protect a man from accusation'.<sup>11</sup> Likewise, *Paul Clifford* uses unjust treatment of the poor to further expose the problems with class discrimination. Paul says, 'I come into the world friendless and poor; I find a body of laws hostile to the friendless and the poor!' (p. 244). If one is not born into high society, he is betrayed by the contradictory codes and vulnerable to criminal designation while a member of the high class remains unaffected by the codes.

Bulwer-Lytton further establishes parallels between high class and criminality through the figure of Judge William Brandon. *Paul Clifford* contains a criminal-hero and a judge-villain demonstrating 'no absolute divide between criminal characters and virtuous ones'.<sup>12</sup> The judge, we learn, is guilty of moral impurity for selling off

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<sup>9</sup> Edward Bulwer-Lytton, *Paul Clifford*, (London: George Routledge & Sons, Limited, 1902), p. 252. Further references are given after quotations in the text.

<sup>10</sup> For Cécile Bertrand, who expands upon the social reaction to various representations of criminals in "'Horred Murders', 'Int'resting Partic'lars' and 'Confessions!': Constructing Criminal Identities in the Early Victorian Broadside" in this issue, 'the heroic criminal subject invented by the literary discourse of the broadside ballad and the Newgate novels was born out of a defensive reaction against the brutality of the Law to account for the reality of punishment' (25). As a defensive mechanism the fiction becomes a powerful force in contesting harsh and unjust laws.

<sup>11</sup> Godwin, *Caleb Williams*, p. 287.

<sup>12</sup> See Jonathan H. Grossman, *The Art of Alibi: English Law Courts and the Novel* (Baltimore: Johns Hopkins University Press, 2002), p. 139.

his wife. He also has a lust for power, ‘knowing no code save that of interest and ambition; viewing men only as machines, and opinions only as ladders’ (p. 334). Brandon’s humanity is lost in the contradictory codes, while Paul, whose innocence is destroyed by this justice system, commits crimes, but finds morality through love. When Brandon mechanises humanity, he is incapable of the moral sentiment that Paul exhibits. Paul elicits sympathy through his character, as Bulwer-Lytton writes: ‘this sympathy was heightened by the hardihood of physical nerve and moral intrepidity displayed by the prisoner, – qualities which among men of a similar mould often form the strongest motive of esteem, and sometimes [...] the only point of attraction!’ (p. 486). Paul has the character of a moral, respectable man, but his public identity is deemed criminal. Bulwer-Lytton exposes the parallels between the classes of men, confirming that both immorality and criminality cross class lines. He further claims this purpose in his preface: ‘to show that there is nothing essentially different between vulgar vice and fashionable vice, and that the slang of the one circle is but an easy paraphrase of the cant of the other’ (p. 8). ‘Vulgar’ and ‘fashionable’ vice both lead to immorality; thereby the social status of a man does not determine his criminal capacity.

Bulwer-Lytton continues to demonstrate that the criminal and the gentleman may be virtually indistinguishable through the notes of fictional criminal Augustus Tomilson that follow the conclusion of the main narrative. Augustus claims, ‘Whenever you read the life of a great man, I mean a man eminently successful, you will perceive all the qualities given to him are the qualities necessary even to a mediocre rogue’ (p. 526). The novel exposes success as rooted in status rather than these ‘qualities’. Augustus claims greatness does not distinguish morality and even suggests that a criminal has qualities to surpass the ‘great man’. Ultimately Bulwer-Lytton suggests the threat that the corrupt, powerful gentleman poses to society and attempts to eradicate the current ignorance to vice embedded in high class. Similarly, Ainsworth’s *Jack Sheppard* illustrates the interchangeability of high and low class characters in terms of their criminality when Jonathan Wild, the administrator of the law says (in a passage that echoes the famously villainous Iago’s ‘Were I the Moor I would not be Iago’), ‘were I not Jonathan Wild, I’d be Jack Sheppard’.<sup>13</sup> Here, Wild perceives the parallel between his own identity and that of the convicted criminal, Jack Sheppard. However, Ainsworth shows Wild’s character to be in fact more villainous than Sheppard’s. Jack is a product of his circumstances who wants to redeem himself, while Jonathan Wild is the living embodiment of a corrupt system, as he tries to balance being a ‘thief-catcher’ and the chief orchestrator of the criminal underground. Like *Paul Clifford*, *Jack Sheppard* attempts to help the public perceive the criminal/gentlemen parallels, further complicating received definitions of criminality.

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<sup>13</sup> William Harrison Ainsworth, *The Works of W. Harrison Ainsworth, Esq. Vol. XI. Jack Sheppard* (London: Chapman and Hall, 1850), p. 173.

Against these definitions, the novels repeatedly illustrate how one becomes a criminal through his circumstances. As Augustus Tomilson says, 'we are all blocks of matter, formed from the atoms of custom; in other words, we are a mechanism, to which habit is the spring. What could I do in an honest career? I am many years older than you. I have lived as a rogue till I have no other nature than roguery' (p. 365). Augustus claims he has no choice but to be a criminal because he has no nature independent of the 'rogue' society has made him. His use of the word 'mechanism' critiques the systemic dehumanisation of criminals. Paul Clifford and Jack Sheppard resist this form of mechanisation as both men make reformatory choices to change and disassociate themselves from their criminal lives. However, they are perpetually stigmatised as criminals, unable to alter public perception.

When the characters see themselves as victims of an oppressive and contradictory social environment, they use language that suggests the pestilent nature of the corruption. Monika Fludernik has noted this rhetoric of contamination in *Caleb Williams*, arguing that 'the poisonous effects of society operate most forcefully on the morals of those who become the victims of its oppression'.<sup>14</sup> Similarly, Paul Clifford defends himself by repeatedly charging the social malfeasance as responsible for his criminality: 'my faults [...] are no less the consequence of circumstances and contagion' (p. 318). Bulwer-Lytton's use of the word 'contagion' makes Paul into an individual infected by circumstance; the resulting disease is his criminality. Similarly, Paul says during his trial, 'you, who will now pass my doom, – You were the cause of my crimes! My lord, I have done. I am ready to add another to the long and dark list of victims who are first polluted and then sacrificed by the blindness and the injustice of human codes!' (p. 491). Paul's exclamations attempt to reveal not only the truth of his history, but the problems with a corrupt institution that creates criminals. The 'heterogeneous and contradictory' codes are unjust, for Paul's humanity has been sacrificed for the preservation of a corrupt social order. He also claims he is not the only one who has been 'polluted' and misidentified, thus accusing the corrupt governing institutions of the widespread creation of criminals. Mrs. Sheppard echoes this sentiment in Ainsworth's novel. She desires Jack's 'instant removal from the contaminating society by which he was surrounded',<sup>15</sup> arguing that his infectious environment has made her son a criminal.

In Paul Clifford's defence Bulwer-Lytton criticises the legal system and exposes its flawed, contradictory nature. He claims, 'your laws are but of two classes; the one makes criminals, the other punishes them' (p. 482). Here Bulwer-Lytton defines the ultimate problem with the legal and penal institutions by revealing the hypocrisy of a system that causes the very crimes it punishes. This becomes a vicious, unending cycle, as observed by Augustus: 'As every crime creates a law, so in turn every law creates a crime; and hence we go on multiplying sins and evils, and

<sup>14</sup> See Fludernik, 'Spectacle, Theatre, and Sympathy in *Caleb Williams*', p. 21.

<sup>15</sup> Ainsworth, *Jack Sheppard*, p. 125.

faults and blunders, till society becomes the organised disorder for picking pockets' (pp. 544-5). Augustus's description resonates with a Foucauldian penal system that focuses on quelling future crime by decreasing criminal 'imitators' from a class of the 'potentially guilty'.<sup>16</sup> The institutions attempt to prevent wrongdoing by creating a system of coercion based on promoting moral modelling and dissuading immoral imitation. Coercive behaviour modelling requires examples of moral and immoral behaviour, which creates a paradoxical situation: in order to reduce crime, there need to be criminals. Bulwer-Lytton illustrates this paradox in *Paul Clifford* as he presents how a corrupt institution corrupts the innocent individual. Society's treating Paul as a criminal is precisely what makes him commit crime.

### Affection and the Reformatory Power of Sympathy

Because the institutions that define criminality also depend upon criminality, they are revealed to be ineffective in reforming criminals. Godwin, Bulwer-Lytton, and Ainsworth imagine a way out of this situation through sympathy and establish the capacity for a human soul that is redeemable, not controlled or regulated by institutions or public influence. Paul Clifford, who actually turns to crime only after escaping from prison, is effectively reformed by love and hope. Likewise, Jack Sheppard has been condemned by society, but his moral inclinations may redeem him in the eyes of those who can sympathise with him. This notion of sympathy, which nineteenth-century writers derived from the moral philosophy of Adam Smith and Edmund Burke,<sup>17</sup> represents the other side of the destructive contamination that spreads from the moral failures of the justice system. Modern definitions of sympathy can also be posited alongside contemporary notions to see the overlap between morality and sympathy, in contrast with immoral or infectious behaviour.

Sympathetic identification in these novels is opposed to the mechanistic objectivity of the penal system. 'Discipline', as Foucault writes, 'is the specific technique of a power that regards individuals both as objects and as instruments of its exercise'.<sup>18</sup> The objectification of individuals as 'instruments' eliminates individuality as such and posits productivity as the end goal of disciplinary procedures. According to Heather Worthington, 'there is no space for individuality in this system of signification: the identities of the criminals become synonymous with

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<sup>16</sup> See Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage, 1975), pp. 93, 108.

<sup>17</sup> See Adam Smith's *The Theory of Moral Sentiments* (Cambridge: Cambridge University Press, 2002), in particular Chapter 1: Of Sympathy, and Chapter 2: Of the Pleasure of Mutual Sympathy, originally published in 1759; Edmund Burke's *A Philosophical Inquiry into the Origin of Our Ideas of the Sublime and Beautiful* (London: George Bell and Sons, 1889), in particular Section 13: Sympathy, originally published in 1757.

<sup>18</sup> Foucault, *Discipline and Punish*, p. 170.

the crime they have committed, and the aberrant criminal individual is absorbed into the robotic citizen model required by sovereign power'.<sup>19</sup> Worthington specifically refers to public trials and execution and the broadcast of crime and punishment in the broadsides.<sup>20</sup> However, Godwin, Ainsworth, and Bulwer-Lytton allow for an individual to separate himself from his crimes. These authors create moral subjectivity through perspective and sympathy, allowing their fiction to prevail as a way to redefine a punished individual who can emerge as virtuous. Toward this end, the authors also reassert humanity by titling their novels with the protagonists' names. The signification of the names as the titles subverts the 'robotic citizen model' created by the contradictory codes of society by humanising the criminal and further allowing for sympathetic identification.

These novelists use sympathy to imagine a reader's affection and possible alteration of moral sensibility. For contemporary notions of sympathy we can look to Adam Smith and Edmund Burke who write that sympathy involves 'our fellow-feeling with any passion',<sup>21</sup> and that 'sympathy must be considered as a sort of substitution, by which we are put into the place of another man, and affected in many respects as he is affected'.<sup>22</sup> Godwin's, Bulwer-Lytton's and Ainsworth's novels invite the reader to share the emotions of Caleb, Paul and Jack, to sympathise with their suffering and acknowledge their capacity for redemption. Caleb Williams suffers in prison, yet remains pure and innocent for the duration of the novel. Caleb's suffering causes him to curse the world: 'Here I am, an outcast, destined to perish with hunger and cold. All men desert me. All men hate me [...] Accursed world! that hates without a cause, that overwhelms innocence with calamities which ought to be spared even to guilt! Accursed world! dead to every manly sympathy; with eyes of horn, and hearts of steel!'<sup>23</sup> Caleb feels unjustly detached from the world and uses exclamatory, emotional language to convey his sense of suffering and abandonment. Caleb lacks sympathy from others, but this provides readers with an opportunity to imagine a sympathetic identification with his lost sense of individuality. This imaginative process is described by Smith: one's 'agonies, when they are thus brought home to ourselves, when we have thus adopted and made them our own, begin at last to affect us, and we then tremble and shudder at the thought of what he

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<sup>19</sup> See Heather Worthington, *The Rise of the Detective in Early Nineteenth-Century Popular Fiction* (New York: Palgrave Macmillan, 2005), p. 17.

<sup>20</sup> For Worthington, the broadsides allowed for the signification of the criminal, which is the root of Victorian disciplinary power. Though the broadsides had entertainment value, and therefore also commodified crime, their ability to reduce real people to signified criminals rejects humanistic individuality. It may be argued the Newgate novels also commodified crime, however since they reimagine the humanity of a criminal, they therefore serve a larger reforming purpose.

<sup>21</sup> Smith, *The Theory of Moral Sentiments*, p. 13.

<sup>22</sup> Burke, *A Philosophical Inquiry into the Origin of Our Ideas of the Sublime and Beautiful*, p. 31.

<sup>23</sup> Godwin, *Caleb Williams*, pp. 260-1.

feels'.<sup>24</sup> Sympathising becomes a physical and emotional process and Godwin's novel suggests then that readers can soften their 'hearts of steel' by sympathising with the innocent Caleb.

We can also look at the development of later and modern notions of sympathy, which posit sympathetic identification alongside morality. This kind of sympathetic imagination, as Charles Cooley argues, ties feeling – sharing emotions – with moral judgment: 'Sympathy [...] underlies also the moral rank of a man and goes to fix our estimate of his justice and goodness'.<sup>25</sup> We can evaluate Caleb's virtuousness because we can sympathise with him and his suffering. Fludernik takes this further, establishing sympathy as the root of morality: 'Charged with affection, reverence, and love, reciprocal sympathy becomes the very essence of our humanity. It is the source of our most positive affections and the home of our moral sense. Sympathy casts us as one among many fellow humans'.<sup>26</sup> Fludernik aligns affective sympathy with establishing morality and humanity, which would release the title characters from their criminal identification. In the narratives, the heroes' humanity can best be seen when they suffer. Paul Clifford's suffering comes from the realisation that he cannot be with the woman he loves due to his past crimes. Bulwer-Lytton invites the reader to imagine Paul's humanity and how he suffers more for it. The scenes with Paul and Lucy reveal Paul's humanity and understanding of his own moral agency:

While the only tears he had shed since his career of crime fell fast and hot upon her countenance, he kissed her forehead, her cheek, her lips in a passionate and wild transport. His voice died within him, – he could not trust himself to speak; only one thought, even in that seeming forgetfulness of her and of himself, stirred and spoke at his breast, – flight. The more he felt he loved, the more tender and the more confiding the object of his love, the more urgent became the necessity to leave her. All other duties had been neglected, but he loved with a real love; and love, which taught him one duty, bore him triumphantly through its bitter ordeal. (p. 319)

Paul is guided by love and a moral obligation – his 'one duty' – to protect Lucy from suffering. Lucy returns these sentiments: 'it seemed as if, carried away by these emotions, she had yielded altogether to the fondness and devotion of her nature, – that she had wished to leave home and friends and fortune, and share with him his punishment and his shame' (p. 502). Lucy's love allows her to sympathise with Paul and therefore accept his status as criminal and the consequences he will have to face. She is willing to sacrifice everything she has in the world for one publicly deemed a

<sup>24</sup> Smith, *The Theory of Moral Sentiments*, p. 12.

<sup>25</sup> See Charles Cooley, *Human Nature and the Social Order* (New York: C. Scribner's Sons, 1902), p. 108.

<sup>26</sup> Fludernik, 'Spectacle, Theatre, and Sympathy in *Caleb Williams*', p. 29.

criminal. Lucy exhibits Cooley's notion of sympathy through showing how Paul's redemption arises from his becoming the object of sympathy, and, reciprocally, a sympathising subject.

As one who has lost his moral purity due to the injustice of the legal system, Paul represents corrupted innocence. However, the possibility of sympathetic identification arises when he gains his moral sensibility back by falling in love. Bulwer-Lytton's illustration of the romance elicits sympathy between the lovers: 'Lucy and Clifford sat together. The streets were utterly deserted; and the loneliness, as they looked below, made them feel the more intensely not only the emotions which swelled within them, but the undefined and electric sympathy which, in uniting them, divided them from the world' (p. 250). Lucy and Paul are 'divided from the world' of contagion and contradictory codes as they sympathise with each other. Paul's capacity to love and sympathise redeems him; it humanises him and preserves his identity from mechanisation. Importantly, this sympathy is 'undefined and electric'; by describing the process of sympathetic identification without defining it, Bulwer-Lytton appeals to the reader's own sympathetic imagination to understand Paul and Lucy's affection and emotional struggles.<sup>27</sup>

Jack Sheppard is also redeemed through sympathetic identification when his humanity and suffering are exposed. Keith Hollingsworth calls Jack's 'devotion' to his mother 'his supreme virtue'.<sup>28</sup> Jack's character evokes sympathy when his emotions emerge through the pain he suffers due to his mother's situation. Instead of fleeing his pursuers, he risks capture to see her: 'Jack was completely overcome. His chest heaved violently, and big tears coursed rapidly down his cheeks' as he says 'I don't deserve it [...] but I would have risked a thousand deaths to enjoy this moment's happiness'.<sup>29</sup> Like Paul, Jack experiences the physicality of emotive release. His language also exposes his humanity and sympathetic feeling for his mother. Later, when Mrs. Sheppard dies, Ainsworth describes Jack's voice as 'suffocated by emotion' as he cries, 'Forgive me – oh, forgive me!' and, 'Oh, God! That I might die too'.<sup>30</sup> Jack's capacity to love extends his sympathetic identifiability, for he cries out for redemption to something outside of an institution. Jack's moral sentiments

<sup>27</sup> Bulwer-Lytton later defends his use of sympathy in 'On Art in Fiction', *The Monthly Chronicle; A National Journal of Politics, Literature, Science and Art*, 1 (1838), pp. 43-51 (p. 49), where he describes the fictional criminal who 'has some touch and remnant of human goodness; and it is according as this sympathy between the outcast and ourselves is indicated or insinuated, that the author profanes or masters the noblest mysteries of his art'. This clear praise for an author who uses sympathy in crime fiction is a subtle defence against the criticism of his own works. He refers to the criminal's morality – his 'human goodness' – as where the readers can feel sympathy, and thereby indicative to quality writing.

<sup>28</sup> See Keith Hollingsworth, *The Newgate Novel, 1830-1847: Bulwer, Ainsworth, Dickens & Thackeray* (Detroit: Wayne State University Press, 1963), p. 137.

<sup>29</sup> Ainsworth, *Jack Sheppard*, p. 206.

<sup>30</sup> Ainsworth, *Jack Sheppard*, p. 264.

emerge through his emotions as he detaches himself from his social identification as a criminal void of sentiment.

The title characters also appeal to the sympathy of the members of the public. Paul says during his defence, 'I trust my words will sink solemnly into the hearts of all present' (p. 482). He relies on his speech to evoke sympathetic identification to redeem him from his criminal behaviour. Likewise, observers of Jack Sheppard's trial notice that 'when sentence was passed there wasn't a dry eye in the court'.<sup>31</sup> This suggests that Jack has successfully appealed to public sympathy. Sympathy redeems him from his crimes in the eyes of the public and the reader, though not in the eyes of the law. Jack's death sentence suggests that the system, unlike the audience, remains cold and unfeeling.

## Intention and Reception

The use of sympathy in fiction allowed the Newgate novelists to present their social reforming message to what they perceived as a misguided society. But the novelists also used other means to declare their purpose. Prior to the backlash of the Newgate genre, Godwin set forth using criminality for reform purposes as he knew his novel's potential to effect a powerful social impact. In his prologue, Godwin writes that his novel accounts the 'modes of domestic and unrecorded despotism by which man becomes the destroyer of man'.<sup>32</sup> Here he declares the problems with society that his novel strives to expose, including the tragedy of lost humanity. The fiction threatens accepted notions of criminality since innocence is represented through a convicted man, and the true criminal, Falkland, the agent of Caleb's misrepresentation, maintains status through power.

There was a need for Bulwer-Lytton to also clarify his social purpose in writing *Paul Clifford* due to the harsh criticism received after its initial publication. In this way he clearly distinguished the novel form from entertainment, as a medium capable of raising social and moral awareness. Initially, in 'On Art in Fiction', he insinuates that a successful crime novelist will reveal the 'vicious influences of any peculiar error in the social system'.<sup>33</sup> However, knowing this article, like *Political Justice*, had a limited audience, Bulwer-Lytton also clearly articulates the purpose of his narrative in his prefaces. In the preface to the 1840 edition he writes, 'the Novel written, with a twofold object: First, to draw attention to two errors in our penal institutions; namely, a vicious Prison-discipline, and a sanguinary Criminal Code, – the habit of corrupting the boy by the very punishment that ought to redeem him, and then hanging the man at the first occasion, as the easiest way of getting rid of our

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<sup>31</sup> Ainsworth, *Jack Sheppard*, p. 196.

<sup>32</sup> Godwin, *Caleb Williams*, p. 3.

<sup>33</sup> Bulwer-Lytton, 'On Art in Fiction', p. 49.



own blunders' (p. 7). The declaration of the novel's purpose brings full attention to his social reforming message so the reader may discern the fictional manifestation of these two objectives. In the preface to the 1848 edition, Bulwer-Lytton expands further, 'it is precisely those offences which society cannot interfere with that society requires fiction to expose [...] fiction follows truth into all the strongholds of convention; strikes through the disguise, lifts the mask, bares the heart, and leaves a moral wherever it brands a falsehood' (p. 11). Bulwer-Lytton justifies the need for fiction and how it may be the only means to alert the public to problems and contradictions that corrupt individuals. By specifically saying fiction 'bares the heart,' Bulwer-Lytton further draws upon sympathetic identification that the novels use in their attempts to connect with an imagined audience. It is through accessing an emotive response from a reader that the texts can spread their social reform messages.

However, as social reform projects, these novels appeared a threat to a stable society and therefore received harsh criticism. Lauren Gillingham states, 'the anxiety that the new crime novels inspired derived from a fear of social contamination and instability, fuelled in large measure by questions of readership'.<sup>34</sup> The fear was that the glorification of the criminals would inspire new criminals, thus defeating the authors' purposes of eliciting fear of a faulty institution. The argument that the novels had the power to 'contaminate' society is ironically parallel to the argument that society contaminates individuals. Both novelists and critics use this rhetoric to describe the process by which ideas and feelings spread through society. However, the two notions cannot coexist in reader reception. If the reader accepts the authors' messages, then the institutions of governance are guilty of corrupting the very society they seek to regulate. If the reader agrees with the critics of the novels, he or she accepts the argument that these works are the source of moral contamination.

Crime fiction that glorifies the criminal was feared because it allowed readers to consider the point of view of a criminal capable of eliciting sympathy. An article in an 1847 issue of *The Examiner*, entitled 'The Moral Epidemic', details the threat of sympathy: 'There are moral pestilences which traverse the world precisely like the physical. The prevalent one in Europe and America at this time is a disease of the sympathies [...] the predisposing causes are several, – bad nourishment of the mind in romance reading, and the conceit of remodelling society upon principles of super-refined humanity, being the most common'.<sup>35</sup> This writer also draws upon the language of infliction, suggesting the dangers of sympathising with literature or literary characters and warning individuals against reading that could infect them.

This fear of contamination extends to conceptions of morality as well. Lyn Pykett notes, 'critics of Newgate fiction deplored its mixing of high- and low-life

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<sup>34</sup> See Lauren Gillingham, 'The Newgate Novel and the Police Casebook', in *A Companion to Crime Fiction*, ed. by Charles J. Rzepka and Lee Horsley (West Sussex: Wiley-Blackwell, 2010), pp. 93-104 (p. 94).

<sup>35</sup> Anon., 'The Moral Epidemic', *The Examiner*, 2074 (1847), p. 690.

characters, and the combining of high- and low-class characteristics in a single character. They objected to mixed motives and mixed morality, preferring the security of a moral universe in which the good and bad, the criminal and the law-abiding are readily identifiable as such'.<sup>36</sup> Comfort in a 'moral universe' requires established definitions of good and evil, and virtue and criminality. Therefore, the novels that stray from the norm and redefine these terms threaten the stability of the normative moral universe. The hybridity of high and low and good and evil that Pykett observes creates a character whose existence society denies. For Godwin, Bulwer-Lytton, and Ainsworth, however, this character reveals the problems with the system and the existence of outliers to the common, accepted belief.

Besides misreading criminality in the organisation of class, the critics attacked the language that glorified criminality, which Bulwer-Lytton addresses as a problem of interpretation. Foucault observes that in the nineteenth century 'there is a whole aesthetic rewriting of crime, which is also the appropriation of criminality in acceptable forms. In appearance, it is the discovery of the beauty and greatness of crime; in fact, it is the affirmation that greatness too has a right to crime and that it even becomes the exclusive privilege of those who are really great'.<sup>37</sup> To associate criminality with greatness threatens any sort of socially unified morality. Foucault elevates crime from the lower class and aligns it with a higher, 'greater' class of men. Additionally, by referring to aestheticism, Foucault notes both crime and crime fiction as an art. The art of crime emerges through the art of literature. Language therefore becomes a powerful tool in appealing to greatness. In *Paul Clifford*, Augustus Tomilson analyses language and reveals the capacity of misinterpretations in a flawed society. He says:

All crime and all excellence depend upon a good choice of words [...] If you take money from the public, and say you have robbed, you have indubitably committed a great crime; but if you do the same, and say you have been relieving the necessities of the poor, you have done an excellent action [...] We are never rogues so long as we call ourselves honest fellows, and we never commit a crime so long as we can term it a virtue. (pp. 120-1)

Interpretive meaning and word association demonstrates to the public how words can falsify intention, misguide perception, and misidentify subjects. The aestheticism of crime depends upon proper word association. These words can align crime with greatness or mislead the public, as Augustus claims they so often do. Bulwer-Lytton

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<sup>36</sup> See Lyn Pykett, 'The Newgate Novel and Sensation Fiction, 1830-1868', in *The Cambridge Companion to Crime Fiction*, ed. by Martin Priestman (Cambridge: Cambridge University Press, 2003), pp. 19-40 (p. 30).

<sup>37</sup> Foucault, *Discipline and Punish*, pp. 68-69.

thus shows the power of language to distort social perceptions and affect collective morality.

In addition, Bulwer-Lytton was aware of the other means of criminal representation and the effect they had on the public. As Pykett notes, 'Bulwer was particularly anxious about the competition from newspapers, asserting the superior moral and psychological complexity of fiction, and deriding the hypocrisy that deplored in the novel what was freely represented in the pages of the daily and weekly press'.<sup>38</sup> For Bulwer-Lytton, fiction has greater moral authority than other print media and is therefore necessary to fill the void left by newspapers that just publish descriptions of crimes. Bulwer-Lytton, like Godwin and Ainsworth, provides psychological motivations and reflects upon the moralistic access to the humanity of mechanised criminals. These authors also present the redemptive power of sympathy and moral identification with characters, distinguishing their novels from print media. The public therefore needs these crime novels to attain its moral education on criminality and realise the disjuncture between morality and legality.

Public definitions of criminality as a threat to morality contrast with the author's definitions of a criminal justice system that is itself immoral, creating tension between the author's piece and the public reception of the text. The novelists who tried to reform society by exposing its faults strived to define morality as a matter of sympathy rather than a system of contradictory codes and false reasoning. The laws are not morally rooted, but Bulwer-Lytton declares a hope to rectify this through Paul: 'Circumstances make guilt [...] let us endeavour to correct the circumstances, before we rail against the guilt!' (p. 509). This is Bulwer-Lytton's message and plea to his readers: cure society in order to cure criminality. However, with the backlash of scathing reviews, the fiction had to battle resistance to get its message to the public. Harsh criticism of the literature conflicted with the literature's harsh messages about society, leaving the nineteenth-century to judge the fiction as revealing, contaminating, or merely entertaining.

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<sup>38</sup> Pykett, 'The Newgate Novel and Sensation Fiction, 1830-1868', p. 32.

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## LEGAL QUESTIONS AND LITERARY ANSWERS: POOR LAW TAXONOMIES AND REALIST NARRATIVE TECHNIQUE IN HARRIET MARTINEAU'S *THE TOWN*

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### *Abstract*

This essay examines the ways in which Harriet Martineau's short novel *The Town*, commissioned as part of the *Poor Laws and Paupers Illustrated* series to popularise planned reforms that would become the New Poor Law, offered responses to the Old Poor Law's ancient practice of legislating poor relief using subjective categories for the poor: idle, able-bodied, deserving and undeserving. Martineau (1802-1876) and her contemporaries believed that the principles of political economy could inform policies that would alleviate the problems associated with flawed judgments of character. *The Town* dramatises the administrative challenges of the old law by showing how the knowledge and labour of a diligent and fair-minded public servant is insufficient for producing a just distribution of poor relief. Analysis reveals the ways Martineau's formal strategies both assist and complicate these efforts. Her construction of character responds directly to her contemporaries' interests in political economy and the morality of the poor in order to support calls for reform on both humanistic and scientific fronts. Specifically, examples demonstrate the text's use of a technique Martineau and later social problem writers adopt of acknowledging the limitations of individual social positions and imaginatively overcoming those limitations by employing a range of narrative focalisations. These strategies allow Martineau to engage readers' sympathy and other emotions, bringing the experience of reading to bear on arguments about the real-world challenges of poor law administration in urban communities. In so doing, this unlikely novel testifies compellingly to the importance of literary models for discerning salient qualities of character necessary to imagine social change and ultimately justice.

For all its importance to later social history, one of the earliest acknowledgments in British law that 'the poor' might include different sub-categories of people appears decidedly understated. In 1563, Queen Elizabeth's 'Acte for the Reliefe of the Poor' sets this idea – 'that idell and loytering [persons] and valiant Beggars may be avoyded, and thimpotent feble and lame [which] are the Poore in very dede, should bee hereafter relieved and well provided for' – as the groundwork upon which the foundations of responsibility for the relief of poverty would rest for hundreds of years.<sup>1</sup> Even more instructively, further within its provisions, a subcategory of the deserving poor emerges with the suggestion that alms should be distributed 'that the more impotent may have the more Helpe, and suche as can get parte of their Lyving to have the lesse, and by the discretion of the Collectoures to be put in such Laboure

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1 5 Elizabeth c.3 (1563), 4 Statutes of the Realm 411 (1547-1624).

as they bee fitt and hable to doo'.<sup>2</sup> In its acknowledgment that certain cases might require additional discretion and more diverse types of help, the law simultaneously acknowledges a more complex responsibility toward those individuals. So began the uneven efforts of government to accommodate the category of the able-bodied deserving poor.

Two and a half centuries later, when reforms to the Poor Laws had begun to seem urgent, it was partly because the apparent simplicity and usefulness of this procedure for the relief of poverty had come into question. In response to the mandate of the Elizabethan law, the 1834 *Poor Law Commission Report* offers several examples like the following, in which an officer, in this case the Reverend W. Bishop of Ufton, testifies to his inability to effectively distribute alms on the basis of such judgments:

When I first came to this parish, I instituted rewards for virtuous conduct amongst my parishioners, but I soon found that I did more mischief than good by the proceeding, and I was compelled to abandon it. I found that my parishioners, from their situation, knew more of the objects whom I selected for reward than I possibly could. They saw actions of which I could obtain no knowledge. With all my desire to do justice, there were actions which I forgot to take into account; and of those which I did take into account, they probably often made a more correct estimate than I could: under these circumstances, I probably was led to decide unjustly, and excited more ill feeling by my decisions than emulation by my rewards.<sup>3</sup>

Identifying 'the deserving' proves to be a complex problem. Somehow, he notes, even when his assessments are essentially correct, and even though he is searching for behaviours to reward, something about the poor's conduct and their motivations confounds an administrative response. Edwin Chadwick, the assistant commissioner who interviewed Bishop, insists that this experience is common: 'I did not find one magistrate of extensive experience, who had found it practicable to take character into account, except on rare occasions'.<sup>4</sup> The large abstractions both speakers employ are telling; the problems of legal classification assert themselves in their reluctance to offer anything resembling specific criteria or examples. In Bishop's case, it comes across as amusing, but also significant for a study of literary representations of legal reasoning, that he finds it less difficult to admit to this array of failures (including forgetfulness) than to put the specific materials of any single judgment of character within his audience's reach.

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2 5 Elizabeth c.3 (1563), 4 Statutes of the Realm 411 (1547-1624).

3 *Report from His Majesty's Commissioners for Inquiring into the Administration and Practical Operation of the Poor Laws* (London: B. Fellowes, 1834), p. 48.

4 *Report from His Majesty's Commissioners*, p. 48.

To those who sought scientific explanations for this mismatch between Elizabethan ideals and Victorian experience, the principles of political economy seemed to offer them, rearranging the old taxonomy so that the deserving and undeserving could be more productively considered as a sub-category of the able-bodied.<sup>5</sup> Gordon Bigelow, in an examination of the history of what we now call economics from the late eighteenth through the nineteenth centuries explains how ‘[the] emergence of economics as a social science was [...] predicated on the separateness of a thing called “the economy” from other forms of human judgment’.<sup>6</sup> In the discussion that follows I want to explore a specific – in some ways, awkward – moment in that narrative, when Harriet Martineau attempted to cast the thing called the economy as a distinct and primary ingredient for the human judgments involved in poor law administration, creating novels whose characters somewhat literally assert themselves as arguments about these same problems of legal classification: what makes people deserving, what makes it hard to tell, and the possibility of – in her view, the urgent need for – laws that could sidestep inevitably flawed judgments and mitigate the harm that they produced. In this aim, these novels may be seen to create for economic subjects a parallel of the trend outlined in Cécile Bertrand’s article in this issue of the early nineteenth century’s gradual separation between the legal and literary representations of criminal subjects.

In her earliest public writings, the *Illustrations of Political Economy* (1832-34) series and the later *Poor Laws and Paupers Illustrated* (1833-34), Martineau draws attention to exactly those questions of morality that earlier efforts to regulate the poor had maintained as primary but makes them secondary, exemplifying behaviours and attitudes as she saw them defined by a variety of economic laws. Scholarship on these texts has been increasingly abundant and insightful, focusing on multiple points of connection between the abstractions of her economic vision and her novels’ grounding in the social.<sup>7</sup> Although Gregory Vargo has situated the poor law novels’ support of reform within the trajectory of working-class radicalism, what has received less attention is the reflection of her economic vision in the novels’

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5 I am using the concept of taxonomy in a very general sense, to indicate the ways in which common practices of categorisation frequently assume a hierarchical structure with broader categories arranged above the sub-categories they include.

6 Gordon Bigelow, *Fiction, Famine, and the Rise of Economics in Victorian Britain and Ireland* (Cambridge: Cambridge University Press, 2003), p. 3.

7 See especially Lana L. Dalley, ‘Domesticating Political Economy: Language, Gender and Economics in the *Illustrations of Political Economy*’, in Ella Dzelzainis and Cora Kaplan, *Harriet Martineau: Authorship, Society and Empire* (Manchester: Manchester University Press, 2010), pp. 103-17; Brian P. Cooper “‘A not unreasonable panic’: Character, Confidence, and Credit in Harriet Martineau’s *Berkeley the Banker*’, *Nineteenth-Century Contexts*, 32.4 (December 2010), pp. 363-84; and Annette Van, ‘Realism, Speculation, and the Gold Standard in Harriet Martineau’s *Illustrations of Political Economy*’, *Victorian Literature and Culture*, 34.1 (March 2006), pp. 115-29.



arguments about equivalent ideals for legal practice.<sup>8</sup> At the same time, Martineau's interests in poverty, individual agency, and the relations between classes put her works at the beginning of a narrative that continues with the social problem fiction of the 1840s. Studies of that sub-genre have enhanced our understanding of the novels' interactions with the legal history and politics of the early Victorian period, literary conventions, public discourse and aesthetic values.<sup>9</sup> One of the most recent and important of these discussions is Carolyn Betensky's *Feeling for the Poor* (2010). Her central claims about the early Victorians' appetite for social knowledge and the ways that novels supplied it and 'volunteered the experience of their own reading as a viable response to conflicts that seemed daunting or irreconcilable'<sup>10</sup> thoroughly informs the reading I offer here and may arguably go further than Martineau studies have to explain the reading habits that made these novels wildly popular in their time and widely ignored afterwards.

Thus, although *The Town* (1834) is not well known, I turn to it here because, as a text from the series dedicated to popularising legal reform and political economy, it presents the parallels and disjunctions between the two discourses with particular clarity. Additionally, because of the novel's setting in a large urban parish and because the plot dramatises the administrative challenges of judging the poor in that context, *The Town* engages a valuable possibility of literature and law scholarship identified by Robin West: 'The empathic knowledge of others that narrative practices facilitate may provide a point of shared reference for moral criticism and growth, including moral criticism of law and its progressive reform'. This is particularly true, West continues, when that reform is 'made on behalf of those who have traditionally been excluded from the processes of law'.<sup>11</sup>

As one answer to the question of how narrative practices facilitate this knowledge on behalf of the poor, in what follows I trace the effects of a technique Martineau and other social problem novelists deploy throughout these fictions of recognising the range of readers' social positions by invoking a range of narrative

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8 Gregory Vargo, 'Contested Authority: Reform and Local Pressure in Harriet Martineau's Poor Law Stories', *Nineteenth-Century Gender Studies*, 3.2 (2007), <<http://www.ncgsjournal.com/issue32/vargo.htm>>.

9 Patrick Brantlinger, *The Spirit of Reform. British Literature and Politics 1832- 1867* (Cambridge, MA: Harvard University Press, 1977); Deidre David, *Fictions of Resolution in Three Victorian Novels, 'North and South', 'Our Mutual Friend', 'Daniel Deronda'* (New York: Columbia University Press, 1981); Kate Flint, *The Victorian Novelist: Social Problems and Social Change* (London: Croom Helm, 1987); Rosemarie Bodenheimer, *The Politics of Story in Victorian Social Fiction* (Ithaca: Cornell University Press, 1988); Josephine M. Guy, *The Victorian Social-Problem Novel: The Market, the Individual, and Communal Life* (London: Macmillan, 1996).

10 Carolyn Betensky, *Feeling for the Poor: Bourgeois Compassion, Social Action, and the Victorian Novel* (Charlottesville: University of Virginia Press, 2010), p. 1.

11 Robin West, *Narrative, Authority, and Law* (Ann Arbor: University of Michigan Press, 1996), p. 10.

focalisations. Shifting between focalisations allows readers to imaginatively overcome the limitations of individual positions, an effect similar to that theorised by Erica McCrystal elsewhere in this issue with respect to crime fiction: ‘authors create moral subjectivity through perspective and sympathy, allowing their fiction to prevail as a way to redefine a punished individual who can emerge as virtuous’ (p. 42). Shlomith Rimmon-Kenan explains focalisation as the presence of differently positioned voices in a text: ‘speaking and seeing, narration and focalisation, may, but need not, be attributed to the same agent. The distinction between the two activities is a theoretical necessity, and only on its basis can the interrelations between them be studied with precision’.<sup>12</sup> Within the argument of the novel, this complexity corresponds to three distinct rationales for legal reform: the disadvantages the unreformed system placed on the deserving and independent poor, the difficulties faced by officers in organised resistance by the opportunistic masses, and the entire community’s vulnerability to fraud, moral degradation and even violence at the hands of the worst of the idle poor due to the complexity and inconsistency of legal practices between and within parishes.

*The Town* provides a moving example of the interactions of principles of political economy and sympathy for independent poor through the story of John Waters, an honest and hard-working shoemaker who has lost his job because of policies against manufacturers’ abuses of the system. Waters himself defends these policies, citing principles of supply and demand: ‘[The employer] would have the preference, if he would sell shoes to the workhouse as cheap as other people do’.<sup>13</sup> Waters’s attitude of approval for a situation that directly disadvantages him recalls Catherine Gallagher’s discussion of William Allen, the tragic hero of Martineau’s novel *A Manchester Strike*, whose admirable qualities she reads as an argument that ‘strikes are not simply the result of quick tempers or vanity, but are, rather, one of the disastrous consequences of an overloaded labor market. Allen’s complete integrity is vital to the illustration of this economic causality’.<sup>14</sup> Waters’s poverty and his complete resignation in the face of the injustices that cause it serve as an analogous claim about pervasive corruption under the old poor law. Claudia Klaver has emphasised the reversal such a strategy represents: ‘For Martineau [...] the injunctions of political economy *themselves* constitute the groundwork of a new moral system’.<sup>15</sup> Klaver contrasts Martineau’s project with the work of other early nineteenth-century didactic writers like Hannah More and Jane Marcet, who

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12 Shlomith Rimmon-Kenan, *Narrative Fiction: Contemporary Poetics* (London: Routledge, 2002), p. 74.

13 Harriet Martineau, *The Town* (London: Charles Fox, 1834), p. 27. Further references are given after quotations in the text.

14 Catherine Gallagher, *The Industrial Reformation of English Fiction: Social Discourse and Narrative Form, 1832-1867* (Chicago: University of Chicago Press, 1985), p. 56.

15 Claudia Klaver, *A/Moral Economics: Classical Political Economy and Cultural Authority in Nineteenth-Century England* (Columbus: Ohio State University Press, 2003), p. 55.

attempted to reconcile political economy with conventional morality.

Gallagher's and Claver's attention to the ways in which the economic structures the moral comes at the end of a long tradition of regarding the stark contrast generated by that strategy as failures of realism and artistry. Edward Bulwer-Lytton's 1833 review entitled 'On Moral Fictions' suggests that each instalment of the *IPE* series is constructed as a new setting in which to demonstrate such oppositions in character, ignoring 'the diversities of mankind'.<sup>16</sup> More recently, Claudia Orazem concurs: 'The didactic purpose of her stories demands that a character is either good or evil, that a character's actions are either positive or negative [...]. Thus, Political Economy postulates an ultimately reductive view of the human being.'<sup>17</sup> Orazem offers Martineau some credit for a more deliberate effect, but also finally regards it as a failure.

What such readings at least partially ignore are the ways that descriptions of Waters's innate goodness and undeserved misfortune gather readers' sympathy. Inspiring it further, Waters is slightly disabled and walks with a limp, a detail that ought to make all other questions of his character redundant, since he represents the single point on which Elizabethan judgments of the poor agree with the Victorians'. Under the moral taxonomy that gives alms to all but sturdy beggars, the category of the undeserving implies a sturdy body. In a taxonomy that privileges economic criteria (like able-bodiedness) over moral, only the able-bodied are subject to classification as deserving or undeserving. To these points, Martineau adds another layer of redundancy, since Waters appears deserving to readers precisely because he refuses to accept most forms of parish relief. He articulates some of the finer points of this behaviour for his wife's benefit, urging her to 'make a distinction' when she questions the propriety of allowing their son to be apprenticed by the parish: 'Neither you nor I would go to the pay-table, or send our children into the work-house; but, our boy being growing up, and now idle for want of what we cannot do for him, it would be a sin not to take seasonable help in apprenticing him' (p. 28). Body and mind, Waters stands and speaks for the utter impossibility of Victorians to realise the ideals of their laws.

In another register, one that adapts Alex Woloch's theories of characters and space in the novel advanced in *The One vs. The Many*, the problem with Waters's goodness is not that it is reductive, but that it is in some sense structurally out of place. In this, his presence in the novel recalls Woloch's foundational example of the death of Lykaon in the *Iliad*, whose disproportionally brief story and death at the hands of Achilles are, in Woloch's terms, an 'instance of terrible luck that, in its very

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16 Edward Bulwer-Lytton, 'On Moral Fictions: Miss Martineau's Illustrations of Political Economy', *The New Monthly Magazine and Literary Journal*, 37 (1833), pp. 146-51 (p. 148).

17 Claudia Orazem, *Political Economy and Fiction in the Early Works of Harriet Martineau* (New York: Peter Lang, 1999), p. 112.

rarity, speaks powerfully to the essential nature of warfare'.<sup>18</sup> Analogously, all the development of Waters's character, with its resistance to being categorised, stands in for a similar and, as Martineau saw it, equally terrible rarity of moral and economic responsibility under the unreformed poor laws. Thus, the sympathy that Martineau generates around him may be said to have unusual energy, despite fairly unremarkable descriptions of his poverty that she produces.

Crucially, the representations of John and his wife that draw readers' admiration and sympathy are narrated from a perspective that readers are privy to while Mr Orger, the representative of the system of poor relief, is not. The first description follows him through the streets and into his home, where the reader learns from his wife that his hopes for reform under Orger's management are misplaced: 'Prissy sighed, and turned away. She had heard such hopes expressed too often; and her husband's spirits were invariably depressed in the greater proportion when the disappointment of such hopes arrived' (p. 27-28). Not even Waters knows his own real feelings. Because of this sense that Waters is both deserving and sympathetic, when, midway through the novel, Orger hires him to be the master of the workhouse school, the change at first seems to prove Prissy wrong, a satisfying reflection of the 'true' worth of his character and of the success of the reforms Orger represents. Yet it is precisely these views that the narration, especially when focalised through Orger, seems determined to withhold:

John Waters was rising in the world. He looked no happier than before, it is true; but every one wondered at this, as he was made master of the workhouse school. Just when he had become reduced to such poverty that he must have asked parish aid the next week, this appointment was given to save him the necessity. He was considered by Orger, and those whom Orger influenced, as proper a person for the situation as the parish was likely to afford, feeble and sunk in spirits as he was; but John had not so good an opinion of his own aptitude. He accepted the appointment, because he had no choice; tried to be delighted, because he saw that his wife was made happy; and went unwillingly into the school every day. (p. 115)

The passage moves from a focalisation on the public, complete with its cliché of upward mobility, to that of Orger and his bureaucratic counterparts, to Waters's own perspective. The assessment that Waters is *only* the best the parish can afford is jarring after earlier depictions of his character, the bald commentary on his feebleness and sunken spirits particularly unfeeling. Even the public is presented as capable of noticing his unchanged attitude, suggesting that the problem with Orger's view is that it is simply too procedural to leave space for sympathy.

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18 Alex Woloch, *The One vs. The Many: Minor Characters and the Space of the Protagonist in the Novel* (Princeton, NJ: Princeton University Press, 2003), p. 8.

Orger's inability to appreciate Waters's full worth and his suffering is emphasised later, when Waters is physically attacked by his workhouse students and furiously quits. To be fair, in his raging, he fails to report the attack, and complains instead about on-going indignities. Still, when the focalisation shifts to Orger's perspective, it describes him as mildly shaking his head 'in a state of wonder that he should have got a man of so violent a temper appointed to the school' (p. 122). Later, Orger tries to get Waters to focus on calmer topics, and at one point comments blandly, mock-omnisciently, that '[he] believed, if the parish was canvassed, there would be universal testimony to Waters's desserts' (p. 128). The effort to calm him backfires, and in the diatribe that Waters lets loose, the realities of his situation present themselves as fully adequate for a certain amount of desperation:

Then why has my life been what it has been, sir? The natural wages of my employment have been deranged by the plotting and managing as to supplying the workhouse with shoes. It has been impossible for us to live in a neighbourly way among the people of the parish, helping one another as we should; for they have all run to the parish for what help they wanted, and had none to give us without hire. And did not they inveigle my boy to taste gin first, and now, they say – But *I* say that if he has done any thing much amiss, it is owing to the deceit and plotting he came to a knowledge of among his neighbours [...]. How does it signify what the parish thinks of me, if this is the way it treats me? (p. 128)

To the question of his desserts in the abstract, Martineau responds by having Waters interrogate, then lecture the representative of the system directly, producing one of the most comprehensive descriptions of its failures in the entire novel. Several elements are new information for readers and Orger alike, most notably the corruption of the young and broken references to deceit and plotting that will only be clarified for readers and characters alike much later. The strategy of building toward this fuller representation in violent plotting, effectively driving an otherwise gentle teacher and father to these complaints, argues more fully than the complaints themselves that the system to which he is subject is finally not just incapable of producing just desserts for individuals (as in the arguments of Rev. Bishop), but incapable of imagining them.

Simultaneously, however, descriptions of Orger's job performance and reactions to his official reappointment suggest strongly that he is aware of the failures of the system for Waters and others like him; several commentaries by characters represent him as a diligent and fair-minded public servant. In the first of these, the focalisation is external: 'Orger's re-appointment was not carried quite so easily. He was too active and determined an enemy to abuses to be any favourite with those who profited by abuses, and great efforts had been made to fill the church with his

enemies to the exclusion of his friends' (p. 12). Although this reporting of the event includes commentary on the opinions of those who oppose him, the opinions are represented as distinct from the reporting, and the behaviours associated with the opposition (to both Orger and the dominant ideology of the narrating agent) are clearly presented as unethical. A bit later, the narration represents the workhouse residents' reaction to Orger's reinstatement:

For another whole year, at least, the paupers must submit to be under the eye of one who knew all their circumstances, and kept a close watch over all their proceedings. All the devices which had been planned to be put in practice against a new officer must be laid aside for an entire year. Nothing better than work, food, clothing, and lodging was to be expected from the parish for twelve whole months. It was a severe disappointment. (p. 18)

The syntactical exaggerations of 'all their circumstances [...]. Nothing better' and 'twelve whole months' invoke a group psychology, while references to proceedings and devices suggest widespread opportunism. As Vargo emphasises, 'Martineau's engagement with arguments about the right to relief helps her anticipate the difficulty local authorities will have implementing the law over community resistance'.<sup>19</sup> Although the outlines of what is being conveyed here appear similar to those in the previous example, in truth the second passage conveys very different information. In this unguarded moment the reader gets a glimpse of the reality of the system's vulnerabilities: another elected officer would have even more problems. Still, the attitudes remain, and they triumph; the election that ends the novel is successfully stacked against Orger.

Martineau, importantly, seems careful to demonstrate that Orger is not lacking an appropriate understanding of political economy. In fact, one way of reading the novel is as an elaborate argument in Orger's defence, one in which Martineau uses the forms of fiction to argue for the impossibility of anyone's succeeding under the problematic pre-reform poor laws. In this way, her novels reproduce but also complicate the arguments of the *Poor Law Commission Report*, where, in addition to the commentaries with which I opened this discussion, Chadwick argues that 'it is not surprising that persons in wealthy or superior stations, who have rarely the means of observing or knowing the daily arts of the labouring classes, usually fail of estimating them'.<sup>20</sup> Orger isn't wealthy, but the novel does take pains to show the ways that the rationale for judgment necessitated by his isolated position in the unreformed system of relief is inadequate for the kind of justice the old poor laws were intended to produce. Even officers as worthy as Orger will consistently fail to 'estimate' the labouring classes.

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<sup>19</sup> Vargo, 'Contested Authority', para. 10.

<sup>20</sup> *Report from His Majesty's Commissioners*, p. 48.

In this blurring of the effects of status and legal role, Orger provides a provocative application of Carolyn Betensky's construct of 'moral capital' to the interdisciplinary study of literature and law. If, as Betensky posits, moral capital is bestowed 'proportionally to a character's will to know and inversely to the extent of his or her knowledge', how does Orger fare?<sup>21</sup> The narrative shows him incorporating a certain amount of hesitation into his efforts at knowing the 'daily arts' of the poor:

No one was less disposed to play the spy than Orger. He was so scrupulous as to turn away his head when he passed the windows of humble houses, – windows too humble to have shutters or blinds. He felt uneasy when, by any chance, he saw a family collected in the firelight, or was an involuntary witness of any whipping or scolding of little boys who would not go to bed, or of the mother's caresses of her infant while preparing it for its rest. But he considered as fair subjects of observation, the comfortably housed who might close their shutters, and yet took their dessert in that which is called the dark hour, when there is gloom enough without to hide the observer, and light enough within to display the observed; and, yet more, the indigent, who, having put themselves under his care, with the profession of making him the guardian of their affairs, could properly have nothing of their daily proceedings to conceal from him. (pp. 55-56)

Is the poor law officer the exception that proves the rule about ideals of knowing the poor? The list of sights he is uncomfortable about seeing seems tellingly directed toward readers' sympathy, yet Orger, an apparently sympathetic man, imagines them to be inappropriate for his own, official, perspective. In such a system, admirable qualities like independence and humility actually unfit individual cases like John Waters's for the care to be bestowed by Orger's office, while the echo of 'proceedings' in this passage and the one above stresses the impossibility of anyone's effectively monitoring the demanding masses.

In *The Town*, Martineau is trying to show that there is a real problem with the system of poor relief in large cities, and that Orger's competence and Waters's independence mean that the failures of that system to deliver justice are not to be assigned to corrupt overseers or inherent immorality among the poor. That some poor are immoral is made clear, yet representative characters from that category are not, in the examples we've seen, afforded the same kind of individualised 'space' in the narrative, in Woloch's terminology, as John Waters.<sup>22</sup> Where this pattern is discontinued, moreover, the point is less about categorising the poor and more about advancing another rationale for reforming the system: namely, that the varieties of

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21 Betensky, *Feeling for the Poor*, p. 32.

22 Woloch, *The One vs. The Many*, p. 12.

poor law practice between and within parishes had multiplied to a point where only the fraudulent would be motivated to master it. Martineau mirrors this complexity through focalisations that stop short, shift and redirect readers' views, denying them purchase on character qualities and motivations for characters' actions. Whether or not she may be seen in this strategy to advocate for a centralised administrative body alongside simpler and more consistent laws (Vargo contends she does not) is finally less important for my purposes than the way that such centralisation might map onto an unproblematic consistent focalisation that the text does not offer.<sup>23</sup>

The multiple focalisations come to bear on Orger's – and everyone's – failure to recognise a monstrous criminality in their midst in the form of a pauper named Pleasance Nudd. Nudd is revealed in the end of the novel to be a competent manipulator of the system as well as a miser who has, the narrator suggests, effectively stolen from everyone in the parish through her constant pleas for relief. At all times, basic questions of her intelligence, sanity, motivations, morality – in short, all the stable qualities of realist characters – veer between possibilities depending on the situation and focalisation from which her appearance is narrated. Her age and gender are very nearly ambiguous. While pronouns clarify that she's female, she is frequently referred to as a 'creature'. Though there are hints that she is elderly, she seems not to have any personal history, and comes across as much more able-bodied than Waters.

Although the inadequate and inconsistent descriptions of Nudd could be identified as weaknesses in Martineau's characterisation techniques, they continually appear in the novel alongside an emphasis on characters' missed opportunities to judge her. In the scene when she is introduced, the vicar observes her among some children playing near the church; he 'always supposed' that she 'amused herself, as other idle people are fond of doing' by tending to them (p. 15). The focalisation shifts to a more omniscient perspective, however, to report that the children seem noticeably *untended* on that day. Eventually, readers will understand that the Vicar has seriously underestimated her intellect as well as her interest in the politics going on inside the church, a pattern that repeats itself in observations of her by several other characters in the scene, even as she observes their activities attentively:

The vicar at that moment, however, recognised her pale smiling face, under her large shabby black bonnet with its faded pink lining, – that half-smiling face which everybody in the parish knew, – peeping through the lowest lattice of the church window which was opposite to him. Mr. Thorn presently after saw it in another direction; and every one who happened to be in full view of a window, was aware of the same bonnet before the business was done. Nobody thought much about this, or cared at all, for Pleasance was known to be every where; and the only concern felt was that so much parish money should be spent on

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23 Vargo, 'Contested Authority', para. 12.



Pleasance Nudd's shoe leather. (p. 16)

Here again, individual assessments blur into a group perspective, even to the point of limp jokes about Nudd's wearing out her shoes by constant wandering. By the end of the novel, however, Nudd understands the subjects of the discussion in the church better than many characters and far better than readers, as she proves herself capable of negotiating, even manipulating the laws of poor relief to her own and others' benefit. In the scene when Orger spies on the indigent, the object of his observation is Nudd, who is forging documents that will allow her and her friends to get more relief than they have properly been awarded. Later she orchestrates an elaborate scheme to defraud a nearby parish under settlement law and tries to blackmail one of Orger's superiors by threatening to have him named as the father of an illegitimate child.

In detailing these efforts, Martineau uses focalisations to hint at the most serious problem lurking behind the characters' limited perspectives: Nudd is aware of social positions and takes advantage of them, a gremlin in the machinery of the unreformed poor laws. In the forgery scene, when Orger comes into the room, Pleasance begins to act as though she were mentally disabled. Others support her in these performances; anonymous voices report that '[she] was always scribbling and scrawling with every pen that she could lay hold of' (p. 65). Orger plays along to his own purposes; when she is found to have a significant sum of the parish's money in her possession, he takes it from her on the grounds that actual food would serve her pretended intellect better.

Similar manipulations and the serious problems of 'reading' Nudd's character come to the surface in a shocking moment when she strangles a new-born infant. The crime is fully witnessed by the vicar:

He stood with his back to the fire [...] and, as it happened, in sight of a looking glass which slanted from the wall, reflecting the greater part of that corner of the room which the drawn curtains otherwise concealed. The first accidental glance showed him Pleasance, in such an attitude, and with such a countenance as not only fixed his attention but made him grasp Mrs. Burcham's arm that she might see it too. Pleasance sat on the side of the bed, holding something at arm's length on her knees, and staring at the wall, her lips compressed, and her face paler, if possible, than ever. That which was covered up on her lap certainly moved. (p. 136)

Here, the mirror mimics the effects of the narrative's earlier focalisations, so that the vicar, Mrs Burcham, and readers all catch Nudd in a completely unguarded moment. Because she thinks she is concealed, something close to her interior character is revealed in the grisly description of her capabilities. As soon as the vicar goes over to her, her performance is back on: 'He could scarcely perceive that she started. Even

now she could smile. Before she had time to drawl, he had pulled aside her apron, and found, – what he had expected, – a dead infant, – strangled; – the string still round its neck’ (p. 137). In contrast to the shifting judgments of Nudd, the striking directness of the last descriptions suggests an unambiguous verdict: the entire community’s failure to estimate Nudd has left its most vulnerable member unprotected.

What kind of resolution is possible, given these problems of seeing and judging? What kind of resolution is strategic, given the arguments for economic and moral reassessments of law they support? *The Town* ends with Nudd’s arrest and trial, a rigged election, and some hints of domestic rewards. In the first of these, the law too proves to be subject to her manipulations: ‘Many who had before given her credit for a sufficient portion of sense, now doubted, – so vacant and quiet was her countenance as she walked on. It seemed incredible that any conscious person could look so, who had felt such a quiver and convulsion as had taken place under her hands within an hour’ (p. 138). When she is revealed to be a miser and her hoarded funds are taken from her, one character states that ‘[she] was so vexed at our finding it out, that you would hardly have taken her to be so wrong in the head as the judge and jury found her’ (p. 157). Thus, although the trial does, as Alison Moulds suggests elsewhere in this issue, serve as a ‘compelling plot device, where private narratives and marginalised characters finally [come] to the fore’ (p. 67), the verdict that Nudd is a lunatic represents not a victory of community judgment, but its continued absence.

The election itself occurs without commentary, but it rearranges relationships. Orger visits Miss Barbara Watson, a nurse in the local infirmary, to tell her that he is moving away. Although they agree that he may yet succeed in a less corrupt environment, he comments gloomily that his continuing search for a place where he can put his efforts into effect leaves little room for personal relationships. He explains the problem with a degree of specificity that invites interpretation: ‘I never change my friends [...] but how do I know what they may think of me, or how they may forget me, if I do not get on in the world, and live at a distance, and leave room for somebody else to fill my place?’ (p. 169) When Barbara points out that he can return to visit, he immediately interprets her comment as an invitation to continue their courtship, but also as a remedy for the problems of distance and perspective he identifies.

Waters’s son Tom is sent away to the country to be a servant. Although the position is to be unpaid until Tom has learned the tasks required, his mother views the opportunity to escape the corruption of the town as more beneficial to the boy than wages (p. 164). That this conclusion is contrary to what Waters himself expressed to his wife earlier in the novel underlines the truth about failed laws that has revealed itself in the tragedies of the story. Although Waters is himself returned to some prosperity with the restoration of the inflated contract between the workhouse and his

former employer, his wife is sceptical: 'there are many that cannot help giving much weight to what the Vicar and his party say about what is likely to become of us; but it is a great thing to us to have the making of the shoes for the workhouse again' (pp. 166-7). Here, as in the promise of Orger and Barbara's courtship and Tom's 'adoption' into a country household, private economies and affectionate domestic spaces serve individual flourishing, anticipating the resolutions of social problem novels in the decades to follow. Simultaneously, however, the shifting of the referents of Mrs Waters's two uses of 'us' signifies the lesson in political economy that she is unconsciously neglecting, namely – Martineau would assert – that there is no real or lasting 'private' benefit to be had when the normal operations of the market are tampered with. In this, the end of the novel may appear doubly unsatisfying: against the failures of reform in the public sphere, the success of the interpersonal is merely an appearance. Yet if one function of narrative is simply, as Patrick Colm Hogan argues, 'to broaden associations beyond the familiar, the immediate – to change and expand what is salient',<sup>24</sup> then perhaps Martineau's achievement is not the relative positioning of truths, but the simple fact of their juxtaposition.

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24 Patrick Colm Hogan, *Affective Narratology: The Emotional Structure of Stories* (Lincoln: University of Nebraska Press, 2011), p. 244.

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## THE FEMALE WITNESS AND THE MELODRAMATIC MODE IN ELIZABETH GASKELL'S *MARY BARTON*

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### *Abstract*

This essay examines Elizabeth Gaskell's use of the 'courtroom scene' in her debut novel *Mary Barton* (1848), focusing on the testimony delivered by the eponymous heroine. It situates the passage in the wider context of real-life nineteenth-century court cases, and subsequent criticism about the relationship between legal proceedings and realist fiction. Countering claims that Mary's appearance has a chiefly didactic purpose or that it is simply a leaden part of an otherwise dramatic scene, it argues that her role in the proceedings has an inherently melodramatic appeal, which Gaskell exploits. Reflecting on the way in which the courtroom is cast as a liminal space between the public and private spheres, this essay interrogates the ways in which Mary's aims – to protect Jem Wilson and conceal the identity of the real murderer (her father) – necessitate both the discourse of emotion and an act of deceit. It examines the ways in which Mary may be seen as a 'performer', telling a feminised 'love' story cast in the melodramatic mode. Arguing that Mary uses the genre to both forestall expectation and guy it, this paper looks at the ways in which Mary's tactics may mirror Gaskell's own strategies as a first-time female novelist.

For the Victorian reader, 'the confrontational arena of the courtroom provided an ideal setting for sensation'.<sup>1</sup> Both the press and popular fiction seized on the adversarial trial format – in its infancy in the mid-nineteenth century – as a mechanism for exploring conflict between individuals, and the individual and society. While journalists delighted in gratuitous accounts of real-life crimes, realist and sensation authors employed the trial scene as a compelling plot device, where private narratives and marginalised characters finally came to the fore. Both fiction and non-fiction capitalised on the public appetite for salacious details of private scandals.

In choosing to introduce a 'courtroom scene' to her debut novel, *Mary Barton* (1848), Elizabeth Gaskell was self-consciously turning to a trope already saturated with melodramatic and sensationalist connotations, participating in a mode of representation which would become only more ubiquitous in the following decades.

Yet the dramatic potential of *Mary Barton*'s courtroom scene has been neglected, even wholly negated. Whilst Laura Struve acknowledges that Mary's public appearance is both 'dramatic and compelling',<sup>2</sup> she fails to expand upon this.

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<sup>1</sup> See Michael Diamond, *Victorian Sensation: Or, the Spectacular, the Shocking and the Scandalous in Nineteenth-Century Britain* (London: Anthem Press, 2003, repr. 2004), p. 5.

<sup>2</sup> Laura Struve, 'Expert Witnesses: Women and Publicity in *Mary Barton* and *Felix Holt*', *Victorian Review*, 28.1 (2002), pp. 1-24 (p. 3).

Her analysis of *Mary Barton* and George Eliot's *Felix Holt, The Radical* (1866) is chiefly concerned with demonstrating that the heroines of both novels prove themselves to be 'good witnesses', whilst assuaging the threat to femininity and respectability that their public appearances pose. Ultimately, Struve portrays Gaskell as a didactic novelist, who uses the courtroom scene principally to exemplify the emotional and moral maturation of her heroine.

Richard Altick obscures the dramatic potential inherent in Mary's public appearance altogether, claiming that the 'most serious defect' of the passage is Gaskell's failure to capitalise on the anticipation surrounding the eventual arrival of Will Wilson. Furthermore, he reproaches Gaskell for using 'wordy' language in the scene, which he feels dissipates 'most of the dramatic tension'.<sup>3</sup>

Yet it is in the 'wordy' language of the courtroom scene, as much as in the action, that Gaskell achieves her purpose. Whilst the trial clearly functions to further both plot (as Altick feels it should) and characterisation (as Struve believes it does), Gaskell's aim is arguably to explore the tensions inherent in Mary's testimony; for the way in which the trial marks Mary's debut as a public woman in an androcentric arena arguably reflects the fact that *Mary Barton* was Gaskell's inauguration as a first-time female novelist participating in a traditionally masculine genre. Ultimately, Gaskell uses her courtroom as a cynosure for the dramatic conflict between private and public spheres, thus rendering it a 'perfect setting for sensation'.

Conventionally, there has been a tendency to delineate discrete 'private' and 'public' plot strands in *Mary Barton*, a reading undoubtedly borne out of a desire to reflect the Victorian milieu in which Gaskell wrote. The nineteenth century has popularly been characterised as one dominated by a conception of separate private and public spheres. This pervasive ideology traditionally equated public activities with men, whilst relegating women to the confines of the private or 'domestic' sphere. In 'Of Queens' Gardens', for example, John Ruskin contrasted men's 'rough work in the open world' with the home 'ruled' over by the woman.<sup>4</sup>

Many traditional readings of *Mary Barton* have portrayed Gaskell as replicating (even perpetuating) this ideology, by preserving a distinction between her public and private plotlines. In *Culture and Society*, Raymond Williams contrasted the story of John Barton with that of Mary Barton, perceiving the former as a more masculine, 'public' narrative, and the latter as a more 'feminine', private plotline. Indeed, Williams pejoratively portrayed the novel's trajectory as a retreat from the public to the private; from a 'Condition of England' social critique, to that 'familiar and orthodox plot of the Victorian novel of sentiment', one of 'little lasting interest'.<sup>5</sup>

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<sup>3</sup> Richard D. Altick, 'Dion Boucicault Stages *Mary Barton*', *Nineteenth-Century Fiction*, 14.2 (1959), pp. 129-41 (p. 140).

<sup>4</sup> John Ruskin, 'Of Queens' Gardens', in *Sesame and Lilies: Two Lectures*, 2nd edn. (London: Smith & Elder, 1865), pp. 147-8.

<sup>5</sup> Raymond Williams, *Culture and Society, 1780-1950* (London: Chatto and Windus, 1959), p. 89.

Gaskell's decision (albeit at the insistence of her publishers) to amend the novel's title from *John Barton* to *Mary Barton* has been seen as evidence of this.<sup>6</sup>

Whereas Williams implicitly denigrates Mary's plotline, more recent criticism, particularly of the feminist school, has called for a revaluation of her story. These readings have instead portrayed Gaskell as *undermining* the dominant ideology of her day by demonstrating the ways in which the heroine's 'private' (or romantic) plotline can be reconciled and integrated with the 'public' (or social) concerns of the novel. Shirley Foster, for example, refutes the suggestion that this 'is a "purpose" novel with a sentimental subplot added on',<sup>7</sup> while Hilary Schor presents Mary's plot as a 'jumbling of public and private'.<sup>8</sup>

Significantly, these interpretations continue to acknowledge the contrasting narrative impulses in the text; for rather than artificially effacing the fact tensions *do* seem to exist within the novel, one can instead argue that Gaskell purposefully introduces both sentimental *and* social narrative tropes to her text. Indeed, the final title *Mary Barton: A Tale of Manchester Life* seems to gesture towards the coupling of both a feminised, private plotline, and a broader, socially reflective narrative.

Nowhere do the public and private (or social and sentimental) concerns of *Mary Barton* seem to coalesce quite as potently as in the murder plot and ensuing trial. The ways in which Gaskell quite consciously merges her narrative strands at this point can be illuminated by studying one of the possible real-life antecedents to Gaskell's plot: the murder of Thomas Ashton in 1831. Although Gaskell denied basing her narrative on this incident,<sup>9</sup> the similarities seem so pronounced that it is difficult not to concur with Judith Flanders' view that Gaskell 'used reality as the basis for her [...] art'.<sup>10</sup> For the real-life incident (like Gaskell's plot) involved the shooting of a mill-owner's son in the area now defined as Greater Manchester.<sup>11</sup> Further, the eventual trial three years later revealed a motive seemingly inspired by industrial unrest, which resembles John Barton's own.<sup>12</sup> Although the Ashton murder and trial took place more than a decade before Gaskell began *Mary Barton*, the fact it 'caused a sensation among all classes' (generating almost 27,000 words of coverage

<sup>6</sup> See Williams, *Culture and Society*, p. 89.

<sup>7</sup> Shirley Foster, 'Introduction', in *Mary Barton* (Oxford: Oxford University Press, 2006), pp. vii-xxvi (p. xix).

<sup>8</sup> Hilary M. Schor, *Scheherazade and the Marketplace: Elizabeth Gaskell and the Victorian Novel* (Oxford: Oxford University Press, 1992), p. 15.

<sup>9</sup> See Foster, 'Introduction', p. xvi.

<sup>10</sup> Judith Flanders, *The Invention of Murder; How the Victorians Revelled in Death and Detection and Created Modern Crime* (London: Harper Press, 2011), p. 87.

<sup>11</sup> See Anon., 'Murder of Mr Thomas Ashton', *The Morning Chronicle*, 19149 (11 January 1831), p. 1.

<sup>12</sup> See Anon., 'Trial and Conviction of the Murderers of Thomas Ashton, Esq. of Pole-Bank, near Hyde', *Preston Chronicle* 1146 (16 August 1834), p. 4.



in the *Manchester Guardian* alone) suggests it would have left an impression on her mind.<sup>13</sup>

While seemingly influenced by the Ashton case, Gaskell also clearly *departs* from this precedent, by depicting a trial which never elucidates the ‘masculine’ social motives behind the murder but rather dwells upon an emotionally charged ‘feminine’ love story. Furthermore, whilst women gave evidence at the Ashton inquest, female witnesses appear to have been absent from the trial itself, in an androcentric courtroom scene markedly different from Gaskell’s. Whether one believes that Gaskell appropriated the basic Ashton narrative for her own ends, or that she inadvertently mirrored real-life events, it is nevertheless clear that she made a deliberate decision to introduce both her domestic narrative and her heroine to a trial scene which *could* have been written quite differently.

Gaskell’s decision to incorporate a courtroom scene in the novel is highly significant, given that the adversarial trial format was still in its infancy in the 1840s. In this edition of *Victorian Network* Cécile Bertrand usefully highlights the way in which popular discourse on criminal justice had hitherto centred on the ‘spectacle of the scaffold’ (p. 14). As Lindsay Farmer argues, the courtroom only began to assume its important symbolic function in the early nineteenth century, when the trial replaced the scaffold as ‘the principal symbol of criminal justice’.<sup>14</sup> Farmer depicts the 1836 Prisoners’ Counsel Act as laying the foundations for the ‘reconstructive’ or adversarial trial, as it granted all those accused of felonies the right to a full legal defence. This arguably established the sort of trial with which we are now familiar: one framed as a ‘contest between two sides’, with the purpose of arriving at a verdict ‘based on proof beyond reasonable doubt’.<sup>15</sup> It is important to acknowledge that the principle of full defence for defendants – with barristers able to address the jury on behalf of prisoners – had been controversial, sparking debates about the capacity of ‘truth’ to speak for itself and the status of professional ethics.

*Mary Barton* is set only a few years after the passage of this legislation, and thus it is perhaps surprising that Jem’s defence counsel plays a relatively minor role in the proceedings. His lawyer seems to avoid any serious cross-examination, and is apparently so poorly paid and ill-advised that he has ‘little hope of establishing anything like a show of a defence’ and instead ‘contented himself with watching the case’.<sup>16</sup> Although he is eventually buoyed by Will Wilson’s arrival, he is largely invisible during Mary’s appearance. This characterisation may be intended as a

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<sup>13</sup> See Flanders, *The Invention of Murder*, pp. 85-6.

<sup>14</sup> Lindsay Farmer, ‘Trials’, in *Law and the Humanities: An Introduction*, ed. by Austin Sarat, Matthew Anderson, and Cathrine O. Frank (Cambridge: Cambridge University Press, 2010), pp. 455-77 (p. 458).

<sup>15</sup> Farmer, ‘Trials’, p. 459.

<sup>16</sup> Elizabeth Gaskell, *Mary Barton* (Oxford: Oxford University Press, 2006), p. 316. Further references are given after quotations in the text.

criticism of the new system's efficacy but, more significantly, it ensures that the early part of the proceedings are not so much a spar between professional representatives as between Mary and the prosecuting counsel.

By explicitly introducing the defence counsel, but then almost assuaging his purpose altogether, Gaskell clearly positions her protagonist centre stage in Jem's defence. This heightens the sense of Mary's transformation into what Struve terms a 'public woman'.<sup>17</sup> The symbolic purpose of the protagonist's appearance at the trial has been widely acknowledged: Robin Colby proposes this as the moment when the 'industrial novel' form is recast in order to 'affirm [women's] fitness for participation in the public sphere'.<sup>18</sup> Whilst this 'participation' may seem largely antithetical to the Victorian imagination, it should be emphasised that the female witness was nevertheless a unique example of the 'public woman'. For whilst women's attempts to participate in other activities in the 'public' sphere – politics or commerce, for example – could be regarded as an unwanted and unsolicited incursion, the justice system *depended* upon female involvement as witnesses (and, in some cases, defendants).<sup>19</sup> Although Schor insists Mary's appearance moves 'beyond normal spheres of action for a woman in a novel',<sup>20</sup> her transgression is in fact socially sanctioned: Mary is explicitly called to act as a 'public woman', as symbolised by the subpoena she receives.

While evidence law clearly opened up possibilities for women to engage with legal proceedings, on a practical level, many would have been barred from doing so. During this period, spouses of the accused were still considered incompetent witnesses and one may thus assume that many women well-placed to provide evidence would have been excluded from doing so.<sup>21</sup> Moreover, if one interrogates the gender dynamics of the nineteenth-century courtroom further, one finds considerable unease about women's fitness to participate in proceedings more generally. Kruger examines trial scenes in a number of mid-nineteenth-century novels from female writers (including *Mary Barton*) and locates a recurrent theme: the inability of the masculine legal system to comprehend women's speech. In these novels, she argues, women's testimony is 'deemed unintelligible, condemned as

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<sup>17</sup> Struve, 'Expert Witnesses', p. 10.

<sup>18</sup> Robin B. Colby, *'Some Appointed Work to Do': Women and Vocation in the Fiction of Elizabeth Gaskell* (Westport, CT: Greenwood Press, 1995), p. 33.

<sup>19</sup> The number of female defendants declined considerably between the late 1600s and early 1900s. At the Old Bailey only 22 per cent of defendants were women in the early nineteenth century, and by the early twentieth century the proportion had declined to just 9 per cent. See Clive Emsley, Tim Hitchcock and Robert Shoemaker, 'Historical Background – Gender in the Proceedings', *Old Bailey Proceedings Online*, <<http://www.oldbaileyonline.org/static/Gender.jsp>>.

<sup>20</sup> Schor, *Scheherazade and the Marketplace*, p. 38.

<sup>21</sup> See Jan-Melissa Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Theology* (Cambridge: Cambridge University Press, 2000), p. 103.

“saucy”, or misconstrued as an admission of guilt’.<sup>22</sup> The authors are seemingly exposing entrenched prejudices about women’s capability to deliver testimony, of the type expressed by Victorian lawyer John Pitt Taylor, who characterised ‘proneness to exaggerate’ as an inherently ‘feminine weakness’.<sup>23</sup>

Yet while such prejudices undoubtedly persisted, there was clearly a concerted effort to accommodate the notion of the female witness. Taylor, for example, went on to concede that ‘in other respects, the testimony of women is at least deserving of equal credit to that of men’; moreover, he proposed that they might even be ‘in some respects far superior witnesses’.<sup>24</sup> He suggests that they are generally ‘closer observers of events than men’ and that their memories are ‘usually more tenacious’.<sup>25</sup> A modern reader may balk at his condescending suggestion that a woman’s tenacity is largely due to the fact her mind is ‘less loaded with matters of business’ and that he grants women only ‘unrivalled powers of simple and unaffected narration’.<sup>26</sup> Yet by imbuing women with reliability and coherency, he seems to implicitly repudiate any suspicion that they may be too hysterical to participate.

Taylor’s conflicted portrayal of the female witness is perhaps an inevitable by-product of an age in which both legislation and the judiciary were resolutely androcentric.<sup>27</sup> To characterise the Victorian courtroom as a contested space is by no means anachronistic, for there were fierce contemporary debates about the role of women in the legal sphere. Indeed, Kruger situates Gaskell’s novel at a particularly charged moment, when there were both changes in jurisprudence ‘disadvantageous to women’ and the ‘beginnings of a concerted feminist assault on women’s legal handicaps’.<sup>28</sup> The male bias of the law was railed against by a number of commentators, including Gaskell herself, who once wrote ‘our sex is badly enough used and legalised against, there’s no doubt of that’.<sup>29</sup> Three years after the publication of *Mary Barton*, Harriet Taylor specifically attacked the all-male composition of juries in ‘The Enfranchisement of Women’.<sup>30</sup> Commentators

<sup>22</sup> Christine L. Kruger, ‘Witnessing Women: Trial Testimony in Novels by Tonna, Gaskell and Eliot’, in *Representing Women: Law Literature, and Feminism*, ed. by Susan Sage Heinzelman and Zipporah Batshaw Wiseman (Durham, NC: Duke University Press, 1994), pp. 337-55 (p. 338).

<sup>23</sup> John Pitt Taylor, *A Treatise on the Law of Evidence, as Administered in England and Ireland* (London: A. Maxwell & Son, 1848), p. 53.

<sup>24</sup> Taylor, *A Treatise on the Law of Evidence*, p. 53.

<sup>25</sup> Taylor, *A Treatise on the Law of Evidence*, p. 53.

<sup>26</sup> Taylor, *A Treatise on the Law of Evidence*, p. 53.

<sup>27</sup> It was not until the twentieth century that this male bias began to be disassembled. In 1919, the Sexual Disqualification (Removal) Act enabled women to enter the legal profession, serve on juries (though only if they were householders) and become magistrates.

<sup>28</sup> Kruger, ‘Witnessing Women’, p. 338.

<sup>29</sup> Elizabeth Gaskell, qtd. in Kathleen Loncar, *Legal Fiction: Law in the Novels of Nineteenth Century Women Novelists* (London: Minerva Press, 1995), p. xiv.

<sup>30</sup> Harriet Taylor, ‘The Enfranchisement of Women’, in *The Disenfranchised: The Fight for Suffrage*, ed. by M. Mulvey Roberts and T. Mizuta (London: Routledge and Thoemmes, 1993), pp. 1-

repeatedly returned to the idea that women were not only being marginalised, but indeed denied justice, through their exclusion on the grounds of gender.

In turn, there was also a wave of condemnation of female interest in criminal proceedings. The content of legal trials was considered particularly unsuitable for female consumption. In Wilkie Collins' *The Law and the Lady* (1875) – a novel which derives much of its sensational appeal from supposedly antithetical elements (the 'law' and the 'lady') coming together – Valeria Woodville tells her uncle that she means to read the transcripts for the trial involving her husband, and is met with reproach. Her uncle replies, 'Nice reading for a young woman! You'll be wanting a batch of French novels next'.<sup>31</sup> He seems more concerned that the testimonies may be too lurid for a young woman's delicate constitution than anxious that she could be unsettled by allegations against her husband.

His attitude may also gesture towards the mounting discomfort surrounding the proportion of female spectators at trials. In 1886, when Adelaide Bartlett stood accused of murdering her husband, both the judge and the press complained that nearly two-thirds of observers were female.<sup>32</sup> *Bell's* lambasted these women for so 'shamelessly' watching another woman being tried, which it felt would 'soon sap the popular respect for women and the popular respect for justice'.<sup>33</sup> Similar indictments against the prurience of female spectators can be found almost forty years earlier in *Mary Barton*. Whilst on the train to Liverpool, Mary overhears a conversation between two lawyers' clerks, in which one remarks that 'the ladies' will 'come in shoals to hear a trial for murder, and see the murderer' and the other accuses them of hypocrisy for judging Spanish women for taking 'delight in bull-fights' (p. 274). It is not only taken for granted that women will flock to the trial – but also that they will derive enjoyment from it. The clerks' exchange belies any preconceptions that Mary might find a sympathetic ear amongst the female observers in the courtroom.

Despite the clerks' suppositions, both the female *and* male spectators prove to be voyeuristic observers. While they direct their prurient scrutiny towards both men and women involved in the trial – with one pseudo-physiognomist claiming he sees 'marks of Cain' in Jem's face (p. 309) – the objectification of Mary is perhaps more uncomfortable, given the sexual overtones. From the 'many who were looking for mere flesh and blood beauty' to those who see a 'higher and a stranger kind of beauty' in her (p. 312), there is a preoccupation with her physical appeal. Moreover, Mary does not stand accused of any crime, thus her crude objectification seems all the more gratuitous – particularly when she is likened (by an unnamed observer) to 'that well-known engraving from Guido's picture of "Beatrice Cenci"' (pp. 312-13),

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37 (p. 7).

<sup>31</sup> Wilkie Collins, *The Law and the Lady* (London: Penguin Books, 1998; repr. 2004), p. 112.

<sup>32</sup> See Flanders, *The Invention of Murder*, p. 317.

<sup>33</sup> Anon., 'The Tatler', *Bell's Life in London*, 3765 (20 April 1886), p. 4.

a simile which, Struve contends, effectively ‘conflates female publicity with criminality’.<sup>34</sup>

Yet the Cenci image represents more than culpability. For the unnamed observer, it suggests a ‘wild sad melancholy’ and a ‘mute imploring agony’ (p. 313). This idea of ‘muteness’ is particularly striking, given that Mary is about to deliver a powerful and articulate speech. The Cenci simile – and Mr Carson’s characterisation of Mary as ‘the fatal Helen, the cause of all’ (p. 311) – demonstrates the way in which the audience have drawn their own conclusions about Mary before she has even spoken. Indeed, Mary has already overheard the lawyers’ clerks refer to her simply as ‘a factory girl’ (p. 274).

Significantly, Gaskell’s narrator detaches himself from these objectifications – they are all attributed to other people. As Struve argues, the narrator seems to purposefully distance himself from the Cenci image, explicitly couching the simile in reported speech: ‘I was not there myself; but one who was told me [...]’ (p. 312).<sup>35</sup> Attributing these comments to other characters – even unnamed individuals – does nothing to diminish their potency. Indeed, the ‘Chinese whispers’ effect in fact makes these circulating images all the more powerful by demonstrating their persistency. It illustrates the way in which Mary’s character and story have already been anticipated. She is partly aware that she must struggle *against* these readings; as she becomes ‘conscious that all was real, that hundreds were looking at her’ (p. 313), she seems to be rousing herself from the sort of mute abstraction so redolent in Guido’s depiction of Cenci. Yet, as this paper shall illustrate, some of these readings are more expedient, and Mary does not detach herself from them altogether.

It is also worth pausing to consider that the coverage of the trial by the *Guardian* and the *Courier* – which earns Mary such ‘miserable notoriety’ and provokes the envy of Miss Simmonds’ other employees (hungry for fame themselves) – probably replicates the voyeuristic gaze of the audience (p. 345). Indeed, it would be difficult to overestimate the way in which the nineteenth-century press objectified women involved in real-life criminal proceedings; for this was an age in which, as Diamond notes, the sexualisation of female defendants extended even to the scaffold.<sup>36</sup> Reporting on the hanging of Maria Manning, convicted for murder, the *Morning Chronicle* wrote, ‘even the distortion consequent upon the mode of death [...] could not destroy the remarkably fine contour of her figure’.<sup>37</sup>

This gratuitous interest in the appearances of the witnesses and the accused was matched by an equally prurient fascination with the potentially salacious details of the case. It is seemingly the possibility of probing Mary’s ‘heart’s secrets’, which

<sup>34</sup> Struve, ‘Expert Witnesses’, p. 21.

<sup>35</sup> Struve, ‘Expert Witnesses’, p. 21.

<sup>36</sup> Diamond, *Victorian Sensation*, p. 161.

<sup>37</sup> Anon., ‘Execution of the Mannings’, *The Morning Chronicle*, 24982 (14 November 1849), p. 5.

animates the ‘pert young barrister’ so ‘delighted to have the examination of this witness’ (p. 313). Even after Mary delivers her acutely personal testimony, the prosecuting counsel interrogates her for more sensational detail, as he tries to determine whether she attempted to ‘excite [Jem’s] jealousy by boasting of a lover so far above [her] in station’ (p. 315). Though Mary courageously resolves that ‘there would be no feminine shame to stand between her and her avowal’ (p. 313), the ‘burning scarlet blushes’ (p. 314) that follow her testimony indicate that she feels considerable embarrassment at having to disclose her private feelings in a public setting.

In ‘The Morality of Advocacy’, James Fitzjames Stephen indicted Gaskell for her supposedly unrealistic portrayal of the profession, but he was all too aware that for many contemporary readers, the depiction of an unethical, unscrupulous – even bullying – legal system matched their preconceptions entirely.<sup>38</sup> Elsewhere in this issue of *Victorian Network*, Erica McCrystal illustrates how other genres – particularly the Newgate novels – also characterised the legal system as hypocritical. Interestingly, only eight years after *Mary Barton*, a letter in the *Morning Chronicle* (which has since been attributed to Charles Dickens) explicitly associated the unscrupulousness of lawyers with the unsuitability of the courtroom for female witnesses. Apparently dwelling on the recent Courvoisier murder trial, the writer questioned the morality of advocacy and went on to say that ‘no earthly consideration should induce me to permit my wife or daughter to give evidence to the Old Bailey, if any effort of mine could shield her’.<sup>39</sup>

The way in which Mary’s personal affairs are played out and pored over in the public arena indeed seems to reflect some real-life court cases, particularly two sensational *causes célèbres* from the decades immediately preceding Gaskell’s writing of *Mary Barton*: the reading of the Pains and Penalties Bill in 1820, and the *Norton v. Melbourne* case (1836). It is worth pausing to consider both cases in more detail, to illuminate the ways in which Gaskell may have been influenced by them.

In 1820, the reading of the Pains and Penalties Bill effectively tried Queen Caroline for adultery against King George IV. The Bill, which would have allowed him to divorce her and deprived her of her title, was branded by her defence team ‘a Bill of Degradation, Dethronement and Disgrace’.<sup>40</sup> It was only narrowly passed by the House of Lords, and was dropped before reaching the Commons due to fears of public unrest. Although Caroline had much public support (due in large part to the unpopularity of her husband), the case was nevertheless a particularly salacious one,

<sup>38</sup> James Fitzjames Stephens, ‘The Morality of Advocacy’, *Cornhill Magazine*, 3.11 (1861), pp. 447-59 (p. 454).

<sup>39</sup> Quoted in Schramm, *Testimony and Advocacy*, p. 116.

<sup>40</sup> See Joseph Nightingale, *Report of the Proceedings Before the House of Lords, on a Bill of Pains and Penalties Against Her Majesty, Caroline Amelia Elizabeth, Queen of Great Britain, and Consort of King George IV: The Defence* (London: J. Robins and Company, 1821), p. 287.

for it was claimed she was having an affair with the head servant of her household, a man of lower status and foreign extraction.

Sixteen years later, the *Norton v. Melbourne* case saw another allegation of adultery pique the public's interest, as magistrate George Norton sued the Prime Minister, Lord Melbourne, for 'criminal conversation' with his wife, Caroline. A 'criminal conversation' trial was the first step towards dismantling a marriage, at a time when divorce could still only be obtained through an act of Parliament.<sup>41</sup> The case attracted considerable public interest, due to the unique celebrity of the figures involved; Mrs Norton was the granddaughter of Richard Brinsley Sheridan and a society beauty renowned for her wit. Despite the fact that her conduct was at the heart of the case, as a married woman she was barred from appearing in court to offer her own defence.<sup>42</sup> While some of the press was more sympathetic towards her, her reputation was effectively tarnished by media coverage of the case. *The Satirist*, for example, portrayed her as 'the unblushing one' and suggested that she had 'already formed a new *liaison*'.<sup>43</sup> As with the Pains and Penalties Bill, the defeat of the prosecution (George Norton in this instance) by no means diminished the scandal associated with the case, nor the woman at its centre.

Initially, these cases may seem to have little bearing on Gaskell's trial scene. Neither Queen Caroline nor Mrs Norton was called to give evidence, and their social standing and sexual transgressions differed markedly from Mary's own. The evidence brought forth was also of a far more salacious nature; Mary's shame at bearing witness to 'the human heart'<sup>44</sup> – confessing her love for Jem and her earlier flirtation with Henry Carson – seems slight compared to the disgrace threatening women in 'criminal conversation' cases. In both of the aforementioned cases a string of (somewhat discredited) servants was called to speculate on their respective mistress's behaviour, giving circumstantial evidence about disordered clothes, dishevelled appearances and intimate exchanges. Atkinson also points out that 'bodily fluids were regularly brought up [...] as evidence of adultery' in such trials.<sup>45</sup>

In contrast, Mary is able to retain both her femininity and morality (as Struve convincingly demonstrates). Yet she too must suffer the anxiety and indignity of

<sup>41</sup> Until 1857, divorce could only be granted by an act of Parliament. Although the Matrimonial Causes Act subsequently made divorce more accessible it did not make cases of separation any less sensational. This is because, in order to obtain a divorce, 'cause' still had to be proven. For a man, this entailed proving that his wife had committed adultery, while a wife – under this inequitable system – would also have to prove an 'additional' offence, such as cruelty, incest, or bigamy. Thus, private matters continued to be aired in a public forum.

<sup>42</sup> Caroline Norton did, however, give evidence before the courts almost twenty years later, when she was subpoenaed to appear in the *Thrupp v. Norton* case, after the coach builders brought a case against George Norton for one of Caroline Norton's unpaid bills.

<sup>43</sup> Anon., 'Multiple News Items', *The Satirist, and the Censor of the Time* (29 May 1836), p. 173.

<sup>44</sup> See Struve, 'Expert Witnesses', p. 22.

<sup>45</sup> Diane Atkinson, *The Criminal Conversation of Mrs Norton* (London: Preface, 2012), p. 5.

having her private, intimate affairs played out on a hostile and androcentric stage, her reputation sensationalised and made the subject of gossip. Caroline Norton's claim that 'a woman is made a helpless wretch by these laws of men' may well have resonated with Gaskell and her protagonist.<sup>46</sup>

Mary's sense of helplessness is undoubtedly compounded by her lower social position. The gendered social dynamics of the courtroom are emphasised in the exchange between Mary and the prosecuting counsel: whereas he addresses her as 'young woman', she calls him 'sir' (pp. 314-15). She is also clearly intimidated by her impression of the judge, whom she sees 'sitting up there like an idol, with his trappings, so rigid and stiff' (p. 316). The pertinent questions and ceremonial aspects of the courtroom seem a world away from what she seeks to confess, something a 'woman usually whispers with blushes and tears [...] to one ear alone' (p. 313).

Jan-Melissa Schramm argues that Victorian realist fiction often ridiculed the law for its 'callous failure' to recognise what lies behind it, namely a 'seething world of emotional turmoil and physical experience'.<sup>47</sup> Many novels – from *Mary Barton* to George Eliot's *Adam Bede* – seem to present this as a gendered social conflict, associating callousness with the 'masculine' legal profession, and emotion with 'feminine' (often working-class) testimony. That the actual confession of murder (and subsequent act of absolution) in *Mary Barton* must take place outside of the courtroom – indeed in the Bartons' own home – seems to question the appropriateness of the courtroom as a vehicle for adequately eliciting truth. The domestic setting (a traditionally feminine 'space') is configured as a rival 'courtroom', where a different type of justice may be enacted. Gaskell does not just teasingly dissolve the private/public binary in the courtroom but forcefully challenges conceptions of the separate spheres.

While the domestic space is presented as better equipped to deal with an examination of truth, the androcentric courtroom seems ill-suited to any consideration of intimate matters, repeatedly reducing Mary's affections to their salacious appeal. While her indiscretions do not amount to adultery, the prurient interest in her conduct nevertheless seems to recall earlier 'criminal conversation' cases. Undoubtedly Mary's behaviour also has its own appeal, given the possibility that it has incited murder. Yet the interrogation focuses not only on her outward conduct, but also her personal preferences; the prosecution twice asks her 'which was the favoured lover?' (p. 313). This strategy also seems reminiscent of the 'love triangle' dynamic found in the infamous *causes célèbres*. Arguably, Gaskell also implicates the reader in the voyeurism surrounding Mary's testimony; for while we are privy to the actual identity of the murderer, we too await the moment that Mary will (publicly) 'own her fault' and 'own her love' (p. 313).

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<sup>46</sup> Caroline Norton, 'Letter to Mary Shelley', quoted in Atkinson, *The Criminal Conversation of Mrs Norton*, p. 182.

<sup>47</sup> Schramm, *Testimony and Advocacy*, p. 15.



Before interrogating this further, one must acknowledge that while Mary's statement is greatly anticipated, it is ineffective in its *practical* purpose, for it does not secure Jem his reprieve. Indeed, her testimony on Jem's behalf is impotent, even injurious; though it 'might inspire pity for the prisoner, it only strengthened the supposition of his guilt' (p. 314). Many critics have highlighted that it is Will Wilson whose testimony is key to proving Jem's innocence. He also seems to be the more effective witness, 'clear and distinct in every corroborative circumstance', thus ensuring the jury's opinion is 'shaken and disturbed' (p. 319).

Many critics – particularly of the feminist school – elide Mary's immediate failing in order to affirm the wider significance of her participation in events. Thus, Struve portrays her as an 'expert witness', even whilst conceding 'the jury is not convinced',<sup>48</sup> and Colby maintains that Mary 'profoundly affects the outcome of events', though only by subsuming her courtroom appearance into a broader sphere of action, encompassing her efforts to find Will.<sup>49</sup> It is also possible to argue that, while Gaskell accepts that Will's testimony is necessary, she accords more importance to Mary's. It seems particularly pertinent that Will's testimony is mediated to the reader simply through reported speech, while Mary's is communicated through direct speech. This has the effect of distancing the reader from Will's evidence, while rendering hers more immediate and intimate.

By championing Mary's subjective version of events over Will's objective truth, Gaskell seems to favour not only the language of emotion but also the more marginalised speaker (the woman). While her courtroom may be unconvinced by Mary's speech, her narrative actively privileges Mary's voice. Schramm writes at length about the development of the adversarial trial format and the realist novel, characterising the relationship between writers and lawyers as one of 'incestuous generic interdependence',<sup>50</sup> but also one of conflict, as each clamoured to usurp the other as the most authoritative storyteller. She suggests that many authors positioned themselves as exploring material suppressed by conventional trials, as their novels represent traditionally marginalised speakers or stories which lie *outside* of the law.

Mary's testimony is assuredly shaped by stories outside of the law. For our understanding of the emotional, 'confessional' aspect of her testimony should not obscure our appreciation of the fact that it is also an act of deceit. Despite Struve's insistence that Mary is a 'good' witness, sincerely protesting Jem's innocence, she is also deliberately concealing a 'tremendous secret' (p. 313) by shielding the identity of the actual murderer: her father. In this way, Mary may be read as a *successful* witness, for she diverts any suspicion from falling on him.

As soon as she learns of her father's guilt, Mary resolves that both he and Jem must be protected, and gives herself the role of shielding them, aware that it will

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<sup>48</sup> Struve, 'Expert Witnesses', p. 16.

<sup>49</sup> Colby, *Some Appointed Work to Do*, p. 44.

<sup>50</sup> Schramm, *Testimony and Advocacy*, p. 15.

‘require much thought, and much prudence’ (p. 238). She has already committed a deliberate act of concealment in burning the gun wadding used by John Barton, and she evidently recognises that she must exploit her testimony as yet another opportunity to suppress the truth. Immediately after her questioning, she mutters to herself: ‘I must not go mad [...] they say people tell the truth when they’re mad’ (p. 317). While Mary feels she was ‘always a liar’, and that she will not necessarily divulge the truth if she loses her sanity (p. 317), she nevertheless rouses and maintains command of herself while it is imperative to do so, perhaps recognising that any sign of insanity could render her testimony inadmissible.<sup>51</sup> It is only when her twin aims have been realised – when she knows her father has escaped suspicion and when Will appears to give Jem his alibi – that her self-command is no longer necessary, and she becomes ‘instantly seized with convulsions’ (p. 317).

Mary’s delirium acts as a framing device to her testimony, for it also manifests before she begins speaking; during the early questioning, she finds herself answering ‘mechanically, as if in a dream’ and ‘with a strange wonder in her brain’ (p. 313), before she rallies herself. Partly this serves to heighten the reader’s admiration for her courage, but it perhaps serves another purpose, assuaging any discomfort about her *deliberate* deceit in a court of law. While not depicted explicitly, readers would assume that Mary has taken an oath and that she thus purposefully conceals the truth about the murder *whilst* speaking under it. (While she does not lie in response to the questions, she certainly withholds pertinent information.) Her early delirium creates a sense of confusion, perhaps suggesting that she is barely aware she has uttered this oath, thus mitigating her culpability. Similarly, her act of destroying the gun-wadding is also presented as a moment of delirium; her ‘head ached with dizzying violence’ (p. 239).

Thus Mary’s anxiety and self-consciousness during her testimony are not only indicative of the sense of shame she feels at her private life becoming public knowledge, but are also symptomatic of her nervousness at committing her most public act of concealment. Significantly, the way in which she sees ‘the court reeling before her’ and ‘hundreds [...] looking at her’ (p. 313) seems to evoke the ‘stage fright’ of an actress, trying to recall her lines before a performance begins. It is possible to accept Mary’s failure to convince the audience about Jem’s integrity, while nevertheless reading her testimony as an artful and concerted performance. Though she does not elicit quite the response she intends, the ‘actress’ metaphor is nevertheless pertinent in other ways, for it illuminates the celebrity she (albeit inadvertently) confers upon herself and the difficulties she faces in becoming a ‘public woman’. In the nineteenth century, actresses were routinely associated with sexual transgression (commonly thought to be prostitutes) and emotional artifice – prejudices which Mary must also navigate in her ‘performance’.<sup>52</sup> Moreover, the

<sup>51</sup> See Schramm, *Testimony and Advocacy*, p. 103.

<sup>52</sup> See Elaine Hadley, *Melodramatic Tactics: Theatricalized Dissent in the English Marketplace*,

methods she employs – both to convey emotion and shield the truth – could be read as those of an actress.

Much has been written about the parallels between legal proceedings and theatre, between the courtroom and the stage, and testimony and public speech. Recently, criticism has turned away from simply examining the ways in which trials generate drama, instead analysing how the structure, format and content of the trial are constructed along inherently ‘theatrical’ lines.

Lindsay Farmer, for instance, contends that the purpose of the adversarial or reconstructive trial is not only to ‘investigate/establish the truth, but also to dramatise it’.<sup>53</sup> The courtroom is, in his conjecture, ‘an imaginative space in which complex stories are told’,<sup>54</sup> and the resolution (or judgment) is entirely dependent on ‘what has taken place within the spatial and temporal limits of the courtroom’;<sup>55</sup> as with a play, the trial may gesture towards the outside world, but the story will be understood in terms of the narrative that is given within a set framework. Farmer also posits that individual elements of the trial recall theatre, such as the way in which participants speak from assigned positions, follow a particular format, and are observed by an audience. Somewhat contentiously, he is cautious about the possibility that nineteenth-century trials consciously exploited drama.<sup>56</sup>

Farmer suggests that an appreciation of the trial/theatre analogy must go beyond the ‘trivial sense of trials being a source of drama’ and frames his own reading as something more sophisticated.<sup>57</sup> However, one could argue that the ‘trial as theatre’ reading and the ‘trial as a *type* of theatre’ interpretation are in fact contingent upon one another: arguably, one is susceptible to detecting drama within the trial precisely *because* it is constructed along the lines of a play (or narrative), and that it is constructed as such so as to contain the dramatic conflicts which inevitably arise.

The melodramatic genre has proved a particularly useful way in which to mediate the trial narrative, for it archetypally ‘pits absolute innocence against absolute evil’.<sup>58</sup> Thus it could, in some ways, be understood as a distillation of the adversarial trial format, which arguably ‘pits’ one version of events against another and is essentially predicated on the notion that one side is ‘right’ (or ‘good’) and the other ‘wrong’ (or ‘evil’).

Indeed, the ubiquity of the trial in the nineteenth-century imagination was probably shaped, at least in part, by the melodramatic genre. The trial had been a

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1800-1885 (Stanford, CA: Stanford University Press, 1995), p. 149.

<sup>53</sup> Farmer, ‘Trials’, p. 460.

<sup>54</sup> Farmer, ‘Trials’, p. 461.

<sup>55</sup> Farmer, ‘Trials’, p. 467.

<sup>56</sup> Farmer, ‘Trials’, p. 460.

<sup>57</sup> Farmer, ‘Trials’, p. 466.

<sup>58</sup> See Ellen Bayuk Rosenman, “‘Mimic Sorrows’: Masochism and the Gendering of Pain in Victorian Melodrama”, *Studies in the Novel*, 35.1 (2003), pp. 22-43 (p.22).

‘stock scene’ of early melodrama,<sup>59</sup> a genre which had become so popular by the mid-1800s that ‘in most respects melodrama was drama’.<sup>60</sup> This confluence between melodrama and legal proceedings in the popular imagination was undoubtedly bolstered by representations off the stage as well. Real-life court cases came to be depicted in this melodramatic mould, particularly with the growth of sensational crime reporting in the press (the history of which Bertrand traces in her article in this issue). The aforementioned Bartlett trial, for instance, was branded a ‘sensational drama’.<sup>61</sup> It has also been argued that real-life defendants and witnesses came to mediate their experiences through increasingly pervasive melodramatic tropes,<sup>62</sup> while Kruger suggests that the legal representation in *Norton v. Melbourne* reduced Caroline to a character in a ‘titillating melodrama’.<sup>63</sup> Gaskell appears to gesture towards this circuitous, reflexive relationship in *Mary Barton*, for her narrator, characters, and the press industry she presents, all seem to perpetuate melodramatic tropes. By placing her narrator outside of the trial scene, Gaskell highlights the multiple layers of mediation involved in criminal cases, reinforcing the complex web of ‘storytelling’ at play.

Gaskell’s engagement with the melodramatic genre has been acknowledged by a number of critics, such as Sally Ledger, who argues that Gaskell’s contemporary readers would have read the novel ‘according to the conventions of melodrama’.<sup>64</sup> Furthermore, its sensational appeal is evidenced by the fact it spawned three contemporary melodramas, two of which, *Mary Barton, or The Weavers’ Distress* (1861) and *The Long Strike* (1866), survive. That these proved ‘hugely popular among the working classes’,<sup>65</sup> and severely truncated Gaskell’s plot (diminishing the acclaimed ‘Condition of England’ narrative), may reinforce the traditional preconceptions of melodrama as a ‘low’ art form. Yet the ingredients for its adaptation are clearly apparent in Gaskell’s original novel. Nevertheless, such prejudices may explain why there has been a lack of critical consensus about the purpose of melodramatic tropes in canonical, realist texts such as *Mary Barton*.

These divergent critical perspectives can be elucidated through reading one of the most explicitly melodramatic elements of Gaskell’s plot. The ‘love triangle’ narrative – particularly the depiction of Harry Carson as Mary’s would-be seducer, Jem as his embittered rival, and Esther as the ‘fallen woman’ that Mary could become

<sup>59</sup> See Hadley, *Melodramatic Tactics*, p. 75.

<sup>60</sup> See Hadley, *Melodramatic Tactics*, p. 1.

<sup>61</sup> Anon., ‘The Tatler’, *Bell’s Life in London*, 3765 (20 April 1886), p. 4.

<sup>62</sup> See Ginger Suzanne Frost, *Promises Broken: Courtship, Class and Gender in Victorian England* (Charlottesville: University of Virginia Press, 1995), p. 26.

<sup>63</sup> Kruger, ‘Witnessing Women’, p. 340.

<sup>64</sup> Sally Ledger, ‘Radical Writing’, in *The Cambridge Companion to English Literature, 1830-1914*, ed. by Joanne Shattock (Cambridge and New York: Cambridge University Press, 2010), pp. 127-46 (p. 142).

<sup>65</sup> See Flanders, *The Invention of Murder*, p. 88.

– is characteristic of conventional melodrama. Indeed, Sally Leadbitter's remark that she would not 'think much the worse of a spirited young fellow for falling foul of a rival', for 'they always do at the theatre' (p. 346), suggests that Gaskell anticipated a melodramatic reading of this plotline.

Indeed, was the rest of the plot to continue in the melodramatic vein of the early romance scenes, Catherine Gallagher feels that Jem's character might have resorted to murder. However, she sees a melodramatic interpretation of the plot, itself associated with the disreputable character of Sally, as a wholly flawed one. She argues that Mary struggles *against* society's attempts to cast her story in a melodramatic light, particularly in the courtroom scene, where she must disabuse sensationalist notions about the murder in order to attest Jem's innocence. Gallagher ultimately portrays Gaskell as demonstrating the dangers of interpreting events 'according to a preconceived melodramatic pattern'.<sup>66</sup>

Yet Gallagher neglects the possibility that the audience's melodramatic preconceptions may serve as a valuable device. As a marginalised speaker, and a witness moved by complex motives, the melodramatic mode arguably gives Mary not only a voice, but one she may manipulate; for allowing the court to interpret events along the 'love triangle' trajectory of course diverts attention *away* from the actual identity of the murderer.

In order to examine the ways in which one might read Gaskell as having her character exploit the suppositions of her audience, it would be useful to appropriate Elaine Hadley's conception of the melodramatic 'mode', which she defines as 'a behavioural and expressive model for several generations of English people' and a 'reactionary rejoinder' against the classificatory procedures of market culture.<sup>67</sup>

Whilst Gallagher depicts the melodramatic genre as restricting Mary's narrative, Hadley usefully points towards its potential to liberate and empower the 'marginalised', particularly women and the working classes.<sup>68</sup> She suggests that the domestication and feminisation of the genre by the mid-nineteenth century rendered it 'the ideal narration of a woman's personal story'.<sup>69</sup> Whilst it persistently cast women in the role of victims, it also gave them a leading role. Thus Gaskell may have seen the genre as a vehicle through which a working-class woman like Mary could enter the public sphere and become a 'heroine on [her] own account' (p. 345).

Although Hadley does not apply her hypothesis to *Mary Barton* specifically, she does consider the ways in which Caroline Norton's legal writings made use of 'the classic melodramatic scenario of virtuous heroine and mercenary villain', by

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<sup>66</sup> Catherine Gallagher, *The Industrial Reformation of English Fiction: Social Discourse and Narrative, 1832-1867* (Chicago: Chicago University Press, 1985), p. 77.

<sup>67</sup> Hadley, *Melodramatic Tactics*, pp. 2-3.

<sup>68</sup> Hadley, *Melodramatic Tactics*, p. 165.

<sup>69</sup> Hadley, *Melodramatic Tactics*, p. 133.

portraying herself as a victim at the hands of her estranged husband.<sup>70</sup> Mary employs a similar trope: for whilst she does extend pity towards ‘poor young Mr Carson’, her admission that she was ‘foolish enough’ to assume that his interest ‘meant marriage’ (p. 313) clearly establishes his more self-serving, sexual motivations in the minds of the audience. In doing so, she aligns Harry with the self-interested, speculative villain of melodrama, a genre which privileged the relationships in a ‘deferential community’ over more modern, commercially-defined social intercourse.<sup>71</sup> Mary specifically depicts her feelings for Harry in socio-economic terms, conflating them with her desire ‘to be a lady, and rich’, and contrasting them with her more deferential adoration of Jem, whom she loves ‘far above [her] life’ (p. 314). She wishes the audience to disregard her former flirtation, and privilege the latter.

In her reading of Mary’s testimony, Kruger is scathing about the fact that the protagonist is produced by the court ‘merely to deliver the lines already written for her’, to tell her ‘love story’.<sup>72</sup> While she acknowledges that Mary manages to present an ‘alternative love story’ (confessing her love for Jem), she feels that the audience suppresses that which they do not want to hear and that the stories of others (namely John Barton and Esther) are silenced.<sup>73</sup> Yet Mary manipulates expectations when she presents her story – a feminised, working-class narrative – not only because the audience do not care about the ‘other’ narrative, but because she does not *want* them to hear it. Mary’s story guys expectation, both meeting it *and* refuting it: her narrative is ‘some dispute about a factory girl’ (p. 274), as the lawyers assumed it would be, but also her own intimate version of events.

If the reader has any doubts about Mary self-consciously appropriating the performative, melodramatic mode (perhaps considering it disingenuous), then these are allayed by the narrator’s use of physical melodramatic tropes, which simultaneously foreground Mary’s sincerity. Although her ‘deadly white’ pallor (p. 312) and fainting spell are characteristic feminine responses in melodrama, they are also presented as *genuine* responses to the anxiety and trauma she feels. They are visible to her ‘audience’ even as she tries to conceal them.

Melodrama and authenticity need not be read as mutually exclusive; indeed, Hadley perceives melodrama as a type of ‘hyperrealism’, countering ‘empty theatricality’ and ‘privileg[ing] visibility, disclosure, and public authenticity’.<sup>74</sup> Whilst Mary does not fully privilege disclosure, the paradoxical notion of an ‘authentic theatricality’ does exemplify her conflicting impulses to both reveal *and* suppress the truth – to finally own her love for Jem, but also to protect her father.

<sup>70</sup> Hadley, *Melodramatic Tactics*, p. 160.

<sup>71</sup> See Hadley, *Melodramatic Tactics*, p. 141.

<sup>72</sup> Kruger, ‘Witnessing Women’, p. 345.

<sup>73</sup> Kruger, ‘Witnessing Women’, p. 347.

<sup>74</sup> Hadley, *Melodramatic Tactics*, p. 158.

It is not difficult to discern why theatrical entertainment, particularly melodrama, proved such a compelling metaphor for nineteenth-century criminal trials. Both the stage and the courtroom seem to mediate the tensions between disclosure and suppression, demonstrate the difficulties of differentiating between authenticity and artificiality, and legitimise public discussion of private scandal. They also both relied upon public appearances from conventionally marginalised groups (including women and the working classes) and often touched upon stories that otherwise existed outside of the public eye.

Gaskell clearly recognised that the melodramatic mode was the ideal vehicle for mediating the conflicts inherent in her trial scene, particularly Mary's appearance as a 'public woman' in an androcentric space, and her telling of a working-class narrative in an arena of pomp and ceremony. The trial is a cynosure for the collision between the public and the private narratives; Mary must suppress the social motivations behind Harry Carson's murder, whilst divulging her own personal experiences with Jem. Her private concerns become public knowledge, whilst her father's public concerns are relegated to the domestic sphere (as indicated, John finds absolution in the home).

Ultimately, Mary seems to navigate her appearance partly through acceding to the narrative that is expected of her and partly through subverting it altogether. Arguably, this trajectory mirrors the very conflict which Gaskell saw at the heart of her novel and her debut as a female novelist. Kruger persuasively argues that the difficulties faced by female witnesses in novels such as *Mary Barton* correspond with their authors' 'own struggles to influence England's predominant social narrative'.<sup>75</sup> In this reading of the text, the conflict enacted in the courtroom is the same conflict Gaskell faced in writing *Mary Barton*; namely how does a female speaker (be she witness or author) assume authority in a world dominated by male voices? Just as Mary must face preconceptions about what a 'factory girl' is capable of, so Gaskell faced prejudice towards the literary output from a minister's wife.

Gaskell may have attempted to sidestep this conflict by releasing her novel anonymously but she also, arguably, uses the same storytelling strategy that her protagonist does. The way in which Mary acquiesces to telling a 'love triangle' story in the courtroom, reflects Gaskell's own approach. For Gaskell ostensibly tells the narrative expected of a female author in her debut novel – a conventional love story, which can be assimilated into the patriarchal dominant discourse. However, Mary's acquiescence to the expected narrative is simultaneously an act of transgression and self-empowerment, as she finds a way to 'own her fault' and 'own her love' (p. 313). In the same way, Gaskell uses her private narrative – the story of *Mary Barton* – to both conceal *and* reveal her social, public narrative, the story of *John Barton*. The private narrative is not subservient to the public one, for both are intrinsic parts of her storytelling.

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<sup>75</sup> Kruger, 'Witnessing Women', p. 338.

That Mary's testimony is configured as a performance and an act of 'storytelling' gestures towards Schramm's characterisation of the relationship between the law and humanities (particularly realist fiction) as one which is both combative and symbiotic. By calling into question the courtroom's capability to comprehend emotional, feminised narratives and marginalised speakers, Gaskell is perhaps casting doubt on the efficacy of the adversarial trial. Yet by using the courtroom scene to crystallise the tensions at play elsewhere in the novel, she arguably also illustrates the way in which preconceptions about both romantic and 'Condition of England' fiction may coop other narratives. Gaskell's novel may be a mouthpiece for narratives that lie outside of the law, but she nevertheless recognises realist fiction as encumbered with limitations of its own.



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