

**Married Women, Law, and the Novel, 1836-
1885: Testimonial and Circumstantial
Evidence in the Victorian Novel's Debate for
Marriage Law Reform**

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Abstract

This thesis explores the relationship between law and literature in the nineteenth-century debates for married women's legal rights from 1836 to 1885. Prior to the 1882 Married Women's Property Act, married women were barred from speaking in legal trials against their husbands due to their non-existence in the eyes of the law. From the 1839 Custody of Infants Act that first recognised the rights of married women to the 1882 Married Women's Property Act that ultimately gave them the right to testify in court, the development of the novel form can be seen as a reflection of ongoing political debates and the role that written testimonial and circumstantial evidence had during this period. The nineteenth century saw an explosion of legislation in support of married women, from the 1839 Custody Act and the 1857 Matrimonial Causes and Divorce Act to the 1870 and 1882 Married Women's Property Acts. Figurehead trials such as *Norton v. Melbourne* (1836), *Robinson v. Robinson & Lane* (1859), *Thelwall v. Yelverton* (1861), *Dalrymple v. Dalrymple* (1811), and *Rex v. Palmer* (1869) illustrate the role that married women's writing had in presenting the narrative of married women's legal oppression under unjust marriage laws.

The novels examined in this thesis all present married women's agency and legal representation through the form of written evidence. From Anne Brontë's *The Tenant of Wildfell Hall* (1848), Caroline Norton's *Stuart of Dunleath* (1851), Mary Elizabeth Braddon's *Lady Audley's Secret* (1862) and *Aurora Floyd* (1863), Wilkie Collins' *Man and Wife* (1870), and George Meredith's *Diana of the Crossways* (1885), this study will explore nineteenth-century novels' representations of the growing debates for married women's legal rights and the role that written evidence had in allowing women to speak out against the injustices of marriage laws.

Contents

Abstract	2
Contents	3
Acknowledgements	5
Author's Declaration	6
Introduction	7
I. Narrative Jurisprudence and the Nineteenth-Century Novel	11
II. Feminist Literary Jurisprudence	18
Chapter 1: "Trust my words rather than your own feelings": The Diary as Testimonial Evidence in Anne Brontë's <i>The Tenant of Wildfell Hall</i>	27
I. Caroline Norton and the Debate for Custody Law Reform	32
II. "Much Criticized Break": Framed Narratives and Chronological Plots in <i>The Tenant of Wildfell Hall</i>	41
III. "[A]ll this was too sacred for any eyes but her own": Helen's Writing as Testimonial Evidence and the Diary Novel	52
IV. Conclusion	59
Chapter 2: "A compound of fact and fiction": Caroline Norton's <i>Stuart of Dunleath</i> as Testimony for Divorce	63
I. <i>Norton v. Melbourne</i> and the Double Standards of Divorce Law (1660-1853)	69
II. Divorce Law Reform Debates	78
III. "Romance of the Bar": <i>Stuart of Dunleath</i> and Fictional Testimonial Accounts	86
IV. Conclusion	109
Chapter 3: Mary Elizabeth Braddon's 'Pair of Bigamy Novels': Circumstantial Evidence and the Debate for Bigamy Law Reform	113
I. Bigamy Law	122
II. "How Married Are You?": Conventions of the Bigamy Novel	133
III. "My pair of bigamy novels": <i>Lady Audley's Secret</i> and <i>Aurora Floyd</i>	137
IV. Conclusion	156

Chapter 4: "The Law Sanctioned the Sacrifice": Marriage Reform in Wilkie Collins' <i>Man and Wife</i>	161
I. "The Fact and the Fiction": Marriage Reform Debate (1868-1870)	168
II. The "Uncertainties" of Ceremonial Laws and Circumstantial Evidence	179
III. "The Law doesn't allow a married woman to call anything her own": Property Laws and Testimonial Evidence	199
IV. Conclusion	221
Chapter 5: "She Lives": Experience and Sympathetic Realism in George Meredith's <i>Diana of the Crossways</i>	225
I. Narratives of Experience and the Philosophy of Advocacy	231
II. Sympathetic Realism and the Narration of Experience	235
III. The "clever literary clothing of a common accusation": Diaries and Trial Reports	238
IV. "I will answer as at the Judgement Bar": Diana's Testimony and Advocacy	247
V. Conclusion	256
Conclusion	261
Bibliography	265

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Author's Declaration

I, Marissa Bolin, declare that this thesis is a presentation of my original work and I am the sole author. All sources are acknowledged in footnotes and bibliography. This work has not previously been presented for an award at this, or any other, University and has not been published in its entirety. A version of Chapter 2 is in the process of publication submission as well as a portion of Chapter 4 has been accepted, subject to revisions, by the *Wilkie Collins Journal*.

Introduction

In the moments when the jury announced the verdict of the 1836 *Norton v. Melbourne* adultery trial, Caroline Norton wrote to Mary Shelley to protest that "a woman is made a helpless wretch by these laws of men, or she would be allowed a defence, a counsel, in such an hour."¹ Norton was not present in the courtroom where celebrated politicians, barristers, and literary figures gathered to witness her credibility as a wife destroyed for the sole purpose of her husband's amusement.² George Norton had already taken away her children, forbidden her entry into her own home, and refused to give her any financial compensation.³ On top of this cruelty, she was forced to sit at home and wait for the news of whether or not her husband was successfully able to convince a jury that she had committed adultery with the then Prime Minister, Lord Melbourne. Norton's inability to defend herself in such a crucial trial was caused by the fact that until 1882 married women were barred from testifying or filing legal suits against their husbands.⁴ Married women's lack of legal rights meant that all marriage law trials were prohibited—custody battles, bigamy suits, divorce and separation requests, and property disputes. Norton acknowledges that her suffering was a result of married women's legal non-existence.⁵ Without the ability to dispute unfair marriage laws, married women

¹ Caroline Norton to Mary Shelley, Hampton Court, 25 June 1836, in Jane Gray Perkins' *The Life of the Honourable Mrs. Norton* (New York: Henry Holt & Co., 1909), 95.

² William Marshall, *Extraordinary Trial!: Norton v. Viscount Melbourne for Crim. Con.* (London: Holborn Bars, 1826), 27.

³ Mary Poovey, "Covered but Not Bound: Caroline Norton and the 1857 Matrimonial Causes Act," in *Uneven Developments: The Ideological Work of Gender in Mid-Victorian England* (London: Virago Press, 1988), 469.

⁴ H. Arthur Smith, *The Married Women's Property Act 1882; with Introduction and Critical and Explanatory Notes* (London: Stevens & Sons, 1882), 8.

⁵ Caroline Norton, *A Letter to the Queen on Lord Chancellor Cranworth's Marriage and Divorce Bill* (London: Longman, Brown, Green and Longmans, 1855), 8.

found it necessary to find other means to defend their innocence, narrate their experiences, and demand equal rights in marriage.

This dissertation argues that testimonial and circumstantial evidence in the form of writing allowed married women to share their experiences of oppression under unjust marriage laws despite legal restrictions. Although married women were barred from speaking in common law cases against their husbands, "narratives of experience" in the form of testimonial evidence like diaries or journals or the "testimony of pure fact" in the form of circumstantial evidence like letters or marriage certificates enabled married women's written narratives to be heard in a court of law.⁶ The use of married women's written evidence in trials like *Norton v. Melbourne* (1836), *Robinson v. Robinson & Lane* (1859), *Thelwall v. Yelverton* (1861), *Dalrymple v. Dalrymple* (1811), and *Rex v. Palmer* (1869) became characteristic of marriage trials of the period and referenced in the debates for the 1839 Custody of Infants Act, 1857 Matrimonial Causes and Divorce Act, and 1870 Married Women's Property Act. It wasn't until the 1882 Married Women's Property Act that married women were given a right to testify in court on their own behalf.⁷ This dissertation recognises that the influence of married women's writing in contemporary marriage trials not only affected the legal system's portrayal of women but also the representation of married women in nineteenth-century novels. The following chapters will examine the use of women's diaries, journals, letters, marriage certificates, and autobiographical writing within novels from 1848 to 1885 as a method of narrating married women's experiences under unjust custody, divorce, ceremonial, and

⁶ Jan-Melissa Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Theology* (Cambridge: Cambridge University Press, 2000), 5; Roslyn Jolly, "The Unreliable Reader: The Problem of Circumstantial Evidence in Nineteenth-Century Narrative," *Australian Journal of Law and Society* 9, (1993), 81.

⁷ "§23. Legal representative of married woman" (See Smith, *The Married Women's Property Act 1882*, 8.)

property laws. I argue that the trend of presenting married women's narratives in the form of material evidence simultaneously contributed to the development of nineteenth-century genres such as the diary novel, divorce novel, bigamy novel, legal/detective fiction, and sympathetic realism through the use of narrative techniques appropriated from the legal system.

Norton represents a recurring thread throughout this thesis in her role as a literary figure who narrated her sufferings under unjust marriage laws and advocated for legal reform. Her written narratives and advocacy for married women's custody, divorce, ceremonial, and property rights positioned her as a figurehead of the mid-nineteenth-century's marriage law reform debates. Norton used her literary talents to publish both political pamphlets and novels in order to narrate her experiences. These writings act as testimonial narratives against the injustices that she was forced to endure under contemporary marriage laws. In her lifetime, Norton wrote five political pamphlets, four novels, two poems, and four collections of poems inspired by her own marital misfortunes.⁸ Amongst politicians, reformists, artists, and novelists, she became one of the most recognised advocates for marriage law reforms in the nineteenth century.⁹ Her efforts and writings instigated the first reform of marriage since the Middle Ages to acknowledge the legal rights of married women.¹⁰ From 1839, with the creation of the Custody of Infants Act, Parliament began to recognise the necessity for married

⁸ Caroline Norton's *Separation of Mother and Child by the Laws of Custody of Infants Considered* (1837), *A Plain Letter to the Lord Chancellor on the Infant Custody Bill* (1839), *English Laws for Women in the Nineteenth Century* (1854), *A Letter to the Queen on Lord Chancellor Cranworth's Marriage & Divorce Bill* (1855), *A Review of the Divorce Bill of 1856* (1857), *The Wife, and Woman's Reward* (1835), *Stuart of Dunleath* (1851), *Lost and Saved* (1863), *Old Sir Douglas* (1866), "I Do Not Love Thee" (1829), "The Cold Change" (1829), *The Sorrows of Rosalie: A Tale and Other Poems* (1829), *The Undying One and Other Poems* (1830), *The Dream, and Other Poems* (1840), and *The Child of the Islands* (1845)

⁹ Kieran Dolin, "The Transfigurations of Caroline Norton." *Victorian Literature and Culture* 30 (2), (2002): 503-527.

¹⁰ Lawrence Stone, *Road to Divorce: England 1530-1987* (Oxford: Oxford University Press, 1990), 307.

women's legal equality to their husbands, creating laws in support of divorce, separation, and property rights for married women.¹¹ My examination of Norton's role in the first legislations to provide women with equal legal rights in marriage focuses on the effects that her first-hand experiences had on the nineteenth-century debates for marriage law reform.

Christine Krueger acknowledges that "[n]arrative legal theory has proposed storytelling as a solution to the problem of attaining legal recognition on the grounds that it allows for testimony regarding 'life contexts,' or alternative realities, excluded by normative rules of evidence."¹² The close connection between nineteenth-century novels' portrayals of married women's "realities" and the influx of marriage trials calling for reform illustrates the close connection between law and literature. This dissertation chronologically frames nineteenth-century novels around real-life marriage trials and marriage law reform debates in order to emphasise the use of women's writing as legal evidence. My analysis examines the role of women's diaries, letters, and signature in both popular legal trials and novels to explore how women's written evidences contributed to the debates surrounding custody law, divorce and separation rights, bigamy law, ceremonial laws, and property rights. Each chapter will focus on a specific novelist's use of married women's writing as legal evidence in order to provide women with a legal voice against unjust marriage laws. This project examines both male and female novelists in order to reveal the overall prevalence of debates for marriage law reform in literature and the widespread knowledge that written evidence served as married women's only form of advocacy for reform.

The central objective of my examination is to analyse novels' purposeful and tactical

¹¹ Stone, *Road to Divorce: England 1530-1987*, 354.

¹² Christine Krueger, *Reading for the Law: British Literary History and Gender Advocacy* (Charlottesville: University of Virginia Press, 2010), 12.

portrayal of married women's legal injustices through the form of testimonial and circumstantial evidence as commentary on marriage law reform debates of the nineteenth century and the necessity of married women's right to legal representation in court. This dissertation will use feminist narrative jurisprudential theory to examine both the material and narrative form of married women's writing in courtrooms and novels between the period of 1836 and 1885, focusing on the most productive period of marriage law reform and the origin of married women's right to legal representation. By chronologically grounding my argument in the timeline of marriage law reforms, I additionally analyse the development of novel genres like diary novels, autobiographical fiction, bigamy novels, and detective fiction through the representation of married women and the role that women's writing has in the portrayal of their legal narratives. Through this analysis, law and literature can be viewed as collectively contributing to the recognition of married women's necessary right to legal representation.

I. Narrative Jurisprudence and the Nineteenth-Century Novel

As narrative jurisprudence is a theory central to my argument, it is important to outline how the development of this theory, within the context of the nineteenth century, brought together the narrative techniques of law and literature. In his 1789 *Introduction to the Principles of Morals and Legislation*, Jeremy Bentham claims that "[j]urisprudence is a fictitious entity" which uses the power of language to construct legal arguments.¹³ Through the concept of "jurisprudence," Bentham examines the use of rhetoric as a tool of the legal system and an important factor in illustrating the need for reform. Jurisprudence encapsulates the ways in

¹³ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* [1789], ed. J.H. Burns and H.L.A. Hart (Oxford: Clarendon Press, 2005), 293.

which individual experiences of oppression are portrayed and the moral responses that observers of oppression have towards the depiction of legal injustices. According to Bentham, “[a] book of jurisprudence can have but one or two objects: 1. to ascertain what the *law* is: 2. to ascertain what it ought to be.”¹⁴ In order to successfully present the necessity for reform, this dissertation examines how advocates for reform, in *Law and Literature*, narrate the suffering caused by the current state of law in a sympathetic and persuasive form as well as create a fictionalised portrayal of the law as “it ought to be.”

Literary scholars and legal historians like Jan-Melissa Schramm, Jonathan Grossman, and Kieran Dolin have adapted Bentham's definition of jurisprudence as a method of understanding the ways in which the narrative techniques of law and literature combined fact and fiction in the nineteenth century. Narrative jurisprudence theory sees the nineteenth century as a prime example of the symbiotic relationship between law and literature through the medium of rhetoric and narrative forms. Grossman emphasises the importance of jurisprudential theory in analysing nineteenth-century novels when he states that “[d]uring this time the courthouse [...] was for the first time powerfully shaping the way that novels conceptualized their own storytelling structure.”¹⁵ With the reforming political and judicial systems of the nineteenth century came the idea that the law should better represent the voices of the people whom it claimed to represent.¹⁶ The debates arguing for a representative democracy led to a wider representation of political and social injustices in literature in order to uncover narratives barred from legal representation.

¹⁴ Bentham, *An Introduction to the Principles of Morals and Legislation*, 294.

¹⁵ Jonathan H. Grossman, *The Art of Alibi: English Law Courts and the Novel* (Baltimore: John Hopkins University Press, 2002), 5.

¹⁶ John Stuart Mill, *Considerations on Representative Government* (London: Parker, Son, and Bourn, 1861).

Genres such as the Newgate novel, detective fiction, and social-problem novels have their origins in the nineteenth century.¹⁷ While these genres are often the primary focus of narrative jurisprudence theorist, this dissertation illustrates that the portrayal of legal evidence in novels is not synonymous with representations of criminal law. Narrative jurisprudence can also be used to examine common law injustices, such as marriage laws, and the development of nineteenth-century genres like diary novels, divorce novels, bigamy novels, autobiographies, and sympathetic realism. As I argue, the progress of these novel genres can be associated with the portrayal of married women's narratives of oppression in the form of written testimonial accounts and circumstantial evidence.

According to Dolin, the portrayal of legal suffering and political protest in nineteenth-century novels can be "conceived as a vehicle not merely for the representation of the law, but for its criticism."¹⁸ Dolin argues that "[t]he novel represents itself as an intervention in the public sphere, more particularly as a supplement to the law, going where it cannot go."¹⁹ Individuals who were unable to speak out in a court of law were given a voice in novels, allowing readers to understand legal injustice from those most affected by a lack of legal representation. Other forms of non-fiction writing such as trial reports, scandal reports, and political pamphlets were simultaneously providing readers with the details of ongoing legal trials and parliamentary debates. As Schramm adds, "the presentation of evidence in a court of law has often served authors of fiction as a coherent and influential model of 'reality', and writers have long imitated the strategies of persuasion privileged by legal forensic

¹⁷ John Sutherland, *The Longman Companion to Victorian Fiction* (Harlow: Pearson Longman, 2009), 184 and 468.

¹⁸ Kieran Dolin, *Fiction and the Law: Legal Discourse in Victorian and Modernist Literature* (Cambridge: Cambridge University Press, 1999), 74.

¹⁹ *Ibid.*, 1.

methodology."²⁰ In an attempt to understand nineteenth-century novelists' obsession with representing legal evidence, Schramm asks, "what did authors see fiction bringing to the task that the law could not?"²¹ The theory of narrative jurisprudence and the analysis of narratives that would otherwise be excluded from a court of law and literature led me to analyse the narratives of married women in nineteenth-century novels.

The omission of specific social classes, races, and sexes in court can be linked to a desire to retain political and legal privilege within a homogeneous government. The legal system silenced married women of all social classes in order to maintain the patriarchal authority of marriage by excluding their experiences from legal discussions and making it nearly impossible for them to state why and how the injustices of marriage laws affected their lives. However, as I argue, it is possible to understand the contemporary state of marriage laws through an examination of this silence. According to the principles of narrative jurisprudential theory, when excluded from verbally testifying silenced-individuals used the narrative for of legal evidence to represent their experiences under "the law as it is" as well as argue for "the law as it should be."²² Legal evidence can appear as witness statements, attorney statements, a husband's testimony, and also material objects in the form of writing. It was through written evidence that married women were able to voice their concerns when bared from speaking in court. Within common law courts, married women's narratives could be put forth in the form of letters, journals, diaries, and marriage certificates. The analysis of such evidence requires an examination of both law and literature. It is necessary to consider not only the factual circumstances by which such evidence was created but also it's narrative form, intended

²⁰ Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Theology*, 1.

²¹ *Ibid.*, 13.

²² Bentham, *An Introduction to the Principles of Morals and Legislation*, 294.

audience, reliability, and effects on readers.

The theory of narrative jurisprudence became known by many literary critics as the "Law and Literature movement" which sought to illustrate "legal argument and judgement as interpretive activities" while also exploring the "empathetic sensibility that could alert the good lawyer or judge to the effect of legal decisions."²³ Guyora Binder and Robert Weisberg argue that this movement embraces two distinct forms of scholarship, "Law *in* Literature" and "Law *as* Literature." According to Binder and Weisberg, "Law *in* Literature scholarship" is primarily focused on "works of imaginative literature that contain legal themes or depict legal practice" while "Law *as* Literature [...] scholarship employs the techniques and principles of literary criticism, theory, and interpretation to better understand the writing, thought, and social practice that constitute legal systems and offers these techniques and principles as tools for reforming those legal systems."²⁴ This dissertation combines both "Law *in* Literature" and "Law *as* Literature" scholarships to examine not only the legal subjects of novels but also the imitation of legal language and narrative forms within novels. What distinguishes narrative jurisprudence theory is that it looks beyond the subject of the law in order to place the novel form within a fictional courtroom which enables characters to testify and gather evidence to prove their own legal innocence and oppression.

Many narrative jurisprudence theorists use what Rae Greiner terms the "novelist-as-lawyer analogy" to analyse the use of legal narratives in nineteenth-century novels.²⁵ As Schramm claims, "authors, like lawyers, must be able to argue a case, to master the

²³ Guyora Binder and Robert Weisberg, *Literary Criticism of Law* (Princeton: Princeton University Press, 2000), 3.

²⁴ *Ibid.*, 3.

²⁵ Rae Greiner, *Sympathetic Realism in Nineteenth-Century British Fiction* (Baltimore: John Hopkins University Press, 2012), 70.

manipulation of evidence, and the similarities between the construction of fictional and of legal narratives are now well documented."²⁶ Scholars like Jan-Melissa Schramm, Alexander Welsh, Kieran Dolin, Cathrine Frank, and Jonathan Grossman have used the novelist-as-lawyer analogy to illustrate the role that literature plays in advocating for political, legal, and social reform. Testimonial and circumstantial evidence provided readers with an added layer of perspective in legal conflicts in the same way that such evidence had the power to alter the verdict of a trial amongst jury members. Schramm argues that "lawyers and authors manipulate this evidence in the competition to provide an authoritative reading of events."²⁷ Therefore, when novelists act as lawyers, readers can be considered the judge or jury. Schramm asserts that by entering a fictional courtroom "we enter the world of the narrative and accept as a valid representation of the 'actual' the action and the characters we encounter there, we see that we are invited to compare the qualities of the evidence brought before us, to test its reliability and to judge the actions of the protagonists accordingly."²⁸ Evidence regarding a character or situation must be persuasive and must present an empathetic portrayal of those affected. The significance of evidence was dependant on its rhetorical influence over decisionmakers, whether they be judges, jury members, or the public. The reliance on individuals' opinions made evidence subjective yet powerful. Inspired by the power of language on readers' decisionmaking abilities, many nineteenth-century novelists began to replicated legal proceedings by presenting evidence and considering how information is discovered, who is the intended audience, and what effect this information has on the reader's judgement of the validity of the situation portrayed. In order to judge married women's writing

²⁶ Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Theology*, 8.

²⁷ *Ibid.*, 16.

²⁸ *Ibid.*, 21.

as legal evidence, this dissertation examines not only what is written but also what form of writing is portrayed, the intended audience and motive, and the effect that such writing has on other characters.

In order to highlight the persuasive power of legal evidence, many nineteenth-century novelists drew from contemporary trials to provide readers with a factual basis behind their representations of political and legal injustice. Roslyn Jolly claims that real-life trials and evidence "seemed especially useful in the novel's efforts to guarantee its realism, and allay anxiety about its fictionality."²⁹ This has led literary analysts to wonder why novels needed to distance themselves away from fiction and instead connect itself with the truthfulness of law. Paul Gewirtz notes that "[t]he goal of storytelling in law is to persuade an official decisionmaker that one's story is true, to win the case, and thus to invoke the coercive force of the state on one's behalf."³⁰ This "decisionmaker" may be the judge, jury, or even the general public that would be responsible for legal reform. But under the "novelist-as-lawyer analogy," the reader also takes on the role of the "decisionmaker" in the judgement of legal injustices. If storytelling is the ultimate decision factor for legal trials then narratologists need to question, "[h]ow do trial narratives gain their intended effects, or fail to?"³¹ Persuasive trial testimonies need to be detailed, sentimental, and factual in order to gain the sympathy of spectators. Gewirtz indicates that while "we know little about how the stories at trial are received [...]" [t]here is some evidence that jurors tend to come to the trial with a set of stock stories in their

²⁹ Jolly, "The Unreliable Reader: The Problem of Circumstantial Evidence in Nineteenth-Century Narrative," 82.

³⁰ Paul Gewirtz, "Narrative and Rhetoric in the Law," in *Law's Stories: Narrative and Rhetoric in the Law* ed. Peter Brooks and Paul Gewirtz (New Haven: Yale University, 1996), 5.

³¹ *Ibid.*, 8.

minds and that they try to fit trial evidence into the shape of one of those stock stories."³²

Based on the chronological emergence of the novels analysed in this dissertation and the social and political debates of the period, this dissertation analyses the effects that literary "stock stories" of marriage law injustices and married women's oppression had on the ongoing debates for marriage law reform and the nineteenth century's push to provide married women with more legal representation. I argue that these "stock stories" not only arise from the popular legal trials and parliamentary debates but also novels which portray the injustices of contemporary marriage laws.

II. Feminist Literary Jurisprudence

In accordance with the theory of narrative jurisprudence, this dissertation aims to examine both the ways in which the exclusion of married women from marriage trials affected their narratives and how the narratives of written evidence inspired nineteenth-century novelists to provide such women with the opportunity to share their experiences. As an insight into the legal narratives of individuals excluded from advocating on their own behalf in a court of law, the sub-theory of feminist jurisprudence examines the ways in which women have been able to break their legal silencing. Christine Krueger claims, in *Reading for the Law: British Literary History and Gender Advocacy*, that "'[v]oice,' and its antithesis 'silence,' have come to metaphorize legal recognition and its denial in much feminist and political theory, as well as in literary criticism."³³ I argue that women's legal silencing became a defining characteristic of many nineteenth-century novel genres' representations of married women. In

³² Gewirtz, "Narrative and Rhetoric in the Law," 8-9.

³³ Krueger, *Reading for the Law*, 7.

such literary works, "women's legal nullity is narrated as their literal silencing or misconstrual before the representative institution of patriarchal authority: a court of law."³⁴ This dissertation contributes to the critical awareness to women's silence in nineteenth-century novels by examining the importance of women's narratives in the material form of written evidence as an acknowledgement of married women's lack of legal representation in the debates for reform.

Feminist jurisprudence theorists of nineteenth-century novels, such as Christine Krueger, Kristen Kalsem, Anthea Trodd, Patricia Smith, and Kathryn Abrams, have provided a widespread examination of the legal system and the narratives of women's injustices. Critics have analysed both unmarried and married women's exclusion from speaking out in criminal courts.³⁵ While it is true that married women did face certain restrictions within criminal courts, such as the inability to testify in cases involving their spouses, they could still take the stand in larceny charges, murder charges, and many other suits in order to defend themselves.³⁶ It is the purpose of this dissertation to argue that the additional exclusion from marriage trials exhibits an even more distinct connection between law and literature in the nineteenth century due to the correlations between legal reforms for married women and the increased representation of their legal silencing in novels of the period.

Married women were unable to defend custody, divorce and separation, adultery, bigamy, and property charges due to their legal non-existence. However, while women were

³⁴ Krueger, *Reading for the Law*, 7.

³⁵ Krueger, *Reading for the Law: British Literary History and Gender Advocacy* (Charlottesville: University of Virginia Press, 2010); Kristin Kalsem, *In Contempt: Nineteenth-Century Women, Law & Literature* (Columbus: Ohio State University, 2012); Anthea Trodd, *Domestic Crime in the Victorian Novel* (London: Macmillan Press, 1989).

³⁶ Joan Perkins, *Woman and Marriage in Nineteenth-Century England* (London: Routledge, 1989), 15.

barred from verbally testifying in a court of law, written evidence in the form of women's diaries, letters, and marriage certificates were presented as testimonial and circumstantial evidence throughout the nineteenth century. I argue that the use of such evidence in common law trials can be analysed as a form of narrative to represent the experiences of married women under unjust marriage laws. In the succeeding chapters, I examine specific legal trials such as *Dalrymple v. Dalrymple* (1811), *Norton v. Melbourne* (1836), *Robinson v. Robinson & Lane* (1859), *Yelverton v. Yelverton* (1861), and *Rex v. Palmer* (1869) in which the legal presentation of women's writing as evidence served to represent women's narratives of experience while simultaneously pointing a finger at the legal injustices that married women were forced to face. It is, therefore, no coincidence that the nineteenth century also saw the development of genres like the diary novel, bigamy novel, and divorce novel that became associated with the presentation of women's narratives in the form of writing. It is the objective of this dissertation to link the development of such novel genres and the surge in marriage law reforms in favour of married women through the importance that written evidence plays in the advocacy for married women's legal rights.

In the first chapter of this study, I explore the relationship between Anne Brontë's *The Tenant of Wildfell Hall* (1848) and the debates surrounding the 1839 Custody of Infants Act which provided married women with custody rights to children under the age of seven. As a key context of the debate for married women's custody rights, I will be focusing on the importance of Caroline Norton's fight for the custody of her own children and the narrative of her experiences demonstrated in her political pamphlets, *The Separation of Mother and Child by the Law of 'Custody of Infants' Considered* (1838) and *A Plain Letter to the Lord Chancellor on the Infant Custody Bill* (1839). This chapter will examine Brontë's use of the

diary as a narrative form to portray Helen Huntingdon's unhappy marriage and argue for married women's custody rights. The importance of married women's diaries as a form of legal evidence can be observed in the 1859 *Robinson v. Robinson & Lane* adultery trial in which Isabella Robinson's diary is presented in court and questioned for its validity and authenticity as a form of narrative. Helen presents her diary to Gilbert Markham as if providing testimonial evidence in a court of law for custodial rights to her young son. This chapter considers the development of the diary novel genre in relation to the use of diaries in legal trials and the ways in which the diary form allows Helen to best communicate a sympathetic account of her experiences in a legal system that has silenced her voice.

The success of the 1839 Act sparked a larger protest for married women's legal rights. The public debates and parliamentary discussions surrounding the 1857 Matrimonial Causes and Divorce Act became a defining moment in the nineteenth century.³⁷ Chapter 2 will introduce an analysis of the 1857 Act with an examination of divorce and separation rights for married women in Caroline Norton's *Stuart of Dunleath* (1851). I particularly focus on the gendered double standards of crim. con. (adultery) trials as a prerequisite for divorce suits. This chapter will examine Norton's non-fictional retellings of her legal oppression in *English Laws for Women in the Nineteenth Century* (1854) and *A Letter to the Queen on Lord Chancellor Cranworth's Marriage and Divorce Bill* (1855) in comparison to her autobiographical portrayal of the patriarchal bias of divorce laws in *Stuart of Dunleath*. I provide not only an examination of Norton's and Eleanor Raymond's unhappy marriages but also provide an analysis of the narrative voices presented in Norton's political pamphlets in contrast to her autobiographical fiction and the narration of Eleanor's marital sufferings. I argue that

³⁷ Stone, *Road to Divorce*, 382.

autobiographical fiction allows Norton to create a more sympathetically compelling portrayal of her misfortunes and, thus, highlights the importance that fictional portrayals of married women's testimonies have in the debates for married women's legal rights.

After the first acknowledgements of married women's legal rights to divorce and separation, Chapter 3 introduces one of the often forgotten topics of the debates surrounding the 1857 Matrimonial Causes and Divorce Act. While many historians, such as Lawrence Stone and Mary Lyndon Shanley, focus on the arguments for divorce and separation rights, the clauses on the 1857 Act also provide new legislation regarding marital desertion, domestic violence, and bigamy as justification for divorce. I explain the ways in which married women's inability to file for divorce or separation in circumstances of desertion or domestic violence often led them to leave marriages through what Ginger Frost and David Cox reference as "self-divorce" due to the inability to obtain a legally sanctioned divorce.³⁸ I also argue that the unclear bigamy laws which divided charges into "intentional" or "accidental" bigamy can be seen as an example of the ambiguity and instability of bigamy laws in the nineteenth century.³⁹ While husbands who married bigamously were able to convince a jury that they married believing their first wife to be missing or dead, women were unable to testify and were, therefore, more likely to be charged with the crime of bigamy.⁴⁰ This chapter will analyse Mary Elizabeth Braddon's popular bigamy novels *Lady Audley's Secret* (1862) and *Aurora Floyd* (1863). Within Braddon's most celebrated bigamy novels, I analyse the

³⁸ Ginger Frost, "Bigamy and Cohabitation in Victorian England," *Journal of Family History*, 22(3), (July 1997); David J. Cox, "'Trying To Get A Good One': Bigamy Offences in England and Wales, 1850-1950," *Plymouth Law and Criminal Justice Review* 4, (2012).

³⁹ Jeanne Fahnestock, "The Rise and Fall of a Convention," *Nineteenth Century Fiction*, 36(1), (June 1981): 61.

⁴⁰ Cox, "'Trying To Get A Good One': Bigamy Offences in England and Wales, 1850-1950," 6.

portrayal of letters, signatures, and marriage certificates as evidence of Lucy Audley and Aurora Floyd's unhappy marriages and the injustices of bigamy charges on married women. Furthermore, I argue that the origins of what Maia McAleavey terms the "bigamy novel" genre in the nineteenth century can be seen as connected with the debates for bigamy law reform and the use of legal evidence as a literary tool.⁴¹ As bigamy novels became characterised by the portrayal of circumstantial evidence and women's unintentional bigamy, the awareness to the growing debates for bigamy law reform is apparent. Unfortunately, women would not be granted equal access to divorce on grounds of adultery until 1923.⁴²

In the fourth chapter of this dissertation, I shift my attention away from the 1857 Act to focus on the continued debates for married women's legal rights in ceremonial and property laws that were not included in the Act. This chapter will analyse Wilkie Collins' *Man and Wife* (1870) in two parts. Firstly, I examine Collins' portrayal of the debates for ceremonial law reform due to the inconsistencies between English, Irish, and Scottish marriage laws. Collins directly responds to *The Report of the Royal Commission on the Laws of Marriage* (1868) as a proposal of ceremonial law reform both in the preface to the novel and through the portrayal of Anne Silvester's legal sufferings. Anne's affirmation of marriage, in the form of letters, is used to dispute Geoffrey Delamayn's refused recognition of her as his wife because verbal or written acknowledgement of marriage was legally binding in Scotland. The use of women's letters was notorious in the ceremonial law trials of *Yelverton v. Yelverton* and *Dalrymple v. Dalrymple* to highlight the obscurities of ceremonial laws. The second part of this chapter will analyse the portrayal of Hester Dethridge and the debates for the Married Women's Property

⁴¹ Maia McAleavey, *The Bigamy Plot: Sensation and Convention in the Victorian Novel* (Cambridge: Cambridge University Press, 2015), 6.

⁴² Stone, *Road to Divorce*, 395-396.

Act of 1870. Excluded from the 1857 Act, married women's property rights become a popular subject of debate amongst essayists, politicians, and novelists. Advocates emphasised that without the legal distinction of married women as separate from their husbands they would continue to be silenced by the law. This chapter examines Hester's written "Confession" as a narrative of her abusive marriage and eventual murder of her husband. As a criminal confession, Hester's narrative can be viewed as both an admission of guilt and accusation of contemporary property and marriage laws. I examine the "Confession" as a commentary of married women's lack of legal rights and representation. Hester's story will be analysed parallel to the 1869 *Rex v. Palmer* murder trial in order to present the differences between married women's legal representation in criminal and civil courts. This chapter focuses on the narrative form of both circumstantial and testimonial evidence as a characteristic feature in the development of nineteenth-century novel form. Furthermore, I examine the novel as a commentary on the failings of the 1857 Act and as a protest for married women's separate legal representation from their husbands in conjunction with contemporary debates.

The concluding chapter of this dissertation examines George Meredith's *Diana of the Crossways* (1885) as an examination of the role that narratives of experience had on nineteenth-century marriage law reforms and the role that married women's written narratives played in such reforms. Meredith's novel is renowned as a fictional portrayal of Norton's legal sufferings and profession as a literary advocate for marriage law reform. As a victim of the double standards of crim. con. trials, Diana Warwick serves as a "martyr" in the fight for married women's equal marriage rights and uses her literary skills to produce autobiographical

novels as the best method of sharing her experiences with the public.⁴³ The distinction between outsider perspectives of Diana's suffering and her own narrations through the form of novels illustrates the importance that married women's first-hand narratives of experience play in making a case for legal reform. My examination will focus on the genre of sympathetic realism as a mixture of fact and fiction that highlights the importance of individuals' experiences, or testimonies, as representative of a wider community concern. By representing the agency of Diana's novel writing against rumours and scandal reports, Meredith emphasises the ways in which his own fictional writing can be more effective than the reports surrounding his own marriage scandal. Published in 1885, after women were provided with the ability to represent themselves in a court of law by the 1882 Married Women's Property Act, *Diana of the Crossways* reflects on the importance that the right to legal representation has on sharing married women's experience of legal oppression. Furthermore, by associating his portrayal of Diana with Norton, Meredith represents the importance of narrative jurisprudence on nineteenth-century marriage law reforms and the development of the nineteenth-century novel form.

Each of these analyses contributes to the study of law and literature's symbiotic relationship during the nineteenth century. This dissertation provides a chronological history of marriage law reform debates in the nineteenth century and the changing representation of married women's narratives in the novel form through an examination of how married women were able to break their silence. I emphasise the significance of married women's written narratives within both legal and literary settings as a combination of fact and fiction and argue

⁴³ George Meredith, *Diana of the Crossways* [1885], introduction by Lois Joseph Fowler (New York: W.W. Norton & Company, 1973), 99.

that law and literature worked together to provide married women with a long-deserved legal voice.

Chapter 1

"Trust my words rather than your own feelings": The Diary as Testimonial Evidence in Anne Brontë's *The Tenant of Wildfell Hall*

On the morning of the 29th of March 1836, Caroline Norton returned home to find the doors of her home locked, her entry barred, and her children taken away by her husband.¹ Frantically in search of legal aid, she would discover that "[t]he Father's right is absolute and paramount, and can no more be affected by the mother's claim, than if she had no existence."² Norton would go on to write three political pamphlets on married women's rights to the custody of their children and persuade Parliament to pass the 1839 Custody of Infants Act, subsequently using her own experiences to spark a wave of married women's narratives in law and literature for marriage law reform.³ Anne Brontë's *The Tenant of Wildfell Hall* (1848) details custody laws before and after the 1839 Custody of Infants Act and the effects that married women's written accounts of marriage law injustices had on the argument for nineteenth-century marriage law reforms. As Jan-Melissa Schramm argues in her examination of testimonial evidence in nineteenth-century novels, "the representation of testimony in imaginative fiction can also serve to recover evidence of suffering."⁴ This understanding draws from the techniques of legal evidence used to narrate personal experiences in order to persuade judges and jury

¹ Diane Atkinson, *The Criminal Conversation of Mrs Norton* (London: Arrow Books: 2012), 156.

² Caroline Norton, *The Separation of Mother and Child By the Law of "Custody of Infants," Considered* (London: Roake and Varty, 1838), 3.

³ Mary Lyndon Shanley, *Feminism, Marriage, and the Law in Victorian England* (Princeton: Princeton University Press, 1989), 17.

⁴ Jan-Melissa Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Theology* (Cambridge: Cambridge University Press, 2000), 4-5.

members in favour of just verdicts.⁵ Unfortunately, as explained in the introduction to this dissertation, married women were barred from giving such testimonies in marriage law trials until 1882.⁶ Brontë enables Helen Huntingdon to speak out against her legal sufferings through the written form of her diary; set during the debates for custody law reform as a depiction of an abused wife torn between the thought of staying with her husband in order to protect her child or running away at the risk of having her son taken away from her forever. Helen emphasises the influence that married women's written testimonies can have when she pleads with Gilbert Markham to "[t]rust my words rather than your own feelings" as testimony of her innocence and the effects of unjust marriage laws.⁷ Only through Helen's own words in the form of her diary to narrate married women's experiences of legal oppression can her legal silencing be broken.

This chapter will be separated into three sections in order to address the legal narrative of Helen's diary in *The Tenant of Wildfell Hall*. As distinguished in my introductory chapter, narrative jurisprudence must address both "Law in Literature" and "Law as Literature."⁸ In order to analyse the legal theme of *The Tenant of Wildfell Hall*, I provide a background to contemporary custody laws and the effect that the debates for custody law reform had on the nineteenth-century representation of married women's lack of legal rights. I analyse Norton's role in the debates for custody law reform and the passing of the 1839 Custody of Infants Act by outlining her use of first-hand experiences in political pamphlets to represent the suffering of married women and the necessity for married women's custody rights. As a result, I

⁵ Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Theology*, 5.

⁶ Shanley, *Feminism, Marriage and the Law in Victorian England*, 103.

⁷ Anne Brontë, *The Tenant of Wildfell Hall* [1848], ed. Stevie Davies (London: Penguin Books, 1998), 403.

⁸ Guyora Binder and Robert Weisberg, *Literary Criticism of Law* (Princeton: Princeton University Press, 2000), 3.

examine the influence that Norton's narratives had on the debates surrounding the 1839 Act and how her advocacy led to a century of debates for married women's legal rights.

In order to examine the role of married women's written narratives in the debates for custody law reform, the second section of this chapter analyses what critic A. Craig Bell calls the "much-criticised break" of narrative form in *The Tenant of Wildfell Hall*.⁹ As an example of written testimonial evidence, Helen's experiences of legal sufferings are presented to Gilbert Markham in the form of a diary. The chronological setting of Brontë's novel can be established through the dated entries of Helen's diary and the portrayal of married women's legal oppression prior to and following the 1839 Act. It is feasible to place Helen's marriage in comparison to Norton's period of advocacy for the 1839 Custody of Infants Act through this examination. By chronologically placing Helen's diary, it is possible to analyse the significance that married women's lack of custody right had on her legal position in marriage. My aim is to point out that while Brontë's novel is fictional it is based in the factuality of custody law reforms of the 1830s and married women's legal oppression. As Ian Ward claims in his chapter "*Huntingdon v. Huntingdon*" in *Law and the Brontës*, Helen's suffering under unjust custody laws "was not an uncommon dilemma in mid-nineteenth-century England. It was, however, an uncommon subject for public discourse, and it was an even more uncommon subject for literary commentary."¹⁰ As a result of Norton's role in bringing to light women's legal position into "public discourse," *The Tenant of Wildfell Hall* brings Helen's legal struggles into "literary commentary." By similarly treating Helen's marriage as a legal case

⁹ A. Craig Bell, "Anne Brontë: A Re-Appraisal," *The Quarterly Review*, 304, July 1966, reprinted in *The Brontë Sisters: Critical Assessment*, Vol. II, ed. Eleanor McNeer (Mountfield: Helm Information Ltd., 1996), 466.

¹⁰ Ian Ward, "*Huntingdon v. Huntingdon*" in *Law and the Brontës* (Basingstoke: Palgrave Macmillan, 2012), 25.

study, my analysis examines Brontë's clear knowledge of the 1830s custody law debates and, therefore, the role that Norton's written testimonial narratives had on legal change.

Furthermore, the third section of this chapter analyses diaries as a form of legal evidence both within *The Tenant of Wildfell Hall* and in marriage trials of the period. While married women were barred from testifying in marriage trials, written evidence enabled women's experiences of marital suffering to be heard. The significance of married women's diaries as testimonial evidence is especially prominent in the 1858 *Robinson v. Robinson & Lane* adultery trial. As the focus of Kate Summerscale's *Mrs Robinson's Disgrace: The Private Diary of a Victorian Lady*, Isabella Robinson's diary leads legal professionals and public audiences to question married women's writing as a mixture of fact and fiction much the same way as Brontë's depiction of Helen's diary. Summerscale argues that “[o]f all the written life stories that fascinated the Victorians—biographies, autobiographies, memoirs, journals of health and travel and politics—the personal diary was the most subjective and raw, and most revealing of the problems of writing and reading about the self.”¹¹ She goes on to argue that the growing consumerism of blank diaries and diary sets can be attributed to women's new-found necessity to record their lives for legal evidence purposes.¹² The diary form enabled women to create records of the legal system's mistreatment of married women while simultaneously utilising the narrative techniques of fiction to create a persuasive case for legal reform. I examine Helen's diary through a similar theory as a factually based form of legal evidence. Presented to Gilbert as a narrative of her marital sufferings and testimony of innocence within an unjust legal system, Helen's diary forces readers to both question her

¹¹ Kate Summerscale, *Mrs Robinson's Disgrace: The Private Diary of a Victorian Lady* (London: Bloomsbury, 2012), 149.

¹² *Ibid.*, 152.

decision to desert her husband and question the legal institution of marriage's treatment of married women.

As this dissertation examines the symbiotic relationship of law and literature in the nineteenth century, I investigate the merging genre of the diary novel and portrayal of married women's diaries as a response to the marriage law reform debates' focus on women's narratives. This chapter situates *The Tenant of Wildfell Hall* within the literary development of what Lorna Martens terms "the diary novel" genre.¹³ I argue that the development of this genre within the nineteenth century, in addition to the other genres which the following chapters will introduce, can be seen as a by-product of the influence of women's written narratives in the debates for marriage law reform. The diary novel genre focuses on the narrative purposes of physical writing in fact and fiction in the same way that jurisprudence theorists argue that law and literature are dependant on the fusion of fact and fiction in order to create an affective argument and grasp for sympathy.¹⁴ Through Brontë's use of the diary model, she allows readers to judge the facts of Helen's legal oppression. By examining Helen's diary against Norton's narratives of suffering under contemporary custody laws, my objective is to emphasise the importance of married women's written testimonials accounts in the legislation which founded the nineteenth-century debates for marriage law reform.

¹³ Lorna Martens, *The Diary Novel* (Cambridge: Cambridge University Press, 1985), 3.

¹⁴ *Ibid.*, 194.

I. Caroline Norton and the Debate for Custody Law Reform

Caroline Norton was separated from her sons for over four years during her legal battles with her husband.¹⁵ During this time, Norton wrote three political pamphlets—*Observations on the Natural Claim of the Mother to the Custody of her Infant Children* (1837), *The Separation of Mother and Child By the Law* (1838), and *A Plain Letter to the Lord Chancellor on the Infant Custody Bill* (1839)—to relate to Members of Parliament the suffering that mothers felt when unjustly separated from their children. Norton privately printed these pamphlets for distribution amongst Members of Parliament as testimonial evidence of the need for custody law reform.¹⁶ Martha Bailey explains that "Norton's pamphlets appealed to the increasing humanitarian sentiments of Parliament, the growing support for individual rights among reformers, the paternalistic feelings of conservatives, and the prevailing view on the natural role of mothers."¹⁷ Norton's writing and the story of her legal oppression would result in the 1839 Custody of Infants Act and inspire future debates for married women's legal representation.

Prior to the passage of the 1839 Act, custody rights had a distinct paternal bias attributable to inheritance customs.¹⁸ According to Norton's explanation of contemporary custody laws, "*the law is clear that the custody of a child, of whatever age, belongs to the father.*"¹⁹ This concept derived from the belief that because a man's child held his bloodline

¹⁵ Jane Gray Perkins, *The Life of the Honourable Mrs. Norton* (New York: Henry Holt & Co., 1909), 103.

¹⁶ Caroline Norton to Mary Shelley, Maiden Bradley, 5 January 1837, in Jane Gray Perkins, *The Life of the Honourable Mrs. Norton* (New York: Henry Holt & Co., 1909), 133.

¹⁷ Martha J. Bailey, "England's First Custody of Infants Act" *Queen's Law Journal* 20(20), (Spring 1995): 417.

¹⁸ Caroline Norton, *A Plain Letter to the Lord Chancellor on the Infant Custody Bill* (London: James Ridgeway, 1839), 8.

¹⁹ Norton, *Separation of Mother and Child*, 36.

and his property, he had a right to control his lineage.²⁰ It is for this reason that a wife's adultery was a cause for divorce while a husband's adultery was not.²¹ A married woman's adultery and the possibility of a resulting child were not only a crime against the religious sanctity of marriage but more importantly a crime against the laws of bloodline inheritance.²² Therefore, mistresses retained custody rights to illegitimate children while lawful wives were left powerless.²³

Norton admits her frustration with finding out that her husband did not even intend to keep their children with him but to send them to Scotland to be guarded by his sister.²⁴ This leads her to question why should the law protect a father's right to his children when he does not even care to have them by his side. Norton explains that:

the law supposing the *nominal* custody to be with him, does not oblige him to make it a *bona fide* custody by the residence of the child under his roof and protection, but holds 'the custody of the father' to mean, in an extended sense, the custody of whatever stranger the father may think fit to appoint in lieu of the mother; and those strangers can exert his delegated authority to exclude the mother from access to her children.²⁵

She argues that this should be reason enough to provide mother's custody of children as, "[h]e who imagines he can find a *substitute* for maternal affection, has never felt its full value ; he who can consent, from anger and caprice, to wean his children from *their* mother, has never truly loved and respected his own."²⁶ And yet, George Norton was not alone in thinking that he still was more deserving of custody rights and justified in the exclusion of his wife from seeing her children.

²⁰ Norton, *A Plain Letter*, 8.

²¹ *Ibid.*, 9.

²² *Ibid.*, 8

²³ Norton, *Separation of Mother and Child*, 23.

²⁴ Atkinson, *The Criminal Conversation of Mrs Norton*, 198.

²⁵ Norton, *Separation of Mother and Child*, 2.

²⁶ *Ibid.*, 12.

The legal non-existence of married women made it impossible to seek "legal remedy [...] by appeal to the Courts or otherwise; the construction of the law being, that they have *no power to interfere* with the exercise of the father's right."²⁷ Married women could not file custody suits against their husbands, let alone speak in defence of their right to the custody of their children in court. In hopes of bringing light to married women's legal non-existence, Norton points out that "the claim of the mother is not only subordinate to that of the father, but is totally disregarded, or rather, has no acknowledged existence in law."²⁸ Norton dedicated the majority of *The Separation of Mother and Child* and *Observations on the Natural Claim of the Mother* to summarising custody trials of the previous thirty years in which women attempted to claim a right to their children.²⁹ *De Manneville v. De Manneville* (1804), *Skinner v. Skinner* (1824), *M'Clellan v. M'Clellan* (1830), *Greenhill v. Greenhill* (1835), and Caroline Norton's own legal battles (1840) were the most highly referenced custody trials of the period and were frequently referenced by reformers such as Norton, Edward Churton, Richard Mence, and William Forsyth.³⁰ These cases varied from wives having their children taken out of the country to those who literally had their infants "torn from the breast."³¹ In the 1804 case of *De Manneville v. De Manneville*, which Norton provides as an example, Lenard de Manneville hunted down his wife and "seized the child, *then at the breast*, and carried it away

²⁷ Norton, *Separation of Mother and Child*, 2.

²⁸ Caroline Norton, *Observations on the Natural Claim of the Mother to the Custody of her Infant Children, As Affected by the Common Law Right of the Father* (London: James Ridgway, 1837), 1.

²⁹ *Ibid.*, 6-48.

³⁰ Edward Churton's *A Letter to the Right Reverend the Lord Bishop of Exeter on the Custody of Infants* (1839), Richard Mence's *The Mutual Rights of Husband and Wife; With the Draft of a Bill to Replace that of Mr. Serjeant Talfourd for the Custody of Infants* (1838), and William Forsythe's *A Treatise on the Law Relating to the Custody of Infants, In Cases of Differences Between Parents of Guardians* (1850) were just a few critics to join the debates over custody law reform.

³¹ Norton, *Separation of Mother and Child*, 64.

almost naked in an open carriage in inclement weather” and yet was still awarded full custody.³² In such cases, a father needed no motivation to send his children away from their mother. Many judges went as far as to allow a husband to give his mistress custodial control over his wife as in the case of *Skinner v. Skinner*.³³ These examples of women's sufferings under unjust custody laws were used in parliamentary debates and within political pamphlets to prove the need for legal reform.

By bringing forth the commonality of mother's sufferings from unjust custody laws and contributing her own experiences, Norton informs her readers that "[n]umerous cases exist, in which the women have attempted to establish a claim to the custody of their children, but the result has invariably been *against the mother*."³⁴ Mothers, such as herself, were legally innocent and yet had no claim against abusive and adulterous husbands. In a letter to her husband, Norton adds her frustration when she declares that "I have been pronounced and publicly declared innocent by the noblemen against whom that ill-advised action was brought. Why, then, are my children kept from me?"³⁵ Norton sees the exclusion of women's narrated experiences in court and the law as the root of custody law injustice.

In accordance with jurisprudence criteria that narration should both present the law "as it is" and the law "as it ought to be," Norton addresses the judicial system's treatment of married women and emphasises the necessity for custody law reform.³⁶ She questions "[w]hy should she suffer unjustly? Because it is so written in the law?" and asks "if it is only THE LAW which stands against the admission of the mother's natural claim—what hinders that the

³² Norton, *Observations*, 7.

³³ Norton, *Separation of Mother and Child*, 54.

³⁴ Norton, *Observations*, 2

³⁵ Perkins, *The Life of Mrs. Norton*, 99.

³⁶ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* [1789], ed. J.H. Burns and H.L.A. Hart (Oxford: Clarendon Press, 2005), 294.

law be altered?"³⁷ She points out that despite a long record of women suffering under unjust custody laws, "it does not appear that any attempt has ever been made to revise or alter it."³⁸ It was thanks to Norton's own pamphlets and the publication of married women's experiences under unjust custody laws that "[t]he law which regulates the Custody of Infant Children" was "now under consideration of the legislature" in 1837.³⁹

Using her political connections, Norton gained the support of Serjeant Thomas Talfourd, a Whig Member of Parliament who defended Melbourne against her husband, and persuaded him to put forth the first motion in the House of Commons for the Custody of Infants Bill on 25 April 1837.⁴⁰ Unfortunately, the Bill was set aside that session and not brought back into debate until 1838.⁴¹ The Bill was passed in the House of Commons in July 1838 and then proceeded to the House of Lords where it again failed to receive enough votes to become law. Bailey argues that the reasoning for the Bill's failure in the House of Lords was because "some judges retreated from judicial incursion on father's rights due to a concern about maintaining family stability."⁴² Opponents of custody reform argued that "wives in conflict with their husbands, were the unchaste ones, and should therefore[sic] be denied maternal rights."⁴³ It did not matter if women left due to cruelty or their husband's adultery; they were seen as violating their duty as wives. John Wroath notes that "[t]he central fear of the opponents of the Bill was the potential destruction of the institution of marriage. They

³⁷ Norton, *Separation of Mother and Child*, 17; Norton, *Observations*, 73.

³⁸ Norton, *Separation of Mother and Child*, 5

³⁹ *Ibid.*, 1

⁴⁰ Talford was a former playwright and was also an acquaintance of Charles Dickens, who wrote a trial report on the *Norton v. Melbourne* case. (See Bailey, "England's First Custody of Infants Act," 409).

⁴¹ Bailey, "England's First Custody of Infants Act," 412.

⁴² *Ibid.*, 396.

⁴³ Joan Huddleston, introduction to *English Laws for Women in the Nineteenth Century* by Caroline Norton (Chicago: Academy Chicago Publishers, 1982), ix.

believed that only the threat of losing their children kept women in unhappy marriages."⁴⁴ Instead, husbands used custody laws as blackmail in order to force women to remain in an unhappy marriage.⁴⁵ They were given a choice to either leave without their children or stay to protect them. Critics of the Bill believed that any means that would prevent the immoral separation of husband and wife was necessary, even when it meant the sacrifice of married women's happiness.⁴⁶

In 1838, Norton published *A Plain Letter to the Lord Chancellor on the Infant Custody Bill* under the pseudonym of Pearce Stevenson as an anonymous response to critical Parliamentary members who opposed custody law reform. Much of the criticism towards the Bill was directed towards Norton and she wished to distance herself in order to focus politician's attention on the cause rather than the rumours of her scandalous marriage. Fellow writer Harriet Martineau, in fact, claimed that Norton's continual reiteration of her suffering could be defined as "epicurean selfishness" and made her "the worst enemy of the cause she professes to plead."⁴⁷ An anonymous review of Norton's first pamphlets warned her to "be careful, that in the minds of men, with less faith in her than ourselves, this common cause, this good woman's case does not degenerate into 'Mrs. Norton's case.'"⁴⁸ As a preventative of this,

⁴⁴ John Wroath, *Until They are Seven: The Origins of Women's Legal Rights* (Winchester: Waterside Press, 1998), 103-104.

⁴⁵ Joan Perkin, *Women and Marriage in Nineteenth-Century England* (London: Routledge, 1989), 108.

⁴⁶ Anonymous, *A Brief Exposure of the Most Immoral and Dangerous Tendency of a Bill Affecting the Rights of Parents now under Consideration of Parliament, or, Summary of Reasons Why this Bill, entitled "Custody of Infants Bill," should not be allowed to become the Law of the Land* (London: Richard and John E. Taylor, 1838).

⁴⁷ Harriet Martineau, *Harriet Martineau's Autobiography*, Vol. 1, ed. Maria Weston Chapman (Boston: J.R. Osgood, 1877), 302.

⁴⁸ Anonymous, "The Non-Existence of Women: Letter to the Queen on Lord Chancellor Cranworth's Marriage and Divorce Bill," *The North British Review* 23 (May-August 1855): 540.

Norton's *A Plain Letter* was written under a male pseudonym and distributed by Talfourd during the 1838 parliamentary deliberation of the Bill.⁴⁹ Norton goes as far as to criticise herself in *A Plain Letter* and attempt to provide an outsider's summary of her own custody battles.⁵⁰ Norton understood that narrating married women's experiences of oppression had brought the Bill into question and if she had to be negatively criticised and ridiculed for her strong stance it would at least keep the conversation of married women's legal rights going.

Norton assures politicians that the Bill does not propose taking custody rights away from fathers but instead allows mothers to also apply for custody of her children.⁵¹ She addresses the concern that women's custody rights would damage the sanctity of marriage by stating that the Bill intended to help return marriage back to a sanctified state for both men and women.⁵² Norton argues that, "whether the instances of injustice which this Bill is intended to remedy be few or many, one thing is very certain, namely, that after the passing of this measure the number of those instances will be diminished."⁵³ The Bill would discourage men from abusing their wives which would, as consequence, improve the integrity of marriage.⁵⁴ Furthermore, women would view separation as a last resort rather than an easy solution—especially since the Bill in question only gave mothers the right to apply for custody for children under the age of seven.⁵⁵ Norton insists that the purpose of the Bill was not to desecrate the institution of marriage by allowing women to leave their husbands whenever they wished. Instead, the Bill would provide married women with the ability to be recognised

⁴⁹ Kieran Dolin, "A Woman's Pleading: Caroline Norton's Pamphlets on Laws for Women in Nineteenth-Century England," *Australian Feminist Law Journal* (10), 1998:55.

⁵⁰ Norton, *A Plain Letter*, 74-96.

⁵¹ *Ibid.*, 2.

⁵² *Ibid.*, 18.

⁵³ *Ibid.*, 25

⁵⁴ *Ibid.*, 18.

⁵⁵ *Ibid.*, 13.

by the legal system as individuals worthy of "protection" and make husbands accountable for their actions.⁵⁶

The Custody of Infants Bill finally passed in both Houses in July 1839 "by a vote of sixty to fourteen."⁵⁷ After each reading the Bill was amended until a final decision was made to allow mothers to "petition in the equity courts for custody of her children up to the age of seven, and for periodic access to children age seven or older."⁵⁸ After the age of seven, a mother was seen as no longer essential for a child's nourishment and upbringing.⁵⁹

Unfortunately, as Joan Huddleston notes, "[t]he mothers had to prove themselves of spotless character, and had to petition the Lord Chancellor for a hearing before a special court which could grant what access it chose. It was a significant improvement though by no means perfect."⁶⁰ Furthermore, Mary Lyndon Shanley points out that "[o]nly mothers who were wealthy, blameless of sexual misconduct, separated from their husbands, and whose children were under age seven might get custody under the Act—a small group indeed."⁶¹ Working class women who could not afford legal representation and trial costs were still overlooked. Undoubtedly there was still much work needed to provide married women with equal custody rights to their husbands but the 1839 Act was only the beginning.

While the 1839 Act was the first acknowledgement of married women's legal presence, custody rights would further be altered throughout the century. The debates leading up to the 1857 Matrimonial Causes and Divorce Act drew from the 1830s custody rights parliamentary

⁵⁶ Caroline Norton, *English Laws for Women in the Nineteenth Century* [1854], introduction by Joan Huddleston (Chicago: Academy Chicago Publishers, 1982), 165.

⁵⁷ Bailey, "England's First *Custody of Infants Act*," 42.

⁵⁸ Shanley, *Feminism, Marriage, and the Law in Victorian England*, 137.

⁵⁹ Norton, *A Plain Letter*, 13.

⁶⁰ Huddleston, introduction to *English Laws for Women in the Nineteenth Century* by Caroline Norton, x.

⁶¹ Shanley, *Feminism, Marriage, and the Law in Victorian England*, 137.

discussions as examples of married women's inequality.⁶² Prior to 1857 custody trials were held in the Court Chancery but with the creation of the Divorce Court married women were provided a new setting for their demand for custody rights.⁶³ Shanley notes that "[t]he discretionary authority given to the Divorce Court reflected a growing concern with children's welfare. The lawyers drafting the Divorce Act believed that the welfare of children, rather than either paternal or maternal rights, should determine custody decisions."⁶⁴ Section 35 of the 1857 Act revealed that the "[c]ourt may, from time to time, before making its final order, make such interim orders, and may make such provision in the final decree as it may deem just with respect to the custody of children."⁶⁵ This decree permitted married women of all social classes to petition for custody rights to children of all ages. Women's custody rights continued to be recognised through the Custody of Infants Act of 1873 and 1886, but it wasn't until the 1925 Guardianship of Infants Act that mothers were considered the preferred guardians of their children.⁶⁶

While the later advancements of the Custody of Infants Act furthered married women's ability to achieve full custody of their children, the importance of the mid-nineteenth century debates and reforms continues to be known as the moment that women's legal rights were first considered by Parliament.⁶⁷ Wroath emphasises that "[f]or the first time in English law, a mother was given the right to apply to the courts in respect of her children. It was a modest step forward and her rights were limited, but it did represent the first crucial recognition of

⁶² Shanley, *Feminism, Marriage, and the Law in Victorian England*, 17.

⁶³ Lawrence Stone, *Road to Divorce: England 1530-1987* (Oxford: Oxford University Press, 1990), 25.

⁶⁴ Shanley, *Feminism, Marriage, and the Law in Victorian England*, 38.

⁶⁵ *Ibid.*, 138.

⁶⁶ *Ibid.*, 138-155.

⁶⁷ Shanley, *Feminism, Marriage, and the Law in Victorian England*, 17.

mothers."⁶⁸ It is for this reason Norton's role in the debates for custody law reform inspired this dissertation to examine married women's written narratives as representative of the arguments for legal representation. Norton put forth her own experiences under the legal institution of marriage as evidence for a public who had previously been ignorant to the suffering of married women under unjust marriage laws. As this dissertation argues, Norton became a figurehead for married women's legal suffering that infiltrated Victorian novels' portrayal of married women's legal oppression under unjust marriage laws.

II. "Much Criticized Break": Framed Narratives and Chronological Plots in *The Tenant of Wildfell Hall*

In Charles Kingsley's 1849 review of Anne Brontë's *The Tenant of Wildfell Hall* in *Fraser's Magazine*, he claims that the narrative frame of Helen Huntingdon's diary is "a defect which injures the real usefulness and real worth of the book."⁶⁹ Yet, he also notes that he hopes "that every man in England might read and lay to heart that horrible record" of married women's oppression.⁷⁰ These contradictory views of the novel separate the narrative form created by Helen's diary and the thematic representation of the injustices of marriage laws as separate when in fact they should be examined together. Narrative jurisprudence analyst, Paul Gewirtz, acknowledges that "a trial consists of fragmented narratives and narrative multiplicity."⁷¹ This chapter argues that Brontë's *The Tenant of Wildfell Hall* can be examined as a work of

⁶⁸ Wroath, *Until They are Seven*, 16.

⁶⁹ Charles Kingsley, "Recent Novels," *Fraser's Magazine* 39, (April 1849): 419.

⁷⁰ *Ibid.*, 419.

⁷¹ Paul Gewirtz, "Narrative and Rhetoric in the Law," in *Law's Stories: Narrative and Rhetoric in the Law* ed. Peter Brooks and Paul Gewirtz (New Haven: Yale University, 1996), 8.

feminist narrative jurisprudence that advocates for custody law reform through the fragmented narrative form of Helen's diary. By treating Helen's marriage as a case study in favour of custody law reform set in the 1830s, it is possible to analyse Helen's diary as testimonial evidence of the unjust custody laws prior to the 1839 Custody of Infants Act.

At the commencement of *The Tenant of Wildfell Hall*, Gilbert Markham writes to his new brother-in-law, Jack Halford, of a time when he became acquainted with a mysterious woman and her child who had recently arrived as the new tenants of a local estate. Markham recounts his growing affections towards her and his desire to learn more about her past in order to acquit her of local rumours. When the widow-in-disguise, Helen Graham Huntingdon, offers up her diary to Markham in order to impart to him the secrets of her unhappy marriage and the decision to run away with her son, she begs him to "[t]rust my words rather than your own feelings."⁷² Helen narrates her marriage to the abusive, adulterous Arthur Huntingdon and her inability to escape with her son due to contemporary custody and marriage laws. Helen's diary serves as a platform for women to speak out against the sufferings of women stuck in unhappy marriages and argues for further custody rights when they were legally silenced.

The chronological structure created by Helen's legal struggles occurs amidst the 1830s debates surrounding real-life trials and parliamentary debates. The chronological period in which *The Tenant of Wildfell Hall's* inner frame was set, beginning in 1821, presents Helen's story as a contribution to the testimonial accounts publicised in the debates for custody law reform. Bell observes the value that chronology plays in the novel when he notes that "[t]he novel is, in fact, a triptych: the first part covering 1827-28 (the period of Helen Huntingdon's arrival and stay at Wildfell Hall); the second 1821-27 (her marriage to and flight from Arthur

⁷² Brontë, *The Tenant of Wildfell Hall*, 403.

Huntingdon, her return to him and his death); the third 1828-30 (Markham's discovery of her whereabouts, and their marriage)."⁷³ The chronological contrast between Helen's first marriage to Huntingdon prior to the 1839 Act and to her second marriage to Markham around 1847 signifies the importance of Parliament's acknowledgement of married women's custody rights. By dissecting the chronological structure of the novel, it is apparent that Helen's legal oppression would have occurred in tandem with Norton's fight for custody law reform. Beginning in 1821 and ending in 1830, Helen's custody battles pre-empted the passing of the 1839 Custody of Infants Act. Unfortunately, Helen would not have been allowed to keep her child, even if the events of the novel had taken place after 1839, due to the fact that her son was over the age of seven and she would not have been given permission by her husband. As Monika Hope Lee emphasises in her analysis of Helen's maternal rights:

Although an Infants and Child Custody Act had been passed in 1839, which allowed non-adulterous women to ask for the custody of children under 7, courts still favoured paternal over maternal custody. The law, in any case, would not have applied to Helen Huntingdon, since she abandons her husband in October 1827, and it would not even have benefitted her in 1848 when the novel was published, because she separates from Huntingdon illegally.⁷⁴

Helen's dated diary entries situate her custody struggles before the 1839 Act as evidence of the call for custody law reform and the ways in which the Act's restriction continues to victimise married women in 1848. Helen's battle over custody law restrictions continued past 1839 until the death of her husband. Like Norton, Helen understood the necessity for women's custody rights despite her inability to have custody of her own children. The narration of her experiences due to such legal turmoil serves as testimony for the continued reform of custody laws to include all ages of children.

⁷³ Bell, "Anne Brontë: A Re-Appraisal," 50.

⁷⁴ Monika Hope Lee, "A Mother Outlaw Vindicated: Social Critique in Anne Brontë's *The Tenant of Wildfell Hall*," *Nineteenth-Century Gender Studies* (4.3), (Winter 2008): 24.

The diary narrative framework and portrayal of marriage injustices in *The Tenant of Wildfell Hall* has been highly criticised since its publication, with contemporary reviews from *The Examiner*, the *Athenaeum*, and *Fraser's Magazine* claiming that Helen Huntingdon's perspective creates a "faulty construction" and presents her marriage with a "hard indifference" that is "unfit to be put into the hands of girls."⁷⁵ George Moore infamously criticises Brontë's choice of narrative structure by stating that:

almost any man of letters would have laid his hand upon her arm and said: You must not let your heroine give her diary to the young farmer, saying "Here is my story; go home and read it." Your heroine must tell the young farmer her story, and an entrancing scene you will make of the telling.⁷⁶

In addition, Bell summarises contemporary responses to Brontë's narrative structure by questioning:

Why, they complain, instead of the clumsy and unnecessarily complicated device of rushing to her desk, thrusting a thick manuscript volume into his hands and agitatedly pushing him out of the house with injunctions to take it home and read it as her vindication—why did she not simply [...] invite him to sit down and tell him her story?⁷⁷

Although the use of Helen's first person narrative in the form of a diary was negatively criticised by contemporary reviews, the novel's "much criticized 'break'" in narrative voice acts as a legal proponent of Helen's physical written testimony of marital sufferings.⁷⁸ Helen's personal perspective provides readers with an authoritative account of what went on behind closed doors of her unhappy marriage. As Schramm notes, "[i]n nineteenth-century narrative, characters are rarely subject to judgement without the reader being offered their personal

⁷⁵ Unsigned Review, *The Examiner* No. 2113 (29 July 1848): 484; Unsigned Review, *Athenaeum* No. 1080 (8 July 1848): 671; Charles Kingsley, *Fraser's Magazine for Town and Country* (April 1849): 423.

⁷⁶ George Moore, *Conversations in Ebury* (New York: Boni and Liveright, 1924) qtd in Maria Frawley, *Anne Brontë* (New York: Twayne, 1996), 120.

⁷⁷ Bell, "Anne Brontë: A Re-Appraisal," 86.

⁷⁸ *Ibid.*, 466.

testimony of guilt or innocence, and thus realist fiction represents itself as capable of reaching the truths of human behaviour to which the bench was no denied access."⁷⁹ Brontë intentionally chooses to relate Helen's testimony through the diary form in order to present to readers that in a realistic trial this would be Helen's only defence. She would not have been able to stand in court and verbally share her narrative and thus must rely on her writing.

In 1822, when Helen marries Arthur she is immediately forced to admit that she "was wilfully blind" to what married life would be.⁸⁰ She quickly learns of her husband's drinking and gambling habits and the ruffian friends with whom he keeps company. Helen is confined to her country home while her husband gallivants around London, making her diary her only companion and outlet for reflection. Fortunately, less than a year into her marriage Helen sees relief in the birth of her son. She at last has company in her marital isolation. However, the birth of her son also brought further "indifference" and discontent from Arthur.⁸¹ He presents his displeasure when he proclaims to Helen, "I shall positively hate that little wretch, if you worship it so madly! [...] I may go and come, be present or absent, cheerful or sad; it's all the same to you. As long as you have that ugly little creature to dote upon."⁸² Helen notes that, with the birth of their son, "the 'romance' of our attachment must have worn away" seeing as Arthur spent most of the year in London.⁸³ Years go by as Helen and her son remain at Grassdale Manor with periodic and abhorrent visits from Arthur and his entourage of sinful men and women. She begins to see her marriage deteriorate and Arthur's abusive behaviour increase with each visit.

⁷⁹ Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Theology*, 7.

⁸⁰ Brontë, *The Tenant of Wildfell Hall*, 202.

⁸¹ *Ibid.*, 240.

⁸² *Ibid.*, 241.

⁸³ *Ibid.*, 243.

Helen finally takes a stand against her husband's misconduct and abuse when she witnesses his adultery with Lady Lowborough. Helen confronts her husband by declaring, "I would leave you tomorrow [...] and never again come under this roof, but for my child."⁸⁴ Helen is clearly aware that there are restrictions to the sole custody of children but she is unaware of the extent to which married women are unfairly treated under marriage laws. Arthur's actions make it clear that he no longer cares for her or their child. Helen decides that it would be best for both of them if she left. She asks Arthur:

"Will you let me take our child and what remains of my fortunes, and go?"

"Go where?"

"Anywhere, where he will be safe from your contaminating influence, and I shall be delivered from your presence—and you from mine."

"No—by *Jove* I won't!"

"Will you let me have the child then, without the money?"

"No-nor yourself without the child."⁸⁵

Without any form of legal education, women entered into the institution of marriage believing themselves to be equal to their husband only to be quickly reminded that they were sorely wrong. As Norton argues, "[i]t is a common error among women to suppose that every mother has a *right* to the custody of her child."⁸⁶ Helen is completely unaware of the extent of her lack of legal rights and representation. She is forced to recognise that she is trapped in a marriage to a man who commands complete ownership over her and her son. Helen goes from the hope of escaping with her "child and what remains of my fortunes," to the sole hope of possessing her "child then, without the money," to no possessions at all.⁸⁷ Helen begins to understand that not only does she not have an equal share in the right to her child but also that she has no ownership over any fortune or means of independence.

⁸⁴ Brontë, *The Tenant of Wildfell Hall*, 305

⁸⁵ *Ibid.*, 306.

⁸⁶ Norton, *Observations*, 2.

⁸⁷ Brontë, *The Tenant of Wildfell Hall*, 306.

Helen comprehends that to remain married to Arthur would be to "stay here, to be hated and despised" and agrees to continue as "husband and wife only in the name" for the sake of staying with her son.⁸⁸ She declares that she must remain merely as her "child's mother" and her husband's "housekeeper—nothing more."⁸⁹ In Helen's mind, marriage is no longer a religious and romantic institution but, as Norton argues, "legalised torture."⁹⁰ Helen is the one to be punished despite the fact that she has committed no crime. To make matters worse, the law endorses her suffering.

Upon witnessing Helen's defiant character and loss of affection for him, Arthur makes it his goal to see "who will tire first" and claims that his behaviour will worsen.⁹¹ He flaunts his adultery in front of Helen as well as Lord Lowborough, who later files for separation as a wife's adultery is justification for divorce unlike that of her husband. When reprimanded by his friends for his behaviour and the necessity to treat his wife well, Arthur responds "what wife? I have no wife [...] or if I have, look you gentleman, I value her so highly that any one among you, that can fancy her, may have her."⁹² Helen is treated by her husband just as the law treats her, as property. Arthur's tyranny over Helen is evidence of Norton's argument that "such power has in many instances been most grossly and savagely abused; that it has been exercised in the extremest spirit of vengeance and cruelty; that it is productive of injury to the child, of suffering to the mother; and has a direct tendency against the moral order and well-

⁸⁸ Brontë, *The Tenant of Wildfell Hall*, 306.

⁸⁹ *Ibid.*, 306.

⁹⁰ Norton, *Observations*, 57.

⁹¹ Brontë, *The Tenant of Wildfell Hall*, 306.

⁹² *Ibid.*, 355.

being of society."⁹³ Helen claims that even if the law does not care about her wellbeing it should at least protect her child from being used as a tool for vengeance.

Helen admits that the "greatest source of uneasiness, in this time of trial, was my son, whom his father and his father's friends delighted to encourage in all the embryo vices a little child can show, and to instruct in all the evil habits he could acquire."⁹⁴ She was forced to watch her son led into the world of her husband's sinful ways for the sole purpose of offending her. In addition, Huntingdon begins to isolate Helen further by making her the enemy of her own child, teaching his son that his "Mamma [...] must be wicked."⁹⁵ It is at this point Helen acknowledges that:

this should not continue; my child must not be abandoned to this corruption: better far that he should live in poverty and obscurity with a fugitive mother, than in luxury and affluence with such a father. [...] I could endure it for myself, but for my son it must be borne no longer: the world's opinion and the feelings of my friends must be alike unheeded here, at least, alike unable to deter me from my duty.⁹⁶

Brontë presents the difficulty of Helen's decision to leave her husband by questioning whether it would be best for her son if she "abandoned" him to the "corruption" of his father or unlawfully ran away with him into a life of "poverty and obscurity." Lee notes that a lack of custody rights would "have serious and unhappy consequences for Helen and her child [...] and that her only way of protecting him is to raise him as a fugitive in poverty."⁹⁷ In addition to the risk of poverty, mothers who chose to escape with their children were "subject to imprisonment for contempt of Court."⁹⁸ Helen understands this risk but holds the necessity to protect her child above her own security. She understands that her "duty" is no longer

⁹³ Norton, *Observations*, 4.

⁹⁴ Brontë, *The Tenant of Wildfell Hall*, 350.

⁹⁵ *Ibid.*, 363.

⁹⁶ *Ibid.*, 351-352.

⁹⁷ Lee, "A Mother Outlaw Vindicated," 3.

⁹⁸ Norton, *Observations*, 3.

centralised on being a good wife, but rather upon being a good mother. It is her duty to educate and mould her son into a proper, Christian man, while her husband feels content with presenting him solely with the debaucheries of the world in order to "make a man of him."⁹⁹ Therefore, as Helen states, "in duty to my son, I must submit no longer."¹⁰⁰ In order to do her duty as a mother, Helen must put the risks to her child above her own.

Helen's crucial decision to leave represents Norton's argument that "[t]he temptation to abduct the children, lies with the woman who is driven to desperation [...] which the law cannot relieve; who knows *she has but that one alternative.*"¹⁰¹ The fact that Helen feels that anything would be better than remaining at Grassdale, even poverty and ostracism, reveals the extent to which she is willing to suffer in order to have custody of her child. As a result, Helen begins to search for means of escaping with her son to avoid his further corruption. Given that the majority of upper class young women were not educated for the purpose of a profession, few means of financial independence were available to women.¹⁰² As Chapter 3 will argue, an income was more difficult for a married woman to obtain than an unmarried woman.¹⁰³ Helen uses her skills as a painter and plans to disguise herself as a widow in the same way that Norton uses her skill as a writer in order to obtain financial independence. Brontë presents the irony in the fact that Helen uses the artistic skills that she was taught in order to attract a husband to instead escape her marriage. Helen understands that the more artwork she produces and sells the sooner she and her child can escape.

⁹⁹ Brontë, *The Tenant of Wildfell Hall*, 350.

¹⁰⁰ *Ibid.*, 386.

¹⁰¹ Norton, *Plain Letter to the Lord Chancellor on the Infant Custody Bill*, 33.

¹⁰² Antonia Losano, "The Professionalization of the Woman Artist in Anne Brontë's *The Tenant of Wildfell Hall*," *Nineteenth-Century Literature* (58:1), June 2003: 10.

¹⁰³ Joshua Gooch, *The Victorian Novel, Service Work, and the Nineteenth-Century Economy* (Basingstoke: Palgrave Macmillan, 2015), 55

Unfortunately, Helen is circumvented by Arthur's legal dominance once again. Upon detailing her plan of escape in writing, Helen has her diary "forcibly wrested" from her hands and her plan found out.¹⁰⁴ In possession of her diary, Arthur examines "leaf after leaf to find an explanation of what he had read."¹⁰⁵ He decides that the best way to prevent her escape is to destroy her means of financial independence and declares that "we must have a confiscation of property."¹⁰⁶ He throws her "palette, paints, bladders, pencils, brushes, varnish" into the fire and confiscates any jewel or money that she has hidden.¹⁰⁷ As Chapter 4 will examine, married women had no right to personal property or equity. All that married women held in possession was automatically passed into the hands of their husband upon marriage.¹⁰⁸ Antonia Losano argues that Arthur's cruelty is "within his rights, for legally he has simply burned his own possessions."¹⁰⁹ By emphasising that it is legally within his rights, Brontë highlights what is wrong with the law. Fortunately, Arthur does not destroy the tool for independence that is most important to Helen, her diary. Helen states that she "would sooner burn it all than he should read what I had written."¹¹⁰ Her narrative remains more important than any painting or jewel and when the next opportunity arises she escapes to Wildfell Hall with her son and her diary.

It is at this point in the novel that Gilbert's narrative voice takes over from Helen's diary. Gilbert recognises the significance of Helen's diary when he declares that it "was too

¹⁰⁴ Brontë, *The Tenant of Wildfell Hall*, 364.

¹⁰⁵ *Ibid.*, 364.

¹⁰⁶ *Ibid.*, 365.

¹⁰⁷ *Ibid.*, 365.

¹⁰⁸ Caroline Norton, *A Letter to the Queen on Lord Chancellor Cranworth's Marriage and Divorce Bill* (London: Longman, Brown, Green, and Longmans, 1855), 8.

¹⁰⁹ Losano, "The Professionalization of the Woman Artist in Anne Brontë's *The Tenant of Wildfell Hall*," 33.

¹¹⁰ Brontë, *The Tenant of Wildfell Hall*, 367.

sacred for any eyes but her own."¹¹¹ Knowing that she is still married, Gilbert is forced to wait until Arthur's death to confront Helen about the possibility of remarrying. As Chapters 2 and 4 will further argue, any rumours of adultery on Helen's part would have provided Arthur with legal justification for judicial separation and barred her from ever seeing her son again. Gilbert is forced to rely on Helen's letters written to her brother, Frederick, while she attempts to make Arthur's death as comfortable as possible. Even when apart, Gilbert is reliant on Helen's written voice.

Brontë makes it clear that verbal "oaths and promises" are inferior to a "written agreement" and thus exemplifies the power of Helen's writing. Helen's written testimony educates Gilbert on the legal oppression of married women and her apprehension to once again enter into such a legally binding institution. As Parliament and public readers sympathised with Norton's pamphlets, Gilbert is convinced of the importance of women's fair treatment in marriage through Helen's writing. By the time that Gilbert and Helen are reunited, Gilbert is fully sympathetic to Helen's marital experiences and promises to accept her as his equal in marriage. Therefore, when he passes both his own narrative and Helen's diary to his brother-in-law, Gilbert hopes that Halford will similarly be convinced and remember to treat his own wife with respect. Encasing Helen's diary within Gilbert's letters and Halford's reading, Brontë once again presents Helen's narrative within a male dominated sphere as a way of showing the authority of her voice in the call for marriage reform. While contemporary critics were sceptical about the narrative form of *The Tenant of Wildfell Hall*, Brontë's choice of diary form seems necessary as both a plausible physical narrative form to be passed to others and as a legal narrative to be presented in court.

¹¹¹ Brontë, *The Tenant of Wildfell Hall*, 367.

III. "[A]ll this was too sacred for any eyes but her own": Helen's Writing as Testimonial Evidence and the Diary Novel

In an analysis of the representation of diaries in nineteenth-century novels, Catherine Delafield argues that "[t]he placement of a letter or diary within a fictional narrative draws attention to the document itself."¹¹² By drawing attention to Helen's diary, *The Tenant of Wildfell Hall* provides married women with the opportunity to testify against the unjust treatment of women within the legal institution of marriage and use their stories as evidence of the need for change. Helen's written narrative depicts the limited opportunities given to married women to have their stories of oppression heard as well as the power that their writing can have in advocating for legal reforms. While the diary narrative form is often examined as an epistolary tool in sentimental novels of the eighteenth and nineteenth century, it is equally as important to analyse the presentation of diaries as a form of narrative jurisprudence that feeds off the techniques of both law and literature to represent the nineteenth-century merging of fact and fiction.¹¹³ The use of married women's diaries as testimonial evidence became a tool of the nineteenth century in both novels and marriage trials as a method of understanding women's unhappy marriages and effects of a lack of legal representation. This chapter argues that the diary novel genre's origins in the nineteenth century can be seen as a by-product of married women's diary narratives in law and literature amidst the debates for marriage law reform.

¹¹² Catherine Delafield, *Women's Diaries as Narrative in the Nineteenth-Century Novel* (Surrey: Ashgate, 2009), 85.

¹¹³ Martens, *The Diary Novel*, 7.

Brontë aligns *The Tenant of Wildfell Hall* with a very specific genre that began to emerge in the nineteenth century. Martens terms this genre the "diary novel" and argues that "unlike the epistolary novel, the diary novel does not presuppose a fictive reader. Letters are by definition addressed to a recipient; diaries are normally private."¹¹⁴ As Kieran Dolin argues, Norton's pamphlets "cross the boundaries of public and private spheres by combining a personal appeal for justice with a general critique of the legal 'non-existence' of women."¹¹⁵ It is through this narrative technique that the diary form also crosses a boundary between "public and private spheres." Although Helen's diary is given to Gilbert, it is written prior to their acquaintance in moments of solitary reflection. Furthermore, Martens states that "the diary form is mimetic of what could be a real situation. No other form of narration can achieve comparable closeness between the narrator and the narrated world without being identifiably fictive."¹¹⁶ Diary writers reflected on recent events, allowing less room for inaccurate recollection while also taking into consideration how daily events impacted writers' lives. Rather than merely describing the events of her miserable marriage, Helen provides us with a transcribed account of her marriage and contemplates how her experiences differ from her idealised expectations. This is a technique prevalent in the diary novel genre with examples visible in Mary Shelley's *Frankenstein* (1823), Emily Brontë's *Wuthering Heights* (1847), Wilkie Collins' *The Woman in White* (1860), and Dinah Craik's *A Brave Lady* (1869). It is this characteristic that allows novels such as *The Tenant of Wildfell Hall* to connect so closely with the non-fictitious events of the debate for marriage legal reform. With aspects that almost mirror the real-life events of marriage trials, Brontë's depiction of Helen's marital sufferings

¹¹⁴ Martens, *The Diary Novel*, 5.

¹¹⁵ Kieran Dolin, *A Critical Introduction to Law and Literature* (Cambridge: Cambridge University Press, 2007), 51.

¹¹⁶ Martens, *The Diary Novel*, 6.

through the diary form allows her to provide women like Helen with evidence of their legal oppression.

Unlike epistolary novels in which a journal or collection of letters form the entirety of the novel, what makes *The Tenant of Wildfell* an important example of narrative jurisprudence is not only the portrayal of Helen's unhappy marriage within her diary but the jurisprudential functions of married women's diaries in nineteenth-century law and literature. As Maria Frawley points out:

The diary functions as a private form of writing associated in the novel with the female protagonist, whereas the male protagonist, Markham, is associated with letter writing, a less private form of communication, as well as with the editorial control of Helen's diary. Helen's diary thus enables Brontë to center the narrative on a woman who either cannot, because of her social situation, or will not, because of her psychological state, speak for herself.¹¹⁷

It is because Helen's diary is "private" that it creates a trustworthy testimonial narrative that supersedes her legal silence. Personal diaries provide a written narrative of married women's experiences as a rhetorical form that focuses on reflection. Everyday actions and conversations are daily recorded as commentary on the realities of married life in a form that could be presented in court in adultery trials, accusations of domestic violence, or divorce and separation suits. Much like the letters examined in Chapters 3 and 4, diaries are written without ulterior motives of deception but instead act as a record of married women's experiences.

It was during this period that the diary became an influential evidentiary form for married women, both in court and in fiction. As Delafield declares, "[i]f a woman is to tell of her relationship from the inside, then a diary is a suitable narrative device."¹¹⁸ Delafield

¹¹⁷ Maria H. Frawley, *Anne Brontë* (New York: Twayne Publishers, 1996), 119.

¹¹⁸ Delafield, *Women's Diaries as Narrative in the Nineteenth-Century Novel*, 63.

observes, in her analysis of the diary novel genre, that "[t]he diary model which appears as a narrative device in the novel is a response to the diary of the nineteenth-century woman which is ideologically positioned within existing diary traditions."¹¹⁹ Published diaries of the eighteenth and early-nineteenth century as well as the consumerist production of blank diaries for the general public meant that it was not impossible to suppose that Helen would use a diary as a form of testimonial narrative.

Rebecca Steinz points out, in her analysis of the consumerism surrounding personal diaries, that "commercial diaries were a direct descendant of eighteenth-century almanacs and pocket diaries. While their content remained similar [...] the nineteenth century saw a vast expansion in their number and variety, as well as a systemization of their contents and form."¹²⁰ Diary brands such as *Sovereign* and *Letts* were sold yearly in order for individuals to create a uniformed and organised set over their lifetime.¹²¹ According to Summerscale, "[t]o cash in on the craze for writing as well as reading journals, the publisher John Letts printed the first large formatted diaries in the 1820s. By 1850 the Letts company was selling several thousand diaries a year, in dozens of different formats."¹²² *Letts* diaries, towards the mid-nineteenth century, were sold inscribed with advice for diarists; "[u]se your diary with the utmost familiarity and confidence [...] conceal nothing from its pages nor suffer any other eye than your own to scan them."¹²³ Summerscale notes that:

Although people had kept records of their domestic and spiritual lives for hundreds of years, the practice spread dramatically in the early-nineteenth century. Before then, most journals had been household books, private to the family rather than to the

¹¹⁹ Delafield, *Women's Diaries as Narrative in the Nineteenth-Century Novel*, 23.

¹²⁰ Rebecca Steinz, "Time, Space, and Gender in the Nineteenth-Century British Diary," *Victorian Studies* 56, no. 1 (2013): 63.

¹²¹ *Ibid.*, 69.

¹²² Summerscale, *Mrs Robinson's Disgrace*, 152.

¹²³ *Ibid.*, 152.

individual, and secret thoughts were enclosed in letters to trusted friends. [...] The number of diaries published each year doubled in the 1820s, and in the 1830s reached a peak that was maintained into the 1850s. In most cases, the authors of these journals had not imagined that their words would one day be read by strangers.¹²⁴

The use of diaries simultaneously became more private and public. While the sale of diaries and journals skyrocketed, so did their presence in court, newspapers, and novels.¹²⁵

Despite the historical growth of the diary as a written form, Delafield notes that critics of *The Tenant of Wildfell Hall* were outraged "about the probability of a woman writing a history of abuse and of a writer employing a diary to tell that story."¹²⁶ In 1849, Charles Kingsley critiques the portrayal of Helen's diary by questioning "what greater mistake [...] can there be than to fill such a diary with written oaths and curses, with details of drunken scenes which no wife [...] would have the heart, not to say the common decency, to write down as they occurred?"¹²⁷ Kingsley argues the unlikelihood of any woman using her personal diary as a record of her oppressive marriage. However, it is possible to argue the success of Brontë's portrayal of Helen's diary through an examination of women's diaries as testimonial evidence in legal trials of the period.

Married women's personal diaries became a useful form for narrating legal oppression in the nineteenth century. In the 1859 *Robinson v. Robinson & Lane* trial, Isabella Robinson's diary became the centre of her husband's efforts to prove her adultery. In *Mrs Robinson's Disgrace: The Private Diary of a Victorian Lady*, Summerscale examines "[t]he issue of the

¹²⁴ Summerscale, *Mrs Robinson's Disgrace*, 149-150.

¹²⁵ *Ibid.*, 150.

¹²⁶ Delafield, *Women's Diaries as Narrative in the Nineteenth-Century Novel*, 60.

¹²⁷ Charles Kingsley, *Fraser's Magazine for Town and Country* (April 1849): 271.

diary's status as evidence" as well as the use of married women's diaries as an important method of narrating unhappy marriages.¹²⁸ Summerscale explains that:

Isabella, like many nineteenth-century women, used her journal as a place in which to confess her weakness, her sadness and her sins. In its pages she audited her behaviour and her thoughts; she grappled with her errors and tried to plot out a path to virtue. Yet by channeling her strong and unruly feelings into this book, Isabella also created a record and a memory of those feelings. She found herself telling a story, a serial in daily parts, in which she was the wronged and desperate heroine.¹²⁹

Like Helen, Isabella uses her diary as a way of grappling with marriage to a tyrannical husband who was known for his affairs with mistresses and rarely lived at home. Upon seeking help for supposed mental illness, Isabella was told to use a diary as a form of reflection and contemplation during troubling times.¹³⁰ The privacy of her diary allowed her to narrate her marital sufferings, look back at memories of happiness, and search for an escape from her current position.¹³¹ It was also as a result of her attempts to seek help for her depression that she became involved with Dr. Edward Lane.¹³²

It wasn't until 1855, when Henry Robinson confiscated her diaries that he learned about her passionate feelings towards Edward and harsh descriptions of their marriage.¹³³ She wrote of romantic encounters and conflicting emotions towards Lane. Outraged, Henry became one of the first husbands to file suit against his wife in the newly established Divorce Court, which will be further described in the following chapter. As Summerscale describes, “[o]ver the five days of the trial, thousands of Isabella Robinson’s secret words were read out to the court, and the newspapers printed almost every one. Her journal was detailed, sensual,

¹²⁸ Summerscale, *Mrs Robinson's Disgrace*, 114.

¹²⁹ *Ibid.*, 15.

¹³⁰ *Ibid.*, 10.

¹³¹ *Ibid.*, 10.

¹³² *Ibid.*, 83.

¹³³ *Ibid.*, 106.

alternately anguished and euphoric, more godless and abandoned than anything in contemporary English fiction."¹³⁴ If anything, this provided a direct commentary on the ways in which courtroom trials could appear more like literary readings than legal judgments and could entice the public's interest in the legal institution of marriage and married women's legal representation. The defence claimed that Isabella's diary was merely a product of a cultural fascination with diary writing as a form of literature and suggested that Isabella "was composing her journal as a form of apprenticeship, a rehearsal for novel-writing."¹³⁵ The passionate scenes written about Edward were simply a way of imagining herself out of her current miseries. As an anonymous reporter in the *British Medical Journal* commented, "on first reading the diary of this unhappy lady, we did believe it to be true. The *vraisemblance* of the details is so extraordinary, that we could scarcely bring ourselves to believe that the writer was drawing upon her imagination for her facts."¹³⁶ Ralph Colp argues that the confusion arose from the public's refusal to believe the reality of many unhappy marriages.¹³⁷ It is clear that the diary form created a bridge between fact and fiction. It borrowed from the techniques of evidentiary records and nonfiction while also using the sentimental language of fiction to produce sympathy.

Edward's lawyer argued that Isabella's narrative was merely a product of insanity. Her history of mental illness led the court to agree that Isabella's diary was "the product of extravagance, of excitement, and irritability, bordering on, if not actually in, the domain of

¹³⁴ Summerscale, *Mrs Robinson's Disgrace*, xv.

¹³⁵ *Ibid.*, 153.

¹³⁶ "Robinson v. Robinson and Lane," *British Medical Journal* (10 July 1858), 561.

¹³⁷ Ralph Colp Jr., "Charles Darwin, Dr. Edward Lane, and the 'Singular Trial' of *Robinson v. Robinson and Lane*." *Journal of the History of Medicine* 36 (2) (April 1981): 209.

madness."¹³⁸ And yet, when examined by a medical profession, Isabella was found to be sane.¹³⁹ For six years of trials and retrials adding up to £636 in legal charges on Henry's part, lawyers questioned Isabella's diary as both a work of fact and fiction.¹⁴⁰ The *Robinson* trial was transformed from a case of adultery into a judgment of the veracity of Isabella's diary and the authenticity of her written narrative. Isabella's adultery was never proven because the court deemed her diary to be too fictitious due to its overextravagant language and Isabella's supposed madness. However, this did not alter the fact that the personal narrative of Isabella's unhappy marriage was shared in court, amongst newspapers, and in legal debates to make the public aware of her legal oppression as a married woman. Just as Helen's diary never provided her legal retribution, Isabella's diary became a narrative of experience under an unjust legal institution of marriage that barred her from defending herself.

IV. Conclusion

It is through the presentation of the diary as a form of legal evidence that Brontë roots Helen's marital sufferings in the political and literary contexts of the period. By representing Helen's experiences of legal oppression in the form of a diary, Brontë provides an analysis of the 1830s as a period that witnessed the authority of women's testimonial writing in the debates for marriage law reform. According to Delafield's analysis of the role of diaries in nineteenth-century novels, "[t]he transmission of such texts into fictional situation becomes part of the narrative itself."¹⁴¹ Helen's diary not only narrates her oppression under unjust custody laws but also contributes to a growing awareness to married women's legal non-existence and the

¹³⁸ Summerscale, *Mrs Robinson's Disgrace*, 149.

¹³⁹ *Ibid.*, 204.

¹⁴⁰ *Ibid.*, 206.

¹⁴¹ Delafield, *Women's Diaries as Narrative in the Nineteenth-Century Novel*, 85.

necessity for marriage law reforms. *The Tenant of Wildfell Hall* aligns with the nineteenth-century appearance of married women's diaries as legal evidence in court and Norton's political pamphlets in order to advocate on the behalf of women for marriage law reform.

Brontë draws readers' attention to an important moment in a growing awareness to married women's rights to legal representation by situating Helen's diary in line with Norton's legal battles and the development of the diary novel genre. Norton's use of writing to share her experiences, when unable to defend herself in court, and the resulting Custody Act illustrates the legal and literary power of testimonial narratives. Helen's diary similarly defends her actions to illegally escape from an unhappy marriage with her child against the naïve opinions of Gilbert and Halford. As Norton states in her *Observations on the Natural Claim of the Mother*, “no right-minded man can read through the examples here given, without admitting the necessity of some such alteration in that law.”¹⁴² Through her narrative style, Helen persuades readers of her diary to admit to the legal injustices faced by married women. It is through the power of shared experiences that Juliet Barker points out that “Anne herself declared that her book had not been written in vain if it deterred one young man from following in Huntingdon’s footsteps or prevented one thoughtless girl from falling into ‘the very natural error’ of her heroine.”¹⁴³ Therefore, as this chapter has argued, *The Tenant of Wildfell Hall* can be read as a jurisprudential narrative in light of nineteenth-century debates for marriage law reform and married women's rights to legal representation by presenting Helen's diary as a physical form of evidence that is handed to Gilbert and distributed as an example of the suffering of married women under unjust marriage laws. Helen's diary

¹⁴² Norton, *Observations*, 4.

¹⁴³ Juliet Barker, *The Brontës* (London: Hachette Digital, 1994), 531.

surpasses her legal silence by allowing her story to be shared as a testimony of married women's oppression under contemporary custody laws.

As this chapter has shown, Brontë's *The Tenant of Wildfell Hall* is an important precedent to my analysis of the ways in which nineteenth-century novels' portrayal of married women became characterised by the use of married women's written evidence to highlight the debates for marriage reform debates. While most literary analyses of married women focus on divorce and separation rights, I argue that it is essential to see the 1830s as the start of this trend and a precursor to further factual and fictional portrayals of married women throughout the nineteenth century. The following chapters will encourage this argument by revealing the reoccurrence of women's written evidence as a form of protest and defence against unjust marriage laws in marriage trials, parliamentary debates, and mimetic novels of the period.

Chapter 2

“A compound of fact and fiction”: Caroline Norton's *Stuart of Dunleath* as Testimony for Divorce

In a letter to the future Prime Minister, William Gladstone, on his recent objection to the passing of the 1857 Matrimonial Causes and Divorce Bill, Caroline Norton notes that "I have not expressed [my] opinion in my pamphlet: partly because, though I think the factor of my case should weigh with those who read, I cannot expect my *opinions* should do so. [...] But I did express it [...] in the description of fictitious characters in a novel I published two years ago."¹ The novel that Norton references is *Stuart of Dunleath: A Story of Present Times* (1851), the autobiographical portrayal of her marital and legal struggles. With no right to testify in a court of law, Norton was left to endure the tyranny of her husband for over forty years following the accusation of her adultery with Prime Minister Melbourne. As my previous chapter illustrated, Norton was already known for the presentation of her marital experiences in the form of political pamphlets. However, as this chapter examines, Norton further details her personal sufferings under contemporary marriage laws in the novel form through her portrayal of Eleanor Raymond. As Norton analyst, Randal Craig, acknowledges, "*Stuart of Dunleath* avoids the argumentative tone of 'so many angry pamphlets and discussions' [...] not because 'opinions are less challenged' in the novel but because they are inseparable from the complicated situations from which they emerge."² In order to represent the "complicated situations" of her marriage, Norton uses the novel form as "a compound of

¹ Caroline Norton to William Gladstone, 27 May 1853, British Library, MS Add. 44379, f. 12. Underlining in original.

² Randall Craig, *The Narratives of Caroline Norton* (New York: Palgrave, 2009), 123.

fact and fiction" to testify on her own behalf and voice her "opinions" on the necessity of marriage law reform while simultaneously using her role as a novelist to use fiction to develop sympathy from her readers.³ Norton understands that through her writing and the continued explanation of her marital sufferings "[d]efence is possible to me, not silence" especially when it is her husband "who has made silence impossible."⁴ Norton presents a fictional testimony of her own marital misfortunes and the legal system's unjust treatment of married women through the portrayal of Eleanor's decision to marry, the violent and oppressing nature of her marriage, and her despondency while attempting to separate from her husband. This chapter examines Eleanor's marriage of convenience, the double standards of adultery, and her mental and physical abuse at the hands of her husband that ultimately leads to her escape from her marital home. Within *Stuart of Dunleath*, Norton weaves her own experiences of abuse, the death of a child, and the unjust accusation of adultery into the misfortunes of her heroine as a way of defending her own legal rights. It is the objective of this chapter to analyse the ways in which Norton's fictional interpretation of her own experiences contrasts with her political pamphlets and contributes to her advocacy for divorce law reform.

Prior to the 1857 Matrimonial Causes and Divorce Act, legal separation and divorce were a near impossibility for married women without the ability to file suits against their husbands.⁵ As Lawrence Stone explains, "[b]etween the Reformation in the 1530s and the Divorce Act of 1857, the laws governing separation and divorce were those which had come

³ Caroline Norton, *Stuart of Dunleath: A Present Story* (New York: Harper & Bro., 1851), 70.

⁴ Caroline Norton, *English Laws for Women in the Nineteenth Century* [1854], introduction by Joan Huddleston (Chicago: Academy Chicago Publishers, 1982), 122; 2.

⁵ Lawrence Stone, *Road to Divorce: England 1530-1987* (Oxford: Oxford University Press, 1990), 307.

down unaltered from the Middle Ages.”⁶ With judicial separation through an act of Parliament made available in 1753, only four women were granted separation from their husbands between then and 1857.⁷ Meanwhile, if a husband desired to be legally separated from his wife and was willing to pay an extravagant sum, he could easily do so.⁸ As a comparison, Ann Sumner Holmes notes that between 1770 and 1800 “123 Private Acts [for divorce] were passed” while “between 1800 and 1856, Parliament passed 184 Acts.”⁹ The discrimination against married women is visible in the fact that out of 307 successful suits for judicial separation only four were granted to women. In order to apply for separation, husbands were required to prove through a trial of criminal conversation (crim. con.) that their wives had committed adultery before requesting a marital separation from Parliament.¹⁰ In contrast, wives were unable to sue their husbands for adultery or seek Parliamentary permission for a separation without their husbands' permission.¹¹

Contemporary advocates like Norton, Lord Brougham, Lord Lyndhurst, and James Ferguson as well as modern legal historians like Lawrence Stone and Ann Sumner Holmes view the legal inequality of spouses as the unjust “double standard” of marriage laws in favour of men.¹² In the debates for a reformed divorce law, Lord Chancellor Cranworth noted that regarding the charge of adultery, “[n]o doubt the crime in both cases was essentially the same; but the consequences were not the same.”¹³ Married men guilty of adultery saw little to no

⁶ Stone, *Road to Divorce*, 347.

⁷ Ann Sumner Holmes, “The Double Standard in the English Divorce Laws, 1857-1923,” *Law & Social Inquiry* 20 (2), (April 1995): 603-604.

⁸ Stone, *Road to Divorce*, 188.

⁹ Holmes, “The Double Standard in the English Divorce Laws,” 603-604.

¹⁰ Stone, *Road to Divorce*, 260-261.

¹¹ *Ibid.*, 242.

¹² *Ibid.*, 289.

¹³ Holmes, “The Double Standard in the English Divorce Laws,” 604-605.

consequences while married women accused of adultery became the subject of gossip and legal trials even if found innocent. This suffering occurred without married women's ability to defend their own honour in court. The abundance of early-nineteenth-century trial reports and caricatures of crim. con. cases and their victims began to bring awareness to the biases of divorce laws and served as a source of reference during the debates for reform.¹⁴ Historians such as Barbara Leckie, Kathryn Temple, and Lawrence Stone argue that marriage trial journalism played an important role in nineteenth-century marriage law reforms. Adam Komisaruk points out that journalistic attention to adultery trials, or "criminal conversation" trials were not innovative to the nineteenth century. Publications such as the Francis Plowden's *Crim. Con. Biography* (1789) and the *Crim. Con. Gazette* (1830) "invented the wildly popular literary genre called, like the offence itself, crim. con..¹⁵ The ability for the public to witness the double standard of marriage laws became an important source of nineteenth-century reform debates. As Chapter 5 will further examine, widespread reports of the legal system's deficiencies in trial and scandal reports became a powerful motivation for politicians to pass the 1857 Matrimonial Causes and Divorce Act.¹⁶ Unfortunately, this publicity often cost married women their reputations and any opportunities to live independent of their husbands.

One such case, which became a key example of the unjust treatment of women under marriage laws and the necessity for divorce law reforms during the nineteenth century, was that of Caroline Norton. Unable to testify in court, Norton was forced to sit by and watch as

¹⁴ Stone, *Road to Divorce*, 249-251. Stone divides publications of crim. con. trials into three categories—trial reports written by legal officials, articles written by the plaintiff or defendant to convince readers of their innocence, or stenographic records which focus on the exact evidence presented by both parties.

¹⁵ Adam Komisaruk, "The Privatization of Pleasure: 'Crim. Con.' in Wollstonecraft's *Maria*," *Law and Literature* (16) 1 (Spring 2004): 34.

¹⁶ Stone, *Road to Divorce*, 44.

her husband's lawyers created scenarios of her repeated sexual relations with one of the most celebrated politicians of the time in order to prove that she was not a virtuous wife. Her reputation was ruined despite the fact that her husband's accusations were deemed by the court to be falsified and unsubstantiated. Norton would spend over half her life in intermittent legal cases that ranged from the initial accusation of adultery to their clash over alimony and his claim over her literary wages.

While Chapter 1 focused on Norton's battle for custody rights following her crim. con. trial, this chapter examines the ways in which unjust divorce and separation laws allowed her husband to destroy their marriage while she was forced to remain silent, ultimately exposing the need for married women's right to legal representation. Norton acknowledges her continued advocacy for marriage law reform when she notes that "[t]here was no law then to help the mother, and there is no law now to help the wife."¹⁷ The first section of this chapter details how married women were barred from divorce and separation rights prior to the 1857 Act. As trial reports began to exploit the privacy of married life, the public and politicians began to educate themselves on the particulars of the legal system's victimisation of married women. It was cases like *Norton v. Melbourne* that set the premise for the necessary reforms during the Parliamentary debates from 1850 to 1857.

The second section of this chapter analyses how the legal restrictions and the current laws regarding women affected Norton's ability to refute the false claims set against her and how her case was influential in the reformation of marriage laws in 1857. After the debates for the 1839 Custody of Infants Act created a wider discussion of marriage law inequality, advocates like Norton sought to reform the double standards of divorce and separation laws.

¹⁷ Caroline Norton, *A Letter to the Queen on Lord Chancellor Cranworth's Marriage and Divorce Bill* (London: Longman, Brown, Green, and Longmans, 1855), 64.

This section examines Norton's role in the debates for divorce law reform. In order to do so, I examine Norton's political pamphlets advocating for divorce law reform: *English Laws for Women in the Nineteenth Century* (1854) and *A Letter to the Queen on Lord Chancellor Cranworth's Marriage and Divorce Bill* (1855). Norton puts forth her legal sufferings and the experiences of many married women in order to provide Parliamentary members with testimonial evidence in support of the 1857 Divorce Bill. Norton would advocate for divorce law reform in her pamphlets as well as her autobiographical works of fiction. As Craig points out, "[h]er writing, literary and political, was motivated by and infused with her own experience."¹⁸ From the first presentation of the Divorce Bill to Parliament in 1850, Norton's marital sufferings were used as an example of the ways in which the contemporary legal system victimised married women by making it nearly impossible to escape cruel and abusive husbands.

In the aftermath of her encounters with the injustices of contemporary marriage laws, Norton chose to use her experiences to comment on the biased divorce laws before and after the 1857 Act in "a compound of fact and fiction."¹⁹ Norton utilised her writings to argue her innocence in place of her inability to defend herself in a court of law. However, political pamphlets were not the only form of writing by which Norton chose to share her experiences of the unjust legal institution of marriage. As Craig points out, "*Stuart of Dunleath* is the first of Norton's [fictional] works to engage questions of law directly and to use the novel to make readers aware of women's legal status."²⁰ *Stuart of Dunleath* tells the tale of an intelligent young woman, Eleanor Raymond, whose financial circumstances lead her to marry a violent

¹⁸ Craig, *The Narratives of Caroline Norton*, 18.

¹⁹ Norton, *Stuart of Dunleath*, 70.

²⁰ Craig, *The Narratives of Caroline Norton*, 116

and dishonorable man, Sir Stephen Penrhyn. Norton's novel follows Eleanor's mental and physical abuse during marriage, the cruelty of her in-laws, the death of her children, and the eventual accusation of adultery with David Stuart. Jane Gray Perkins argues that Norton's "own story, told in her own dramatic words, is her real contribution to the literature of her century."²¹ Norton's experiences enable her to present a knowledgeable account of married women's oppression under unjust marriage laws. In order to illustrate how Norton uses her personal experiences to advocate for divorce law reform through the medium of fiction, this chapter examines the similarities between Norton and Eleanor as well as the differences. My analysis emphasises how the intertwining of fact and fiction, in the genre of autobiographical fiction, allows Norton to make a case for divorce law reform that her nonfiction works fell short of accomplishing.

I. *Norton v. Melbourne* and the Double Standards of Divorce Law (1660-1853)

The early-nineteenth-century boom in suits for judicial separation, or *divortium à mensâ et thoro*, and applications for divorce, *divortium à vinculo*, reflected the growing demand for marriage law reform and the success of the 1857 Matrimonial Causes and Divorce Act.²² The public began to view the necessity to be able to apply for the dissolution of marriages. As individuals began to demand divorce and separation, the restrictions surrounding divorce laws became more apparent to the public. Despite the plethora of other adultery cases, Norton's marital sufferings remained a prime example of the double standard of contemporary marriage laws. It was during these unjust times for married women that Norton became a victim of the

²¹ Jane Gray Perkins, *The Life of the Honourable Mrs. Norton* (New York: Henry Holt & Co., 1909), xiii.

²² Holmes, "The Double Standard in the English Divorce Laws," 603-604; Stone, *Road to Divorce*, 356.

patriarchal biases of separation and divorce laws. The sufferings endured by Norton exemplified the injustices of the contemporary legal system's treatment of married women in the case of crim. con. suits, custody rights, property law, and judicial separations. Although she had already endured the embarrassment of a crim. con. case and was separated from her children prior to the 1857 Act, Norton would continue to suffer from legal trials and the continual divorce restriction put on married women until the death of her husband in 1875.²³ It was because of her experiences that she would become the most prominent female advocate for marriage law reform in the 1850s.

In order to understand the importance of *Norton v. Melbourne* and how it was reflected in Norton's literary works, it is necessary to understand how her marriage led to one of the most infamous adultery trials of the nineteenth century. Norton was highly educated and raised amongst the reformist upper class company that frequented her family's home.²⁴ She had already begun her literary career by writing poetry and songs when she met George Norton, a newly appointed Tory MP and licensed barrister.²⁵ She had come from a prominent Whig family and her views often contrasted with those of her Tory husband and his relations.²⁶ However, as Norton's family was highly respected and George would receive no inheritance, he believed that the family connection would be financially beneficial.²⁷ The

²³ Diane Atkinson, *The Criminal Conversation of Mrs Norton* (London: Arrow Books: 2012), 419.

²⁴ *Ibid.*, 47.

²⁵ Perkins, *The Life of the Honorable Mrs. Norton*, 97.

²⁶ Mary Poovey, "Covered but Not Bound: Caroline Norton and the 1857 Matrimonial Causes Act," in *Uneven Developments: The Ideological Work of Gender in Mid-Victorian England* (London: Virago Press, 1988), 469.

²⁷ Norton's grandfather, celebrated playwright and politician Richard Sheridan, provided her with a highly intellectual and political upbringing but due to her father's gambling addiction George was wrong in believing that she would contribute to his financial gain. (See Atkinson, *The Criminal Conversation of Mrs. Norton*, 25-30.)

couple married in July 1827 and Norton quickly realised her mistake.²⁸

George was a violent and jealous man who cared little about the damages done to his wife. This is not to say that Norton was completely docile in their marital disputes. She was smart, witty, and opinionated. Financial struggles and differing political views often led to heated arguments in the Norton home. Unfortunately, George believed that violence was the best way to silence his wife. Norton was very close to her siblings and wrote often to her sister, Georgiana, and brother, Richard, about her marital miseries.²⁹ On one occasion George arrived home drunk and heatedly interrupted her letter writing. Norton recalls that "he rose, took one of the allumettes she had placed for his cigar, lit it, poured some of the spirit which stood by him over her writing materials, and in a moment set the whole ablaze."³⁰ His excuse was to "teach her not to brave him."³¹ As Chapter 1 highlighted in the analysis of Arthur Huntington's similar destruction of Helen's painting supplies, any tool that could supply a married woman with the means of independence threatened married men. Therefore, if such tools were destroyed then women would understand that independence and separation were not possible. This was not the only time that George tried to silence Norton's writing. In 1853, years after the decision to live separately, George took legal action to obtain the copyright privileges for her pamphlets.³² He argued that as she was financially benefitting from her descriptions of him as a cruel husband then it was only right that he should have financial

²⁸ Atkinson, *The Criminal Conversation of Mrs. Norton*, 54.

²⁹ Upon one occasion, Norton's brother witnessed her being dragged out of a carriage by her throat and pleading her family for protection. "From this time forth all that was friendly in their relations with their brother-in-law ceased, and never was renewed again." (See Perkins, *The Life of the Honorable Mrs. Norton*, 63.)

³⁰ Norton, *English Laws for Women*, 32.

³¹ *Ibid.*, 32.

³² Norton, *A Letter to the Queen*, 82.

compensations.³³ Moments of domestic violence like these were almost a "nightly" occurrence in the Norton household prior to 1836.³⁴ Norton was unable to escape from her violent marriage because cruelty without the charge of adultery was not a valid reason for women's application for judicial separation. As Chapter 4 will further analyse, domestic violence was not deemed illegal until 1853 and not regarded as an excuse for separation until the 1857 Act.³⁵

In 1831 George became unemployed and looked to his wife for help. Norton utilised her family's political connections to ask Lord Melbourne for help.³⁶ Melbourne obtained a position for George as the Police Magistrate for the Winchester district.³⁷ Melbourne was invited to the Norton's home for meals and conversation in gratitude for his role in George's new career.³⁸ He was a widower and nearly thirty years older than Caroline.³⁹ Rumours began to develop of the relationship between Melbourne and Norton but were never factually grounded.⁴⁰ Chapter 5 will examine the effect that such rumours had on the rest of Norton's life and career. However, as Clarke Olney observes, Norton was "more of a mental flirt than

³³ Norton, *A Letter to the Queen*, 82.

³⁴ Perkins, *The Life of the Honorable Mrs. Norton*, 16.

³⁵ The 1853 Aggravated Assaults Act made a husband's excessive violence towards his wife and children punishable by a prison sentence of up to six months. However, after the sentence was complete husbands many times returned home to further punish their wives for their actions. The 1857 Act only made cruelty a legal excuse for divorce when paired with adultery. (See A. James Hammerton, *Cruelty and Companionship: Conflict in Nineteenth-Century Married Life* (London: Routledge, 1992), 59.)

³⁶ William Marshall, *Extraordinary Trial!: Norton v. Viscount Melbourne for Crim. Con.* (London: Holborn Bars, 1826), 10.

³⁷ *Ibid.*, 28

³⁸ *Ibid.*, 10.

³⁹ Atkinson, *The Criminal Conversation of Mrs. Norton*, 66.

⁴⁰ Alan Chedzoy, *A Scandalous Woman: The Story of Caroline Norton* (London: Allison & Busby, 1992), 115-116.

anything else."⁴¹ She was often amongst male intellectuals and politicians like Lord Brougham, Benjamin Disraeli, Lord Palmerston, and Lord Talfourd.⁴² She would later use these connections to distribute her pamphlets and advocate on her behalf for the 1839 Custody Act and the 1857 Divorce Act.⁴³ Such connections developed from her position as an author and editor and the political importance of her family. She enjoyed having heated political and literary discussions amongst both men and women. Although she had female friends, she often sought political and literary advice from important men such as Melbourne, the Duke of Devonshire, and Edward Bulwer-Lytton.⁴⁴

In 1835 Norton fled her marital home after a heated dispute over her husband's right to her inheritance and his indignation towards her family.⁴⁵ However, after his continual pleading and threats of legal action, she returned for the sake of her children.⁴⁶ Her family was aware of George's violence and refused to have him included in any family gatherings. Norton immersed herself in her literary works and maternal duties as a form of escape. She began to write and publish poetry, articles, short stories, and songs.⁴⁷ Many of her works reflected her current marital troubles: "The Invisibility of London Husbands," "Great Ladies," and "The Law of Libel."⁴⁸ These works provide hints of Norton's social position in literary and political circles, her husband's neglect, and her growing awareness to her lack of legal rights as a married woman. They reveal that Norton had already begun to expose her miserable marriage

⁴¹ Caroline Norton, *The Letters of Caroline Norton to Lord Melbourne*, edited by James O. Hoge and Clarke Olney (Columbus: Ohio State University Press, 1974), 258.

⁴² Atkinson, *The Criminal Conversation of Mrs. Norton*, 103; 207; 274.

⁴³ *Ibid.*, 207.

⁴⁴ *Ibid.*, 117-253.

⁴⁵ Craig, *The Narratives of Caroline Norton*, 110.

⁴⁶ Norton, *English Laws for Women*, 38.

⁴⁷ Perkins, *The Life of the Honorable Mrs. Norton*, 46.

⁴⁸ *Ibid.*, 46.

in the form of fiction.

In 1836, Norton's married life reached a crisis. After a dispute with her husband over an invitation to visit her family in which he was not included, Norton left with full intent to come back.⁴⁹ As Chapter 1 thoroughly explains, upon her return, she found that her husband had sent her children away to Scotland and had ordered their servants to not allow her entry into her own house.⁵⁰ Norton writes that her husband "said he would not part from me quietly, but endeavour publicly to disgrace me; that he had put the affair in the hands of lawyers, pledged himself not to interfere, and was not allowed to mention what they thought of doing."⁵¹ In April 1836 Norton returned from her family's home to London after hearing rumours that her husband had accused her of committing adultery with Lord Melbourne and meant to sue for an action of crim. con.⁵² The case was publicly announced on June 5th in *Bell's Life in London* journal.⁵³

On 22 June 1836 the *Norton v. Melbourne* trial for criminal conversation began in the Court of Common Pleas.⁵⁴ To prove adultery in cases for separation, an action for *crim. con.* was required where a husband would sue the supposed lover of his wife for property damages and as her husband's property, she would be unable to testify in a court of law to defend her honour. It was this process of judicial separation that was disputed amongst reformers in the nineteenth century because of its sexual double standard and victimisation of women.⁵⁵ Stone acknowledges this double standard when he points out that

⁴⁹ Atkinson, *The Criminal Conversation of Mrs. Norton*, 155.

⁵⁰ *Ibid.*, 156.

⁵¹ Norton, *English Laws for Women*, 41.

⁵² Atkinson, *The Criminal Conversation of Mrs. Norton*, 163.

⁵³ Chedzoy, *A Scandalous Woman*, 119. (See "Norton V. Melbourne" in *Bell's Life in London and Sporting Chronicle* (05 June 1836), British Newspaper Archives).

⁵⁴ Marshall, *Extraordinary Trial!*, 1.

⁵⁵ Holmes, "The Double Standard in the English Divorce Laws," 607.

Even a single act of adultery by a wife was an unpardonable breach of the law of property and the idea of hereditary descent. [...] Adultery by the husband, on the other hand, was generally regarded as a regrettable but understandable foible, rather than a serious threat to a marriage, and therefore was something best ignored by a prudent wife.⁵⁶

These biases behind crim. con. suits made judges more willing to side with husbands.⁵⁷

Married women's adultery threatened the social hierarchy by compromising the line of succession whereas a husband's adultery had no negative consequences. Anne Sumner Holmes acknowledges that "a wife's infidelity was considered to be more serious than her husband's because her adultery could confuse the rightful inheritance of property by introducing illegitimate children into a family."⁵⁸ However, Holmes notes "[m]ore subtle than fear regarding inheritance was the idea that a husband had a property interest in his wife; her adultery decreased the value of that interest."⁵⁹ The double standard resulted from the fact that a husband could sue his wife's lover for property "damages" and yet a wife could not sue her husband's mistresses.⁶⁰

Within crim. con. cases the legal team of the plaintiff (or husband) would state the case against the defendant (or lover) followed by the examination of witnesses and a closing statement.⁶¹ Following this, the defendant's counsel would state the defence, cross-examine witnesses, call forth any additional witnesses, and present a closing defence.⁶² Stone points out that "[t]he wife [...] was not permitted to play any part in it; she was denied the opportunity to

⁵⁶ Stone, *Road to Divorce*, 7.

⁵⁷ *Ibid.*, 234.

⁵⁸ Holmes, "The Double Standard in the English Divorce Laws," 605.

⁵⁹ *Ibid.*, 605.

⁶⁰ *Ibid.*, 605.

⁶¹ Stone, *Road to Divorce*, 234.

⁶² *Ibid.*, 234.

call witnesses or testify in her own defence."⁶³ The fate of her marriage would be entirely in the hands of the defendant's legal team. Even if Melbourne's lawyer won the case, her virtuous reputation and any form of financial security would be lost.⁶⁴

The most extensive record of the trial proceedings comes from William Marshall's "Extraordinary Trial!: Norton v. Viscount Melbourne for Crim. Con." Marshall's report would be published in various newspapers around the country, including *The Times*, *Morning Post*, and the *London Evening Standard*. Various other reports of the trial were also published in numerous other forms, including a front-page trial summary and caricature in the *Crim. Con. Gazette*.⁶⁵ Marshall describes the courts as "instantly crammed" and "crowded" with individuals paying up to five guineas for seats.⁶⁶ The majority of the crowd consisted of "gowned and wigged members of the bar" while the general public sat outside awaiting a verdict.⁶⁷ At the start of the trial the jury was asked to "act upon the evidence only" to decide if Melbourne was guilty of crim. con. and Norton guilty of adultery. Yet, Norton was not allowed to testify in support of her own innocence; as she writes, "a woman is made a helpless wretch by these laws of men."⁶⁸ She had to hope that Melbourne's lawyers would prove her innocence.

Norton was left to sit by as her husband's lawyers graphically described her as morally corrupt and responsible for the adulterous acts. She writes that in a "mockery of accusation [...] Mr Norton was represented as an amiable, injured, deceived husband; Lord Melbourne as

⁶³ Stone, *Road to Divorce*, 234.

⁶⁴ *Ibid.*, 193.

⁶⁵ *The Crim. Con. Gazette*, No. 12, (10 November 1838):1.

⁶⁶ Marshall, *Extraordinary Trial!*, 8.

⁶⁷ *Ibid.*, 8.

⁶⁸ Caroline Norton to Mary Shelley, (Date Unknown), Hampton Court, British Library, MS 42767.

a profligate impostor; and I myself as a painted wanton."⁶⁹ The plaintiff's legal representation, led by Sir William Follett, presented evidence of Melbourne's frequent visits to the Norton house through a side entrance when George was not home and Caroline's orders to servants that she would see no other guests during his visits.⁷⁰ Witnesses in the form of former servants claimed that Norton and Melbourne often were indisposed for hours, and if interrupted were seen sitting close to one another.⁷¹ One witness claimed to have walked in to see Norton's dress "in a position to expose her person," while another servant alluded to having seen "marks from the consequence of the intercourse upon the linens."⁷² No matter the verdict, Norton's reputation had been ruined. Norton responds to *The Times* in 1853 that there are those "in whose eyes the accusation of a woman is her condemnation, and who care little whether the story be false or true, so long as there is or was a story against her."⁷³ Norton knew the power of a story, whether it was factual or fictional. The entire accusation was fictional, created by her husband, and yet the public believed it to be fact.

When it came time for the defence to give a statement and call witnesses, George's absurd case was exposed. No evidence was presented and no witnesses were called because the defence argued that the plaintiff had put forth no credible proof that adultery had occurred.⁷⁴ The Attorney General revealed the injustice of a charge where neither Melbourne nor Norton could be called forth to testify—"Lord Melbourne could not because he was the

⁶⁹ Norton, *English Laws for Women*, 45.

⁷⁰ Marshall, *Extraordinary Trial!*, 15.

⁷¹ *Ibid.*, 27.

⁷² *Ibid.*, 12.

⁷³ Caroline Norton, "To the Editor of *The Times*, *The Times*, 24 August 1853. Buckinghamshire Archives.

⁷⁴ Marshall, *Extraordinary Trial!*, 27.

defendant—Mrs Norton could not because she is the wife of the plaintiff."⁷⁵ Fortunately, as Olney notes, "[t]he evidence presented against Lord Melbourne and the Hon. Mrs. Norton was so trivial and the testimony so obviously corrupt that the jury returned a verdict of acquittal without leaving the box."⁷⁶ The witnesses were deemed corrupted by bribery and the entire case was revealed to be a scheme to throw Melbourne from political power.⁷⁷ The defence pointed out that many of the servants had been dismissed for wrongful behaviour and were, at that time, being paid for their witness testimonies by George's brother, Lord Grantley.⁷⁸ Melbourne was proven innocent and George was left embarrassed in the most highly attended crim. con. case of the nineteenth century. The irony of the *Norton v. Melbourne* verdict is that without proven adultery in a crim. con. case a divorce between Norton and her husband was an impossibility. If Norton had committed adultery then her husband could have applied for judicial separation, followed by Parliamentary divorce. Instead, she is forced to remain legally married to a husband who had made her into a laughing stock of society.

II. Divorce Law Reform Debates

It wasn't until 1850 that Parliament officially began to question the inadequacies of marriage law regarding marital separation and divorce. As Chapter 1 argues, the nineteenth-century debates for legal reforms were sparked by the parliamentary consideration and adoption of the 1839 Custody of Infants Act. The Royal Commission on Divorce was set up in 1852 to discuss the major concerns of the debate for divorce law reform and in 1853 published the *First Report [...] to Enquire Into the Law of Divorce* to address these concerns and propose

⁷⁵ Marshall, *Extraordinary Trial!*, 27.

⁷⁶ Norton, *The Letters of Caroline Norton to Lord Melbourne*, 255.

⁷⁷ Marshall, *Extraordinary Trial!*, 36.

⁷⁸ Atkinson, *The Criminal Conversation of Mrs. Norton*, 19.

changes.⁷⁹ These concerns included the high price of separation and divorce suits, the complex structure of the legal system's control of marriage suits, and the double standard that benefitted men.

Legal historians such as Lawrence Stone, Samuel Pyeatt Menefee, Ann Holmes, and John Baker identify that early-nineteenth-century marriage laws were still stuck in the Middle Ages. Until 1857, the separation of husband and wife could be obtained through five methods: desertion, wife-selling, private separation, judicial separation, or divorce.⁸⁰ These methods were dependant on the couple's social class and the specificities of their case. Desertion and wife-selling were seen as a form of self-divorce because they involved no legal proceedings. As Chapter 3 will discuss, desertion and bigamy were common amongst lower class marriages as marriage suits were only an option for men who could afford the expensive legal fees.⁸¹ Women, on the other hand, were legally forced to return if found through a suit of "conjugal rights."⁸² In addition, a more barbaric form of self-divorce existed in the "ritual of wife-sale"—"a custom unique to Britain and New England, by which a husband publicly sold to another man not only his wife but also all legal responsibility for her and her upkeep."⁸³ This unjust ritual is referenced in Norton's *English Laws* when she notes that "a man may legally sell his wife, and so break the bond of union!"⁸⁴ Samuel Pyeatt Menefee's detailed research

⁷⁹ *First Report of The Commissioner Appointed by Her Majesty To Enquire Into the Law of Divorce, And More Particularly Into The Mode of Obtaining Divorces À Vinculo Matrimonii* (London: Bradbury & Evans, 1853).

⁸⁰ Stone, *Road to Divorce*, 141,

⁸¹ Stone points out that the cost of litigation could range between £100 and £1,000 depending on the complexities of the case. Lord Ellenborough's complex suit for judicial separation in 1830 cost him £5,000. (See Stone, *Road to Divorce*, 188.)

⁸² Lawrence Stone, *Uncertain Unions: Marriage in England 1660-1753* (Oxford: Oxford University Press, 1992), 76.

⁸³ Stone, *Road to Divorce*, 141,

⁸⁴ Norton, *English Laws for Women*, 15.

into this symbolic custom claims that "[w]ife-selling occurred throughout the British Isles, perhaps as early as 1073, with scattered cases as late as the twentieth century."⁸⁵ The long-lasting debate on the selling of wives is apparent in Thomas Hardy's *The Mayor of Casterbridge* (1886) when Michael Henchard questions "Why shouldn't they put 'em up and sell 'em by auction to men who are in need of such articles?"⁸⁶ As Mary Lyndon Shanley notes, "a wife was herself the 'property' of her husband" and so wives and property were treated similarly by the law.⁸⁷

In defiance of these informal processes of separation, the law did provide other methods for those who could afford it. The least controversial of these processes was the application for private separation. Stone defines private deeds for separation as "an agreement to part, negotiated between the two spouses and embodied in a deed of separation drawn up by a conveyancer."⁸⁸ As Stone points out, "[b]ecause a wife had legally no personality, she was unable to contract with her husband, so these deeds are always between the husband and a trustee for the wife."⁸⁹ As married women had no legal identity outside marriage, such cases were set up between a husband and his wife's trustee in order to assess an appropriate alimony value.⁹⁰ Private separation most often occurred through a mutual agreement between husband and wife and did not require a public trial.⁹¹ Alimony would depend on the social class of the

⁸⁵ Samuel Pyeatt Menefee, *Wives for Sale: An Ethnographic Study of British Popular Divorce* (Oxford: Basil Blackwell, 1981), 2.

⁸⁶ Thomas Hardy, *The Mayor of Casterbridge* ed. Keith Wilson (London: Penguin, 2003), 9.

⁸⁷ Mary Lyndon Shanley, *Feminism, Marriage and the Law in Victorian England* (Princeton: Princeton University Press, 1989), 22.

⁸⁸ Stone, *Road to Divorce*, 14.

⁸⁹ *Ibid.*, 150.

⁹⁰ Norton, *A Letter to the Queen*, 11.

⁹¹ Stone, *Road to Divorce*, 160.

couple as well as the class of the spouse's family; typically it ranged between one third to half of the couple's joint income.⁹²

If a husband did not wish to be burdened by alimony or had hopes of remarrying there were other options. Firstly, he could file suit for a judicial separation, or *divortium à mensâ et thoro*.⁹³ Examples of these suits could involve the nullification of marriage due to incest, a spouse's incapacitating mental or physical state "such as lunacy or male impotence (and, very rarely female frigidity, or physical deformation of the vagina)."⁹⁴ The most common form of judicial separation sought by individuals was a separation from bed and board, which was permissible in cases of adultery and/or life-threatening cruelty.⁹⁵ To prove adultery in cases for separation *à mensâ et thoro*, an action for *crim. con.* was required. As Stone states, "[i]f the husband sued his wife for separation on the grounds of her adultery and he won, the court would not allocate alimony to her, and she was consequently left penniless."⁹⁶ If adultery could not be proven then the husband would be unable to apply for the final form of separation—Parliamentary divorce (*divortium à vinculo matrimonii*)—and "would be obliged to maintain her and also his children, who would have a claim to inherit his property; and he would continue to be responsible for paying her debts."⁹⁷ A wife would be forced to remain married to a man who had accused her of sexual misconduct and labelled her as an indecent wife.

From 1660 to 1857, the most conclusive form of separation was known as Parliamentary divorce, or *divortium à vinculo matrimonii*. Unfortunately this could only be

⁹² Stone, *Road to Divorce*, 210.

⁹³ *Ibid.*, 159.

⁹⁴ *Ibid.*, 191.

⁹⁵ *Ibid.*, 192.

⁹⁶ *Ibid.*, 193.

⁹⁷ *Ibid.*, 209-210.

decided through an Act of Parliament.⁹⁸ Application for Parliamentary divorce required a long process in which the case would go through three trials: "one for separation in the ecclesiastical courts; one for damages for crim. con. in the common law courts; and one for divorce in Parliament."⁹⁹ It was due to this lengthy process that individuals rarely applied, as it would involve three times the legal fees. The only benefit of a Parliamentary divorce was complete financial separation. If awarded a divorce, alimony would no longer be a requirement and the innocent party would be economically independent of their guilty spouse.¹⁰⁰ However, once again the double standard of divorce law meant that only in extreme cases of adultery and cruelty would an act of divorce be granted and even then married women would be left penniless and outcast from society.¹⁰¹

The first Matrimonial Causes and Divorce Bill was submitted by Lord Cranworth to the House of Commons in 1854.¹⁰² Unfortunately, the Bill did very little to correct the legal oppression of married women. Lord Cranworth and many others saw marriage as an indissoluble institution and argued that by giving women the ability to seek divorce the institution would be weakened.¹⁰³ He claimed that broadening circumstances for divorce would bring a rise in cruelty and desertion, as if cruelty or desertion weren't already a common occurrence for married women of lower classes.¹⁰⁴ Although Cranworth's argument appears to protect women, it would prove to further trap many women in unhappy and cruel marriages. While Cranworth argues that divorce law reforms would damage the institution of marriage,

⁹⁸ Stone, *Road to Divorce*, 46.

⁹⁹ *Ibid.*, 355.

¹⁰⁰ *Ibid.*, 141.

¹⁰¹ *Ibid.*, 193.

¹⁰² *Ibid.*, 369.

¹⁰³ *Ibid.*, 353.

¹⁰⁴ *Ibid.*, 353.

Norton points to her own experiences and those of women like Eleanor to illustrate that divorce law reform would, in fact, help to improve the reputation of marriage.

The Bill was ultimately withdrawn due to the indecisiveness of Parliament in finding a solution.¹⁰⁵ It was in this same year that Norton published her *English Laws for Women in the Nineteenth Century* (1854), explaining the importance of reformed marriage laws to women such as herself. In response to Cranworth and the 1854 Bill, Norton also published *A Letter to the Queen on Lord Chancellor Cranworth's Marriage and Divorce Bill* (1855). She argues that in the current system the legal entity of a married woman is "absorbed in that of her husband."¹⁰⁶ She has "no possessions [...] her property is *his* property."¹⁰⁷ Norton points out that she "cannot make a will," "prosecute for libel," "sign a lease," "claim support," "bind her husband by any agreement," or "legally claim her own earnings."¹⁰⁸ To make matters worse, Norton notes that "[i]f her husband takes proceedings for a divorce, she is not, in the first instance, allowed to defend herself. She has no means of proving the falsehood of his allegations."¹⁰⁹ Instead, as this dissertation examines, she was made "non-existent" by a legal system that she believed ought to protect her.¹¹⁰

The 1856 Bill addressed many of the concerns highlighted by Norton's *Letter to the Queen*.¹¹¹ Gisela Argyle points out that "[w]hen the legislation was passed in 1857, several

¹⁰⁵ Stone, *Road to Divorce*, 370.

¹⁰⁶ Norton, *A Letter to the Queen*, 8.

¹⁰⁷ *Ibid.*, 8.

¹⁰⁸ *Ibid.*, 9.

¹⁰⁹ *Ibid.*, 10.

¹¹⁰ *Ibid.*, 4.

¹¹¹ The final 1857 Act only contained 14 of the original clauses from the 1854 Bill. Many of the clauses that were deemed too radical, and sought to provide married women with more legal rights, were eliminated by the time the Bill was passed in both Houses. (See Stone, *Road to Divorce*, 382.)

clauses cited her contributions nearly verbatim."¹¹² For example, the new Bill did give married women the ability to make contracts and provided financial security for women after divorce.¹¹³ It also created a distinct High Court for Matrimonial Causes where marriage trials could be judged separately from other civil law trials.¹¹⁴ However, it did not address the absurd bias of crim. con. actions or married women's right to property. As a result, the double standard of divorce law remained. A husband could continue to keep a mistress while "the slightest sexual slip on the part of his separated wife would allow him to stop payment of the maintenance allowance, and the wife would thereafter be socially humiliated and financially ruined."¹¹⁵ This would remain as legally acceptable until the Royal Commission on Divorce of 1912.¹¹⁶ Despite this failing, the 1857 Matrimonial Causes and Divorce Act would pass by a close vote of 46 to 44.¹¹⁷

The portrayal of Norton's marital suffering in her own pamphlets and Parliamentary debates exemplifies the ways in which personal stories became an important part of marriage law reform. She argues that the object of her writings was to make sure that the "law was known, at least among the weaker sex."¹¹⁸ Norton utilised her writing to illustrate the commonality of married women's legal sufferings under contemporary marriage laws by referencing similar cases of women's oppression. Her story became a model of the unjust legal system's treatment of married women and symbolic of the necessity for reform. Norton

¹¹² Gisela Argyle, "George Meredith's Fictional Transformations of Female Life-Writings," *Studies in English Literature 1500-1900*, 49 (4), (Autumn 2009): 983.

¹¹³ Stone, *Road to Divorce*, 376.

¹¹⁴ *Ibid.*, 47

¹¹⁵ *Ibid.*, 160.

¹¹⁶ *Report of the Royal Commission on Divorce and Matrimonial Causes* (London: H.M. Stationery, 1912), 393.

¹¹⁷ *Ibid.*, 382.

¹¹⁸ "Letter to John Murray" (5 Jan 1837) qtd in Perkins, *The Life of the Honorable Mrs. Norton*, 133.

acknowledges that "I do not consider this as MY cause: though it is a cause of which (unfortunately for me) I am an illustration. It is the cause of all the women, and of a large proportion of the trades-people, in England."¹¹⁹ Kelly Hager comments that Norton's pamphlets "along with the many journalistic accounts of her trials and travails, were circulated so widely and enjoyed so much popularity that the figure of Caroline Norton came to seem more like a fictional character than an actual woman."¹²⁰ Norton's sufferings as a victim of the legal oppression of married women inspired not only her own literary works but also the works of others. Her experiences read like a sensation novel filled with melodrama and suspense. And yet Norton's experiences were not fictional and thus made the reality of married women's oppression more unbelievable.

The novel form appears to have adapted with the changed focus on married women's legal suffering. As Tony Tanner points out, "many of those nineteenth-century novels that have been canonized as 'great' [...] center on adultery."¹²¹ Divorce novels and the presentation of adultery can be further categorised by degree of adultery, the spouse accused of adultery, and whether or not legal divorce is possible. As Chapter 3 will examine, bigamy plots and adultery plots were synonymous with one another in novels like Charlotte Brontë's *Jane Eyre* (1847) and Eliza Lynn Linton's *The Rebel of the Family* (1880) when an individual barely escapes abetting adultery because they did not know that their future husband was already married. Adultery novels such as William Thackeray's *Vanity Fair* (1847) and Lady Charlotte Bury's *The Divorced* (1837) can be characterised by the portrayal of married women's adultery and

¹¹⁹ Norton, *A Letter to the Queen*, 89

¹²⁰ Kelly Hager, *Dickens and the Rise of Divorce: The Failed- Marriage Plot and the Novel Tradition* (Burlington, VT: Ashgate Publishing Co., 2010), 92.

¹²¹ Tony Tanner, *Adultery in the Novel: Contract and Transgression* (Baltimore: John Hopkins University Press, 1979), 11.

marital separation prior to the enactment of the 1857 Act and Parliamentary divorce. Novels like Dinah Mulock Craik's *A Brave Lady* (1870), Henry James' *Portrait of a Lady* (1881) and *What Maisie Knew* (1897), and Thomas Hardy's *Jude the Obscure* (1895) instead emphasise the ways in which the 1857 Act made divorce unrealistic and inaccessible. The only nineteenth-century English novel where an act of divorce is successfully granted through a case of adultery is Ellen Wood's *East Lynne* (1861). What distinguishes Norton's portrayal of contemporary divorce and separation debates in *Stuart of Dunleath* from that of other novelists is its autobiographical nature. The process of novel writing acts as her legal testimony and allows Norton to further use the authority of her own experiences to accurately represent married women's experiences and support her appeal for reform.

III. "Romance of the Bar": *Stuart of Dunleath* and Fictional Testimonial Accounts

Norton notes in *English Laws* that the legal concept "license of the Bar" allowed barristers to present 'what if?' scenarios in court in order to excuse the guilt of criminals.¹²² Norton's theory is reminiscent of Jeremy Bentham's philosophy that a work of jurisprudence should not only state "what the law is" but also "to ascertain what it ought to be."¹²³ It requires a certain level of imagination to convince a jury that an individual is not a criminal but a victim of unjust laws. Norton would reinvent this terminology as the "Romance of the Bar" to

¹²² Norton, *English Laws for Women*, 92.

¹²³ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* [1789], ed. J.H. Burns and H.L.A. Hart (Oxford: Clarendon Press, 2005), 294.

describe the engagement of fiction in law and the melodrama of the courtroom.¹²⁴ But if fiction could be used to criticise the law in court, could it not also criticise the law in literature? *Stuart of Dunleath* is Norton's first novel to address the subject of marriage law and women's legal oppression following her crim. con. trial. Written at the start of the Parliamentary discussions on divorce law reform, *Stuart of Dunleath* provides a testimonial account of how women like Norton were trapped in marriages, victims of a lack of legal rights, and without a means of escape. Norton testifies through the persona of Eleanor Raymond in favour of her own innocence and her victimisation under contemporary marriage law. She describes in an 1851 letter that her novel acts as "a sort of appendix to the report of the Committee on the Law of Divorce."¹²⁵ Norton puts forth her own and Eleanor's marriages as testimonial evidence of the commonality and severity of married women's sufferings without sufficient legal rights to protect themselves.

Stuart of Dunleath depicts the life of its heroine, Eleanor Raymond, after the death of her father. Her only family consists of a sickly mother and a malicious half brother until she is rescued by the guardianship of David Stuart. After falling in love with her guardian, Eleanor is left destitute and heartbroken when he seemingly commits suicide after losing her inheritance to an ill-judged financial investment. It is at this time that Eleanor is proposed to by an elite politician, Sir Stephen Penrhyn. With no money or options, Eleanor consents out of obligation to her family and want of financial security. As a married woman, Eleanor witnesses the adultery of her husband, the death of her two sons, and is victim to physical abuse. According to biographer Alan Chedzoy, Eleanor's husband, Sir Stephen, even "out-Nortons Norton" in

¹²⁴ Norton, *English Laws for Women*, 132.

¹²⁵ Caroline Norton to Caroline Henrietta Sheridan, 6 May 1851, Buckinghamshire Archives, D/RA/A/2C/19/1.

his cruelty towards his wife.¹²⁶ Norton embeds her own experiences of abuse, the death of a child, and the unjust accusation of adultery into the misfortunes of her heroine as a way of defending her own legal trials against her husband. By distancing herself from Eleanor through the median of fiction, Norton is able to illustrate how even an innocent and dutiful wife can be victimised by the double standard of divorce laws. As Schramm argues, "[t]ime and time again in Victorian fiction we see the law ridiculed for its reductionism, for its legalese, for its callous failure to acknowledge that behind the language of rights, duties, and sanctions lies a seething world of emotional turmoil and physical experience which defies easy categorisation or description."¹²⁷ It is clear that Norton also sees these limitations of the law and the power of fictions to most accurately portray the "emotional turmoil and physical experience" that she endured as a legally oppressed married woman.

Leigh Gilmore's *The Limits of Autobiography: Trauma and Testimony* examines the ways in which an author's negative experiences can affect self-representation in autobiographical works. She notes that autobiographical work can "offers writers the opportunity to promote themselves as representative subjects, that is, as subjects who stand for others."¹²⁸ Carolyn Barros analyses the differences between the writer and representation by using the term "persona" to emphasise the transformation between the author's life and the characters and situations portrayed.¹²⁹ In other words, no matter how autobiographical a work is, it will always be infused with some element of fiction. As a work of autobiographical

¹²⁶ Chedzoy, *A Scandalous Woman*, 226.

¹²⁷ Jan-Melissa Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Theology* (Cambridge: Cambridge University Press, 2000), 15.

¹²⁸ Leigh Gilmore, *The Limits of Autobiography: Trauma and Testimony* (Ithaca: Cornell University Press, 2001), 4.

¹²⁹ Carolyn Barros, *Autobiography: Narrative of Transformation* (Ann Arbor: University of Michigan Press, 1998), 21.

fiction, *Stuart Dunleath* not only represents Norton's own marital and legal sufferings but the prevalence of many other married women's sufferings under the patriarchal bias of marriage laws. Therefore, while this chapter examines the similarities between Norton and her "persona," Eleanor, it also acknowledges Norton's decision to distance herself from her "persona."

Mary Poovey argues that Norton "justifies publicizing her private story by rhetorically splitting herself into two persons: the long-suffering victim of social injustice and the vindicating polemical writer."¹³⁰ Although Poovey is referring to Norton's pamphlet writing, it is clear that in *Stuart of Dunleath* Eleanor takes on the first persona while Norton, as a novelist, takes on the second. As Chapter 1 acknowledged, Norton was self-conscious of how her reputation would affect her advocacy. By distancing herself from Eleanor, she could eradicate any faults that could turn a jury against her. She would use her own theory of "Romanc[ing] the bar" to fictionalise her own experiences into a more empathetic persona.¹³¹ Thus, any differences between herself and Eleanor are created for the purpose of furthering her argument for marriage law reform and portraying the suffering of married women under contemporary divorce and separation laws.

Norton was "stormy-tempered with a reckless and specious tongue" and occasionally provoked her husband's violence.¹³² She knew that her own temper might make her appear as an unruly and dangerous woman in the eyes of the law. In order to create a more sympathetic persona, Eleanor is presented as wealthy, beautiful, docile, and "prepared to be a submissive

¹³⁰ Mary Poovey, *Uneven Developments: The Ideological Work of Gender in Mid-Victorian England* (London: Virago Press, 1989), 65.

¹³¹ Norton, *English Laws for Women*, 132.

¹³² Atkinson, *The Criminal Conversation of Mrs. Norton*, 43.

wife to her lover."¹³³ When David loses the Raymond fortune in a property scandal, Eleanor's wealth and reputation are destroyed and her mother left penniless. Sir Stephen claims that he "is still willing" to marry Eleanor despite her earlier rejection.¹³⁴ In order to support her mother and avoid impoverishment, Eleanor is forced to accept Sir Stephen's willingness to marry her. Craig acknowledges the similarities between Eleanor and Norton's incentives for marrying when she states that "Eleanor Raymond accepts the offer without a strong attachment because, among other things, she faces poverty and no other desirable alternative."¹³⁵ From the moment of her marriage ceremony she becomes aware of Sir Stephen's newly formed control over her: "[t]here was something terrible and repulsive to her in the savage fondness of his locked embrace—in the wild eagerness of his anxious eyes."¹³⁶ Norton emphasises the legal significance of marriage ceremonies when she portrays that "the wedding over; and that pale wonder of the world his by every law human and divine; his, so that he would have the right to smite and slay any man who attempted to wrench her from him."¹³⁷ Eleanor is now the legal property of her husband and has no means of resistance. Perkins notes that within the first few months of marriage Norton had become quickly aware of her husband's violent and controlling nature.¹³⁸ With this loss of legal representation in mind, it is difficult to separate Norton's personal experiences from the fictional portrayal of Eleanor's marriage.

Eleanor leaves her family home for her new home at Castle Penrhyn, in the Scottish

¹³³ Norton, *Stuart of Dunleath*, 14.

¹³⁴ *Ibid.*, 44.

¹³⁵ Craig, *The Narratives of Caroline Norton*, 115.

¹³⁶ Norton, *Stuart of Dunleath*, 47.

¹³⁷ *Ibid.*, 46.

¹³⁸ Perkins, *The Life of the Honorable Mrs. Norton*, 15.

Highlands. Norton's marriage similarly began with a visit to George's relations in Scotland.¹³⁹ Sir Stephen's decision to marry a penniless young woman is not seen as a wise choice by his family. But instead of protecting his new wife, Sir Stephen leaves her to be bullied by his family. Sir Stephen "thought of her with as much romance as the purchasers of such luxuries might do."¹⁴⁰ It was this same principle that formed the legal procedures of wife selling and crim. con. cases. Eleanor is grateful to be saved from financial turmoil but feels little romantic attachment to Sir Stephen just as he views their marriage as a sound business decision due to her charm, beauty, and vast social connections that could aid his career.

Norton understood the financial benefits of the marriage market. She gained financial security through marriage while her husband gained social standing. However, through this process, Norton sold away her right to possess any form of financial separation from her husband. When George lost his job, they frequently disputed over his right to control her inheritance.¹⁴¹ George came from a wealthy family but due to his political career and the importance of reputation was encouraged to marry Norton for her family's social standing.¹⁴² Because of the conflicting political opinions between Norton's Whig relations and George's Ultra Tory family, his siblings never truly approved of the marriage.¹⁴³ It was popularly rumoured that George's brother, Lord Grantley, persuaded him to accuse Melbourne of crim con. in order to overthrow the Whig Prime Minister.¹⁴⁴ From the beginning of her marriage until her trial for adultery, Norton's marriage was a means to an end and used as a tool to keep

¹³⁹ Like Eleanor, Norton was born in Scotland and identified the landscape with her childhood. Unfortunately, it was also where she met George. (See Atkinson, *The Criminal Conversation of Mrs. Norton*, 53.)

¹⁴⁰ Atkinson, *The Criminal Conversation of Mrs. Norton*, 55.

¹⁴¹ Norton, *A Letter to the Queen*, 62.

¹⁴² Atkinson, *The Criminal Conversation of Mrs. Norton*, 30.

¹⁴³ Perkins, *The Life of the Honorable Mrs. Norton*, 82.

¹⁴⁴ Stone, *Road to Divorce*, 280.

George in a high social position.

When Eleanor's family's money is eventually returned and she inquires if she may use it for her own purchases, Sir Stephen quickly reminds her that "the money's mine, and you're mine."¹⁴⁵ He taunts her by stating "[y]our fortune's mine; do you understand that? [...] No married woman has a fortune of her own [...] The law don't admit a married woman has a right to a farthing's worth of property. It can't be done."¹⁴⁶ Without money Eleanor remains "non-existent" in the eyes of her husband and disempowered in her own right.¹⁴⁷ As Chapter 4 will further examine, the lack of inclusion of married women's property rights in the Act sparked outrage and led to a long campaign by activists for the passing of the 1870 Married Women's Property Act. While Norton was campaigning for the Custody and Divorce Acts, activists like Barbara Smith Bodichon and Frances Power Cobbe were attempting to have a separate form of legislation passed that would focus specifically on married women's property rights.¹⁴⁸ Sadly, the 1857 Divorce Act took precedence and led to a delay in property rights for married women until 1870.¹⁴⁹

Amidst a period in which Eleanor was made to feel like a financial burden, her only solace came with the birth of twin sons, Frederick and Clephane. Frederick was "strong, blooming and lovely" while Clephane was "pale and feeble."¹⁵⁰ Frederick became the favourite of his father, as a strong male heir, while Clephane was left to the care of his mother. She had equal affection for both her "dear children" for there was no "difference in her love"

¹⁴⁵ Stone, *Road to Divorce*, 92.

¹⁴⁶ *Ibid.*, 92.

¹⁴⁷ Norton, *A Letter to the Queen*, 84.

¹⁴⁸ Lee Holcombe, *Wives and Property: Reform of the Married Women's Property Law in Nineteenth-Century England* (Toronto: University of Toronto Press, 1983), 108.

¹⁴⁹ Shanley, *Feminism, Marriage, and the Law in Victorian England*, 50.

¹⁵⁰ Norton, *Stuart of Dunleath*, 58.

of motherhood.¹⁵¹ During her life as a "neglected, miserable, maltreated wife," Eleanor had "one bright spot in her home: in that darkness a watch-light burns: she has her children's love, she will strive for her children."¹⁵² Her husband frequently chastised her for her motherly doting on Clephane and argued that if she "managed them better, the boy would surely be stronger."¹⁵³ While he was happy to be a father, Sir Stephen's cruel nature did not subside. In response to her husband's contempt Eleanor declares that "[s]he will bear on for her children's sake. She will toil for them—die for them—*live* for them—which is sometimes harder still."¹⁵⁴ She agrees that her marriage may not be happy in terms of affection for her husband, but that her love for her children had now made her marriage worthwhile. She recognises that "[h]er trials and troubles and irritations seemed nothing, when balanced with this new joy."¹⁵⁵ Eleanor feels that her sufferings have finally ended with the birth of her children and that her future life will be filled with motherly happiness. However, as those familiar with Norton's life would have known, this is not the case.

After approximately eight years of wifely surrender to her husband for the sake of her children, Eleanor is met with the worst experience that any mother can experience. She notes that "[i]n the morning she was a mother of living, and in the evening of departed souls!"¹⁵⁶ Both children drown on an outing with their father. In an attempt to save his weaker son and believing that Frederick's strength would save him, Sir Stephen fails to save either child. After the death of her children, Eleanor's marriage became an inescapable trap.

As Chapter 1 emphasised, Norton had three sons with George. She was forcibly

¹⁵¹ Norton, *Stuart of Dunleath*, 58.

¹⁵² *Ibid.*, 58.

¹⁵³ *Ibid.*, 59.

¹⁵⁴ *Ibid.*, 58.

¹⁵⁵ *Ibid.*, 58.

¹⁵⁶ *Ibid.*, 71.

separated from the youngest, Michael, before he was even a year old. Her elder children very much resembled Eleanor's sons. Fletcher was energetic and ambitious while Brinsley was quiet and witty. However, both of Norton's sons spent most of their childhoods in a sickbed.¹⁵⁷ Norton gained nursing experience from both children. When her husband did allow her to see her children, she often wrote to her sister about how she doted on Brinsley and when Fletcher became ill she went to nurse him back to health.¹⁵⁸ However, Norton's doting did not spare her the experience of her children's deaths. Amidst her preliminary legal battles with George and her initial separation from her children, Michael became severely ill. She explains in her *Letter to the Queen* that "Mr Norton allowed this child to lie ill a week before he sent to tell me he was dying; and, when I arrived, I found the poor little creature already in his coffin."¹⁵⁹ The subject of Michael's death and her distance from her other children remained a recurring topic of her writings as symbolic of the unsympathetic treatment of married women by their husbands. Norton's separation from her children was her initial inspiration for studying the legal position of married women and using her literary abilities to advocate for reformed custody laws.

The significance of child mortality in Norton marital struggles is apparent in the preface to the novel. Norton states that "the description of the death of a child in the course of these volumes [...] is not an invention, but a fact taken from real life."¹⁶⁰ Norton is able to emphasise her own miseries at the death of her infant son through her portrayal of Eleanor's sufferings from the death of her children and the guilt of her husband. Having lost one son, Norton was left with two sons who frequently became ill. Alan Chedzoy notes that "*Stuart of*

¹⁵⁷ Chedzoy, *A Scandalous Woman*, 226.

¹⁵⁸ Atkinson, *The Criminal Conversation of Mrs. Norton*, 334.

¹⁵⁹ Norton, *A Letter to the Queen*, 69.

¹⁶⁰ Norton, *Stuart of Dunleath*, 4.

Dunleath took her four years to write because she had had so many problems with her sons."¹⁶¹ Her husband often refused to pay for his sons' medical bills.¹⁶² He argued that since Norton had put forth so much effort to fight for custody and was now a successful author that she'd have no trouble paying for them herself.¹⁶³ Norton built up a large amount of debt in order to pay for her sons' education and medical bills.¹⁶⁴ This debt and her insistence that her husband pay the money she was owed led to the 1853 trial for alimony which she lost.

Although Frederick and Clephane's deaths were accidental, their deaths indicate the moment in which Eleanor no longer has any hope that her marriage will be happy. In contrast to Chapter 1's analysis of Helen Huntingdon, Eleanor can no longer be blackmailed into staying with her husband for the sake of her children. Without her children, Eleanor is left to the cruelty of her husband who saw no reason to comfort his wife during this time of mourning. Instead, as Eleanor witnesses, he sought the company of another. In the chapter preceding the death of her children, Eleanor becomes victim to the double standards of adultery and divorce law. Upon moving to Glencarrick, Eleanor is greeted by a local woman and her young son. She is told by her husband that Bridget Owen was a widow whom he had kindly allowed her to stay in an estate cottage with her son. It isn't until Eleanor sees her holding an infant child years later that her suspicions arise. She approaches to inquire "[w]hose child are you taking care of Bridget?"¹⁶⁵ Bridget's response forever changes Eleanor's hopes of loving her husband:

'Mine!' said the voice: and the look said, 'question me further if you dare!' Mine. She admitted it. She gave the child a passionate kiss; and she looked again at Eleanor; and

¹⁶¹ Chedzoy, *A Scandalous Woman*, 226.

¹⁶² Norton, *A Letter to the Queen*, 69.

¹⁶³ Atkinson, *The Criminal Conversation of Mrs. Norton*, 365.

¹⁶⁴ *Ibid.*, 365.

¹⁶⁵ Norton, *Stuart of Dunleath*, 67.

then she stepped within the threshold of her decorated cottage, with a pride of a gipsy queen. She did not close the door. She knew she had dropped a bar between her and that pale astonished lady, stronger than iron. She had no fear of being followed.¹⁶⁶

Bridget's hostility towards Eleanor derives from her awareness that Eleanor now realises that Sir Stephen is the father of her children. Like Eleanor, Bridget understands the voicelessness of married women by law and Eleanor's inability to legally confront her husband. As Bridget's eldest son peers from behind his mother, Eleanor recognises that "something roguish in his smile, perhaps, made her think for a moment, that he resembled her little Frederick."¹⁶⁷ She understands that Sir Stephen has set Bridget up in the estate cottage to be his live-in mistress while she suffers as his wife.

The "bar" that Bridget drops is symbolic of the legal barricade that prohibits Eleanor from using Sir Stephen's adultery as grounds for divorce in the contemporary legal system. Bridget and Eleanor both know that Sir Stephen will suffer no legal repercussions for this act of adultery. The double standard of contemporary marriage laws meant that he can take as many mistresses as he wishes but even the rumour of Eleanor's love for her guardian could result in legal and social side effects. Norton questions this "bar" by questioning "[w]hy did Eleanor bear this?"¹⁶⁸ The answer is that she has no other option. In order to escape, a married woman "must have friends, home, money, a protection of some sort, somewhere to go to. Eleanor had none of these things."¹⁶⁹ Instead, "Eleanor remained speechless," physically and legally.¹⁷⁰ Or, as Norton argues, "non-existent" in the eyes of the law.¹⁷¹

Eleanor begins to remember all of her past interactions with Bridget and her husband's

¹⁶⁶ Norton, *Stuart of Dunleath*, 67.

¹⁶⁷ *Ibid.*, 67.

¹⁶⁸ *Ibid.*, 73.

¹⁶⁹ *Ibid.*, 73.

¹⁷⁰ *Ibid.*, 67.

¹⁷¹ Norton, *A Letter to the Queen*, 87.

gestures towards his mistress. In the aftermath of her sons' deaths and in want of comfort, Eleanor witnesses one of these gestures as her husband seeks the affection of his mistress. In deep embrace, "Eleanor heard it; she heard him say he wished he had never had wife or child; she heard him say, that if he could, he would make the woman his wife he then held in his arms; and who was comforting him—comforting him for the loss of Eleanor's own child!"¹⁷² Upon hearing this declaration, Eleanor acknowledges that there is no hope of a happy marriage with such a man. It is these moments that speak to Eleanor: "'Remember us,' they seemed to say; 'we are *the proofs*.'"¹⁷³ "Proofs" of Sir Stephen's adultery that together with "aggravated circumstances" could give her claims for private or judicial separation. While Eleanor cannot seek legal action for Sir Stephen's adultery, if he commits any other form of marriage crime such as cruelty, desertion, incest, or bigamy, Eleanor could form a case against her husband. After the 1857 Act, these examples for aggravated adultery would become claims for divorce. While *Stuart of Dunleath* is published in 1851, Norton had been arguing against the double standards of adultery trials since her own in 1836 and the Bill was already being drafted by the Royal Commission to put forth that "aggravated" adultery was grounds for separation.

Eleanor is unable to file for a separation against her husband without aggravating circumstances even though adultery or rumored adultery is enough to prosecute her. Norton portrays this bias and the injustices of crim. com. cases in the accusation of Eleanor's adultery. The crisis of Eleanor's marriage occurs when her guardian, David Stuart, suddenly returns after having been presumed dead. Eleanor is taken aback when the man she once loved appears at Glencarrick during her husband's absence. David relays that after losing her fortune

¹⁷² Norton, *Stuart of Dunleath*, 73.

¹⁷³ *Ibid.*, 67.

and attempting suicide he assumed the disguise of "Mr Lindsay" and he ran away to America to avoid creditors and earn back her fortune as amends. He chose to remain under this disguise upon his return to England to avoid his shame. Because none of Eleanor's in-laws had known David, this pseudonym masks his true identity. However, it leaves Eleanor and David's behavior towards one another unexplained. Lady Macfarren is constantly searching for faults in her sister-in-law while Sir Stephen's relation, Tib's jealous nature seeks to destroy Eleanor's happiness. Eleanor becomes "[f]iercely watched, and fiercely condemned by both."¹⁷⁴ Upon Sir Stephen's return, Lady Macfarren relays these suspicions and demands that he "[c]rush her, divorce her, disgrace her, and choose again!"¹⁷⁵ Sir Stephen refuses to believe such accusations. He confronts Eleanor to convey that "[t]hey're both of them convinced that you're on terms of familiarity with that fellow, Lindsay, such as no married woman ought to be on with any man. It's well for you I don't think so."¹⁷⁶ Sir Stephen understands that without proof he could not verify Eleanor's transgression or file a crim. con. case against "Lindsay." Like George Norton, if Sir Stephen accuses his wife without the required evidence and fails to prove her adultery he will be denied a later application for Parliamentary divorce.

However, Sir Stephen's need for proof is forgotten when David's true identity is revealed. Like George's own accusations of his wife's affair with Melbourne, anger is all that is needed. Norton's own false accusation is evident in her portrayal of Sir Stephen's growing anger when she states that "[t]he proof that Eleanor had acquiesced in the deception practiced with respect to David Stuart's assumed name, did what such proofs do in all cases; the

¹⁷⁴ Norton, *Stuart of Dunleath*, 88.

¹⁷⁵ *Ibid.*, 103.

¹⁷⁶ *Ibid.*, 92.

boundary of trust was broken down."¹⁷⁷ Even if Eleanor had not committed adultery, Sir Stephen viewed her relationship with David and deception as worthy of punishment. Lady Macfarren observes her brother's anger and warns him that they should "take steps quietly to ascertain the truth" so that they would be able to prove adultery in a court of law.¹⁷⁸ He responds by repeating "the word 'truth' with a growling curse, and a blow on the table with his clenched fist."¹⁷⁹ Sir Stephen's ability to prove Eleanor's adultery would not stop him from punishing his wife.

It is at this moment of Sir Stephen's unhinged anger that Eleanor enters the room: "[h]e rushed towards her, as she made a breathless, startled pause at the door; he seized her with his right hand, he grasped her shoulder with his left, and he shook her as passionate nurses shake a rebellious child."¹⁸⁰ In response to her husband's sudden violence, Eleanor lets out a "wild, short, sharp cry" with "her eyes fixed in speechless amazement and horror on his face."¹⁸¹ Eleanor's inability to speak mirrors her legal silence. Norton knew perfectly well that like adultery, physical violence was not grounds for divorce. As A. James Hammerton points out, prior to the 1923 Matrimonial Causes Act "the court had always insisted upon proof of danger to life, limb, or healthy."¹⁸² Sir Stephen questions "I wonder you are not afraid for your life, by God, after your conduct towards me."¹⁸³ After revealing her broken arm as a result of his attack, Eleanor responds, "I am afraid of nothing—you can only kill me! [...] when all's done,

¹⁷⁷ Norton, *Stuart of Dunleath*, 106.

¹⁷⁸ *Ibid.*, 106.

¹⁷⁹ *Ibid.*, 106.

¹⁸⁰ *Ibid.*, 106.

¹⁸¹ *Ibid.*, 106.

¹⁸² A. James Hammerton, *Cruelty and Companionship: Conflict in Nineteenth-Century Married Life* (London: Routledge, 1992), 120.

¹⁸³ *Ibid.*, 106.

it's only a little agony more or less, I would not care if it were death."¹⁸⁴ With no legal escape, Eleanor has no option but to wait for death. Eleanor apologises for having lied about David's identity but defends her innocence against his accusation of adultery.

Sir Stephen's sudden act of violence marks a significant moment in the novel. Craig notes that Eleanor enters her marriage believing that it would be a haven only to be forced to endure "two forms of spousal violence, a literal blow of the hand and the figurative assault of the law."¹⁸⁵ He argues that "[a]lthough Eleanor's arm heals, her marriage is irremediably broken."¹⁸⁶ It is clear that Sir Stephen feels no remorse over his cruelty towards Eleanor. Although he is haunted by "disturbing dreams" of his abuse and Eleanor's death, he immediately seeks refuge in the arms of his mistress.¹⁸⁷ Norton understood this insincerity of remorse after instances of domestic violence. When she managed to escape George's grasp after a particularly severe night of abuse, Norton was persuaded to return to her husband after numerous pleas for forgiveness and no other alternative.¹⁸⁸ As Norton declares in her *Letter to the Queen*,

I consulted counsel whether I could not now divorce my husband: whether a divorce 'by reason of cruelty' might not be pleaded for me; and I laid before my lawyers the many instances of violence, injustice, and ill-usage, of which the trial was but the crowning example. I was then told that no divorce I could obtain would break my marriage; that I could not plead cruelty which I had forgiven; that by returning to Mr Norton I had 'condoned' all I complained of.¹⁸⁹

It is her return to her husband that ironically haunts Norton's life as it was seen as proof of

¹⁸⁴ Norton, *Stuart of Dunleath*, 106-107.

¹⁸⁵ Craig, *The Narratives of Caroline Norton*, 114.

¹⁸⁶ *Ibid.*, 114

¹⁸⁷ Norton, *Stuart of Dunleath*, 108.

¹⁸⁸ Norton, *English Laws for Women*, 47.

¹⁸⁹ Norton, *Letter to the Queen*, 70.

condoning his violence and barred her from applying for a Parliamentary divorce.¹⁹⁰

Like George, Sir Stephen's cruelty only continues after breaking Eleanor's arm. In order to further punish her for her lies and her rumoured adultery, Sir Stephen opens his home up to his bastard son. Eleanor is forced to witness her husband dote upon the son of his mistress as she once had her own sons. It is at this moment that her "silence is broken."¹⁹¹ Norton's focus on married women's silence and inability to have a say in the laws of marriage led her to argue that through writing "[d]efence is possible to me, not silence." She argues in *English Laws* that the injustices that she had been forced to endure "made silence impossible."¹⁹² Poovey claims that Norton's advocacy for marriage law reform "required transforming herself from the silent suffer of private wrongs into an articulate spokesperson in the public sphere."¹⁹³ Norton acknowledges that no amount of legal or social scrutiny could be worse than what she was currently enduring. Even after being accused of promiscuity in newspapers and trial reports, Norton felt the drive to alter the unjust laws that had condemned her. She felt it her duty as someone with the financial means to do her best to prevent the future misery of married women like herself.

In her decision to revolt, Eleanor seeks the advice of David. He only confirms what Eleanor knows regarding her position as an English wife. David states that "in England your husband might heap what insult he pleased upon you—might bring that Welshwoman and her brood into your very house—and, beyond the half-measure of being allowed to live separate

¹⁹⁰ Norton, *Letter to the Queen*, 47.

¹⁹¹ Norton, *Stuart of Dunleath*, 114.

¹⁹² Norton, *English Laws*, 122; 2.

¹⁹³ Poovey, "Covered but Not Bound: Caroline Norton and the 1857 Matrimonial Causes Act," 64.

from him, the law would do nothing for you."¹⁹⁴ He argues that if Eleanor attempted to take legal action as an English wife:

it would not divorce you; it would not enable you to be free forever of the man who could so mock the tie that binds you both; it would not enable you to make some other choice; to exchange oppression and insult, for protection and love. You might appeal to justice in vain.¹⁹⁵

It is this legal barricade that barred Norton from applying for a divorce after many instances of cruelty. As she explains in her *Letter to the Queen*, "I was an ENGLISH WIFE, and for me there was no possibility of redress. The answer was always the same. The LAW."¹⁹⁶ David informs Eleanor that in Scotland not all of these restrictions would apply. Chapter 4 will demonstrate that the differentiation between Scottish, Irish, and English marriage laws could both help and harm women's legal claims. Scottish law had much laxer restrictions on divorce and separation.¹⁹⁷ David informs Eleanor that "[i]t will be necessary to prove yours a Scotch marriage" which should not be difficult as she lives in Scotland and that her husband is Scottish.¹⁹⁸ Norton similarly attempted to prove her own marriage as a "Scotch marriage" as "[i]n Scotland, above all, the law *has* power to divorce *a vinculo* [...] and the right of the wife to apply for such divorce is equal with the right of the husband."¹⁹⁹ As Chapter 4 will further explain, married women were given different legal rights in Scotland than they were in England, such as the right to apply for divorce. David advises Eleanor to leave for London where she could seek legal counsel to file a suit claiming that she was under the jurisdiction of Scottish law when married and therefore eligible for divorce. At this moment of refuge and

¹⁹⁴ Norton, *Stuart of Dunleath*, 114.

¹⁹⁵ *Ibid.*, 114.

¹⁹⁶ Norton, *A Letter to the Queen*, 70.

¹⁹⁷ Norton, *English Laws for Women*, 143-145.

¹⁹⁸ Norton, *Stuart of Dunleath*, 114.

¹⁹⁹ Norton, *A Letter to the Queen*, 16.

relief from her marital sufferings, Eleanor surrenders.

Once in London, she seeks the aid of lawyers and begins her legal education. In order to attain a separation, her lawyers need to know every detail of her marriage—the financial disputes, the adultery, the accusation of crim. con., and the physical violence. As she notes earlier, "[t]hen was the time to judge her husband; then was the time to protect her; then was the time to sit making bitter, heart-broken reflections on the sacredness of choice."²⁰⁰ This is reflective of Poovey's depiction of Norton's position in publicising her story as a form of "self-authorization."²⁰¹ As Poovey argues, "'if George is the villain here, and Caroline is the lady-in-distress, who [...] is to be the lady's defender? [...] there is no one else to play the role but Caroline Norton herself."²⁰² With no one to turn to, Eleanor must also become her own legal defender. She is given the task of reading legal journals and pamphlets in order to educate herself on the process of obtaining a separation from her husband. Norton describes that "[o]pen, on her knee, lay a book—Ferguson's "Law of Divorce" with the leaves folded down to such cases as the lawyer who was employed for her thought fair precedents and examples of the decision that she might expect."²⁰³ Ferguson's *Reports [...] of Scotland In Actions of Divorce* (1817) was influential in Norton's own legal education alongside the writings of John Macqueen and John Hosack.²⁰⁴ Norton specifically mentions in her *Letter to the Queen* that

²⁰⁰ Norton, *Stuart of Dunleath*, 95.

²⁰¹ Poovey, "Covered but Not Bound: Caroline Norton and the 1857 Matrimonial Causes Act," 65.

²⁰² *Ibid.*, 67.

²⁰³ Norton, *Stuart of Dunleath*, 115.

²⁰⁴ Norton, *A Letter to the Queen*, 146-147. Norton references the following: James Ferguson, *Reports of some recent Decisions by the Consistorial Court of Scotland, in actions of Divorce* (Edinburgh: A. Constable & Co., 1817), John Macqueen, *A Practical Treatise on the Appellate Jurisdiction of the House of Lords and Privy Council, together with the Practice on Parliamentary Divorce* (London: A. Maxwell & Son, 1842), and John Hosack, *A Treatise on the Conflict of Laws of England and Scotland* (London: William Blackwood & Sons, 1847).

the works of Ferguson are important reading for those wishing to educate themselves on the current debates regarding married women's legal rights. She believed that not only women seeking a divorce but all women should be knowledgeable of the laws of marriage. Norton argued that it is necessary for women to know their legal rights, especially during a period where their rights were being heavily disputed within Parliament.²⁰⁵ Through her own self-education and the help of fellow intellectuals, Norton became one of the top experts on custody and marriage laws of the period and establishes her writing as a method of educating other women.²⁰⁶

Eleanor observes from Ferguson's pamphlets that rarely were cases won in favour of married women. Wives were often left victims of such trials due to lack of legal defence. Eleanor would be unable to testify, even in Scotland, and the evidence would have to speak on her behalf. Like Norton's in-laws, Sir Stephen's family is wealthy and highly influential. As Norton knew from her crim. con. action, this meant that witnesses could be bribed and that very few individuals would be willing to speak out against Sir Stephen. In addition, Eleanor's assault had been in private and, therefore, no witnesses could be brought forth to verify Sir Stephen's guilt. Eleanor is equally hindered by the fact that she continued living with her husband after learning of his adultery. Norton was similarly refused a separation because she returned home after leaving her husband the first time. Her lawyers advised her that in the eye of the law she had condoned his actions by returning just as Eleanor had done by staying.

Eleanor begins to question “[w]hat if, after all the scandal, the exposure, the publishing of home miseries to the world, she should fail; and remain, after all, Sir Stephen Penrhyn’s

²⁰⁵ Norton, *Stuart of Dunleath*, 147.

²⁰⁶ Kieran Dolin, *A Critical Introduction to Law and Literature* (Cambridge: Cambridge University Press, 2007), 122.

wife?"²⁰⁷ In a way, she employs her own form of the "Romance of the Bar" by envisaging the results of her own legal trial.²⁰⁸ Her lawyers assures her that if a Scotch marriage could be proved, she could obtain a judicial separation. But as Eleanor's research has shown her, this was still highly unlikely. Not only did Eleanor fear failure but she feared success. After receiving a letter from her friend, Lady Margaret, Eleanor is forced to question the effects of being separated from her husband. Margaret warns Eleanor that as a separated wife a shadow of scandal would be cast over her. She states "some are glad to believe the worst of any woman who parts from her husband."²⁰⁹ Margaret asks Eleanor, "[d]o you know what the life is, that you desire to attempt for yourself? Have you ever watched it in others? You leave home because you are wretched—you will be wretched still—and more helpless."²¹⁰ Margaret argues that if Eleanor succeeds in obtaining a separation that it is not her husband that will be punished but her. It is this "helpless" state that Norton is writing from. As she states in an 1844 letter during the aftermath of the crim. con. trial, "I feel legally so helpless."²¹¹ Even though she was found innocent of committing adultery, Norton was a constant topic of gossip and scandal. She claims that she was forced to remain in a "half-position"—not a single woman and yet not a wife. This position would encompass over forty years of her life.

After a year of searching for legal relief, Eleanor begins to lose hope and wonders "is happiness possible?"²¹² She had hoped that with a judicial separation that she could return as the love of David. But this hope quickly fades when she is forced to question how she could

²⁰⁷ Norton, *Stuart of Dunleath*, 115.

²⁰⁸ Norton, *English Laws for Women*, 132.

²⁰⁹ Norton, *Stuart of Dunleath*, 116.

²¹⁰ *Ibid.*, 116.

²¹¹ Caroline Norton to Richard Brinsley Sheridan, 1844, "Sheridan Papers," British Library, Add MS 42767 f. 119. Underlining in original.

²¹² Norton, *Stuart of Dunleath*, 115.

enter into such a union again that had brought her so much misery. Would her status as a cast-off wife ruin his affection for her? While Norton's portrayal of Eleanor's relationship with David could be misread as proof of her love for Melbourne, it is important to examine the concluding relationship between these two characters. Although David offers to marry her, Eleanor acknowledges that this would be unfair to him and his hopes of ever having a happy marriage. As Craig claims, "Eleanor systematically rehearses and discounts all extenuating circumstances that might justify marrying David."²¹³ The more Eleanor questions women's lack of security in marriage the more she loses hope that she will be able to marry David. She asks herself:

Would she herself, in her own secret heart, believe it possible to be wedded to David Stuart by a murmured repetition of the same sentences which married her to Sir Stephen Penrhyn? Never! she felt that in her soul and conscience, that ceremony would be nothing but a delusive mockery.²¹⁴

Eleanor believes that the miseries that she was forced to endure due to her legal non-existence as a married woman had made a "mockery" of the institution of marriage. She understands that although she will never return to her husband she also can never again marry. As Parliament began to debate how divorce would affect the sanctity of marriage, Norton points out that with biased laws the sanctity of marriage for married women was already gone.²¹⁵

As a married woman separated from her husband, Eleanor is forced to rely on the aid of others just as Norton did when she was forced out of her home. After 1836, Norton frequently relied on the financial and legal support of her brothers and sister until she was able to earn enough from her writing to live alone. Ill from the stress of her position, Eleanor seeks refuge with her brother, Godfrey. Godfrey became a mediator between Eleanor and her

²¹³ Craig, *The Narratives of Caroline Norton*, 121.

²¹⁴ Norton, *Stuart of Dunleath*, 117.

²¹⁵ Norton, *English Laws for Women*, 161.

husband. While he did not agree with Eleanor's leaving and wished her to return, he also could not condone the treatment that she had endured. As Eleanor lay extremely ill, Sir Stephen writes to Godfrey to threaten that:

if, when her health bettered, she did not return to his lawful protection, he would sue her return to his lawful protection, he would sue her under the English law for restitution of conjugal rights, and if she disobeyed the legal order, which was sure to be the result of such proceedings, he should then hold himself free from the liability of maintaining her at all, and cease to countenance her in any way whatever.²¹⁶

Sir Stephen would be completely in his rights to sue his wife for "conjugal rights"—the rights that destined Eleanor to perform her duties as a wife. Ultimately, she would be made to return—by force or by her own submission.

Because he is not a trained lawyer and hopes to save Eleanor from returning home, Godfrey replies that "Eleanor would not return to her husband who had maltreated her; that the allowance was ridiculously small [...], and that he should advise her to sue for alimony" if he did not allow her to remain with him.²¹⁷ Presumably in a state of anger, Sir Stephen refuses to respond but instead decides to involve his lawyers. His legal counsel writes to Godfrey to assure him that Eleanor "was not in a position to sue for alimony, on the contrary, she had left home clandestinely, and remained away without her husband's consent [...] there was no doubt the court would order Eleanor to return."²¹⁸ By this precedent, Eleanor would be forced to return after years of marital abuse and years of misguided hope that the law would protect her. It wasn't until 1891 that women could apply for separation based on their own desertion rather than being forced to return to their husbands.²¹⁹

Eleanor sees no reason for recovery in light of this bleak future. She understands that

²¹⁶ Norton, *Stuart of Dunleath*, 123.

²¹⁷ *Ibid.*, 123.

²¹⁸ *Ibid.*, 123.

²¹⁹ Stone, *Road to Divorce*, 166.

when her health returns she will have to return to Sir Stephen. Craig argues that with no hope of happiness, she chooses "a path leading to a dead end."²²⁰ This "dead end" is represented as both metaphorical and literal in Eleanor's case. When Eleanor reaches a legal "dead end" in her desire for a divorce, she also lost the will to live. Because Eleanor is denied the ability to testify in a court of law, Norton observes that God "made himself her judge."²²¹ Eleanor dies before she would be forced to once again suffer at the hands of her husband. She would have been forced to remain married to Sir Stephen "til' death do they part." Norton points out in *English Laws* that marriage is treated as a life sentence for such women as no "circumstance, except death" can divide them or "affect the legal fiction which assumes that a married couple are one."²²² As Chapter 5 will further analyse, women's decision to suffer rather than return to their unhappy marriages helps to position themselves as martyrs to the cause of marriage law reform. Mary Poovey points out that in Norton's self representation she "becomes not just innocence personified, but also judge, jury, and executioner all at once."²²³ Although Poovey's use of the term "executioner" is in reference to Norton's role as punisher, in the conclusion of *Stuart of Dunleath*, Norton can also be seen as a literal executioner of Eleanor. Eleanor becomes a literal victim of oppression. Norton presents the fervent necessity for reform by portraying the preference of death rather than continued oppression under the legal institution of marriage.

Eleanor had no means of resistance, unlike Norton. Even Norton cannot save Eleanor. She leaves that responsibility to lawmakers and the decision to provide married women with

²²⁰ Craig, *The Narratives of Caroline Norton*, 119-120.

²²¹ Norton, *Stuart of Dunleath*, 127.

²²² Norton, *English Laws for Women*, 156

²²³ Poovey, "Covered but Not Bound: Caroline Norton and the 1857 Matrimonial Causes Act," 67.

an equal share of legal rights. Like the cases put forward as evidentiary support for the 1857 Matrimonial Causes and Divorce Act, *Stuart of Dunleath* serves as evidence of the necessity for reform. The function of testimonial evidence is not to resolve the legal injustices but to provide a narrative of experience under the contemporary unjust legal institution of marriage. By this definition Norton succeeds in providing evidentiary support for the passing of the 1857 Divorce Act through not only the fictional testimony of Eleanor but the factual basis of her own legal battles. It is Norton's own experiences with the double standards of contemporary marriage laws that substantiate her claim for reform and blurs the lines between law and literature, fact and fiction by demonstrating the influence that marriage law reform debates had on nineteenth-century novels.

IV: Conclusion

Norton states in an 1842 letter to her sister, "I will write upon the law—& I will see the law changed."²²⁴ After suffering under the double standards of divorce laws and witnessing the ways in which women are treated in crim. con. trials, Norton made it her life goal to use her writing to convince others that the legal treatment of married women was unjust. Having already witnessed the effect that her writings had had on the success on the 1839 Custody of Infants Act, Norton believed it to be her duty to continue to advocate for married women's legal rights. She argues that her writing "was meant to enable me to rouse the hearts of others to examine into all the gross injustice of these laws." Norton's role in the nineteenth-century

²²⁴ Caroline Norton to Jane Georgiana Seymour, 4 October 1853, Buckinghamshire Archives D/RA/A/2B/9/45/1.

marriage reform debates demonstrates the importance of portraying a "combination of fact and fiction." She notes that "I combine, with the fact of having suffered wrong, the power to comment on and explain the cause of that wrong; which few women are able to do."²²⁵ By using the "power" of the novel form to present the compelling case study of Eleanor's marital sufferings, Norton argues that even the most innocent and dutiful wives can fall victim to the double standards of marriage laws. Fiction allows Norton to distance herself from her own faults and instead present the question of reform as if it were a villain in a novel set to destroy an innocent woman. It is not Sir Stephen who leads to the demise of Eleanor but the laws that silence her and treat her as worthless of protection.

In the preface to *Stuart of Dunleath*, Norton declares that "[f]iction has ever held the dignity of Ambassador from the Court of Truth."²²⁶ While *Stuart of Dunleath* may appear to many readers as a sensationalised novel, the autobiographical details of Norton's experiences and Eleanor's marriage emphasises the reality of many other married women's legal sufferings. As this dissertation has and will continue to argue, fiction served not as a replacement for the law but as a commentator on married women's exclusion from the law. Craig acknowledges that "[t]he sentimental ideology of marriage suggests that husbands, of course, will be fair-minded. [...] When such is not the case, however, positive law always favors the husband, regardless of the intuitive notion of justice."²²⁷ In this case, it is the law that is based on an unrealistic ideal of marriage while the novel form is representing the realities of married women's legal inequalities. Throughout her political pamphlets, Norton refers to the idealisation of marriage and the falsity that man and wife are equal as the "fiction of the

²²⁵ Norton, *A Letter to the Queen*, 151-153.

²²⁶ Norton, *Stuart of Dunleath*, v.

²²⁷ Craig, *The Narratives of Caroline Norton*, 117.

law."²²⁸ Therefore, when held side by side, Norton emphasises that the novel form can actually be more truthful than the law.

Without the representation of married women in law, fiction and the portrayal of married women's experience becomes an authentic depiction of married life. This authenticity is grounded in the reference to real-life sufferings of married women, like Norton. Thus, despite the variations pointed out between Norton and Eleanor's marriage, *Stuart of Dunleath* represents a factual portrayal of married women's legal inequality under contemporary divorce and separation laws. Only by familiarising the public with the experiences of married women can a successful reform, which addresses married women's concerns, be accomplished. Nineteenth-century novels provided the public with authentic experiences of women fallen victim to legal oppression in hope that their suffering will provide the necessary evidence needed to support marriage law reform.

²²⁸ Norton, *English Laws for Women*, 82-83.

Chapter 3

Mary Elizabeth Braddon's 'Pair of Bigamy Novels': Circumstantial Evidence and the Debate for Bigamy Law Reform

In 1867 the novelist and married women's rights activist, Margaret Oliphant, observed that Mary Elizabeth Braddon's *Lady Audley's Secret* (1862) and *Aurora Floyd* (1863) have "brought in the reign of bigamy as an interesting and fashionable crime, which no doubt shows a certain deference to the British relish for law and order."¹ Oliphant satirises bigamy as a "fashionable" crime that is not only apparent in popular novels but a principal subject in the debates for married women's legal rights. Braddon's self-proclaimed "pair of bigamy novels" demonstrate the influence of parliamentary debates for marriage law reform on the nineteenth-century novel form and the power of women's written evidence to both condemn and set them free. Braddon presents bigamy as a consequence of married women's lack of legal rights to divorce by questioning the circumstances such as desertion, cruelty, and adultery that lead women to commit bigamy. In order to draw attention to the legal double standards of marriage laws, Braddon constructs the fictional bigamy accusations of Lucy Audley and Aurora Floyd and the "fatal chain of evidence" needed to convict them.² As married women were unable to explain in a court of law the circumstances that may have led them to commit bigamy, they were forced to rely on the power of circumstantial evidence. This chapter examines parliamentary debates for bigamy law reform following the 1853 *First Report [...] to Enquire Into The Law of Divorce* and the 1857 Matrimonial Causes and Divorce Act as well as the

¹ Margaret Oliphant, "Novels," *Blackwood's Edinburgh Magazine* (1867): 258.

² Mary Elizabeth Braddon, *Lady Audley's Secret* [1862], ed. Lyn Pykett (Oxford: Oxford University Press, 2012), 188; Mary Elizabeth Braddon, *Aurora Floyd* [1863], ed. P.D. Edwards (Oxford: Oxford University Press, 1996), 334.

significance of bigamy as a fictional trope into the nineteenth century. By doing so, Braddon's "pair of bigamy novels" can be analysed in correspondence with the emerging discussion of married women's lack of legal voices in court and the ways in which this can result in false accusations or unjust convictions of bigamy due to an inability to otherwise apply for divorce.

As indicated in Chapter 2, the 1857 Matrimonial Causes and Divorce Act is considered by legal historians such as Allen Horstman and Lawrence Stone to be the most significant moment for married women's legal rights in the nineteenth century.³ The development of the Act brought forth discussions on property, separation, adultery, custody, and bigamy. However, debates over bigamy law reform are frequently overlooked due to the focus on divorce and separation reforms in the 1857 Act. And yet, as bigamy law historians Ginger Frost and David Cox argue, bigamous marriages often resulted from an individual's attempt at "self-divorce" when legal divorce was unavailable.⁴ Furthermore, while literary scholars like Kieran Dolin and Jenni Calder argue that fiction was greatly affected by the 1857 Act, neither acknowledges the production of bigamy plots in conjunction with nineteenth-century marriage law reform debates.⁵ Maia McAleavey categorises the representation of bigamous marriages and the common characteristics used to reveal bigamy in her definition of the bigamy novel.⁶ In her examination of the popular growth of the bigamy novel, Jeanne Fahnestock states that

³ Allen Horstman, *Victorian Divorce* (London: Croom Helm, 1985); Lawrence Stone, *Broken Lives: Separation and Divorce in England 1660-1857* (Oxford: Oxford University Press, 1993).

⁴ Ginger Frost, "Bigamy and Cohabitation in Victorian England," *Journal of Family History* 22(3), (July 1997); David J. Cox, "'Trying To Get A Good One': Bigamy Offences in England and Wales, 1850-1950," *Plymouth Law and Criminal Justice Review* 4, (2012).

⁵ Kieran Dolin, *A Critical Introduction to Law and Literature* (Cambridge: Cambridge University Press, 2007); Jenni Calder, *Women and Marriage in Victorian Fiction* (London: Thames and Hudson, 1976).

⁶ Maia McAleavey, *The Bigamy Plot: Sensation and Convention in the Victorian Novel* (Cambridge: Cambridge University Press, 2015), 1-4.

the "peak years of the fashion are 1862, 1863, 1864, and 1865."⁷ Within this period, "over 270 Victorian novels" featured a bigamy plot.⁸ While most literary criticism focuses on the use of bigamy as a plot device or extension of sentimentalism, it is important to contextualise the portrayal of bigamy within the contemporary legal debates and real-life trials that were used as models for many fictional portrayals.⁹ In this chapter I examine the use of circumstantial evidence to link Braddon's portrayal of Lucy and Aurora's charges of bigamy with real-life trials and debates of the period.

Contemporary marriage trials' emphasis on circumstantial evidence and its power to distinguish between accidental or intentional bigamy can be linked to the portrayal of circumstantial evidence in bigamy novels of the period as a method of narrating the circumstances of legal oppression that led women to marry bigamously. As Roslyn Jolly argues, circumstantial evidence "created a narrativized world, in which every circumstance was part of a larger story and every object was the tell-tale trace of a past action, if only it could be read aright."¹⁰ The duty of readers of evidence was to read circumstantial evidence in order to understand married women's decision to risk the charge of bigamy. Letters, signatures, and marriage certificates both tied women to their previous marriages while also highlighting how an inability to escape from unhappy or abusive marriages led them to deny

⁷ Jeanne Fahnestock, "The Rise and Fall of a Convention," *Nineteenth Century Fiction*, 36(1), (June 1981): 55.

⁸ McAleavey, *The Bigamy Plot*, 2.

⁹ Ian Ward, "Things Little Girls Have No Business To Know Anything About: The Crimes of Aurora Floyd," *Colombia Journal of Gender and Law* 22(2), (2011): 430-478; Maia McAleavey, *The Bigamy Plot: Sensation and Convention in the Victorian Novel* (Cambridge: Cambridge University Press, 2015); Gail Turley Houston, "Mary Braddon's Commentaries on the Trials and Legal Secrets of Audley Court," in *Beyond Sensation: Mary Elizabeth Braddon in Context*, ed. Marlene Tromp, Pamela K. Gilbert, and Aeron Haynie. (Albany: State University of New York Press, 2000).

¹⁰ Roslyn Jolly, "The Unreliable Reader: The Problem of Circumstantial Evidence in Nineteenth-Century Narrative," *Australian Journal of Law and Society* 9, (1993), 83.

their first marriages in order to marry again as a form of self-proclaimed divorce. As women could not explain these circumstances in court, they had to rely on such evidence to justify their actions. This chapter argues that while Lucy and Aurora are guilty of bigamy, their decisions to marry bigamously are a result of the legal system's inability to grant them divorces from their previous unhappy marriages. By treating both heroines' stories as case studies, this chapter examines the ways in which Braddon portrays them as victims rather than criminals. In order to understand Lucy and Aurora's reasoning for marrying bigamously, I analyse Braddon's portrayal of circumstantial evidence such as Lucy and Aurora's letters, signatures, and marriage certificates which prove their guilt of bigamy but also narrate their reasons for marrying bigamously due to their inability to otherwise seek a divorce.

As I will examine, Braddon presents women's written circumstantial evidence in the form of letters, signatures, and marriage certificates in her most celebrated bigamy novels, *Lady Audley's Secret* and *Aurora Floyd*.¹¹ The significance of women's writing as legal evidence in Braddon's works indicates that "[t]he evidence of time and place" and "[t]he evidence of handwriting" has the power either to trap married women in unwanted marriages or set them free.¹² These three examples of circumstantial evidence connect Braddon's portrayal of bigamy with trials of the period to further her examination of the patriarchal biases of bigamy law. As Gail Houston points out, Braddon's writing "stands out as a commentary on the law's machinations" through the presentation of the legal system

¹¹ In addition to the two novels that this chapter will discuss, Maia McAleavey identifies eleven novels by Braddon under the categorization of "Victorian bigamy novels," including *Birds of Prey* (1867), *The Cloven Foot: A Novel* (1879), *Dead-Sea Fruit* (1868), *John Marchmont's Legacy* (1863), *The Lovels of Arden: A Novel* (1871), *Robert Ainsleigh* (1872), *Sir Jasper's Tenant* (1865), *Taken at the Flood* (1891), and *Wyllard's Weird* (1886). (See McAleavey, *The Bigamy Plot*, 173.)

¹² Braddon, *Lady Audley's Secret*, 230.

surrounding bigamy.¹³ By allowing readers to discover Lucy and Aurora's reasons for marrying bigamously through the narrative of physical evidence, Braddon illustrates the power of evidence to represent married women's legal oppression when they are otherwise unable to speak in a court of law. Christine Krueger acknowledges that "women's legal nullity is narrated as their literal silencing or misconstrual before the representative institution of patriarchal authority: a court of law."¹⁴ Therefore, by calling attention to the use of circumstantial evidence to represent married women's legal sufferings, novelist directly call attention to women's legal silencing. As this dissertation emphasises, only through written evidence can married women narrate their experiences and advocate for marriage law reform.

Braddon had first-hand knowledge of the injustices of bigamy law. *Lady Audley's Secret* is frequently acknowledged as her most autobiographical novel, as it was influenced by her romantic involvement with John Maxwell when he was already married.¹⁵ Maxwell's wife had become mentally unstable shortly after their marriage and was frequently in and out of asylums. Although Maxwell and his wife were legally separated, it would still have been considered bigamy for him to marry again. Braddon and Maxwell had a legally unsanctioned relationship and parented six illegitimate children before Maxwell's wife's death enabled them to marry.¹⁶ Ian Ward highlights that "she played the role of wife, forever conscious that her precarious 'secret' might be uncovered at any time."¹⁷ In order to prevent a suit of bigamy,

¹³ Houston, "Mary Braddon's Commentaries on the Trials and Legal Secrets of Audley Court," 18.

¹⁴ Christine Krueger, *Reading for the Law: British Literary History and Gender Advocacy* (Charlottesville: University of Virginia Press, 2010), 7.

¹⁵ Marlene Tromp, Pamela K. Gilbert, and Aeron Haynie (ed.), *Beyond Sensation: Mary Elizabeth Braddon in Context* (Albany: State University of New York Press, 2000), xxi.

¹⁶ Tromp, *Beyond Sensation*, xxii.

¹⁷ Ward, "Things Little Girls Have No Business To Know Anything About: The Crimes of Aurora Floyd," 476.

Braddon would have had to be extremely knowledgeable of the "fatal chain of evidence" that could have led to Maxwell's arrest.¹⁸ As she states in a letter to Edward Bulwer-Lytton, she would only sign her name "Mary Maxwell" in private letters because she knew that publicly signing under this name would be evidence that she had been legally married and that Maxwell was guilty of bigamy. As Robert Wolff notes, it is for this reason that she continued to publish under the name "Mary Elizabeth Braddon" as opposed to "Mary Maxwell."¹⁹ Braddon could not have been accused of condoning bigamy because she and Maxwell never legally married until after his wife's death.

Braddon utilises her knowledge of the specifics of bigamy law to construct the fictional cases of Lady Audley and Aurora Floyd. In what narrative jurisprudence theorists describes as the "novelist-as-lawyer analogy," Braddon positions her readers as jury members in the trials of her heroines by presenting them with evidence that both condemns her heroines of bigamy while simultaneously illustrating the unjust circumstances that led them to their crimes. Braddon asks her readers to consider who is truly at fault, her heroines or the legal system that left them with no other options, by providing them with the evidence of their crimes whilst simultaneously revealing how the limited rights of married women gave them no other option. In *Lady Audley's Secret*, Robert Audley warns Lucy of his intentions when he inquires:

did you ever study the theory of circumstantial evidence? [...] Circumstantial evidence, [...] that wonderful fabric which is built out of straws collected at every point of the compass, and which is yet strong enough to hang a man. Upon what infinitesimal trifles may sometimes hang the whole secret of some wicked mystery, inexplicable heretofore to the wisest upon the earth! A scrap of paper; a shred of some torn garment; the button off a coat; a word dropped incautiously from the over-

¹⁸ Braddon, *Lady Audley's Secret*, 188.

¹⁹ Robert Wolff, *Sensational Victorian: Life and Fiction of Mary Elizabeth Braddon* (New York: Garland Publishing, 1979), 18.

cautious lips of guilt; the fragment of a letter; the shutting or opening of a door; a shadow on a window-blind; the accuracy of a moment; a thousand circumstances so slight as to be forgotten by the criminal, but links of steel in the wonderful chain forged by the science of the detective officer.²⁰

Braddon emphasises the ambiguity of circumstantial evidence in order to reveal the inconsistency of bigamy law. In doing so, she emphasises how "[a] scrap of paper," "the fragment of a letter," or "a word dropped incautiously" are used to condemn women while they are still unable to argue against such accusations within a court of law—highlighting the gender bias of contemporary marriage laws.

This chapter will be divided into three sections: the legal debates surrounding bigamy law, the development of the bigamy novel genre, and a discussion of how an analysis of circumstantial evidence can contribute to a reading of *Lady Audley's Secret* and *Aurora Floyd* as representative of the debates for bigamy law reform. As jurisprudence narrative theorist Alexander Welsh argues, "[t]he history of narratives founded on circumstantial evidence is multifarious."²¹ Circumstantial evidence may appear to be a material object set in front of the reader but by examining the context, content, and narrative form of legal evidence, novels become "multifarious." Jonathan Grossman recognises the importance of circumstantial evidence when he notes that "[n]arratives—whether recounted in the courtroom, in the novel, in scientific inquiry, or elsewhere—more than ever came to depend on presentations of circumstantial evidence."²² Circumstantial evidence brings into light narratives that for purposeful reasons were hidden or obscured by the novelist. My analysis of *Lady Audley's Secret* emphasises how Braddon depicts Lucy's marital suffering through circumstantial

²⁰ Braddon, *Lady Audley's Secret*, 107.

²¹ Alexander Welsh, *Strong Representations: Narrative and Circumstantial Evidence in England* (Baltimore: John Hopkins University, 1992), 7.

²² Jonathan H. Grossman, *The Art of Alibi: English Law Courts and the Novel* (Baltimore: John Hopkins University Press, 2002), 21.

evidence in order to highlight how her bigamous marriage could have been avoided by further divorce law reform. I will examine three examples of circumstantial evidence within the novel: Lucy's letters regarding her husband's desertion, her marriage certificate to George Talboys, and the signatures found within her luggage that map her changing identities. While this evidence proves Lucy to be guilty of bigamy, it also emphasises the position that George left her in, with no money to support herself or their child. It illustrates the impossibility of married women's survival in the five years of desertion needed to apply for divorce. Therefore, with few options for obtaining a job and the struggles that young women faced to support themselves, many women committed bigamy out of necessity.²³ Had Parliament's passing of the 1857 Act included a just period of desertion in which women would be able to marry again, Lucy and many other women of the period would have been protected from bigamy laws that took advantage of married women's lack of legal representation.

In this light, the evidence gathered by Robert reflects how Lucy was a victim of obscure and unjust marriage laws who chose to take the law into her own hands. Houston points out the legal oppression of married women when she claims that "Braddon cross-examines the mystification of women inscribed in the law, and, using cultural circumstantial evidence, proves the self-interestedness of the law and male lawmaker."²⁴ It is the "self-interestedness" of figures like Lucy's first husband, Robert, and the physicians who agree to imprison her forever in a mental asylum that demonstrates the lack of opportunities available for married women to seek justice. Although Houston focuses on Robert's role as evidence gatherer in the novel, it is equally important to this chapter to examine the role that such

²³ Stone, *Road to Divorce*, 143.

²⁴ Houston, "Mary Braddon's Commentaries on the Trials and Legal Secrets of Audley Court," 18.

evidence has in narrating Lucy's legal struggles after her first husband deserts her and what she must do in order to survive. Without the ability to make her case in court, Lucy is forced to have her case discovered by a man who only sought to find her guilty of a crime that the law gave her little option but to commit.

This chapter also highlights how many of the same forms of circumstantial evidence—letters, signatures, and marriage certificates—are used to reveal Aurora's accidental bigamy. After her clandestine marriage to her stable boy, James Conyers, Aurora discovers him to be "a selfish spendthrift, extravagant to wantonness upon himself, but meaner than words could tell towards others."²⁵ Aurora believes that "had she, upon the discovery of her first husband's infidelity, called the law to her aid [...] she might have freed herself from the chains so foolishly linked together."²⁶ However, due to the double standards of divorce laws, adultery alone would not have provided her with a divorce and domestic violence was often excused by law. After reading that Conyers had died in a riding accident, she believes herself free to marry again. Aurora becomes aware of her bigamous action when her first husband appears again. Letters between Aurora and Conyers and the discovery of their marriage certificate expose Aurora's guilt. It is through Braddon's use of written evidence in both works that she enables readers to recognise the legal injustices that afflicted married women of the period. The portrayal of circumstantial evidence in Braddon's bigamy novels highlights a correlation between contemporary discussions of bigamy laws and married women's lack of legal representation in court. Law and literature's focus on written evidence in the representation of married women accused of bigamy emphasises how evidence served as married women's only opportunity to narrate their case for reform.

²⁵ Braddon, *Aurora Floyd*, 393.

²⁶ *Ibid.*, 393.

In Margaret Oliphant's 1867 essay, she observes that “[i]t is painful to inquire where it is that all those stories of bigamy and seduction, those *soi disant* revelations of things that lie below the surface of life, come from.”²⁷ It is this "painful" inquiry that I undertake. This chapter examines the discussions surrounding bigamy law after the 1857 Matrimonial Causes and Divorce Act and how Braddon incorporates these discussions into her depictions of Lucy and Aurora's bigamous marriages. By acknowledging the failures of the 1857 Act and the continued oppression of married women, bigamy plots in real-life and in novels draw attention to the need for further marriage law reform and enable married women to defend themselves in court. Through the analysis of surrounding legal debates and trials, the significance of the bigamy plot becomes more than just a sensationalist trope. I argue that the surge of bigamy novels presents a commentary on the lack of bigamy law reform in the 1857 Act and enabled readers to observe the continued sexist bias of marriage laws. The surge of bigamy plots frequently focuses on how bigamy could be prevented through easier access to divorce and how married women were unjustly penalised by bigamy law.

I. Bigamy Law

The first appearance of bigamy in British legal statute came about in the 1603 Bigamy Act, which stated that "any person or persons within his Majesty's Dominions of England and Wales, being married, or which hereafter shall marry, [...] any person or persons, the former husband or wife being alive [...] then every such offense shall be felony."²⁸ Following this

²⁷ Oliphant, "Novels," 258.

²⁸ Cox, "'Trying To Get A Good One': Bigamy Offences in England and Wales, 1850-1950," 2.

Act, the only way a man could marry again while still being married would be to prove that his current marriage was invalid.²⁹ Nullified marriages included those involving incest, bigamy, or performed during an incapacitated state of mind or body such as lunacy or impotence.³⁰ As Chapter 4 will further explain, the 1753 Act, created to make the validity of marriage ceremonies more strict, ironically led to more clandestine marriages and an increase in bigamous marriages.³¹ Unlike custody and separation suits, both spouses were able to file bigamy charges against the other as the premise of women's legal silencing centred on their legal absorption under their husband and the focus of a bigamy trial would be to prove that they were not in fact married. In addition, bigamy was considered under the jurisdiction of criminal law where married women were given more legal rights than common law suits.³² Little changed until the nineteenth century when bigamy law reform became a subject amongst reformists amidst the growing question of women's marriage rights. It was often incorporated with the debate for divorce reform as a lack of easy divorce was often the cause of bigamy. Without the ability to obtain divorce many couples committed bigamy as a form of "self-divorce."³³

While the legal system often portrayed bigamy as a detriment to marriage, historians such as Ginger Frost and David Cox view bigamy as proof of the value of the institution of marriage. Cox argues that "the desire to remarry, albeit bigamously, shows that there was a continuing respect for the institution of marriage, and that the main problem lay with the

²⁹ *First Report [...] to Enquire Into The Law of Divorce*, 3.

³⁰ Stone, *Road to Divorce*, 191

³¹ *Ibid.*, 131.

³² Cox, "'Trying To Get A Good One': Bigamy Offences in England and Wales, 1850-1950," 2.

³³ Frost, "Bigamy and Cohabitation in Victorian England," 294.

complex and unfair divorce laws.”³⁴ Many couples chose to marry bigamously despite their previous disappointing marriages. Frost observes that “bigamies were strong evidence of people’s attachment to marriage. Despite miserable experiences, many risked prison to create new ties. Often, the illegal unions were more successful.”³⁵ Unlike previous chapters' analyses of divorce and separation cases, married women's objective in bigamy cases was to remain in their current marriage rather than escape it.

The punishment for bigamy was often left up to the discretion of the court. The 1603 Act deemed death by hanging to be a fitting punishment but this was rarely implemented.³⁶ With no set punishment, judges were left to judge how those guilty should be penalised—from branding, imprisonment, to transportation.³⁷ Under the classification of 4 Geo IV c. 76, s. 22, the act of bigamy was still considered a felony.³⁸ Unlike other forms of marital litigation, such as adultery, property disputes, or divorce, bigamy was considered a "Class One (Offenses Against the Person) indictable felony.”³⁹ However, according to Frost, “[t]hroughout the 1850s and 1860s, only a minority of defendants spent more than a year in prison for bigamy.”⁴⁰ A bigamist's reasons for committing the crime or proof that they believed themselves to be

³⁴ Cox, "'Trying To Get A Good One': Bigamy Offences in England and Wales, 1850-1950," 22.

³⁵ Ginger Frost, *Living in Sin: Cohabiting as Husband and Wife in Nineteenth-Century England* (Manchester: Manchester University Press, 2004), 80.

³⁶ Cox, "'Trying To Get A Good One': Bigamy Offences in England and Wales, 1850-1950," 2.

³⁷ *Ibid.*, 3.

³⁸ Fahnestock, "The Rise and Fall of a Convention," 62.

³⁹ Cox, "'Trying To Get A Good One': Bigamy Offences in England and Wales, 1850-1950," 2.

⁴⁰ Frost, *Living in Sin*, 74.

legally free to marry again were often taken into consideration to decide an appropriate punishment.⁴¹

What sets bigamy apart from other marriage scandals is that an individual could commit bigamy without ever even knowing. Within a civil court, the accusation of bigamy was divided into two sections: intentional or accidental.⁴² According to one contemporary reporter, "[b]igamy is one of those offenses which may simply consummate villainy [sic], or may be undeserving of the mildest punishment known to the law."⁴³ The judgment and punishment of the crime often varied according to the variety of circumstances that could lead to bigamy, especially if the individual charged believed their spouse to have deserted them or died.⁴⁴ Fahnestock explains that bigamy could be "either accidental, caused by fated circumstance, or intentional, caused by villainy."⁴⁵ While accidental bigamy cases were still considered criminal, rarely were individuals severely punished.

A larger population was able to seek legal action for bigamy through the formation of the Divorce Court system and the extended ability to apply for divorce brought about by the 1857 Act.⁴⁶ However, as Frost points out, "the cost of divorce, and the limited ground available, meant that it remained an option of a small minority."⁴⁷ Caroline Norton connects

⁴¹ Frost notes the case of Sophia Winters, who was told by her second husband, Mr Doxwell, that she was free to marry him and when she later tried to return to her first husband was taken to court by Doxwell. "The judge declared in his summation that Doxwell 'was in truth the guilty party,' and the jury, defying the letter of the law, acquitted her." (See Frost, "Bigamy and Cohabitation in Victorian England," 300.)

⁴² McAleavey, *The Bigamy Plot*, 2.

⁴³ Anonymous, "Topics of the Week," *The Graphic* (21 February 1874): 166.

⁴⁴ Frost, *Living in Sin*, 75

⁴⁵ Fahnestock, "The Rise and Fall of a Convention," 62.

⁴⁶ *Ibid.*, 58.

⁴⁷ Frost, *Living in Sin*, 289

social class and bigamous marriages in her pamphlet *English Laws for Women in the Nineteenth Century* when she points out that:

The rich man makes a new marriage, having divorced his wife in the House of Lords: his new marriage is legal; his children are legitimate; his bride (if she be not the divorced partner of his sin, but simply his elected choice in his new condition of freedom), occupies, in all respects, the same social position, as if he had never previously been wedded. The poor man makes a new marriage, *not* having divorced his wife in the House of Lords; his new marriage is null; his children are bastards; and he himself liable to be put on his trial for bigamy: the allotted punishment of which crime, at one time was hanging, and is now imprisonment.⁴⁸

Norton blames unjust bigamy convictions on the restrictions on divorce applications set up by the 1857 Act. While the ability to divorce was now more accessible than before, not everyone could afford the high costs of legal action, while others simply fell victim to the complexities of the right to a divorce. Barbara Leigh Smith Bodichon highlights in her pamphlet, *A Brief Summary of the Most Important Laws Concerning Women*, that “[t]he expenses of only a common divorce bill are between six hundred and seven hundred pounds, which makes the possibility of release from the matrimonial bond a privilege of the rich.”⁴⁹ Marriage for working class couples was often built upon economic benefits (two incomes were better than one) and because divorce was unaffordable, many opted for bigamy.⁵⁰ Those who could not afford such methods of divorce were those most often accused of bigamy.⁵¹ Frost indicates that “[u]pper-class male bigamists had fewer reasons to commit the crime after 1857, because

⁴⁸ Caroline Norton, *English Laws for Women in the Nineteenth Century* [1854], introduction by Joan Huddleston (Chicago: Academy Chicago Publishers, 1982), 149.

⁴⁹ Barbara Leigh Smith Bodichon, *A Brief Summary in Plain Language of the Most Important Laws Concerning Women; Together with a Few Observations Thereon* (London: John Chapman, 1854), 9-10

⁵⁰ of the 221 cases that Frost examines from 1830 to 1900, 47 were women. Frost notes that after 1857 fewer men felt the need to commit bigamy as they could easily obtain a divorce. Unfortunately, this was not the case for women. (See Frost, "Bigamy and Cohabitation in Victorian England," 286.)

⁵¹ Frost, "Bigamy and Cohabitation in Victorian England," 287.

they were no longer forced to remain with errant wives."⁵² However, for married women, the 1857 Act did little to suppress incentives to commit bigamy.

What even further complicates the examination of bigamy law are the vast circumstances behind committing such a crime. The primary reason this chapter examines is desertion as it specifically affected married women who were left to financially support themselves and their family with limited employment opportunities. In the 1853 *First Report [...] to Enquire Into The Law of Divorce*, the Royal Commissioners argued that "[a]bsolute desertion, protracted absence, mortal enmities, and lasting cruelty, were all adjudged to be lawful grounds of Divorce."⁵³ Prior to the 1857 Act, if a man's wife left, "the husband was within his legal rights to abduct his wife by force and lock her up."⁵⁴ This occurs in Mary Wollstonecraft's 1798 novel, *Maria; or the Wrongs of Woman*, when the heroine declares that "[a]fter leaving, what the law considers as my home, I was hunted like a criminal from place to place [...] as the laws sanction such proceedings, and make women the property of their husbands."⁵⁵ As Lee Holcombe points out, this did not change until 1891, when it was declared by Parliament that "a husband had no right to coerce his wife or confine her against her will."⁵⁶ Many bigamy cases revolved around married women who were unable to financially support themselves after their husbands left and thus sought out a second,

⁵² Frost, "Bigamy and Cohabitation in Victorian England," 288-289.

⁵³ *First Report of The Commissioner Appointed by Her Majesty To Enquire Into the Law of Divorce, And More Particularly Into The Mode of Obtaining Divorces À Vinculo Matrimonii* (London: Bradbury & Evans, 1853), 4.

⁵⁴ Stone, *Broken Lives*, 18.

⁵⁵ Mary Wollstonecraft, *Maria; Or, The Wrongs of Woman* ed. Gary Kelly (Oxford: Oxford University Press, 1980), 172.

⁵⁶ Lee Holcombe, *Wives & Property: Reform of the Married Women's Property Law in Nineteenth-Century England* (Toronto: University of Toronto Press, 1983), 30.

bigamous marriage.⁵⁷ This would be an example of intentional bigamy. However, if a man had deserted his wife for a lengthy period of time and she believed him to be dead before marrying again, this would be an example of accidental bigamy.

Frost views desertion as a common cause of accidental bigamy and states that “if the bigamist had honestly believed that her or his first spouse was dead, juries often acquitted. And, even if found guilty, defendants used this plea to mitigate the punishment.”⁵⁸ Even prior to the 1857 Act, reformists emphasised the victimisation of married women by desertion. In the *First Report*, the Royal Commissioners deemed “wilful and obstinate desertion” to be “another cause [...] which so entirely frustrates all the objects of the marriage union.”⁵⁹ The Commissioners went on to explain that “[o]ur old Reformers considered that this was so gross a breach of all the obligations, human and divine, which the husband and wife owe to each other, that in that case they would have allowed the deserted party to enter again into fresh nuptials” after “an interval was prescribed of two or three years, for the chance of his return, that nothing might be done with levity or rashness.”⁶⁰ In a discussion of the proper punishment for desertion, they determined that:

desertion must be coupled with cruelty before it can entitle the abandoned party to a sentence of separation; but in reason, in principle, and in its moral consequences, it can hardly be distinguished from cruelty itself. We are therefore of opinion [...] that wilful desertion, like adultery and cruelty, should enable her to ask judicial relief if not by a sentence of Divorce *à mensâ et thoro*, at least by an award of proper alimony for her separate maintenance where the desertion has continued for a period to be limited by the Legislature.⁶¹

In other words, the Commission argued that desertion should be grounds at least for

⁵⁷ Frost notes the 1872 case of Margaret Milton who married three times due to her first two husbands' refusal to support her. (See Frost, *Living in Sin*, 79-80.)

⁵⁸ Frost, *Living in Sin*, 74.

⁵⁹ *First Report [...] to Enquire Into The Law of Divorce*, 14-15.

⁶⁰ *Ibid.*, 14-15.

⁶¹ *Ibid.*, 14-15.

separation, if not divorce.

Despite these recommendations by the 1853 Commissioners, the 1857 Act dismissed the proposed two to three year period of desertion as grounds for either separation or divorce.

Cox explains that the category of desertion only applied to:

any person or persons whose husband or wife shall be continually remaining beyond the seas by the space of seven years together, or whose husband or wife shall absent him or herself the one from the other by the space of seven years together, in any parts within his Majesty's Dominion, the one of them not knowing the other to be living within that time.⁶²

The only way that desertion could be used as an excuse for divorce is if it were to last for over seven years and was coupled with the crime of adultery.⁶³ This decision by Parliament led to debates about what this would mean for married women. The double standard of desertion requirements meant that many women "persisted in the face of repeated official denials, [...] people mixed up the idea that they could not be convicted of bigamy with the idea that they could remarry legally."⁶⁴ McAleavey asserts that bigamy was most commonly a result of an individual's "dense ignorance of the laws and statutes of their country on marriage and divorce [...] as, for instance, that desertion, or misconduct, or incompatibility of temper, is a sufficient justification for immediate dissolution of partnership."⁶⁵ As a result, the obscurity of bigamy law penalised individuals without a proficient knowledge of the specifics of marriage law.

The 1857 Act did little to help this problem. Frost points out that "one could argue, as some contemporaries did, that the very law meant to support marriage [...] instead undermined it by forcing people to remain in empty unions and by denying the comforts of

⁶² Cox, "'Trying To Get A Good One': Bigamy Offences in England and Wales, 1850-1950," 2.

⁶³ A. James Hammerton, *Cruelty and Companionship: Conflict in Nineteenth Century Married Life* (London: Routledge, 1992), 96.

⁶⁴ Frost, *Living in Sin*, 84.

⁶⁵ McAleavey, *The Bigamy Plot*, 8-9.

marriage to deserted spouses.”⁶⁶ While the 1857 Act helped to define marriage law, it did so at women's expense. The only way women could divorce a deserting husband was if he were to commit adultery alongside cruelty, incest, sodomy, bestiality, or bigamy and even then, as I will reveal in the case of Aurora Floyd, divorce was not guaranteed. Frost argues that the "major circumstance that made bigamy acceptable was if the bigamist had a good reason for leaving her or his first spouse.”⁶⁷ Many women from abusive and miserable marriages saw the illegality of bigamy as worth the risk. Cox suggests that “a bigamous route for an unhappily married woman would be a more attractive option than for a man, who could divorce more easily and who could retain both financial assets and custody of any children.”⁶⁸ It is through this rationale that Anne Brontë's *The Tenant of Wildfell Hall* could be considered a bigamy plot in its representation of Helen's relationship with Gilbert after escaping with her son from an abusive marriage. Although Helen Huntingdon and Eleanor Raymond never marry bigamously, they do contemplate marrying again while their first husbands are still alive.

Bigamy law's oppression of women can be linked to their lack of legal representation within the marriage legal system and the double standard of divorce and separation laws. Circumstantial evidence played an extremely important role in bigamy cases of the period, as it wasn't until 1882 that married women would be able to explain the circumstances of their bigamous marriage in the form of testimonial evidence. Unlike testimonial accounts, circumstantial evidence was used to understand the unspoken conditions surrounding a crime. As Welsh notes, "[e]yewitnessing and personal recollection have great advantages in narrative, particularly for the interest of the personality seeing and telling; but some aspects of behavior,

⁶⁶ Frost, "Bigamy and Cohabitation in Victorian England," 302.

⁶⁷ Frost, *Living in Sin*, 78.

⁶⁸ Cox, "'Trying To Get A Good One': Bigamy Offences in England and Wales, 1850-1950," 10.

such as good or bad intentions, cannot be seen, and others, such as unconscious motives, cannot be remembered."⁶⁹ Therefore the only evidence able to reveal certain truths was circumstantial evidence. Examples of circumstantial evidence could be letters or diaries, or even a simple signature that tied an individual to a crime. Circumstantial evidence was considered by the law as evidence that alone could not prove that a crime had been committed but cumulatively could convince a jury that a defendant was untrustworthy or had motives to commit a crime.⁷⁰ It is for this reason that circumstantial evidence alone was not able to prove Norton's crime of adultery when her husband falsely accused her of committing adultery with Lord Melbourne in 1836.⁷¹

Because married women were unable to testify in a court, circumstantial evidence was the only way in which their voices could be heard and examined. The rule remained that "nothing [...] shall in any criminal proceeding render any wife competent or compellable to give evidence for or against her husband."⁷² The *First Report* notes that:

Under ordinary circumstances, a Divorce Bill may be obtained at the suit of the husband, but not at the suit of the wife. It may be obtained almost as a matter of right at the suit of a husband, when the wife is convicted of infidelity, and the conduct of the husband is irreproachable. But it cannot be obtained at the suit of the wife, except in cases of enormity.⁷³

Instead, court rulings had to rely on scraps of paper and fragments of letters to connote married women's innocence while husbands were allowed to provide verbal testimonies. As Alexander Welsh describes in his examination of the use of circumstantial evidence in

⁶⁹ Welsh, *Strong Representations*, 6.

⁷⁰ Atkinson, *The Criminal Conversation of Mrs Norton*, 9.

⁷¹ *Ibid.*, 18.

⁷² Evidence Act of 1851 c. 99 (Regnal. 14 and 15 Vict.).

⁷³ *First Report of The Commissioner Appointed by Her Majesty To Enquire Into the Law of Divorce*, 11.

literature, "[b]ecause circumstances are not human, they never deliberately tell fibs."⁷⁴ What makes circumstantial evidence more compelling than testimonial evidence is the fact that it is stuck in the moment in which it is created. Unlike Helen Huntingdon's diary or Norton's novel, it is void of the motivation for self-preservation or restitution. It is not created to analyse the crime committed but merely to factually state that a crime has been committed and the emotions that occurred at the moment in which the crime was committed. Welsh explains that, through the examination of circumstantial evidence, "some aspects of behavior, such as good and bad intentions, cannot be seen, and others, such as unconscious motives, cannot be remembered."⁷⁵ Due to these limitations, circumstantial evidence alone could not lead to a conviction but when collected could convince a judge and jury that a crime had occurred. Unfortunately, married women were forced to rely on what little narrative power circumstantial evidence could provide them.

Although the Act was an important step towards investigating the issues surrounding divorce and separation legislation, contemporary reformers such as Frances Power Cobbe, Barbara Leigh Smith Bodichon, and Caroline Norton were unhappy with the ways in which married women were still overlooked by the legal system.⁷⁶ The creation of the first court system dedicated to marriage law, known as the Divorce Court, saw a spread of scandalous

⁷⁴ Welsh, *Strong Representations*, 16-17.

⁷⁵ *Ibid.*, 6.

⁷⁶ Frances Power Cobbe, *Criminals, Idiots, Women, and Minors: Is the Classification Sound?; A Discussion on the Laws Concerning the Property of Married Women* (Manchester: A.Ireland, 1869); Barbara Leigh Smith Bodichon, *A Brief Summary in Plain Language of the Most Important Laws Concerning Women; Together with a Few Observations Thereon* (London: John Chapman, 1854); Caroline Norton, *A Letter to the Queen on Lord Chancellor Cranworth's Marriage and Divorce Bill* (London: Longman, Brown, Green and Longmans, 1855).

trials in news reports and novels.⁷⁷ Karen Chase and Michael Levenson argue that the "bigamy novel was a precipitate of the buzzing divorce conversation conducted through the length and breadth of every genteel breakfast table in Britain"⁷⁸ The reports of men and women found guilty of unintentionally committing bigamy fascinated the public's hunger for scandal and gossip.

As the awareness of marriage laws spread amongst the public, women's knowledge of the dangers of bigamy grew. The demand for reform increased as more and more women came forth as victims of the unjust legal system's oppression of married women. Reports of the damages done by ambiguous bigamy laws and women's inability to fight back transformed the newly formed Divorce Court into a source of inspiration for dramatists, poets, and novelists. As this dissertation examines, tales of mistaken identity, returning from the dead, and the hunt for answers were not simply traits of fiction but shared elements of law and literature.

II. "How Married Are You?": Conventions of the Bigamy Novel

In a period when sensation and detective fiction shared many of the same characteristics—seduction, crime, and suspense—the bigamy novel creates a bridge between pure sensationalism and pointed legal commentary.⁷⁹ Like sensation fiction, bigamy novels are characterised by dramatic plot twists, uncovered secrets, and portrayals of good versus evil. However, what distinguishes bigamy novels from other forms of sensation fiction is the

⁷⁷ Leckie, *Culture and Adultery*, 102.

⁷⁸ Karen Chase and Michael Levenson, *The Spectacle of Intimacy: A Public Life for the Victorian Family* (Princeton: Princeton University Press, 2000), 202.

⁷⁹ Cox, "'Trying To Get A Good One': Bigamy Offences in England and Wales, 1850-1950," 48.

portrayal of marriage laws like divorce and bigamy and the legal evidence used to distinguish victims from villains. It is the attention to the debates for marriage law reform and the connections to contemporary bigamy trials that grounded bigamy novels in the context of the period. The fictitious bigamy trials of these novels enabled readers to investigate the reasons why an individual would enter into a bigamous marriage, either intentionally for wealth or love or unintentionally due to believing a former spouse is dead. Once the previous spouse mysteriously reappears and the main character is accused of bigamy, it is the role of detective work and legal expertise to decide “*how* married are you?”⁸⁰ Only legal evidence could prove that a couple was, in fact, legally married and that bigamy had occurred. Therefore, novelists portraying the obscurities of bigamy law needed to be knowledgeable about what would legally deem an individual guilty of bigamy. Luckily, they need look no further than the influx of bigamy trials available in numerous newspapers and journals.

The growing public awareness of unjust bigamy laws was a result of numerous factors, such as the first legal reforms to widen access to divorce, the creation of the Divorce Court, and the access of reporters to these trials.⁸¹ The disputes of unhappy marriages were now accessible to a wider public. Fahnestock notes that “[t]he bigamy convention in particular owes its popularity not only to the force of popular models but also to a contemporary scandal and trial, to public outrage over the confused state of the marriage laws.”⁸² For example, historian Chloë Schama argues that the novels inspired by the 1861 Yelverton bigamy case “intended to show that marriage law was a mess, but also to demonstrate that there were ways

⁸⁰ McAleavey, *The Bigamy Plot*, 16.

⁸¹ *Ibid.*, 6.

⁸² Fahnestock, “The Rise and Fall of a Convention,” 48.

in which the law could not fully address the disorder."⁸³ Like trial reports of bigamy cases, the novels portraying similar marital legal disputes frequently focused on the ways in which circumstantial evidence was often a deciding factor.

Although the categorisation of the bigamy novel can be referenced back to Oliphant's commentary in 1867, it has only recently been analysed as a nineteenth-century novel genre. While the novels' plots all present the occurrence of a bigamous marriage, the circumstances surrounding the marriage often varied, making bigamy novels difficult to categorise. McAleavey and Fahnestock divide bigamy novels into two categories: those that portrayed intentional bigamy and those that presented accidental bigamy. Intentional bigamous marriages could also be those that were "allowed to continue by the tacit permission of the first spouse," such as in Ellen Wood's *East Lynne* (1861), or occurred "after an unofficially binding 'divorce'" had been acquired, such as in Thomas Hardy's *The Mayor of Casterbridge* (1886) or Dora Russell's *A Hidden Chain* (1896).⁸⁴ Even marriages that verge on bigamy without actually allowing the second marriage to exist, like Charlotte Brontë's *Jane Eyre* (1847) and Anne Brontë's *The Tenant of Wildfell Hall* (1848), are still categorised by McAleavey as intentional bigamy cases because one individual was aware of a living former spouse. Such novels can still be categorised as bigamy novels as they touch upon the dangers of bigamy laws and how easily individuals can fall victim to bigamy plots. However, the most common premise of the bigamy novel is the result of a spouse's lengthy absence or a "misreported death occurring at a distance."⁸⁵ McAleavey comments that "[i]n hundreds of novels, plays, and poems published in Great Britain over the course of the nineteenth century,

⁸³ Chloë Schama, *Wild Romance: A True Story of Victorian Scandal* (London: Bloomsbury, 2010), 207.

⁸⁴ McAleavey, *The Bigamy Plot*, 3.

⁸⁵ *Ibid.*, 2.

most noticeably in the 1860s and 1870s, a husband or wife remarries bigamously, believing (or merely wishing) that his or her first spouse is dead."⁸⁶ In these texts, it is only after the second marriage occurred that she or he would come to find out that her former husband was still alive.

The bigamy plot trope consists of a hunt for circumstantial evidence that would either free or criminalise the hero or heroine. It is this quest for evidence that links the bigamy plot with the development of nineteenth-century novel genres. It bridged the gap between the romances of sentimental novels and the thrill of detective fiction through the portrayal of marriage law injustices. The legal investigation of bigamy in nineteenth-century novels educated readers about the obscurities of bigamy law while demonstrating how easily bigamy could be committed. Fahnestock marks this investigation into either "accidental or unintentional bigamy" or "apparent but not actual bigamy" as "a clue to its psychological appeal."⁸⁷ The realisation that individuals could be guilty of bigamy without even knowing it fascinated many readers. Evidence presented in bigamy novels often replicated circumstantial evidence brought up in bigamy trials of the period such as the newspaper reports in *East Lynne* and letters in *A Hidden Chain*. Eyewitness testimonies, forensic evidence, proof of an individual's presence at the scene of the crime, and the possession of items that could link an individual to the crime were all used within the novel to tie the accused to bigamy.

Similar to the reports evidence within the newly formed Divorce Court being reported in the press, evidence within a bigamy novel could either confirm an individual's innocence or guilt. While novelists like Wood, Brontë, and Russell saw death to be the redemptive punishment for bigamy, Braddon examines the ways in which married women are unjustly

⁸⁶ McAleavey, *The Bigamy Plot*, 1.

⁸⁷ Fahnestock, "The Rise and Fall of a Convention," 65.

punished for bigamy, especially when bigamy was committed unintentionally. The use of circumstantial evidence enabled novelists like Braddon to advocate on the bigamist's behalf in order to prove that, while they may be guilty, the true guilt lies with the legal system of marriage that gave them limited other options.

III. "My pair of bigamy novels": *Lady Audley's Secret* and *Aurora Floyd*

Braddon's presentation of the biases of bigamy laws within her novels situates her works within a period where the fundamentals of women's position in marriage laws were being challenged. By emphasising women's inability to apply for divorce based on desertion, adultery, and domestic violence in *Lady Audley's Secret* and *Aurora Floyd*, Braddon contributes to the call for the reform of bigamy marriage laws and the recognition of married women's legal voices. She enables readers to observe Lucy Audley and Aurora Floyd's crimes through the presentation of circumstantial evidence that signifies the role that the double standards of marriage laws played in their bigamous marriages. Where circumstantial evidence in the form of letters, signatures, and marriage certificates is used to prove Lucy and Aurora's guilt, Braddon uses such evidence to illustrate the ways in which married women are unjustly penalised by bigamy laws. The evidence ultimately capable of proving that Lucy and Aurora are guilty of bigamy also allows Braddon to narrate how their lack of legal rights led to their crimes. Such evidence reveals why Lucy and Aurora were willing to risk the charge of bigamy in a legal system that would have prohibited them from applying for divorce from absent or cruel husbands. The presentation of written evidence in the form of letters, signatures, and marriage certificates provides readers with convincing accounts of Lucy and Aurora's accidental bigamy in a system that has denied them any alternative.

In order to understand the specifics of bigamy law put forth in *Lady Audley's Secret*, it is important to analyse the ways in which Lucy's case is investigated by a biased barrister whose search for evidence is driven by his hunt for guilt. Braddon demonstrates the double standard of bigamy laws through the narrative perspective of Robert Audley. Robert's motivation centres around his determination to find out more about his uncle's new young bride while simultaneously attempting to console his newly widowed friend, George Talboys. His incentives emphasise the law's focus on the benefits that men receive through the legal oppression of married women. George had previously been away in Australia for three and a half years in order to earn a substantial income. When he and Robert met, George had returned home only to read in a newspaper that his wife, Helen Talboys, had died. Robert, who was on his way to his uncle's estate of Audley Court to meet his new aunt, decides to bring George along. While at Audley Court, the mystery of Lady Audley's past life unfolds with the help of Robert's investigative work. Houston analyses the way in which the location of the novel acts as a mock-trial setting when she points out that

Braddon implies the collusion between manmade courts of law and male property rights. As a matter of law, one of the hidden motivations for the hero's relentless legal pursuit of Lady Audley is that he stands to lose the property of Audley Court if he cannot prove that she is an outlaw.⁸⁸

With the setting of Audley Court acting as a metaphorical courtroom setting in which the laws of marriage are dictated by a patriarchal legal system, Robert puts the benefits of George and himself above the honourable consideration of what rights married women ought to have. This "collusion" exposes the bias of Robert's motives and is an important example of the patriarchal prejudice within the marriage law system. Lucy later recognises Robert's selfish motivations

⁸⁸ Houston, "Mary Braddon's Commentaries on the Trials and Legal Secrets of Audley Court," 21.

when she exclaims, "I am pursued and tormented by a man whom I never injured, whom I have never wished to injure. I am never suffered to rest by this relentless tormentor."⁸⁹ In order to "enforce" the legal results that would ensure his property rights to Audley Court and inheritance, Robert collects circumstantial evidence against Lady Audley in order to prove that she is, in fact, the supposedly dead wife of George and therefore a bigamist.

Despite Robert's frequent boasts of legal expertise, he is not a practising barrister and thus is uneducated in the complications surrounding bigamy law. Indeed, Braddon claims that Robert was

supposed to be a barrister. As a barrister was his name inscribed in the Law List; as a barrister, he had chambers in Fig-Tree Court, Temple; as a barrister he had eaten the allotted number of dinners, which form the sublime ordeal through which the forensic aspirant wades on to fame and fortune. If these things can make a man a barrister, Robert Audley decidedly was one. But he had never either had a brief, or tried to get a brief, or even wished to have a brief in all those five years.⁹⁰

Robert masks his profession by mere proximity to the court system. He had never practised the law nor intended to practice the law. In addition, Braddon also describes Robert as "unqualified" and "not a detective officer" in hopes of clarifying any confusion regarding Robert's legal credentials.⁹¹ Yet, Robert takes it upon himself to accuse Lady Audley.

In contrast to Braddon's depiction of the unqualified barrister in *Lady Audley's Secret*, *Aurora Floyd* draws in the aid of a successful Member of Parliament, a criminal detective, and a police officer to uncover a mysterious case of bigamy. Amidst his short-lived engagement to the unruly and audacious Aurora Floyd, Talbot Bulstrode learns of her curious disappearance during her time at a boarding school in France. Talbot confronts Aurora with these rumours only to be denied her secret. The proud and moderate Talbot breaks off his engagement and

⁸⁹ Braddon, *Lady Audley's Secret*, 255.

⁹⁰ *Ibid.*, 32.

⁹¹ *Ibid.*, 151.

consequently is forced to watch Aurora marry his friend, John Mellish. During this period of dejection, Talbot joins Parliament, "legislating for the Cornish miners."⁹² Unlike Robert, Talbot would have been knowledgeable of marriage law procedures as a result of the contemporary discussions surrounding marriage law reform in Parliament. Braddon presents Talbot as frequently studying "Blue-books and Parliamentary Minutes" and writing reformist pamphlets as part of ongoing parliamentary debates.⁹³ He would have been aware of the plethora of parliamentary discussions surrounding marriage law reform in his attempts to remain up-to-date with contemporary topics of discussion in Parliament. Upon the reappearance of her first husband and his subsequent death at Mellish Park, Aurora looks to Talbot to prove her innocence. As she proclaims, "I will abide by Talbot's decision."⁹⁴ Braddon states that Aurora "looked to Talbot Bulstrode as a wise judge, to whose sentence she would be willing to submit."⁹⁵ Unlike Lucy Audley, Aurora seeks out the help of Talbot to prove that her bigamous marriage was accidental as opposed to intentional.

In contrast to Talbot's unbiased detection work, Robert Audley keeps a record of circumstantial evidence in what he entitles his "Journal of Facts Connected With The Disappearance Of George Talboys, Inclusive of Facts Which Have No Apparent Relation To That Circumstance."⁹⁶ The mere title of this item emphasises that Robert is not on a mission to find justice but rather of a man-hunt (or woman-hunt) to push the blame upon an individual. Robert's ironic title of "Facts" which have "No Apparent Relation" to the truth affirms that his sole aim as a detective is to draw conclusions. In spite of Robert's description of the crime as

⁹² Braddon, *Aurora Floyd*, 130.

⁹³ *Ibid.*, 347.

⁹⁴ *Ibid.*, 360.

⁹⁵ *Ibid.*, 360.

⁹⁶ Braddon, *Lady Audley's Secret*, 90-91.

"Circumstance," he remains convinced of Lucy's guilt. When asked "the name of that woman—the woman whom you suspect of being concerned in his disappearance—in his murder" Robert replies that "I cannot do until [...] I know that she is guilty."⁹⁷ The principle of "innocent until proven guilty" clearly does not apply in Robert's accusations.⁹⁸ As Roslyn Jolly argues, because Robert "applies no principle of relevancy in gathering his evidence, every circumstance is made to bear witness in some way to his theory."⁹⁹ Robert has no desire to prove Lucy innocent. Robert already knows the "name" that he has been asked to provide. His entire detective routine is centred around proving this name guilty. He needs only to provide the evidence to convince others of his unsubstantiated accusation and prove that Lady Audley is Helen Talboys.

His first theory of how Helen Talboys transformed into Lady Audley comes when he questions:

What do people generally do when they wish to begin a new existence—to start for a second time in the race of life, free from the encumbrances that had fettered their first journey? *They change their name*, Lady Audley. Helen Talboys deserted her infant son—she went away from Wildernsea with the predetermination of sinking her identity. She disappeared as Helen Talboys upon the 16th of August, 1854, and upon the 17th of that month she reappeared as Lucy Graham, the friendless girl undertook pitiless duty in consideration of a home in which she was asked no questions.¹⁰⁰

From this point, Robert works to fill in the gap from when Helen Talboys disappears and Lucy Graham, later Lady Lucy Audley, appears. As McAleavey explains in her analysis of the

⁹⁷ Braddon, *Lady Audley's Secret*, 170.

⁹⁸ "The maxim, 'innocent until proven guilty' was born in the late thirteenth century, preserved in the universal jurisprudence of the *ius commune*, employed in the defense of marginalized defendants, Jews, heretics, and witches, in the early modern period, and finally deployed as a powerful argument against torture in the sixteenth, seventeenth, and eighteenth centuries." Kenneth Pennington, "Innocent Until Proven Guilty: The Origins of a Legal Maxim," *The Jurist* 63 (2003): 124.

⁹⁹ Roslyn Jolly, "The Unreliable Reader: The Problem of Circumstantial Evidence in Nineteenth-Century Narrative," *Australian Journal of Law and Society* 9, (1993), 87.

¹⁰⁰ Braddon, *Lady Audley's Secret*, 231-232.

novel's timeline, "[t]he complex narrative trajectory of bigamy burns the simple storyline Lady Audley has provided from both ends."¹⁰¹ In contrast to the ways in which Brontë uses Helen Huntington's diary to divulge her unhappy marriage all at once, Braddon presents Lucy's marriage and past piece by piece in hopes that readers will act as detectives and assemble the evidence to form a full narrative of Lucy's past. This is the primary difference between testimonial and circumstantial evidence. Testimonial evidence presents a full narrative while circumstantial evidence portrays pieces of evidence that must be put together by the reader to create a full narrative. Without all the pieces, the reader is left with a partial and not entirely completed narrative. While uncovering Helen Talboy's character from past to present, we are simultaneously uncovering Lucy Audley's character from present to past until every moment of the past three years is accounted for. Only then can the connection between the two be made to convince a jury that Helen and Lucy are the same.

The first item of evidence that Robert discovers is a letter left behind at Helen's father's home. It reads:

I am weary of my life here, and wish, if I can, to find a new one. I go out into the world, dissolved from every link which binds me to the hateful past, to seek another home and another fortune. Forgive me if I have been fretful, capricious, changeable. You should forgive me, for you know *why* I have been so. You know the *secret* which is the key to my life.

Helen Talboys¹⁰²

It is in this letter that Helen's testimony of her reasons for bigamy is represented. As readers have been made aware, George Talboys had left his wife and son for Australia. However, according to the bigamy trials of the period, this would have been considered desertion. In accordance with many of the bigamy trials of the period in which women believed their

¹⁰¹ McAleavey, *The Bigamy Plot*, 136.

¹⁰² Braddon, *Lady Audley's Secret*, 213.

husbands to be gone forever, Helen's bigamy charge would most likely have been judged as unintentional bigamy within a court of law. By George's own confession, he left his wife and son with no income and no hope for his return. With no other option for financially supporting her son and drunkard father, Helen is forced to leave and take on another name in order to obtain employment. The letter left for her father is used to explain these circumstances in hopes that he will keep the "secret" of her true identity and her unfortunate first marriage.

Joshua Gooch explains that the "marriage bar" and the social rejection of married women in the workforce "actively ensured that many women's positions in service were reserved for young single women."¹⁰³ Gooch points out that the majority of employers used the "marriage bar" as an excuse to dismiss women after they were married. It would have been seen as unrespectable for a married woman to leave her husband and children to live and work in another family's home. Helen chose to hide her married identity and find a position as a governess. Her decision to change her name was in no way linked to her future marriage to Sir Michael. When Sir Michael proposes and her employer persuades her to accept, Helen complies because she assumes that because her husband has been absent for three years at this point and had no reason to believe that he would ever return that she is free to do so.

Braddon's reference to three years can be seen as a commentary on the parliamentary debates regarding what period of desertion would validate a divorce. While the 1853 Bill proposed that two to three years be the appropriate period of desertion to result in the nullification of a marriage, the 1857 Act extended the period to seven years. However, because the debates were more widely published than the successful Act, many of the public would have been unaware of the period of desertion needed to apply for a divorce. In response, pamphlets such

¹⁰³ Joshua Gooch, *The Victorian Novel, Service Work, and the Nineteenth-Century Economy* (Bastinstitute: Palgrave Macmillan, 2015), 55.

as Norton's *A Review of the Divorce Bill of 1856* and John Stuart Mill's *The Subjection of Women* lamented the effects that this decision would have on married women and the continual attempts of both men and women to attempt "self-divorce" through remarriage. Married women deserted by their husbands would have to try to survive and support themselves for seven years in a society that limited opportunities to work and scorned the idea of women living on their own.

Robert confronts Lady Audley with this piece of evidence and states that “[w]hen Helen Talboys left her father’s house at Wildernsea, she left a letter behind her—a letter in which she declared that she was weary of her old life, and that she wished to seek a new home and a new fortune. That letter is in my possession.”¹⁰⁴ However, Robert argues that the only link between this letter and Lady Audley relies upon their similar handwriting. While Robert may believe that this is proof enough, handwriting analysis, or graphology, was not recognised as legal evidence at this point in time. Because handwriting could be easily forged or copied, courts were unwilling to accept evidence based on handwriting as anything more than circumstantial evidence.¹⁰⁵ He later admits that "that which I have found to-day is no evidence for a jury" as it will not hold up in court.¹⁰⁶ If a witness had seen the letter written or the letter writer had admitted to writing the piece of evidence then it would be seen as substantial evidence. While Robert initially believes that this letter "forms the connecting link between the woman whose death George Talboys read of in the *Times* newspaper and the woman who rules in my uncle’s house,” it does nothing more than raise suspicion.¹⁰⁷

¹⁰⁴ Braddon, *Lady Audley's Secret*, 230.

¹⁰⁵ Jeremy Bentham, *A Treatise on Judicial Evidence* (London: J.W. Paget, 1825), 139.

¹⁰⁶ Braddon, *Lady Audley's Secret*, 204.

¹⁰⁷ *Ibid.*, 204.

Letters, likewise, play an important role in uncovering Aurora's bigamous marriage. It is through the epistolary form that Talbot begins to suspect Aurora's "secret." The reason why Talbot breaks off his engagement to Aurora is because he received a "pitiless letter" from his mother, informing him of Aurora's disappearance while in France.¹⁰⁸ However, at the time, he never would have imagined that she had eloped during this time span. It is also through the medium of letter writing that Aurora is blackmailed by James Conyers, her first husband. Prior to believing him dead, Aurora was forced to send sums of money through his servant, Joseph Green. In order to shroud her guilt, she "went alone to the post-office, where she registered and posted this valuable parcel."¹⁰⁹ The value that she speaks of not only refers to its monetary context but also its legal importance. If she had been caught, then her marriage to Conyers would have been discovered. However, this was before her marriage to Mellish and therefore before committing bigamy. It isn't until Aurora reads a report in *Bell's Life* which announced the riding accident and death of a jockey named Conyers that she believes herself free to marry.¹¹⁰ Once married, Aurora learns that Conyers has been hired as a horse trainer by Mellish. In order to communicate with him, she once again writes him a letter, which reads, "[a]bove all, *express no surprise*.—A."¹¹¹ She writes to plead for Conyers not to reveal her secret to her husband.

Letters were not the only proof of the past left behind by both Aurora and Lucy. The second piece of circumstantial evidence that Robert discovers is similarly an example of Lucy's handwriting, but this time indisputable proof in the form of names written on the lid of a trunk. When Robert visits the location of Lucy's governess residence, he identifies a trunk

¹⁰⁸ Braddon, *Aurora Floyd*, 100.

¹⁰⁹ *Ibid.*, 37.

¹¹⁰ *Ibid.*, 73-74.

¹¹¹ *Ibid.*, 184.

left behind after her relocation to Audley Court. Upon opening the lid, Robert finds “[t]he evidence of two labels, pasted one over the other, [...] the upper label bearing the name of Miss Graham, the lower that of Mrs George Talboys.”¹¹² This list of written names provides Robert with an outline of Lucy's changing identity. It is at this point that she admits that “all is lost.”¹¹³ Upon presenting the damning evidence to Lucy, Robert inquires, “[h]ave you any proof to offer against this evidence?”¹¹⁴ In response, Lucy replies, “if I were placed in a criminal dock, I could, no doubt, bring forward witnesses to refute your absurd accusation.”¹¹⁵ As a defence, Lucy points the blame of her conviction at the injustices that women face in marriage laws. Only in a criminal law court would she have been allowed to obtain legal representation to defend her innocence. Lucy declares to Robert that had she committed a more serious crime than she would feel more prepared against the accusations put upon her. In such an instance married women are given fewer rights than criminals.

The final fragment of circumstantial evidence that Robert collects is the most substantial piece of evidence in bigamy trials of the period: a marriage certificate.¹¹⁶ According to Frost, “[t]o succeed, a charge of bigamy had to have proof of both marriages, preferably the marriage registers.”¹¹⁷ The presentation of marriage certificates or eye-witnesses from the ceremony became a common feature in nineteenth-century bigamy novels, from Charlotte Brontë's *Jane Eyre* (1847) to Wilkie Collins' *The Law and the Lady* (1875) and *Armadale* (1866). The value of this documentation is evident by its concealment within Lucy's clothing. As Braddon describes:

¹¹² Braddon, *Lady Audley's Secret*, 232.

¹¹³ *Ibid.*, 232.

¹¹⁴ *Ibid.*, 233.

¹¹⁵ *Ibid.*, 233.

¹¹⁶ Frost, *Living in Sin*, 73.

¹¹⁷ *Ibid.*, 73.

She had never taken her left hand from the black ribbon at her throat. She drew it from her bosom as she spoke, and looked at the object attached to it. It was neither a locket, a miniature, nor a cross: it was a ring wrapped in an oblong piece of paper—the paper partly printed, partly written, yellow with age, and crumpled with much folding.¹¹⁸

The "paper partly printed [...] partly written" is identified as the marriage certificate from her marriage to George, wrapped around her first wedding ring, and, therefore, provides proof of her guilt. As a symbol of mourning, the "black ribbon" could also suggest Lucy's belief that George had either died or that their marriage was dead—considering herself to be free to marry again. The pretence of widowhood is present in many bigamy plots of the period. As Chapter 4 will highlight, Anne Silvester disguises herself as a widow in order to be socially accepted when Geoffrey Delamayn leaves her pregnant and vulnerable. Helen Huntingdon also chose the identity of a widow in *The Tenant of Wildfell Hall* to prevent her abusive husband from discovering her location. Isabel Carlyle in Ellen Wood's celebrated bigamy novel, *East Lynne*, camouflages herself as a widow to the point where she is even unrecognisable by her own husband. As Mrs John Sherwood notes in her 1887 essay *Manners and Social Usages*, "[m]ourning garments [...] are a shield to the real mourner, and they are often a curtain of respectability to the person who should be a mourner but is not."¹¹⁹ Whether or not Lucy believed George to be dead or not, the appearance of mourning jewelry signifies that she believed her first marriage to be dead and that she was free to accept Sir Audley's proposal.

The presentation of marriage certificates became a distinguishing feature of Braddon's bigamy plots. In *Aurora Floyd*, a "bit o' paper" is found within the clothing of the murdered

¹¹⁸ Braddon, *Lady Audley's Secret*, 16-17.

¹¹⁹ Mrs. John Sherwood, *Manners and Social Usages* (New York: Harpers & Bro, 1887), 201.

Conyers.¹²⁰ Upon examining the body, the police officer:

felt a thick substance that seemed like a folded paper [...]. The paper was sewn between the inner lining and the outer material of the waistcoat. He discovered this by examining the seam, a part of which was sewn with coarse stitches and a thread of a different colour to the rest. He ripped open this part of the seam, and drew out the paper, which was so much blood-stained as to be undecipherable.¹²¹

After the coroner had "washed away a considerable portion of the stains which had rendered it illegible," the document is presented to Mellish.¹²² It is until this point that the document remains a mystery, even after it is found by Conyers' accomplice, "the Softy," and the constable. Braddon reveals it to be "[t]he certificate of a marriage which had been solemnized at the parish church of Dover, upon the 2nd of July, 1856, between James Conyers [...] and Aurora Floyd."¹²³ When Aurora is confronted with the marriage certificate, she is taken aback and regrets that:

She had never thought of that; she had never remembered that miserable scrap of paper which was the legal evidence of her folly. She had dreaded the presence of that husband, who had arisen, as if from the grave, to pursue and torment her; but she had forgotten that other evidence of the parish register, which might also arise against her at any moment. She had feared the finding of something—some letter—some picture—some accidental record amongst the possession of the murdered man; but she had never thought of this most conclusive evidence, this most incontrovertible proof.¹²⁴

A marriage certificate could either convict a married woman of bigamy or prove that a woman had the legal status and rights of a wife.¹²⁵ While the letters between Aurora and Conyers could have proved their acquaintance, it is the "legal" and "conclusive evidence" of the marriage certificate that provides "incontrovertible proof" of Aurora's crime.

¹²⁰ Braddon, *Aurora Floyd*, 252.

¹²¹ *Ibid.*, 302.

¹²² *Ibid.*, 322.

¹²³ *Ibid.*, 325.

¹²⁴ *Ibid.*, 329.

¹²⁵ Leah Leneman, *Promises, Promises: Marriage Litigation in Scotland 1698-1830* (Edinburgh: Nation Museums of Scotland Enterprises Ltd., 2003), 13.

It is these "wonderful documents" which are united to form the "fatal chain of circumstantial evidence" needed to accuse Lucy and Aurora of bigamy.¹²⁶ However, while the novel's presentation of circumstantial evidence proves Lucy's guilt of bigamy, it points readers to the lack of other option available to deserted married women. Lucy responds to Robert's accusation by stating, "I looked upon this as a desertion, and I resented it bitterly—I resented it by hating the man who had left me with no protector but a weak, tipsy father, and with a child to support. I had to work hard for my living, and in every hour of labour—and what about labour is more wearisome than the dull slavery of a governess?"¹²⁷ When Robert finally gathers enough evidence to convict Lucy, he asks himself:

I wonder if the judges of the land feel as I do now, when they put on the black cap and pass sentence of death upon some poor, shivering wretch who has never done them any wrong. Do they feel a heroic fervour of virtuous indignation, or do they suffer this dull anguish which gnaws my vitals as I talk to this helpless woman?¹²⁸

But the reader must remember that Robert is not a judge and clearly not aware of the contemporary legal system's rulings in bigamy trials. In addition to taking on the role of investigator of Lucy's suspected crimes Robert but also becomes her punisher. The connections with bigamy and death sentences can be seen as a reference to the only official punishment of bigamy, set up by 1603 Bigamy Act.¹²⁹ But had Robert been aware of the contemporary state of bigamy trials he would have been aware of the lenient rulings for bigamy charges and the differentiation between accidental and intentional bigamy. As Braddon declares, "he had been her judge; and he was now her gaoler."¹³⁰ It is Robert who

¹²⁶ Braddon, *Lady Audley's Secret*, 49; 188.

¹²⁷ *Ibid.*, 300-301.

¹²⁸ *Ibid.*, 232.

¹²⁹ Cox, "'Trying To Get A Good One': Bigamy Offences in England and Wales, 1850-1950," 2.

¹³⁰ Braddon, *Lady Audley's Secret*, 325.

decides what Lucy's punishment will be. With no sympathy from the law, Lucy decides to take matters into her own hands.

Frances Power Cobbe asserts in her 1869 pamphlet *Criminals, Idiots, Women, and Minors: Is the Classification Sound?* that married women have fewer legal rights than those found guilty of murder or those proven to be mentally unstable.¹³¹ Braddon represents this injustice in Lucy's fate. When George goes missing and Lucy is discovered to be the last person seen with him, Robert accuses her of murder. Already treated by the law as a criminal, Lucy begins to identify as a criminal. It is later revealed that Lucy does attempt to murder George but is not successful. Lucy's journey into crime and madness emphasises how the negative treatment by the legal system can lead married women in "a storm of real anguish and terror, of remorse and misery" due to fear of punishment, prosecution, or physical harm.¹³² All of the married women analysed in this dissertation who ran away from unhappy marriages were, in truth, committing crimes by leaving their husbands. It was criminal for women to desert their husbands but not for men to desert their wives.

As Chapter 4 further addresses, the literary portrayal of married women's temptations toward murder can often be seen as a result of their lack of legal rights in marriage. Aware that the law treats her worse than a criminal, Lucy shows no fear of the legal system in her attempts to murder both George and her maid's husband, who continually blackmailed her and threatened to divulge her secret. Welsh argues that "Lady Audley is guilty of no more than a passionate attempt to kill Talboys."¹³³ Furthermore, Morris explains that "Lucy could not have been brought to trial without some conclusive proof of her guilt in Talboy's second

¹³¹ Cobbe, *Criminals, Idiots, Women, and Minors*, 5.

¹³² Braddon, *Lady Audley's Secret*, 241

¹³³ Welsh, *Strong Representations*, 22

disappearance."¹³⁴ And yet, her sentence aligns more with the contemporary punishments for murder than for bigamy. This is because, unlike trials for murder, Lucy was never taken to a court of law and given the opportunity to testify.

The difference between married women's legal representation in criminal law courts as opposed to common law courts and marriage trials is equally emphasised in *Aurora Floyd* after James' death and the discovery of the marriage certificate that proves their union. Unlike George, who reappears and thus clears Lucy of supposed murder, Aurora's first husband is found dead with concrete evidence of Aurora's motives for murder upon his person. Thus, Aurora becomes a suspect in a murder investigation by the police officer, Joseph Brimstone. It is only through tracking the blood-soaked money, which Aurora had paid James to quiet his blackmailing, that the disgruntled servant, "the Softy," is found to be the murderer.¹³⁵ Braddon illustrates the legal silencing of married women by their husbands by emphasising that even though Aurora would have been able to speak out in a criminal case, her second husband, John Mellish, takes her place and testifies in a court of law on her behalf.¹³⁶ Although her first husband may be dead, her second husband now has complete control over her legal voice. Luckily for Aurora, not only is she cleared of murder but her first husband's death leaves her free from being charged with bigamy.

Despite the fact that the maximum prison sentence for bigamy at this time was six years and that those accused of accidental bigamy often received no prison time at all, Robert deems a lifetime condemnation in a mental institution to be an appropriate punishment for Lucy. Robert consults a physician, Dr. Musgrove, only to be told that "[t]he lady is not

¹³⁴ Virginia B. Morris, *Double Jeopardy: Women Who Kill in Victorian Fiction* (Lexington: University Press of Kentucky, 1990), 97.

¹³⁵ Braddon, *Aurora Floyd*, 306.

¹³⁶ *Ibid.*, 308.

mad."¹³⁷ Musgrove provides his opinion of how her mental state could have affected her marital crimes when he declares that:

She ran away from her home, because her home was not a pleasant one, and she left it in the hope of finding a better. There is no madness in that. She committed the crime of bigamy, because by that crime she obtained fortune and position. There was no madness there. When she found herself in a desperate position, she did not grow desperate. She employed intelligent means, and she carried out a conspiracy which required coolness and deliberation in its execution. There is no madness in that.¹³⁸

Lucy was sane in her choices but it was the feeling of desperation that led her to go to extreme lengths to keep her secrets. Musgrove agrees to declare her mentally unsound because she is a danger to the institution of marriage. Lynn Voskuil emphasises that "[a]cknowledging Lady Audley's understandable urge toward self-protection and security, Musgrove initially confirms her self-authenticating behaviours. By such logic, desertion and bigamy seem not insane but supremely rational."¹³⁹ Through the close examination of Braddon's portrayal of circumstantial evidence, Lucy's crimes and her "madness" can be seen as a product of her unjust treatment by the legal system in her attempts to protect herself when no one else would. Unfortunately, Musgrove believes that she should be categorised as if insane for what sane woman would fight against the patriarchal control of the marriage legal system?

The relationship between married women's revolt and madness was an important topic of debate in the nineteenth century. In 1858, Rosina Bulwer Lytton burst into the Corn Exchange, Hertford Town Hall to announce to her husband's peers the treacherous treatment she had had to endure from her husband, the celebrated novelist Edward Bulwer Lytton.¹⁴⁰ Rosina addressed her husband and the crowd to state that

¹³⁷ Braddon, *Lady Audley's Secret*, 323.

¹³⁸ *Ibid.*, 321.

¹³⁹ Lynn Voskuil, "Acts of Madness: Lady Audley and the Meaning of Victorian Femininity," *Feminist Studies*, 27(3) (Autumn 2001): 629

¹⁴⁰ Rosina Bulwer Lytton, *A Blighted Life* (London: London Publishing Office, 1880), 27.

after turning me and my children out of our house to run an unexampled career of vice, you have spent years in promulgating every lie of me, and hunting me through the world with every species of persecution and outrage, your last gentlemanlike and manly attempt having been to try and starve me out: therefore, in return for your *lies*, I have come here to-day to say the *truths* I have to say of you, *to you*, openly and publicly. If you can deny *one* of the charges I shall bring against you, do so, but to *disprove* them I defy you.¹⁴¹

Without the right to speak out against her husband in a court of law, Rosina had to find an alternative way to call attention to her oppression as a married woman and the double standards of marriage laws. To punish her and discredit her accusations, Edward told the papers that she was mad and bribed physicians to declare her insane.¹⁴² She was taken from her home and admitted to Inverness Lodge, a private mental asylum.¹⁴³ So, when she escaped the asylum three weeks later thanks to public support, she wrote an exposé entitled *A Blighted Life* to narrate what she termed the "Madhouse Conspiracy."¹⁴⁴

Rosina uses her literary talents, like Norton and many other women, to narrate the injustices that they had to endure during marriage as a result of unequal marriage laws. In *A Blighted Life*, Rosina questions how a husband would be able to "bury his life-long victim alive in a madhouse."¹⁴⁵ As she points out, "[n]ever was a more criminal or despotic Law passed than that which now enables a Husband to lock up his Wife in a Madhouse on the certificate of two medical men, who often in haste, frequently for a bribe, certify to madness where none exists."¹⁴⁶ But as married women, neither Rosina nor Lucy could fight back against their husbands' legal authority. If their husbands agreed that they were mentally unstable then, as their legal property, they would be deemed unfit to testify in a court of law.

¹⁴¹ Lytton, *A Blighted Life*, 20.

¹⁴² *Ibid.*, 30.

¹⁴³ *Ibid.*, 31.

¹⁴⁴ *Ibid.*, 30.

¹⁴⁵ *Ibid.*, 12.

¹⁴⁶ *Ibid.*, 17.

In Virginia]Morris' analysis of the "Madness Conspiracy" of *Lady Audley's Secret*, she claims that "[t]he reason she is punished so cruelly is that she has somehow bested men—or so they believe."¹⁴⁷ Lucy had bested the laws of marriage by believing that her husband's desertion justified her remarriage. Robert disguises her revolt against the patriarchal bias of marriage law as madness. As Elaine Showalter argues in her examination of the *Female Malady*, "madness has been a historical label applied to female protest and revolution."¹⁴⁸ This is evident in the bigamy themes of Charlotte Brontë's *Jane Eyre* and Wilkie Collins' *The Woman in White* (1860) as well as real-life cases like that of Rosina Bulwer Lytton. Showalter claims that such women were not mad but treated as insane in an attempt to silence their rebellion. She argues that Lucy's secret was not her madness but the fact that she was not mad. Showalter points out that "Lady Audley's real secret is that she is *sane* and, moreover, representative."¹⁴⁹ Lucy stands as a representative of married women's lack of autonomy in the law. The secret she is exposing is the injustices that married women face under contemporary marriage laws—laws that result in accidental bigamy due to an inability to apply for divorce on equal grounds as their husbands.

In accordance with the theory of married women's rebellion masked as madness, Robert discovers the asylum of Villebrumeuse in Belgium to be a fitting punishment. Morris views Lucy's punishment to be a direct result of Robert's self-interest. She states that Robert decides "to punish her without involving the judicial system, and without exposing her—and more importantly, his family—to the scandal of a trial."¹⁵⁰ In addition, Morris argues that

¹⁴⁷ Morris, *Double Jeopardy*, 96.

¹⁴⁸ Elaine Showalter, *The Female Malady: Women, Madness, and English Culture, 1830-1980* (London: Virago Press, 1987), 5.

¹⁴⁹ *Ibid.*, 167

¹⁵⁰ Morris, *Double Jeopardy*, 97

"[h]er punishment enabled Robert Audley to demonstrate the authority over women that he believes men should have."¹⁵¹ When Lucy is admitted, she declares that "[y]ou have brought me to my grave, Mr Audley [...] you have used your power basely and cruelly, and have brought me to a living grave."¹⁵² In response to her punishment, she questions Robert's role in proving her guilt when she asks:

Why have you tormented me so? Why could you not let me alone? What harm had I ever done *you* that you should make yourself my persecutor, and dog my steps, and watch my looks, and play the spy upon me? Do you want to drive me mad? Do you know what it is to wrestle with a madwoman?¹⁵³

Lucy asserts that Robert's motives are entirely selfish and that he is the cause of her distress which has ultimately shaped the form of her punishment. It is true that Lucy has not harmed Robert in any way and yet he has continuously pursued her. Robert's pursuits illustrate the double standards of the law's treatment of married women as he does not seek to equally punish George upon learning that he deserted his wife and child for over three years. I argue that Lucy's madness is the result of her pursuit not the cause of it.

Unlike Lucy, Aurora is freed from prosecution for her crimes due to Conyers' death. McAleavey notes this dichotomy of punishment when she observes that, "[w]hile Lady Audley is forced to confront the dismal truth that her past is always present, and ends her novel locked away in a sanatorium, Aurora is allowed to live out the fantasy of escaping from the past, and especially from a past marriage."¹⁵⁴ Braddon points out the reality of how the legal system treats married women through her depiction of the lack of consistent punishment of married women. She illustrates that without a structure legal code of bigamy law, the

¹⁵¹ Morris, *Double Jeopardy*, 97.

¹⁵² Braddon, *Lady Audley's Secret*, 333.

¹⁵³ *Ibid.*, 235.

¹⁵⁴ McAleavey, *The Bigamy Plot*, 145.

obscurity of the crime will continue to victimise women like Lucy and Aurora.

IV: Conclusion

By questioning whether Lucy and Aurora are, indeed, guilty, readers are inadvertently asked to question the legal system that led them to commit such crimes. Had the newly reformed divorce laws taken the suffering of married women due to desertion into account, Lucy could have very easily obtained a legal divorce from her husband. Lucy argues that “I have a right to think that he is dead, or that he wishes me to believe him dead, and his shadow shall not stand between me and prosperity.”¹⁵⁵ Like many women charged with bigamy, Lucy believes that she has a right to consider this as desertion. As Frost notes, “[t]he simple act of desertion could be enough for some men and women; the fact that they lived apart for several years, they insisted, invalidated their legal ties.”¹⁵⁶ Robert is aware of these circumstances when he is told that “[s]he tried to support herself after her husband’s desertion by giving music lessons.[...] But I suppose her father took her money from her, and spent it in public-houses.”¹⁵⁷ When asked to confess her crimes, Lucy pleads: “[b]ut where could I go? What would become of me? [...] What could I do?”¹⁵⁸ Unlike Helen Huntingdon in *The Tenant of Wildfell Hall* and Eleanor Raymond in *Stuart of Dunleath* who were able to turn to their brothers in times of crisis, Lucy had no one to help her support herself or gain independence. She was trapped by her marital circumstances and argues that “I learned that my ultimate fate in life depended upon my marriage.”¹⁵⁹ When Lucy is given a second chance at marrying to become financially stable, she risks being accused of bigamy. Without the ability to possess her own property and

¹⁵⁵ Braddon, *Lady Audley's Secret*, 301.

¹⁵⁶ Frost, "Bigamy and Cohabitation in Victorian England," 295.

¹⁵⁷ Braddon, *Lady Audley's Secret*, 212.

¹⁵⁸ *Ibid.*, 269.

¹⁵⁹ *Ibid.*, 298.

the limited employment opportunities, Lucy has few other options. It is these factors that could categorise Lucy's crime of bigamy as unintentional. She had no reason to believe that George would return nor could she reveal her past without losing her position as governess and risk poverty for herself and her child. Although Lucy would have been unable to testify, the circumstantial evidence collected by Robert illustrated Lucy's dilemma and reasons for risking being charged with the crime of bigamy. The letter left for her father reveals the degree of her desperation at the idea of caring for her child with no form of income, the names hidden in her trunk illustrate her plan to hide her identity in order to earn a living and support herself, and the marriage certificate hidden in mourning jewellery illustrates her belief that her husband had deserted her and never intended to return.

Aurora, on the other hand, acknowledges that she could have divorced Conyers through the accusations of adultery and cruelty when she states "[t]he law would have set me free from him, if I had been brave enough to appeal to the law."¹⁶⁰ Aurora inquires if "[h]ad she, upon the discovery of her first husband's infidelity, called the law to her aid—she was rich enough to command its utmost help—she might have freed herself from the hateful chains so foolishly linked together."¹⁶¹ Unfortunately, as Aurora's marriage to Conyers takes place in the summer of 1857 and the Divorce Court did not open until January 1858, she still would have been unable to seek a divorce.¹⁶² It isn't until a later edition of the novel that Conyers' "brutality" is added to make Aurora's claim for a divorce more accurate.¹⁶³ By protesting that adultery alone should allow women like Aurora to escape marriages, Braddon comments on

¹⁶⁰ Braddon, *Aurora Floyd*, 418.

¹⁶¹ *Ibid.*, 393.

¹⁶² Horstman, *Victorian Divorce*, 85.

¹⁶³ Braddon, *Aurora Floyd*, 393.

the biases of the newly established divorce law in which a man may divorce his wife on the sole basis of adultery but a woman is unable to do the same.

While nineteenth-century critics of *Lady Audley's Secret* and *Aurora Floyd*, such as Alfred Austin and Eneas Sweetland Dallas, considered its bigamy plot as merely a sidetrack from sensation, it is important to view Braddon's work in correlation with the rise of bigamy law reform debates and trials.¹⁶⁴ Although no courtroom trial occurs within either novel, Braddon focuses on the evidence that would have been presented in a court of law in order to accurately represent the injustices that married women are subject. Her focus on the specific injustices of bigamy law not only created an important commentary on contemporary marriage law reform debates but also led to the development of a characteristic literary genre of the nineteenth century.

The use of circumstantial evidence like letters, signatures, and marriage certificates in the portrayal of bigamy plots presents a close connection between the novel's depiction of marriage law injustices and married women's legal voices. In the cases of Lucy Audley and Aurora Floyd, letters and signatures are taken as proof of their guilt. It is only through a jurisprudential examination of the same evidence that readers are simultaneously informed of the effects of married women's lack of legal rights on their choice to risk the charge of bigamy. In addition to contemporary marriage law reform debates and real-life trials, the novel form provides a commentary on how married women's written evidence can be misconstrued without the ability to testify the circumstance of a crime and evoke empathy. By emphasising the limitation of circumstantial evidence, novelist like Braddon point out the further limitations that married women face in a court of law when circumstantial evidence is their

¹⁶⁴ Alfred Austin, "Our Novels (Part II): The Sensation School," *Temple Bar* 29 (June 1870): 410-424; Eneas Sweetland Dallas, "Lady Audley's Secrets," *The Times* (1862): 480-481.

only option for defence.

It is through the examination of the specific functions and narrative purposes of circumstantial evidence that bigamy novels serve an important role in the debates for marriage law reform. *Lady Audley's Secret* and *Aurora Floyd* provided readers with further insight into the dangers of contemporary marriage laws and the negative effects that such laws have on the sanctity of marriage. The relevance of marriage law reform debates in bigamy novels and the influence of bigamy novels in the public awareness to the injustices of marriage laws illustrates the interrelationship between law and literature in the nineteenth century. Unable to testify against these injustices, married women were reliant on circumstantial evidence to relate narratives of experience and advocate for a reformed legal system that would focus on the prevention of bigamous marriage as opposed to justifying them.

Chapter 4

"The Law Sanctioned the Sacrifice": Marriage Reform in Wilkie Collins' *Man and Wife*

The popularity of marriage trials after the creation of the Matrimonial and Divorce Court in 1857 presented an opportunity for novelists to join the debate for marriage legal reform. As this dissertation has sought to analyse, the nineteenth-century development of the novel form fed upon the public's interest in the drama of courtroom verdicts and newly founded rights for married women.¹ The 1870 publication of *Man and Wife* emerged within a period of numerous legal changes for married women and consequently engaged with the marriage reform debates through the inclusion of married women's writing as testimonial and circumstantial evidence. Wilkie Collins saw the opportunity to unveil the limitations put upon women by unjust marriage laws through the use of evidentiary narratives. As Jan-Melissa Schramm asserts, Collins fictionalises the prevailing debate for marriage legal reform: "for this tale can only be told in fiction when the law has refused to claim it as her own."² With a common law system that refused to acknowledge women's legal voices, the novel form provided married women's testimonies in support of reform. Collins emphasises the significance of women's writings within the legal system through the physical, written evidence in the cases of Anne Silvester and Hester Dethridge. Collins submits the circumstantial evidence of Anne and the confession of Hester as a way of enabling them to

¹ Jonathan H. Grossman, *The Art of Alibi: English Law Courts and the Novel* (Baltimore: John Hopkins University Press, 2002), 1.

² Jan-Melissa Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Theology* (Cambridge: Cambridge University Press, 2000), 12.

reveal how "the law sanctioned the sacrifice" of married women under unjust ceremonial and property laws.³

In the preface to *Man and Wife*, Collins presents the two legal subjects of his writing. Collins argues that "[a]s to the present scandalous condition of the Marriage Laws of the United Kingdom, there can be no dispute."⁴ Collins, firstly, identifies *The Report of the Royal Commission on the Laws of Marriage* (1868) and the debate for reformed ceremonial laws as the "solid foundation" of *Man and Wife*.⁵ The contemporary legal disputes surrounding women's interest in ceremonial law reform provides the basis for his portrayal of Anne Silvester. In addition, Collins engages with the Parliamentary debates for marriage legal reform through his presentation of the legal discussions surrounding the 1870 Married Women's Property Act. He signifies the importance of these debates when he states that "while I write these lines, Parliament is bestirring itself to remedy the cruel abuses which are here exposed in the story of 'Hester Dethridge'."⁶ Collins situates *Man and Wife* in direct discussion with the contemporary debates for property rights. He outlines his portrayal of Hester as proof of the need for legal reform that would establish "the right of a married woman, in England, to possess her own property, and to keep her own earnings."⁷ In order to create fictional versions of these legal debates, Collins presents the narratives of both Hester and Anne's marital sufferings as exemplary cases demonstrating the necessity of reform.

Collins had trained as a barrister from 1846 to 1848 and, thus, had a fair amount of

³ Wilkie Collins, *Man and Wife* [1870], ed. Norman Page (Oxford: Oxford University Press, 1995), 526.

⁴ *Ibid.*, 5.

⁵ *Ibid.*, 5.

⁶ *Ibid.*, 5.

⁷ *Ibid.*, 5.

legal knowledge.⁸ He furthermore used Charles Benham as an advisor on the legal themes of his works in order to make sure that all of the court proceedings and evidence were faithful to contemporary legal procedures.⁹ In the preface to *The Woman in White*, Collins labels Benham as a "solicitor of great experience in his profession."¹⁰ Collins emphasises his desire for legal accuracy when he states that "[e]very doubtful question was submitted to this gentleman, before I ventured on putting pen to paper; and all the proof-sheets which referred to legal matters were corrected by his hand before the story was published."¹¹ As a result, Keiran Dolin notes that Collins, "who studied law at Lincoln's Inn, was exceptional in his blending of reformist and sensational elements."¹² Collins strove to create an accurate legal novel that encompassed the details of women's sufferings under unjust marriage laws by developing his knowledge of marriage ceremonial and property law.

In this chapter, I argue that the authority given to written evidence within a court of law contextualises Collins' portrayal of unjust ceremonial and property laws. Through the narratives of Anne and Hester, *Man and Wife* does what the law cannot; it provides married women with a voice to protest their sufferings. Both Anne and Hester use their writings to defend themselves against the injustices of contemporary marriage laws. As Donald Hall argues, *Man and Wife* "works to undermine the positionality of the terms included in its own title, suggesting that women deserve much more than simply definition through relationship

⁸ Kieran Dolin, *A Critical Introduction to Law and Literature* (Cambridge: Cambridge University Press, 2007), 141.

⁹ William Baker (ed.), *The Public Face of Wilkie Collins: The Collected Letters*, Vol. 4 (London: Prickery & Chatto, 2005), 368.

¹⁰ Wilkie Collins, *The Woman in White* [1860], ed. John Sutherland (Oxford: Oxford University Press, 2008), 3.

¹¹ *Ibid.*, 3.

¹² Dolin, *A Critical Introduction to Law and Literature*, 141.

with corrupt men."¹³ Collins separated women's voices from their husband's to provide them with ownership of their own experiences. He allows Anne and Hester to speak for themselves and appeal for what they really "deserve." Unlike other forms of the marriage reform debate, such as trial reports, political essays, and parliamentary papers, the novel form enabled readers to view the sufferings of women under unjust marital laws from the perspective of those most affected by providing married women with the opportunities to defend their cases through written evidence of their experiences.

This chapter examines how, by incorporating the use of married women's writing as evidence, Collins links the novel's fictional cases with contemporary judicial cases about ceremonial legality and property rights. As this chapter demonstrates, Collins' use of women's written words as a form of legal narrative responds to the contemporary cases of *TheWall v. Yelverton* (1861), *Dalrymple v. Dalrymple* (1811), and *Rex v. Palmer* (1869). In Chloë Schama's account of the 1861 *TheWall v. Yelverton* case, she describes how "[f]rom its first day, the trial became a public melodrama, indulging in the trademarks of the genre: extremes of emotion, moral polarization, villainy, extravagant expression, and suspense."¹⁴ It is these "trademarks" that Collins adopts from the melodramatic events of courtroom trials for the development of the novel form. Louis Dépret emphasises the ways in which the courtroom presentation of evidence fascinated Collins when he recounts him saying that "[i]t came to me then [...] that a series of events in a novel could lend themselves to an exposition like this [...] one could import to the reader that acceptance, that sense of belief, which was produced here

¹³ Donald E. Hall, *Fixing Patriarchy: Feminism and Mid-Victorian Male Novelists*, (London: Macmillan, 1996), 170.

¹⁴ Chloë Schama, *Wild Romance: The True Story of a Victorian Scandal* (London: Bloomsbury, 2010), 66.

by the succession of testimonies."¹⁵ The "exposition" of truth and evidence in a courtroom setting became a model for Collins' plot and narrative structure in *Man and Wife* in order to expose the realities of married women's experiences with the law. By mimicking such trials as these, *Man and Wife* joins the contemporary conversations regarding the necessity for marriage law reform.

As Schramm argues, the development of the nineteenth-century novel was "indebted to the techniques of the courtroom, but also to the very limitations of the law."¹⁶ In order to address the complexity of legal issues portrayed by Collins in *Man and Wife*, this chapter is divided into three sections. Firstly, I establish the context of the novel by providing an account of the contemporary debates for ceremonial and property law. I examine the specific aspects of reformed ceremonial laws that Collins responds to, with particular attention to *The Report of the Royal Commission on the Laws of Marriage* (1868). I also review the points of reformist debates leading up to the 1870 passing of the Married Women's Property Act such as the 1856 *Petition for Reform of Married Women's Property Law Presented to Parliament* and Frances Power Cobbe's *Criminals, Idiots, and Minors* of 1869. As Hall claims, Collins adds "his voice clearly to those of Victorian feminists such as Barbara Leigh Smith and Frances Power Cobbe who decried laws and conventions that denied women possession of their property, any sense of personal safety, and even their 'selves.'"¹⁷ I explore how Collins is able to use the novel form and the fictional representation of married women's legal oppression to connect with the subject of essayists such as Smith and Cobbe in the debate for marriage law reform.

¹⁵ Louis Dépret, *Chez les Anglais* (Paris: Librairie Hachette, 1879), 250-251. (See translation in Nuel Pharr Davis, *The Life of Wilkie Collins* (Urbana: University of Illinois Press, 1956), 221.)

¹⁶ Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Theology*, 12.

¹⁷ Hall, *Fixing Patriarchy*, 171.

In addition to providing a historical background of debates surrounding ceremonial law, the second section of this chapter evaluates Collins' response to these ongoing debates in *Man and Wife*. I analyse how Collins illustrates the uncertainties of ceremonial laws between England, Ireland, and Scotland through the portrayal of Anne Vanborough and Anne Silvester's sufferings and their similarities to the *Dalrymple v. Dalrymple* and *Thelwall v. Yelverton* trials. This section highlights the differences between English, Irish, and Scottish ceremonial laws that led women to believe their marriages valid when legally they were not and the ways in which double standards led men to take advantage of such laws in order to seek other marital opportunities. Amidst a period when the inconsistent marriage laws of Britain were negatively affecting women and popular trials were being widely publicised, Collins engages with the ways in which written evidence plays an important role in defending married women against such double standards. My examination focuses on the importance that letters play in Anne Silvester's case and both real-life trials in order to illustrate how women's ability to speak on their own behalf has a great effect on the jury's pronouncement of their innocence.

The third section of my argument considers Collins' engagement with property law. I analyse how the portrayal of Hester's character is centred on her property rights both before and after her marriage. As further evidence of Collins' presentation of women's lack of property rights, I explore the ways in which her written "Confession" provides testimonial support for the passing of the Property Act and proves her crimes as a matter of circumstance. Schramm observes that the "confession mode" serves as "a crucial kind of self-expression, one that is supposed to bear a special stamp of sincerity and authenticity and to bear special

witness to the truth of the individual personality."¹⁸ I examine connections between the 1869 *Rex v. Palmer* trial and Hester's marital sufferings and the empathetic power of publicising married women's legal oppression under unjust married women's property laws.

While Collins' writings have received much critical attention, this chapter will look at one of his less-analysed novels through the perspective of the legal history of marriage reform and the narrative purposes of legal evidence. Biographers such as Peter Ackroyd, Lyn Pykett, Andrew Lycett, and Catharine Peters mention the relationship between *Man and Wife* and the debates for ceremonial and property law reform, but do not delve further into the jurisprudential techniques Collins uses. I examine the methods that Collins uses to assert the importance of ceremonial and property law reform. In order to accomplish this, I look at the role that narrative plays in Collins' presentation of legal representation and how the physical writings of women provide an important outlet for debates. Building on the research by Alexander Welsh, Kieran Dolin, Jonathan Grossman, and Schramm regarding the narrative purposes of legal evidence, I argue that Collins views the legal system as silencing the distresses of women under unjust laws. In accordance with feminist jurisprudence theorists like Christine Krueger and Kristen Kalsem, this chapter pays particular attention to the representation of married women's legal silence through the portrayal of their physical silencing. I consider Collins' use of legal language and links to reformist debates in order to provide a new reading of *Man and Wife* as a novel which engages with the marriage debates of the period and contributes a unique fictional perspective toward understanding the necessity for reform and right to legal representation.

¹⁸ Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Theology*, 29.

I. "The Fact and the Fiction": Marriage Reform Debate (1868-1870)

Man and Wife was published two years after *The Report of the Royal Commission on the Laws of Marriage* (1868) was presented to Parliament, and three months before the passing of the Married Women's Property Act (1870). This timing situated the novel in the middle of two important debates for marriage reform. Collins chooses to acknowledge this and sets out two goals in the preface to the novel which would, he claimed, mould "the fact and the fiction" into one.¹⁹ He firstly indicates that his novel will work towards responding to the debate for reformed ceremonial laws, as argued in the *Report*. This objective is visible in his preface's acknowledgement of ceremonial laws as the "solid foundation" for *Man and Wife*.²⁰ Secondly, Collins aims to contribute to the discussions surrounding the Property Act and the "prospect, at last, of lawfully establishing the right of a married woman, in England, to possess her own property, and to keep her own earnings."²¹ Collins describes the significance that marriage legal reform plays in the reading of the novel when he states that "the purpose of the story is always an integral part of the story itself" where "fact and fiction shall never be separable."²² Thus, an understanding of the legal environment surrounding *Man and Wife* proves crucial to the reading of the novel and comprehension of how the fiction is influenced by the facts.

In 1868, the Royal Commission set out to debate the necessary reforms for English, Irish, and Scottish ceremonial laws.²³ The *Report* sought to make uniform the obscure laws in

¹⁹ Collins, *Man and Wife*, 7.

²⁰ *Ibid.*, 5.

²¹ *Ibid.*, 5.

²² *Ibid.*, 7.

²³ Commissioners: Frederic Baron Chelmsford, Richard Southwell Bourke (commonly called Lord Naas), Robert Vernon Baron Lyveden, Spencer Horatio Walpole, William Monsell, John Inglis (Justice-Clerk of Scotland), Thomas O'Hagan (Justice of Our Court of Common Pleas in Ireland), Sir James Plaisted Wilde, Knight (Justice of Our Court of Probate), Sir William Page Wood, Knight (Vice-Chancellor), Sir Roundell Palmer, Knight (Attorney-General), Sir Hugh

the United Kingdom "with respect to the constitution and proof of the Contract of Marriage, and the Registration and other means of preserving evidence thereof."²⁴ The Commission claims that all marriages should be solemnised through consent, both verbal and written, between husband and wife in the presence of an "authorized celebrant or official witness."²⁵ The *Report* recommends that after banns are read and mutual consent is recognised, marriage records ought to be kept in the form of "proper books and forms."²⁶ The means of keeping these records would be "supplied at the public expense, by the Registrar General in each part of the United Kingdom, to every person authorized by law to celebrate, or to be the official witness of, marriage."²⁷ Collins supports and advocates this solution through his portrayal of how contemporary marriage ceremonial laws negatively affect Anne Silvester and her mother.

At this time, the primary characteristic that divided English and Irish marriage ceremonial laws was the fact that "mixed marriages by the Roman Catholic clergy in Ireland [were] not permitted."²⁸ In the 1862 *Thelwall v. Yelverton* case, for example, the Irish definition of a mixed marriage was put into law "by an Irish statute, 19th Geo. II., cap. 13" which stated "that a marriage between a Catholic and a Protestant [...] shall be deemed to be null and void."²⁹ Irish clergymen were therefore careful to question the religious affiliation of couples hoping to be married due to the fact that any clergyman found "marrying a Catholic

McCalmant Cairns, Knight, George Young, Esq. (Our-Solicitor-General for Scotland), Travers Twiss, Esq. (Doctor of Civil Law), Alexander Murray Dunlop, Esq. (See *The Report of the Royal Commission on the Laws of Marriage* (London: HMSO, 1868), 3.)

²⁴ *The Report of the Royal Commission on the Laws of Marriage* (London: HMSO, 1868), 3.

²⁵ *Ibid.*, 37.

²⁶ *Ibid.*, 43.

²⁷ *Ibid.*, 43.

²⁸ *Ibid.*, 12.

²⁹ *The Yelverton Marriage Case, Thelwall v. Yelverton, Comprising an Authentic and Unabridged Account of the Most Extraordinary Trial of Modern Times, With all Its Revelations, Incidents, and Details Specially Reported* (London: George Vickers, 1861), 186.

and a Protestant was guilty of felony."³⁰ Because of these restrictions, Irish ceremonial laws were viewed as strict and well regulated, unlike those of Scotland.³¹

As Jenny Bourne Taylor has shown, Collins' objective in choosing ceremonial law as a theme for *Man and Wife* is to portray "the failure of parliament to reform the Scottish rules on irregular marriages in the late 1860s."³² Scotland's marriage laws provided few restrictions and caused a great deal of legal confusion. According to the Commission's account of the requirements of marriage legality in Scotland, "[n]o form or ceremony, civil or religious, no notice before or publication after, no consummation or cohabitation, no writing, no witnesses even are essential to the constitution" of irregular marriages.³³ The Commission was astounded that so few requirements were needed to define "the most important contract which two private parties can enter into."³⁴ The obscurity of Scottish marriage laws led the Commission and recent historians such as Leah Leneman and Lawrence Stone to ask "what defined a marriage in Scotland?"³⁵ Scottish marriages, unlike their English and Irish counterparts, could be separated into two categories—regular marriages and irregular marriages. Regular marriages, according to the *Report*, could be classified as those "established by custom or statute, in the presence of a minister of religion."³⁶ Leneman explains that legally these can be referred to as marriages that are issued "*in facie ecclesiae*, by having the banns proclaimed three times and then being married by the parish priest or

³⁰ *The Yelverton Marriage Case, Thelwall v. Yelverton*, 11.

³¹ *Ibid.*, 6.

³² Jenny Bourne Taylor, "The Later Novels," in *The Cambridge Companion to Wilkie Collins* (Cambridge: Cambridge University Press, 2006), 81.

³³ *The Report of the Royal Commission on the Laws of Marriage*, 16.

³⁴ *Ibid.*, 16.

³⁵ Leah Leneman, *Promises, Promises: Marriage Litigation in Scotland 1698-1830* (Edinburgh: Nation Museums of Scotland Enterprises Ltd., 2003), xi.

³⁶ *The Report of the Royal Commission on the Laws of Marriage*, 17.

minister in the presence of the congregation."³⁷ As such, Scottish regular marriages are legally equivalent to English and Irish marriages.

However, Scotland's protection of irregular marriages caused great confusion. The *Report* defines irregular marriages as further separated into two sections, *per verba de praesenti* and *per verba de futuro, subsequente copula*. Leneman explains that *per verba de praesenti* marriages are defined by "some present interchange of consent to be thenceforth man and wife, privately or informally given."³⁸ *Per verba de futuro* marriages, contrarily, are characterized by the presence of "a promise of future marriage without any present interchange of consent to be husband and wife, followed at a subsequent time by carnal intercourse."³⁹ The primary difference between these two categories lies in the tense of the pledge of marriage. According to John Baker, promises *per verba de praesenti* were a type of mock ceremony in which a couple would pronounce themselves married from that point forwards "without any ecclesiastical ceremony, parental consent, or physical consummation, provided the consent was notified in words of the present tense."⁴⁰ Promises *per verba de futuro*, however, made the marriages legally more ambiguous as the point in which the couple would be married was unclear. With promises *de futuro* the eventual reference to each other as husband and wife and sexual intercourse were the most obvious characteristics. If a couple promised marriage, had sexual intercourse, and then referred to each other as married it would constitute an irregular marriage. Such marriages could be "most secret and private" and take place "with or without witnesses, and with or without any subsequent open acknowledgement

³⁷ Leneman, *Promises, Promises*, xi.

³⁸ *Ibid.*, xi.

³⁹ *The Report of the Royal Commission on the Laws of Marriage*, 17.

⁴⁰ John H. Baker, *An Introduction to English Legal History*, 4th ed. (Oxford: Oxford University Press, 2007), 179.

or matrimonial cohabitation.”⁴¹ This ambiguity made evidence of the union extremely difficult to find.

Irregular marriages were usually the only option for couples who could not obtain parental consent or had professional obligations, such as apprenticeships or clerical fellowships, which would make acknowledgment of the marriage impossible at that point in time.⁴² In these cases, the marriage would be kept a secret until the spouse, presumably the husband, had received his inheritance or reached success in his career.⁴³ However, because such unions were never recorded, owing to a lack of licensing for Scottish irregular marriages, it was difficult to prove that a marriage had occurred. As a result, many legal cases occurred when a woman was promised marriage and when the time came her husband would marry someone more advantageous. This is evident in Collins' depiction of how easily John Vanborough is able to leave his wife in exchange for "a woman highly connected and highly bred—a woman who can receive the best society in England, and open her husband's way to a position in the world."⁴⁴ In response to such cases, the Commission set out to create "some kind of solemnity to constitute or authenticate the contract of marriage" to prevent women's sufferings as a result of Scottish marriage laws.⁴⁵

Two varieties of cases were often brought to court due to the legal confusion of irregular marriages: declarator of marriage suits and declarator of freedom suits. As Leneman explains, a declarator of marriage suit, on the one hand, would "force an individual to cohabit

⁴¹ *The Report of the Royal Commission on the Laws of Marriage*, 18.

⁴² Leneman, *Promises, Promises*, 1-2.

⁴³ *Ibid.*, 2.

⁴⁴ Collins, *Man and Wife*, 20.

⁴⁵ *Ibid.*, 27.

with, or alternatively (if a man) pay alimony to, the spouse."⁴⁶ Declarator of freedom suits, on the other hand, "would not only legally repudiate the 'marriage' but also prohibit the defender from publicly claiming to be married to the pursuer."⁴⁷ Each case would require evidence of the existence of a marriage, verbal or written. In declarator of freedom cases, marriage would not be accepted as legal if evidence could only be found that one party promised marriage. However, marriage would be defined as an irregular marriage if evidence could be found that both individuals acknowledged the promised marriage, either in a written document or in a verbal conversation. The Commission recognised such cases and the importance of evidence that "proved, even at the distance of years, by subsequent written acknowledgement or oath of reference [...] that such consent was seriously and deliberately given."⁴⁸ Such evidence would ultimately verify that an irregular marriage had taken place.

While verbal evidence could prove a marriage, it was less likely that such evidence would be accepted in court due to its unreliability. Written evidence was generally only created to be seen by one individual and was usually of a personal, private nature. As Leneman explains, written evidence in declarator of marriage suits could consist of a simple "acknowledgement" of marriage: "[i]f a man addressed a woman in his correspondence with her as his wife, or signed himself her loving husband."⁴⁹ Cases such as these put a great emphasis on the writing of both husband and wife. Written pieces of evidence were used, read, and examined despite the fact that "[t]he law does not allow women to bring action against her husbands."⁵⁰ Whether they were letters, signatures, or journals, women's written words were

⁴⁶ Leneman, *Promises, Promises*, 6.

⁴⁷ *Ibid.*, 6.

⁴⁸ *The Report of the Royal Commission on the Laws of Marriage*, 16.

⁴⁹ Leneman, *Promises, Promises*, 26.

⁵⁰ *The Yelverton Marriage Case, Thelwall v. Yelverton*, 55.

treated just as if they were testifying against their supposed husbands. These writings would be examined to understand their meaning and circumstance, which was a more thorough investigation than would be granted to their spoken words.

The legal ambiguity of irregular marriages and the surplus of women negatively affected by these obscurities led the Commission to focus on Scottish laws. As a solution, the *Report* argued that "the law of secret consensual marriage, and the marriage by promise *subsequente copula*, as it now exists in Scotland, ought not to continue."⁵¹ Unfortunately, women were given no opportunity to voice their concerns in *The Report*, which solely relied on the testimonial accounts of men. As a result, Collins saw the need for women who had suffered on account of unjust ceremonial laws to be heard. Collins indicates that without a stress on personal experiences of marital sufferings it is less likely for "Parliament to make any reply" in the form of reformed marriage laws.⁵²

Collins is correct in this claim. In 1868, Parliament saw both the publishing of the *Report* and the reintroduction of the Married Women's Property Act in the House of Commons.⁵³ Consequently, many reformists felt the need to focus on one legal action at a time. Petitioners, such as the Law Amendment Society and Social Science Association, often presented the right to property as the more essential reform.⁵⁴ Goldman describes this political focus on property acts as a result of the promise to make married women "as capable as an unmarried one of acquiring, holding, and disposing of real and personal property; of making

⁵¹ *The Report of the Royal Commission on the Laws of Marriage*, 34.

⁵² Collins, *Man and Wife*, 5.

⁵³ Lee Holcombe, *Wives and Property: Reform of the Married Women's Property Law in Nineteenth-Century England* (Toronto: University of Toronto Press, 1983), 126.

⁵⁴ Lawrence Goldman, *Science, Reform, and Politics in Victorian Britain: The Social Science Association 1857-1886* (Cambridge: Cambridge University Press, 2002), 49.

contracts in her own name, suing and being sued, and disposing of property at will."⁵⁵ As a result, little action followed the *Report*. The ability for Irish couples to marry, despite their religious affiliation, was brought into law through the Matrimonial Causes and Marriage Law (Ireland), Amendment Act of 1871. The Amendment Act states that marriages would be deemed legal if "one of the parties intending to intermarry is a Protestant Episcopalian, in the same manner and subject to the same rules as are therein prescribed in cases where both the parties are Protestant Episcopalians."⁵⁶ However, as Leneman points out, "[m]arriage by declaration *de praesenti* and *per verba de futuro* remained valid in Scotland until the Marriage (Scotland) Act 1939, and Scots law still recognizes irregular marriage by habit and repute."⁵⁷ The legal remedies for ceremonial law inconsistencies were put aside due to the belief that property rights were of more immediate importance.

Collins recognises the importance of this legal movement in the preface to *Man and Wife*. He comments on the contemporary state of property law debates, when he declares that "[t]here is a prospect, at last, of lawfully establishing the right of a married woman, in England, to possess her own property, and to keep her own earnings."⁵⁸ Collins uses Hester's writings to depict many of the sufferings of married women that were being discussed in parliamentary debates for the Property Act at that time. He engages with reformists by contributing Hester's sufferings under unjust property laws as testimonial support for the passing of the 1870 Act alongside political pamphlets and parliamentary reports.

The debate over married women's property rights had been an ongoing discussion for much of the nineteenth century. In 1854 Barbara Leigh Smith Bodichon wrote in her *Brief*

⁵⁵ Goldman, *Science, Reform, and Politics in Victorian Britain*, 49-50.

⁵⁶ Matrimonial Causes and Marriage Law (Ireland), Amendment Act 1871, c. 49, s. 27.

⁵⁷ Leneman, *Promises, Promises*, 238.

⁵⁸ Collins, *Man and Wife*, 5.

Summary in Plain Language of the Most Important Laws Concerning Women that "[m]oney earned by a married woman belongs absolutely to her husband; that and all sources of income [...] are included in the term personal property."⁵⁹ Bodichon's *Summary* belongs to the first wave of debates on the Married Women's Property Act surrounding the 1856 *Petition for Reform of the Married Women's Property Law Presented to Parliament*. She argues that the current property restrictions of married women needed to change, insisting that "the abolition of the laws which give husbands this unjust power is most urgently needed."⁶⁰ Like Bodichon, Collins questions, "how much will not a woman endure before she will publicly plead for a maintenance!"⁶¹ As Caroline Norton argues in her *Letter to the Queen on Lord Chancellor Cranworth's Marriage and Divorce Bill* (1855), "[a]n English wife cannot legally claim her own earnings [...] her salary is *the husband's*."⁶² Norton, like Collins, emphasises that married women of all social classes ought to be given the same rights and legal claim within marriage. Independence and the ability to escape ought to be an option for all married women, not only those who could afford it.

The first petition to parliament was presented on 14 March 1856 by the Married Women's Property Committee.⁶³ Bodichon led a committee consisting of numerous literary and political female figures. The 1856 *Petition* created an outline of the necessary legal

⁵⁹ Barbara Leigh Smith Bodichon, *A Brief Summary in Plain Language of the Most Important Laws Concerning Women; Together with a Few Observations Thereon* (London: John Chapman, 1854), 7.

⁶⁰ *Ibid.*, 14.

⁶¹ *Ibid.*, 15.

⁶² Caroline Norton, *A Letter to the Queen on Lord Chancellor Cranworth's Marriage and Divorce Bill* (London: Longman, Brown, Green and Longmans, 1855), 9.

⁶³ Influential supporters including "Harriet Martineau, Elizabeth Barrett Browning, Elizabeth Gaskell, Jane Carlyle, and Marian Evans (George Eliot)." (See Lawrence Goldman, *Science, Reform, and Politics in Victorian Britain: The Social Science Association 1857-1886* (Cambridge: Cambridge University Press, 2002), 49.)

changes that would provide women with property ownership rights, including equity rights, wage possession, and debt responsibility.⁶⁴ The *Petition* highlighted the fact that, without reform, a wife "may work from morning till night, to see the produce of her labour wrested from her, and wasted in a gin-palace."⁶⁵ The Committee strove to outline how the passing of the Property Act would provide working-class women with the same legal opportunities as middle and upper class women.

Unfortunately, the 1856 Petition was overshadowed by the debates for the 1857 Matrimonial Causes and Divorce Bill similarly to the ways in which the Property Act of 1870 surpassed ceremonial law reform. The Committee acknowledged that there was a division amongst reformists to support the 1857 Matrimonial Bill or the Married Women's Property Act. Holcombe acknowledges the fact that "[i]mportant as the Divorce Act of 1857 was [...] it was very far from embodying the thoroughgoing reform of the married women's property law which feminists had been demanding."⁶⁶ As Lawrence Goldman notes, this division resulted from the dilemma of "whether to support the inadequate provisions of the Divorce bill" or push for the passing of a property bill, "which was more controversial still."⁶⁷ Reformists, persuaded by Lord Lyndhurst's Divorce Bill, chose to push forward the less radical Divorce Bill in hope that at least some legal changes would occur within the institution of marriage.⁶⁸ Supporters of the Divorce Bill believed that it would fix all problems for married women, but

⁶⁴ Holcombe, *Wives and Property*, 86.

⁶⁵ *Petition for Reform of the Married Women's Property Law Presented to Parliament 14 March 1856*, in *Wives and Property* by Lee Holcombe (Toronto: University of Toronto Press, 1983), 238.

⁶⁶ Holcombe, *Wives and Property*, 108.

⁶⁷ Goldman, *Science, Reform, and Politics in Victorian Britain*, 50.

⁶⁸ *Ibid.*, 50.

it did not.⁶⁹ Goldman states that "[t]he passage of the Divorce Act in that session ensured that the issue of the property of married women in all circumstances died a death in 1857 and was not resurrected again for a decade."⁷⁰ Although the issue of property rights was introduced in 1868 and 1869, "[i]n both sessions the bill was examined by select committees; in both, time ran out as the sessions ended."⁷¹ It wasn't until the Bill was introduced in 1870 that the discussion of married women's property rights was re-established.

One individual who was responsible for its revival in political debate was Frances Power Cobbe. Cobbe had been a powerful member of the previous wave's Married Women's Property Committee. In 1869, the committee saw an opportunity to reintroduce the Bill and the support of essayists began again. Cobbe's pamphlet, entitled *Criminals, Idiots, Women, and Minors: A Discussion on the Laws Concerning the Property of Married Women* (1869), points out that without the necessary property rights for married women, there would be no change in the injustices of marriage laws. The creation of the Matrimonial Causes and Divorce Court provided a separate judicial platform for marriage trials. However, this was useless without the opportunity for married women to speak out against their sufferings. As Cobbe states:

By the Common Law of England a married woman has no legal existence, so far as property is concerned, independently of her husband. The husband and wife are assumed to be one person, and that person is the husband. The wife can make no contract, and can neither sue nor be sued. Whatever she possess of personal property at the time of her marriage, or whatever she may afterwards earn or inherit, belongs to her husband, without control on her part.⁷²

⁶⁹ Goldman, *Science, Reform, and Politics in Victorian Britain*, 50.

⁷⁰ *Ibid.*, 50.

⁷¹ *Ibid.*, 125.

⁷² Frances Power Cobbe, *Criminals, Idiots, Women, and Minors: Is the Classification Sound?; A Discussion on the Laws Concerning the Property of Married Women* (Manchester: A.Ireland, 1869), 6-7.

Cobbe directly links the oppression of married women under the current property restrictions with a lack of legal self-representation. The belief that married women were legally the property of their husbands, and thus unable to speak in trials against their husbands, was the primary excuse amongst opponents of marriage law reform. Cobbe views the passing of the 1870 Act as a way of amending what the previous wave of debates did not take into consideration by including the means for women to sue, be sued, and stand in a court of law.

Collins provides testimonial support for ceremonial law reform and property rights for married women through the experiences of Anne and Hester. The resonance of these campaigns within *Man and Wife* substantiates the authority of women's writing to narrate their sufferings under unjust ceremonial and property laws. While the topical similarities in these different forms of debate are important, this chapter focuses on the structural and narrative techniques that the novel form generates in order to enhance the argument for married women's legal rights.

II. The "Uncertainties" of Ceremonial Laws and Circumstantial Evidence

Uncertain ceremonial laws often meant many women were denied what few marriage rights they were warranted. The inconsistencies of ceremonial laws throughout Britain were an important topic of debate in the nineteenth century. Alongside these debates, Collins advocates for a united marriage ceremonial law between England, Ireland, and Scotland. Collins details the negative effects of the inconsistent legal requirements for marriage through the presentation of character testimonies, spanning two generations from mother to daughter. Through the references that Collins makes to *The Report of the Royal Commission on the Laws of Marriage*, he is able to provide further legal support for his frustration towards Anne Vanborough and Anne Silvester's sufferings from Irish and Scottish marriage laws.

Using the same argumentative format as the *Report*, Collins dedicates a large portion of the novel to exposing the injustices derived from Scottish marriage laws. In order to do so, the majority of the text focuses on the sufferings of Anne Silvester from her irregular marriage. As with the *Report's* brief discussion of Irish ceremonial laws, Collins introduces Anne Silvester's story with that of her mother, Anne Vanborough.⁷³ Like the *Report*, Collins begins his examination of ceremonial laws with an account of the injustices of Irish marriage law. Married for approximately twelve years, Anne Vanborough believes herself to be permanently secured in her marriage. However, when her husband finds another woman who would be more advantageous to his political career, he hires a lawyer, by the name of Mr. Delamayn, to find a way out of his current marriage. Luckily for John Vanborough, and unluckily for his wife, Delamayn finds a loophole in the fact that they were married in Ireland where "every marriage, celebrated by a Popish priest, between two Protestants, or between a Papist and any person who has been a Protestant within twelve months before the marriage, is declared null and void."⁷⁴ In the preface to *Man and Wife*, Collins argues that such a law is a "disgrace of the English Legislature, and the English Nation."⁷⁵ Collins presents the ways in which the injustices of Irish marriage laws allow innocent women like Anne Vanborough to be "disowned and deserted" as an example of how easily such women's marital security can change.⁷⁶

As Lyn Pykett observes, it is the result of the "inconsistencies" of Irish ceremonial laws that "allow the lawyer Delamayn to secure the annulment of Anne Sylvester's[sic]

⁷³ For the sake of clarity, Anne Vanborough, née Silvester, who later reverts back to her maiden name after her marriage is dissolved, will be referred to as Anne Vanborough. Her daughter will be identified as Anne Silvester.

⁷⁴ Collins, *Man and Wife*, 27.

⁷⁵ *Ibid.*, 27.

⁷⁶ *Ibid.*, 38.

marriage to John Vanborough when the latter seeks to make a better match with an aristocratic widow."⁷⁷ Catherine Peters and Andrew Lycett recognise the 1861 *Thelwall v. Yelverton* case as inspiration for Collins' scrutiny of Irish marriage laws. However, they do not examine how the use of written evidence in the trial influenced Collins' presentation of women and the law. Seeking the help of his advisor, Charles Benham, Collins states "I want to find out what 'Mrs. Yelverton's' grievance is. [...] Can you tell me, in what point her marriage, was 'null and void?'" Collins researched the trial in order to understand "the complexities of the ongoing Yelverton case" and the exact differences between English, Irish, and Scottish marriage laws.⁷⁸

The Yelverton case had significant presence in contemporary culture and led to a consequent impact on the literature of the period. Schama states that "[l]awyers regularly borrowed the techniques of novelists, and novelists borrowed characters from the courts, but this was perhaps the first time that the central evidence so closely resembled fiction."⁷⁹ She notes that the evidence of the trial echoed the form of "an epistolary novel" which the jurors were asked to judge and scrutinise.⁸⁰ Despite the fact that Anne Vanborough's appearance within the novel is brief, the parallels between "the painful position in which she was placed" and that of Theresa Longworth Yelverton foreshadow the later fate of her daughter as a result of Scottish marriage laws.⁸¹

Although the majority of present-day readers will not realise these parallels,

⁷⁷ Lyn Pykett, *Authors in Context: Wilkie Collins* (Oxford: Oxford University Press, 2005), 134.

⁷⁸ William Baker (ed.), *The Public Face of Wilkie Collins: The Collected Letters*, Vol. 4 (London: Prickery & Chatto, 2005), 368; Andrew Lycett, *Wilkie Collins: A Life of Sensation* (London: Hutchinson, 2013), 292.; 62.

⁷⁹ Schama, *Wild Romance*, 71.

⁸⁰ *Ibid.*, 71.

⁸¹ *The Yelverton Marriage Case, Thelwall v. Yelverton*, iv.

contemporary readers would have been well aware of the 1862 *Thelwall v. Yelverton* trial which "attracted national front-page attention for weeks."⁸² Newspapers such as *The Times* and *The Morning Chronicle* reveled in a case that "members of the bar attended in great numbers, while the galleries, the side benches, and approaches were thronged to excess by an assembly which included many ladies, who evinced the greatest interest in the case as it proceeded."⁸³ Crowds were standing in the streets outside the Dublin courtroom in order to witness if Theresa Yelverton would be able to persuade the jury of her Irish and Scottish marriage to William Yelveron. Surprisingly, Theresa did not directly file a suit for her husband to acknowledge their marriage. As Chloë Schama emphasises in her extensive analysis of the Yelverton trial, Theresa "could not bring legal action before a court unless her husband's name was joined with hers, and she could not testify against her husband."⁸⁴ Instead, the case was brought to the Dublin Court of Common Pleas as an equity case, where John Thelwall, an ironmaster and friend of Theresa, demanded that Captain William Charles Yelverton pay for the £259 17s 3d required to financially support his wife after he abandoned her.⁸⁵

It wasn't until the passing of the 1886 Maintenance of Wives Act that married women who had been "battered or deserted" by their husbands were able to apply for a "temporary maintenance order from a local magistrate."⁸⁶ Prior to this, cases were more frequent amongst the upper classes due to the high cost of bringing about legal action. When the case was filed

⁸² Schama, *Wild Romance*, ix.

⁸³ *A Full Report of the Important Trial Thelwall versus Yelverton (Marriage Case,) Before Lord Chief Justice Monahan in the court of Common Pleas, Dublin*, (Glasgow: William Syme & Co., 1861), 15.

⁸⁴ Schama, *Wild Romance*, 59-60.

⁸⁵ *The Yelverton Marriage Case, Thelwall v. Yelverton*, vii.

⁸⁶ Stone, *Road to Divorce*, 386

for William to financially support his wife, he denied that any legal marriage had occurred and refused to "pay her any maintenance."⁸⁷ Thus, a case that began as a simple property case immediately turned into a declarator of marriage trial with a complex examination of the restrictions of Irish and Scottish marriage laws, combining the two legal themes that Collins designates as the premise of *Man and Wife*.

William Yelverton and Theresa Longworth Yelverton met in 1852 aboard a steamer and began a long-term epistolary relationship. From 1853 to 1858 William and Theresa wrote numerous letters and met in Malta and Kamiesch.⁸⁸ However, it was after Theresa's return to Britain in 1857 that her marital troubles truly began. Theresa claimed that William had promised to marry her but due to the fact that his uncle would only financially support him if he "remained childless and unmarried" was unable publicly to admit to their engagement.⁸⁹ As their relationship continued, Theresa required assurance that they would be married in the near future. William attempted to reassure her by reading the Book of Common Prayer's "Solemnization of Marriage."⁹⁰ According to a trial report published by George Vickers in 1861, "mutual consent and promise made persons man and wife—and, having read the marriage ceremony, he proposed that it should legitimize their position as husband and wife."⁹¹ Jurors were asked to reflect upon the evidence presented in order to decide if, in fact,

⁸⁷ Andrew Lycett, *Wilkie Collins: A Life of Sensation* (London: Hutchinson, 2013), 292.

⁸⁸ It is unclear the exact number of letters that passed between Theresa and Yelverton or how many were presented as evidence. The only indication of a quantity of letters in the case is when Theresa states that approximately twenty-four letters were passed after their Irish marriage but most of them had been destroyed by Yelverton. (See *The Yelverton Marriage Case, Thelwall v. Yelverton*, 40.)

⁸⁹ Schama, *Wild Romance*, 26.

⁹⁰ *The Yelverton Marriage Case, Thelwall v. Yelverton*, 13.

⁹¹ *Ibid.*, 11.

a Scottish marriage had occurred. This would not be a simple task due to the complex and unregulated restrictions that defined Scottish marriages.

Determining a Scottish marriage would not be the jury's only mission. As a devoted Catholic, Theresa declared during cross examination that she considered herself to be "half married and not married," which still led her to doubt her social and legal status as William's wife.⁹² Five months after their Scotch marriage, Theresa ran away with William to Ireland in order to obtain a secret, yet official, marriage performed by a Catholic priest. As Schama notes, "[w]ith these two unions, she hoped to gain a level of legitimacy that would allow her to live a less secretive life."⁹³ Since William would later argue that there was no formality to the ceremony performed in Ireland nor that he ever claimed to be a Catholic, the defence found that it was necessary to determine the definition of a formal marriage ceremony. By indicating the minute differences between Protestant and Catholic marriage lines, the plaintiff's attorney emphasised that William's inability to distinguish between the two makes a "mere mockery" of a law that makes one ceremony legal and another illegal.⁹⁴

In the ten months that followed their marriages, William and Theresa appeared in public as husband and wife both in Britain and on their honeymoon abroad. The newlyweds sought accommodation at various inns along the way and left "a trail of witnesses: hotel owners, maids, and waiters who would later testify that they had lived together as man and wife."⁹⁵ It was after this honeymoon period that William sought a way out. With the excuse that his leave had ended and that he was needed in England, William left Theresa alone and ill in Italy. After finally recovering from a life-threatening illness, Theresa was able to make her

⁹² *Full Report of the Important Trial Thelwall v. Yelverton*, 42.

⁹³ Schama, *Wild Romance*, 42.

⁹⁴ *The Yelverton Marriage Case, Thelwall v. Yelverton*, 98.

⁹⁵ Schama, *Wild Romance*, 45.

way back to Edinburgh just in time to find out that William had married Emily Forbes months after deserting her.⁹⁶ As a result, Theresa set forth upon the complex mission to prove their marriage and seek her rights as a married woman. Initially accusing him of bigamy, she found that she had no hope of winning her case. Thus, she tried another tactic with the aid of John Thelwall.

The *Thelwall v. Yelverton* case is particularly apparent in *Man and Wife* not merely because of how it questions ceremonial laws in an effort to bring awareness to the necessity for reform but in the importance given to circumstantial evidence as representative of married women's narratives of experience. As the Lord Chief Justice, James Henry Monahan observed, "it is all-important that when there is a conflict of evidence, we should look at the contemporaneous documents that are available in the case, to ascertain, if we can, what was passing in their minds at the time."⁹⁷ Theresa "was enabled to have the letter placed in her hands, and particularly she has the opportunity of telling you what she meant by the expressions used in the letters."⁹⁸ In the four-day trial, Theresa's letters were sifted through in order to evaluate the marital relationship through the events that defined their marriage, such as the Scottish and Irish marriages. As Schama argues, "[t]hey were clearly more than correspondents—more, perhaps, than lovers—but were they man and wife to the rest of the world?"⁹⁹ Collins attempts to answer this question through his presentation of the legalities of Anne Silvester and Anne Vanborough's marriages.

Like Theresa, Anne Vanborough becomes a victim of the inconsistencies of British ceremonial laws. However, unlike Theresa, she becomes just another woman unable to fight

⁹⁶ Schama, *Wild Romance*, 57.

⁹⁷ *The Yelverton Marriage Case, Thelwall v. Yelverton*, 171.

⁹⁸ Schama, *Wild Romance*, 55.

⁹⁹ *Ibid.*, 43.

against the legal authority of her husband due to her inability to speak on her own behalf in a court of law. Instead, "she stood on the wreck of her married life" and her marriage certificate, a document that should have been symbolic of their religious and legal union, was turned into mere "waste paper" as if her marriage had never happened.¹⁰⁰ This refers to the strict legal document that binds Lucy Audley and Aurora Floyd to their first husbands in Chapter 3's examination of Mary Elizabeth Braddon's bigamy novels. It highlights that the use of evidence like marriage certificates in a court of law isn't necessarily used to enact a moral judgment but instead to uphold the patriarchal double standard of marriage laws. Anne Vanborough's distress at being deserted leads to her death, less than a year later, leaving her daughter orphaned and illegitimate.

The next time readers encounter her daughter, Anne Silvester, she is in the midst of her own marital troubles at the hands of Geoffrey Delamayn, the younger son of the lawyer who ruined her mother's life. Although Collins does not reveal how Anne and Geoffrey's romantic relationship began, readers are made aware of Anne's misfortune when she confronts Geoffrey and demands that he marry her, as he had previously promised. However, as with most irregular marriages that Leneman and Stone describe, Geoffrey refuses to announce their engagement due to the fear of being disinherited. As he states, "[i]f I marry you now, I'm a ruined man."¹⁰¹ But, as it is later revealed, Anne is pregnant and argues that "if you *don't* marry me, I am a ruined woman."¹⁰² With their relationship completely unknown to anyone, Anne suggests "a private marriage."¹⁰³ It is clear that Anne is desperate for a solution that would allow her to marry Geoffrey while convincing him that he would still retain his fortune.

¹⁰⁰ Collins, *Man and Wife*, 37; 36.

¹⁰¹ *Ibid.*, 79.

¹⁰² *Ibid.*, 79.

¹⁰³ *Ibid.*, 81.

Announcing her plan to Geoffrey, Anne declares "you know that we are in Scotland. You know that there are neither forms, ceremonies, nor delays in marriage, here."¹⁰⁴ Planning to meet at a nearby inn, Anne is to announce to the landlady that her husband will be meeting her shortly and when Geoffrey arrives and asks for his wife, both will have verbally recognised each other as married. It is here that Anne's plan for a marriage *per verba de futuro* comes into action. Anne understands that, unlike the Scottish irregular marriage portrayed in the Yelverton trial, a witness is crucial and carefully plans out the order of events leading up to her irregular marriage.

Unfortunately, Anne's plan does not go as smoothly as she had hoped. After she has already abandoned her home and has made her way to the inn, Geoffrey receives a letter stating that his father has fallen ill and that he is needed on the next train back to London. Geoffrey confides in his friend Arnold Brinkworth and convinces him to meet Anne at the inn to give her a letter describing his necessary departure. It is here that Anne's legal troubles begin. Because Arnold knows that if a man besides Anne's husband asks for her at the inn she would be ruined, he pretends to be her husband in order to give her Geoffrey's letter. As Lyn Pykett points out, "[h]e had subsequently been forced to spend the night in her room because of a storm, and under Scots law these two circumstances were regarded as constituting a public declaration of marriage."¹⁰⁵ Geoffrey decides to benefit from these circumstances and, when he finds a wealthier, socially superior woman in London whom his family would approve of, refuses to marry Anne and uses Arnold as his scapegoat.

Geoffrey becomes anxious about his tie to Anne after overhearing Sir Patrick, who is an experienced Scottish lawyer. Geoffrey learns that it is "extremely easy for a man to drift

¹⁰⁴ Collins, *Man and Wife*, 86.

¹⁰⁵ Pykett, *Authors in Context: Wilkie Collins*, 135.

into marrying, in Scotland; without feeling the slightest suspicion of having done it himself."¹⁰⁶ Geoffrey fears that he may have drifted into a marriage with Anne and seeks Sir Patrick's advice on behalf of a "friend." Sir Patrick informs him that there is little that "is *not* marriage in Scotland."¹⁰⁷ Throughout the novel, Sir Patrick becomes the voice of reason in Collins' attempt to scrutinise Scottish marriage laws. Collins satirises the general public's knowledge of ceremonial restrictions when a man who is a well-known Scottish legal figure cannot fully understand the marriage laws of his own country. Sir Patrick directly references the *Report* and states that even after the publishing of such a detailed outline of marriage laws, "[a] haze of doubt and uncertainty hangs, in Scotland, over the most important contract of civilized life."¹⁰⁸ As Sir Patrick declares, "[a]n uncertain marriage-law is a national calamity."¹⁰⁹ The Anne and Geoffrey's relationship represents the inconsistencies between Irish, Scottish, and English marriage laws which created immense difficulties for women throughout Britain.

After discovering that Geoffrey has returned to Scotland to visit her guardian without coming to her rescue, Anne runs away to Glasgow in order to obtain legal advice on her marital dilemma. Anne's first legal advisor, Mr. Camp, assures her that "I see a plain inference of matrimonial consent in the circumstances which you have related to me; and *I* say you are a married woman."¹¹⁰ However, in order to be sure of her marital status and to be prepared if Geoffrey denies their marriage, Anne visits yet another lawyer, only to be told that there is "[n]o marriage [...] Evidence in favor of perhaps establishing a marriage, if you propose to

¹⁰⁶ Collins, *Man and Wife*, 199.

¹⁰⁷ *Ibid.*, 229.

¹⁰⁸ *Ibid.*, 232.

¹⁰⁹ *Ibid.*, 232.

¹¹⁰ *Ibid.*, 321.

claim the man. But that, as I understand it, is exactly what you don't wish to do."¹¹¹ The differing legal advice that Anne receives is portrayed by Collins as a "scandalous divergence of opinions produced by the confusion and uncertainty of the marriage law of Scotland."¹¹² It is implied that irregular marriage laws in Scotland were not regulated and that knowledge of marriage legitimacy was unclear even to those within the legal system. Collins suggests that if lawyers are unable to understand the regulations irregular marriages how can women, without a legal education, be expected to know what did and did not constitute a Scottish marriage.

Collins' portrayal of Anne's decision to fight for her marital status articulates the necessity for legal justice, even if it means proving her

Married—to the villain who had not hesitated to calumniate the woman whom he had ruined, and then to cast her helpless on the world. Married—to the traitor who had not shrunk from betraying Arnold's trust in him, and desolating Arnold's home. Married—to the ruffian who would have struck her that morning, if the hands of his own friends had not held him back.¹¹³

Collins characterises Geoffrey and all others who choose to take advantage of the obscurities of marriage laws in order to desert their wives as "villain[s]," "traitor[s], and "ruffian[s]". He asserts that reform is necessary when it is individuals such as Geoffrey who succeed as a result of others' oppression. Although Anne originally desired to use the laws of irregular marriages to marry Geoffrey, these same laws could be used to punish him for his attempts to leave her unwed, pregnant, and with no financial support. Anne has a choice to make as to what a legal battle to prove her marriage to Geoffrey would mean for her.

Looking back at her and her mother's sufferings as a result of the inconsistencies of British marriage laws, Anne states that "I saw the sad side of life sooner than most children

¹¹¹ Collins, *Man and Wife*, 322.

¹¹² *Ibid.*, 322.

¹¹³ *Ibid.*, 483.

see it. My mother was cruelly deserted. The hard marriage laws of this country were harder on her than on me."¹¹⁴ Anne decides that she must fight back, as her mother never could, after learning of Geoffrey's impending marriage and miscarrying her pregnancy in a moment of hysteria. Anne decides that she must present her case as an example of the injustices of such laws, for while they cannot aid her they can at least punish Geoffrey. In the examination of Theresa Yelverton's decision to seek legal action to declare herself married to a man whom she knew did not wish to be married to her, her lawyers assured the jury that, "[y]ou cannot restore her to the husband she adored or to the happiness she enjoyed [...] you cannot relieve the sorrows of her bursting heart, but you may restore her to her place in society."¹¹⁵ Like Theresa, Anne does not fight to prove herself legally married to Geoffrey because she hopes for a happily-ever-after marriage, but because she believes that Geoffrey ought to be made accountable for his actions towards her. She is not only contesting her lack of legal rights as a married woman, but those of her mother and all others who could fall victim to the injustices of marriage ceremonial law.

Geoffrey refuses to claim her as his wife and is still determined to marry another, so Anne takes legal action with the help of Sir Patrick. It is here that the specific importance of written evidence plays an essential role in Anne's battle for justice. Margaret Oliphant claims, in her critique of the novel, that "the most powerful scenes in the book" are when Anne "makes up her mind to produce the document which proves her marriage to him, and the consequent nullity of the pretended marriage which he is trying to prove her to have entered into with another."¹¹⁶ Oliphant specifically links Anne's ability to stand trial against her

¹¹⁴ Collins, *Man and Wife*, 520.

¹¹⁵ *The Yelverton Marriage Case, Thelwall v. Yelverton*, 164.

¹¹⁶ Margaret Oliphant, Unsigned Review, *Blackwood's Magazine* (Nov 1870): 189-190.

seducer with the authority of the "document[s]" in her possession. It is the fact that women's writings qualified as evidence while they were still unable to speak for themselves in court that makes this scene such an important presentation of women's limited legal representation.

It isn't until this point in the novel, with Anne's legal credibility growing, that readers are presented with the letters sent between Geoffrey and Anne. When Anne consults Sir Patrick on her legal conundrum, he inquires as to whether or not Geoffrey had promised her marriage both "[i]n words" and "[i]n writing."¹¹⁷ As if presenting evidence in a court of law, Anne gives Sir Patrick both letters and waits for him to make the legal connection of their importance towards her defence. It is the reading of the corresponding letters between Anne and Geoffrey that Ackroyd deems "the pivot upon which [Collins'] novel was based."¹¹⁸

Anne's letter reads:

Windygate House, August 12th, 1868

GEOFFREY DELAMAYN,--I have waited in the hope that you would ride over from your brother's place, and see me—and I have waited in vain. Your conduct to me is cruelty itself: I will bear it no longer. Consider! in your own interests, consider—before you drive the miserable woman who has trusted you, to despair. You have promised me marriage by all that is sacred. I claim your promise. I insist on nothing less than to be what you vowed I should be—what I have waited all this weary time to be—what I am, in the sight of Heaven, your wedded wife [...] If I don't see you, I won't answer for what may happen. My mind is made up to endure this suspense no longer. Oh, Geoffrey, remember the past! Be faithful—be just—to your loving wife,
ANNE SILVESTER¹¹⁹

Collins clearly has an understanding of the importance of the term "promise" in Scottish marriage laws. According to Leneman, a "promise" was all that was required to legalise a marriage in Scotland.¹²⁰ Anne's reference to the promises that Geoffrey "vowed [...] in the sight of Heaven" indicates that a Scottish irregular marriage took place. As the law stands,

¹¹⁷ Collins, *Man and Wife*, 480.

¹¹⁸ Peter Ackroyd, *Wilkie Collins* (London: Chatto & Windus, 2012), 136.

¹¹⁹ Collins, *Man and Wife*, 481-482.

¹²⁰ Leneman, *Promises, Promises*, x.

“nothing is more necessary to constitute actual marriage by the law of Scotland, as now established, than a present interchange of consent, in whatever manner given, to become thenceforth husband and wife.”¹²¹ Anne's "claim" to the title of Geoffrey's wife is specifically centered around such a term when she states “I am his wife, if promises can make me his wife! He has pledged his word to me by all that is sacred!”¹²² Anne is correct in assuming that a "promise" of marriages makes her Geoffrey's wife.

However, it is not solely this promise of consent that Anne must prove in her fight to verify her marriage to Geoffrey. Geoffrey's letters are then submitted as evidence.

DEAR ANNE,--Just called to London to see my father. They have telegraphed him in a bad way. Stop where you are; and I will write you. Trust the bearer. Upon my soul, I'll keep my promise. Your loving husband,

GEOFFREY DELAMAYN

Windygates House. August 14th, 4 p.m. In a mortal hurry. Train starts at 4.30.¹²³

Like the Yelverton case's examination of the timeline of letters, the legality of Anne's marriage depends very much on the order of events between when she left for the inn and when Arnold arrived at her door. While Anne's recognition that she is Geoffrey's "wedded wife" and his response that he is her "loving husband" is enough to marry them by Scottish law, the obstacle remains as to whether she was married to Arnold first. Fortunately, the clearly indicated time of Geoffrey's writing confirms that his letter was written prior to Arnold's departure for the inn, as testified by Sir Patrick's alibi. Sir Patrick explains to Anne that "[o]n the day, and at the hour, when he wrote those lines at the back of your letter to him, you were *Geoffrey Delamayn's wedded wife*."¹²⁴ Sir Patrick is able to prove that Anne is married to the man who

¹²¹ *The Report of the Royal Commission on the Laws of Marriage*, 18.

¹²² Collins, *Man and Wife*, 129-130.

¹²³ *Ibid.*, 154.

¹²⁴ *Ibid.*, 483.

has abandoned her through the depiction of the letter that Anne sent Geoffrey, calling him to meet her at prior to desertion, and the letter that Geoffrey sends, via Arnold, announcing his need to travel to London.

Represented by Sir Patrick in the presence of Blanche, Arnold, Geoffrey, and his lawyer Mr. Moy, Anne makes her case as a declarator of marriage in hopes of avoiding "the painful publicity which would result from an appeal to a Court of Law."¹²⁵ After intensive questioning on the order of events regarding Arnold's attendance at the inn to prove that he is, in fact, not married to Anne and can return to his wife, Blanche, the investigation into Anne and Geoffrey's relationship begins. Because Geoffrey continues to deny his promise to marry Anne, Sir Patrick is forced to present the "marriage lines" written in their letters.¹²⁶ Directing the evidence towards Geoffrey's lawyer, Sir Patrick inquires whether he remembers "the famous decision of Doctors' Commons, which established the marriage of Captain Dalrymple and Miss Gordon."¹²⁷ A simple reference to the *Dalrymple v. Dalrymple* case are all that Mr. Moy needs to realise that Anne has won her case.

While the *Thelwall v. Yelverton* case marked an important recognition of Irish marriage laws and their differences from English ceremonial laws, it also revealed the tremendous confusion surrounding Scottish marriage ceremonial laws. In order fully to comprehend the legal definition of a Scottish marriage, Collins chooses to reference a case that both the Yelverton case and the *Report* attribute as a defining moment in the legal examination of Scottish ceremonial laws.¹²⁸ Trial reports and Commission reports mark *Dalrymple v.*

¹²⁵ Collins, *Man and Wife*, 507.

¹²⁶ Leneman, *Promises, Promises*, 30.

¹²⁷ Collins, *Man and Wife*, 522.

¹²⁸ *Full Report of the Important Trial Thelwall v. Yelverton*, 82; *The Report of the Royal Commission on the Laws of Marriage*, 61.

Dalrymple as the origin of the nineteenth-century debates for reformed ceremonial laws.¹²⁹

What makes the trial so significant is the fact that, being tried in an English court, legal officials and jury members found it necessary to educate themselves on the particulars of Scottish irregular marriage laws and were, thus, made aware of the unjust irregularities of ceremonial laws in Britain. As Dodson notes, the reason why Members of Parliament needed to understand Scottish marriage laws corresponded with the fact that "the legal Tribunals of England recognise the validity of every Marriage contracted in conformity to the Laws and Usages of the Country in which it had its Origin."¹³⁰ The Consistorial Court of London was forced to comply with Scottish law because John Dalrymple was English, yet supposedly married in Scotland.

The publicity that followed the Dalrymple trial served to educate the English public on the lack of formality of Scottish irregular marriages. Trial summaries and newspaper reports sparked a national interest in the effects of unjust marriage laws on women. *Dalrymple v. Dalrymple* became a figurehead case for the nineteenth-century debates over ceremonial laws. Theresa Yelverton's legal counsel even used the Dalrymple case as an example to sway the jury in Theresa's favor by comparing the strong presence of circumstantial evidence in epistolary form in both cases. George Handiside Patterson, a prominent advocate at the Scottish bar, asserts the importance of women's letters as a form of evidence because "[a]ll the facts and circumstances antecedent to, attendant on, and subsequent to the alleged contract, will be taken into account considering the writings exhibited."¹³¹ The Dalrymple case provides an example of the significance of married women's written evidence. Like Theresa Yelverton,

¹²⁹ *The Report of the Royal Commission on the Laws of Marriage*, 18.

¹³⁰ Dodson, *A Report of the Judgment [...] , in the Cause of Dalrymple the Wife, Against Dalrymple the Husband*, vi. (See Marriage Act of 1753).

¹³¹ *The Yelverton Marriage Case, Thelwall v. Yelverton*, 125.

Johanna Dalrymple was unable to testify in support of her own marriage. Her letters and those that she possessed spoke on her behalf just as Anne Silvester's letters served as proof of her marriage to Geoffrey. As Chapters 3 highlighted in the analysis of Lucy Audley and Aurora Floyd's letters and marriage certificates, the proof of letters and handwriting was held by marriage trials as circumstantial evidence in determining a verdict. During the entirety of the mock trial *Silvester v. Delamayne*, Anne does not speak once, except to Sir Patrick when she is taken out of the room for client consultation. She is able to prove her innocence only through her writings.

The Dalrymple trial provides one of the most well-known cases, at the time, of Scottish irregular marriages and is referenced by the *Report* to support the Commission's position that "writings, secretly exchanged between a gentleman and lady in Scotland, without the knowledge of any other person, were held by the English Matrimonial Court to have constituted a valid marriage."¹³² Dodson asserts the significance of the letters presented by Johanna's lawyers on the verdict, stating that "[i]t is much more natural that they should be left in the possession of the lady, she being the party whose safety is the more special object of protection."¹³³ Dodson presents the irony of the fact that while women were unable to represent themselves within marriage trials it was their respectability and virtue that was on the line.

The first letter recorded in the 1811 *Dalrymple v. Dalrymple* case, entitled "A sacred[sic] promise,"¹³⁴ consists of both John and Johanna's written agreements to marriage.

¹³² *The Report of the Royal Commission on the Laws of Marriage*, 18.

¹³³ Dodson, *A Report of the Judgment [...], in the Cause of Dalrymple the Wife, Against Dalrymple the Husband*, 66.

¹³⁴ *Ibid.*, 243.

I DO hereby promise to marry you as soon as it is in my power, and never marry another.

J. DALRYMPLE

& I promise the same.

J. GORDON

I HEREBY declare that Johanna Gordon is my lawful wife.

J. DALRYMPLE

May 28th, 1804.

AND I hereby acknowledge John Dalrymple as my lawful husband.

J. GORDON¹³⁵

It is clear that at this point John and Johanna had consented to a marital union, which in Scottish law meant that they were legally married. Because of John's family and the fear of "being disinherited," the marriage had to be an irregular one and kept in secrecy, not even known to Johanna's family.¹³⁶ John convinces Johanna of the necessity for confidentiality when he states that "it would be nearly impossible for me to support you in the style of life you ought, my wife, to be supported in; therefore it is my wish it *should not be mentioned* till such time as it can without injury to *ourselves* be done."¹³⁷ John's reasoning is congruent with Leneman's analysis of motives for irregular marriages. However, John declared that even though their marriage had not been made public, she possessed every "right" as his wife.¹³⁸ He also saw it to be her responsibility to perform all duties as his wife, such as sexual intercourse. This would later prove important to the jury's verdict because of the legal significance of

¹³⁵ Dodson, *A Report of the Judgment [...] , in the Cause of Dalrymple the Wife, Against Dalrymple the Husband*, 243.

¹³⁶ *Ibid.*, 253.

¹³⁷ *Ibid.*, 242.

¹³⁸ *Ibid.*, 245.

consummation as a requirement of marriage.¹³⁹ Although John would later deny that sexual intercourse occurred, the court agreed that his letters proved otherwise due to the sensual and affection language of the letters between John and Johanna.¹⁴⁰

Both John and his "Dearest Wife" continued to write to one another even after he was stationed in Malta in 1805.¹⁴¹ With less frequent letters, the death of John's father in 1807, and his final return to England in 1808, the relationship between the couple altered. Using John's lawyer, Samuel Hawkins, as a transmitter of letters during this three year period, Johanna warned Hawkins that if John attempted to abandon her and marry another, "I will immediately come forward with my claims, which must put himself and the unfortunate woman in a most disagreeable situation."¹⁴² On the 2nd of June, 1808, she was forced to do so after John married a woman by the name of Laura Manners and, within a few days of the marriage, Johanna's legal battle began.

The *Dalrymple v. Dalrymple* case is extremely important because of the legal influence that the written word has with regards to marriage law and the legal realisation of how inconsistent ceremonial laws makes defining marriage extremely difficult. In the report of the legal process regarding the case, Dodson states that "[t]he consent of two parties expressed in words of present mutual acceptance, constituted an actual and legal marriage."¹⁴³ The complex Scottish marriage ceremonial laws are necessarily laid out for jurors to understand and judge. This is an important illustration of the weight that written materials held in marriage trials of the period. In the words of the Commission, "[i]f the material fact (i.e., of a present

¹³⁹ Dodson, *A Report of the Judgment* [...], *in the Cause of Dalrymple the Wife, Against Dalrymple the Husband*, 3.

¹⁴⁰ *Ibid.*, 69

¹⁴¹ *Ibid.*, 245.

¹⁴² *Ibid.*, 264-265.

¹⁴³ *Ibid.*, 13-14.

interchange of consent) is proved by the documents, it is *very* marriage, without the necessity of any process."¹⁴⁴ Both the *Report* and Collins recognise the Dalrymple case because, as Sir Patrick notes, it is the "one case" where a Scottish marriage had "confirmed and settled by the English Courts."¹⁴⁵ He links Anne and Geoffrey's marriage to the Dalrymple verdict when he clarifies that "[a]n English Court of Justice (sitting in judgment on the case I have just mentioned to Mr Moy) has pronounced that law to be good—and the decision has since been confirmed by the supreme authority of the House of Lords."¹⁴⁶ Thus, because Anne and Geoffrey "living in Scotland at the time—have promised each other marriage in writing, there is now no longer any doubt. They are certainly, and lawfully, Man and Wife."¹⁴⁷ As a result of the written evidence provided and the exemplary Dalrymple case as precedent, Anne is able to receive her legal rights as Geoffrey's wife.

While the Dalrymple case is celebrated for the education in Scottish marriage laws that it provided, what is little acknowledged by the *Report* and other journalists about this case is that when Johanna is declared the wife of John she is forced to remain married to a man who clearly did not wish to be her husband. Collins emphasises that it is the English Court of Justice's and the House of Lords' responsibility to not merely accept Scottish marriage laws as an exception but to reform a judicial system that is "loose and reckless" and leaves women such as Anne Silvester and Johanna Dalrymple married "to husbands whose one want and one purpose was to be free from their wives."¹⁴⁸ Instead, all men and women should be subjected

¹⁴⁴ *The Report of the Royal Commission on the Laws of Marriage*, 20.

¹⁴⁵ Collins, *Man and Wife*, 523.

¹⁴⁶ *Ibid.*, 523.

¹⁴⁷ *Ibid.*, 523.

¹⁴⁸ *Ibid.*, 551.

to the same ceremonial laws through the elimination of irregular marriages and the creation of uniform restrictions for marriage ceremonies throughout the United Kingdom.

Until the reform of ceremonial laws can be achieved and women become able to speak out within a court of law, women's writing must serve the purposes of legal self-representation. Collins draws upon the Yelverton and Dalrymple cases in order to illustrate the importance of women's writing at the time due to a lack of legal representation. The references to both cases enables Collins to link the fictional stories of Anne Silvester and her mother with the reality of the legal institution of marriage in Britain. Collins acts as Anne's legal counsel given the task of persuading readers of her innocence—providing readers with physical evidence of Anne's struggles to obtain her legal rights as a married woman. Like jurors, readers are presented with the negative effects of both Irish and Scottish ceremonial laws on innocent women, such as Anne and her mother. Through the inclusion of evidentiary support, *Man and Wife* provides readers with a representation of women's innocence under unjust ceremonial laws in hopes of inspiring reformative solutions.

III. "The Law doesn't allow a married woman to call anything her own": Property Laws and Testimonial Evidence

Collins explores a variety of experiences of married women and their sufferings as a result of unjust marriage laws. While Anne struggles legally to validate a marriage, Collins inverts her legal sufferings through the portrayal of Hester Dethridge and her struggles to escape her marriage. In his call for reformed ceremonial laws in Britain, Collins tackles the legal formalities of entering into marriage. However, it is Collins' commentary on a legal system that "doesn't allow a married woman to call anything her own" in *Man and Wife* that creates a

significant connection with the surrounding reforms.¹⁴⁹ As Pykett points out in her analysis of *Man and Wife*, "what begins as an attack on the confused state of the marriage laws subsequently develops into a continuation of Collins' attack on the position of women within marriage, and, at points, into an attack on the marriage as an institution."¹⁵⁰ By representing the suffering of women at opposing stages of life, Collins presents the legal institution of marriage to be the common factor. While it is important to recognise the thematic ways in which Collins portrays married women's lack of property rights, it is equally paramount to examine the narrative techniques that make *Man and Wife* a jurisprudential source for understanding the debates surrounding the Married Women's Property Act of 1870.

As I have demonstrated, Collins introduces his readers to Hester Dethridge in the preface to *Man and Wife* when he declares that "while I write these lines, Parliament is bestirring itself to remedy the cruel abuses which are here exposed in the story of 'Hester Dethridge.'"¹⁵¹ By alluding to Hester before the plot has even begun Collins makes his readers aware of the fact that her presence within the novel will be of great importance in the portrayal of married women's unjust treatment by the law. In this acknowledgment, readers are introduced to a woman who will ultimately be presented as an example of the "cruel abuses" that women who work for their "own earnings" face as a result of unjust property laws.¹⁵² But it is thirty-seven years from the chronological start of the plotline and ten chapters into the novel before Hester first makes an appearance, and not until the conclusion of the novel are readers presented with the tale of her marital sufferings in the form of her written "Confession." Hester's "Confession" demonstrates Collins' focus on the written words of

¹⁴⁹ Collins, *Man and Wife*, 586.

¹⁵⁰ Pykett, *Authors in Context: Wilkie Collins*, 135.

¹⁵¹ Collins, *Man and Wife*, 5.

¹⁵² *Ibid.*, 5.

women and the testimonial presentation of their sufferings.

The character of Hester is first presented within the novel as "a woman with the seal of some terrible past suffering set on her for the rest of her life."¹⁵³ She is introduced without giving readers any specific details about her past life except for the fact that

Her character (given by the clergyman of her parish) described her as having been married to an inveterate drunkard, and having suffered unutterably, during her husband's lifetime. There were drawbacks to engaging her, now that she was a widow. On one of the many occasions on which her husband had personally ill-treated her, he had struck her a blow which had produced very remarkable nervous results. She had lain insensible many days together, and had recovered with the total loss of speech.¹⁵⁴

It is solely through the source of a clergyman that readers are informed of Hester's past, giving the impression that she is a moral and trustworthy woman. Although it is unclear if Hester's inability to speak is a physical or psychological ailment, it allows her to have complete possession of her own voice,—communicating through a slate that hangs around her neck. In this way, Collins is mirroring the claims in Sarah Stickney Ellis' *Wives of England* (1843) when she argues that "silence" is "ranked by most men amongst the highest excellences of the female character" because "those wordy weapons sometimes so injudiciously made use of, are of all things what they most abhor."¹⁵⁵ Collins notes that women are legally silenced not because they are unworthy of a voice but because men fear the loss of legal control. He acknowledges that the spoken word is not the only way in which women can speak out against the legal bias that they "abhor." Norton acknowledges her necessity to use her literary skills in

¹⁵³ Collins, *Man and Wife*, 113.

¹⁵⁴ *Ibid.*, 113.

¹⁵⁵ Sarah Stickney Ellis, *Wives of England; Their Relative Duties, Domestic Influence, and Social Obligations* (New York: J. & H.G. Langley, 1843), 30.

the debates for marriage law reform because it was her husband "who has made silence impossible."¹⁵⁶

Collins' representation of Hester's silence symbolises a significant aspect of the legal institution of marriage. As Elizabeth Steere argues, "Hester's muteness is the physical embodiment of such a woman's voicelessness in the contemporary English justice system."¹⁵⁷ Kate Lawson uses the term "unspeakability" when discussing Hester's muteness and argues that "[t]he unspeakability of her experience is a function not only of her own shame, but also of a culture in which she has no voice."¹⁵⁸ Hester's sufferings are silenced within the legal system. Thus, the elimination of her physical voice serves to draw attention to her lack of legal voice. Hester's inability to speak of her marital sufferings reflects contemporary society's unwillingness to speak of the negative aspects of marriage. Only in writing can she share her experiences under unjust laws.

Cobbe portrays women's silence in marriage as representative of the lack of legal voice of wives by emphasising that when wed, "every husband makes a generous promise, which promise is not only a mockery, but the actual reverse and parody of the real state of the case: the man who promises giving nothing, and the woman who is silent giving all."¹⁵⁹ This is a direct reference to the differences in marital vows between men and women. While men must "promise" to "love," "comfort," "honour," and "keep" their wives, women must swear to

¹⁵⁶ Caroline Norton, *English Laws for Women in the Nineteenth Century* [1854], introduction by Joan Huddleston (Chicago: Academy Chicago Publishers, 1982), 2.

¹⁵⁷ Elizabeth Steere, "The Servant Victim in the Works of Wilkie Collins," in *The Female Servant and Sensation Fiction* (Houndsmill: Palgrave Macmillan, 2013), 77.

¹⁵⁸ Kate Lawson and Lynn Shakinovsky, "'Will She End Like Me?: Violence and the Uncanny in Wilkie Collins' *Man and Wife*," in *The Marked Body: Domestic Violence in Mid-Nineteenth Century Literature* (Albany: State University of New York Press, 2002), 129.

¹⁵⁹ Cobbe, *Criminals, Idiots, Women, and Minors*, 6-7.

"obey" and "serve."¹⁶⁰ Due to the double standard of marriage laws, when men break their vows they are left unpunished but when married women do not live up to their duties as wives they can be filed with a suit for separation or divorce. As the subject of marriage ceremonies are similarly crucial to *Man and Wife*, it is clear that Cobbe and Collins both agree on the lack of sanctity of such vows and the lack of legal power to make individuals abide to such promises in the portrayal of Anne's struggles to make Geoffrey live up to his promises. Collins illustrates Hester's muteness in order to reveal the ways in which women's voices are taken from them in marriage. As Hall states, "[m]ute, Hester becomes a living emblem of the legally and socially constructed wifely ideal which her husband was able to exploit mercilessly."¹⁶¹ Hester becomes evidence of her own oppression. Hester communicates with Anne, over how Geoffrey treats her, that "[w]e are loth to own it when they up with fists and beat us—ain't we?"¹⁶² But Hester does "own" her sufferings in the form of her writing and uses them to her advantage.

Besides Hester's ability to have control over her own voice, it is clear that her possessions are of the utmost important in the creation of her authority. After her efforts to help Anne escape, Hester is fired from her position as cook in Sir Patrick's household. Fortunately, Hester inherits a house from her brother "as some compensation for the sufferings that she had endured at the hands of her deceased husband."¹⁶³ Hester is able to start afresh with her new property through a profession as a landlady. When Anne arrives as Geoffrey Delamayn's lawful wife and a tenant of Hester's property, she comments "What! Hester

¹⁶⁰ "The Form of Solemnization of Matrimony," in *The Book of Common Prayer, and Administration of the Sacrements and other Rites and Ceremonies of the Church, According to the Use of the Church of England* (Oxford: Mark Bassett, 1762).

¹⁶¹ Hall, *Fixing Patriarchy: Feminism and Mid-Victorian Male Novelists*, 171.

¹⁶² Collins, *Man and Wife*, 474.

¹⁶³ *Ibid.*, 475-476.

Dethridge in possession of a house of her own? Well! Well! why shouldn't she have a rise in the world like other people?"¹⁶⁴ Anne here provides Collins' readers with an important argument in favour of women's property rights. Why shouldn't a woman of Hester's social class be able to support herself within a space that belongs solely to her?

Although only in possession of a small country cottage, Hester is extremely proud of her newly obtained property and income of "two hundred pounds a year."¹⁶⁵ Anne observes that "[s]he pointed round the room; and then took me to a window, and pointed round the garden—and then made a sign indicating herself. 'My house; and my garden'—that was what she meant."¹⁶⁶ Hester's pride in her cottage is not solely a result of her property ownership but also because of the authority and independence that it provides. At the start of the novel Hester is a mere cook, while Geoffrey, though not the heir to his father's wealth, comes from an aristocratic family and is a professional athlete. As a result of Hester's inheritance from her brother, she financially supersedes Geoffrey, who is frequently in debt for gambling. Through her estate ownership, Hester is able to have economic and societal authority over Geoffrey in addition to being the owner of his lodgings. As in Chapter 1's analysis of *The Tenant of Wildfell Hall*, Helen Huntingdon does not own Wildfell Hall and is, thus, continuously reliant on her brother as both the owner of her home and mediator in her attempts to earn a living as a painter. *Stuart of Dunleath's* Eleanor Raymond and *Lady Audley's Secret's* Lucy Audley are similarly thrown into a state of desperation by their inability to hold property independently of their husbands. Throughout *Man and Wife*, Collins comments on the role of property laws in marriage, such as in Arnold's newly inherited wealth as an opportunity to marry Blanche and

¹⁶⁴ Collins, *Man and Wife*, 473.

¹⁶⁵ *Ibid.*, 476.

¹⁶⁶ *Ibid.*, 475.

Geoffrey's desire to marry Mrs. Glenarm due to her "Birth and fortune."¹⁶⁷ By presenting the significance of wealth for these couples, Collins emphasises the class bias of current marriage laws, with separation only available to those who can afford legal representation and an independent lifestyle thereafter. This legal bias is what makes the passing of the Property Act so important for working class wives. As Hester later admits in her "Confession", "the law might protect me, provided I had money to spend in asking some higher court to grant me a separation."¹⁶⁸ Thus, Hester does her best to defend Anne against her brutal husband, understanding that she has "no means of appeal to expensive legal protection" and no form of independence if she could escape.¹⁶⁹

Hester's protection of Anne supports Hall's analysis that "women *must* work together to counter the evil perpetuated by selfish, authoritarian men, evil allowed by law and convention."¹⁷⁰ In an altercation in which Anne reproaches Geoffrey about his refusal to recognise their marriage, Hester is able to defend Anne and stop Geoffrey from physically attacking his wife. As Anne recounts, "[s]he looked at me, and then looked towards the garden" where Geoffrey stood "and made the motion of striking a blow with her clenched fist."¹⁷¹ Hester is able to "smile" over the situation, knowing that Geoffrey does not control her and that, as his landlady, she has control over him.¹⁷² Speedwell states the "[t]hey were well matched in that house" in reference not only to Hester's violent actions but to her authority over Geoffrey while they remain at her cottage.¹⁷³ After being rescued from Geoffrey, Anne

¹⁶⁷ Collins, *Man and Wife*, 186.

¹⁶⁸ *Ibid.*, 588.

¹⁶⁹ *Petition for Reform of the Married Women's Property Law Presented to Parliament*, 237.

¹⁷⁰ Hall, *Fixing Patriarchy*, 161.

¹⁷¹ Collins, *Man and Wife*, 477.

¹⁷² *Ibid.*, 478.

¹⁷³ *Ibid.*, 478.

notes that Hester "made the same motion again with her clenched hand [...] and nodded her head, as much to say, 'He will do it yet!'"¹⁷⁴ This is an important scene in understanding Hester as a symbol of the marriage legal reform movement of the period. Lisa Surridge argues that "[w]omen characters who protect abused women [...] were depicted as dangerous in Victorian realist fiction because they threatened patriarchal marriage, under which the husband was constructed as the protector of the wife."¹⁷⁵ Hester shows that the real threat for married women is their own husbands.

Many analyses of Hester's marriage, such as those by Surridge and Lawson, focus on her lack of property rights while married. I, however, argue that it is the way in which she reclaims the control of her property after her husband's death through the physical property of her written "Confession" that most distinctly reveals Hester's fear that even her story and voice will be taken from her. Collins reveals Hester's testimony as an example of women's sufferings under contemporary property restriction. He borrows the technique of written confessions, like those of Jean-Jacques Rousseau and Thomas De Quincey, which gained popularity in the eighteenth century and were used, much like a legal confession, to argue truthfulness and plead redemption. The value of Hester's "Confession" can be inferred from the way in which she hides the papers on her person at all times. Concealed in her "upper clothing," Hester has sewn a "secret pocket" into her dress where she keeps a "manuscript inscribed, 'My Confession'" ready to write "another entry, under the entry made on the previous night."¹⁷⁶ By describing her attachment to the "Confession," Collins illustrates that Hester's past marriage and the sufferings that she has had to endure are by far the most valuable of all her

¹⁷⁴ Collins, *Man and Wife*, 478.

¹⁷⁵ Lisa Surridge, *Bleak Houses: Marital Violence in Victorian Fiction* (Athens: Ohio UP, 2005), 159.

¹⁷⁶ Collins, *Man and Wife*, 579.

possessions. As her writing contains a record of the miseries that she was forced to endure as a married woman, Hester's "Confession" acts as the most valuable piece of property. The mere act of hiding her writing emphasises its power in much the same way as Helen Huntingdon's diary in *The Tenant of Wildfell Hall* and the marriage certificates hidden in clothing in *Lady Audley's Secret* and *Aurora Floyd*. The secret possession of writing became a popular literary device in Samuel Richardson's *Pamela* (1740) when she declares that "I begin to be afraid my Writings may be discover'd; for they grow large! I stitched them hitherto in my Under-coat, next my Linen."¹⁷⁷ As April London suggests, Pamela's letters and Hester's "Confession" serve as "both an alienable text recounting events and her responses to them, and, as an object, a metaphor for the female body as property."¹⁷⁸ Collins engages with Richardson's portrayal of Pamela's letters and the techniques of sensation novels by introducing Hester's "Confession" as stitched into her clothing in order to protect her most valued piece of property.

When not hiding her "Confession" in her apparel, Hester is moreover unable to have her writings out of sight. This is confirmed by the fact that "[n]ot even for a minute could she prevail on herself to leave it in one room, while she was away from it in another."¹⁷⁹ Collins illustrates the authority that written evidence has over its readers by creating suspense regarding the content of Hester's "Confession." While he makes it known that Hester's muteness derived from physical abuse by her husband, he does not present her side of the story until her written "Confession" is introduced. Furthermore, it is important to note that Hester never tells her story or relinquishes the possession of her writing. It is only when the

¹⁷⁷ Samuel Richardson, *Pamela* [1740], ed. Thomas Keymer and Alice Wakely (Oxford: Oxford University Press, 2001), 131.

¹⁷⁸ April London, *Women and Property in the Eighteenth-Century English Novel* (Cambridge: Cambridge University Press, 1999), 54.

¹⁷⁹ Collins, *Man and Wife*, 580.

property of her "Confession" is taken from her that readers are able to view the precious words written by Hester through the eyes of Geoffrey. In the same way that married women's property and legal voices can be legally confiscated, Hester's testimony of marital injustice is taken from her. As Hester is sleeping in an armchair, Geoffrey sneaks into the room and picks "up the white thing on the floor" which "proved to be a collection of several sheets of thin paper, neatly folded together, and closely covered with writing."¹⁸⁰ Geoffrey is curious at the idea of Hester "writing," especially when he recollects that "[a]s long as she was awake she had kept it hidden in her hand."¹⁸¹ The idea that a woman of Hester's social standing and profession would possess such a precious piece of writing surprises Geoffrey.

Collins' readers become further aware of the significance of her written words upon Geoffrey's inspection. In the prologue of her "Confession," Hester writes:

My Confession:—To be put into my coffin; and to be buried with me when I die.

This is the history of what I did, in the time of my married life. Here—known to no other mortal creature, confessed to my Creator alone—is the truth. [...] When I am called before the Judgment Seat, I shall have this in my hand.

Oh just and merciful Judge, Thou knowest what I have suffered. My trust is in Thee.¹⁸²

Hester has no intention of ever having her sufferings known to another: she wishes the "Confession" to "be put into my coffin; and to be buried" with her when she dies. As Schramm notes, the legal presentation of witness testimonies and confessional statements illustrate "the inter-relationship of religious epistemology and legal conceptions of evidentiary reliability."¹⁸³ Collins explicitly links religious confessions and legal testimonies in order to convey that the institution of marriage is not solely a religious institution, as it has been presented in the past.

¹⁸⁰ Collins, *Man and Wife*, 581.

¹⁸¹ *Ibid.*, 581.

¹⁸² *Ibid.*, 581-582.

¹⁸³ Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Theology*, 29.

As the portrayal of legal versus religious contracts in the matter of ceremonial laws has revealed, the unjust treatment of married women is often justified through the lens of religion.¹⁸⁴ However, Collins notes that marriage is a legal institution and should, consequently, form a "just and merciful" legal system. Hester writes to those who hold the "Judgement Seats" in Heaven, much like the judges and politicians responsible for "lawfully establishing the right of a married woman, in England, to possess her own property, and to keep her own earnings."¹⁸⁵ Hester presents her writing for the purpose of "Judgement" as if it were a written testimony being presented in court while simultaneously pleaded to the "Judgement" of God to sympathise with her sufferings and excuse her sins.

It is important to recognise that readers are forced to view Hester's writings through the eyes of the only character who is villainous enough to steal it from her possession. As Surridge points out, "the reader reaches this text in the most ironic of ways, reading it over the shoulder of the novel's villain, who approaches it with neither sympathy, judgment, justice nor vindication."¹⁸⁶ While Geoffrey may approach Hester's "Confession" "with neither sympathy, judgment, justice nor vindication," Collins hopes that his readers will instead judge Hester's case as if she were sympathetically pleading to them in court. He hopes that readers will question why Hester chose to write her story in a physical form rather than keep her story hidden in her mind. As this dissertation argues, the physical, written form of evidence is tremendously important for married women due to the fact that written evidence remained

¹⁸⁴ W.E. Gladstone and Christopher Wordsworth are seen as the primary opponents to the Divorce Bill for the sake of religion. The quote the following as proof of men's superiority to women in marriage: Deuteronomy ch. 24, St. Matthew ch. 5 and 19, St. Mark ch 10, St. Luke ch 16, Romans ch 7, and 1 Corinthians ch 7. (See Horstman, *Victorian Divorce*, 53-5).

¹⁸⁵ Collins, *Man and Wife*, 5.

¹⁸⁶ Lisa Surridge, "Unspeakable Histories: Hester Dethridge and the Narration of Domestic Violence in *Man and Wife*," *Victorian Review*, 22:2 (Winter 1996): 107-109.

their only defence until they were given the right to legal representation in 1882. It also allows Hester to have ownership of her own voice when otherwise barred.

Hester details her married life and crimes within the story of how she married a man only to discover afterwards her husband's drunkenness and bad temper. She becomes the sole earner in her household by obtaining a position as a housemaid in a prestigious home, using her money to buy furniture and pay rent while her husband drinks and gambles. As all of the married women analysed in this dissertation thus far have similarly come to realise, Hester soon becomes aware that not even her own wages and what she purchases with her earnings belong to her. Returning from work, Hester comes home to find brokers "carrying off the furniture which [she] had bought."¹⁸⁷ After asking who gave them permission to take away her belongings, she is told that "they were acting under my husband's orders; and they went on removing it, before my own eyes."¹⁸⁸ Hester's husband is completely within his rights in selling her possessions to sustain his constant drunkenness by reason that, when married, women gave up all ownership rights of personal property to their husbands. As Lee Holcombe states, "[h]e could use and dispose of this property in any way he chose during his lifetime without his wife's consent."¹⁸⁹ Believing that it is in her legal right to have possession over the fruits of her own labours, Hester seeks legal advice only to find out that "Law and Society armed her husband with his conjugal rights. Law and Society had but one answer to give, if she appealed to them:—You are his wife."¹⁹⁰ Hester's role as his "wife" is presented as some sort of justification for legal injustice. She is forced to realise that "Law and Society" put her

¹⁸⁷ Collins, *Man and Wife*, 585-586.

¹⁸⁸ *Ibid.*, 585-586.

¹⁸⁹ Lee Holcombe, *Wives and Property: Reform of the Married Women's Property Law in Nineteenth-Century England* (Toronto: University of Toronto Press, 1983), 23.

¹⁹⁰ Collins, *Man and Wife*, 550.

husband's interest before her own and that she must relinquish herself to the double standards of marriage laws.

After her furniture and wages are taken from her by her husband, Hester has no option but to continue working to buy back her lost possessions with full knowledge that they may once again be taken from her to support her husband's drinking habit. In Holcombe's analysis of how such lack of property rights affected working women, she states that in 1851 "24 percent of all married women were employed."¹⁹¹ In the marriages of these women, most "worked outside the home because their husbands were unable or unwilling to support their families" which led to "very painful cases' that arose when husbands seized their wives' earnings and also their personal possessions, often squandering these on drink and leaving their families with no recourse but the workhouse."¹⁹² Hester's "Confession" is a perfect example of one of the "very painful cases" of which Holcombe speaks. She is unable to succeed in her profession due to continuously having to rebuild her life after her husband confiscates her furniture and wages, nor can she prevent the inevitable seizing of her property from occurring in the future. Lawson asserts that Hester "describes the first traumatic incident in her marriage as the illegitimate selling of her furniture. There is an intimate connection between place and property, on the one hand, and identity, on the other."¹⁹³ The inability to obtain an individual legal identity reveals just how much property rights dictated women's experiences within the institution of marriage by deeming them to be mere possessions of their husbands. The link between married women's legal oppression and lack of legal representation is an important aspect of this dissertation, from the real life activist identity of Caroline Norton

¹⁹¹ Holcombe, *Wives and Property*, 161.

¹⁹² *Ibid.*, 161.

¹⁹³ Lawson and Shakinovsky, "'Will She End Like Me?: Violence and the Uncanny in Wilkie Collins' *Man and Wife*," 143.

in order to embrace her experiences to the secret identities of Helen Huntingdon and Lucy Audley in order to hide their experiences.

Hester has no way to escape from her husband. She has no relations to help her escape and no money to afford her independence. She writes that "it's not good for a woman to be situated as I was; friendless and alone, with her things that she took a pride in sold away from her, and with nothing to look forward to in her life to come."¹⁹⁴ It is clear just how important Hester's "things" meant to her. Having them taken from her, she is completely powerless. Instead she observes that "[t]he laws of my own country, which ought to have protected me as an honest woman, left me helpless. In place of the laws, I had no friend near to open my heart to."¹⁹⁵ Unlike Helen Huntingdon and Eleanor Raymond, Hester has no financial support from family and friends in order to live separately from her husband or rebuild her life after her property is confiscated. When the artwork of Helen Huntingdon intended to support her escape from her husband is destroyed she luckily has the financial support of her brother until a time when she can earn an income. It is clear that Hester blames the legal system that has put her in this position. Questioning a legal system that has excluded her, Hester pleads "[c]onsider me as a human creature, and say: Was this not trying my humanity very hardly?"¹⁹⁶ But the issue remains that the legal system does not see her as a "human creature" worth basic rights. Even when her husband abandons her and leaves her to support herself, he is able to find her and once again rob her of her earnings. In her "Confession," Hester notes how the legal system fails to protect her from the brutality of her husband: "[h]e had traced me, with the help of a man he knew in the police; and he had come to claim his rights...there was no escape for

¹⁹⁴ Collins, *Man and Wife*, 587.

¹⁹⁵ *Ibid.*, 592.

¹⁹⁶ *Ibid.*, 592.

me.”¹⁹⁷ The "rights" to which she refers are her husband's rights to the property of his wife, for once again Hester is forced financially to provide for her husband only to be physically abused by him whilst in one of his drunken rages and left robbed of her possessions.

With the proof of her husband's violence visible through the bruises on her face, Hester hopes for legal redress only to find out that “[t]here is no limit, in England, to what a bad husband may do—as long as he sticks to his wife.”¹⁹⁸ In other words, as long as her husband continues to return to her—even if solely for the purpose of stealing her belongings—she must legally remain his wife. Cobbe notes that because husbands, such as Hester's, come back "just often enough to keep within the technical period fixed as desertion, and take from her everything she may have earned [...] there is absolutely no resource for her at all."¹⁹⁹ Because her husband never deserts her permanently, Hester has no legal right to a dissolution of marriage. As Chapter 3 discussed, only after seven years could a woman apply for a divorce based on desertion.²⁰⁰ If he chose to return at any point then desertion would not be recognised by the law.

Consulting a lawyer, Hester is told that for physical abuse her husband can either be fined or serve a short sentence in prison. Hester recognises that contemporary marriage laws have trapped her in an abusive marriage and views both options as a punishment of her rather than of her husband. In response to the absurdities of such laws, Hester notes that if given a fine "he can pay that, out of the money he gets by selling my furniture" and if sent to prison "while he's in it, what's to become of me, with my money spent by him, and my possessions

¹⁹⁷ Collins, *Man and Wife*, 589.

¹⁹⁸ *Ibid.*, 590.

¹⁹⁹ Cobbe, *Criminals, Idiots, Women, and Minors*, 12

²⁰⁰ Norton, *A Plain Letter*, 13.

gone—and when he's *out* of it, what's to become of me again."²⁰¹ Hester is unable to seek any legal action in which her husband would not be benefited. As a retort to the lack of legal authority given to wives in her situation, Hester explains that "[t]here's more that's bruised in me than what shows in my face."²⁰² Lawson notes that "[t]he magistrate can punish her husband because he can see the bruise but her real injury remains unresponded to and uninscribed."²⁰³ As Chapter 3 acknowledged with Aurora Floyd's hope that the violence enacted by her first husband would be justification for a divorce, married women were barred from applying for divorce on the sole basis of cruelty.²⁰⁴ Only when deemed extreme violence and accompanied by proven adultery would a separation be granted.²⁰⁵ Hester understands that the law is not there to help her but to help her husband sustain his control over her despite his crimes. Instead, her sufferings must remain silenced within the legal system.

Out of options, Hester declares that "[m]agistrates and lawyer; relations and friends; endurance of injuries, patience, hope, and honest work—I had tried all these, and tried them vainly. Look round me where I might, the prospect was closed on all sides."²⁰⁶ Upon returning home and finding her furniture sold again Hester becomes outraged and goes to confront her husband in person. In his drunken state, he becomes aggressive and beats her more forcefully than ever before. Hester states that "[t]hree of my teeth were knocked out [...] My head had struck against something in falling; and some part of me (a nerve, I think they said) was

²⁰¹ Collins, *Man and Wife*, 587.

²⁰² *Ibid.*, 587.

²⁰³ Lawson and Shakinovsky, "'Will She End Like Me?: Violence and the Uncanny in Wilkie Collins' *Man and Wife*," 18.

²⁰⁴ A. James Hammerton, "Victorian Marriage and the Law of Matrimonial Cruelty" *Victorian Studies* 33.2 (Winter 1990): 271.

²⁰⁵ *First Report of The Commissioner Appointed by Her Majesty To Enquire Into the Law of Divorce*, 11.

²⁰⁶ Collins, *Man and Wife*, 593.

injured in such a way as to affect my speech."²⁰⁷ In this moment, Hester's physical silence now matches her legal silence. Left by her husband in a state of serious injury, Hester begins to plot her revenge. She understands that if the law will not help her, she must help herself. She believes that "[t]here's no deliverance from this, but in death—his death or mine."²⁰⁸ Hester waits for her husband to return home in a drunken state and whilst he sleeps smothers him, passing his death off as "congestion of the lungs."²⁰⁹ However, while the written "Confession" is proof of Hester's guilt, Collins presents it as justification of why she did what she did.

In examination of Collins' choice to display Hester's story in the form of a written confession, Dougald Maceachen states that "the presentation of an emotionally stirring 'case history' was a far more potent means of reform, so far as the average, uncritical reader was concerned."²¹⁰ Through the formation of Hester's story as a "case history," readers are presented with "as much a declaration of victimhood as a confession of crime."²¹¹ In other words, as Maceachen confirms, "[m]urder is able to do for [Hester] what the law cannot do. Murder, Collins suggested, was the consequence of the law's failure to protect the wife."²¹² The association between murder and marriage law is similarly emphasised in *Lady Audley's Secret* and *Aurora Floyd* as the only option available to married women to free them from their sufferings as wives. Cobbe links murder with legal oppression when she asks "[w]hy is the property of the woman who commits Murder, and the property of the woman who commits

²⁰⁷ Collins, *Man and Wife*, 594.

²⁰⁸ *Ibid.*, 590.

²⁰⁹ *Ibid.*, 604.

²¹⁰ Dougald Maceachen, "Wilkie Collins and British Law," *Nineteenth-Century Fiction* 5(2) (Sept 1950): 134.

²¹¹ Surridge, "Unspeakable Histories: Hester Dethridge and the Narration of Domestic Violence in *Man and Wife*," 107.

²¹² Maceachen, "Wilkie Collins and British Law," 133.

Matrimony, dealt with alike by your law?"²¹³ Both Cobbe and Collins equate marriage and murder as similarly the cause of women's imprisonment and for many married women, imprisonment is preferable to marriage.

The year prior to *Man and Wife*'s publication, an important trial caught the attention of married women's property right activists around Britain. In 1869, both the *Times* and the *Morning Post* deemed the *Rex v. Palmer* case "as sad and shocking a story as we ever remember to have read."²¹⁴ Elizabeth Steer and Lisa Surridge briefly mention *Rex v. Palmer* as a possible influence on Collins' portrayal of Hester's crime on the basis of plot similarities and examples of the injustices of property laws. Surridge notes that

The stories of Hester and Susannah Palmer are strikingly similar: in each, the husband's abuse and alcoholism is compounded when he exercises his legal right to claim his wife's earnings and property after their separation. Both women (real and fictional) are trapped by Victorian marriage laws, and both finally assault their husbands.²¹⁵

However, it is also essential to note the ways in which testimonial evidence played an importance role in both cases. Therefore, it is important to provide an in depth examination of the Palmer case in order to understand how the trial contributes to Collins' appeal for married women's property rights. The defendant in the trial was Susannah Palmer, who suffered many of the same horrors as Hester. Her twelve-year relationship with James Palmer was a violent and miserable marriage. As the case report highlights, James was "repeatedly in custody for assaulting [Susannah] ... and had undergone six months' imprisonment for an aggravated

²¹³ Cobbe, *Criminals, Idiots, Women, and Minors*, 5.

²¹⁴ *Times* [London, England] 16 Jan. 1869; *Morning Post*, April 15, 1869; *The Case of Susannah Palmer; Indicted for Wounding a Husband Who Had Illtreated Her* (London: A. Ireland & Co., 1869), 3-4.

²¹⁵ Surridge, "Unspeakable Histories: Hester Dethridge and the Narration of Domestic Violence in *Man and Wife*," 104.

assault upon [her son].”²¹⁶ The Palmer case was tried in a criminal court due to the nature of the crime. As a result, Susannah was able to testify on her own behalf and provided the jury with an extremely sympathetic account of how she was treated by her husband. She would have been unable to do so if she had been tried within a common law court.

In her testimony, Susannah states that on numerous occasions "she was turned out at night, with her children, by her husband, who brought home a bad woman" and, when she complained, "he blackened both her eyes and knocked five of her front teeth out."²¹⁷ Susannah's husband would not allow her to work, yet was unwilling to provide any income. As a result, she and her children were forced to work secretly and steal whatever was still needed to survive. However, "[a]s soon as she had contrived to earn enough money by word to get decent lodgings and a few articles of furniture, he invariably appeared upon the scene, sold up all that belonged to her, even to her bed, and "broke up her home".²¹⁸ When Susannah confronted her husband regarding his poor treatment of her and their children, "[h]er little boy was toasting a piece of bread on the point of a knife, and laid the knife upon the table. She took it up to cut some bread. The husband attempted to strike her, upon which she raised her arm in which the knife was."²¹⁹ Immediately after wounding him, Susannah ran up to the nearest constable and "told him she had stabbed her husband, and begged that he would take her into custody, and so restrain her from doing any more mischief, as she could not control her feelings, and, if left alone, she feared she would 'finish' him before the morning."²²⁰ The officer saw this declaration as a clear admission of guilt. The jury was torn after Susannah's

²¹⁶ *The Case of Susannah Palmer*, 3.

²¹⁷ *Ibid.*, 2.

²¹⁸ *Ibid.*, 4-5.

²¹⁹ *Ibid.*, 1.

²²⁰ *Ibid.*, 1.

compelling testimony of her marital sufferings. Nonetheless, because she had admitted that she had stabbed her husband, whether it was an accident or not, Susannah was found guilty.

Reporters called for a retrial, declaring that "[s]he seems to have thought there was no remedy but to endure as patiently as she could his repeated brutality, and who can wonder that at last, in a more than usually trying moment—if this was possible—her patience deserted her."²²¹ The plethora of publicity surrounding the trial and outrage over the verdict led to a court issue for an appeal. While her case was re-tried, court deemed that Newgate Prison "would be ten times better than the hell in which she had been compelled to live."²²² The original *Times* report of Susannah Palmer's trial was republished around Britain, renamed "A Miserable Story of Married Life" in the *Liverpool Mercury* and "A Sad Story" in the *York Herald*. Concern over her fate spread and the debate for property rights grew.²²³ Meanwhile, donations were collected on her behalf so that when she was finally released she could afford legal action and separation from her husband.²²⁴

As a result of public concern over Susannah's fate and the sufferings that she had endured, the *Rex v. Palmer* trial became a popular source of evidence by reformists to support their claims regarding the necessity for married women's property rights. Reformists revealed that "the existing law having been thus proved inadequate to give her any protection whatsoever" are reason enough for why such laws ought to be altered.²²⁵ Cobbe references the Palmer trial as an example of how "[t]he law, as it at present exists, has absolutely no help to

²²¹ *The Case of Susannah Palmer*, 4-5.

²²² *Ibid.*, 3.

²²³ *Times*, (London: 16 Jan. 1869); *York Herald*, (York: 23 Jan, 1869).

²²⁴ *The Case of Susannah Palmer*, 8.

²²⁵ *Ibid.*, 8.

offer."²²⁶ Collins even goes as far as to mock the absurdity of a legal system that will see murder justified by an unhappy marriage but is unwilling to create laws that would prevent such murders when he declares that "[h]ere was the Law that they all paid to protect them, actually doing its duty in dreadful earnest! Shocking! shocking!".²²⁷ However, as Hall argues, "this is a noteworthy situation, one in which patriarchs must choose between threats: a lesser threat to male power through alterations in a morally bankrupt legal system or a murderous threat of women physically redressing the wrongs that they have suffered."²²⁸ In other words, would husbands rather lose their rights to their wives' possessions or be murdered in their sleep out of desperation? Because of unjust property laws, Hester believed that she must do what the legal system could not: end her marriage. As Hall notes, "Hester is a killer formed by an oppressive system and a remarkable testament to the way socially sanctioned abuse creates its own resistance and sows the seeds of its own destruction."²²⁹ It is at this point in Hester's "Confession" that she vows that "[n]o human ear *has* heard me, from that time. No human *will* hear me, to the day of my death."²³⁰ Hester remains silent of her guilt in her husband's death and keeps the manuscript of her "Confession" on her person as a constant reminder of her past and why she remains silent, not because of the physical trauma that she endured but as protest against the legal system that denies her a voice.

Upon reading Hester's "Confession," Geoffrey is unable to sympathise with her sufferings or gain perspective on Anne's situation. Instead, Geoffrey merely sees Hester's murder of her husband as a means of escaping an unhappy marriage and her murderous

²²⁶ Cobbe, *Criminals, Idiots, Women, and Minors*, 15.

²²⁷ Wilkie Collins, *Armadale* [1866], ed. Catherine Peters (Oxford: Oxford University Press, 1989), 645.

²²⁸ Hall, *Fixing Patriarchy*, 172.

²²⁹ *Ibid.*, 173.

²³⁰ Collins, *Man and Wife*, 604.

experience as a tool for how to set his plan into action. Collins demonstrates the authority that Hester's writing has over its possessor when Geoffrey declared that "[w]hile the woman's Confession was in his pocket, the woman herself was in his power. 'If she wants it back,' he said, 'she must get it on my terms.'"²³¹ Geoffrey discovers that by controlling Hester's property he is able to control her. However, if Geoffrey had correctly understood what he had read he would have realised that Hester is willing to do anything to take back the possession of her property, with no care for the limitations of the legal system that refuses to protect her. As a result, in the moments when Hester is aiding in Geoffrey's attempted murder of Anne, she instead murders him just as she had her husband. Hester sees murder as the only option when her property is taken from her.

Collins uses Hester's "Confession" as the ultimate testimony for women's property rights and the lengths that they will go to in order to obtain this right. As Maceachen notes, "Collins appeal[s] for legislation granting property rights to married women."²³² While Hester intended her writings to be a religious confession for the forgiveness for her sins, it is also distinguishably a legal confession, or testimony, of how a married woman's lack of property rights leads to the necessity of taking actions into her own hands. It is not whether or not she is judicially but morally guilty or innocent. Collins does not put the blame on Hester but on her situation. Despite the fact that she is responsible for two murders, Hester is represented sympathetically because of the sufferings that she has had to endure. With the ongoing debates surrounding the passing of the Married Women's Property Act, Collins provides a first person account of those who would be most affected by legal reform. He presents a woman who is willing to sacrifice her own freedom in order to ensure that others will be able to live life safe

²³¹ Collins, *Man and Wife*, 607.

²³² Maceachen, "Wilkie Collins and British Law," 132.

from the abuse of husbands like Geoffrey. Like Lucy Audley, Hester is "confined for life" in an asylum, "resigned to the existence that she leads" and become a martyr for Anne in hopes that she would be relinquished from the same fate.²³³

IV. Conclusion: "When I am called before the Judgment Seat, I shall have this in my hand"²³⁴

The authority of written testimonies had greatly contributed to the contemporary shifts of marriage laws in favor of women, but, as Collins' novel makes clear, married women were still unable to speak on their own behalf. To ensure the further legal reform of the institution of marriage, full legal representation for women was necessary. Collins argues that the recently instituted custody and divorce laws are useless without married women's ability to seek legal action. While simultaneously asserting the necessity of reformed ceremonial and property laws, Collins uses the methods of legal testimonies to highlight the ways in which women are silenced by the legal system.

As Schramm states, "we see that we are invited to compare the qualities of the evidence brought before us, to test its reliability and to judge the actions of the protagonists accordingly."²³⁵ Such evidence must be presented in a way that influences sympathy towards married women's sufferings in order to convince judges, jury members, and politicians of the necessity for marriage law reform. Collins puts his readers in this position, making them judge the ways in which Anne and Hester are treated by marriage laws of the time. Schramm further emphasises that "authors, like lawyers, must be able to argue a case, to master the

²³³ Collins, *Man and Wife*, 639.

²³⁴ *Ibid.*, 582.

²³⁵ Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Theology*, 21.

manipulation of evidence, and the similarities between the construction of fictional and of legal narratives."²³⁶ In other words, novelists began to imitate the legal system's presentation of evidence in order to ground their fiction in reality. *Man and Wife* exemplifies this technique, providing an important contribution to the debate for marriage reform through the incorporation of women's legal narratives. Rather than examining the guilt of individuals, Collins demonstrates that such testimonies in the field of marriage law instead expose the guilt of the system while highlighting the innocence of married women. Acting, in a sense, as the legal representative of both women, Collins presents the history of their oppression and provides first person testimonials that fully illustrate the circumstantial evidence surrounding their sufferings. In a period of marriage legal reform, Collins provides an illuminating perspective into the lives of those suffering under an unjust legal system while simultaneously incorporating the written and legal debates surrounding the reform of ceremonial and property laws for married women.

As I have argued in this chapter, *Man and Wife* is an essential text for understanding the ways in which novelists of the period chose to engage with the legal presentation of evidence as a way of legitimising their arguments for marriage reform. By providing a factual basis to Anne and Hester's legal struggles and narrative forms for refuting marriage laws, Collins uses narrative jurisprudence to represent the most truthful and persuasive portrayal of married women's legal oppression. This aim is further demonstrated through the parallels between Anne and Hester's sufferings and those of real-life marriage trials. While many of Collins' other works similarly parallel court proceedings and the necessity of reasonable evidence, *Man and Wife*, in particular, identifies the ways in which women are disadvantaged

²³⁶ Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Theology*, 8.

by their lack of legal voice. Collins explores the means of written evidence to address women's inability to speak out against the injustices of marriage laws within the legal system. Through his use of women's writing as a rhetorical tool in the debate for marriage reform, Collins allows those women most affected by ceremonial and property law injustices to speak on their own behalf in a system where they would otherwise be forced to be silent.

Chapter 5

"She Lives": Experience and Sympathetic Realism in George Meredith's *Diana of the Crossways*

In a letter to French poet André Raffalovich, George Meredith declares that his current novel "is partly based on a real instance."¹ He would later inform novelist Robert Louis Stevenson that *Diana of the Crossways* (1884) is "partly modelled upon Mrs. Norton. But this is between ourselves."² In order to accurately represent Caroline Norton, Meredith "had to endow her with brains and make them evidence to the discerning."³ This "positive heroine with brains, with real blood" haunted Meredith to the point that he asserted, "I think she lives."⁴ Despite the undeniable representation of Norton, in the first complete edition of this novel, published in 1885, Meredith makes a point to indicate that "[t]he story of *Diana of the Crossways* is to be read as fiction."⁵ With Norton's death only six years earlier, the legacy of her marital sufferings and advocacy for marriage law reform was still fresh to Meredith and in the minds of his readers. Norton lived in a world where scandal and rumour were also taken as fact—blurring the lines between fact and fiction. As Mary Poovey argues, Norton "justifies publicizing her private story by rhetorically splitting herself into two persons: the long-

¹ George Meredith to André Raffalovich, Box Hill, 16 June 1884, in C.L. Cline, ed., *The Letters of George Meredith* (Oxford: Clarendon Press, 1970), (2), 829.

² George Meredith to Robert Louis Stevenson, Box Hill, 24 March 1884, in C.L. Cline, ed., *The Letters of George Meredith* (2), 839.

³ *Ibid.*, 840

⁴ George Meredith to Miss Louisa Lawrence, Box Hill, 21 April 1884, in C.L. Cline, ed., *The Letters of George Meredith* (2), 841; George Meredith to Robert Louis Stevenson, Box Hill, 24 March 1884, in C.L. Cline, ed., *The Letters of George Meredith* (2), 839.

⁵ George Meredith, *Diana of the Crossways* [1885], introduction by Lois Joseph Fowler (New York: W.W. Norton & Company, 1973), i.

suffering victim of social injustice and the vindicating polemical writer."⁶ This splitting of Norton inspired Meredith's portrayal of Diana Warwick. The *Dublin Review* saw the connection between Norton and Diana as a perfect example of "a historical sketch under the disguise of fiction."⁷ As William Ray states in his examination of narrative representation, such literary works illustrate a "play between history and story."⁸ Despite the factual inaccuracies of Meredith's portrayal of Norton, when *Diana of the Crossways* came out in 1885, it was "pounced on, as soon as published."⁹ This frenzy to further understand Norton's marital sufferings reveals the effect that accounts of marital turmoil had on the public, in the form of rumours, scandal reports, and even their influence in the Parliamentary debates for legal reform. Norton was not only a historical figure—the subject of the most illustrious adultery trial of the nineteenth century and the author of the most prominent parliamentary papers in support of marriage law reform—but also a source of inspiration for literary representations of legally oppressed married women.

It is the literary representation of Norton's experiences that made critics such as W.E. Henley claim that Diana "suggests Mrs. Norton, it is true, but she suggests Mr. George Meredith still more."¹⁰ Like Norton, Meredith became the subject of gossip and scandal surrounding his own marital struggles and his wife's adultery. Meredith had full knowledge of the effects that marriage scandals could have on those involved. In 1857, Meredith's wife,

⁶ Mary Poovey, *Uneven Developments: The Ideological Work of Gender in Mid-Victorian England* (London: Virago Press, 1989), 65.

⁷ Anonymous, "Diana of the Crossways," *Dublin Review* (London: Chapman & Hall, 1885), 191.

⁸ William Ray, *Story & History: Narrative Authority and Social Identity in the Eighteenth-Century French and English Novel* (Cambridge, MA: Basil Blackwell, 1990), 24.

⁹ George Meredith to Herman Charles Merivale, Box Hill, 22 April 1885, in C.L. Cline, ed., *The Letters of George Meredith* (2), 895.

¹⁰ W.E. Henley, *Antheneum*, 14 March 1885, in Ioan Williams, ed., *Meredith: The Critical Heritage* (London: Routledge, 1971), 1.70.

Mary, ran away with the Pre-Raphaelite painter, Henry Wallis. Meredith became the subject of gossip and scandal.¹¹ And yet, despite the ways in which he was treated by the public, Meredith still sympathised with his wife. He frequently used his wife as a model in his writing to represent married women's inabilities to leave an unhappy marriage. Meredith's 1879 *The Egoist* and 1891 collection of sonnets entitled *Modern Love* highlighted the portrayal of a disinterested, self-absorbed husband and his regretful, dispirited wife as a trope in his writing. Distinct from these works, *Diana of the Crossways* pays particular attention to the ways in which married women's right to legal representation can prevent and dispute rumours.

Published three years after the passing of the 1882 Married Women's Property Act which gave married women the right to file suit against their husbands and testify in their own defence, *Diana of the Crossways* informs readers of the importance that married women's narratives can have on the representation of marriage law injustices. Set in the 1830s, *Diana of the Crossways* tells the story of a married woman's inability to defend herself against her husband's false accusations of adultery and the use of her literary skills to regain the public's sympathy. Regardless of whether Meredith's readers were fascinated with his factual or fictional portrayal of Norton, the popularity of *Diana of the Crossways* reveals the importance of nineteenth-century novels for the legal recognition of married women's rights.

The public's fascination with Norton and Diana's sufferings is examined in this chapter through the various modes used to present Diana's marital sufferings and the importance of Diana's novel-writing against the ill-motivated narratives of trial reports and professional diaries. In order to do so, this chapter analyses the ways in which fictional writing can act as testimonial evidence in the debates for legal reform. By fusing the tools of fiction and fact,

¹¹ Robert Esmonde Sencourt, *The Life of George Meredith* (London: Chapman and Hall, 1929), 61.

married women's writing illustrates the literary skills needed to gain the sympathy of their readers and advocate for legal reform. Built upon the philosophical ideas of jurisprudence and utilitarianism in Jeremy Bentham's *An Introduction to the Principles of Moral Legislation* (1789) and John Stuart Mill's *Utilitarianism* (1861), the first section of this chapter focuses on the ways in which political advocacy and the importance of individuals' first-hand narratives can be combined with Adam Smith's *Theory of Moral Sentiments* (1759) to explain how first-hand testimonial accounts promote political reform through the evocation of sympathy. As Mill reminds us, "the burden of proof" makes the public conscience of injustices and produces the desire for justice in order to alleviate the pain of others for the improvement of mankind.¹²

The second section of this chapter looks at how the portrayal of legal evidence can be identified as a literary characteristic of the "sentimental realism" genre by examining the ways in which an individual's suffering and narrative of experience can affect a wider community. The portrayal of a character's suffering as representative of a specific group within the community can be seen as affecting the readers' drive to alleviate the oppression of that group. As Rae Greiner argues, "[t]urning other people's (real) sentiments into the stuff of story, the sympathetic case optimizes our moral capacities by cultivating a kind of historical awareness that might be considered novelistic."¹³ Meredith uses Norton as a model for the "sympathetic case" of Diana in order to provide a precedent to his depiction of the persuasive differences between rumours of Norton's marital scandal and her own recollections of her marriage. I argue that novels which portray such oppression can be seen as joining the debates for marriage law reform. In the same manner that trial reports of married women's injustices were

¹² John Stuart Mill, *Utilitarianism* [1861], ed. Colin Heydt (Toronto: Broadview Press, 2011), 3.

¹³ Rae Greiner, *Sympathetic Realism in Nineteenth-Century British Fiction* (Baltimore: John Hopkins University Press, 2012), 54.

brought up in parliamentary debates, literary representations of suffering wives and their legal struggles joined the public's understanding of the gravity of such injustices within the community.

Through an analysis of the role that sympathy plays in the debates for reform, my analysis of *Diana of the Crossways* examines the methods that Meredith uses to represent married women's writing as evoking sympathy in response to their suffering. The third part of this chapter looks at Meredith's portrayal of public scandal and the ways in which second hand accounts do not abide by the philosophy of "fellow-feeling."¹⁴ Rather than developing the need to end the suffering of the individual, gossip and rumours develop pleasure from the pain of others. Meredith's introduction of the "Warwick-Dannisburgh" adultery trial through published diary accounts and scandal reports highlights the public's fascination with Diana's suffering and the affects that such rumours have on her social position despite being proven innocent in court. Ray claims that because such representations are based on historical persons, who not only were the centre of private but also public narratives, the protagonist's retellings are also "framed by an ongoing semi-public drama of gossip and local reportage which mediates between the private realm of affect and personal experience, and the public domain of politics and history."¹⁵ Meredith uses this framing to accentuate the necessity of women's testimonial accounts as the ultimate authority in the debates for marriage law reform. Without women's writing, the facts would be lost in a world of uncertainty and assumptions on behalf of women within a patriarchal society with ulterior motives.

¹⁴ Adam Smith, *The Theory of Moral Sentiments* [1759], ed. Knud Haakonssen (Cambridge: Cambridge University Press, 2002) 13.

¹⁵ Ray, *Story & History*, 25.

It is only through Diana's career as a novelist that she is able to set the record straight. Like Norton, Diana uses her literary skills and the details of her own legal struggles to represent the suffering of many married women unable to speak out against the injustices of marriage laws. The final section of this chapter examines the persuasive effects of Diana's writing and the ways in which her autobiographical accounts of her sufferings act as testimonial evidence. As Chapter 2 illustrated in my analysis of Norton's own autobiographical novels, fiction provided married women with the distinct opportunity to disguise their testimonies under the guise of fiction. While Diana's novels are categorised as fictional, as Ray argues, "[f]iction [...] not only has an affective impact superior to that of factual accounts, it has the very capacity to generate 'truth' and 'facts'—provided, at least, the description it provides is 'accurate.'"¹⁶ Diana's writing is able to influence the community through the evocation of sympathy and advocate on behalf of the movement for married women's legal rights by using her personal experiences as representative of the necessity for reform.

As this dissertation has sought to examine the underlying fusions of fact and fiction in the portrayal of married women's legal oppression, Meredith's *Diana of the Crossways* serves as an ideal example of the ways in which nineteenth-century novels' blending of fact and fiction enabled contemporary readers to place such novels within the historic debates for married women's legal rights. While parliamentary papers, trial reports, and political pamphlets are often examined in the study of reform movements, I believe that it is necessary to include fictional portrayals of those affected by the movement and the impact of first hand narrative of experience as representations of the call for legal change. As this chapter and Chapter 4 argue, both male and female novelists took up the debate for marriage law reform

¹⁶ Ray, *Story & History*, 2.

during the nineteenth century as a discussion of legal equality and the affects of unjust marriage laws on both sexes. Although Meredith was able to legally speak out against his unhappy marriage and his wife's adultery, he understood Norton's frustrations and the effects of scandal and rumours of his personal and professional life. Therefore, Meredith drew upon Norton's sufferings to validate his argument for marriage law reform.

I. Narratives of Experience and the Philosophy of Advocacy

The entirety of this dissertation has sought to examine the ways in which married women joined the debates for legal reform in a system that barred them from verbally speaking out against oppression in court. Despite this, reform did occur in the form of the 1839 Custody of Infants Act, the 1857 Matrimonial Causes and Divorce Act, and the 1870 and 1882 Married Women's Property Acts. Legislators discovered the need for married women's legal rights through the retelling of their experiences. Wives used writing to share these experiences with the public in order to evoke sympathy. In order to understand the ways in which the retelling of personal experiences led the public towards legal reform, it is first necessary to understand the interrelationship between narrative form and sympathy. Through this understanding it is possible to analyse nineteenth-century novels' portrayal of married women's writing in order to join the debate for marriage law reform.

Jeremy Bentham's *Principles of Moral Legislation* defines utility as the "property in any object, whereby it tends to produce benefit, advantage, pleasure, good, or happiness [...] or [...] to prevent the happening of mischief, pain, evil, or unhappiness to the party whose

interest is considered."¹⁷ Through an awareness of "happiness" and "unhappiness," the "principle of utility [...] approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question: or [...] to promote or to oppose that happiness."¹⁸ An action which conforms to the principle of utility can be defined by that which "promotes the interest" to "add to the sum total of [...] pleasure" or "diminish the sum total of [...] pain."¹⁹ John Stuart Mill would later reiterate this distinction between "pleasure" and "pain" when he argued that "all desirable things [...] are desirable either for the pleasure inherent in themselves, or as means to the promotion of pleasure and the prevention of pain."²⁰ Every moral action can be narrowed down to the motive of creating pleasure or preventing pain but only those that use this distinction to advance the pleasure of the community can be considered actions of utility.

With regards to legal action, the principle of utility requires the community to generate pleasure by protecting individuals from pain. Bentham claims that "[t]he community is a fictitious *body*, composed of the individual persons who are considered as constituting as it were its *members*."²¹ As he questions, "[t]he interest of the community then is, what?—the sum of the interests of the several members who compose it."²² Mill argues that these actions can be either laws or social arrangements that "place the happiness, or [...] the interest, of every individual, as nearly as possible in harmony with the interest of the whole."²³ Mill further explains that this is based on the understanding that "it is just to respect" and "unjust to

¹⁷ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* [1789], ed. J.H. Burns and H.L.A. Hart (Oxford: Clarendon Press, 2005), 12.

¹⁸ Bentham, *An Introduction to the Principles of Morals and Legislation*, 12.

¹⁹ *Ibid.*, 12.

²⁰ Mill, *Utilitarianism*, 43.

²¹ Bentham, *An Introduction to the Principles of Morals and Legislation*, 12.

²² *Ibid.*, 12.

²³ Mill, *Utilitarianism*, 53.

violate, the *legal rights* of any one.”²⁴ Therefore, advocacy for legal reform must be supported by the community on behalf of the individual. Mill defines justice not by what is written in the law but what is morally "right."²⁵ Injustice, according to Mill, can refer to any law which infringes upon an individual's rights and, thus, is morally wrong.²⁶

The aim of reformist narratives is to develop "sympathy" through the transference of "sentiment" from the individual to the community.²⁷ Mill divides this "sentiment" into the "sentiment of injustice" and the "sentiment of justice." He connects the idea of creating sentiment and methods of jurisprudence when he claims that “sentiment of injustice came to be attached, not to all violations of law, but only to violations of laws as *ought* to exist, including such as ought to exist but do not; and to laws themselves, if supposed to be contrary to what ought to be law.”²⁸ Therefore, the use of fiction to portray laws which ought to exist is essential to establishing the sentiment of justice and injustice. The expression of the sentiments regarding the injustices of marriage law must portray how the legal system currently treats married women in contrast to how they ought to be treated. In doing so, as Mill argues, "the power of sympathizing" enables the public to "attach" themselves with the "collective idea" for change "in such a manner than any act hurtful of them, rouses his instinct of sympathy, and urges him to resistance."²⁹ Mill states that “[i]t is natural to resent, and to repeal or retaliate, any harm done or attempted against ourselves, or against those with whom we sympathize.”³⁰ He claims that the most convincing method of sparking sympathy is

²⁴ Mill, *Utilitarianism*, 79.

²⁵ *Ibid.*, 55.

²⁶ *Ibid.*, 55.

²⁷ *Ibid.*, 21.

²⁸ *Ibid.*, 83.

²⁹ *Ibid.*, 87.

³⁰ *Ibid.*, 87.

through the presentation of experience. He notes that throughout history the public has "been learning by experience the tendencies of action."³¹ In many ways the history of legal change can be examined through the representations of experiences and the evocation of sympathy which inspires such change.

It is the portrayal of such experiences that serves as the central focus of Adam Smith's *Theory of Moral Sentiments*. Smith declares that sympathy is derived from "the situation which excites it."³² When such a "situation" is presented, the spectator inevitably finds "some principles in his nature, which interest him in the fortune of others, and render their happiness necessary to him, though he derives nothing from it except the pleasure of seeing it."³³ Smith states that the fact that "we often derive sorrow from the sorrow of others, is a matter of fact too obvious to require any instances to prove it."³⁴ It is the role of moral sentiment which leads to the wish to relieve the "sorrow" and suffering of others. When an individual learns of the suffering and pain of another, the process of "fellow-feeling" demands that "the spectator must arise altogether from the consideration of what he himself would feel if he was reduced to the same unhappy situation."³⁵ In order to engage sympathy, the individual must effectually present the "situation," or event, in a manner that allows the spectator to imagine the "sentiments of the sufferer."³⁶ It is for this reason that the narration of experience is important to the creation of sympathy in both law and literature.

³¹ Mill, *Utilitarianism*, 60.

³² Smith, *The Theory of Moral Sentiments*, 15.

³³ *Ibid.*, 11.

³⁴ *Ibid.*, 11.

³⁵ *Ibid.*, 13; 15.

³⁶ *Ibid.*, 13.

II. Sympathetic Realism and the Narration of Experience

While the evocation of sympathy is imperative within a courtroom setting and political debate, it is equally important within the novel form. As this dissertation has shown, nineteenth-century novelists engaged readers' sympathy through the same methods used by a lawyer in the persuasion of a judge and jury. Rae Greiner points out that in accordance with Bentham's theories regarding the power of fiction, "the rising status of fiction raised the rhetorical stakes for novelists and lawyers alike."³⁷ Novelists and lawyers were encouraged to fuse fact and fiction in order to persuade readers and courtroom attendees. In doing so, as Greiner states, "[t]he novelist-as-lawyer analogy [...] draws the persuasive techniques of both professions into close proximity."³⁸ Novelists acted as legal professionals in their portrayals of legal injustices in order to convince readers of the necessity for legal reform. Jan-Melissa Schramm acknowledges that "[t]he ethical investment of the novel at mid-century lay in this hope that sympathy could serve to close the gap between suffering and benevolent action."³⁹ Narrative techniques were used by novelists in the nineteenth-century development of sympathetic realism as a way of linking fiction to the contemporary debates for marriage law reform. In the same way that each of the married women analysed in this dissertation use the portrayal of their suffering to convince those around them of their oppression under unjust marriage laws, novels like *Diana of the Crossways* adopts the tools of sympathetic realism to support marriage law reform and the legal representation of married women.

³⁷ Greiner, *Sympathetic Realism in Nineteenth-Century British Fiction*, 70.

³⁸ *Ibid.*, 70.

³⁹ Jan-Melissa Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Theology* (Cambridge: Cambridge University Press, 2000), 15.

Smith claims that the imagination enables members of the community to become invested in the wellbeing of the individual—"we place ourselves in his situation, we conceive ourselves enduring all the same torments, we enter as it were into his body, and become in some measure the same person with him."⁴⁰ Greiner applies Smith's theory of developing sympathy to the role of the realist novel. Realism is defined by the evocation of feeling by the reader through the representation of similarities in circumstance and feeling within situations and character development.⁴¹ Greiner defines "sympathetic realism" as "a realism (in a variety of incarnations) for which virtual, Smithian forms of sympathy prove central to our understanding, and which are perceptible in some of realism's most familiar techniques."⁴² Greiner argues that sympathetic realism can be identified in novels which "employ forms designed to enact sympathetic habits of mind in readers."⁴³ These forms span from the use of narrative effects like omniscience and free indirect discourse to character development and subjectivity. Greiner claims that:

the nineteenth-century realist novel differs most from novels of the previous century in granting to fellow-feeling—not objects—the task of maintaining reality. By depicting social reality as a product of fellow-feeling, the realist novel portrays the real as both fictive and sympathetic.⁴⁴

Nineteenth-century sympathetic realism can often be observed in the portrayals of lower-class poverty, prostitution, prisoners, and industrial workers.⁴⁵ However, the importance of sympathetic realism in the nineteenth century was not merely the portrayal of oppressed

⁴⁰ Smith, *The Theory of Moral Sentiments*, 12.

⁴¹ Delia Da Sousa Correa (ed.), *The Nineteenth-Century Novel: Realisms* (London: Routledge, 2000), v; Greiner, *Sympathetic Realism in Nineteenth-Century British Fiction*, 159.

⁴² Greiner, *Sympathetic Realism in Nineteenth-Century British Fiction*, 9.

⁴³ *Ibid.*, 15.

⁴⁴ *Ibid.*, 10.

⁴⁵ *Ibid.*, 12-13.

characters but the narrative methods by which the injustices of their situations developed sympathy in readers.

In his later pamphlet, *The Subjection of Women* (1869), Mill acknowledges the importance of women's narratives of experience in the development of community sympathy when he claims that “the question rests with women themselves—to be decided by their own experience, and by the use of their own faculties.”⁴⁶ However, because married women were silenced by the law, their faculties remained limited to written testimonies and circumstantial evidence of the necessity for reform. As Mill notes:

Ever since there have been women able to make their sentiments known by their writings (the only mode of publicity which society permits them), an increasing number of them have recorded protests against their present social condition.⁴⁷

These "protests" against their current legal and social positions served to both inform the public of the injustices of marriage law and provide married women with a sense of legal representation.

The importance of married women's written protests against the unjust legal institution of marriage through the narration of experiences is Meredith's central focus in *Diana of the Crossways*. Meredith juxtaposes the effects of scandal reports of Diana's marital sufferings to her own autobiographical novels in order to illustrate the role that women's testimonial writing has on the evocation of sympathy. Unlike the scandal reports and published diaries which introduce readers to Diana's unhappy marital circumstance and seem to feed upon her suffering, Diana's own writing uses the public's enthrallment with her marriage scandal to her

⁴⁶ John Stuart Mill, *The Subjection of Women* [1869], ed. by Kate Soper (London: Virago Press, 1983), 48.

⁴⁷ *Ibid.*, 24.

advantage in order to reveal the truth of how her pain has been caused by the gender biases of the legal system.

III. The "clever literary clothing of a common accusation": Diaries and Trial Reports

Upon preparing for *Diana of the Crossways* to be published in serial form, Meredith commented that he feared he had "not put in enough of the popular stuff."⁴⁸ Meredith knew that representing a public figure like Norton would require the inclusion of many of the "popular," but not necessarily factually correct, responses to her scandalous marriage trials. In contrast to the philosophical idea that members of the community derive pain from knowledge of an individual's suffering, *Diana of the Crossways* provides an examination of the ways in which the community can also derive pleasure from an individual's pain through the portrayal of published diaries and scandal reports. The opening of Meredith's novel introduces Diana as a spectacle of marital scandal—the subject of published diaries and newspaper reports. In Augustus Warwick's published announcement of an action of crim. con. against Lord Dannisburgh, Diana immediately becomes a subject of scandal. Meredith views these forms of public narratives as "the clever literary clothing of a common accusation" which though they may appear to be a positive form of debate over Diana's accusation of adultery instead seem to feed from her sufferings.⁴⁹ As if her trial for adultery was a celebrity endorsement, Diana is placed upon a pedestal as a figure of the legally misused wife. It is through the presentation of published diaries and trial report journalism that Meredith introduces his readers to the permeability of fact and fiction in the portrayal of married women. He acknowledges the

⁴⁸ George Meredith to Miss Louisa Lawrence, Box Hill, 21 April 1884, in C.L. Cline, ed., *The Letters of George Meredith* (2), 841.

⁴⁹ Meredith, *Diana of the Crossways*, 8.

limitations of published diaries and trial reports. It is these limitations that highlight the importance of Diana's first-hand narratives and the testimonies of married women in the debates for marriage law reform.

The first chapter of *Diana of the Crossways*, entitled "Of Diaries and Diarists Touching the Heroine," establishes Diana as a celebrity of suffering.⁵⁰ Before readers are even introduced to the heroine of the novel they are given an account of how she has become the subject of gossip and scandal as a victim of a popular crim. con. trial—"that Warwick-Dannisburgh affair."⁵¹ Meredith produces a collection of published diaries as evidence of the public endorsement of Diana's unhappy marriage. Chapter 1 of this dissertation focused on the use of diaries as testimonial evidence, allowing married women such as Helen Huntingdon to narrate the details of her marital sufferings and later to convince others of her legal oppression. However, what distinguishes Helen's diary from the diaries presented by Meredith is their intended audience and motives. Helen's diary could be considered a "personal" diary, while Meredith brings forth the complex literary form of public, published diaries.⁵² He provides his readers with three variations of what Anne-Marie Millim terms "the professional diary" to symbolise the ways in which third person narratives present Diana's legal scandal.⁵³

Firstly, Meredith portrays the "Leaves from the Diary of Henry Wilmers" as an overly sensationalised, melodramatic depiction of Diana's celebrity.⁵⁴ While Henry "attempts a portrait" of Diana, he primarily focuses on her physical appearance and celebrity appeal.⁵⁵ He

⁵⁰ Meredith, *Diana of the Crossways*, 1.

⁵¹ *Ibid.*, 5.

⁵² Anne-Marie Millim, "The Victorian Diary: Between the Public and the Private," *Literature Compass* 7, no.10 (October 2010): 978.

⁵³ *Ibid.*, 981.

⁵⁴ Meredith, *Diana of the Crossways*, 1.

⁵⁵ *Ibid.*, 3.

simplifies Diana's character to an "unusual combination" of "wit" and "beauty" whose marital miseries were perfect for the "literary market."⁵⁶ This narcissistic objective identifies Henry's diary as merely "created for popularity" rather than as a source of political or legal debate.⁵⁷ His portrayals of Diana are merely there to "stun us, twirl us, hoodwink, mystify, tickle and twitch."⁵⁸ Henry uses Diana's suffering as a source of pleasure and entertainment for his readers. He sensationalises Diana's story but, unlike the sensation fiction analysed in this dissertation, his portrayals have no factual basis. Having never met Diana, he decidedly regards her as a "queen of her period, fit for homage" without any reference to the ways in which her legacy is based on oppression.⁵⁹ Meredith exposes such writers who claim to have an "open mind" to strong female figure while in reality exemplifying a hypocritical system that promotes marriage scandal without acknowledging the dark side of such celebrity.⁶⁰ In accordance with Bentham's theory of false motives of utility, Henry's diary is written for the "pleasure of wealth" and "love of reputation" as opposed to the pleasure of alleviating the pain of an individual within the community.⁶¹ Henry's writing is insincere and unsympathetic because of his false motives.

Another example of false motivation is illustrated in Meredith's portrayal of Henry's cousin, Dorset Wilmers' "Reminiscence," or "Dorset-Diary."⁶² Meredith depicts Dorset's diary as a negative judgment on Diana through his "harsh substantive statements."⁶³ Dorset is represented as having political motives behind his portrayal of Diana. As an illustration of the

⁵⁶ Meredith, *Diana of the Crossways*, 1-4.

⁵⁷ *Ibid.*, 4.

⁵⁸ *Ibid.*, 2.

⁵⁹ *Ibid.*, 2.

⁶⁰ *Ibid.*, 2.

⁶¹ Bentham, *An Introduction to the Principles of Morals and Legislation*, 105; 115.

⁶² Meredith, *Diana of the Crossways*, 5.

⁶³ *Ibid.*, 5.

Norton v. Melbourne trial and George Norton's hidden objective of discrediting Prime Minister Melbourne's political reputation, the *Warwick v. Dannisburgh* case similarly describes the Tory party's attempt to damage the Whig Prime Minister under the mask of an adultery charge. Therefore, as a Tory supporter, Dorset's intention in slandering Dannisburgh reveals that his ulterior motive was to accuse Diana. Meredith notes that "[w]e have not to ask what he judged" because it is clear that "he had by nature a tarnishing eye that cast discolouration" upon Diana's reputation.⁶⁴ Despite the diary's "appearance of a body of fact," Meredith presents it as "grossly unlike the likeness" of Diana.⁶⁵ Dorset is quick to judge without being given the facts of Diana's sufferings. In accordance with Bentham's theory of motives, Dorset puts his "pleasure of power" and "ambition" above his pleasure of justice.⁶⁶ In the same way that Mary Elizabeth Braddon presents Robert Audley's motives in the condemnation of Lucy, Dorset's diary serves a singular purpose of condemnation.

Lastly, Perry Wilkinson's "Recollections" portrays a psychologically complex approach to the diary depiction of Diana.⁶⁷ Like Henry, Perry is enamoured of Diana's celebrity status and yet is "ashamed of his wonderment."⁶⁸ When describing the *Warwick v. Dannisburgh* trial, he "names the pro-party and the con; recites the case, [...] tells the list of witnesses, records the verdict."⁶⁹ He provides readers with an "anecdote" about Diana's marriage and claims that although her marriage may have been unhappy this was often the gamble taken when marrying.⁷⁰ Meredith represents Perry as serving "no other purpose than

⁶⁴ Meredith, *Diana of the Crossways*, 4-5.

⁶⁵ *Ibid.*, 5.

⁶⁶ Bentham, *An Introduction to the Principles of Morals and Legislation*, 108.

⁶⁷ Meredith, *Diana of the Crossways*, 4.

⁶⁸ *Ibid.*, 4.

⁶⁹ *Ibid.*, 5-6.

⁷⁰ *Ibid.*, 6.

that of an apology" with "no belief, no disbelief" in the "vindication of innocence."⁷¹ He is neither overly factual nor overly sensational in his depiction of Diana. He does not indicate the legal status of married women as the source of Diana's suffering nor does he question the responsibility of Parliament in protecting such women. Instead, his motivation is "purely-social."⁷² He gains pleasure not from defending Diana but from his own popularity as a witness of scandal.

It is important to understand that such diaries were written for public consumption. Unlike Helen Huntington's personal diary in *The Tenant of Wildfell Hall* which is only given to Gilbert with the intent of narrating her own sufferings, the published professional diaries represented in *Diana of the Crossways* use Diana's misfortunes as a tool for social and political gain. Meredith views the professional "Diarist's power" to "relate" but not evoke sympathy because of the lack of first person experience.⁷³ As Millim argues, such diaries have a "liminal status between the public and the private" because the professional diarist is clearly aware of an audience and "characterized by a strong editorial presence."⁷⁴ The diary is given a "hybrid status" as neither a public nor a private document.⁷⁵ This awareness "compromises their authenticity as private documents."⁷⁶ Because of this compromise, they are no better than "the scandal-newspapers" that spread gossip of adultery and separation, ruining the reputation of married women while leaving their husbands unscathed.⁷⁷

⁷¹ Meredith, *Diana of the Crossways*, 6.

⁷² Bentham, *An Introduction to the Principles of Morals and Legislation*, 116.

⁷³ Meredith, *Diana of the Crossways*, 7.

⁷⁴ Millim, "The Victorian Diary," 979.

⁷⁵ *Ibid.*, 977.

⁷⁶ *Ibid.*, 979.

⁷⁷ Meredith, *Diana of the Crossways*, 121.

As explained in Chapter 3, the creation of the Divorce Court under the 1857 Matrimonial Causes and Divorce act led to a boom in marriage trial rates. This inflation caused an upsurge in marriage scandal trial reports. Barbara Leckie notes that:

between 1857 and 1914 adultery was, in fact, everywhere in English print culture: it was discussed in parliamentary debates; it was a front-page 'Divorce Court' story in most of the daily newspapers at least twice a week for over fifty years; it was a topic of heated discussion in literary and cultural interest reviews.⁷⁸

Leckie points out that divorce court trial reports were "usually located on the third or fourth page of the *London Times* and the first page of the less "serious" newspapers like the *Pall Mall Gazette* or the *Evening News*."⁷⁹ Furthermore, Leckie emphasises the magnitude of publicity surrounding crim. con. suit:

the newspaper columns devoted to these cases (ninety columns in one case), the questions posed (twenty-three hundred questions were directed to one participant alone in an 1890 case), and even the words [...] composed of 180,000.⁸⁰

Crim. con. trials fascinated the public. Leckie argues that the lack of literary censorship of portrayals of adultery signifies the growing public awareness to marriage law injustices.⁸¹

While crim. con. suits were not an innovation of the nineteenth century, their popularity thrived during the period. In a similar manner to published copies of the *Newgate Calendar* which recounted criminal cases, "[n]ewspaper trials were sold in bound volumes with pen-and-ink illustrations and portraits of the key players, ballads were written, pamphlets and moral tracts were distributed."⁸² Meredith observes that trial and scandal reports serve as a

⁷⁸ Barbara Leckie, *Culture and Adultery: The Novel, the Newspaper, and the Law, 1857-1914* (Philadelphia: University of Pennsylvania Press, 1999), 1.

⁷⁹ *Ibid.*, 64.

⁸⁰ *Ibid.*, 64.

⁸¹ *Ibid.*, 29.

⁸² *Ibid.*, 68.

"judicial summary of the union."⁸³ As I discussed in Chapter 3, crim. con. trials and topics of adultery created their own genre of journalism in the mid-nineteenth century. No longer was it a taboo to discuss unhappy marriages but a popular topic of debate. Printed alongside the periodical publication of fictional tales of unhappy marriages, like those examined in this dissertation, it would become difficult to distinguish between factual and fictional trials.

While such publicity had a positive influence on the public's growing awareness to married women's marital struggles, many women were also negatively affected by the notoriety involved in spreading their stories through these forms of publications. It is this notoriety that made Norton a celebrity of the period. Meredith criticised the scandalmongers of divorce court trial reports by emphasising the unsympathetic nature of reports of "the Warwick-Dannisburgh Affair" as exacerbating the double standard of marriage. Because these reports were not created with the motive of relieving the pain of women and thus for the benefit of the community, marriage trial reports cannot be classified as adequate evidence for reform. Meredith depicts "one of those journals, barely credible" as a "ghastly thing [...] dreaded as a scourge, hailed as a refreshment, nourished as a parasite. It professed undaunted honesty, and operated in the fashion of the worms bred of decay."⁸⁴ In his representation of crim. con. journalism, Meredith signifies the ways in which the false sentiment of trial reports does the opposite of what it proposes. Although claiming to argue for marriage law reform, scandal reports can also be seen as feeding off of married women's suffering. Instead of educating the public of the oppression of married women in crim. con. suits, these literary forms also lead to their prosecution.

⁸³ Meredith, *Diana of the Crossways*, 59.

⁸⁴ *Ibid.*, 69.

The victimisation of married women by the media is portrayed throughout *Diana of the Crossways* as a hunt for scandal, seeking pleasure from the pain of others. As opposed to Diana the Huntress, Diana Warwick becomes the hunted, "a creature of the wilds marked."⁸⁵ Meredith claims that the moment a married woman becomes doubted by her husband "[t]he doubt casts her forth, the general yelp drags her down; she runs like the prey of the forest under spotting branches."⁸⁶ Perpetuated by the "yelp" of public gossip, "the hunt was uproarious" with no purpose other than to maim the accused woman.⁸⁷ Norton also made this correlation when she described the psychological response of the public to scandal as "the passion for hunting something."⁸⁸ It is this same passion that has maintained the role of rumours and gossip throughout history.

In a scene where Sir Lukin Dunstane first reads of Diana's charge of adultery in a newspaper report, Meredith exposes the hypocrisy of many individual's interest in crim. con. suits. Sir Lukin reads the report "enraged, [...] indignant, feeling for Diana."⁸⁹ And yet he complains that "[t]he paragraph was brief; it had a flavour. Promise of more to come, pricked curiosity."⁹⁰ Although he claims to be appalled by what he reads, "his third reading found him

⁸⁵ Meredith, *Diana of the Crossways*, 89.

Mike Dixon-Kennedy, *Encyclopedia of Greco-Roman Mythology* (Santa Barbra, CA: Library of Congress, 1998), 110. In Roman mythology, Diana (daughter of Jupiter and twin of Apollo) was seen as the protector of women. In Geoffrey Chaucer's *Canterbury Tales* "The Knight's Tale" (lines 1404-1508), Emily prays to the goddess Diana to spare her from marriage.

⁸⁶ Meredith, *Diana of the Crossways*, 89.

⁸⁷ *Ibid.*, 69.

⁸⁸ Caroline Norton, *A Plain Letter to the Lord Chancellor on the Infant Custody Bill* (London: James Ridgeway, 1839), 56

⁸⁹ *Ibid.*, 70.

⁹⁰ *Ibid.*, 70.

out: he felt for both, but as a member of the whispering world."⁹¹ After learning of her dear friend's legal hounding, Emma Dunstane

perceived in Sir Lukin that the old Dog-world was preparing to yelp a scent. He of his nature belonged to the hunting pack, and with a cordial feeling for the quarry, he was quite with his world in expecting to see her run, and readiness to join the chase. No great scandal had occurred for several months. The world was in want of it; and he, too with a very cordial feeling for the quarry, piously hoping she would escape, already had his nose to ground, collecting testimony in the track of her.⁹²

Meredith depicts the "Dog-world" and its "hunting pack" as representative of the patriarchal bias of the marriage legal system. They mask their interest as sympathy but when given the opportunity to support Diana's cause simply shy away. Unlike the "testimony" that Diana gives in defence of the accusations against her, Sir Lukin and his pack gather evidence already knowing who will win the chase. In the same way that Robert Audley gathers evidence to prove that Lucy is guilty of bigamy, "[s]uccess was its boasted justification."⁹³ Meredith recognised that the "cry of hounds at her disrobing by Law is instinctive" and that pursuit will always "crown with success the machine supplying its appetites."⁹⁴ It is self-centred motives and consumer interests in married women's sufferings within newspaper reports that form this "machine."

Leckie views this "machine" as not only socially motivated by success but the voyeuristic interests of its readers. She links the shared interests of law and literature in scandal papers by stating that:

the goal for judge, jury, and reader alike is to read the signs by which adultery betrays itself, to determine the truth of this uniquely domestic crime. How can one *know* that

⁹¹ Norton, *A Plain Letter*, 70.

⁹² *Ibid.*, 63-64.

⁹³ Meredith, *Diana of the Crossways*, 69.

⁹⁴ *Ibid.*, 4; 69.

one's spouse has been unfaithful? What evidence constitutes proof of such suspicions? What stories, what narratives count as evidence?⁹⁵

Leckie associates the portrayal of legal evidence in fiction and journalism with the effect on its readers. By examining portrayals of married women's suffering through the concept of sympathy, professional diaries and trial reports cannot be justified as evidentiary support for marriage law reform. Smith summarises the difficulties of outside perspectives when he points out that "[m]y companion does not naturally look upon the misfortune that has befallen me, or the injury that has been done me, from the same point of view in which I consider them. They affect me much more nearly."⁹⁶ Smith argues that, without an understanding of the individual's suffering, the community does not obtain the necessary sentiment to evoke sympathy.

According to Smith, without the narration of experience, "the emotions of the spectator will still be very apt to fall short of the violence of what is felt by the sufferer."⁹⁷ Married women's testimonies would not have been available to diarists and reporters in their portrayals because women were still barred from testifying in a court of law. Therefore, diaries and scandal reports treated Diana's misfortunes "in like manner if her story had not to be told."⁹⁸ In order to mend the deficiencies of third person accounts, Meredith endows his heroine with the ability to provide the public with a narration of her own oppression through the median of the novel form. Diana uses her newfound celebrity status and the public interest in her unhappy marriage, despite their intentions, to share her story and serve as an example for young women and legal advocates.

⁹⁵ Leckie, *Culture and Adultery*, 62-63.

⁹⁶ Smith, *The Theory of Moral Sentiments*, 25.

⁹⁷ *Ibid.*, 26.

⁹⁸ Meredith, *Diana of the Crossways*, 7.

IV. "I will answer as at the Judgement Bar": Diana's Testimony and Advocacy

Prior to her appearance in professional diaries and newspaper reports, Diana was already suffering as an oppressed wife. She was born into an intellectually and politically influential family.⁹⁹ During her young life, Diana was sought after by many men who wished to marry her but she continuously refused to marry. However, after being assaulted by Sir Dunkin and running away to her family home in Ireland, Diana decides to accept the proposal of Augustus Warwick in order to escape the hunt of the marriage market. Unfortunately, this decision did more damage than good. Augustus was aggressive and jealous and when given the opportunity to accuse her of adultery, while simultaneously advancing his career, he took advantage. In a similar path as Eleanor Raymond, Anne Silvester, and Hester Dethridge, Diana's decision to advocate for marriage law reform was triggered by her necessity to defend herself against her husband. It is Diana's legal education that informs her of the power that writing—letters, novels, and journalism—can have in advocating on behalf of married women.

Diana's career as a novelist serves to exonerate her in the public's eye through the development of sympathy for her suffering. Unlike the professional diaries and scandal reports which gain pleasure from her pain, Diana's novels and the portrayal of her experiences as an oppressive wife illustrate her pain and advocate marriage law reform as a collective interest of the community. Despite her invisibility within the legal system, Diana proclaims that through her advocacy and written testimonies she "will answer as at the Judgment Bar."¹⁰⁰ Meredith

⁹⁹ Meredith, *Diana of the Crossways*, 21.

¹⁰⁰ *Ibid.*, 65.

writes in a letter to Leslie Stephen that Diana is the "mother of Experience."¹⁰¹ The narrative of her experiences serves as testimonial evidence in the debates for legal reform and acts as evidence in Parliamentary discussions for the necessity of married women's legal rights. As Schramm argues, "the fictional representation of testimony" within the novel form serves "as a means of proof, not simply as a subjective and unfalsifiable account of an individual's 'life'" but as representative of factual legal controversies.¹⁰² With no right to speak in a legal setting, Diana encloses the testimonial account of her innocence within her novels, portraying villainous husbands, suffering wives, and manipulative lovers, to prepare young women for the legal struggles of marriage.

When Diana first hears of her husband's accusation she is forced to make a choice: to stand trial for adultery against her tyrannical husband or flee the country. Stood upon this crossway, "Diana cried aloud, 'My freedom!'" in hopes that by leaving she would be free from scandal and rumour.¹⁰³ She believes that if she leaves then she would be able to escape the charges filed against her and distance herself from the scandal surrounding her name. Implored by her supportive friends, Emma Dunstane and Thomas Redworth, to stay, Diana understands that "[b]y staying to defend herself" she would also be defending the population of married women legally oppressed by the patriarchal bias of marriage laws.¹⁰⁴ Meredith reveals Diana's decision when

'Let me be myself, whatever the martyrdom!' she cried [...], showing herself as she was, accepting martyrdom, becoming the first martyr of the modern woman's cause—a grand position! and one imaginable to an excited mind in the dark, which does not

¹⁰¹ George Meredith to Mrs. Leslie Stephen, Box Hill, 23 August 1884, in C.L. Cline, ed., *The Letters of George Meredith* (2), 859.

¹⁰² Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Theology*, 4.

¹⁰³ Meredith, *Diana of the Crossways*, 96.

¹⁰⁴ *Ibid.*, 96.

conjure a critical humour, as light does, to correct the feverish sublimity. She was, then, this martyr, a woman capable of telling the world she knew it.¹⁰⁵

According to Schramm, the "interpretation of martyrdom" through testimonial accounts suggests that "the quest for truth becomes particularly compelling when the price to be paid by a witness for her testimony may be death."¹⁰⁶ As Schramm argues, the "treatment of the testimony of a martyr" is a source of "inspiration" and "appeal to intuition" by theological definition, constituting a "gesture towards both human and divine tribunals of justice."¹⁰⁷

Diana understands the effect that her case will have upon the legal history of married women and her brain "dashed in revolt at the laws of the world when she thought of the forces, natural and social, urging young women to marry and be bound to the end."¹⁰⁸ She accepted the role of "martyrdom" in hope that her suffering would alleviate the fate of future women, becoming a model of the oppression of married women. According to Mill, the presentation of an individual's suffering "has to be done voluntarily by the hero or the martyr, for the sake of something which he prizes more than his individual happiness."¹⁰⁹ Mill questions, "would the sacrifice be made if the hero or martyr did not believe that it would earn for others immunity from similar sacrifices?"¹¹⁰ Diana voluntarily sacrifices her own reputation and independence with the hope of preventing future married women from the same pain. Unlike the motives of diarists and reporters, Diana's motive is morally right. As Smith argues, a morally sound motive can be observed by individuals who "abstain from present pleasure or endure present pain [...] in order to obtain a greater pleasure or to avoid a greater pain in some future

¹⁰⁵ Meredith, *Diana of the Crossways*, 99.

¹⁰⁶ Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Theology*, 152.

¹⁰⁷ *Ibid.*, 159.

¹⁰⁸ Meredith, *Diana of the Crossways*, 97.

¹⁰⁹ Mill, *Utilitarianism*, 52.

¹¹⁰ *Ibid.*, 52

time."¹¹¹ Therefore, Diana's decision to return to England during the *Warwick v. Dannisburgh* trial and use her talents as a writer to evoke sympathy from the public in the debate for married women's legal rights is morally validated.

Diana knows that she "never could have allowed this infamous charge to be undefended" and begins her legal education in preparation for trial and advocacy.¹¹² She is told that she "must be prepared for the questions of lawyers."¹¹³ While she is unable to testify in front of a judge and jury, she defends her case to her legal counsel by detailing the abuse that she received during her marriage and describing her innocent relationship with Dannisburgh.¹¹⁴ Married women's self-education of their lack of legal rights has been an important part of this dissertation; from Helen's gained knowledge of custody laws, Lucy and Aurora's awareness of bigamy laws, Eleanor's realisation of contemporary separation and divorce laws, Anne's knowledge of ceremonial law, and Hester's grievance towards property laws of the period. Most of this education consisted of legal readings and advice from lawyers. Christine Krueger terms this step of self-education as "reading for the law" which originates from the "British term for legal study" but also signifies the unity of law and literature in the advocacy of the legally oppressed.¹¹⁵ Diana, however, takes her education a step further and seeks to understand the legal process of her case had she been allowed to testify in court.

In the same fashion that Smith claims that the imagination allows the community to put themselves in an individual's position, Diana imagines a scenario in which she is enabled to speak directly to the jury that would decide her fate. Diana prepares her case as if she were the

¹¹¹ Smith, *The Theory of Moral Sentiments*, 220.

¹¹² Meredith, *Diana of the Crossways*, 109.

¹¹³ *Ibid.*, 100.

¹¹⁴ Meredith, *Diana of the Crossways*, 101.

¹¹⁵ Christine L. Krueger, *Reading for the Law: British Literary History and Gender Advocacy* (Charlottesville: University of Virginia Press, 2010), 2.

defence lawyer in her own trial. She visits the Law Courts, "where she stood spying and listening behind a veil [...] she watched the process of the tortures to be applied to herself."¹¹⁶ She even "set her mind upon the mysterious enshrouded Twelve, with whom the verdict would soon be hanging" in order to "prompt her human combativeness" to respond to questions that would be asked of case if she had been able to speak in the witness stand.¹¹⁷ Diana uses her gained knowledge to imagine a hypothetical trial that presents a "balance of legal injustice toward the sex."¹¹⁸ During Diana's imagined trial, Meredith represents the hypocrisy of nineteenth-century marriage trials. Even in her hypothetical trial, Diana is denied full legal rights. The "mysterious enshrouded Twelve" of the jury responds to Diana's request for divorce rights by declaring "[w]ell, we have wives of our own, and we can lash, or we can spare; that's as it may be; but we'll keep the couple tied, let 'em hate as they like."¹¹⁹ Meredith highlights the patriarchal bias at the root of marriage trials where women are accused of adultery, violently abused, and slandered throughout the country and yet are forced to remain "tied." Diana's hypothetical jury claims that this is their "way of holding the balance."¹²⁰ She rebuts that "would it not be better to rectify the law and the social system, dear sir? [...] don't you see, my good man, that you are offering scapegoats for the comfort of the majority?"¹²¹ Diana argues with her imaginary judge that married women should have equal marital rights and not to be used as tools in crim. con. trials for men hoping to obtain a divorce. Instead, married women should be given legal representative rights in order to defend themselves

¹¹⁶ Meredith, *Diana of the Crossways*, 118.

¹¹⁷ *Ibid.*, 130.

¹¹⁸ *Ibid.*, 130.

¹¹⁹ *Ibid.*, 130.

¹²⁰ *Ibid.*, 130.

¹²¹ *Ibid.*, 130-131.

against such slander or be given the opportunity to file for divorce prior to such unjust accusations.

Despite the imaginative quality of Diana's debate with judge and jury, Meredith is able to represent the reality of married women's treatment by the contemporary judicial system. He questions the unjust judgment and punishment of married women and argues that the law is blinded by the "fiction" that every marriage is "pure" and faultless, arguing that by doing so "they narrow their understanding of human nature, and this is not the way to improve the breed."¹²² As Bentham claims, "[a] fiction of law may be defined—a wilful falsehood, having for its object the stealing legislative power, by and for hands, which could not, or durst not, openly claim it,—and, but for the delusion thus produced, could not exercise it."¹²³ By accepting this "delusion" as truth and omitting the experiences of married women's suffering, the legal system is ignoring the pain of the individual for the immoral objective of the community.

The more knowledge Diana gains regarding her lack of legal representation the more infuriated she becomes. Her trial was "fought shadowily behind her back" while she was forced to sit idly by. Unfortunately, the dismissal of her husband's charge did not end Diana's sufferings. Like Norton, Diana is left "houseless" with no financial security or social standing.¹²⁴ In a state of "imprisoned liberty," Diana states that "[s]he *must* have an income, and she won't apply to her husband."¹²⁵ She believes that "literature should help her."¹²⁶ She

¹²² Meredith, *Diana of the Crossways*, 133.

¹²³ Jeremy Bentham, *A Fragment on Government* [1776], ed. by J.H. Burns and H.L.A. Hart (Cambridge: Cambridge University Press, 1988), 117.

¹²⁴ Meredith, *Diana of the Crossways*, 4.

¹²⁵ *Ibid.*, 282; 167.

¹²⁶ *Ibid.*, 167.

found writing to be a "refuge," a "solace," and an "escape" from her misfortunes.¹²⁷ As Smith inquires, "[h]ow are the unfortunate relieved when they have found out a person to whom they can communicate the cause of their sorrow?"¹²⁸ According to Smith, the narration of suffering by an individual "seems to alleviate the weight of what they feel."¹²⁹ While Diana's writing does benefit her financially and psychologically, she is also using her own pain to prevent the future suffering of married women by testifying against the injustices of the contemporary legal position of women.

Meredith does not summarise the plots of Diana's novels, entitled *The Princess Egeria*, *The Young Minister of State*, *The Cantatrice*, and *The Man of Two Minds*. However, it is clear that Diana's writing presents an autobiographical account of her legal obstacles in the same manner that *Stuart of Dunleath* portrays Norton's marital misfortunes. Diana acknowledges that with regards to her writing, "[s]he did at least draw her inspiration from herself."¹³⁰ Her first book, *The Princess Egeria*, is written anonymously under the pseudonym "Antonia" but her reader quickly discern that "the woman Warwick" must be the novelist due to similarities between the princess's misfortunes and her own.¹³¹ Her second novel, *The Young Minister of State*, written under her full name, is similarly associated as a fictional affirmation of her budding relationship with a young politician, Percy Dacier, while her last two works detail how this relationship came to a miserable end when Percy attempts to persuade her to elope and commit adultery only to throw her to the side after one dispute. The portrayal of her suffering was clear enough that "one would imagine the conversations going on behind the

¹²⁷ Meredith, *Diana of the Crossways*, 171.

¹²⁸ Smith, *The Theory of Moral Sentiments*, 18.

¹²⁹ Meredith, *Diana of the Crossways*, 18.

¹³⁰ *Ibid.*, 163.

¹³¹ *Ibid.*, 163. Diana's pseudonym comes from her middle name and nickname amongst friends.

scenes."¹³² No one dared to dispute Diana's testimony because she remains the ultimate authority on her own story. It is this same evidentiary authority that can be seen in Helen's diary, Lucy and Aurora's letters, Norton's novels, Anne's letters, and Hester's "Confession."

With each novel, Diana slowly exonerates herself in the eyes of the public and makes her case for marriage law reform. According to Meredith, "[g]radually the persecution ceased, thanks to her active pen."¹³³ She accomplished this by "appealing to a mirror of the common surface emotions" of her readers.¹³⁴ As Smith describes, when retelling experiences of oppression the imagination awakens "in their memory the remembrance of those circumstances which occasioned their affliction."¹³⁵ He argues that, through an understanding of an individual's experiences of suffering, members of the community seem to embody the pain of the individual. Smith states that members of the community recognise "what they themselves would feel, if they actually were the sufferers."¹³⁶ In the same way that a legal defence provides the court with a sympathetic portrayal in order to present their client's innocence, Diana's evocation of sympathy from her readers emphasises her victimisation under an unjust legal system.

Meredith is clearly drawing from Norton's declaration that "I have a position separate from my woman's destiny; I am known as a writer" when he depicts Diana proclaiming that "[w]omen are women, and I am a woman: but I am I, and unlike them" because "I am armed."¹³⁷ Diana asserts that "she had charity to bestow on women; in defence of them against

¹³² Meredith, *Diana of the Crossways*, 200.

¹³³ *Ibid.*, 218.

¹³⁴ *Ibid.*, 170.

¹³⁵ Smith, *The Theory of Moral Sentiments*, 18.

¹³⁶ *Ibid.*, 27.

¹³⁷ Caroline Norton, *English Laws for Women in the Nineteenth Century* (Chicago: Academy Chicago Publishers, 1982), 121; Meredith, *Diana of the Crossways*, 218

men and the world, it was a charity armed with the weapons of battle.¹³⁸ She points out that in contrast to the reports written by diarist and journalists, "I have my natural weapons and my cause. It must be confessed that I have also more knowledge of men and the secret contempt."¹³⁹ This "knowledge" provides her with the credibility to present the reality of married women's lives and expose to her male readers that "this is your Law!"¹⁴⁰ Diana bestows the "defence" of married women through the written portrayal of her own marriage where her pen serves as her "natural weapon."¹⁴¹ Because she has the opportunity to write about her experiences, she found it to be her duty to defend women who are similarly oppressed by the legal system. In a society where Diana was previously the *hunted*, she uses her weapon of writing to become *the huntress*.

In the battle for married women's legal rights, Diana leads an army for justice and reform. Meredith argues that Diana was

deformed by marriage, irritable, acerb, rebellious, constantly justifiable against [her husband], but not in her own mind, and therefore accusing him of the double crime of provoking her and perverting her—these were the troops defiling through her head while she did battle with the hypocrite world.¹⁴²

This "hypocrite world" is illustrated in what is mocked as a "civilized country, where you and I and dozens of others are ready to start up as brothers of a lady, to defend her" and yet uphold a law that is "instituted for the protection of dirty dogs—their majority."¹⁴³ With the "hunt" ongoing even after her trial, Diana is armed with the weapon of her pen and the troops of her experiences to "battle" against the injustices of marriage laws.

¹³⁸ Meredith, *Diana of the Crossways*, 258-259

¹³⁹ *Ibid.*, 72.

¹⁴⁰ *Ibid.*, 289.

¹⁴¹ *Ibid.*, 72.

¹⁴² *Ibid.*, 97.

¹⁴³ *Ibid.*, 350.

V. Conclusion

The conclusion of *Diana of the Crossways* was a source of turmoil for Meredith and his critics. The publication of the novel in *The Fortnightly* fell short of an ending and declared that the ending would be presented in the first edition of the novel. However, deciding the fate of Diana proved difficult for Meredith. He writes in a letter that "*Diana of the Crossways* keeps me still on her sad last way to wedlock. I could have killed her merrily, with my compliments to the public; and that was my intention."¹⁴⁴ A victim of scandal himself, Meredith contemplated related the damage that false reports can do by making them responsible for Diana's death. However, he chose instead to give himself retribution by not only allowing Diana to live but allowing her to marry again.

By choosing to marry Diana again, Meredith provides Diana with a second chance at a happy marriage. Meredith admits that "the coupling of such a woman and her man is a delicate business."¹⁴⁵ When the complete version of *Diana of the Crossways* was published in 1885 readers discovered that Diana would marry Thomas Redworth after the death of her first husband. While Diana's affection towards Thomas is not always apparent in the novel, Thomas has remained Diana's editor and supporter since her legal trial but believed himself unworthy of becoming her husband until he was financially stable and her husband had died. Meredith's decision to marry Diana may be linked to his choice to model his heroine after Norton. In March 1877, two years after George Norton's death, Caroline Norton married Sir

¹⁴⁴ George Meredith to Mrs. Leslie Stephen, Box Hill, 19 May 1884, in C.L. Cline, ed., *The Letters of George Meredith* (2), 849.

¹⁴⁵ George Meredith to Mrs. Leslie Stephen, Box Hill, 23 August 1884, in C.L. Cline, ed., *The Letters of George Meredith* (2), 859.

William Stirling Maxwell.¹⁴⁶ Maxwell had been her editor for many years and a fellow literary figure. Fourteen weeks into her new married life Norton died, followed by Maxwell a few weeks later.

Norton never lived to see married women given the right to legal representation in the 1882 Married Women's Property Act. Although *Diana of the Crossways* was published in 1885, the timeline of Diana's experiences is set during Norton's life. The most obvious evidence of this is illustrated by Diana's involvement in the political debates surrounding the repeal of the Corn Laws in 1846. However, Meredith also makes it clear that Diana's story takes place prior to 1882 through the portrayal of her lack of legal voice. Despite the portrayal of the very recent past, Meredith's *Diana of the Crossways* can be both categorised as sentimental and historical realism. Meredith looks upon the nineteenth century as a historian examining Norton's role in the debates for marriage law reform. In addition, Meredith creates a historical analysis of the role of married women's testimonial evidence in the debates for marriage law reform and in the development of the nineteenth-century novel.

As Kathryn Abrams argues, "[a]uthors use their own experiential stories, or those of others, to illuminate what unites and divides us across lines of genre, race, class, or sexual orientation. They offer these stories not only to illuminate the insights that have been excluded, but to help legal decisionmakers develop less partial, more broadly responsive legal solutions."¹⁴⁷ Stories like those of Norton, Diana, Meredith, and all the legally oppressed married women analysed within this thesis can be seen as not only as pointing to the causes of their exclusion from the law but also as portraying a solution to marriage law injustices

¹⁴⁶ John Fyvie, "The Real *Diana of the Crossways*" *Temple Bar*, June 1898-Dec. 1901, Vol. 121 (480), 404.

¹⁴⁷ Kathryn Abrams, "The Narrative and the Normative in Legal Scholarship", 44.

through legal reform that would provide them with legal representation. A system of exclusion is not a just system. Only when given an equal right to protest and critique the social, legal, and political system which dictate our lives can a system truly be equal.

Conclusion

The purpose of this dissertation has been to explore the interdisciplinary relationship between legal and literary representations of married women as a way of understanding the changing portrayal of married women in the nineteenth century. From 1839 to 1882, married women went from having no rights in marriage to gaining the rights to the custody of their children, the ability to apply for separation and divorce, property rights separate from their husbands, and equal legal representation. The fact that women could not testify in court or in Parliament makes this achievement even more astonishing. Therefore, in order to understand how the portrayed experiences of married women in novels changed during this period, it was essential to uncover how the experiences of married women were able to be shared in law despite their forced silence. The only legal representation available to married women prior to 1882 was the ability to sharing of written testimonies of experience. This dissertation has analysed the representation of married women's experiences through writing as a persuasive element in each stage of the nineteenth-century marriage law reforms. From the moment Norton's children were taken from her and her decision to advocate for married women's custody rights to the debates for equal divorce and property rights, women's shared experiences aided in the development of sympathy for their legal non-existence. Alongside the political pamphlets of Norton, married women's ability to put forth writing as legal evidence in court and the increase in trial reports spread an awareness of suffering caused by a lack of legal rights and representation. Married women's writings as courtroom evidence and political pamphlets were used in Parliamentary debates for marriage law reform as a way of understanding the oppression of married women within the contemporary legal system. As the

preceding chapters have explained, the written evidence brought forth in court could consist of journals, diaries, letters, and signature. However, in order to spread light on the unjust treatment of married women by the law, the evidence examined in this thesis had to not only represent the law as it is and as it ought to be.

With the legal perception of married women dramatically changing, this thesis has brought attention to the altering image of married women in novels and the role that literary portrayals of married women's legal oppression played in the spreading awareness to women's legal non-existence. As this thesis has argued, a significant commonality between the representation of married women in law and the novel can be observed in the use of written evidence as a vehicle for narrating the necessity for legal reform. Many nineteenth-century novelists adopted the use of women's writing as a narrative form which allowed them to not only depict the real-life suffering of married women within an unjust legal system but also to call attention to how the inability to speak out against such injustices has obstructed women's ability to advocate for reform. As each chapter of this dissertation has argued, the portrayal of women's writing significantly influenced the development of the novel form through the development of genres like the diary novel, the bigamy novel, the divorce novel, detective fiction, and sympathetic realism.

The novels chosen in this study represent the interrelationship between law and literature in the call for marriage law reform and were all chosen due to the importance put upon married women's physical writing as a medium for sharing their experiences of legal oppression. Anne Brontë's *The Tenant of Wildfell Hall* not only highlights the development of the diary novel but draws attention to the suffering of women as a result of their inability to apply for custody of their children. Caroline Norton's *Stuart of Dunleath* both portrays her

own suffering through the utilisation of autobiographical fiction and exemplifies a fusion of fact in fiction which highlights the argumentative affects of fiction. Mary Elizabeth Braddon's *Lady Audley's Secret* and *Aurora Floyd* provide examples of the origins of the bigamy novel genre and its characteristic use of legal evidence to connect novels to the legal proceedings which they imitated. Wilkie Collins' *Man and Wife* both emphasises the use of women's letters and personal writing as a tool of defence in ceremonial law trials and the effects of unjust property rights. And lastly, George Meredith's *Diana of the Crossways* provides a summary of the legal and literary development of the nineteenth century and the importance that married women's right to a legal voice to share their experiences has on their ability to fight against legal injustices.

As chronologically focused as this dissertation is, the affect of unequal marriage laws and the role of women's testimonies in the call for legal change is still relevant. The ever-changing realm of marriage laws and the importance of marriage law equality has continued to evolve through legislation that has legalised interracial and same-sex marriages around the world. In addition, women's testimonies have continued to be a source of authority in legal and social reforms. The fight against legal silencing in sexual assault trials has similarly resulted in the mass distribution of women's shared experience as a way of highlighting the injustices that women face within the legal system. Even with the ability to speak out in a court of law, individuals have continued to be silenced by the biases of executive, legislative, and judicial branches of government. But this has not stopped women from using their narratives of experience to represent the necessity for legal equality.

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