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CHAPTER 1

A Novel Approach to Feminist Jurisprudence

Narrating the Gothic Reality of Coverture

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

—Oxford English Dictionary

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

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

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

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

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

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

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

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

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

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

**Buried Alive under Coverture**

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

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

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

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

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

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

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

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

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

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

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

**Wollstonecraft’s Prosecution of Gothic Laws**

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

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

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

With the help of Jemima, Maria escapes from the madhouse and returns to London, where Darnford soon joins her. When Darnford is sued by Venables for seduction and adultery, he leaves for France, and Maria stays to take charge of his defense.\(^{13}\) Wollstonecraft’s narrative culminates in a trial scene, in which the future course of Maria’s life will be determined. As a conclusion, Godwin appended several of Wollstonecraft’s outlines for completion of the novel, all but one of which portend tragedy.

This novel, however, is much more than its Gothic plot summary suggests. It is not the story of a sentimental woman who tries to escape a bad marriage for true love and suffers as a result of her passion. Maria is not on trial here, but rather a system that, under the guise of protecting women, keeps them totally dependent on men. Rhetoric of “protection” abounds in *Maria* just as it does in the legal discourse on coverture. In the novel, the word “protection” is what Kristeva would characterize as an “ambivalent” word, one that “introduces a signification opposed to that of the other’s [the Law’s] word” (“Word, Dialogue and Novel” 44).\(^{14}\) Working
with Bakhtin’s concept of “ambivalence,” Kristeva explains that the term “implies the insertion of history (society) into a text and of this text into history” (“Word, Dialogue and Novel” 39). Maria explores (from a woman’s point of view) how this abstract legal language translates in society into something very different from protection—real-life misery and oppression.

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

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

Unambiguously clear in the novel is that women need to help themselves. Maria’s memoirs are written with the express purpose of educating and exposing her daughter to the subtleties and harms of patriarchy. She hopes her life story “might perhaps instruct her daughter, and shield her from the misery, the tyranny, her mother knew not how to avoid” (82). While Maria is writing to her daughter, Wollstonecraft is writing to her female readers, who can become that daughter as they read the memoirs over Darnford’s shoulder (Maurer 50). Wollstonecraft is thus able to encourage her readers “to form your grand principle of action. . . . Gain experience—ah! gain it—while experience is worth having, and acquire sufficient fortitude to pursue your own happiness” (125; emphasis added).

At the same time that Maria encourages her daughter and the reader to be “mistress of your own actions” (149), however, the novel acknowledges that the laws that kept women buried alive, and in complete economic dependence on men, presented almost insurmountable barriers to the freedoms to which women should have had access. Maria’s story illustrates the ramifications of a husband’s absolute control over all family finances (and the lawful methods of coercion he could employ to gain control over any sources of funds available to his wife). The working-class Jemima, whose story relates how she has been treated as “a slave, a bastard, a common property,” tells of her harrowing efforts to feed and shelter herself through prostitution and physically debilitating labor (109). These narratives show how limited employment opportunities made it next to impossible for a woman to support—and thus protect—herself.

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

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

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

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

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

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

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

**Outlaw Texts**

*Novels That Don’t Police*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The law is fully on Heathcliff’s side and he knows it. He is careful to act within “the limits of the law” (187), which, as this scene dramatically exposes, are really no limits at all. The emotional abuse is explicit, and the intensity of Isabella’s hatred of Heathcliff suggests that his “experiments” have very likely included the completely legal act of marital rape, as well as any force that was necessary to keep her from leaving. Her rage works only to make her appear more in need of his “protection.” In its presentation of speakable and unspeakable acts of this husband’s cruelty, this outlaw novel
shows the “protection” of coverture to be far from anything anyone could ever desire.24

Feminist legal theory and methods provide a different lens than has been used in previous law and literature scholarship through which to view interrelationships between the novel and the law. For example, such a perspective brings to the center questions such as these: When studying the impact on novelistic discourse of changing rules of evidence or trial procedures in the nineteenth century, how might it matter that women were not allowed to study or practice law? Are connections between juries and novel readers at all affected by the fact that, at the time, many women read novels but no women sat on juries? What does it say about the interplays between legal proceedings and the novel that women often were not welcome in law courts and that popular and influential women writers, such as Frances Trollope, were chided in literary reviews for daring to write about such an unfit topic as the law?25 In her recent book, Riding the Black Ram: Law, Literature, and Gender, Susan Sage Heinzelman brings gender to the center of the analysis and examines the impact that this change of focus has on the traditional telling of the rise of the English novel in the eighteenth century.26 For the nineteenth century, a particularly relevant inquiry that In Contempt addresses is how taking into account “outlaw” novels by women might call into question long-standing judgments that have been made about the cultural role of the Victorian novel, especially as these conclusions have been based primarily on studies of texts that have been deemed acceptable as literary precedents.27 Among the outlaw texts analyzed in the following chapters, many are outlaw novels that were “in contempt” of the law. The performances of feminist jurisprudence in these novels cast more than reasonable doubt on conclusions about the normalizing and policing effects of novels on nineteenth-century readers.