In Contempt
Kalsem, Kristin

Published by The Ohio State University Press

Kalsem, Kristin.
In Contempt: Nineteenth-Century Women, Law, and Literature.
The Ohio State University Press, 2012.
Project MUSE. muse.jhu.edu/book/24252.

For additional information about this book
https://muse.jhu.edu/book/24252

For content related to this chapter
https://muse.jhu.edu/related_content?type=book&id=859114
Introduction

1. This Act made it possible for a Court of Chancery to award mothers custody of their children under the age of seven and access to children under sixteen. Norton was responsible for the introduction of this legislation, and her efforts have been acknowledged as very influential in getting this Act passed. See Shanley 25.

2. Norton claimed to have no problem with the law treating husband and wife as “one” so long as they were living together amicably, but when they were “living alienated and in a state of separation” the results were “unjust, unfit, and unnatural” (Laws 167). Quite conservative in her published views, Norton asserts, “What I write, is written in no spirit of rebellion; it puts forward no absurd claim of equality; it is simply an appeal for protection” (Laws 2). However, as Poovey has argued, the act of making a public appeal was very radical at the time, and her transformation “from the silent sufferer of private wrongs into an articulate spokesperson in the public sphere” worked to challenge “the entire ideological order that the legal and sexual double standard supported” (Uneven Developments 64–65).

3. Norton created a great stir with the publication of her A Letter to the Queen on Lord Chancellor Cranworth’s Marriage and Divorce Bill (1855). Critiquing provisions of the proposed bill that allowed men to divorce adulterous wives but only allowed women to separate from adulterous husbands, Norton highlighted the injustice of this unequal treatment with scathing irony:

“[I]t is not good for MAN to be alone,”—but extremely good for woman. Hard that a husband should not divorce an adulterous wife! Hard that he should not form a “purer connection!” Hard (though he has a career and occupations out of his own home), that a second chance of domestic happiness should not again greet him!—But not the least hard that his weaker partner, elevated, according to Mr. Gladstone, to an equality with him, since the Christian advent,—she, who if she has not a home has nothing—
should be left stranded and wrecked on the barren sands, at the foot of the world’s impassive and impassable rocks. (58)

Parkes and Howitt joined Smith in her efforts to amend married women’s property laws; they became involved in divorce reform when the legal issues were linked in the parliamentary debates of 1856 and 1857. See Shanley 32–35.

4. The 1857 Act did include certain provisions that helped women escape the strictures of coverture. For example, if a woman was granted a separation decree, she was treated as a *feme sole* with respect to her property and contracts. Also, if she was deserted by her husband, she could go before a local magistrate and receive an order to control her earnings as a *feme sole*. Also in 1857, Smith, Parkes, Anna Murphy, and Anna Jameson started *The Englishwoman’s Journal*, which became the official paper of the burgeoning women’s movement (St. John-Stevas 261).

5. Under the 1870 Act, a wife was entitled to keep her own wages and earnings made after marriage and passage of this law. Property belonging to her prior to marriage, however, was her separate property only if so agreed to by her husband in writing. She was entitled to keep any personal property as one of the next of kin of an intestate and specific bequests of money (but only up to £200). The law did not address at all the limitations on a married woman’s own testamentary powers. See Holcombe 166–83 for a discussion of the legislative history of this Act, as well as why it was declared a “legislative abortion” in its final form (179). Under the much broader 1882 Act, a married woman was considered to have the rights of a *feme sole* with respect to acquiring, holding, and disposing by will or otherwise her separate property. Her separate property included all real and personal property that belonged to her prior to marriage, as well as her wages and earnings acquired after marriage. Married women were also granted the right to enter into contracts and to sue on their own behalf. See Holcombe 184–205 for the legislative history of the 1882 Act. Also, see Dorothy Stetson’s book, *A Woman’s Issue: The Politics of Family Law Reform in England*, for a study of “the political influence of feminists on the development of divorce and matrimonial property law in England” (15).

6. See Mitchell, *Cobbe*, for a discussion of Cobbe’s central role in the inclusion of provisions relating to protection from domestic abuse in the Matrimonial Causes Act of 1878, specifically the impact of her writings such as “Wife-Torture in England,” published in the *Contemporary Review* while the legislation was pending. See Mitchell generally for a biographical account of Cobbe, one of the most influential women writer advocates in the nineteenth century.

7. The Contagious Diseases Acts and Butler’s seventeen-year campaign are discussed in detail in chapter 5.

8. Thomas Talfourd introduced the bill that became the Infant Custody Act in 1839 (Shanley 25); Richard Monkton Milnes was supportive on many women’s issues including reform of married women’s property laws (34); Lords Brougham and Lyndhurst advocated for women’s rights during the debates on reform of divorce and property laws (35, 40); and John Stuart Mill, Jacob Bright, and George Shaw Lefevre (who introduced the married women’s property bill in 1868) agreed with Wollstoneholme, Butler, and Cobbe on the need to rethink substantially the institution of marriage (67).

9. Women’s efforts to influence the law more directly are discussed in detail in chapter 4.
10. As Patricia Smith explains in the introduction to a collection of essays representing the wide spectrum of approaches to and focuses of feminist jurisprudence, “This analysis and critique manifests itself in a variety of ways, owing partly to the range of issues it covers and partly to the divergence among feminists on virtually all points other than the rejection of patriarchy” (3). Far from limiting its scope to the fields of equal protection, reproductive freedom, rape, sexual harassment, spousal abuse, prostitution, and pornography, “the issues covered by feminist jurisprudence are as wide ranging as the areas covered by law” (4). Martha Chamallas identifies “the central core of feminist legal theory” as “the exploration of women’s subordination through the law,” with subordination “meant to convey the systemic nature of women’s inequality” (xx). For helpful introductions to this field, see Chamallas; Dowd and Jacobs; Scales; Smart, *Feminism and the Power of the Law* 66–89; Cain; Smith, Introduction; and Bartlett, “Perspectives in Feminist Jurisprudence.” For collections of essays on feminist jurisprudence and feminist legal theory, see Bartlett and Kennedy; Smith, *Feminist Jurisprudence*; D. K. Weisberg; Wing; Barnett; and Taylor, Rush, and Munro. In this book, I draw on the work of a wide array of feminist legal theorists.

11. Richard Delgado, in the context of law, describes an “outgroup” as “any group whose consciousness is other than that of the dominant one” (2412).

12. One of the purposes of Sedgwick’s study of Gothic conventions was to make meaningful the critical gesture of writing “Gothic” in the margins of a text. I hope that this book will make “feminist jurisprudence” an increasingly common and critically significant marginal note.

13. In her article “Victorian Narrative Jurisprudence,” Krueger persuasively makes the case that if literary historians contributed to studies of narrative jurisprudence and lawyers engaged with literary history then “the goals of narrative jurisprudence are better served, the significance of narrative evidence made more clear, and therefore its defence more robust” (438). This is because there would be attention paid to “an historical process of social formation carried out by fusing aesthetics and rationalism” (438). For an excellent discussion of Victorian feminist narrative jurisprudence, see 456–60.

14. Krueger focuses primarily on gender and feminist jurisprudence but also suggests “how literary history might contribute to other forms of ‘outsider jurisprudence,’ which advocate for justice for legally disadvantaged sexual, racial, ethnic, and religious groups” (3).

15. As I discuss more fully in chapter 1, I also focus primarily on novels written by women that have been outside the consideration of many studies on nineteenth-century law and literature. In *A Critical Introduction to Law and Literature*, for example, Kieran Dolin explores “border crossing” between the two disciplines across centuries, focusing his discussion of the nineteenth century around “the debate about the legal and political position of women in Victorian England” (16). While there is excellent discussion of Caroline Norton (122–26) and reform efforts by literary women (126–30), the novelist that Dolin focuses on in this chapter is Charles Dickens. This chapter also discusses the fictionalization of the Norton case in William Thackeray’s *The Newcomes* (1853–55) and George Meredith’s *Diana of the Crossways* (1885) (Dolin 130–33).

16. For details of the Waters case, see Bentley 202–5. See Shanley 87–93 for a discussion of the legal discourse surrounding the baby farmer cases, as well as for
a discussion of the feminist response to the law’s “truths” about infant mortality. Moore’s story depicts many of the feminist arguments such as that poverty and male irresponsibility were significant aspects of the problem of high infant mortality. His introduction of the baby farmer Mrs. Spires’s murderous husband stresses that men also are implicated in the “business” of infanticide. So too, Moore’s novel argues, are the upper classes who willingly sacrifice the children of their wet nurses for their own. As there is no mention of the husband of Mrs. Rivers, the woman who hires Esther to feed her child, all the blame of the class issue is translated into the selfishness of this wealthy woman.

17. The actress Helen Faucit believed that the quick and intelligent Portia had discovered the problem in the wording of the bond almost immediately upon hearing it, which would explain her light-hearted mood as she sets off to meet with Bellario (Foulkes 31). Ellen Terry later in the century played the part as if Portia has an inspiration near the end of her dialogue with Shylock in the courtroom when she remarks, “‘Tarry a little; there is something else” (4.1.304). Terry herself realized that this allowed Portia only nine lines to look up the specifics in the law books (Foulkes 33). Critics like William Winter, however, thought Portia never could have come up with the winning legal argument herself. He concludes that the “line and plan of Antonio’s defence have been thoroughly worked out by Bellario.” See William Winter, *Shakespeare on Stage* (New York, 1911) 230, qtd. in Hankey 445.


19. In her fascinating study, *Shakespeare and Victorian Women*, Marshall analyzes Victorian “women variously negotiating their Shakespearean legacy and attempting to plot its meaning for themselves. . . .” Specifically citing Jameson’s work, Marshall notes, “an historicist attentiveness to the cultural situation of the playwright and his women generally signals a recognition of Shakespeare as fundamentally, and often liberatingly, non-Victorian” (6).


21. In Clarke’s sketch, Portia’s father is so heartsick after the loss of his wife that he leaves, directing Bellario to oversee the rearing of his daughter. Portia and her father are reunited when she is seventeen, but he dies a few years later, leaving behind the infamous will that promises his daughter to the suitor who chooses the correct casket (gold, silver, or lead). Clarke mentions that while Bellario is Portia’s uncle, she calls him “cousin” (42); this most likely is in explanation of Portia’s line in *The Merchant of Venice*, “See thou render this / Into my cousin’s hands, Doctor Bellario” (3.4.49–50).

22. In a letter to Helen Faucit, Jewsbury wrote, “Many thanks for writing and sending me Ophelia . . . please do another. Portia is one of my great heroines. . . .” See Sir Theodore Martin, *Helena Faucit (Lady Martin)* (Edinburgh, 1900) 369, qtd. in Foulkes 28. This letter prompted Faucit to write her “Letter on Portia” (Foulkes 28).


24. One of the rebuked essays read, “My favourite heroine from Shakespeare is the ‘Lady Lawyer, Portia.’ . . . She is evidently Shakespeare’s pet creation, and can
Notes to Chapter 1

we not deduct [sic] from this, that the great writer would give to women a more important position that they hitherto occupied?” (“Our Prize Competition” 380–81, qtd. in Marshall 41).

25. Hankey also argues that women writers had to “tread carefully,” explaining that “they had internalized the feminine ideal, at least in part, and needed some subterfuge to do justice, as they saw it, to Portia without disturbing that ideal” (433–34). Hankey explains that her study of the history of women’s interest in Portia has revealed more of “a private sense of identification with the character, a feeling almost of consanguinity” than “a campaign to widen the definition of Womanliness to include, say, intellect and independent-mindedness” (434).

26. Women’s efforts to be admitted into the legal profession in England are detailed in chapter 4. Ms. Thompson was one of the four plaintiffs in the 1913 case, *Bebb v. the Law Society*, discussed in that chapter.

27. In “Feminist Legal Methods,” Katharine Bartlett sets out various feminist methods to be applied to law. As she explains, these methods seek to make women’s experiences and voices relevant: “All of these methods reflect the status of women as ‘outsiders,’ who need ways of challenging and undermining dominant legal conventions and of developing alternative conventions which take better account of women’s experiences and needs” (831). Methodologies that she discusses in detail include (i) “identifying and challenging those elements of existing legal doctrine that leave out or disadvantage women and members of other excluded groups” and (ii) “seeking insights and enhanced perspectives through collaborative or interactive engagements with others based upon personal experience and narrative” (831).

28. Works such as George Eliot’s *Adam Bede* and Thomas Hardy’s *Jude the Obscure* have received serious attention in law and literature studies. For insightful examinations of legal and literary connections in these novels, for example, see Rodensky 100–21 and McDonagh 145–52 (*Adam Bede*), and Marsh 269–327 and McDonagh 181–83 (*Jude the Obscure*). *In Contempt* presents these more canonical texts in relationship to “outlaw texts”: moreover, it approaches them differently, through the lens of feminist jurisprudence.

29. In her *Introduction to Feminist Legal Theory*, Martha Chamallas explains, “Feminist legal theory responds to a basic insight about life and law. It proceeds from the assumption that gender is important in our everyday lives and recognizes that being a man or a woman is a central feature of our lives, whether we are pleased or distressed by the thought of gender difference. Feminist legal theory takes this approach into the study of law by examining how gender has mattered to the development of the law and how men and women are differently affected by the power of law” (xix).

Chapter 1

1. Wollstonecraft died in childbirth before completing *Maria*. Godwin edited the manuscript, which was published four months after her death. He wrote his own preface to the novel and provided bracketed editorial information throughout the text.

2. Kelly argues that Godwin’s novel *Things As They Are; or, The Adventures of Caleb Williams* (1794), as well as other English Jacobin political novels, were models for Wollstonecraft’s work (xv–xvii). Krueger, noting Godwin’s belief with respect to
Notes to Chapter 1

his own writing that a novel would have a wider audience, argues that Wollstonecraft's choice of this genre can be viewed as an effort "to assert a more capacious understanding of rationality and to engage male as well as female readers in an experience of intersubjective communication that would undermine efforts to exclude evidence of 'unrecorded despotism' from rational thought" (Reading for the Law 113).

3. In her analysis of Gothic theory after 1760, Harriet Guest characterizes Maria as a Gothic novel. Her brief discussion of the novel focuses on its presentation of "the Gothic 'spirit of liberty'" (137), which Guest suggests, "in its privacy and specificity, articulates a gender-specific utopian politics" (137). Tilottama Rajan calls Maria "a form of political Gothic" (233). While I agree with Rajan's assessment that the novel "retains the Gothic setting as a socially imposed metaphor," I read Wollstonecraft's use of the Gothic as more radical than Rajan, who emphasizes the form's "complicity in attitudes of patriarchy" (237).

4. Laurie Langbauer offers a different interpretation of Maria's "breakdown of language and shattering of meaning," suggesting associations with the maternal and semiotic forces (102).

5. A legal fiction is an assumption that certain facts exist, whether or not they really do. Thus, under the law, the husband and wife are one person even though, in reality, this is an impossibility. While coverture applied only to married women, its role in shaping cultural representations of and ideas about women made it a legal concept that significantly affected the everyday lives of all women.

6. Other of Sedgwick's categories that could be discussed in connection with coverture and Maria include "sleeplike and deathlike states," "the poisonous effects of guilt and shame," "nocturnal landscapes and dreams," and "the madhouse" (9–10).

7. Actually, four categories of persons were excluded from many civil and all political rights in England: criminals, idiots, women, and minors (Cobbe 110). Cobbe's essay interrogates the inappropriateness of these associations.

8. For a detailed analysis of a wife's legal disabilities (including exceptions to the general rules), see Doggett 34–61. For a most thorough discussion of women's property rights in the eighteenth century, see Staves.

9. Holcombe reports that while, "[s]ince the late seventeenth century, courts had held that chastisement did not extend to physical punishment but meant only admonition of the wife and her confinement to the house . . . older interpretations lingered on, and it was generally believed that a man could beat his wife, although not in a violent and cruel manner—not with a stick thicker than his thumb" (30). Holcombe also describes two legal actions a wife could take against an abusive husband: she could prosecute him for attempting, threatening, or actually causing her grievous bodily harm, or she could apply to the court for an order binding her husband to keep the peace (30). If he was imprisoned, however, she might lose her means of support. And, then, as now, he might prove more of a danger to her after she had publicly accused him of abuse (in the nineteenth century, the wife would have been required to return home with her husband [Doggett 14–15]). For a discussion of the sources and extent of, and the challenges to, a husband's right to beat his wife, see Doggett 4–15.

10. For a fascinating discussion of the details of various petitions for divorce, including those of the four successful women's petitions in the early part of the nineteenth century, see Horstman 20–45.

11. See chapter 5 for specific discussion of the 1891 legal case Queen v. Jackson,
which set forth the “new” rule that a husband could not lawfully keep his wife confined.

12. Coverture literally took the voice of married women (they had no legal identity); the ideology that coverture represented and the overwhelming influence that it exerted in naturalizing the subordination of women also effectively silenced unmarried women.

13. This was a suit that could be brought by a husband against his wife’s lover. The wife was not a party to the suit; rather she was the “property” that had been damaged. These suits were called actions for criminal conversation and they “came to look uncomfortably near to setting a price on the wife’s virtue” (Horstman 4).

14. In “Word, Dialogue and Novel,” Kristeva discusses two other types of “ambiguous” words: those that are “characterized by the writer’s exploitation of another’s speech—without running counter to its thought—for his own purposes” and those “characterized by the active (modifying) influence of another’s word on the writer’s word. It is the writer who ‘speaks,’ but a foreign discourse is constantly present in the speech that it distorts” (44).

15. Sunstein argues that Darnford’s character is based on Gilbert Imlay, an American author who abandoned Wollstonecraft and their child Fanny (236, 239–43, 253, 275, 279, 299, 305–7). Wollstonecraft attempted to commit suicide twice in connection with this relationship.

16. For a discussion of the interrelationship between economics and power in Maria, see Frost 259–60.

17. In his 1957 The Rise of the Novel, Watt elaborates on these connections: “The novel’s mode of imitating reality may . . . be equally well summarized in terms of the procedures of another group of specialists in epistemology, the jury in a court of law. Their expectations, and those of the novel reader coincide in many ways: both want to know ‘all the particulars’ of a given case . . . and they also expect the witnesses to tell the story ‘in his own words.’ The jury in fact takes the ‘circumstantial view of life,’ which T. H. Green found to be the characteristic outlook of the novel” (31).

18. Linking changes in law to literary practices, Welsh notes, “Precisely in the decades when the ‘probative force’ of circumstantial evidence was most seriously sought after by theorists and practitioners of the law, the attitude of English novelists toward fictionality underwent a change. . . . [I]ncreasingly, through the conscious practice of Fielding and others, the claim to represent reality in novels was expressed by their internal connectedness of circumstances, their deliberate response to the challenge of making representations, until by the time of James novelists scorned either to pretend truth or to concede falsehood in their work” (42).

19. Schramm’s study also identifies two specific issues with Welsh’s analysis, relating to the distinction he draws between testimony and circumstantial evidence. First, she explains that circumstantial evidence was presented, for the most part, to the court as a form of testimony, thus also requiring “inference and interpretation to attest . . . probative value” (20). Second, she complicates the distinction by taking into account professional representations made by lawyers, arguing that “the rise of the third-person realist novel is simultaneously in imitation of, and in reaction against, the increasing prominence of the activities of defence counsel” (23). Schramm’s study focuses on first-person testimonial speeches in fictional trials. But see Lisa Rodensky’s study, which, in analyzing the novel’s “license to represent interiority not by inference but directly” (21), complicates analogies between real-
life advocates and narrators: “While both lawyers and third person narrators may present details about the thoughts of the accused, it is worth considering the difference it makes that the details presented by the third person narrator exist in an imaginative context in which the narrator may have unique and unchallenged access to those thoughts—the kind of access that no person (whether or not a lawyer) could ever hope to have” (24).

20. Focusing on crime fiction, Grossman argues more generally that the novel “defined itself against and through the cultural and material presence of the law court—a symbolic and real place where stories are reconstructed” (6).

21. Miller primarily discusses the works of Dickens, Anthony Trollope, and Wilkie Collins. In discussing the law, Said focuses on Dickens; however, he also cites Jane Austen and George Eliot as authors in whose works “consolidation of authority includes, indeed is built into the very fabric of, both private property and marriage, institutions that are only rarely challenged” (77).

22. In Fiction and the Law: Legal Discourse in Victorian and Modernist Literature, Kieran Dolin, although from a different perspective than this study, also identifies the novel as a site for the critique of the law. Analyzing literary representations of legal trials to illustrate the novel’s role in social reform, he explains that “the framing of a legal trial within a larger narrative operates to highlight the special interpretive assumptions and processes of law” that reveal “the possibility of variation between legal and other interpretations” (19). Dolin’s study, like Miller’s and Said’s, also focuses on well-known texts, specifically The Heart of Midlothian; Bleak House; Orley Farm; Billy Budd, Sailor; Lord Jim; and A Passage to India. Emphasizing the connections between nineteenth-century literature and legal insiders, Dolin discusses the “juridical connections” of many of the writers he includes (4).

23. For explorations of the connections between societal attitudes toward women and madness, see Showalter, who writes:

The advent of the Victorian era coincided with a series of significant changes in society’s response to insanity and its definition of femininity. New legislation made the public asylum the primary institution for the treatment of the insane. . . . As the inmate population of public asylums increased during the century, so too did the percentage of women; by the 1850s women were the majority of the inmate population, and the asylum rather than the attic was identified as the madwoman’s appropriate space. . . . They designed their asylums not only to house feminine irrationality but also to cure it through paternalistic therapeutic and administrative techniques. (17–18)

Also, see chapter 5 of this book for more information on nineteenth-century laws relating to mental illness and asylums.

24. See Surridge for an excellent study of a wide variety of Victorian novels that shed light upon “Victorian novelists’ intense engagement with the issue of marital violence” (12).

25. While judges had no specific authority to exclude women spectators from the courts, as Beaumont explains in his pamphlet “Women and the Law Courts,” it was a fairly common informal practice:

The right of the public to witness legal proceedings is unquestionable,
but, unfortunately for women, judges usually act in this matter as though the public must be interpreted to mean the male sex only. When cases are to be tried in which questions will arise affecting the relations between the sexes, questions in which women may well be considered to have a special interest and a special responsibility in seeing fair play, the first sign of impartiality on the part of the court, is the exclusion of female spectators. (1)

Emphasizing that law courts were almost exclusively a male space, he comments, “With the exception of a very few heroic women, who in recent years have risen superior to the enervating conditions of their sex and braved the terrors of conventionality, the cause of womanhood in our law courts is left entirely to male judges, male advocates, and male juries, under the supervision of male spectators, reporters, and editors” (2).

26. In this excellent study, Heinzelman makes a persuasive case for the influence of the French romance on the development of the novel form. As her analysis illustrates, a combination of critical bias against gender (women) and nationality (French) led to the English novel being defined in a way to exclude the influences of the romance altogether.

27. In her study of New Woman novels, for example, Ardis discusses how the overtly political aspects of these works have been taken as signs of “aesthetic deficiency” (3); thus, they have been disqualified from much “literary” study. Specifically with respect to literary and legal discourse on issues of domestic violence, see Tromp for a compelling analysis of the ways in which sensation novels, which “have only recently come under serious consideration in Victorian studies” (3), served as “the pivot on which a cultural shift occurred, generating a kind of chaos in understanding and necessitating new dialogues about violence and married life” (5).

Chapter 2

1. Act to Prevent the Destroying and Murthing of Bastard Children 1623 (21 James 1, c. 27). The text is from Pickering, Statutes at Large 298. I refer to this statute as the 1623 statute because that is the date cited in this source. In the Statutes of the Realm, the date is cited as 1623–4.

2. The 1623 statute was enacted out of concern that “lewd women” were escaping the strictures of the bastardy clauses of the “poor law” of 1576 (18 Eliz. 1, ch. 3), which mandated that an unmarried pregnant woman declare the name of the father of her unborn child so that the parish could collect support from him and provided for corporal punishment and gaol time for both parents. Women, however, bore the brunt of this social control, with fathers either fleeing or disputing accusations of paternity (Hoffer and Hull 13–17). With the high rate of infant mortality, the bastardy laws provided much incentive for an unwed mother to conceal her pregnancy. In the not unlikely event that her child was stillborn or died from other natural causes, she might, through concealment, be able to escape certain punishment under the bastardy laws, as well as the social judgment that the law abetted and legitimized. The 1623 statute greatly raised the stakes of concealment—if discovered, the woman was presumed guilty of a capital offense (the statute also solved the difficult evidentiary problem of proving premeditation in concealment
cases). Hoffer and Hull report a fourfold increase in the prosecution of infanticide cases after passage of the statute (27), as well as a growing association between guilty verdicts and the illegitimacy of the victims (23).

3. The evidence given by the doctor, which we only know is “heavy on her” (474), also most likely goes to proving that Hetty has borne a child.

4. A well-known literary precedent of a fallen woman returning to the presumed burial spot of her infant is William Wordsworth’s “The Thorn” (1798). In this lyrical ballad, Martha Ray has returned for twenty-two years to a mountaintop area where many believe an infant she may have hanged or drowned is buried. The sea-captain whom the narrator of the poem cross-examines, however, defends Martha, saying, “But kill a new-born infant thus! / I do not think she could” (223–24). Martha is never prosecuted, and the question of whether she repeats her refrain “Oh misery! Oh misery!” (65) because of her murder of the child, the natural death of the child, or some other combination of reasons is left open.

5. Krueger emphasizes that Hetty is “the farm girl seduced by the aristocrat Arthur Donnithorne,” who thinks “that her role in a fairy-tale romance will bring her new freedom” (Reader's Repentence 253). She sees Hetty as typifying the “tragic vulnerability of both women and children in a society ruled by Donnithorne’s law” (254). McDonagh explains jostling interpretations of Hetty in terms of two competing child-murder narratives in Adam Bede, one that emphasizes Hetty’s own childishness in a way that draws mother and child together as “equal victims of other crimes—lechery and seduction” and another more disciplinary narrative that represents Hetty as “an outré form of femininity for which there is no place in a social body made up of families” (248).

6. For less sympathetic readings of Hetty, see, for example, Catherine Hancock, who explores the ways in which Arthur and Adam both “fall prey to the assumption that Hetty’s remarkable good looks reflect an inner beauty and perfection of womanliness,” while lurking behind this façade is “Hetty’s true nature: her narcissism, insensitivity to the needs of others, and above all else, what Eliot calls ‘hardness’” (304). Also, Aeron Hunt describes Hetty as “economic and competitive” and resembling “another grotesque economic woman, the consumer” in the ways in which she misapprehends “true value as merely the market value” (85). Hunt argues that Hetty’s portrayal is linked to the inflammatory infanticide discourse of the mid-nineteenth century through Hetty’s acquiescence “to the belief that the law of the market determines all social relations” and “subscribes to a model that represents human value as exchangeable and reducible to money” (85).

7. For a detailed analysis of social cognition theory and its applicability to law, see Krieger.

8. Krueger argues that literary treatments of infanticide may have “contributed to this effort to protect women from the state by elaborating a representation of infanticide that insisted on its private character” (“Literary Defenses” 271).

9. Miriam Jones argues that Eliot portrays Hetty in stark contrast to the sympathetic women accused of infanticides in the mid-century broadsides: “[W]ith her disdainful descriptions she attacks the cliché of the helpless woman and firmly directs her readers away from the paternalistic, infantilizing sympathy provoked by stock representations” (310). Jones takes the position that “Eliot allocates blame disproportionately: that Hetty is punished, Arthur is excused, and Adam is figured as the true sufferer because the male characters, unlike Hetty, are represented as having the ability to learn from mistakes” (311).
10. Jones agrees that the narrative voice, which she characterizes as “a punitive courtroom spectator,” complicates interpretations of Hetty as sympathetic in the trial scene (312).

11. The complex relationship between law, religion, and truth explored in the confession scene in *Adam Bede* similarly is of concern in Sir Walter Scott’s *The Heart of Midlothian*, an 1819 novel also involving a woman accused of infanticide. Technically, Effie Deans is accused of concealing her pregnancy, which was a capital offense in Scotland if the child was missing or subsequently found dead. Much in the same way that Hetty’s story becomes the story of Adam Bede, Effie’s trials serve as a vehicle to highlight her sister’s heroic efforts on her behalf. Jeannie Deans is the heroine of the novel, and she is a heroine of truth. Even knowing that her sister did not kill her child, Jeannie refuses to commit perjury and save her sister by testifying that they had discussed her pregnancy, thus proving that there had been no concealment. Following the law of her religion, Jeannie follows the law of the land; these laws to Jeannie are knowledge and truth: “He has given us a law . . . for the lamp of our path; if we stray from it we err against knowledge—I may not do evil, even that good may come out of it” (164). For Jeannie Deans, law is truth.

12. Hancock argues that the resolution at the end of the novel is possible only because “Hetty—along with her dangerous sexuality and destructive maternity” (308) have been banished. McDonagh concludes that the infanticide “paradoxically facilitates the constitution of the new society at the end of the novel, symbolized by the marriage of Dinah and Adam” (248). Hetty’s murder of her child “takes on the role of a sacrifice that will enable the eventual reconstitution of the social order” (248).

13. But see, for example, Marck, who argues that because the moral of the novel depends “on the conscious memory of Hetty and the recollection/retelling of her fall,” she “continues to disrupt the narrator’s claim to a true reading of events” and has the “power to disturb the narrator’s moral” (467). Logan also analyzes “the enigma of Hetty Sorrel’s character” (21), arguing that the issues raised by this complex character “remain unresolved by the novel’s conclusion” (18).

14. Welsh traces this shift from the lawyer Henry Fielding’s 1749 novel *The History of Tom Jones*. He argues that strong representations were central to the British novel throughout the nineteenth century until modernism “challenged the conclusive aspect of literary realism” (255).

15. In her analysis of class in *Adam Bede*, Miriam Jones describes Hetty as “representative of her class in her limited character and her dangerous sexuality” but deviant in her act of infanticide, querying, “[j]ust what is the reader being told in *Adam Bede* about the infanticidal woman?” Her response suggests the power of the prosecutorial narrative voice in making a strong case against Hetty: “She is limited, vain, unintelligent, venal, narcissistic, manipulative, lacking in spirituality, and exceptionally attractive physically”; moreover, “she was clearly born that way” (322).

16. Hancock describes Eliot as presenting a troubling norm for infanticide in *Adam Bede*: “As an unmarried woman whose fertility has not been sanctioned by the institution of matrimony, Hetty’s story epitomizes one of the most dreaded fears of Victorian society. Her loss of sexual purity and lack of maternal feeling threatened the very foundations of Victorian culture” (308).

17. See Hancock for an analysis of two other late Victorian novels, Lucy Clifford’s *Mrs. Keith’s Choice* (1885) and Margaret Harkness’s *A Manchester Shirtmaker* (1890), which “offer a radically different version of murderous maternity than that depicted in *Adam Bede*” (299). Hancock argues that while “the unmarried
Hetty murders her child . . . to efface all traces of her motherhood and thus avoid the censure of her family and community, the young widows in *A Manchester Shirtmaker* and *Mrs. Keith’s Choice* . . . interpret their violence against children as the fullest expression of their maternal devotion*” (299).

18. A popular novel, *The Broad Arrow*, published under the pseudonym Oliné Keese, was reprinted in at least eight editions by 1918. See Hergenhan 142–43.

19. While criticism of the 1960s and 1970s accused the novel of being too didactic in nature, with the author falling “more readily than Harriet Beecher Stowe into melodrama and sentimentality” (Poole 120) and more “at home as a writer of religious tracts” (Hergenhan 141), more recently the novel has been acknowledged as having “not yet received the critical attention it deserves” (Scheckter 89), and its heroine praised as “undoubtedly the most powerful female creation in Australian colonial literature” (Walker 88). Emphasizing the novel’s literary merit, Walker states that “to come for the first time to *The Broad Arrow* is, because of the experience it deals with, and because of the power of the writing, a stunning experience” (88). I believe this novel, through the complex representation of Maida, unsettles institutions such as the law and religion more than has heretofore been suggested.

20. Leakey did more than write on behalf of fallen women; she helped to establish a home for them, the Exeter Home (Walker 87). In *Tainted Souls and Painted Faces*, Amanda Anderson identifies “a pervasive rhetoric of fallenness in mid-Victorian culture, one that constitutes sexually compromised women as lacking the autonomy and coherence of the normative masculine subject” (1). She describes how fallen women often are presented in realist fiction as “hyperdetermined and disturbingly ‘false’” in order to make the other characters seem less “textually determined,” more real, and more in control of their own stories (10). While the law sets the scene and helps script the plot of Maida’s story, she is presented as a complex and independent woman who thinks and acts (to the extent possible) for herself. Like Elizabeth Barrett Browning with her presentation of the fallen woman Marian Erle in *Aurora Leigh*, Leakey “insists on particularizing the fallen woman, on rescuing her from a set of conventions that obscure the perception of her as an individual” (Anderson 177).

21. In her study of social-problem novels, Josephine Guy notes that a distinguishing feature of such novels was “their attempt to comment on, and stimulate debate about, matters of public and political concern” (4). She goes on: “social-problem novelists are commonly credited with the intention of trying to educate, and therefore by implication to change, the opinions and prejudices of their readers. In so doing, they are seen to be implying that the novel can, and should, have an important role to play in social and political life” (4). While Guy doesn’t discuss any of Trollope’s novels in her study, *Jessie Phillips* fits within this tradition. See Guy 3–12 for a general discussion of the social-problem novel.

22. Dickens’s competitiveness with Frances Trollope early in his career led to such comments as “I will express no fuller opinion of Mrs. Trollope, than that I think Mr. Trollope must have been an old dog and chosen his wife from the same species” (letter to S. Laman Blanchard 506–7, qtd. in Kissel 116). For a discussion of Dickens’s literary debt to Trollope, see Kissel 115–22.

23. All quotations from *Jessie Phillips* are from the three-volume Colburn edition. The parenthetical references list the volume first, followed by the page number.

24. The first known fictional woman detective appeared in 1864 in Andrew For-
rester’s *The Female Detective*. See Klein 18. The first woman to practice law in Britain was admitted to the profession in 1922. See Abel-Smith and Stevens 194.

25. While sometimes referred to as “the bastardy clause,” the Poor Law Amendment Act actually included several bastardy clauses.

26. By 1834, the 1623 statute had been repealed and infanticide was treated like any other case of murder, with even the mother being innocent until proven guilty. This change in the law, however, did not reflect a change in attitudes toward unmarried mothers. Rather, there was concern that the flagrant disregard of the statute’s provisions was emasculating the law. Throughout the eighteenth century, there had been a sharp decline in the number of infanticide convictions, with both judges and juries showing an increasing leniency toward defendants. Judges, for example, were less likely to rule that the floating of the infant’s lungs was conclusive evidence that it had been born alive, and juries were accepting a wide array of defenses. Defendants were acquitted who claimed an inability to keep the infant from falling onto a rough floor, into a bucket, or into a privy. Others argued that they had been unable to tie off umbilical cords or had missed when doing so and inflicted mortal wounds. See Hoffer and Hull 65–91. Upon a failed murder prosecution, however, the mother was again singled out for special treatment and could be charged with a new offense, concealment of birth, which carried a sentence of up to two years’ imprisonment. A separate prosecution for concealment alone became possible in 1829 (Madhouses (Scotland) Act, 9 Geo. 4, c. 34).

27. See Ledwon 54–67 for an analysis of the Commissioners’ Report in terms of melodrama. Ledwon argues that the Report deviates from conventional melodramatic conventions by figuring the persecuted innocent as male, in need of protection from predatory females.

28. The Commissioners’ Report, published in March of 1834, was composed of selected materials taken from (i) questionnaires, known as Rural and Town Queries, that were mailed to parishes in 1832 and (ii) reports completed in 1833 by 26 assistant commissioners who had visited parishes throughout England and Wales. The answers to the questionnaires and the assistant commissioners’ reports were published later in 1834. The Commissioners’ Report, because of “the massive amount of evidence used to support its arguments, and its air of self-confidence,” has been characterized as “by far the most influential work ever written on the economic effects of the Old Poor Law” (Boyer 64–65). This report, however, also selectively ignored much of the information contained in the questionnaires and assistant commissioners’ reports (Boyer 62).

29. For an in-depth discussion of laws governing marriage up to and including Lord Hardwicke’s Marriage Act, see Stone 30–37.

30. Sally Mitchell suggests that Jessie knows the sexual facts of life (*Fallen Angel* 23); however, I read her reactions to her pregnancy as suggesting sexual innocence.

31. In the Introduction to their collection *Narrating Mothers: Theorizing Maternal Subjectivities*, Brenda Daly and Maureen Reddy discuss the paucity of maternal voices in literature and theory and stress the importance to feminism of listening to mothers’ stories (1–18).

32. See Mackay 157–72 for a discussion of the administration of the New Poor Law.

33. For information about women’s petitions for relief under the Poor Law in the 1830s and 1840s, see Levine-Clark 62–67.

34. While Stallybrass focuses on sixteenth-century assumptions, Carol Smart
identifies similar ideas in the nineteenth century. See Smart, “Disruptive Bodies,” for an analysis of the “complex ways in which discourses of law, medicine and social science interweave to bring into being the problematic feminine subject who is constantly in need of surveillance and regulation” and an exploration of the “dominant idea of disruption and unruliness which is seen to stem from the very biology of the body of Woman” (7).

35. For a discussion of several successful benefit-of-linen and want-of-help defenses, see Hoffer and Hull 68–71.

36. My discussion of Jessie’s plea of “temporary insanity” is informed by Jill Matus’s analysis of moral and maternal madness in the novel Lady Audley’s Secret. See Matus 338–44.

37. Matus describes Lady Audley in Lady Audley’s Secret as “not mad (insane) but mad (angry)” (344). I find this recharacterization particularly useful in examining the pervasive rhetoric of madness in specific confrontational scenes in Jessie Phillips.

38. See Shanley 82–93 for interesting comparisons between CALPIW’s critique of the Infant Life Protection Act and the protests of the Ladies’ National Association (LNA) against the Contagious Diseases Acts. Wolstenholme, Butler, and Becker were also members of the LNA.

39. In suggesting that Jessie Phillips has been erased, I do not want to discount the work that Helen Heineman, Sally Mitchell, and Lenora Ledwon have done on Jessie Phillips. Specifically in the context of infanticide, however, relative to a character such as Hetty Sorrel (the nineteenth-century literary character associated with infanticide), I think it is fair to characterize Jessie as lost.

40. This quotation appears in Sadleir 112 with no citation.

41. At the age of thirty, Trollope married a lawyer and became the mother of seven children over the next eight years. The Trollopes were plagued by financial difficulties, and Frances engaged in several business ventures in America before turning to writing at the age of 53 to support the family. (Her husband had grown increasingly unable to accept, let alone alleviate, the family’s economic hardships.) Her first book, Domestic Manners of the Americans (1832), was an immediate success and marked the beginning of her twenty-five-year writing career.

42. Helen Heineman’s extensive and important reclamation work on Trollope must be acknowledged. Her research in the 1970s and 1980s rescued Trollope from almost complete oblivion as an author. See Triumphant and Frances Trollope. The 1990s saw an increase in interest in Trollope’s writing and life. See Kissel, Ransom, and Neville-Sington.

43. For analyses of her social reform novels—Jonathan Jefferson Whittaw; The Vicar of Wrexhill; and The Life and Adventures of Michael Armstrong, The Factory Boy—see Heineman, Frances Trollope 58–76.

44. For two quite different approaches to Anthony Trollope and the law, see Coral Lansbury’s The Reasonable Man: Trollope’s Legal Fiction, which discusses the structure of his novels in terms of legal pleading, and R. D. McMaster’s Trollope and the Law, which explores the novels within the contexts of nineteenth-century legal history and legal philosophy.

Chapter 3

1. While I use the term “birth control,” it should be noted that Margaret Sanger
coined this term in 1914. The word “contraception” was coined in 1886 by an American physician; however, it was rarely used in Britain until after World War I. The most commonly used terms in the nineteenth century were “preventive checks,” “artificial checks,” “artificial limitation,” and “Malthusian appliances.” “Family limitation” was a broader term that also included “non-artificial” methods of birth control such as abstinence and the use of the “safe period.” See Bland 190–91.

2. As Gail Cunningham has examined in her study, The New Woman and the Victorian Novel, Jude was widely received as an addition to the New Woman fiction (103), and Sue shares much in common with the New Woman heroines of 1890s popular fiction. Her objections to marriage, including her desire not to be anyone’s sexual property, as well as her reading habits, her anti-religious feelings, and her “somewhat callous experimenting with emotions,” ally her with heroines such as Hadria in Mona Caird’s The Daughters of Danaus, Evadne in Sarah Grand’s The Heavenly Twins, Gwen Waring in Iota’s A Yellow Aster; and the heroines in George Egerton’s Keynotes (110–11).

3. See Boumelha 11–25 for a discussion of the cultural debates surrounding sexual ideology and the “nature” of women in the 1880s and 1890s, including ideas about birth control. In introducing her analysis of women in the novels of Hardy, she explains that “the very fact that female sexuality was so much a matter for discussion, speculation and research, and the accompanying questioning of marriage, would have been enough to make unselfconscious writing involving these subjects almost impossible” (25). Interestingly, the novel does specify that Physician Vilbert sells “female pills,” a common euphemism for abortifacients. Vilbert is closely associated with Arabella, who, despite her sexual appetites, has only one child. See Boumelha 152.

4. See Morgan for an insightful discussion of “alternative sightings” in the novel in which Sue is portrayed (through the eyes of the narrator and Arabella) as a sexual, corporeal, and sexual being. Morgan argues that it is Jude’s perceptions and descriptions of Sue that perpetuate the idea of her sexlessness (143).

5. See Bland 196–97 for a discussion of feminist opposition to artificial birth control. Bland discusses concerns that contraception would encourage excessive indulgence, have brutalizing effects, and make sex “devoid of the higher feelings of love and monogamous emotional commitment” (197).

6. In discussing family limitation in an 1895 article in The Saturday Review entitled “The Maternal Instinct,” the author (“A Woman of the Day”) used similar language, commenting that New Women were “acquiring more or less the courage of their convictions” and that “those who were never destined by Nature for maternity will have none of it” (753).

7. See Gordon 299 (who argues that Little Father Time is a thinly veiled persona for Hardy, a time spirit who sees and fashions Jude’s future); Gregor 221 (who sees Little Father Time as playing a choric role, a symbolic character who “introduces the processes of history into the lives of Jude and Sue”); and Edwards 32 (who sees him as symbolizing the mistakes his father has made in the past). Gordon also argues that the word “menny” is a macabre pun meaning “like men,” and that the misspelling recalls the biblical verse, “Mene, mene, tekel, upharsin,” meaning “God has numbered the days of your kingdom and brought it to an end” (299). In discussing the key role of class in Hardy’s wordplay, Joss Marsh suggests that “menny” may be a pun on the word “mean” (288).

8. Gregor comments that Little Father Time’s “sorrowful contemplative eyes
become ours as we watch them [Sue and Jude] desperately attempting to cheat time, repudiating the past, evading the social commitments of the present, indifferent with their ever increasing family to the demands of the future. With Father Time their ‘dreamless paradise’ fades into the light of common day” (221).


10. For a discussion of the influences of Anna Wheeler on William Thompson, Eliza Sharples on Richard Carlile, Frances Wright on Robert Dale Owen, and Harriet Taylor on John Stuart Mill, see McLaren 95–98. McLaren suggests that women were using men as mouthpieces.

11. References to the trial are taken from the published trial transcript. See Freethought.

12. The full indictment is reprinted in Freethought 322–23.


14. For a detailed analysis of Malthusianism and its progeny, see McLaren 43–58.

15. This language from the handbill is set forth in Fryer 47. A copy of this handbill is located in The Place Museum in the British Museum.

16. For a discussion of the vicious attacks on Place and Carlile in such radical journals as *Black Dwarf* and *Cobbett’s Weekly Register*, see Fryer 79–86.

17. Owen’s earlier American editions included discussions of the sponge and the condom; however, he later rejected both of these methods.

18. *Fruits of Philosophy* describes very specific chemical solutions, the use of which Knowlton prefers to the withdrawal method and the sponge, both of which he believes are unreliable. He also dismisses the condom, morally tainted as the known method for protection against syphilis, as “by no means calculated to come into general use” (137).

19. Bradlaugh was wary of taking on the cause because there was disagreement amongst his fellow freethinkers on the issue of Neo-Malthusianism, a theory that accepts Malthusian fears about overpopulation but advocates birth control rather than moral restraint. Also, personally, Bradlaugh did not like Knowlton’s book. While Bradlaugh’s name will be forever associated with the famous trial, and he certainly played a major role in the proceedings, it was truly Besant’s cause. Her biographer, Anne Taylor, describes Besant’s pivotal role as follows:

She insisted that the book was defensible, that it must be defended, and that the free-thought party would respond to an appeal. . . . Bradlaugh argued with her for some hours. . . . Watts’s plea of guilty to an offence Annie felt to be disgraceful was a violation of her integrity; her fiery sense of honour was aroused. She told Bradlaugh she would never allow her work to appear over the imprint of a man who pleaded guilty to publishing obscene literature. Bradlaugh had rarely encountered a stronger will; he bent before its force. (104–5)

For more information on Bradlaugh, the famed freethinker, orator, secularist, and publisher of the *National Reformer*, see Fryer 141–50.

20. Annie Besant’s determination to champion widespread dissemination of birth-control information was very much in keeping with the strong-minded nature
she exhibited throughout her life. Born Annie Wood in 1847, the only daughter of Emily Roche Morris and William Wood, Annie was five when her father died, leaving the family destitute. At the age of eight, she went to live with a wealthy, unmarried woman, Ellen Marryat, who provided her with an extensive private education over the course of eight years. Trained in Latin, German, French, history, and geography, among other things, she also was very much influenced by Marryat's strong Evangelical beliefs. At the age of twenty, she married the Reverend Frank Besant. Writing years later in her Autobiography, she comments that she feels “a profound pity for the girl standing at that critical point of life, so utterly, hopelessly ignorant of all that marriage meant, so filled with impossible dreams, so unfitted for the rôle of wife” (65). She also reflects on the devastating effects of her complete sexual ignorance: “My dreamy life, into which no knowledge of evil had been allowed to penetrate, in which I had been guarded from all pain, shielded from all anxiety, kept innocent on all questions of sex, was no preparation for married existence, and left me defenseless to face a rude awakening . . .” (71). She sees it as a mother's duty to educate her daughters about the facts of married life: “Many an unhappy marriage dates from its very beginning, from the terrible shock to a young girl's sensitive modesty and pride, her helpless bewilderment and fear . . . [N]o mother should let her daughter, blindfold, slip her neck under the marriage yoke” (71). Her own marriage turned out to be disastrous, the yoke too much to bear, and after great suffering and a complete loss of her religious faith, she separated from Besant in 1873. Under the terms of a separation agreement, her husband obtained custody of their son Digby and she obtained custody of their daughter Mabel. This type of custody arrangement had become possible only six months earlier with passage of the Custody of Infants Act (36 & 37 Victoria, c. 12) (A. Taylor 60). See Besant, Autobiography 11–119 and A. Taylor 1–60 for additional information about Besant's childhood and her unhappy marriage.

21. In this article, Besant advocates the repeal of the Contagious Diseases Acts, which attempted to curb the spread of venereal disease by registering and sometimes incarcerating prostitutes. In the article, which was reprinted in 1885 as a pamphlet, she is defiant in her denunciation of patriarchal law: “In the name, then, of Liberty outraged, in the name of Equality disregarded, we claim the repeal of these one-sided Acts, even if the bond of Fraternity prove too weak to hold men back from this cruelty inflicted on their sisters” (6). The page references are to the 1885 pamphlet. See chapter 5 for a discussion of the movement to repeal the Contagious Diseases Acts.

22. In Child Murder and British Culture 1720–1900, McDonagh focuses on Besant and Bradlaugh's use of the trope of child murder to advance their “civilizing project” of birth control (177). See McDonagh 174–78 for her analysis of their defense at trial.

23. This description is quoted in Dinnage 31; no original citation is provided. The speaker most likely is referring to Besant's position as the “heroine of free-thought” (the title her biographer Anne Taylor gives to the chapter covering these years in Besant's life).

24. This is especially apparent in her references to prostitutes. While at times sympathizing with them as victims of a system that promoted vice (Freethought 103), she made a clear distinction between “depraved and dissolute women” (241)
(with whom birth control commonly was associated) and the wives and mothers for whom she was pleading.

25. This excerpt is from Hypatia Bradlaugh Bonner and J. M. Robertson, *Charles Bradlaugh, A Record of His Life and Work By His Daughter* (London: Fisher, 1894) n. pag., qtd. in Manvell 153.

26. See Banks and Banks for a detailed discussion of the newspaper coverage of the trial.


28. The Social Democratic Federation (“SDF”), under the leadership of H. M. Hyndman, opposed birth control. McLaren states that “[t]here was always a strong misogynist current evident in the writings of the SDF and it followed that birth control, which was already suspect because of its Malthusian connotations, would be open to further attacks when viewed as a means by which women sought to escape their natural duties” (162). McLaren also identifies, however, several socialists or “men and women on the English left,” who, like Besant, argued for family limitation (174). See McLaren for a discussion of birth-control advocates, including Daniel Chatterton, Stewart Headlam, John M. Robertson, Sidney and Beatrice Webb, George Bernard Shaw, and H. G. Wells.


30. Besant explains in her *Autobiography* that she renounced Neo-Malthusianism after two years’ instruction from Madame H. P. Blavatsky, “who showed me that however justifiable Neo-Malthusianism might be while man was regarded only as the most perfect outcome of physical evolution, it was wholly incompatible with the view of man as a spiritual being, whose material form and environment were the results of his own mental activity” (237).


32. See Lewes 10–19 for an in-depth analysis of why nineteenth-century women were so drawn to the utopian genre. After noting the attractions to women of writing novels generally, Lewes specifically comments that utopian novels were accessible to the amateur because there were few daunting “monumental supertexts” (11). Lewes also argues that utopian novels served consolatory and cathartic functions (10–11).

33. In the “Apology” introducing his 1922 volume of poetry, *Late Lyrics and Earlier*, Hardy identifies his own philosophy as, not pessimism, but evolutionary meliorism. Quoting the following line from his earlier poem “In Tenebris,” “If way to the Better there be, it exacts a full look at the Worst,” Hardy clarifies this philosophy as “the exploration of reality, and its frank recognition stage by stage along the survey, with an eye to the best consummation possible: briefly, evolutionary meliorism” (viii). It may be that *Jude* is a “full look at the Worst,” but arguably for the purpose of questioning whether or not there may be a “way to the Better.” While I am unaware of any direct associations between Hardy and Clapperton, they both were influenced by George Eliot, who originally coined the term “meliorism.” See Adams, Bailey, and Boris for discussions of evolutionary meliorism in connection with Hardy’s novels and poems.
34. Clapperton analyzes and critiques State Socialism, the Democratic Federation, and Christian Socialism in her chapter of *Scientific Meliorism* entitled “Socialism versus Individualism” (389–408). She believes that “crude socialism in method has gone astray, and real socialism is yet in an early stage” (396). For Clapperton, “the only definition [of socialism] wide enough to be scientifically correct is this—concerted action for social ends” (396).

35. In an 1889 interview, Clapperton identified Wollstonecraft as one of the writers who had most influenced her (“Jane Hume Clapperton: Authoress” 1).

36. Wollstonecraft argued that the government should set up schools that educated boys and girls together. Specifically, “[t]he school for the younger children, from five to nine years of age, ought to be absolutely free and open to all” (“Vindication” 167). While class distinctions entered into her proposals for older children, she still maintained the need for the sexes being educated together at these older ages (168).

37. Clapperton, like Mona Caird, Sarah Grand, and other feminist writers of the late nineteenth century, was fascinated by the new field of eugenics. Unlike Sir Frances Galton, however, she did not espouse celibacy for those “unfit” to have children. Instead, she advocated the use of artificial checks. Parentage should be avoided, not marriage or sex. Also, Clapperton did not see population control as an issue for only the working classes. Many of her arguments are framed in terms of the ruin to women’s health and the foreclosure of women’s happiness from having too many children. While Clapperton was a proponent of eugenics, she was also interested in birth control for reasons wholly unrelated to eugenic practices. Specifically, she saw voluntary motherhood as key to women’s emancipation.

38. It is the close relationship based on mutual interests between Margaret and Frank (who is married to Rose), and Rose’s reaction to it, that *The Saturday Review* found particularly objectionable.

39. Hardy also advocates socialized child care in *Jude the Obscure*. Upon first learning of Little Father Time’s existence, Jude comments, “The beggarly question of parentage—what is it, after all? What does it matter, when you come to think of it, whether the child is yours by blood or not? All the little ones of our time are collectively the children of us adults of the time, and entitled to our general care” (340–41). Collective childcare was a standard feature of the co-operative communities planned by Robert Owen and his followers (B. Taylor 51). Owenite and feminist William Thompson specifically called for men to share in childcare responsibilities (52).

40. These were the charges brought against Besant and Bradlaugh. Clapperton also followed Besant’s lead in challenging the idea that birth control and socialism were incompatible.

41. See Davies for a collection of letters written by working-class women in 1913 and 1914 that present various views on aspects of mothering, including birth control.

42. That the Prime Minister suggested this meeting is set forth in the biography of Stopes’s life written by Maude in 1933 (147), as well as in the biography written by Briant in 1962 (143). Hall emphasizes that Stopes “always claimed” that the meeting was Lloyd George’s idea (191). See Hall’s 1977 biography for what she professes is a more critical and objective view of Stopes’s life. Hall comments that much of Maude’s biography was dictated by Stopes herself and that Briant, although more
objective, also was too influenced by his close personal acquaintanceship with Stopes (Hall 11). Rose’s 1992 biography also notes that “Marie always claimed that Lloyd George had advised her to ‘make birth control respectable’ and helped behind the scenes to make her great Queen’s Hall meeting a success” (192). For more information on Stopes’s relationship with Lloyd George and his mistress (and later wife) Frances Stevenson, see Rose 181, 190–92.

43. The attorney for Sutherland, for example, after making the rather odd and seemingly gratuitous comment that Bradlaugh “had a co-defendant, Mrs. Annie Besant—as clever a woman, perhaps, as Mrs. Stopes,” offered the following examples of the ways in which Knowlton’s book came nowhere near the obscenity of Stopes’s:

[Knowlton] specifically says that in the interests of decency, he does give no full description of the man’s organ of generation or its action. . . . [Dr. Stopes] has no such reticence at all that Dr. Knowlton had, and she sets out in full with the most horrible detail, exactly how that organ acts under certain circumstances. Now, it is not a physiological treatise only, there are pages and pages of erotic stuff, so I suggest to you, what if this matter is directed to the goal to which she says her energies are directed? Why do you want pages of intimate, stimulating, exciting descriptions of the act of copulation, and how it takes place? (qtd. in Box 204)

46. March 5, 1923, MCS, duplicated letter. BL-S, qtd. in Hall 238.
47. This is a landmark case in the law of libel for differentiating between a plea of justification (which requires that all facts and comments be true) and a plea of fair comment (which requires that facts be true and expressions of opinion be fair). See Hyde 277 and Gatley 492–95.
48. “Stopery” was a term frequently used when referring to Dr. Stopes’s activities or the advocacy of birth control in general (Maude 187).
49. Although she is briefly mentioned in a few books dealing with birth control (Bland, McLaren, and Porter and Hall) and the New Woman (Ardis, Boumelha, Ledger, and Waters), I was unable to locate Clapperton in any biographical dictionaries or similar sources. An 1889 interview with her that appeared on the front page of the Women’s Penny Paper provides some facts about and insights into the life and beliefs of this forward-thinking writer. Born in Scotland in 1832, she remained at home to care for her ailing mother, “daily and hourly suffering from isolation” (“Jane Hume Clapperton: Authoress” 1). When her mother died in 1872, Clapperton devoted her leisure time to the study of social questions and, in 1881, began to write Scientific Meliorism. She brought the ideal home she described in that treatise into fictional reality in Margaret Dunmore in response to requests from her readers. Clapperton explained that she was “in entire sympathy with the movement for women’s advance all along the line from rational education in every branch to professional activities and sharing with men public duties and responsibilities, as they fit themselves for these” (1). In addition to Wollstonecraft’s works, the women’s books that had most influenced her were those of Harriet Martineau and George Eliot (2). In an 1897 pamphlet entitled Some Supporters of the Women’s Suffrage Movement, “Miss Clapperton” is listed under “Women in Literature” (Blackburn 38). She also
joined several other feminist activists such as Elizabeth C. Wolstenholme Elmy and Mona Caird in protesting a call from The Edinburgh National Society for Women's Suffrage to use the lash as punishment for men guilty of violent offenses against women. In a pamphlet entitled Woman Suffragists and the Lash, she responded to a “Sir” who had inquired about her position on this issue by explaining that it was “the outcome of confusion of thought and outraged feeling arising from the action of your sex in blocking the true path of progress. No real advance on the right lines,” she wrote, “can take place so long as women are denied the Parliamentary Franchise and the same rights of citizenship as men” (2–3). In 1904, Clapperton published a third major work, A Vision of the Future. This treatise updates the ideas set forth in Scientific Meliorism.

50. Himes estimates that millions of people learned about more effective methods of birth control after the Besant trial. He judges this from two circumstances: (i) the tremendous increases in the circulation of works providing instruction on birth control; and (ii) the halving of the English birth rate since 1876 (243).

51. The Malthusian League had two objectives: “To agitate for the abolition of all penalties in the public discussion of the Population Question” and “To spread among the people, by all practicable means, a knowledge of the law of population, and of the consequences, and of its bearing upon human conduct and morals” (The Malthusian, May 15, 1909, p. 37, qtd. in Bland 202). Neo-Malthusian feminist members of this League, such as Alice Vickery, also worked to provide practical birth-control advice to working-class women (Bland 207–9).

52. Stopes resigned from the Malthusian League in 1921 and severed all ties by charging that the atheism of Besant and Bradlaugh had actually hindered efforts to advance family limitation. The Malthusian League remained in existence until 1927. See McLaren 107–115 for a history of the Malthusian League.

53. See chapter 5 for discussions of George Paston's A Writer of Books and Florence Dixie's Gloriana, novels that mention family limitation and population control in the contexts of discussions of greater rights for women.

54. In Women and Sexuality in the Novels of Thomas Hardy, Morgan provides a “revisionary study of Hardy’s treatment of female sexuality” by analyzing the ways in which he hid or disguised some of his more disruptive and controversial views (xvi). Marsh argues that Sue's self-reproach concerning her unclear explanation to Little Father Time about the facts of life, “for with a false delicacy I told him too obscurely” (Jude 412), serves as a severe indictment of the “Victorian compulsion to euphemism” (Marsh 293). Marsh further comments, in this context, that Sue might have benefited from efforts to remove the “heavy constraining hand” on the publication of birth-control information (293).

55. The fact that contemporary reviews of Jude did not mention the Neo-Malthusian aspects of Little Father Time's note may have been only another method of silencing discussion of this most controversial topic. No mention is made of Neo-Malthusianism in the reviews of Margaret Dunmore.

Chapter 4

1. St. John-Stevas summarizes these arguments as follows: “Women didn’t want the vote: women did want it and would dominate the country: women wouldn’t use
the vote if it were given to them: the amendment gave them too much: the amendment gave them too little: the country would be at the mercy of feminine caprice, etc.” (263).

2. Mary Abbott claimed that she was qualified and entitled to be placed on the list of voters. When the Revising Barrister for the borough of Manchester held that she was not so entitled, she appealed the decision to the Court of Common Pleas. The appeals of 5,346 other women were consolidated (Chorlton 374–75).

3. School boards were created in 1870 by Forster’s Education Act (33 & 34 Vict., c. 75), and women were entitled to vote for and serve as members pursuant to this Act. Elizabeth Garrett was the first woman elected to a school board. In 1871, Mrs. Nassau was the first woman appointed as a poor-law inspector. See St. John-Stevas 273.

4. Women were not able to be elected as county or borough councillors until 1907, with passage of the Qualification of Women Act (7. Edw. 7, c. 33). See St. John-Stevas 274.

5. The key role of Coke is made clear in the opinion of one of the other judges who affirms that “the opinion of Lord Coke [in 4 Institutes 5], who clearly considered the law to be that women were disqualified at common law, would under any circumstances be of great authority: but, when it is supported by centuries of usage quite in accordance with his statement, the authority becomes such as it would be impossible for this Court to disregard” (Chorlton, Keating opinion 396).

6. Lawyers in England were (and still are) either solicitors or barristers. In the nineteenth century, a solicitor was literally, as Birks describes him in his aptly titled history Gentlemen of the Law, “the practical man of affairs who looks after the day-to-day management of legal business, the man to whom the layman takes his troubles” (3). Barristers were primarily advocates, with the exclusive right to plead cases in the superior courts. Generally speaking, the services of a barrister were retained by a solicitor rather than by the client directly. To train as a solicitor, one had to be articled to a practicing solicitor, serve an apprenticeship (typically of five years), and pass examinations administered by the Law Society (2–3). While dated, Birks’s book provides a thorough and fascinating history of the “character” of the solicitor.

7. Barristers (as opposed to solicitors) are “called to the Bar.” After being admitted to one of the four Inns of Court (Gray’s Inn, Lincoln’s Inn, the Inner Temple, or the Middle Temple), a law student had to “keep terms,” evidenced by his dining in the hall of his Inn a specified number of times. For three years, graduates of English universities were required to dine twelve times each year and all other would-be barristers were required to dine twenty-four times each year. This represented a significant expense, especially for those who had to travel to London (Abel 38). Since 1872, students have also been required to pass a Bar examination. Law lectures were given by the Council of Legal Education (established by the four Inns in 1852), although many students engaged the services of private “crammers” (Abel 50). Judges were called from the ranks of barristers (Birks 2).

8. The novel She sold a nearly record-breaking 30,000 copies within a few months (Gilbert 124). Gilbert contends that the terse title suggests that the book might be “an abstract treatise on the female gender or a fictive exploration of the nature of womanhood” (124).

9. Gilbert describes the men’s penetration of Africa as follows: “Lifted into lit-
ters, the explorers yield to a ‘pleasant swaying motion’ and, in a symbolic return to the womb, they are carried up ancient swampy birth-canals into ‘a vast cup of earth’ that is ruled by She-Who-Must-Be-Obeyed and inhabited by a people called the Amahaggar” (125).

10. All quotations from She are from the Oxford edition.

11. The first lectures at Cambridge given specifically for women were in 1870, and soon thereafter women began to be admitted to some of the “men’s” lectures. Women were not granted degrees from Cambridge until 1948. See St. John-Stevas 269–70.

12. That it was no trouble for a mediocre male scholar (like Leo) or one with little real interest in the profession (like Haggard) to be called to the Bar accentuates the injustice of the barriers that kept even the most zealous women from making it into the club. Encouraged by his friend Justice Kotzé, who asked him, “Why not read for the Bar?” (Haggard, Days 173), Haggard embarked on such a course in 1881 as a member of Lincoln’s Inn. He was admitted to the Bar in 1885, but by 1888 he had given up the practice of law. See Etherington 7–9. His biographer Morton Cohen explains, “Rider Haggard was not destined to serve the law long. His whimsical strain made him unsuited for chambers and the routine of legal affairs” (85).

13. Laura Chrisman argues that this matrilineal society, which emphasizes a woman’s reproductive role and excludes her from the processes of production (women are exempt from manual labor), limits her to a domestic function (43).

14. In Cassandra, Florence Nightingale laments the mental and physical suffering that women endure as a result of their confinement within the domestic sphere. Far from celebrating women’s role as angel in the house, Nightingale describes the plight of upper- and middle-class women as “like the Archangel Michael as he stands upon Saint Angelo in Rome. She has an immense provision of wings, which seem as if they would bear her over heaven and earth; but when she tries to use them, she is petrified into stone, her feet are grown into the earth, chained to the bronze pedestal” (228).

15. Neil Parsons explains that the “term ‘Great White Queen’ as applied to Queen Victoria (ruled 1837–1901) was put into the mouths of ‘native’ applicants by British settler records around the world and came to be accepted in metropolitan Britain as correct ‘Sambo’ pidgin” (xvii).

16. In fact, Queen Victoria expressed anti-feminist sentiments such as “[w]e women are not made for governing—and if we are good women, we must dislike these masculine occupations” (Mullen and Munson 60). Regardless of what she said, however, she was very active in government. Sir Charles Dilke, a republican detractor of Queen Victoria, complained in 1879, “The Queen does interfere . . . constantly” (D. Thompson 121). Thompson explains the Queen’s political role as follows: “To the end of her life she took an active interest in all matters of state, demanded to be consulted and undoubtedly influenced many decisions” (122).

17. Mullen and Munson do not cite the original source of this comment by Helene Vacaresco.

18. Thompson comments that “the presence of a female in the highest political position in the country had at times given strength, if only by implication, to the arguments of her female subjects who were seeking greater educational and political opportunities” (120).
19. A few days after the travelers had arrived in the land of the Amahaggars, Holly, in trying to save his servant Mahomed from having the red-hot pot placed on his head and then being cooked and eaten, had shot the Amahaggar woman who was holding Mahomed and accidentally killed Mahomed at the same time. A deadly fight had ensued, and the Englishmen were saved only when the Amahaggar Father Billali intervened. Ayesha had sent orders that the Englishmen (the white men) were to be kept alive, and the men who had disobeyed her orders and tried to kill Holly, Leo, and Job were on trial.

20. The associations in the novel between savagery and dark skin are emphasized in that Holly no longer refers to Ayesha as savage once he realizes that she is not dusky.

21. The term “fortune” emphasizes the imperial nature of Leo and Holly’s quest; they have come to Africa in search of whatever of value they might acquire (power, knowledge, eternal youth).

22. To support this argument, Brantlinger cites Benjamin Kidd’s 1894 Social Evolution: “The Anglo-Saxon has exterminated the less developed peoples with which he has come into competition . . . through the operations of laws not less deadly [than war] and even more certain in their result. The weaker races disappear before the stronger through the effects of mere contact.” See Kidd, Social Evolution (New York, 1894) 46, qtd. in Brantlinger 205. Brantlinger also analyzes Darwin’s 1874 The Descent of Man, concluding that “Darwinism lent scientific status to the view that there were higher and lower races, progressive and nonprogressive ones, and that the lower races ought to be governed by—or even completely supplanted by—civilized, progressive races like the British” (206).

23. For a discussion of the racism in She and other imperial fiction by Haggard, see Katz 131–54.

24. In 1902, Slessor moved further inland to Enyong Creek. She accepted an appointment in 1905 as a Member of the Itu Native Court with the status of permanent vice-president. She received forty-eight pounds per annum for her services. See Livingstone, Mary Slessor of Calabar 231.

25. Most of these tales are compiled in Livingstone’s biography, Mary Slessor of Calabar. He includes information from her correspondence, from the correspondence of government officials and other missionaries, as well as articles published in the Mission Record. In 1915, Livingstone made a collection of her “voluminous correspondence,” which unfortunately was destroyed in World War II (Buchan viii).

26. The biography does not cite a source for Maxwell’s account, but it does set it out in full.

27. Buchan reports that the Africans called Slessor “Eka Kpukpro Owo—‘Mother of All The Peoples’” (xii). Livingstone also quotes a missionary as saying, “[h]er power is amazing; she is really Queen of the whole Okoyong district” (Mary Slessor of Calabar 180). Livingstone refers to Slessor as the White Queen of the Okoyong several times in his biography, and he actually uses that as the title of the children’s biography he wrote about her, The White Queen of the Okoyong: Mary Slessor: A Story of Adventure, Heroism, and Faith.

28. Livingstone’s biography is entitled Mary Slessor of Calabar: Pioneer Missionary. It was not until Caroline Oliver titled her chapter on Slessor in her 1982 book, Western Women in Colonial Africa, “Mary Slessor: Missionary and Magistrate,” that Slessor’s position as a magistrate was given any prominence at all.
29. While Kingsley crosses boundaries that enable her to represent a woman with power, her views are steeped in imperialist structures of attitude and reference.

30. Buchan provides more specific information on why the twins were killed. Specifically, the Efik and other Cross River tribes “believed that one twin was the child of a devil which secretly mated the mother, and since it was impossible to tell which was the devil’s baby both must die” (55).

31. Miss Cave told the press that she would proceed to seek admission to the rolls as a solicitor and would study for a law degree at the University of London (The Law Times 107). While the professional bodies allowed only men as members, women were able to earn degrees in law at universities (Abel-Smith and Stevens 192–93). The suffragette Christabel Pankhurst was another woman who had studied law but wasn’t permitted to practice it. Sachs and Wilson suggest that she was more effective on the other side of the law:

It is interesting to speculate what the result on the suffrage movement would have been had women been admitted to legal practice at that time; if many leading rebels and revolutionaries have been lawyers, few leading lawyers have been rebels, and it is highly likely that even the spirited Christabel Pankhurst would have been totally contained by the Bar. As it was, “the hot strife at the Bar,” which allegedly was too much for women, appealed to her temperament, and in her capacity as a defendant she manifested such forensic brilliance that it was the male witnesses, magistrates and lawyers who found the combat too intense, not her. The courtroom became an arena in which she was far more effective as a feminist law-breaker than she would have been as a female barrister, and the occasion when she humiliated Lloyd George in the witness box—a Government Minister, solicitor and orator of note—stands out as one of the notable pieces of cross-examination of her era. (173)

Pankhurst’s study of the law, however, was no doubt useful to her as a leader of the suffrage movement.

32. See Susan Kingsley Kent’s excellent study of the feminist movement in the late nineteenth and early twentieth centuries, Sex and Suffrage in Britain, 1860–1914. As Kent argues, “The ultimate source and embodiment of patriarchal power was seen to lie in political expression, or law, and the vote was perceived as a strategic tool for changing law. Thus, the demand for women’s enfranchisement was a direct strike at the very seat and symbolic locus of patriarchal power” (13). Bebb’s case was another such strike.

33. The attorney also noted that women were permitted to practice law in many of Britain’s colonies, as well as in foreign countries (Bebb 289). While he did not offer specific information, it is true that women were lawyers elsewhere. In Canada, Clara Brett Martin was admitted as both a solicitor and a barrister in 1897. Women were allowed to be lawyers in Australia as early as 1903. Ellen Melville set up practice in New Zealand in 1909. See Corcos 323–26. In the United States, Arabella A. Mansfield was admitted to practice law in Iowa in 1869 (Sachs and Wilson 95). In France, legislation allowing women to enter the legal profession was passed in 1900 (Corcos 326–27). See Mossman for a book-length study of the first women lawyers in the United States, Canada, Britain, New Zealand, India, and Europe.

34. A bill relating specifically to barristers, the Barristers and Solicitors (Quali-
fication of Women) Bill, does not appear to have passed. However, the 1919 Sex Disqualification (Removal) Act accomplished the same end (Corcos 386). As Helena Kennedy comments, “It was not until the passage of the Sex Disqualification (Removal) Act of 1919 that the admission of women was forced upon the Inns by Parliament, and since that date the acceptance of women has continued to be slow and grudging” (148). For a discussion of women at the Bar today, see Kennedy 148–62.

35. No mention of this first admission was made in the legal papers, and The Law Society Gazette continued to list names of women under the heading “Gentlemen Applying for Admission” for some time (Kirk 111). See Abel 172–76 for a discussion of women’s numbers and roles as solicitors from the 1920s to the present.

36. See Abel 80–85 for a discussion of women’s numbers and roles within the Bar from the 1920s to the present.

37. See Burton 110–51 for a discussion of Sorabji’s experience of studying law at Oxford. See Mossman 232–37 for additional information on Sorabji’s legal work in India, both before and after she was officially admitted into the legal profession.

38. This legislation gave the vote to six million out of thirteen million adult women (Perkin, Victorian Women 243). Universal suffrage for women was not attained until 1928 with passage of the Representation of the People (Equal Franchise) Act (18 & 19 Geo. 5, c. 12).

39. Perkin suggests that the influence of women members of parliament, as well as millions of women voters, was responsible for the passage of sixteen Acts protecting women’s interests in the early 1920s (Victorian Women 244).

40. For a history of the legal battle of women to gain access to the House of Lords, especially the key role played by Margaret Haig Thomas Mackworth, Viscountess Rhondda, see Eoff 81–88.

41. This meant she was also appointed a Bencher at her Inn of Court, making her the first woman to sit on the very prestigious governing body of an Inn (Lane 136–37).

42. For a probing and reflective analysis of the influence women have had on the law and the legal process in both the nineteenth and twentieth centuries, see the chapter “Women as Citizens” in Atkins and Hoggett 181–99.

Chapter 5

1. Weldon ran an orphanage for children. In 1877, she had moved the children from Tavistock House to Argueil, France. She trained these children in voice. Weldon was a well-known and talented vocalist, performing at such venues as Covent Garden in London and the Opéra Comique in Paris. She was also a spiritualist. For an analysis of this attempted abduction that focuses on Weldon as a spiritualist, see Walkowitz, City 172–80.

2. Louisa Lowe had been waging this campaign since at least 1845, when she founded the Alleged Lunatic’s Friend Society. Also a writer, Lowe published The Bastilles of England; or the Lunacy Laws at Work in 1883. This book includes a rich collection of stories of unjust confinements, including a recounting of Weldon’s escape. After describing Weldon’s refusal to comply with Harry’s wishes that she move from Tavistock House, Lowe poses a significant question, one whose all too
dangerous implications signify beneath her irony, “Who but a lunatic would thus oppose a husband’s will?” (41).

3. Trial testimony indicates that 30,000 tickets were printed for one of her lectures at St. James Hall (“Weldon v. Winslow,” 15 Mar. 1884, 4).

4. Weldon acknowledged that she was fortunate to have sufficient funds and friends to protect her. In How I Escaped the Mad Doctors, she emphasizes this point by concluding with the line, “Had I been quite a poor woman, unable to pay printers; in spite of all my courage and energy, I should have been quite ruined long ago” (22).

5. Created in 1845, the Lunacy Commission was a central regulatory body that administered the lunacy laws (Forsythe, Melling, and Adair 69).

6. Lord Ashley, the seventh Earl of Shaftesbury, became a Lunacy Commissioner in 1828. He was Chairman of the Commissioners from 1845 until his death in 1885. See K. Jones 133, 197; Forsythe, Melling, and Adair 71.

7. Weldon primarily worked on her own cases, but many sought her legal advice. Treherne comments that “[l]etters would reach her from all corners of the globe; some came to Red Lion Court with the simple address, ‘The Mrs. Weldon, London’; letters asking advice on all possible points of law . . .” (96). On Weldon’s death, the headlines read, “A Noted Portia Dead”; “Famous Lady of the Law Courts Dead”; “Death of a Noted Litigant” (Treherne 238).

8. Manisty also stated that “it was revolting to one’s sense of right that merely because the person has some strange or eccentric ideas therefore she is to be shut up for life” (“Weldon v. Winslow,” 9 Apr. 1884, 4).

9. A writer in the newspaper Truth commented after her death, “Remembering Mrs. Weldon, I can quite understand the objections of the Bar to lady barristers. There was a remarkable choice of able men at the Bar in Mrs. Weldon’s time, but if she had brought an action against me I should not have felt safe with the best of them . . .” (qtd. in Treherne vi).

10. This is the comment of an unidentified barrister who knew Weldon in the 1880s and was familiar with her law “practice.”

11. It is only at the end of the Life article that it is clarified that the picture shows Weldon dressed as Serjeant Buzfuz (163).

12. Kathleen Jones credits Weldon with being very influential in the legislative reform of the lunacy laws. She specifically cites the importance of the case Weldon v. Winslow (198).

13. Indeed, it was the judge of the divorce court who had to grant the order for attachment against Harry Weldon who appealed to the House of Lords for legislative action.

14. While this quotation suggests that Weldon’s motivations may have been misunderstood, it is not at all incorrect to name her a champion of women’s rights. One of her concerns was that this law would make it too easy for men to abandon their wives. As desertion happened anyway, however, this amendment offered much needed protection to heretofore unrepresented (by themselves or anyone else) women.

15. This was the heading the London Times used in reporting this case. Its first story on March 10, 1891, was titled “Remarkable Abduction Case” (8).


17. Haughton’s actions and testimony fit the profile of a batterer. A batterer
wants sole possession of his wife, often driving away her friends and family. Batterers also are masters of justification (Waits 193–95).

18. Waits explains that “[e]ven when confronted with undeniable evidence of his violence, he [the batterer] will minimize its severity” (194).


21. Ann Ardis has identified more than one hundred New Woman novels written between 1883–1900 (4). For information on the popularity of these novels, their readership, and their detractors, see Flint 294–316.

22. For insightful analyses of many New Woman novels and discussions of the historical and social contexts of this genre, see Ardis and Cunningham.

23. When Grand was 15, she formed a club to perpetuate the principles of Josephine Butler. These activities resulted in her dismissal from school (Kersley 81).

24. The Acts included no definition of “common prostitute.” Dr. William Acton, one of the leading proponents of the Acts, quoted the following working definition that had been given in testimony before Parliament: “[a prostitute is] any woman whom there is fair and reasonable ground to believe is, first of all going to places which are the resorts of prostitutes alone, and at times when immoral persons are usually out. It is more a question of mannerism than anything else” (qtd. in Murray 425). In other words, all women were vulnerable.

25. The Contagious Diseases Act of 1869 extended the reach of the Acts to non-military districts. For a detailed discussion of the specific provisions of the Contagious Diseases Acts, see Walkowitz, Prostitution 69–89.


27. West sees the law and literature movement as a necessary and powerful check on the more established interdisciplinary arena of law and economics. West focuses on two distinct characteristics of the “economic man” of the field of law and economics. First, he is “perfectly rational” (“Economic Man” 869), always knowing and motivated to seek what is best for himself. Secondly, he has no empathetic understanding of others. West argues that these characteristics of “economic man” do not describe real people. “Literary woman,” by contrast, understands that people are multimotivational and act in complex ways. She has the ability to empathize.

28. West explains that she uses the term “literary woman” for reasons of rough justice and accuracy: “In the interest of rough justice, I use the word ‘woman’ to include men as well as women, ‘she’ to include the male pronoun, and ‘womankind’ to include mankind. In the interest of accuracy, women’s moral voice seems to be distinctively tied to the moral value of empathy I discuss in this paper, and the literary method of narrative” (“Economic Man” 867n2).

29. West clarifies that “[t]he knowledge we learn . . . through metaphor, allegory, narrative, literature, and culture—is a peculiar sort of knowledge, but it is absolutely essential to any meaningful quest for justice, legal or otherwise” (“Economic Man” 876–77). Contrasting these ideas to those of the proponents of law and economics, West claims, “Knowledge of the other’s subjectivity is not rationally acquired, and it cannot be rationally calculated, quantified, aggravated, or compared. It is knowledge
that moves us rather than informs us. We ‘make room’ for this knowledge in our heart, not in our head” (877).

30. While Josephine Butler and her followers called for radical feminist reforms, not all women who advocated repeal of the Acts wanted to become or be associated with public women. Many reformers adhered to a separate-sphere ideology, stressing women’s moral supremacy, purity, and domestic virtue. Yet even those women who fought the Acts on purely moral grounds were influenced by the powerful narratives of women’s suffering (Walkowitz, *Prostitution* 110). See Walkowitz, *Prostitution*, for a complex study of the various and diverse ideas and motivations of the repealers.


33. For a detailed analysis of the “anxiety of authorship” and “struggle for artistic self-definition” typical of nineteenth-century women writers, see Gilbert and Gubar 45–92.

34. Beth’s mother is a most complex character. She frequently beats Beth severely, and we despise her for this treatment; however, as this opening scene suggests, she is not presented as completely unsympathetic. Although Mrs. Caldwell’s behavior is not excused, stories of her own experiences provide contexts that at least work to explain her complicated motivations.

35. Butler was described by a journalist as “a shrieking sister, frenzied, unsexed, and utterly without shame” (qtd. in Petrie 20). In 1888, Caird published an essay in the *Westminster Review* critiquing the institution of marriage. The article was taken up by the *Daily Telegraph*, which received 27,000 letters in response to its related inquiry, “Is Marriage A Failure?” (Hamilton 306). For a collection of essays elaborating on Caird’s views on marriage, see Caird, *Morality of Marriage*. Caird also makes a fictional case against marriage in her New Woman novel *Daughters of Danaus* (1894).

36. This review that appears in the *Academy* is anonymous; however, Anita Miller identifies it as written by Arnold Bennett (262).

37. Dixie dedicates the novel as follows:

To all women and such honorable upright, and courageous men as, regardless of Custom and Prejudice, Narrowmindedness and Long-Established Wrong, will bravely assert and uphold the Laws of Justice, of Nature, and of Right; I dedicate the following pages, with the hope that a straightforward inspection of the evils afflicting Society, will lead to their demolition in the only way possible—namely, by giving to Women equal rights with Men. Not till then will Society be purified, wrongdoing punished, or Man start forward along that road which shall lead to Perfection. (vii)

38. Eleanor Marx-Aveling was a socialist who was deeply concerned with women’s place in society. See Marx-Aveling and Marx-Aveling for a discussion of her thoughts on such issues as marriage and prostitution. In contrast to Dixie, Marx-Aveling believed that establishing a socialist society was the necessary first step to women’s equality (27).

39. In 1819, a peaceful working-class demonstration in Peterloo became a mas-
sacred as Hussars and a Yeomanry Cavalry charged through the crowd on horseback. E. P. Thompson reports that eleven people died and 421 were injured. Saber wounds accounted for 161 of the injuries (687). See E. P. Thompson 669–700 for an analysis of Peterloo.

40. In 1795, an act was passed making it illegal to hold meetings of over fifty people without the consent of a magistrate (E. P. Thompson 145). In 1819, reformers were claiming rights to “political organisation, the freedom of the press, and the freedom of public meeting; beyond these three, there was the right to vote” (E. P. Thompson 672).

Afterword

1. Dixie does not address inequalities based on race in Gloriana. While her utopian vision includes “England, Ireland, Scotland, and Wales peacefully attending to their private affairs in their Local Parliaments” (284), they send delegates, along with “representative men and women from all parts of our glorious Empire” (284), to an Imperial Assembly. See chapter 4 of this book for a discussion of issues of race and Empire in the nineteenth century. Prejudices based on sexual orientation became Victorian spectacle five years after Gloriana was published with the 1895 Oscar Wilde trials. Wilde was sentenced to two years' hard labor when he was convicted under the Criminal Law Amendment Act of 1885 of committing an “act of gross indecency with another male person.” See Showalter 14.

2. See Kalsem for analysis of the way that studying historical narrative advocacy by women “can enrich our understanding and critical consideration of legal history, the meaning of law, and law’s meanings” (280).

3. I use the term “official” legal texts in the positive law sense of “the written law of a centralized government that has assumed authority over law.” See Constable 111.

4. Baron describes the law and literature movement as fractured into primarily three disparate strands: humanist (“law in literature”); hermeneutic (“law as literature”); and narrative jurisprudence. For an understanding of some of the basic premises from which the current movement has evolved (including defining disagreements), see White, The Legal Imagination and Heracles’ Bow; Posner, Law and Literature (1988); R. Weisberg; and West, Narrative, Authority, and Law. Other key books and collections in this field include Fish; White, Acts of Hope; Heinzelman and Wiseman; I. Ward; Brooks and Gewirtz; Posner, Law and Literature (1998; 2009); Freeman and Lewis; Kahn; Aristodemou; Binder and Weisberg; Heinzelman; and Krueger, Reading for the Law.

5. Far from considering itself represented by West’s figure of “literary woman,” the history of the field of law and literature reveals a tradition of the exclusion of women. In 1992, one of the leading scholars in this area, Richard Weisberg, proposed a “Great Books” syllabus that spans a 500-year period and includes only one novel by a woman (117). In response to Carolyn Heilbrun and Judith Resnick’s critique that the law and literature movement was ignoring women’s writing, Weisberg argued that books should not be chosen to satisfy some “social litmus test,” and then asserted that “the field of Law and Literature fully accepts responsibility for hewing to the Great Books” because it defines “‘best’ quite differently from the current myopic fashion” (120). See Heilburn and Resnick. A 1994 nation-
wide survey revealed that of the 68 literary texts most often assigned in law and literature courses, only six were by women (Gemmette, “Joining the Class Action” 686–87). Only one work by a woman was included in the list of top twenty secondary sources assigned (671). But see Heinzelman and Wiseman for an excellent collection of essays that worked to change the nature of this terrain with its exploration of the connections between law, literature, and feminism. Also, Elizabeth Gemmette has published a four-volume collection of literary works with legal themes (actual short stories, drama, and novellas, and a bibliography including summaries of novels), which includes many works by women. See Gemmette, Law and Literature. Significantly, in two recent book-length studies, Heinzelman, Riding the Black Ram, and Krueger, Reading for the Law, gender is central to the analysis.